



Office of the City Manager

PUBLIC HEARING
September 24, 2019

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Timothy Burroughs, Director, Department of Planning & Development
Subject: ZAB Appeal: 2325 Sixth Street, Use Permit #ZP2017-0146

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP2017-0146 to alter a 6,000 sq. ft. parcel at 2325 Sixth Street by 1) raising the existing one-story, 1,348 sq. ft. single-family residence with an average height of 12 feet - 7 inches, to create a new, 3,330 sq. ft. two-story duplex, with an average height of 22 feet, 2) increasing the total number of bedrooms on the parcel from three to seven, and 4) constructing a two-story, 472 sq. ft. accessory building with an average height of 19 feet - 3 inches, located 1 foot - 6 inches from the rear and side yard property line to the south, that would consist of a two-car garage on the ground floor and a workshop on the second floor.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On September 13, 2017, Bacilia Macias submitted an application for a Use Permit as described above. On October 31, 2018, City staff deemed the application complete. The ZAB held a public hearing on May 9, 2019, and approved the Use Permit application, with modifications to the plans and conditions of approval, by a 6-3-0-0 vote (Yes: Clarke, Kahn, Kim, O'Keefe, Pinkston, Tregub; No: Selawsky, Sheahan, Olson; Abstain: none; Absent: none).

On May 22, 2019, staff issued the notice of the ZAB decision. After additional review of the captioner's record, staff issued a revised Notice of Decision on June 3, 2019. On June 17, 2019, Mary Beth Thomsen filed an appeal of the ZAB decision with the City Clerk. The Clerk set the matter for review by the Council on September 24, 2019. On September 10, 2019, staff posted the public hearing notice at the site and two nearby locations and mailed notices to property owners and occupants within 300 feet of the project site, and to all registered neighborhood groups that cover this area. This City Council hearing is required to resolve the appeal.

BACKGROUND

The project approved by the ZAB would raise the existing single-family residence by 9 feet - 5 inches and extend the building by 18 feet - 3 inches toward the rear, convert the existing single-family residence into a duplex, and construct a two-story, 472 sq. ft. accessory building with an average height of 19 feet - 3 inches, located 1 foot - 6 inches from the rear and side yard property line to the south. The accessory building would consist of a two-car garage on the ground floor and a workshop on the second floor. Like many buildings in the area, the main building was originally built within the front yard setback (it is 17 feet from the front property line where 20 feet is required), and the applicants have proposed to vertically extend the portion of the building that projects into the required setback to create a new ground floor. New door and window openings are proposed on all sides of the main building and on three sides of the accessory building. Two decks are proposed along the south side of the main building, a 168 sq. ft. one-story deck for the ground floor dwelling and a 78 sq. ft. second-floor deck for the dwelling on the second floor; one 62 sq. ft. second-story deck is proposed along the north side of the accessory building.

After a lengthy public hearing at which testimony regarding various issues and options was considered, the ZAB entertained a motion to approve the project with revisions to reduce the size and massing of the addition to the main building and additional conditions that would reduce sunlight, air, and privacy impacts created by the addition to the main building.

Prior to taking a vote on this motion, a substitute motion was made by Board member Tregub, to continue the item, require mediation, and give the applicant specific direction about how to revise the project. The Board deliberated further before voting on the substitute motion. The substitute motion failed with a 4-5-0-0 vote (Yes: Olson, Selawsky, Sheahan, Tregub; No: Clarke, Kahn, Kim, O'Keefe, Pinkston; Abstain: none; Absent: none). The Board then voted on the main motion, which passed with a 6-3-0-0 vote (Yes: Clarke, Kahn, Kim, O'Keefe, Pinkston, Tregub; No: Selawsky, Sheahan, Olson; Abstain: none; Absent: none) and approved the project with the following conditions:

- The 203 sq. ft. area at the northeast corner of the second story of the main building, where bedroom and bathroom #4 was proposed, must be removed from the project;
- All second story bedroom windows along the north façade of the main building must be clerestory windows¹; and
- The lower panes of all second story bedroom and bathroom windows along the north façade of the main building must contain obscured glass at all times.

¹ Clerestory windows are typically located along the top of a structure's wall, near the roof line and above eye level. The purpose is generally to permit light and air flow without creating direct sight lines.

On August 21, 2019, the applicant provided revised project plans that comply with the additional Conditions of Approval.

The appeal filed by Mary Beth Thomsen, neighbor to the immediate north, is requesting that the Council overturn the ZAB decision and require mediation between the applicant and appellant if the project is reconsidered.

ENVIRONMENTAL SUSTAINABILITY

The project approved by the ZAB is in compliance with all state and local environmental requirements.

RATIONALE FOR RECOMMENDATION

The issues raised in the appellant's letter, and staff's responses, are as follows. For the sake of brevity, the appeal issues are not re-stated in their entirety; refer to the attached appeal letter for full text.

Issue 1: Quality of Life. The appellant contends that the project would be destructive to their quality of life and would create severe shadowing, loss of light, air, warmth, and open views, invasion of privacy, and elimination of green space (page 1 of appeal).

Response 1: At the public hearing the ZAB weighed whether the proposed project would unreasonably obstruct sunlight, air, views, or privacy and discussed ways in which the project could be revised to reduce the overall massing of both the main and accessory building, increase sunlight access, and ensure privacy of neighboring buildings, while acknowledging that almost any residential addition will create additional shadows on neighboring buildings.

The ZAB determined that with the removal of the 203 sq. ft. area at the northeast corner of the second story of the main building, where bedroom and bathroom #4 was proposed, use of obscured glass for all bedroom and bathroom windows along the north façade of the main building facing the appellant's property to the north, and the condition that all second story bedroom windows along the north façade of the main building be clerestory, the project would not unreasonably obstruct sunlight, air, views, or privacy and found that it would not be detrimental.

While the shadow studies show that the addition to the main dwelling will create an increase in shadows on the appellant's main dwelling and Accessory Dwelling Unit (ADU) during the winter, they also show that the project will have no impact on the appellant's main dwelling and ADU during the summer months.

The addition to the main building meets the R-1A District standards for allowable residential density, height, number of stories, lot coverage, useable open space, and parking. With the exception of the existing non-conforming front yard setback, all existing and proposed construction on the main building would meet required setbacks and satisfy the development standards of the Zoning Ordinance.

The proposed two-story accessory building would be 19 feet - 3 inches in average height and would be set back 1 foot - 6 inches from the east and south property line (for accessory buildings, this setback is measured to the eave; the wall of the building would be set back 3 feet from the east and south property line), where a 10-foot setback is required. While the accessory building would have a setback of less than 10 feet, the ZAB found that the two-story accessory building would not unreasonably obstruct sunlight, air, or views and found that it would not be detrimental.

Shadow studies show that during winter mornings, one living room door on the south façade of the ADU at 2323 Sixth Street would be fully shaded by the proposed accessory building. The new accessory building would be closest to the neighboring building to the southeast at 2328 Seventh Street, a 6-unit apartment building; however no windows are proposed along the rear of the new accessory building, and the west façade of the 6-unit apartment building that the accessory building would face also does not have any openings. One small bathroom window is proposed on the south façade, and there are no windows proposed on the rear of the accessory building facing east. In addition, the proposed accessory building is designed to be a workshop/studio space and will be secondary to the primary use of the main building on the property, which will serve as two dwellings.

Furthermore, significant views as defined in BMC Chapter 23F.04 (Definitions) are not available to neighboring dwellings because the area is flat, at a low elevation (in relation to sea level), and has mature trees.

The appellant does not provide new evidence to support the argument that ZAB erred in determined that, with revisions and additional conditions the project would not unreasonably obstruct sunlight, air, views, or privacy.

Issue 2: Significant Over-Crowding and Associated Parking and Noise Issues.
The appellant contends that the applicant plans to “leverage the land” and has essentially created a “party house” (page 3 and 4 of appeal). In the appeal letter, the appellant describes that “last year the applicants

rented this home to a group of four to six young people; between them they had five cars which were almost always parked on the street.” The appellant goes on to say that “just this week the house has been rented again, this time to a group of six to eight young people, [and] while they mainly don’t have cars...they do have night life... Given this track record, and city guidelines for short-term rentals, that could mean 16 tenants living there.”

Response 2: The project would raise the existing one-story single-family dwelling to create a new two-story building that would contain two dwellings. The project would also construct a new two-story accessory building that would consist of a two-car garage on the ground floor, providing one off-street parking space for each dwelling, and a workshop on the second floor.

The project as it was presented to the ZAB proposed three bedrooms in the new dwelling unit on the ground floor and four bedrooms in the dwelling unit on the second floor, with the total number of bedrooms on the parcel increasing from three to eight (the second floor of the accessory building would be considered the eighth bedroom on the parcel).

During the public hearing, the ZAB discussed the number of bedrooms proposed and considered design changes that could give the applicants “the bedrooms they desire.” Ultimately, the ZAB approved the project with removal of the fourth bedroom in the dwelling unit on northeast corner of the second floor of the main building, in an effort to reduce the overall massing of the building and mitigate sunlight impacts to the appellant’s property to the north. This would have the effect of also reducing the potential occupancy of the unit.

Furthermore, the project is conditioned to require that all owners of record of the subject property sign and record with the Alameda County Clerk-Recorder a “Notice of Limitation on Use of Property” stipulating that no part of the accessory building shall be used or converted to use as a dwelling unit without applicable City of Berkeley permits and prohibiting rental of the accessory building separately from the main dwelling units on the property, except as a Short-Term Rental, pursuant to BMC Chapter 23C.22.

The project as approved and conditioned by ZAB would comply with residential density and off-street parking requirements of the Zoning Ordinance, would include only three bedrooms in each dwelling unit, and would meet the off-street parking requirements of the Zoning Ordinance.

Issue 3: Compatibility of Building's Design and Scale with Character of Surrounding Neighborhood Buildings. The appellant contends that the project would introduce "an apartment-like structure into a block of family homes" and that the design is incompatible with the historic character of the neighborhood (page 1 of appeal).

Response 3: The subject property is located in a neighborhood area which consists of a variety of uses, building heights, and architectural styles. A mixture of single- and multi-family residences abut the subject property to the north, east, and south, and a variety of office/warehousing and light industrial uses confront the subject property to the west. To determine this project was categorically exempt pursuant to CEQA Guidelines 15300.2, a Historic Resource Evaluation (HRE) was prepared for the property in February 2019 by Architectural Historian Stacy Farr. The HRE notes the subject property was developed in 1923 as a modest California Bungalow style single-family residence and has undergone a series of alterations since its construction which have reduced its ability to accurately convey its modest historic appearance. Stacy Farr concluded that the subject property is not historically significant under any of the four California Register criteria and is therefore ineligible for listing in the California Register. Because the subject property is not a historic resource, and is a residential building, located in a residential zoning district, the project is not subject to Design Review.

The appellant's property, directly north of the subject property (2321 Sixth Street, developed with a Queen Anne style residence) is a two-story single family residence and includes a two-story detached Accessory Dwelling Unit (ADU) at the rear of the property. The three abutting properties to the east consist of a two-story, 6-unit apartment building, and two, 2-story single-family residences, and the site directly south of the subject property (2329 Sixth Street, developed with a Queen Anne style residence) is a two-story single-family residence and includes a one-story detached accessory building at the rear. A two story office/warehouse building in the MU-R zoning district confronts the subject property to the west along Sixth Street.

Issue 4: Applicants' Family Living Elsewhere. The appellant contends that no members of the applicants' family have lived at the residence for many years (page 2 of appeal), and the "project has been marketed and, I fear, sold to staff planners and the ZAB as the heart-warming story of an extended family reuniting to enhance their property and create a welcoming, nurturing home environment... [and, that] staff planners and the ZAB may have suffered from failures of imagination in regards to picturing what approving this project as it is would actually mean." The

appellant goes on to say that the applicant and her husband, who is the Chief Operating Officer of a large construction company and the project's contractor, live in Dublin and that it is "ludicrous to imagine they will move as alleged...in close quarters with enough other family members to populate 6 more bedrooms" (pages 3 and 4 of appeal).

Response 4: Staff reviewed the proposed project under the requirements of the Zoning Ordinance, determined proper evidence supported the non-detriment finding and consistency with the City's adopted policies, and recommended ZAB approve this project. Consideration of where the property owners currently reside, the number of family members that would be living at the property, and their occupations, are irrelevant to the findings required by the Zoning Ordinance.

At the public hearing, several ZAB members explained that their goal is to balance the needs of the applicant and the needs and concerns of the neighbors and community, and to try to move towards consensus. After hearing the neighbors' concerns, the ZAB acknowledged there would be impacts on neighboring properties, discussed design alternatives, and considered whether the hearing should be continued to require further design changes and mediation, or whether conditions could be added to approve the project and reduce impacts to neighboring properties. After careful consideration, the ZAB determined that the non-detriment finding can be made with design changes and implementation of additional conditions.

Issue 5: Mediation. The appellant contends that the applicants have been "totally dismissive of and antagonistic towards all of our concerns...and not open to any sort of mitigation" (page 1 of appeal).

Response 5: In April 2017, five months prior to submittal of this application, the City received written correspondence from two neighboring property owners expressing concerns about the proposed project. After reviewing the initial Use Permit application (which was submitted in September 2017), and deeming the materials incomplete, staff met with the applicant to discuss the project and incomplete items. During this meeting staff encouraged the applicant to consider mediation through SEEDS, the voluntary City-sponsored mediation service. The applicant expressed feeling hostility when speaking with the neighbors and did not elect to pursue mediation at that time. In October 2017, one month after the application was submitted, the City received a third letter of opposition from a third neighboring property owner (the appellant of this application).

In May 2018, the property owners submitted a letter to the City providing responses to the letters of opposition and concerns raised by neighboring property owners.

After receiving this letter, staff encouraged the property owner to reach out to their neighbors to see if they would be interested in meeting again to discuss their concerns about the project. In July 2018, the property owners of 2325 Sixth Street met with neighboring property owners, including the appellant. All neighbors who submitted correspondence expressing opposition were in attendance. No compromises or agreements between parties were reached, and the applicants did not wish to revise their project.

The appellant and other neighbors who oppose the project presented the same information to the ZAB prior to and at the public hearing that is now being presented to the City Council in this appeal, which the Board considered as part of its deliberations. ZAB's substitute motion to continue the item, require mediation, and give the applicant specific direction about how to revise the project failed; the main motion to approve the project with additional conditions carried.

ALTERNATIVE ACTIONS CONSIDERED

Pursuant to BMC Section 23B.32.060.D, the Council may (1) continue the public hearing, (2) reverse, affirm, or modify the ZAB's decision, or (3) remand the matter to the ZAB.

Action Deadline:

Pursuant to BMC Section 23B.32.060.G if the disposition of the appeal has not been determined within 30 days from the date the public hearing was closed by the Council (not including Council recess), then the decision of the Board shall be deemed affirmed and the appeal shall be deemed denied.

CONTACT PERSONS

Timothy Burroughs, Director, Department of Planning & Development, (510) 981-7437
Steven Buckley, Planning Manager, Land Use Planning Division, (510) 981-7411
Alison Lenci, Project Planner, Land Use Planning Division, (510) 981-7544

Attachments:

- 1: Draft Resolution
 - Exhibit A: Findings and Conditions
 - Exhibit B: Project Plans, dated August 21, 2019
- 2: Appeal Letter, dated June 17, 2019
- 3: ZAB Staff Report, dated May 9, 2019
- 4: Index to Administrative Record
- 5: Administrative Record

ZAB Appeal: 2325 Sixth Street
Use Permit #ZP2017-0146

PUBLIC HEARING
September 24, 2019

6: Public Hearing Notice

RESOLUTION NO. ##,###-N.S.

AFFIRMING THE ZONING ADJUSTMENTS BOARD'S APPROVAL OF ADMINISTRATIVE USE PERMIT #ZP2017-0146 TO ALTER A 6,000 SQ. FT. PARCEL AT 2325 SIXTH STREET BY 1) RAISING THE EXISTING ONE-STORY, 1,348 SQ. FT. SINGLE-FAMILY RESIDENCE WITH AN AVERAGE HEIGHT OF 12'7", TO CREATE A NEW, 3,330 SQ. FT. TWO-STORY DUPLEX, WITH AN AVERAGE HEIGHT OF 22', 2) INCREASING THE TOTAL NUMBER OF BEDROOMS ON THE PARCEL FROM THREE TO SEVEN, AND 3) CONSTRUCTING A TWO-STORY, 944 SQ. FT. ACCESSORY BUILDING WITH AN AVERAGE HEIGHT OF 19'3", LOCATED 1'6" FROM THE REAR AND SIDE YARD PROPERTY LINE TO THE SOUTH, THAT WOULD CONSIST OF A TWO-CAR GARAGE ON THE GROUND FLOOR AND A WORKSHOP ON THE SECOND FLOOR, IN THE LIMITED TWO-FAMILY (R-1A) ZONING DISTRICT, AND DISMISSING THE APPEAL.

WHEREAS, on September 13, 2017, Bacilia Macias ("applicant") filed an application for a Use Permit to expand an existing one-story, 1,348 sq. ft. single-family residence and alter an existing 6,000 sq. ft. parcel by: 1) raising the existing one-story dwelling 9'2" to create a new 1,676 sq. ft. sq. ft. ground floor dwelling, 2) increasing the total number of bedrooms on the parcel from three to eight, and 3) constructing a two-story, 472 sq. ft. accessory building with an average height of 19'3", located 1'6" from the rear and side yard property line to the south at 2325 Sixth Street; and

WHEREAS, on October 31, 2018, staff deemed this application complete and determined that the project is categorically exempt from the California Environmental Quality Act ("CEQA") under Section 15301 and 15303 of the CEQA Guidelines ("Existing Facilities" and "New Construction or Conversion of Small Structures"); and

WHEREAS, on April 25, 2019, staff posted the ZAB Notice of Public Hearing at the site in three locations and mailed 205 notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations; and

WHEREAS, on May 9, 2019, the ZAB held a public hearing in accordance with BMC Section 23B.28.030, and approved the application with modifications to the conditions of approval; and

WHEREAS, on May 22, 2019, staff issued the notice of the ZAB decision; and

WHEREAS, on June 3, 2019, staff issued a revised notice of the ZAB decision; and

WHEREAS, on June 17, 2019, Mary Beth Thomsen filed an appeal of the ZAB decision with the City Clerk; and

WHEREAS, on August 21, 2019, the applicant submitted revised floor plans and elevations to reflect the additional Condition of Approval imposed by the ZAB and revised shadow studies; and

WHEREAS, on September 10, 2019, staff posted the public hearing notice at the site in three locations and mailed notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations; and

WHEREAS, on September 24, 2019, the Council held a public hearing to consider the ZAB's decision, and, in the opinion of this Council, the facts stated in, or ascertainable from the public record, including the staff report and comments made at the public hearing, warrant approving the project.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that the City Council hereby adopts the findings made by the ZAB in Exhibit A to affirm the decision of the ZAB to approve Use Permit #ZP2017-0146, adopts the conditions of approval in Exhibit A and the project plans in Exhibit B, and dismisses the appeal.

Exhibits

A: Findings and Conditions

B: Project Plans, dated August 21, 2019

ATTACHMENT 1, EXHIBIT A

FINDINGS AND CONDITIONS

MAY 9, 2019

2325 Sixth Street

Use Permit #ZP2017-0146 to alter a 6,000 sq. ft. parcel by 1) raising the existing one-story, 1,348 sq. ft. single-family residence with an average height of 12'7", to create a new, 3,330sq. ft. two-story duplex, with an average height of 22', 3) increasing the total number of bedrooms on the parcel from three to eight, and 4) constructing a two-story, 944 sq. ft. accessory building with an average height of 19'3", located 1'6" from the rear and side yard property line to the south, that would consist of a two-car garage on the ground floor and a workshop on the second floor.

PERMITS REQUIRED

- Use Permit, under BMC Section 23D.20.030, to add a second dwelling unit;
- Use Permit, under BMC Section 23D.20.050.A, for the addition of any bedroom beyond a fifth to the parcel;
- Administrative Use Permit, under BMC Section 23D.20.070.C, to construct a residential addition over 14 ft. in average height;
- Administrative Use Permit, under BMC Section 23D.20.030, to construct a major (>600 sq. ft.) residential addition;
- Administrative Use Permit, under BMC Section 23C.04.070.B to vertically extend the non-conforming front yard;
- Administrative Use Permit, under BMC Section 23D.08.005.A.1, to construct a new accessory building; and
- Administrative Use Permit, under BMC Section 23D.08.010.B, to construct an accessory building which does not comply with the height limits.

I. CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15301 and 15303 of the CEQA Guidelines ("Existing Facilities" and "New Construction or Conversion of Small Structures").
2. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

II. FINDINGS FOR APPROVAL

1. As required by Section 23B.32.040.A of the Zoning Ordinance, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons

residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:

- A. The project has been designed to conform with the applicable zoning requirements and development standards that apply to the R-1A Zoning District.
 - B. The project is consistent with, and supports implementation of, relevant policies set out in the adopted Berkeley General Plan and West Berkeley Plan in that it, a) will provide infill development that is compatible with neighboring land uses in terms of use and scale and b) it will add a residential dwelling unit to an existing single-family residence.
 - C. The project will not be detrimental to the general welfare of persons residing or working in the area, or neighborhood, nor be detrimental to or injurious to the property and improvements of the adjacent properties or existing properties on the site because the project will raise the existing one-story single family residence to create a new, two-story duplex, and construct a detached two-story accessory building. The project is consistent with zoning standards and would retain the location and general footprint of the existing single-family residence, thereby minimizing the potential impacts on adjacent buildings.
2. Pursuant to Berkeley Municipal Code Section 23D.20.030, the Zoning Adjustments Board finds that the construction of a new dwelling unit on the site would not be detrimental to the general welfare of persons residing or working in the area, or neighborhood. The proposed design would result in a project that would meet the R-1A development standards with respect to the height, number of stories, lot coverage, useable open space, and parking, and therefore would not be detrimental to or injurious to the property and improvements of the adjacent properties or existing properties on the site.
 3. Pursuant to Berkeley Municipal Code Section 23D.20.090.B, the Zoning Adjustments Board finds that the proposed major residential addition would not unreasonably obstruct sunlight, air, or views for the following reasons:
 - A. Sunlight: shadow studies submitted by the applicant document the addition's projected shadow angles and lengths at three times throughout the day during the summer and winter solstice. The studies show that the addition will create an incremental increase to shadows on one neighboring property to the north at 2321-2323 Sixth Street, that is occupied by two dwellings (one single-family residence and one ADU), as follows:
 - During morning hours on the winter solstice, two living room windows and one kitchen window on the south façade of 2321 Sixth Street that are partially shaded by the existing one-story building and will be completely shaded by the addition during winter mornings. Two bedroom windows on the south façade that are unshaded will be partially shaded by the addition and one bedroom and one bathroom window on the south façade that are unshaded, will be fully shaded by the addition. In addition, two kitchen windows on the east façade that are unshaded, will be fully shaded by the addition.
 - During afternoon hours on the winter solstice, two living room windows and one kitchen window that are unshaded will be fully shaded, and two bedroom windows will be partially shaded by the addition. In addition, one living room door on the ADU at 2323 Sixth Street will be fully shaded by the addition.

- During evening hours on the winter solstice, one living room door on the ADU at 2323 Sixth Street that is partially shaded, will be fully shaded by the addition.

Because the impacts to neighboring dwellings would occur on limited areas, and would be limited to one property with two dwellings, for a limited time during the year, and only for a few hours of the day, the major residential addition would not result in a significant loss of direct sunlight on abutting residences, and these shading impacts are not deemed detrimental.

- B. Air: The addition is found to be consistent with the existing development and building-to-building separation pattern – or air – in this R-1A neighborhood because the addition would retain two stories, where as many as three are allowed, would be less than the average height allowed in this district (22', where up to 35' is allowed with a Use Permit), would not further reduce the non-conforming front yard, and would exceed all other minimum required yards.
- C. Views: Significant views as defined in BMC Chapter 23F.04 (Definitions) are not available to neighboring dwellings because the area is flat, at a low elevation (in relation to sea level) and has mature trees. Therefore, the addition would not result in additional obstruction of significant views in the neighborhood.
4. Pursuant to BMC Section 23C.04.070.B, the Zoning Adjustments Board finds that the vertical extension of the non-conforming yard is permissible because the use of the property is conforming the extension would not further reduce the existing non-conforming front yard, and would not exceed the maximum height limits of this district.
5. Pursuant to BMC Section 23D.08.010.B, the Zoning Adjustments Board finds that the new accessory building that would exceed the height requirement as set forth in BMC Section 23D.08.020.A, would not unreasonably obstruct sunlight, air, privacy, or views for the following reasons:
- A. Sunlight: shadow studies submitted by the applicant document the accessory building's projected shadow angles and lengths at three times throughout the day during the summer and winter solstice. The studies show that the accessory building would create an incremental increase in shadows on neighboring dwellings, as follows:
- During evening hours on the summer solstice, portions of the north and west façades of the multi-unit apartment building at 2328 Seventh Street would be partially shaded, but no window openings would be affected.
 - During morning hours on the winter solstice one living room door on the south façade of the ADU at 2323 Sixth Street would be fully shaded by the accessory building.
 - During afternoon hours on the winter solstice, a portion of the south façade of the ADU at 2323 Sixth Street would be partially shaded by the accessory building, but no openings would be affected.

Because the impacts to neighboring dwellings would occur on limited areas, and would only partially shade neighboring dwellings for a limited time during the year, and only for a few hours of the day, the accessory building would not result in a significant loss of direct sunlight on abutting residences, and these shading impacts are not deemed detrimental.

- B. Air: While the accessory building would be two-stories, and would be 19'3" in average height, the accessory building is found to be consistent with the existing development and building-to-building separation pattern – or air – in this R-1A neighborhood because the new building would be more than 20' from the edge of the neighboring ADU to the north, at 2321 Sixth Street, more than 95' from the front yard property line, and more than 30' from one of the neighboring buildings to the east, at 2324 Seventh Street. The new accessory building would be closest to the neighboring building to the southeast at 2328 Seventh Street, a 6-unit apartment building, however the wall of the 6-unit apartment building that the accessory building would face has no openings, and no windows are proposed along the rear of the new accessory building facing east.
- C. Privacy: The project proposes new openings on the side and front façades of the second floor of the accessory building and a new second story deck on the north façade, however these openings and deck area are not expected to be detrimental to the privacy of abutting neighbors for the following reasons:
- Four windows are proposed on the front (west) façade of the accessory building would face the rear of the main building on the subject property and therefore would not face directly into any neighboring dwellings;
 - One window, one door, and a 62 sq. ft. deck (with an average height of 12'6" measured to the top of the deck's railing) are proposed on the left (north) façade. The distance measured from the edge of the accessory building to the side yard property line to the north (shared with 2321-2323 Sixth Street) is approximately 23' and the edge of the deck, stairs and landing is approximately 15'5" from this side yard property line.
 - One small bathroom window is proposed along the right (south) façade of the accessory building. While the distance measured from the edge of the accessory building to the side yard property line to the south (shared with 2329 Sixth Street) is 1'6", the new opening is relatively small and located high up on the building's wall, thereby minimizing potential impacts to privacy of neighboring dwellings.
 - No windows are proposed on the rear of the accessory building, facing east, and therefore there will be no impacts to privacy of the abutting neighbors to the rear, at 2324 Seventh Street.
- D. Views: As described in Section V.D.3 above, significant views as defined in BMC Chapter 23F.04 (Definitions) are not available to neighboring dwellings because the area is flat, at a low elevation (in relation to sea level) and has mature trees. Therefore, the accessory building would not result in additional obstruction of significant views in the neighborhood.
-

III. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

1. Conditions Shall be Printed on Plans

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions.' *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

2. Applicant Responsible for Compliance with Conditions

The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.

3. Uses Approved Deemed to Exclude Other Uses (Section 23B.56.010)

- A. This Permit authorizes only those uses and activities actually proposed in the application, and excludes other uses and activities.
- B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

4. Modification of Permits (Section 23B.56.020)

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Board, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.

Changes in the plans for the construction of a building or structure, may be modified prior to the completion of construction, in accordance with Section 23B.56.030.D. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.

5. Plans and Representations Become Conditions (Section 23B.56.030)

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

6. Subject to All Applicable Laws and Regulations (Section 23B.56.040)

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

7. Exercised Permit for Use Survives Vacancy of Property (Section 23B.56.080)

Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8, below.

8. Exercise and Lapse of Permits (Section 23B.56.100)

- A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
- B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
- C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

9. Indemnification Agreement

The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney’s fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney’s fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant’s expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.

ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

Pursuant to BMC 23B.32.040.D, the Zoning Adjustments Board attaches the following additional conditions to this Permit:

Prior to Submittal of Any Building Permit:

- 10. Project Liaison.** The applicant shall include in all building permit plans and post onsite the name and telephone number of an individual empowered to manage construction-related complaints generated from the project. The individual’s name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis.

Please designate the name of this individual below:

Project Liaison _____

Name	Phone #
------	---------

- 11. Geotechnical Report.** The applicant shall prepare a geotechnical report, satisfying the requirements of “Special Publication 117”7 (for landslide and liquefaction zones) and submit a copy of the report to the Land Use Planning Division, along with a deposit of \$2,500 for peer review of the geotechnical report, prior to submittal of any building permit.

Prior to Issuance of Any Building Permit:

12. Geotechnical Plan Review. The applicant's geotechnical consultant shall review and approve all geotechnical aspects of the project building and grading plans (i.e. site preparation and grading, site drainage improvements and design parameters for foundations and hardscape) to ensure that their recommendations have been properly incorporated. The results of the plan review shall be summarized by the geotechnical consultant in a letter and submitted to the City Engineer for review and approval prior to issuance of any building permit.
13. Accessory Building. All owners of record of the subject property shall sign and record with the Alameda County Clerk-Recorder a "Notice of Limitation on Use of Property" (available from Land Use Planning Division) and provide a recorded copy thereof to the project planner. This Notice of Limitation shall stipulate that no part of this accessory building shall be used or converted to use as a dwelling unit unless and until permission is requested of the City of Berkeley and authorized a Use Permit, Administrative Use Permit, or Zoning Certificate, whichever is applicable. This limitation shall include the explicit acknowledgment that a full bathroom and cooking facilities may be installed, as long as the cooking facilities do not constitute a Kitchen per BMC 23F.04. This limitation may not be revised or removed from this property without the prior written permission of the Zoning Officer of the City of Berkeley.
14. Bedroom and Bathroom #4 on Second Floor of Main Building. Plans submitted for building permit shall show that the 203 sq. ft. area at the northeast corner of the second story of the main building, where bedroom and bathroom #4 was proposed, has been removed from the project.
15. Bedroom Windows. Plans submitted for building permit shall show clerestory windows for all second story bedroom windows along the north façade of the main building.
16. Bedroom and Bathroom Windows. Plans submitted for building permit shall show that the lower panes of all second story bedroom and bathroom windows along the north façade of the main building are obscured at all times.
17. Address Assignment. The applicant shall file an "Address Assignment Request Application" with the Permit Service Center (1947 Center Street) for any address change or new address associated with this Use Permit. The new address(es) shall be assigned and entered into the City's database prior issuance of a building permit.
18. Construction and Demolition. Applicant shall submit a Waste Diversion Form and Waste Diversion Plan that meet the diversion requirements of BMC Chapters 19.24 and 19.37.
19. Public Works ADA. Plans submitted for building permit shall include replacement of sidewalk, curb, gutter, and other streetscape improvements, as necessary to comply with current City of Berkeley standards for accessibility.
20. Toxics. The applicant shall contact the Toxics Management Division (TMD) at 1947 Center Street or (510) 981-7470 to determine which of the following documents are required and timing for their submittal:
 - A. Environmental Site Assessments:
 - 1) Phase I & Phase II Environmental Site Assessments (latest ASTM 1527-13). A recent Phase I ESA (less than 6 months old*) shall be submitted to TMD for developments for:

- All new commercial, industrial and mixed use developments and all large improvement projects.
 - All new residential buildings with 5 or more dwelling units located in the Environmental Management Area (or EMA).
 - EMA is available online at:
http://www.cityofberkeley.info/uploadedFiles/IT/Level_3_-_General/ema.pdf
- 2) Phase II ESA is required to evaluate Recognized Environmental Conditions (REC) identified in the Phase I or other RECs identified by TMD staff. The TMD may require a third party toxicologist to review human or ecological health risks that may be identified. The applicant may apply to the appropriate state, regional or county cleanup agency to evaluate the risks.
- 3) If the Phase I is over 6 months old, it will require a new site reconnaissance and interviews. If the facility was subject to regulation under Title 15 of the Berkeley Municipal Code since the last Phase I was conducted, a new records review must be performed.
- B. Soil and Groundwater Management Plan:
- 1) A Soil and Groundwater Management Plan (SGMP) shall be submitted to TMD for all non-residential projects, and residential or mixed-use projects with five or more dwelling units, that: (1) are in the Environmental Management Area (EMA) and (2) propose any excavations deeper than 5 feet below grade. The SGMP shall be site specific and identify procedures for soil and groundwater management including identification of pollutants and disposal methods. The SGMP will identify permits required and comply with all applicable local, state and regional requirements.
- 2) The SGMP shall require notification to TMD of any hazardous materials found in soils and groundwater during development. The SGMP will provide guidance on managing odors during excavation. The SGMP will provide the name and phone number of the individual responsible for implementing the SGMP and post the name and phone number for the person responding to community questions and complaints.
- 3) TMD may impose additional conditions as deemed necessary. All requirements of the approved SGMP shall be deemed conditions of approval of this Use Permit.
- C. Building Materials Survey:
- 1) Prior to approving any permit for partial or complete demolition and renovation activities involving the removal of 20 square or lineal feet of interior or exterior walls, a building materials survey shall be conducted by a qualified professional. The survey shall include, but not be limited to, identification of any lead-based paint, asbestos, polychlorinated biphenyl (PBC) containing equipment, hydraulic fluids in elevators or lifts, refrigeration systems, treated wood and mercury containing devices (including fluorescent light bulbs and mercury switches). The Survey shall include plans on hazardous waste or hazardous materials removal, reuse or disposal procedures to be implemented that fully comply state hazardous waste generator requirements (22 California Code of Regulations 66260 et seq). The Survey becomes a condition of any building or demolition permit for the project. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition. If asbestos is identified, Bay Area Air Quality Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center.
- D. Hazardous Materials Business Plan:
- 1) A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 shall be submitted electronically at <http://cers.calepa.ca.gov/> within 30 days if on-site hazardous materials exceed BMC 15.20.040. HMBP requirement can be found at <http://ci.berkeley.ca.us/hmr/>

During Construction:

- 21. Construction Hours.** Construction activity shall be limited to between the hours of 8:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and Noon on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.
- 22. Transportation Construction Plan.** The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:
- Alterations, closures, or blockages to sidewalks, pedestrian paths or vehicle travel lanes (including bicycle lanes);
 - Storage of building materials, dumpsters, debris anywhere in the public ROW;
 - Provision of exclusive contractor parking on-street; or
 - Significant truck activity.

The applicant shall secure the City Traffic Engineer's approval of a TCP. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be consistent with any other requirements of the construction phase.

Contact the Permit Service Center (PSC) at 1947 Center Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the surrounding neighborhood. A current copy of this Plan shall be available at all times at the construction site for review by City Staff.

- 23. Halt Work/Unanticipated Discovery of Tribal Cultural Resources.** In the event that cultural resources of Native American origin are identified during construction, all work within 50 feet of the discovery shall be redirected. The project applicant and project construction contractor shall notify the City Planning Department within 24 hours. The City will again contact any tribes who have requested consultation under AB 52, as well as contact a qualified archaeologist, to evaluate the resources and situation and provide recommendations. If it is determined that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.
- 24. Avoid Disturbance of Nesting Birds.** Initial site disturbance activities, including vegetation and concrete removal, shall be prohibited during the general avian nesting season (February 1 to August 30), if feasible. If nesting season avoidance is not feasible, the applicant shall retain a qualified biologist to conduct a preconstruction nesting bird survey to determine the presence/absence, location, and activity status of any active nests on or adjacent to the project site. The extent of the survey buffer area surrounding the site shall be established by the qualified biologist to ensure that direct and indirect effects to nesting birds are avoided. To avoid the destruction of active nests and to protect the reproductive success of birds protected by the MBTA and CFGC, nesting bird surveys shall be performed not more than 14 days prior to scheduled vegetation and concrete removal. In the event that active nests are discovered, a suitable buffer

(typically a minimum buffer of 50 feet for passerines and a minimum buffer of 250 feet for raptors) shall be established around such active nests and no construction shall be allowed inside the buffer areas until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). No ground-disturbing activities shall occur within this buffer until the qualified biologist has confirmed that breeding/nesting is completed and the young have fledged the nest. Nesting bird surveys are not required for construction activities occurring between August 31 and January 31.

- 25. Archaeological Resources (Ongoing throughout demolition, grading, and/or construction).** Pursuant to CEQA Guidelines section 15064.5(f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore:
- A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.
 - B. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Berkeley. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by the qualified professional according to current professional standards.
 - C. In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.
 - D. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation measures for cultural resources is carried out.
 - E. If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.
- 26. Human Remains (Ongoing throughout demolition, grading, and/or construction).** In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.
- 27. Paleontological Resources (Ongoing throughout demolition, grading, and/or construction).** In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards [SVP 1995,1996]). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist shall notify the appropriate

agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.

28. Stormwater Requirements. The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:
- A. The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.
 - B. Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.
 - C. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.
 - D. Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be conducted prior to the issuance of a Building Permit.
 - E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.
 - F. All on-site storm drain inlets/catch basins must be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.
 - G. All on-site storm drain inlets must be labeled "No Dumping – Drains to Bay" or equivalent using methods approved by the City.
 - H. Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
 - I. Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.

- J. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.
- 29. Public Works - Implement BAAQMD-Recommended Measures during Construction.** For all proposed projects, BAAQMD recommends implementing all the Basic Construction Mitigation Measures, listed below to meet the best management practices threshold for fugitive dust:
- A. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
 - B. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
 - C. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
 - D. All vehicle speeds on unpaved roads shall be limited to 15 mph.
 - E. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
 - F. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
 - G. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
 - H. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.
- 30. Public Works.** All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter thick and secured to the ground.
- 31. Public Works.** The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
- 32. Public Works.** The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season to prevent on-site soils from being washed off-site and into the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.
- 33. Public Works.** Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.
- 34. Public Works.** The removal or obstruction of any fire hydrant shall require the submission of a plan to the City's Public Works Department for the relocation of the fire hydrant during construction.

- 35. Public Works.** If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

Prior to Final Inspection or Issuance of Occupancy Permit:

- 36. Compliance with Conditions.** The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit.
- 37. Compliance with Approved Plan.** The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings received **September 19, 2018 and April 23, 2019**, except as modified by conditions of approval.
- 38. Construction and Demolition Diversion.** A Waste Diversion Report, with receipts or weigh slips documenting debris disposal or recycling during all phases of the project, must be completed and submitted for approval to the City's Building and Safety Division. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement. A copy of the Waste Diversion Plan shall be available at all times at the construction site for review by City Staff.

At All Times:

- 39. Exterior Lighting.** All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
- 40. Drainage Patterns.** The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.
- 41. Electrical Meter.** Only one electrical meter fixture may be installed per dwelling unit.
- 42. Bedroom and Bathroom Windows.** The lower panes of all second story bedroom and bathroom windows along the north façade of the main building shall contain obscured glass at all times.

CODES

2016 CA FIRE CODE
 2016 CA BUILDING CODE
 2016 CA MECHANICAL CODE
 2016 CA PLUMBING CODE
 2016 CA ELECTRICAL CODE
 2016 ENERGY CODE
 2016 CA GREEN CODE
 2016 CA RESIDENTIAL CODE

PROJECT SCOPE

RAISING OF (E) RESIDENCE TO CREATE A TWO STORY DUPLEX . NEW 2 STORY ACCESSORY BLDG. IN REAR, GARAGE ON THE GROUND FLOOR AND WORKSHOP ON TOP FLOOR.

PROJECT DATA

TITLE RESIDENTIAL ADDITION
 2325 6TH STREET
 BERKELEY, CALIFORNIA

ZONING: RI-A
 OCCUPANCY: R-3
 CONSTRUCTION TYPE: V-BN
 SPRINKLERS: NO
 LOT SIZE: = 6000 SF

SETBACKS
 FRONT = 20'
 REAR = 20'
 SIDE = 4'

AREA TABULATIONS

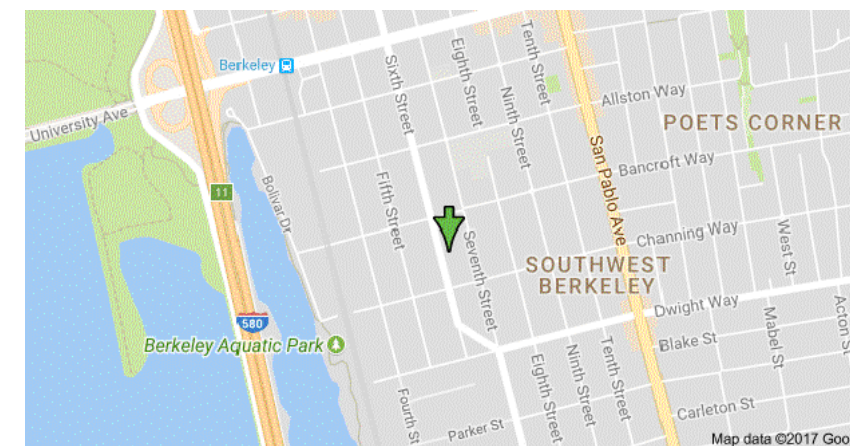
STRUCTURE INFORMATION (EXISTING)						
	AREA	TYPE OF CONSTRUCTION	NO. OF STORIES	OCCUPANCY	NO. OF DWELING UNITS	OFF STREET PARKING
MAIN BLDG.						
1ST FL.	1348	V-B	1	R-3	1	
TOTAL	1348					2
STRUCTURE INFORMATION (PROPOSED)						
	AREA	TYPE OF CONSTRUCTION	NO. OF STORIES	OCCUPANCY	NO. OF DWELING UNITS	OFF STREET PARKING
MAIN BLDG.						
1ST FL.	1443	V-B	2	R-3	1	
2ND	1439	V-B		R-3	1	
TOTAL	2882				2	2
ACCESSORY	944	V-B	2		0	2
TOTAL	3826					
FOOTPRINTS						
HOUSE	1807	SF				
COVERED DECKS	77	SF				
PORCH(FRONT)	33	SF				
ACCESS. STRUCTURE	473	SF				
TOTAL	2390	SF				
PERCENTAGE	39.8%					

BACILIA MACIAS
 ARCHITECTURE
 732 gilman street berkeley ca 94710
 510.691.7910 ph bacilia@bmarcch.net

**RESIDENTIAL ADDITION TO
 CREATE DUPLEX AND NEW
 GARAGE/WORKSHOP**

2325 6TH STREET
 BERKELEY, CA
 APN # 056-194-19

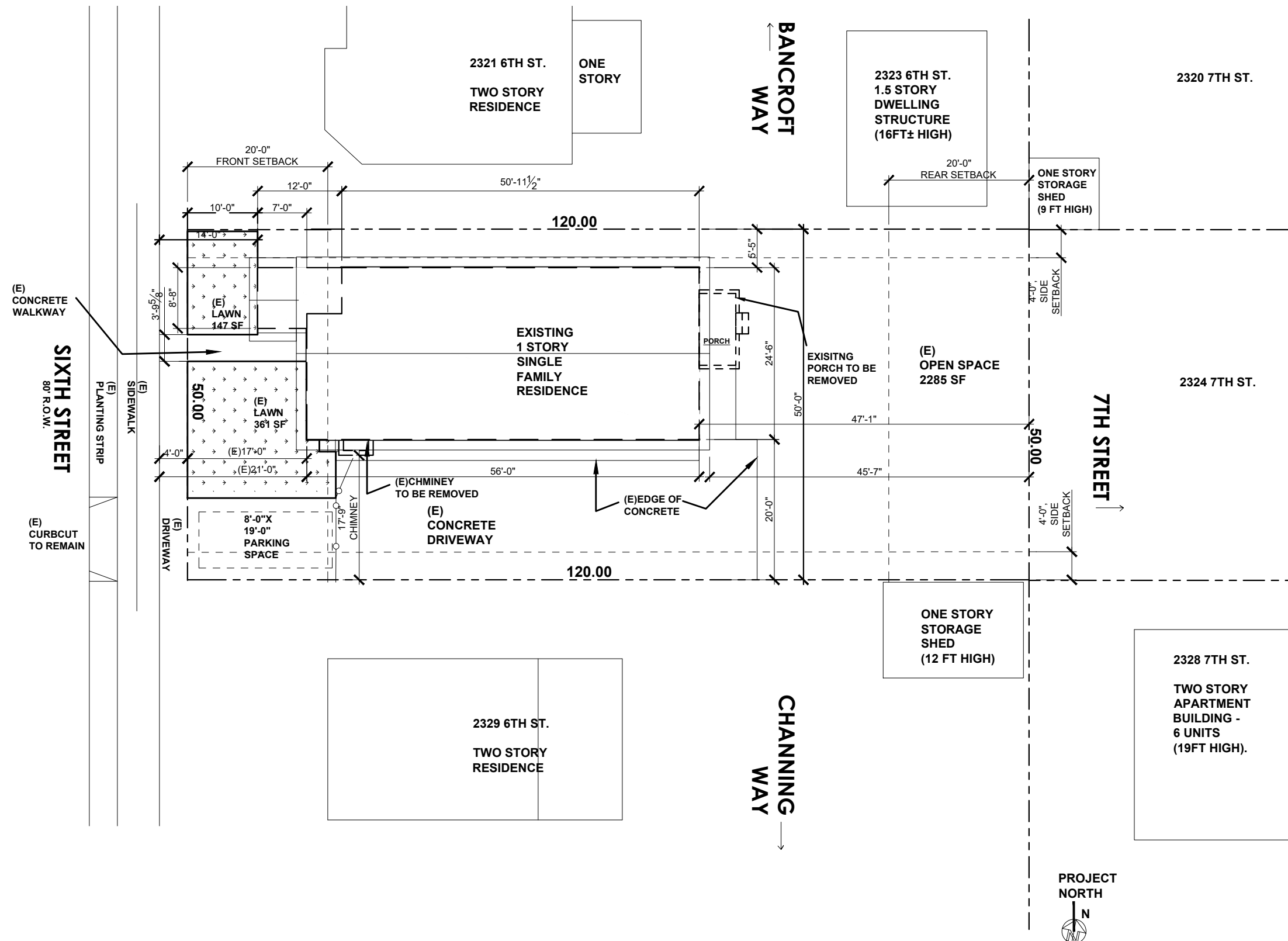
VICINITY MAP



**LAND USE PLANNING
 RECEIVED AUGUST 21, 2019**

REVISED AUG. 22, 2019
 Date SEPT. 18, 2018
 Drawn by BM
 Scale AS NOTED

**TITLE SHEET
 A0.0**



RESIDENTIAL ADDITION TO CREATE DUPLEX AND NEW GARAGE/WORKSHOP

BACILIA MACIAS ARCHITECTURE

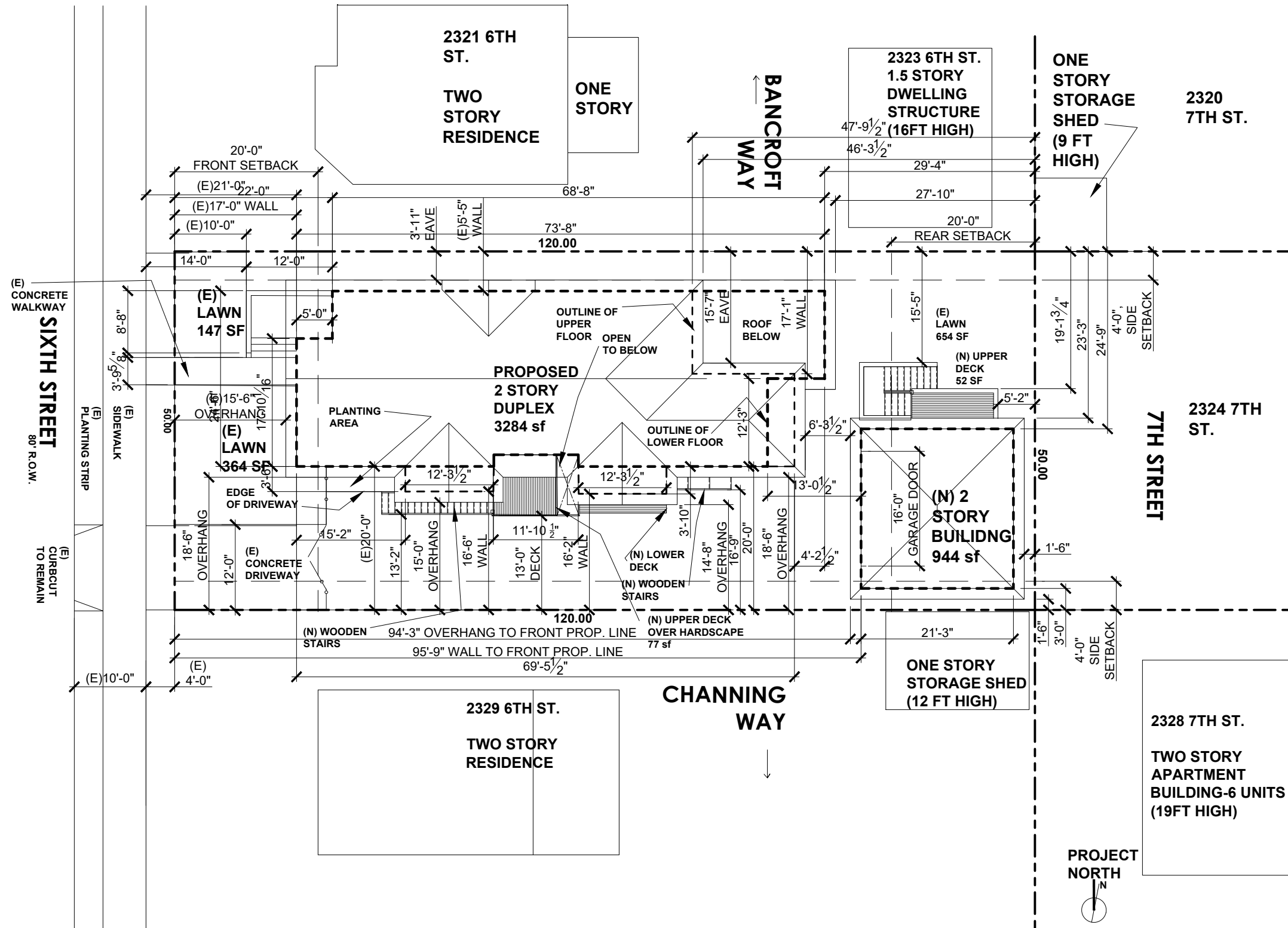
732 gilman street berkeley ca 94710 510.691.7910 ph bacilia@bmarsh.net

2325 6TH STREET BERKELEY, CA APN # 056-194-19

Date SEPT. 18, 2018 Drawn by Scale: AS NOTED

EXISTING SITE PLAN PLAN

1 EXISTING SITE PLAN 1/16" = 1'-0"



**RESIDENTIAL ADDITION TO
CREATE DUPLEX AND NEW
GARAG / WORKSHOP**

**BACILIA MACIAS
ARCHITECTURE**
732 gilman street berkeley ca 94710
510.691.7910 ph bacilia@bmarcch.net

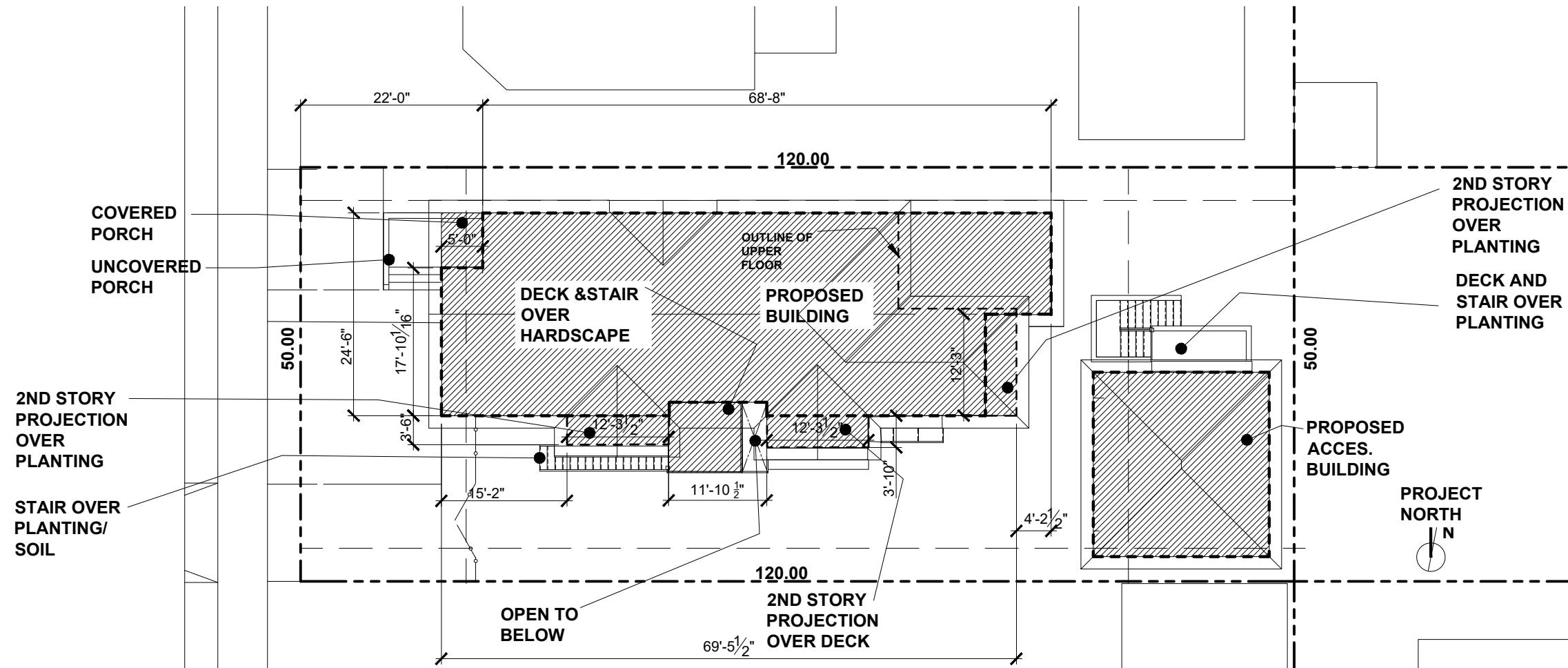
2325 6TH STREET
BERKELEY, CA
APN # 056-194-19

REVISED: AUG. 22, 2019
Date APRIL 19, 2019
Drawn by BM
Scale AS NOTED

**PROPOSED
SITE PLAN**

1 PROPOSED SITE PLAN
1/16" = 1'-0"

LAND USE PLANNING A0.2
RECEIVED AUGUST 21, 2019

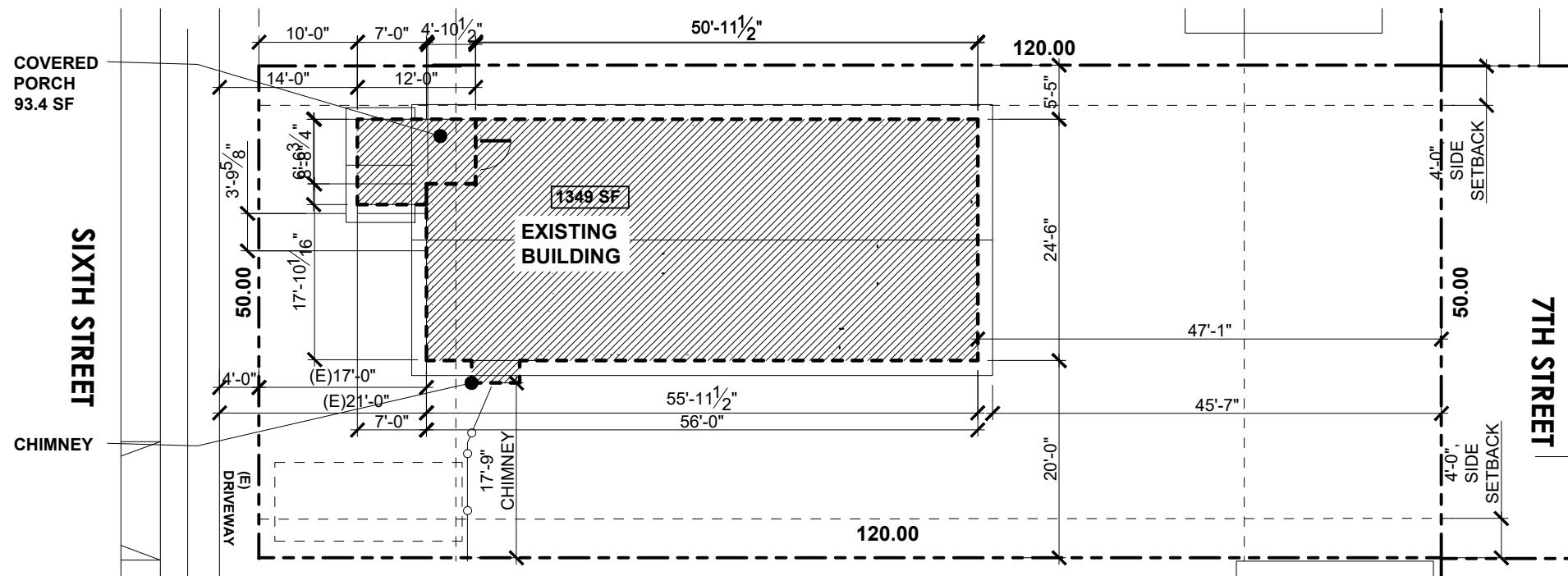
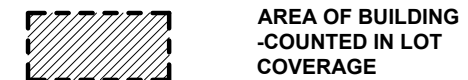


2 PROPOSED LOT COVERAGE
1/16" = 1'-0"

EXISTING			
HOUSE	1349	SF	
PORCH(FRONT)	93.4	SF	
TOTAL	1442.4	SF	
PERCENTAGE	24.0%		

PROPOSED			
HOUSE	1789	SF	
COVERED DECKS OR STAIRS	77	SF	
PORCH(FRONT)	33	SF	
ACCESS. STRUCTURE	473	SF	
TOTAL	2372	SF	
PERCENTAGE	39.5%		

HATCH LEGEND



1 EXISTING LOT COVERAGE
1/16" = 1'-0"

RESIDENTIAL ADDITION TO
CREATE DUPLEX AND NEW
GARAG / WORKSHOP

BACILIA MACIAS
ARCHITECTURE

732 gilman street berkeley ca 94710
510.691.7910 ph bacilia@bmarcch.net

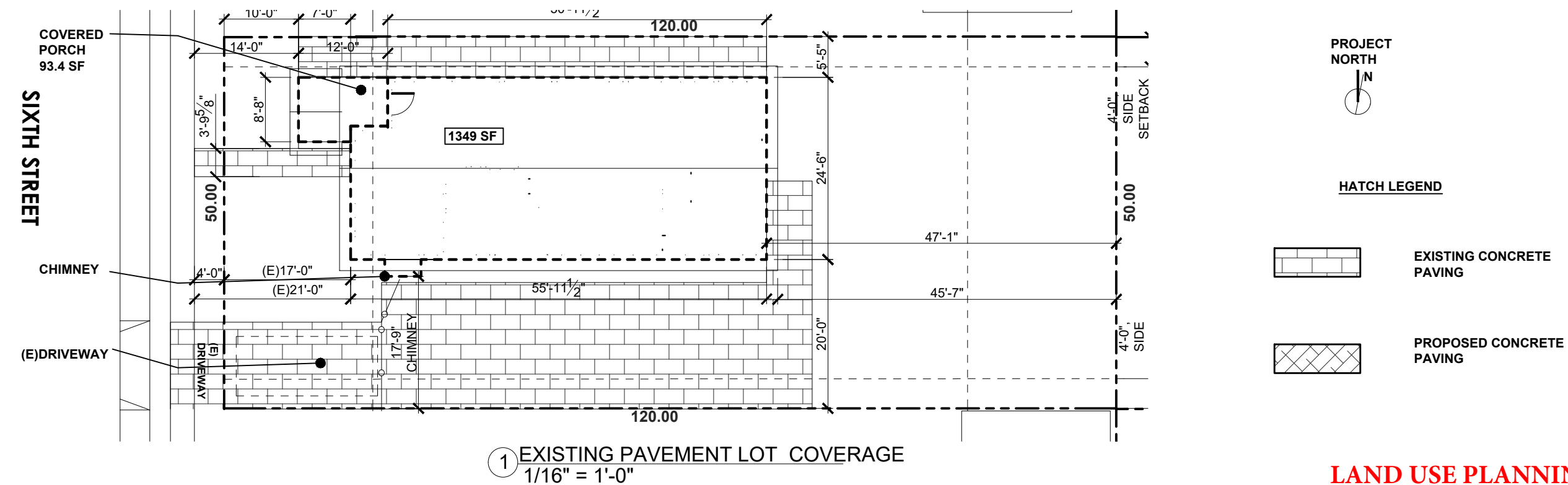
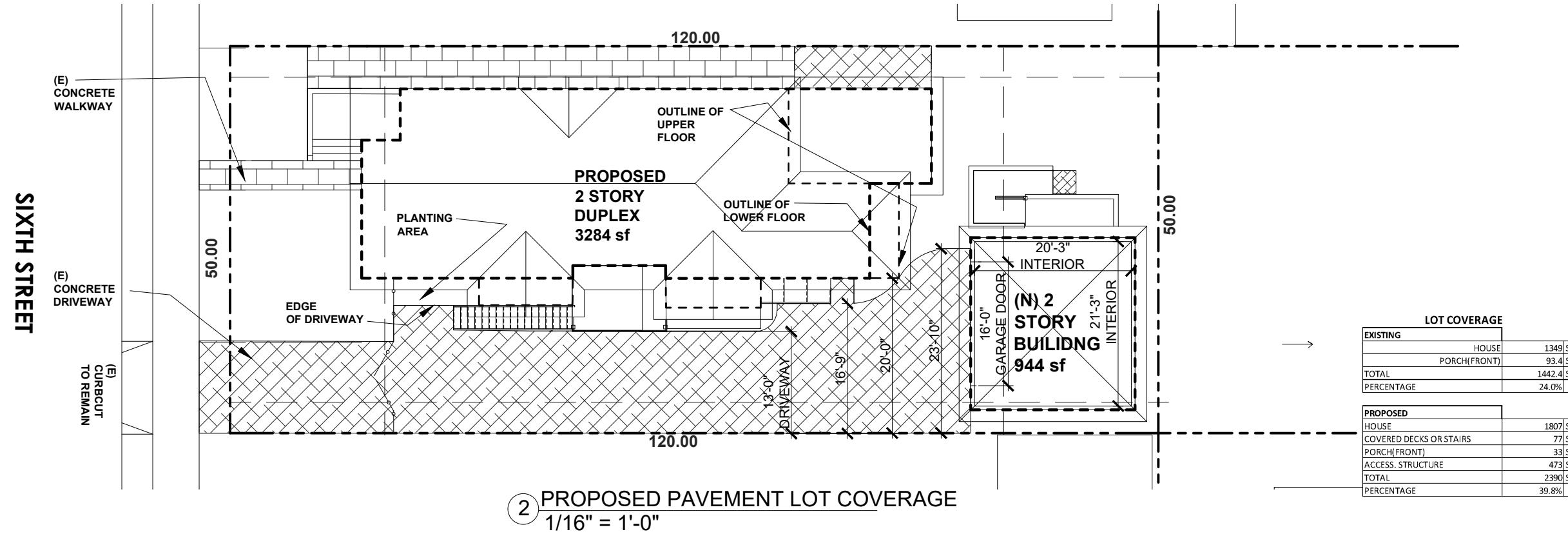
2325 6TH STREET
BERKELEY, CA
APN # 056-194-19

REVISED: AUG. 22, 2019
Date APRIL 19, 2019
Drawn by BM
Scale AS NOTED

EXISTING AND
PROPOSED
LOT COVERAGE

LAND USE PLANNING
RECEIVED AUGUST 21, 2019

A0.3



**RESIDENTIAL ADDITION TO
CREATE DUPLEX AND NEW
GARAG / WORKSHOP**

2325 6TH STREET
BERKELEY, CA
APN # 056-194-19

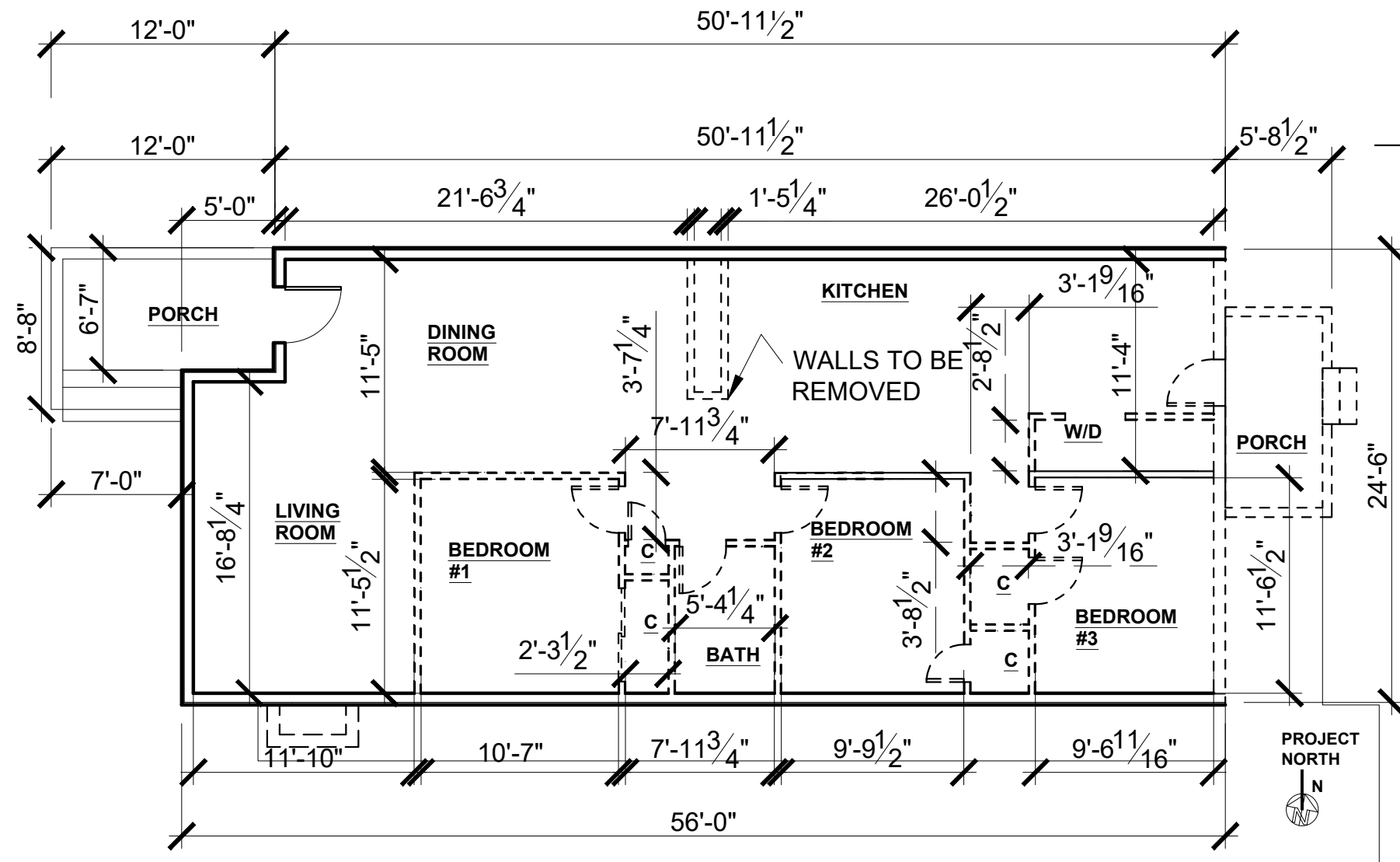
**BACILIA MACIAS
ARCHITECTURE**
732 gilman street berkeley ca 94710
510.691.7910 ph bacilia@bmararch.net

REVISED: AUG. 22, 2019
Date APRIL 19, 2019
Drawn by BM
Scale AS NOTED

**EXISTING AND
PROPOSED
PAVEMENT
COVERAGE**

**LAND USE PLANNING
RECEIVED AUGUST 21, 2019**

A0.31



1 DEMOLITION FLOOR PLAN
1/8" = 1'-0"

RESIDENTIAL ADDITION TO
CREATE DUPLEX AND NEW
GARAGE/WORKSHOP

2325 6TH STREET
BERKELEY, CA
APN # 056-194-19

BACILIA MACIAS
ARCHITECTURE

732 gilman street berkeley ca 94710
510.691.7910 ph bacilia@bmarcch.net

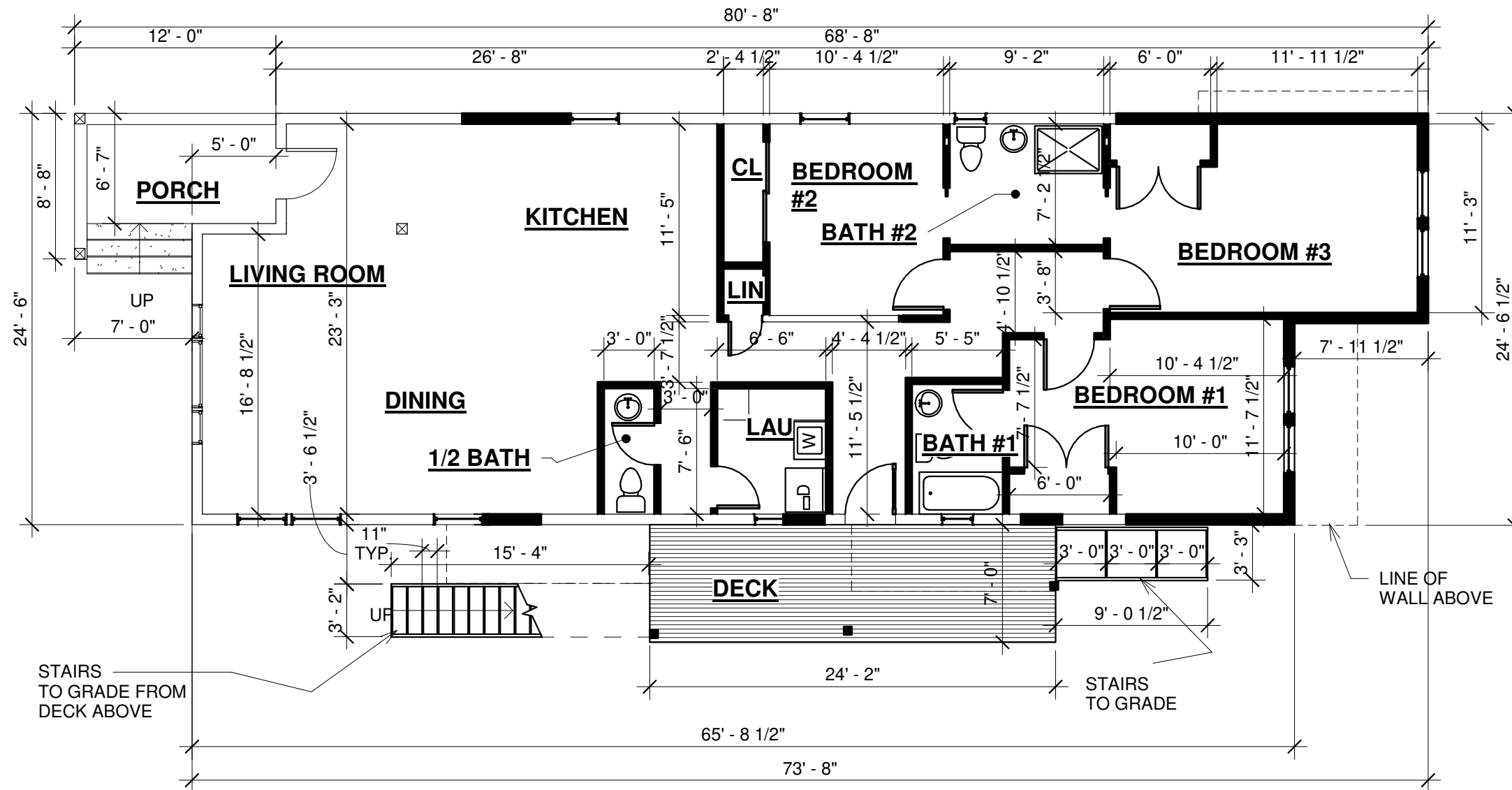
Date SEPT. 18, 2018
Drawn by
Scale: AS NOTED

DEMOLITION
PLAN

A1.0

LAND USE PLANNING
RECEIVED AUGUST 21, 2019

6TH



STAIRS TO GRADE FROM DECK ABOVE

STAIRS TO GRADE



1 PROPOSED LOWER FLOOR
1/8" = 1'-0"

LAND USE PLANNING
RECEIVED AUGUST 21, 2019

PROPOSED FIRST
FLOOR PLAN

REVISION:	AUG. 22, 2019
Date	SEPT. 18, 2018
Drawn by	BM
Scale	1/8" = 1'-0"

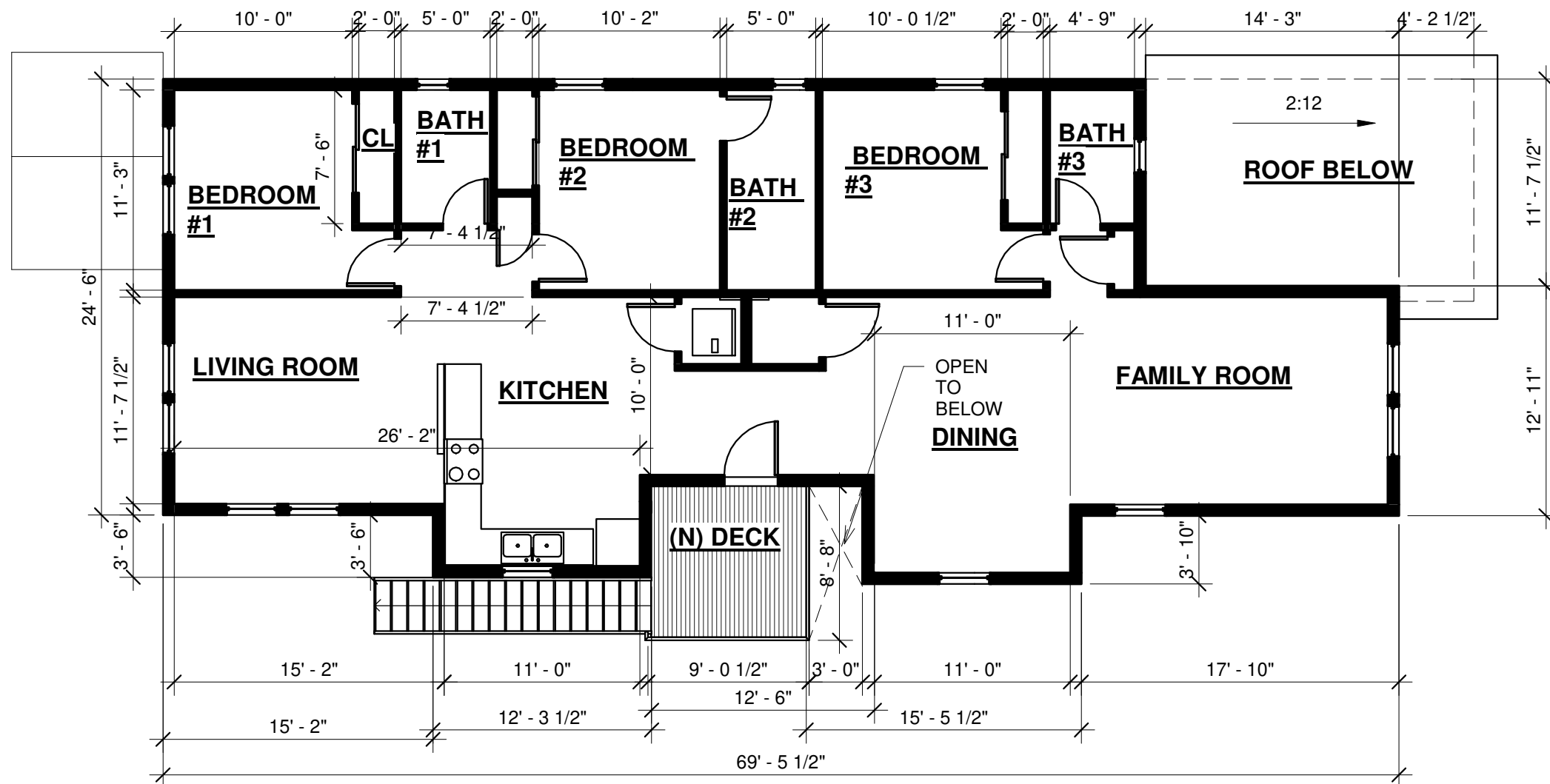
RESIDENTIAL ADDITION TO
CREATE DUPLEX AND NEW
GARAGE / WORKSHOP

2325 SIXTH ST
BERKELEY, CA
APN # 056-194-10190

BACILIA MACIAS
ARCHITECTURE

732 gilman street berkeley ca 94710
510.691.7910 ph bacilia@bmarsh.net

A2.0



① (N) SECOND FLOOR
1/8" = 1'-0"



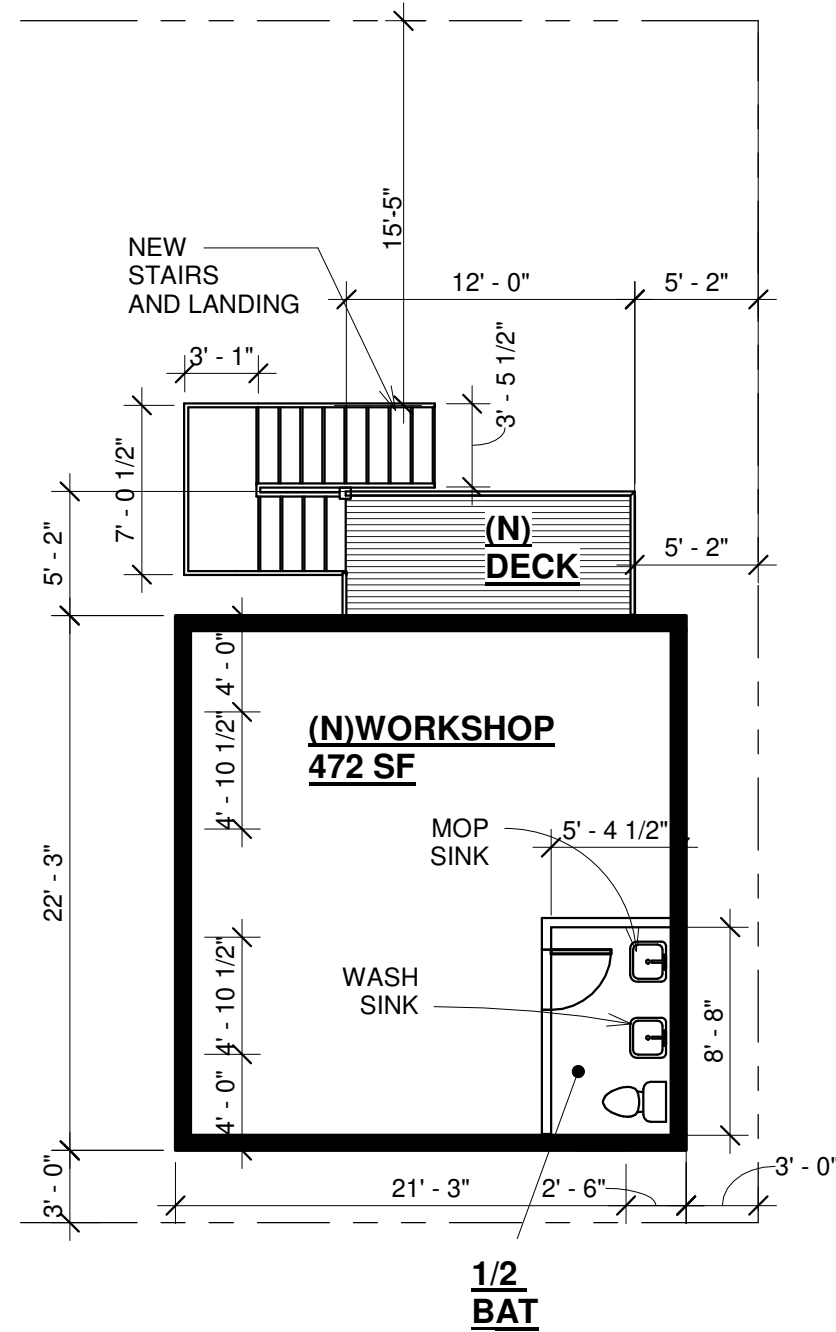
**RESIDENTIAL ADDITION TO
CREATE DUPLEX AND NEW
GARAGE / WORKSHOP**
2325 SIXTH ST
BERKELEY, CA
APN # 056-194-10190

**BACILIA MACIAS
ARCHITECTURE**
732 gilman street berkeley ca 94710
510.691.7910 ph bacilia@bmarc.net

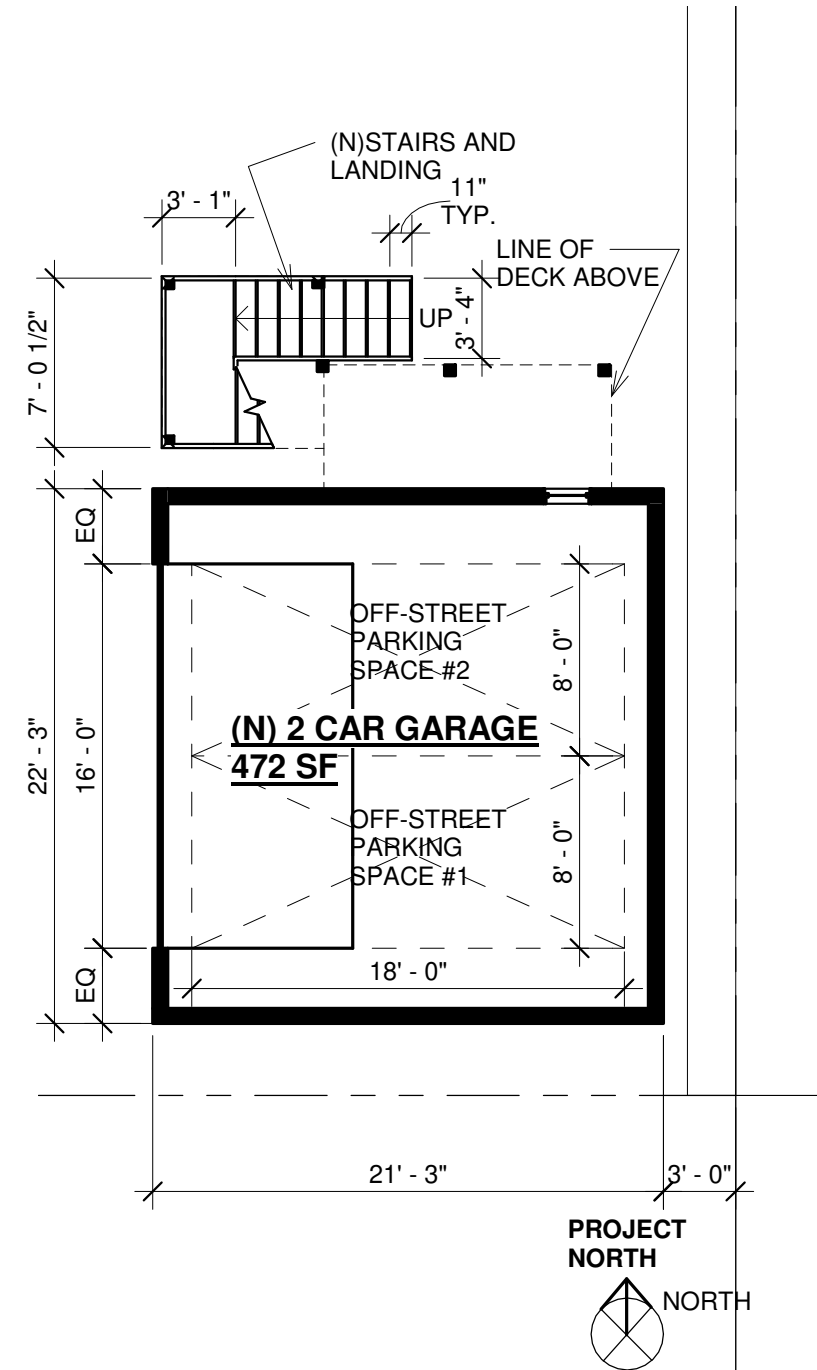
**PROPOSED SECOND
FLOOR PLAN**
REVISION: AUG. 22, 2019
Date SEPT. 18, 2018
Drawn by Author
Scale 1/8" = 1'-0"

**LAND USE PLANNING
RECEIVED AUGUST 21, 2019**

A2.1



2 PROPOSED SECOND FLOOR-NEW REAR STRUCTURE
1/8" = 1'-0"



1 PROPOSED LOWER FLOOR -NEW REAR STRUCTURE
1/8" = 1'-0"

PROJECT NORTH
NORTH
**LAND USE PLANNING
RECEIVED AUGUST 21, 2019**

RESIDENTIAL ADDITON TO
CREATE DUPLEX AND NEW
GARAGE / WORKSHOP

2325 SIXTH ST
BERKELEY, CA
APN # 056-194-10190

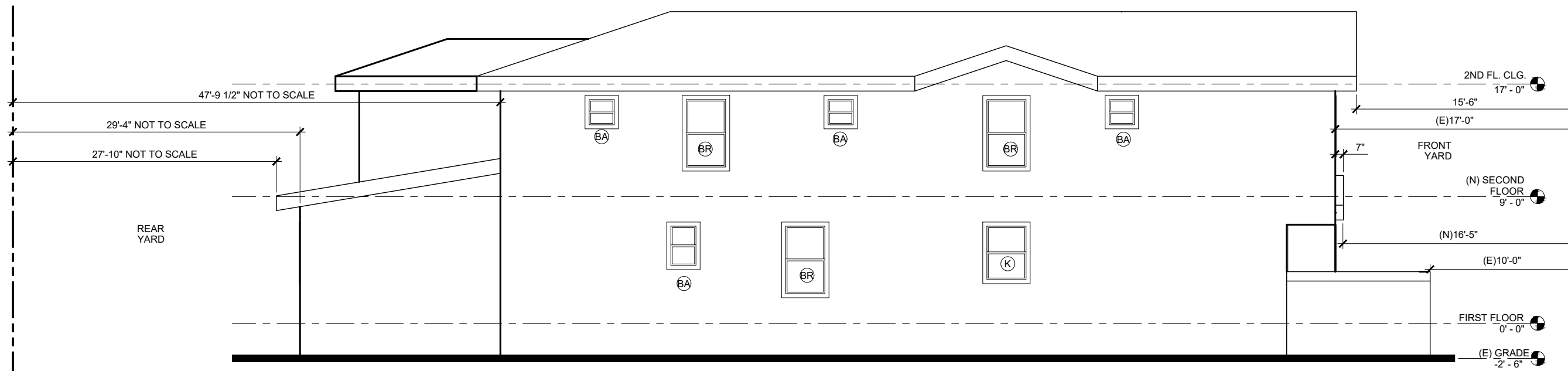
PROPOSED ACCESSORY
STRUCTURE

REVISION: AUG. 22, 2019
Date SEPT. 18, 2018
Drawn by Author
Scale 1/8" = 1'-0"

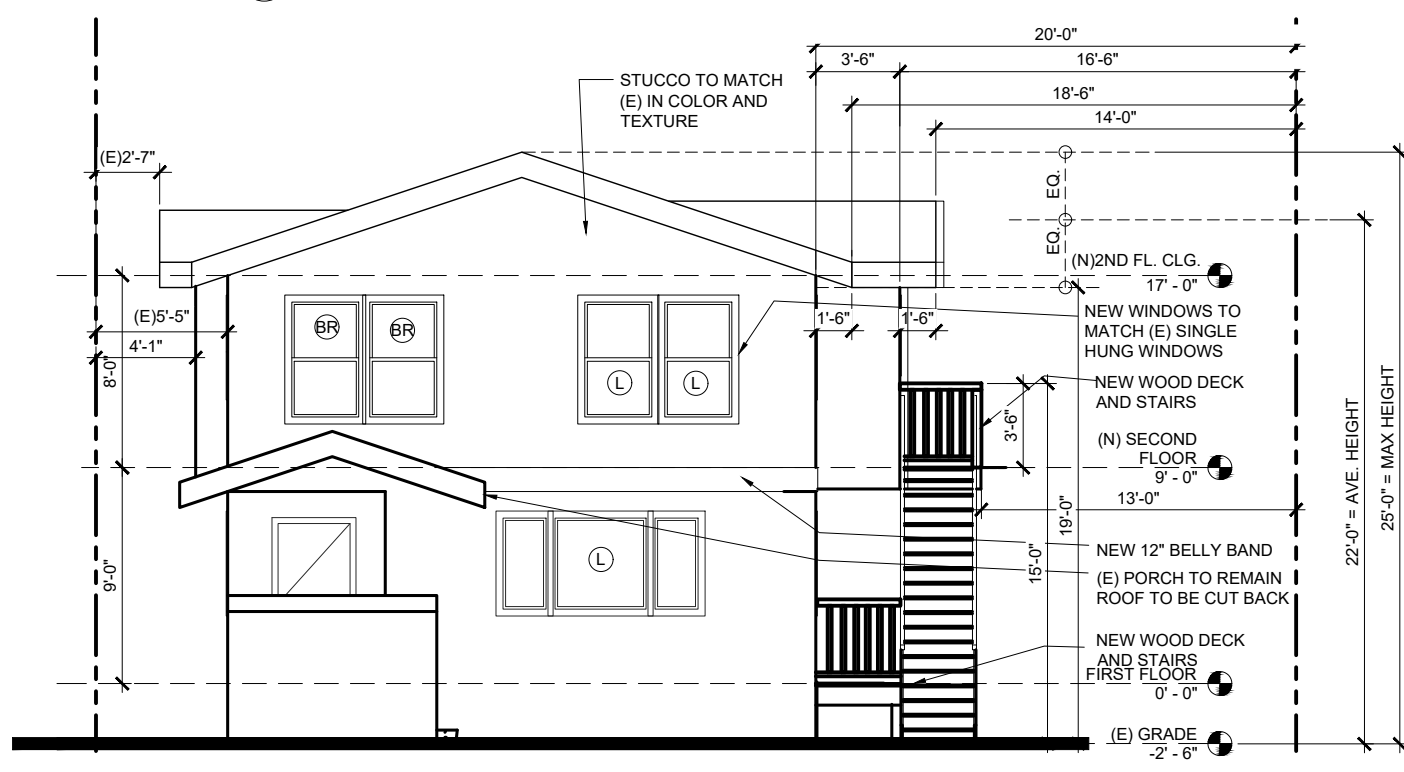
BACILIA MACIAS
ARCHITECTURE

732 gilman street berkeley ca 94710
510.691.7910 ph bacilia@bmatch.net

A2.2



2 PROPOSED NORTH (LEFT) SIDE ELEVATION
1/8" = 1'-0"



1 PROPOSED WEST (FRONT) ELEVATION
1/8" = 1'-0"

OPENINGS LEGEND

- BR BEDROOM
- BA BATHROOM
- L LIVING
- K KITCHEN
- D DINING
- F FAMILY RM.
- LY LAUNDRY
- W WORKSHOP
- G GARAGE

**RESIDENTIAL ADDITION TO
CREATE DUPLEX AND NEW
GARAGE/WORKSHOP**

2325 6TH STREET
BERKELEY, CA
APN # 056-194-19

**BACILIA MACIAS
ARCHITECTURE**
732 gilman street berkeley ca 94710
510.691.7910 ph bacilia@bmatch.net

REVISED AUG. 22, 2019
Date SEPT. 18, 2018
Drawn by BM
Scale AS NOTED

**PROPOSED
EXTERIOR
ELEVATIONS**

**LAND USE PLANNING
RECEIVED AUGUST 21, 2019**

A3.2

BACILIA MACIAS
ARCHITECTURE

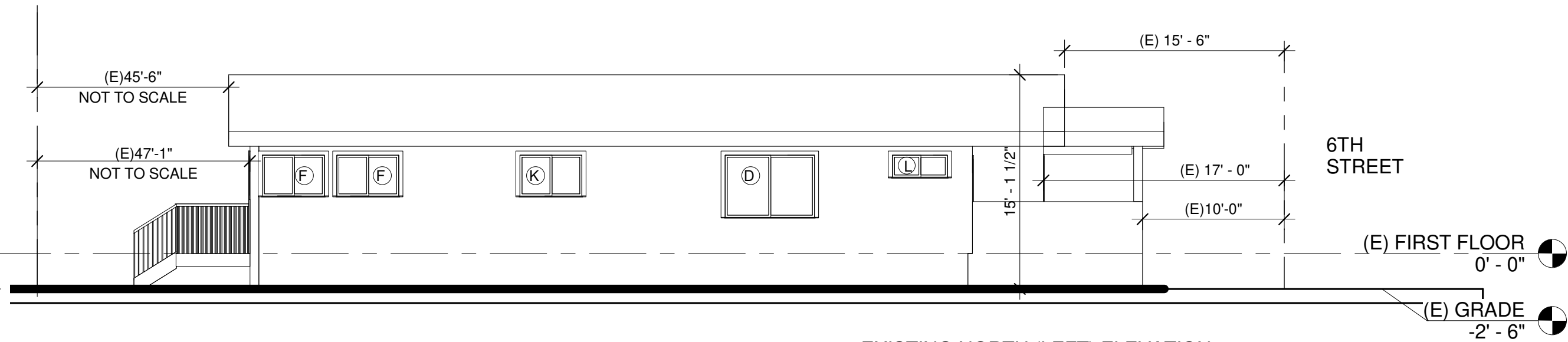
732 gilman street berkeley ca 94710
510.691.7910 ph bacilia@bmararch.net

RESIDENTIAL ADDITION TO
CREATE DUPLEX AND NEW
GARAGE / WORKSHOP

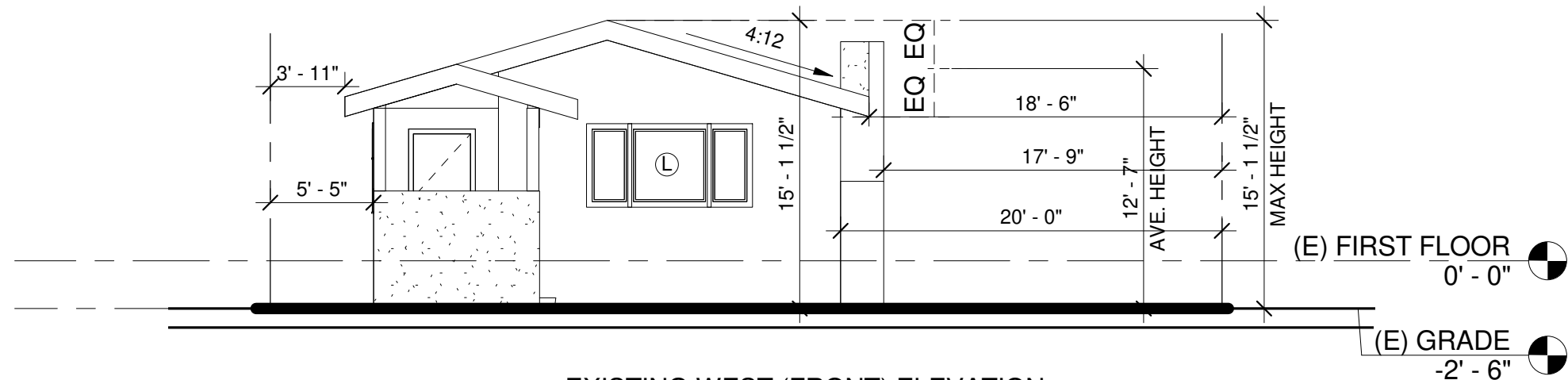
2325 SIXTH ST
BERKELEY, CA
APN # 056-194-10190

EXISTING EXTERIOR
ELEVATIONS

REVISION: AUG. 22, 2019
Date SEPT. 18, 2018
Drawn by Author
Scale 1/8" = 1'-0"



2 EXISTING NORTH (LEFT) ELEVATION
1/8" = 1'-0"



1 EXISTING WEST (FRONT) ELEVATION
1/8" = 1'-0"

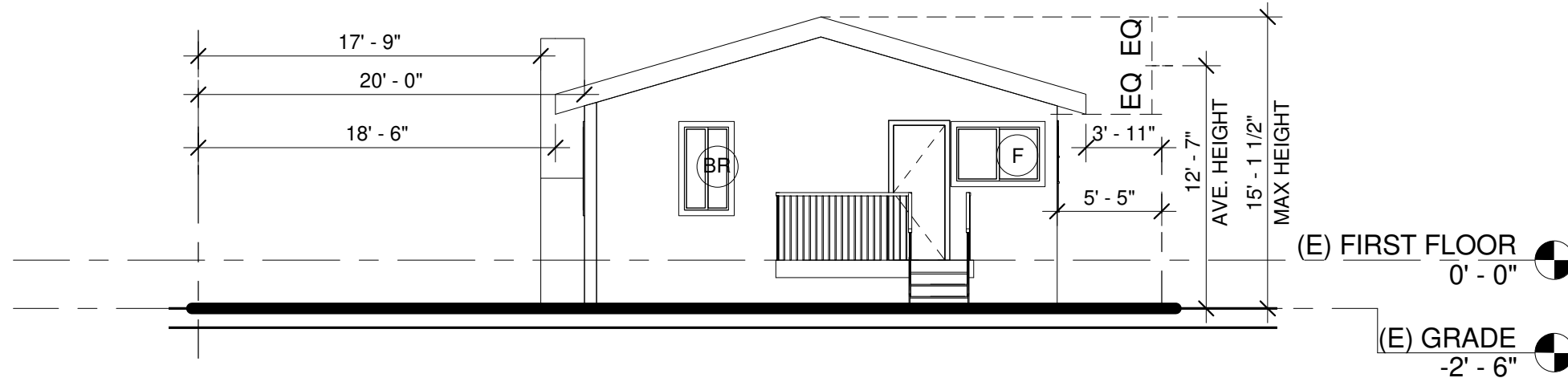
LAND USE PLANNING
RECEIVED AUGUST 21, 2019

A3.1

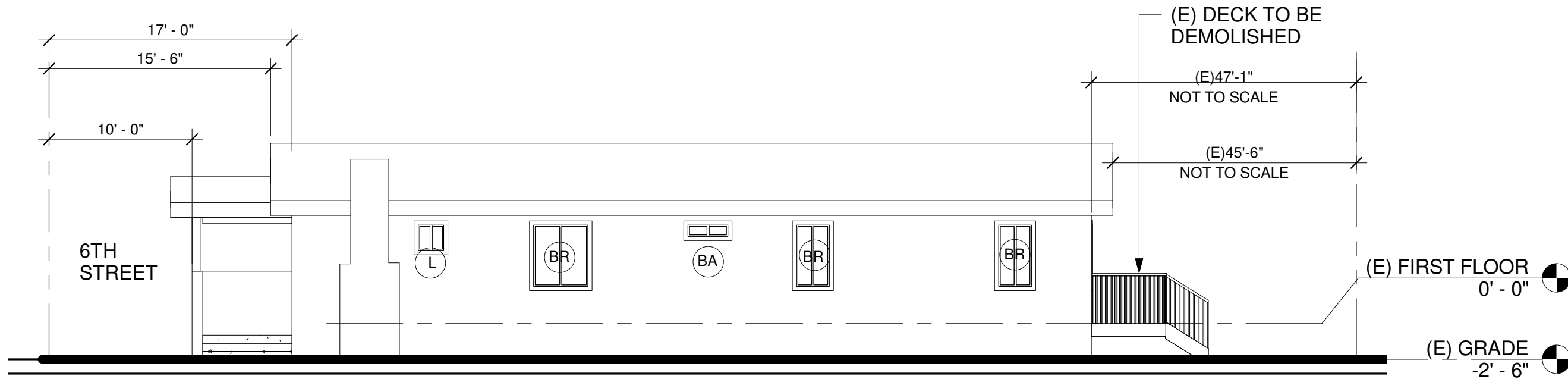
BACILIA MACIAS
 ARCHITECTURE
 732 gilman street berkeley ca 94710
 510.691.7910 ph bacilia@bmarcch.net

OPENINGS LEGEND

- (BD) BEDROOM
- (BA) BATHROOM
- (L) LIVING
- (K) KITCHEN
- (D) DINING
- (F) FAMILY RM.



② EXISTING EAST (REAR) ELEVATION
 1/8" = 1'-0"



① EXISTING SOUTH (RIGHT) SIDE ELEVATION
 1/8" = 1'-0"

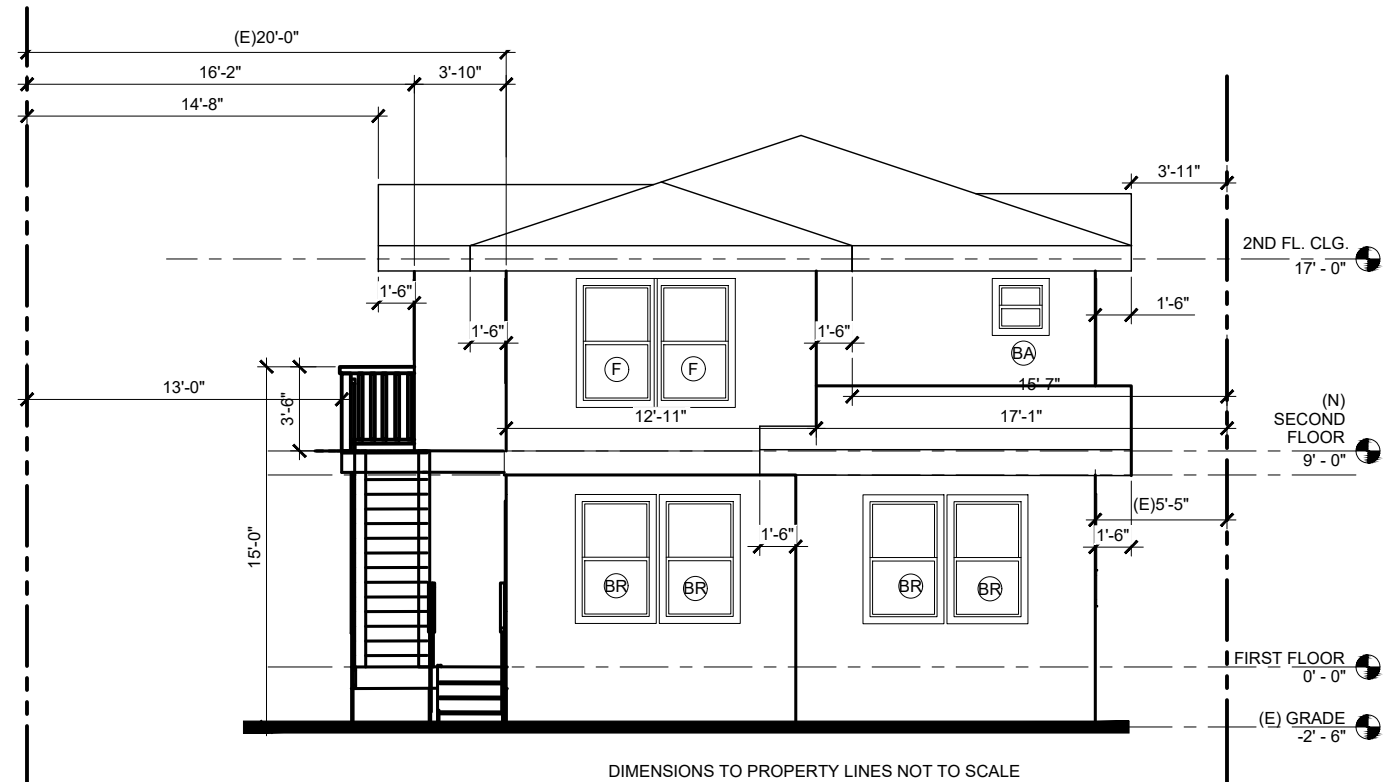
**RESIDENTIAL ADDITION TO
 CREATE DUPLEX AND NEW
 GARAGE / WORKSHOP**
 2325 SIXTH ST
 BERKELEY, CA
 APN # 056-194-10190

REVISION: AUG. 22, 2019
 Date SEPT. 18, 2018
 Drawn by Author
 Scale 1/8" = 1'-0"

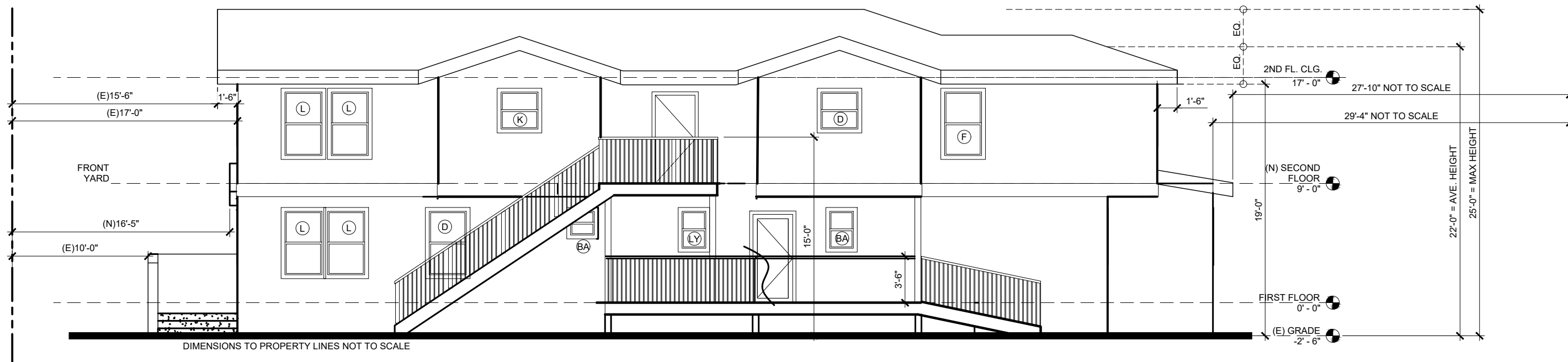
EXISTING EXTERIOR
 ELEVATIONS

LAND USE PLANNING
RECEIVED AUGUST 21, 2019

A3.0



2 PROPOSED EAST (REAR) ELEVATION
1/8" = 1'-0"



1 PROPOSED SOUTH (RIGHT) SIDE ELEVATION
1/8" = 1'-0"

BACILIA MACIAS
ARCHITECTURE
 732 gilman street berkeley ca 94710
 510.691.7910 ph bacilia@bmarcch.net

**RESIDENTIAL ADDITION TO
 CREATE DUPLEX AND NEW
 GARAGE/WORKSHOP**

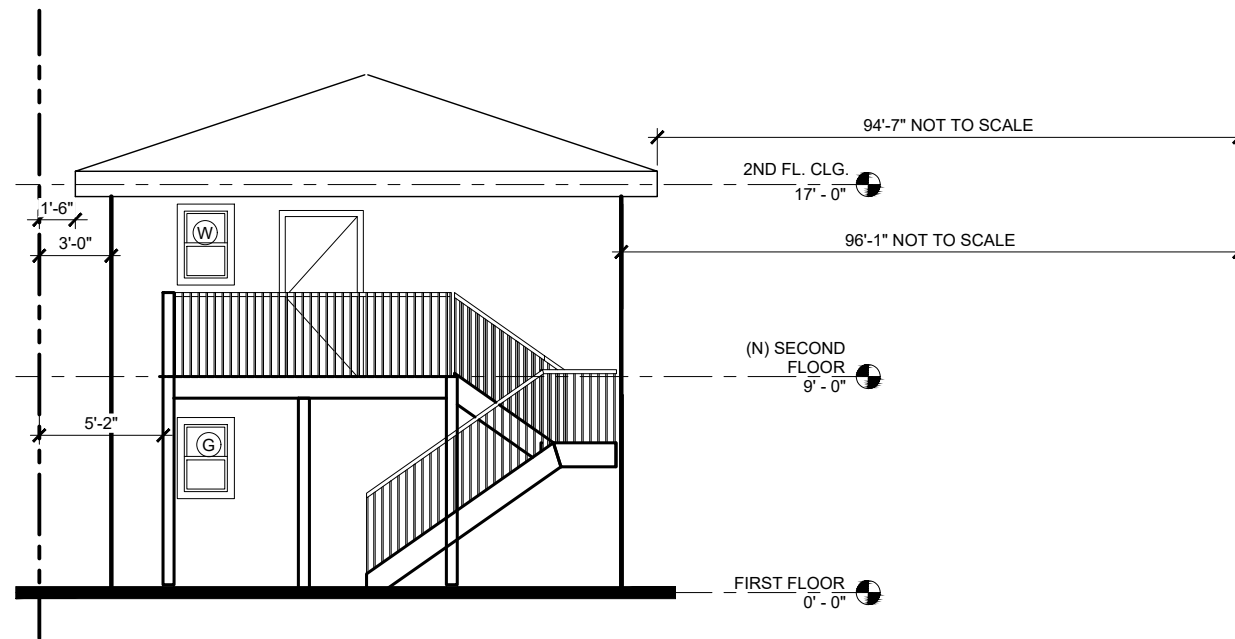
2325 6TH STREET
 BERKELEY, CA
 APN # 056-194-19

REVISED AUG. 22, 2019
 Date SEPT. 18, 2018
 Drawn by BM
 Scale AS NOTED

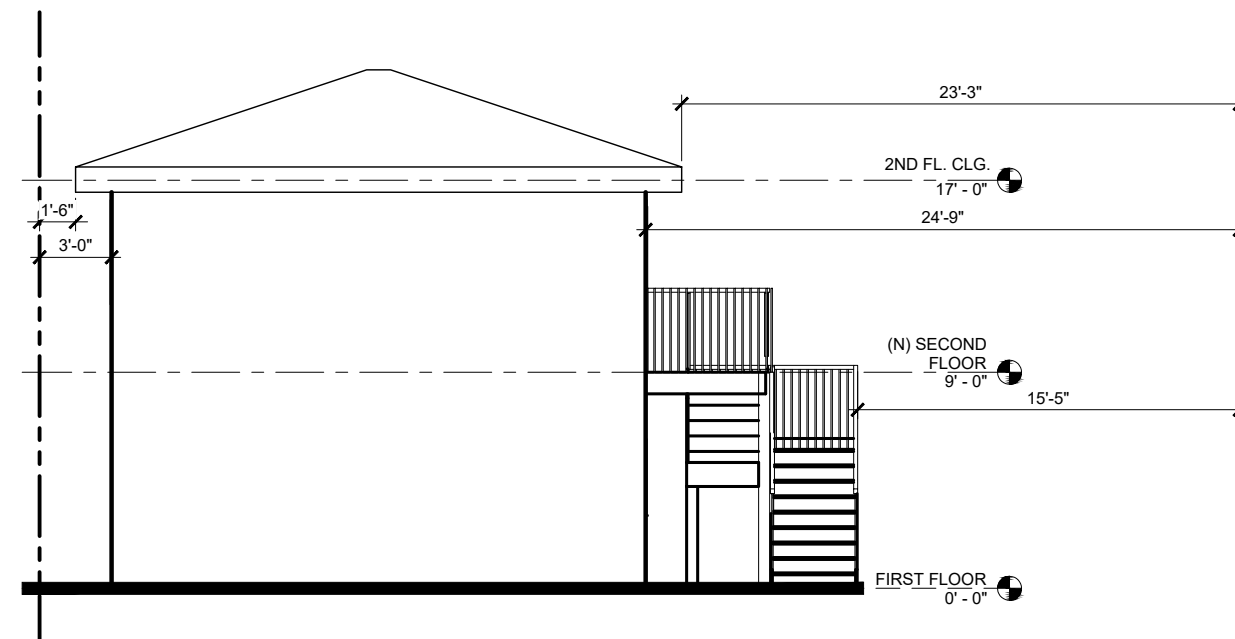
PROPOSED
 EXTERIOR
 ELEVATIONS

A3.3

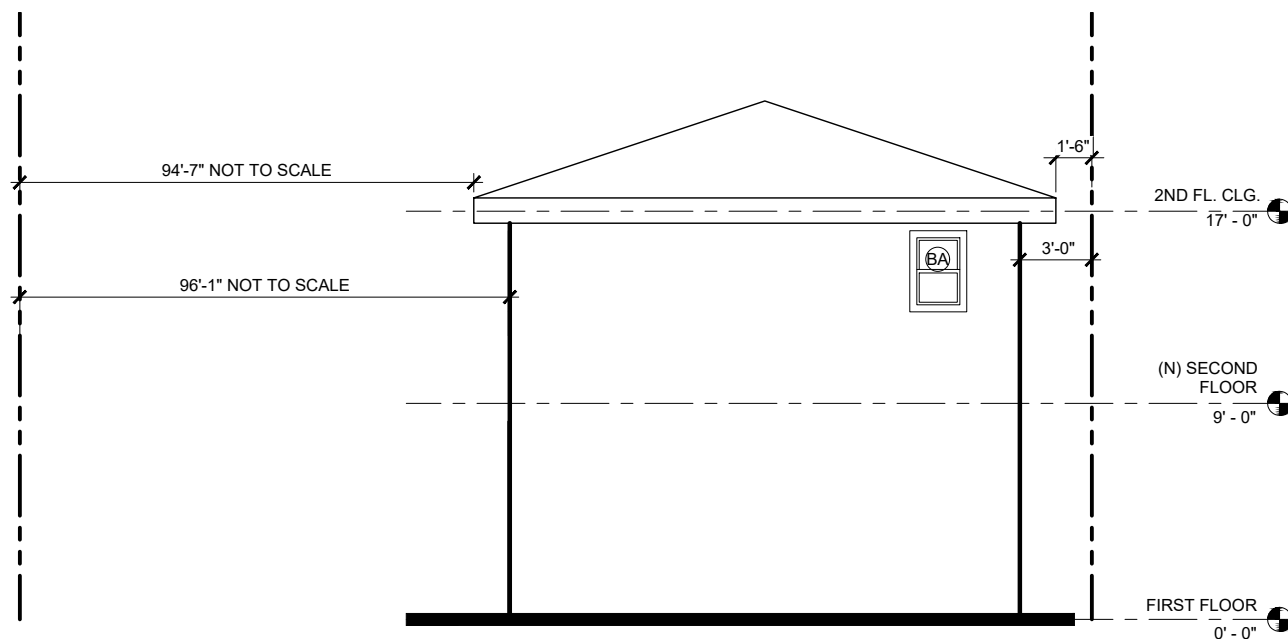
LAND USE PLANNING
RECEIVED AUGUST 21, 2019



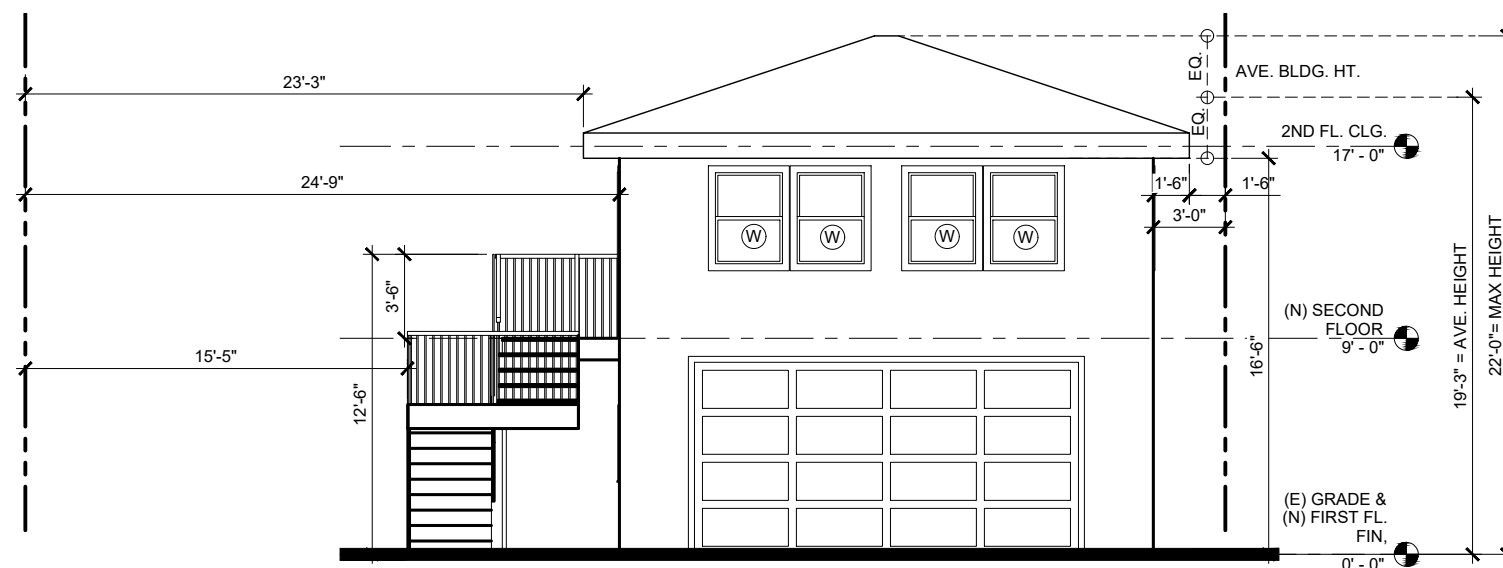
4 PROPOSED NORTH (LEFT) SIDE ELEVATION
1/8" = 1'-0"



2 PROPOSED EAST (REAR) ELEVATION
1/8" = 1'-0"



3 PROPOSED SOUTH (RIGHT) SIDE ELEVATION
1/8" = 1'-0"



1 PROPOSED WEST (FRONT) ELEVATION
1/8" = 1'-0"

BACILIA MACIAS
ARCHITECTURE
732 gilman street berkeley ca 94710
510.691.7910 ph bacilia@bmararch.net

**RESIDENTIAL ADDITION TO
CREATE DUPLEX AND NEW
GARAGE/WORKSHOP**

2325 6TH STREET
BERKELEY, CA
APN # 056-194-19

PROPOSED EXTERIOR ELEVATIONS NEW REAR STRUCTURE	REVISED AUG. 22, 2019
	Date SEPT. 18, 2018
	Drawn by BM
	Scale AS NOTED

A3.4

**LAND USE PLANNING
RECEIVED AUGUST 21, 2019**

2019 JUN 17 AM 8:45

June 14, 2019

Berkeley City Council
City Clerk Department
City Hall
2180 Milvia Street, 1st floor
Berkeley, CA 94704

Dear Council Members,

I am writing on behalf of myself and the under-signed neighbors to appeal the Zoning Adjustments Board's decision of May 9, 2019, to approve the proposed project at 2325 Sixth Street, Berkeley, Use Permit #ZP2017-0145.

This development is strikingly more massive than, and out of keeping with, anything else on our block. Its excessive scope and scale are reflected in the fact that two Use Permits and five Administrative Use Permits are required. This reality was highlighted at the ZAB hearing by Patrick Sheahan, for example, (1:15; time stamps are taken from video of the ZAB meeting, as posted on the City of Berkeley's web site) who stated that the project was, in his professional opinion, "excessive considering the pattern of the neighborhood . . . this is pushing it too far," and later (1:39) added that it was "overbuilt (and) extremely crowded." He went on to say that there was "a lot that could be improved in this design . . . it (will) take rework . . . to end up with a better project that better suits the neighborhood."

All of us near neighbors are opposed to this project as currently designed, as we've expressed in our many letters and public comments (see our collective 12 letters, which have all been uploaded as part of the official record). Its impact would be extremely destructive to our quality of life, in terms of severe shadowing and the accompanying loss of light, air, warmth, and open views; invasion of privacy; major elimination of green space; significant overcrowding and concomitant noise and parking issues; the introduction of an apartment-like structure into a block of family homes; design incompatibility with a neighborhood of historical wooden Victorians and Craftsman-like bungalows; and callous disregard for all of us already living in this established neighborhood.

During this project's nearly two years in the permitting process, the applicants have been unwilling to consider the detrimental effects on us, their neighbors, and have refused any mediation or mitigation. The Planning Department staff recommended early on (September 2017), that the applicants pursue mediation, given our significant opposition; they elected not to. In mid-2018, the Planning staff again encouraged them to meet with neighbors (Alison Lenci, 0:18.) An informal meeting did occur on July 7, 2018, between four members of the applicants' extended family, along with their architect, and David Greenstone (backyard neighbor at 2324 7th Street), April Schirmer (south-side neighbor at 2329 6th Street) and me (north-side neighbor at 2321 6th Street). This get-together was strikingly unproductive. In my view, the applicants seemed offended by the idea that we opposed their goals and ambitions, totally dismissive of and antagonistic towards all of our concerns, dishonest in their

characterization of facts, and not open to any sort of mitigation. (See, for example, our respective letters – theirs dated May 21, 2018, and, in response, mine of July 2, 2018, and David and Althaea Greenstone’s of April 30, 2019 – as illustrative of these dynamics and our Impasse.) No members of the applicants’ family have lived at this residence for many years; their disconnection from and lack of regard for the community is apparent.

As a result, there had been no compromises considered by applicants by the time of the ZAB meeting on May 9, 2019. Happily, the central purpose and task of the ZAB, as articulated at that meeting, is to balance the needs of the applicant and the needs and concerns of the neighbors and community (Igor Tregub, 0:52; Charles Kahn, 0:55 and 0:58; Mr. Sheahan, 1:34) and to be “fair to everybody” (Denise Pinkston, 1:04).

Mr. Tregub raised this issue early on in the meeting (0:26), asking the applicants whether there had been “any attempts to mitigate”? Speaking for the applicants, and in contradiction of clear physical facts, Denise Seymour explained that this project was “not bringing anything different” in terms of square footage, shading, or privacy, and therefore warranted no modifications (0:27). A little later on, Lance Turner, Ms. Seymour’s husband and the project contractor, reiterated this point of view when he was asked if they had addressed neighbors’ concerns, promptly stating that my property to the north had been shadowing theirs “all the time” (0:50). Although the realities of solar orientation make such shadowing impossible, the implication seemed to be that I had harmed them and thus deserved no consideration.

In spite of these protestations by the applicants, there was broad agreement among Board members that mitigation was needed. For example, Charles Kahn (0:55) focused on the mass of both the main and accessory buildings; Ms. Pinkston (1:04) on how to reduce the height of the accessory building and how to preserve sunlight; Carrie Olson (1:08) wished to increase the setback of the accessory building, ensure privacy by strategic placement of windows, and increase sunlight; Mr. Selawsky (1:12) was concerned about light, massing, and setback; Mr. Sheahan (1:13, 1:15) emphasized the need to reduce the buildings’ height and bulk and the fact that the garage was “too tight;” Teresa Clarke (1:18, 1:23) underlined the need to create more sunlight; Mr. Tregub (1:28) felt strongly about finding workable compromises and achieving a more finished project; Shoshana O’Keefe (1:42) wanted the impact on neighbors to be acknowledged and for mitigation to occur.

The ZAB was divided as to how to achieve the compromise and mitigation they desired, and eventually entertained two competing motions, one to continue the matter with required mediation and one to approve the measure as it ultimately prevailed. Four council members supported a continuation (Ms. Olson, Mr. Selawsky, Mr. Sheahan, and Mr. Tregub). Their reasoning was as follows: Mr. Tregub (1:28), “I feel uncomfortable re-designing projects on the floor of ZAB at almost 9:00pm when we have another really important project coming up right after this.” He wanted to have a continuance, to require a “forced mediation, to engage dialogue,” so that when it “comes back before us it will look like a more finished project.” Mr. Sheahan (1:34) stated that he “supports a continuance because the design problems are too complex for us to solve on the fly,” and because he believed that it is “important to the

applicant and to neighbors to give it the time and effort (needed) to make it the best project we can." Mr. Tregub (1:40) reiterated, "When doing major design changes at this late hour (there's the) possibility that we're missing something, and I don't feel comfortable doing that." And he returned, again, to the ZAB "goal of trying to move towards consensus" between applicants and neighbors.

For Chairperson O'Keefe (1:42), who cast the deciding vote and who stated that both the motion to continue and the motion to revise were "within the spirit" of what she wanted (i.e., "to approve this with some acknowledgement of the impact on neighbors and mitigation"), the "deciding factor (was) what the applicant thinks." When the vote to continue was called, she voted (1:47), "No, as per the applicants' wishes." The motion to continue thus failed, 4 to 5.

I have to say, this was a profoundly surreal and upsetting moment for me. A decision was being made that would affect me and my family and all of our neighbors for many, many years to come, and we were essentially being reduced to bystanders and spectators. Where was the Chairperson's equal concern for "what the neighbors think"? Absent, apparently. No one asked that question. There was no reciprocal platform from which we could speak.

So, although the ZAB recognized that neighbors' concerns were legitimate and rather valiantly tried to provide the missing mediation themselves, this was an inherently flawed and impossible task, given time constraints and the lack of any opportunity for all parties to really work together. The revisions they were able to make, to reduce the height of the proposed addition to the main structure and to require that second-story windows be obscured, were a significant and welcomed start and also demonstrated that applicants would agree to mitigations if the issuance of the use permits was at stake.

Our appeal now is that you re-open and continue this matter with required mediation, so that adequate time and thought can be devoted to truly achieving a project that all of us can live with.

While you are considering the matter, I would like to remind you, as we were cautioned and reminded during the ZAB meeting, that building projects must be assessed and evaluated not just in terms of applicants' immediate stated plans, but in terms of other eventual longer-term potential uses and consequences. This project has been marketed and, I fear, sold to staff planners and the ZAB as the heart-warming story of an extended family reuniting to enhance their property and create a welcoming, nurturing home environment. This vision is strikingly contradicted by several realities. Mr. Turner is the COO of Turner Group Construction, a large construction company in Oakland. He joined the applicants' family in late 2017, when he and Denise Seymour were married. Prior to that time, the applicants were planning to sell 2325 6th Street to their then-tenants, a young family with an infant daughter. I believe that it has been under his auspices that the applicants, in Ms. Seymour's words (0:23), decided to "leverage the land." The couple currently lives in a 4-bedroom home in Dublin; it is ludicrous to imagine they will move as alleged into this over-crowded and unappealing project, in close quarters with enough other family members to populate 6 more bedrooms, who, except for Gladys Jenkins

and her daughter Barbara Jenkins-Jacobs, haven't been seen or heard from during these proceedings.

I feel that staff planners and the ZAB may have suffered from failures of imagination in regards to picturing what approving this project as it is would actually mean. Luckily (and also, sadly), I don't need imagination to know what could go wrong with this plan; I have already experienced versions of it. Last year the applicants rented this home to a group of four to six young people; between them they had five cars (including a pick-up truck for one person's gardening business) which were almost always parked on the street. If a 3-bedroom residence can house that many people and vehicles, think of how many an 8-bedroom could accommodate.

After standing empty for some months, just this week the house has been rented again, this time to a group of six to eight young people. While they mainly don't have cars (they are a group of international students), they do have night life. Although Ms. Seymour (0:27) assured us that it is "not in our interest to create a party house," they seem to have done just that. During the first three nights of the current residency, I was awoken each night at around 11:00pm and again at 2:00am by loud, boisterous and extensive shouting, seemingly leading up to and then returning from a night out. With this level of disturbance occurring within the relatively narrow confines of a 3-bedroom structure, the prospect of adding five more bedrooms is appalling; given this track record, and city guidelines for short-term rentals, that could mean 16 tenants living there.

So, please, when considering this project, don't be swayed by a sentimental desire to give applicants "the bedrooms they desire," as Mr. Kahn (1:31) put it. These bedrooms, once built, don't have anyone's name permanently on the door.

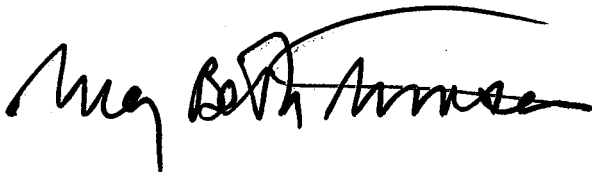
I do want to also add a personal note. My son and his wife and their two small boys are currently in the process of moving into my house at 2321 6th Street, while I move into the rear cottage. Should the quality of their lives be degraded and our futures here pawned to the applicants' ambitions? Surely our respective needs and desires can be better reconciled than would be possible with this current development.

In ending, I want to make it very clear that we do not blindly oppose the applicants' wishes to create more value and utility for their property. Most of us own our properties here and treasure the space and opportunity to create home lives that nourish and support us. However, given the magnitude of this project and the importance of its impact on us, we respectfully request the opportunity to engage in an honest, comprehensive mediation process. We believe that we all deserve a chance to set aside any potentially emotion-driven us vs them tensions and collaboratively develop a plan we can all live with. On May 9th, a significant portion of the ZAB agreed that this project shouldn't continue until some actual time and conversation had been dedicated to mediation and mitigation, beyond the bare two minutes allowed to each neighbor and the three-plus minutes allowed to applicants. Now that the pressure and rush of the ZAB meeting is behind us, and there's time to more broadly and carefully reflect, we are hoping that you, too, will appreciate the importance of making sure

that adequate time for mediation is established, to ensure that the covenants of our communal civic processes are maintained with integrity, accountability, and fairness. We are asking for a chance to be heard and to work together with the applicants on a matter of great importance to us.

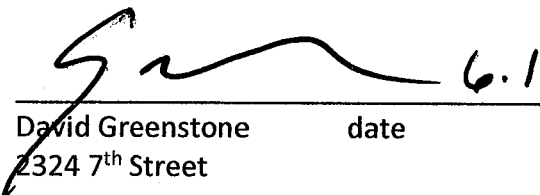
Thank you for your time and attention.

Sincerely,




6.17.2019

Mary Beth Thomsen
2321 6th Street
510-295-8491
marybeth.thomsen@gmail.com



6.16.19

David Greenstone date
2324 7th Street



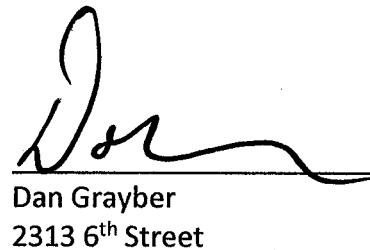
6/16/19

Althaea Greenstone date
2324 7th Street




6.16.19

Roseanne Botha date
2313 6th Street



6/16/19

Dan Grayber date
2313 6th Street



6/16/19

Nate Agrin date
2317 6th Street



6/16/19

Lauren Pappone date
2317 6th Street

April Schirmer 6/17/19

April Schirmer date
2339 6th Street

Dusan Supica 6-17-19

Dusan Supica date
2339 6th Street

Joel Mark 6/16/19

Joel Mark date
2312 6th Street

Robert Ballard 6/16/19

Robert Ballard date
2316 6th Street

Marc Gantz 6/16/19

Marc Gantz date
2320 6th Street

(Away on vacation;
verbal consent)

Andrea Bramwell date
2333 6th Street

6.15.2019



Z O N I N G A D J U S T M E N T S B O A R D S T A F F R E P O R T

FOR BOARD ACTION
MAY 9, 2019

2325 Sixth Street

Use Permit #ZP2017-0146 to expand an existing one-story, 1,348 sq. ft. single-family residence and alter an existing 6,000 sq. ft. parcel by: 1) raising the existing one-story dwelling 9'2" to create a new 1,676 sq. ft. sq. ft. ground floor dwelling, 2) increasing the total number of bedrooms on the parcel from three to eight, and 3) constructing a two-story, 472 sq. ft. accessory building with an average height of 19'3", located 1'6" from the rear and side yard property line to the south.

I. Background

A. Land Use Designations:

- General Plan: LMDR - Low Medium Residential Density
- Zoning: R-1A - Limited Two-Family Residential District

B. Zoning Permits Required:

- Use Permit, under BMC Section 23D.20.030, to add a second dwelling unit;
- Administrative Use Permit, under BMC Section 23D.20.070.C, to construct a residential addition over 14 ft. in average height;
- Administrative Use Permit, under BMC Section 23D.20.030, to construct a major (>600 sq. ft.) residential addition;
- Administrative Use Permit, under BMC Section 23C.04.070.B to vertically extend the non-conforming front yard;
- Administrative Use Permit, under BMC Section 23D.08.005.A.1, to construct a new accessory building; and
- Administrative Use Permit, under BMC Section 23D.08.010.B, to construct an accessory building which does not comply with the height limits.

C. CEQA Determination: Categorically exempt pursuant to Section 15301 and 15303 of the CEQA Guidelines ("Existing Facilities" and "New Construction or Conversion of Small Structures").

D. Parties Involved:

- Applicant Bacilia Macias
 732 Gilman Street
 Berkeley, CA 94710

- Property Owners Tafia M. Jenkins
 3722 Northridge Drive
 Richmond, CA 94806

- Lashan M. Jenkins
 1569 Solano Avenue #655
 Berkeley, CA 94707

Figure 1: Vicinity Map

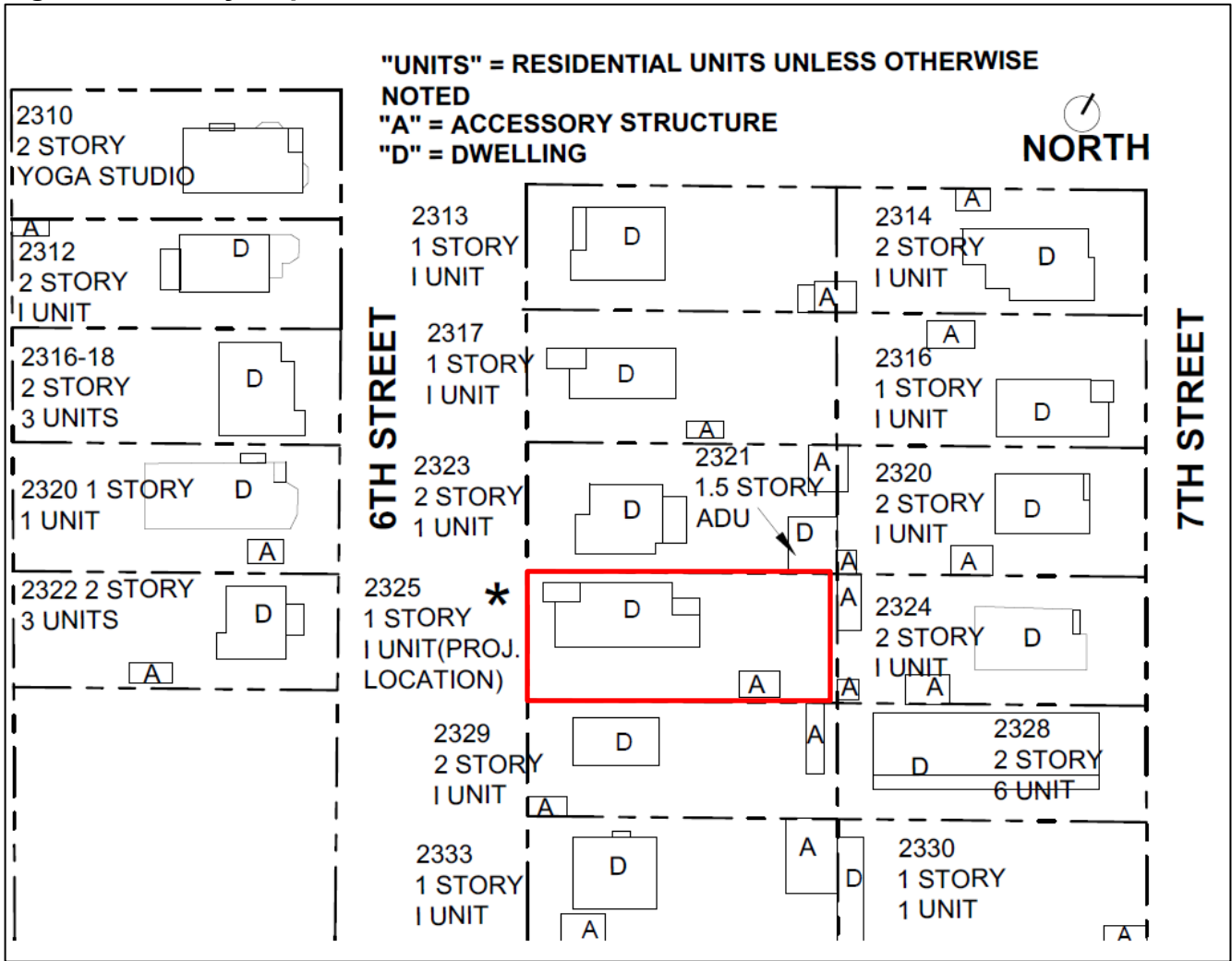


Figure 2: Aerial Vicinity Map (from Google Earth)

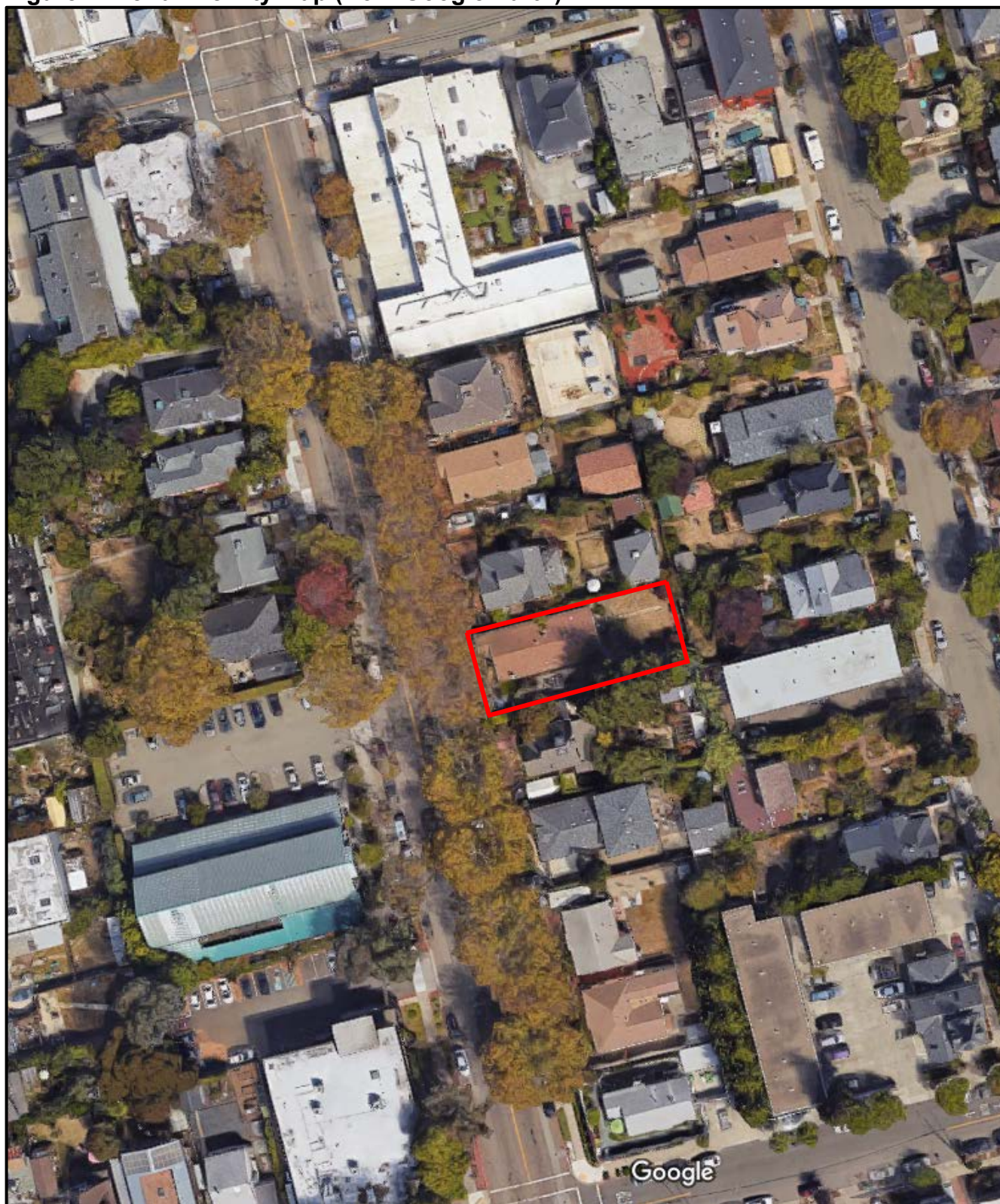


Figure 3: Site and Adjacent properties looking east from Sixth Street



Figure 4: Existing Site Plan

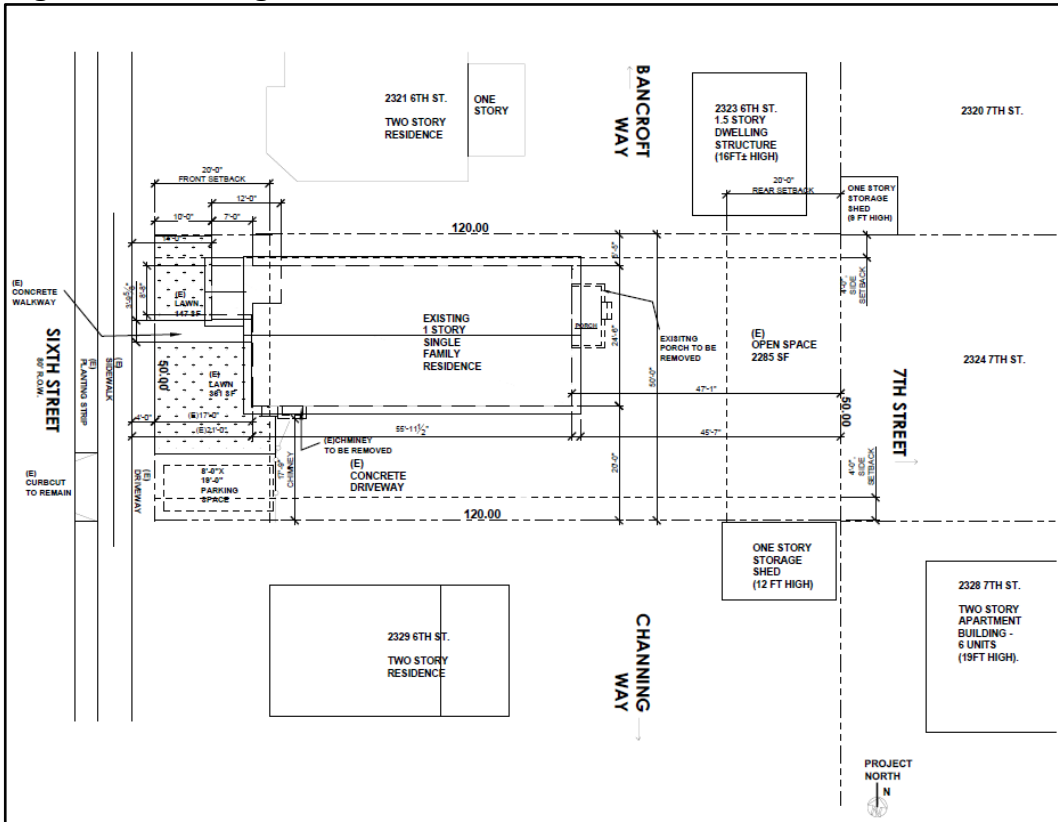


Figure 5: Proposed Site Plan

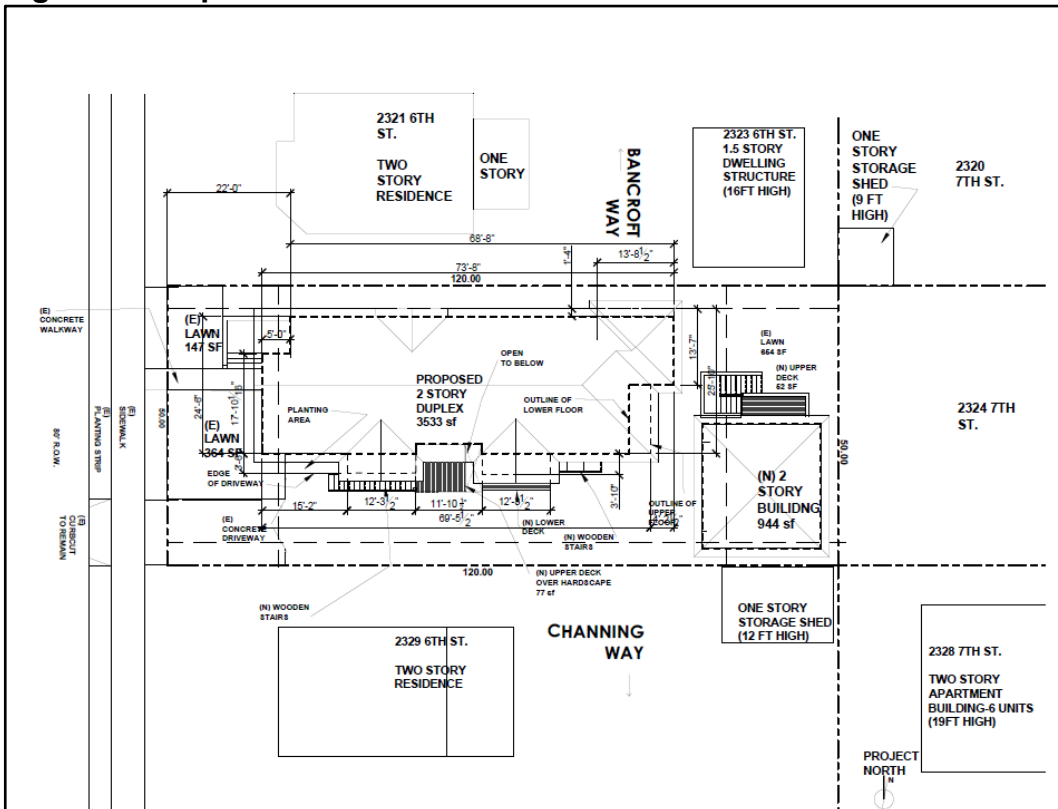


Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Single-family residence	R-1A	LMDR – Low Medium Residential Density
Surrounding Properties	North	Single-family residence with detached ADU		
	South	Single-family residence		
	East	Single-family residence		
	West	Commercial Offices	MU-R	MU – Manufacturing Mixed Use

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.)	No	The project is below the minimum threshold of 7,500 sq. ft. net new non-residential gross floor area.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)		
Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)	No	The project is not creating four or more dwellings.
Housing Accountability Act (Gov't Code Section 65589.5(j))	Yes	The project proposes to add a dwelling and therefore, is considered a "Housing Development Project" ¹ as defined by Government Code. However, the ZAB is not required to make special findings because the project proposes to vertically extend the existing non-conforming front yard (see Section V.A for analysis below).
Coast Live Oak Trees (Per BMC §6.52.010)		The site does not contain Coast Live Oaks.
Creeks (BMC Chapter 17.08)	No	The proposed development is not located within 30 feet of an open creek or creek culvert.
Density Bonus (Per Gov't Code Chapter 65915)	No	The proposed development includes only two dwelling units and is not eligible for consideration under Gov't Code Section 65915.
Green Building Score	Yes	The applicant submitted a GreenPoint Rated checklist for the project. The minimum score required is 50 points, and the checklist indicates a score of 77 out of a possible 374 for the two dwellings.

¹ Per Government Code Section 65589.5(H)(2) "Housing development project" means a use consisting of any of the following: (A) Residential units only; (B) Mixed-use developments consisting of residential and nonresidential uses in which nonresidential uses are limited to neighborhood commercial uses and to the first floor of buildings that are two or more stories. As used in this paragraph, "neighborhood commercial" means small-scale general or specialty stores that furnish goods and services primarily to residents of the neighborhood; and (C) Transitional housing or supportive housing.

Characteristic	Applies to Project?	Explanation
Historic Resources (Per Gov't Code §15064.5 and BMC Chapter 3.24)	No	The subject property is not listed on the local, state or National Register listings as a historic resource. However, because the project proposes a major residential addition to the existing structure, the applicant was required to prepare a Historic Resources Evaluation (HRE). The HRE, prepared by Architectural Historian Stacy Farr in February 2019, concluded that while the building was designed in the California Bungalow style, it has undergone a series of alterations and no longer conveys its modest historic appearance. The property is not historically significant under any of the California Register criteria and therefore, is not eligible for listing on the California Register.
Rent Controlled Units (Per BMC Chapter 13.76)	No	There is one existing and one proposed dwelling unit at this site, however there are no rent controlled units, and, therefore, Berkeley's Rent Control Ordinance, BMC Chapter 13.76. does not apply to this project.
Residential Preferred Parking (RPP) (Per BMC Chapter 14.72)	No	The project area is not included in a RPP area.
Soil/Groundwater Contamination	No	The project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5
State Hazards Mapping Act (Liquefaction, Fault-rupture, Landslide)	No	The project site is located within an area susceptible to liquefaction as shown on the State Seismic Hazard Zones map. Per Condition of Approval (COA) #11, a geotechnical report will need to be prepared and submitted for peer review, prior to building permit submittal.

Table 3: Project Chronology

Date	Action
September 13, 2017	Application submitted
October 12, 2017	Application deemed incomplete
February 26, 2018	Revised application materials submitted
March 26, 2018	Application deemed incomplete
May 14, 2018	Revised application materials submitted
May 25, 2018	Application deemed incomplete
June 15, 2018	Revised application materials submitted
July 11, 2018	Application deemed incomplete
August 6, 2018	Revised application materials submitted
September 6, 2018	Application deemed incomplete
September 19, 2018	Revised application materials submitted
October 19, 2018	Application deemed incomplete
October 31, 2018	Revised application materials submitted
October 31, 2018	Application deemed complete
April 25, 2019	Public Hearing notices mailed and posted
May 9, 2019	ZAB Hearing

Table 4: Development Standards

Standard		Existing	Proposed Total	Permitted/ Required
BMC Sections 23D.20.070-080 & 23D.08.020-030				
Lot Area (sq. ft.)		6,000	No Change	5,000 min
Gross Floor Area (sq. ft.) -Main Building -Accessory Building		1,348 N/A	3,533 472	N/A
Dwelling Units		1	2	2 max
Bedrooms		3	8	N/A
Main Building Height	Average	12' - 7"	22'	28' 35' w/Use Permit
	Maximum	15'-1 ½"	25'	N/A
	Stories	1	2	3 max
Main Building Setbacks	Front	17'	17'	20' min
	Rear	47'-1"	29'4"	20' min
	Left Side	5'-5"	4'-1"	4' min
	Right Side	20'	16'-2"	4' min
Accessory Building Height	Average	-	19'-3"	24' max
	Maximum	-	22'	N/A
	Stories	-	2	N/A
Accessory Building Setbacks	Front	-	94'-3"	75' min
	Rear	-	1'-6"	10' min
	Left Side	-	15'5"	10' min
	Right Side	-	1'-6"	10' min
Lot Coverage (%)		23	39.98	40 max
Usable Open Space (sq. ft.)		2,807	922	800 min (400/dwelling)
Automobile Parking		1	2	2 min (1/dwelling)

II. Project Setting

A. Neighborhood/Area Description: The subject property is located in a neighborhood area which consists of a variety of uses, building heights, and architectural styles. A mixture of single- and multi-family residences abut the subject property to the north, east, and south, and a variety of office/warehousing and light industrial uses confront the subject property to the west. According to a Historic Resource Evaluation (HRE) prepared for the property in February 2019 by Architectural Historian Stacy Farr, there are two Queen Anne residences, located directly north (at 2321 Sixth Street) and south (at 2329 Sixth Street) of the subject property, that were owned by Matilde Niehaus, wife of Edward F. Niehaus, a prominent West Berkeley businessman who constructed the Stick-Eastlake mansion at 839 Channing Way, a City of Berkeley landmark, located on the same block as the subject site. While Niehaus built seven other houses

on this block, including the two Queen Anne residences at 2321 Sixth Street and 2329 Sixth Street, and owned the subject property until 1923, the subject property was developed in 1923 as a modest California Bungalow style single-family residence, after Matilde sold the property. The site directly north of the subject property (2321 Sixth Street, developed with a Queen Anne) is a two-story single family residence and includes a two-story detached Accessory Dwelling Unit (ADU) at the rear of the property. The three abutting properties to the east consist of a two-story, 6-unit apartment building, and two, 2-story single-family residences, and the site directly south of the subject property (2329 Sixth Street, developed with a Queen Anne) is a two-story single-family residence and includes a one-story detached accessory building at the rear. A two story office/warehouse building in the MU-R district confronts the subject property to the west along Sixth Street.

- B. Site Conditions:** The subject lot is located on the east side of Sixth Street, mid-block between Bancroft Way and Channing Way and is currently occupied by a one-story single family residence. According to City records and the HRE, the subject building has undergone a series of alterations since the time of its construction in 1923. The existing dwelling is setback from the street and is sited on the north side of the fairly flat lot. A concrete paved driveway occupies the south side of the lot, while the front and rear yards are covered by a mix of vegetation and cement paving. Additional site features include an aluminum shed in the rear yard which sits atop a concrete pad, historically the site of a garage. The rear yard is divided from the front yard by a board fence at both sides of the main building, and the rear yard is enclosed by a variety of vertical board fencing types, topped in some areas by wood lattice.

III. Project Description

The project would raise the existing one-story single-family dwelling to create a new two-story building that would contain two dwellings. The new dwelling unit on the ground floor would have three bedrooms and the dwelling unit on the second floor would have four bedrooms. The average height of the existing one-story building would increase and the total number of bedrooms on the parcel would increase from three to eight (the second floor of the accessory building would be considered the eighth bedroom on the parcel). Two decks are proposed along the south side of the building, a 168 sq. ft. one-story deck for the ground floor dwelling and a 78 sq. ft. second-floor deck for the dwelling on the second floor.

The project would also construct a new two-story, accessory building that would comply with the height limits, subject to approval of an Administrative Use Permit. The accessory building would consist of a two-car garage on the ground floor, providing one off-street parking space for each dwelling, and a workshop on the second floor with a 62 sq. ft. second-story deck along the north side of the accessory building.

IV. Community Discussion

- A. Public Notice:** Prior to submitting this application to the city, the applicant erected a pre-application poster and contacted abutting and confronting neighboring property

owners and occupants to show them a copy of the proposed project plans and obtain their signature on the proposed plans. Two neighboring owners and two neighboring tenants could not be reached in person, so the applicant sent a certified letter explaining the project and included a copy of the plans, and submitted to staff a copy of the certified receipt. On April 25, 2019, the City mailed 205 public hearing notices to property owners and occupants, and to interested neighborhood organizations and the City posted notices within the neighborhood in three locations.

B. Neighbor/Community Concerns/Applicants' Response to Neighbor Concerns: In April 2017, five months prior to submittal of this application, the City received written correspondence from two neighboring property owners expressing concerns about the proposed project: one letter from the property owners of 2324 Seventh Street (received April 6, 2017) and one letter from the property owners of 2329 Sixth Street (received April 20, 2017). Since the application was submitted to the City on September 13, 2017, the City has received additional written correspondence from the neighboring property owner of 2321 Sixth Street (received October 30, 2017) expressing concerns about the project. In addition to submitting these letters to the City, the three neighboring property owners mentioned above also submitted a copy of their correspondence to the applicant of this Use Permit.

On May 21, 2018, the property owners of the subject property submitted a letter to the City, in response to the opposition and concerns raised by neighboring property owners. In June 2018, the property owners reached out to their neighbors and asked if they would be interested in meeting again to discuss their concerns about the project. On July 7, 2018, the property owners of 2325 Sixth Street met with the neighboring property owners. All neighbors who submitted correspondence expressing opposition were in attendance. No compromises or agreements between parties were reached.

On July 5, 2018, two days before the second neighborhood meeting was held, the neighboring property owners of 2321 Sixth Street submitted another letter to the City in response to the correspondence submitted by the owners of the subject property on May 21, 2018. On May 1, 2019, the property owners of 2324 Seventh Street submitted additional correspondence.

The land use issues from the letters are summarized in Table 5 below, and copies of letters received by the City, as of writing of this report, are provided in Attachment #4.

Table 5: Neighbor Concerns

Concern	Staff Report Discussion
Addition to Main Building	
Design	Table 2, III. Project Description, and IV.C. Committee Review
Compatibility with Neighboring Buildings	II. Neighborhood/Area Description, V.G. General Plan Consistency, Policies LU-7, UD-16, UD-24
Privacy	V.B. Compatibility with District Purposes
Loss of light/shadows	V.C. Use Permit to construct a second dwelling unit, and V.D.1. Administrative Use Permit to construct a major (>600 sq. ft.) residential addition over 14 ft. in average height
New Accessory Building	
Privacy	V.F. Administrative Use Permits to 1) construct a new Accessory Building that 2) does not conform to the height limits
Site Location/setbacks	V.F. Administrative Use Permits to 1) construct a new Accessory Building that 2) does not conform to the height limits
Privacy	V.F. Administrative Use Permits to 1) construct a new Accessory Building that 2) does not conform to the height limits
Loss of light/shadows	V.F. Administrative Use Permits to 1) construct a new Accessory Building that 2) does not conform to the height limits
Accessory Building becoming 3 rd rental unit	V.F. Administrative Use Permits to 1) construct a new Accessory Building that 2) does not conform to the height limits, and Attachment 1, Findings & Conditions, COA #13
Maximum Building Length	V.F. Administrative Use Permits to 1) construct a new Accessory Building that 2) does not conform to the height limits

C. Committee Review: This Use Permit application is not subject to review by the Landmarks Preservation Committee or Design Review Committee.

V. Issues and Analysis

A. The Housing Accountability Act: The Housing Accountability Act requires that when a proposed housing development complies with the applicable, objective General Plan and Zoning standards, but a local agency proposes to deny the project or approve it only if the density is reduced, the agency must base its decision on written findings supported by substantial evidence that:

- (1) The development would have a specific adverse impact on public health or safety unless disapproved, or approved at a lower density; and
- (2) There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval, or approval at a lower density.

As used in the Act, a “specific, adverse impact” means a “significant, quantifiable, direct and unavoidable impact, based on objective, identified written public health or safety standards, polices, or conditions as they existed on the date the application was complete.”

The project proposes to vertically extend the existing non-conforming front yard, and therefore does not comply with all applicable, objective general plan and zoning standards in the zoning ordinance.

Therefore, the findings required by Section 65589.5(j) **do not apply** to this project as currently proposed. Thus, the Act does not require the Board to approve this project.

B. Compatibility with District Purposes: Staff reviewed the purposes of the Limited Two-Family Residential District (R-1A) District and found the project to be compatible with the purposes as described below:

1. Purpose A: Recognize and protect the existing pattern of low medium density residential areas characterized by reasonable open and spacious type of development in accordance with Master Plan.

Staff Analysis: The project is consistent with this purpose because it would maintain the existing pattern of this low medium density residential area, by providing additional housing on the lot while exceeding the usable open space requirements of the district (see Table 4 above).

2. Purpose B: Protect adjacent properties from unreasonable obstruction of light and air.

Staff Analysis: As discussed further in Section V.D below, although the proposed project would increase the average and maximum building height and vertically extend the non-conforming front yard, the project would comply with height, setback, lot coverage and usable open space requirements of the R-1A District. Additionally, the proposed project would not be unreasonably detrimental to the abutting neighbors because new shadows would occur only during a few hours of the day during few days of the year, and would be limited to two neighboring dwellings.

3. Purpose C: Allow flexibility in the use of property for residential purposes by permitting two Dwelling Units on one lot under limited conditions.

Staff Analysis: The project proposes to raise the existing one-story single-family residence to create a two-story, two dwelling building. The property is in a neighborhood developed with one- and two-story building with a mixture of uses, including single- and multi-family residences and office/warehousing and light industrial uses. In addition, the property meets the development standards of the district (as described in Table 4 above) and therefore, is consistent with this purpose.

4. Purpose D: In those portions of the District west of San Pablo Avenue, appropriately regulate the rear and side yards for the construction of a Dwelling Unit.

Staff Analysis: As demonstrated in Table 4, the proposed two-story main building would comply with the setbacks, and therefore is consistent with this purpose.

- C. Use Permit to construct a second dwelling unit:** Two dwellings are permitted in the R-1A zoning district with a Use Permit (Public Hearing) per BMC 23D.20.030, provided the design meets the applicable R-1A development standards, and the ZAB can make the required non-detriment finding.

As demonstrated in Table 4, the proposed design would meet the R-1A development standards with respect to the height, number of stories, lot coverage, useable open space, and parking. And, as described in Section V.B above, the proposed project would be compatible with this broader neighborhood area that is characterized by a mixture of one- to two-story buildings with a variety of uses, including single- and multi-family residences and office/warehousing and light industrial.

The windows within the second story could potentially allow views to adjacent northern and southern properties. However, staff believes the project will not unreasonably impact the privacy of neighboring dwellings because while windows would now face second floor windows on the properties to the north and south, they would be approximately 10' from the neighboring dwelling to the north at 2321 Sixth Street and would not directly overlap with second story windows on the south façade of the neighboring dwelling, thereby minimizing privacy impacts. While the south façade would include two living room windows, one dining, one kitchen, and one family room window that would face the neighboring building to the south at 2329 Sixth Street, they would be more than 16' from this neighboring dwelling, and there are no windows on the second story north-facing façade of this neighboring dwelling. In addition, there are existing driveways on both sides of the subject property, resulting in additional separation between the subject property and adjacent dwellings. Therefore, staff believes the project will achieve appropriate building-to-building separations for this low-medium density residential neighborhood, and the proposed dwelling would not be detrimental to privacy of neighboring dwellings.

- D. Administrative Use Permit to construct a major (>600 sq. ft.) residential addition over 14 ft. in average height:** Pursuant to BMC Section 23D.20.090.B, staff believes the proposed major residential addition would not unreasonably obstruct sunlight, air, or views for the following reasons:

1. Sunlight: Shadow studies submitted by the applicant document the existing and proposed shading caused by buildings on and off site in the close vicinity, and document that the addition will create an incremental increase to shadows on one neighboring property to the north at 2321-2323 Sixth Street, that is occupied by two dwellings (one two-story, single-family residence and one ADU), as follows:
 - During morning hours on the winter solstice, two living room windows and one kitchen window on the south façade of 2321 Sixth Street that are partially shaded by the existing one-story building will be completely shaded by the addition. Also, two bedroom windows on the south façade that are unshaded today will be partially shaded by the addition, and one bedroom and one bathroom window on the south façade and two kitchen windows on the east façade of 2321 Sixth Street that are unshaded, will be fully shaded by the addition.

- During afternoon hours on the winter solstice, two living room windows and one kitchen window on the south façade of 2321 Sixth Street that are unshaded will be fully shaded by the addition, and two bedroom windows will be partially shaded by the addition. In addition, one living room door on the ADU at 2323 Sixth Street will be fully shaded by the addition.
- During evening hours on the winter solstice, one living room door on the ADU at 2323 Sixth Street that is partially shaded, will be fully shaded by the addition.

Because the impacts would be limited to one property and would occur on limited areas for a limited time during the year, and only for a few hours of the day, the major residential addition would not result in a significant loss of direct sunlight on abutting residences, and these shading impacts are not deemed detrimental.

2. Air: The addition is found to be consistent with the existing development and building-to-building separation pattern – or air – in this R-1A neighborhood because the addition would add a second story, where as many as three are allowed, would be less than the average height allowed in this district (22', where up to 35' is allowed with a Use Permit), would not further reduce the non-conforming front yard, and would exceed all other minimum required yards.
3. Views: Significant views as defined in BMC Chapter 23F.04 (Definitions) are not available to neighboring dwellings because the area is flat, at a low elevation (in relation to sea level) and the neighborhood area has mature, existing trees along the street. Therefore, the addition would not result in additional obstruction of significant views in the neighborhood.

E. Administrative Use Permit to extend a portion of a building within the required front yard: BMC Section 23C.04.070.B allows additions or enlargements which horizontally or vertically extend a non-conforming yard, or alter a portion of a building that encroaches into a non-conforming yard to be authorized with an AUP if the existing use of the property is conforming and the addition would not further reduce the existing non-conforming yards or exceed the maximum height limits.

The proposed project would raise the existing single-story building, which was built 17' from the front property line, where 20' is required under today's zoning standards, and retain the footprint of the existing non-conforming covered front porch. As noted in Table 4, the new, two-story building would exceed all other minimum required yards, would not further reduce the existing non-conforming front yard, and would not exceed the maximum height limits of this district.

Staff believes that this vertical extension of the existing building, 17' from the front property line, is permissible under BMC Section 23C.04.070.B, and that the Board can approve the Administrative Use Permit request for this vertical extension.

F. Administrative Use Permits to 1) construct a new Accessory Building that 2) does not conform to the height limits: BMC Section 23D.08.005.A.1 requires an Administrative Use Permit for the construction of a new accessory building of any size

and in any location, and BMC Section 23D.08.010.B requires an Administrative Use Permit for any accessory building that does not comply with the height limit and/or setback, subject to a finding that the proposed accessory building will not be detrimental to the light, air, privacy and views of adjacent properties.

The proposed two-story accessory building would be 19'3" in average height and would be setback 1'6" from the east and south property line, where a 10' setback is required. While the accessory building would have a setback of less than 10', staff believes the two-story accessory building would not be detrimental to the light, air, privacy and views of adjacent properties as described below:

1. Sunlight: Shadow studies submitted by the applicant document the accessory building's projected shadow angles and lengths at three times throughout the day during the summer and winter solstice. The studies show that the accessory building would create an incremental increase in shadows on neighboring dwellings, as follows:
 - During evening hours on the summer solstice, portions of the north and west façades of the multi-unit apartment building at 2328 Seventh Street would be partially shaded, but no window openings would be affected.
 - During morning hours on the winter solstice, one living room door on the south façade of the ADU at 2323 Sixth Street would be fully shaded.
 - During afternoon hours on the winter solstice, a portion of the south façade of the ADU at 2323 Sixth Street would be partially shaded, but no openings would be affected.

Because the impacts to neighboring dwellings would occur on limited areas, and would only partially shade neighboring dwellings for a limited time during the year, and only for a few hours of the day, the two-story accessory building would not result in a significant loss of direct sunlight on abutting residences, and these shading impacts are not deemed detrimental.

2. Air: The accessory building is found to be consistent with the existing development and building-to-building separation pattern – or air – in this R-1A neighborhood because the new building would be more than 20' from the edge of the neighboring ADU to the north, at 2323 Sixth Street, more than 95' from the front yard property line, and more than 30' from the neighboring building to the east, at 2324 Seventh Street. The new accessory building would be closest to the neighboring building to the southeast at 2328 Seventh Street, a 6-unit apartment building, however no windows are proposed along the rear of the new accessory building, and the west façade of the 6-unit apartment building that the accessory building would face, also does not have any openings.
3. Privacy: While the proposed accessory building includes new openings and a second story deck, the accessory building is not anticipated to have significant impacts on privacy of adjacent dwellings because the north façade of the building is approximately 23' from the side yard property line to the north, only one small bathroom window is proposed on the south façade, and there are no windows

proposed on the rear of the accessory building facing east. In addition, the proposed accessory building is designed to be a workshop/studio space and will be secondary to the primary use of the main building on the property, which will serve as two dwellings.

4. Views: As described in Section V.D.3 above, significant views as defined in BMC Chapter 23F.04 (Definitions) are not available to neighboring dwellings because the area is flat, at a low elevation (in relation to sea level) and the neighborhood area has mature, existing trees along the street. Therefore, the accessory building would not result in additional obstruction of significant views in the neighborhood.

As mentioned in Section III, Project Description, the workshop on the second floor of the proposed accessory building would be considered the eighth bedroom on the parcel, because it meets the City's definition of a bedroom, as defined in BMC Section 13.42.020.B. If approved, Condition of Approval (COA) #13 would require that, prior to issuance of any building permit, the owners of the subject property shall sign and record with the Alameda County Clerk-Recorder a "Notice of Limitation on Use of Property" stipulating that the accessory building shall not be rented as a separate dwelling unit.

G. General Plan Consistency: The 2002 General Plan contains several policies applicable to the project, including the following:

1. Policy LU-3–Infill Development: Encourage infill development that is architecturally and environmentally sensitive, embodies principles of sustainable planning and construction, and is compatible with neighboring land uses and architectural design and scale.

Staff Analysis: The project will add residential density to a property located in the R-1A district consistent with the district requirements. As described in Key Issues above, the proposed duplex is consistent with other buildings in the neighborhood, which is developed with one- and two-story building with a mixture of uses, including single- and multi-family residences and office/warehousing and light industrial uses.

2. Policy LU-7–Neighborhood Quality of Life, Action A: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.
3. Policy UD-16–Context: The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.
4. Policy UD-24–Area Character: Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in.

Staff Analysis: The proposed project would raise the existing one-story single family residence to create a new, two-story duplex, and construct a detached, two-story accessory building. The project is consistent with zoning standards and would retain the location and general footprint of the existing single-family residence.

As described in Section II.A and B above, the subject property is in a neighborhood area with a variety of building heights, uses, and architectural styles. The height of the new duplex would be consistent with abutting and confronting neighboring properties along Sixth Street and to the rear, on Seventh Street, and would retain the residential use of the property. While the subject property directly abuts two Queen Anne residences, the existing single family residence was constructed in the California Bungalow style, and has undergone a series of alterations since the time of its construction. The project would retain the existing character of the single-family residence and would be compatible with the scale, character, and surrounding uses in the area.

5. Policy UD-32–Shadows: New buildings should be designed to minimize impacts on solar access and minimize detrimental shadows.

Staff Analysis: As discussed in Key Issues D.1 above, shadows created by the major residential addition will be limited to one property, with two dwellings, and at limited times throughout the year. And, as discussed in Key Issues F.1 above, shadows created by the accessory building will be limited to one opening on one neighboring dwelling, and only for a limited time throughout the year. Therefore, the project would result in negligible shading impacts to neighboring dwellings.

6. Policy H-33–Regional Housing Needs: Encourage adequate housing production to meet City needs and the City’s share of regional housing needs.

Staff Analysis: The proposed project would support the City’s housing production goals by providing one additional dwelling unit on the property.

H. Plan Consistency: The West Berkeley Area Plan, adopted in December 1993, also contains several policies applicable to the project, including the following:

1. Physical Form Element - Goal 4: Development in locations where there is a juxtaposition of uses and building scales – particularly when concentrations of residential uses are adjacent to more intense uses – should be sensitive to the character of both the less intense and the more intense uses. This will be particularly important in the Mixed Use/Residential zone and on the “edges” where industrial zones meet residential uses.

Staff Analysis: The project has been designed to support and reflect the scale and character of the surrounding development pattern. It retains a residential use on the site, is sensitive to adjacent residential uses and compliments the non-residential uses across Sixth Street, in the MU-R District.

2. Housing and Social Services Element – Goal 4: Provide appropriately scaled and located housing development.

Staff Analysis: The project retains the existing residential use of the site in a residential zoning district, and would add an additional dwelling unit.

VI. Recommendation

Because of the project's consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board **APPROVE Use Permit #ZP2017-0146** pursuant to Section 23B.32.030 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Findings and Conditions
2. Project Plans, received September 19, 2018 and April 23, 2019
3. Notice of Public Hearing
4. Correspondence Received

Staff Planner: Alison Lenci, Assistant Planner alenci@cityofberkeley.info, (510) 981-7544

**NOTICE OF PUBLIC HEARING-BERKELEY CITY COUNCIL
SCHOOL DISTRICT BOARD ROOM, 1231 ADDISON STREET**

ZAB APPEAL: USE PERMIT #ZP2017-0146

Notice is hereby given by the City Council of the City of Berkeley that on **TUESDAY, SEPTEMBER 24, 2019 at 6:00 P.M.** a public hearing will be conducted to consider an appeal of a decision by the Zoning Adjustments Board to approve Use Permit #ZP2017-0146, to alter a 6,000 sq. ft. parcel at 2325 Sixth Street by 1) raising the existing one-story, 1,348 sq. ft. single-family residence with an average height of 12'7", to create a new, 3,330 sq. ft. two-story duplex, with an average height of 22', 2) increasing the total number of bedrooms on the parcel from three to seven, and 4) constructing a two-story, 472 sq. ft. accessory building with an average height of 19'3", located 1'6" from the rear and side yard property line to the south, that would consist of a two-car garage on the ground floor and a workshop on the second floor.

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of **September 12, 2019**.

For further information, please contact Alison Lenci, Project Planner, Land Use Planning Division, (510) 981-7544. Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

Mark Numainville, CMC, City Clerk

Mailed: September 10, 2019

NOTICE CONCERNING YOUR LEGAL RIGHTS: *If you object to a decision by the City Council to approve or deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) an appeal, the following requirements and restrictions apply: 1) Pursuant to Code of Civil Procedure Section 1094.6, no lawsuit challenging a City decision to deny or approve a Zoning Adjustments Board decision may be filed more than 90 days after the City Council action. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a Zoning Adjustments Board decision, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available at the City Clerk Department and posted on the City of Berkeley webpage at least 10 days prior to the public hearing.

