



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
OCTOBER 13, 2022

1262 Francisco Street

Appeal of Zoning Officer's Decision to approve Administrative Use Permit #ZP2021-0006 to modify Administrative Use Permit ZP#2020-0122 to add 40 square feet on the first floor and a balcony on the second floor of an existing single-family dwelling unit.

I. Background

A. Land Use Designations:

- General Plan: Low Medium Density Residential (LMD)
- Zoning: Restricted Two-Family Residential District (R-2)

B. Zoning Permits Required:

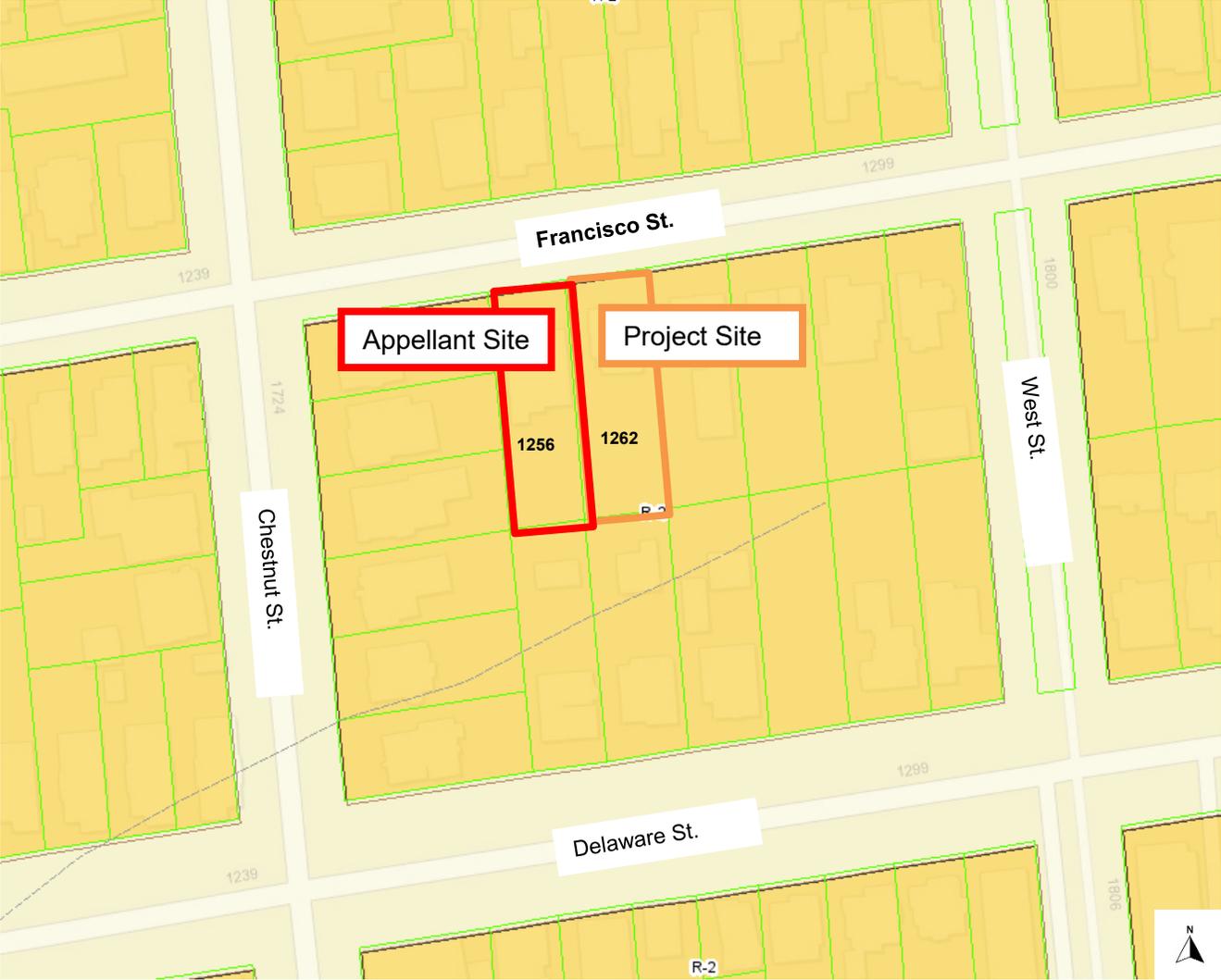
- Administrative Use Permit for an addition greater than 14 feet in height, under BMC Section 23.202.080(D).

C. CEQA Recommendation: It is staff's recommendation that the project is categorically exempt pursuant to Section 153301 of the CEQA Guidelines ("Existing Facilities"). The determination is made by ZAB.

D. Parties Involved:

- Applicant Sunny Grewal (Architect), Oakland
- Property Owner Jonathan Miller, 1262 Francisco, Berkeley
- Appellants: Aimee Baldwin, 1256 Francisco, Berkeley
John Vinopal, 1256 Francisco, Berkeley

Figure 1: Vicinity Map – 1262 Francisco (Project Site) + 1256 Francisco (Appellant Site)



**Map not to scale.*

Yellow = R-2 Zoning District

Figure 2: Site Plan

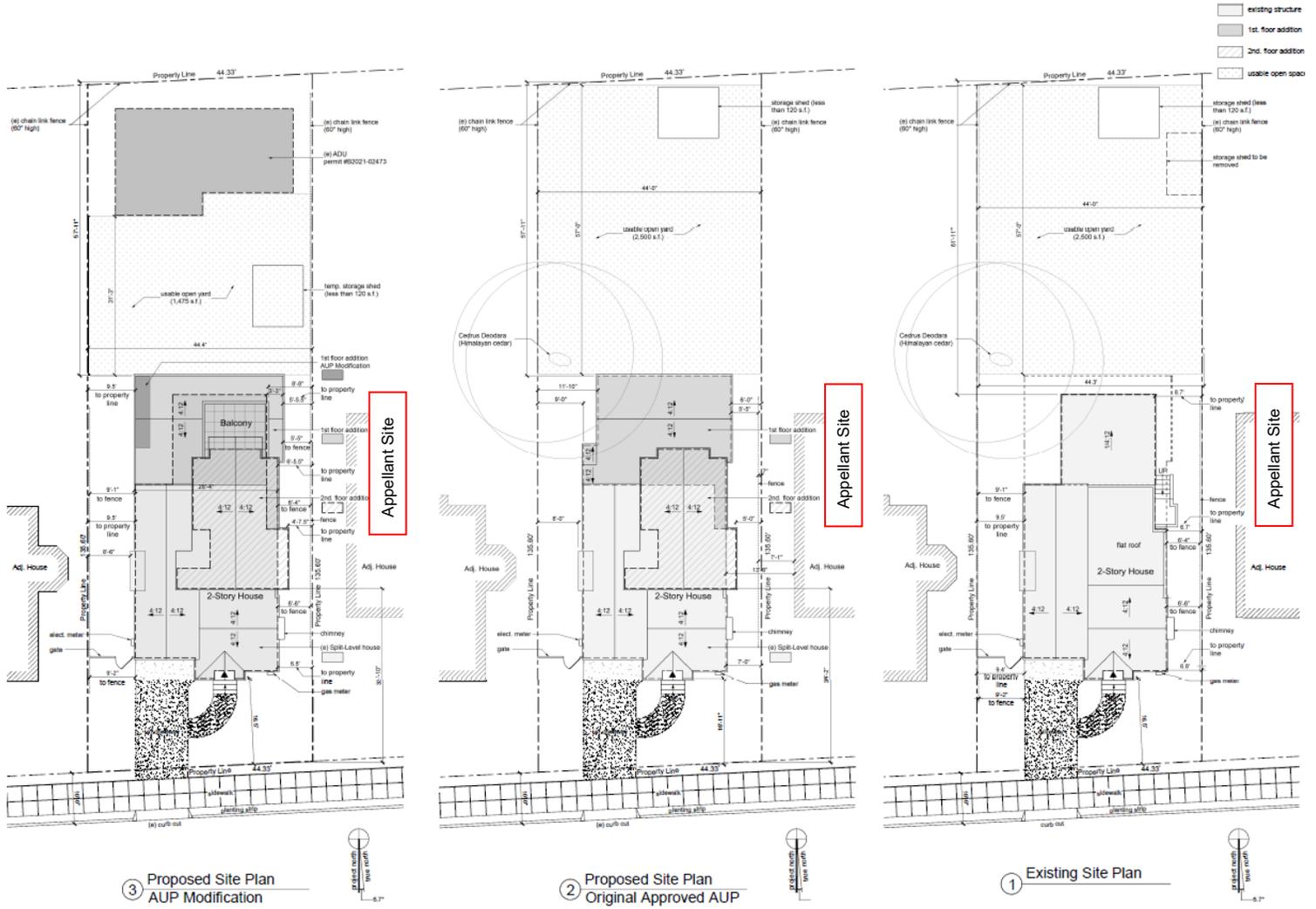


Figure 3: Original Approved First and Second Floor Plans

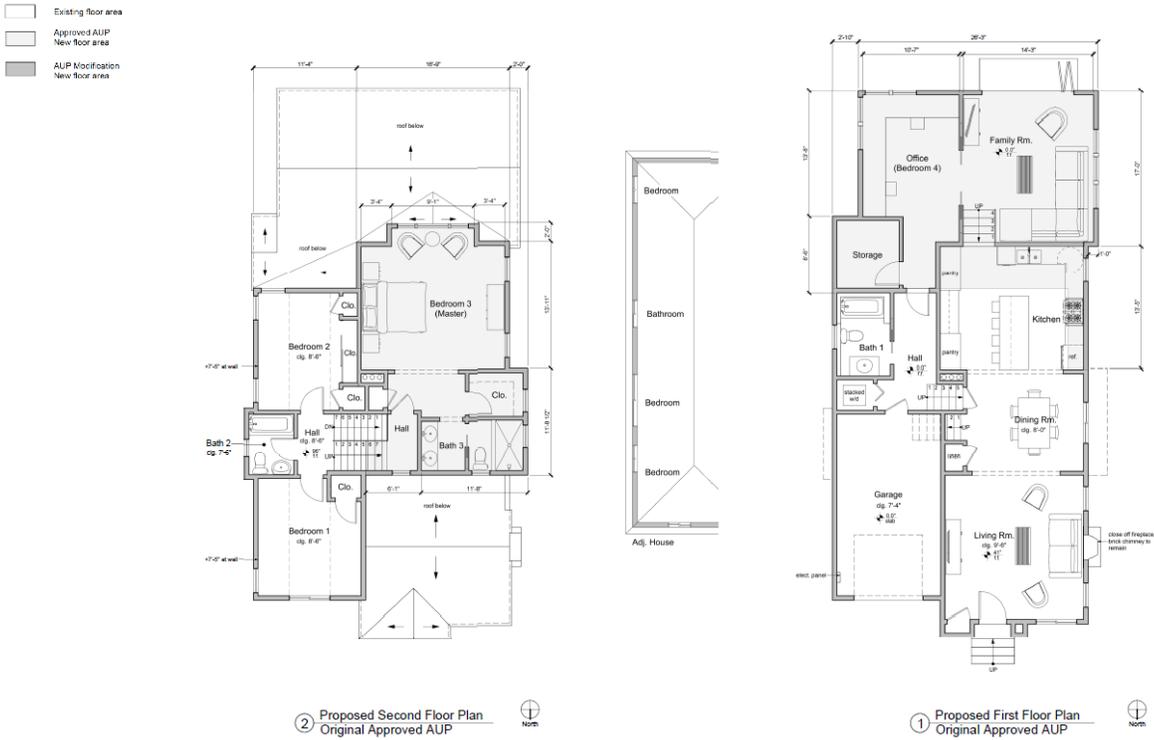


Figure 4: Proposed Modified First and Second Floor Plans

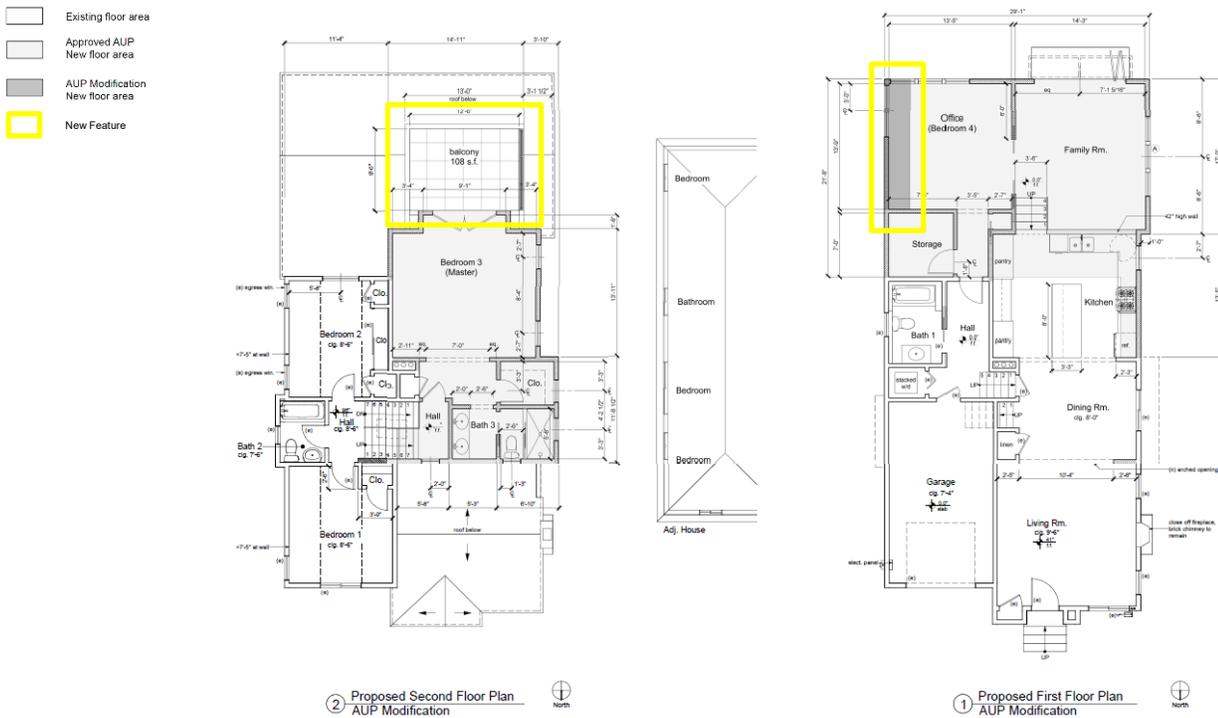


Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Single – Family Dwelling	R-2	LMD
Surrounding Properties	North			
	South			
	East			
	West			

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 involves only new residential floor area, and thus this requirement does not apply.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)	No	This fee applies to projects with net new 7,500 square feet of non-residential floor area. The project involves only new residential floor area, and thus this requirement does not apply.
Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)	No	This fee applies to projects that propose 5 or more rental dwelling units. This project does not propose rental units.
Alcohol Sales/Service	No	The project is a residential project.
Creeks	No	The project is not located within the creek buffer.
Density Bonus	No	The project is not a density bonus project.
Natural Gas Prohibition (Per BMC 12.80.020)	No	The project is not subject to the natural gas prohibition.
Historic Resources	No	The project site is not designated as a Landmark by the City, nor is the application proposing to demolish the existing structure.
Housing Accountability Act (Gov't Code Section 65589.5(j))	No	A "housing development project" is defined as a is a project that is: residential units only, a mixed-use project with at least two-thirds of the square-footage residential, or for transitional or supportive housing. The project proposes modifications to an existing dwelling unit and does not meet the definition of a "housing development project," therefore HAA is not applicable.
Housing Crisis Act of 2019 (SB330)	No	The project is: all residential; a mixed-use project with at least two-thirds of the square-footage residential; or for transitional or supportive housing. However, the project proposes modifications to an existing dwelling unit and does not meet the definition of a "housing development project," therefore the Housing Crisis Act is not applicable.
Coast Live Oak Trees (BMC 6.52.010)	No	There are no coast live oak trees on or abutting the project site.
Rent Controlled Units	No	There are no rent controlled units on the subject site.
Residential Preferred Parking (RPP)	No	The neighborhood surrounding the subject site is not located in an RPP Zone.

Seismic Hazards (SHMA)	No	The project is not located within an area susceptible to liquefaction as shown on the State Seismic Hazard Zones map.
Soil/Groundwater Contamination	No	The project site is not listed on the Cortese List (an annually updated list of hazardous materials sites), however it is located within the City's Environmental Management Area. Standard Toxics Conditions of Approval apply.
Transit	Yes	North Berkeley BART, AC Transit 72, 72M, 800

Table 3: Project Chronology

Date	Action
October 27, 2020	AUP (ZP2020-0122) application submitted
January 5, 2021	AUP (ZPA2020-0122) Approved
February 5, 2021	AUP Modification (ZP2021-0006) application submitted
June 28, 2022	Application deemed complete
August 3, 2022	Notice of Decision Issued
August 4, 2022	Appeal Received (#1)
August 23, 2022	Appeal Received (#2)
September 29, 2022	Public hearing notices for appeal hearing mailed/posted
October 13, 2022	ZAB appeal hearing

Table 4: Development Standards (Does not include ADU)

Standard		Existing	Approved AUP (ZP2021-0006)	Proposed/ Approved by Zoning Officer	Permitted/ Required
BMC Sections 23.202.080.070-080					
Lot Area (sq. ft.)		6,000	No change	No change	5,000 min
Gross Floor Area (sq. ft.)		1,518	2,235	2,275	N/A
Dwelling Units	Total	1	No change	No change	2 max
	Affordable	0	No change	No change	N/A
Building Height	Average (ft.)	16'-5"	21'-3"	No change	28 max
	Stories	2	No change	No change	max
Building Setbacks (ft.)	Front	16'-11"	No change	No change	20 min
	Rear	61'-11"	57'	No change	20 min
	Left Side (West)	6'-7"	4'-7.5"	No change	4 min
	Right Side (East)	9'-6"	9'-6"	No change	4 min
Lot Coverage (%)		25.6%	28.8%	29.5%	40 max
Usable Open Space (sq. ft.)		1,000+	No change	No change	400 min
Parking	Automobile	1	No change	No change	N/A

II. Project Setting

- A. Neighborhood/Area Description:** The subject site is located midblock along Francisco Street, between Webster Street and Chestnut Street in North Berkeley. The site is located about two blocks east of San Pablo Avenue and a block and a half west from the North Berkeley Bart Station. The surrounding area is composed of single to two-family dwelling units.
- B. Site Conditions:** The project site is rectangular, generally level, and is currently developed with a two-story dwelling unit, shed, and an Accessory Dwelling Unit (ADU), which was approved subsequent to the approval of the Administrative Use Permit (ZP2020-0122). The lot is accessed by an existing driveway and curb cut located east of center towards the front of the lot.

III. Project Description

The project approved by the Zoning Officer would modify the original Administrative Use Permit (AUP) (ZP2020-0122) by adding 40 square feet to the office (bedroom 4) located on the first floor and a 108 square foot balcony located on the second floor accessed off the primary bedroom suite (bedroom 3). The subject balcony is located atop the existing roof of the first floor.

The original AUP, issued on January 5, 2021, was for a two-story major residential addition greater than 14 feet in average height.

IV. Community Discussion

- A. Neighbor/Community Concerns:** At the time of submitting this application, the City had temporarily waived the Neighborhood Contact and Project Yellow Poster requirements for proposed zoning project applications to comply with the Shelter-in-Place order issued by the County Health Official. Instead, the City mailed a Notice of Received Application on February 23, 2020 to July 2021.

Staff received several communications from the residents at 1256 Francisco about the proposed balcony and its potential impacts on privacy, site lines, and noise. Staff determined that the proposed modifications were consistent with the underlying development standards and would not unreasonably obstruct sunlight, air, or views, and would not be detrimental neighboring properties.

- B. Zoning Officer's Decision to Approve:** The Zoning Officer determined that the proposed project, which would add 40 square feet to the southeast corner of single-family dwelling on the first floor and a balcony on the second floor, would not result in detrimental air, views, light, or privacy impacts and would be consistent with the underlying development standards in BMC Section 23.202.080.

The first appeal of the administrative decision was filed on August 4, 2022 by one owner of 1256 Francisco. The second appeal was filed on August 23, 2022 by a second resident of 1256 Francisco.

C. Public Notice: On October 6, 2022, the City mailed public hearing notices to all adjacent property owners and occupants within 300 feet of the subject property. Staff also posted the Notice of Public Hearing at two locations within the immediate vicinity of the subject site. At the time of this writing, Staff has not received any communications, outside of the appellants, regarding this project.

V. Appeal Issues and Analysis

The issues raised in the appellants' letter and staff's responses are as follows. For the sake of brevity, the appeal issues are not re-stated in their entirety. Other issues were raised in the appeal letter, however, only the appeal points and analysis that are within the purview of the Zoning Adjustments Board are discussed below. Please refer to the appeal letters (Attachment 3) for full text.

A. Appeal Issue: The appellants state the application should be denied based on the privacy, views, and noise detriments created by the proposed balcony. The appellants assert that the balcony should be designed and located elsewhere on the property to preserve existing conditions between the neighboring dwellings. In addition to the balcony, the appellants note privacy concerns with the location of the windows along the western portion of the primary bedroom suite.

Staff Response:

- *Views* – The modifications would not result in obstruction of significant views in the neighborhood as defined in BMC Section 23.502 (Glossary)¹. This area is generally flat and developed with one- and two-story residences that filter or obscure most views that may be available of the Berkeley Hills or the Golden Gate Bridge from off-site view angles. Further, during a site visit of the subject properties conducted on September 1, 2022, staff observed that the views from 1256 Francisco looking eastward were not significant.
- *Noise* – Community noise is regulated pursuant to BMC Section 13.40 under the authority of the Environmental Health Department. The following information is provided for reference. Exterior noise limits are established to mitigate the detrimental impacts of specific sound levels and vibrations. Shown below, Table 13.40-1 outlines the exterior noise limit levels according to Zoning District.

Figure 5: Exterior Noise Limits by Zoning District

¹ *View Corridor.* A significant view of the Berkeley Hills, San Francisco Bay, Mt. Tamalpais, or a significant landmark such as the Campanile, Golden Gate Bridge, and Alcatraz Island or any other significant vista that substantially enhances the value and enjoyment of real property.

Table 13.40-1. EXTERIOR NOISE LIMITS

(Levels not to be exceeded more than 30 minutes any hour)

Zoning District	Time Period	Noise Level (dBA)
R-1, R-2, R-1A, R-2A, and ESR	7:00 a.m. – 10:00 p.m.	55
	10:00 p.m. – 7:00 a.m.	45
R-3 and above	7:00 a.m. – 10:00 p.m.	60
	10:00 p.m. – 7:00 a.m.	55
Commercial	7:00 a.m. – 10:00 p.m.	65
	10:00 p.m. – 7:00 a.m.	60
Industry	Anytime	70

Noise levels at 55 decibels A² (dBA) is equivalent to conversation amongst a group of people about three feet apart or the noise generated by a coffee percolator³.

Activity on the residential balcony is not within the purview of the Zoning Ordinance, however, the noise levels noted above are applicable and enforceable through Environmental Health.

- *Privacy* – The propose balcony will not result in significant privacy impacts. As shown in Figures 2 and 4, the proposed balcony at the second-story level is setback 8 feet-8 inches from the western property line and over 20 feet from the eastern property line. The proposed balcony parallels an existing second floor bedroom at 1256 Francisco Street. To mitigate the potential impacts to privacy, a privacy screen is proposed along the west side of the balcony, between the subject properties. Further, Staff amended the approved Conditions of Approval, adding Condition of Approval #11 to ensure that the privacy screen shall be maintained throughout the life of the project.

The location of the new primary bedroom, bathroom, and closet windows were approved under the original AUP (ZP2020-0122), and are not subject to the modification request. Although outside the purview of the modification and appeal, staff notes that the previously approved windows and second floor addition are located outside of the required side setback.

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 #ZP2021-0006** pursuant to Section 23.406.030.F and subject to the attached Findings and Conditions (see Attachment 1) and **DISMISS the Appeal**.

² *Decibel*. A unit used to measure the intensity of a sound or the power level of an electrical signal by comparing it with a given level on a logarithmic scale.

³ *Sound Effects Decibel Level Chart* <https://www.creativefieldrecording.com/2017/11/01/sound-effects-decibel-level-chart/>

Attachments:

1. Findings and Conditions, #ZP2021-0006 August 3, 2022
2. Project Plans, dated July 21, 2022
3. Survey, dated May 16, 2022
4. Appeal Letters
5. Notice of Public Hearing

Staff Planner: Katrina Lapira, klapira@cityofberkeley.info, (510) 981-7488

ATTACHMENT 1

FINDINGS AND CONDITIONS

AUGUST 3, 2022

1262 Francisco Street

Administrative Use Permit #ZP2021-0006

Modification of Administrative Use Permit #ZP2020-0122 to add 40 square feet on the first floor and a balcony on the second floor.

PERMITS REQUIRED

- Administrative Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.202.080(D) for an addition greater than 14 feet in height.

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 CEQA Guidelines Section 153301 ("Existing Facilities).
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.

FINDINGS FOR APPROVAL

3. As required by BMC Section 23.406.030(F), 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 subject property complies with the BMC Section 23D.202.080(D) (R-2 Restricted Two-Family Residential District Development Standards) for maximum residential density (one dwelling unit on the lot where two dwelling units are allowed for a lot of this size), maximum lot coverage (29.5 percent lot coverage where the maximum allowed is 40 percent), and usable open space (over 1,000 square feet where a minimum of 400 square feet is required per dwelling unit). There is a permitted Accessory Dwelling Unit located at the rear of subject lot. Additionally, a minor accessory structure- a tool shed

(non-habitable space) that is less than 120 square feet, is located along western property line, that is proposed to remain.

- B. An average height of 21 feet-3 inches was approved under #ZP2020-0122. The modification to allow a second story balcony will not increase the average height of the dwelling beyond that approval.
 - C. The site complies with the following required setbacks: left side setback is 9 feet-6 inches and the right-side setback is 4 feet-7 inches where 4 feet is required, and the rear setback is 57 feet-11 inches where 20 feet is required. The existing front setback is legally nonconforming, providing 16 feet-6 inches where 20 feet is required. The modifications to extend the walls of the addition approved under #ZP2020-0122 are outside of all required setbacks.
 - D. The modification on the first floor does not propose new openings different those that were approved under the previous administrative use permit, although one window will be located closer to the east lot line, and are not expected to be detrimental to the privacy of abutting neighbors.
 - E. The proposed balcony at the second-story level is accessed through the primary bedroom, and setback 8 feet-8 inches from the western property line and over 20 feet from the eastern property line. The proposed balcony parallels an existing second floor bedroom at 1256 Francisco Street. To mitigate potential impacts to privacy, a privacy screen is proposed along the west side of the balcony.
4. Pursuant to BMC Section 23.202.030(A)(2)(a), the Zoning Officer finds that the proposed modifications would not unreasonably obstruct sunlight, air, or views for the following reasons:
- A. Sunlight: The proposed modifications to the previously approved project under #ZP2020-0122 will not further increase shadow impacts on the surrounding neighborhood dwellings.
 - B. Air: The 40-square-foot addition to the east side of office (bedroom four) will slightly reduce the distance from the east neighbor (1266 Francisco), but exceeds the required left side setback. Therefore, there will be no impacts to air circulation.
 - C. Views: The modifications would not result in obstruction of significant views in the neighborhood as defined in BMC Section 23.502 (Glossary). In addition, this area is generally flat and developed with one- and two-story residences that filter or obscure most views that may be available of the Berkeley Hills or the Golden Gate Bridge from off-site view angles.
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STANDARD CONDITIONS

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. Compliance Required (BMC Section 23.102.050)

All land uses and structures in Berkeley must comply with the Zoning Ordinance and all applicable City ordinances and regulations. Compliance with the Zoning Ordinance does not relieve an applicant from requirements to comply with other federal, state, and City regulations that also apply to the property.

3. Approval Limited to Proposed Project and Replacement of Existing Uses (BMC Sections 23.404.060.B.1 and 2)

- A. This Permit authorizes only the proposed project described in the application. In no way does an approval authorize other uses, structures or activities not included in the project description.
- B. When the City approves a new use that replaces an existing use, any prior approval of the existing use becomes null and void when permits for the new use are exercised (e.g., building permit or business license issued). To reestablish the previously existing use, an applicant must obtain all permits required by the Zoning Ordinance for the use.

4. Conformance to Approved Plans (BMC Section 23.404.060.B.4)

All work performed under an approved permit shall be in compliance with the approved plans and any conditions of approval

5. Exercise and Expiration of Permits (BMC Section 23.404.060.C)

- A. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.
- B. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.
- C. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except if the applicant has applied for a building permit or has made a substantial good faith effort to obtain a building permit and begin construction. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant. A determination that a permit has lapsed may be appealed to the ZAB in accordance with Chapter 23.410 (Appeals and Certification).
- D. A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant must apply for and receive City approval of a new permit.

6. Permit Remains Effective for Vacant Property (BMC Section 23.404.060.D)

Once a Permit for a use is exercised and the use is established, the permit authorizing the use remains effective even if the property becomes vacant. The same use as allowed by the original permit may be re-established without obtaining a new permit, except as set forth in Standard Condition #5 above.

7. Permit Modifications (BMC Section 23.404.070)

No change in the use or structure for which this Permit is issued is permitted unless the Permit is issued is permitted unless approved by the review authority which originally approved the permit. 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.

8. Permit Revocation (BMC Section 23.404.080)

The City may revoke or modify a discretionary permit for completed projects due to: 1) violations of permit requirements; 2) Changes to the approved project; and/or 3) Vacancy for one year or more. However, no lawful residential use can lapse, regardless of the length of time of the vacancy. Proceedings to revoke or modify a permit may be initiated by the Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.

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 OFFICER

Pursuant to BMC Section 23.404.050(H), the Zoning Officer 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. Privacy Screen. As shown on Sheet A3.1 of the approved plan set, the privacy screen located towards the western portion of the balcony shall be maintained for the life of the project.

Standard Construction-related Conditions Applicable to all Projects:

12. 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.

13. Construction activity shall be limited to between the hours of 8:00 a.m. and 6:00 p.m. on Monday through Friday, and between 9:00 a.m. and noon on Saturday. No construction-related activity shall occur on Sunday or on any Federal Holiday.

14. 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.
15. Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.
16. 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 in thickness and secured to the ground.
17. All active construction areas shall be watered at least twice daily, and all piles of debris, soil, sand, or other loose materials shall be watered or covered.
18. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.
19. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.
20. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.
21. 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.
22. Any construction during the wet season shall require submittal of a soils report with appropriate measures to minimize erosion and landslides, and the developer shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.
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. 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.

25. 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 CEQA Guidelines Section 15064.5 (e)(1). If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to Health and Safety Code Section 7050.5(c), 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.

26. 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.

Prior to Issuance of Occupancy Permit or Final Inspection:

27. All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
28. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated July 21, 2022.

At All Times (Operation):

29. 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.
30. 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.



Prepared by: Katrina Lapira
For Samantha Updegrave, Zoning Officer

SITE PHOTOS



Street View



Rear View

MILLER RESIDENCE

1262 Francisco St. Berkeley, CA 94702

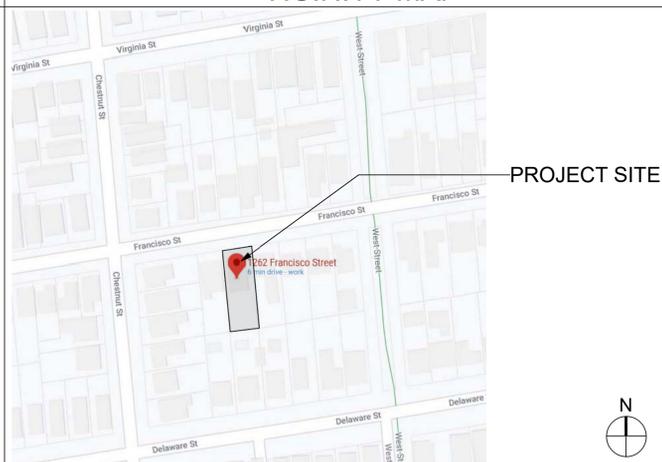
SCOPE OF WORK

The proposed project includes a modification to an approved AUP (ZP2020-0122) for a second story addition

Components of the project include:

- First floor:**
- Expand office (bedroom 4) by a 40 s.f. addition
- Second floor:**
- Create new balcony at master suite
 - Add new patio doors to access balcony
 - Add new transom window above balcony

VICINITY MAP



PROJECT SITE

PROJECT DIRECTORY

Owner:
Jonathan Miller
1262 Francisco St.
Berkeley, CA 94702
Tel: 415-999-2797

Project Address:
1262 Francisco St.
Berkeley, CA 94702
APN: 058 213500300

Architect:
Studio G+S, Architects
2223 5th St.
Berkeley, CA 94710
Tel: 510-548-7448
sunny@sgsarch.com

Occupancy: R-3 Duplex
U - Private garage

Proposed Construction: Type V-B

Fire Sprinkler System: No

Zoning/General Plan Regulation

Zoning District: R-2: Restricted Two-Family Residential

General Plan Area: LMDR

Downtown Arts District Overlay: No

Commercial District With Use Quotas: No

Seismic Safety

Earthquake Fault Rupture(Alquist-Priolo) Zone: No

Landslide (Seismic Hazards Mapping Act): No

Liquefaction (Seismic Hazards Mapping Act): No

Un-reinforced Masonry Building Inventory: No

Historic Preservation

Landmarks or Structure of Merit: No

Environmental Safety

Creek Buffer: None

Fire Zone: 1

Flood Zone(100-year or 1%): No

Wildlife Urban Interface: No

Tabulations			
	Required/Allowed	Existing	Proposed
Set Backs:			
Front:	20'-0"	16'-6"	16'-6" to (e) structure 33'-10" to (n) addition
Rear:	20'-0"	61'-11"	57'-11"
Left side:	4'-0"	9'-5"	9'-6"
Right side:	4'-0"	6'-9.5"	4'-7.5"
Habitable Floor Area:			
First floor:		1,078 s.f.	1,393 s.f. (315 s.f. new)
Second floor:		440 s.f.	882 s.f. (442 s.f. new)
Total Area:		1,518 s.f.	2,275 s.f. (757 s.f. new)
Bedroom Count:		3	4
Building Height:			
Average Height:	28'-0" 35'-0" w/ AUP	16'-5"	21'-3"
Parking:	1	1	1
Lot Size:	5,000 s.f.	6,000 s.f.	6,000 s.f.
Total Footprint:			
House:	2,400 s.f.	1,334 s.f.	1,649 s.f.
Storage Shed:		202 s.f.	120 s.f.
Total footprint:		1,536 s.f.	1,769 s.f.
Lot Coverage:	40% (2 story building)	25.60%	29.48%
Usable Open Space:	400 s.f.	2,500 s.f.	2,608 s.f.

ADU: Not subject to lot coverage. Therefore, it is not included in the calculations above

SHEET INDEX

Architectural:

- A0.0 Scope Of Work, Vicinity Map, Project Data, Sheet Index, Abbreviations, Applicable Codes, Project Directory, Photos
- A0.1 Existing & Proposed Site Plan
- A1.1 Existing Floor & Demo Plans
- A1.2 Existing Exterior Elevations
- A1.3 Proposed Floor Plans - Original Approved AUP
- A1.4 Proposed Exterior Elevations - Original Approved AUP
- A2.1 Proposed Floor Plans - AUP Modification
- A3.1 Proposed Exterior Elevations, Renderings - AUP Modification
- A4.1 Shadow Study - AUP Modification
- A4.2 Shadow Study - Original Approved AUP
- Boundary Survey

APPLICABLE CODES

2019 California Building Code (CBC) Volume 1
2019 California Building Code (CBC) Volume 2
2019 California Residential Code (CRC)
2019 California Energy Code (CBES)
2019 California Green Building Standards Code (CALGreen)
2019 California Electrical Code (CEC)
2019 California Plumbing Code (CPC)
2019 California Mechanical Code (CMC)

This project shall conform to all the above codes and any local and state laws and regulations adopted by the City of Berkeley, CA.

ABBREVIATIONS

&	and	fdn.	foundation	pr.	pair
@	at	fin.	finish	p.s.	plumbing stack
perpen.	perpendicular	fl.	floor	pt.	point
#	pound or number	flash.	flushing	p.t.	pressure treated
(e)	existing	fluor.	fluorescent	ptd.	painted
(n)	new	f.o.c.	face of concrete	r.	riser
(r)	renovated	f.o.f.	face of finish	r.a.	return air
a.f.f.	above finished floor	f.o.s.	face of studs	ref.	reference
acous.	acoustical	ft.	foot or feet	refr.	refrigerator
adj.	adjacent/ adjustable	ftg.	footing	rgtr.	register
alum.	aluminum	furn.	furnace	reinfr.	reinforced
approx.	approximate	g.a.	gauge	req.	required
arch.	architectural	gal	gallon	rm.	room
asph.	asphalt	g.s.m.	galvanized sheet metal	rwd.	rough opening
bd.	board	g.	glass	rwd.	redwood
bidg.	building	gnd.	ground	r.w.l.	rain water leader
blk.	block	gr.	grade	sr.	south
blkg.	blocking	gyp. bd.	gypsum board	s.c.	solid core
bm.	beam	h.b.	hose bibb	sched.	schedule
bot.	bottom	hdwd.	hardwood	sect.	section
b.p.	building paper	h.f.	hem fir	sh.	shelf
btw.	between	horiz.	horizontal	shr.	shower
cab.	cabinet	hgt.	height	sim.	similar
cem.	cement	i.d.	inside diameter (dia.)	s.mech.	see mechanical drawings
cer.	ceramic	insul.	insulation	s.o.	sash opening
cl.	center line	int.	interior	spec.	specification
clg.	ceiling	jt.	joint	sq.	square
clg.	caulking	kit.	kitchen	s.s.d.	see structural drawings
c.o.	cleanout	lav.	lavatory	sst.	stainless steel
clo.	closet	loc.	location	std.	standard
clr.	clear	lt.	light	sti.	steel
col.	column	lt.	light	stor.	storage
comp.	composition	max.	maximum	struct.	structure
conc.	concrete	m.c.	mechanical	sym.	symmetrical
constr.	construction	mech.	mechanical	sym.	symmetrical
cont.	continuous	memb.	membrane	t.	tread or tempered
det.	detail	manuf.	manufacturer	t.b.	towel bar
d.f.	douglas fir	min.	minimum	tel.	telephone
dia.	diameter	mir.	mirror	t. & g.	tone & groove
dim.	dimension	misc.	miscellaneous	thk.	thick
dir.	direction	mtd.	mounted	t.b.r.	to be removed
dir.	direction	mtl.	metal	t.o.	top of
disp.	disposal	n.	north	t.p.d.	toilet paper dispenser
d.w.	dishwasher	nat.	natural	t.v.	television
dr.	door	nc.	necessary	typ.	typical
drw.	drawer	neo.	neoprene	unf.	unfinished
drg.	drawing	n.i.c.	not in contract	u.o.n.	unless otherwise noted
drgs.	drawings	no.	number	vert.	vertical
e.	east	nom.	nominal	v.g.	vertical grain
ea.	each	n.s.	not to scale	v.i.f.	verify in field
el.	elevation	o.a.	overall	w.h.	water heater
elec.	electrical	o.c.	on center	w.	west
encl.	enclosure	o.d.	outside diameter (dim.)	w/	with
eq.	equal	opng.	opening	wd.	wood
eqpt.	equipment	opp.	opposite	w/o	without
ext.	exterior	pl.	property line	w.o.	where occurs
f.	frosted	p.lam.	plastic laminate	wp.	waterproof
f.d.c.	fire dept. connection	plywd.	plywood	wt.	weight



2223 Fifth St.
Berkeley, CA 94710
Ph: 510.548.7448
info@sgsarch.com
www.sgsarch.com



MILLER RESIDENCE
AUP Modification
1262 Francisco St.
Berkeley, CA 94702
APN: 058 213500300

Sheet Contents:
Sheet Index
Applicable Codes
Vicinity Map
Project Data
Scope of Work
Project Directory
Photos

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Project No: 20-07-414

Drawn By: SSG

Checked By: SSG

Scale: as noted

Revisions:
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Sheet A0.0



2223 Fifth St.
Berkeley, CA 94710
Ph: 510.548.7448
info@sgsarch.com
www.sgsarch.com



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Sheet Contents:
Existing Site Plan
Proposed Site Plan

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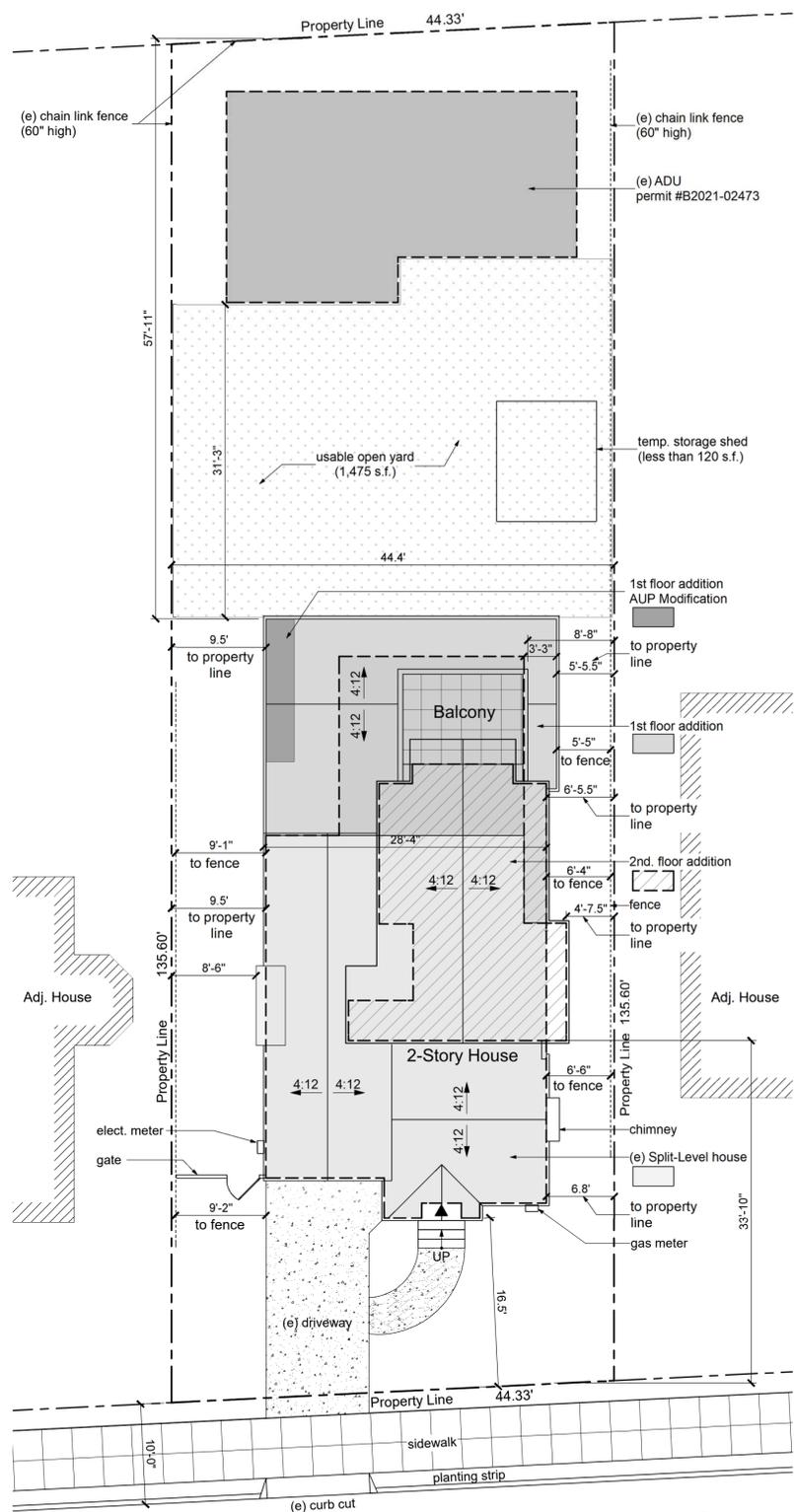
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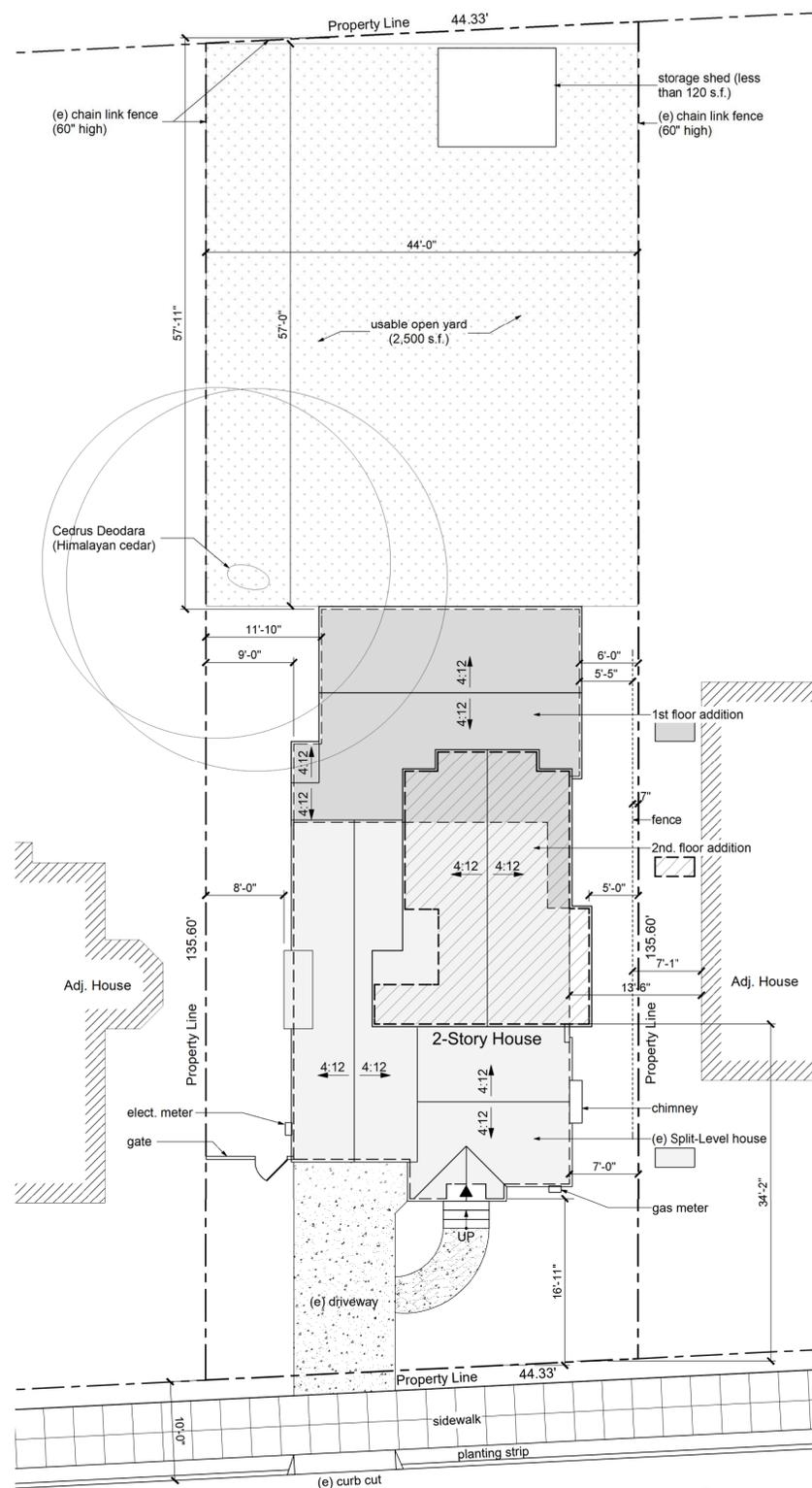
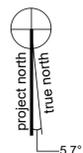
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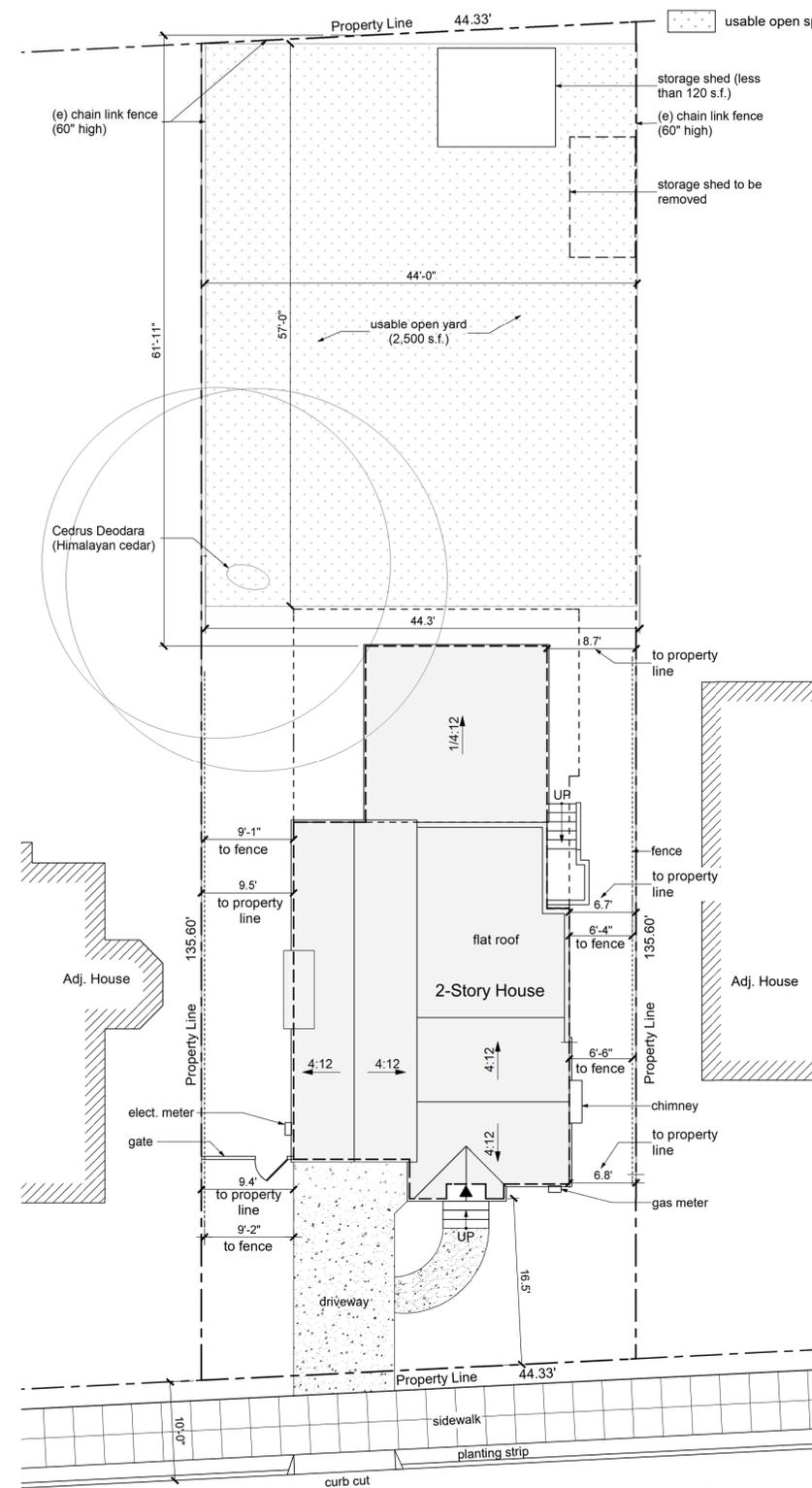
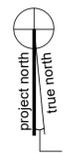
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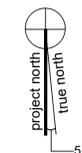
3 Proposed Site Plan
AUP Modification



2 Proposed Site Plan
Original Approved AUP



1 Existing Site Plan





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Berkeley, CA 94710
Ph: 510.548.7448
info@sgsarch.com
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Sheet Contents:
Existing Floor Plans

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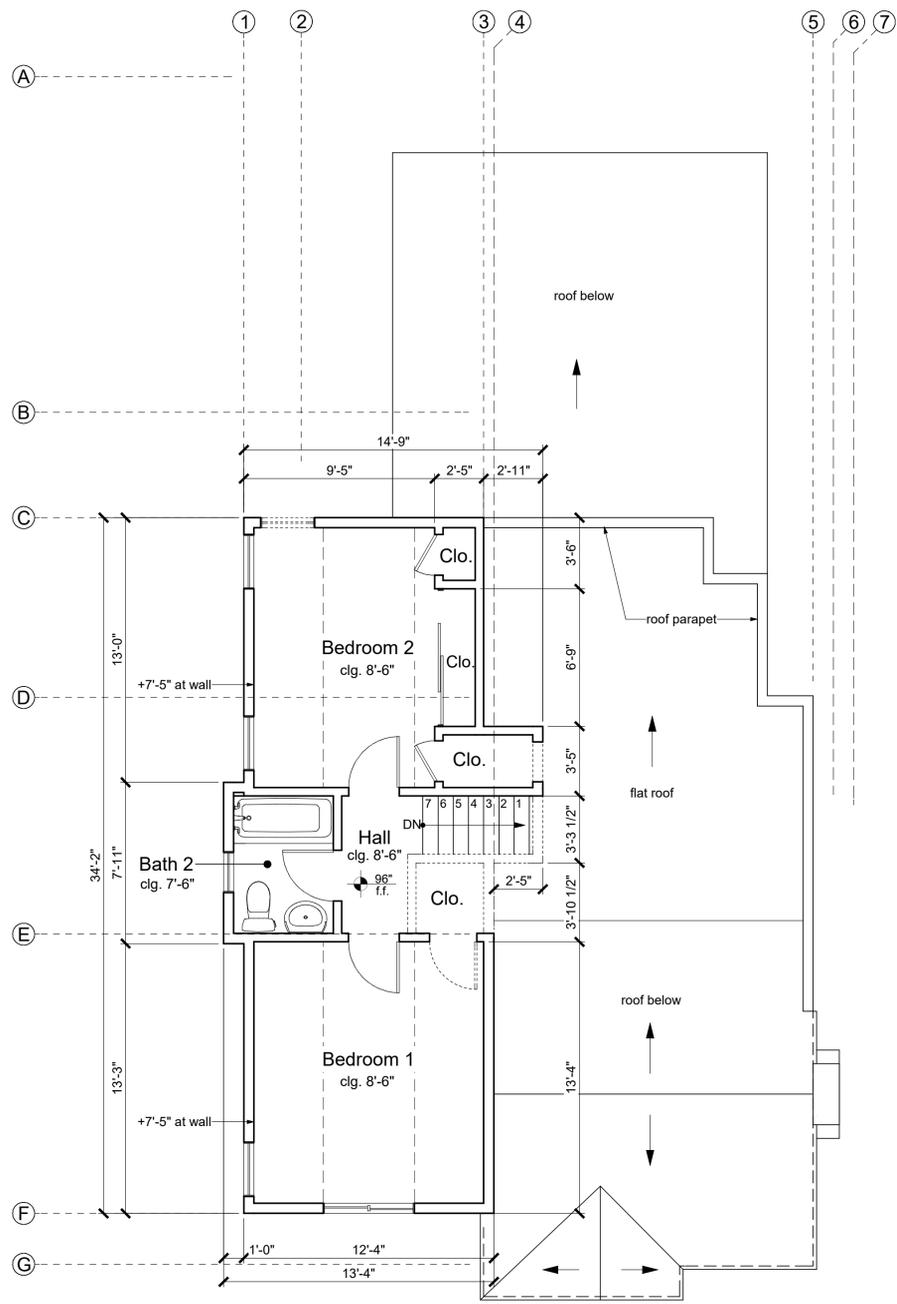
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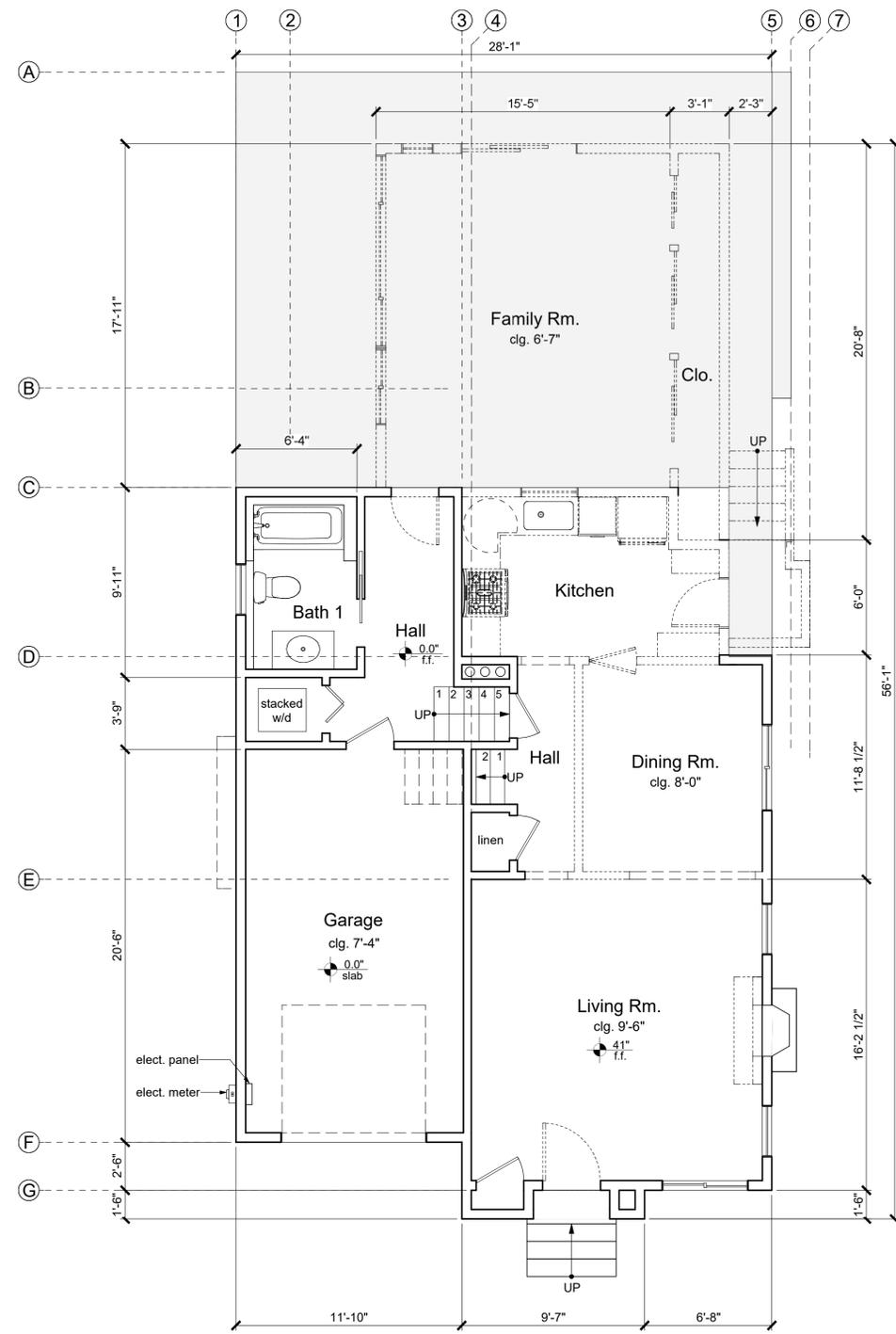
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Sheet
A1.1



2 Existing Second Floor Plan



1 Existing First Floor Plan



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 Berkeley, CA 94710
 Ph: 510.548.7448
 info@sgsarch.com
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Sheet Contents:
 Existing Exterior Elevations

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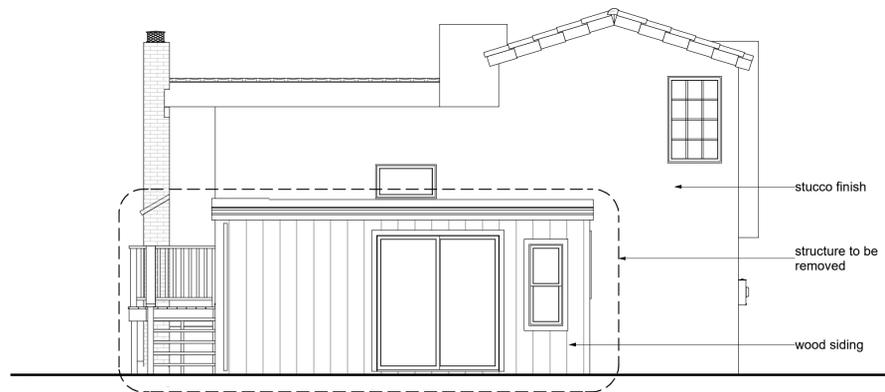
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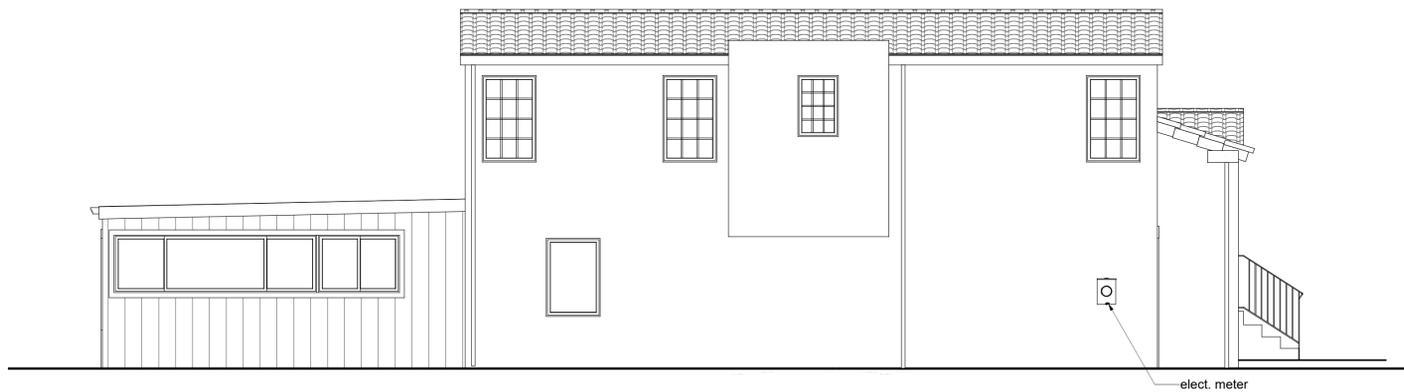
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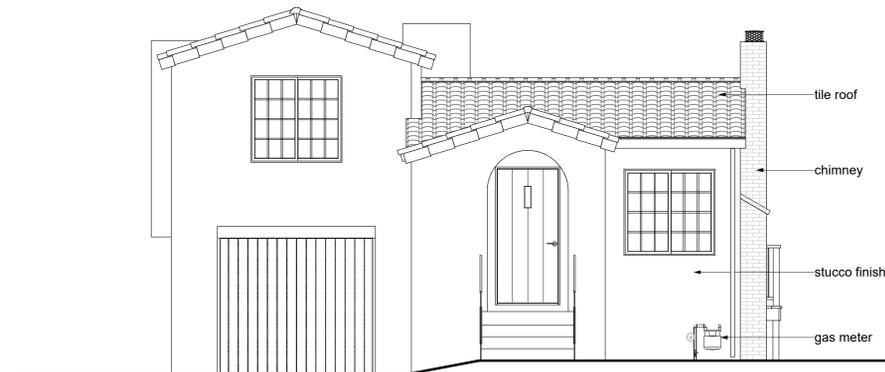
④ Existing West Elevation - Right Side



③ Existing South Elevation - Rear



② Existing East Elevation - Left Side



① Existing North Elevation - Front



7 Right Rear View Of Proposed Addition



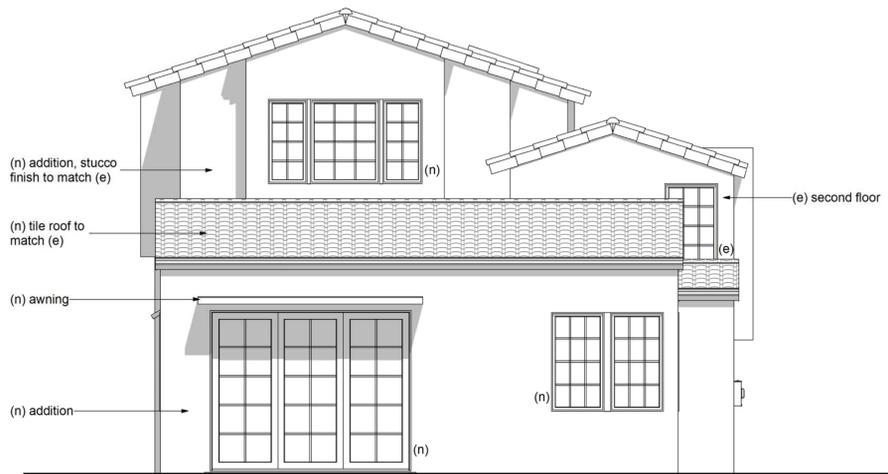
6 Left Rear View Of Proposed Addition



5 Street View Of Proposed Addition



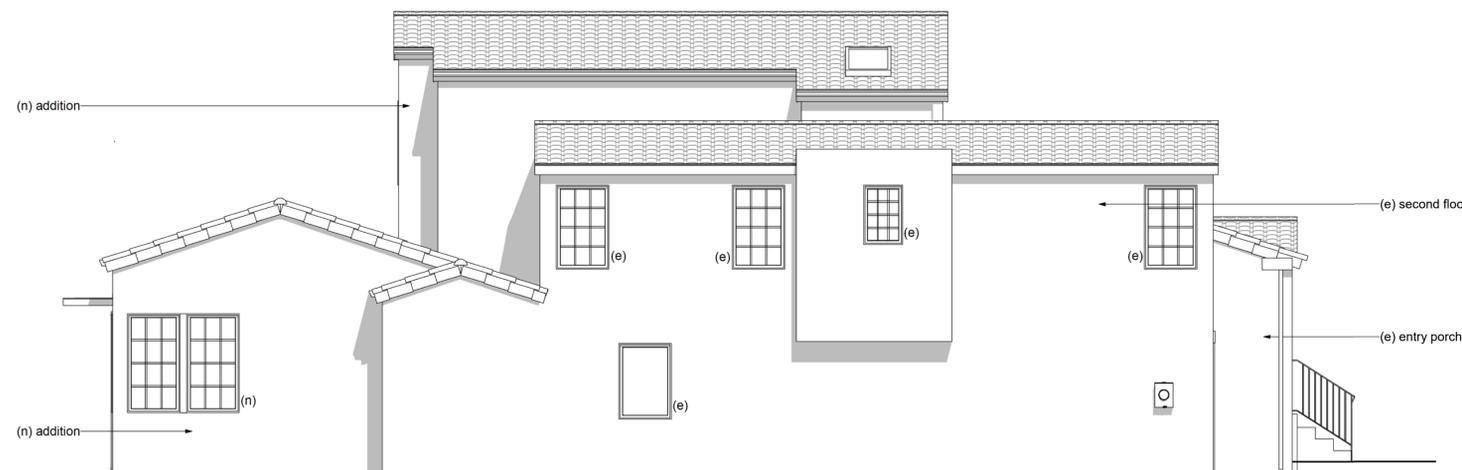
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4 Proposed South Elevation - Rear
Original Approved AUP



3 Proposed West Elevation - Right Side
Original Approved AUP



2 Proposed East Elevation - Left Side
Original Approved AUP



1 Proposed North Elevation - Front
Original Approved AUP

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Sheet Contents:
Approved AUP
Proposed Exterior Elevations

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Sheet
A1.4

Existing floor area
Approved AUP
New floor area
AUP Modification
New floor area



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Berkeley, CA 94710
Ph: 510.548.7448
info@sgsarch.com
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Sheet Contents:
AUP Modification
Proposed Floor Plan

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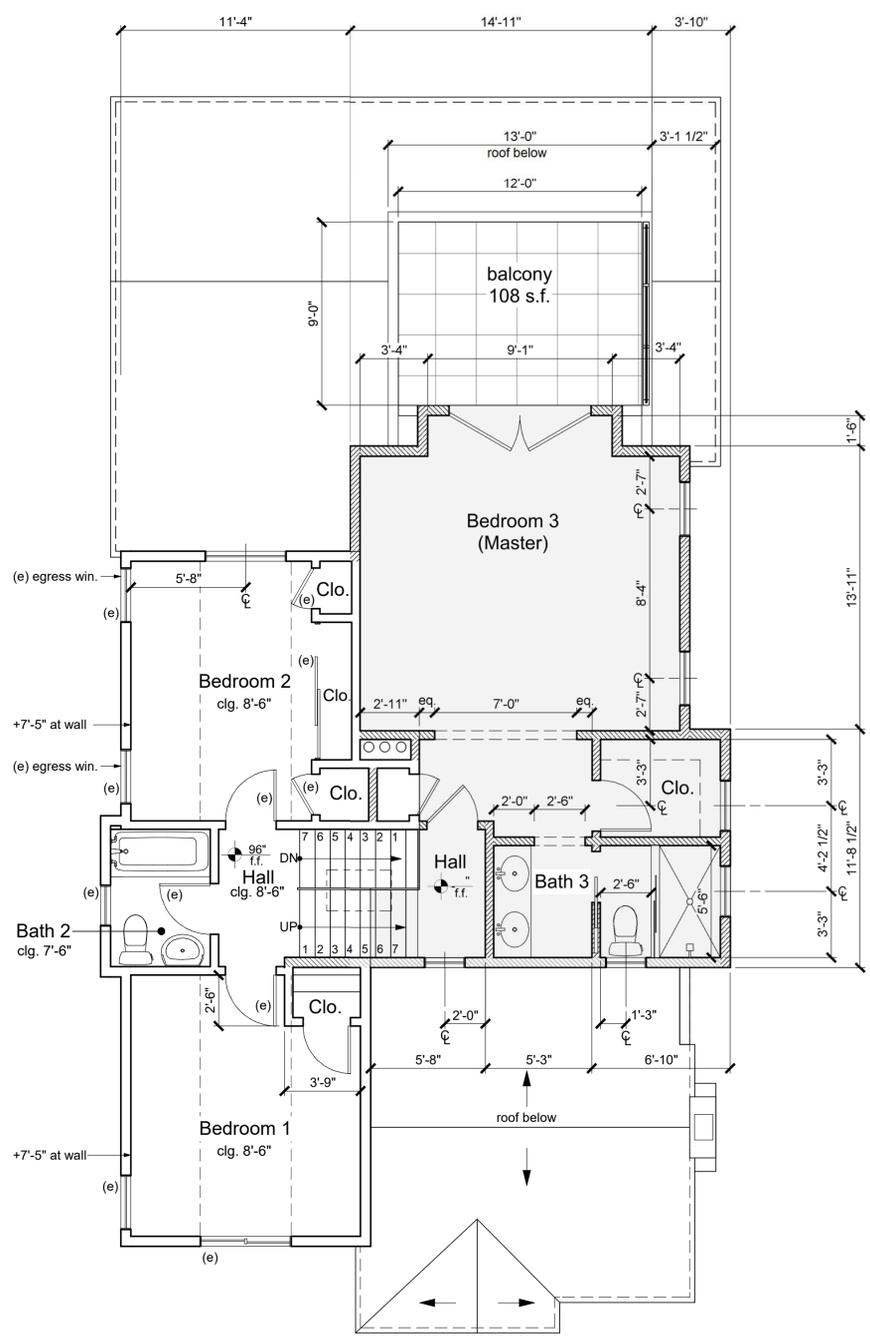
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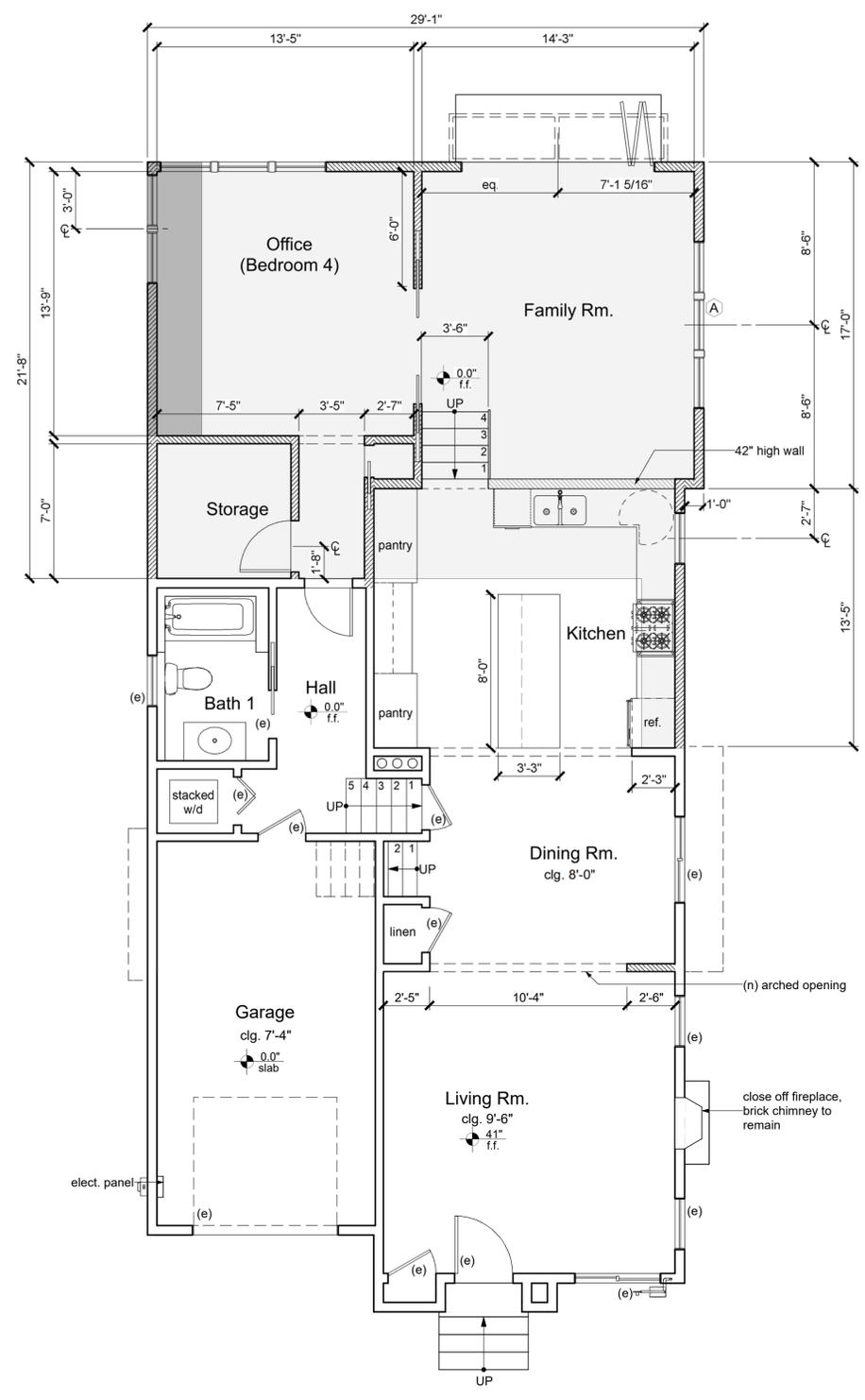
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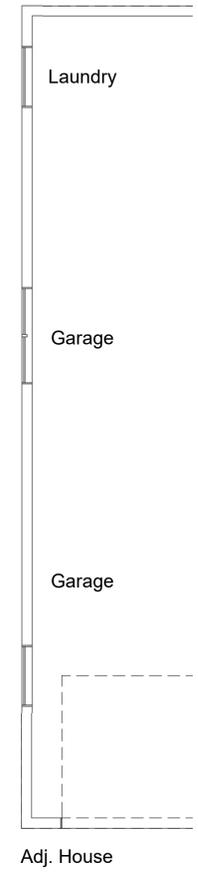
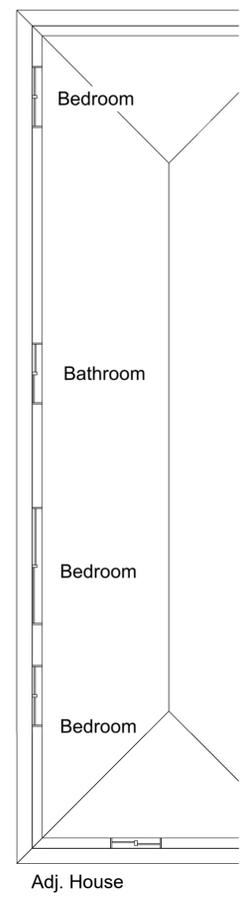
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② Proposed Second Floor Plan
AUP Modification



① Proposed First Floor Plan
AUP Modification

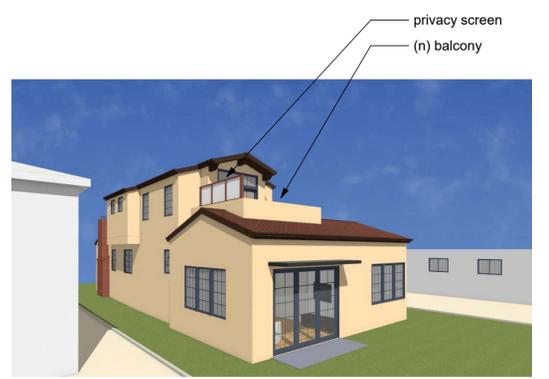




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8 Aerial View Of Proposed Addition
AUP Modification



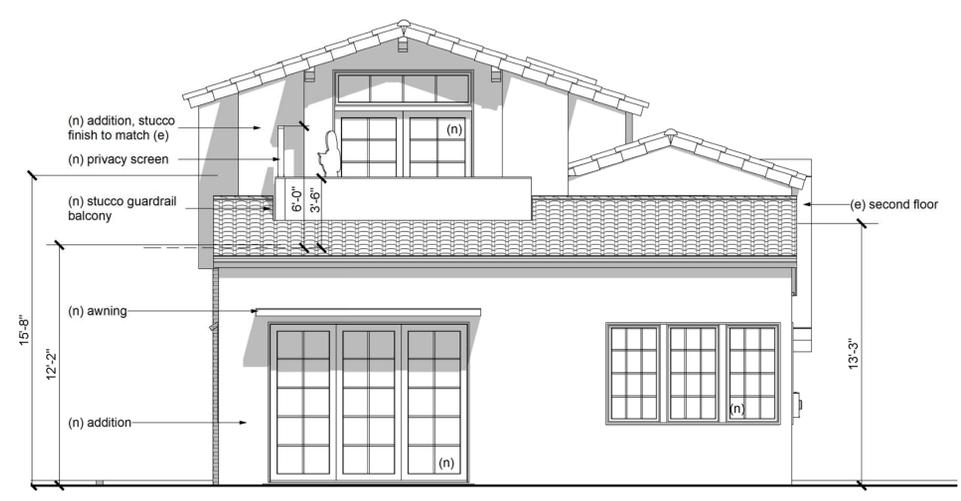
7 Right Rear View Of Proposed Addition
AUP Modification



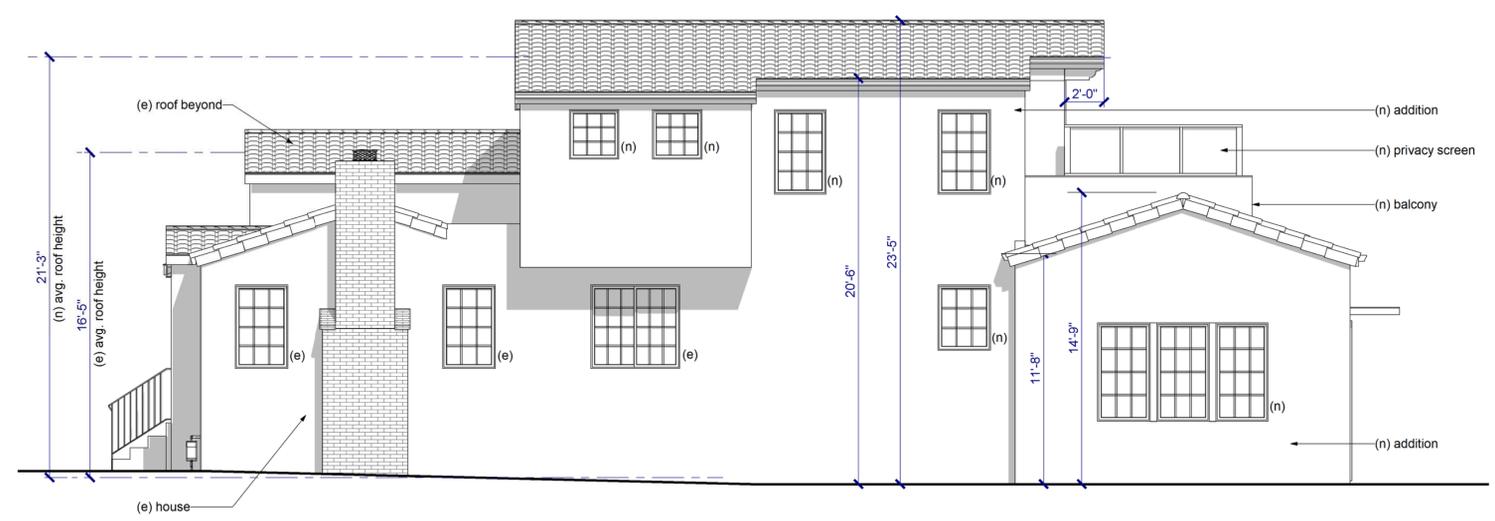
6 Left Rear View Of Proposed Addition
AUP Modification



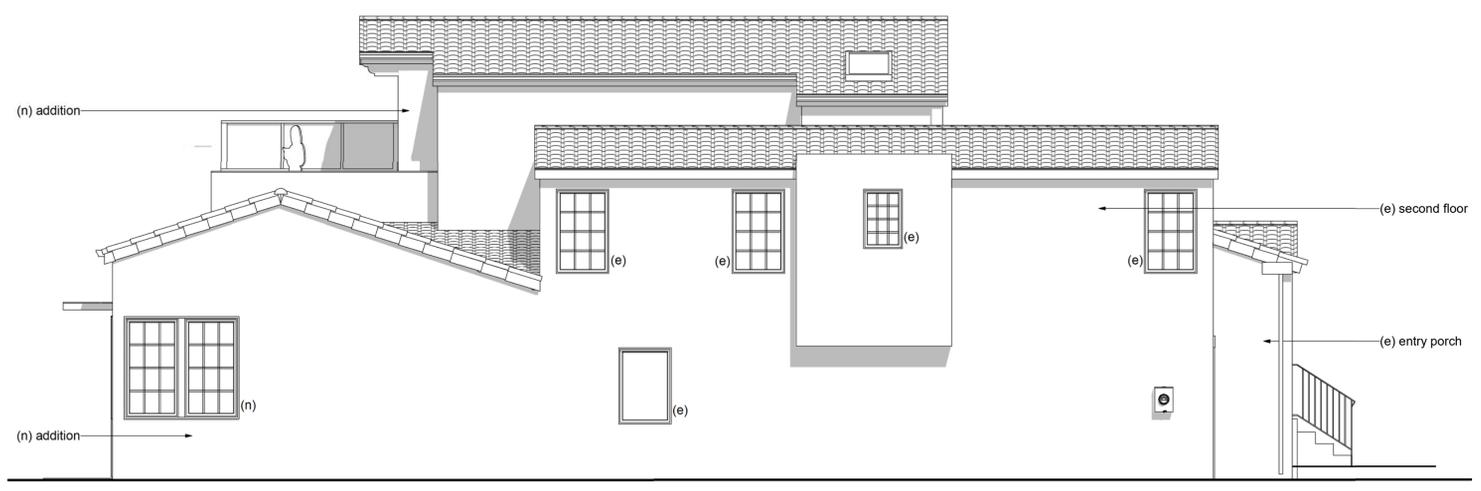
5 Street View Of Proposed Addition
AUP Modification



4 Proposed South Elevation - Rear
AUP Modification



3 Proposed West Elevation - Right Side
AUP Modification



2 Proposed East Elevation - Left Side
AUP Modification



1 Proposed North Elevation - Front
AUP Modification

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Sheet Contents:
AUP Modification
Proposed Exterior Elevations

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Checked By:
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Scale:
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Revisions:
AUP Modification Submittal:
07-21-2022

Sheet
A3.1



Proposed
6-21-2020 / 7:47 am



Proposed
12-21-2020 / 9:21 am



Proposed
6-21-2020 / 6:35 pm



Existing
6-21-2020 / 7:47 am



Existing
12-21-2020 / 9:21 am



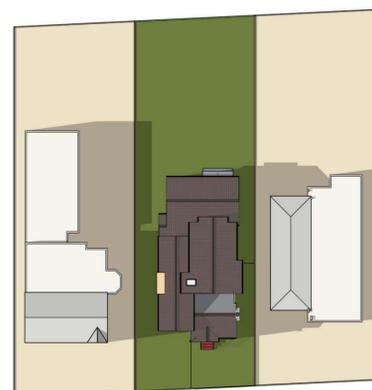
Existing
6-21-2020 / 6:35 pm



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Ph: 510.548.7448
info@sgsarch.com
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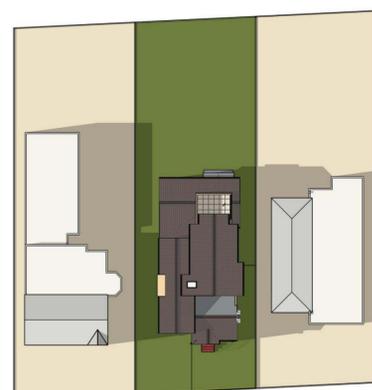


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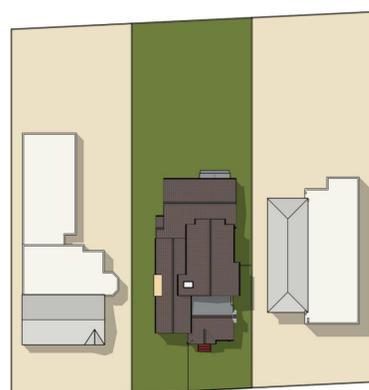


Approved Project

6-21-2020 / 7:47 am
See Above

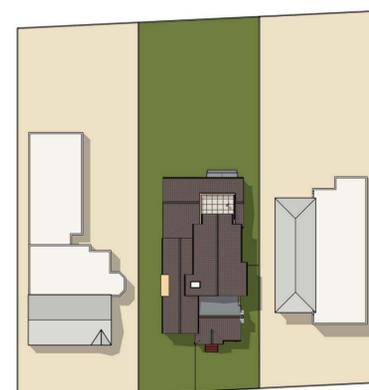


Proposed Modification



Approved Project

6-21-2020 / 12:00 pm



Proposed Modification



Approved Project

6-21-2020 / 6:35 pm
See Above



Proposed Modification

Sheet Contents:
AUP Modification
Shadows Studies

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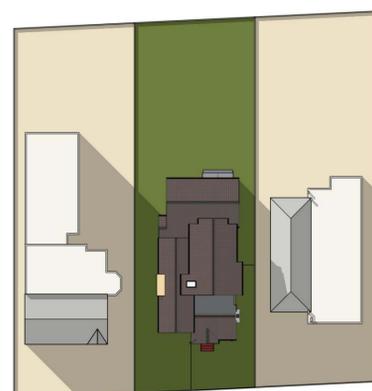
Project No:
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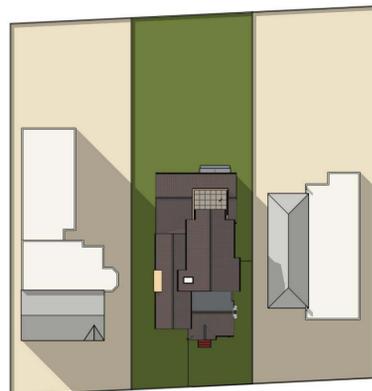
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07-21-2022

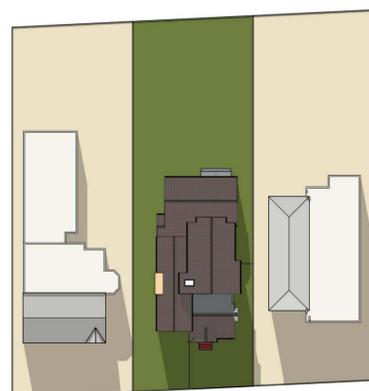


Approved Project

12-21-2020 / 9:21 am
See Above



Proposed Modification

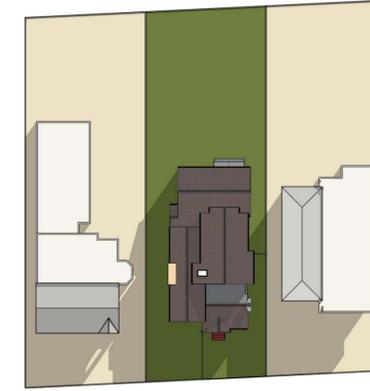


Approved Project

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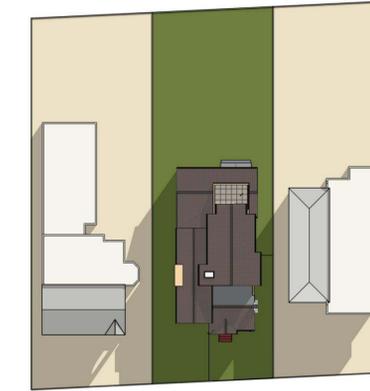


Proposed Modification



Approved Project

12-21-2020 / 2:54 pm



Proposed Modification



Sheet

A4.1



Shadow Accuracy Simulation
6-09-2020 / 4:00 pm



Shadow Accuracy Simulation
6-09-2020 / 4:00 pm



Proposed
6-21-2020 / 7:47 am



Existing
6-21-2020 / 7:47 am



Proposed
12-21-2020 / 9:21 am



Existing
12-21-2020 / 9:21 am



Proposed
6-21-2020 / 6:35 pm



Existing
6-21-2020 / 6:35 pm



2223 Fifth St.
Berkeley, CA 94710
Ph: 510.548.7448
info@sgsarch.com
www.sgsarch.com



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Sheet Contents:
Original Approved AUP
Shadows Studies

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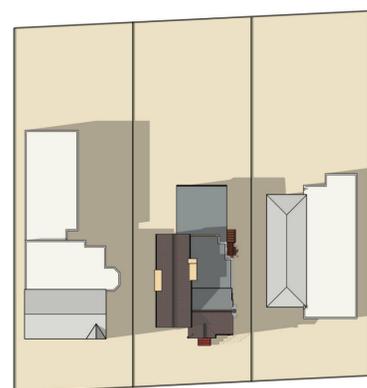
Project No:
20-07-414

Drawn By:
SSG

Checked By:
SSG

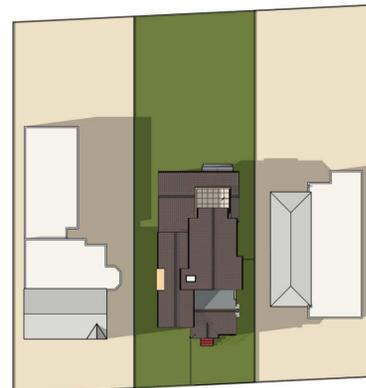
Scale:
NTS

Revisions:
AUP Modification Submittal:
07-21-2022

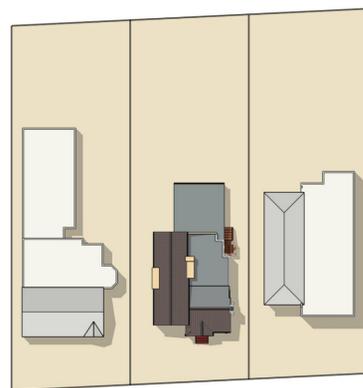


Existing

6-21-2020 / 7:47 am
See Above

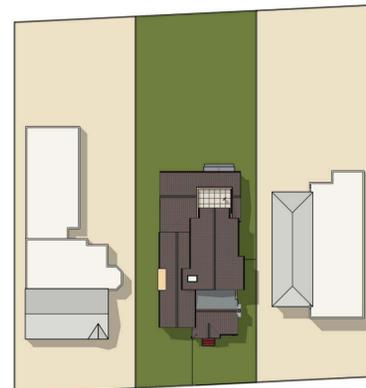


Proposed Modification

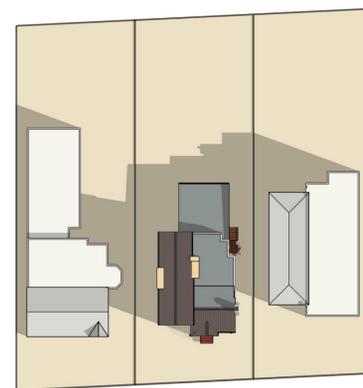


Existing

6-21-2020 / 12:00 pm

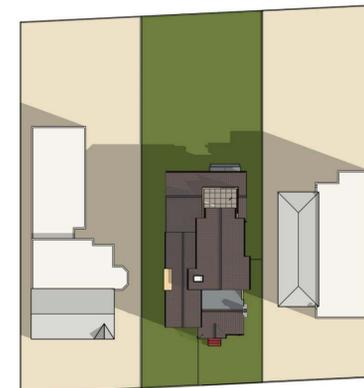


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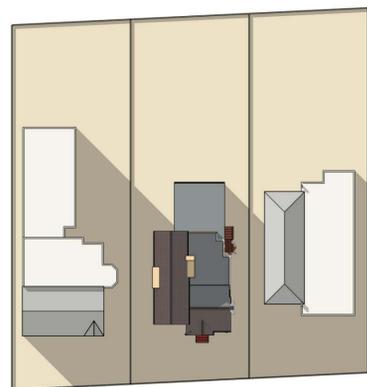


Existing

6-21-2020 / 6:35 pm
See Above

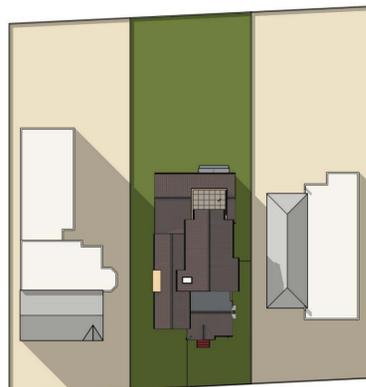


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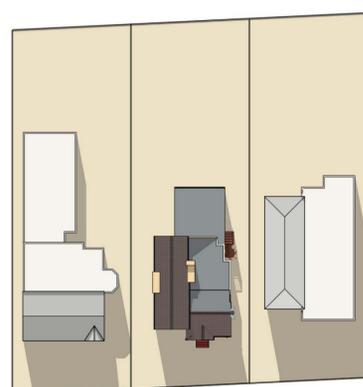


Existing

12-21-2020 / 9:21 am
See Above

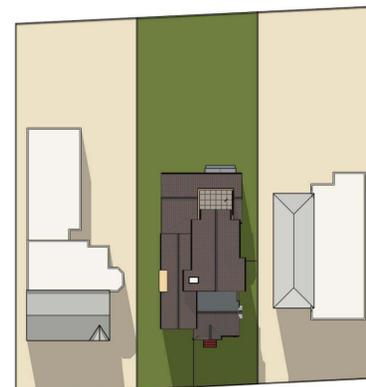


Proposed Modification

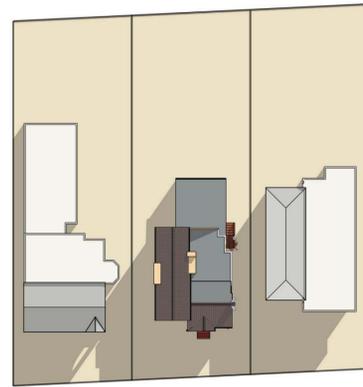


Existing

12-21-2020 / 12:00 pm

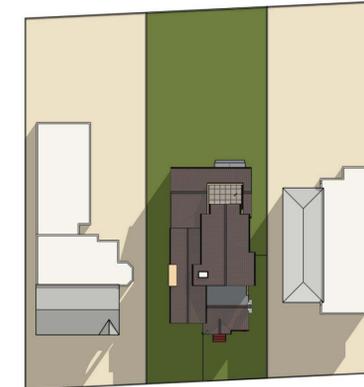


Proposed Modification



Existing

12-21-2020 / 2:54 pm



Proposed Modification



Sheet

A4.2

FRANCISCO STREET (50' WIDE)
(FORMERLY BAY STREET)

N09°30'32"W
5.00'
2" BRASS DISC WITH PUNCH
AT WEST STREET



- LEGEND**
- EM ELECTRIC METER
 - BUILDING LINE
 - CONCRETE
 - CHAIN LINK FENCE
 - FOUND MONUMENT IN WELL, AS NOTED
 - + FOUND CROSS PER RECORD OF SURVEY
 - x FOUND 3/4" TAG, LS 6745 PER RECORD OF SURVEY
 - x FOUND 5/8" REBAR WITH PLASTIC CAP, LS 6745 PER RECORD OF SURVEY IN PROGRESS, BEING PREPARED BY BATES AND BAILEY

GENERAL NOTES:
DIMENSIONS ARE IN FEET AND DECIMAL FEET.
DIMENSIONS SHOWN FROM BUILDINGS TO PROPERTY LINES ARE MEASURED AT BUILDING CORNERS FROM THE EXTERIOR BUILDING FACE PERPENDICULAR TO THE PROPERTY LINE.
NO TITLE REPORT PROVIDED, EASEMENTS MAY EXIST.
ASSESSOR'S PARCEL NUMBER: 058-2135-003
PROPERTY AREA = 5,996± SQUARE FEET
DATE OF FIELD SURVEY: APRIL 20, 2022
BASIS OF BEARINGS:
THE MONUMENT LINE IN CHESTNUT STREET WAS TAKEN AS NORTH 05°29'00" WEST AS SHOWN ON CORNER RECORD 7911 (75 CR 74).



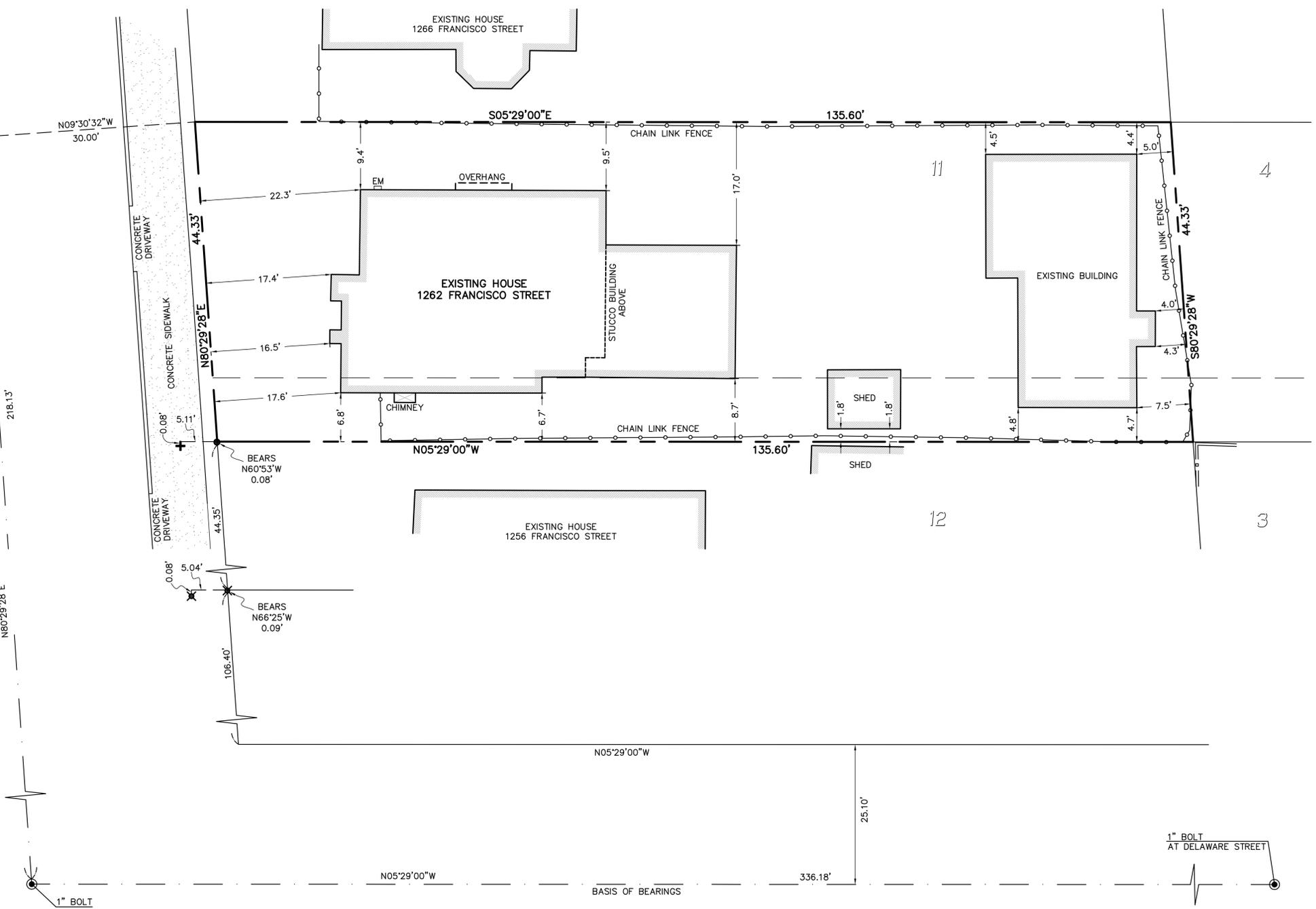
05-16-2022

HOUSE LOCATION SURVEY
A PORTION OF LOTS 11 AND 12, BLOCK 6,
MAP OF THE CURTIS TRACT (6 M 5)
LOCATED AT 1262 FRANCISCO STREET
CITY OF BERKELEY, COUNTY OF ALAMEDA, CALIFORNIA

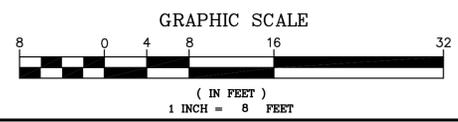
MAY 16, 2022 SCALE: 1" = 8'

MORAN ENGINEERING, INC.
CIVIL ENGINEERS \ LAND SURVEYORS
1930 SHATTUCK AVENUE, SUITE A
BERKELEY, CALIFORNIA 94704
(510) 848-1930

F.B. NO. 1889 FRANCISCO-HL.DWG JOB NO. 22-10930



CHESTNUT STREET (60' WIDE)



Appeal Letter #1

1

Appeal of AUP Modification #ZP2021-0006 at 1262 Francisco Street
Objections from Aimee Baldwin, resident and co-owner of adjacent
property at 1256 Francisco Street

August 4, 2022

As the resident and co-owner of 1256 Francisco St., the house immediately adjacent (to the west, sharing a property line) to the subject property of AUP #ZP2021-0006, I object to the details of this AUP, and wish to appeal its design. I have the following objections:

1. Roof Deck creates a privacy detriment to my entire yard.
2. Roof Deck creates a noise detriment next to my bedroom (capacity for 18 people).
3. Roof Deck privacy screen creates a view detriment to my bedroom (it eliminates my view of the sky and Berkeley Hills).
4. Roof Deck privacy screen creates a light detriment to my bedroom (possibly mitigated with translucent obscuring glass).
5. Roof Deck privacy screen design needs to be legally enforceable for me to accept reliance upon it for privacy (there is major privacy invasion without privacy wall, and I distrust the applicant and architect).
6. Roof Deck is out of scale for the neighborhood. Other single-family homes with usable backyards do not have 100+ square foot roof decks immediately outside neighbors' bedrooms. Most balconies are less than 4 feet deep, often only 6-8 feet wide, and placed more respectfully to adjacent neighbors.
7. Windows of the second-story master bath and closet create a privacy detriment to two of my bedrooms: I request non-opening fixed windows, with obscuring glass.

I do not object to my neighbor having a roof deck: I object to this particular roof deck design and placement. Mr Miller presented me with the now approved house additions and remodel in AUP #ZP2020-0122 in October 2020. Major factors in my signed full approval of that design were that it maintained some privacy/tranquility in the back of my house and yard, left unobstructed one last eastern upstairs window, and Mr Miller's own assurance at the time that he had decided against a roof deck. Now this AUP Modification, this roof deck as it is currently designed, eliminates those factors.

As an alternative to this roof deck submitted in AUP #ZP2021-0006, I have designed a different roof deck, which I think would meet my neighbor's needs, and which I would approve immediately. Trying to discuss design solutions with my neighbor to mitigate the above described detriments has been made extremely difficult by the following factors:

- My neighbor Mr. Miller has repeatedly refused to discuss design solutions to mitigate these detriments.
- His architect Sunny Grewal has made numerous misrepresentations on the application: regarding neighbor consent (my own personal consent); inaccuracies in the plans including property relations/sizes, window sizes, shadowing studies, and the tabulation table; including his fabrication of the property line; and months of subsequent refusal to correct these misrepresentations.
- Any further ability to trust my neighbor has been precluded by his misrepresentation, in email to the Planning Department, the terms of our signed agreement reached in professional mediation in April 2021.

Please view the document "2022-06-17_Neighbor Objections - Baldwin_1262 Francisco.pdf", on the the City of Berkeley Zoning Applications Attachments page for AUP#ZP2021-0006 (posted June 28, 2022), which describes: the details of my objections to the initial AUP submission; the failure of subsequent design changes to address the detriments which I will experience as the immediately adjoining neighbor; the basis for my distrust of the applicant and architect; and my proposed solutions, including alternate roof deck designs, to address the detriments.

Signed,

A handwritten signature in blue ink that reads "Aimee Baldwin". The signature is written in a cursive, flowing style.

Aimee Baldwin, resident and owner of 1256 Francisco St.

PL N 22-0074

Appeal Letter #2

Received

AUG 23 2022

Land Use Planning

Appeal for AUP #ZP2021-0006, 1262 Francisco Street

John Vinopal, resident 1256 Francisco Street.

As a non-owner resident of 1256 Francisco Street, I wish to appeal the approval of AUP Modification #ZP2021-0006. The design creates a clear detriment to 1256 Francisco and violates the agreed upon signlines and privacy established in AUP #ZP2020-0122. But more concerning are the Applicants' repeated misrepresentations: in the AUP signed under penalty of perjury, in personal email, and in email to the City of Berkeley Planning Department.

I believe if the architect Mr Sunny Grewal had followed standard City process, this AUP modification would have been less contentious and destructive to the long-standing amicable relationship with my neighbor Jonathan Miller. Jonathan has been my neighbor for 8 years, and my spouse Aimee's neighbor for 20 years. I've watered his tomatoes when he was on vacation. He has watched our house when we were on vacation. When Alameda County released us from mandatory lockdown in early 2021 I gave him a (socially distanced) celebratory margarita over the fence. He borrowed yard tools for a birthday gathering. Now we're more than 18 months, and 3 different Project Planners, into an intractable situation.

The architect Mr Grewal set us all up to fail. He failed to ensure that the neighbors were notified of the project. He misrepresented the neighbors' support. He mistated our property line. He designed an intensely invasive roof deck with zero privacy mitigations. He misdrafted the relationship of the two houses. None of these things were done by our neighbor Jonathan. Due to Mr Grewal's actions, all of us were put into an impossible position. Aimee and I reacted poorly to being blindsided by a filed AUP for a deck that looked directly into our bedroom, which misrepresented her consent, and which was rife with errors. Jonathan reacted poorly to a perceived threat and delay to his project.

Everyone brings their past trauma to a crisis: Aimee's is that she is a sexual assault survivor; mine is a broken home with parental violence; as neighbors we know that Jonathan had a grief-filled year. Certainly 2020 was extremely challenging for everyone. No one was at their best after a year of lockdown, with children at home, all routines upended, support structures undermined, a long dark covid winter following the long dark smoke-filled summer of 2020. But this does not excuse or explain the failures of a licensed architect who has practiced in Berkeley for 18 years. Mr Grewal knew how to do this AUP modification properly and chose not to.

The following are documented facts explaining how and why this AUP modification went so poorly.

- This AUP Modification updates a previously approved AUP #ZP2020-0122.
 - Mr Miller brought us the original AUP in October 2020.
 - Mr Miller told us then that he had considered but decided against a roof deck.
 - My spouse Aimee, the property owner, signed off on the original AUP.

- Applicants submitted this AUP Modification in early January 2021.
 - We talked with Mr Miller through the fence numerous times during the period. The deck was never mentioned.
 - Mr Miller has our email, phone, and was familiar with the process of showing designs as he had just done in October 2020.
 - Our first notice was at the end of February with a yellow card from the City.
 - For better or worse, this made us feel like we were getting a bait and switch.
- Mr Miller denied ever telling us that he was not building a deck.
 - *"In reference to the proposed roof deck, your claim that you "were told this project wouldn't exist" is simply false and unsubstantiated."* – Mr Miller, email 2021-03-03
 - Later in person, he said that while he had said that in October 2020, he had simply changed his mind.
- The original submitted deck design was large and contained no privacy mitigations.
 - The design was a 270 sqft deck at 13' base elevation and 13' from our house.
 - It had direct lines of sight down into our bedroom, bathroom, kitchen, and backyard.
- We found the following false claim in the AUP applicants statement:
 - *"The proposed project has support from the adjoining neighbors."* – AUP Item J
 - No "adjoining neighbors" had been notified: I asked the other neighbors and none said they had been notified.
 - Applicants have never explained or clarified this statement.
 - Aimee found this misrepresentation of her consent offensive, particularly coupled with the invasive nature of the roof deck design. Simply put, men who lie cannot be trusted.
- We found that the AUP plans contained numerous inaccuracies:
 - Sizes and positions of the two houses off by several feet.
 - Window sizes and placements on 1256 off by more than a foot.
 - Shadow studies inconsistent.
- We found that the AUP plans placed the property line 8" on our side of the shared fence.
 - The property line was calculated such that 1262 is set back exactly 7'.
 - The new second-floor addition adds 2', making the setback exactly 5'.
 - This is precisely 1' greater than than the required 4' R2 Zoning setback.
 - See original tabulation table.
- Faced with these problems, which were beyond our ability to deal with in a backyard conversation, we asked for mediation. This was 2 weeks since we had received notice of the AUP modification.
- Mr Miller reacted with hostility, writing:
 - *"Listen, I could be a total a-hole and cram my modified AUP down your throats, just to spite you, but that's not who I am. I consulted with one of my best friends, whose high school buddy is the chair of the Berkeley ZAB, and given our situation, she assured him that, while you could delay my construction, you would lose any type of eventual challenge to #ZP2021-0006, as it satisfies all of the zoning restrictions and requirements with margin. Also, it's already been approved, awaiting the appeals period. This is why I know that this new modified, modified AUP, which you helped convince me to explore, and which I like better anyway, will definitely have no problem passing muster and*

resisting any sort of opposition. I know this isn't what you want to hear, but trust me that this latest iteration is an excellent compromise that I'm confident you'll be cool with. – Mr Miller, email 2021-03-12

- *"I expect you to pay the fee for said mediation"* – Mr Miller, email 2021-03-14
- Rather than talking to us in mediation first, the Applicants submitted their second design two weeks before the scheduled mediation session (2021-03-26).
 - (There have been 3 different designs submitted to Planning.)
- SEEDS Mediation yielded a 4 part agreement, agreed to by all participants on 2021-04-17.
 1. *John and Aimee will refrain from accusing others of dishonesty or subterfuge and give Jonathan the benefit of the doubt.*
 2. *Jonathan will refrain from being reactive and keep his tone even.*
 3. *The plans need to reflect more accuracy. Sunny will re-measure and re-draw the plans. John and Aimee will review the revised plans and then decide how to go forward. A surveyor may have to be hired.*
 4. *They will all work together to determine sight-lines, and possibly do a series of story-poles.*
- Unfortunately, following mediation, the architect Mr Grewal maintained his claim about the property line which he backed up with curious math.
 - *"I measured 9'-1" and 9'-2" (two separate locations) from Jonathan's house to the fence on the left hand side. I measured 6'-4" and 6'-6" (two separate locations) from Jonathan's house to the fence on the right hand side (your side)."*
 - *From past experience, I know that fences are typically not precisely aligned with property lines. Therefore, I interpolated the above dimension to 9'-0" on the left side and 7'-0" on the right side."*
 - *"We know the width of the existing house is 28'-4" (based on my measurements) and the property width is 44.3' per the Alameda County Assessor's parcel map. The above leads to a 7'-3" dimension from Jonathan's house to the property line between his and your house. That's 3" more than what was originally shown."*
 - *"It appears that the fence is approximately 9" on Jonathan's side of the property line. The proposed addition setbacks are 6'-3" at the first floor (originally shown as 6'-0") and 5'-3" at the bathroom popout (originally shown as 5'-0"). The proposed project is well within the City of Berkeley's required minimum side yard setback of 4'-0" for projects of this nature."*
 - *"This is all based on my field measurements and not a boundary survey prepared by a licensed surveyor. A licensed survey is only required for new construction and any additions that are to be built within a specific proximity to property lines."*
 - – Mr Grewal, email 2021-04-28
- I asked why this method of rounding was used, as I am an engineer by trade.
 - *"Thanks for the numbers, but I'm not sure I follow your math. First, the width of the house (28'4") + interpolated left setback (9') + interpolated right setback (7'3") = 44'7" which is greater than the width of the lot. The second problem is that you're making a seemingly arbitrary choice to round DOWN the left setback and round UP the right setback. Can you explain your reasoning more fully?"*
 - *"In the enclosed photo I present two other interpolations. **Devil's Advocate** rounds UP the left setback and finds the left setback to be 9'8" and the right setback to be 6'4". **Even Steven** splits the difference evenly between the two setbacks and finds the left*

setback to be 9'4.5" and the right setback to be 6'7.5". Can you please explain why your choice of interpolation is superior to either of these interpolations?"

- – Me, email 2021-04-28
- Mr Grewal never responded.
- To determine if the rounding-off of measurements was common architectural practice, I examined 50 recent residential AUP submissions.
 - Zero AUPs round to the foot when changing the footprint as does this AUP.
 - 24% measure to the foot on one side, but do not change footprint.
 - (This is often 4', ie: built to the setback on one side.)
 - 4% measure to the foot on 2 sides, but do not change footprint.
 - 12% measure to the foot on 4 sides, but do not change footprint.
 - (This is generally larger lots in the hills.)
- Mr Miller told us that he was going to get a property survey as part of his ADU project.
 - *"One of the benefits to you is that I'll have to produce a professional survey of the property prior to construction, the results of which I'll be happy to share with you as well."*
– Mr Miller, email 2021-05-05
 - Mr Miller may have misunderstood a survey vs the ADU staking diagram, but in the event no survey was done. This was communicated to us in early September 2021.
 - In October 2021, we paid \$3915 for our own property survey.
 - This survey found that the fence was in general alignment with the property line.
 - The Zoning Officer may have subsequently required Applicants to obtain their own property survey. The Planning Department has declined to make known any communications to the Applicants on this topic.
- A month later, Mr Miller chose to misrepresent the terms of our mediation agreement in an email to the Planning Department.
 - *"John, Aimee, Sunny and myself did participate in mediation through SEEDS and were able to arrive at a mutually acceptable compromise, including a balcony which is significantly smaller than the initially proposed deck, along with a permanently installed privacy screen on the West side of the balcony facing their property."* – Mr Miller, email 2021-11-13
 - We complained about this misrepresentation to the Planning Department.
- Mr Miller later characterized his statement as "aspirational".
 - *"I can see how that may have sounded aspirational, but I really did feel better after that 3-hour session and it seemed that we'd settled on a balcony with a privacy screen?"* – Mr Miller, email 2022-01-28.
- Even in this current 3rd submitted design, with a property survey in hand, Mr Grewal continues to misrepresent the property line.
 - Applicant's survey clearly shows the minimum right-side setback is 6.7' – this is 6'-8.4".
 - Yet Mr Grewal enters 6'-9.5" for the existing right-side setback.
 - How can any of Mr Grewal's measurements, entries, or calculations be trusted?
 - Additionally the shadow studies still show the shadows of 1256 Francisco varying.
 - Lacking consistency, how can any of the shadow studies be trusted?

The Planning Department is supposed to apply Objective Standards to Facts. When Applicants choose to misrepresent facts, this prevents the Planning Department from doing their job. The seriousness of misrepresentation is why AUPs are signed under penalty of perjury. I understand that the Planning Department does not want to adjudicate applicant's veracity. But if not them, then who keeps the system honest?

I filed a formal complaint against Mr Grewal with the California Architects Board and their finding is that this is a local matter and needs to be dealt with locally. I am asking the ZAB to take whatever steps they are able in order to discipline this architect and help keep the system honest.

Thank you.

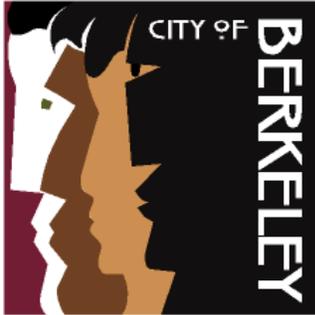
A handwritten signature in black ink, appearing to read "John Vinopal". The signature is written in a cursive style with a large initial "J" and "V".

2022-08-23

John Vinopal

Resident, 1256 Francisco.

john.vinopal@gmail.com



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

NOTICE OF PUBLIC HEARING

1262 Francisco Street

Administrative Use Permit #ZP2021-0006

Modification of Administrative Use Permit #ZP2020-0122 to add 40 square feet on the first floor and a balcony on the second floor.

The Zoning Adjustments Board of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23.406.040.D, on October 13, 2022, conducted via Zoom, see the Agenda for details at: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2022-10_13_ZAB_Agenda.pdf . The meeting starts at 7:00 p.m.

PUBLIC ADVISORY: This meeting will be conducted exclusively through videoconference and teleconference. Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

A. Land Use Designations:

- General Plan: Low Medium Density Residential (LMD)
- Zoning: Restricted Two-Family Residential District (R-2)

B. Zoning Permits Required:

- Administrative Use Permit for an addition greater than 14 feet in height, under BMC Section 23.202.080(D).

C. CEQA Recommendation: Categorically exempt pursuant to Section 15303 (“New Construction or Conversion of Small Structures”) of the CEQA Guidelines. The determination is made by ZAB.

D. Parties Involved:

- Appellants: Aimee Baldwin and John Vinopal, 1256 Francisco, Berkeley
- Applicant: Sunny Grewal (Architect), Oakland
- Property Owner: Jonathan Miller, 1262 Francisco, Berkeley

Further Information:

All application materials are available online at:

<https://aca.cityofberkeley.info/CitizenAccess/Welcome.aspx>.

The Zoning Adjustments Board final agenda and staff reports will be available online 6 days

prior to this meeting at: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board>.

Questions about the project should be directed to the project planner, Katrina Lapira, at (510) 981-7488 or klapira@cityofberkeley.info.

Written comments or a request for a Notice of Decision should be directed to the Zoning Adjustments Board Secretary at zab@cityofberkeley.info.

Communication Disclaimer:

Communications to Berkeley boards, commissions or committees 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 a City board, commission or committee, 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 secretary of the relevant board, commission or committee. 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 secretary to the relevant board, commission or committee for further information.

Communications and Reports:

Written comments must be directed to the ZAB Secretary at the Land Use Planning Division (Attn: ZAB Secretary), or via e-mail to: zab@cityofberkeley.info. All materials will be made available via the Zoning Adjustments Board Agenda page online at this address: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board>

All persons are welcome to attend the virtual hearing and will be given an opportunity to address the Board. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Board may limit the time granted to each speaker.

Correspondence received by 5:00 PM, eight days before this public hearing, will be provided with the agenda materials provided to the Board. Note that if you submit a hard copy document of more than 10 pages, or in color, or with photos, you must provide 15 copies. Correspondence received after this deadline will be conveyed to the Board in the following manner:

- **Correspondence received by 5:00 PM two days before** this public hearing, will be conveyed to the Board in a Supplemental Communications and Reports, which is released around noon one day before the public hearing; or
- **Correspondence received after 5:00 PM two days before** this public hearing will be saved in the project administrative record.

It will not be possible to submit written comments at the meeting.



Accessibility Information / ADA Disclaimer:

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date.

SB 343 Disclaimer:

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available to the public. Please contact the Land Use Planning Division (zab@cityofberkeley.info) to request hard-copies or electronic copies.

Notice Concerning Your Legal Rights:

If you object to a decision by the Zoning Adjustments Board regarding a land use permit project, the following requirements and restrictions apply:

1. If you challenge the decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice.
2. You must appeal to the City Council within fourteen (14) days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, the following requirements apply:
 - A. That this belief is a basis of your appeal.
 - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
 - C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.
