



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

BOARD ACTION
OCTOBER 26, 2023

1515 Derby Street

Use Permit #ZP2023-0045 to demolish a two-car garage and construct a three-story (30 feet 6 inches), 1,745 square foot single-family dwelling unit behind the existing single-family dwelling unit on a 6,625 square foot lot. The project also includes the construction of an on-site Accessory Dwelling Unit (ADU) subject to ministerial review, and not included in this discretionary action.

I. Background

A. Land Use Designations:

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

B. Zoning Permits Required:

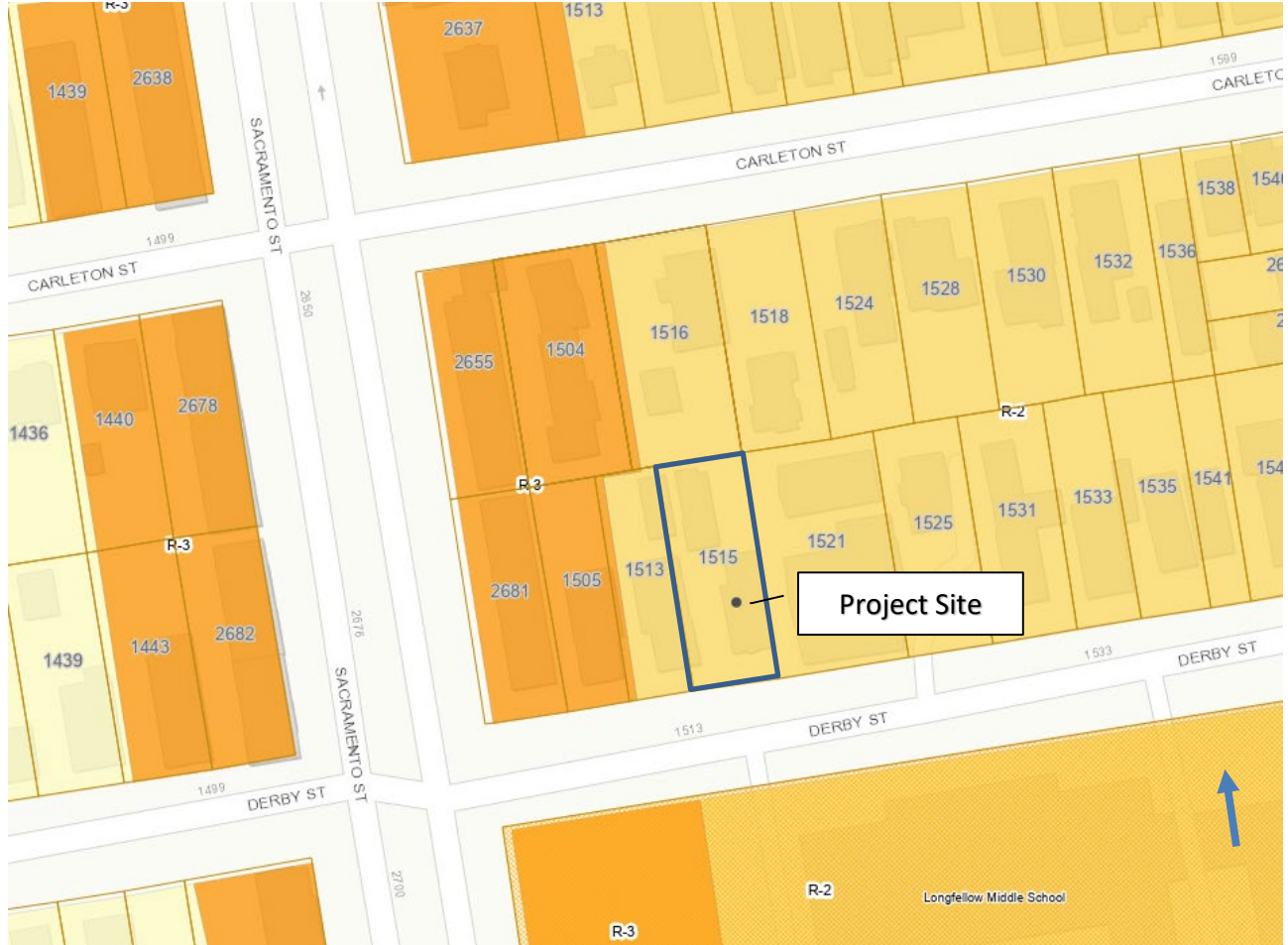
- Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.202.020(A) to construct a new single-family dwelling,
- Use Permit pursuant to BMC Section 23.202.030(B) for six or more bedrooms on lot;
- Administrative Use Permit pursuant to BMC Section 23.202.080(D) for a new building 28 feet in height and greater;
- Administrative Use Permit pursuant to BMC Section 23.304.040(A) to reduce building separation

C. **CEQA Recommendation:** It is staff's recommendation to the Zoning Adjustments Board (ZAB) that this project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15303 ("New Construction or Conversion of Small Structures") of the CEQA Guidelines. The determination is made by ZAB

D. Parties Involved:

- Applicant: Ashley Hsu, 2120 University Ave., Berkeley
- Property Owner: Kevin Casey, 2120 University Ave., Berkeley

Figure 1: Vicinity Map



Legend

- R-2 = Restricted Two-Family Residential District
- R-3 = Multiple-Family Residential District

Figure 2: Proposed Site Plan

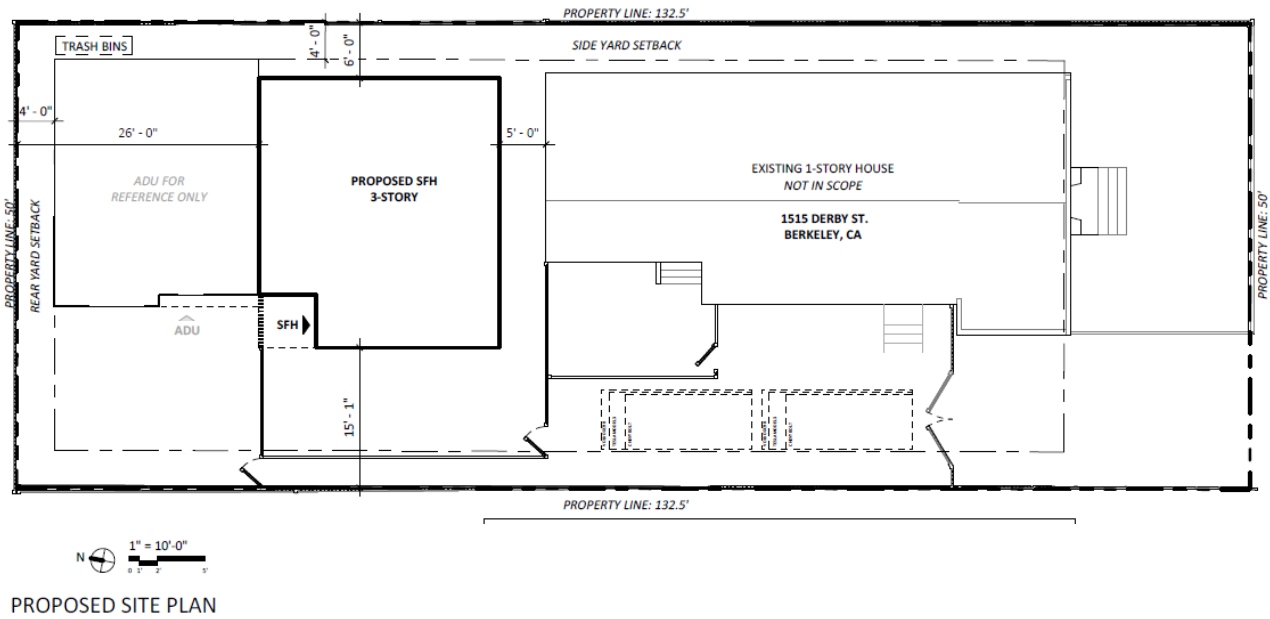


Figure 3: Front Elevation

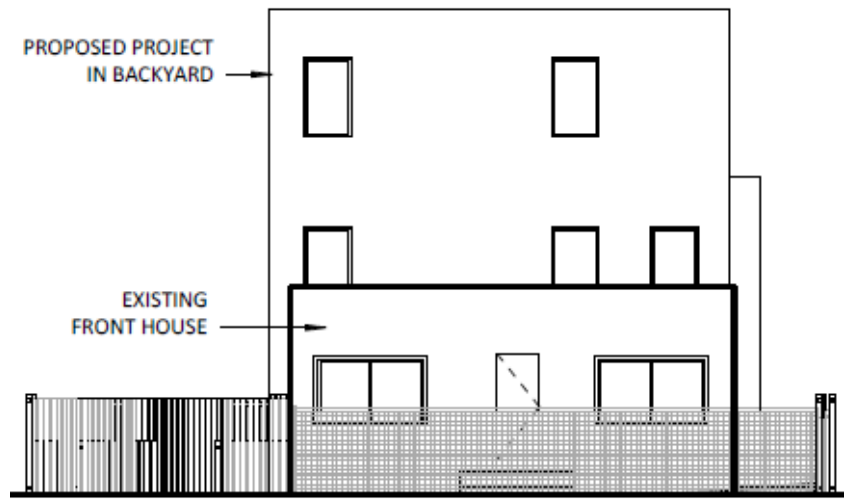


Figure 4: West Elevation

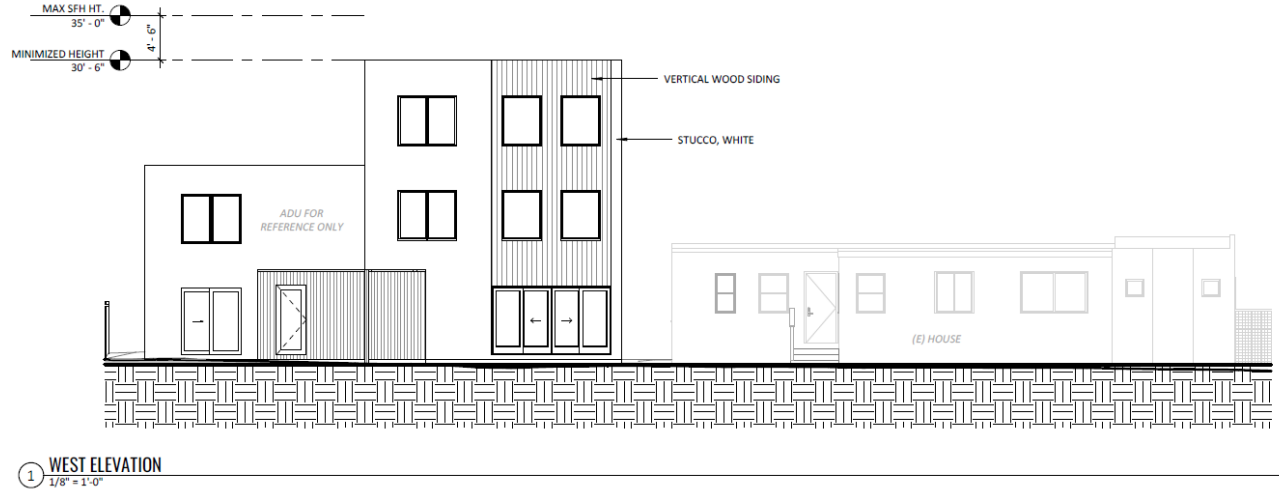


Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Single-Family Dwelling	R-2	LMDR
Surrounding Properties	North	Single-Family Dwelling		
	South	School (Longfellow Middle School)		
	East	Bethlehem Temple		
	West	Multi-family Dwellings		

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 non-residential floor area. The project would only construct new residential floor area; therefore, these fee's do not apply.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)		
Affordable / Inclusionary Housing Requirements (Per BMC Chapter 23.328)	No	The project is a housing development project, as defined in BMC 23.328.020(E) ¹ , but is not subject to these provisions because the project contains less than 5,000 square feet of residential unit floor area.
Creeks (Per BMC Section 17.08.045)	No	The project site is not within a creek buffer zone.
Density Bonus	No	The project is not requesting a Density Bonus.
Historic Resources	No	The proposed project is located in a vacant area behind an existing single-family residence on the same lot. The existing building is not a Landmark or Structure of Merit.
Housing Accountability Act (Government Code Section 65589.5(j))	Yes	The project meets the definition of a "Housing Development Project" per Government Code Section 65589.5(h)(2) ² because the project would construct a single-family dwelling and an ADU on the project site. Modifications to the building separation have been requested; however, the criteria for approval is not objective. Therefore, the project complies with the applicable objective general plan and zoning standards and Section (j) of the Housing Accountability Act applies. See Section V.A of this report for additional discussion on compliance with the Housing Accountability Act.
Housing Crisis Act of 2019 (Senate Bill 330)	Yes	The project meets the definition of a "Housing Development Project" per Government Code Section 65589.5(h)(2) ³ because the project would construct a single-family dwelling and an ADU on the project site. See Section V.B of this report for additional discussion on the sections of SB 330 that apply to the project.
Natural Gas Prohibition (Per BMC Section 12.80.020)	Yes	This project is an application for new construction and was submitted after January 1, 2020, and is subject to the Natural Gas Prohibition.

¹ BMC 23.328.020(E) defines a "Housing Development Project" for purposes of inclusionary housing requirements as "a development project, including a Mixed-Use Residential project involving the new construction of at least one Residential Unit. Projects with one or more buildings or projects including multiple contiguous parcels under common ownership or control shall be considered as a sole Housing Development Project and not as individual projects.

² 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.

³ See footnote 2

Oak Trees (Per BMC Section 6.52.010)	No	There are no Coast Live Oak trees on the site.
Rent Controlled Units (Per BMC Chapter 13.76)	No	There are no rent-controlled units at the site, nor would the new unit be subject to rent control restrictions.
Residential Preferred Parking (RPP)	No	The project site is not within an RPP zone. The project is not eligible for RPP permits pursuant to BMC Section 14.72.080(C)(1) which states that no permits shall be issued to residents in newly constructed residential units.
Seismic Hazards (Per State Hazards Mapping Act)	No	The site is not located within an area susceptible to liquefaction, Fault Rupture, or Landslides 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), nor is it within the City's Environmental Management Area.
Transit	Yes	The project area is served by AC Transit line 88. There is an existing bus stop approximately 0.1 miles to the north near the intersection of Sacramento Street and Carleton Street.

Table 3: Project Chronology

Date	Action
March 21, 2023	Application submitted
April 25, 2023	Application incomplete
May 4, 2023	Application resubmitted
June 13, 2023	Application deemed complete
July 20, 2023	Revised plans received
July 27, 2023	Public hearing notices mailed/posted
August 10, 2023	ZAB hearing, project continued to October 26, 2023
September 5, 2023	Revised plans received
October 26, 2023	ZAB hearing

Table 4: R-2 and Parking Development Standards

Standard		Existing	Proposed Total	Permitted/Required
BMC Sections 23.202.080				
Lot Area (sq. ft.)		6,625	No Change	5,000 min
Gross Floor Area (sq. ft.)		1,355	4,165 ^a	n/a
Dwelling Units		1	2	2
Building Height (proposed structure)	Average (ft.)	n/a	30' 6"	28' max (35' with AUP)
	Stories	n/a	3	3 max.
Building Setbacks (ft.) (proposed structure, excluding ADU)	Front (Derby St.)	n/a	80'	20' min
	Rear	n/a	26'	20' min
	Left Side	n/a	15'-1"	4' min
	Right Side	n/a	6'	4' min
Building Separation (excluding ADU)		n/a	5'	16' (Reduction with AUP)
Lot Coverage (%) (excluding ADU)		20.45	31.77	35 max.
Usable Open Space (sq. ft.)		4,352	400	400 min
Parking (BMC 23.322)	Automobile	2	2	1 maximum
Notes:				
a: This number includes the square footage for the proposed ADU.				
Abbreviations: sq.ft.: square feet; %: percent; max: maximum; min: minimum; n/a: not applicable; AUP: administrative use permit				

II. Project Setting

A. Neighborhood/Area Description: This is a residential area with a mix of one- and two- single-family dwellings, and multiple-family lots, with areas of open space in excess of that required, and mature vegetation. The project site shares a side property line with the Bethlehem Temple, and is located across the street from Longfellow Middle School, and within 0.25 miles of San Pablo Park.

B. Site Conditions: The project site is located on the north side of Derby Street, four houses east of Sacramento Street. The flat and rectangularly shaped project site is 50 feet wide along Derby Street, and approximately 132 feet deep. The subject parcel is currently developed with a one-story, four-bedroom single-family home at the front of the lot. There is also a two-car detached garage that is accessed from a curb cut on the west side of the lot. There are no protected Coast Live oak trees on the site.

III. Project Description

- A. Project Background:** The version of the project that ZAB reviewed at the August 10, 2023 ZAB hearing proposed to construct a single-family dwelling unit in the rear of the property with the ADU in front, adjacent to the existing single-family dwelling. The ZAB considered neighbor concerns raised during the August 10, 2023 hearing and voted to continue the project to October 26, 2023 to allow more time for the two parties to compromise. On October 3, 2023, the applicant provided revised site plans in an effort to respond to the concerns raised at the hearing. The revised site plans propose the single-family dwelling unit at the middle of the property, adjacent to the existing single-family dwelling, and the ADU at the rear of the property. The revised plans propose a decreased in the average height of the proposed single-family dwelling (from 34 feet to 30 feet and 6 inches), a slight increase in the lot coverage (from 31.62 percent to 31.77 percent), and a reduction in the amount of open space (from 1,489 square feet to 400 square feet). The single-family dwelling proposes a total of four bedrooms; however, the office space meets the definition of a bedroom pursuant to BMC Section 13.42.020.⁴ For this reason, a total of five bedrooms are attributed to the single-family dwelling.
- B. Proposed Project:** The proposed project would demolish a two-car garage and construct a new 1,745 square foot three-story single-family dwelling unit, in the middle of the property, adjacent to the existing single-family dwelling. The first floor of the proposed single-family dwelling unit would include a kitchen, dining room, living room, and half bath. The second floor would include a primary bedroom suite, office, and laundry. The proposed office on the second floor meets the definition of a bedroom per BMC Section 13.42.020. The third floor would include three bedrooms, one bath, and a lounge area. The proposed single-family dwelling unit includes a total of five bedrooms and three bathrooms. Parking proposed on the west side of the project site. The project would also construct an ADU at the rear of the property. Pursuant to Government Code Section 65852.2 and 65852.22, the proposed ADU is a ministerial action without discretionary review under ZP#2023-0045 and is included for reference only.

IV. Community Discussion

- A. Neighbor/Community Concerns:** Prior to submitting this application on March 20, 2023, the applicant installed a pre-application poster at the project site. They also submitted drawings of the proposed plans to all adjacent and abutting neighbors

A neighbor at 1518 Carleton Street submitted a letter of opposition on March 23, 2023

⁴ Pursuant to BMC Section 13.42.020, a "Bedroom" means any Habitable Space in a Dwelling Unit or habitable Accessory Structure other than a kitchen or living room that is intended for or capable of being used for sleeping with a door that closes the room off from other common space such as living and kitchen areas that is at least 70 square feet in area, exclusive of closets and other appurtenant space, and meets Building Code standards for egress, light and ventilation. A room identified as a den, library, study, loft, dining room, or other extra room that satisfies this definition will be considered a bedroom for the purposes of applying this requirement.

citing concerns about the impacts to sunlight on their property. The neighbor at 1510 Carleton Street submitted a letter on August 1, 2023 that noted concerns citing concerns about potential impacts to sunlight, and requested an increase in the proposed setback. All neighbor correspondence is included as Attachment 4.

On July 27, 2023, public hearing notices were mailed to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations (Attachment 3). The City also posted notices within the neighborhood at three locations. As of the date of this report, Staff received one public comment regarding the project, as noted above.

On August 10, 2023, the Zoning Adjustments Board (ZAB) held a public hearing for the proposed project. Based on public comments from neighbors that cited concerns regarding light and air impacts, the ZAB voted to continue the project to a date certain and allow the applicant time to coordinate with the neighbors and consider potential project changes to resolve the neighbor concerns.

On October 3, 2023 the applicant submitted revised plans that swapped the location of the proposed three-story family dwelling and the future ADU to address neighborhood concerns regarding light and air. As of the date of this report, Staff has not received additional communication from neighbors.

B. Landmark Preservation Commission / Design Review 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 residential district subject to design review, commercial or manufacturing district, and does not involve the demolition of a nonresidential building, respectively.

V. Issues and Analysis

A. Housing Accountability Act Analysis:

Pursuant to the Housing Accountability Act (HAA), California Government Code Section 65589.5(j), 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 safety⁵ 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 a

⁵ A "specific, adverse impact" means "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete."

“housing development project” consisting of a new three-story single-family dwelling built behind an existing single-family home. The project complies with applicable, objective general plan and zoning standards; however, the project includes Administrative Use Permits to allow for the construction of building above 28 feet in average height, and to reduce the minimum building separation. Therefore, the City may not deny the project without basing its decision on the written findings under Section 65589.5(j), above.

As shown in Table 4 above, the project complies with the zoning standards. While the project may include Administrative Use Permits to modify standards, there are no objective criteria in the findings; therefore, the project still complies with the HAA. The ZAB 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.

Staff is not aware of specific adverse impacts that could occur with the construction of the of the project.

B. Senate Bill (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 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 Section 65920)).

The October 26, 2023 ZAB hearing represents the second 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 Section 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 proposed structure is new and there are no landmarked or structures of merit on the site. Therefore, the property does not appear to be historically significant and is not eligible for listing on the California Register of Historical Resources or as a City of Berkeley Landmark or Structure of Merit.

Government Code Section 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 CEQA. 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.

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.

A. General Non-Detriment Finding: Staff believes the project would not be detrimental to the health, safety, peace, morals, comfort, or general welfare of residents or workers in the area because it would be consistent with the development pattern in the area. The applicant proposes to construct a single-family dwelling in a neighborhood developed with single-family dwellings. The siting/design of the proposed structure would be compatible with the surrounding built environment. Staff believes that the proposed project would not unreasonably obstruct sunlight, privacy, air, or views as analyzed below:

1. Sunlight/Shadow: Shadow studies submitted by the applicant document the existing and proposed shadow effects at three times each day during the summer and winter solstices, and the spring equinox. The studies show that the new dwelling would cast new shadows on neighboring yards and buildings at certain times of year and times of day. However, while the proposed dwelling would cast new shadows, impacts would be limited in duration and effect and would not substantially diminish sunlight for the affected residences. The proposed building would cast new shadows on 1518 Carleton Street during the winter and spring afternoons. Shadows are already cast on 1518 Carleton Street by the existing temple building located at 1521 Derby Street. Staff recommends that the Board find that these potential impacts are non-detrimental.
2. Privacy: The proposed dwelling would have first, second, and third floor windows on all sides. However, the north elevation facing 1516 Carleton Street, includes three small windows in an effort to reduce privacy impacts. The new dwelling is setback 26 feet from the rear property line and 6 feet from the east property line which is shared with a church. The dwelling meets the R-2 Zoning District development standards for building height and setbacks, except for the reduced

building separation requested with an AUP. BMC Section 23.304.040(A) allows for a reduced building separation on a lot with two or main buildings with no additional findings. Privacy impacts from the project would not be detrimental.

3. Air: As discussed above, the proposed single-family dwelling unit exceeds all setback requirements in the R-2 Zoning District, and would be consistent with the existing development except for a reduced building separation between the existing single-family home and new dwelling. The reduced building separation between main buildings to accommodate the second dwelling would locate the new three-story structure further from neighboring residential buildings, and is required due to the size of the existing lot. Additionally, the proposed project would exceed the usable open space requirement (See Table 4 above).
4. Views: Pursuant to BMC Chapter 23.502.020 (Glossary), a view corridor includes significant views of the Berkeley Hills, San Francisco Bay, Mt. Tamalpais, or a significant landmark or any other significant vista that substantially enhances the value and enjoyment of real property. The proposed three-story residence will be constructed on the same lot as an existing one-story dwelling. The surrounding neighborhood is surrounded by two story homes including a church and middle school. The new residence would be approximately four feet from the rear property line. As described above under Section II, Project Setting, this neighborhood is generally flat and surrounded by residential structures and mature vegetation which block views of significant view corridors from the project site. As such, staff believes the proposed project would not unreasonably obstruct views.

B. Administrative Use Permit to Reduce the Required Building Separation: Pursuant to BMC Section 23.304.040(A), if there are two or main buildings which contain dwelling units, the building separation may be reduced with approval of an AUP. The proposed project includes shifting the three-story structure toward the interior of the lot leaving the area in the rear of the lot for a new ADU. Therefore, the proposed dwelling would not cause significant privacy issues.

C. R-2 District Purposes: The proposed project would meet the following purposes of the Restricted Two-Family Residential District:

1. Implement the General Plan by encouraging the development of low medium-density residential areas characterized by a reasonably open and spacious type of development with a pattern of housing types ranging from single-family to duplexes and small apartment structures;
2. Make available housing for persons who desire a range of housing choice with a relatively large amount of open space; and
3. Protect adjacent properties from unreasonable obstruction of light and air.

Staff Analysis: Pursuant to BMC Section 23.202.020(B), a new single-family dwelling is

allowed in the R-2 zoning district with a Use Permit, provided that its siting meets applicable development standards and subject to the non-detriment finding. As shown in Table 4, the proposed project would meet or exceed all development standards for the dwelling, except for the reduced building separation. The average height may be increased from 28 feet up to 35 feet with an AUP in the R-2 (BMC 23.202.080(D)). Staff received communication from the neighbor at 1518 Carleton Street with concerns of the height and the elimination of sunlight. The building was shifted to the south to reduce potential impacts on light and air. Since it comes in below the allowed maximum height and new shadows would be cast for limited times at limited times of the year, it is staff's opinion that height-related issues would not be detrimental. The existing front unit contains four bedrooms while the new dwelling unit proposes five bedrooms for a total of nine on the lot. The project recognizes and protects the existing pattern of development in the low-medium density single-family residential areas of the city and is consistent with the general plan.

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

1. Policy LU-3–Infill Development: Encourage infill development that is architecturally and environmentally sensitive, embodies principles of sustainable planning and construction, and is compatible with neighboring land uses and architectural design and scale.
2. Policy LU-7–Neighborhood Quality of Life, Action A: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.
3. Policy UD-16–Context: The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.
4. Policy UD-24–Area Character: Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in.
5. Policy UD-32–Shadows: New buildings should be designed to minimize impacts on solar access and minimize detrimental shadows.
6. Policy H-16–Family Housing: Support and encourage housing projects that include units affordable and suitable for households with children and large families.
7. Policy H-33–Regional Housing Needs: Encourage adequate housing production to meet City needs and the City's share of regional housing needs.

Staff Analysis: The proposed project is an infill development with a new dwelling unit on a lot with an existing residence in a primarily residential neighborhood. The massing, proportions, design, and use of the buildings would be compatible with the surrounding neighborhood. The project meets all development standards in the R-2 district, except for the building separation, and may be allowed with an AUP. The project would add one accessory dwelling unit to the City's housing stock. The

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

VII. Recommendation

Because of the project's consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board **APPROVE** Use Permit ZP2023-0045 pursuant to Section 23.406.040 and subject to the attached Findings and Conditions (Attachment 1).

Attachments:

1. Findings and Conditions
2. Project Plans, received October 3, 2023
3. August 10, 2023 Staff Report with attachments

Staff Planner: Brian Garvey, bgarvey@berkeleyca.gov, (510) 981-7424

ATTACHMENT 1

FINDINGS AND CONDITIONS

OCTOBER 26, 2023

1515 Derby Street

Use Permit #ZP2023-0045 to demolish a two-car garage and construct a three-story (30 feet 6 inches), 1,745 square foot single-family dwelling unit behind the existing single-family dwelling unit on the project site. The project also includes the construction of an Accessory Dwelling Unit (ADU) on-site subject to ministerial review, and not included in this discretionary action.

ZONING PERMITS REQUIRED

- Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.202.020(A) to construct a new single-family dwelling,
- Use Permit pursuant to BMC Section 23.202.030(B) for six or more bedrooms on lot;
- Administrative Use Permit pursuant to BMC Section 23.202.080(D) for a new building 28 feet in height and greater;
- Administrative Use Permit pursuant to BMC Section 23.304.040(A) to reduce building separation

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 15303 of the CEQA Guidelines (“New Construction or Conversion of Small Structures”).
2. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

II. HOUSING ACCOUNTABILITY ACT FINDINGS

- A. 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: (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.

- B.** The project includes construction of a three-story single-family residence behind a current single-family home. 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 will develop one three-story single-family dwelling unit and add one unit of housing;
 - B. The project is consistent with all R-2 objective development standards;
 - C. Impacts to light on neighboring residences will be limited to certain time of a year and during certain hours of a day, therefore, shading impacts will not be detrimental;
 - D. New windows are proposed on all sides of the dwelling, however will be setback 26 feet from the rear property line and 15 feet 1 inch from the east property line minimizing privacy to neighboring properties.
 - E. The proposal will be consistent with the existing development and building-to-building separation pattern. The proposed single-family dwelling unit exceeds all setback requirements in the R-2 Zoning District.
 - F. The proposed project will not result in additional obstruction of significant views (BMC Section 23.502.020 (Defined Terms) in the neighborhood because the site is flat and the proposed height of the new building is located more centrally on the lot.
 - G. 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.
 - H. The reduced building separation to accommodate the dwelling is required due to the shifting of the three-story structure toward the interior of the lot leaving the area in the rear of the lot for a new ADU.
 - I. The proposed height is compatible with those of neighboring structures and will not create unreasonable obstruction of significant views from neighboring properties;
 - J. The proposed rear unit includes the addition of five bedrooms while the existing residence contains four for a total of nine on the lot. The bedrooms will provide additional living area for the new dwelling.

IV. 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 23.404.050(H), 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. Prior to the issuance of any building or demolition permit, the applicant shall prepare and submit a transportation construction plan to the City Traffic Engineer for approval. Please contact the Office of Transportation at (510) 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.
14. 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](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

- 15. 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.
- 16. Solar Photovoltaic (Solar PV) and Battery Energy Storage Systems (ESS).** A solar PV system shall be installed, subject to specific limited exceptions, as specified by the Berkeley Energy Code (BMC Chapter 19.36). Energy storage system (ESS) readiness (new single-family, duplex, and townhouse homes) or ESS installation (new multifamily and most nonresidential buildings) shall be completed as specified by BMC Chapter 19.36. Location of the solar PV system and the ESS, if applicable, shall be noted on the construction plans.
- 17. Electric Vehicle (EV) Charging.** Each dwelling unit shall install a listed raceway, wiring, and load capacity to allow for future Level 2 (40 amp) plug-in electric vehicle (EV) charging system installation, or any more stringent EV charging requirements as specified by the Berkeley Green Code (BMC Chapter 19.37). Readiness for EV charging and EV charging station installations shall be noted on the construction plans.
- 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). The building permit plan set submission shall both include a cover sheet declaration: 'Natural Gas-Free Design as required by 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.

During Construction:

22. Construction Hours. Construction activity shall be limited to between the hours of 8:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and Noon on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.
24. Public Works - Implement BAAQMD-Recommended Measures during Construction. For all proposed projects, BAAQMD recommends implementing all the Basic Construction Mitigation Measures, listed below to meet the best management practices threshold for fugitive dust:
 - A. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
 - B. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
 - C. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
 - D. All vehicle speeds on unpaved roads shall be limited to 15 mph.
 - E. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
 - F. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
 - G. All construction equipment shall be maintained and properly tuned in accordance with manufacturer specifications. All equipment shall be checked by a certified visible emissions evaluator.
 - H. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District 's phone number shall also be visible to ensure compliance with applicable regulations.
25. Construction and Demolition Diversion. Divert debris according to your plan and collect required documentation. Get construction debris receipts from sorting facilities in order to verify diversion

requirements. Upload recycling and disposal receipts if using [Green Halo](#) and submit online for City review and approval prior to final inspection. Alternatively, complete the second page of the original [Construction Waste Management Plan](#) and present it, along with your construction debris receipts, to the Building Inspector by the final inspection to demonstrate diversion rate compliance. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement.

- 26. Low-Carbon Concrete.** The project shall maintain compliance with the Berkeley Green Code (BMC Chapter 19.37) including use of concrete mix design with a cement reduction of at least 25%. Documentation on concrete mix design shall be available at all times at the construction site for review by City Staff.
- 27. Transportation Construction Plan.** The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:
- Alterations, closures, or blockages to sidewalks, pedestrian paths or vehicle travel lanes (including bicycle lanes);
 - Storage of building materials, dumpsters, debris anywhere in the public ROW;
 - Provision of exclusive contractor parking on-street; or
 - Significant truck activity.

Please contact the Office of Transportation at (510) 981-7010, or 1947 Center Street, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be consistent with any other requirements of the construction phase.

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

- 28. Avoid Disturbance of Nesting Birds.** Initial site disturbance activities, including vegetation and concrete removal, shall be prohibited during the general avian nesting season (February 1 to August 30), if feasible. If nesting season avoidance is not feasible, the applicant shall retain a qualified biologist to conduct a preconstruction nesting bird survey to determine the presence/absence, location, and activity status of any active nests on or adjacent to the project site. The extent of the survey buffer area surrounding the site shall be established by the qualified biologist to ensure that direct and indirect effects to nesting birds are avoided. To avoid the destruction of active nests and to protect the reproductive success of birds protected by the MBTA and CFGC, nesting bird surveys shall be performed not more than 14 days prior to scheduled vegetation and concrete removal. In the event that active nests are discovered, a suitable buffer (typically a minimum buffer of 50 feet for passerines and a minimum buffer of 250 feet for raptors) shall be established around such active nests and no construction shall be allowed inside the buffer areas until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). No ground-disturbing activities shall occur within this buffer until the qualified biologist has confirmed that

breeding/nesting is completed and the young have fledged the nest. Nesting bird surveys are not required for construction activities occurring between August 31 and January 31.

29. Archaeological Resources (Ongoing throughout demolition, grading, and/or construction). Pursuant to CEQA Guidelines section 15064.5(f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore:

- A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.
- B. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Berkeley. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by the qualified professional according to current professional standards.
- C. In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.
- D. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation measures for cultural resources is carried out.
- E. If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.

30. Human Remains (Ongoing throughout demolition, grading, and/or construction). In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.

31. Paleontological Resources (Ongoing throughout demolition, grading, and/or construction). In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards [SVP 1995,1996]). The qualified paleontologist shall document the discovery as needed,

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

- 32. 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 dated October 3, 2023, except as modified by conditions of approval.

At All Times:

42. 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.
43. 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.
44. 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.
45. Electrical Meter. Only one electrical meter fixture may be installed per dwelling unit.



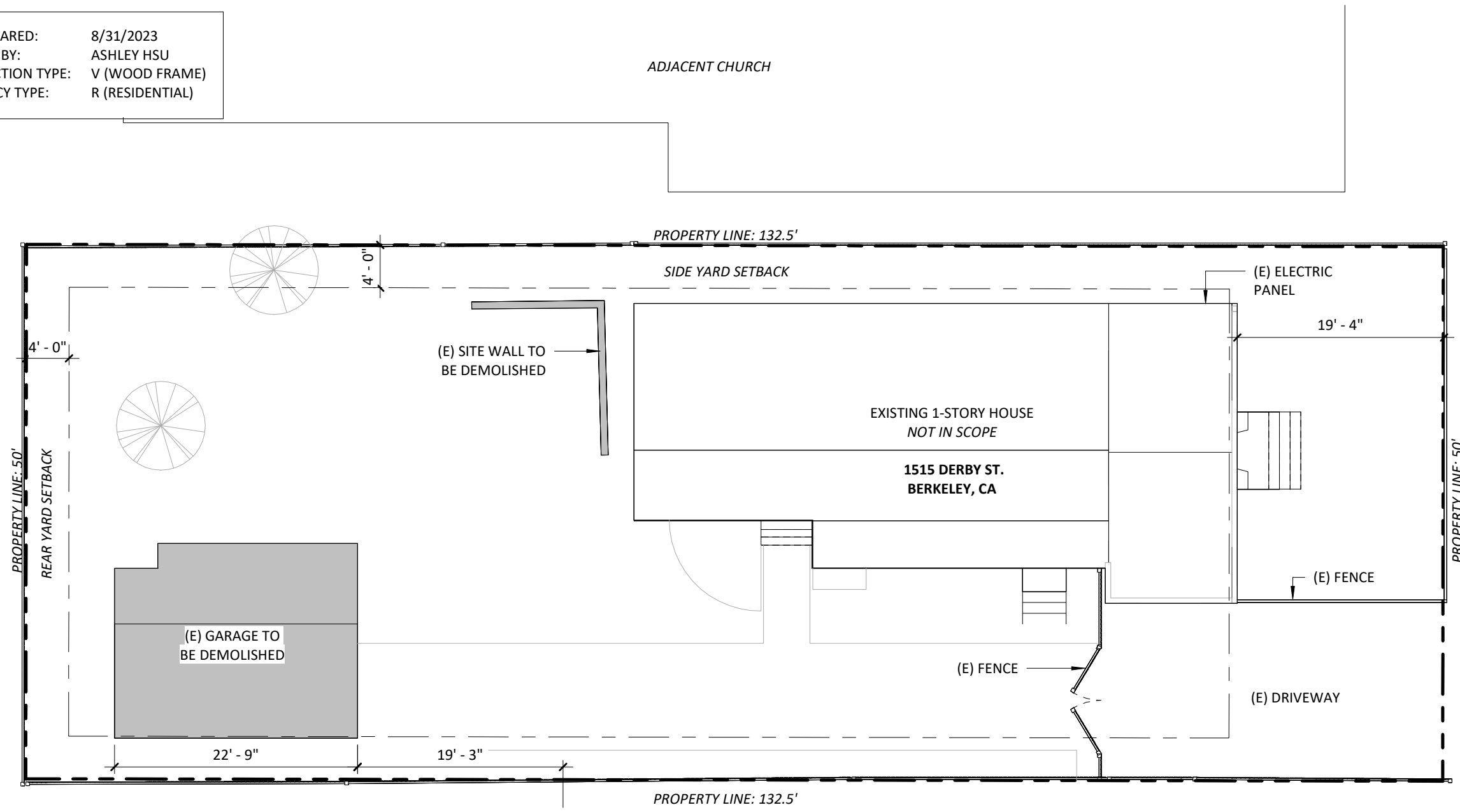
NEW AVENUE

USE PERMIT APPLICATION

FUND 1 - DERBY

1515 DERBY ST. BERKELEY, CA 94703

DATE PREPARED: 8/31/2023
PREPARED BY: ASHLEY HSU
CONSTRUCTION TYPE: V (WOOD FRAME)
OCCUPANCY TYPE: R (RESIDENTIAL)



ADJACENT CHURCH

EXISTING 1-STORY HOUSE
NOT IN SCOPE
1515 DERBY ST.
BERKELEY, CA

(E) GARAGE TO
BE DEMOLISHED

(E) ELECTRIC
PANEL

(E) SITE WALL TO
BE DEMOLISHED

(E) FENCE

(E) FENCE

(E) DRIVEWAY

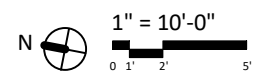
PROPERTY LINE: 132.5'

TO BE DEMOLISHED

ADJACENT HOUSE



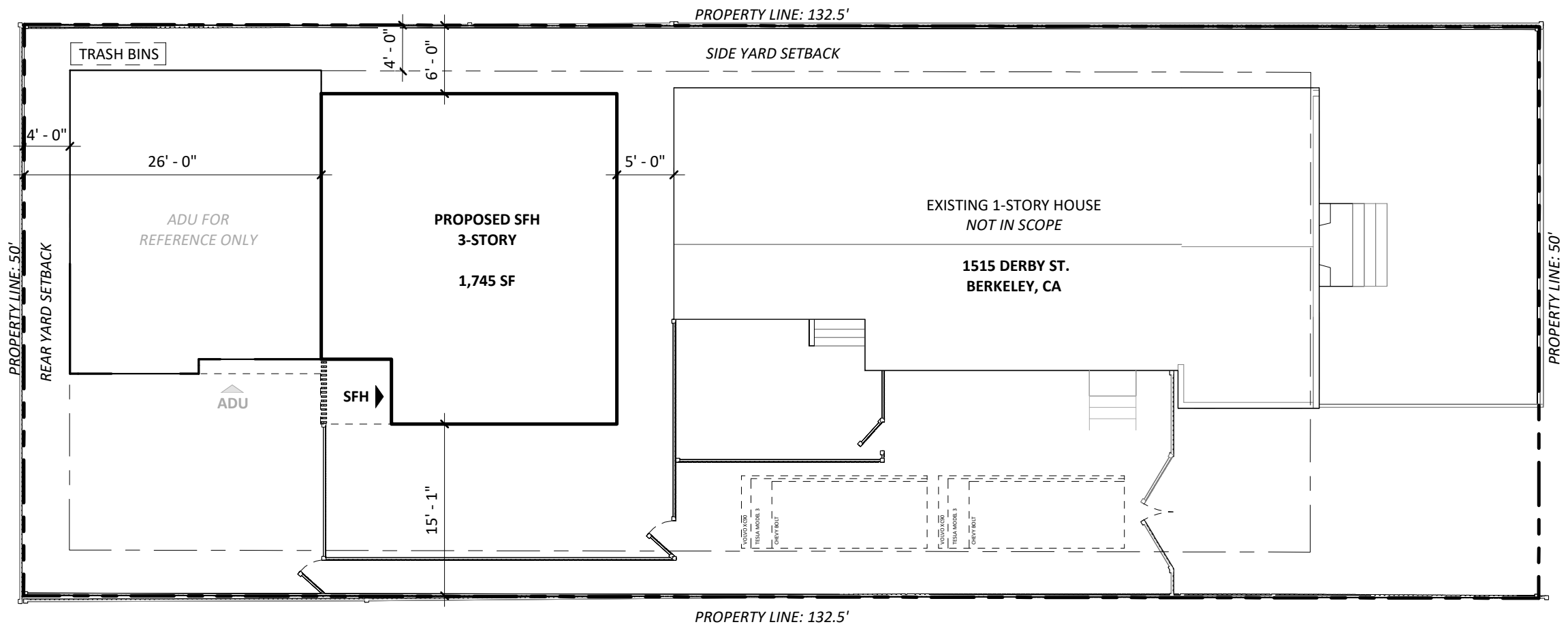
USE PERMIT APPLICATION
1515 DERBY ST. BERKELEY, CA 94703



EXISTING SITE PLAN
PAGE 1

DATE PREPARED: 8/31/2023
PREPARED BY: ASHLEY HSU
CONSTRUCTION TYPE: V (WOOD FRAME)
OCCUPANCY TYPE: R (RESIDENTIAL)

ADJACENT CHURCH

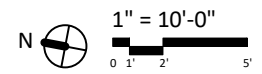


DERBY STREET

ADJACENT HOUSE

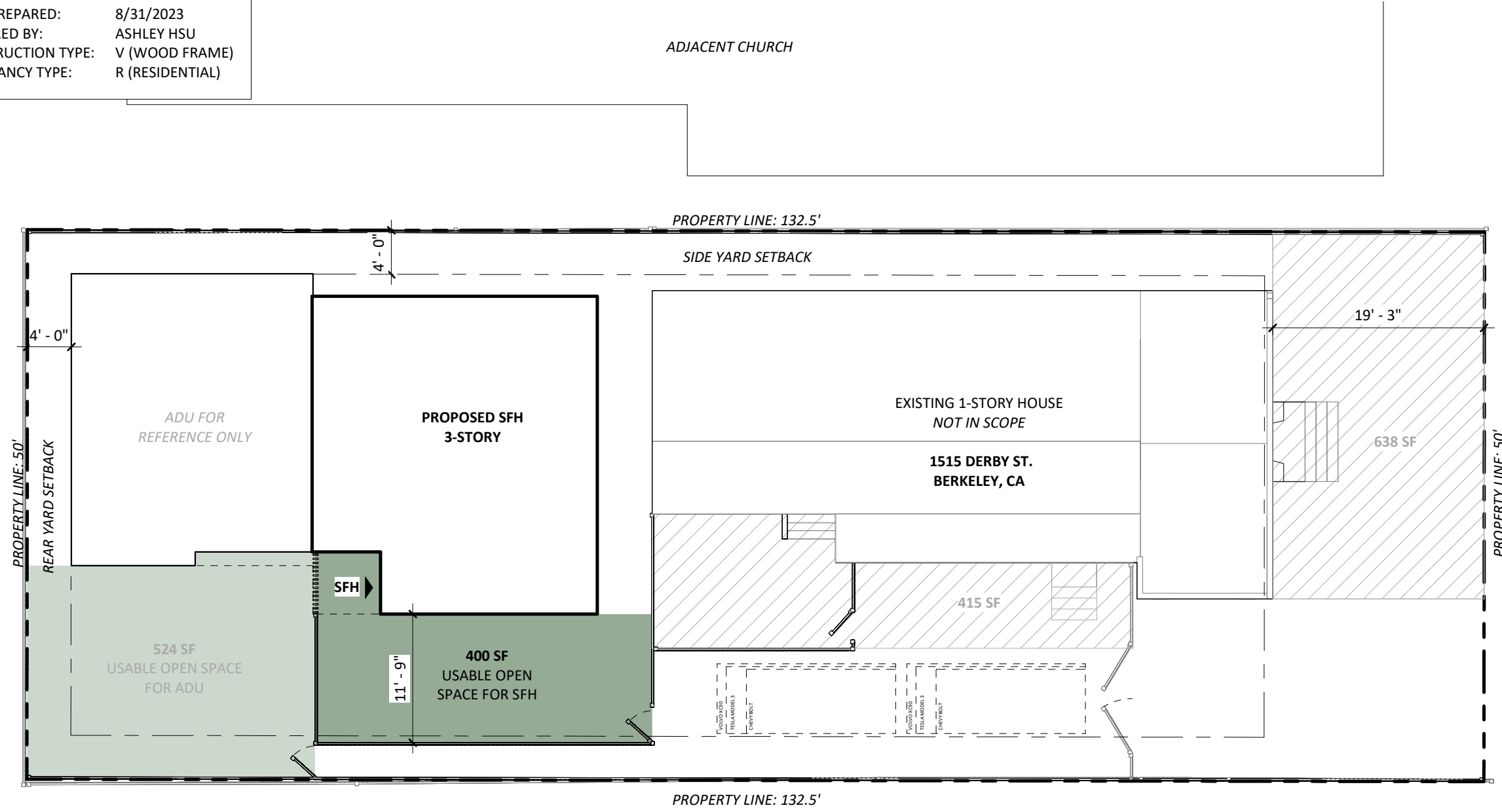


USE PERMIT APPLICATION
1515 DERBY ST. BERKELEY, CA 94703



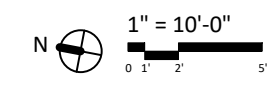
PROPOSED SITE PLAN
PAGE 2

DATE PREPARED: 8/31/2023
 PREPARED BY: ASHLEY HSU
 CONSTRUCTION TYPE: V (WOOD FRAME)
 OCCUPANCY TYPE: R (RESIDENTIAL)



NEW ASSIGNED USABLE OPEN SPACE

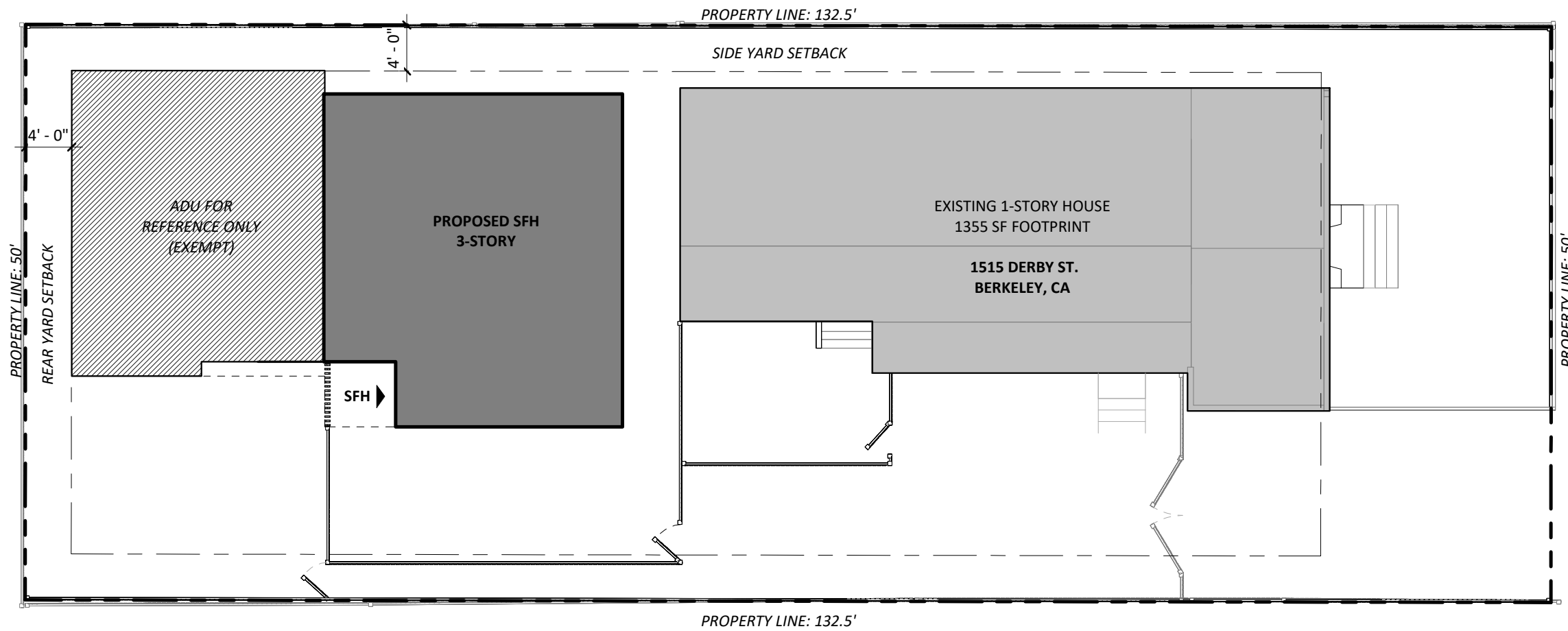
SHARED USABLE SPACE OR EXISTING USABLE SPACE FOR EXISTING HOME



USE PERMIT APPLICATION
 1515 DERBY ST. BERKELEY, CA 94703

LANDSCAPE & OPEN SPACE PLAN

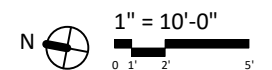
DATE PREPARED: 8/31/2023
 PREPARED BY: ASHLEY HSU
 CONSTRUCTION TYPE: V (WOOD FRAME)
 OCCUPANCY TYPE: R (RESIDENTIAL)



LOT COVERAGE CALCULATIONS

LOT: 50' X 132.5' = 6625 SF
 (E) LOT COVERAGE: 1355/6625 = 20.45%
 (N) LOT COVERAGE: 1355+715 = 2105
 2105/6625 = 31.77%
 MAX ALLOWABLE: 35%

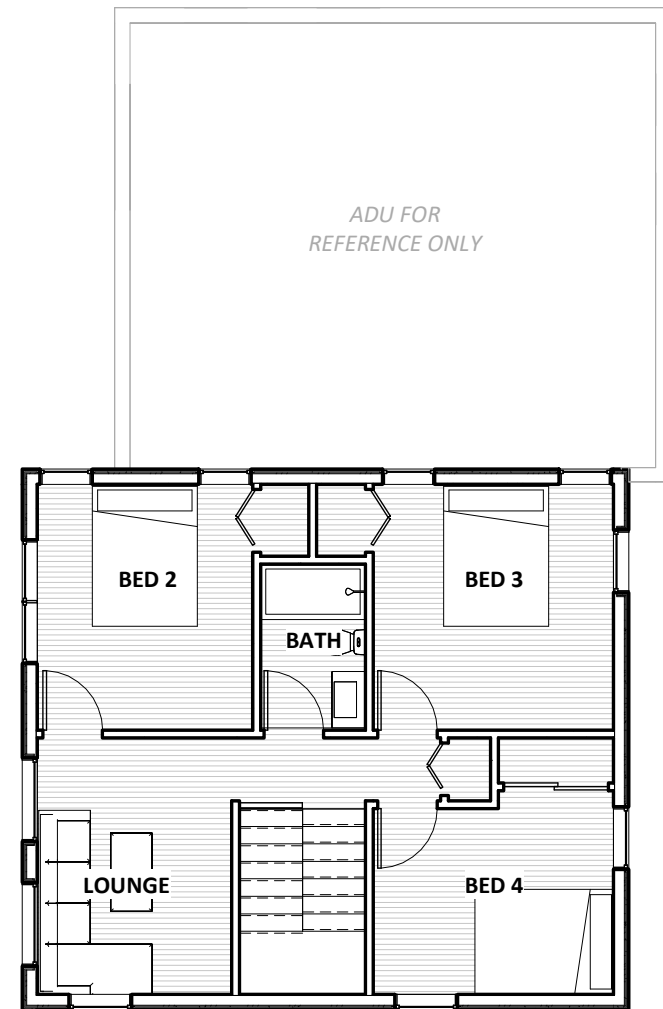
- PROPOSED ADDITION TO LOT COVERAGE
- (E) HOUSE FOOTPRINT
- EXEMPT FROM LOT COVERAGE



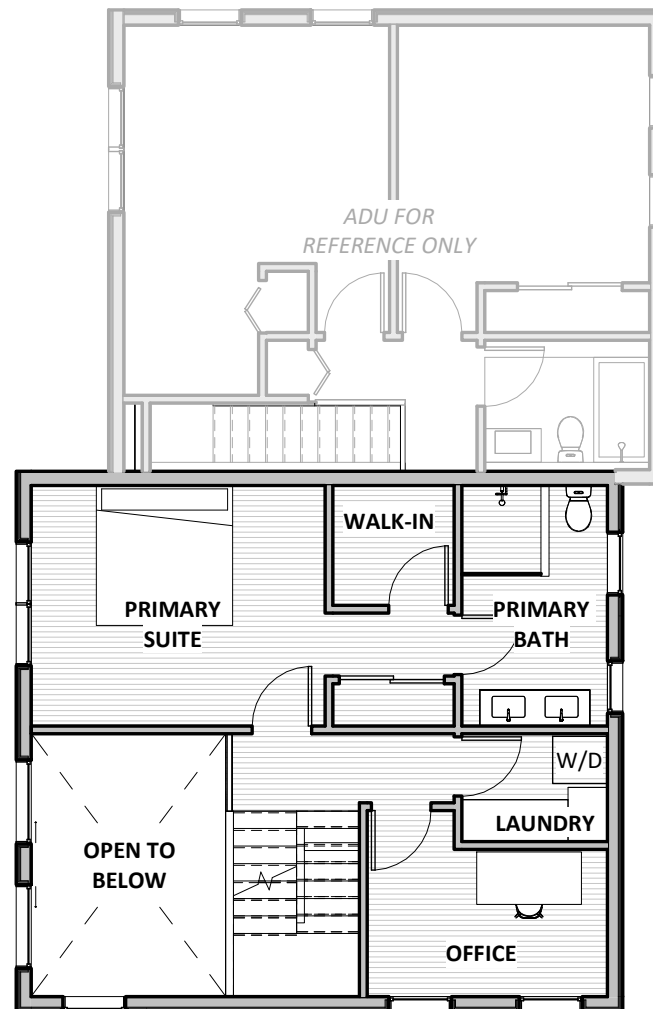
USE PERMIT APPLICATION
 1515 DERBY ST. BERKELEY, CA 94703

LOT COVERAGE DIAGRAM
 PAGE 4

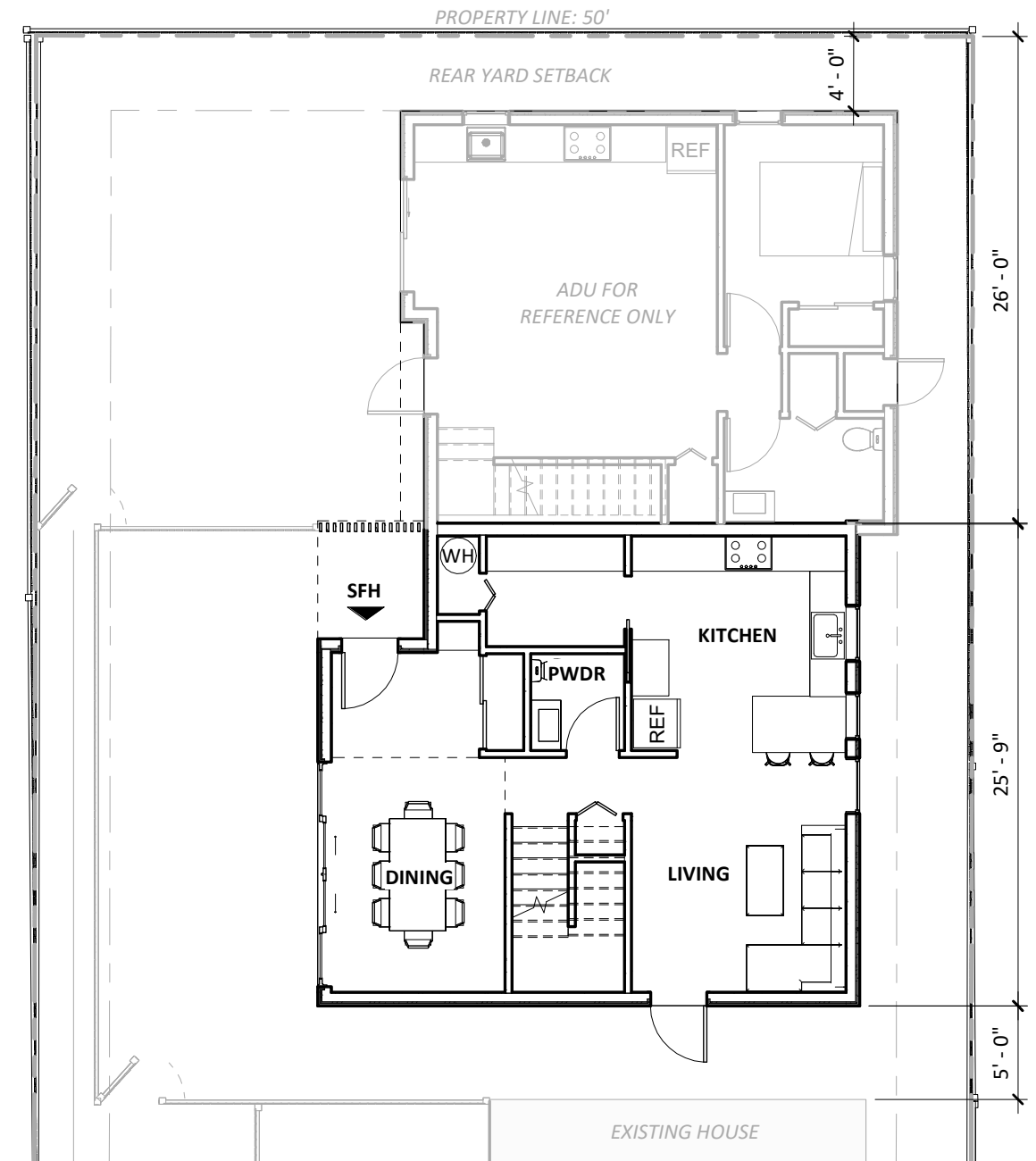
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 PREPARED BY: ASHLEY HSU
 CONSTRUCTION TYPE: V (WOOD FRAME)
 OCCUPANCY TYPE: R (RESIDENTIAL)



3 THIRD FLOOR
 1/8" = 1'-0"



2 SECOND FLOOR
 1/8" = 1'-0"



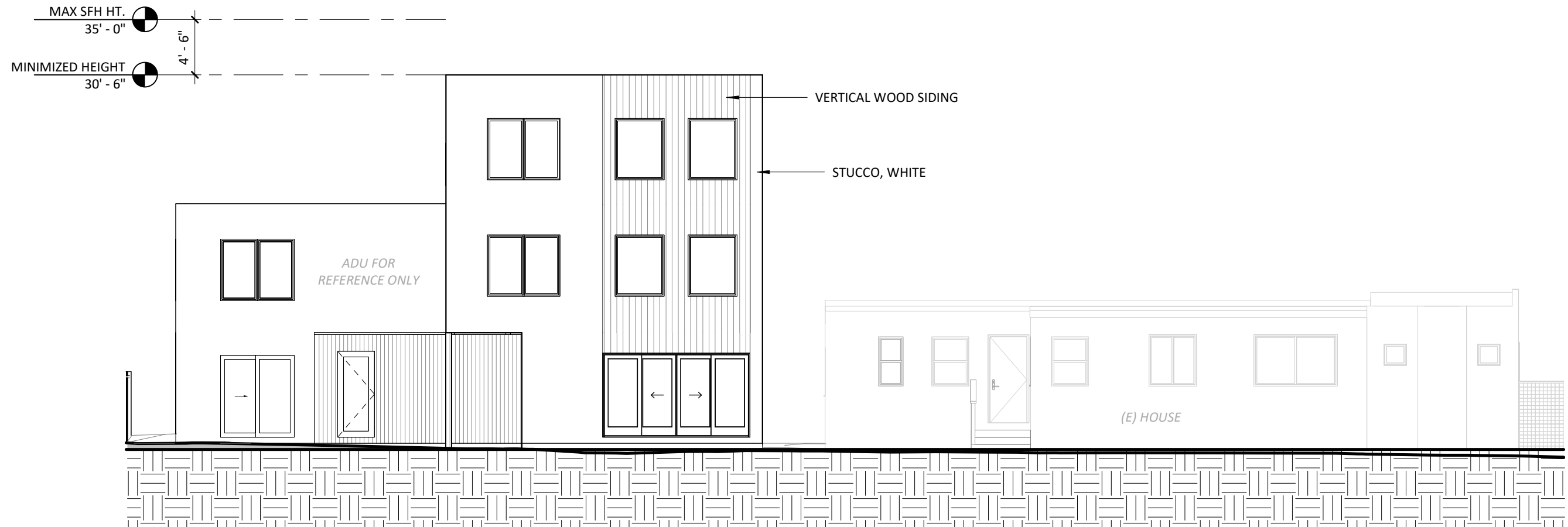
1 FIRST FLOOR
 1/8" = 1'-0"

TOTAL SF: 1,745 SF
 N 1/8" = 1'-0"
 0 1' 2' 5'



USE PERMIT APPLICATION
 1515 DERBY ST. BERKELEY, CA 94703

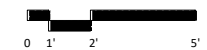
DATE PREPARED: 8/31/2023
PREPARED BY: ASHLEY HSU
CONSTRUCTION TYPE: V (WOOD FRAME)
OCCUPANCY TYPE: R (RESIDENTIAL)



1 WEST ELEVATION
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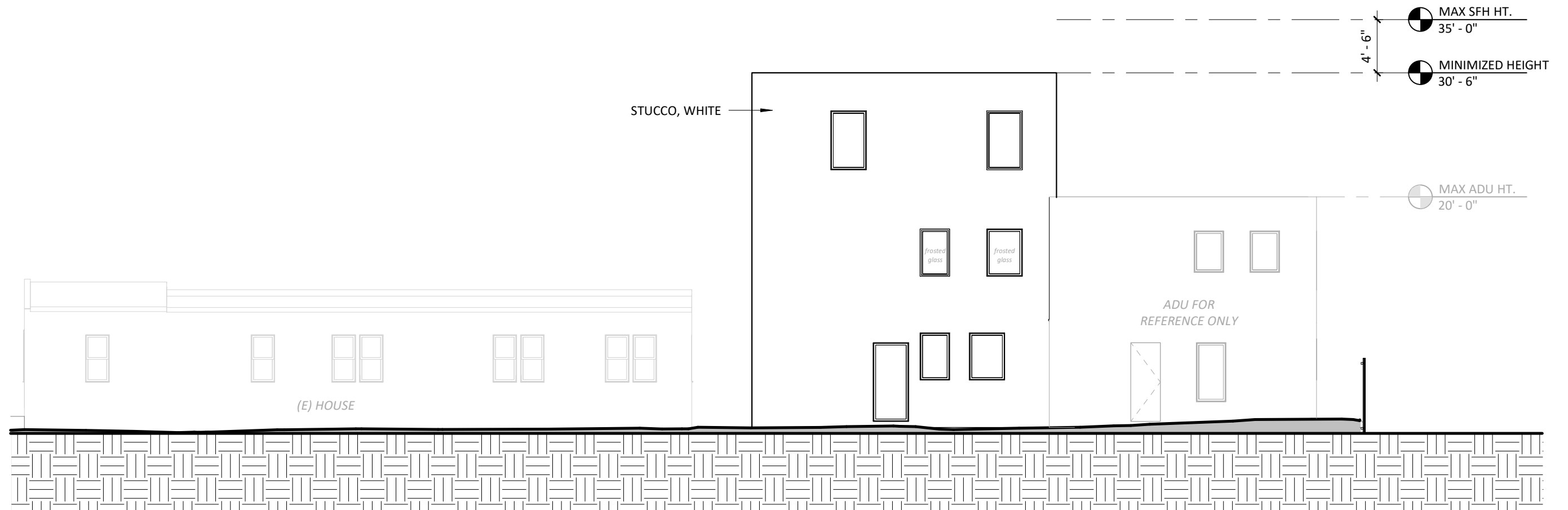


USE PERMIT APPLICATION
1515 DERBY ST. BERKELEY, CA 94703



BUILDING ELEVATIONS
PAGE 6

DATE PREPARED: 8/31/2023
 PREPARED BY: ASHLEY HSU
 CONSTRUCTION TYPE: V (WOOD FRAME)
 OCCUPANCY TYPE: R (RESIDENTIAL)

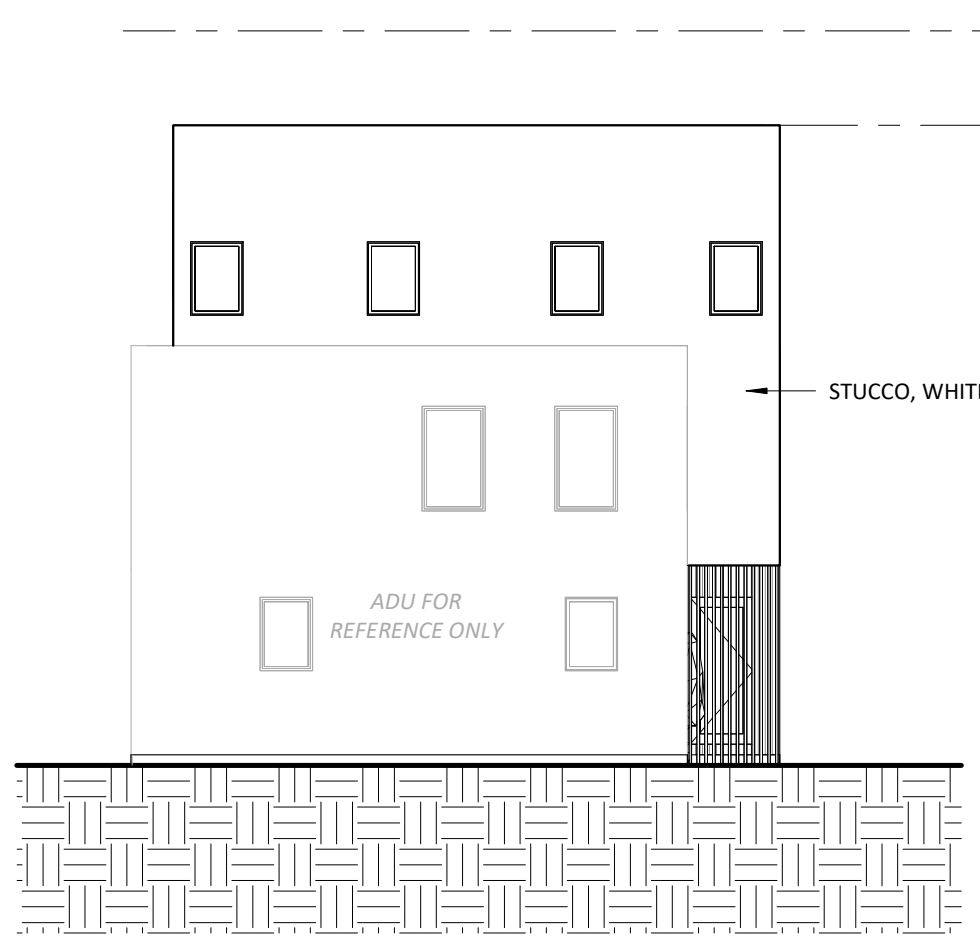


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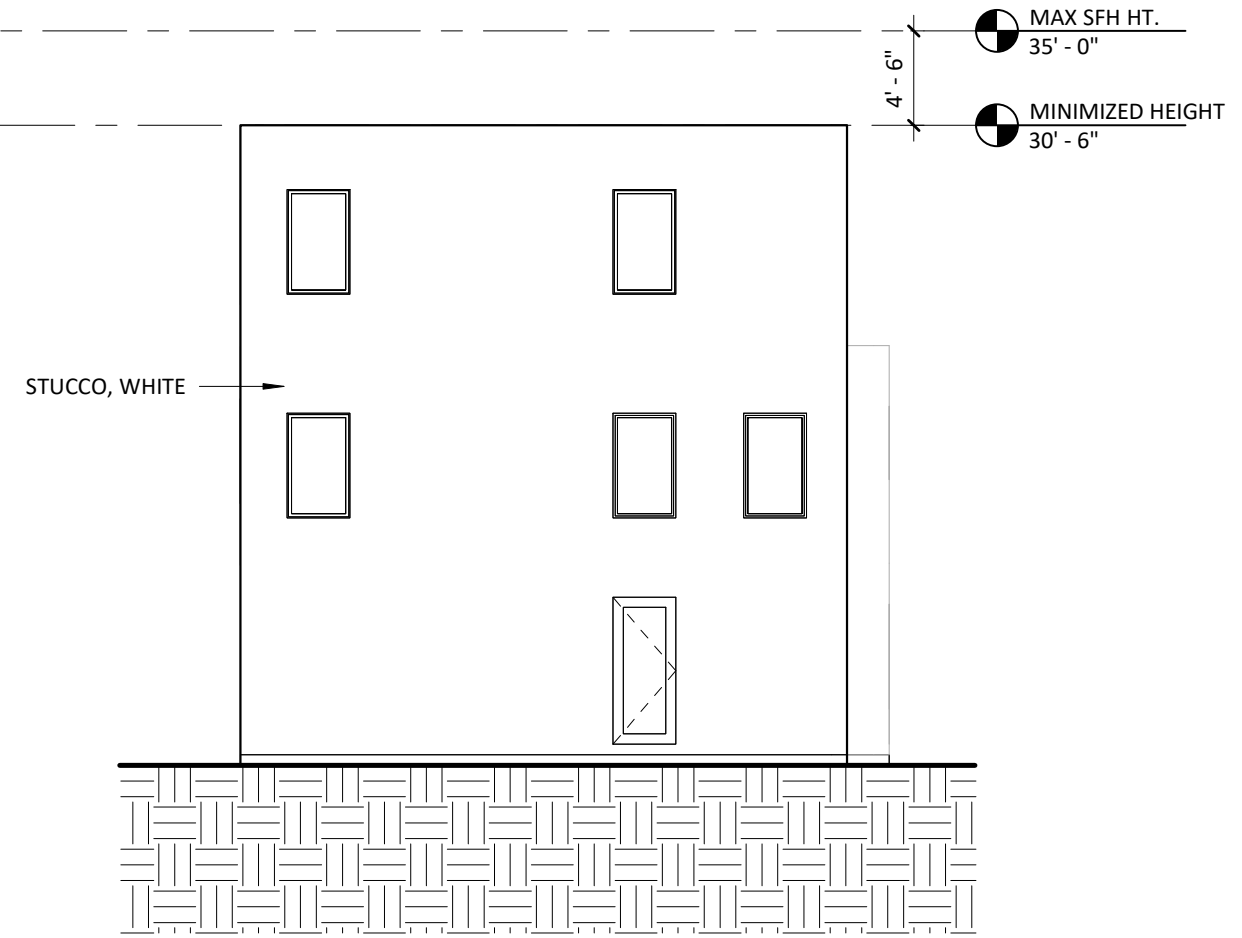


USE PERMIT APPLICATION
 1515 DERBY ST. BERKELEY, CA 94703

DATE PREPARED: 8/31/2023
 PREPARED BY: ASHLEY HSU
 CONSTRUCTION TYPE: V (WOOD FRAME)
 OCCUPANCY TYPE: R (RESIDENTIAL)



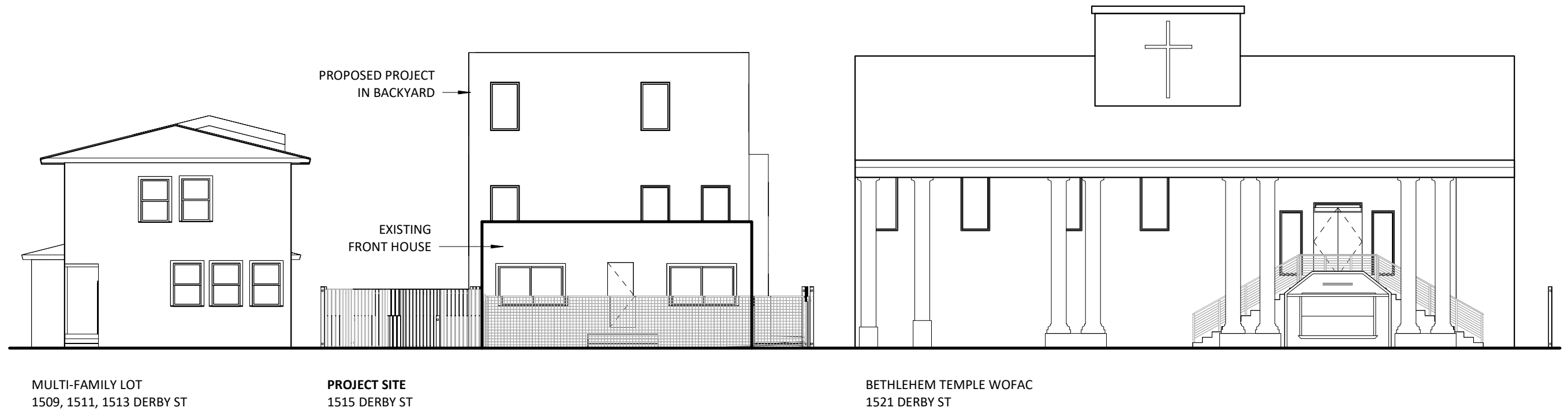
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2 SOUTH ELEVATION
 1/8" = 1'-0"



DATE PREPARED: 8/31/2023
PREPARED BY: ASHLEY HSU
CONSTRUCTION TYPE: V (WOOD FRAME)
OCCUPANCY TYPE: R (RESIDENTIAL)

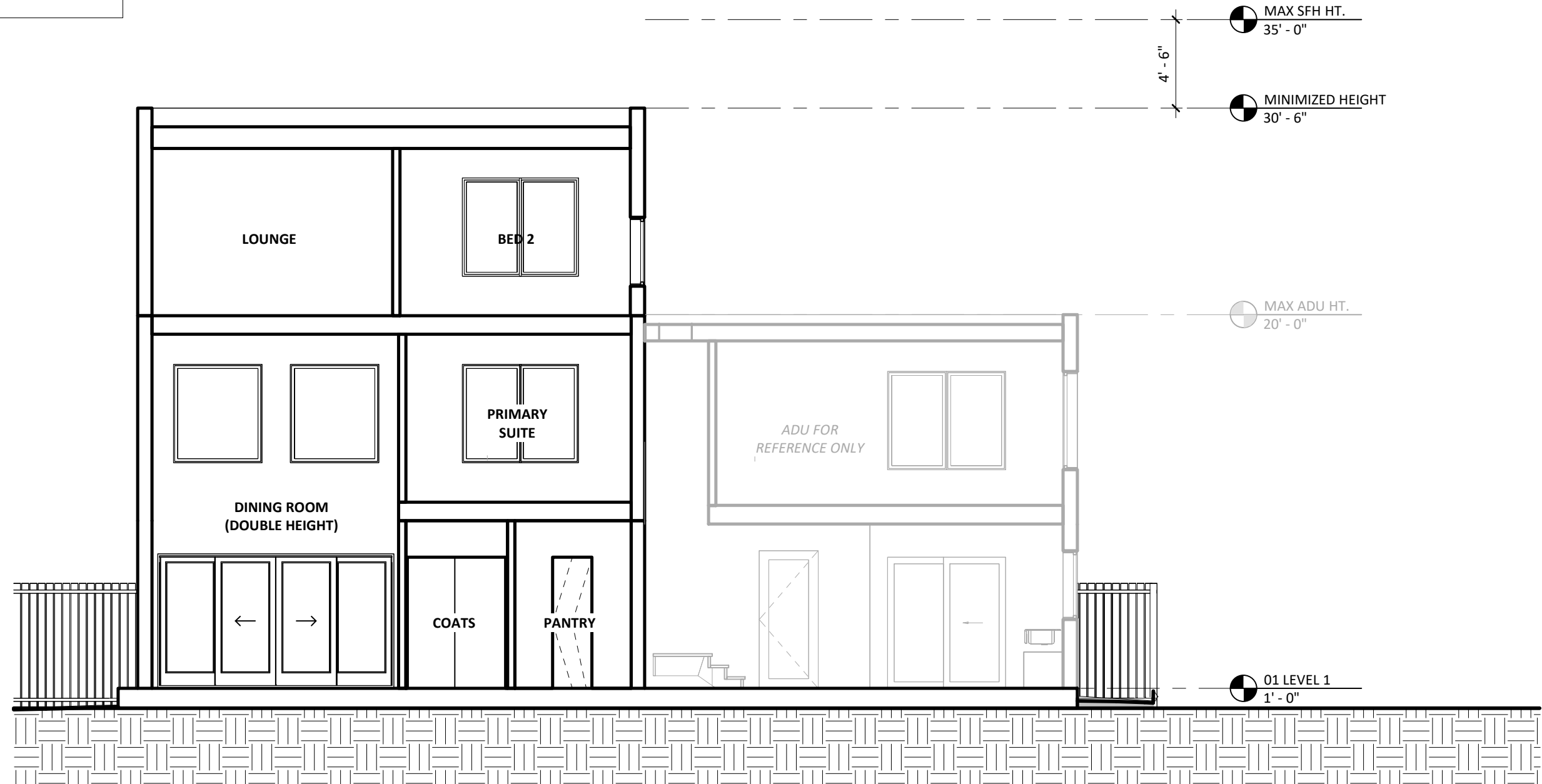


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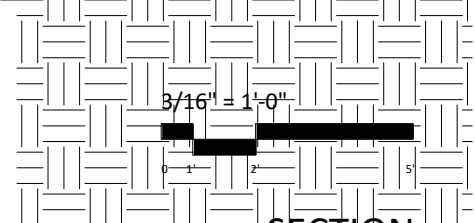
1" = 10'-0"
0 1' 2' 5'

STREET STRIP ELEVATION
PAGE 9

DATE PREPARED: 8/31/2023
PREPARED BY: ASHLEY HSU
CONSTRUCTION TYPE: V (WOOD FRAME)
OCCUPANCY TYPE: R (RESIDENTIAL)

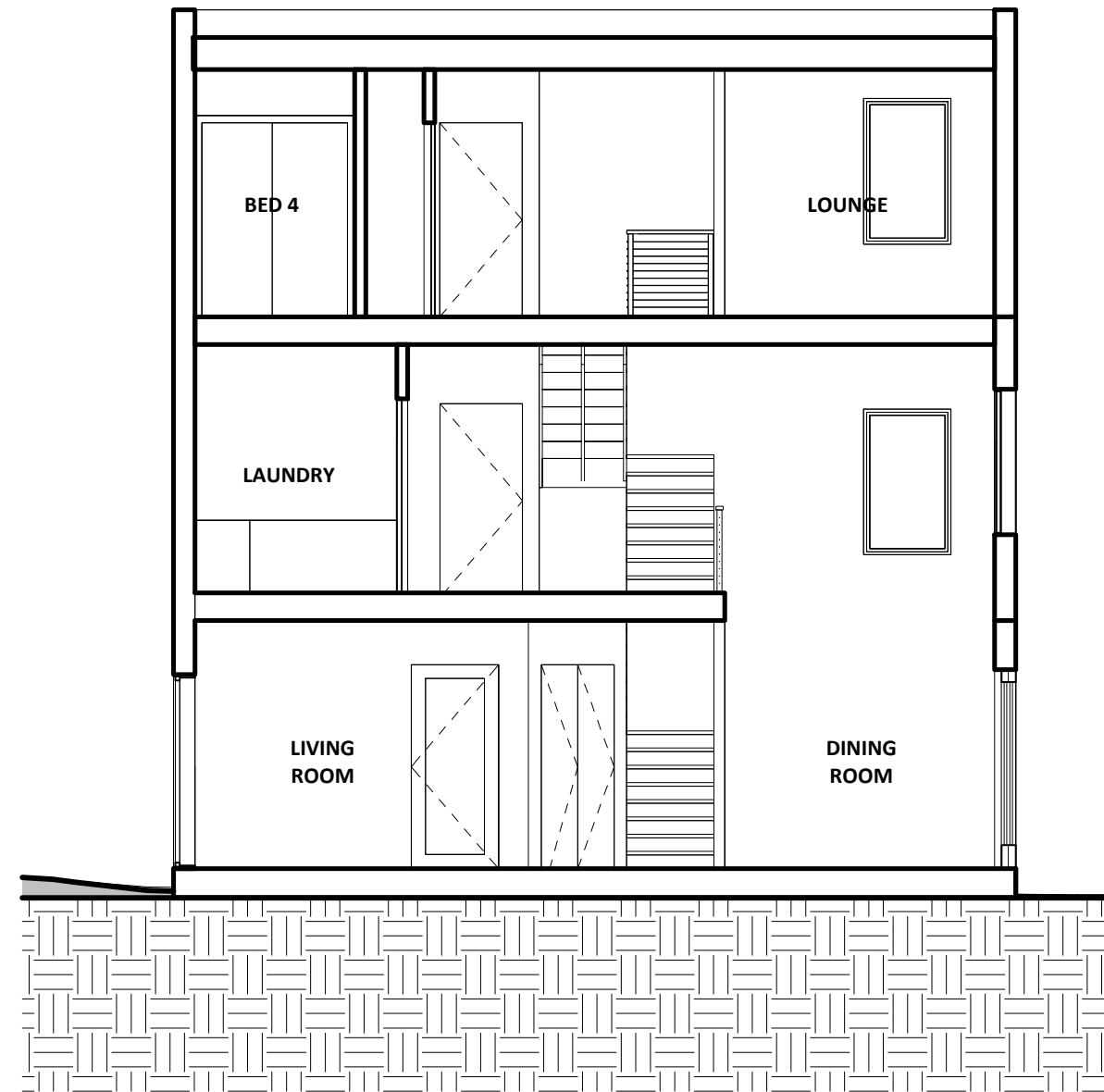


USE PERMIT APPLICATION
1515 DERBY ST. BERKELEY, CA 94703



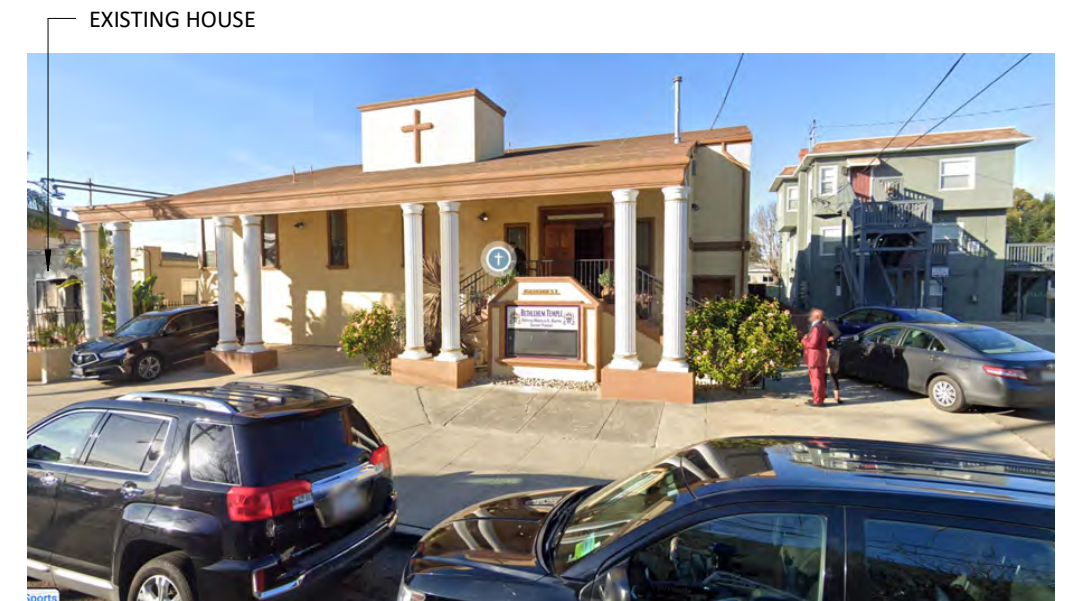
SECTION
PAGE 10

DATE PREPARED: 8/31/2023
PREPARED BY: ASHLEY HSU
CONSTRUCTION TYPE: V (WOOD FRAME)
OCCUPANCY TYPE: R (RESIDENTIAL)



USE PERMIT APPLICATION
1515 DERBY ST. BERKELEY, CA 94703

SECTION
PAGE 11

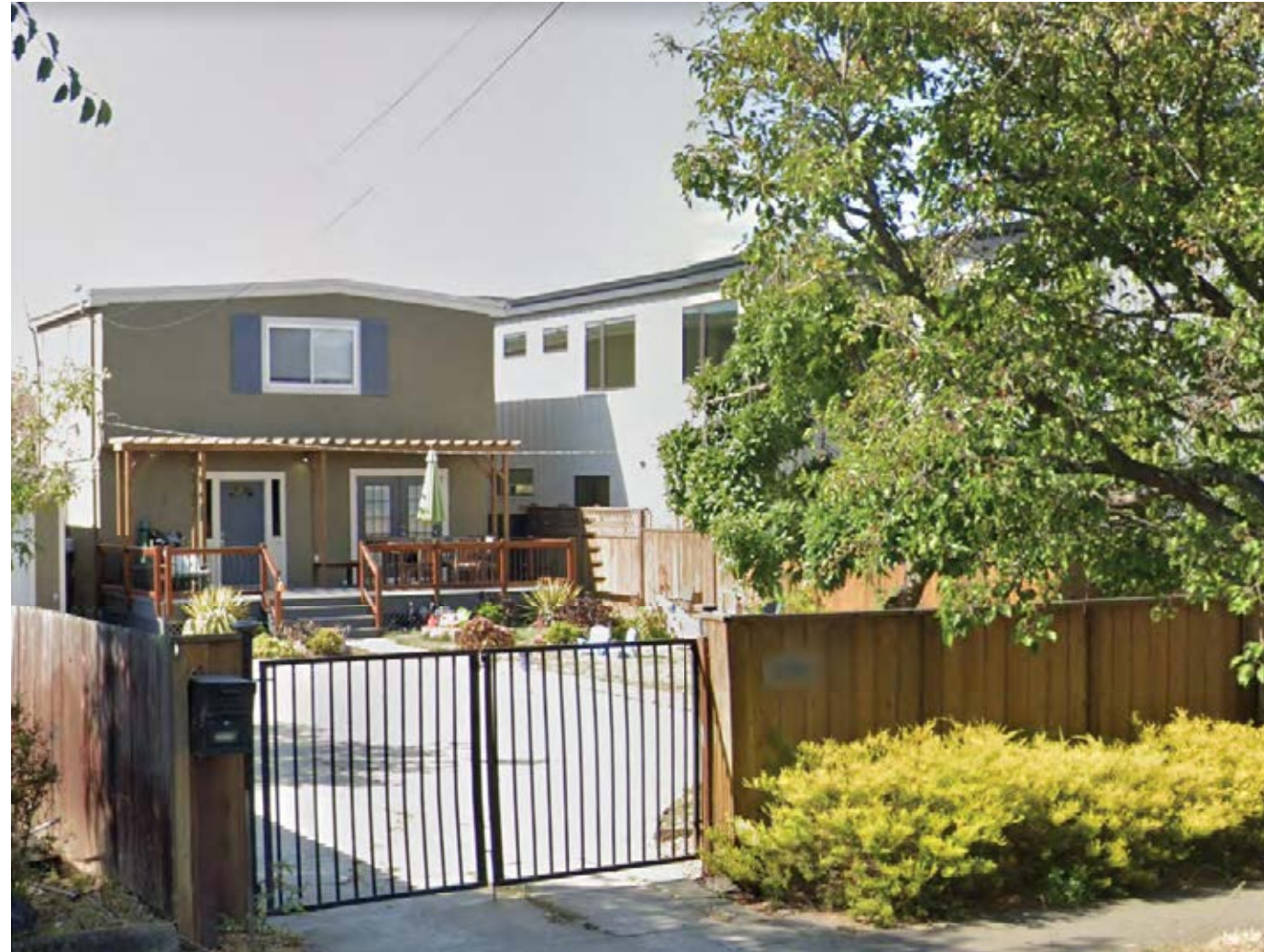




3-STORY MULTI-FAMILY STRUCTURE (2) LOTS AWAY



SCHOOL ACROSS THE STREET FROM PROJECT SITE, ON DERBY ST



1518 CARLETON



1510, 1512, 1516 CARLETON
(LOT DIRECTLY BEHIND PROJECT SITE)



USE PERMIT APPLICATION

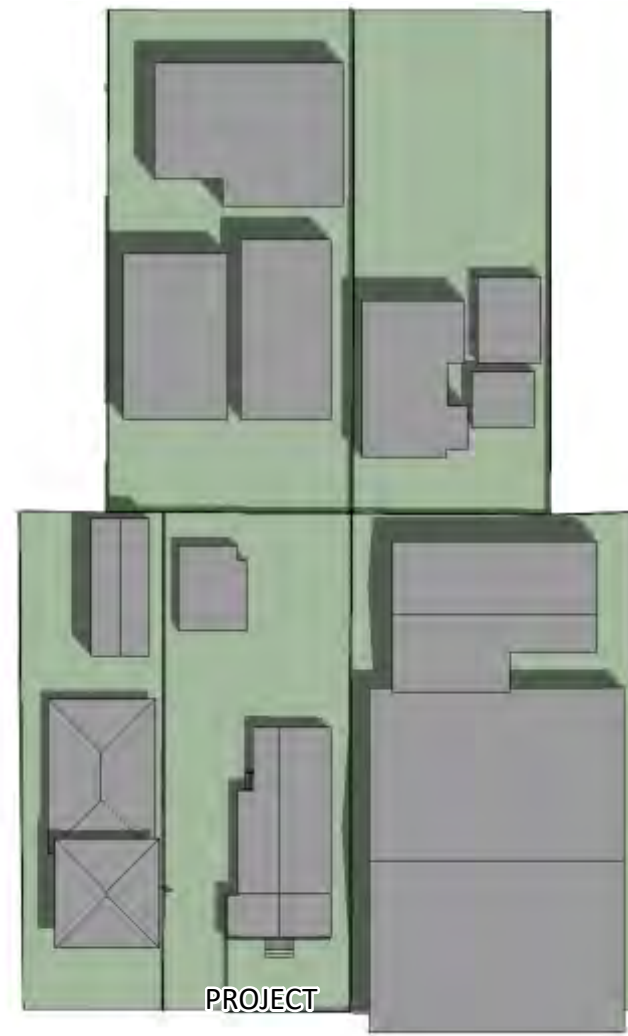
1515 DERBY ST. BERKELEY, CA 94703



EXISTING CONDITIONS

PROPOSED DESIGN



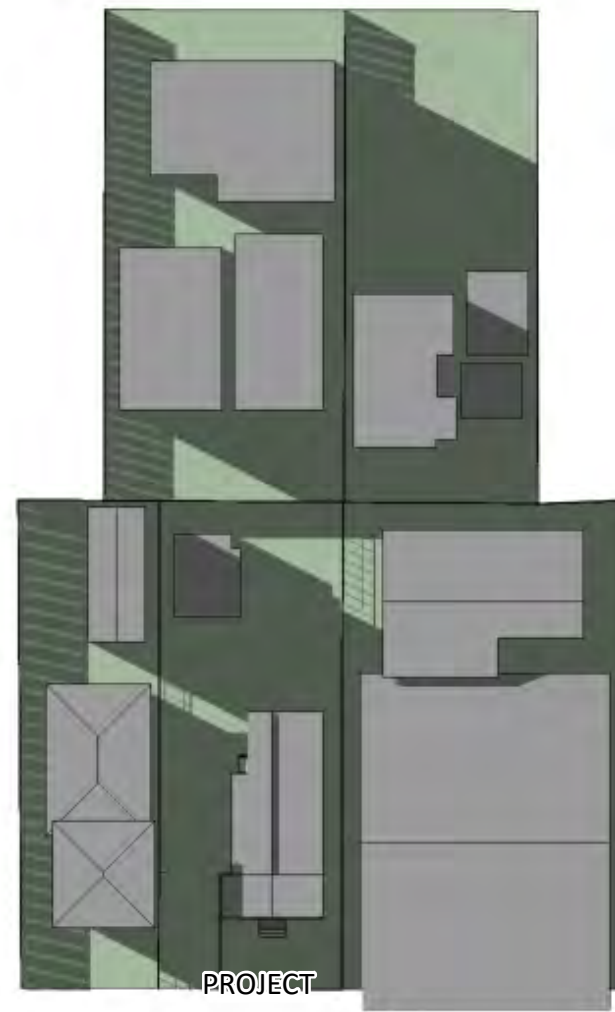


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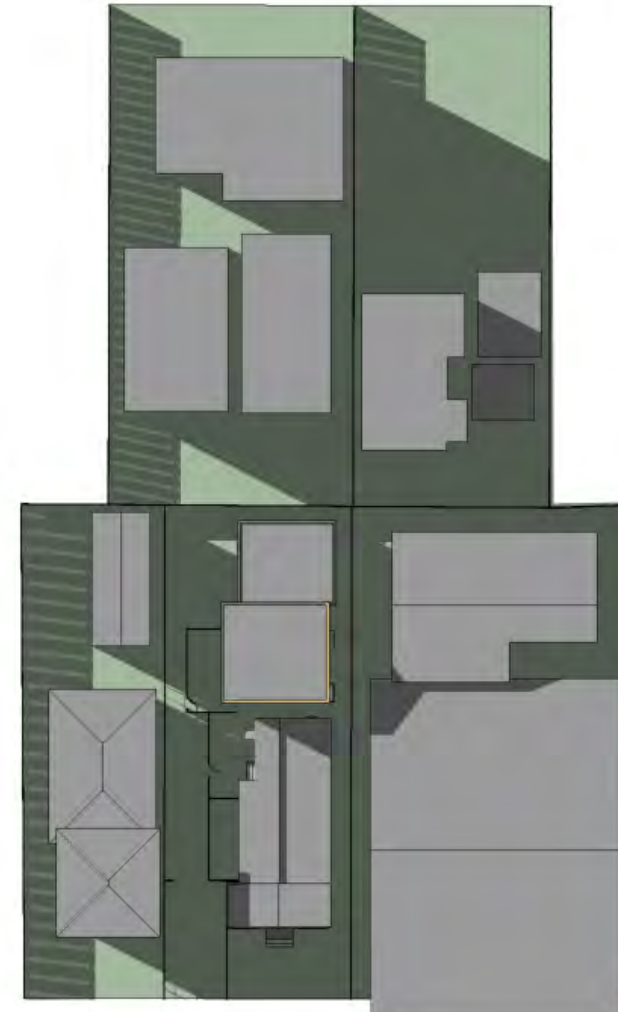


PROPOSED DESIGN





EXISTING CONDITIONS

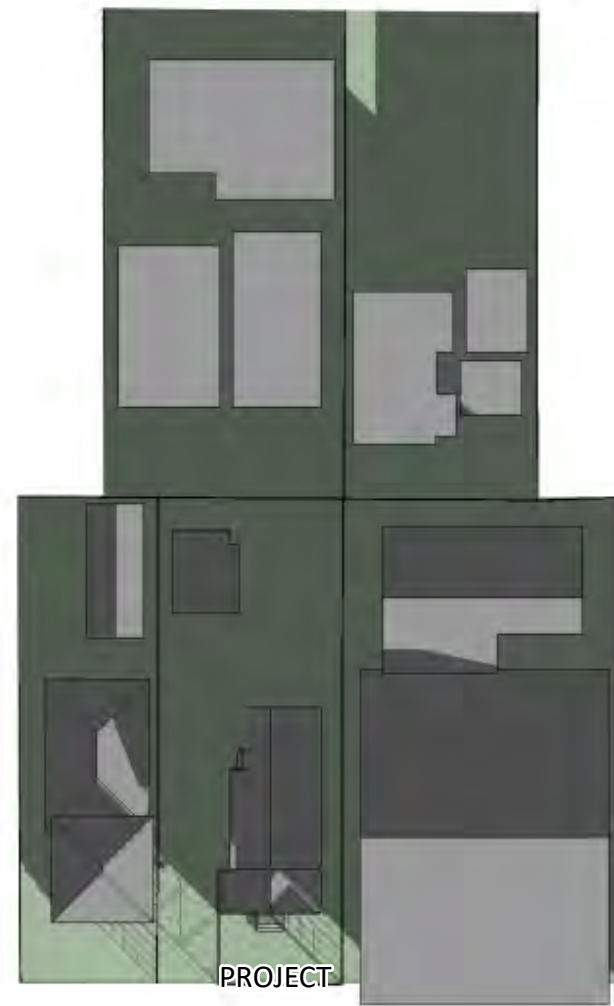


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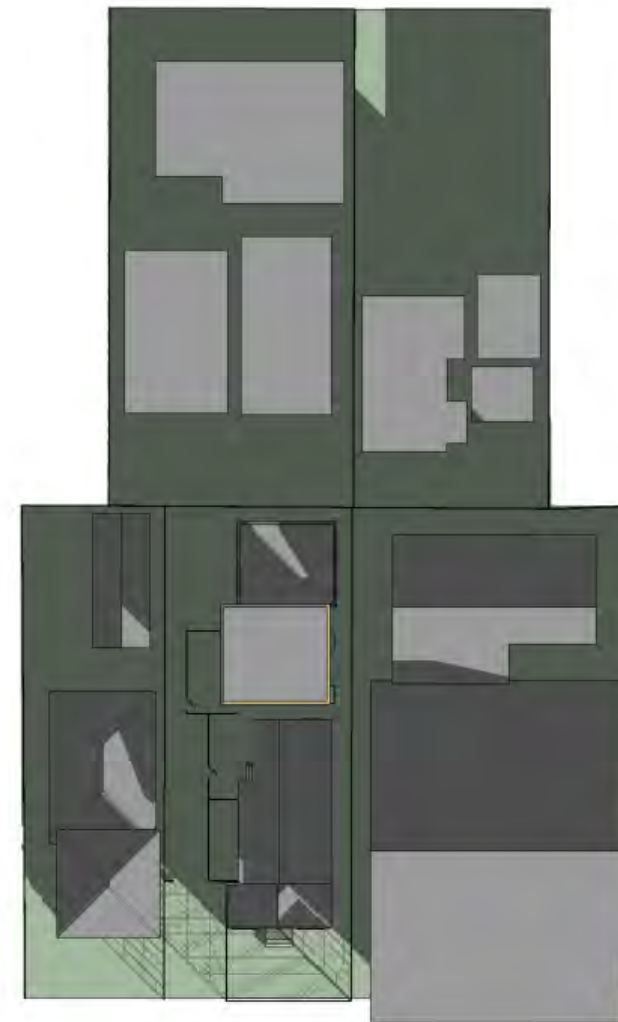


USE PERMIT APPLICATION

1515 DERBY ST. BERKELEY, CA 94703



EXISTING CONDITIONS

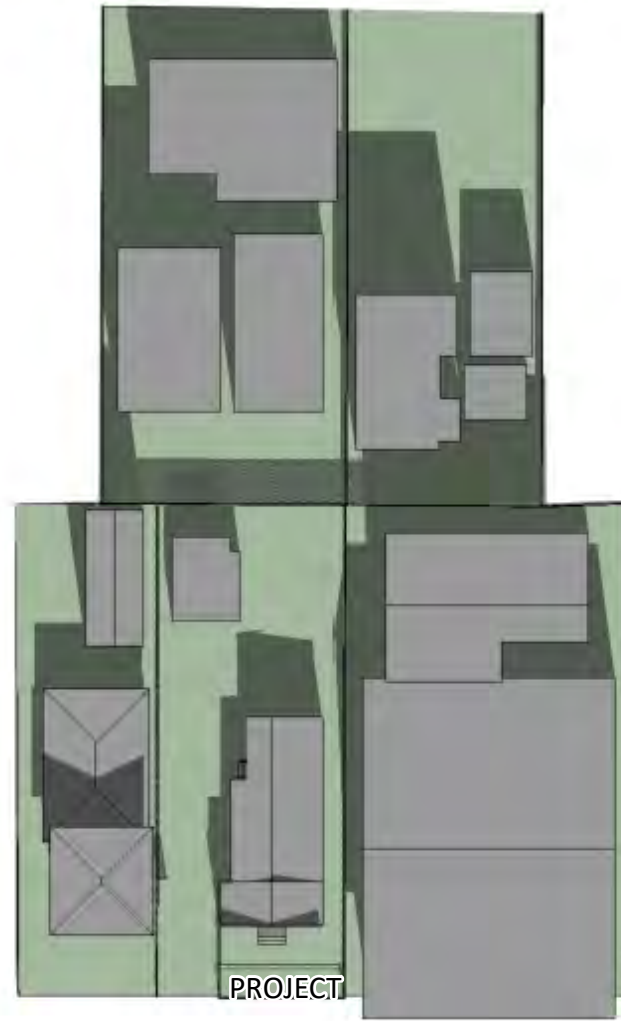


PROPOSED DESIGN



USE PERMIT APPLICATION

1515 DERBY ST. BERKELEY, CA 94703



EXISTING CONDITIONS



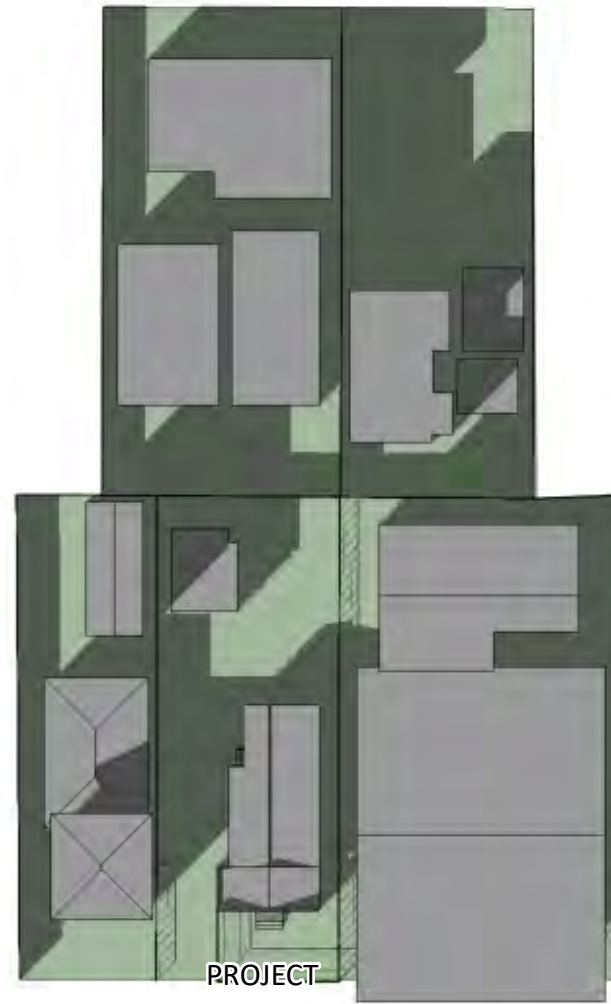
PROPOSED DESIGN



USE PERMIT APPLICATION

1515 DERBY ST. BERKELEY, CA 94703

COMPARATIVE SHADOW STUDIES: WINTER SOLSTICE 12PM

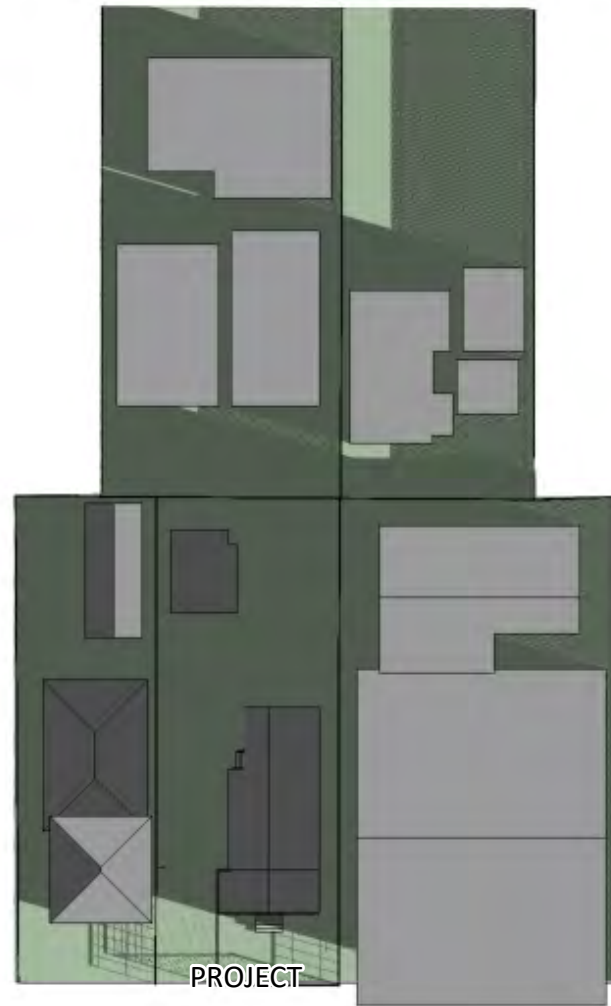


EXISTING CONDITIONS



PROPOSED DESIGN





EXISTING CONDITIONS

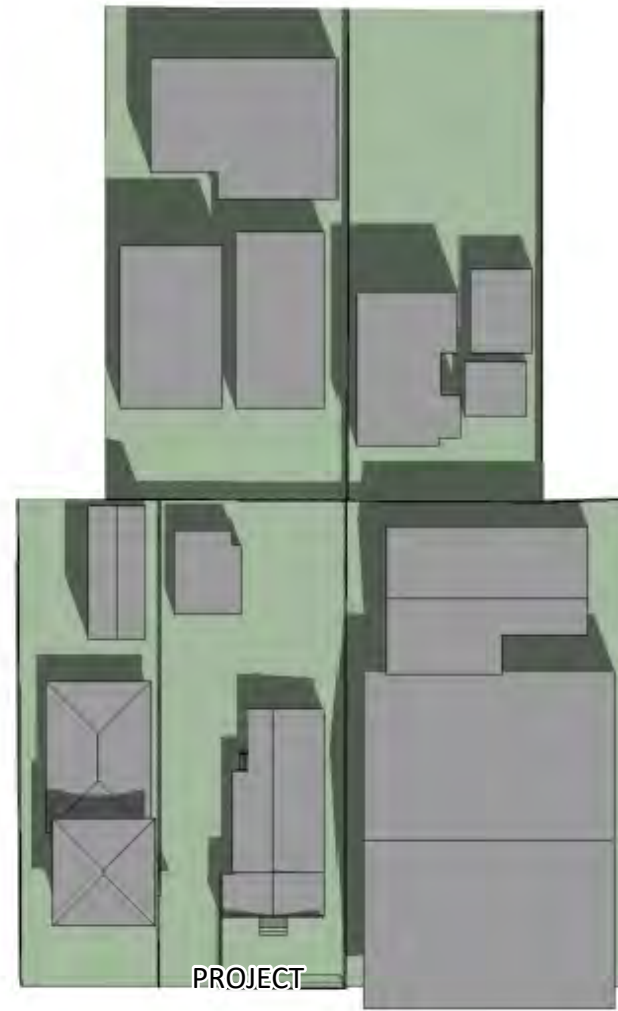


PROPOSED DESIGN



USE PERMIT APPLICATION

1515 DERBY ST. BERKELEY, CA 94703

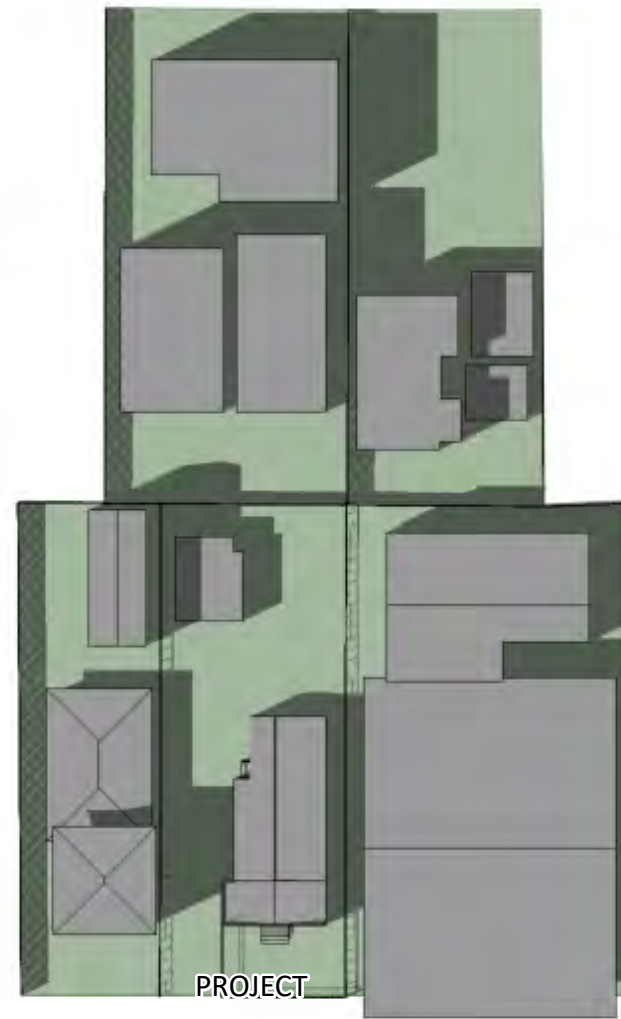


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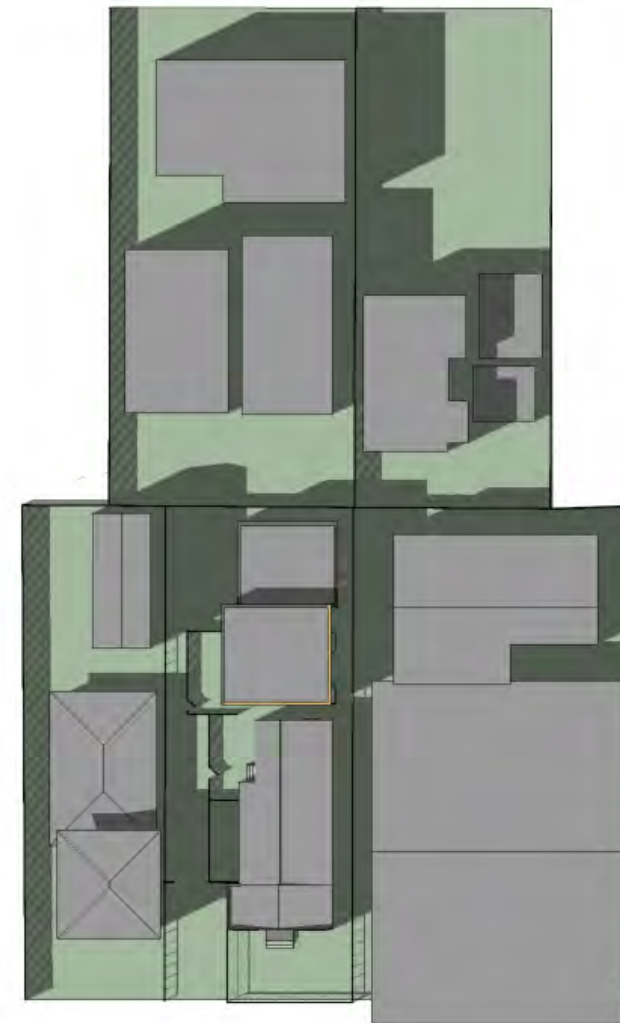


PROPOSED DESIGN





EXISTING CONDITIONS



PROPOSED DESIGN



USE PERMIT APPLICATION

1515 DERBY ST. BERKELEY, CA 94703



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
AUGUST 10, 2023

1515 Derby Street

Use Permit #ZP2023-0045 to demolish a two-car garage and construct a three-story (34 feet), 1,810 square foot single-family residence behind the current single-family home.

I. Background

A. Land Use Designations:

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

B. Zoning Permits Required:

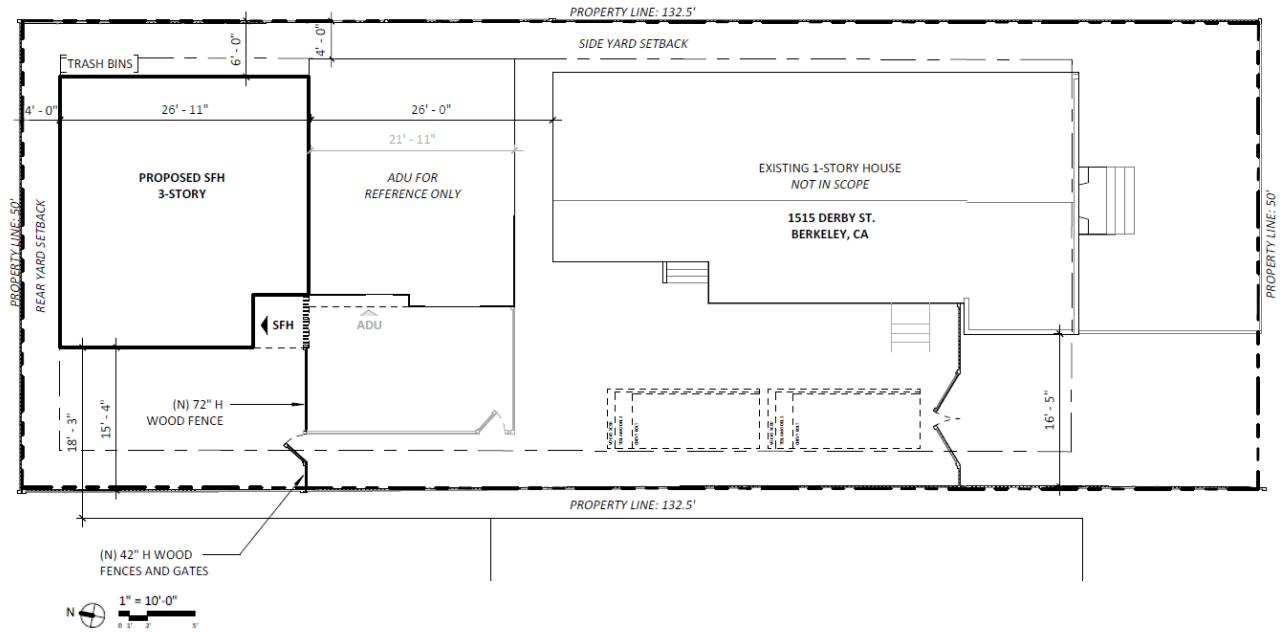
- Use Permit to construct a new single-family dwelling, pursuant to Berkeley Municipal Code (BMC) Section 23.202.020(A)
- Use Permit pursuant to BMC Section 23.202.030(B) for six or more bedrooms on lot
- Administrative Use Permit pursuant to BMC Section 23.304.030(B) for reduced rear setback
- Administrative Use Permit pursuant to BMC Section 23.202.080(D) for a new building 28 feet in height and greater

CEQA Recommendation: It is staff's recommendation to the Zoning Adjustments Board (ZAB) that this project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15303 ("New Construction or Conversion of Small Structures") of the CEQA Guidelines. The determination is made by ZAB

A. Parties Involved:

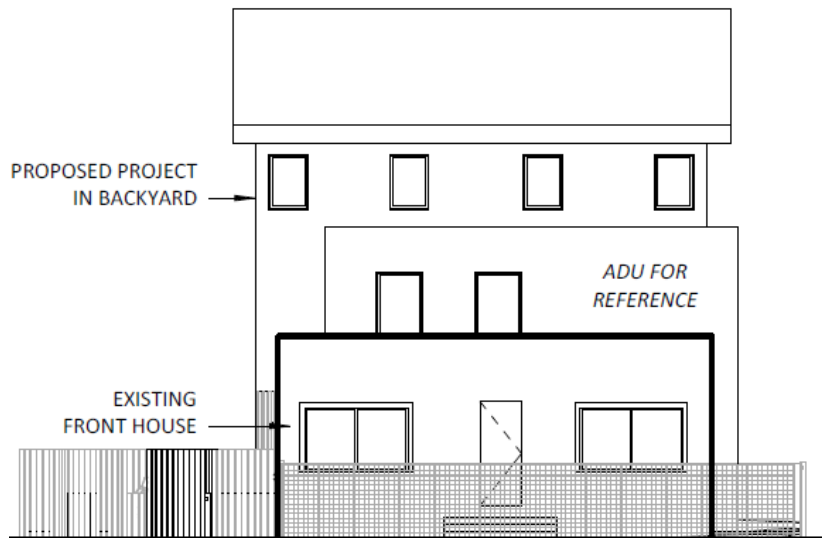
- Applicant: Ashley Hsu, 2120 University Ave., Berkeley
- Property Owner: Kevin Casey, 2120 University Ave., Berkeley

Figure 2: Proposed Site Plan



PROPOSED SITE PLAN

Figure 3: Front Elevation



PROJECT SITE
1515 DERBY ST

Figure 4: West Elevation



① WEST ELEVATION
 1/8" = 1'-0"

Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Single-Family Dwelling	R-2	LMDR
Surrounding Properties	North	Single-Family Dwelling		
	South	School (Longfellow Middle School)		
	East	Bethlehem Temple		
	West	Multi-family Dwellings		

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 non-residential floor area. The project involves only new residential floor area, and thus these requirements do not apply.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)		
Affordable / Inclusionary Housing Requirements (BMC 23.328)	No	The project is a housing development project, as defined in BMC 23.328.020(E) ¹ , but is not subject to these provisions because the project contains less than 5,000 square feet of residential unit floor area.
Creeks (Per BMC Section 17.08.045)	No	The project site is not within a creek buffer zone.

¹ BMC 23.328.020(E) defines a "Housing Development Project" for purposes of inclusionary housing requirements as "a development project, including a Mixed-Use Residential project involving the new construction of at least one Residential Unit. Projects with one or more buildings or projects including multiple contiguous parcels under common ownership or control shall be considered as a sole Housing Development Project and not as individual projects.

Density Bonus	No	The project is not requesting a Density Bonus.
Historic Resources	No	The proposed project is located in a vacant area behind an existing single-family residence on the same lot. The existing building is not a Landmark or Structure of Merit.
Housing Accountability Act (Gov't Code Section 65589.5(j))	Yes	The project meets the definition of a "Housing Development Project" per Government Code Section 65589.5(h)(2) ² because a second unit is being added to the site. Modifications to the rear setback have been requested; however, the criteria for approval is not objective. Therefore, the project complies with the applicable objective general plan and zoning standards and Section (j) of the Housing Accountability Act applies. See Section V.A of this report for additional discussion on compliance with the Housing Accountability Act.
Housing Crisis Act of 2019 (SB330)	Yes	The project meets the definition of a "Housing Development Project" per Government Code Section 65589.5(h)(2) ³ . See Section V.B of this report for additional discussion on the sections of SB 330 that apply to the project.
Natural Gas Prohibition (Per BMC 12.80.020)	Yes	This project is an application for new construction and was submitted after January 1, 2020, and is subject to the Natural Gas Prohibition.
Oak Trees (Per BMC Section 6.52.010)	No	There are no Coast Live Oak trees on the site.
Rent Controlled Units (Per BMC Chapter 13.76)	No	There are no rent-controlled units at the site, nor would the new unit be subject to rent control restrictions.
Residential Preferred Parking (RPP)	No	The project site is not within an RPP zone. The project is not eligible for RPP permits pursuant to BMC Section 14.72.080(C)(1) which states that no permits shall be issued to residents in newly constructed residential units.
Seismic Hazards (Per State Hazards Mapping Act SHMA)	No	The site is not located within an area susceptible to liquefaction, Fault Rupture, or Landslides 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), nor is it within the City's Environmental Management Area.
Transit	Yes	The project area is served by AC Transit line 88. There is an existing bus stop approximately 0.1 miles to the north near the intersection of Sacramento Street and Carleton Street.

² 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.

³ See footnote 2

ZONING ADJUSTMENTS BOARD
 AUGUST 10, 2023

1515 DERBY STREET
 Page 6 of 12

Table 3: Project Chronology

Date	Action
March 21, 2023	Application submitted
April 25, 2023	Application incomplete
May 4, 2023	Application resubmitted
June 13, 2023	Application deemed complete
July 20, 2023	Revised plans received
July 27, 2023	Public hearing notices mailed/posted
August 10, 2023	ZAB hearing

Table 4: R-2 and Parking Development Standards

Standard		Existing	Proposed Total	Permitted/Required
BMC Sections 23.202.080				
Lot Area (sq. ft.)		6,625	No Change	5,000 min
Gross Floor Area (sq. ft.)		1,355	4,165	n/a
Dwelling Units		1	2	2
Building Height (proposed structure)	Average (ft.)	n/a	34'	28' max (35' with AUP)
	Stories	n/a	3	3 max.
Building Setbacks (ft.) (proposed structure, excluding ADU)	Front (Derby St.)	n/a	80'	20' min
	Rear	n/a	4'	20' min (Reduction with AUP)
	Left Side	n/a	15'-4"	4' min
	Right Side	4'	6'	4' min
Building Separation (excluding ADU)		n/a	26'	16'
Lot Coverage (%) (excluding ADU)		20.45	31.62	35 max.
Usable Open Space (sq. ft.)		4352	1489	400 min
Parking (BMC 23.322)	Automobile	2	2	1 maximum
Abbreviations: sq.ft.: square feet; %: percent; max: maximum; min: minimum; n/a: not applicable; AUP: administrative use permit				

II. Project Setting

- A. Neighborhood/Area Description:** This is a residential area with a mix of one- and two- single-family dwellings, with areas of open space in excess of that required, and mature vegetation. The project site shares a side property line with the Bethlehem Temple, located within across the street from Longfellow Middle School, and within 0.25 miles of San Pablo Park.
- B. Site Conditions:** The project site is located on the north side of Derby Street, four houses east of Sacramento Street. The flat and rectangularly shaped project site is 50 feet wide along Derby Street, and approximately 132 feet deep. The subject parcel is currently developed with a one-story, four-bedroom single-family home at the front of the lot. There is also a two-car detached garage that is accessed from a curbcut on the west side of the lot. There are not, nor has there recently been, protected Coast Live oak trees on the site.

III. Project Description

- A. Proposed Project:** The proposed project would construct a new 1,810 square foot three-story single-family dwelling with behind the existing home. An attached Accessory Dwelling Unit (ADU), which is allowed by-right per BMC 23.306.020 and State Law, is also proposed and shown for reference only. The first floor includes a kitchen, dining room, living room, and powder room. The second floor includes a primary suite, bath, and laundry. The third floor has three bedrooms, bath, and a lounge. The proposed single-family dwelling includes a total of four bedrooms and three bathrooms. There will be a total of eight bedrooms on the lot as the result of the proposal.

IV. Community Discussion

- A. Neighbor/Community Concerns:** Prior to submitting this application to the city on March 20, 2023, the applicant installed a pre-application poster at the project site. They also submitted drawings of the proposed plans to all adjacent and abutting neighbors

A neighbor at 1518 Carleton Street submitted a letter of opposition on March 23, 2023 citing concerns about the impacts to sunlight on their property. The neighbor at 1510 Carleton Street submitted a letter on August 1, 2023 that noted concerns citing concerns about potential impacts to sunlight, and requested an increase in the proposed setback. All neighbor correspondence is included as Attachment 4.

On July 27, 2023, public hearing notices were mailed to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations (Attachment 3). The City also posted notices within the neighborhood at three locations. As of the date of this report, Staff received one public comment regarding the project, as noted above.

B. Landmark Preservation Commission / Design Review 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 residential district subject to design review, commercial or manufacturing district, and does not involve the demolition of a nonresidential building, respectively.

V. Issues and Analysis

A. Housing Accountability Act Analysis:

Pursuant to the Housing Accountability Act (HAA), California Government Code Section 65589.5(j), 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 safety⁴ 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 a “housing development project” consisting of a new three-story single-family dwelling built behind an existing single-family home. The project complies with applicable, objective general plan and zoning standards; however, the project includes Administrative Use Permits⁵ to allow for the construction of building above 28 feet in average height, and to modify the rear setback. Therefore, the City may not deny the project without basing its decision on the written findings under Section 65589.5(j), above.

As shown in Table 4 above, the project complies with the zoning standards. While the project may include Administrative Use Permits to modify standards, there are no objective criteria in the findings; therefore, the project still complies with the HAA. The ZAB 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.

Staff is not aware of specific adverse impacts that could occur with the construction of the of the project.

⁴ A “specific, adverse impact” means “a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.”

⁵ The City has determined that the “protections afforded by the HAA and the definition of a base project for density bonus calculations apply to a housing development project up to and including the maximum development allowed with use permits and/or administrative use permits”.

B. Senate Bill (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 affect at the time an application is deemed complete, then the city shall not conduct more than five hearings in connection with the approval of that housing development project. This includes all public hearings in connection with the approval of the housing development project and any continuances of such public hearings. The city must consider and either approve or disapprove the project at any of the five hearings consistent with applicable timelines under the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920)).

The August 10, 2023 ZAB hearing represents the first public hearing for the proposed project since the project was deemed complete. The City can hold up to four additional public hearings on this project, if needed. One of those hearings must be reserved for any possible appeal to the City Council.

- 2. Government Code Section 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 proposed structure is new and there are no landmarked or structures of merit on the site. Therefore, the property does not appear to be historically significant and is not eligible for listing on the California Register of Historical Resources or as a City of Berkeley Landmark or Structure of Merit.

Government Code Section 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 CEQA. Should ZAB determine the application is categorically exempt from CEQA at the August 10, 2023 public hearing, the application must be approved or disapproved by October 9, 2023.

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.

A. General Non-Detriment Finding: Staff believes the project would not be detrimental to the health, safety, peace, morals, comfort, or general welfare of residents or workers in the area because it would be consistent with the development pattern in the area. The applicant proposes to construct a single-family dwelling in a neighborhood developed with single-family dwellings. The siting/design of the proposed structure would be compatible with the surrounding built environment. Staff believes that the proposed project would not unreasonably obstruct sunlight, privacy, air, or views as analyzed below:

1. Sunlight/Shadow: Shadow studies submitted by the applicant document the existing and proposed shadow effects at three times each day during the summer and winter solstices, and the spring equinox. The studies show that the new dwelling would cast new shadows on neighboring yards and buildings at certain times of year and times of day. However, while the proposed dwelling would cast new shadows, impacts would be limited in duration and effect and would not substantially diminish sunlight for the affected residences. The proposed building would cast new shadows on 1518 Carleton Street during the winter and spring afternoons. Shadows are already cast on 1518 Carleton Street by the existing temple building located at 1521 Derby Street. Staff recommends that the Board find that these potential impacts are non-detrimental.
2. Privacy: The proposed dwelling would have first, second, and third floor windows on all sides. However, the north elevation facing 1516 Carleton Street, includes three small windows in an effort to reduce privacy impacts. The main dwelling is setback 4 feet from the rear property line and 6 feet from the east property line. The dwelling meets the R-2 Zoning District development standards for building height and setbacks, except for the reduced rear setback requested with an AUP. BMC Section 23.304.030(B)(2) allows for a reduced rear setback on a lot with two or main buildings with no minimum or additional findings. Privacy impacts from the project would not be detrimental.
3. Air: As discussed above, the proposed single-family dwelling unit exceeds side and front setback requirements in the R-2 Zoning District, and would be consistent with the existing development and building-to-building separation pattern – or air – in this neighborhood. The reduced rear setback to accommodate the dwelling is required due to the size of the existing lot. Additionally, the proposed project would exceed the usable open space requirement (See Table 4 above).
4. Views: Pursuant to BMC Chapter 23.502.020 (Glossary), a view corridor includes significant views of the Berkeley Hills, San Francisco Bay, Mt. Tamalpais, or a significant landmark or any other significant vista that substantially enhances the value and enjoyment of real property. The proposed three-story residence will be constructed on the same lot as an existing one-story dwelling. The surrounding neighborhood is surrounded by two story homes including a church and middle school. The new residence would be approximately four feet from the rear property line. As described above under Section II, Project Setting, this

neighborhood is generally flat and surrounded by residential structures and mature vegetation which block views of significant view corridors from the project site. As such, staff believes the proposed project would not unreasonably obstruct views.

B. R-2 District Purposes: The proposed project would meet the following purposes of the Restricted Two-Family Residential District:

1. Implement the General Plan by encouraging the development of low medium-density residential areas characterized by a reasonably open and spacious type of development with a pattern of housing types ranging from single-family to duplexes and small apartment structures;
2. Make available housing for persons who desire a range of housing choice with a relatively large amount of open space; and
3. Protect adjacent properties from unreasonable obstruction of light and air.

Staff Analysis: Pursuant to BMC Section 23.202.020(B), a new single-family dwelling is allowed in the R-2 zoning district with a Use Permit, provided that its siting meets applicable development standards and subject to the non-detriment finding. As shown in Table 4, the proposed project would meet or exceed all development standards for the dwelling, except for the rear setback. The average height may be increased from 28 feet up to 35 feet with an AUP in the R-2 (BMC 23.202.080(D)). Staff received communication from the neighbor at 1518 Carleton Street with concerns of the height and the elimination of sunlight. Since it comes in below the allowed maximum height and new shadows would be cast for limited times at limited times of the year, it is staff's opinion that height-related issues would not be detrimental. The existing front unit contains four bedrooms while the new dwelling unit proposes four bedrooms for a total of eight on the lot. The project recognizes and protects the existing pattern of development in the low-medium density single-family residential areas of the city and is consistent with the general plan.

C. Administrative Use Permit to Reduce the Required Setback: Pursuant to BMC Section 23.304.030(B)(2), if there are two or main buildings which contain dwelling units, the rear setback may be reduced with approval of an AUP. The rear wall of the proposed dwelling is located 4 feet from the property line where 20 feet is required. It would be located approximately 25 feet away from the dwelling at 1512 Carleton Street. Therefore, the proposed dwelling would exceed building separation requirements in the R-2 District.

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

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

2. Policy LU-7–Neighborhood Quality of Life, Action A: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.
3. Policy UD-16–Context: The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.
4. Policy UD-24–Area Character: Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in.
5. Policy UD-32–Shadows: New buildings should be designed to minimize impacts on solar access and minimize detrimental shadows.
6. Policy H-16–Family Housing: Support and encourage housing projects that include units affordable and suitable for households with children and large families.
7. Policy H-33–Regional Housing Needs: Encourage adequate housing production to meet City needs and the City’s share of regional housing needs.

Staff Analysis: The proposed project is an infill development with a new dwelling unit on a lot with an existing residence in a primarily residential neighborhood. The massing, proportions, design, and use of the buildings would be compatible with the surrounding neighborhood. The project meets all development standards in the R-2 district, except for the rear setback, and may be allowed with an AUP. The project would add one additional dwelling unit to the City’s housing stock. The project would be constructed to comply with current green building standards that are required by the Building Code.

VII. Recommendation

Because of the project’s consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board **APPROVE** Use Permit ZP2023-0045 pursuant to Section 23.406.040 and subject to the attached Findings and Conditions (Attachment 1).

Attachments:

1. Findings and Conditions
2. Project Plans, received July 20, 2023
3. Notice of Public Hearing
4. Correspondence Received, Neighbor opposition dated March 24, 2023 and August 1, 2023

Staff Planner: Brian Garvey, bgarvey@berkeleyca.gov, (510) 981-7424

ATTACHMENT 1

FINDINGS AND CONDITIONS

AUGUST 10, 2023

1515 Derby Street

Use Permit #ZP2023-0045 to demolish a two-car garage and construct an 1,850 square foot three-story single-family residence behind the current single-family home.

ZONING PERMITS REQUIRED

- Use Permit to construct a new single-family dwelling, per Berkeley Municipal Code (BMC) Section 23.202.020(A).
- Use Permit pursuant to BMC Section 23.202.030(B) for six or more bedrooms on lot.
- Administrative Use Permit pursuant to BMC Section 23.304.030(B) for reduced rear setback.
- Administrative Use Permit pursuant to BMC Section 23.202.080(D) for a new building 28 feet in height and greater.

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 15303 of the CEQA Guidelines (“New Construction or Conversion of Small Structures”).
2. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

II. HOUSING ACCOUNTABILITY ACT FINDINGS

- A. 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: (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.
- B. The project includes construction of a three-story single-family residence behind a current single-family home. 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 will develop one three-story single-family dwelling unit;
 - B. The project is consistent with all R-2 objective development standards;
 - C. Because impacts to neighboring residences due to construction of one single-family dwelling will be limited to certain time of a year and during certain hours of a day, shading impacts will not be detrimental;
 - D. New windows are proposed on all sides of the dwelling; however, privacy impacts would be minimal due to the north elevation only having a single window on the third story. The main dwelling is setback four feet from the rear property line and six feet from the east property line.
 - E. The proposal will be consistent with the existing development and building-to-building separation pattern. The proposed single-family dwelling unit exceeds all side and front setback requirements in the R-2 Zoning District.
 - F. The proposed project will not result in additional obstruction of significant views (BMC Section 23.502.020 (Defined Terms) in the neighborhood because of the existing slope in the neighborhood, and the proposed height of the new buildings
 - G. 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.
 - H. The reduced rear setback to accommodate the dwelling is required due to the size of the existing lot.
 - I. The proposed increased height limits are justifiable and approvable with an AUP because the proposed height is compatible with those of neighboring structures and will not create unreasonable obstruction of significant views from neighboring properties;
 - J. The proposed rear unit includes the addition of four bedrooms while the existing residence contains four for a total of eight on the lot.

IV. 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 23.404.050(H), 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. Prior to the issuance of any building or demolition permit, the applicant shall prepare and submit a transportation construction plan to the City Traffic Engineer for approval. Please contact the Office of Transportation at (510) 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.
14. 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](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

15. 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.
16. Solar Photovoltaic (Solar PV) and Battery Energy Storage Systems (ESS). A solar PV system shall be installed, subject to specific limited exceptions, as specified by the Berkeley Energy Code (BMC Chapter 19.36). Energy storage system (ESS) readiness (new single-family, duplex, and townhouse homes) or ESS installation (new multifamily and most nonresidential buildings) shall be completed as specified by BMC Chapter 19.36. Location of the solar PV system and the ESS, if applicable, shall be noted on the construction plans.
17. Electric Vehicle (EV) Charging. Each dwelling unit shall install a listed raceway, wiring, and load capacity to allow for future Level 2 (40 amp) plug-in electric vehicle (EV) charging system installation, or any more stringent EV charging requirements as specified by the Berkeley Green Code (BMC Chapter 19.37). Readiness for EV charging and EV charging station installations shall be noted on the construction plans.
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). The building permit plan set submission shall both include a cover sheet declaration: 'Natural Gas-Free Design as required by 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. Geotechnical Plan Review. The applicant's geotechnical consultant should review and approve all geotechnical aspects of the final project building a grading plans (i.e., site preparation and grading, shoring design, site surface and subsurface drainage improvements including site runoff discharge, and design parameters for foundations and retaining walls) to ensure that their recommendations have been properly incorporated.

The Project Geotechnical Consultant should clarify anticipated depths to bedrock materials across the site for structural design (i.e., at what depth can bedrock skin friction be used).

The results of the plan review should be summarized by the Geotechnical Consultant in a letter and submitted to the City Engineer for review and approval prior to issuance of building permits.

During Construction:

23. Construction Hours. Construction activity shall be limited to between the hours of 8:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and Noon on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.
30. The height and location of the proposed structure, property lines and spot elevations shall be verified by a licensed surveyor or engineer on site after foundation forms are placed, but before pouring concrete or placing construction material in its permanent position. This verification shall be to the satisfaction of the Zoning Officer.
31. 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 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.
32. 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.
33. 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.
34. 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.
- Please contact the Office of Transportation at (510) 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.

35. 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.
36. 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.

- 37. 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.
- 38. 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.
- 39. 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.
- 40. 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.

41. 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.
42. 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.
43. 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.
44. 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.
45. 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.
46. 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:

47. 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.
48. Compliance with Approved Plan. The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated July 20, 2023, except as modified by conditions of approval.

At All Times:

49. 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.
50. 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.

51. 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.
52. Electrical Meter. Only one electrical meter fixture may be installed per dwelling unit.

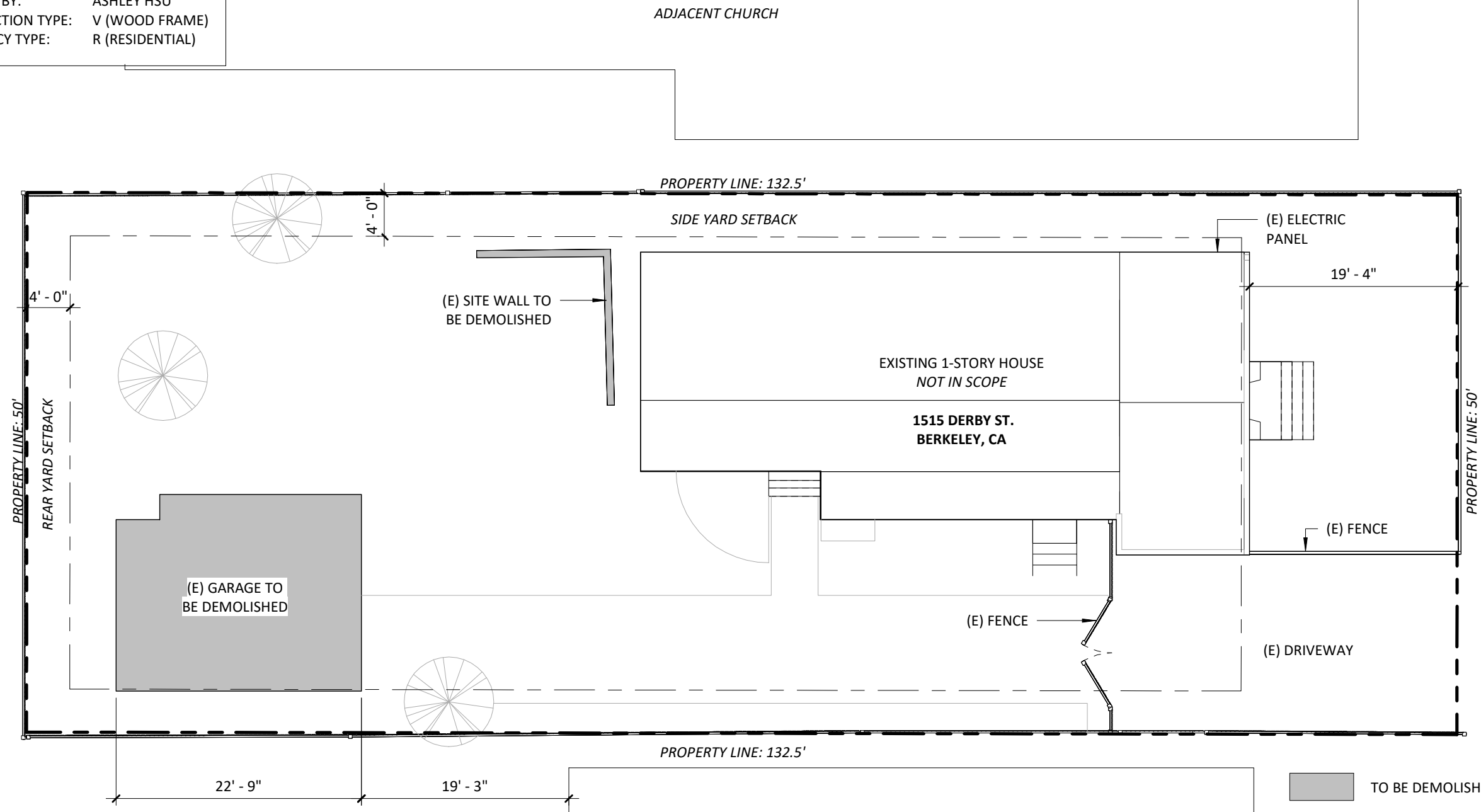


NEW AVENUE

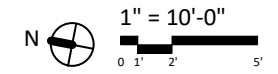
USE PERMIT APPLICATION

FUND 1 - DERBY
1515 DERBY ST. BERKELEY, CA 94703

DATE PREPARED: 2/06/2023
PREPARED BY: ASHLEY HSU
CONSTRUCTION TYPE: V (WOOD FRAME)
OCCUPANCY TYPE: R (RESIDENTIAL)

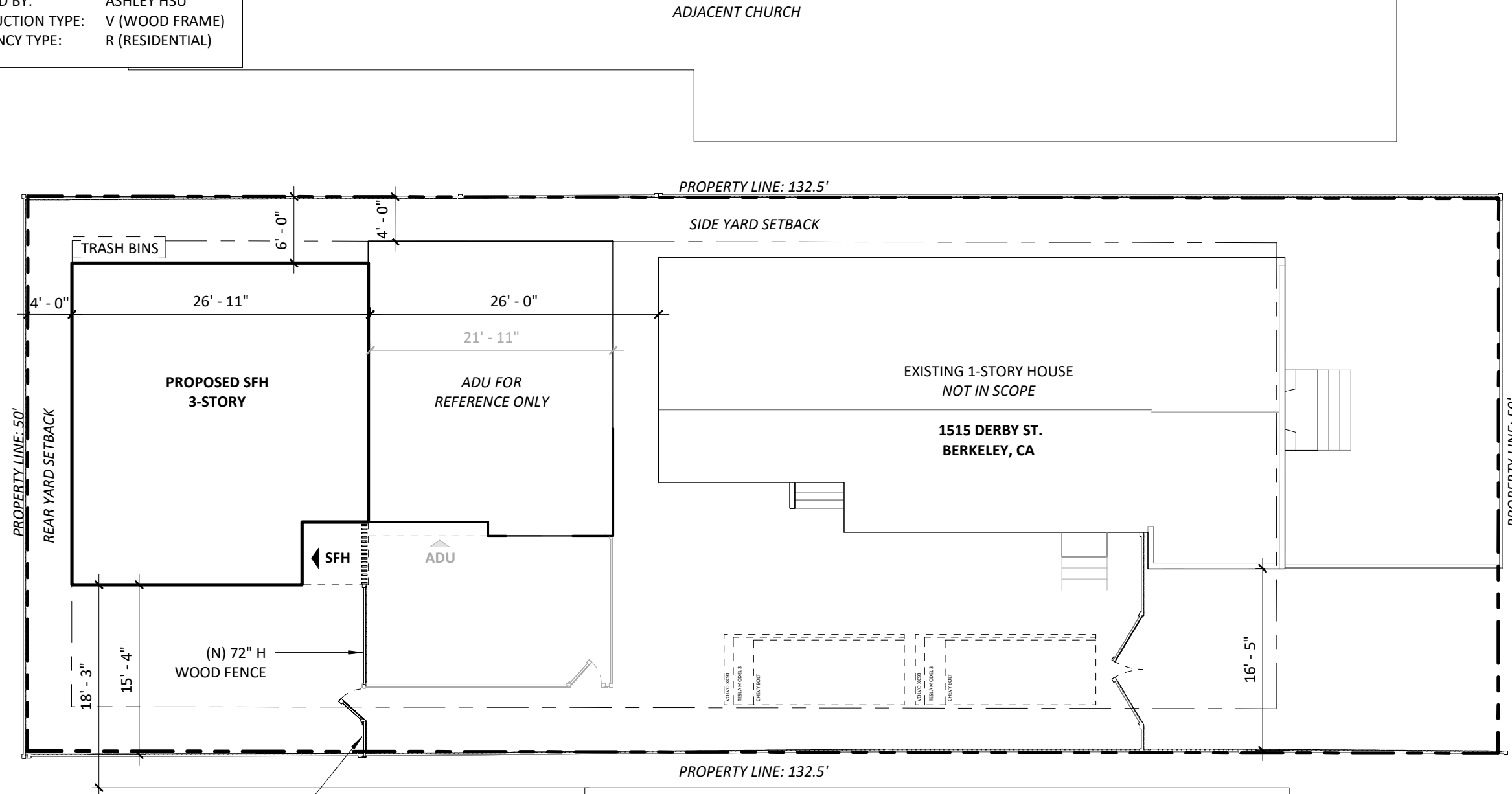


USE PERMIT APPLICATION
1515 DERBY ST. BERKELEY, CA 94703

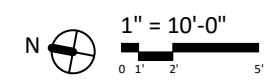


EXISTING SITE PLAN
PAGE 1

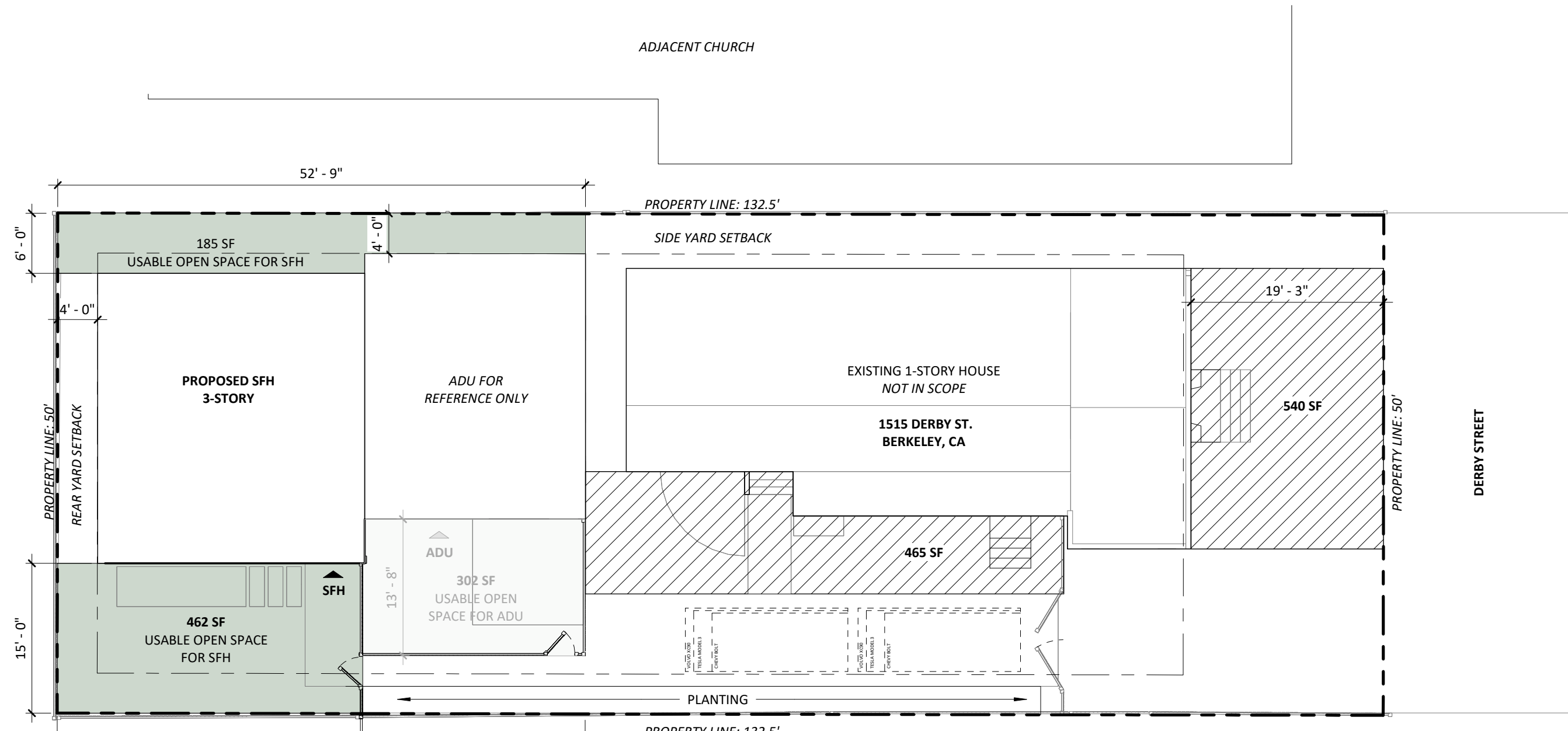
DATE PREPARED: 2/06/2023
PREPARED BY: ASHLEY HSU
CONSTRUCTION TYPE: V (WOOD FRAME)
OCCUPANCY TYPE: R (RESIDENTIAL)


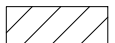


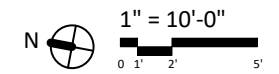
USE PERMIT APPLICATION
1515 DERBY ST. BERKELEY, CA 94703



PROPOSED SITE PLAN
PAGE 2



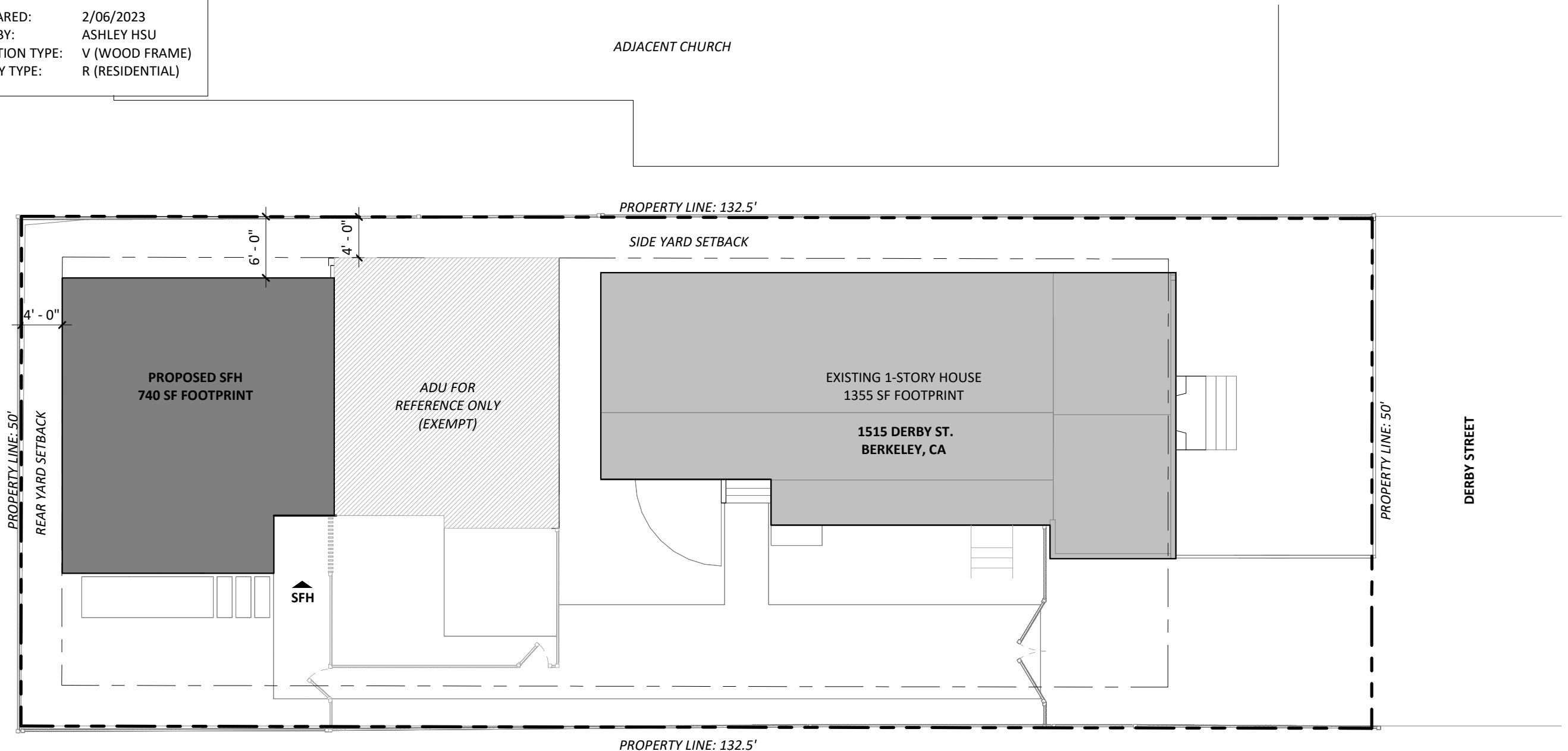
 NEW ASSIGNED USABLE OPEN SPACE
 SHARED USABLE SPACE OR EXISTING USABLE SPACE FOR EXISTING HOME



USE PERMIT APPLICATION
 1515 DERBY ST. BERKELEY, CA 94703

LANDSCAPE & OPEN SPACE PLAN
 PAGE 3

DATE PREPARED: 2/06/2023
 PREPARED BY: ASHLEY HSU
 CONSTRUCTION TYPE: V (WOOD FRAME)
 OCCUPANCY TYPE: R (RESIDENTIAL)

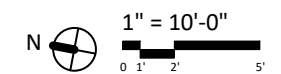


LOT COVERAGE CALCULATIONS

LOT: 50' X 132.5' = 6625 SF
 (E) LOT COVERAGE: 1355/6625 = 20.45%
 (N) LOT COVERAGE: 1355+740 = 2095
 2095/6625 = 31.62%
 MAX ALLOWABLE: 35%

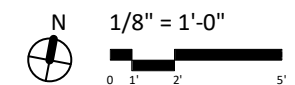
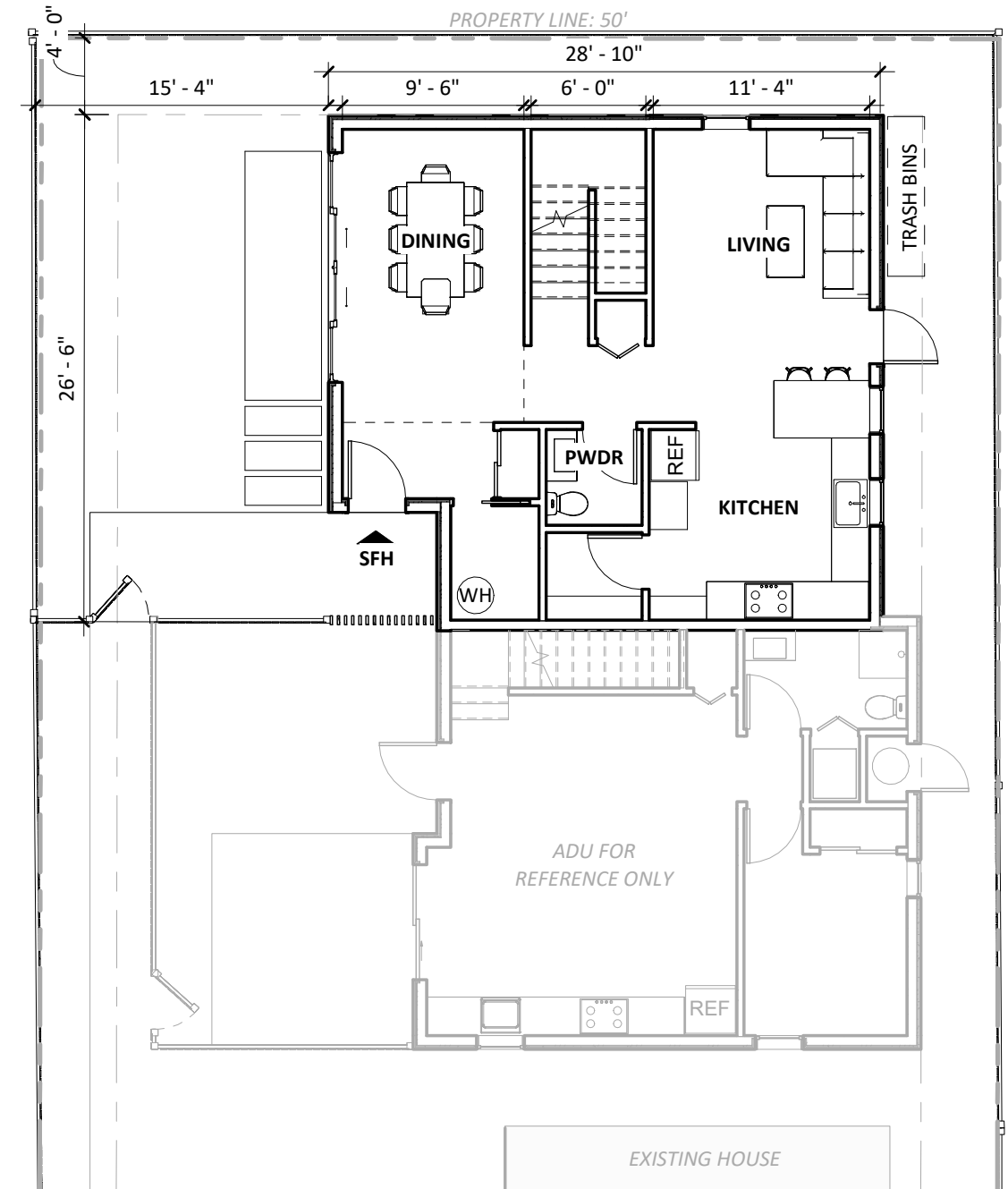
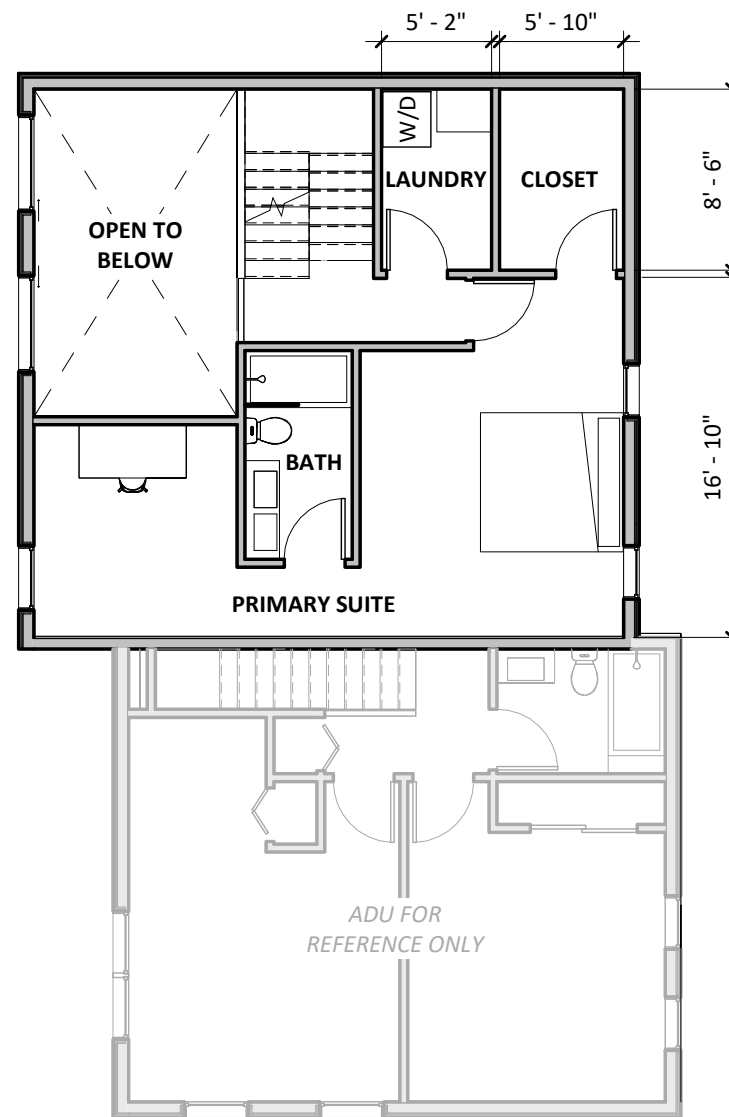
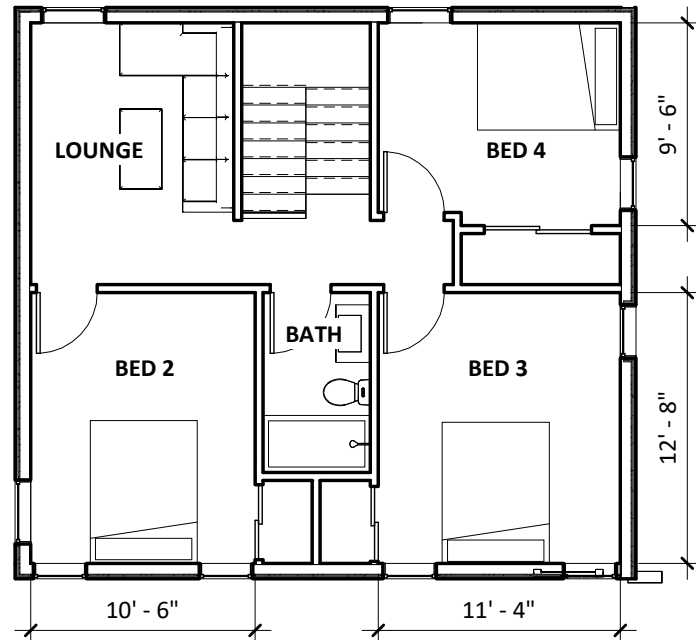


- PROPOSED ADDITION TO LOT COVERAGE
- (E) HOUSE FOOTPRINT
- EXEMPT FROM LOT COVERAGE



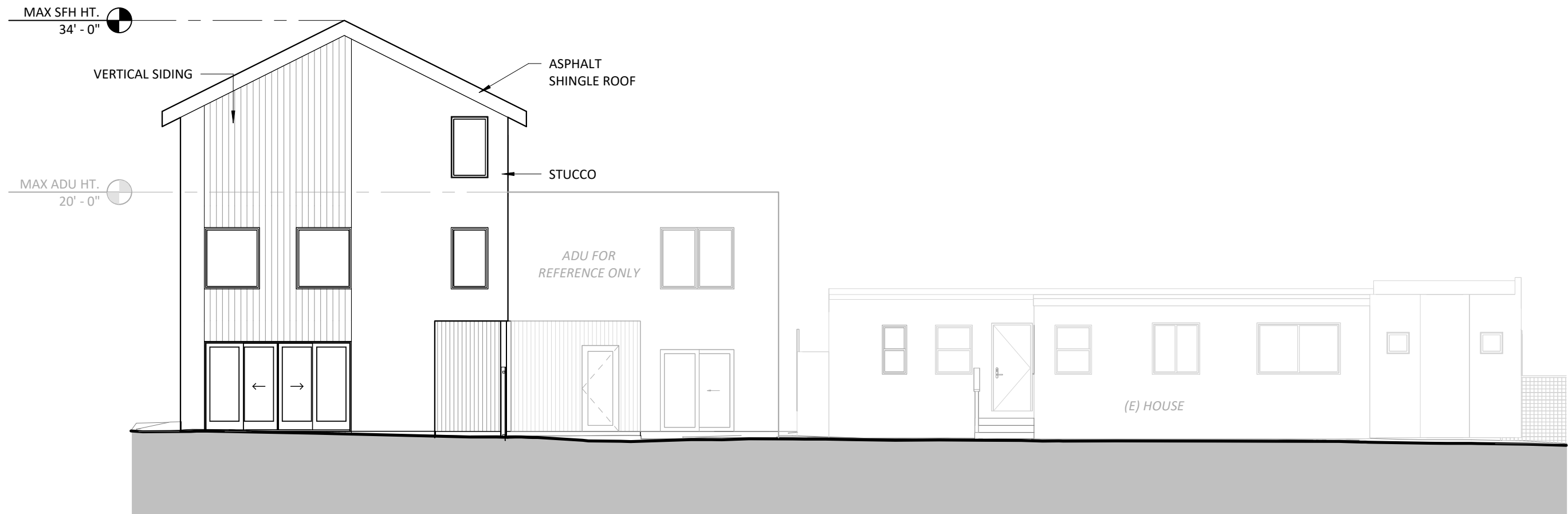
USE PERMIT APPLICATION
 1515 DERBY ST. BERKELEY, CA 94703

DATE PREPARED: 2/06/2023
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 CONSTRUCTION TYPE: V (WOOD FRAME)
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USE PERMIT APPLICATION
 1515 DERBY ST. BERKELEY, CA 94703

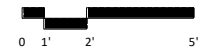
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CONSTRUCTION TYPE: V (WOOD FRAME)
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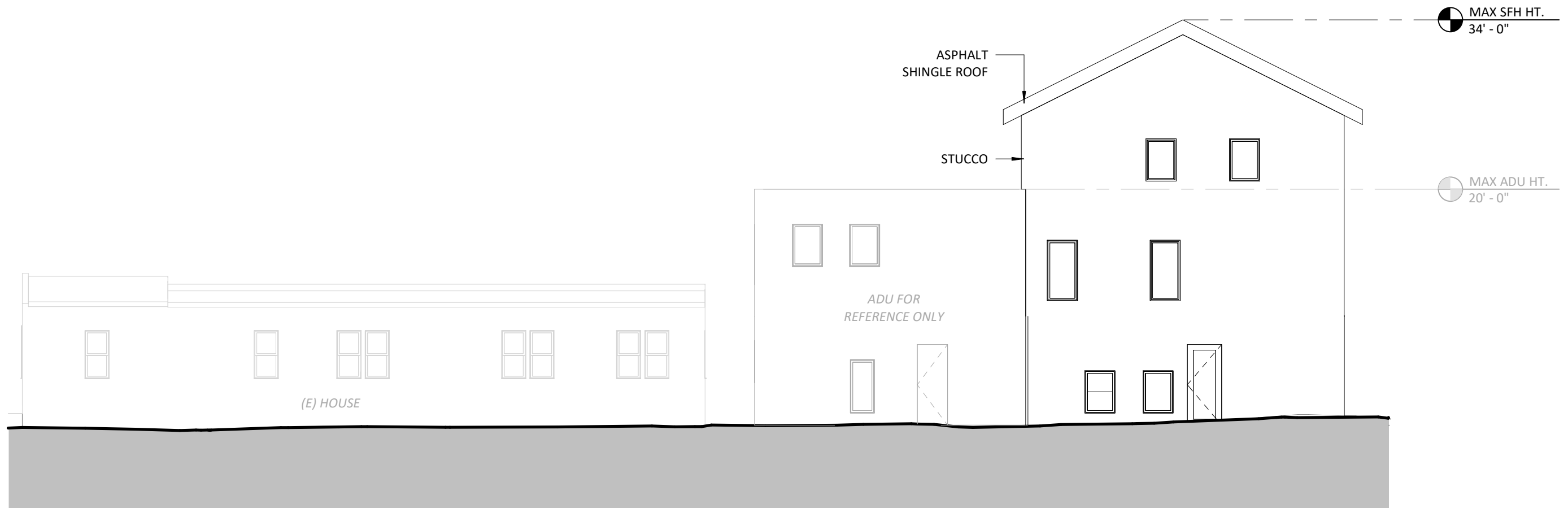
1 WEST ELEVATION
1/8" = 1'-0"



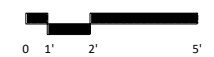
USE PERMIT APPLICATION
1515 DERBY ST. BERKELEY, CA 94703



DATE PREPARED: 2/06/2023
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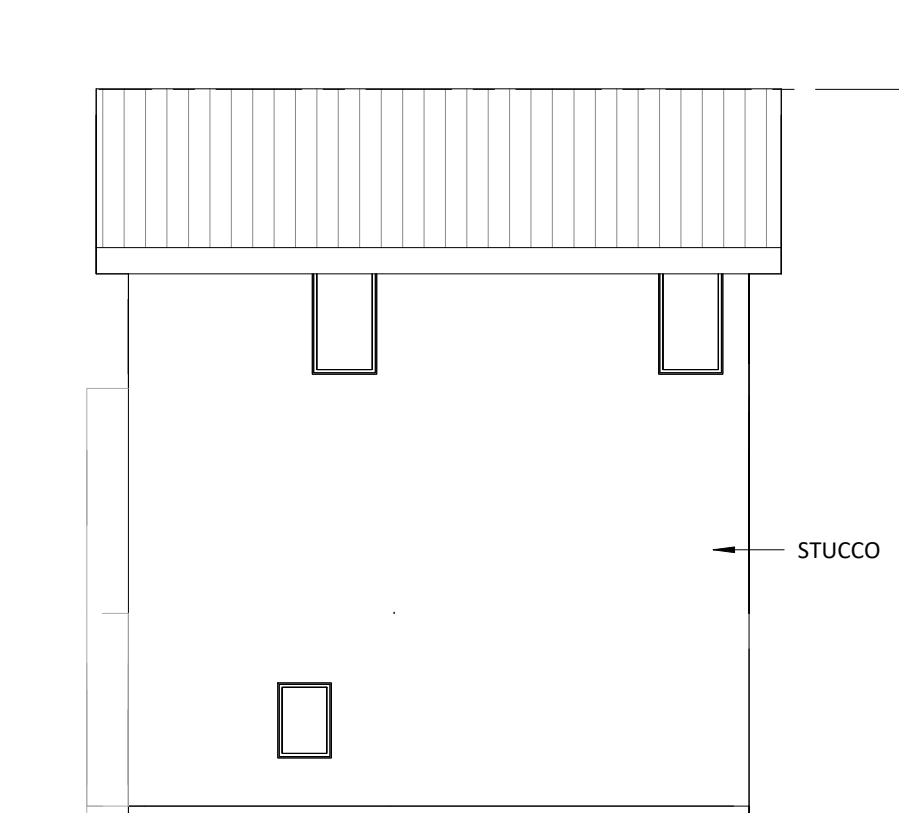
1 EAST ELEVATION
1/8" = 1'-0"



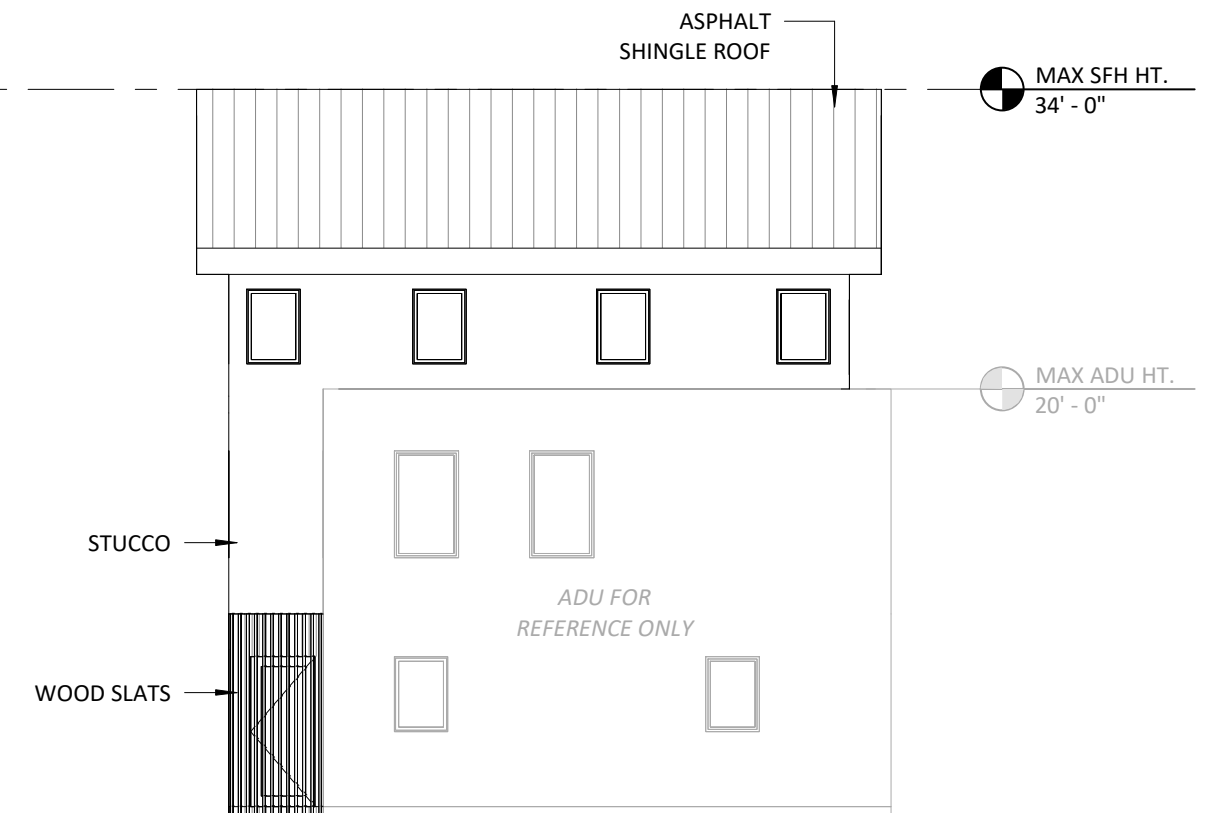
USE PERMIT APPLICATION
1515 DERBY ST. BERKELEY, CA 94703

BUILDING ELEVATIONS
PAGE 7

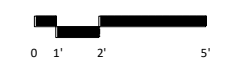
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 PREPARED BY: ASHLEY HSU
 CONSTRUCTION TYPE: V (WOOD FRAME)
 OCCUPANCY TYPE: R (RESIDENTIAL)



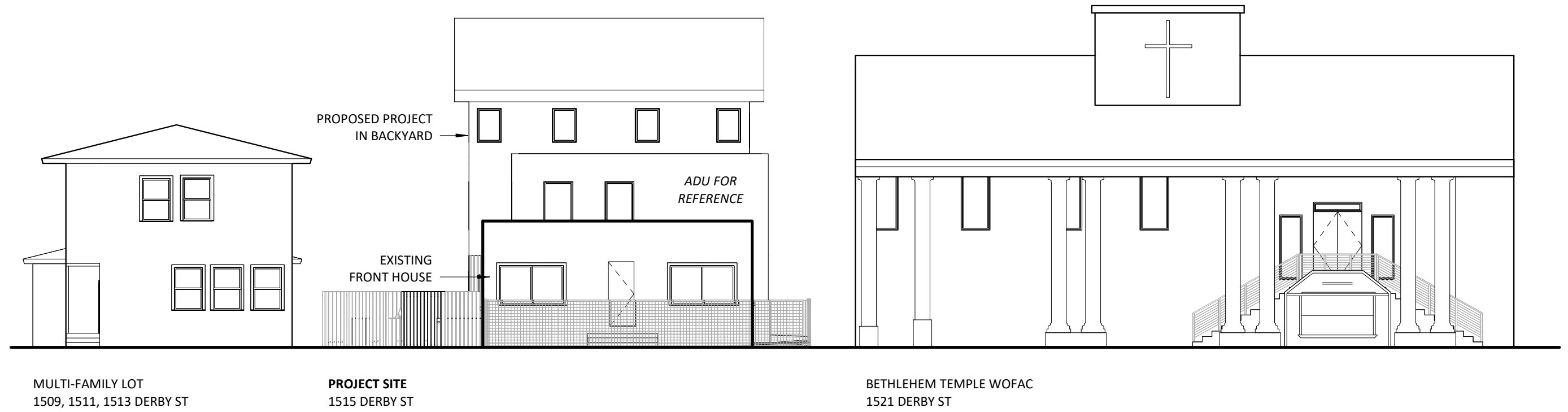
1 NORTH ELEVATION
 1/8" = 1'-0"



2 SOUTH ELEVATION
 1/8" = 1'-0"



DATE PREPARED: 2/06/2023
PREPARED BY: ASHLEY HSU
CONSTRUCTION TYPE: V (WOOD FRAME)
OCCUPANCY TYPE: R (RESIDENTIAL)



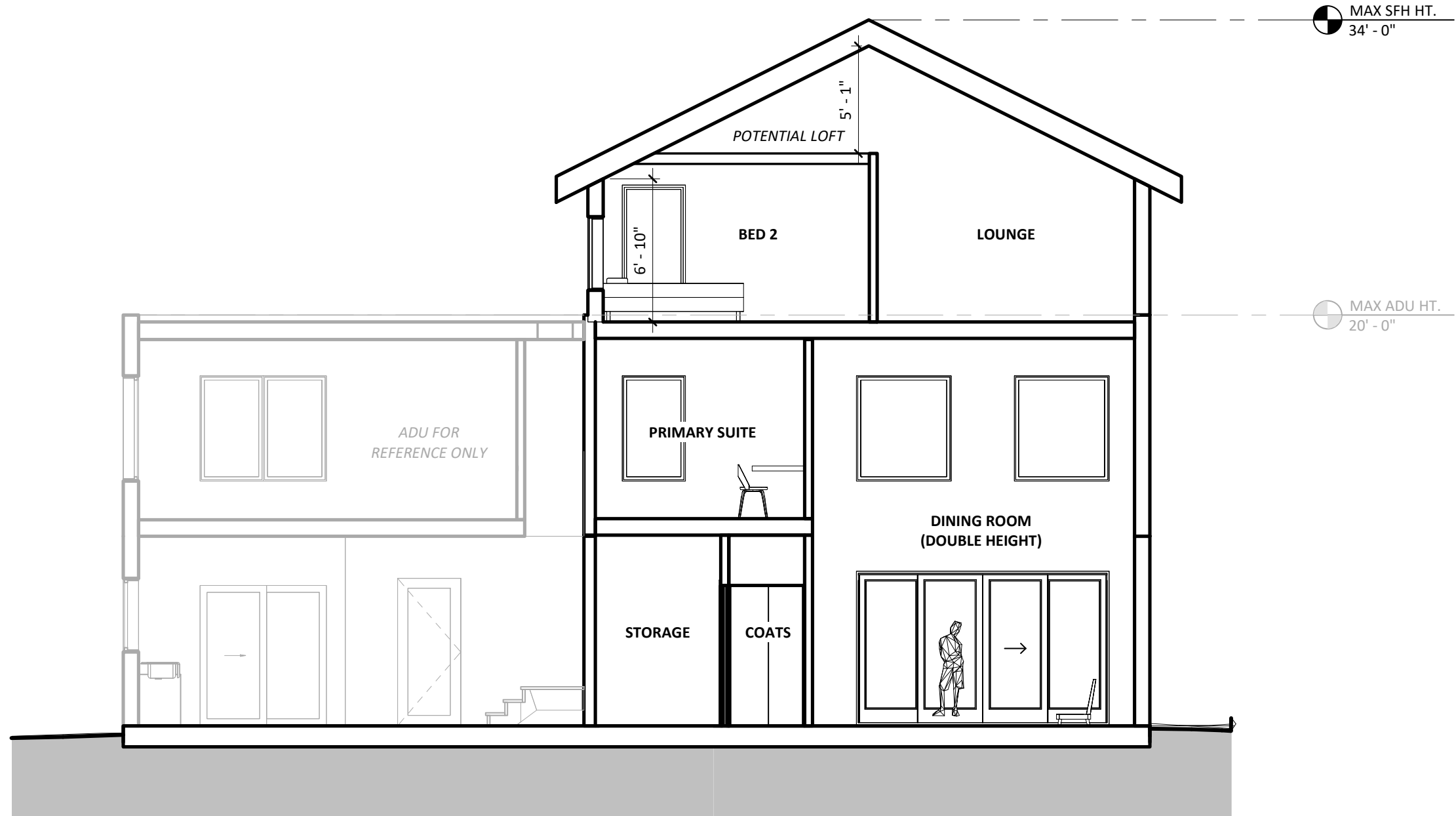
1" = 10'-0"
0 1' 2' 5'



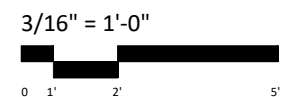
USE PERMIT APPLICATION
1515 DERBY ST. BERKELEY, CA 94703

STREET STRIP ELEVATION
PAGE 9

DATE PREPARED: 2/06/2023
PREPARED BY: ASHLEY HSU
CONSTRUCTION TYPE: V (WOOD FRAME)
OCCUPANCY TYPE: R (RESIDENTIAL)

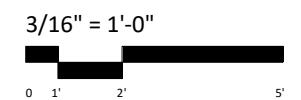
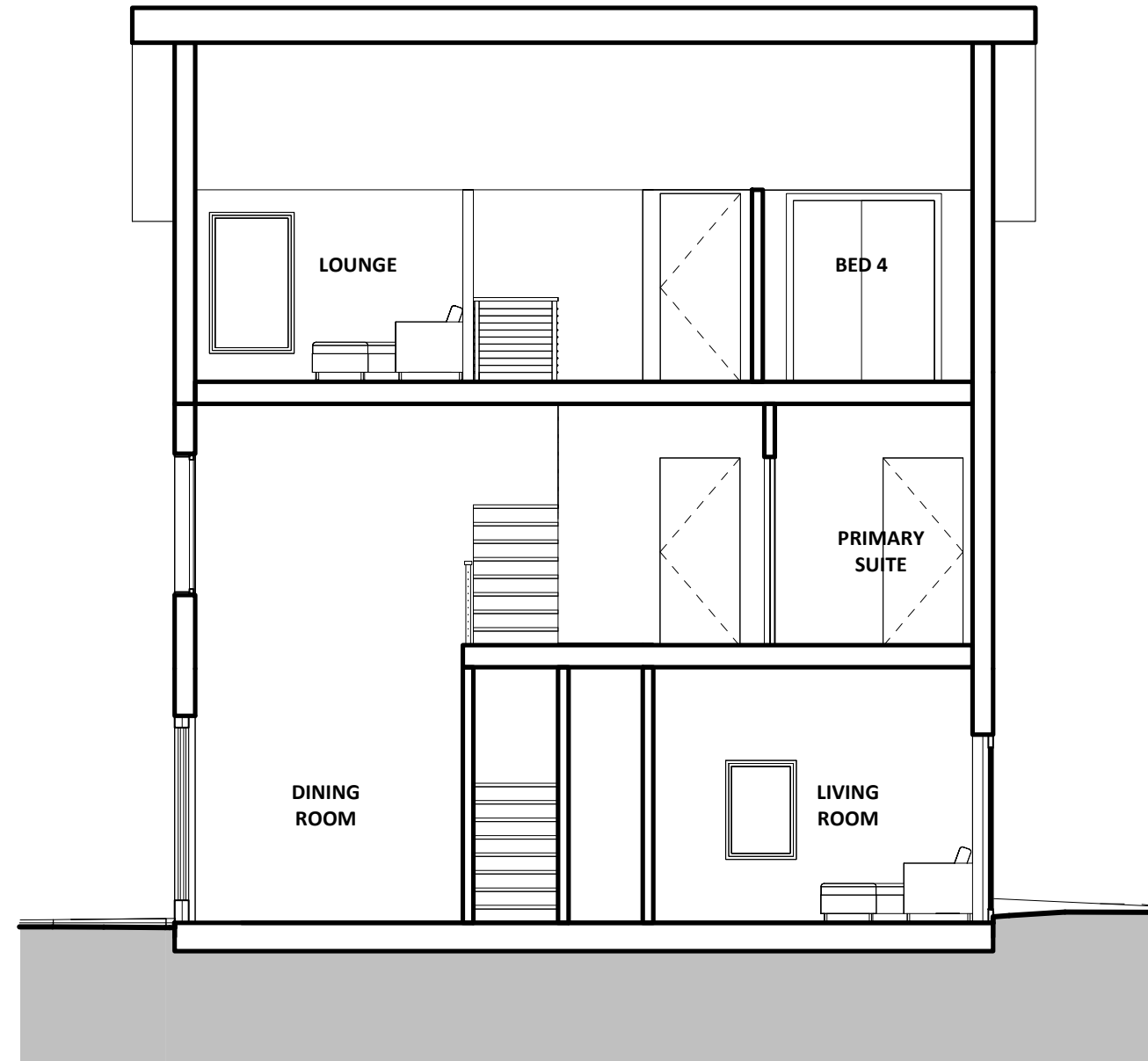


USE PERMIT APPLICATION
1515 DERBY ST. BERKELEY, CA 94703



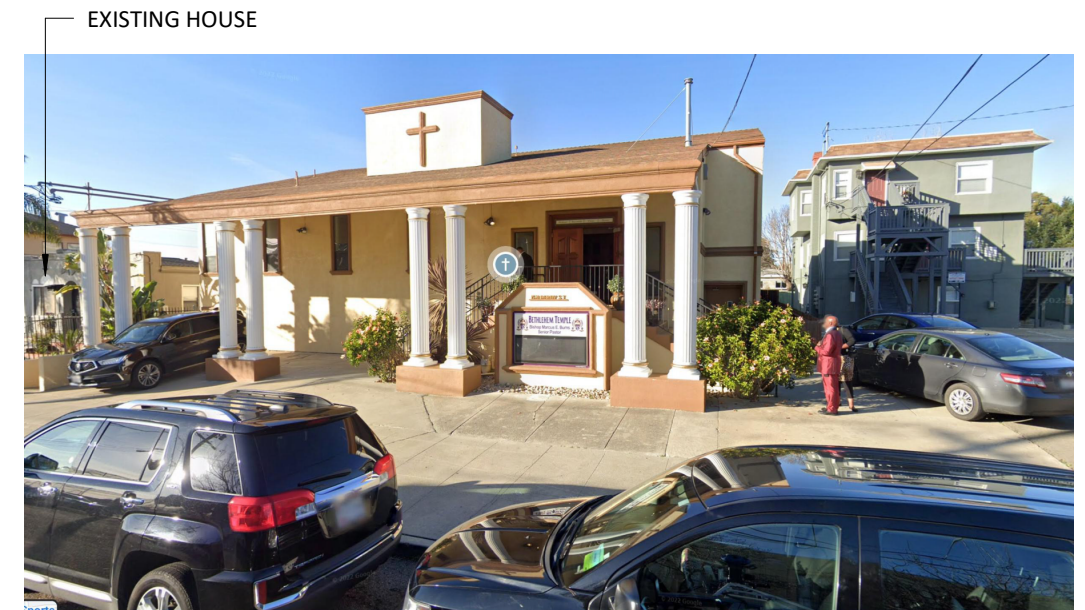
SECTION
PAGE 10

DATE PREPARED: 2/06/2023
PREPARED BY: ASHLEY HSU
CONSTRUCTION TYPE: V (WOOD FRAME)
OCCUPANCY TYPE: R (RESIDENTIAL)

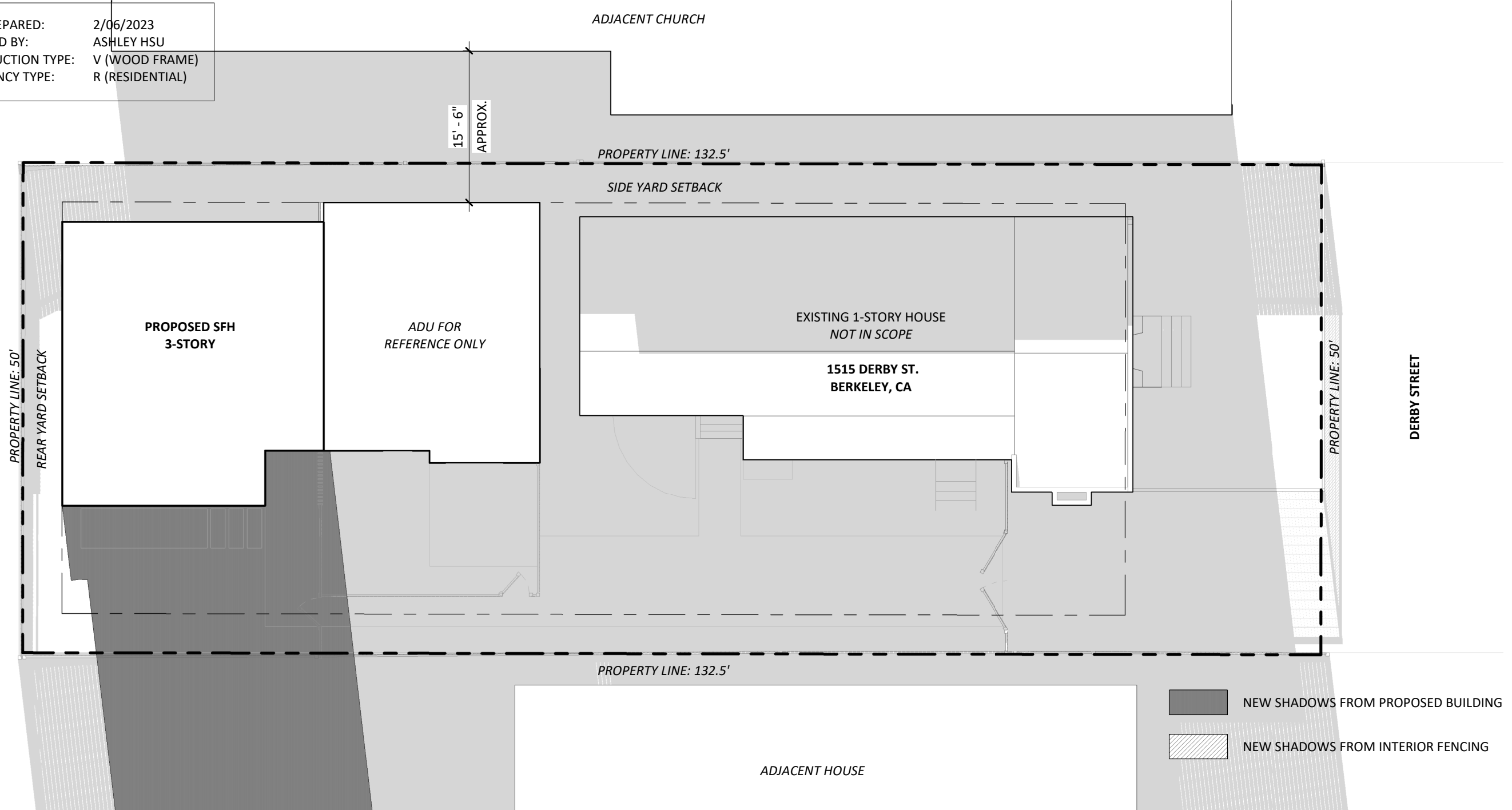


USE PERMIT APPLICATION
1515 DERBY ST. BERKELEY, CA 94703

SECTION
PAGE 11



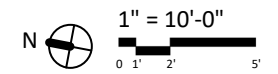
DATE PREPARED: 2/06/2023
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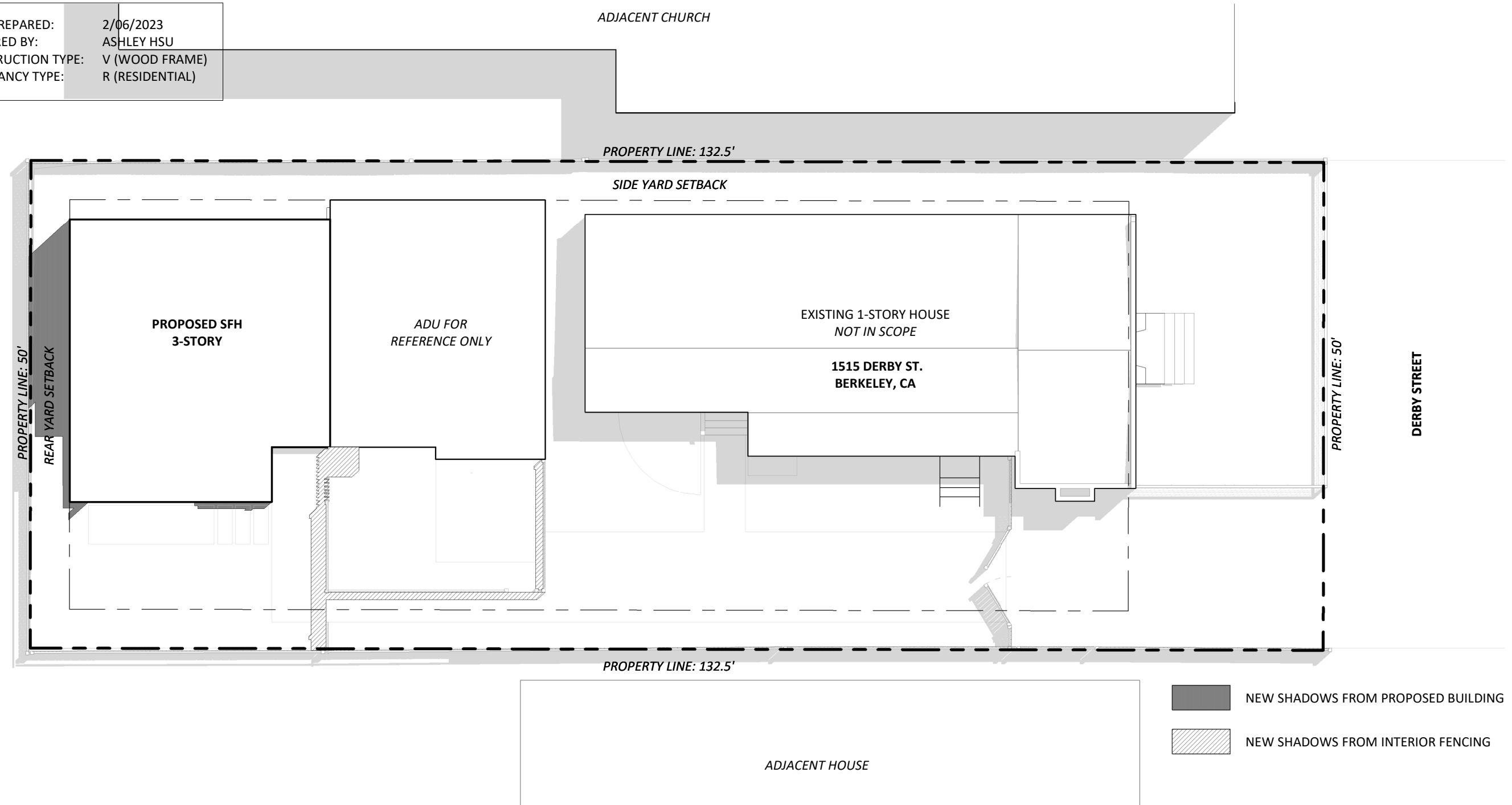
1 STUDY - SUMMER SOLSTICE 7.30AM
 1" = 10'-0"



USE PERMIT APPLICATION
 1515 DERBY ST. BERKELEY, CA 94703



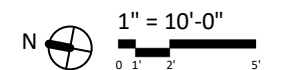
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PREPARED BY:	ASHLEY HSU
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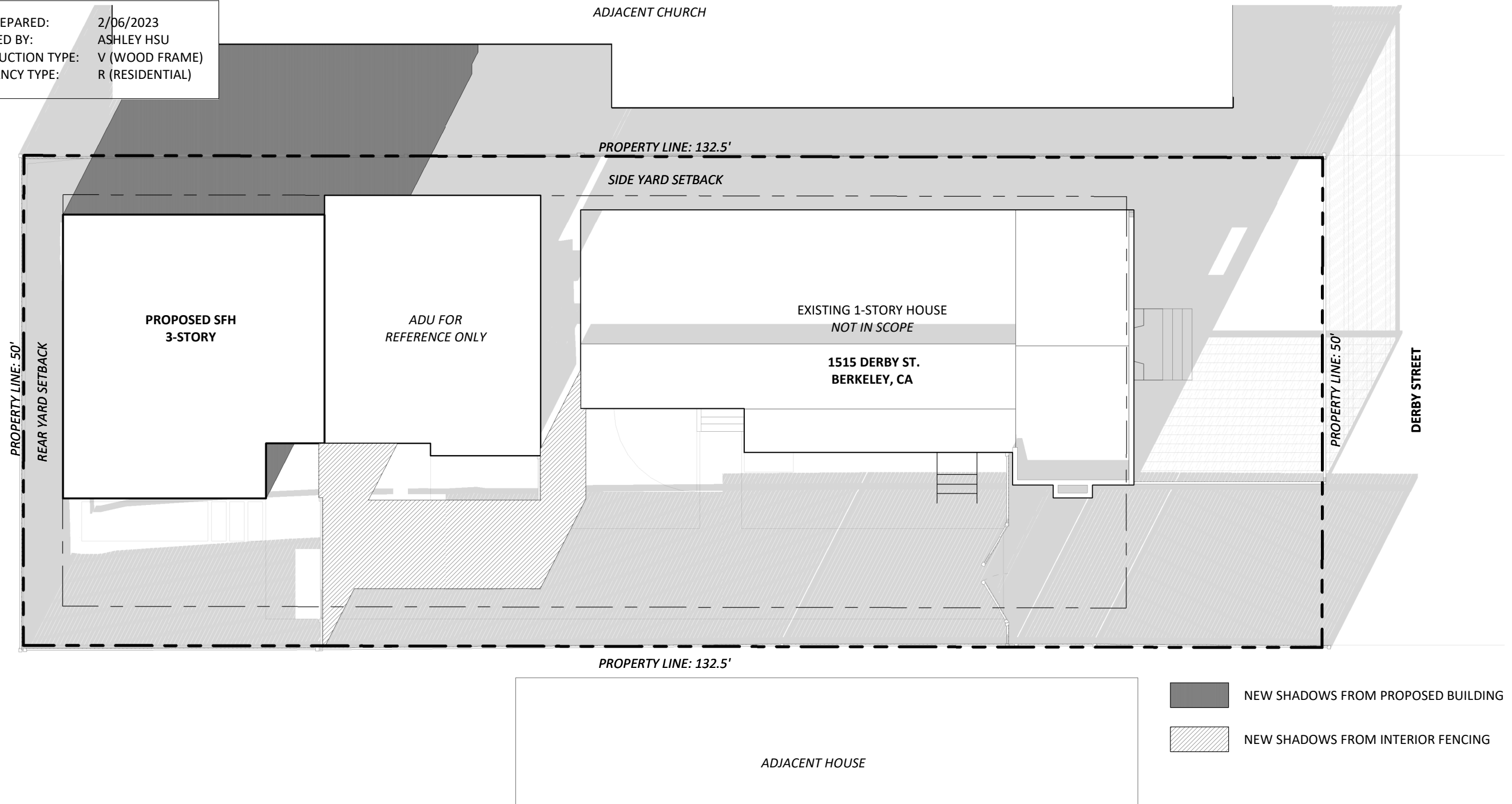
1 STUDY - SUMMER SOLSTICE 12PM
 1" = 10'-0"



USE PERMIT APPLICATION
 1515 DERBY ST. BERKELEY, CA 94703



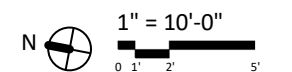
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 PREPARED BY: ASHLEY HSU
 CONSTRUCTION TYPE: V (WOOD FRAME)
 OCCUPANCY TYPE: R (RESIDENTIAL)



1 STUDY - SUMMER SOLSTICE 7PM
 1" = 10'-0"

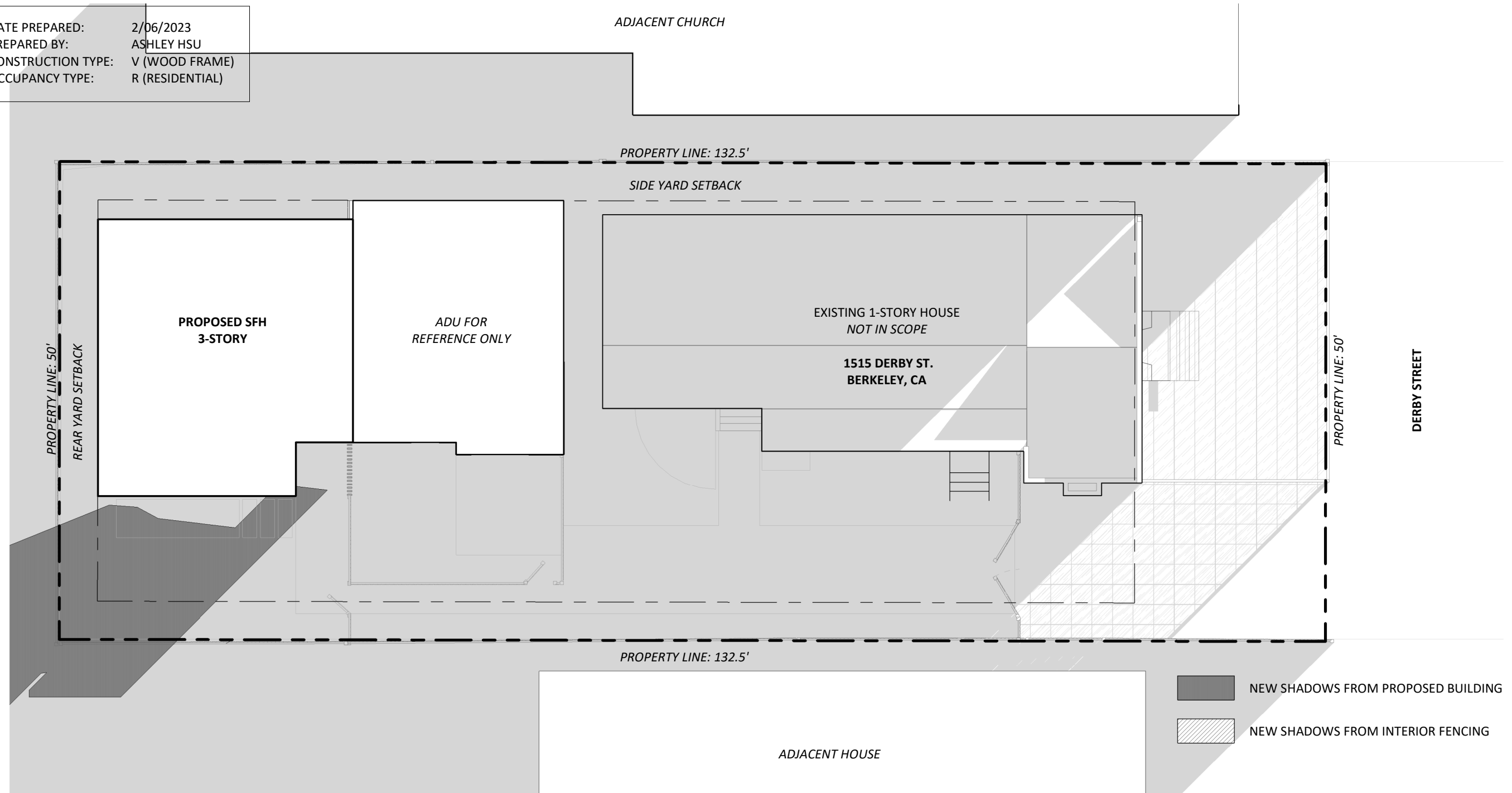


USE PERMIT APPLICATION
 1515 DERBY ST. BERKELEY, CA 94703



SHADOW STUDY
 PAGE 16

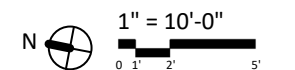
DATE PREPARED: 2/06/2023
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 CONSTRUCTION TYPE: V (WOOD FRAME)
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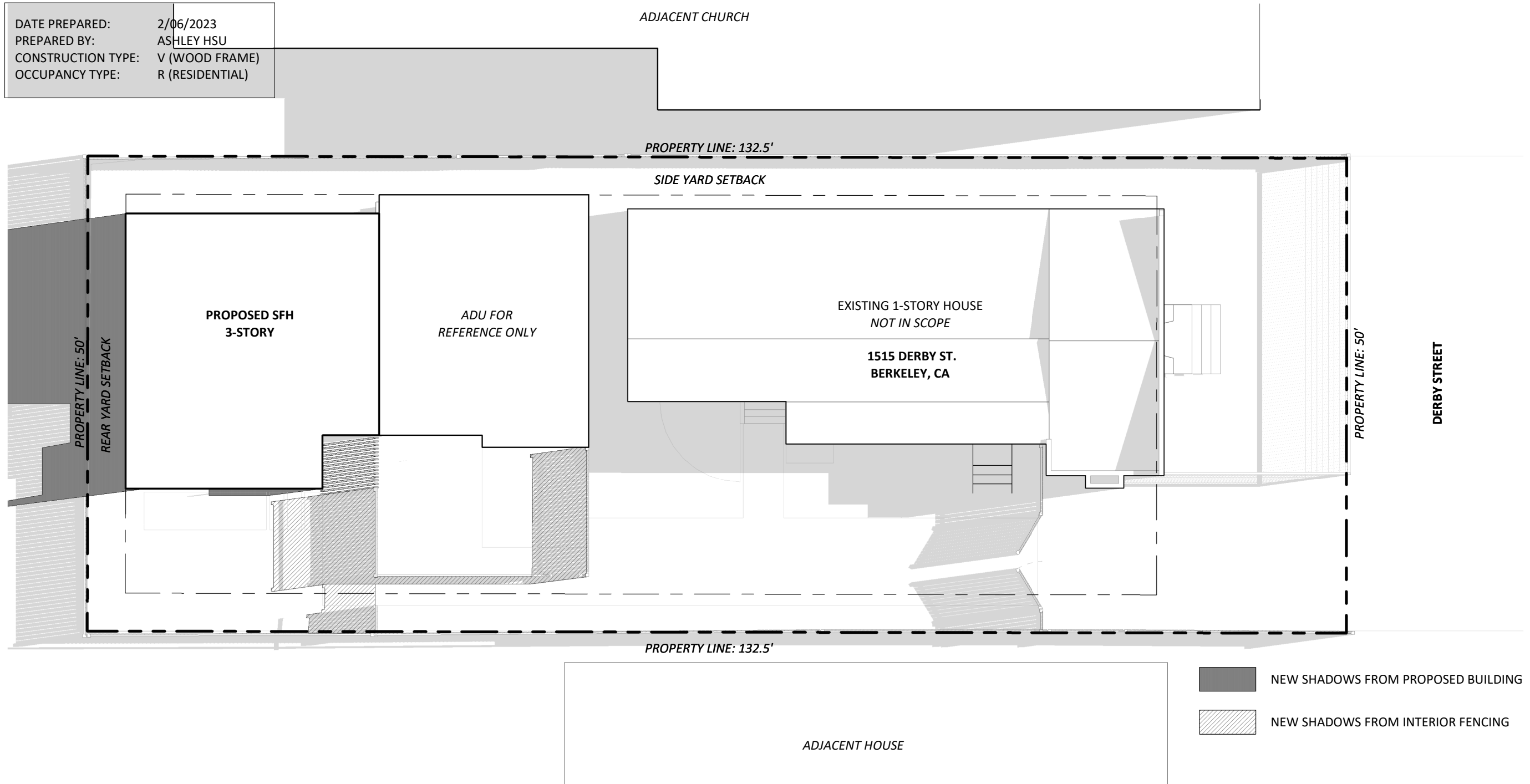
1 STUDY - WINTER SOLSTICE 9AM
 1" = 10'-0"



USE PERMIT APPLICATION
 1515 DERBY ST. BERKELEY, CA 94703



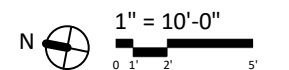
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 CONSTRUCTION TYPE: V (WOOD FRAME)
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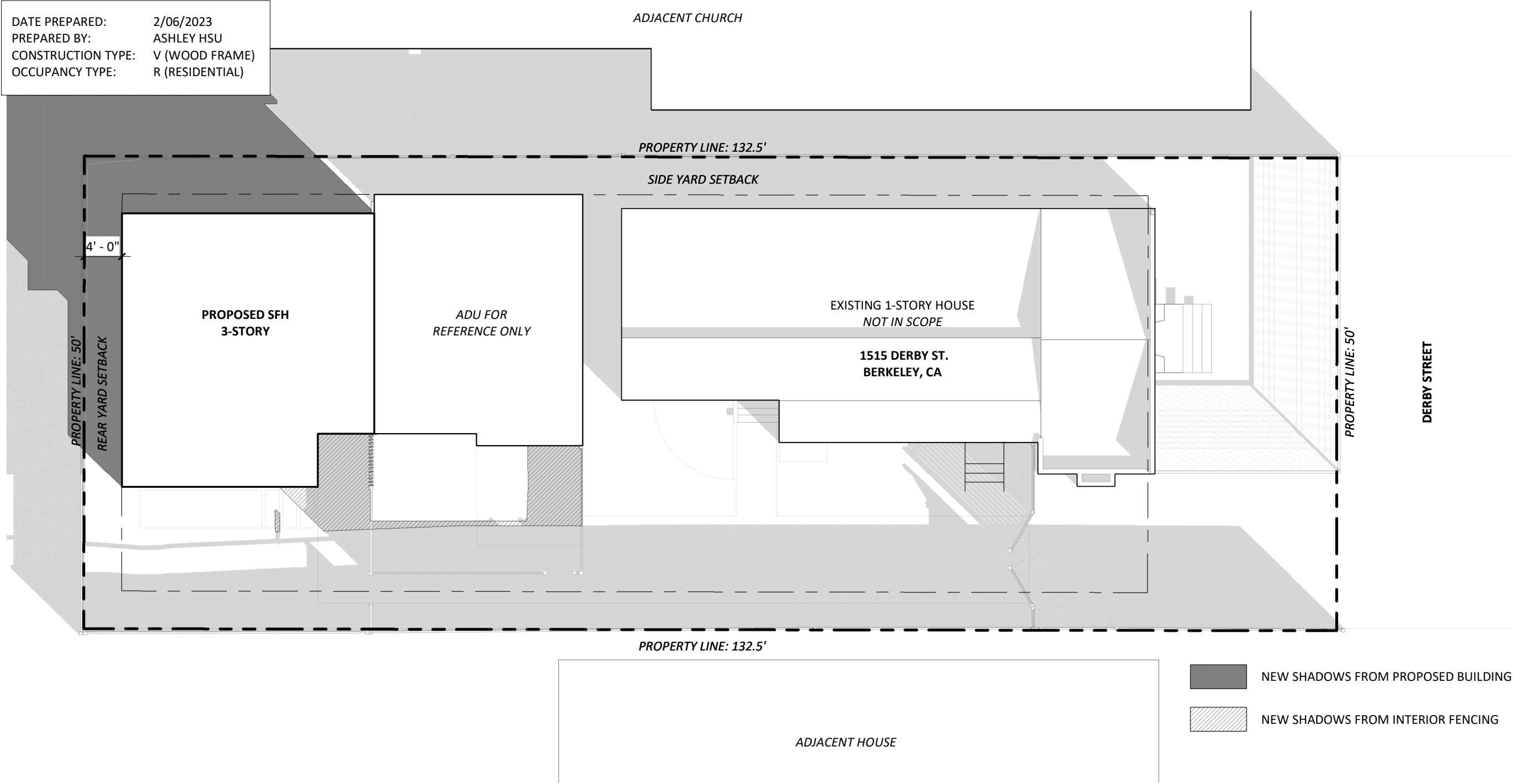
1 STUDY - WINTER SOLSTICE 12PM
 1" = 10'-0"



USE PERMIT APPLICATION
 1515 DERBY ST. BERKELEY, CA 94703



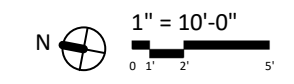
DATE PREPARED: 2/06/2023
 PREPARED BY: ASHLEY HSU
 CONSTRUCTION TYPE: V (WOOD FRAME)
 OCCUPANCY TYPE: R (RESIDENTIAL)



1 STUDY - WINTER SOLSTICE 3.30PM
 1" = 10'-0"

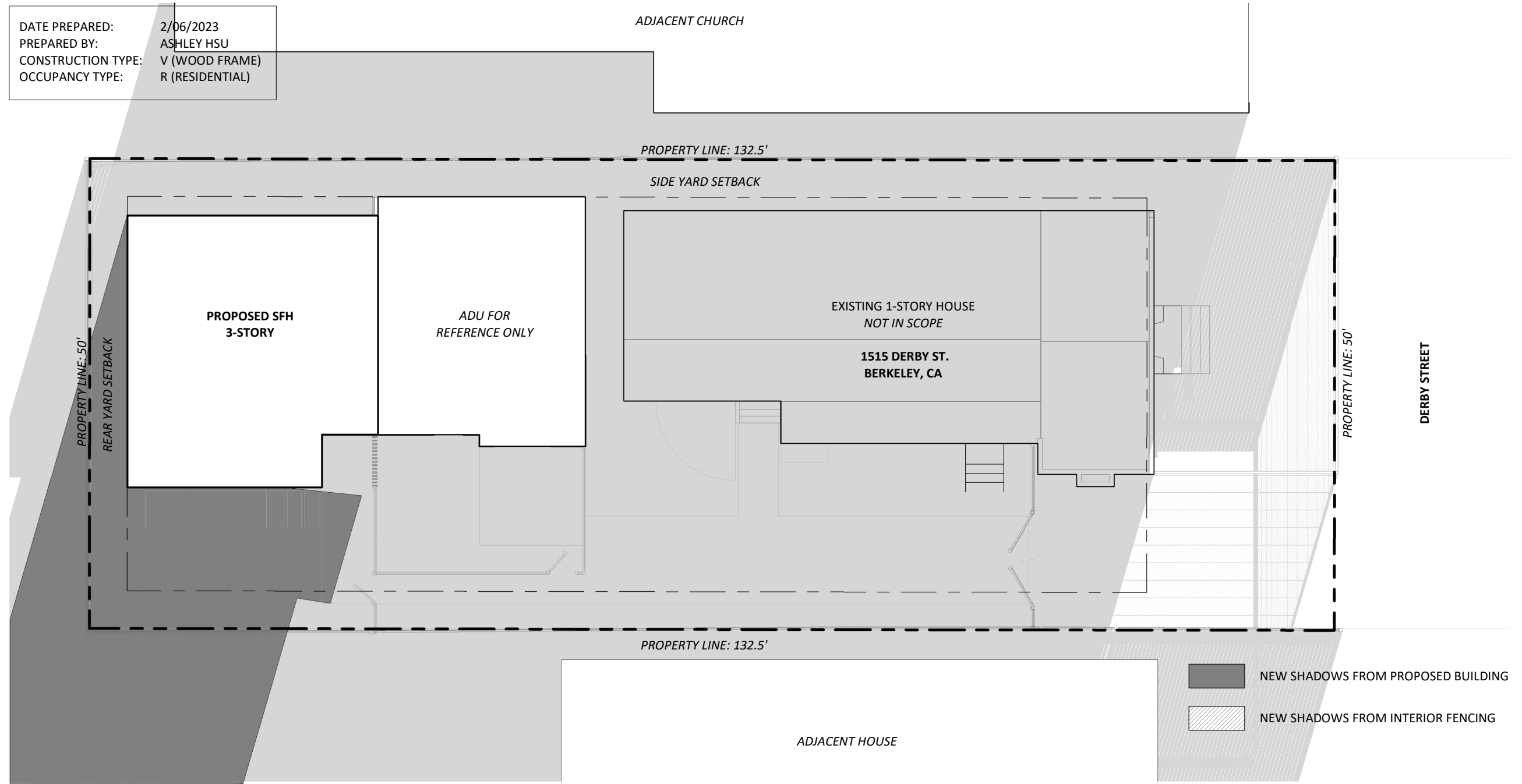


USE PERMIT APPLICATION
 1515 DERBY ST. BERKELEY, CA 94703



SHADOW STUDY
 PAGE 19

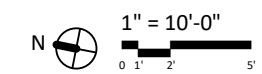
DATE PREPARED: 2/06/2023
 PREPARED BY: ASHLEY HSU
 CONSTRUCTION TYPE: V (WOOD FRAME)
 OCCUPANCY TYPE: R (RESIDENTIAL)



1 STUDY - SPRING EQUINOX 8AM
 1" = 10'-0"

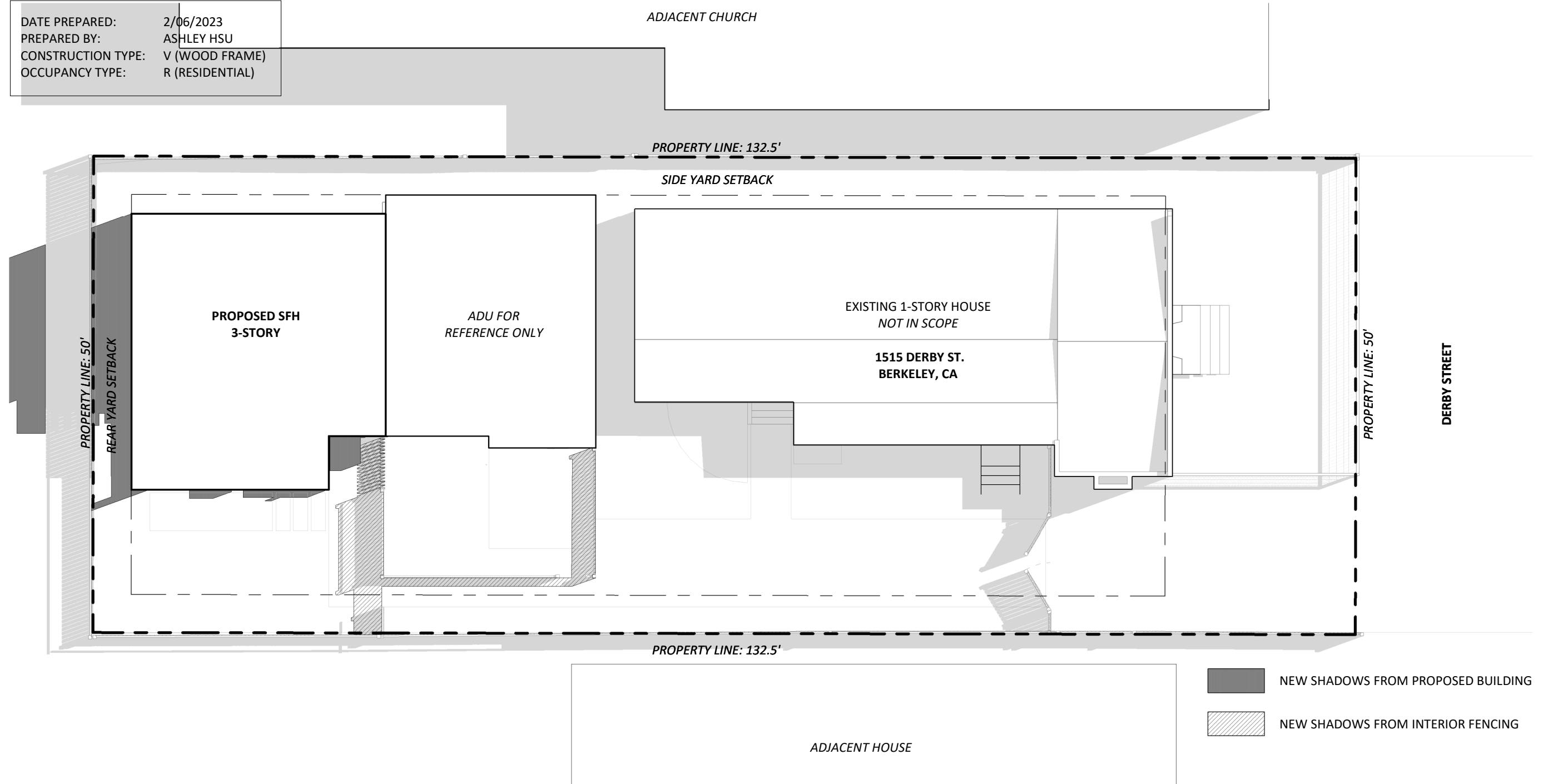


USE PERMIT APPLICATION
 1515 DERBY ST. BERKELEY, CA 94703



SHADOW STUDY
 PAGE 20

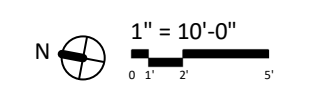
DATE PREPARED: 2/06/2023
 PREPARED BY: ASHLEY HSU
 CONSTRUCTION TYPE: V (WOOD FRAME)
 OCCUPANCY TYPE: R (RESIDENTIAL)



1 STUDY - SPRING EQUINOX 12PM
 1" = 10'-0"

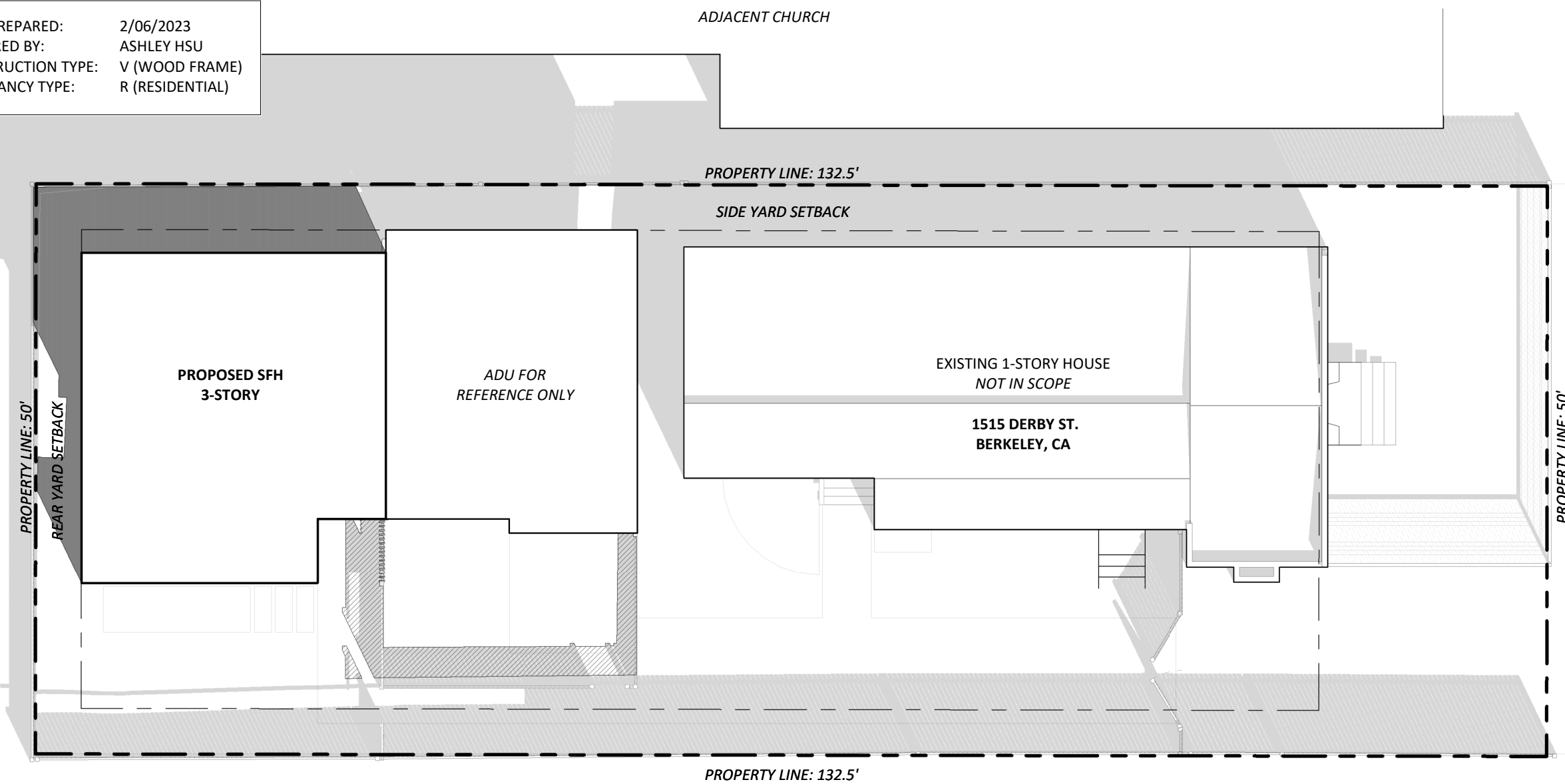


USE PERMIT APPLICATION
 1515 DERBY ST. BERKELEY, CA 94703



SHADOW STUDY
 PAGE 21

DATE PREPARED: 2/06/2023
 PREPARED BY: ASHLEY HSU
 CONSTRUCTION TYPE: V (WOOD FRAME)
 OCCUPANCY TYPE: R (RESIDENTIAL)



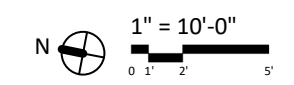
NEW SHADOWS FROM PROPOSED BUILDING

NEW SHADOWS FROM INTERIOR FENCING

1 STUDY - SPRING EQUINOX 4PM
 1" = 10'-0"



USE PERMIT APPLICATION
 1515 DERBY ST. BERKELEY, CA 94703



SHADOW STUDY
 PAGE 22

DATE PREPARED: 2/06/2023
PREPARED BY: ASHLEY HSU
CONSTRUCTION TYPE: V (WOOD FRAME)
OCCUPANCY TYPE: R (RESIDENTIAL)



USE PERMIT APPLICATION
1515 DERBY ST. BERKELEY, CA 94703

EXTERIOR RENDERINGS
PAGE 23



NEW AVENUE




SUPPLEMENTAL MATERIALS

FUND 1 - DERBY

1515 DERBY ST. BERKELEY, CA 94703



LEGEND

-  MULTI-FAMILY LOTS
-  NON-RESIDENTIAL (CHURCH)
-  SINGLE FAMILY HOUSE LOTS



USE PERMIT APPLICATION

1515 DERBY ST. BERKELEY, CA 94703

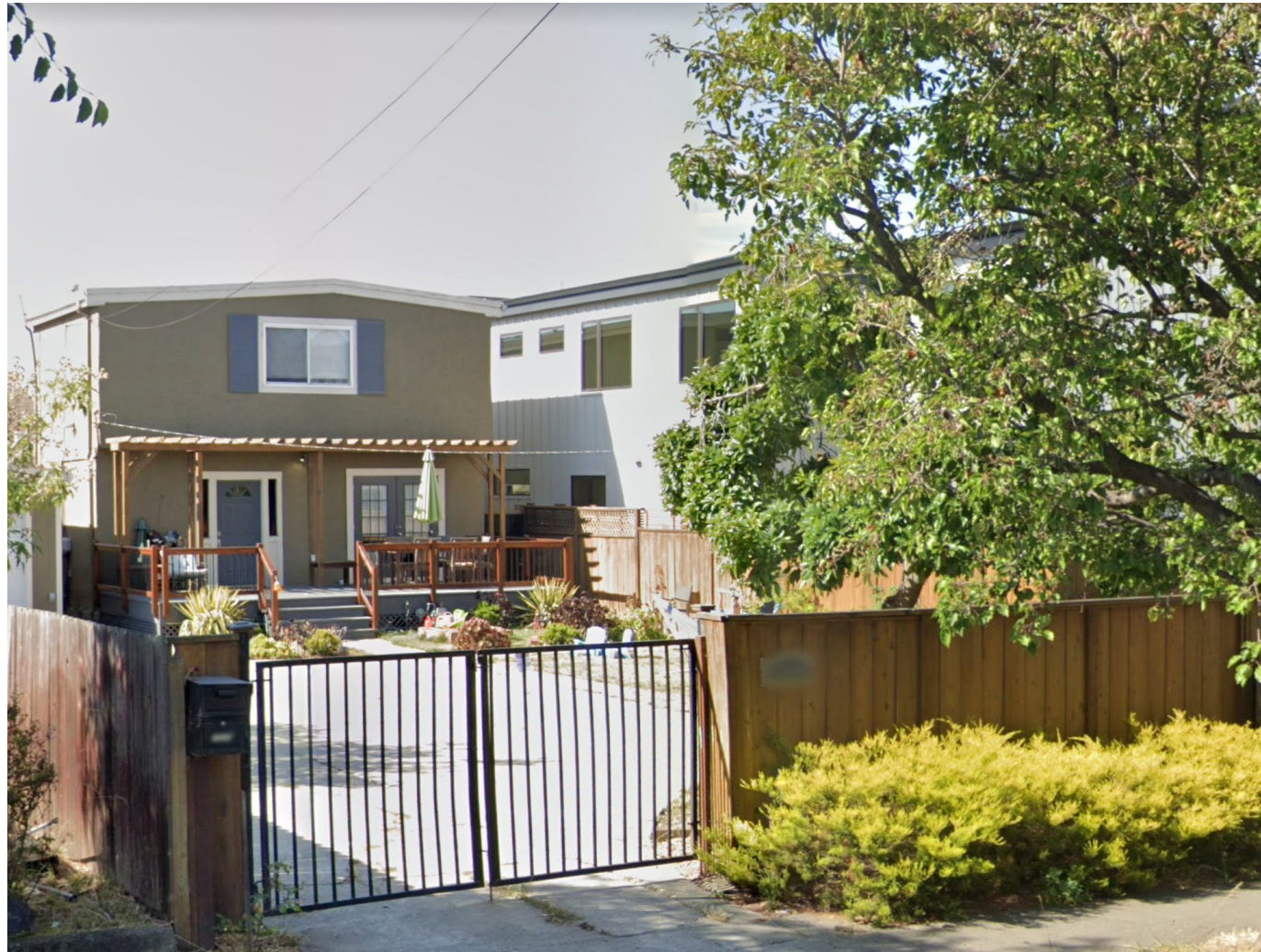
DIAGRAM SHOWING EXISTING MULTI-FAMILY LOTS



3-STORY MULTI-FAMILY STRUCTURE (2) LOTS AWAY



SCHOOL ACROSS THE STREET FROM PROJECT SITE, ON DERBY ST



1518 CARLETON



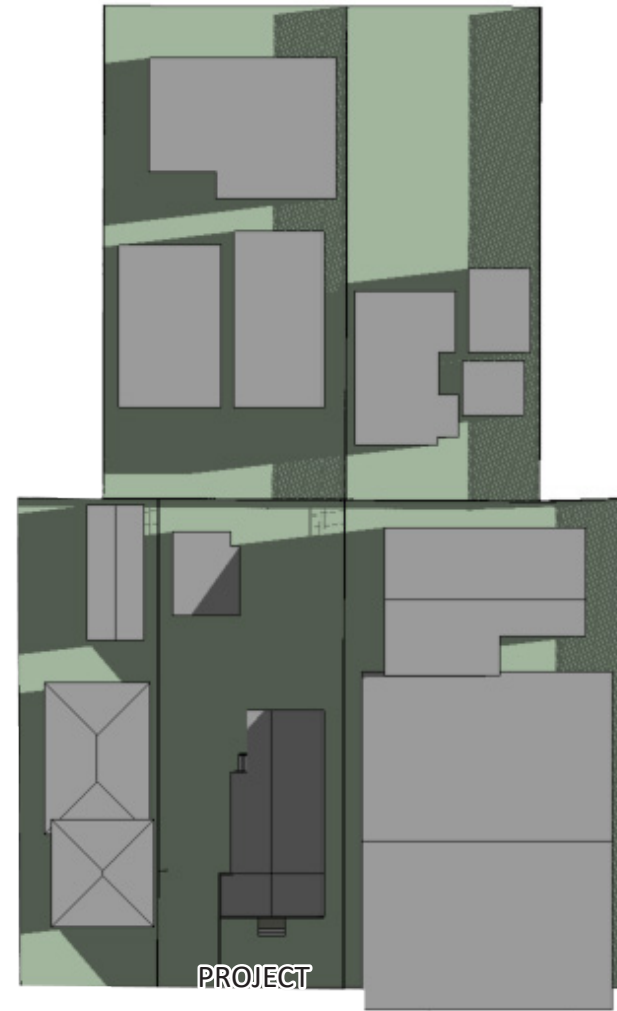
1510, 1512, 1516 CARLETON
(LOT DIRECTLY BEHIND PROJECT SITE)



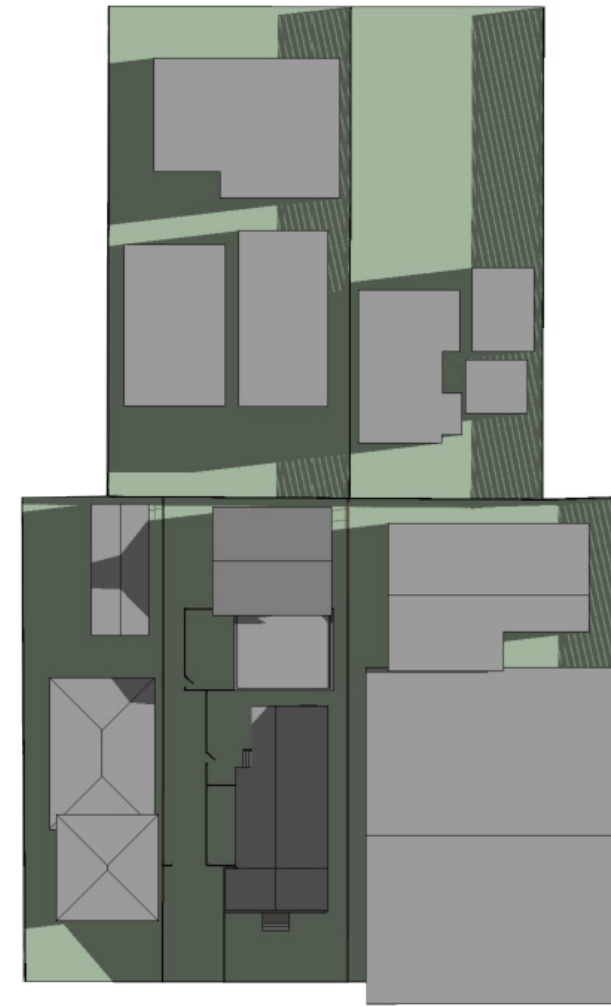
USE PERMIT APPLICATION

1515 DERBY ST. BERKELEY, CA 94703

ADDITIONAL NEIGHBOURHOOD PHOTOS



EXISTING CONDITIONS



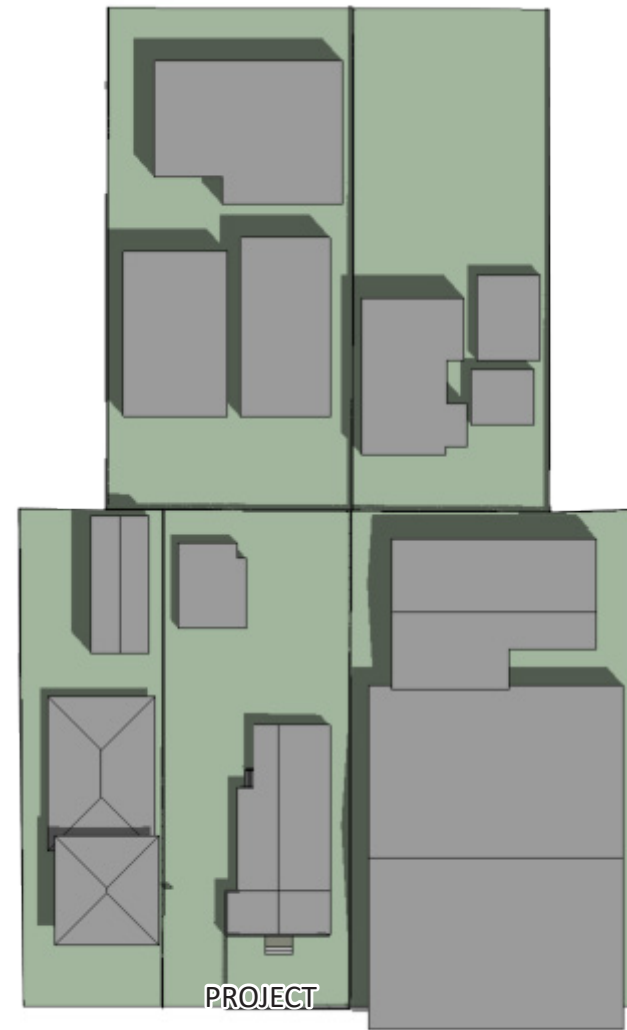
AS PROPOSED
(34' HEIGHT; 4' SETBACK)



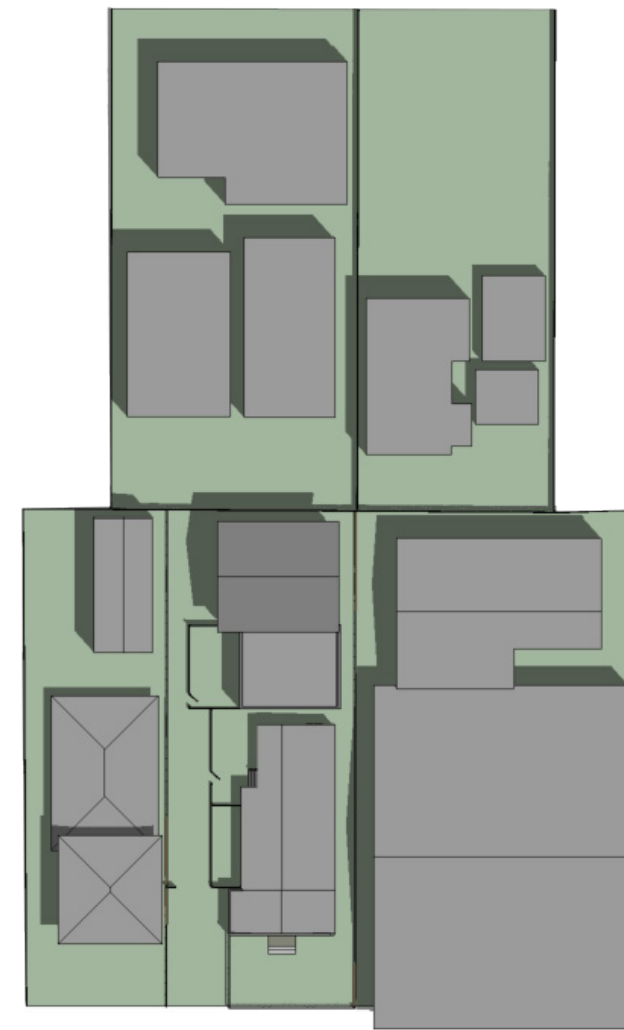
USE PERMIT APPLICATION

1515 DERBY ST. BERKELEY, CA 94703

COMPARATIVE SHADOW STUDIES: SUMMER SOLSTICE 7:30AM



EXISTING CONDITIONS



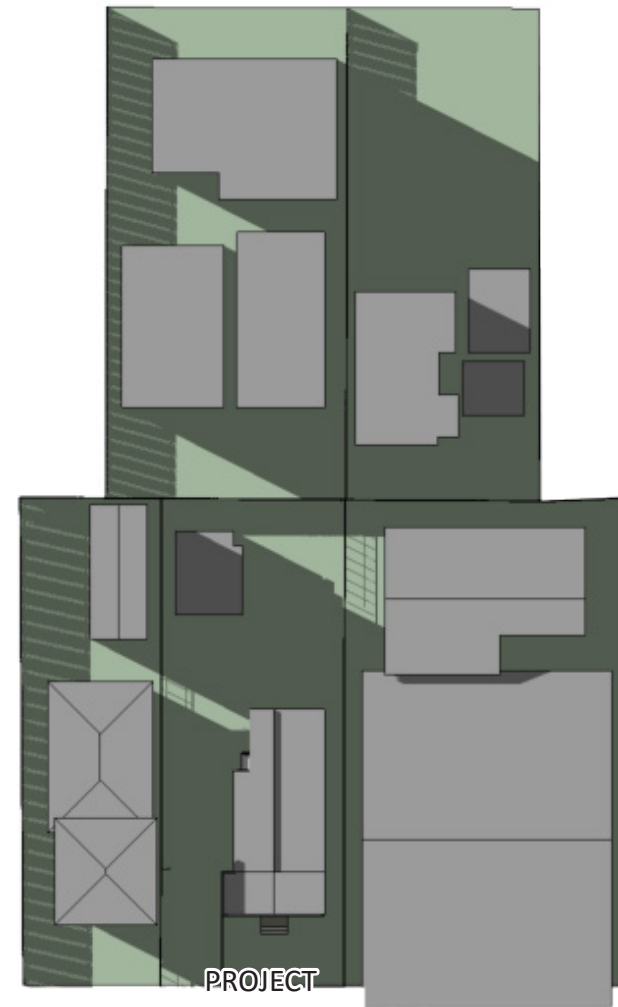
AS PROPOSED
(34' HEIGHT; 4' SETBACK)



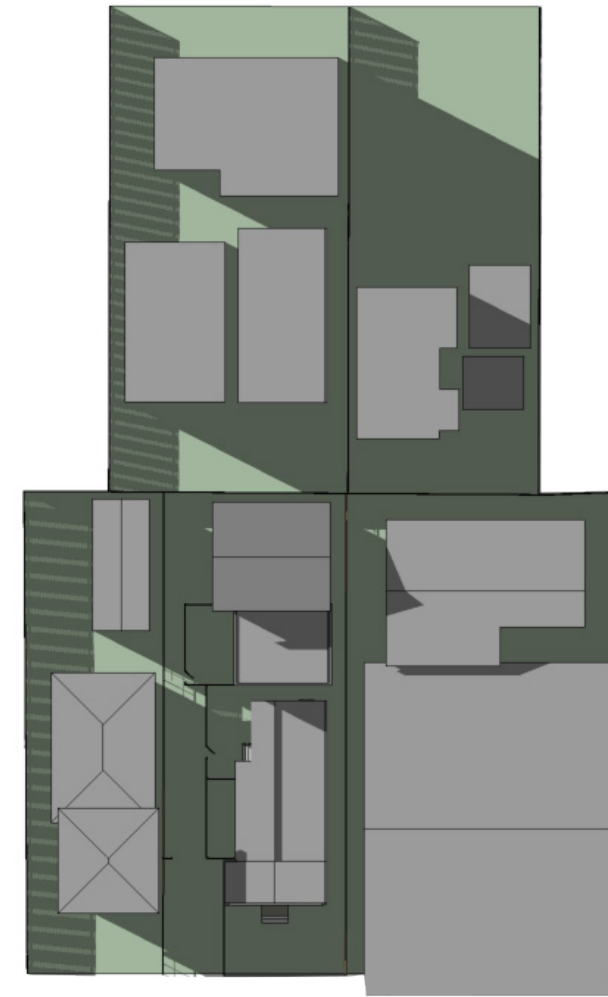
USE PERMIT APPLICATION

1515 DERBY ST. BERKELEY, CA 94703

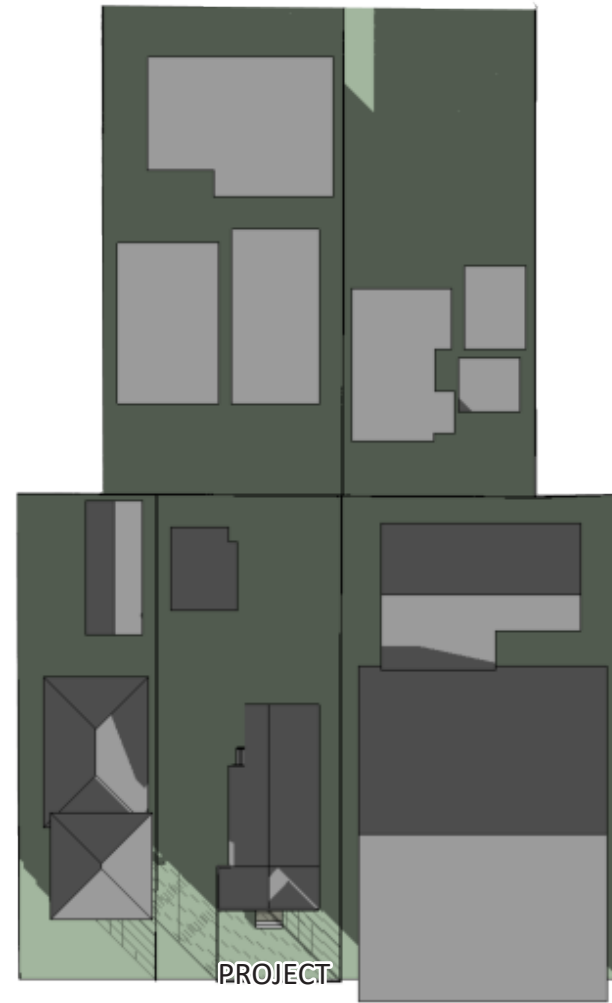
COMPARATIVE SHADOW STUDIES: SUMMER SOLSTICE 12PM



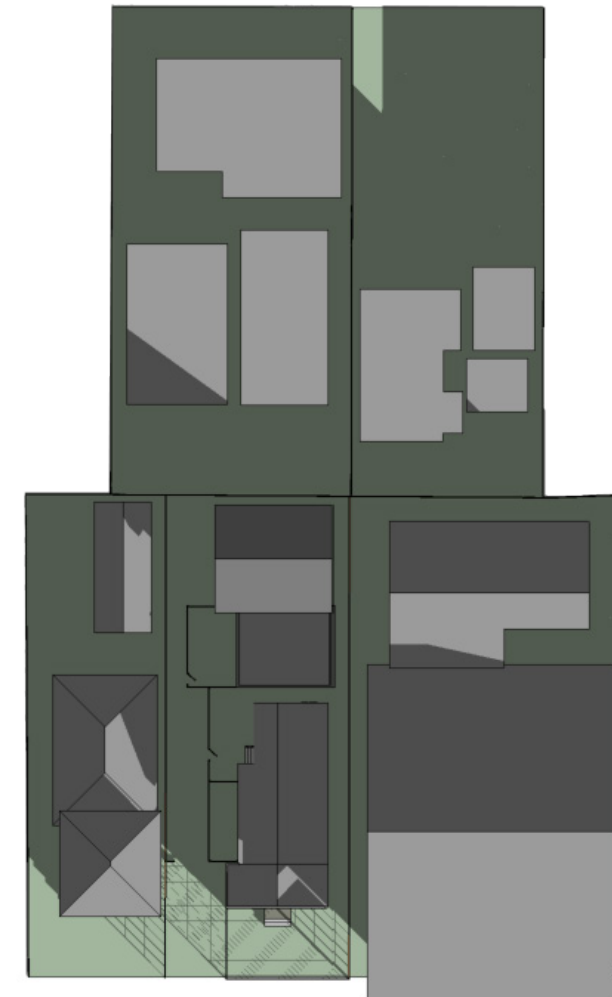
EXISTING CONDITIONS



AS PROPOSED
(34' HEIGHT; 4' SETBACK)



EXISTING CONDITIONS



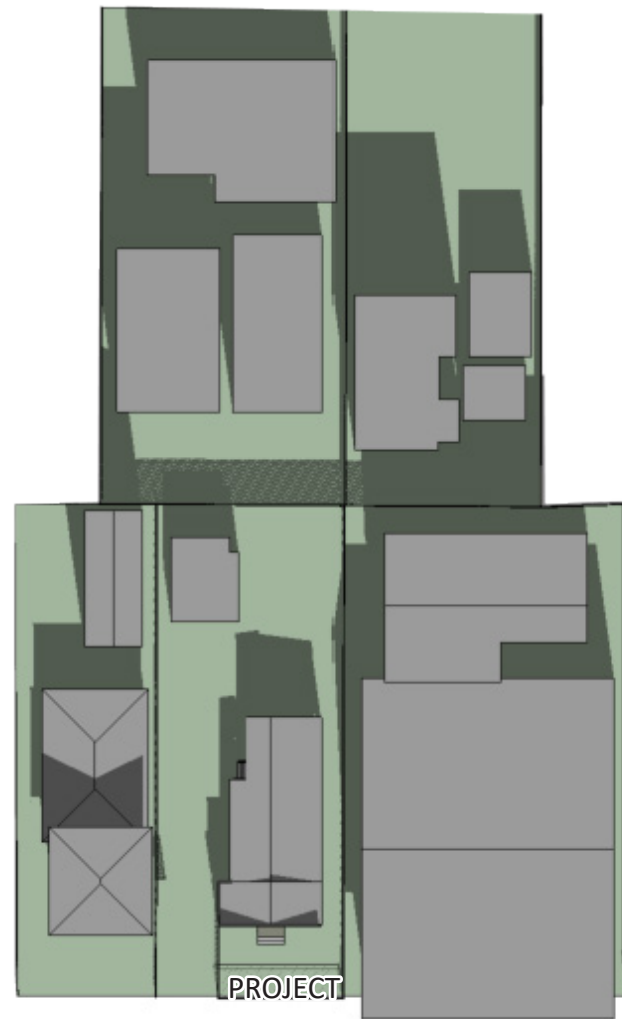
AS PROPOSED
(34' HEIGHT; 4' SETBACK)



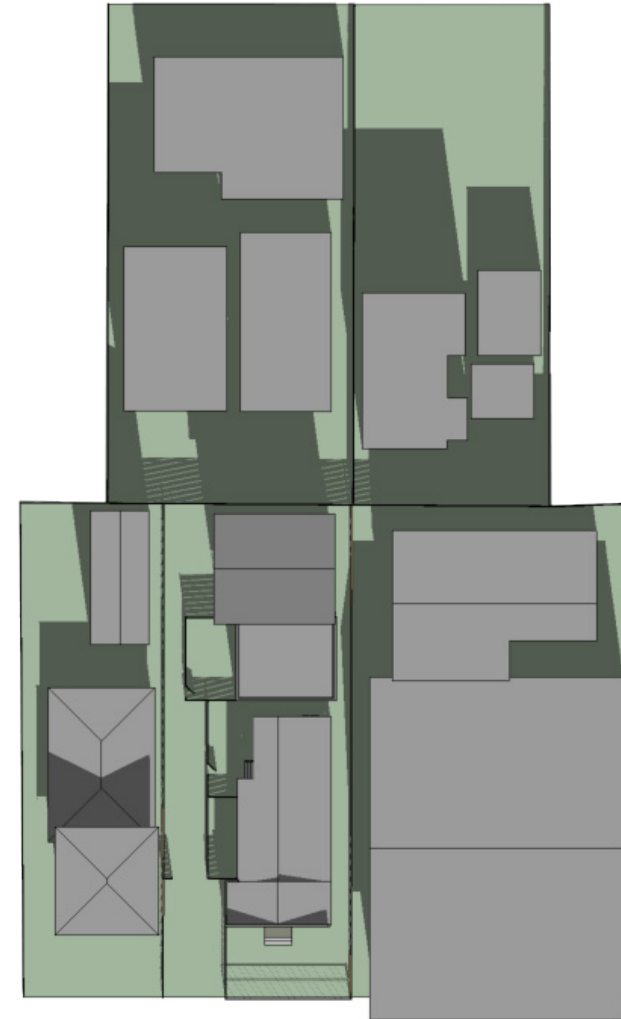
USE PERMIT APPLICATION

1515 DERBY ST. BERKELEY, CA 94703

COMPARATIVE SHADOW STUDIES: WINTER SOLSTICE 9AM

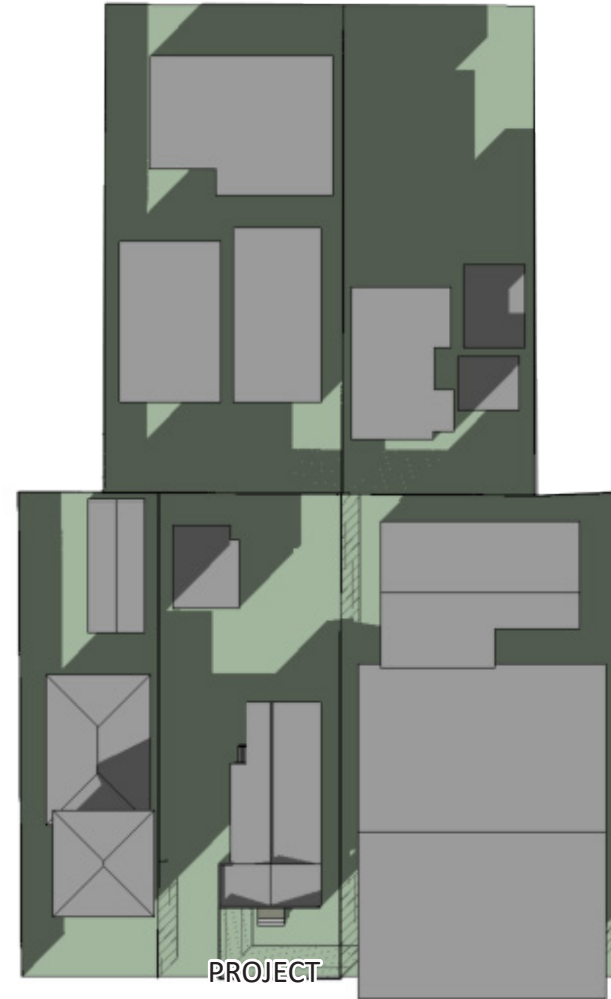


EXISTING CONDITIONS

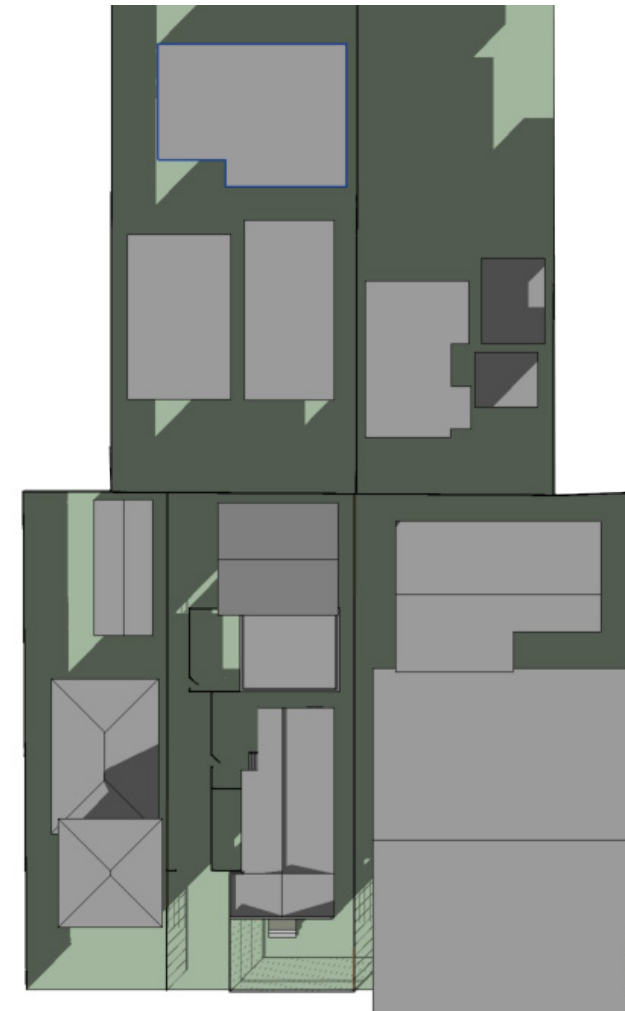


AS PROPOSED
(34' HEIGHT; 4' SETBACK)



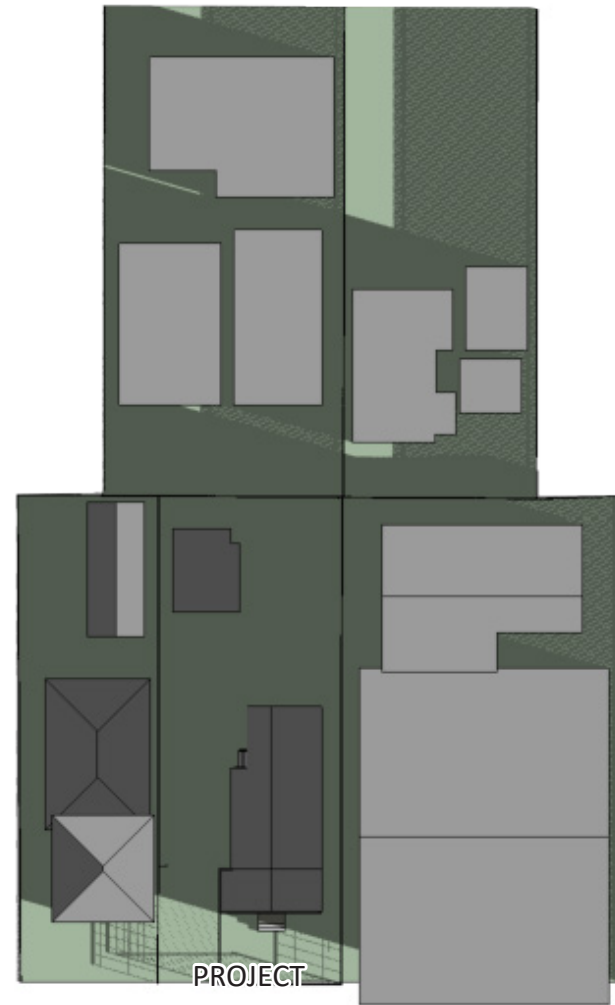


EXISTING CONDITIONS

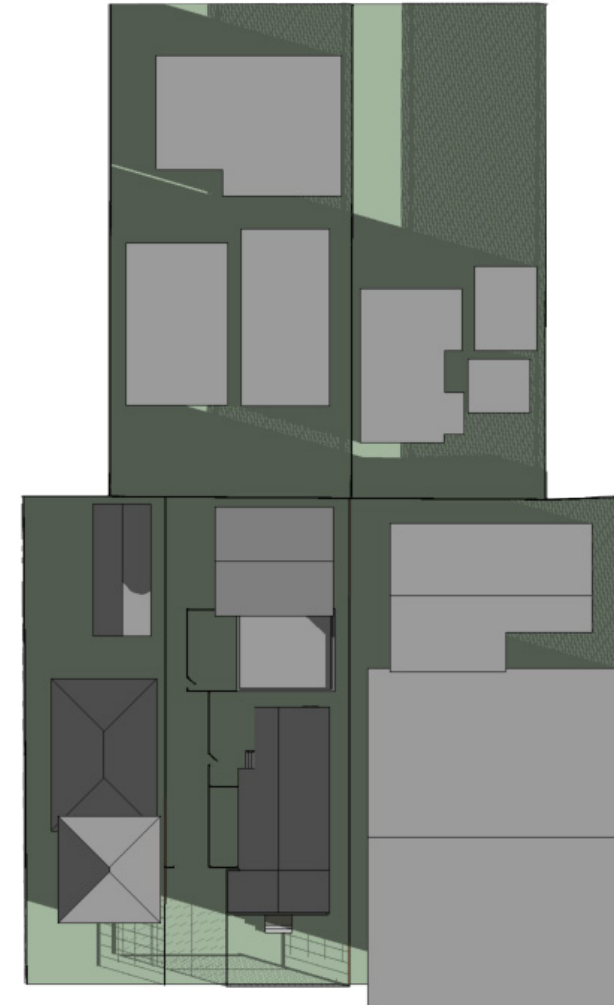


AS PROPOSED
(34' HEIGHT; 4' SETBACK)

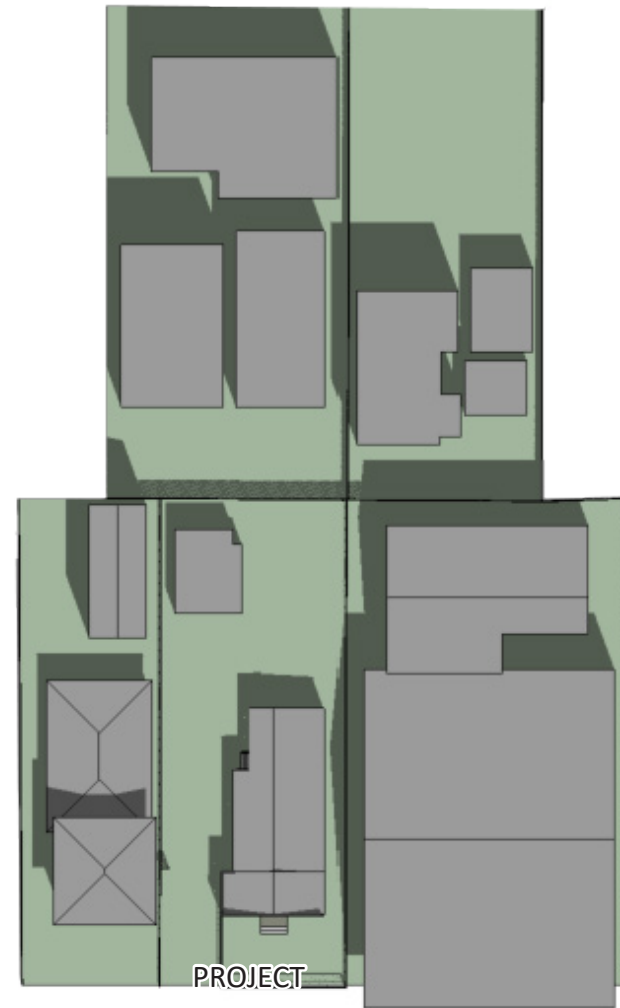




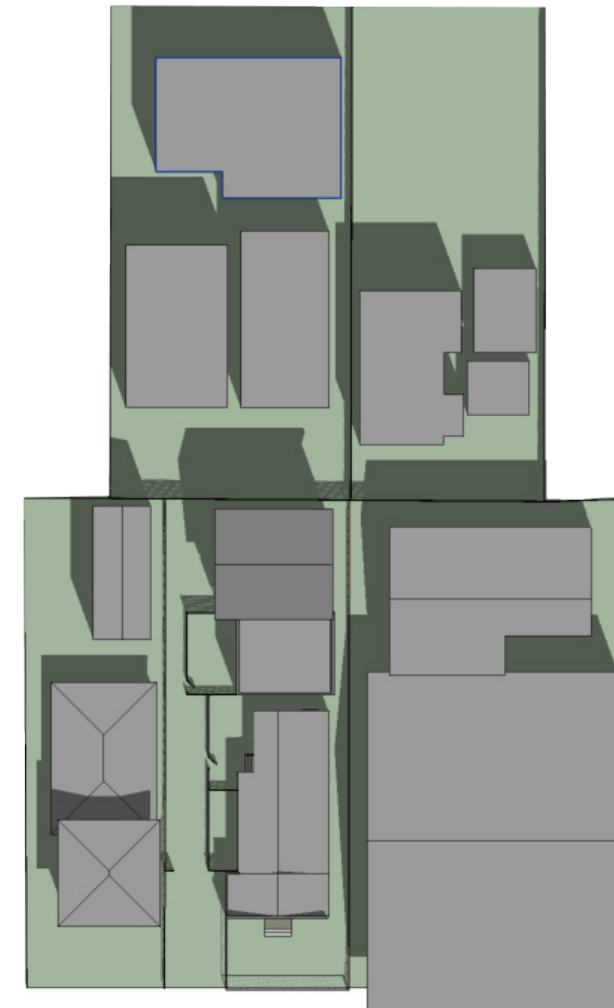
EXISTING CONDITIONS



AS PROPOSED
(34' HEIGHT; 4' SETBACK)



EXISTING CONDITIONS



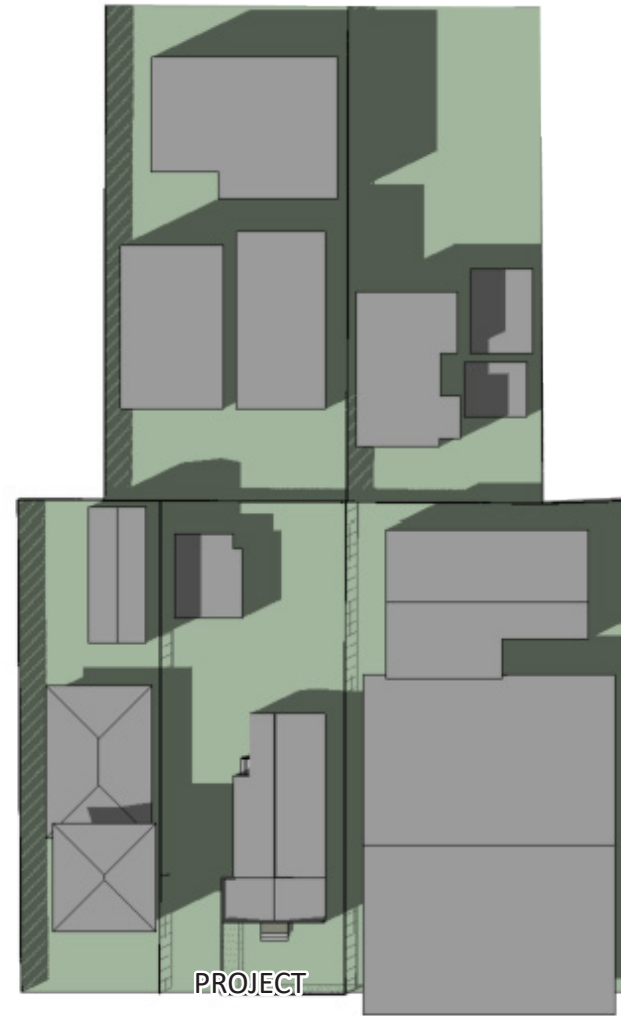
AS PROPOSED
(34' HEIGHT; 4' SETBACK)



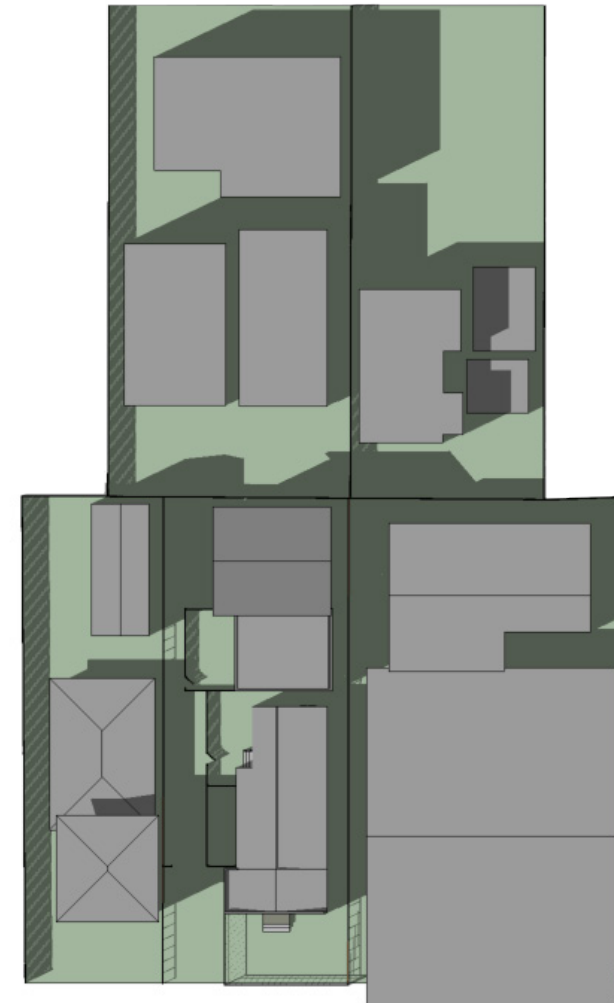
USE PERMIT APPLICATION

1515 DERBY ST. BERKELEY, CA 94703

COMPARATIVE SHADOW STUDIES: SPRING EQUINOX 12PM



EXISTING CONDITIONS



AS PROPOSED
(34' HEIGHT; 4' SETBACK)



USE PERMIT APPLICATION

1515 DERBY ST. BERKELEY, CA 94703



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

1515 Derby Street

Use Permit #ZP2023-0045 to demolish a two-car garage and construct an 1,850 square foot three-story single-family residence behind the current single-family home.

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, August 10, 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: Low Medium Density Residential
- Zoning: Restricted Two-Family Residential Zoning District (R-2)

B. Zoning Permits Required:

- a. Use Permit to construct a new single-family dwelling, per Berkeley Municipal Code (BMC) Section 23.202.020(A).

- b. Use Permit pursuant to BMC Section 23.202.030(B) for a sixth or more bedrooms on lot.
- c. Administrative Use Permit pursuant to BMC Section 23.304.030(B) for reduced rear setback.
- d. Administrative Use Permit pursuant to BMC Section 23.202.080(D) for a new building 28 feet in height and greater.

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

D. Parties Involved:

- Applicant/Property Owner Ashley Hsu, 2120 University Ave., Berkeley
-

Further Information:

All application materials are available online at:

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

The Zoning Adjustments Board final agenda and staff reports will be available online 6 days prior to this meeting at: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board>.

Questions about the project should be directed to the project planner, Brian Garvey, at (510) 981-7424 or bgarvey@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@berkeleyca.gov. 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@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.

Garvey, Brian

From: Bondi, James
Sent: Wednesday, August 2, 2023 9:21 AM
To: Garcia, Claudia; Garvey, Brian
Subject: RE: 1515 Derby Street

Internal

No problem, always happy to help.

Jim Bondi, Associate Management Analyst
City of Berkeley, Department of Planning & Development
1947 Center St., 5th Floor, Berkeley, CA 94704
(510) 981-7428
JBondi@berkeleyca.gov
<https://berkeleyca.gov/>

From: Garcia, Claudia
Sent: Wednesday, August 2, 2023 9:18 AM
To: Bondi, James <JBondi@berkeleyca.gov>; Garvey, Brian <BGarvey@berkeleyca.gov>
Subject: RE: 1515 Derby Street

Internal

Thank you Jim for forward the messages, and responding to their concerns. Melinda will confirm that the property will receive a notice this week.

Best,
Claudia

From: Bondi, James
Sent: Wednesday, August 2, 2023 9:01 AM
To: Garvey, Brian <BGarvey@berkeleyca.gov>; Garcia, Claudia <CGarcia@berkeleyca.gov>
Subject: FW: 1515 Derby Street

Internal

Hi Brian and Claudia,

Brian it looks like you did completeness review on this application but not clear to me if that means it's assigned to you for the duration or not (there's no planner name attached in the case assignment log). So please include the email exchange below in the file for the 1515 Derby project, and follow up with the concerned neighbors if there's any other info they should have.

Thanks.

Jim Bondi, Associate Management Analyst
City of Berkeley, Department of Planning & Development

1947 Center St., 5th Floor, Berkeley, CA 94704
(510) 981-7428
JBondi@berkeleyca.gov
<https://berkeleyca.gov/>

From: Planning Dept. Mailbox
Sent: Wednesday, August 2, 2023 8:59 AM
To: Karen Lee <leeykaren@gmail.com>
Cc: Cary Tiernan <cary.tiernan@gmail.com>
Subject: RE: 1515 Derby Street

Dear Karen and Cary,

Thanks for contacting us about your concerns. The proposed project you reference is tracked in our system under Record ZP2023-0045, with a current status of "Under Review." As proposed, the project will require a formal public hearing before the City's Zoning Adjustments Board (ZAB), which includes required notice to nearby property owners and residents and the opportunity for formal public comment. The fact that you have not been contacted yet is not necessarily a failure of the developer to meet requirements; that outreach would have to happen before the project goes much further.

In a moment I will forward this email exchange to staff with our Land Use Planning Division who will be reviewing the project.

For your information, you can keep track of this (or any project in Berkeley) using our online Accela Citizen's Access tool at <https://aca.cityofberkeley.info/Community/Default.aspx>. Choose the "Zoning" tab, enter the property address, and results will come up. For any specific project that comes up, click through the link under the permit number, go to the drop-down menu under "Record Info" and choose "Processing Status" to see what stage the project is in, or choose "Attachments" to view publicly available documents pertaining to the project.

Sincerely,

Jim Bondi, Associate Management Analyst
City of Berkeley, Department of Planning & Development
1947 Center St., 5th Floor, Berkeley, CA 94704
<https://berkeleyca.gov/>

From: Karen Lee <leeykaren@gmail.com>
Sent: Tuesday, August 1, 2023 9:04 PM
To: Planning Dept. Mailbox <Planning@berkeleyca.gov>
Cc: Cary Tiernan <cary.tiernan@gmail.com>
Subject: 1515 Derby Street

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

Hello,

We are a family living at 1510 Carleton Street, directly sharing a fence with 1515 Derby Street, which is currently going through a proposed permit change. I would like to formally register several concerns with the proposed project, including the following:

- We have not been contacted by the developer about the plans and only found out from a walk to the site and from another neighbor.
- We have not received any mailings about a public hearing about the property.
- Additionally, specific to the property -
 - The configuration of the three-story structure will impact the sunlight to our home. We would like to request that this be 1-2 stories rather than three stories.
 - The proposed setback is only four feet, extremely close to the shared fence. We would like to request a setback of at least 15 feet, which we understand to be the current city code.

Please advise.

Thank you,

Karen Lee & Cary Tiernan (1510 Carleton Street, Berkeley)

Jacob, Melinda

Subject: FW: 1515 Derby St USE PERMIT

-----Original Message-----

From: Fields, Shane
Sent: Friday, March 24, 2023 12:54 PM
To: Kathryn.Margolis@ucsf.edu
Cc: katemargolis@gmail.com; Garcia, Claudia <CGarcia@cityofberkeley.info>; Updegrave, Samantha <SUpdegrave@cityofberkeley.info>
Subject: RE: 1515 Derby St USE PERMIT

Hello Kate, thank you for reaching out to the City of Berkeley.

All Use Permits (UP's) are subject to a public hearing with our Zoning Adjustments Board (ZAB). These particular projects are decided by council, and not by staff-level decisions. Once the project has been reviewed for completeness, and then determined to be complete, it will be assigned a hearing date in front of ZAB. Staff will send out notifying postcards, as well as post signage in the neighborhood, providing the time, date, and location, of the hearing. All neighbors opposed to the project will be given the right to register their opposition to the ZAB members in the form of public comment. At the projects current stage, I could not provide a rough estimate of when it will receive a ZAB hearing. Public information about this permit, to include updates in status and public noticing, can be accessed online via the City's ACA Portal (<https://permits.cityofberkeley.info/citizenaccess/Default.aspx>), by utilizing the permit number "ZP2023-0045" for search under the "Zoning" tab.

I have recorded your opposition to this project, and CC'd our Principal Planners and the Zoning Officer in this response to ensure that the project planner assigned is made aware of it.

Respectfully,
Shane Fields

Shane Fields, (he/him)
Planning Technician
Planning and Development, Land Use Division
1947 Center St., 2nd Floor, Berkeley, CA 94704
Phone: (510) 981.7419
Website: www.berkeleyca.gov
Email: sfields@cityofberkeley.info

NEW HOURS: The Permit Service Center (PSC), including the zoning counter, is open between 8:30 am – 2:30 pm (final check in at 2:00 pm) Monday through Thursday.

To limit the spread of COVID-19, face masks and social distancing are required when visiting our offices, and some Planning staff continue to work remotely.

All permit-related and Zoning services are available online. Please visit us online for more information.

-----Original Message-----

From: permits
Sent: Friday, March 24, 2023 06:38
To: ZoningCounter <ZoningCounter@cityofberkeley.info>
Subject: FW: 1515 Derby St USE PERMIT

Internal

Robert Williams (AKA Mr. Williams)
Building & Public Works
Permit Specialist

Permit Service Center

City of Berkeley, Building and Safety Division

1947 Center St, 3rd Floor Berkeley, CA 94704 www.cityofberkeley.info/permitservicecenter/

Permits Online: <https://permits.cityofberkeley.info/>

Office Hours: 8:30 am to 2:30 pm Monday through Thursday, and closed to the public Fridays and holidays.

Appointments are required for in-person permit processing services. Visit our web page to schedule an appointment. To limit the spread of COVID-19, face masks and social distancing are required when visiting our offices in person. We continue to provide permit-related services online. Visit Permits Online for online services.

-----Original Message-----

From: Margolis, Kathryn <Kathryn.Margolis@ucsf.edu>

Sent: Thursday, March 23, 2023 8:07 PM

To: permits <permits@cityofberkeley.info>

Cc: Kate Margolis <katemargolis@gmail.com>

Subject: 1515 Derby St USE PERMIT

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

Hello,

I am a neighbor at 1518 Carleton St for the proposed use permit change for 1515 Derby St. I would like to register a concern with this proposed project. The project proposes to build a three story building in our backyard space. It will eliminate any open sky space available to us. The sun sets over that exact part of the sky where the house will go. Therefore this structure will eliminate any afternoon sound that we have remaining access to.

A project was recently completed next door to us at 1516 Carleton that also eliminated the only front yard sunlight that we have. If I had understood the impact of that project we would have contested it because it eliminated about 3 hours of afternoon sunlight. My children now cannot go outside and play in our front yard in the afternoons because without the sunlight, it is too cold for them.

With this new proposed project, it will eliminate any remaining afternoon sun on our property. The backyard is all we have for light and for our kids to be able to enjoy the outdoor space in our residence without being too cold. Please register that we are opposed to this project and would like for the project proposal to be revised to allow more of a set back between the structure and the fence.

Thank you,
Kate Margolis and Ian Cummings
1518 Carleton St
330-715-4505

Sent from my iPhone