

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
FEBRUARY 23, 2023

1337-1339 Hearst Avenue

Use Permit #ZP2021-0160 to construct a major residential addition by lifting the existing duplex at 1337-39 Hearst Avenue on a lot that exceeds residential density.

I. Background

A. Land Use Designations:

- General Plan: LMDR– Low Medium Density Residential
- Zoning: R-2– Restricted Two-Family Residential District

B. Zoning Permits Required:

- Use Permit (UP) under Berkeley Municipal Code (BMC) Section 23.324.050(D)(3a) to construct an addition on a property that is non-conforming to the allowable residential density
- Administrative Use Permit (AUP) under BMC Section 23.202.030(A)(1) to construct a major residential addition
- AUP under BMC Section 23.324.050(D)(2) to vertically extend a non-conforming front yard
- AUP under BMC Section 23.324.050(D)(2) to vertically extend non-conforming side yards
- AUP under BMC Section 23.324.080(D)(2) for a residential addition over 14 feet in height

C. **CEQA Recommendation:** It is staff's recommendation that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code Section 21000, et seq. and California Code of Regulations, Section 15000, et seq.) pursuant to CEQA Guidelines Section 15301 ("Existing Facilities").

D. Parties Involved:

- Applicant Allyson Noman, 1339 Hearst Avenue
Berkeley, CA
- Property Owner Same as applicant

Figure 1: Vicinity & Zoning Map



Legend

- R-2: Restricted Two-Family Residential District
- R-2A: Restricted Multiple-Family Residential District

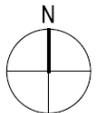


Figure 2: Site Plan

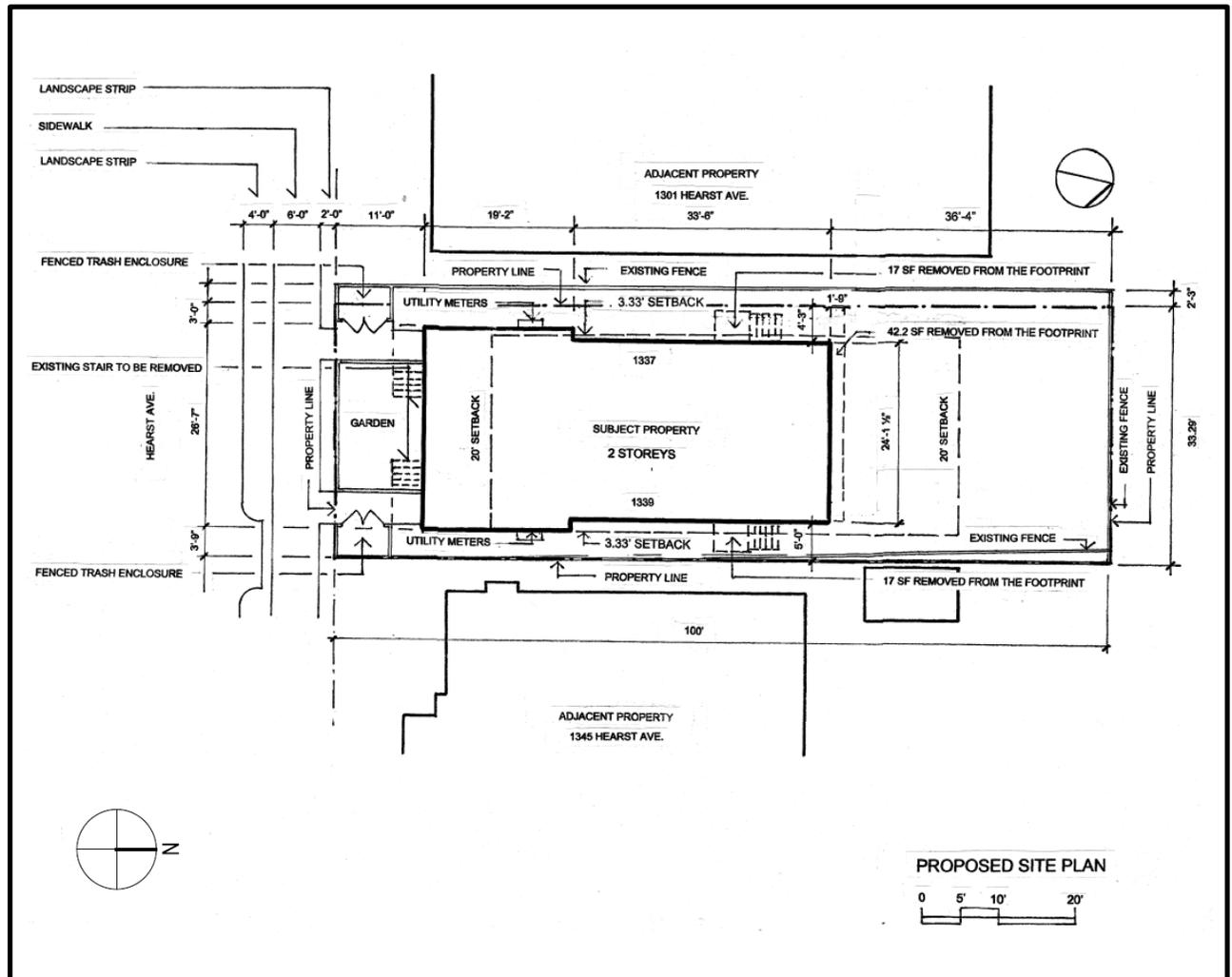


Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Duplex	R-2	LMDR
Surrounding Properties	North	Apartments		
	South	Single-family dwelling		
	East	Single-family dwelling		
	West	Apartments		

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	These fees apply to projects with net new 7,500 square feet of non-residential floor area. The project involves only new residential floor area, therefore this requirement does 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.
Creeks	No	The project site is not within a creek buffer zone.
Density Bonus	No	The applicant has not applied for a State Density Bonus.
Natural Gas Prohibition (Per BMC 12.80.020)	No	The project is not subject to the natural gas prohibition.
Historic Resources	No	The property does not have potential historical significance under the criteria of Berkeley's LPO.
Housing Accountability Act (Gov't Code Section 65589.5(j)) ¹ .	No	because no additional units would be constructed. Therefore, HAA does not apply.
Housing Crisis Act of 2019 (SB330)	Yes	The proposed is not a "housing development project" because no new residential units would be constructed. Therefore, SB 300 does not apply.
Coast Live Oak Trees	No	There are no oak trees on the project site
Rent Controlled Units	Yes	According to the City of Berkeley's Rent Registry, one of the two units (1337 Hearst Avenue) is subject to the City's rent control regulations, and is occupied at the time of writing this report. Rent Stabilization Tenant Protections Ordinance and Just Cause Eviction Laws would apply.
Residential Preferred Parking (RPP)	No	The neighborhood surrounding the project site is not located in an RPP Zone.

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.

Seismic Hazards (SHMA)	No	The project site 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 pursuant to Government Code Section 65962.5), and not located within the City's Environmental Management Area. Standard Toxics Conditions of Approval apply.
Transit	Yes	There is a bus stop near the project site on University Avenue that provides access to an AC Transit bus routes (51B).

Table 3: Project Chronology

Date	Action
September 9, 2021	Application submitted
May 5, 2022	Application deemed complete
February 9, 2023	Public hearing notices mailed/posted
February 23, 2023	ZAB hearing
April 24, 2023	CEQA deadline

Table 4: Development Standards

Standard		Existing	Addition/ (Reduction)	Proposed Total	Permitted/ Required
BMC Sections 23.202.080					
Lot Area (sq. ft.)		3,329	-	3,329	5,000 min
Gross Floor Area (sq. ft.)		1,393	1,240	2,633	-
Dwelling Units	Total	2	-	2	1 max
	Affordable	0	0	0	-
Building Height	Average (ft.)	13'-6"	6'-4"	19'-10"	35 max
	Maximum (ft.)	15'-6"	6'-4"	21'-10"	
	Stories	1	1	2	3 max
Building Setbacks (ft.)	Front	11'-0"	-	11'-0"	20 min
	Rear	34'-7"	1'-9"	36'-4"	20 min
	Left Side	3'-0"	-	3'-0"	3.33 min
	Right Side	3'-9"	-	3'-9"	3.33 min
Lot Coverage (%)		41.8	- 2.3	39.5	40 % max
Usable Open Space (sq. ft.)		1936	76	2012	800 max
Parking	Automobile	0	-	0	2 max
	Bicycle	0	-	0	N/A

II. Project Setting

- A. Neighborhood/Area Description:** The project site is located in northwest Berkeley at the western end of Hearst Avenue, between San Pablo Avenue and Sacramento Avenue (to the east of San Pablo Avenue). The area is residential and predominantly comprised of one- and two-story single-family dwellings.
- B. Site Conditions:** The project site is 3,329 square feet in area with an existing one-story, 1,393 square feet duplex. Each unit is one-bedroom and approximately 700 square feet in size and is in the R-2 District. The site is non-conforming to the allowable residential density which requires 2,500 per dwelling unit in the R-2 District, the front and side yards are also non-conforming. There are no garages on this lot.

III. Project Description

The project would expand the existing duplex by raising the building 6 feet and 4 inches in average height and adding a second-story. Approximately 620 square feet would be added to each unit. The existing lot is over the allowable density for the district (one dwelling per 2,500 square feet), however, there will be no changes in the number of units. The lot coverage is currently slightly over the allowable lot coverage for the district (41.8 percent where 40 percent is the maximum); however, the project would decrease the building footprint by pulling the north wall inward. Therefore, the project would improve the non-conforming lot coverage to an allowable 39.5 percent coverage. The existing building is located within the required front and side yards; however, these non-conforming setbacks would not be further reduced due to the proposed project.

IV. Community Discussion

- A. Neighbor/Community Concerns:**
A pre-application poster was posted by the applicant in February 2022. On February 9, 2023, 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 this writing, staff has not received any communications regarding the project.
- 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 non-residential district subject to design review, commercial or manufacturing district, and does not involve the demolition of a non-residential building, respectively.

V. Issues and Analysis

- A. Addition to a Structure on a Parcel with Non-Conforming Density:**
BMC Section 23.324.050(D)(3a) allows additions and/or enlargements of lawful non-

conforming structures that are non-conforming by reason of violation of the maximum allowable density to be permitted with a Use Permit if the addition does not increase or exacerbate the density or exceed the height limit. The proposed project would add a second-story above the existing duplex, within the existing footprint, within the allowable height and would not increase density.

B. General Non-Detriment: Pursuant to BMC Section 23.406.040(E) the Board may approve an application for a Use Permit if the proposed project meets the findings of non-detriment. A discussion of the project's potential impact to sunlight, air or views follows:

Sunlight: The existing single-story duplex has an average height of 13 feet 6 inches. The proposed two-story duplex will be approximately 20 feet in average height. Shadow studies submitted by the applicant document the existing and proposed shadow angles during summer and winter solstice. The incremental increase on the neighboring properties are as follows:

- During summer solstice, at two hours after sunrise, upper level windows along the east elevation of the abutting neighboring building at 1301 Hearst Avenue would be partially shaded due to the proposed project.
- During summer solstice, at two hours before sunset, lower level windows (kitchen and living room) along the west elevation of the abutting neighbor building at 1345 Hearst Avenue would be fully shaded due to the proposed project.
- During winter solstice, at two hours after sunrise, lower level windows along the east elevation of the abutting neighbor building at 1301 Hearst Ave would be fully shaded due to the project, similar to existing conditions.
- During winter solstice, at two hours before sunset, lower level windows along the west elevation of the abutting neighbor building at 1345 Hearst Avenue would be fully shaded due to the project, similar to existing conditions.

Because impacts to neighboring residences due to construction of this duplex would be limited to certain time of a year and during certain hours of a day, staff believes these shading impacts would not be detrimental. (Shadow studies are provided on Sheet AS1.1 to AS4.3 of the plan set.)

Air: Staff believes the proposed project would be consistent with the existing development and building-to-building separation pattern – or air – in this R-2 District neighborhood. The building would meet the setback requirement in the rear, and would not further reduce the existing setbacks in the front and side yards. In addition, the lot coverage is improved and decreased to below the maximum allowable 40 percent and the project exceeds the useable open space requirements.

Views: 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 23.502.020 (Defined Terms) available to residences in the area. The

area is generally flat, developed with one- to two-story buildings, and includes some mature vegetation which provides visual screening.

C. Administrative Use Permit: Pursuant to BMC Section 23.324.050(D)(2) alterations within the front and side nonconforming setbacks would be permissible because the dwelling use is conforming and the proposed project would not further reduce the existing non-conforming setback and would not exceed the height limit.

D. Dwelling Units in the R-2 District and Neighborhood Compatibility: Pursuant to BMC Section 23.202.080(A), the proposed project is consistent with the purposes of the R-2 District because it would strengthen the residential concentration 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. Given the existing residential concentration and as the residential use would be maintained on the project site, the project would not contribute to a cumulative change of use in buildings away from residential uses that surround this area. Moreover, the proposed use and its proposed design elements is consistent with local residential buildings and would thereby contribute to the existing development pattern ranging from single-family to duplexes and small apartment structures.

Staff Analysis: The proposed project complies with applicable R-2 District development standards (see Table 4) except for density and front and side setbacks. A Use Permit is requested for additions on a lot that is over-densified and AUPs are requested for alterations within the front and side non-conforming setbacks. Staff believes the proposal is consistent with the overall scale and development pattern of the one-, and two-story residences in the neighborhood.

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.

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

1. 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.
2. 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 massing, proportions, design, and use of the buildings would be compatible with the surrounding neighborhood.

3. 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.)

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

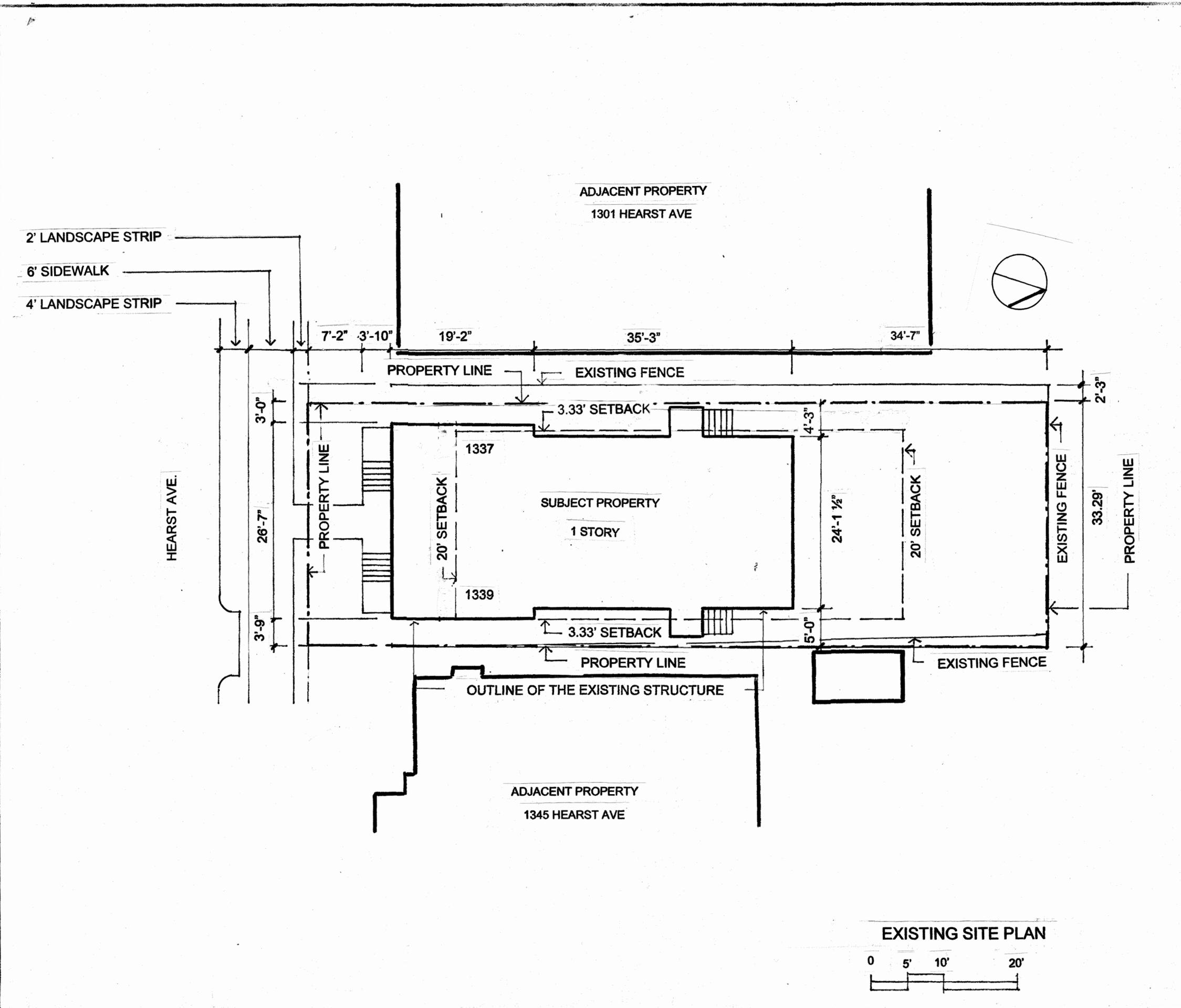
VI. Recommendation

Because of the project’s consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board: **APPROVE** Use Permit ZP2021-0160 pursuant to Section 23.406.040 and subject to the attached Findings and Conditions (see Attachment 1).

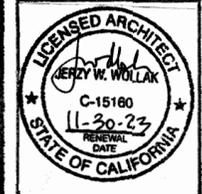
Attachments:

1. Findings and Conditions
2. Project Plans, received May 17, 2022
3. Notice of Public Hearing

Staff Planner: Nilu Karimzadegan, nkarimzadegan@cityofberkeley.info, (510) 981-7430



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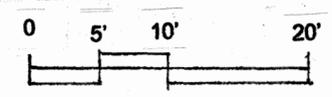


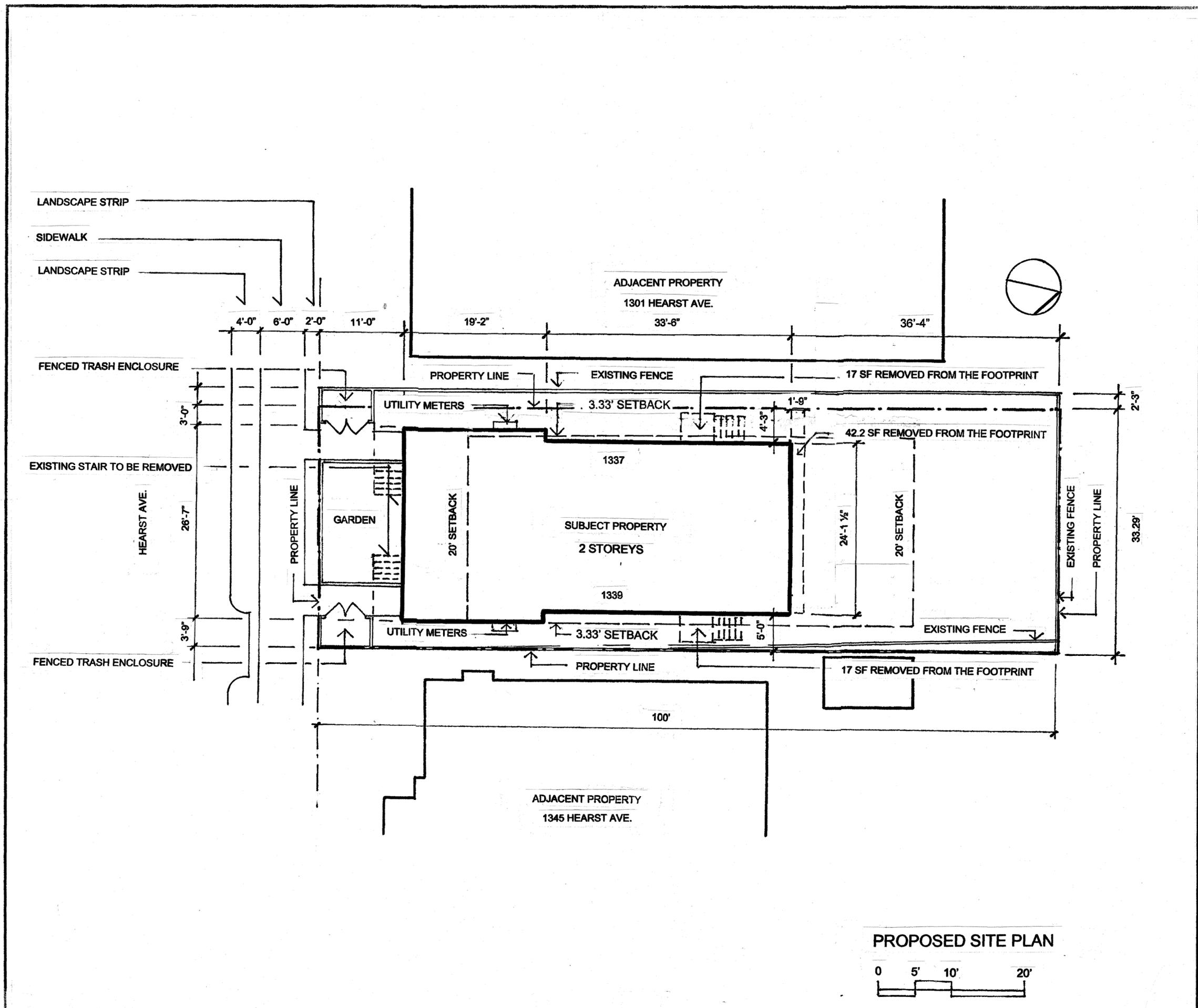
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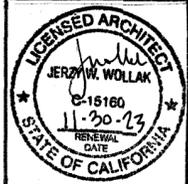
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EXISTING SITE PLAN





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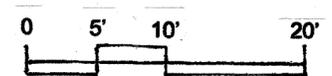


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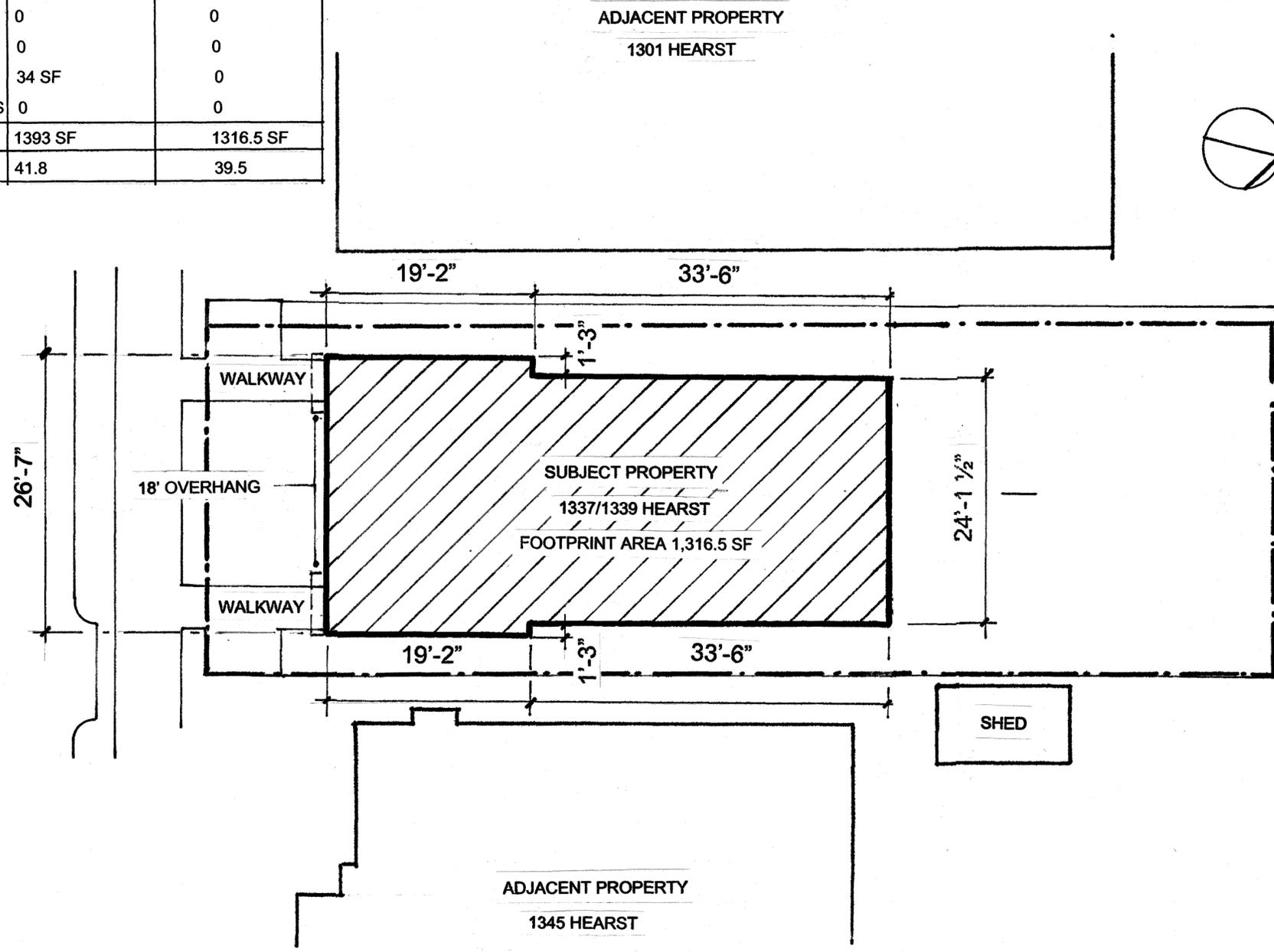
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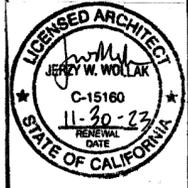
LOT AREA 3,329SF

LOT COVERAGE TABLE

COMPONENT	EXISTING AREA	PROPOSED AREA
BUILDING FOOTPRINT	1,359 SF	1316.5 SF
ACCESSORY STRUCTURES	0	0
PROJECTIONS	0	0
COVERED PORCHES	34 SF	0
DECKS OVER PAVED AREAS	0	0
TOTAL LOT COVERAGE	1393 SF	1316.5 SF
TOTAL % COVERAGE	41.8	39.5



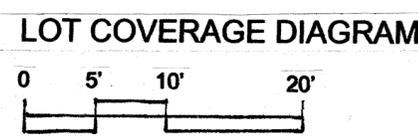
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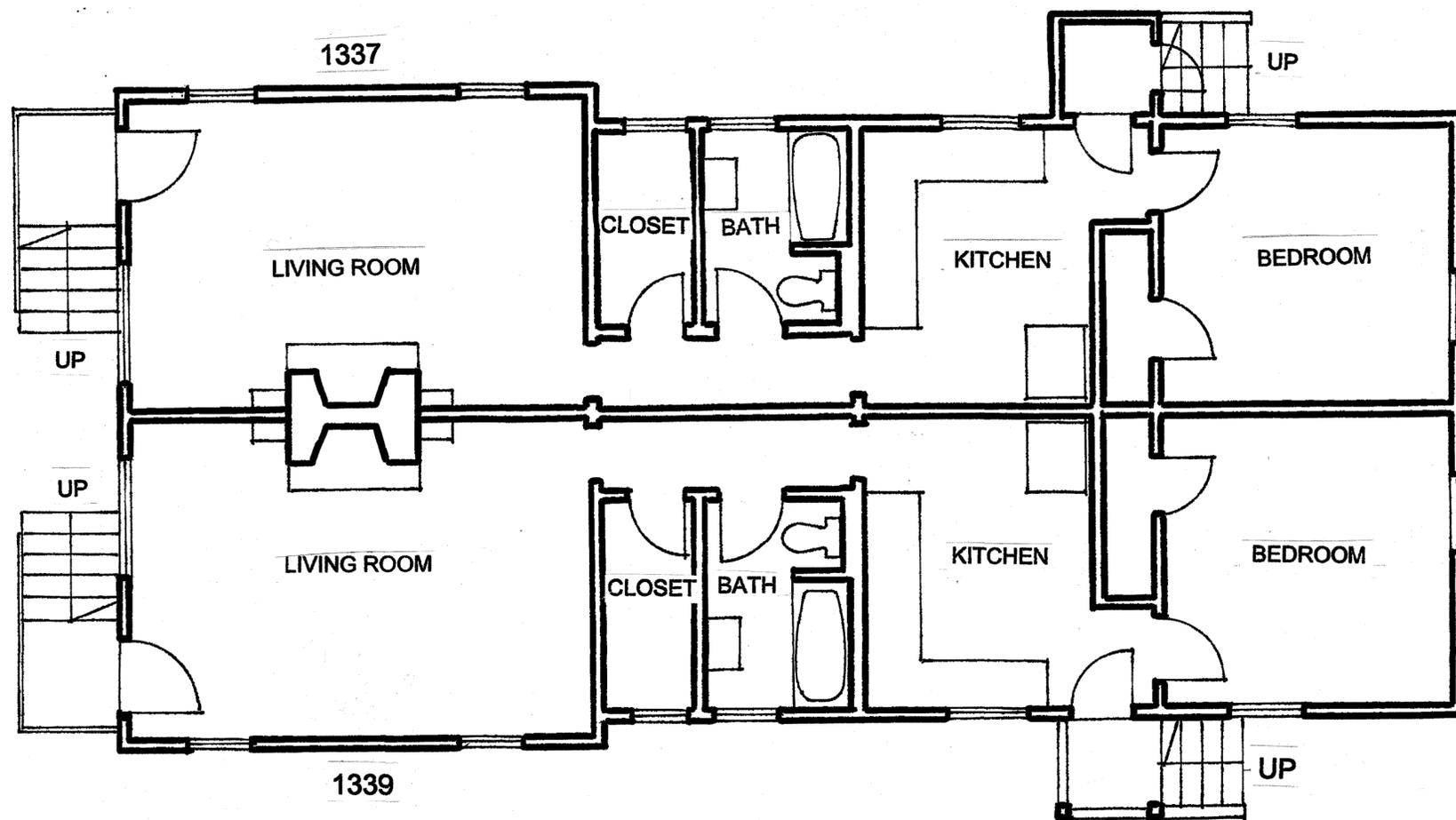


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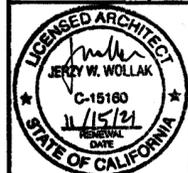
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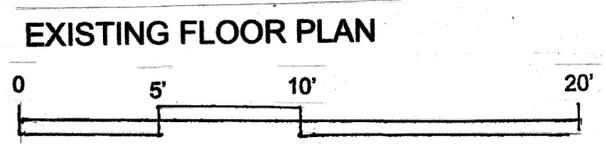
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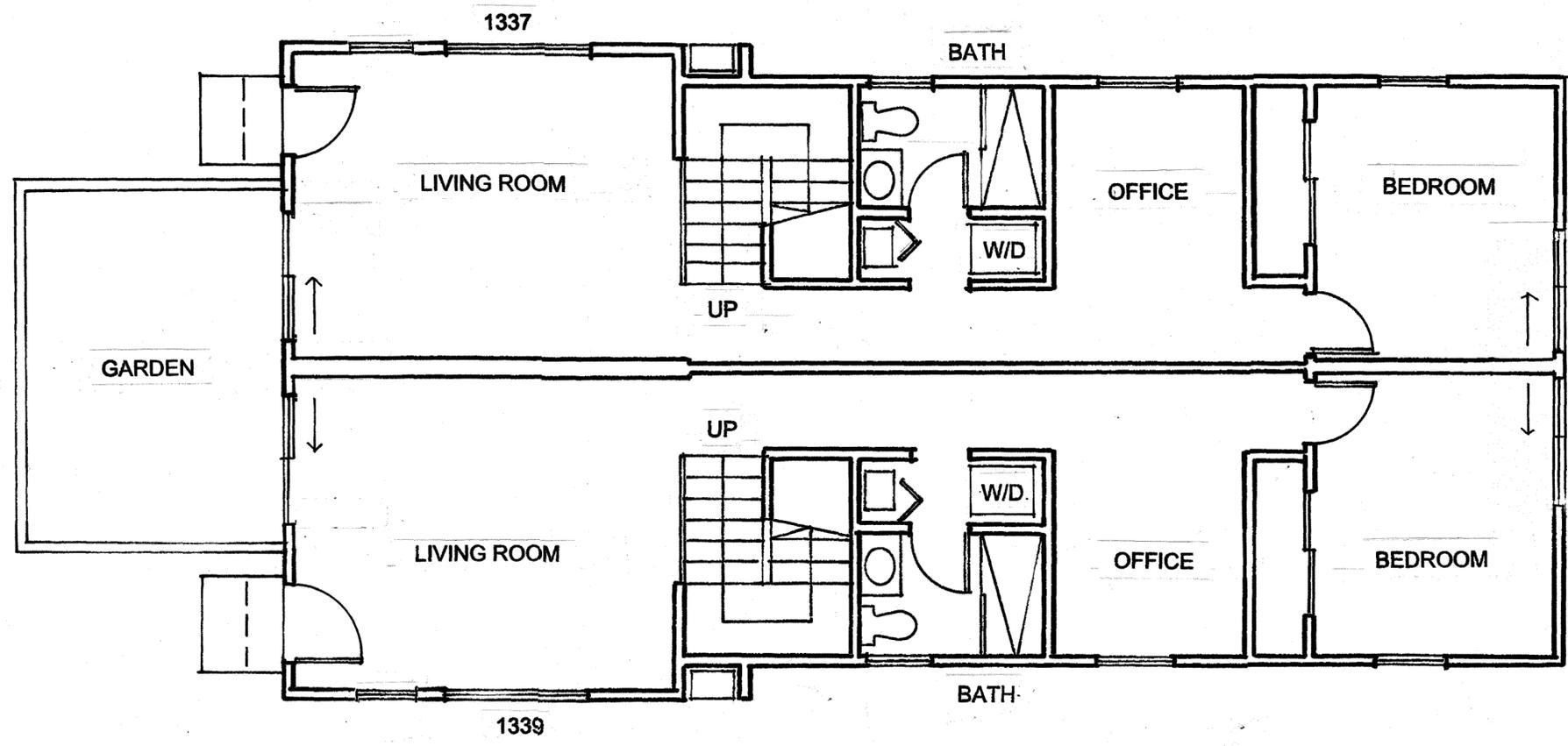


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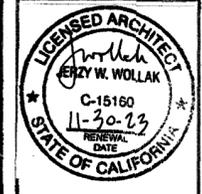
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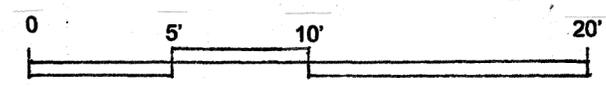


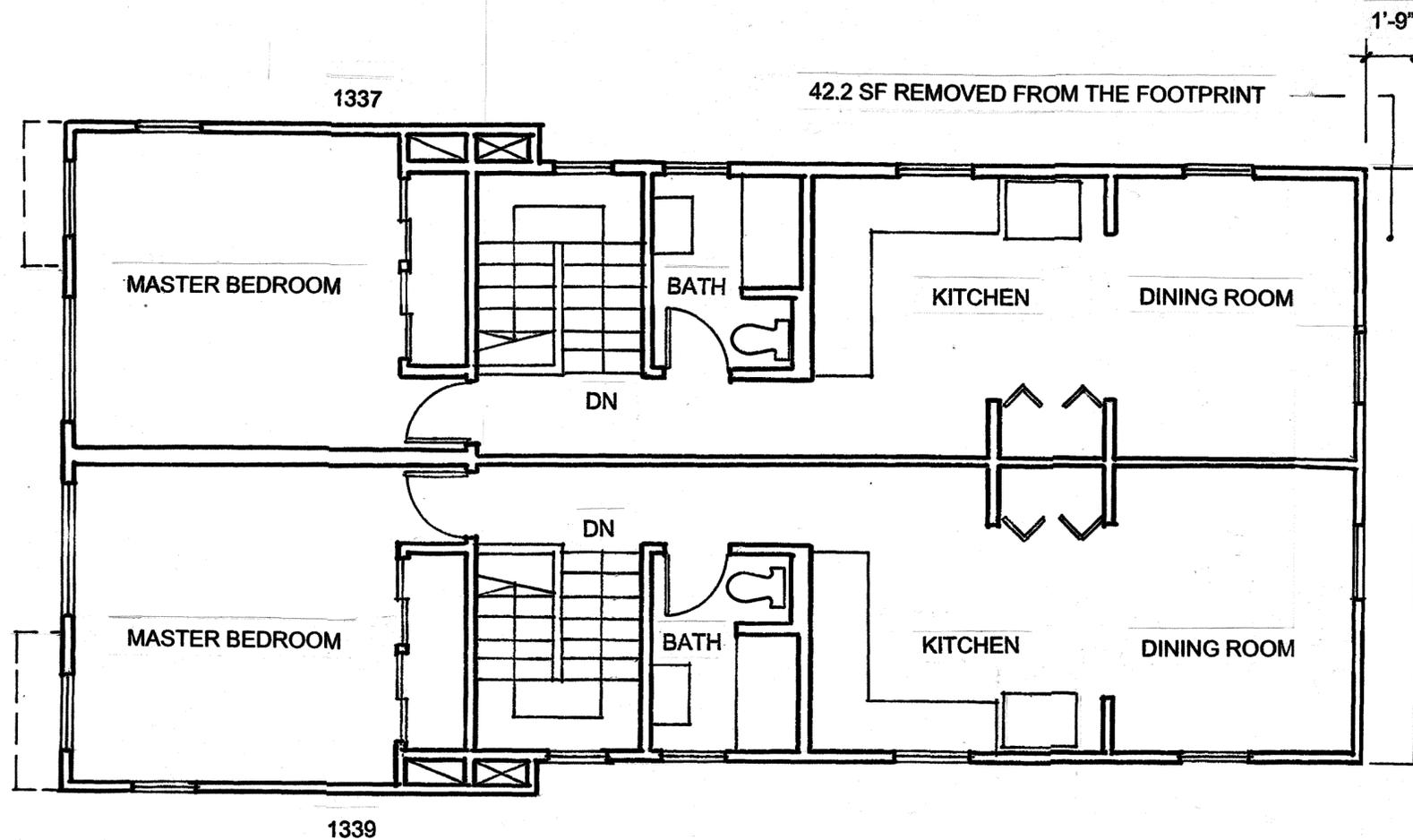
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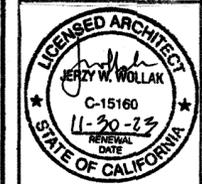
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PROPOSED 1ST FLOOR PLAN





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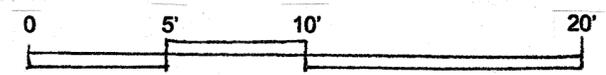


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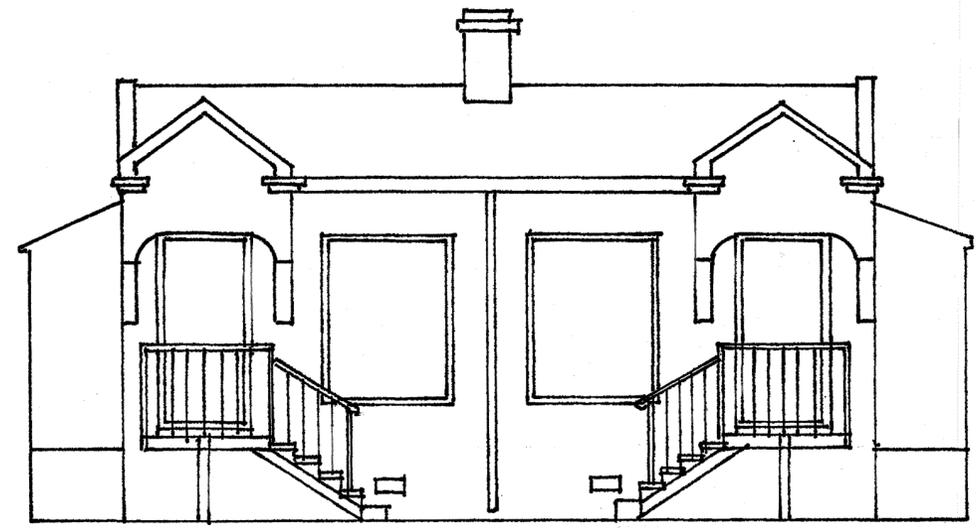
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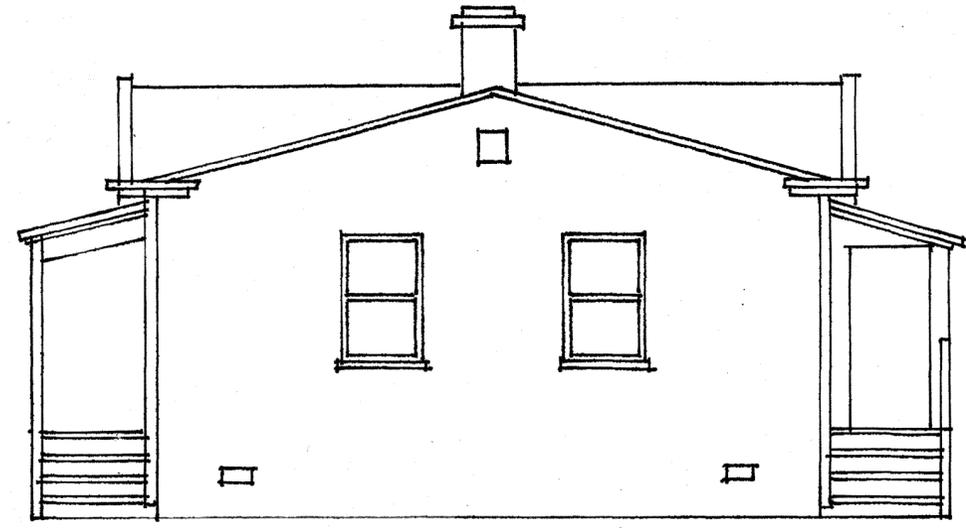
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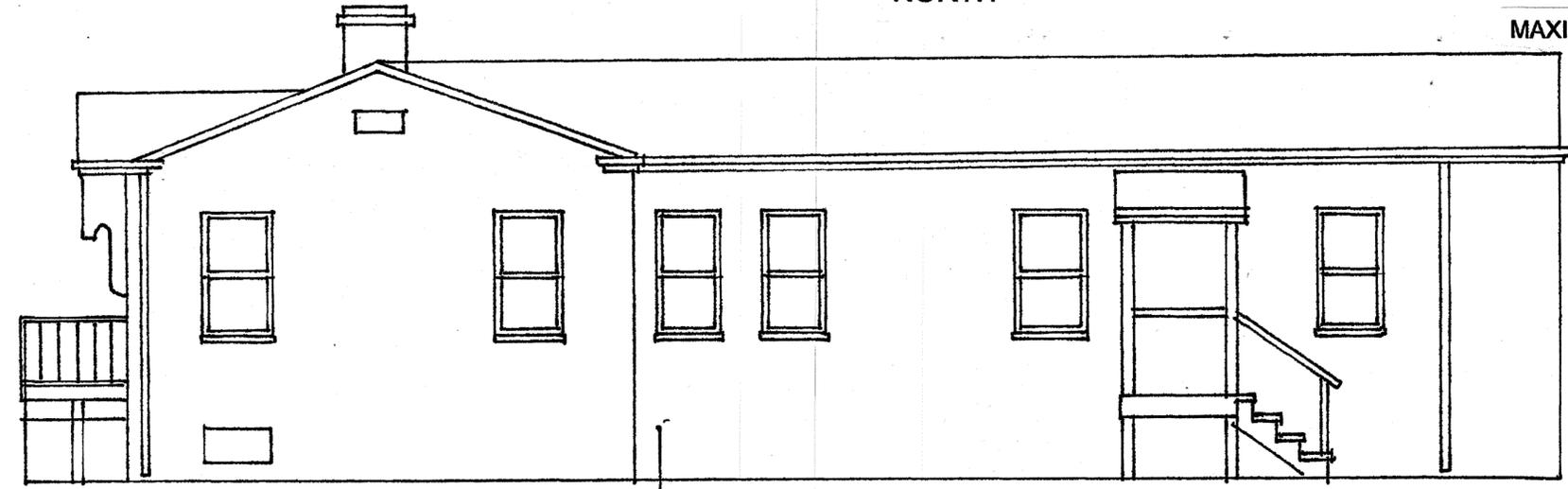
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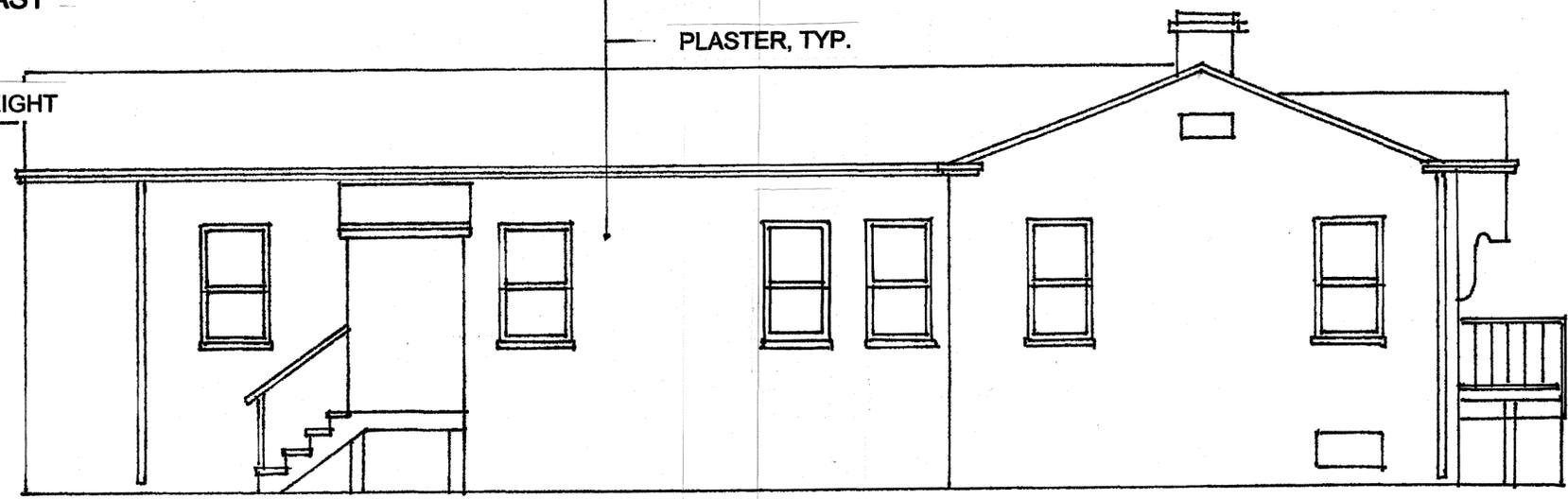
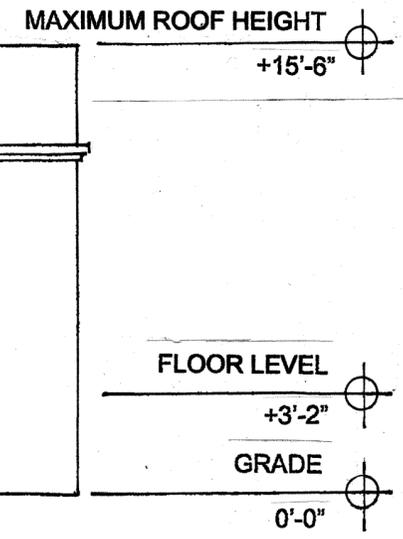
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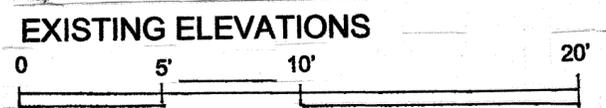
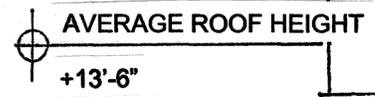
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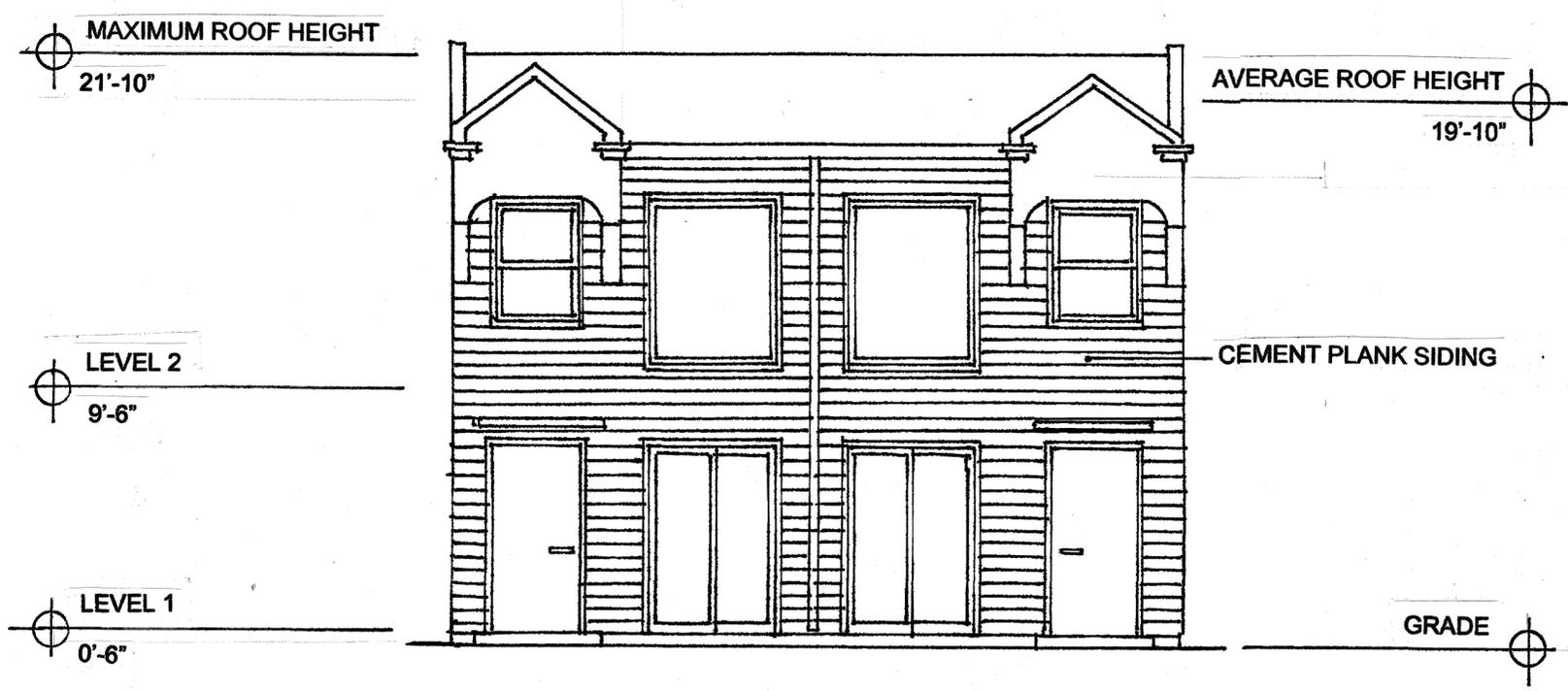
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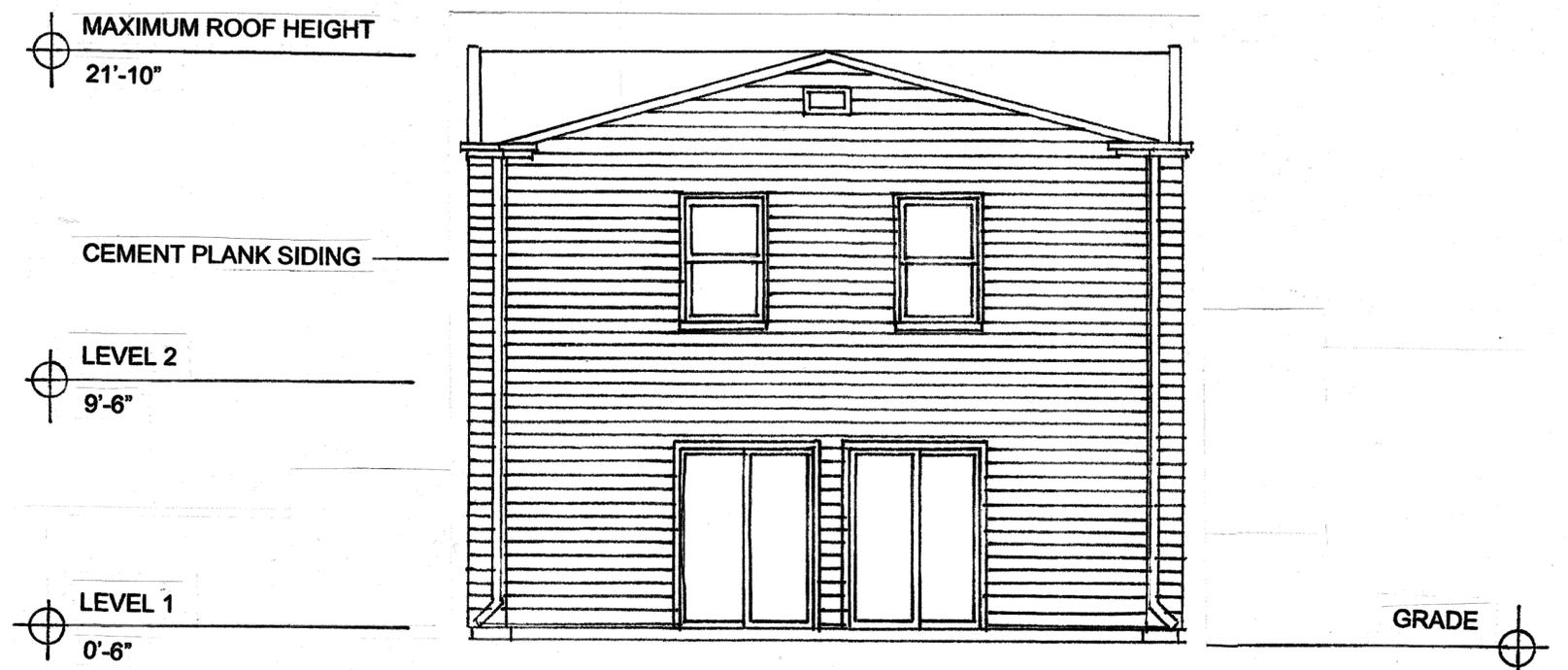
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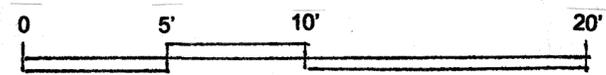
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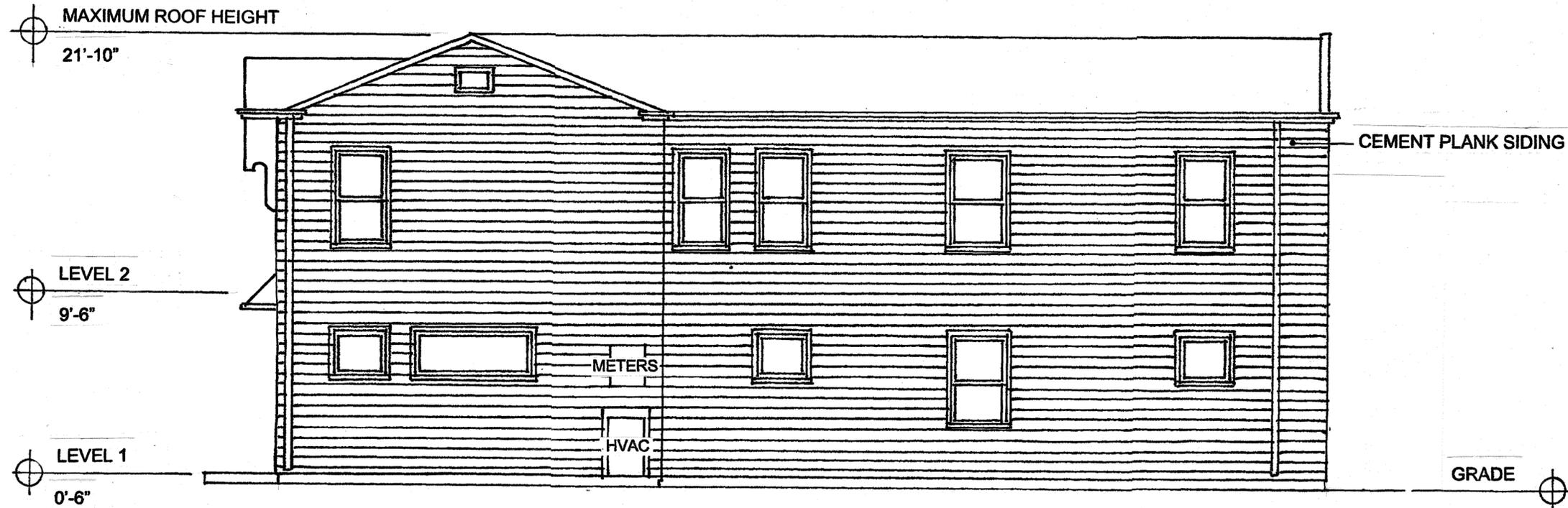


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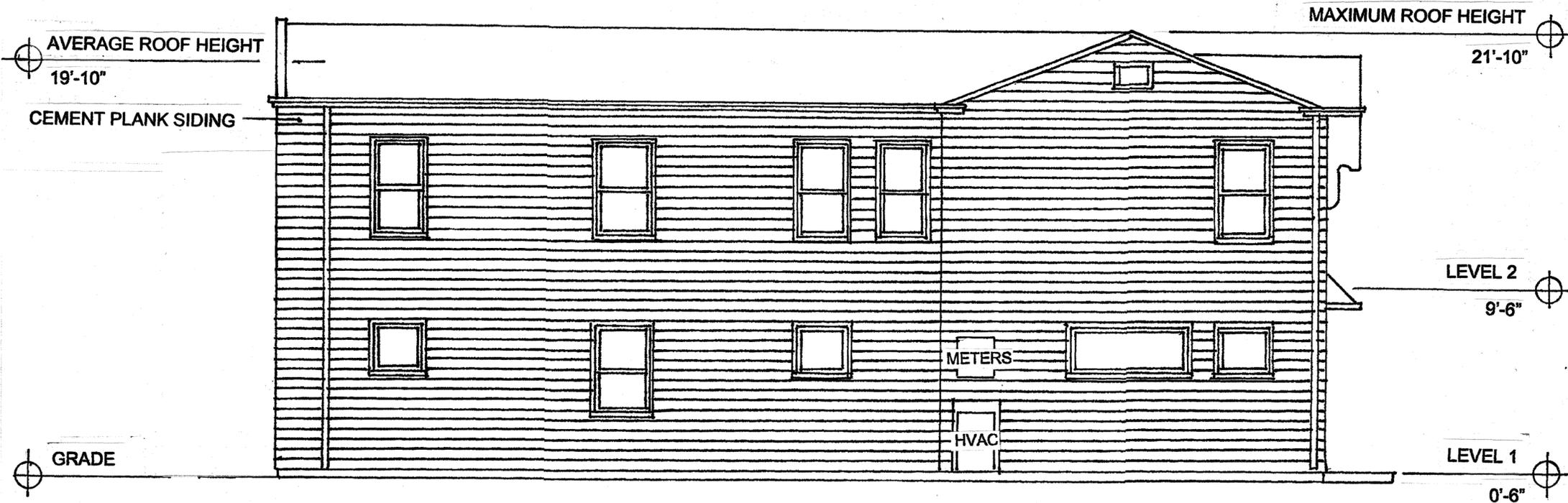


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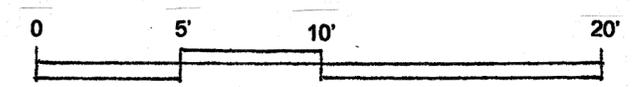


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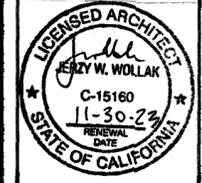


WEST

PROPOSED ELEVATIONS



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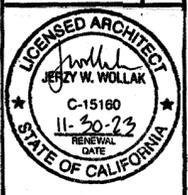


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 BERKELEY CA

JERZY WOLLAK
 ARCHITECT
 CA LIC. 15160
 3768 GROVE STREET
 SONOMA CA 95476
 TEL. 415-845-4885

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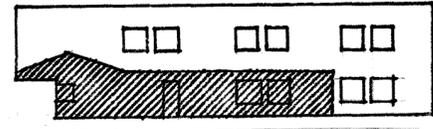
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REVISION 2 4/14/2022	



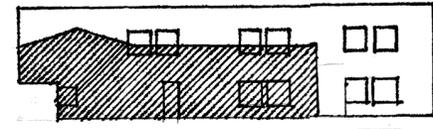
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 ARCHITECT
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 3788 GROVE STREET
 SONOMA CA 95476
 TEL. 415-846-4685

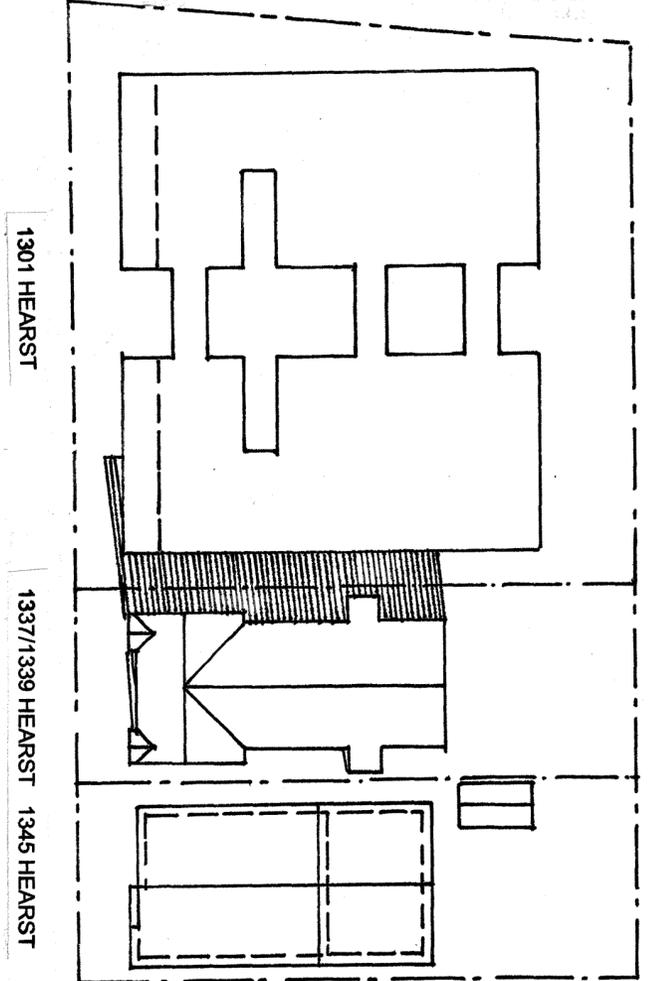
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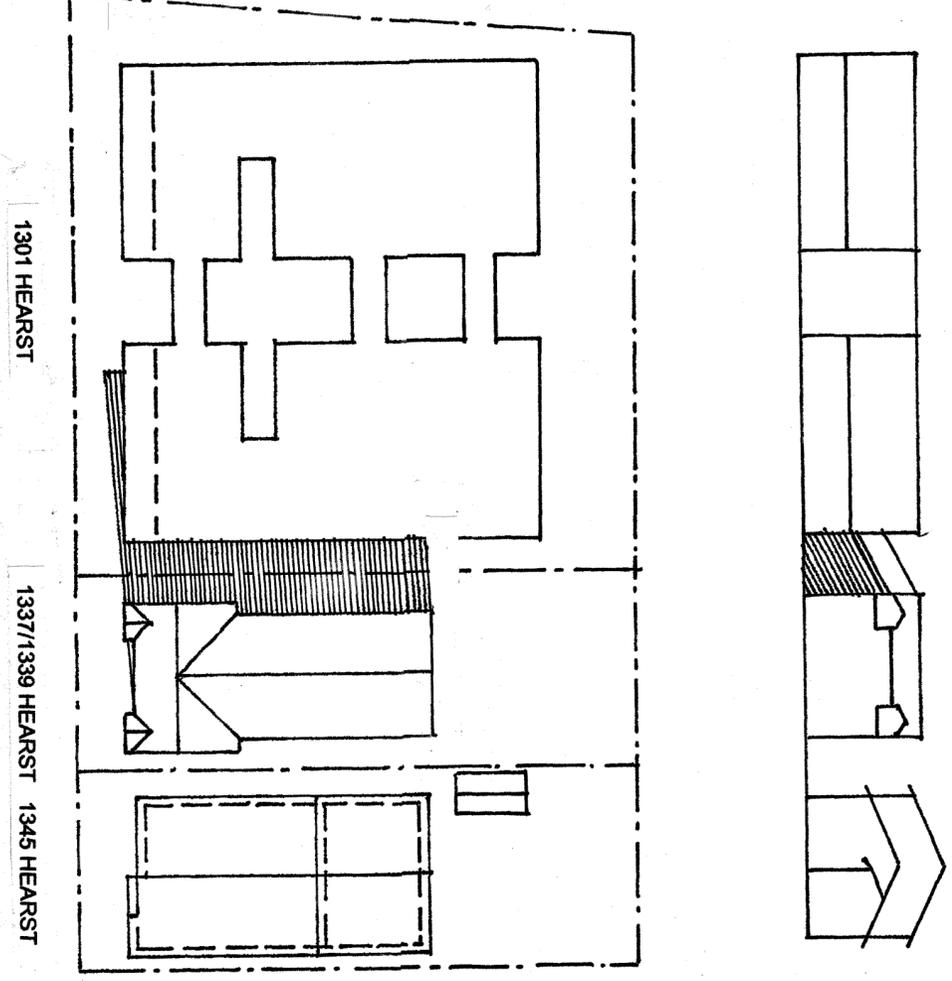
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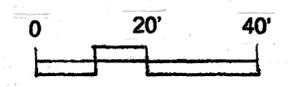
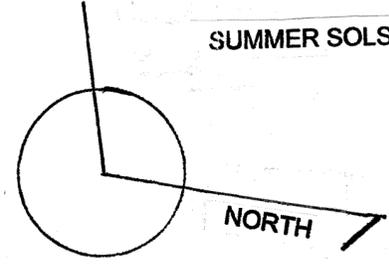
1301 HEARST- EAST ELEVATION



SUMMER SOLSTICE SUNRISE + 2 HRS. - EXISTING



SUMMER SOLSTICE SUNRISE + 2 HRS. - PROPOSED



SHADOW STUDY

ALL BUILDINGS BEING SHADOWED BY THE PROPOSED PROJECT ARE SHOWN ON THE DIAGRAMS, SHADOWS CAST BY THE ADJACENT BUILDINGS ARE NOT

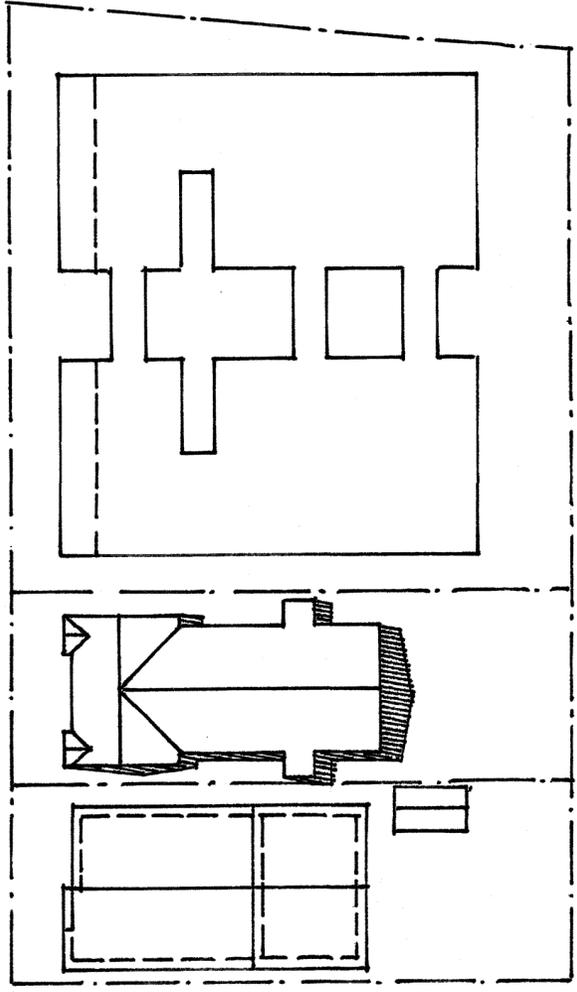
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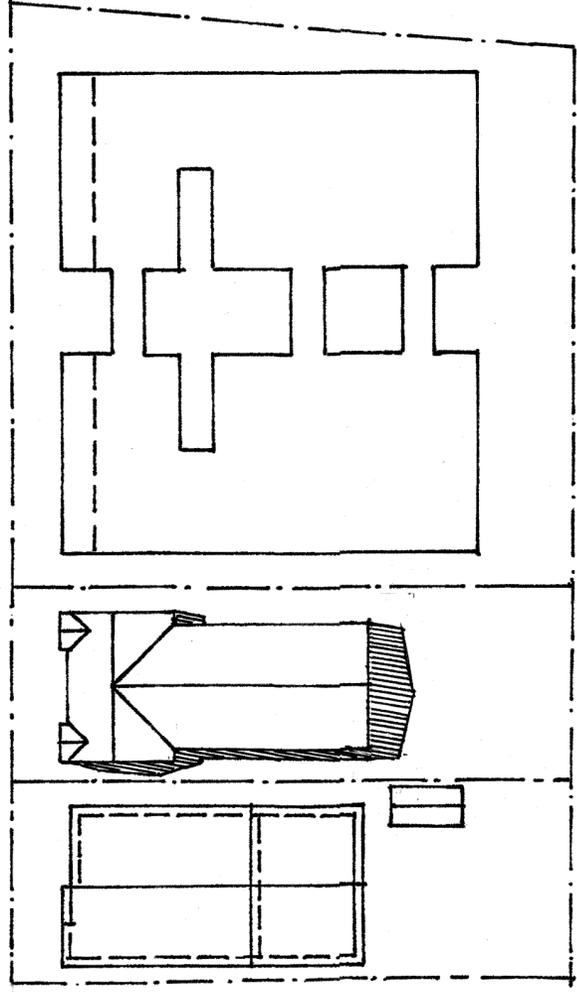
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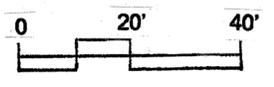
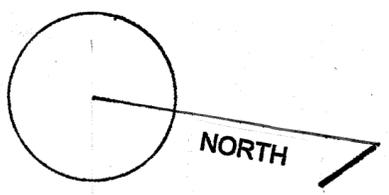
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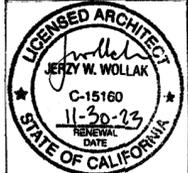
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SHADOW STUDY

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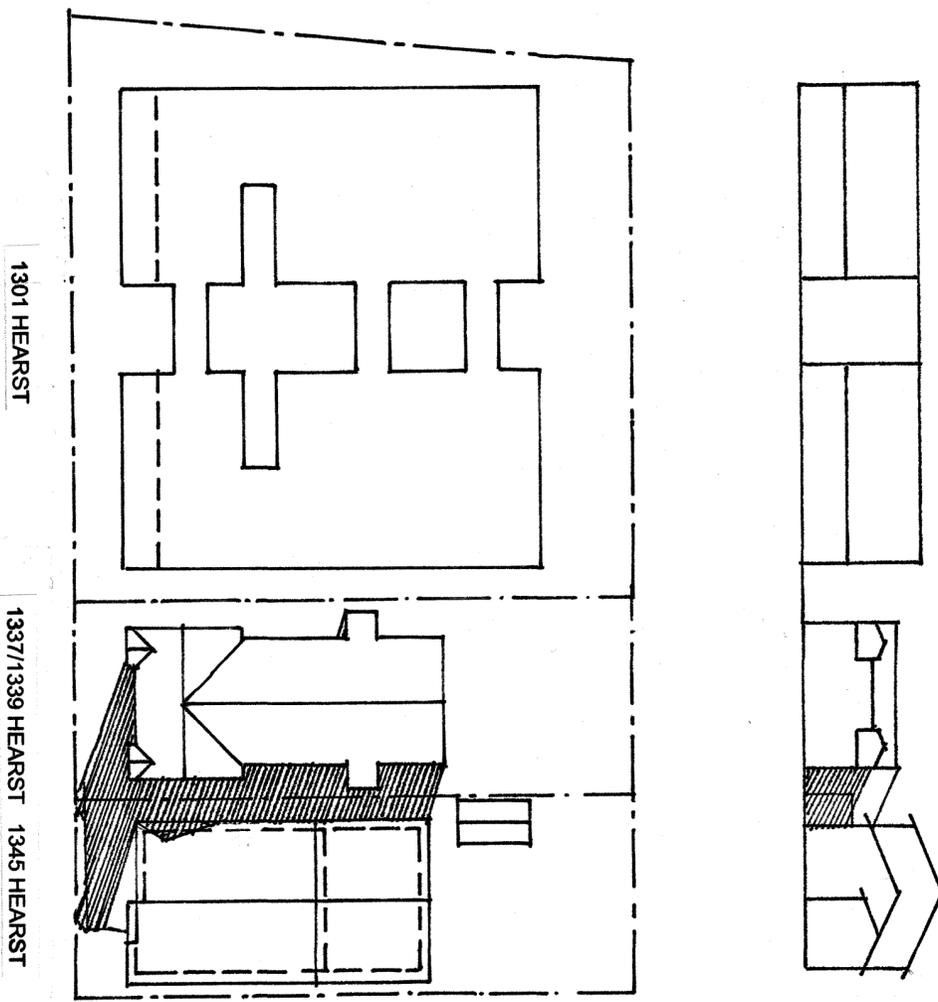
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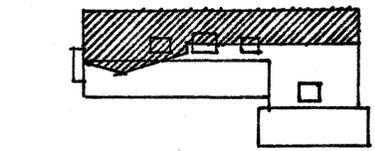
1337/1339 HEARST AVENUE
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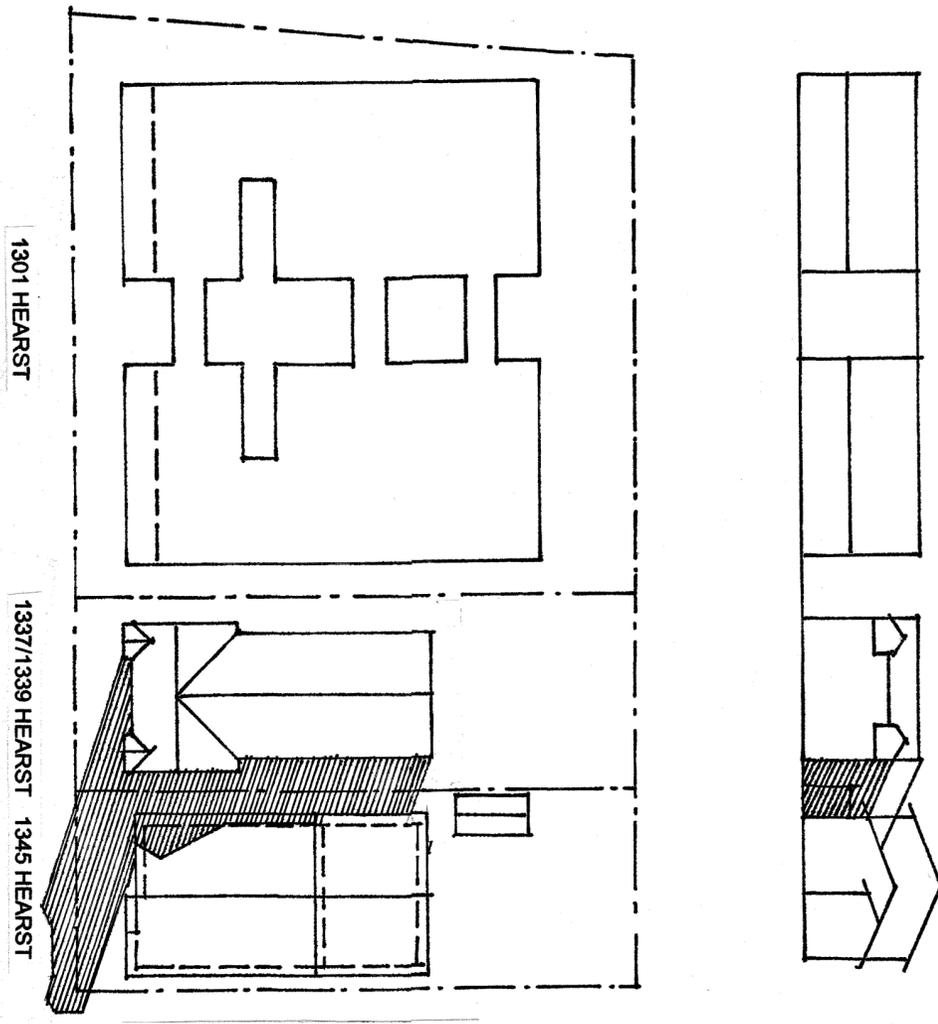
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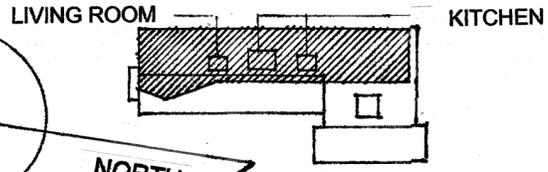
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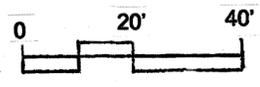
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1345 HEARST WEST ELEVATION

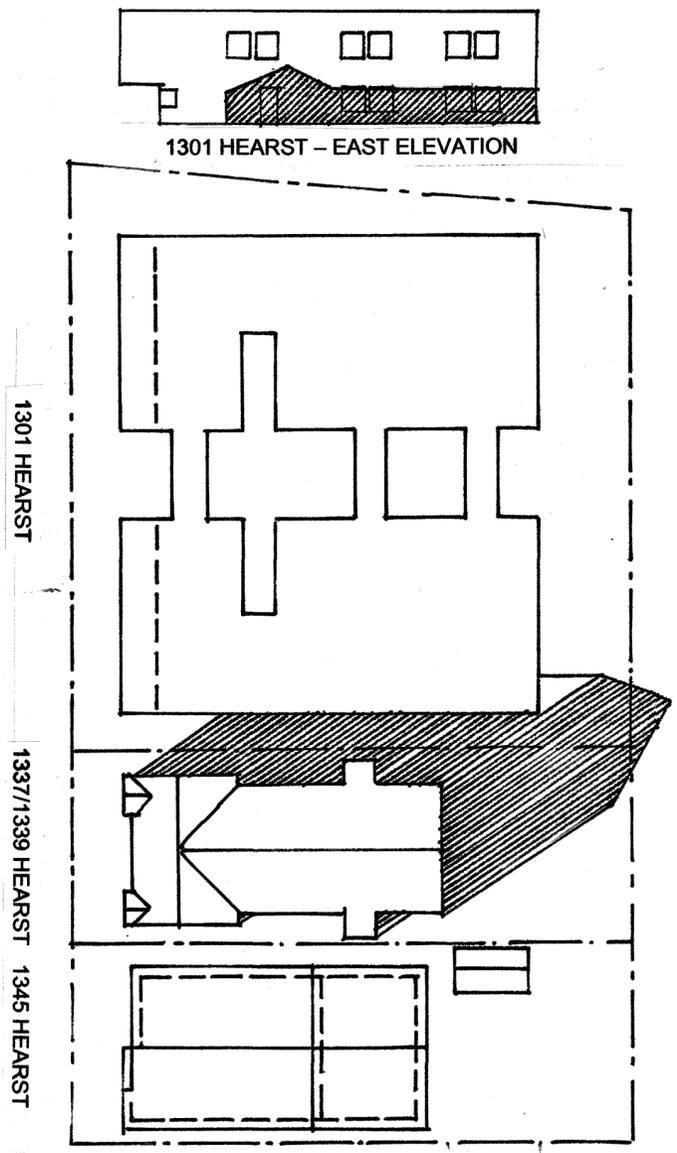


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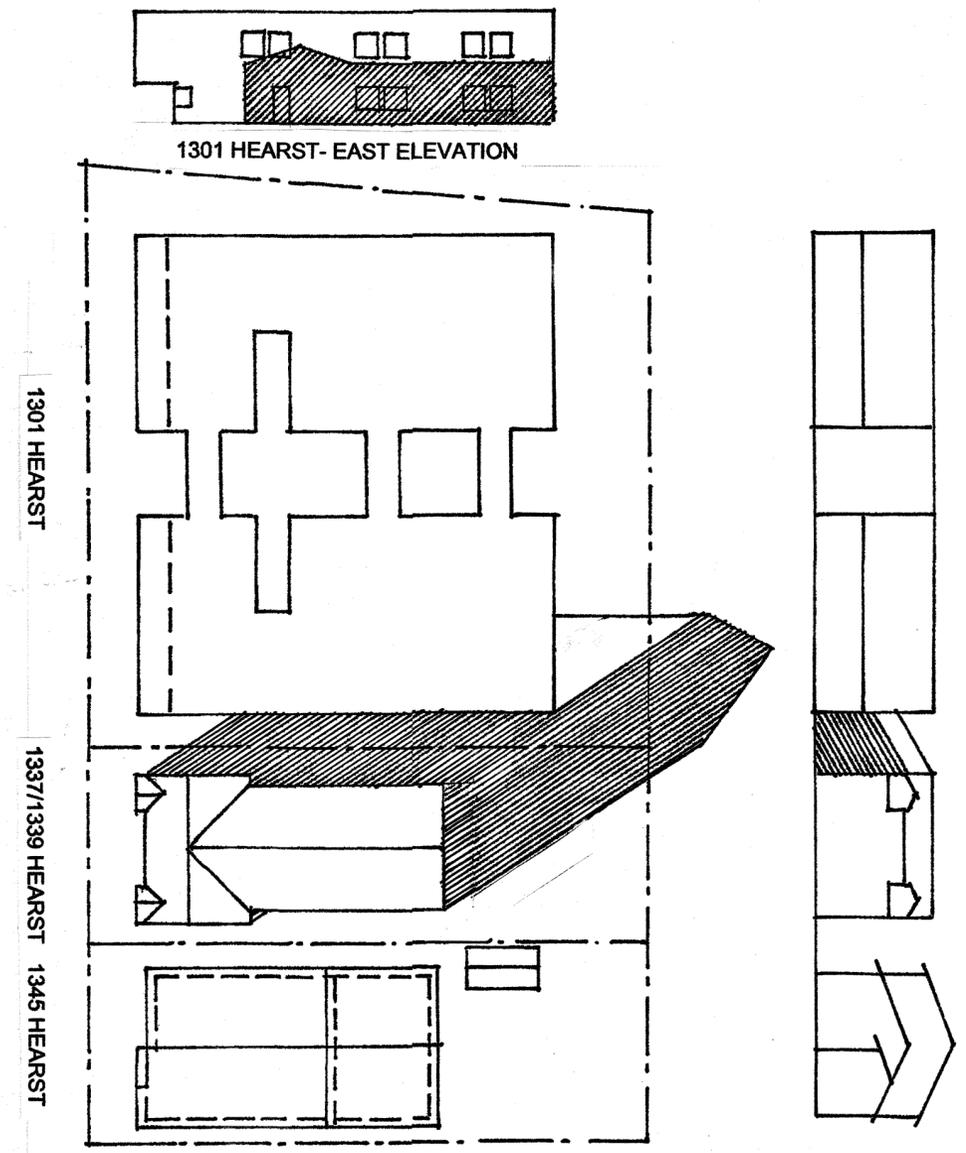


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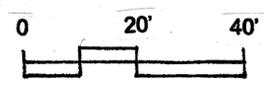
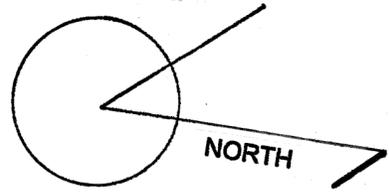
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WINTER SOLSTICE SUNRISE + 2 HRS. - EXISTING



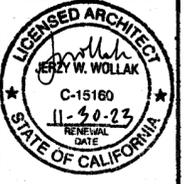
WINTER SOLSTICE SUNRISE + 2 HRS. - PROPOSED



SHADOW STUDY

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 BERKELEY CA

JERZY WOLLAK
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 CA LIC. 15160
 3788 GROVE STREET
 SONOMA CA 95478
 TEL. 415-845-4886

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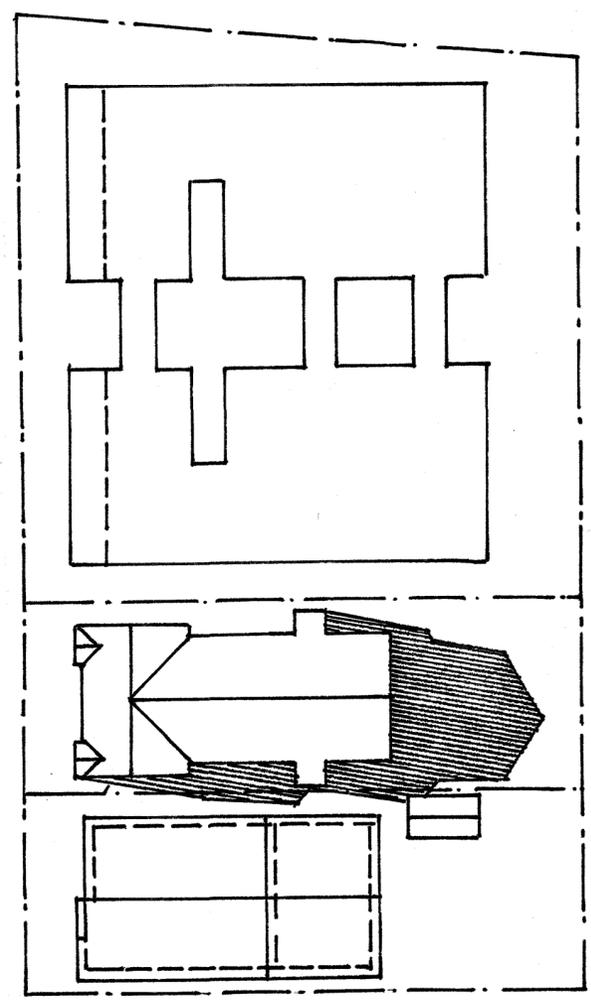
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ZONING APPLICATION	
REVISION 2 4/14/2022	



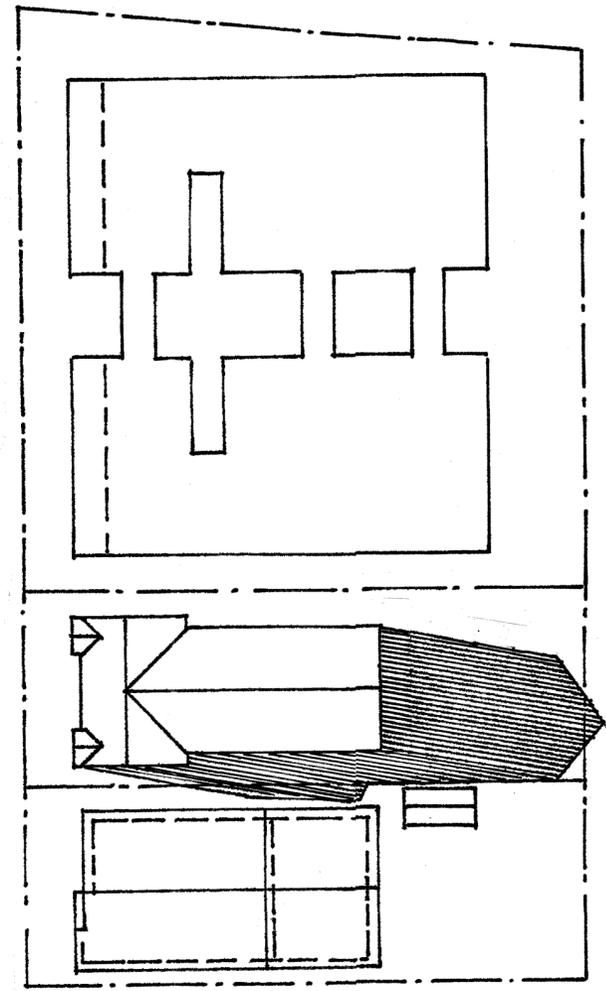
1337/1339 HEARST AVENUE
 BERKELEY CA

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 3788 GROVE STREET
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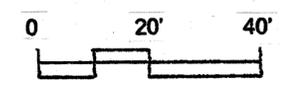
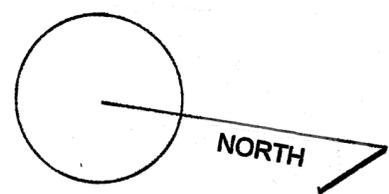
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WINTER SOLSTICE NOON - EXISTING



WINTER SOLSTICE NOON - PROPOSED



SHADOW STUDY

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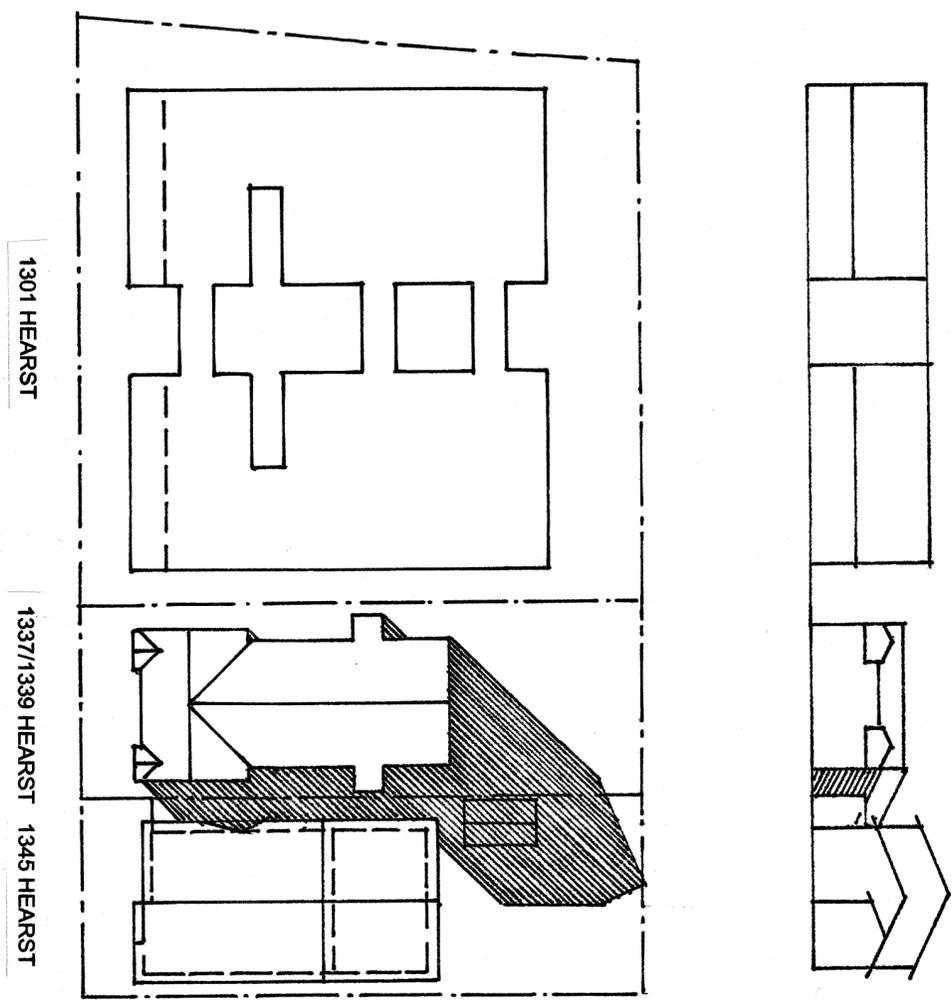
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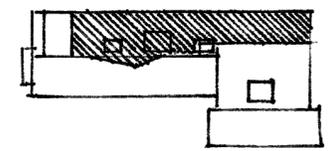
1337/1339 HEARST AVENUE
 BERKELEY CA

JERZY WOLLAK
 ARCHITECT
 CA LIC. 15160
 3708 GROVE STREET
 SONOMA CA 95476
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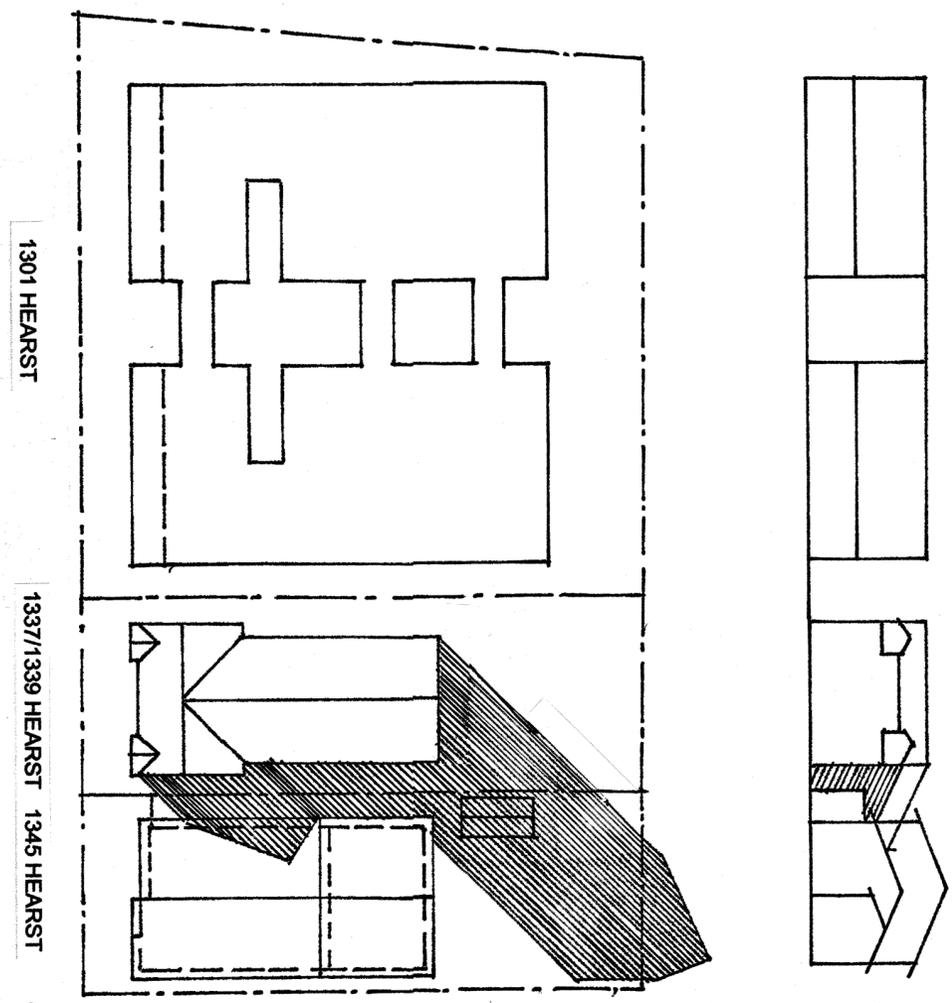


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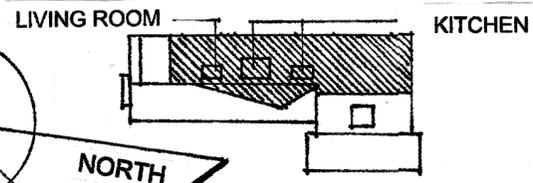


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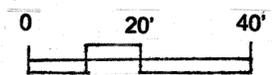
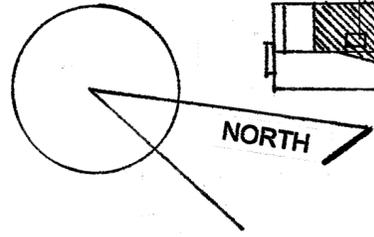
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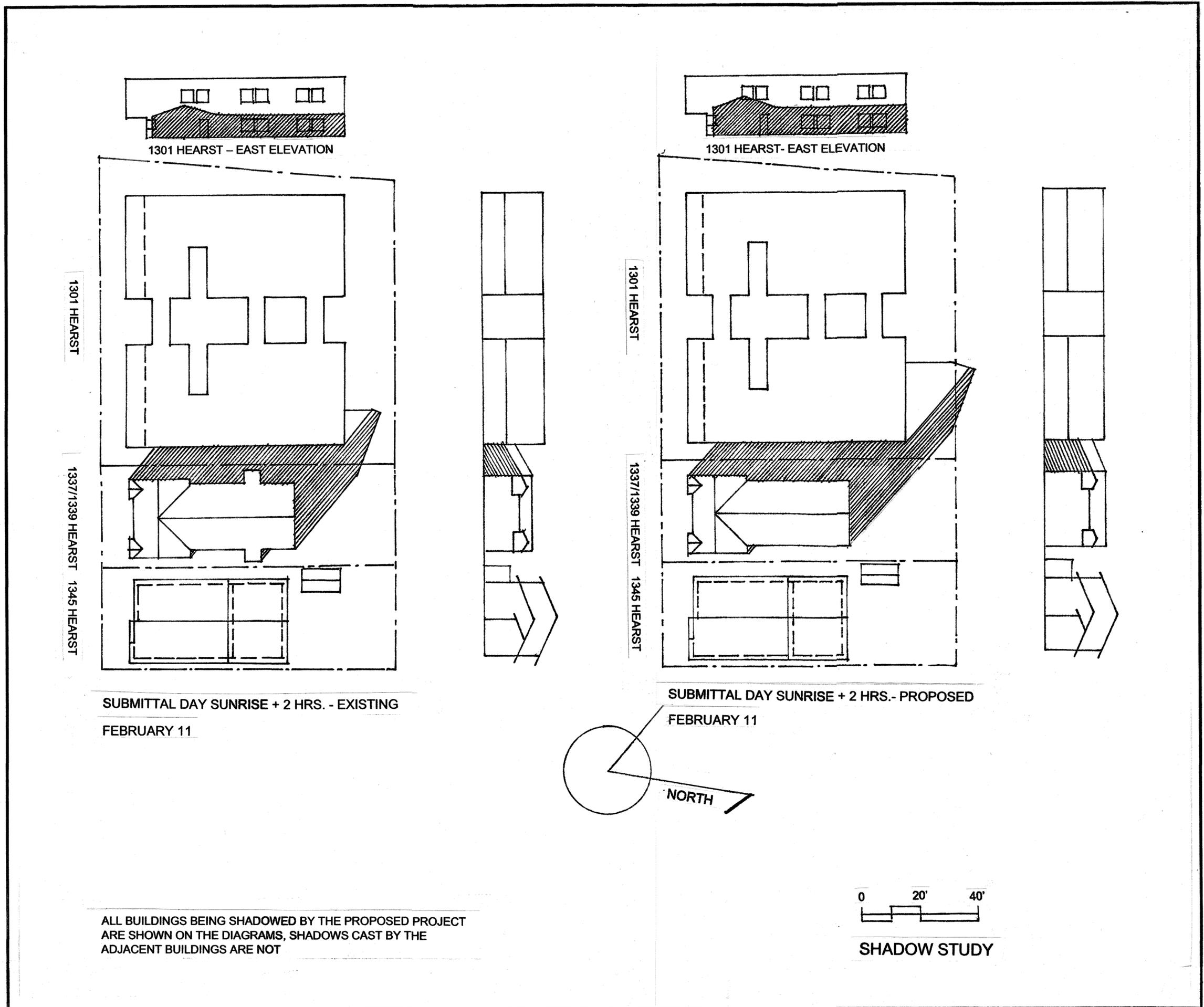
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WINTER SOLSTICE SUNSET - 2 HRS. - PROPOSED



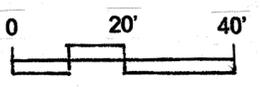
SHADOW STUDY



SUBMITTAL DAY SUNRISE + 2 HRS. - EXISTING
 FEBRUARY 11

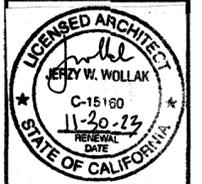
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 FEBRUARY 11

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SHADOW STUDY

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1337/1339 HEARST AVENUE
 BERKELEY CA

JERZY WOLLAK
 ARCHITECT
 CA LIC. 15160
 3768 GROVE STREET
 SONOMA CA 95476
 TEL. 415-845-4885

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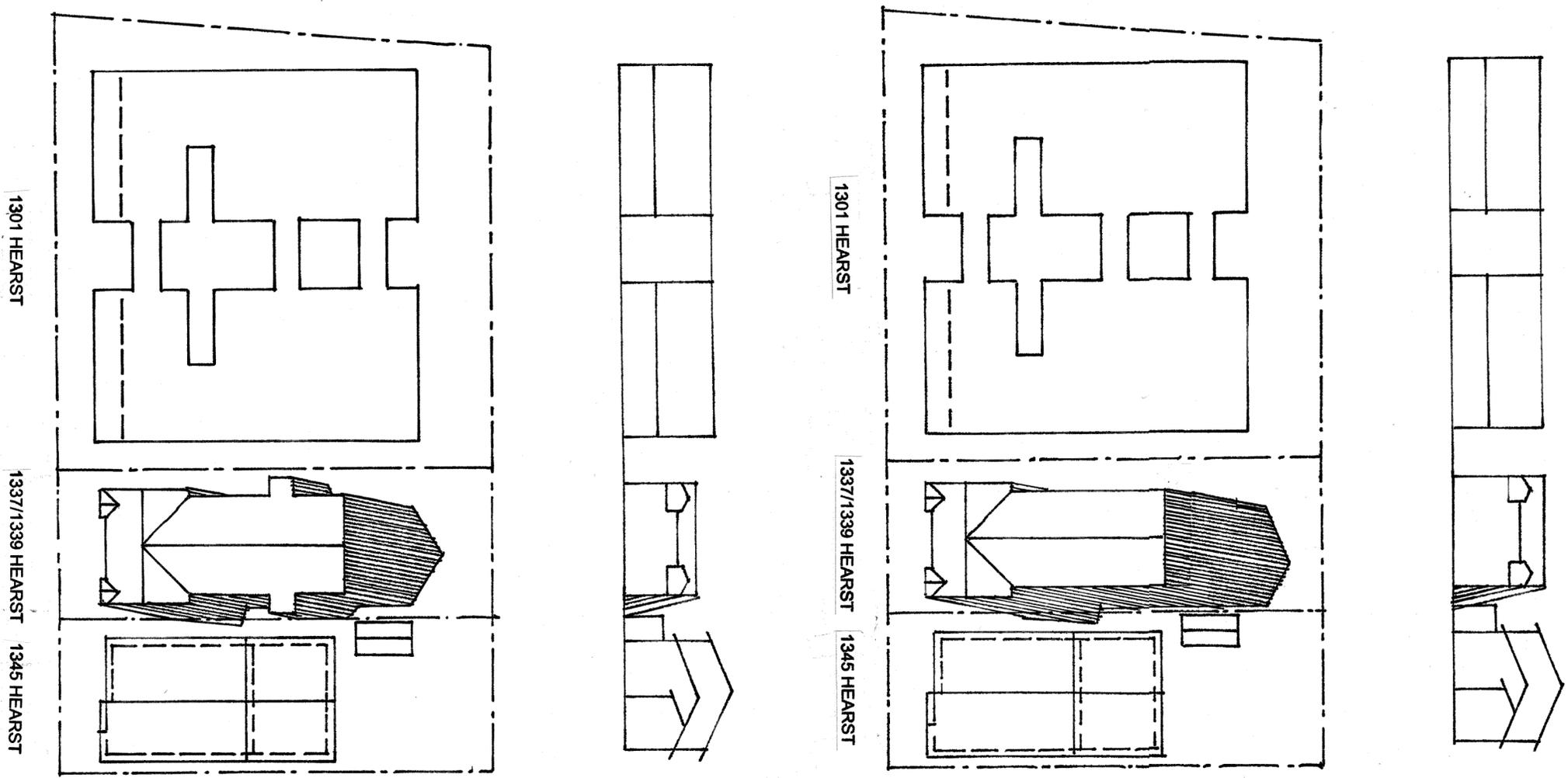
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1337/1339 HEARST AVENUE
 BERKELEY CA

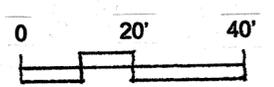
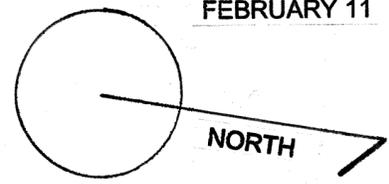
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 CA LIC. 15160
 3768 GROVE STREET
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 FEBRUARY 11

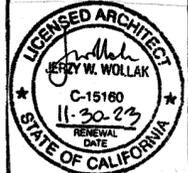
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 FEBRUARY 11



SHADOW STUDY

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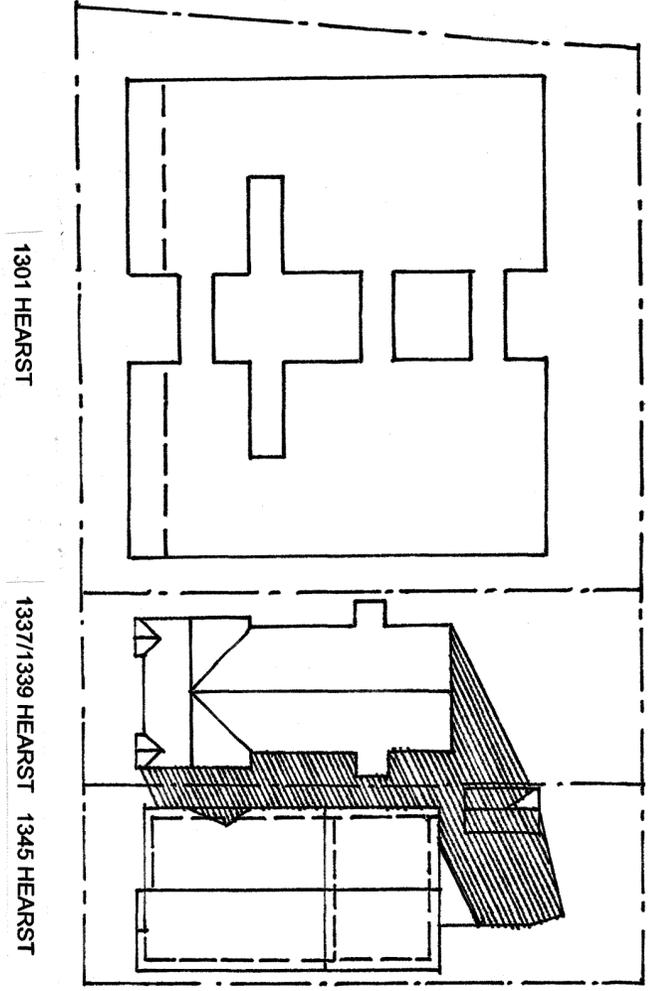
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ZONING APPLICATION	
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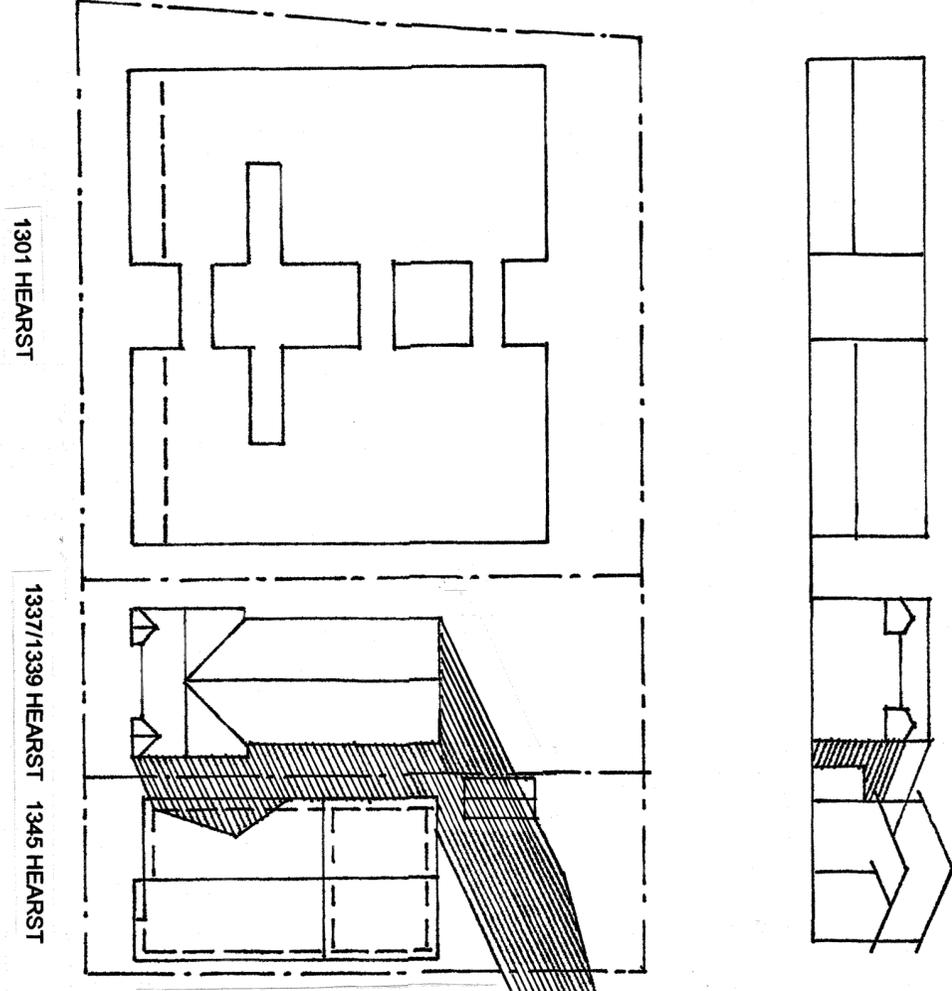
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1345 HEARST WEST ELEVATION

SUBMITTAL DAY SUNSET – 2 HRS. - EXISTING
 FEBRUARY 11

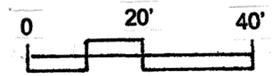
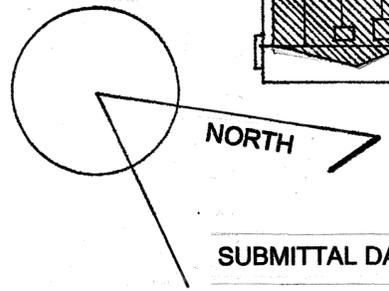
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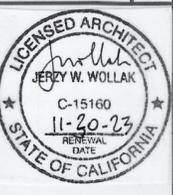
LIVING ROOM KITCHEN

SUBMITTAL DAY SUNSET – 2 HRS. - PROPOSED
 FEBRUARY 11



SHADOW STUDY

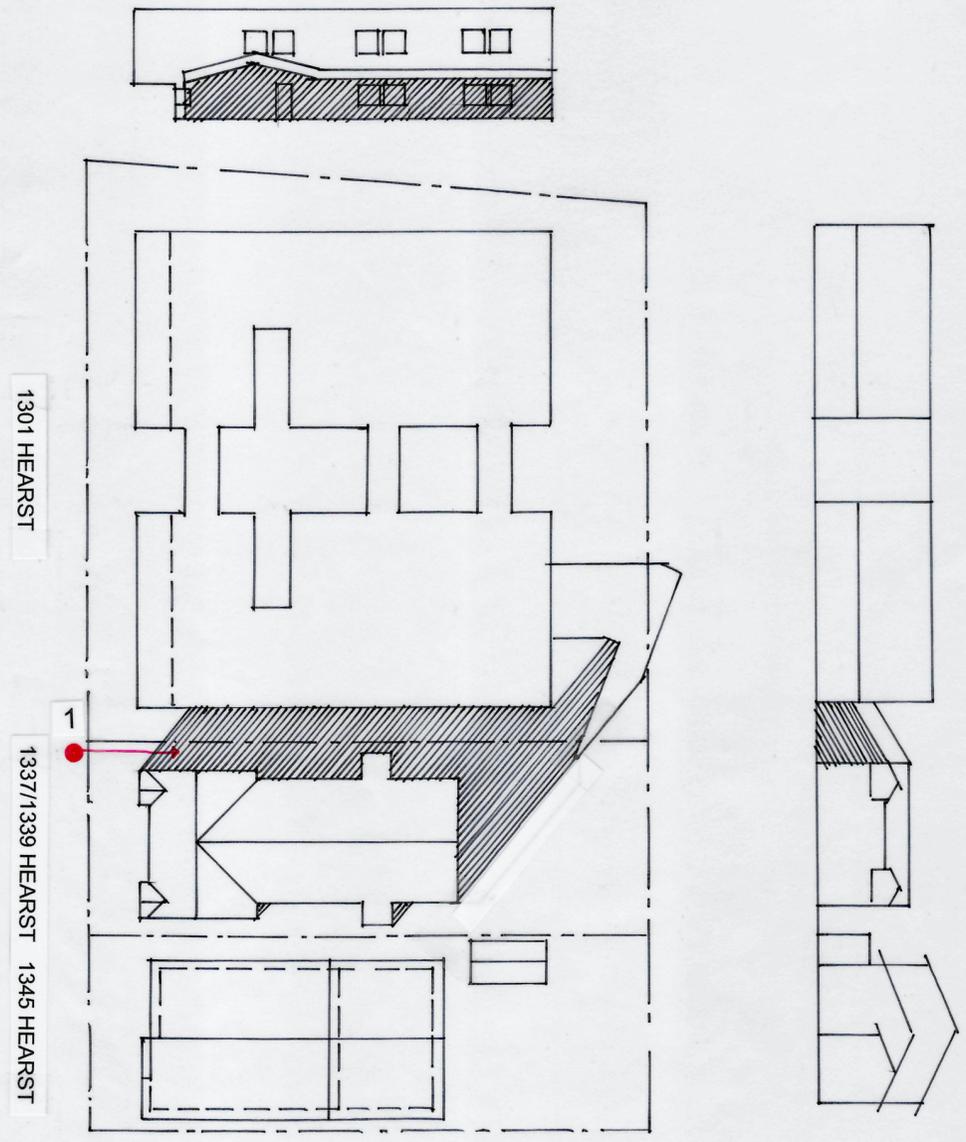
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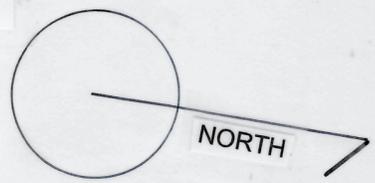
1337/1339 HEARST AVENUE
 BERKELEY CA

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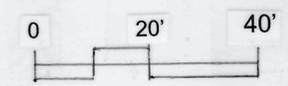
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 FEBRUARY 11

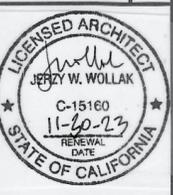


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SHADOW STUDY

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 TEL. 415-845-4685

Date 2/11/2022

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Drawn

Job

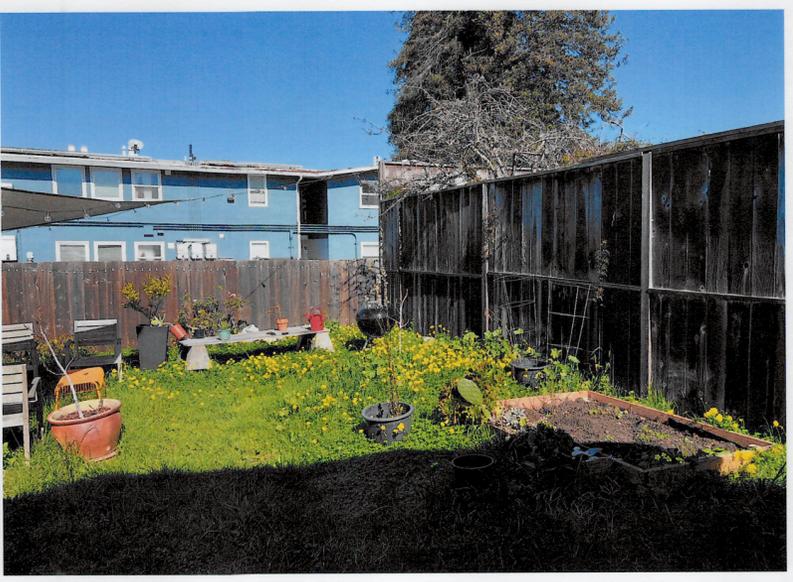
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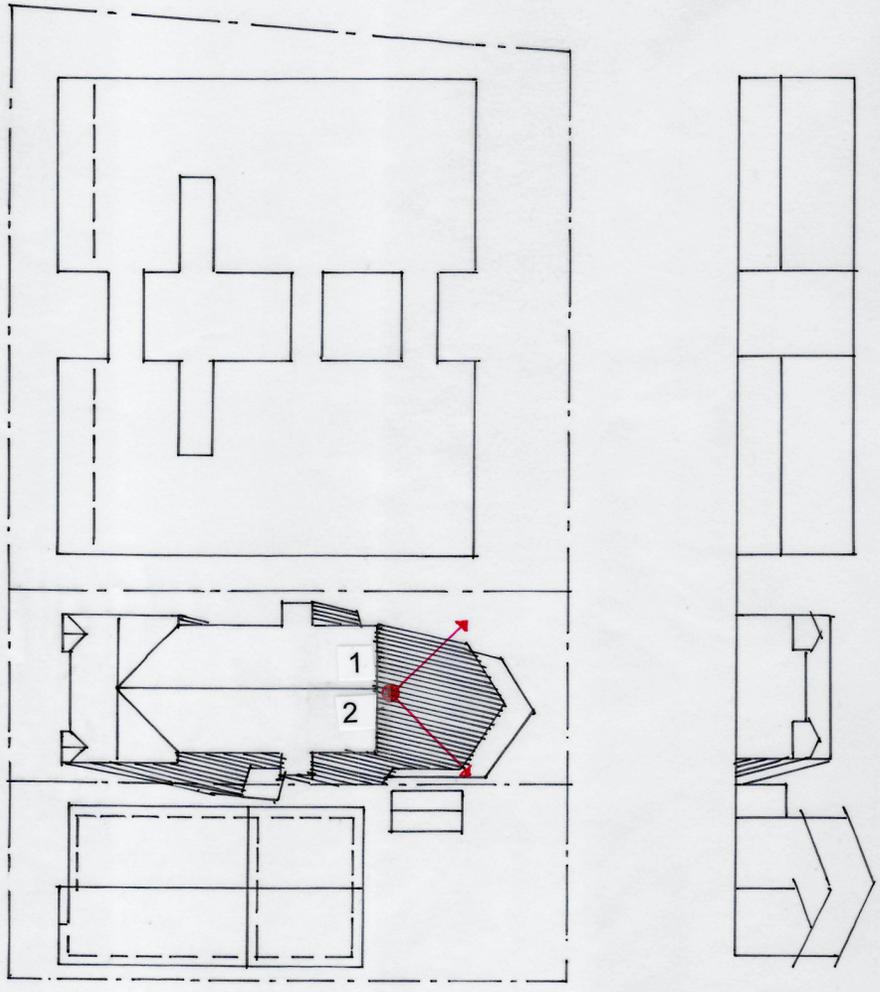
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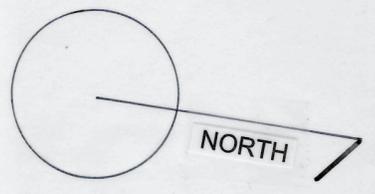
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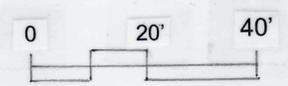
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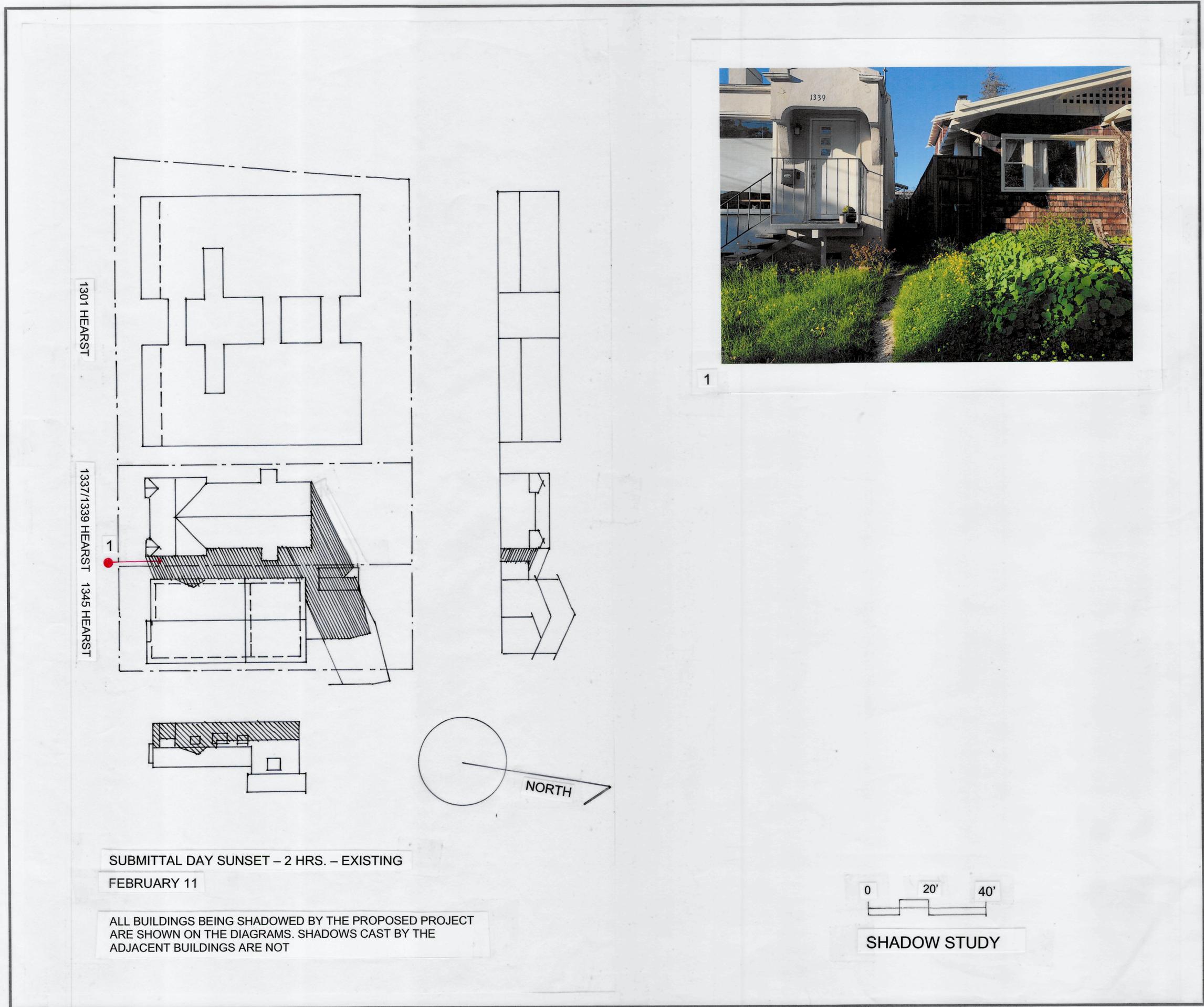
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SHADOW STUDY

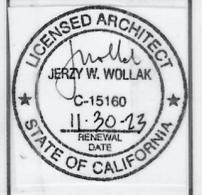


SUBMITTAL DAY SUNSET – 2 HRS. – EXISTING
 FEBRUARY 11

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Date	2/11/2022
Scale	1"=20'
Drawn	
Job	
Sheet	AS4.3
Of	Sheets

ATTACHMENT 1

FINDINGS AND CONDITIONS

FEBRUARY 23, 2023

1337-1339 Hearst Avenue

Use Permit #ZP2021-0160 to construct a major residential addition by lifting the existing duplex at 1337-39 Hearst Avenue on a lot that exceeds residential density.

PERMITS REQUIRED

- Use Permit (UP) under Berkeley Municipal Code (BMC) Section 23.324.050(D)(3a) to construct an addition on a property that is non-conforming to the allowable density
- Administrative Use Permit (AUP) under BMC Section 23.202.030(A)(1) to construct a major residential addition
- AUP under BMC Section 23.324.050(D)(2) to vertically extend a non-conforming front yard
- AUP under BMC Section 23.324.050(D)(2) to vertically extend non-conforming side yards
- AUP under BMC Section 23.324.080(D)(2) for a residential addition over 14 feet in height

I. CEQA FINDINGS

- II. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code Section 21000, et seq. and California Code of Regulations, Section 15000, et seq.) pursuant to Section 15301 of the CEQA Guidelines (“Existing Facilities”).
- III. 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.

IV. FINDINGS FOR APPROVAL

1. 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 enlarge the existing duplex by adding a second story to the building;
 - B. The project is consistent with all R-2 objective development standards;
 - C. Because impacts to neighboring residences due to the additional story 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.
-
- 2. Pursuant to BMC Section 23.324.050(D)(2), the alterations within the front and side nonconforming setback are permissible because the dwelling use is conforming and the second story addition will not further reduce the existing non-conforming setback and will not exceed the height limit.
 - 3. Pursuant to BMC Section 23.324.050(D)(3a) additions and/or enlargements of lawful non-conforming structures that are non-conforming by reason of violation of the maximum allowable density to be permitted with a Use Permit if the addition does not increase or exacerbate the density or exceed the height limit. The proposed project will add a second-story above the existing duplex, within the exiting footprint, within the allowable height and would not increase density.
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V. 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.

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.

VI. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

Pursuant to BMC 23.406.040.E, the Zoning Adjustments Board attaches the following additional conditions to this Permit:

Prior to Submittal of Any Building Permit:

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

Project Liaison _____
Name Phone #

Prior to Issuance of Any Building & Safety Permit (Demolition or Construction)

11. Tenant Relocation. The property owner shall follow all requirements in BMC Chapter 13.84 for the relocation of tenants at 1337 Hearst Avenue, including the notice of temporary relocation in BMC Chapter 13.84.040.B, the notice of complete repairs in BMC Chapter 13.84.040.C, and move-back option notices in BMC Chapter 13.84.090. Prior to submittal of any building permit application, the property owner shall submit to the Building Official a written relocation plan signed by all existing tenants acknowledging receipt, to be kept on file with Health, Housing and Community Services stating whether the provisions of BMC Chapter 13.84 will be strictly adhered to or if another settlement has been agreed upon, in accordance with 13.84.070.I.

12. Construction and Demolition Diversion. Applicant shall submit a [Construction Waste Management Plan](#) that meets the requirements of BMC Chapter 19.37 including 100% diversion of asphalt, concrete, excavated soil and land-clearing debris and a minimum of 65% diversion of other nonhazardous construction and demolition waste.

13. Toxics. The applicant shall contact the Toxics Management Division (TMD) at 1947 Center Street or (510) 981-7470 to determine which of the following documents are required and timing for their submittal:

A. Environmental Site Assessments:

- 1) Phase I & Phase II Environmental Site Assessments (latest ASTM 1527-13). A recent Phase I ESA (less than 2 years old*) shall be submitted to TMD for developments for:
 - All new commercial, industrial and mixed use developments and all large improvement projects.
 - All new residential buildings with 5 or more dwelling units located in the Environmental Management Area (or EMA).
 - EMA is available online at: http://www.cityofberkeley.info/uploadedFiles/IT/Level_3_-_General/ema.pdf
- 2) Phase II ESA is required to evaluate Recognized Environmental Conditions (REC) identified in the Phase I or other RECs identified by TMD staff. The TMD may require a third party toxicologist to review human or ecological health risks that may be identified. The applicant may apply to the appropriate state, regional or county cleanup agency to evaluate the risks.

- 3) If the Phase I is over 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

14. 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.

15. 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).
16. 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:

17. 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.
18. 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.
19. 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.

- 20. 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.
- 21. 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.

- 22. 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.
- 23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. Stormwater Requirements. The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:
 - A. The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.
 - B. Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.

- C. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.
 - D. Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be conducted prior to the issuance of a Building Permit.
 - E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.
 - F. All on-site storm drain inlets/catch basins must be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.
 - G. All loading areas must be designated to minimize "run-on" or runoff from the area. Accumulated waste water that may contribute to the pollution of stormwater must be drained to the sanitary sewer or intercepted and pretreated prior to discharge to the storm drain system. The property owner shall ensure that BMPs are implemented to prevent potential stormwater pollution. These BMPs shall include, but are not limited to, a regular program of sweeping, litter control and spill cleanup.
 - H. 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.
 - I. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.
- 29. Public Works.** 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.
- 30. 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.
- 31. 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.

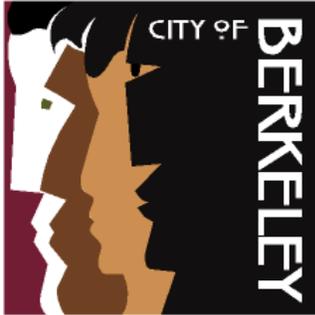
32. Public Works. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.
33. 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.
34. 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:

35. 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.
36. 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 May 17 2022, except as modified by conditions of approval.

At All Times:

37. 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.
38. 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.
39. 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.
40. Electrical Meter. Only one electrical meter fixture may be installed per dwelling unit.



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

1337-1339 Hearst Avenue

Use Permit #ZP2021-0160 to construct a major residential addition by lifting the existing duplex at 1337-39 Hearst Avenue on a lot that exceeds residential density.

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 February 23, 2023, **conducted via Zoom, see the Agenda for details at:** https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2023-02-23_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 Government Code Section 54953(e) and the state declared emergency, this meeting of the Zoning Adjustments Board (ZAB) will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.

A. Land Use Designations:

- General Plan: LMDR– Low Medium Density Residential
- Zoning: R-2– Restricted Two-Family Residential District

B. Zoning Permits Required:

- Use Permit (UP) under Berkeley Municipal Code (BMC) Section 23.324.050(D)(3a) to construct an addition on a property that is non-conforming to the allowable residential density
- Administrative Use Permit (AUP) under BMC Section 23.202.030(A)(1) to construct a major residential addition
- AUP under BMC Section 23.324.050(D)(2) to vertically extend a non-conforming front yard
- AUP under BMC Section 23.324.050(D)(2) to vertically extend non-conforming side yards
- AUP under BMC Section 23.324.080(D)(2) for a residential addition over 14 feet in height

C. CEQA Recommendation: It is staff's recommendation that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code Section 21000, et seq. and California Code of Regulations, Section 15000, et seq.) pursuant to CEQA Guidelines Section 15301 ("Existing Facilities").

D. Parties Involved:

- Applicant/Property Owner: Allyson Noman, 1339 Hearst Avenue
Berkeley, CA

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, Nilu Karimzadegan, at (510) 981-7430 or nkarimzadegan@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.
