



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
DECEMBER 8, 2022

2310 Eighth Street –

Use Permit #ZP2022-0098 to demolish a single-family dwelling and construct two new single-family dwellings with two off-street parking spaces.

I. Background

A. Land Use Designations:

- General Plan: Low Medium Density Residential (LMDR)
- Zoning: Limited Two-Family Residential District (R1-A)

B. Zoning Permits Required:

- Use Permit, pursuant Berkeley Municipal Code (BMC) 23.326.020 demolition of a single-family dwelling;
- Use Permit, pursuant BMC 23.202.020(A) to construct two single-family dwellings;
- Use Permit pursuant BMC 23.202.030(B) for six or more bedrooms on a lot;
- Administrative Use Permit pursuant to BMC Section 23.304.030(B) for reduced rear setback; and
- Administrative Use Permit pursuant to BMC Section 23.322.070(D) to exceed the parking maximum.

C. CEQA Recommendation: It is staff's recommendation that the project is categorically exempt pursuant to Section 15303 of the CEQA Guidelines ("New Construction or Conversion of Small Structures"). The determination is made by ZAB.

D. Parties Involved:

- Applicant John Newton, 5666 Telegraph Avenue, Oakland, CA 94609
- Property Owner Alex and Ysabel Yow, 945 Taraval Street #281 SF 94116

Figure 1: Vicinity Map



*Map not to scale

Figure 2: Site Plan

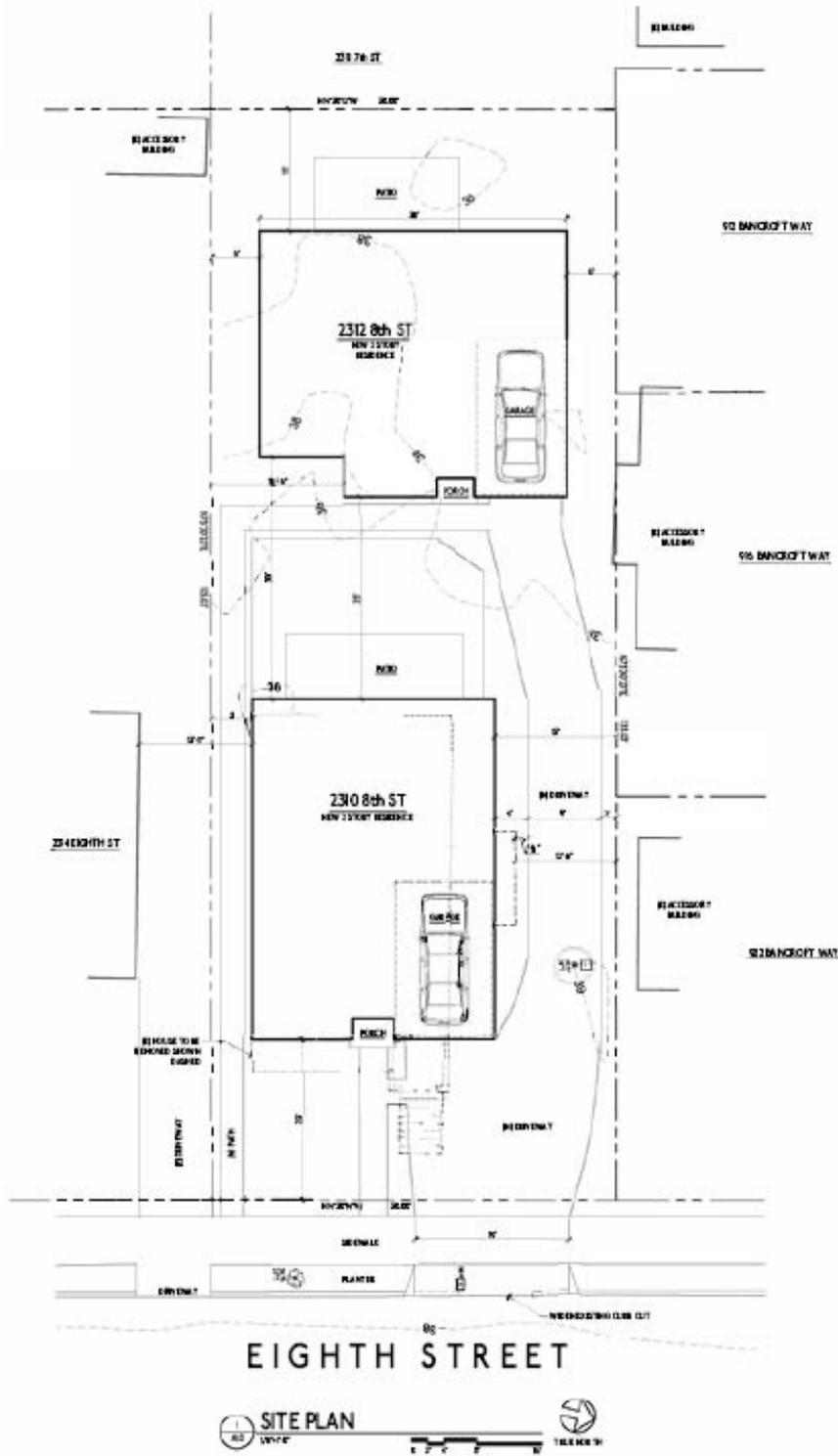


Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Single-family dwelling	R-1A	Low Medium Density Residential
Surrounding Properties	North	Multi-family dwelling	R-1A	Low Medium Density Residential
	South	Multi-family dwelling	R-1A	Low Medium Density Residential
	East	Single-family dwelling	R-1A	Low Medium Density Residential
	West	Single-family dwelling	R-1A	Low Medium Density Residential

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 these requirements do not apply.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)	No	
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)	Yes	The project is subject to the natural gas prohibition
Historic Resources	No	The project site is not designated as a Landmark by the City.
Housing Accountability Act (Gov't Code Section 65589.5(j))	Yes	The proposed project is for two residential units only, and meets the definition of a "Housing Development Project" per Government Code Section 65589.5(h)(2) ¹ . Modifications to the rear setback and maximum parking have been requested, however, the criteria for approval is not objective, and therefore the project complies with the applicable objective general plan and zoning standards. Section (j) of the Housing Accountability Act applies. See Section V.B of this report for additional discussion on compliance with the Housing Accountability Act.

¹ 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 at least two-thirds of the square footage is designated for residential use, and (C) transitional or supportive housing.

Housing Crisis Act of 2019 (SB330)	Yes	The proposed project is for two residential units only, and meets the definition of a "Housing Development Project" per Government Code Section 65589.5(h)(2) ² . See Section V.A of this report for additional discussion on compliance with SB 330.
Oak Trees	No	There are no coastal 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 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	From the site, AC Transit Bus 51B and 72R are within half a mile. Ashby Bart is located within 2.1 miles by way of street

Table 3: Project Chronology

Date	Action
July 21, 2022	Application submitted
August 23, 2022	Application deemed incomplete
September 19, 2022	Application resubmitted
October 19, 2022	Application deemed complete
November 22, 2022	Public hearing notices mailed/posted
December 8, 2022	ZAB hearing

Table 4: Development Standards

Standard		Existing	Proposed Total	Permitted/ Required
BMC Sections 23.202.060				
Lot Area (sq. ft.)		6,752	6,752	4,500 min
Gross Floor Area (sq. ft.)		1,047	4,273	n/a
Floor Area Ratio		n/a	n/a	n/a
Dwelling Units	Total	1	2	max
	Affordable	0	0	n/a

² See footnote 1

Building Height	Average (ft.) / Stories	15'-9"	24'-6" (front building) 22'-0" (rear building)	28' / 3 22' / 2
	Stories	1	2	3 max
Building Setbacks (ft.)	Front	13'-5"	20'-0" (front building)	20' min
	Rear	74'-9"	15'-0" (rear building)	20' min (AUP requested)
	Left Side	5'-0"	5'-0" (front building)	4' min
			6'-0" (rear building)	
Right Side	20'-3"	15'-0" (front building)	4' min	
		6'-0" (rear building)		
Lot Coverage (%)		16.3	37.5	40 max
Usable Open Space (sq. ft.)		2,737	1,592	400 min per dwelling unit
Parking	Automobile	1	2	1 max
	Bicycle	n/a	n/a	n/a

II. Project Setting

- A. Neighborhood/Area Description:** The project is located on the north side of Eighth Street, three blocks west of San Pablo Avenue and three blocks south of University Avenue. The neighborhood consists of single-family and multi-family dwelling units.
- B. Site Conditions:** The subject lot is rectangular, with 50 feet of frontage along Eighth Street, 133 feet deep, and generally flat. The lot is occupied by a single-story, 1,047 square-foot, single-family dwelling. The dwelling is unoccupied and is currently in a dilapidated state.

III. Project Description

The applicant proposes to demolish the single-family dwelling unit and construct two new single-family dwelling units. Each unit would contain four bedrooms, bringing the total number of bedrooms on the parcel to eight. Unit A (front) would be 2,446 square feet, Unit B (rear) 2,310 square feet. Approximately 1,592 square feet of useable open

space would be provided on the site. Each new dwelling unit would include an attached one-car garage, providing off-street parking to the occupants.

IV. Community Discussion

- A. Neighbor/Community Concerns:** A pre-application poster was erected by the applicant in July 2022. On November 22, 2022, the City mailed public hearing notices to property owners and occupants within a 300-foot radius, and to interested neighborhood organizations, and the City posted notices within the neighborhood in three locations. At the time of writing this report, staff received one correspondence related to compliance with the Permit Streamlining Act (see Attachment 4).
- B. Committee Review:** This project is not subject to review by the Design Review Committee or the Landmarks Preservation Commission because it is not located in a commercial or manufacturing district, and does not involve the demolition of a non-residential building.

V. Issues and Analysis

A. SB 330 – Housing Crisis Act of 2019: The Housing Crisis Act, also known as Senate Bill 330, seeks to boost homebuilding throughout the State with a focus on urbanized zones by expediting the approval process for and suspending or eliminating restrictions on housing development. Housing development is defined as 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. Sections of SB 330 that apply to the proposed project include the following:

1. Government Code §65905.5(a) states that if a proposed housing development project complies with the applicable, objective general plan and zoning standards in affect at the time an application is deemed complete, then the city shall not conduct more than five hearings in connection with the approval of that housing development project. This includes all public hearings in connection with the approval of the housing development project and any continuances of such public hearings. The city must consider and either approve or disapprove the project at any of the five hearings consistent with applicable timelines under the Permit Streamlining Act (Chapter 4.5 (commencing with §65920)).

The December 8, 2022 ZAB hearing represents the first public hearing for the proposed project since the project was deemed complete. The City can hold up to four additional public hearings on this project, if needed. One of those hearings must be reserved for any possible appeal to the City Council.

2. Government Code §65913.10(a) requires that the City determine whether the proposed development project site is a historic site at the time the application for the housing development project is deemed complete. The determination as to whether the parcel is a historic site must remain valid during the pendency of the housing development project, unless any archaeological, paleontological, or tribal

cultural resources are encountered during any grading, site disturbance, or building alteration activities.

As discussed in an historic resource evaluation prepared for the property in September 19, 2022, the property is not historically significant and therefore is not eligible for listing on the California Register of Historical Resources or as a City of Berkeley Landmark or Structure of Merit. Further, standard conditions of approval have been included to halt work in case of any unanticipated discovery of archeological, paleontological, or tribal cultural resources.

3. Government Code §65950(a)(5) requires a public agency to approve or disapprove a project within 60 days from the determination that the project is exempt from the California Environmental Quality Act. The project was deemed complete on October 19, 2022. Should ZAB determine the application is categorically exempt from CEQA at the December 8, 2022 public hearing, the application must be approved or disapproved by February 6, 2023.

B. Housing Accountability Act Analysis: The Housing Accountability Act (HAA), California Government Code Section 65589.5(j), 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 described in Table 4 above, the project complies with the applicable general plan and zoning standards. While the project includes Administrative Use Permits (AUP) to reduce the rear setback and provide parking in excess of the maximum, there are no objective criteria in the findings. Therefore, the City may not deny the project or approve the project at a reduced density without basing its decision on the written findings under Section 65589.5(j), referenced above. Staff is not aware of specific adverse impacts that could occur with the construction of the of the project.

C. Demolish One Dwelling Unit: Government Code Section 66300(d) prohibits the demolition of residential dwelling units unless the project will create at least as many residential units as will be demolished; prohibits the demolition of occupied or vacant protected units, unless replaced according to replacement provisions therein; and does not supersede any local ordinance that reserves greater protections/provisions for lower income households or displaced households. The project proposes replacing one demolished dwelling with two new dwellings; the existing unit is not considered a “protected” unit as defined in Section 66300(d); and compliance with this section also satisfies the findings to approve the demolition of the dwelling unit under BMC Section 23.326.030. The dwelling proposed to be demolished is vacant, and is not subject to tenant displacement provisions pursuant to Section 66300(d).

VI. Other Considerations

The following analyses of conformance with district purposes, use and administrative use permit findings in the zoning ordinance, and the 2002 General Plan goals and policies are provided for informational purposes only, to provide context. They are not required because the proposed project is HAA-compliant.

- A. General Non-Detriment Finding:** BMC Section 23.406.040 states that before the ZAB approves an application for a Use Permit, it must find that 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.

Sunlight/Shadows: The project proposes to construct two, two-story buildings to replace an existing single-story building. As such, the project would create greater shadowing compared to existing conditions. To assess the anticipated shading impacts, the applicant submitted shadow studies for the project which show that the new buildings will shadow neighboring buildings in the same manner as the existing building, with additional shadows at the rear of the property. The new buildings will create the greatest shadows during the winter solstice, casting shadows on the accessory structures/buildings at 916 and 922 Bancroft Way. While shadows would be cast on portions of these accessory structures/buildings, such impacts to light access are limited in duration and are considered typical of urban settings and is not considered substantial or detrimental.

Air: The proposed rear building would be approximately 70 feet from the multifamily building to the west (2311 Seventh Street), more than 60 feet from next dwelling to the north (912 Bancroft Way), and there is no building to the south of the rear building. The proposed rear setback is 15 feet, and would provide adequate air space on all sides.

Views: The proposed project is located to the south of two two-story residential multi-family buildings, north of a two-story multi-family building, and buildings to the west and east are generally two stories tall. Staff expects that the proposed project would not result in additional obstruction of significant views in the neighborhood because there are limited significant views as defined in BMC Section 23.502 (Definitions) available to residences in the area. The area is generally flat, and includes mature vegetation which provides visual screening. Additionally, given the proposed building would meet the maximum height limit for the R-1A Zoning District, potential impacts to views are considered typical of urban settings and are not considered substantial or detrimental.

Privacy: The proposed single-family dwelling units would not cause significant privacy impacts to the neighboring properties. The proposed rear building will have a setback of 15 feet at the rear (west), and 6-foot setback on both the north and south sides of the property. The proposed front building will have a 9-foot setback on the north property line, and building separation of 13 feet 11 inches between the multi-family dwelling unit on the neighboring property on the south. Thus, privacy impacts from the project would be reasonable and not substantially detrimental.

The proposed project provides additional housing in a residential district. In addition, the project approval is subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, thereby ensuring the project would not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or 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.

- A. New Dwelling Units in the R-1A District and Neighborhood Compatibility:** Pursuant to BMC Section 23.202.060(A), the proposed project is consistent with the purposes of the R-1A District because it would strengthen the existing pattern of low medium-density residential in this neighborhood. The project would protect neighboring residents from unreasonably detrimental effects of nonresidential uses, such as noise, vibration, odors, smoke, fumes, gases, dust, heat and glare because the proposal would add residences (not industrial uses) to the existing cluster of residential buildings at this block. The project would allow flexibility in the use of property for residential purposes by permitting two dwelling units on one lot. Given the existing residential concentration and as the residential use would be maintained on the subject property, the project would not contribute to a cumulative change of use in buildings away from residential uses that surround this area of West Berkeley. Moreover, the proposed use and its proposed design elements including responds to local residential buildings and would thereby contribute to a neighborhood.

The proposed project complies with applicable R-1A District development standards (see Table 4) except for rear setback and excess parking. AUPs are requested for the reduced setback and the additional off-street parking space on this application.

- B. Administrative Use Permit to Reduce the Required Rear Yard:** In the R-1A District the required rear setback is 20 feet. Per BMC Section 23.304.030(B), the rear setback may be reduced to 12 feet with approval of an AUP for projects with two main dwellings to accommodate the second unit, provided the unit would not cause a detriment to emergency access or on the light, air, or privacy for neighboring properties. As discussed under Table 4 above, the proposed rear building would be 15 feet from the rear property line and approximately 70 feet from the next dwelling unit to the west (2311 Seventh Street). The reduced setback provides ample area between the new dwelling unit and the property line, offering usable open space between the two

proposed buildings on the subject lot, and would allow a compliant building separation of 25 feet between the two main buildings. Emergency access would not be hindered by the reduced setback, as the second unit would be approximately 100 feet from the front lot line. See Section VI.A for discussion on light, air, or privacy.

C. Findings for Administrative Use Permit to Exceed Parking Maximums:

The proposed project is subject to a parking maximum of 0.50 spaces per unit because it is located within a quarter mile of a major transit stop, or along a transit corridor with service at 15-minute headways during the morning and afternoon peak periods (BMC 23.322.070(B)).

Pursuant to BMC 23.322.070(D), off-street residential parking in excess of the maximum number may be approved with an AUP if the review authority finds one or both of the following:

- (a) Trips to the use or uses to be served, and the apparent demand for additional parking, cannot be satisfied by the amount of parking permitted by this section, by transit service which exists or is likely to be provided in the foreseeable future, or by more efficient use of existing on-street and off-street parking available in the area; or
- (b) The anticipated residents of the proposed project have special needs or require reasonable accommodation that relate to disability, health or safety that require the provision of additional off-street residential parking.

Two parking spaces are proposed – one for each dwelling located in an attached garage. The project contains two single-family dwelling units that are designed and arranged to accommodate a single household. In the supporting materials, the applicant stated the type and design of the units would likely support an inter-generational family, and require closer proximity to parking. In particular, the rear unit is approximately 100 feet from the street lot line and reliance on available street parking within a reasonable distance is challenging, particularly for a wide range of ages that could be part of the household, including families with young children and older individuals.

The applicant also referenced the need for an electric vehicle (EV) charging station. Under the provisions of the Berkeley Green Building Code, BMC 19.37.040, new one- and two-family dwellings and townhouses that provide parking must install a listed raceway and associated conductors to accommodate a dedicated 208/240-volt branch circuit for a future EV charger (see condition 18). Both parking spaces would be required to be “EV-ready,” ensuring that the infrastructure is installed and available when needed.

B. 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.

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 H-33 – Regional Housing Needs: Encourage adequate housing production to meet City needs and the City’s share of regional housing needs.
4. 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.
5. 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 is an infill development with a gain of two new dwelling units in a primarily residential neighborhood. The massing, proportions, design, and use of the buildings would be compatible with the surrounding neighborhood. As noted above, the project meets all development standards in the R-1A district, except for the rear setback, and may be allowed with an AUP.

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

Staff Analysis: As discussed in section VI.A. **above**, the two new dwelling units would create shadows, but they would not result in a significant loss of direct sunlight on neighboring residences.

7. Policy LU-23–Transit-Oriented Development: Encourage and maintain zoning that allows greater commercial and residential density and reduced residential parking requirements in areas with above-average transit service such as Downtown Berkeley.

Staff Analysis: The site is near University Avenue and San Pablo Avenue, and close to transit. There are two off-street parking spaces proposed as part of the project.

8. Policy H-33–Regional Housing Needs: Encourage adequate housing production to meet City needs and the City’s share of regional housing needs.
9. Policy EM-5– “Green” Buildings: Promote and encourage compliance with “green” building standards. (Also see Policies EM-8, EM-26, EM-35, EM-36, and UD-6.)

10. Policy UD-33–Sustainable Design: Promote environmentally sensitive and sustainable design in new buildings.

Staff Analysis: The project would be constructed to comply with current green building standards that are required by the Building Code.

VII. 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:

A. APPROVE ZP2022-0098 pursuant to Section 23.406.040 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Findings and Conditions
2. Project Plans, received July 22, 2022
3. Notice of Public Hearing
4. Correspondence Received

Staff Planner: Karen Hernandez, khernandez-gonzalez@cityofberkeley.info, (510) 981-7426

FINDINGS AND CONDITIONS

DECEMBER 8, 2022

2310 Eighth Street

Use Permit #ZP2022-0098 to demolish an existing single-family dwelling and construct two new single-family dwellings with two off-street parking spaces.

PERMITS REQUIRED

- Use Permit, pursuant Berkeley Municipal Code (BMC) 23.326.020 demolition of a single-family dwelling;
- Use Permit, pursuant BMC 23.202.020 to construct two single-family dwellings;
- Use Permit pursuant BMC 23.202.030 for six or more bedrooms on a lot;
- Administrative Use Permit pursuant to BMC Section 23.304.030(B) for reduced rear setback; and
- Administrative Use Permit pursuant to BMC Section 23.322.070(D) to exceed the parking maximum.

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 15303 of the CEQA Guidelines (“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.

I. FINDINGS FOR APPROVAL

1. The Housing Accountability Act §65589.5(j) requires that when a proposed housing development complies with applicable, objective general plan and zoning standards, a local agency may not deny the project or approve it with reduced density unless the agency makes written findings supported by substantial evidence that:
 - A. The development would have a specific adverse impact on public health or safety unless disapproved or approved at a lower density¹; and
 - B. There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval or approval at a lower density.

¹ 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 includes construction of two dwelling units on a lot that allows two dwelling units and Meets all objective zoning standards. No significant, quantifiable, direct and unavoidable impacts, based on objective, identified written public health or safety standards, polices, or conditions, have been identified by staff, the findings above could not be made.

2. Pursuant to Government Code §66300(d)(1), a City “shall not approve a housing development application that will require the demolition of residential dwelling units unless the project will create at least as many residential units as will be demolished.” This project proposes replacing the one dwelling proposed for demolition with two new dwellings; therefore, the application complies. Section 66300(d)(2) does not apply because the existing unit is not considered a “protected” unit under SB 330. The findings to approve the demolition of the dwelling unit under BMC Section 23.326.030 are therefore satisfied due to compliance with Government Code §66300(d)(3).
3. As required by Section 23.406.040(E) of the BMC, 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 will develop two two-story single-family dwelling units;
 - B. The project is consistent with all R-1A objective development standards;
 - C. Because impacts to neighboring residences due to construction of two single-family dwellings will be limited to certain time of a year and during certain hours of a day, shading impacts will not be detrimental;
 - D. The proposal will be consistent with the existing development and building-to-building separation pattern;
 - E. The proposed project will not result in additional obstruction of significant views (BMC Section 23.502.020 (Defined Terms)) in the neighborhood because there are limited significant views available to residences in the area; and
 - F. The project is subject to the City’s standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, thereby ensuring the project will not be detrimental.
4. Pursuant to BMC Section 23.322.070(D), the off-street parking space at a higher rate than 0.5 per dwelling unit (two proposed for the proposed project) will be allowable because the apparent demand for additional parking, cannot be satisfied by the amount of parking permitted by this section or by the available transit service. The project contains two single-family dwelling units that are designed and arranged to accommodate a single household. In the supporting materials, the applicant stated the type and design of the units would likely support an inter-generational family, and require closer proximity to parking. In particular, the rear unit is approximately 100 feet from the street lot line and reliance on available street parking within a reasonable distance is challenging, particularly for a wide range of ages that could be part of the household, including families with young children and older individuals. The off-street parking to accommodate electric vehicle charging.

5. Pursuant to BMC Section 23.304.030(B)(2) the Board finds that the reduced rear yard setback may be approved because:
- A. The rear building will be located approximately 70 feet from the neighbor's building to the west (2311 Seventh Street).
 - B. The proposed rear building will provide adequate useable open space between the subject property and the neighbor property to the west.
 - C. There is adequate emergency access to the rear unit.
 - D. There are no detrimental impacts to light, air, or privacy.
-

II. 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. **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 modified by the Board. 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.

III. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

Pursuant to BMC 23.404.050, the Zoning Adjustments Board attaches the following additional conditions to this Permit:

Prior to Submittal of Any Building Permit:

- 3) If the Phase I is over 2 years 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/>

Prior to Issuance of Any Building (Construction) Permit

16. HVAC Noise Reduction. Prior to the issuance of building permits, the project applicant shall submit plans that show the location, type, and design of proposed heating, ventilation, and cooling (HVAC) equipment. In addition, the applicant shall provide product specification sheets or a report from a qualified acoustical consultant showing that operation of the proposed HVAC equipment will meet the City's exterior noise requirements in BMC Section 13.40.050. The City's Planning and Development Department shall review the submitted plans, including the selected HVAC equipment, to verify compliance with exterior noise standards.

17. Interior Noise Levels. Prior to issuance of a building permit, the applicant shall submit a report to the Building and Safety Division and the Zoning Officer by a qualified acoustic engineer certifying that the interior residential portions of the project will achieve interior noise levels of no more than 45 Ldn (Average Day-Night Levels). If the adopted Building Code imposes a more restrictive standard for interior noise levels, the report shall certify compliance with this standard.
18. Electric Vehicle (EV) Charging. Each dwelling unit shall install a listed raceway, wiring, and power to allow for future Level 2 (240 Volt/40 amp) plug-in electric vehicle (EV) charging system installation as specified by the Berkeley Green Code (BMC Section 19.37.040). Readiness for EV charging and EV charging station installations shall be noted on the construction plans.
19. Water Efficient Landscaping. Landscaping, totaling 500 square feet of more of new landscaping or 2,500 square feet or more of renovated irrigated area, shall comply with the State's Model Water Efficient Landscape Ordinance (MWELo). MWELo-compliant landscape documentation including a planting, grading, and irrigation plan shall be included in site plans. Water budget calculations are also required for landscapes of 2,500 square feet or more and shall be included in site plans. The reference evapotranspiration rate (ET_o) for Berkeley is 41.8.
20. Prohibition of Natural Gas Infrastructure in New Buildings. The project shall comply with the City of Berkeley Prohibition of Natural Gas Infrastructure in New Buildings (BMC Chapter 12.80).
21. Recycling and Organics Collection. Applicant shall provide recycling and organics collection areas for occupants, clearly marked on site plans, which comply with the Alameda County Mandatory Recycling Ordinance (ACWMA Ordinance 2012-01).
22. 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.

During Construction:

23. 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.
24. **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.
- 25. Construction and Demolition Diversion.** Divert debris according to your plan and collect required documentation. Get construction debris receipts from sorting facilities in order to verify diversion requirements. Upload recycling and disposal receipts if using [Green Halo](#) and submit online for City review and approval prior to final inspection. Alternatively, complete the second page of the original [Construction Waste Management Plan](#) and present it, along with your construction debris receipts, to the Building Inspector by the final inspection to demonstrate diversion rate compliance. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement.
- 26. Low-Carbon Concrete.** The project shall maintain compliance with the Berkeley Green Code (BMC Chapter 19.37) including use of concrete mix design with a cement reduction of at least 25%. Documentation on concrete mix design shall be available at all times at the construction site for review by City Staff.
- 27. 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.

- 28. 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.
- 29. 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.
- 30. 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.

- 31. 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.
- 32. Paleontological Resources (Ongoing throughout demolition, grading, and/or construction).**
- A. *Qualified Paleontologist.* The project applicant shall retain a Qualified Paleontologist prior to excavations or ground disturbance that will exceed three feet in depth. The Qualified Paleontologist shall direct all mitigation measures related to paleontological resources. A qualified professional paleontologist is defined by the SVP standards as an individual preferably with an M.S. or Ph.D. in paleontology or geology who is experienced with paleontological procedures and techniques, who is knowledgeable in the geology of California, and who has worked as a paleontological mitigation project supervisor for a least two years (SVP 2010).
 - B. *Paleontological Worker Environmental Awareness Program (WEAP).* Prior to ground disturbance, the applicant shall incorporate information on paleontological resources into the Project's Worker Environmental Awareness Training (WEAP) materials, or a stand-alone Paleontological Resources WEAP shall be submitted to the Department of Planning and Development at the City of Berkeley. The Qualified Paleontologist or his or her designee shall conduct training for construction personnel regarding the appearance of fossils and the procedures for notifying paleontological staff should fossils be discovered by construction staff. The Paleontological WEAP training shall be fulfilled simultaneously with the overall WEAP training, or at the first preconstruction meeting at which a Qualified Paleontologist attends prior to ground disturbance. Printed literature (handouts) shall accompany the initial training. Following the initial WEAP training, all new workers and contractors must be trained prior to conducting ground disturbance work.
 - C. *Paleontological Monitoring.* The extent of required paleontological monitoring for the project shall be determined by the Qualified Paleontologist based on an evaluation of the previously undisturbed geologic units exposed during ground disturbing activity. The Qualified Paleontologist shall conduct an initial spot check and evaluation of geologic conditions for ground disturbing activity for excavations between 5-10 feet below ground surface (BGS). The evaluation shall be based on field evidence including lithology of geologic units and results of microscreening or other inspections for fossil resources. If the paleontologist determines that geologic units exposed between 5-10 feet BGS have high paleontological

sensitivity, then full-time monitoring shall be conducted for the duration of ground disturbing activity. If sediments between 5-10 feet BGS are determined to not be paleontological sensitive, spot checks should be conducted again for ground disturbance between 10-15 feet BGS and again for ground disturbance between 15-20 feet BGS, and again to the full depth of ground disturbance. If spot checks indicate low or no paleontological sensitivity, or if full time monitoring results in no fossil discoveries once the full depth of ground disturbance has been reached, paleontological monitoring can be discontinued for the remainder of project activity. Monitoring shall be reinstated if any new ground disturbances are required to depths exceeding previous depths of previous work, and reduction or suspension shall be reconsidered by the Qualified Paleontologist at that time.

- D. In the event of a fossil discovery by the paleontological monitor or construction personnel, all work in the immediate vicinity of the find shall cease. A Qualified Paleontologist shall evaluate the find before restarting construction activity in the area. If it is determined that the fossil(s) is (are) scientifically significant, the Qualified Paleontologist shall complete the following conditions to mitigate impacts to significant fossil resources:
- 1) *Salvage of Fossils.* If fossils are discovered, the paleontological monitor shall have the authority to halt or temporarily divert construction equipment within 50 feet of the find until the monitor and/or lead paleontologist evaluate the discovery and determine if the fossil may be considered significant. Typically, fossils can be safely salvaged quickly by a single paleontologist and not disrupt construction activity. In some cases, larger fossils (such as complete skeletons or large mammal fossils) require more extensive excavation and longer salvage periods. In this case, the Construction Contractor may be requested to supply heavy equipment and an operator to assist in the rapid removal of a large fossil specimen(s) or sediment sample(s). Bulk matrix sampling may be necessary to recover small invertebrates or microvertebrates from within paleontologically- sensitive Quaternary old alluvial deposits.
 - 2) *Preparation and Curation of Recovered Fossils.* Once salvaged, significant fossils shall be identified to the lowest possible taxonomic level, prepared to a curation-ready condition, and curated in a scientific institution with a permanent paleontological collection (such as the UCMP), along with all pertinent field notes, photos, data, and maps. Fossils of undetermined significance at the time of collection may also warrant curation at the discretion of the Qualified Paleontologist.
- E. *Final Paleontological Mitigation Report.* Upon completion of ground disturbing activity (and curation of fossils if necessary) the Qualified Paleontologist shall prepare a final report describing the results of the paleontological monitoring efforts associated with the project. The report shall include a summary of the field and laboratory methods, an overview of the project geology and paleontology, a list of taxa recovered (if any), an analysis of fossils recovered (if any) and their scientific significance, and recommendations. The report shall be submitted to the Department of Planning and Development at the City of Berkeley. If the monitoring efforts produced fossils, then a copy of the report shall also be submitted to the designated museum repository.

- 33. 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.

- 34. 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.
35. 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.
36. 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.
37. 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.
38. 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.
39. 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.
40. 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.

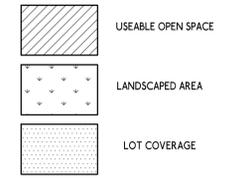
Prior to Final Inspection or Issuance of Occupancy Permit:

41. 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.
42. 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 **dated July 20, 2022**, except as modified by conditions of approval.

At All Times:

-
43. 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.
 44. Rooftop Projections. No additional rooftop or elevator equipment shall be added to exceed the approved maximum roof height without submission of an application for a Use Permit Modification, subject to Board review and approval.
 45. 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.
 46. Electrical Meter. Only one electrical meter fixture may be installed per dwelling unit.
 47. See BMC Section 14.72.080.C.Residential Permit Parking. No Residential Permit Parking (RPP) permits shall be issued to project residents, nor shall commercial placards be issued to non-residential occupants and/or users of the site. The project planner shall notify the Finance Department, Customer Service Center, to add these addresses to the list of addresses ineligible for RPP permits. The property owner shall notify all tenants of rental units, and/or buyers of condominium units, of this restriction in leases and/or contracts, and shall provide sample leases and/or contracts including such notification to the project planner prior to issuance of an occupancy permit or final inspection.
-

LEGEND

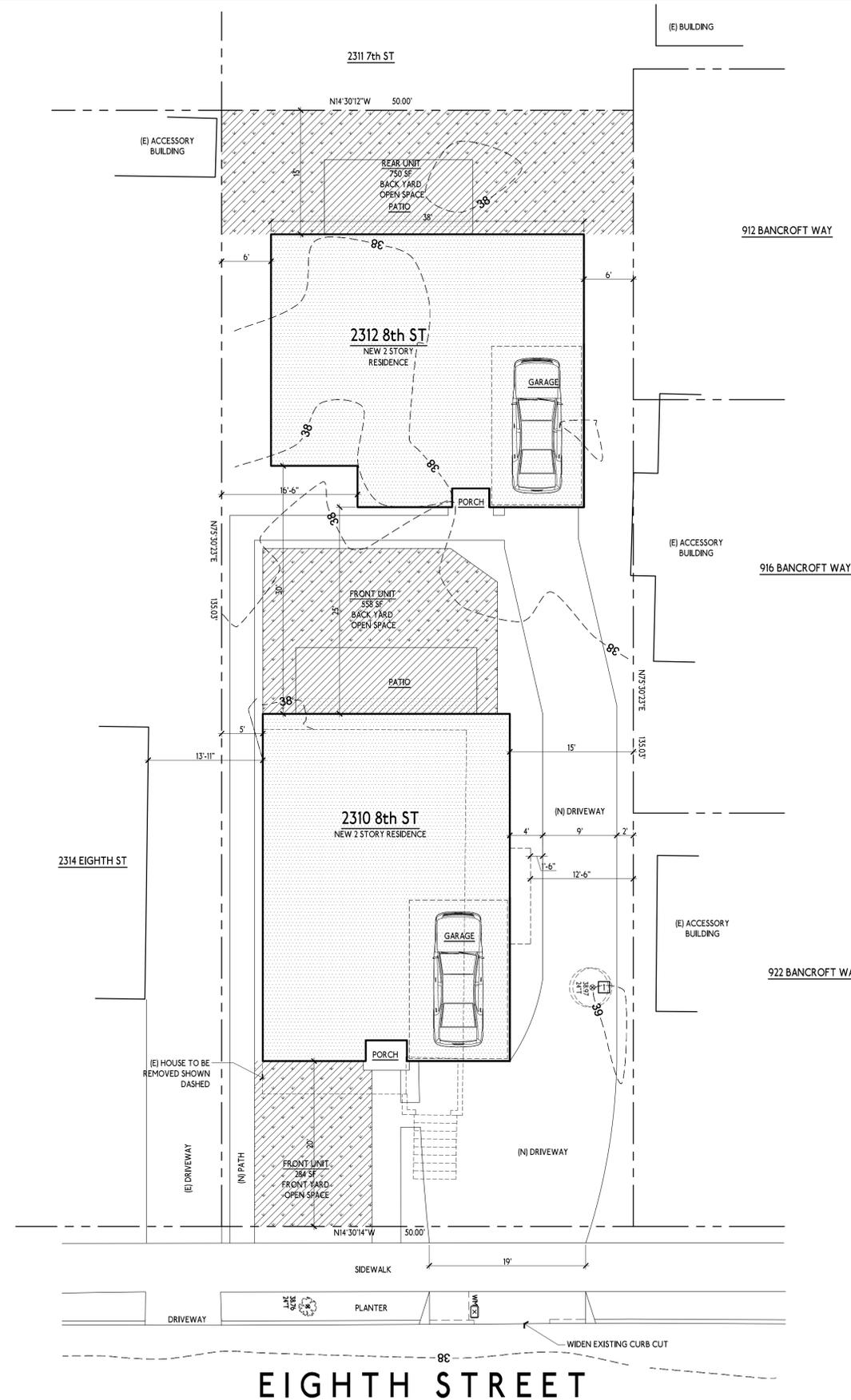


FRONT UNIT
284 SF USEABLE OPEN SPACE (FRONT YARD)
558 SF USEABLE OPEN SPACE (BACK YARD)
842 SF TOTAL USEABLE OPEN SPACE
666 SF LANDSCAPED-79%

REAR UNIT
750 SF USEABLE OPEN SPACE (BACK YARD)
588 SF LANDSCAPED-78.4%

TOTAL USEABLE OPEN SPACE AREA: 1,592 SF
TOTAL LANDSCAPED AREA: 1,254 SF-78.7%

FRONT UNIT FOOTPRINT: 1,276 SF
REAR UNIT FOOTPRINT: 1,254 SF
LOT COVERAGE: 37.5%



John Newton
Design & Development
5666 Telegraph Ave, Ste A
Oakland, CA 94609
(510) 847-4108

NEW RESIDENCES

PROJECT ADDRESS:
2310 Eighth St.
Berkeley, CA 94710
APN: 56-1938-7

OWNERS:
Alex & Ysabel Yow
(415) 265-9373

USEABLE OPEN SPACE & LOT COVERAGE DIAGRAM

REVISION

No.	Description	Date

PROJECT No. :
DRAWN BY: *mal*
CHECKED BY: *JMN*
DATE: 4/25/22

A1.1

John Newton
Design & Development
5666 Telegraph Ave, Ste A
Oakland, CA 94609
(510) 847-4108

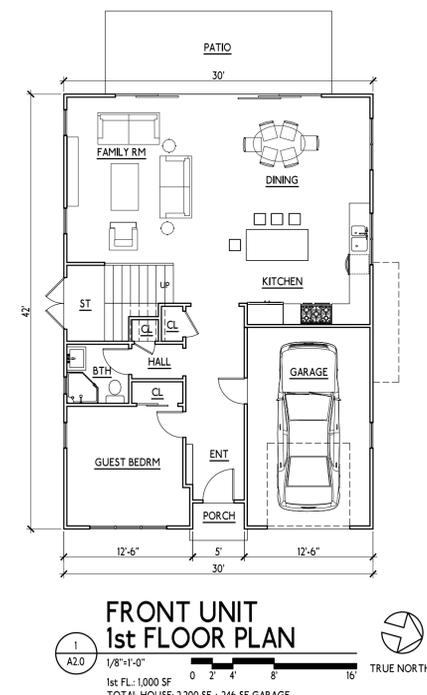
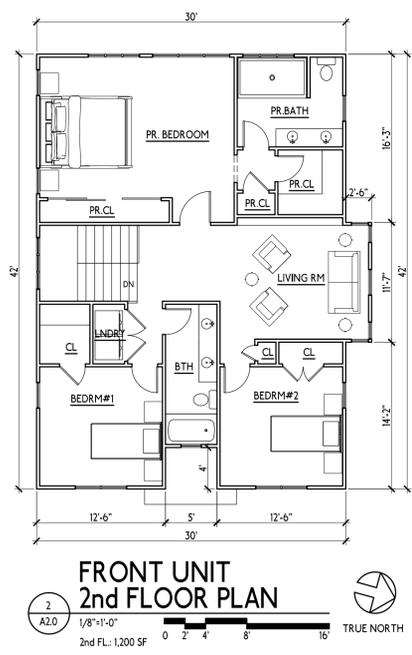
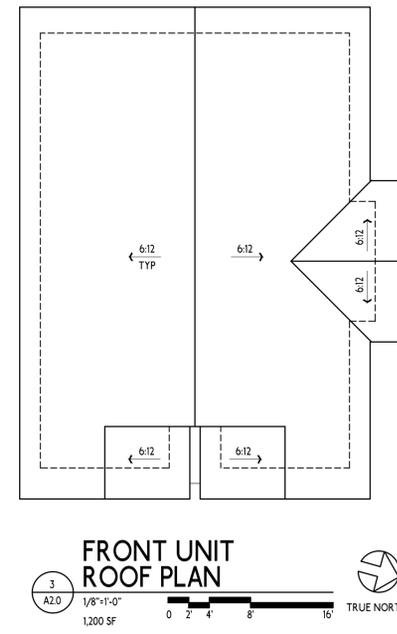
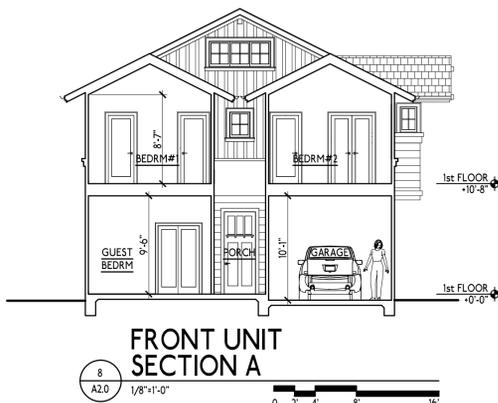
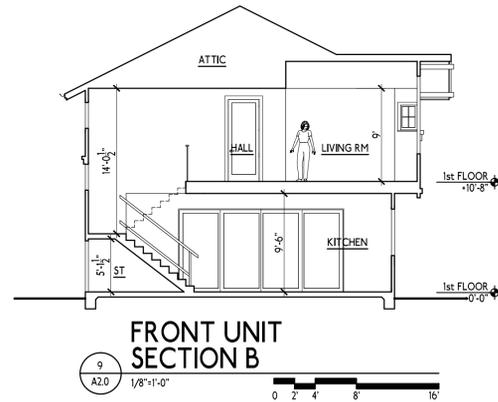
NEW
RESIDENCES

PROJECT ADDRESS:
2310 Eighth St.
Berkeley, CA 94710
APN: 56-1938-7

OWNERS:
Alex & Ysabel Yow
(415) 265-9373

FRONT UNIT
PROPOSED PLANS,
ELEVATIONS &
SECTIONS

TYPICAL MATERIALS:
ROOF: CLASS "A" ASPHALT COMP SHINGLE ROOF
SIDING: BOARD & BATTEN SIDING (WOOD BATTENS OVER SMOOTH HARDIE BOARD); HARDIE LAP SIDING.
WINDOWS: DUAL-PANE VINYL (SDL LITES)
DOORS: DUAL PANE VINYL SLIDING DOORS; SOLID WOOD/GLASS DOOR AT ENTRY; WOOD/GLASS AT GARAGE DOOR



REVISION

Revision	Date

PROJECT No. :
DRAWN BY: mal
CHECKED BY: JMN
DATE: 4/25/22

A2.0

John Newton
Design & Development
5666 Telegraph Ave, Ste A
Oakland, CA 94609
(510) 847-4108

NEW
RESIDENCES

PROJECT ADDRESS:
2310 Eighth St.
Berkeley, CA 94710
APN: 56-1938-7

OWNERS:
Alex & Ysabel Yow
(415) 265-9373

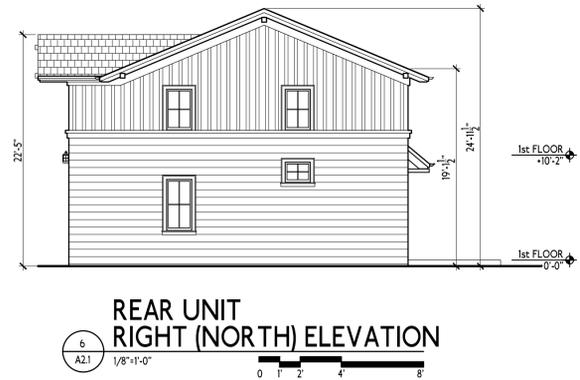
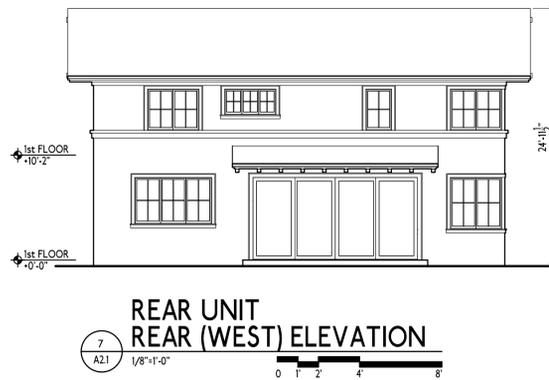
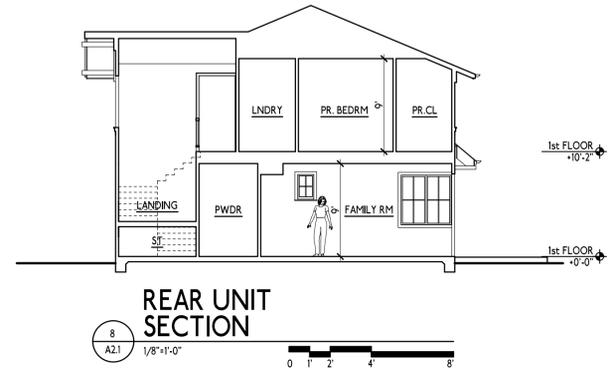
REAR UNIT
PROPOSED PLANS,
ELEVATIONS &
SECTION

REVISION

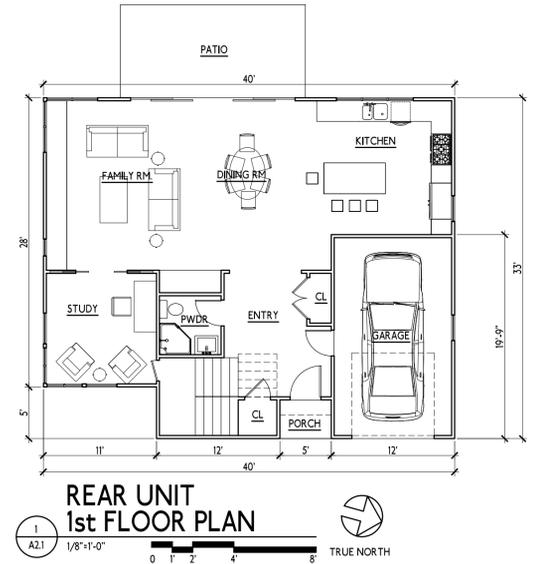
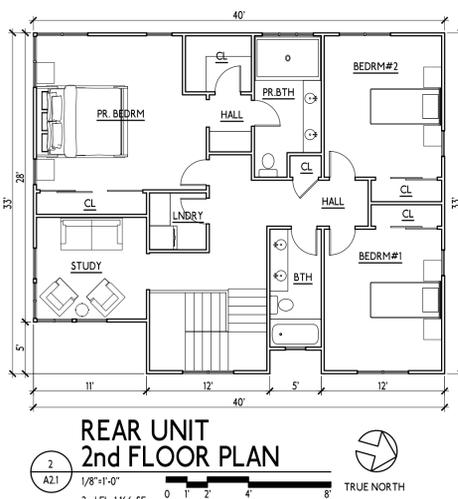
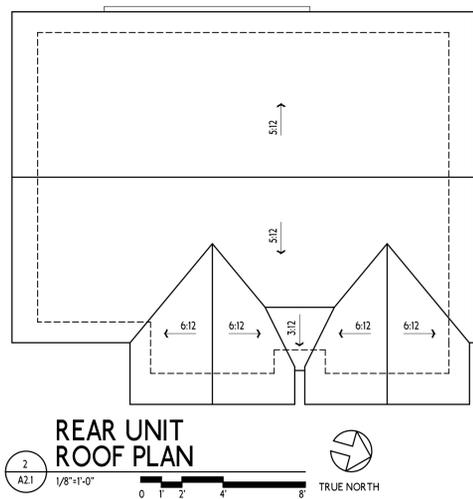
Revision	Date

PROJECT No. :
DRAWN BY: mal
CHECKED BY: JMN
DATE: 4/25/22

A2.1



TYPICAL MATERIALS:
ROOF: CLASS "A" ASPHALT COMP SHINGLE ROOF
SIDING: BOARD & BATTEN SIDING (WOOD BATTENS OVER SMOOTH HARDIE BOARD); HARDIE LAP SIDING.
WINDOWS: DUAL-PANE VINYL (SDL LITES)
DOORS: DUAL PANE VINYL SLIDING DOORS; SOLID WOOD/GLASS DOOR AT ENTRY; WOOD/GLASS AT GARAGE DOOR



1st FL: 1,009 SF
TOTAL HOUSE: 2,175 SF + 237 SF GARAGE

John Newton
Design & Development
5666 Telegraph Ave, Ste A
Oakland, CA 94609
(510) 847-4108

*NEW
RESIDENCES*

*PROJECT ADDRESS:
2310 Eighth St.
Berkeley, CA 94710
APN: 56-1938-7*

*OWNERS:
Alex & Ysabel Yow
(415) 265-9373*



2316 A-B 2318 8th ST

2314 8th ST

2310 8th ST

922 BANCROFT WAY

1
A3.0
EXISTING STREETSCAPE
1/8"=1'-0"
0 2' 4' 8' 16'



2316 A-B 2318 8th ST

2314 8th ST

2310 8th ST

922 BANCROFT WAY

2
A3.0
PROPOSED STREETSCAPE
1/8"=1'-0"
0 2' 4' 8' 16'

STREETSCAPE

REVISION

Revision	Date

PROJECT No. :
DRAWN BY: *mal*
CHECKED BY: *JMN*
DATE: 4/25/22

A3.0

NEW RESIDENCES

2310 8th Street, Berkeley, CA 94710
APN: 56-1938-7

John Newton
Design & Development
5666 Telegraph Ave, Ste A
Oakland, CA 94609
(510) 847-4108

NEW RESIDENCES

PROJECT ADDRESS:
2310 Eighth St.
Berkeley, CA 94710
APN: 56-1938-7

OWNERS:
Alex & Ysabel Yow
(415) 265-9373

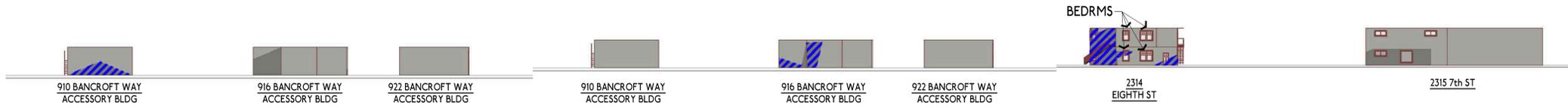
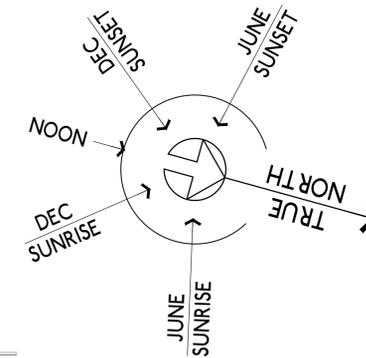
SHADOW STUDY PART 1

REVISION

Revision	Date

PROJECT No. :
DRAWN BY: *mal*
CHECKED BY: *JMN*
DATE: 4/25/22

A4.0



6 MAY 16- 7:58 AM
A4.0

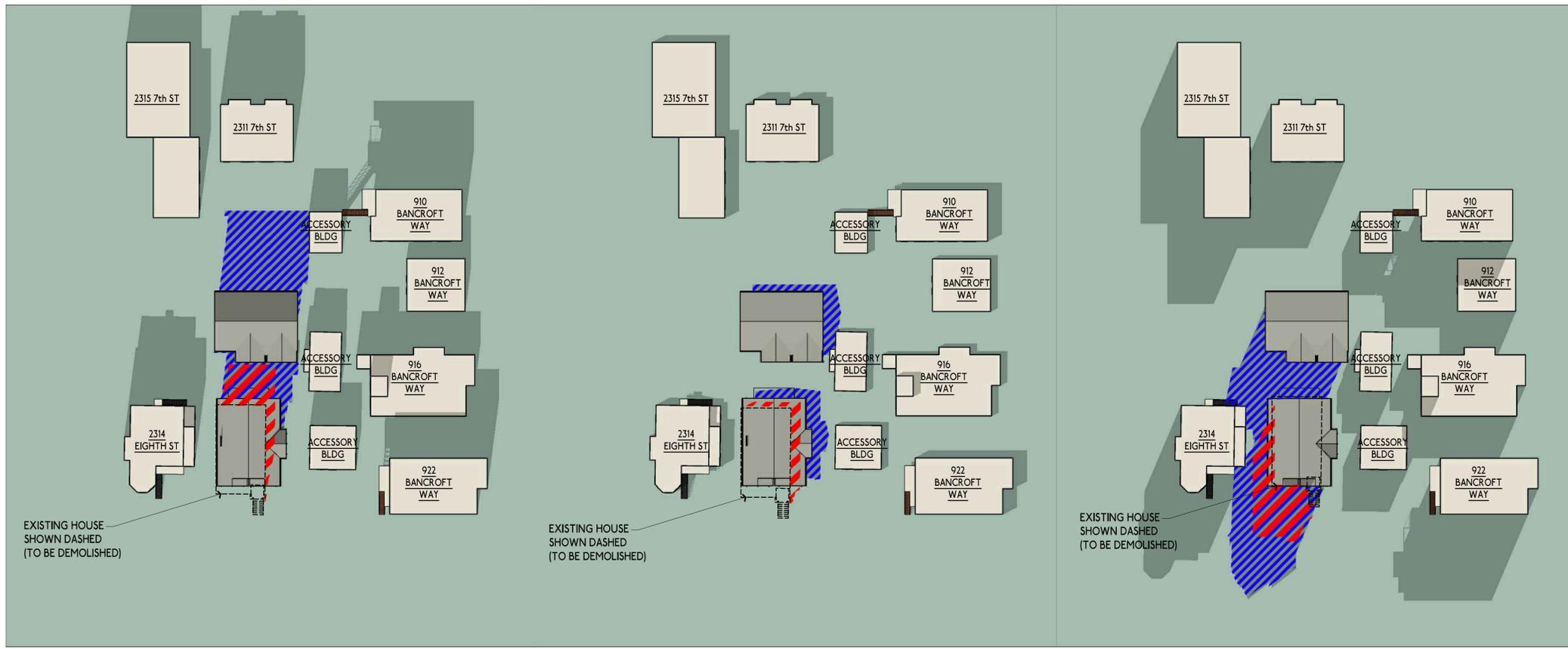
5 MAY 16-NOON
A4.0

4 MAY 16- 6:18 PM
A4.0

LEGEND

-  NEIGHBORING BUILDINGS EXISTING SHADOW
-  NEW SHADOW
-  1716 7TH ST EXISTING SHADOW (EXISTING RESIDENCE & SHED)

NOTE:
SHADOW STUDY PLAN VIEWS ANALYZE WORST CASE SCENARIO AND DOES NOT INDICATE THE MASS OF NEIGHBORING BUILDINGS AND (E) TREES. THIS STUDY ONLY GIVES MASS TO 2310 8TH ST. ALL HABITABLE BUILDINGS AFFECTED BY THE NEW SHADOWS CAST ARE SHOWN IN ELEVATION.



3 MAY 16- 7:58 AM
A4.0

2 MAY 16- NOON
A4.0

1 MAY 16- 6:18 PM
A4.0



NEW RESIDENCES

2310 8th Street, Berkeley, CA 94710
APN: 56-1938-7

John Newton
Design & Development
5666 Telegraph Ave, Ste A
Oakland, CA 94609
(510) 847-4108

NEW RESIDENCES

PROJECT ADDRESS:
2310 Eighth St.
Berkeley, CA 94710
APN: 56-1938-7

OWNERS:
Alex & Ysabel Yow
(415) 265-9373

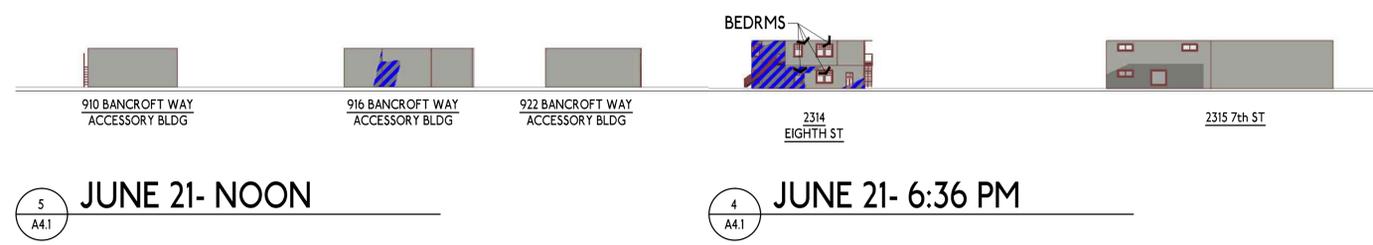
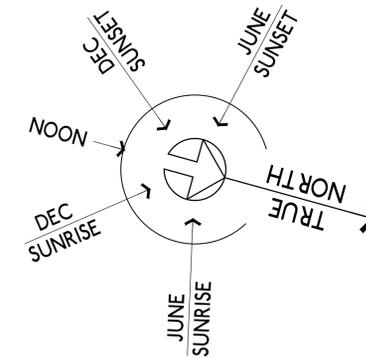
SHADOW STUDY PART 2

REVISION

Revision	Date

PROJECT No. :
DRAWN BY: *mal*
CHECKED BY: *JMN*
DATE: 4/25/22

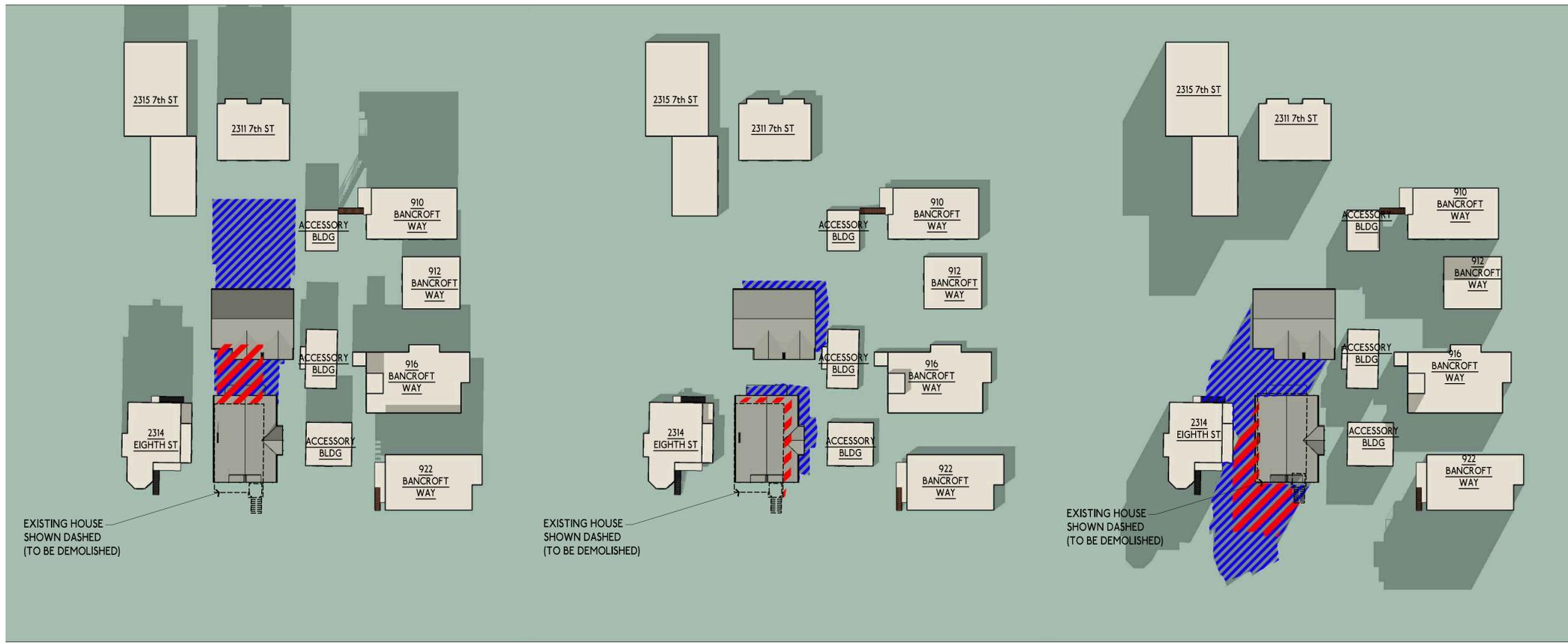
A4.1



LEGEND

-  NEIGHBORING BUILDINGS EXISTING SHADOW
-  NEW SHADOW
-  1716 7TH ST EXISTING SHADOW (EXISTING RESIDENCE & SHED)

NOTE:
SHADOW STUDY PLAN VIEWS ANALYZE WORST CASE SCENARIO AND DOES NOT INDICATE THE MASS OF NEIGHBORING BUILDINGS AND (E) TREES. THIS STUDY ONLY GIVES MASS TO 2310 8TH ST. ALL HABITABLE BUILDINGS AFFECTED BY THE NEW SHADOWS CAST ARE SHOWN IN ELEVATION.



3 A4.1 JUNE 21- 7:46 AM



2 A4.1 JUNE 21- NOON



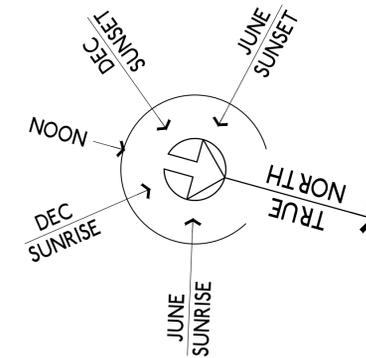
1 A4.1 JUNE 21- 6:36 PM



NEW RESIDENCES

2310 8th Street, Berkeley, CA 94710
APN: 56-1938-7

John Newton
Design & Development
5666 Telegraph Ave, Ste A
Oakland, CA 94609
(510) 847-4108



6
A4.2 DECEMBER 21- 9:22 AM

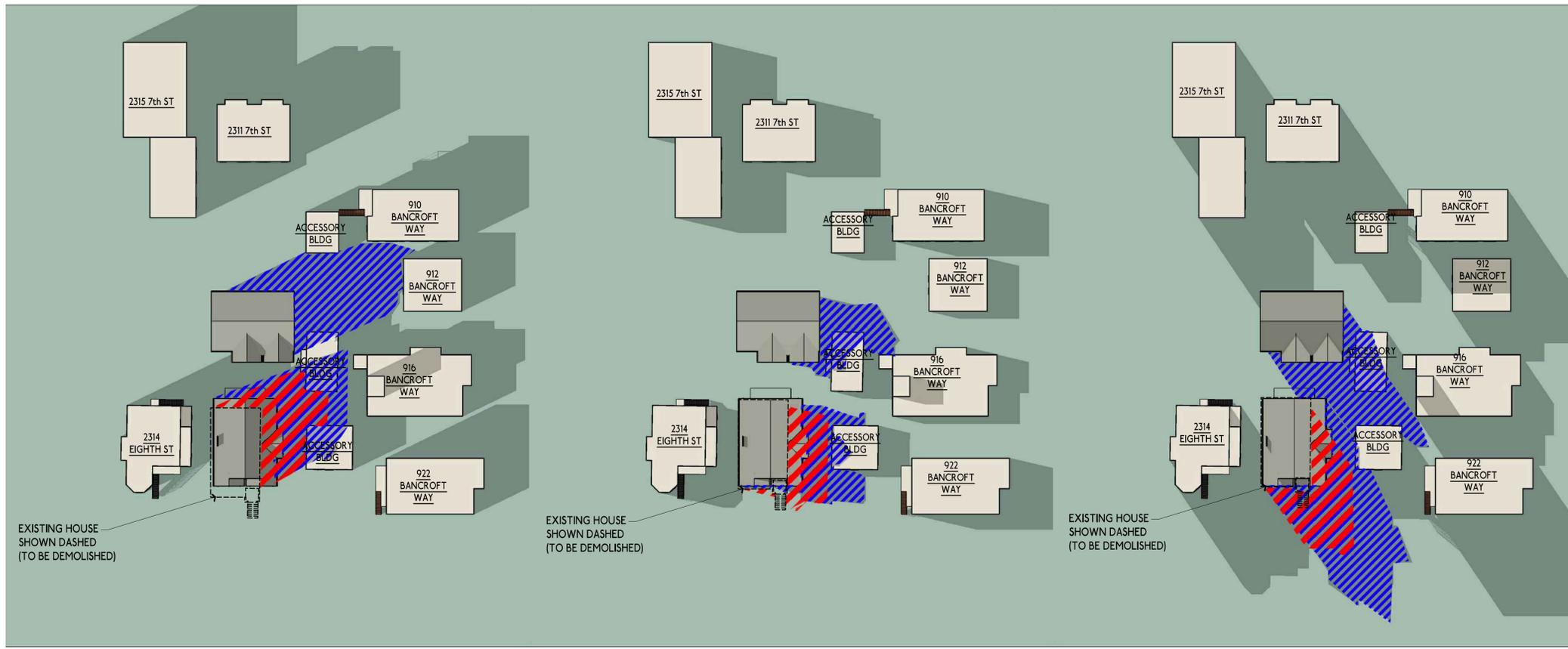
5
A4.2 DECEMBER 21- NOON

4
A4.2 DECEMBER 21- 3:53 PM

LEGEND

-  NEIGHBORING BUILDINGS EXISTING SHADOW
-  NEW SHADOW
-  1716 7TH ST EXISTING SHADOW (EXISTING RESIDENCE & SHED)

NOTE:
SHADOW STUDY PLAN VIEWS ANALYZE WORST CASE SCENARIO AND DOES NOT INDICATE THE MASS OF NEIGHBORING BUILDINGS AND (E) TREES. THIS STUDY ONLY GIVES MASS TO 2310 8TH ST. ALL HABITABLE BUILDINGS AFFECTED BY THE NEW SHADOWS CAST ARE SHOWN IN ELEVATION.



3
A4.2 DECEMBER 21- 9:22 AM



2
A4.2 DECEMBER 21- NOON



1
A4.2 DECEMBER 21- 3:53 PM



NEW RESIDENCES

PROJECT ADDRESS:
2310 Eighth St.
Berkeley, CA 94710
APN: 56-1938-7

OWNERS:
Alex & Ysabel Yow
(415) 265-9373

SHADOW STUDY PART 3

REVISION

Revision	Date

PROJECT No. :
DRAWN BY: *mal*
CHECKED BY: *JMN*
DATE: 4/25/22

A4.2



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

2310 Eighth Street

Use Permit #ZP2022-0098 to demolish a single-family dwelling and construct two new single-family dwellings with two off-street parking spaces.

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 December 8, 2022, **conducted remotely via Zoom. See the Agenda for details at:**
https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2022-12-08_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 (LMDR)
- Zoning: Limited Two-Family Residential District (R1-A)

B. Zoning Permits Required:

- C. Use Permit, pursuant Berkeley Municipal Code (BMC) 23.326.020 demolition of a single-family dwelling;
- D. Use Permit, pursuant BMC 23.202.020(A) to construct two single-family dwellings;
- E. Use Permit pursuant BMC 23.202.030(B) for six or more bedrooms on a lot;
- F. Administrative Use Permit pursuant to BMC Section 23.304.030(B) for reduced rear setback; and
- G. Administrative Use Permit pursuant to BMC Section 23.322.070(D) to exceed the parking maximum.

C. CEQA Recommendation: Categorically exempt pursuant to Section 15303 of the CEQA Guidelines ("New Construction or Conversion of Small Structures").

D. Parties Involved:

- Applicant John Newton, 5666 Telegraph Avenue, Oakland, CA 94609
- Property Owner Alex and Ysabel Yow, 945 Taraval Street #281 SF 94116

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, Karen Hernandez-Gonzalez, at (510) 981-7426 or khernandez-gonzalez@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.

From: [David Kellogg](#)
To: [Klein, Jordan](#); [jmnewton67@sbcglobal.net](#); [gonzalez@cityofberkeley.info](#); [Hernandez-Gonzalez, Karen](#)
Subject: Re: Administrative Use Permit #ZP2022-0098 for 2310 Eighth Street
Date: Monday, November 14, 2022 6:07:00 PM
Attachments: [2022-10-12_LTR_Completeness_Eighth_ZP2022-0098.pdf](#)

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Fixing the planners emails.

Dear Karen C. Hernandez, please see my emails below and then confirm that Berkeley recognizes that the PSA's 60 day deadline has been triggered as of 10/19/22.

On Mon, Nov 14, 2022, 6:04 PM David Kellogg <david.kellogg@gmail.com> wrote:
Apologies, hit sent before I finished my email and left in numbers from another matter.

The actual date is 10/19, not 10/22.

The letter is now attached.

Please confirm that Berkeley recognizes that the PSA's 60 day deadline has been triggered as of 10/19/22.

On Mon, Nov 14, 2022, 6:03 PM David Kellogg <david.kellogg@gmail.com> wrote:

Dear Karen C. Hernandez,

Per the attached letter of completeness, the lead agency issued a determination, dated 10/20/22, that this project is exempt from CEQA.

Pursuant to the permit streamlining act, Berkeley must approve or deny this project within 60 days of the CEQA exemption determination, other the builder may be able to claim deemed approved rights and members of the public may be able to sue under the HAA for improper denial (which includes PSA violations).

Please confirm that Berkeley recognizes that the PSA's 60 day deadline has been triggered as of 10/22/22.

Best,
David Kellogg

||