

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

FOR BOARD ACTION
OCTOBER 26, 2023

805 Jones Street

Use Permit #ZP2022-0162 to construct three, two-story duplexes for a total of six units (5,510 square feet) with a height of 26 feet and a 455 square foot second-story (22 feet) addition to the existing 1,750 square foot commercial building.

I. Background

A. Land Use Designations:

- General Plan: Manufacturing Mixed Use Residential
- Zoning: Mixed Use-Residential District (MU-R)

B. Zoning Permits Required:

- **Use Permit** to establish multiple dwelling units, under Berkeley Municipal Code (BMC) Section 23.203.090(B)(7)
- **Administrative Use Permit** to create between 5,000-10,000 square feet of new residential floor area in the MU-R, under BMC Section 23.206.030(A)(3)

C. CEQA Recommendation: It is staff's recommendation to the Zoning Adjustments Board (ZAB) 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 15332 of the ("Infill Development"). The determination is made by ZAB.

A. Parties Involved:

- Applicant Matthew Wadlund, Berkeley, CA
- Property Owner 805 Jones Street, LLC, Berkeley, CA

Figure 1: Vicinity Map



*Map not drawn to scale

Map Key

- MU-R: Mixed Use Residential District
- MULI: Mixed Use Light Industrial District
- R-1A: Two-Family Residential District

Figure 2: Site Plan

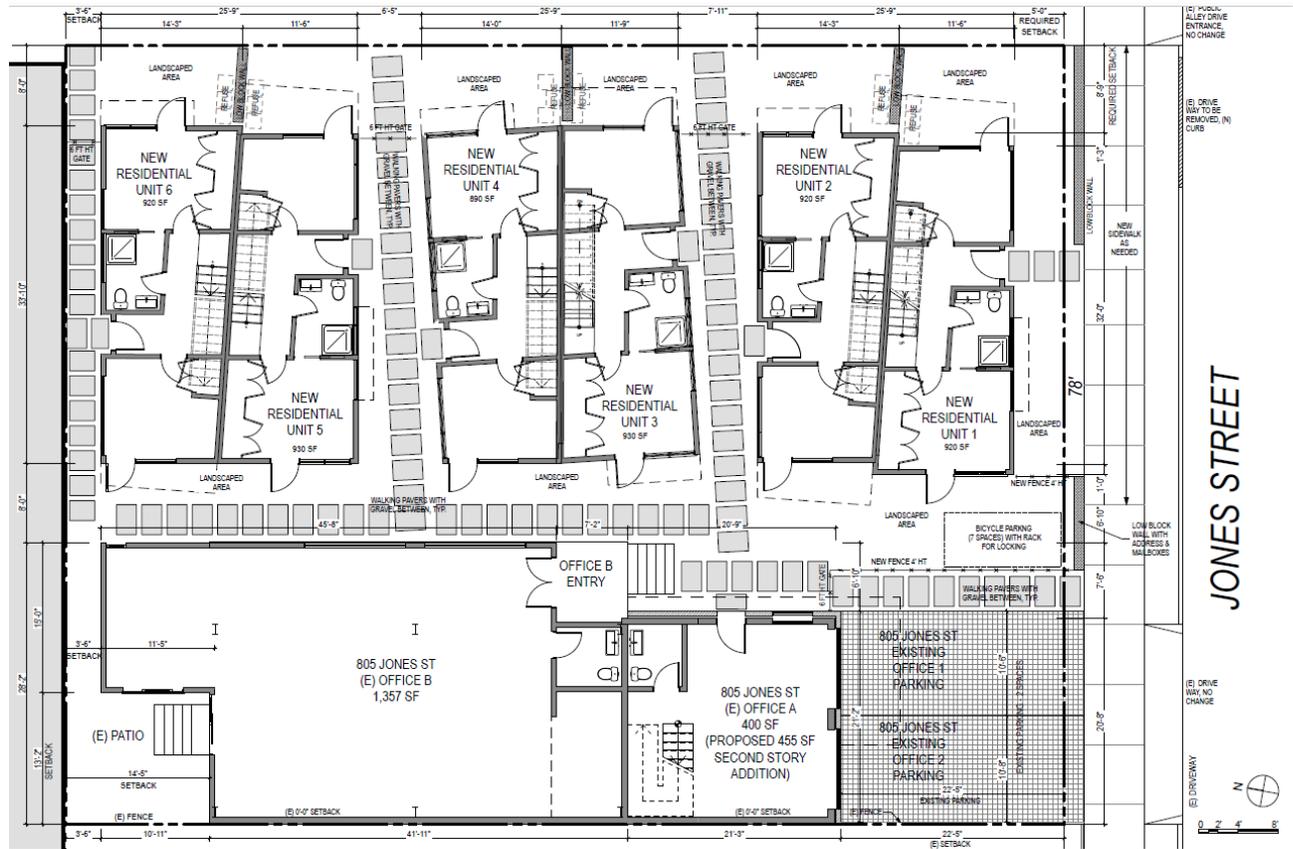
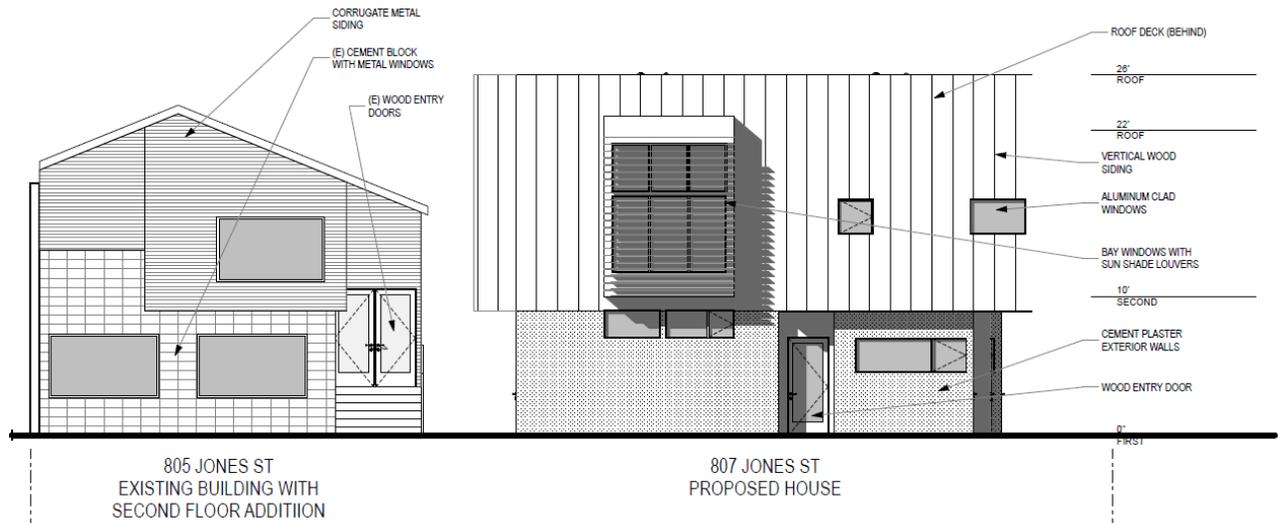


Figure 3: Proposed Elevations

South Elevation (Jones Street)



East Elevation (Alleyway)

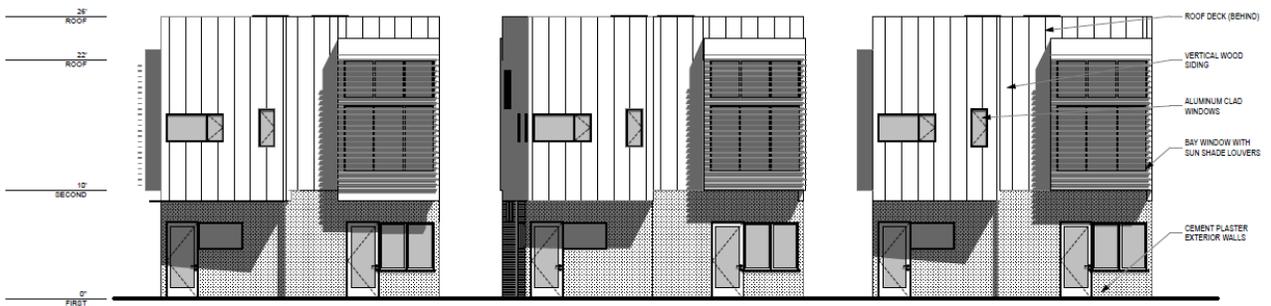


Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Commercial	MU-R	Manufacturing Mixed Use Residential
Surrounding Properties	North	Light manufacturing and offices (catering)		
	South	Multifamily residential		
	East			
	West	Mixed-use (residential/ grocery market 1468 Sixth Street); Single-family Residential (1460 Sixth Street)		

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	This fee applies to net newly constructed nonresidential gross floor area over 7,500 square feet. The project would increase the non-residential gross floor area by 455 square feet; therefore, the fee does not apply.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)		
Affordable / Inclusionary Housing Requirements (BMC 23.328)	No	The project proposes to construct 5,510 square feet of gross floor residential area. ¹ However, the proposed residential unit floor area would be 4,959 square feet which is less than 5,000 square feet. ² Therefore, the project is exempt from the inclusionary housing in-lieu fee, per BMC Section 23.328.050(F)(2).
Alcohol Sales/Service	No	No alcohol sales or service is proposed on site.
Creeks	No	No creek or culvert, as defined by BMC Chapter 17.08, exists on or within 30 feet of the site.
Density Bonus	No	The project is not a Density Bonus project.
Natural Gas Prohibition (Per BMC 12.80.020)	Yes	This project includes new construction, and is therefore subject to the Natural Gas Prohibition.
Historic Resources	No	The project site is not designated as a Landmark by the City, nor is the application proposing to demolish the existing structure.
Housing Accountability Act (Gov't Code Section 65589.5(j))	Yes	The project meets the definition of a "Housing Development Project" per Government Code

¹ Pursuant to BMC 23.106.030, gross floor area means the total gross horizontal areas of all floors of a building or enclosed structure.

² Pursuant to BMC 23.328.020, residential unit floor area is measured from the interior walls of each unit.

		Section 65589.5(h)(2) ³ . The project establishes six dwelling units and complies with applicable, objective general plan and zoning standards, and thus section (j) of the Housing Accountability Act applies. See Section V.B of this report for additional discussion on compliance with the Housing Accountability Act.
Housing Crisis Act of 2019 (SB330)		The project meets the definition of a “Housing Development Project” per Government Code Section 65589.5(h)(2) ⁴ . See Section V.A of this report for additional discussion on the sections of SB330 that apply to the project.
Oak Trees	No	There are no oak trees on site.
Rent Controlled Units	No	There are no existing dwelling units on the site. No rent-controlled units would be demolished.
Residential Preferred Parking (RPP)	No	Pursuant to BMC Section 14.72.080(C)(1), no RPP permits shall be issued to residents in newly constructed residential units which do not meet the parking requirements established by the Zoning Ordinance unless a variance for parking requirement set forth in the Zoning Ordinance was issued. Because the applicant is not requesting a variance for parking, the project is ineligible for the RPP Program.
Seismic Hazards (SHMA)	Yes	The site is located within an area susceptible to liquefaction as shown on the State Seismic Hazard Zones ⁵ map. The applicant submitted a draft geotechnical report, which was peer reviewed by a consulting geologist. The peer review recommended that the project be conditioned to require geotechnical plan review of the final building and grading plans and inspections at different phases of construction (i.e., site preparation, grading, excavations, etc.) – see Condition of Approval 15 in Section VI and Attachment 1.
Soil/Groundwater Contamination	Yes	The project site is located within the City’s Environmental Management Area, but is not on the Cortese List ⁶ . The applicant submitted a Phase II report, reviewed by the City’s Toxics Management Division, which concludes that no further site investigation is required. Standard and supplementary Conditions of Approval related to hazardous materials would apply. See Conditions of Approval 14 and 43 in Section VI and Attachment 1.

³ 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.

⁴ See footnote 2

⁵ California Department of Conservation. DOC Maps: Geologic Hazards. Available: <https://maps.conservation.ca.gov/geologic Hazards/>

⁶ The Cortese List is an annually updated list of hazardous materials sites compiled pursuant Government Code Section 65962.5.

Transit	Yes	The project site is about three blocks south of Gilman Street, which is served by The Alameda-Contra Costa Transit District (AC) Transit line 12, and is located five blocks from San Pablo Avenue, which is served by AC Transit lines 52, 72, and 800 (All-Nighter line). The project site is located about 1.2 miles away from the North Downtown Berkeley BART Station. There are several designated bikeways within a half mile of the site.
---------	-----	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Table 3: Project Chronology

Date	Action
November 28, 2022	Application submitted
December 23, 2022	Application deemed incomplete
June 1, 2023	Application resubmitted
July 3, 2023	Application deemed incomplete
July 14, 2023	Application resubmitted
August 14, 2023	Application deemed incomplete
August 17, 2023	Application resubmitted
September 15, 2023	Application deemed incomplete
September 18, 2023	Application resubmitted
September 28, 2023	Application deemed complete
October 12, 2023	Public hearing notices mailed/posted DRC Staff Level Design Review NOD Posted
October 26, 2023	ZAB hearing

Table 4: Development Standards

Standard	Existing	Proposed Total	Permitted/ Required
BMC Sections 23.206.090			
Lot Area (sq. ft.)	7,800	No change	7,500 min (1,200 sq. ft./ dwelling unit)
Gross Floor Area (sq. ft.) ⁷ <i>Includes Commercial Floor Area</i>	1,780	7,715 (5,510 residential and 2,205 commercial)	11,700 max
Residential Unit Floor Area (sq. ft.) ⁸	0	4,959	n/a
Floor Area Ratio	0.2	1	1.5 max

⁷ Pursuant to BMC 23.106.030, gross floor area means the total gross horizontal areas of all floors of a building or enclosed structure.

⁸ Pursuant to BMC 23.328.020, residential unit floor area is measured from the interior walls of each unit.

Dwelling Units	Total	0	6	n/a
	Affordable	0	0	0 min
Building Height	Maximum (ft.)	22	22 (commercial use) 26 (residential use)	35 max
	Stories	2	2	2 max - commercial 3 max - residential
Building Setbacks (ft.)	Front	20	5	5 min
	Rear	3'6"	3'6"	0 min
	Left Side (East)	50	8'-9"	5 min
	Right Side (West)	0	0	0 min
Lot Coverage (%)		23	57	100 max
Usable Open Space (sq. ft.)		n/a	2,650	900 min
Parking	Automobile	2	2	min
	Bicycle	0	7	7 min
Abbreviations: sq. ft. = square feet; max. = maximum; min. = minimum; n/a = not applicable; % = percent'				

II. Project Setting

A. Neighborhood/Area Description: The project site is located mid-block along Jones Street, between Fifth Street (West) and Sixth Street (East) in manufacturing district characterized by a mix of light manufacturing, residential, office, and commercial retail uses. Both the western and eastern portions of the block is primarily developed with mixed-use development, and single and multifamily dwelling units. The block also maintains several light manufacturing uses, such as the production of catered goods, and commercial services that serve immediate neighborhood, including a child care center and corner grocery store. Along Fifth Street, between Page and Jones Streets, and within the greater West Berkeley area, there are several multifamily developments, similar to the proposed project.

B. Site Conditions: The site is a rectangular, interior lot, where the eastern lot line abuts a public alleyway (Fifth ½ Street). The 7,800 square foot lot maintains approximately 78 feet of frontage along Jones Street. The eastern portion of the site is currently developed with a 1,780 square foot one-two story commercial building with two office suites, where the rear portion of the structure is 22 feet in height. There are two off-street parking spaces located within the front setback, in front of the existing building. The western portion of lot is paved and is used for uncovered storage. The site is accessed by two curb cuts located along Jones Street.

III. Project Description

The proposed project would construct three, two-story duplexes and a 455 square foot addition to the existing commercial building with the following primary components:

- Six dwelling units (each duplex would include 2-bedrooms and 2-bathrooms)
- Average size of each unit – 918 square feet
- 1,470 square feet of open space (230 square foot roof deck per unit and a 190 square foot patio)
- 455 square foot second-story commercial addition to existing building located at the front of the lot to include office space and bathroom
- Seven bike parking spaces (4 long term, 3 short term)

IV. Community Discussion

A. Neighbor/Community Concerns: Prior a pre-application poster was installed by the applicant in November 2022. On October 12, the City mailed public hearing notices to property owners and occupants, 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. Landmarks Preservation Commission: The existing building is not a designated landmark, structure of merit, and is not located within a historic district. The project does not involve the demolition or a substantial of a non-residential building greater than 40 years old, and is therefore not subject to review by the Landmarks Preservation Commission.

C. Design Review Committee: The project is subject to design review because it is located in a non-residential district and proposes exterior improvements to the property. Staff reviewed the design review application submitted on November 28, 2022 (Design Review #DRCP2022-0019) and concluded that Staff Level Design Review is appropriate for this project. The Design Review Committee Chair concurred with Design Review Staff's recommendation for Staff Level Design Review. Design Review staff concluded that the project would be compatible with the mixed-use neighborhood from a design standpoint, and noted that this project has one less story than other nearby projects.

Staff posted the Notice of Staff Level Design Review Approval at the project site on October 11, 2023. The noticing period for that approval ends at 4:00 p.m. on October 25, 2023. Design Review Staff will continue to review this project through the building permit and construction phases.

V. Issues and Analysis

A. SB 330 – Housing Crisis Act of 2019: The Housing Crisis Act, also known as Senate Bill 330, seeks to boost homebuilding throughout the State with a focus on urbanized

zones by expediting the approval process for and suspending or eliminating restrictions on housing development. A “housing development project” can include any of the following: residential units only; mixed use consisting of residential and nonresidential uses in which at least two-thirds of the square-footage is designated residential, and transitional or supportive housing. Sections of SB 330 that apply to the proposed project include the following:

1. Government Code Section 65905.5(a) states that if a proposed housing development project complies with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete, then the city shall not conduct more than five (5) hearings in connection with the approval of that housing development project. This includes all public hearings in connection with the approval of the housing development project and any continuances of such public hearings. The city must consider and either approve or disapprove the project at any of the five hearings consistent with applicable timelines under the Permit Streamlining Act (Chapter 4.5 (commencing with §65920)).

The October 26, 2023 ZAB hearing represents the first public hearing for the proposed project since the project was deemed complete. The City can hold up to three additional public hearings on this project, if needed. One of those hearings must be reserved for any possible appeal to the City Council.

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

The project site is not designated as a Landmark by the City. No historic resource evaluation was prepared for the property since the application is not proposing the demolition of the existing structure on site. Standard conditions of approval have been included to halt work in case of any unanticipated discovery of archeological, paleontological, or tribal cultural resources.

3. Government Code §65950(a)(5) requires a public agency to approve or disapprove a project within 60 days from the determination that the project is exempt from the California Environmental Quality Act. The project was deemed complete on September 28, 2023. Should ZAB determine the application is categorically exempt from CEQA at the October 26, 2023 public hearing, the application must be approved or disapproved by December 26, 2023.

B. Housing Accountability Act Analysis: The Housing Accountability Act (HAA), California Government Code Section 65589.5(j), requires that when a proposed housing development complies with the applicable, objective general plan and zoning standards, but a local agency proposes to deny the project or approve it only if the density is reduced, the agency must base its decision on written findings supported by substantial evidence that:

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

The project is consistent with the applicable, objective general plan and zoning standards. Staff is aware of no specific adverse impacts that could occur with the construction of the project.

As described in Table 4 above, the project complies with the applicable general plan and zoning standards. While the project may include Use Permits or Administrative Use Permits to modify standards, there are no objective criteria in the findings. The ZAB still has the discretion to approve, deny or modify the request according to the zoning findings, provided the action does not reduce the project density or effectively deny the project by making it infeasible, unless the ZAB is also able to make the required findings for denial set forth under Section 65589.5(j), above.

VI. Other Considerations (Zoning and Land Use Considerations)

The following analyses of conformance with district purposes, and the 2002 General Plan goals and policies are provided for informational purposes only, to provide context, because the proposed project is HAA-compliant. See section V.B for discussion of the HAA. All permits are subject to the MU-R District permit findings and General Non-Detriment findings discussed in sections IV.E

A. General Non-Detriment: As required by BMC Section 23.406.040(E), the ZAB must find that the proposed structure will not be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons and adjacent properties for any Use Permit in the MU-R.

- 1) Views: The project site is located in West Berkeley, on a relatively flat lot. The project does not obstruct any significant view corridors as defined in BMC Section 23.502.020(V)(12)⁹.
- 2) Shadows: According to the shadow studies submitted for the project (see Attachment 1) new shadows would be cast on the existing commercial/ light manufacturing building north (1451 Fifth Street) of the lot and along the rear of

⁹ View Corridor - A significant view of the Berkeley Hills, San Francisco Bay, Mt. Tamalpais, or a significant landmark such as the Campanile, Golden Gate Bridge, and Alcatraz Island or any other significant vista that substantially enhances the value and enjoyment of real property.

the residential lots (1458, 1460, 1464 Sixth Street) east of the public alleyway. buildings throughout the year. These changes in sunlight pattern are found to be reasonable given the orientation of these properties in relation to the subject building and their close proximity given the urban residential environment. These affects would not be detrimental because limited in duration and will not persist for extended periods throughout the year.

Shadow impact of the respective 26-foot and 22-foot buildings on adjacent dwellings are to be expected, because the subject site is located in the MU-R district, which allows heights of up to 35 feet with a Use Permit an additional permit a use permit and roof top projections beyond the height with an administrative use permit. The additional height above the district limits would cast shadows in the affected directions further than if the project were limited to the base district height standards. Staff believes that shadow impacts from the project would be reasonable and not detrimental.

- 3) Privacy: There are no windows facing residential development within 30 feet of the project. The project may result in potential impacts to privacy given the scale of the infill development. Perceived impacts to privacy are subjective and cannot preclude the development of an HAA compliant project.
- 4) The project is subject to the City's standard and supplementary (shown below) conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, thereby ensuring the project would not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

The following supplementary conditions of approval further mitigate any impacts related to soil and groundwater management, and liquefaction:

COA 14 Geotechnical Plan Review. The applicant shall provide a geotechnical consultant letter that summarizes the results of the final project building and grading plan review to ensure that recommendations have been properly incorporated. Geotechnical aspects include, but are not limited to site preparation and grading including removal and replacement/treatment of expansive soils, site surface and subsurface drainage improvements including site runoff discharge, and design parameters for foundations, temporary shoring excavation and installation, etc.

COA 15 Toxics. The applicant shall obtain approval of their Soil and Groundwater Management Plan from the Regional Water Quality Control Board prior to the issuance of any building and safety permit.

COA 43 Geotechnical Inspections. The applicant shall provide a geotechnical consultant letter to the City Engineer for review that summarizes the results of geotechnical inspections and the as-built conditions of the project. The inspections should include, but are not limited to: site preparation and grading, site surface and subsurface drainage improvements, and excavations for foundations and other improvements prior to the placement of steel and concrete.

- B. MU-R Specific Findings:** Pursuant to BMC Section 23.206.100(B)(3) to approve any AUP or Use Permit for a project in the MU-R District, several findings concerning cumulative change of use away from residential, live/work, light industrial, or arts and craft uses and the compatibility of the proposed use with the manufacturing district must be made. Consistent with the purposes of the underlying district, the project strengthens the residential concentration within district by redeveloping the existing lot with six-unit dwelling units. The project would also construct an addition to an existing commercial building on the lot that would create additional office space. The proposed residential units and commercial addition does not result in a cumulative change of use away from residential uses and compatible within a mixed-use West Berkeley context.
- C. All Manufacturing Districts Specific Findings:** Pursuant to BMC Section 23.206.100(A) to approve any AUP or Use Permit for a project in a Manufacturing District the ZAB must find that the project is consistent with the district purposes, is compatible with surrounding uses, complies with the West Berkeley Plan, and meets applicable performance standards for off-site impact. As noted above, the project is consistent with the underlying district, increases the residential concentration in the area, and establishes additional commercial space without resulting in a cumulative change away from uses permitted in the MU-R zoning district. The proposed development is also compatible with several multifamily projects within one-block radius of the site – along Fifth and Page Streets in terms of density, bulk, massing, and type. The mixed-use nature of the project is consistent with the West Berkeley Plan as it would add limited office space and six dwelling units on an underdeveloped lot.
- D. General Plan Consistency:** The project is consistent with the following policies in the 2002 General Plan:
1. Policy LU-3 – Infill Development: Encourage infill development that is architecturally and environmentally sensitive, embodies principles of sustainable planning and construction, and is compatible with neighboring land uses and architectural design and scale.
 2. Policy H-33 – Regional Housing Needs: Encourage housing production adequate to meet City needs and the City's share of regional housing needs.
 3. Policy LU-7 – Neighborhood Quality of Life, Action A: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.

4. Policy H-12 – Transit-Oriented New Construction: Encourage construction of new medium- and high-density housing on major transit corridors and in proximity to transit stations consistent with zoning, applicable area plans, design review guidelines, and the Climate Action Plan.
5. Policy T-43 – Bicycle Network, Action C: Encourage, and when appropriate, require new multi-family residential developments to provide secure locker space for resident bicycles.
6. Policy T-16-Access by Proximity: Improve access by increasing proximity of residents to services, goods, and employment centers.

Staff Analysis: The project is consistent with the above General Plan policies because the infill development would construct six new dwelling units proximate to public transit, bicycle boulevards, and commercial corridors that offer various goods and services to residents. The project would also count towards the City's share of regional housing needs

E. West Berkeley Plan Consistency: The project is consistent with the following objective in the 1993 West Berkeley Area Plan:

1. Encourage infill buildings on vacant and low intensity use sites along these corridors. Residential and/ or office uses should be encouraged where appropriate.

Staff Analysis: The proposed project is consistent with the above West Berkeley Plan objective because it is an infill development that would construct new residential and commercial uses on an underutilized site.

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** click and enter permit type and # pursuant to Section 23.406.040.D and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Findings and Conditions
2. Project Plans, received August 17, 2023
3. Notice of Public Hearing

Staff Planner: Katrina Lapira, klapira@berkeleyca.gov, (510) 981-7488

ATTACHMENT 1

FINDINGS AND CONDITIONS

OCTOBER 26, 2023

805 Jones Street

Use Permit #ZP2022-0162 to construct three, two-story duplexes for a total of six units (5,510 square feet) with a height of 26 feet and a 455 square foot second-story (22 feet) addition to the existing 1,750 square foot commercial building

PERMITS REQUIRED

- **Use Permit** to establish multiple dwelling units, under BMC Section 23.203.090(B)(7)
- **Administrative Use Permit** to create between 5,000-10,000 square feet of new residential floor area in the MU-R, under BMC Section 23.206.030(A)(3)

I. CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15332 of the CEQA Guidelines (“Infill Development”).

The project meets all of the requirements of this exemption, as follows:

- A. The project is consistent with the applicable General Plan designation and policies, and with the applicable zoning designation and regulations.
 - B. The project occurs within the Berkeley City limits on a project site of no more than five acres, and is surrounded by urban uses.
 - C. The parcels within the project site have previously been developed and have no value as habitat for endangered, rare or threatened species.
 - D. The project would not result in any significant effects relating to traffic, noise, air quality or water quality. The Traffic Impact Analysis prepared for the project was reviewed by the City Transportation Division which concurred with the findings of less than significant impacts. City Standard Conditions would address potential impacts related to traffic, noise, air quality, and water quality.
 - E. The site can be adequately served by all required utilities and public services.
2. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

II. HOUSING ACCOUNTABILITY ACT FINDINGS

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

2. Because the project complies with applicable, objective general plan and zoning standards, §65589.5(j) does apply to this project. No significant, quantifiable, direct and unavoidable impacts, based on objective, identified written public health or safety standards, polices, or conditions, have been identified

III. 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 is located on a relatively flat lot in West Berkeley and does not obstruct any significant view corridors as defined in BMC Section 23.502.020(V)(12);
 - B. New shadows cast on neighboring lots and changes in sunlight pattern are found to be reasonable given the orientation of these properties in relation to the subject building and their close proximity given the urban residential environment. These affects would not be detrimental because limited in duration and will not persist for extended periods throughout the year; and
 - C. Also, 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 would not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

IV. OTHER FINDINGS FOR APPROVAL

2. As required by Section 23.206.100(B)(3) of the BMC, the Zoning Adjustments Board finds that the project is consistent with the purposes of the underlying district, and the project strengthens the residential concentration within district by redeveloping the existing lot with six-unit dwelling units. The project will also construct an addition to an existing commercial building on the lot that would create additional office space on the lot. The proposed residential units and commercial addition does not result in a cumulative change away from residential uses and is compatible within a mixed-use West Berkeley development pattern.
3. As required by Section 23.206.100(A) of the BMC, the Zoning Adjustments Board finds that the project is consistent with the underlying district because it increases the residential concentration and establishes additional commercial space without resulting in a cumulative change away from residential, live/work, light industrial, or arts and craft uses. The proposed development is compatible with several multifamily projects within one-block radius of the site – along Fifth and Page Streets in terms of density, bulk, massing, and type. The mixed-use nature of the project is consistent with the West Berkeley Plan as it would add limited office space and six dwelling units on an underutilized parcel.

STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

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

1. **Conditions Shall be Printed on Plans**

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

2. **Compliance Required (BMC Section 23.102.050)**

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

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

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

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

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

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

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

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

Once a Permit for a use is exercised and the use is established, the permit authorizing the use

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

7. Permit Modifications (BMC Section 23.404.070)

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Board. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.

8. Permit Revocation (BMC Section 23.404.080)

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

9. Indemnification Agreement

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

V. 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 #

11. Address Assignment. The applicant shall file an "Address Assignment Request Application" with the Permit Service Center (1947 Center Street) for any address change or new address associated with this Use Permit. The new address(es) shall be assigned and entered into the City's database prior to the applicant's submittal of a building permit application.

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

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. Geotechnical Plan Review. The applicant shall provide a geotechnical consultant letter that summarizes the results of the final project building and grading plan review to ensure that recommendations have been properly incorporated. Geotechnical aspects include, but are not limited to site preparation and grading including removal and replacement/treatment of expansive soils, site surface and subsurface drainage improvements including site runoff discharge, and design parameters for foundations, temporary shoring excavation and installation, etc.
14. Toxics. The applicant shall obtain approval of their Soil and Groundwater Management Plan from the Regional Water Quality Control Board prior to the issuance of any building and safety permit.
15. 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

16. Percent for Public Art: Consistent with BMC §23C.23, the applicant shall either pay the required in-lieu fee or provide the equivalent amount in a financial guarantee to be released after installation of the On-Site Publicly Accessible Art.
17. 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.
18. Water Efficient Landscaping. Landscaping, totaling 500 square feet of more of new landscaping or 2,500 square feet or more of renovated irrigated area, shall comply with the State's Model Water Efficient Landscape Ordinance (MWELO). MWELO-compliant landscape documentation including a planting, grading, and irrigation plan shall be included in site plans. Water budget calculations are also required for landscapes of 2,500 square feet or more and shall be included in site plans. The reference evapotranspiration rate (ET_o) for Berkeley is 41.8.
19. Prohibition of Natural Gas Infrastructure in New Buildings. The project shall comply with the City of Berkeley Prohibition of Natural Gas Infrastructure in New Buildings (BMC Chapter 12.80).
20. 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).
21. 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.
22. Required Parking Spaces for Persons with Disabilities. Per BMC Section 23.322.040.H of the Zoning Ordinance, "If the number of required off-street parking spaces in a non-residential district is reduced as allowed by this chapter, the number of required parking spaces for persons with disabilities shall be calculated as if there had been no reduction in required spaces."

During Construction:

23. Construction Hours. Construction activity shall be limited to between the hours of 7:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and 4:00 PM on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.
24. 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.

25. 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.
26. 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.

27. 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.

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

31. 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.

32. 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.

33. Stormwater Requirements. The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:

- A. The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.
- B. Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to

the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.

- C. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.
 - D. Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be conducted prior to the issuance of a Building Permit.
 - E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.
 - F. All on-site storm drain inlets/catch basins must be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.
 - G. All on-site storm drain inlets must be labeled "No Dumping – Drains to Bay" or equivalent using methods approved by the City.
 - H. Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
 - I. Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
 - J. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.
- 34. 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.
- 35. 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.

36. 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.
37. 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.
38. 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.
39. 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:

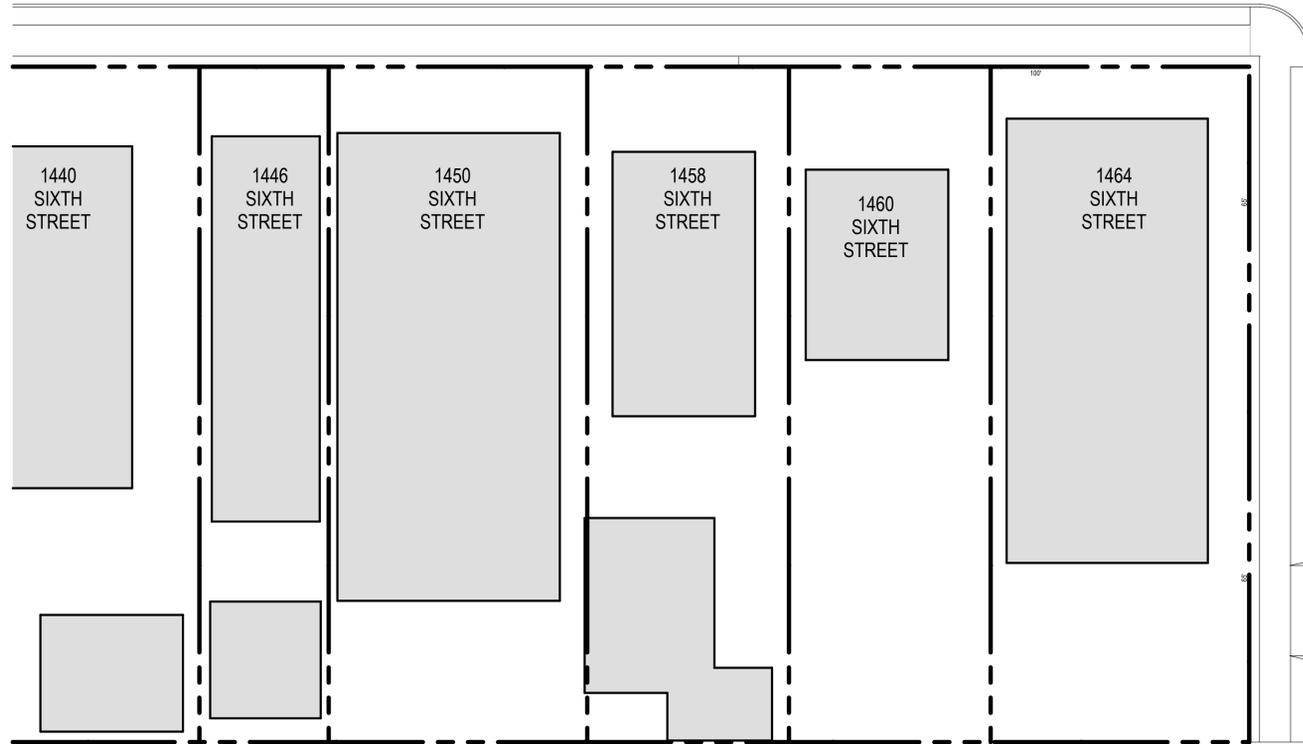
40. Compliance with Conditions. The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit.
41. Compliance with Approved Plan. The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings received on August 17, 2023, except as modified by conditions of approval.
42. Geotechnical Inspections. The applicant shall provide a geotechnical consultant letter to the City Engineer for review that summarizes the results of geotechnical inspections and the as-built conditions of the project. The inspections should include, but are not limited to: site preparation and grading, site surface and subsurface drainage improvements, and excavations for foundations and other improvements prior to the placement of steel and concrete.

At All Times:

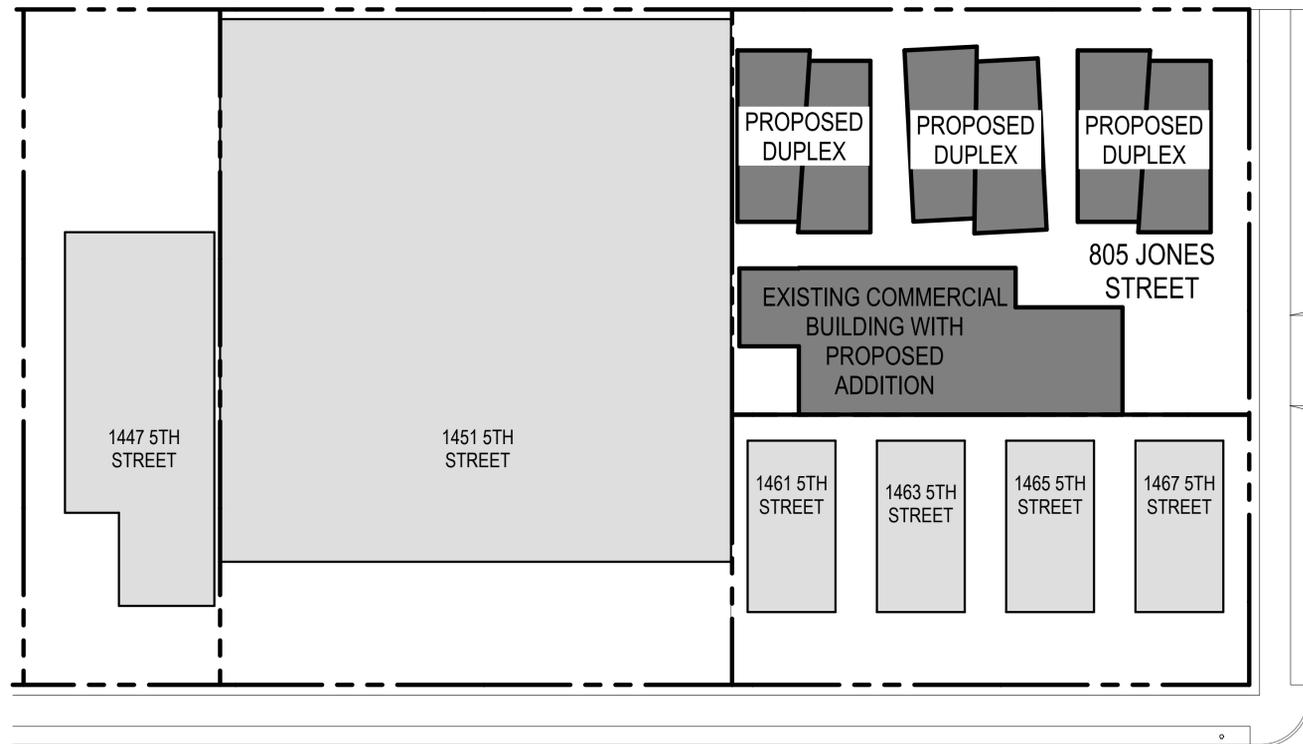
43. Exterior Lighting. All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
44. Rooftop Projections. No additional rooftop or elevator equipment shall be added to exceed the approved maximum roof height without submission of an application for a Use Permit Modification, subject to Board review and approval.
45. Design Review. Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to Design Review Committee approval.

- 46. 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.
- 47. Electrical Meter.** Only one electrical meter fixture may be installed per dwelling unit.
- 48. Residential Permit Parking.** No Residential Permit Parking (RPP) permits shall be issued to project residents, nor shall commercial placards be issued to non-residential occupants and/or users of the site. The project planner shall notify the Finance Department, Customer Service Center, to add these addresses to the list of addresses ineligible for RPP permits. The property owner shall notify all tenants of rental units, and/or buyers of condominium units, of this restriction in leases and/or contracts, and shall provide sample leases and/or contracts including such notification to the project planner prior to issuance of an occupancy permit or final inspection.
-

SIXTH STREET

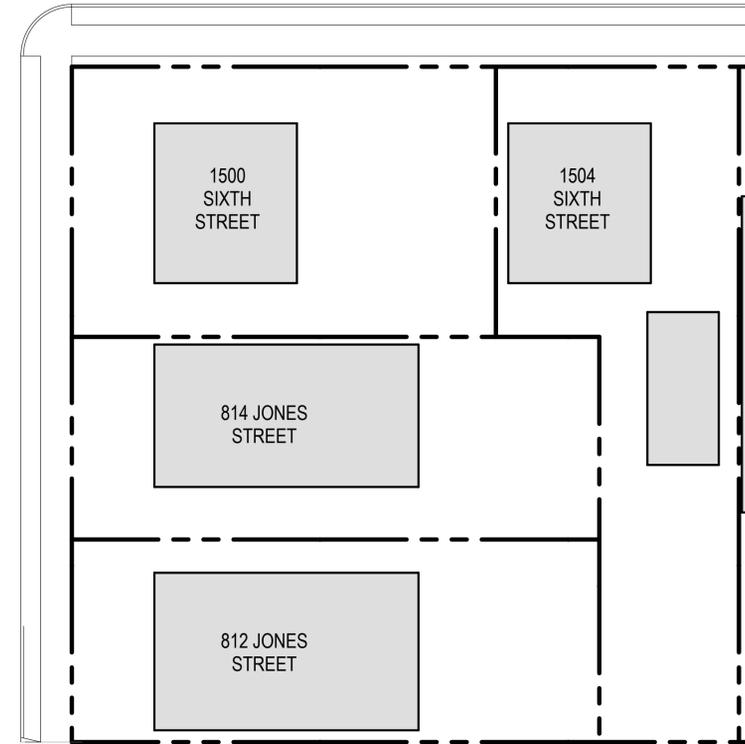


ALLEY



FIFTH STREET

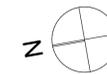
JONES STREET



ALLEY



0 8' 16' 32'



PROJECT DESCRIPTION

CONSTRUCT THREE (3) NEW, TWO STORY RESIDENTIAL DUPLEX UNITS ON CURRENTLY VACANT PORTION OF LOT.

415 SF SECOND STORY ADDITION TO EXISTING FLAT ROOF PORTION OF COMMERCIAL BUILDING. REMAINING PORTION OF COMMERCIAL BUILDING IS UNCHANGED.

OWNER: 805 JONES STREET, LLC
 APN: 059-2325-016
 ZONE: MU-R
 USE PERMIT: ZP 2022 - 0162

FLOOR AREA RATIO

	EXISTING	PROPOSED
LOT AREA	7,800 SF	7,800 SF
RESIDENTIAL	0 SF	5,510 SF
COMMERCIAL	1,750	2,205 SF
FAR	0.2	1.0

TABLE OF CONTENTS

VICINITY MAP	1
SITE PLAN	2
FIRST FLOOR PLAN	3
SECOND FLOOR PLAN	4
ROOF PLAN	5
SITE ELEVATIONS	6
SITE ELEVATIONS	7
STREET STRIP ELEVATION	8
COMM BLDG ELEVATIONS	9
LANDSCAPE PLAN	10
OPEN SPACE DIAGRAM	11
SHADOW STUDY EXISTING	12
SHADOW STUDY PROPOSED	13
EXISTING SITE SURVEY	14

VICINITY MAP

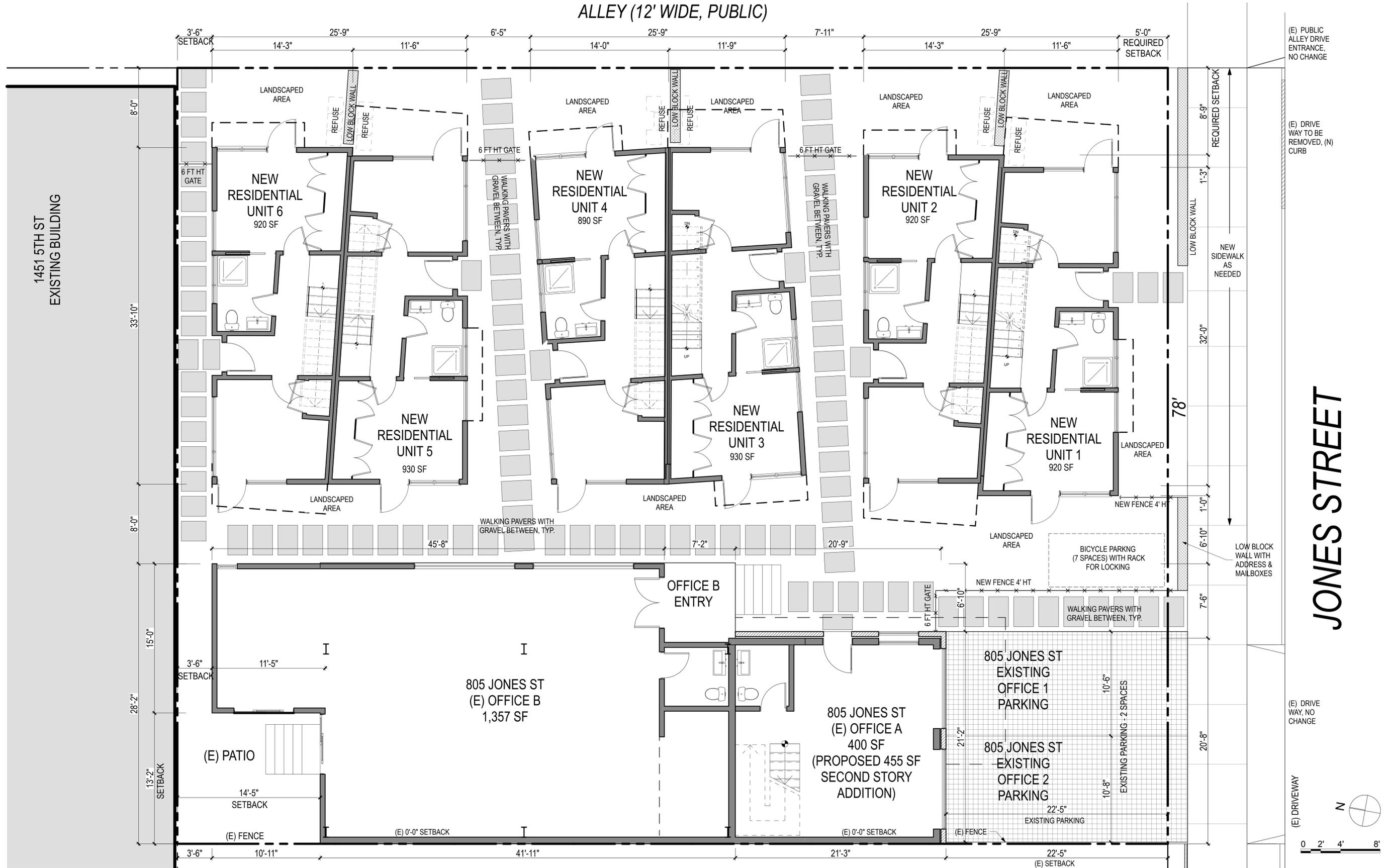
805 JONES STREET

USE PERMIT APPLICATION

WADLUND+
 Design Studio
 August 2023 -
 v2

1

ALLEY (12' WIDE, PUBLIC)



SITE PLAN & FIRST FLOOR PLAN

805 JONES STREET
 USE PERMIT APPLICATION

WADLUND+
 Design Studio
 August 2023 -
 v2



FIRST FLOOR PLAN

805 JONES STREET
USE PERMIT APPLICATION

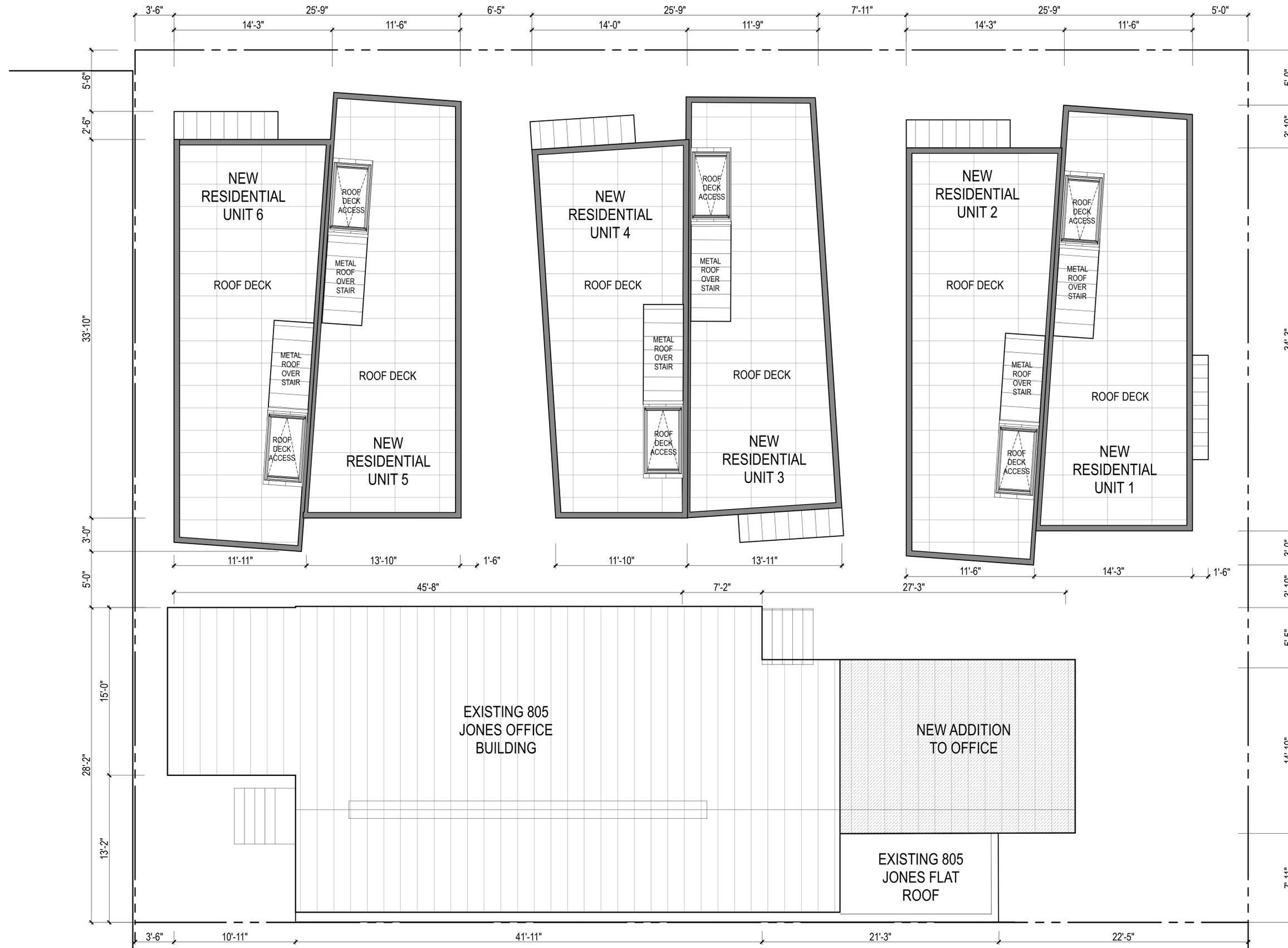
WADLUND+
Design Studio
August 2023 -
1/18/2023



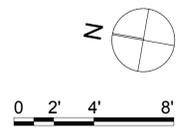
SECOND FLOOR PLAN

805 JONES STREET
USE PERMIT APPLICATION

WADLUND+
Design Studio
August 2023 -
V3



JONES STREET



ROOF PLAN

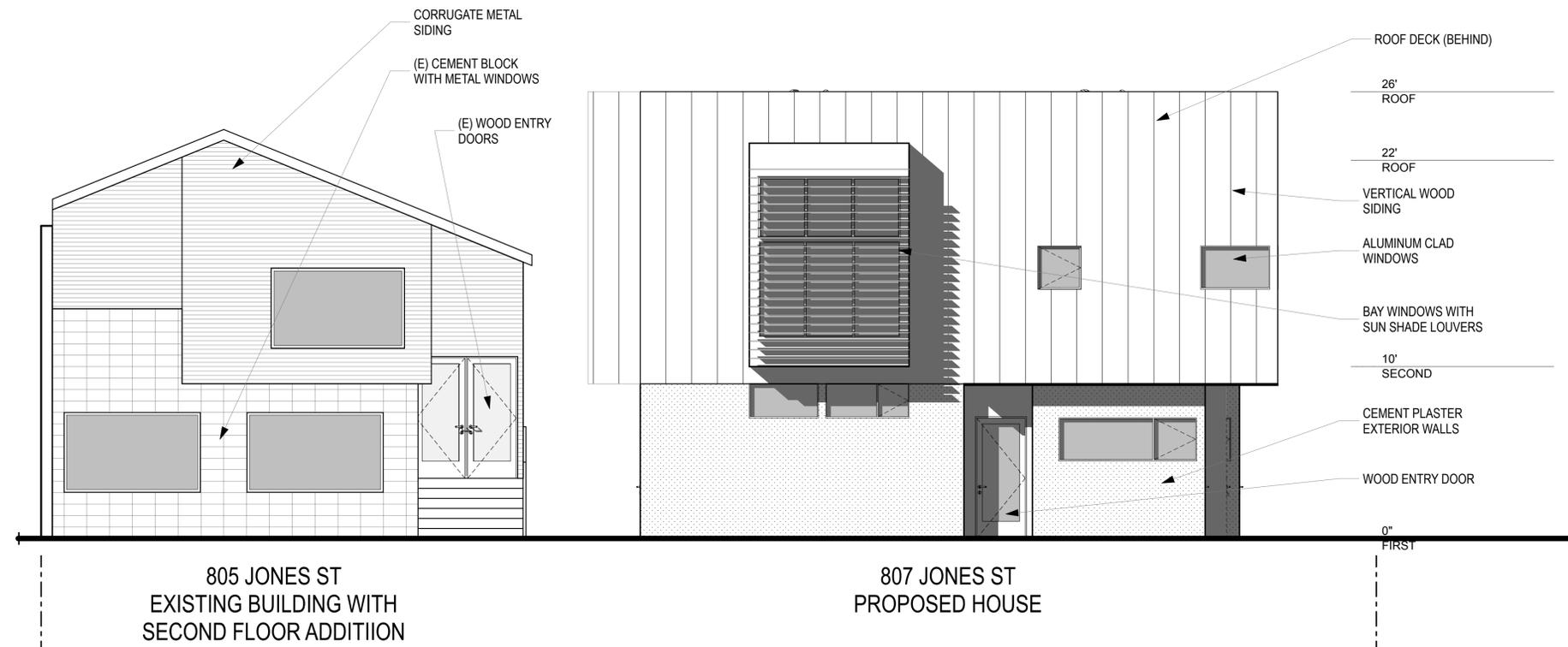
805 JONES STREET

USE PERMIT APPLICATION

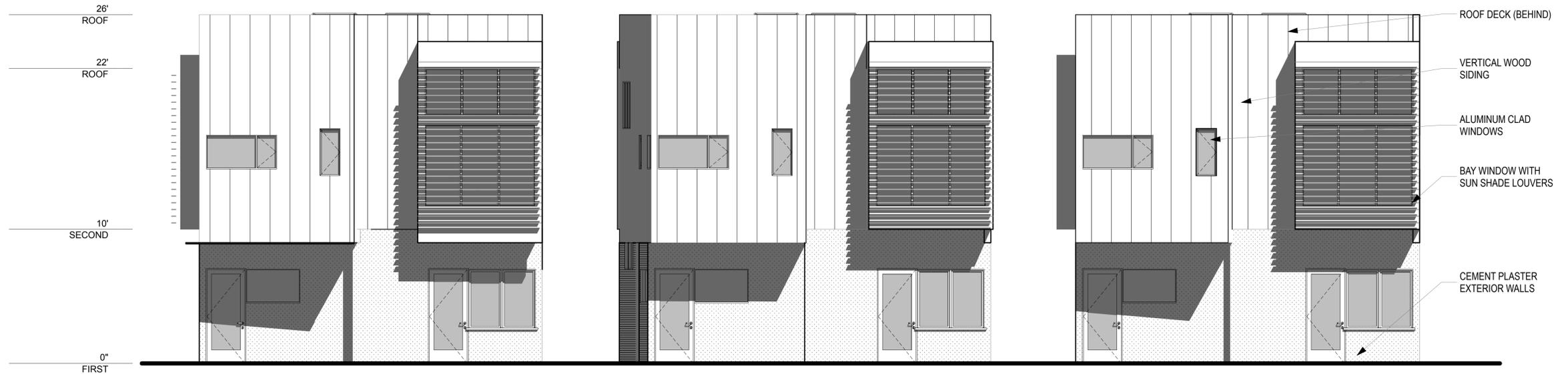
WADLUND+
Design Studio
AUGUST 2023
NOVEMBER 2022



NORTH ELEVATION - INTERIOR LOT



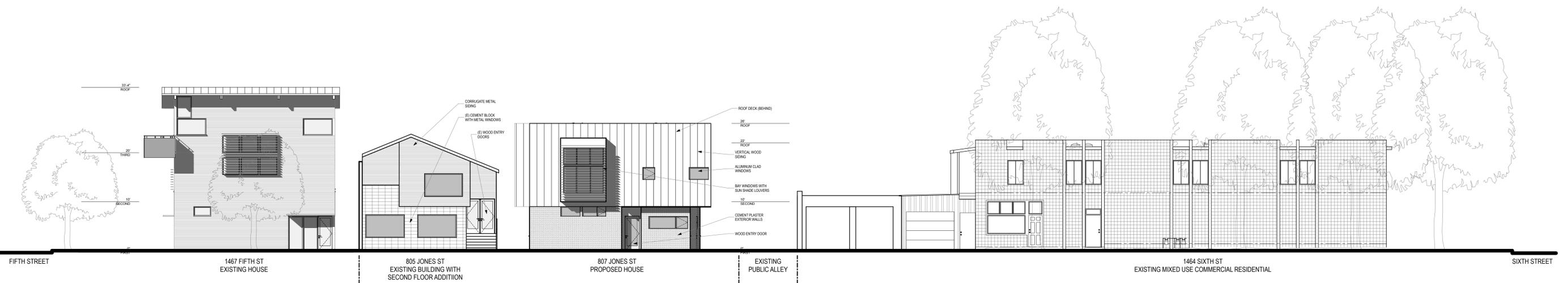
SOUTH ELEVATION - JONES STREET



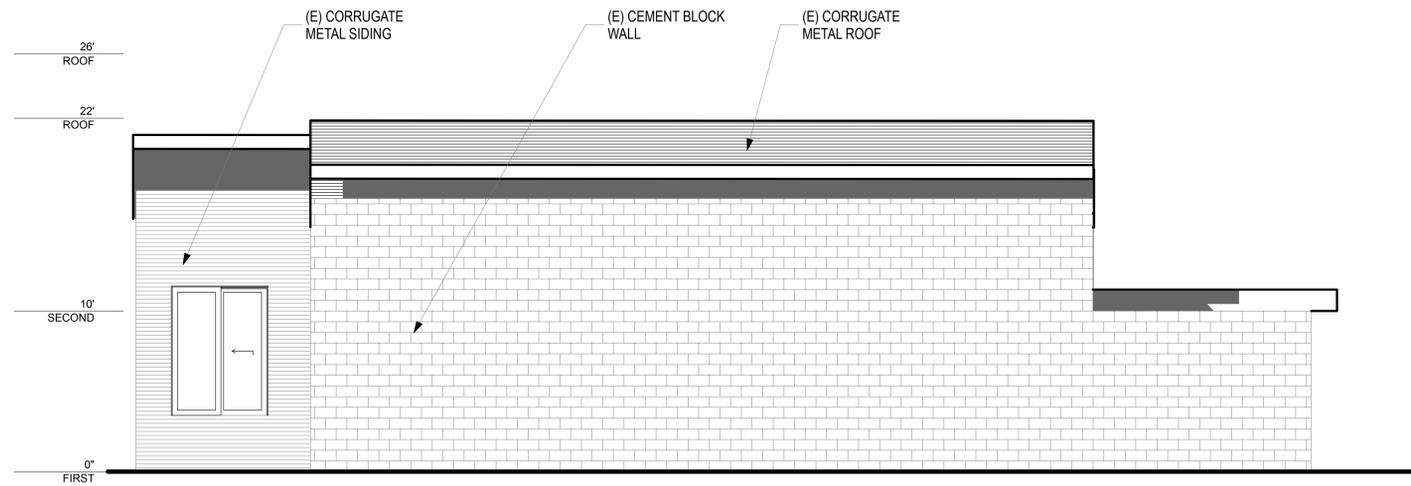
EAST ELEVATION - ALLEY



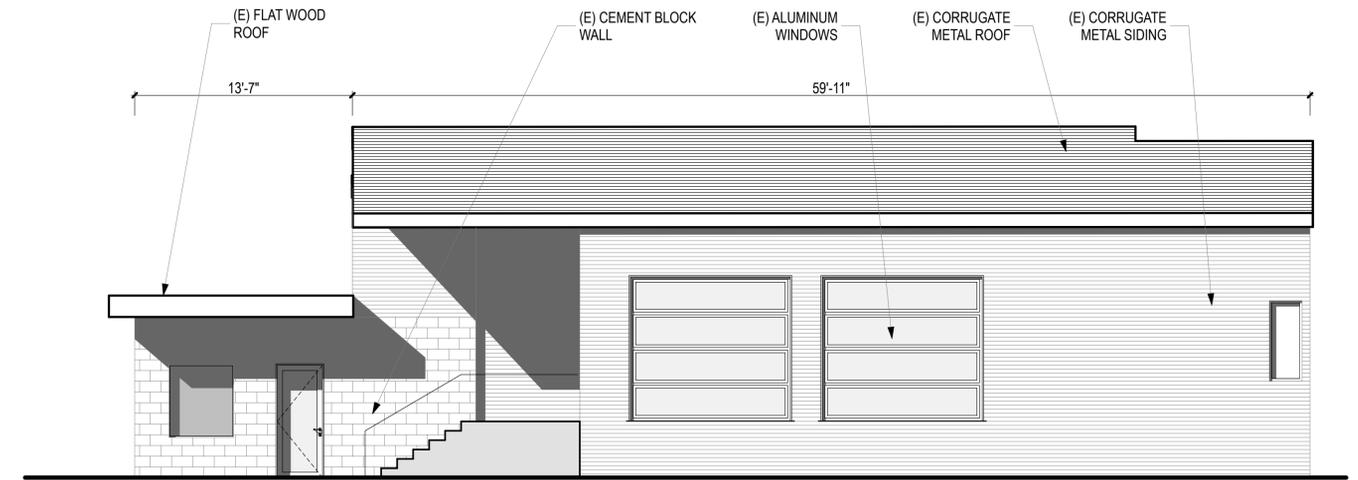
WEST ELEVATION - INTERIOR LOT



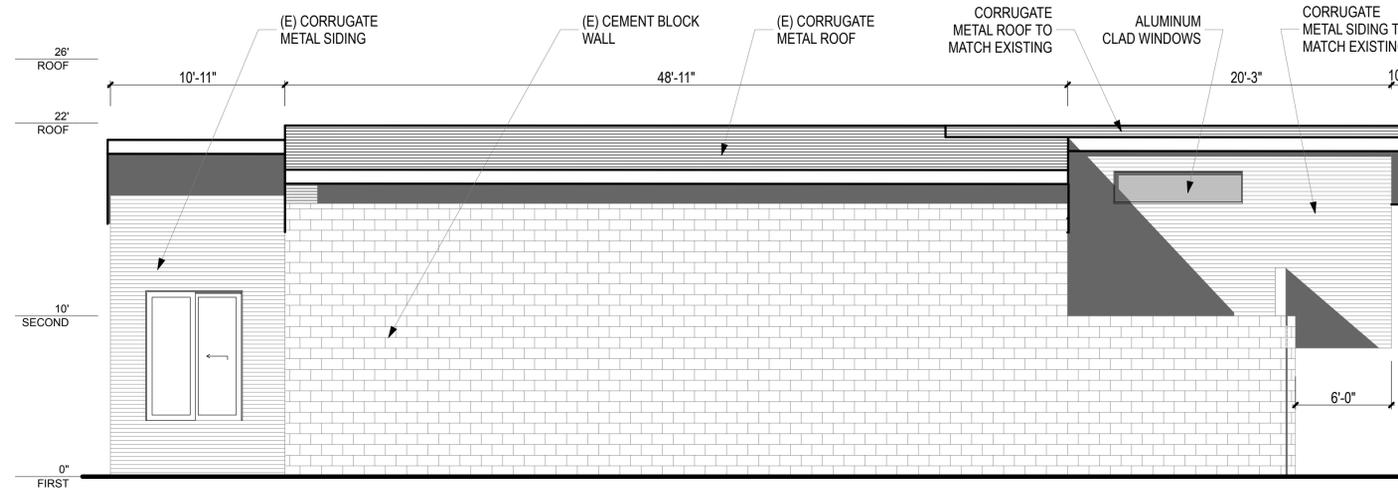
SOUTH ELEVATION - JONES STREET



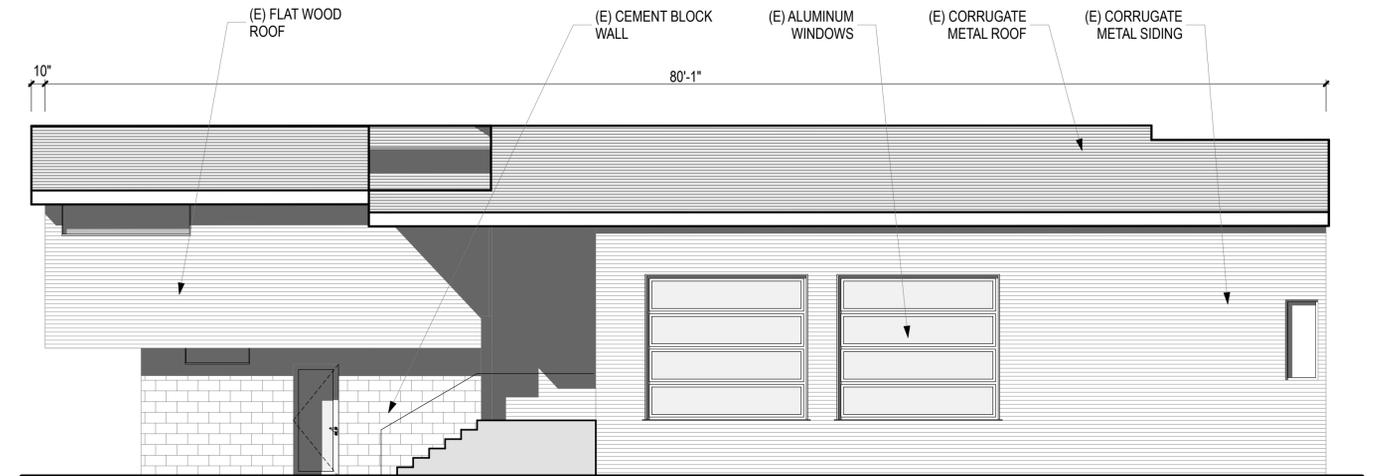
WEST ELEVATION - EXISTING



EAST ELEVATION - EXISTING

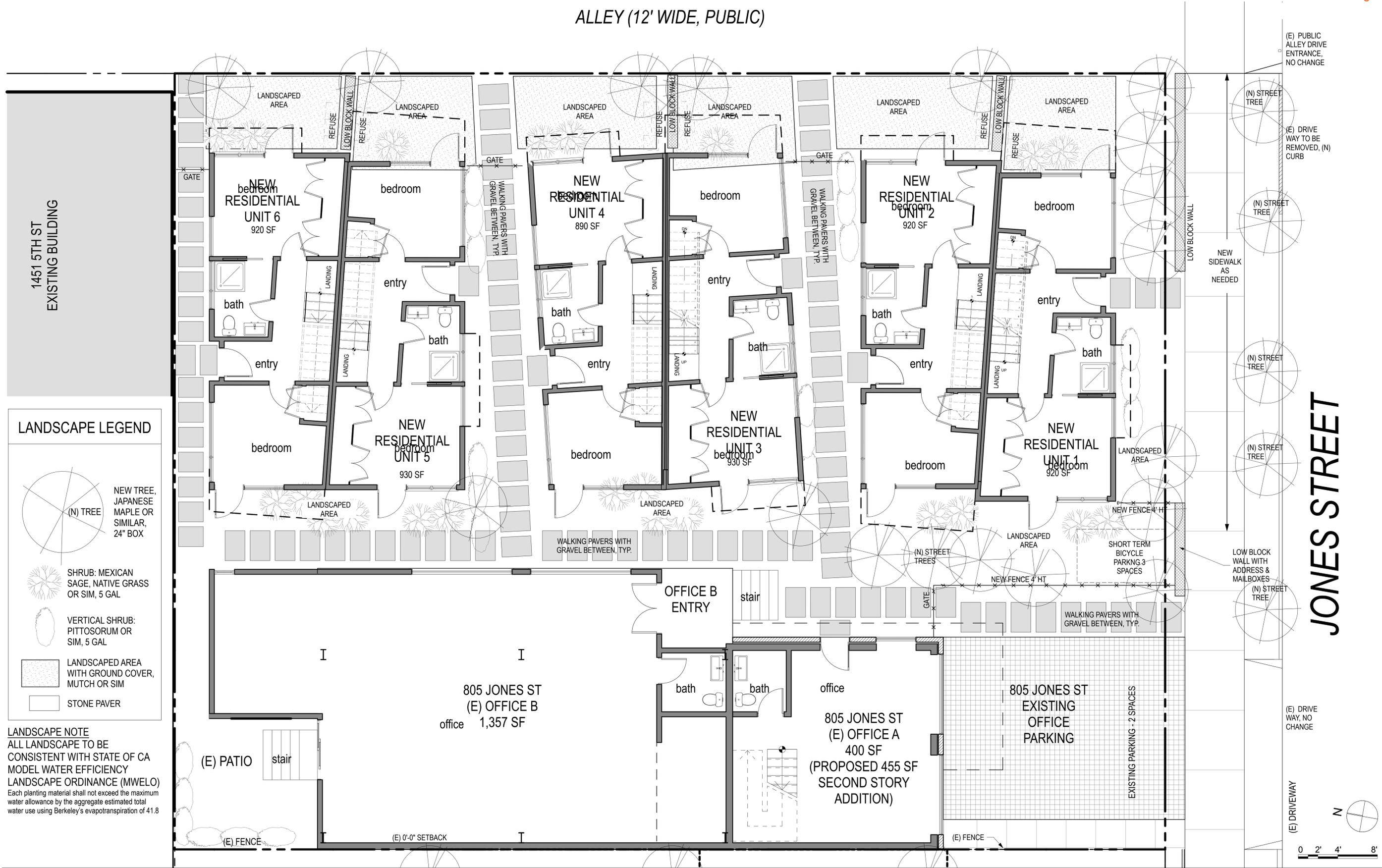


WEST ELEVATION - PROPOSED



EAST ELEVATION - PROPOSED

ALLEY (12' WIDE, PUBLIC)



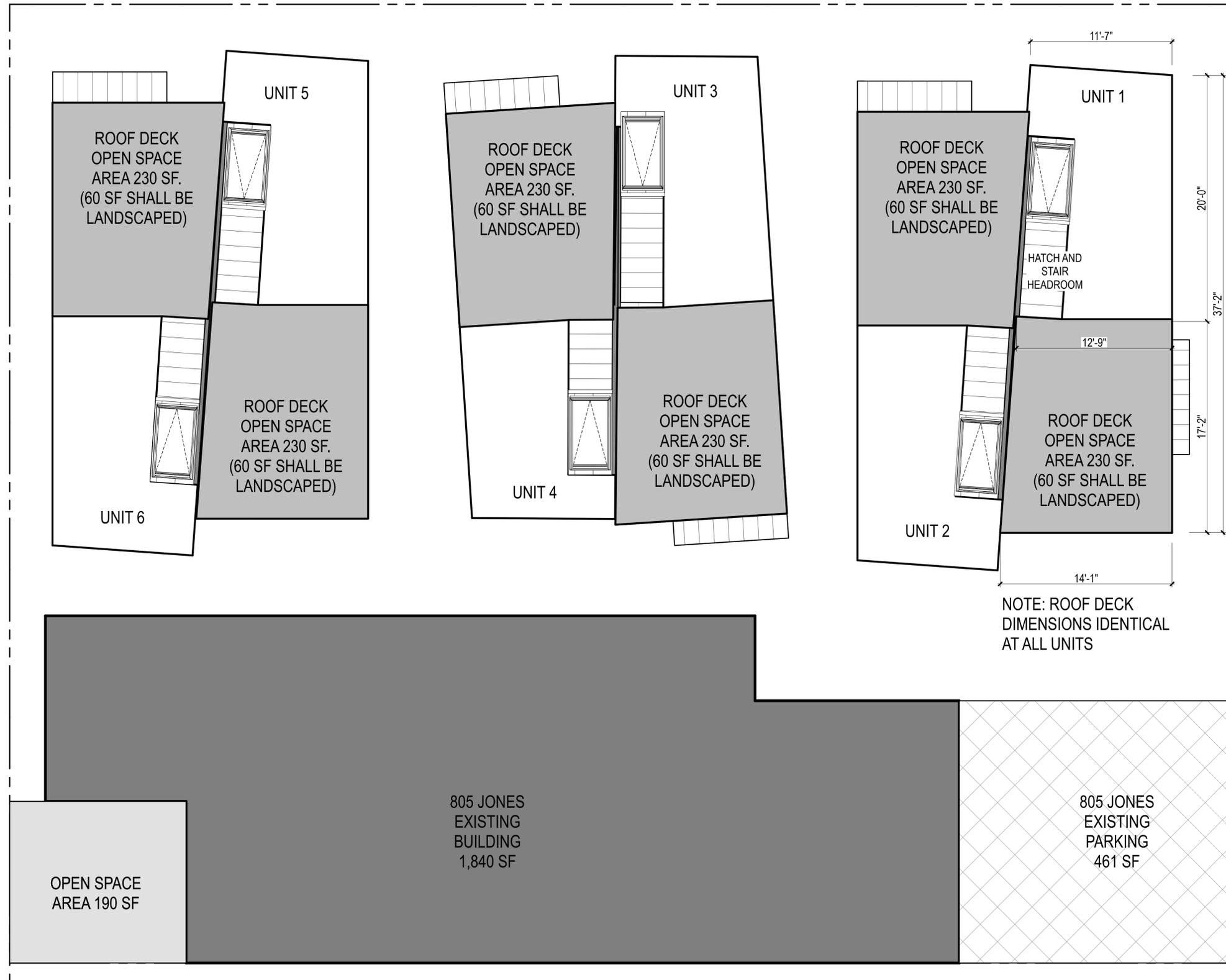
LANDSCAPE LEGEND

- (N) TREE: NEW TREE, JAPANESE MAPLE OR SIMILAR, 24" BOX
- SHRUB: MEXICAN SAGE, NATIVE GRASS OR SIM, 5 GAL
- VERTICAL SHRUB: PITTOSORUM OR SIM, 5 GAL
- LANDSCAPED AREA WITH GROUND COVER, MUTCH OR SIM
- STONE PAVER

LANDSCAPE NOTE
 ALL LANDSCAPE TO BE CONSISTENT WITH STATE OF CA MODEL WATER EFFICIENCY LANDSCAPE ORDINANCE (MWELO)
 Each planting material shall not exceed the maximum water allowance by the aggregate estimated total water use using Berkeley's evapotranspiration of 41.8

LANDSCAPE PLAN

805 JONES STREET
 USE PERMIT APPLICATION



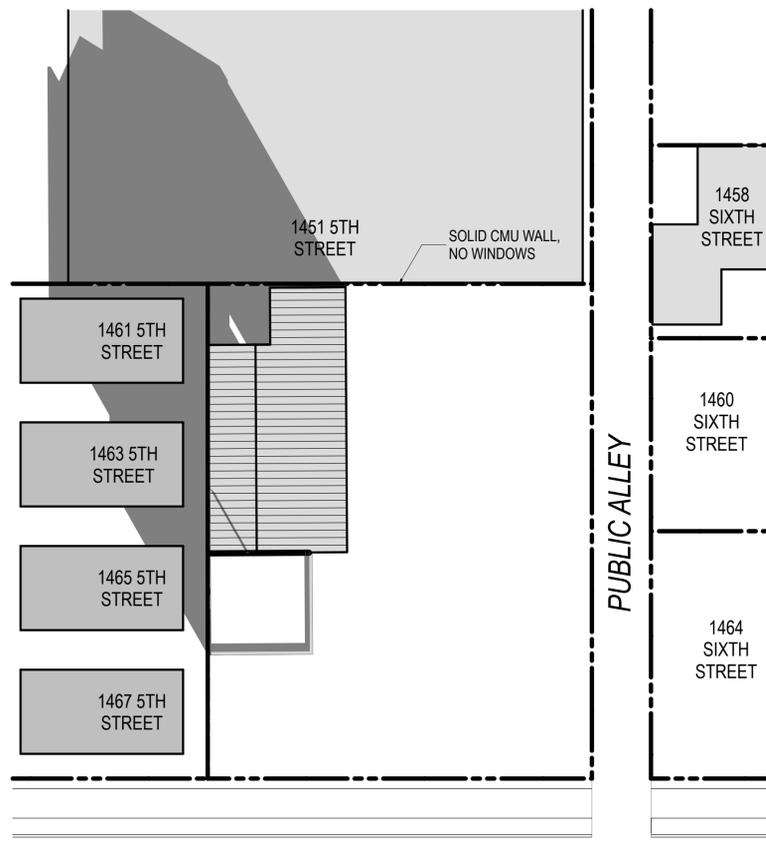
LEGEND	
	USABLE OPEN SPACE
	DESIGNATED PARKING
	"NON-USABLE" OPEN SPACE
	BUILDING

OPEN SPACE AREA	
OPEN SPACE AT ROOF TOP DECKS FOR RESIDENTIAL	1,380
OPEN SPACE AT GRADE FOR COMMERCIAL	190
TOTAL OPEN SPACE	1,470

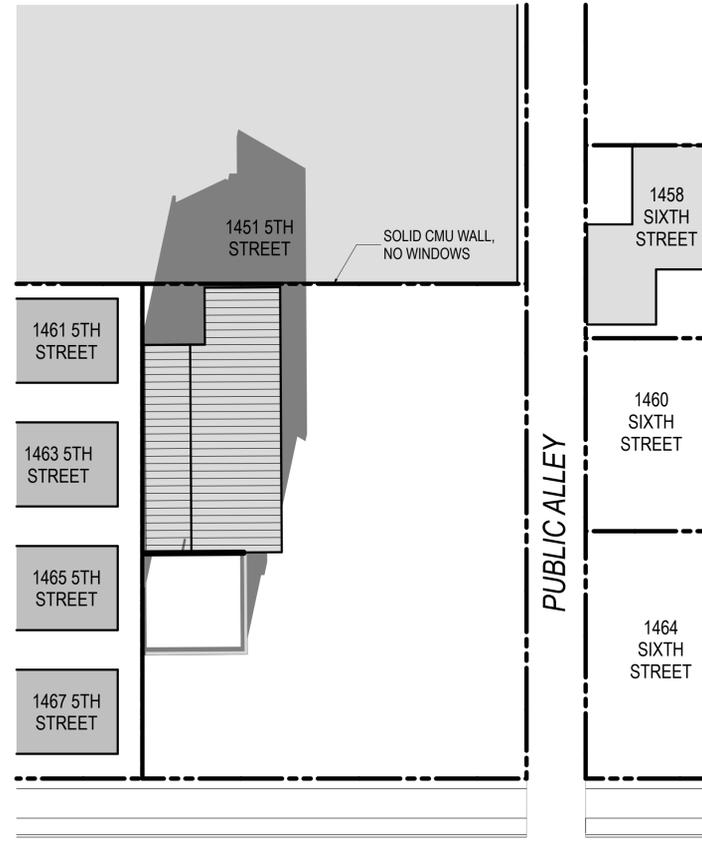
LOT COVERAGE		
	FOOTPRINT	COVERAGE
RESIDENTIAL	2,570	33%
COMMERCIAL	1,840	24%
COMMERCIAL PARKING	461	6%
OPEN SPACE AT GRADE LEVEL	190	2%
OTHER	2,739	35%
TOTAL	7,800	

LOT COVERAGE = 4,871 SF = 63%

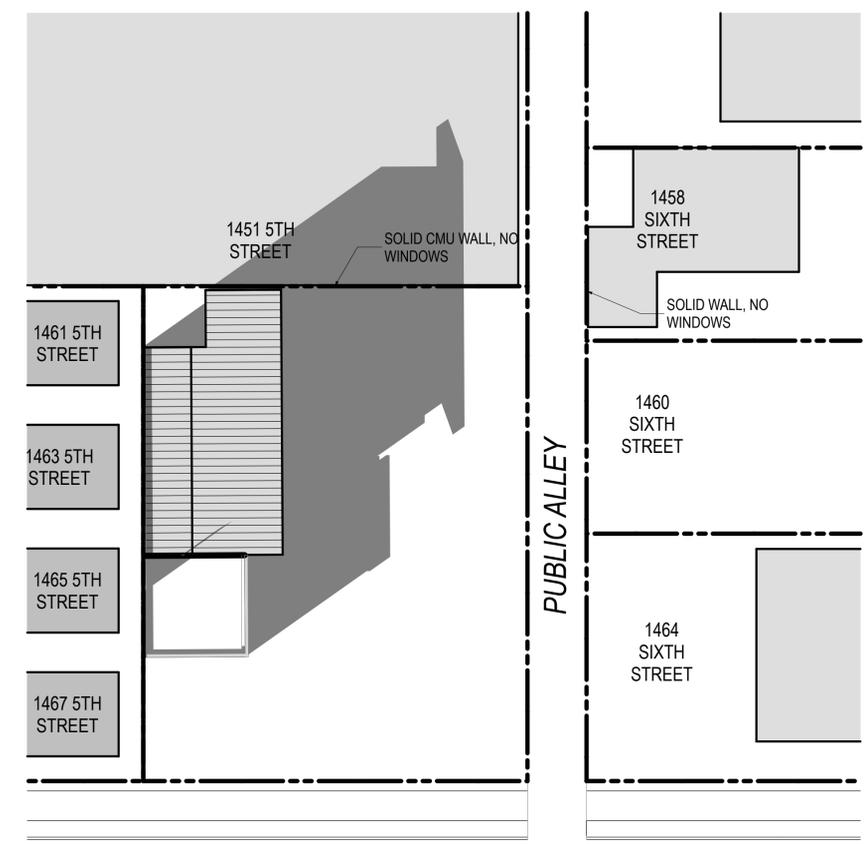
OPEN SPACE DIAGRAM



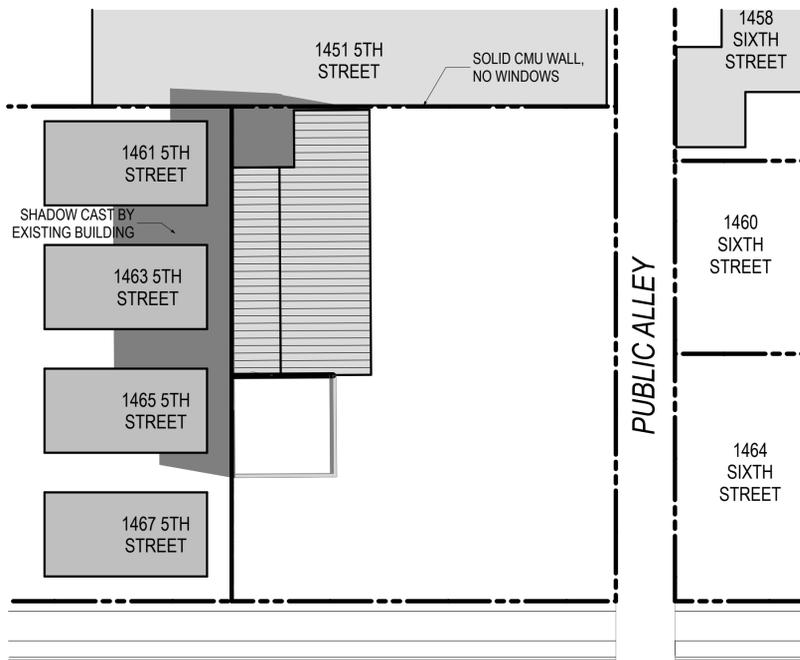
JONES STREET
EXISTNG - DEC 21, 2 HOURS AFTER SUNRISE



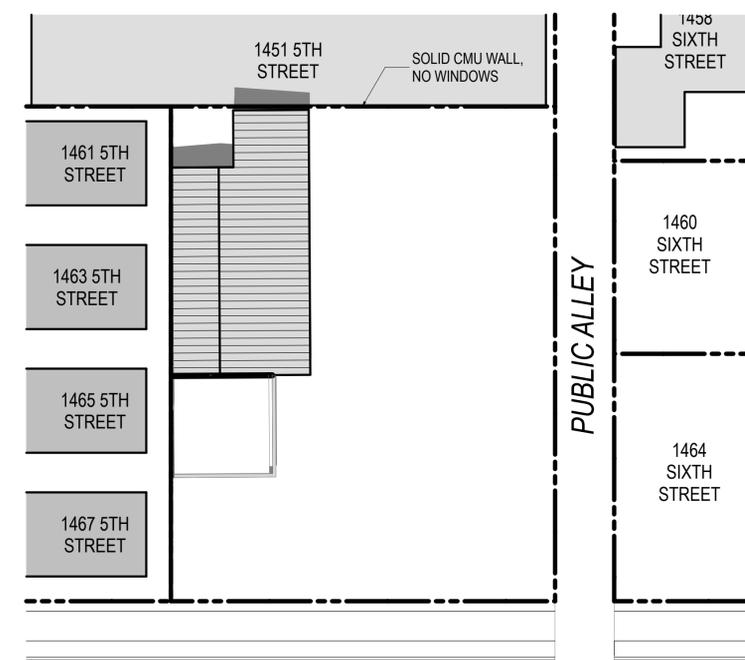
JONES STREET
EXISTNG - DEC 21, NOON



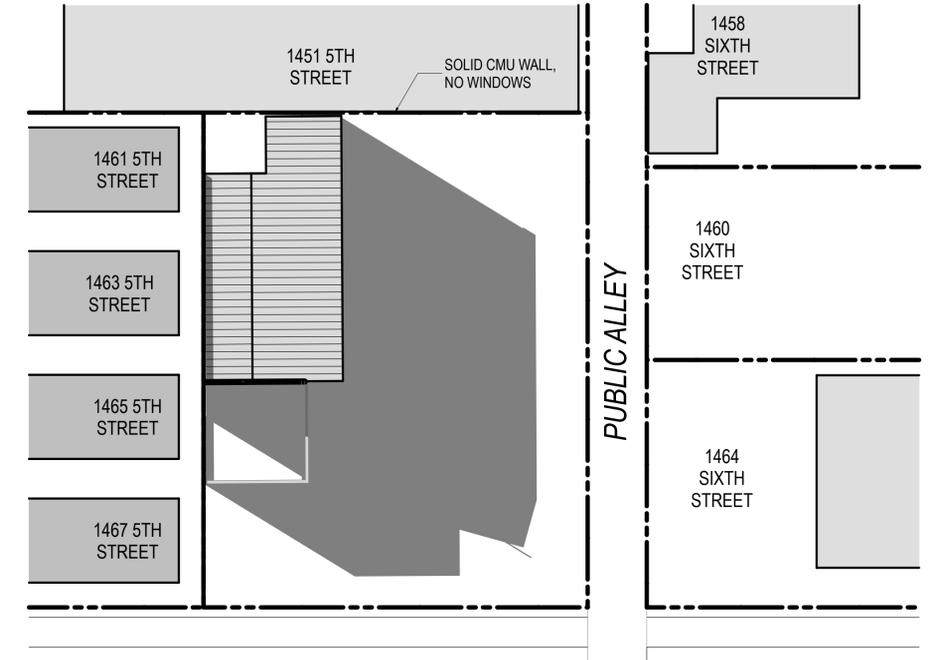
JONES STREET
EXISTNG - DEC 21, 2 HOURS BEFORE SUNSET



JONES STREET
EXISTNG - JUNE 21, 2 HOURS AFTER SUNRISE



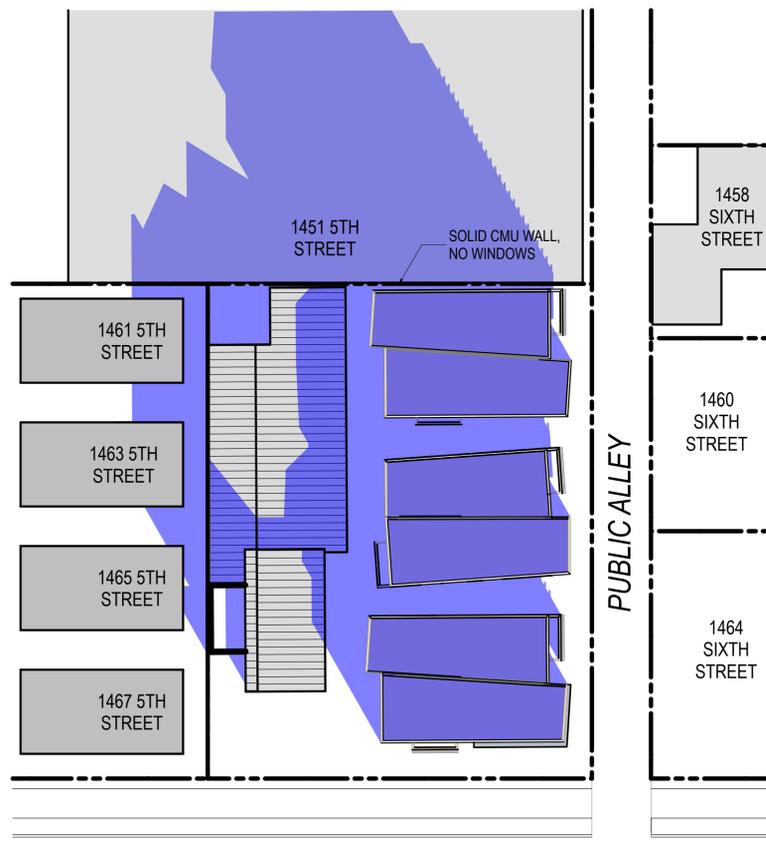
JONES STREET
EXISTNG - JUNE 21, NOON



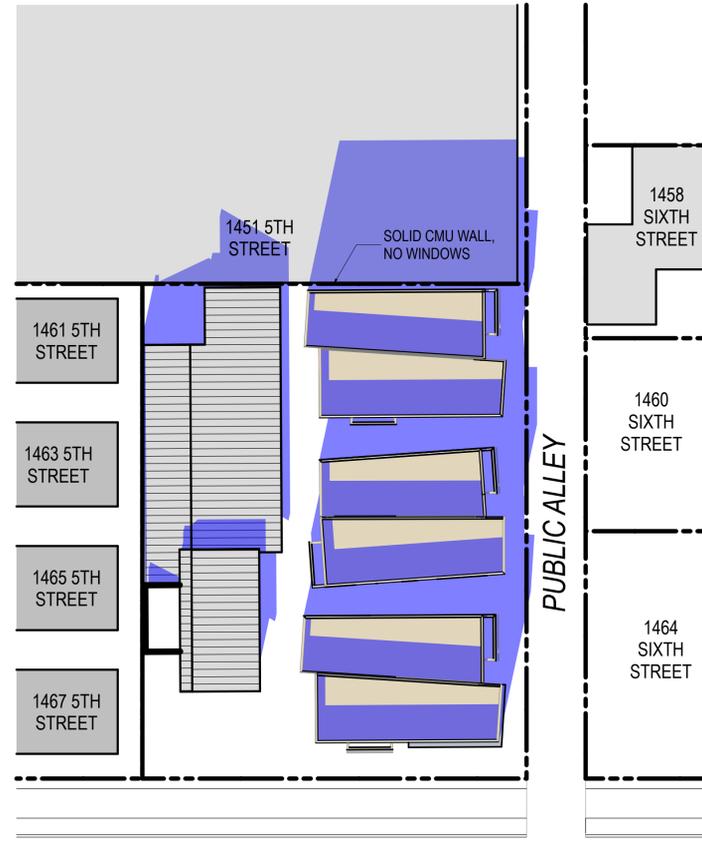
JONES STREET
EXISTNG - JUNE 21, 2 HOURS BEFORE SUNSET

SHADOW STUDY - EXISTING

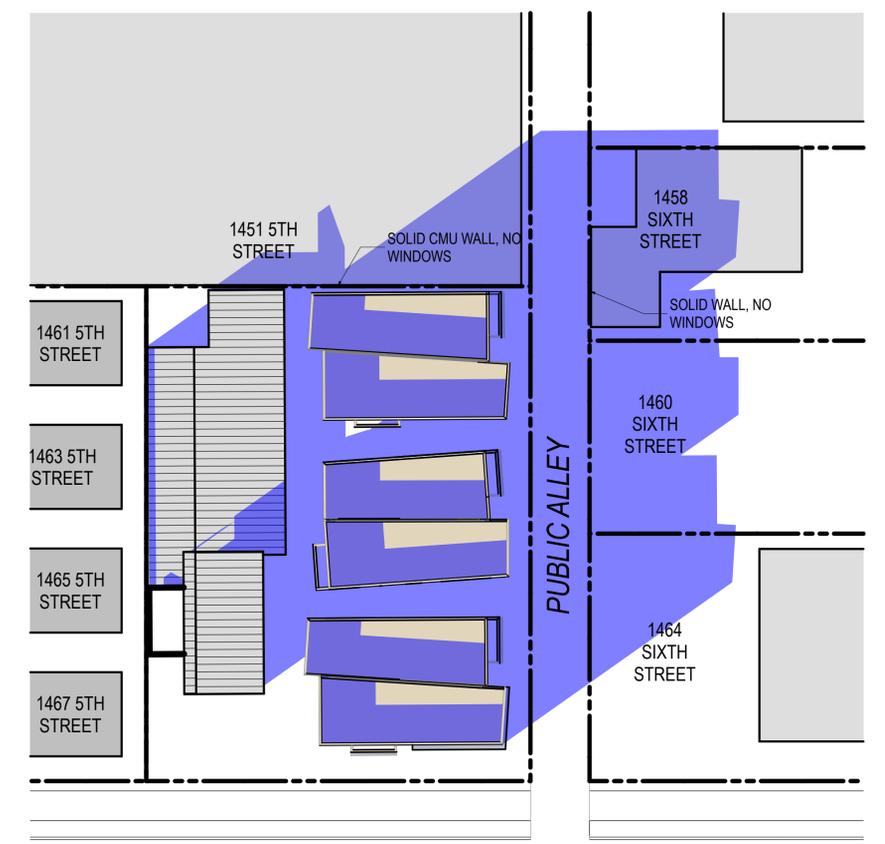
805 JONES STREET
USE PERMIT APPLICATION



JONES STREET
PROPOSED - DEC 21, 2 HOURS AFTER SUNRISE



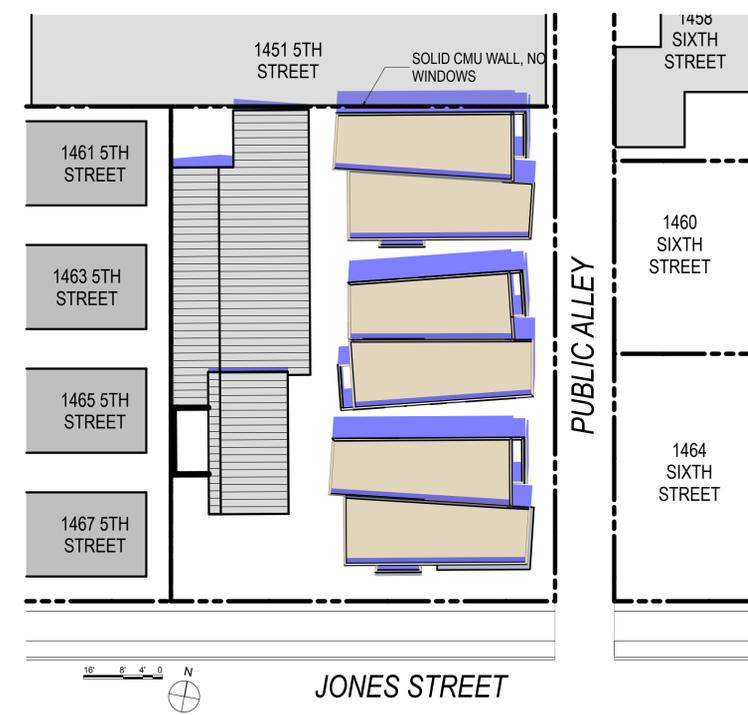
JONES STREET
PROPOSED - DEC 21, NOON



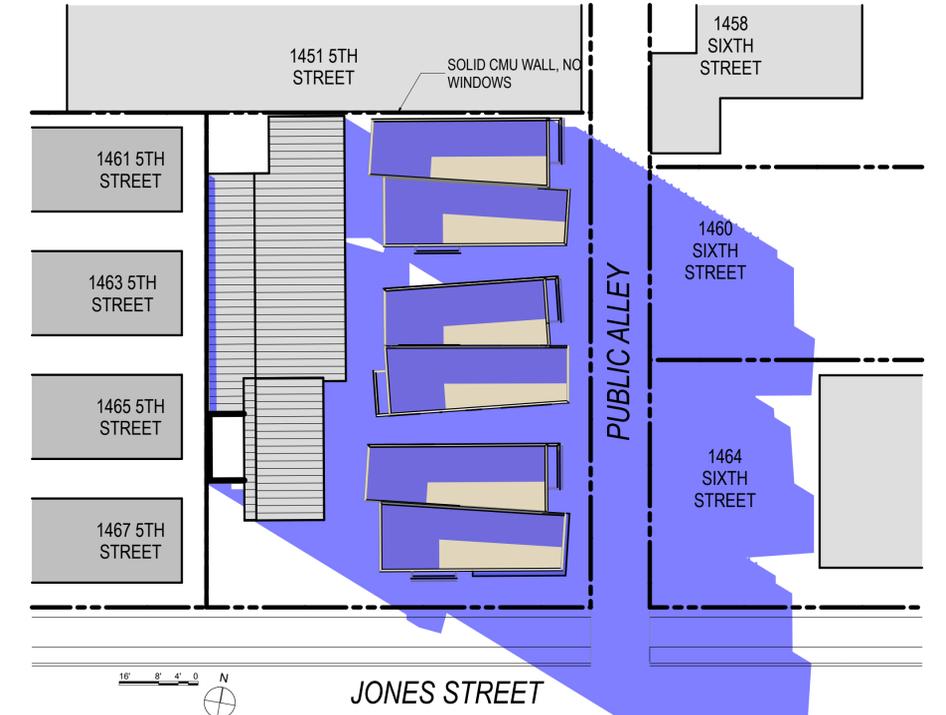
JONES STREET
PROPOSED - DEC 21, 2 HOURS BEFORE SUNSET



JONES STREET
PROPOSED - JUNE 21, 2 HOURS AFTER SUNRISE



JONES STREET
PROPOSED - JUNE 21, NOON

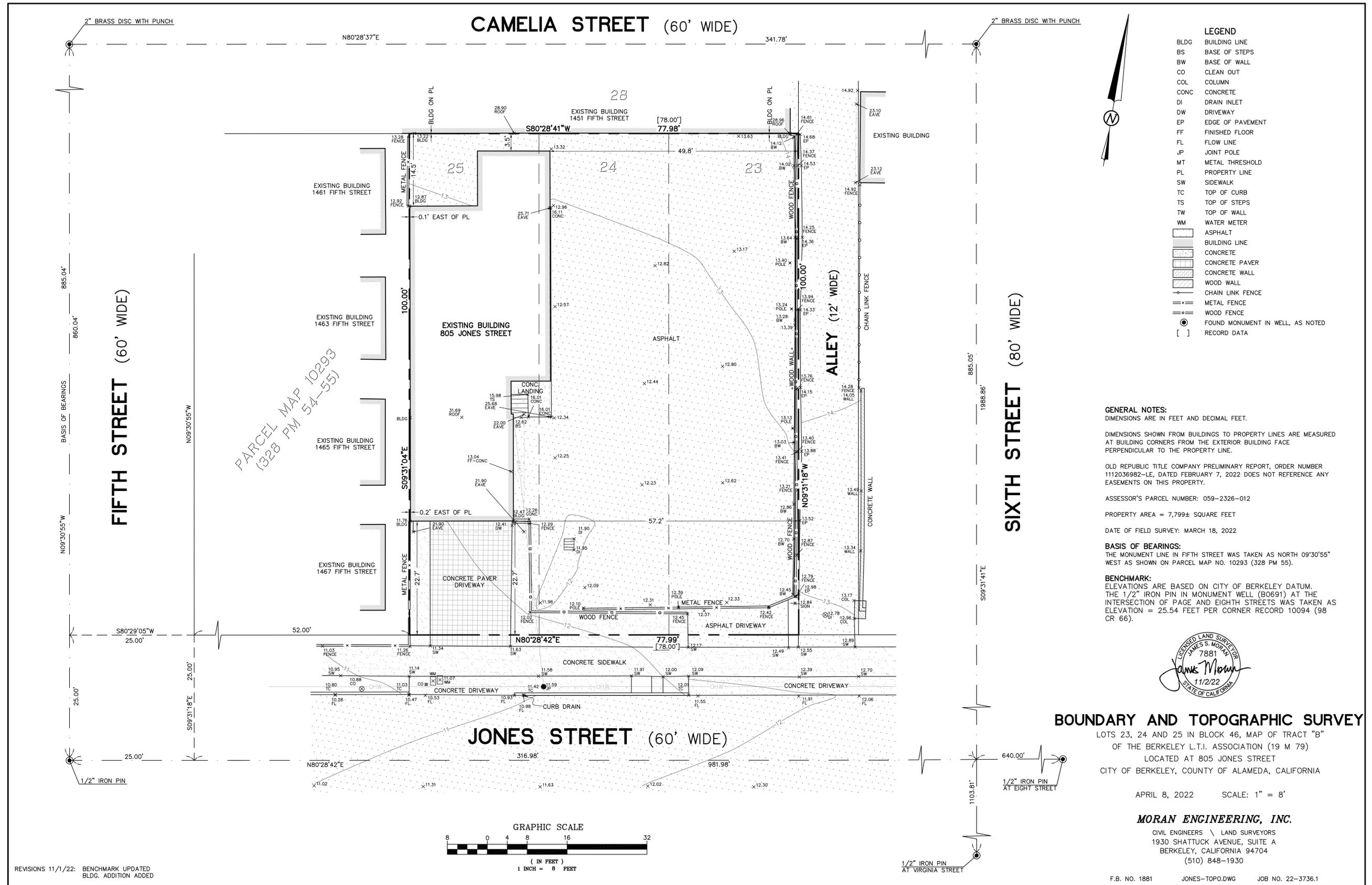


JONES STREET
PROPOSED - JUNE 21, 2 HOURS BEFORE SUNSET

SHADOW STUDY - PROPOSED

805 JONES STREET
USE PERMIT APPLICATION

WADLUND+
Design Studio
APR 2023 -
V2



EXISTING SURVEY

805 JONES STREET
USE PERMIT APPLICATION

WADLUND+
Design Studio
August 2023 -
11/2023



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

805 Jones Street

Use Permit #ZP2022-0162 to construct three, two-story duplexes for a total of six units (5,510 square feet) with a height of 26 feet and a 455 square foot second-story (22 feet) addition to the existing 1,750 square foot commercial building.

The Zoning Adjustments Board of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23.404.

When: Thursday, October 26, 2023, 7:00 PM.

Where: Berkeley Unified School District meeting room, 1231 Addison Street, (wheelchair accessible) with remote/hybrid option (via Zoom).

Please visit: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board> and click on the hearing date to access the most up-to-date meeting information, or call the Land Use Planning division (510) 981-7410.

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED IN A HYBRID MODEL WITH BOTH IN-PERSON ATTENDANCE AND VIRTUAL PARTICIPATION AVAILABLE FOR MEMBERS OF THE PUBLIC.

For in-person attendees, face coverings or masks that cover both the nose and mouth are encouraged. If you're feeling sick, please do not attend the meeting in-person as a public health precaution.

Currently, there are no physical distancing requirements in place by the State of California or the Local Health Officer for an indoor event similar to a Commission meeting. However, all attendees are requested to be respectful of the personal space of other attendees. An area of the public seating area will be designated as "distanced seating" to accommodate persons that need to distance for personal health reasons.

A. Land Use Designations:

- General Plan: Manufacturing Mixed Use Residential
- Zoning: Mixed Use-Residential District (MU-R)

B. Zoning Permits Required:

- Use Permit to establish multiple dwelling units, under BMC Section 23.203.090(B)(7)
- Administrative Use Permit to create between 5,000-10,000 square feet of new

residential floor area in the MU-R, under BMC Section 23.206.030(A)(3)

D. CEQA Recommendation: Categorically exempt pursuant to Section 15332 of the CEQA Guidelines (“Infill Development Project”).

E. Parties Involved:

- Applicant Matthew Wadlund, Berkeley, CA
- Property Owner 805 Jones Street, LLC, 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, Katrina Lapiro, at (510) 981-7488 or klapiro@berkeleyca.gov.

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

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.

Written Comments, 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 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.



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@berkeleyca.gov) 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.