

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

FOR BOARD ACTION
FEBRUARY 22, 2024

1205 Kains Avenue

Use Permit #ZP2023-0102 for a residential addition to a single-family dwelling on a lot that is non-conforming for setbacks and lot coverage. The project would lift the dwelling and the height by 18-inches, resulting in an average height of 23-feet, 8-inches, move the dwelling back 3 feet, 3 inches toward the eastern boundary, and construct a balcony on the third floor at the rear of the dwelling.

I. Background

A. Land Use Designations:

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

B. Zoning Permits Required¹:

- Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.324.050(D)(3) for an addition to a structure that exceeds the maximum allowed lot coverage;
- Administrative Use Permit pursuant to BMC Section 23.202.080(D) to construct a residential addition over 14-feet in average height; and
- Administrative Use Permit pursuant to BMC Section 23.324.050(D)(2) to vertically and horizontally extend a building wall projecting into a minimum required setback.

C. CEQA Recommendation:

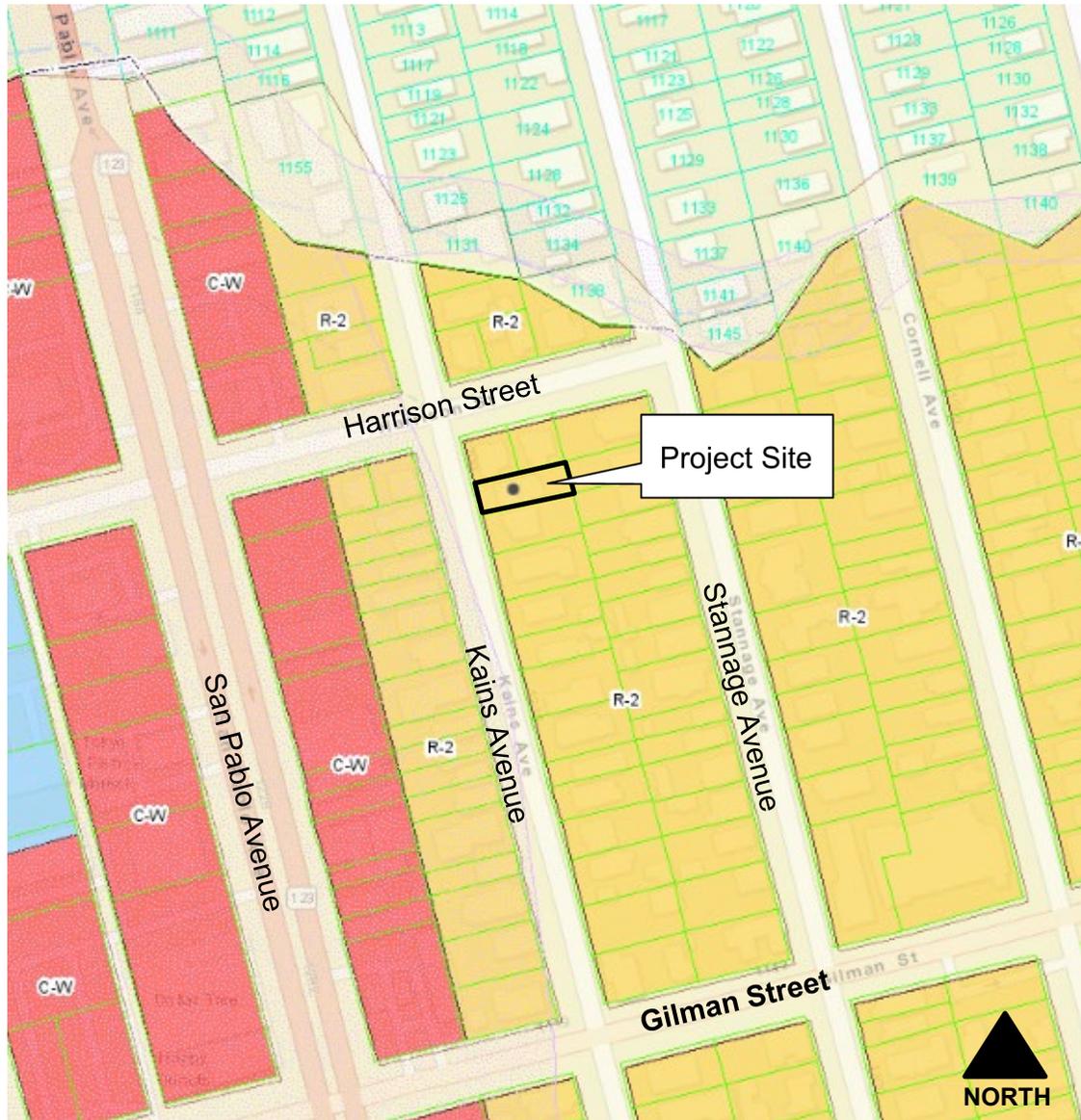
It is staff's recommendation to the Zoning Adjustments Board (ZAB) that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code Section 21000, et seq. and California Code of Regulations, Section 15000, et seq.) pursuant to CEQA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

¹ The project proposes to construct an Accessory Dwelling Unit. Pursuant to BMC 23.322.080(G), on a lot with an existing or proposed ADU, replacement of required off-street parking for the main building or required off-street parking for an ADU is allowed in any configuration on the lot, including within the front setback. Construction of an ADU is a ministerial action.

D. Parties Involved:

- Applicant: Tim Larkin, Larkin Design, 1405 Josephine Street, Berkeley
- Property Owner: Mary Mulvehill & David Smith, 1205 Kains, Berkeley

Figure 1: Vicinity and Zoning Districts Map

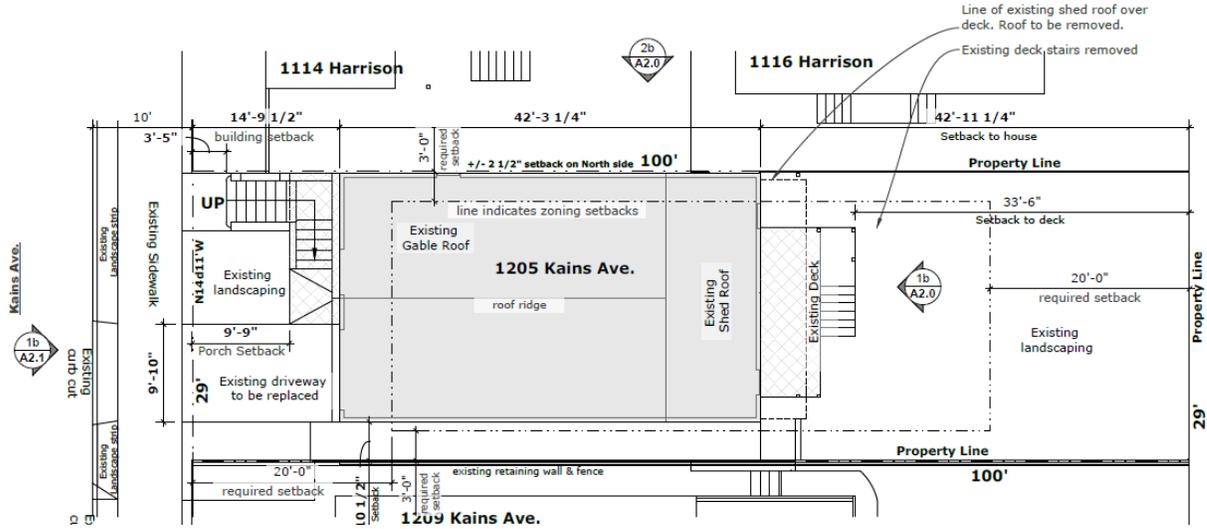


Legend:

- R-2 Restricted Two-Family Residential District
- C-W West Berkeley Commercial District

Figure 2: Site Plan

Existing:



Proposed: House raised 18-inches and moved 39-inches further from front property line, located along Kains Avenue.

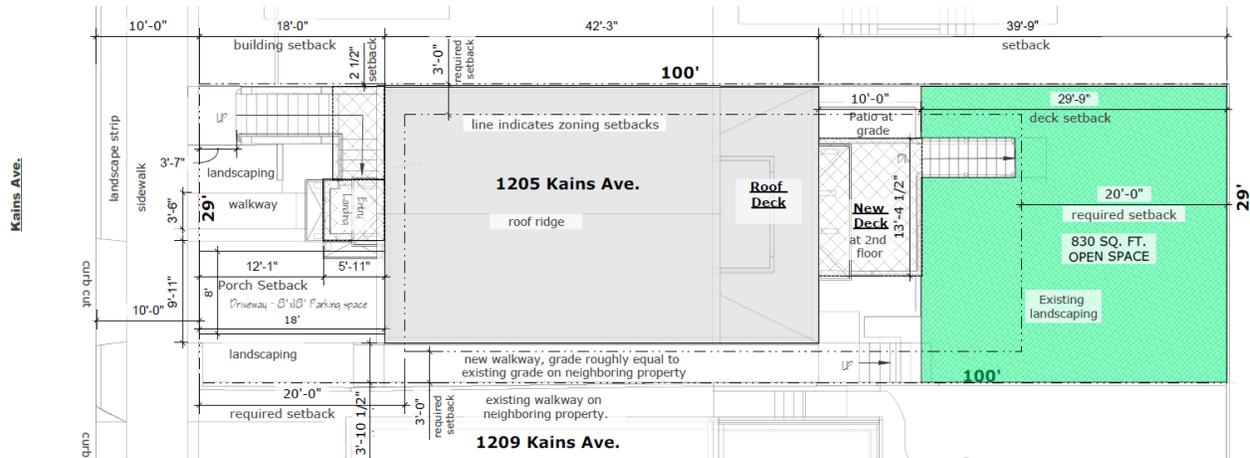
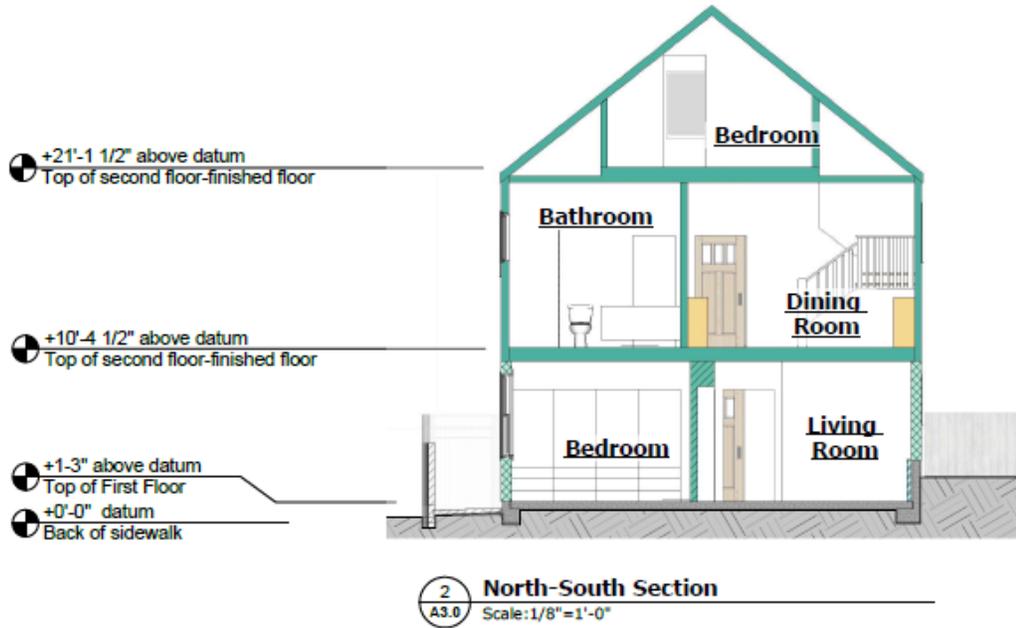


Figure 4: Elevations

Existing: Average height 22-feet, 2-inches. Front setback 14-feet, 9-inches.



Proposed: Average height 23-feet, 8-inches . Front setback 18 feet- 0 inches.

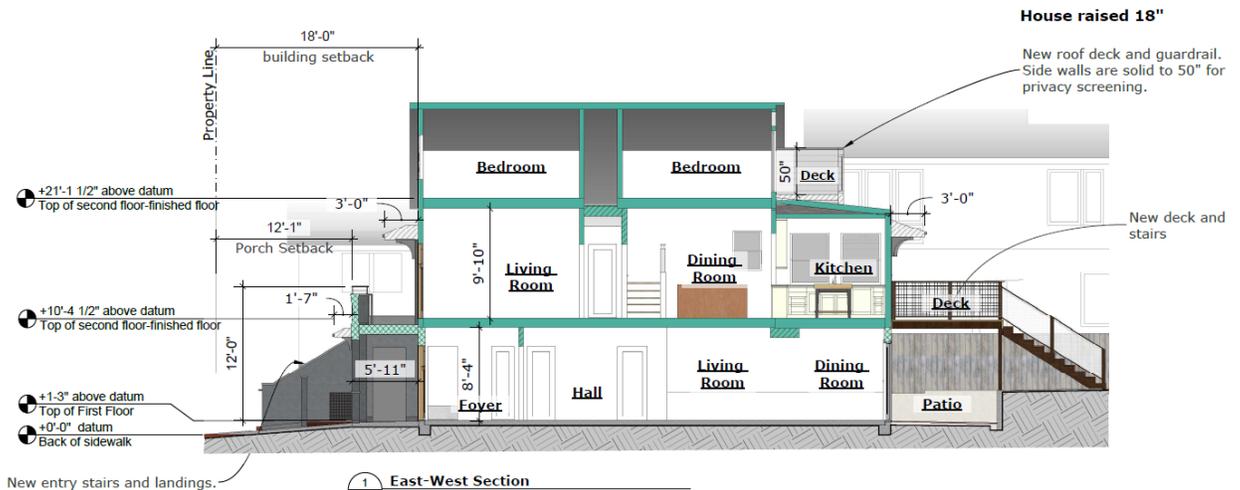


Table 1: Land Use Information

| Location | | Existing Use | Zoning District | General Plan Designation |
|------------------------|-------|--------------|-----------------|--------------------------------|
| Subject Property | | Residential | R-2 | Low Medium Density Residential |
| Surrounding Properties | North | Residential | R-2 | Low Medium Density Residential |
| | South | | | |
| | East | | | |
| | West | | | |

Table 2: Special Characteristics

| Characteristic | Applicability | Explanation |
|--|---------------|---|
| Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.) | No | This fee applies to net newly constructed nonresidential gross floor area over 7,500 square feet; therefore, the fee does not apply. |
| Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.) | No | This fee applies to net newly constructed nonresidential gross floor area over 7,500 square feet; therefore, the fee does not apply. |
| Coast Live Oak Trees (BMC Chapter 6.52) | No | There are no Coast Live Oak (<i>Quercus agrifolia</i>) trees on the project site. |
| Creeks | No | No creek or culvert, as defined by BMC Chapter 17.08, exists on or within 30 feet of the project site. |
| Historic Resources | No | Landmarks staff reviewed the application and concluded that the project was not a historical resource. |
| Housing Accountability Act (HAA) (Gov't Code Section 65589.5(j)) | No | The project does not meet the definition of a "Housing Development Project" per Government Code Section 65589.5(h)(2). ^a Therefore, the Housing Accountability Act does not apply. |
| Housing Crisis Act of 2019 (SB 330) | No | The project does not meet the definition of a "Housing Development Project" per Government Code Section 65589.5(h)(2). ^b Therefore, SB 330 does not apply. |
| Rent Controlled Units | No | The subject building is a single-family dwelling and not subject to rent control provisions pursuant to BMC Chapter 13.76. |
| Residential Preferred Parking (RPP) | No | The site is not located in an RPP zone. |
| Seismic Hazards (SHMA) | No | The project site is not located within an area susceptible to landslide/liquefaction/fault rupture as shown on the State Seismic Hazard Zones map. ^c |
| Soil/Groundwater Contamination | No | The project site not located within the City's Environmental Management Area and is not on the Cortese List. ^d Standard Conditions of Approval related to hazardous materials would apply. |
| Transit | Yes | The project site is located one block from San Pablo Avenue and Gilman Street where there is frequent Alameda-Contra Costa Transit (AC Transit) bus service, such as Line 52, 72, 800, 12. |

| Characteristic | Applicability | Explanation |
|---|---------------|-------------|
| <p>Notes:</p> <p>a. 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.</p> <p>b. See footnote a.</p> <p>c. California Department of Conservation. DOC Maps: Geologic Hazards. Available: https://maps.conservation.ca.gov/geologic Hazards/</p> <p>d. The Cortese List is an annually updated list of hazardous materials sites compiled pursuant Government Code Section 65962.5.</p> | | |

Table 3: Project Chronology

| Date | Action |
|-------------------|--------------------------------------|
| July 20, 2023 | Use Permit Application submitted |
| August 18, 2023 | Application deemed incomplete |
| October 3, 2023 | Application resubmitted |
| November 2, 2023 | Application deemed complete |
| February 8, 2024 | Public hearing notices mailed/posted |
| February 22, 2024 | ZAB hearing |

Table 4: R-2 Zoning District Development Standards BMC Sections 23.202.080 and 23.322 Parking and Loading

| Standard | | Existing | Proposed Total | Permitted/ Required |
|-------------------------------|----------------------|---------------|----------------|------------------------------|
| Lot Area (sq. ft.) | | 2,900 | No change | 5,000 min |
| Gross Floor Area (sq. ft.) | | 2,082 | 2,476 | n/a |
| Dwelling Units | Total | 1 | No change | 1 unit per 2,500 sq. ft. |
| Building Height (ft. - in.) | Average | 22 ft., 2 in. | 23 ft., 8 in. | 28 ft. max (35 ft. with AUP) |
| | Stories | 3 | No change | 3 max |
| Building Setbacks (ft. - in.) | Front (Kains Avenue) | 14 ft., 9 in. | 18 ft. | 20 min |
| | Rear | 43 ft | 39 ft., 9 in. | 20 min |
| | Left Side | 2.5 in. | No change | 3 min ^a |
| | Right Side | 3ft., 10 in. | No change | 3 min ^a |
| Lot Coverage (%) | | 44 | No change | 35 max for 3 stories |

| Standard | | Existing | Proposed Total | Permitted/ Required |
|---|------------|-------------|---------------------------------|------------------------|
| Usable Open Space (sq. ft.) | | 908 | 830 | 400 min per unit |
| Parking | Automobile | 1 in garage | 1 in front setback ^c | 0 min ^b |
| | Bicycle | 0 | No change | 0 min |
| Abbreviations: sq. ft. = square feet; max. = maximum; min. = minimum; n/a = not applicable; % = percent; avg. = average, ft = feet ('), in. = inches (") | | | | |
| Notes: | | | | |
| a. Lot width less than 40 ft. allowed 10% reduction from standard 4 ft. side setback. | | | | |
| b. AB-2097 , effective January 1, 2023, prohibits local jurisdictions from requiring minimum parking for most non-residential uses. | | | | |
| c. The project proposes to construct an Accessory Dwelling Unit. Pursuant to BMC 23.322.080(G), on a lot with an existing or proposed ADU, replacement of required off-street parking for the main building or required off-street parking for an ADU is allowed in any configuration on the lot, including within the front setback. Construction of an ADU is a ministerial action. | | | | |

II. Project Setting

A. Neighborhood/Area Description:

The subject property is located in north Berkeley, one block east of San Pablo Avenue and a few houses south of the Berkeley-Albany border. The area is residential in nature and consists predominantly of one- and two-story residential dwellings with a pattern of housing types ranging from single-family to duplexes and small apartment structures.

B. Site Conditions:

The 2,900 square foot lot is substandard in size when compared to the 5,000 square foot minimum size requirement in the R-2 zoning district. Due to the substandard size of the lot, the existing on-site 1,265 square foot single family dwelling on a 2,900 square is non-conforming for lot coverage; 44 percent lot coverage where 35 percent is permitted. The lot is rectangular in shape and gently slopes up towards the east (rear) about 1 foot, 4 inches. In addition to the non-conforming lot coverage, the setbacks are non-conforming along the north (side) and west (front) property lines. Access to the property is provided via an existing curb-cut and driveway leading to an attached garage located inside the ground floor. The main living area is located on the second floor and there is a bedroom and office in the third floor, attic area.

III. Project Description

The proposed project would lift the house by 18-inches to create habitable space at the ground level which is currently used as a single car garage, laundry area, and storage. The project would also move the house further back from the front property line by 3 feet, 3 inches to accommodate one new off-street parking space within the front setback. The existing off-street parking space would be converted to habitable space so the new replacement parking is allowed in any configuration on the lot, including the front setback. Raising and moving the house requires a new front and rear entry. The new front entry stairs would be located in the same location as the existing stairs and the proposed landing

would be setback 2-feet, 4-inches further than the existing porch but would remain non-conforming, as it's located within the required 20-foot front setback. The new entry would be open to the sky with an awning over the entry door, the current entry way is enclosed on three sides. The rear deck would also be reconfigured and replaced, and a balcony would be added to the third level off of an existing bedroom. The balcony will face the rear yard and be built over an existing roof within the existing footprint of the building.

IV. Community Discussion

A. Neighbor/Community Concerns:

A pre-application poster was installed on site by the applicant in May 2023. On February 8, 2024, the City mailed public hearing notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations. The City also posted notices within the neighborhood at nearby three locations. At the time of writing this report, staff had not received any communications regarding the project.

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. In addition, as noted in Table 2, Landmarks staff reviewed the application and concluded that the project was not a historical resource.

V. Issues and Analysis

A. CEQA Approach and Recommendation:

It is staff's recommendation that the project qualifies for a Class 1 Categorical Exemption pursuant to CEQA Guidelines Section 15301 ("Existing Facilities"). The project complies with this exemption because the addition will not result in an increase of more than 50 percent of the floor area of the structure before the addition. In addition, none of the exceptions to eligibility for a categorical exemption as listed under CEQA Guidelines Section 15300.2, apply to the project:

- The project is currently developed/characterized as developed by the California Natural Diversity Database;² therefore, it is not located in an environmentally sensitive area;
- There are no similar projects proposed in the area. Therefore, the cumulative impact of successive projects of the same type in the same place, over time would not be significant;
- There are no "unusual circumstances" at the project site that would result in significant environmental effects;

² California Department of Fish and Wildlife. California Natural Diversity Database. Available: <https://apps.wildlife.ca.gov/bios6/?tool=cnddbqv>

- There are no eligible or designated scenic highways within the City of Berkeley;³ therefore, the project site is not in view of a state scenic highway;
- The site is not included on a list compiled pursuant to Government Code Section 65962.5;⁴ and
- The project would not result in a substantial adverse change in the significance of a historical resource.

The CEQA determination is made by ZAB, as the decision-making body.

B. General Non-Detriment Finding:

BMC Section 23.406.040(E) states that before the ZAB approves an application for a Use Permit, it must find that the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City. An analysis of sunlight/shadows, air, and views is included below:

- Sunlight/Shadow: The project is located on a block which faces west. Due to the position of the dwelling and solar orientation, new shadow impacts on neighboring properties will occur on limited areas, at limited times during the year. Repositioning and lifting the dwelling will not result in a significant loss of direct sunlight on abutting residences. Therefore, shading impacts are found to be non-detrimental.
- Air: The non-conforming side setback will remain the same, maintaining the existing building-to-building separation and plenty of open space to provide adequate air circulation. Therefore, impacts to air circulation are determined to be non-detrimental.
- Views: The addition would not result in obstruction of significant views in the neighborhood as defined in BMC Section 23.502.020 (Glossary). The neighborhood is generally flat and developed with one and two-story residences that filter or obscure most views that may be available of the Berkeley hills or the Golden Gate Bridge from off-site view angles.

In addition, the proposed balcony at the third story would not unreasonably obstruct sunlight, air or views because of its location and minor scale. The proposed addition is located at the rear of the building within the existing building footprint; the balcony would be located on top of the existing roof of the story below. It is not expected to be detrimental to the privacy of neighbors because it will face the rear yard and have solid side walls on the north and south side to obstruct direct views between neighboring properties, and it will not be a main gathering place for the dwelling because the balcony will be off of a bedroom at the third story.

³ California Department of Transportation. California Scenic Highway Program's Scenic Highway System List. Available: <https://dot.ca.gov/programs/design/lap-landscape-architecture-and-community-livability/lap-liv-i-scenic-highways>

⁴ California Environmental Protection Agency. Cortese List Data Resources. Available: <https://calepa.ca.gov/sitecleanup/corteselist/>

Further, the project is subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, thereby ensuring the project would not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

C. Addition to Structure on Parcel with Nonconforming Lot Coverage

Pursuant to BMC Section 23.324.050(D)(3), the addition and or enlargements of lawful non-conforming structures that are non-confirming by reason of exceeding lot coverage are permitted with a Use Permit provided that the existing use of the property is conforming, the addition/enlargement complies with all applicable laws, and the addition/enlargement does not increase lot coverage or exceed the height limit.

The proposed addition would lift and move the entire building and habitable space within the existing footprint of the building. Therefore, the lot coverage would remain unchanged. The project would comply with all applicable laws, and conditions of approval as noted above. Further, the project would not exceed the maximum height limit permitted in the R-2 zoning district pursuant to BMC Section 23.202.080. Main buildings in the R-2 Zoning District are allowed an average height of 28-feet and maximum height of 35-feet with an AUP. The proposed average height of the building would be 23-feet, 8-inches.

D. Alteration of Structure in Nonconforming Setback

Pursuant to BMC Section 23.324.050(D) additions or enlargements of lawful nonconforming structures that vertically or horizontally extend a building wall projecting into a minimum required setback are allowed with an Administrative Use Permit if the addition and/or enlargement does not increase or exacerbate any nonconforming setbacks and does not exceed the calculated height limits. The project will increase the buildings setback from the front property line; the non-conforming setback of 14-feet, 9-inches would change to 18-feet because the building would be moved back 3 feet, 3-inches. Although this does not eliminate the non-conformity, where a 20-foot setback is required, it would reduce it, therefore not exacerbating the condition. The non-conforming side setback will remain the same at 2-inches, where 3-feet is required, therefore not exacerbating the condition. The project would not exceed the maximum height limit permitted in the R-2 zoning district pursuant to BMC Section 23.202.080. Main buildings in the R-2 Zoning District are allowed an average height of 28-feet and maximum height of 35-feet with an AUP. The proposed average height of the building would be 23-feet, 8-inches. Further, the existing use of the property is conforming and the project complies with all applicable laws.

VI. Other Considerations (Zoning and Land Use Considerations)

A. District Purpose

The purpose of the R-2 district is to:

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: The proposed project is consistent with the above purposes of the R-2 Zoning District because the lot will remain open and spacious by not increasing the lot coverage and maintaining plenty of open space in the rear yard. The project maintains the existing single-family residential use while increasing the amount of habitable floor area. The height of the building would increase slightly but would not unreasonably obstruct light and air to adjacent properties.

B. General Plan Consistency:

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

1. **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.
2. **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.
3. **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.
4. **Policy UD-32 Shadows:** New buildings should be designed to minimize impacts on solar access and minimize detrimental shadows.

Staff Analysis: As discussed above, the project would not substantially block views, cast shadows for long periods of time, or create impacts on the privacy of adjacent neighbors. The proposed addition occurs within the existing building footprint, meets the R-2 District development standards, the balcony would be located on top of the existing roof of the story below, and would not increase the non-conforming lot coverage, or further reduce the front setback. Additionally, the project is consistent with the single-family use and residential design character of other buildings in the vicinity.

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:

1. **FIND** that the project is categorically exempt from the provisions of the CEQA pursuant to Section 15301 of the CEQA Guidelines ("Existing Facilities"); and
2. **APPROVE** Use Permit #ZP2023-0102 pursuant to Section 23.406.040(D) and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Findings and Conditions
2. Project Plans, received February 6, 2024
3. Notice of Public Hearing

Staff Planner: Vicky Schlepp, vschlepp@berkeleyca.gov, (510) 981-7422

ATTACHMENT 1

FINDINGS AND CONDITIONS

FEBRUARY 22, 2024

1205 Kains Avenue

Use Permit #ZP2023-0102 for a residential addition to a single-family dwelling on a lot that is non-conforming for setbacks and lot coverage. The project would lift the dwelling and the height by 18-inches, resulting in an average height of 23-feet, 8-inches, move the dwelling back 3 feet, 3 inches toward the eastern boundary, and construct a balcony on the third floor at the rear of the dwelling.

ZONING PERMITS REQUIRED

- Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.324.050(D)(3) for an addition to a structure that exceeds the maximum allowed lot coverage;
- Administrative Use Permit pursuant to BMC Section 23.202.080(D) to construct a residential addition over 14-feet in average height; and
- Administrative Use Permit pursuant to BMC Section 23.324.050(D)(2) to vertically and horizontally extend a building wall projecting into a minimum required setback.

I. CEQA FINDINGS

- A.** 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 15301 of the CEQA Guidelines (“Existing Facilities”).
- B.** Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows:
- The project is currently developed/characterized as developed by the California Natural Diversity Database;¹ therefore, it is not located in an environmentally sensitive area;
 - There are no similar projects proposed in the area. Therefore, the cumulative impact of successive projects of the same type in the same place, over time would not be significant;
 - There are no “unusual circumstances” at the project site that would result in significant environmental effects;

¹ California Department of Fish and Wildlife. California Natural Diversity Database. Available: <https://apps.wildlife.ca.gov/bios6/?tool=cnddbqv>

- The site is not included on a list compiled pursuant to Government Code Section 65962.5;² and
- The project would not result in a substantial adverse change in the significance of a historical resource.

II. FINDINGS FOR APPROVAL

- A.** 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, will 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:
1. **Sunlight/Shadow:** The project is located on a block which faces west. Due to the position of the dwelling and solar orientation, new shadow impacts on neighboring properties will occur on limited areas, at limited times during the year. Repositioning and lifting the dwelling will not result in a significant loss of direct sunlight on abutting residences. Therefore, shading impacts are found to be non-detrimental.
 2. **Air:** The non-conforming side setback will remain the same, maintaining the existing building-to-building separation and plenty of open space to provide adequate air circulation. Therefore, impacts to air circulation are determined to be non-detrimental.
 3. **Views:** The addition would not result in obstruction of significant views in the neighborhood as defined in BMC Section 23.502.020 (Glossary). The neighborhood is generally flat and developed with one and two-story residences that filter or obscure most views that may be available of the Berkeley hills or the Golden Gate Bridge from off-site view angles.
 4. In addition, the proposed balcony at the third story would not unreasonably obstruct sunlight, air or views because of its location and minor scale. The proposed addition is located at the rear of the building within the existing building footprint; the balcony would be located on top of the existing roof of the story below. It is not expected to be detrimental to the privacy of neighbors because it will face the rear yard and have solid guardrails on the north and south side to obstruct direct views between neighboring properties, and it will not be a main gathering place for the dwelling because the balcony will be off of a bedroom at the third story.
 5. The project will be subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, which will ensure that the project will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

² California Environmental Protection Agency. Cortese List Data Resources. Available: <https://calepa.ca.gov/sitecleanup/corteselist/>

III. OTHER FINDINGS FOR APPROVAL

- A.** As required by Section 23.324.050(D)(3) of the BMC, the Zoning Adjustments Board finds the addition and or enlargement s of lawful non-conforming structures that are non-confirming by reason of exceeding lot coverage are permitted with a Use Permit provided that the existing use of the property is conforming, the addition/enlargement complies with all applicable laws, and the addition/enlargement does not increase lot coverage or exceed the height limit.

The proposed addition would lift and move the entire building and habitable space within the existing building footprint of the building. Therefore, the lot coverage would remain unchanged. The project would comply with all applicable laws, and conditions of approval as noted above. Further, the project would not exceed the maximum height limit permitted in the R-2 zoning district pursuant to BMC Section 23.202.080. Main buildings in the R-2 Zoning District are allowed an average height of 28-feet and maximum height of 35-feet with an AUP. The proposed average height of the building would be 23-feet, 8-inches.

- B.** As required by Section 23.324.050(D) of the BMC, the Zoning Adjustments Board finds that additions or enlargements of lawful nonconforming structures that vertically or horizontally extend a building wall projecting into a minimum required setback are allowed with an Administrative Use Permit if the addition and/or enlargement does not increase or exacerbate any nonconforming setbacks and does not exceed the calculated height limits. The project will increase the buildings setback from the front property line; the non-conforming setback of 14-feet, 9-inches would change to 18-feet because the building would be moved back 3 feet, 3-inches. Although this does not eliminate the non-conformity, where a 20-foot setback is required, it would reduce it, therefore not exacerbating the condition. The non-conforming side setback will remain the same at 2-inches, where 3-feet is required, therefore not exacerbating the condition. The project would not exceed the maximum height limit permitted in the R-2 zoning district pursuant to BMC Section 23.202.080. Main buildings in the R-2 Zoning District are allowed an average height of 28-feet and maximum height of 35-feet with an AUP. The proposed average height of the building would be 23-feet, 8-inches. Further, the existing use of the property is confronting and the project complies with all applicable laws.

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.
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 re-establish 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 comply 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. Hold Harmless.** The permittee agrees as a condition of approval of this application to indemnify, protect, defend with counsel selected by the City, and hold harmless, the City, and any agency or instrumentality thereof, and its elected and appointed officials, officers, employees and agents, from and against any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorney's fees and disbursements (collectively, "Claims") arising out of or in any way relating to the approval of this application, any actions taken by the City related to this entitlement, or any environmental review conducted under the California Environmental Quality Act, Public Resources Code Section 210000 et seq., for this entitlement and related actions. The indemnification shall include any Claims that may be asserted by any person or entity, including the permittee, arising out of or in connection with the approval of this application, whether or not there is concurrent, passive or active negligence on the part of the City, and any agency or instrumentality thereof, and its elected and appointed officials, officers, employees and agents. The permittee's duty to defend the City shall not apply in those instances when the permittee has asserted the Claims, although the permittee shall still have a duty to indemnify, protect and hold harmless the City.

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 in accordance with BMC 16.28.030, and, except for new buildings on vacant lots, entered into the City's database after the building permit is issued but prior to final inspection.

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 percent diversion of asphalt, concrete, excavated soil and land-clearing debris and a minimum of 65 percent diversion of other nonhazardous construction and demolition waste.

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

- A. Phase I and Phase II Environmental Site Assessment (ESA) (per ASTM 1527).** A recent Phase I ESA (less than 2 years old) shall be submitted to the Toxics Management Division for developments for: all new commercial, industrial and mixed-use developments and all improvement projects that require work 5 or more feet below grade, and all new residential buildings with more than four dwelling units located in the Environmental Management Area (or EMA). The EMA can be viewed at: [City of Berkeley Community GIS Portal \(arcgis.com\)](#)
- B.** Depending on the findings in the Phase I, a Phase II or additional investigation may be necessary. Any available soils and groundwater analytical data available for projects listed in this section must also be submitted to TMD.

C. Environmental Site Clearance. The applicant shall provide environmental screening clearance from either the San Francisco Bay Regional Water Quality Control Board (RWQCB), Department of Toxic Substances Control (DTSC), or the Alameda County Department of Environmental Health's Local Oversight Program (LOP). Clearance from one of these regulatory agencies will ensure that the property meets development investigation and cleanup standards for the specific use proposed on the property. Environmental screening clearance shall be submitted to the City of Berkeley's Toxics Management Division prior to issuance of any building permits.

D. Soil and Groundwater Management Plan. A site-specific Soil and Groundwater Management Plan (SGMP) shall be submitted to Toxics Management Division (TMD) for all non-residential projects, and residential or mixed-use projects with more than four dwelling units, that: (1) are in the Environmental Management Area (EMA), as shown on the most recent City of Berkeley EMA map, and (2) propose any excavations deeper than 5 feet below grade or if significant soils removal is anticipated. The SGMP shall be submitted to the TMD with the project's building permit application and shall be approved by TMD prior to issuance of the building permit.

The SGMP shall comply with the hazardous materials and waste management standards required by BMC Section 15.12.100, the stormwater pollution prevention requirements of San Francisco Bay Regional Water Quality Control Board's Order No. R2-2009-0074, California hazardous waste generator regulations (Title 22 California Code of Regulations (CCR) 66260 et seq.), and the East Bay Municipal Utility District's Ordinance 311, and shall include the following:

- i. procedures for soil and groundwater management including identification of pollutants and disposal methods;
- ii. procedures to manage odors, dust and other potential nuisance conditions expected during development;
- iii. notification to TMD within 24 hours of the discovery of any previously undiscovered contamination; and
- iv. the name and phone number of the individual responsible for implementing the SGMP and who will respond to community questions or complaints.

TMD may require additional information or impose additional conditions as deemed necessary to protect human health and the environment. All requirements of the approved SGMP shall be deemed conditions of approval.

E. Demolitions & Renovations – Building Materials Survey. A hazardous materials survey for building materials and plans on hazardous materials and hazardous waste removal and disposal is required and must be prepared by qualified professionals, and submitted to the Toxics Management Division (TMD) prior to issuance of the building permit.

- v. The survey shall include the identification of all materials to be disturbed for lead-based paints, PCB containing equipment and caulking, hydraulic fluids, refrigerants, treated wood, and mercury containing devices (including fluorescent light bulbs and mercury switches), asbestos and other hazardous materials and chemicals.

- vi. 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. Contractors must follow state regulations where there is asbestos-related work involving 100 square feet or more of asbestos containing material (8 Cal. Code Regs. §1529, §341.6 et seq.)
- vii. The report to the TMD shall include, in addition to the survey, plans on hazardous materials and hazardous waste removal and disposal that comply with State and Federal codes including California Code of Regulations (CCR) 66260 et seq.
- viii. 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.

Please note, the PCB Screening Form required by Public Works, Engineering, is a separate requirement and does not address the PCB identification requirement of the Toxics Management Division.

F. Hazardous Materials Business Plan. A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 and California Health & Safety Code, Chapter 6.95 Div. 20, shall be submitted to the Toxics Management Division through the California Environmental Reporting System: <http://cers.calepa.ca.gov/> for chemicals used or stored on site during construction that exceed reporting thresholds. The reporting is required if your facility stores or handles hazardous materials in aggregate quantities equal to or greater than 55 gallons for liquids, 500 pounds for solids, or 200 cubic feet of compressed gases, or generates any quantity of hazardous waste. This includes welding gases, emergency generator fuel, paints, etc.

Additionally, the business occupant must submit an HMBP within 30 days of starting operations.

G. Petroleum Storage. An (SPCC) Plan is required to be prepared and implemented for facilities with any one of the following:

- ix. aggregate aboveground petroleum storage capacities of 1,320 gallons or more stored in aboveground storage containers, tanks, oil-filled equipment, or
- x. one or more tank(s) in an underground area (TIUGA) with petroleum storage capacities of 55 gallons or greater. More information on TIUGAs can be found here: <https://osfm.fire.ca.gov/divisions/pipeline-safety-and-cupa/certified-unified-program-agency-cupa/aboveground-petroleum-storage-act/tank-in-an-underground-area-tiuga/>

The SPCC plan must be prepared prior to beginning operations and you must submit facility information to Toxics Management Division (TMD) through the California Environmental Reporting System: <http://cers.calepa.ca.gov/>. The SPCC plan will be reviewed during the site inspection and shall not be submitted in CERS or to the TMD.

Prior to Issuance of Any Building (Construction) Permit

- 14. HVAC Noise Reduction.** Prior to the issuance of building permits, the project applicant shall submit plans that show the location, type, and design of proposed heating, ventilation, and cooling (HVAC) equipment. In addition, the applicant shall provide product specification sheets or a report from a qualified acoustical consultant showing that operation of the proposed HVAC equipment will meet the City's exterior noise requirements in BMC Section 13.40.050. The City's Planning and Development Department shall review the submitted plans, including the selected HVAC equipment, to verify compliance with exterior noise standards.
- 15. Recycling and Organics Collection.** Applicant shall provide recycling and organics collection areas for occupants, clearly marked on plans, which comply with the Alameda County Organics Reduction and Recycling Ordinance (2021-02). Contact the Zero Waste Division's Recycling Program Manager, Julia A. Heath, at jheath@berkeleyca.gov.
- 16. Public Works ADA.** Plans submitted for building permit shall include replacement of sidewalk, curb, gutter, and other streetscape improvements, as necessary to comply with current City of Berkeley standards for accessibility.

Prior to Demolition or Start of Construction:

- 17. Construction/No Parking Permits.** 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.

During Construction:

- 18. 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.
- 19. Public Works - Implement Bay Area Air Quality Management District (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.

20. Air Quality - Diesel Particulate Matter Controls during Construction. All off-road construction equipment used for projects with construction lasting more than 2 months shall comply with one of the following measures:

- A. The project applicant shall prepare a health risk assessment that demonstrates the project's on-site emissions of diesel particulate matter during construction will not exceed health risk screening criteria after a screening-level health risk assessment is conducted in accordance with current guidance from BAAQMD and OEHHA. The health risk assessment shall be submitted to the Land Use Planning Division for review and approval prior to the issuance of building permits; or
- B. All construction equipment shall be equipped with Tier 2 or higher engines and the most effective Verified Diesel Emission Control Strategies (VDECS) available for the engine type (Tier 4 engines automatically meet this requirement) as certified by the California Air Resources Board (CARB). The equipment shall be properly maintained and tuned in accordance with manufacturer specifications.
- C. In addition, a Construction Emissions Minimization Plan (Emissions Plan) shall be prepared that includes the following:
 - i. An equipment inventory summarizing the type of off-road equipment required for each phase of construction, including the equipment manufacturer, equipment identification number, engine model year, engine certification (tier rating), horsepower, and engine serial number. For all VDECS, the equipment inventory shall also include the technology type, serial number, make, model, manufacturer, CARB verification number level, and installation date.
 - ii. A Certification Statement that the Contractor agrees to comply fully with the Emissions Plan and acknowledges that a significant violation of the Emissions Plan shall constitute a material breach of contract. The Emissions Plan shall be submitted to the Public Works Department for review and approval prior to the issuance of building permits.

- 21. 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 [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.
- 22. 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 percent. Documentation on concrete mix design shall be available at all times at the construction site for review by City Staff. (Project required to meet applicable code at time of building permit application, if different from above.)
- 23. 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.
- 24. Archaeological Resources (Ongoing throughout demolition, grading, and/or construction).** Pursuant to CEQA Guidelines section 15064.5(f), “provisions for historical or unique archaeological resources accidentally discovered during construction” should be instituted. Therefore:
- A.** In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.

- B.** If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Berkeley. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by the qualified professional according to current professional standards.
- C.** In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.
- D.** If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation measures for cultural resources is carried out.
- E.** If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.
- 25. Human Remains (Ongoing throughout demolition, grading, and/or construction).** In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to 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.
- 26. Paleontological Resources (Ongoing throughout demolition, grading, and/or construction).** In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards [SVP 1995,1996]). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.

- 27. Halt Work/Unanticipated Discovery of Tribal Cultural Resources.** In the event that cultural resources of Native American origin are identified during construction, all work within 50 feet of the discovery shall be redirected. The project applicant and project construction contractor shall notify the City Planning Department within 24 hours. The City will again contact any tribes who have requested consultation under AB 52, as well as contact a qualified archaeologist, to evaluate the resources and situation and provide recommendations. If it is determined that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.
- 28. Stormwater Requirements.** The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:
- A.** The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.
 - B.** Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.
 - C.** Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.
 - D.** Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be 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 of 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. All loading areas must be designated to minimize “run-on” or runoff from the area. Accumulated waste water that may contribute to the pollution of stormwater must be drained to the sanitary sewer or intercepted and pretreated prior to discharge to the storm drain system. The property owner shall ensure that BMPs are implemented to prevent potential stormwater pollution. These BMPs shall include, but are not limited to, a regular program of sweeping, litter control and spill cleanup.
- J. 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.
- K. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.
- 29. Public Works.** Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.
- 30. 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.
- 31. Public Works.** The applicant shall ensure that all excavation accounts for surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
- 32. 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.
- 33. 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.
- 34. 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.

35. Public Works / Building and Safety. 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:

36. 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.

37. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated October 3, 2023.

At All Times:

38. Compliance with Approved Plan. The project shall conform to the plans and statements in the Use Permit.

39. 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.

40. 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.

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

42. Loading. All loading/unloading activities associated with deliveries to all uses shall be restricted to the hours of 7:00 a.m. to 10:00 p.m. daily.

AREA DATA

LOT AREA: 2,900 SQ. FT.

FLOOR AREA DATA:

Existing Floor Areas:

Existing Ground Floor:(Total with garage) 1,053 Sq. Ft.
 Finished storage and Utility 659 Sq. Ft.
 (Attached garage) 394 Sq. Ft.
 Existing Second Floor: 1,053 Sq. Ft.
 Existing Third Floor: 370 Sq. Ft.

New Floor Areas:

Ground Floor : 1,053 Sq. Ft.
 New ADU: 1,000 sq. ft.
 Utility Room: 53 sq. ft.
 Second Floor: 1,053 Sq. Ft.
 Third Floor: 370 Sq. Ft.

Total: (with attached garage) 2,476 Sq. Ft. Total: 2,476 Sq. Ft.

1205 Kains Ave.

NEW ADU, STRUCTURAL REPAIR & REMODEL

PROJECT DESCRIPTION

Remodel and addition to existing single family dwelling.
 House to be raised 18" to create headroom at lower level to enable conversion of existing attached garage and non-conforming space to a new ADU. House to also be moved 39" further from street to allow a conforming parking space in the driveway.
 Raising of house will require existing entry stairs & porch and a rear deck to be replaced.
 Lot coverage and side setbacks remain as-is.
 Portions of existing floors to be remodeled.

Larkin Design
 1405 Josephine St.
 Berkeley, CA 94703
 ph: 510.847.7751
 tlarkin.berkeley@gmail.com



PROJECT DATA

ADDRESS: 1205 Kains Ave.
 APN: 60 2406 33
 ZONING: R-2
 BUILDING TYPE: V B
 OCCUPANCY GROUP: R-3
 SPRINKLERS: NO
 Berkeley Fire Zone: 1
 Creek: NO

Existing Single Family home
 with proposed new attached ADU

Drawing Index:

- 1** Cover Sheet
- SP1.0** Existing Site Plan
- SP1.1** Proposed Site Plan
- SP1.2** Site Plan-Open Space
- A0.0** Existing Plans
- A1.0** New First Floor Plan
- A1.1** New Second Floor Plan
- A2.0** Exterior Elevations
- A2.1** Exterior Elevations
- A2.2** Exterior Elevations
- A2.3** Exterior Elevations
- A2.4** Exterior Elevations
- A3.0** Sections

PROJECT DIRECTORY:

OWNER:

Mary Mulvehill
David Smith
 1205 Kains Ave.
 Berkeley, CA 94706

DESIGNER:

Larkin Design
TIM LARKIN
 1405 Josephine St.
 Berkeley, CA 94703
 ph: 510.847.7751
 tlarkin.berkeley@gmail.com



PLANNING & DEVELOPMENT

Land Use Planning, 1947 Center Street, Berkeley, CA 94704
 Tel: 510.981.7410 TDD: 510.981.6903 Email: Planning@CityofBerkeley.info

TABULATION FORM

Project Address: 1205 Kains Ave. Date: 4/28/23
 Applicant's Name: Larkin Design/ Tim Larkin
 Zoning District: R-2

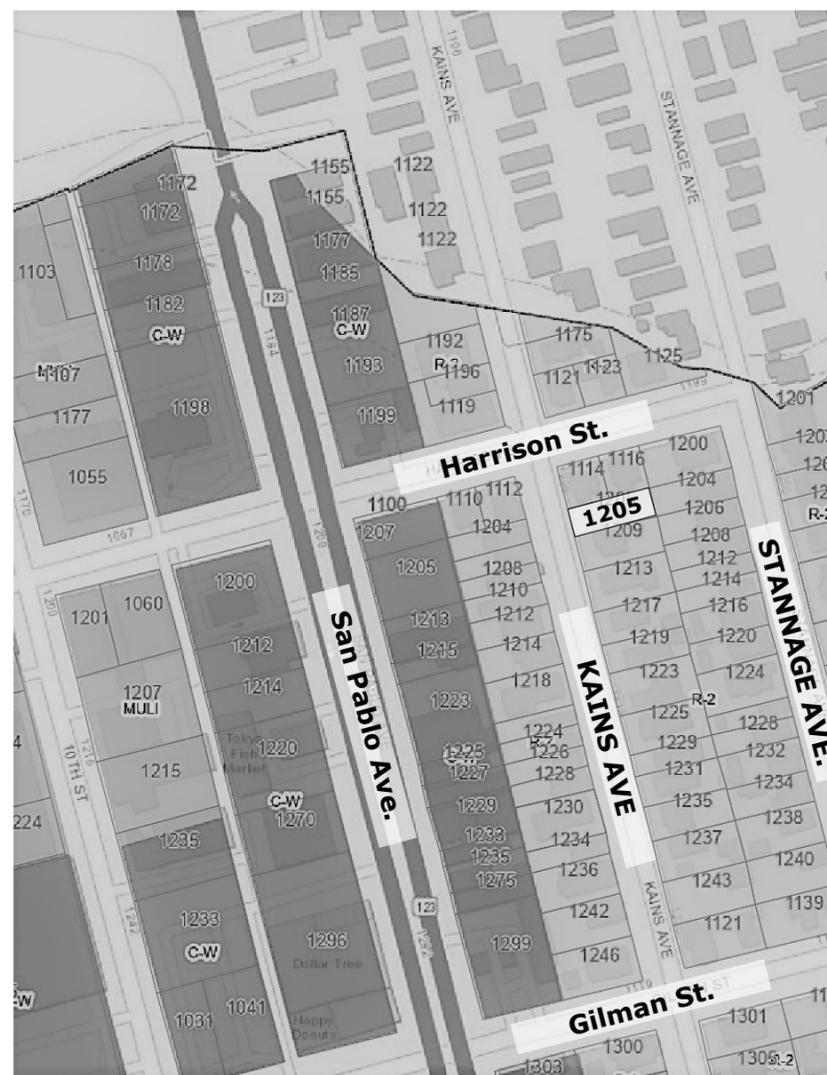
Please print in ink the following numerical information for your Administrative Use Permit, Use Permit, or Variance application:

| | Existing | Proposed | Permitted/ Required ¹ |
|---|------------|-------------|----------------------------------|
| Units, Parking Spaces & Bedrooms | | | |
| Number of Dwelling Units (#) | 1 | 1+ADU | 2 |
| Number of Parking Spaces (#) | 1 | 1 | |
| Number of Bedrooms (#) (R-1, R-1A, R-2, R-2A, and R-3 only) | 4 | 4+ADU | |
| Yards and Height | | | |
| Front Yard Setback (Feet) | 14'-9" | 18' | 20' |
| Side Yard Setbacks: (facing property) | | | |
| Left: (Feet) | 2 1/2" | 2 1/2" | 3' |
| Right: (Feet) | 3'-10" | 3'-10" | 3' |
| Rear Yard Setback (Feet) | 43' | 39'-9' | 20' |
| Building Height* (# Stories) | 3 | 3 | 3 |
| Average* (Feet) | 22'-1 3/4" | 23'-8" | 28' |
| Maximum* (Feet) | 27'-11" | 29'-10 1/2" | NA |
| Areas | | | |
| Lot Area (Square-Feet) | 2,900 | 2,900 | |
| Gross Floor Area* (Square-Feet) | 2,082 | 2,476 | |
| Total Area Covered by All Floors | | | |
| Building Footprint* (Square-Feet) | 1,265 | 1,264 | |
| Total of All Structures | | | |
| Lot Coverage* (%) | 43.5 | 43.5 | 35 |
| Residential districts only (Building Footprint/Lot Area) | | | |
| Useable Open Space* (Square-Feet) | 908 | 830 | |
| Floor Area Ratio* Non-Residential districts only (Except ES-R) | | | |

*See Glossary - BMC Chapter 23.502.

Revised: 12/21

¹ See development standards for the Zoning District, per the Berkeley Municipal Code, Chapters 23.202 and 23.204
 g:\landuse\forms & instructions\land use planning forms\word files\forms_zoning project application\december 2021- bzo related\zoning project application_tabulation form.docx



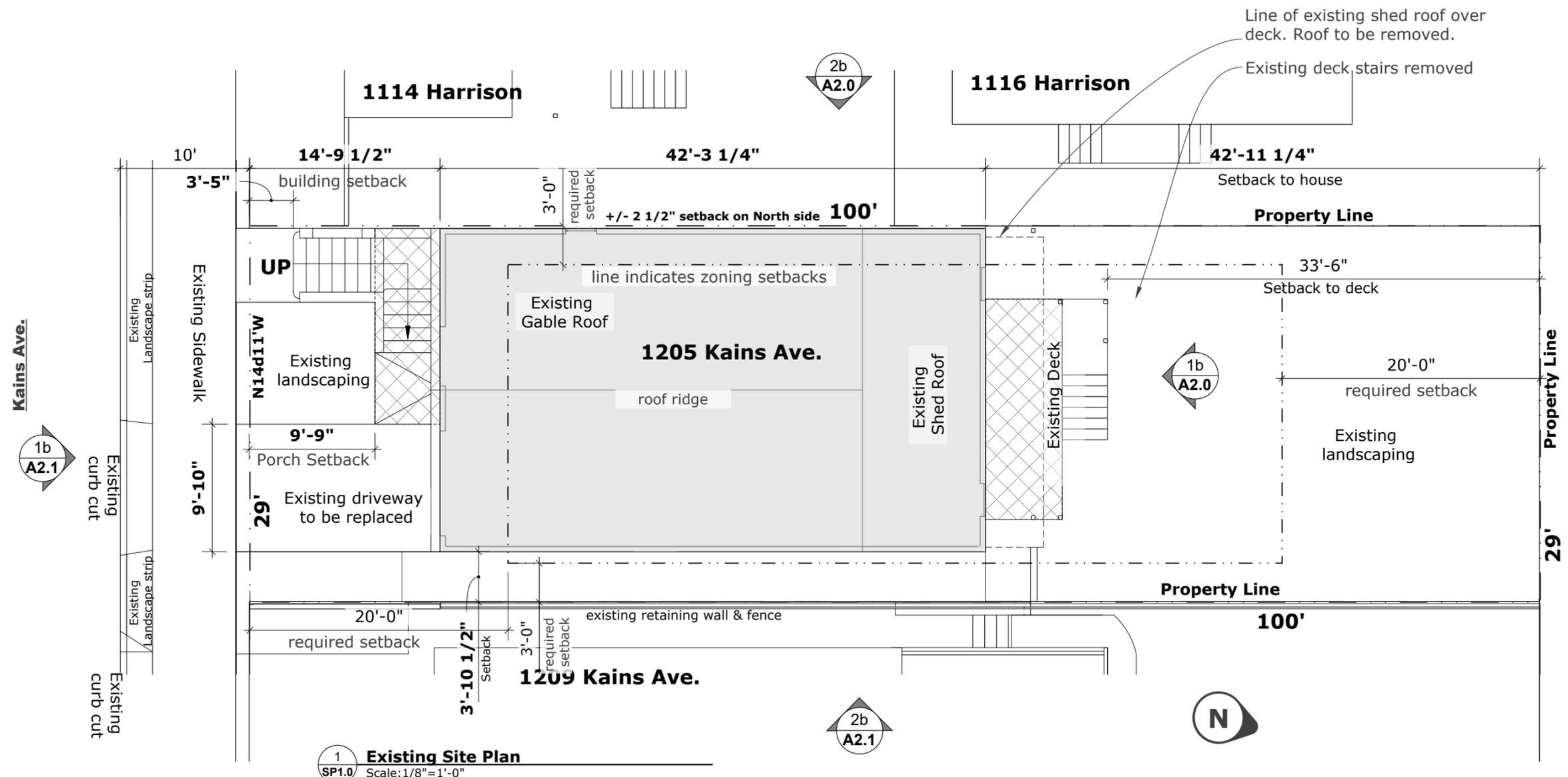
Vicinity Map

Scale: 1"=100'-0"

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 ph: 510.847.7751
 tlarkin.berkeley@gmail.com



1205 Kains Ave.
 Berkeley, CA 94710
 New ADU,
 structural repair &
 remodel



1 Existing Site Plan
 SP1.0 Scale: 1/8"=1'-0"

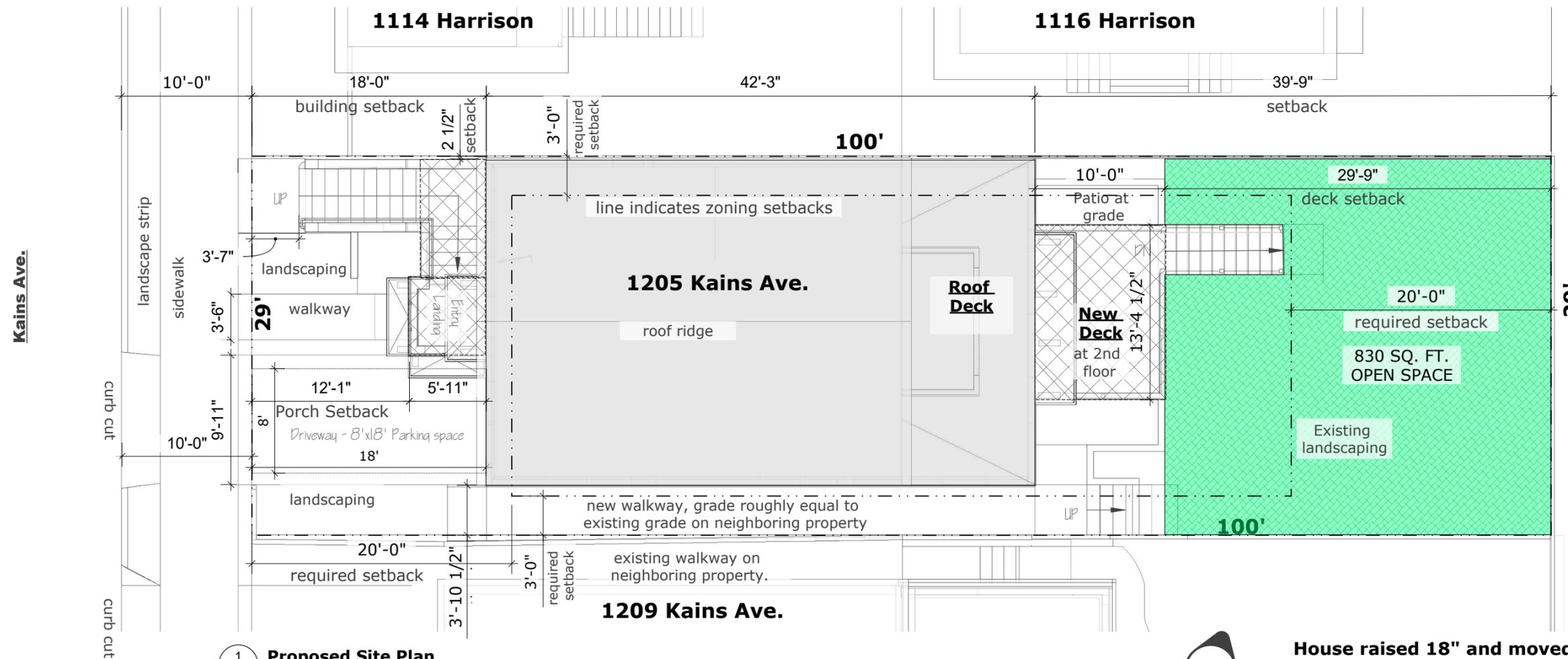
- Shaded areas indicate areas where building walls extend to ground. Included in lot coverage
- Cross Hatch Indicates Covered decks, porches, or trellis. Included in lot coverage

| Existing Lot coverage: | | New Lot coverage: (See New Site Plan-Sheet SP1.1) | |
|----------------------------------|----------------------|---|----------------------|
| -House Footprint | 1,053 sq. ft. | -House Footprint | 1,053 sq. ft. |
| -Rear Deck: | 135 sq. ft. | -Rear Deck: | 134 sq. ft. |
| -Entry Stair/Porch over storage: | 77 sq. ft. | -Entry Stair/Porch over storage: | 77 sq. ft. |
| | 1,265 SQ. FT. | | 1,264 SQ. FT. |
| | 43.5% | | 43.5% |



 Shaded areas indicate areas where building walls extend to ground. Included in lot coverage
 Cross Hatch Indicates Covered decks, porches, or trellis. Included in lot coverage

TOTAL OPEN SPACE: 830 SQ. FT.  Usable Open Space

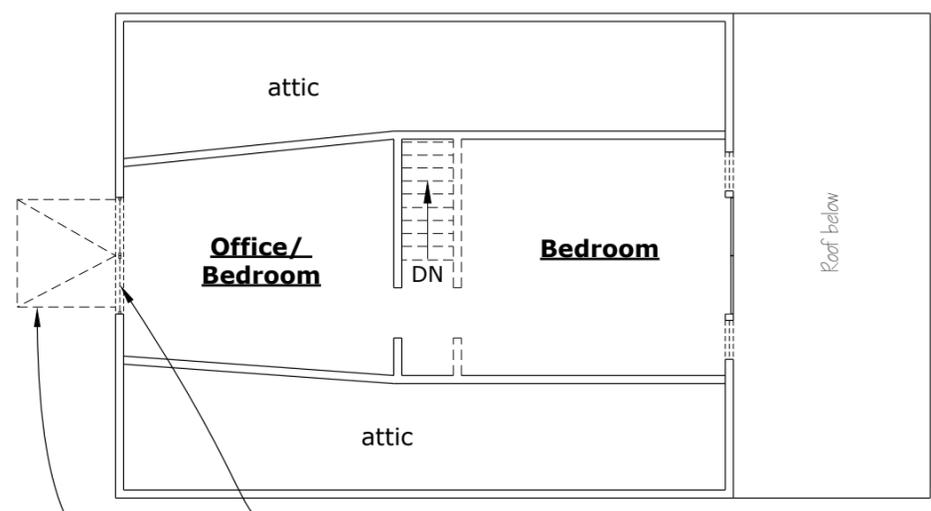


1 Proposed Site Plan
 SP1.1 Scale: 1/8" = 1'-0"

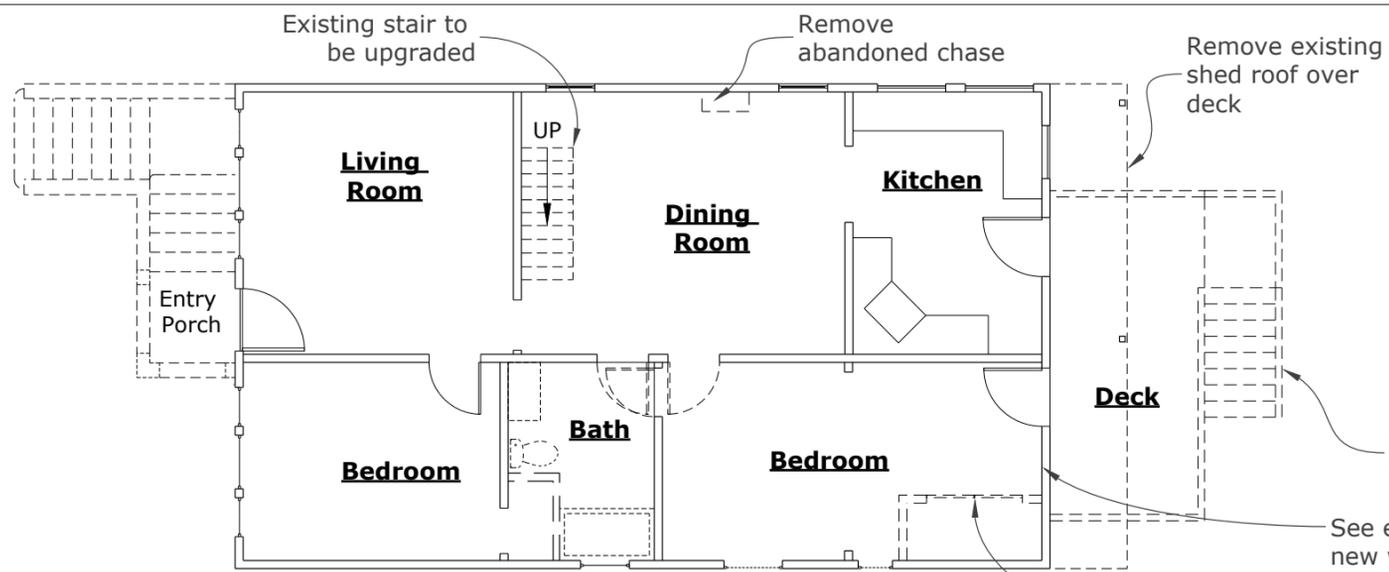
House raised 18" and moved 39" further from front property line in a direction parallel to side lot line.

I have reviewed the plans for the remodel at 1205 Kains St. which includes raising the house 18" and moving it 39" further from front property line to enable construction of an ADU at the ground level with room for a parking space in the driveway. Other changes include modest updates to the existing floor and the replacement of the existing deck.

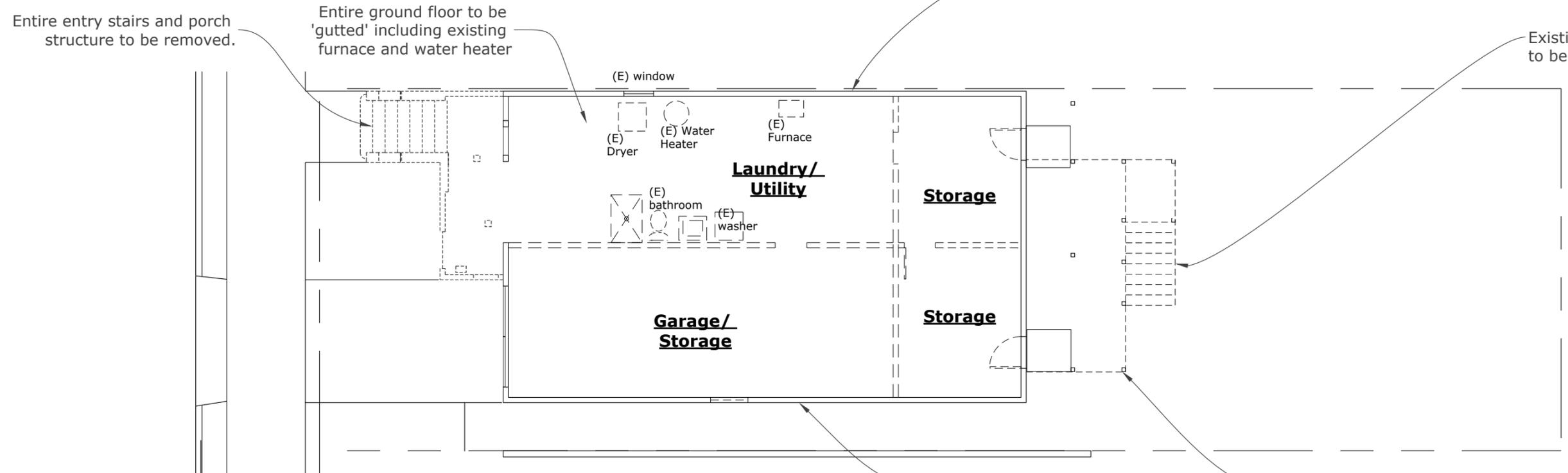
| Name (Printed) | Signature | Address | Owner | | | | Name (Printed) | Signature | Address | Owner | | | |
|----------------|-----------|---------|-----------|--------------------|--------------------|---------|----------------|-----------|---------|-----------|--------------------|--------------------|---------|
| | | | or Renter | Have No Objections | Have No Objections | Comment | | | | or Renter | Have No Objections | Have No Objections | Comment |
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3 Existing Third Floor Plan
 A0.0 Scale: 1/8" = 1'-0"



2 Existing Second Floor Plan
 A0.0 Scale: 1/8" = 1'-0"



1 Existing Ground Level Plan
 A0.0 Scale: 1/8" = 1'-0"

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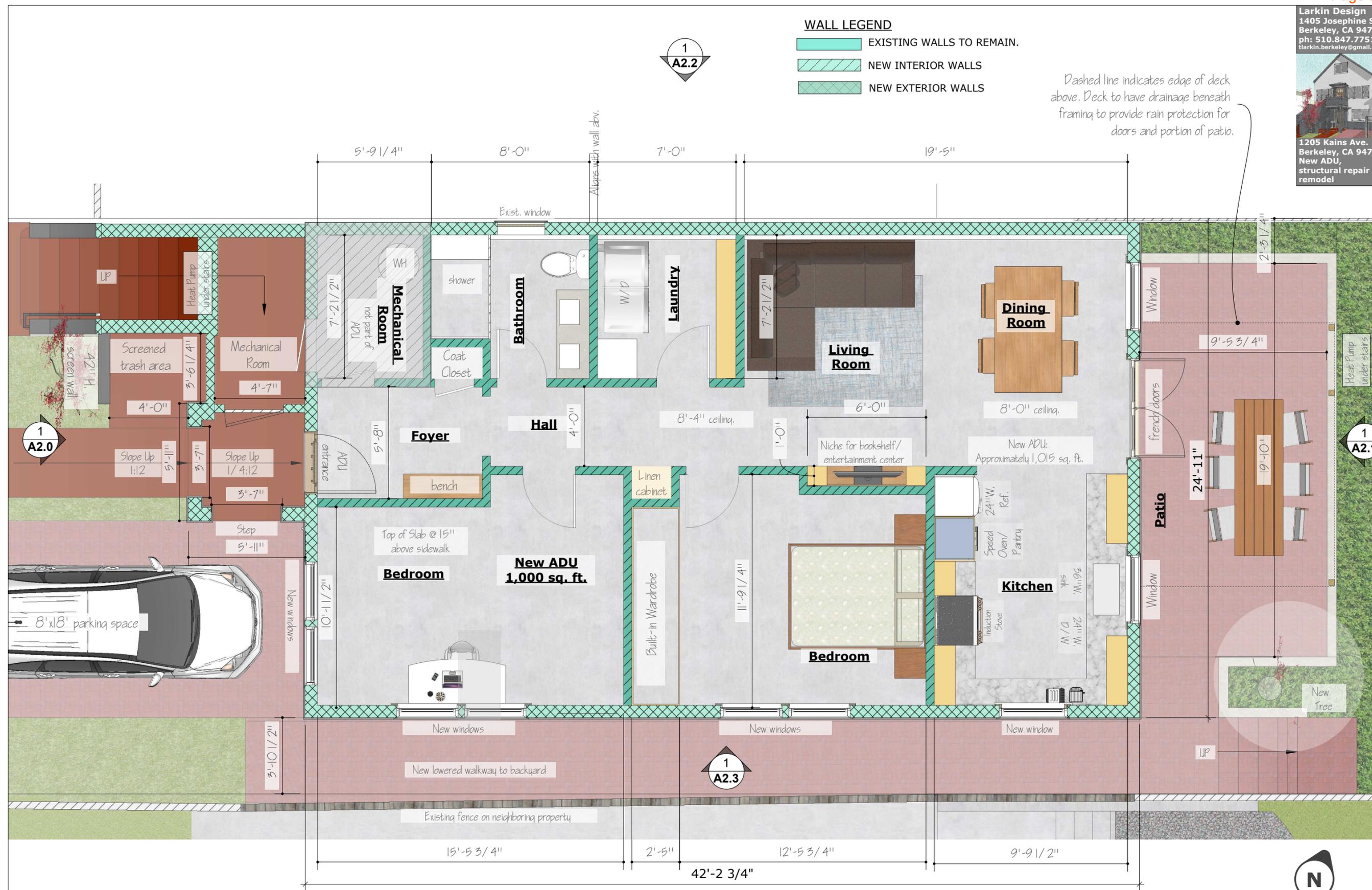


1205 Kains Ave.
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 New ADU,
 structural repair &
 remodel

WALL LEGEND

- EXISTING WALLS TO REMAIN.
- NEW INTERIOR WALLS
- NEW EXTERIOR WALLS

Dashed line indicates edge of deck above. Deck to have drainage beneath framing to provide rain protection for doors and portion of patio.



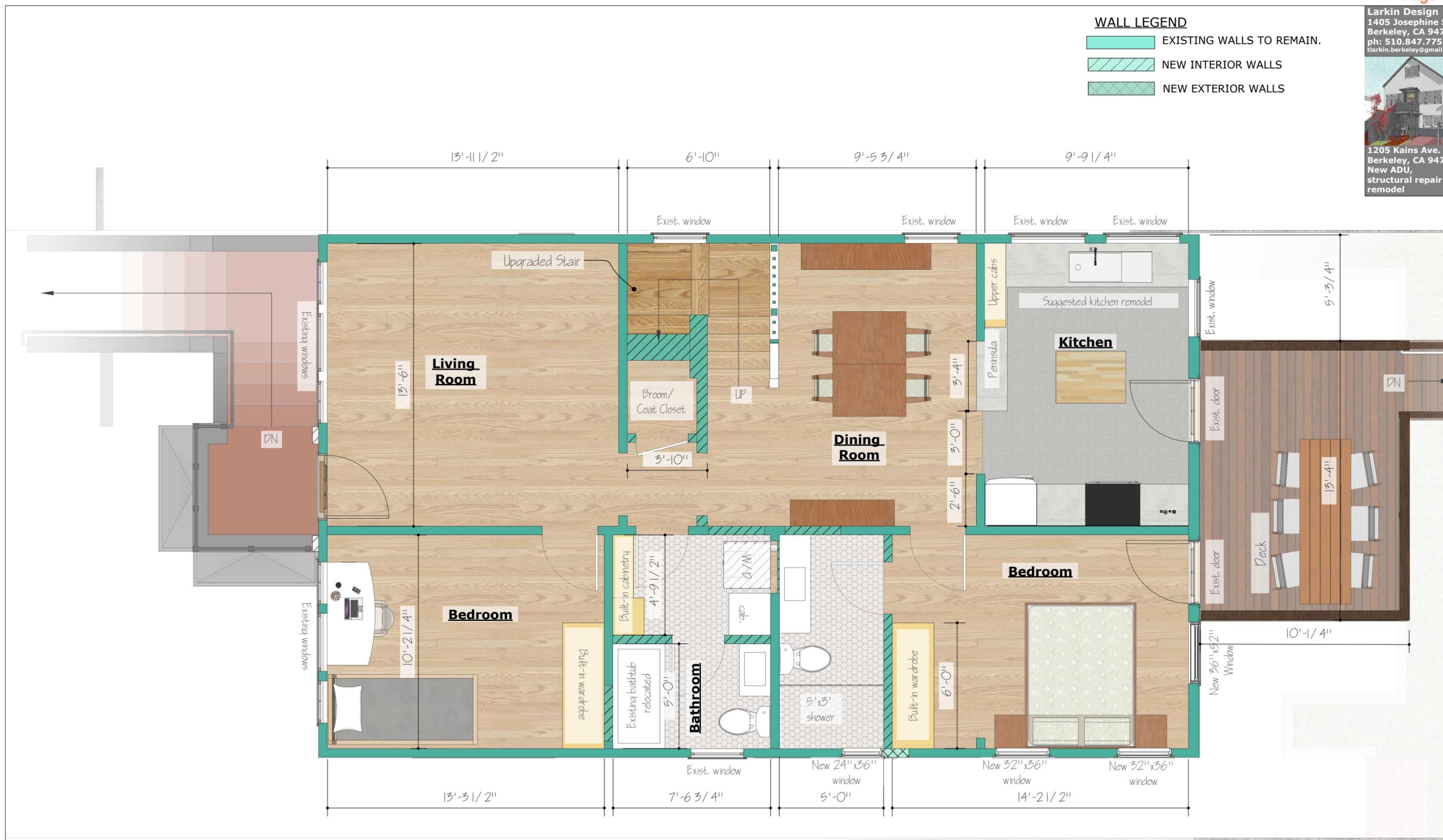
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WALL LEGEND

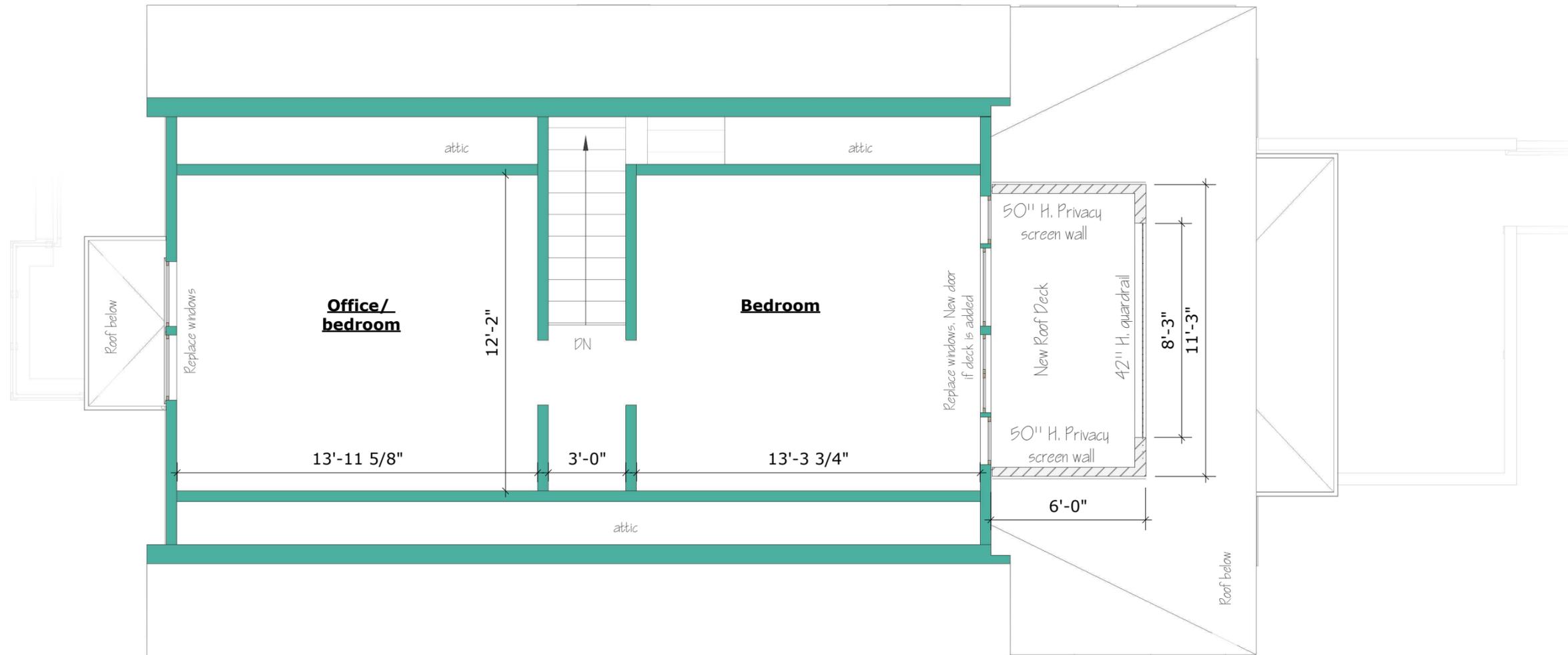
- EXISTING WALLS TO REMAIN.
- NEW INTERIOR WALLS
- NEW EXTERIOR WALLS





WALL LEGEND

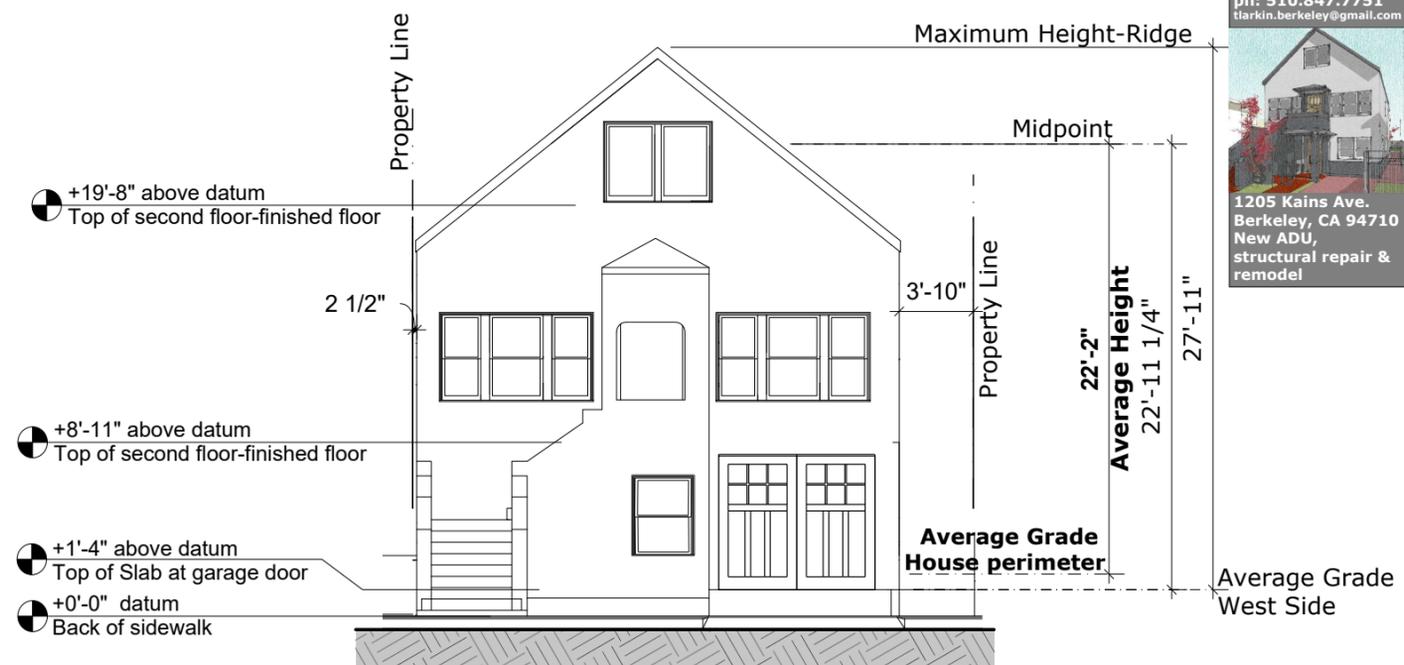
| | |
|--|---------------------------|
| | EXISTING WALLS TO REMAIN. |
| | NEW INTERIOR WALLS |
| | NEW EXTERIOR WALLS |



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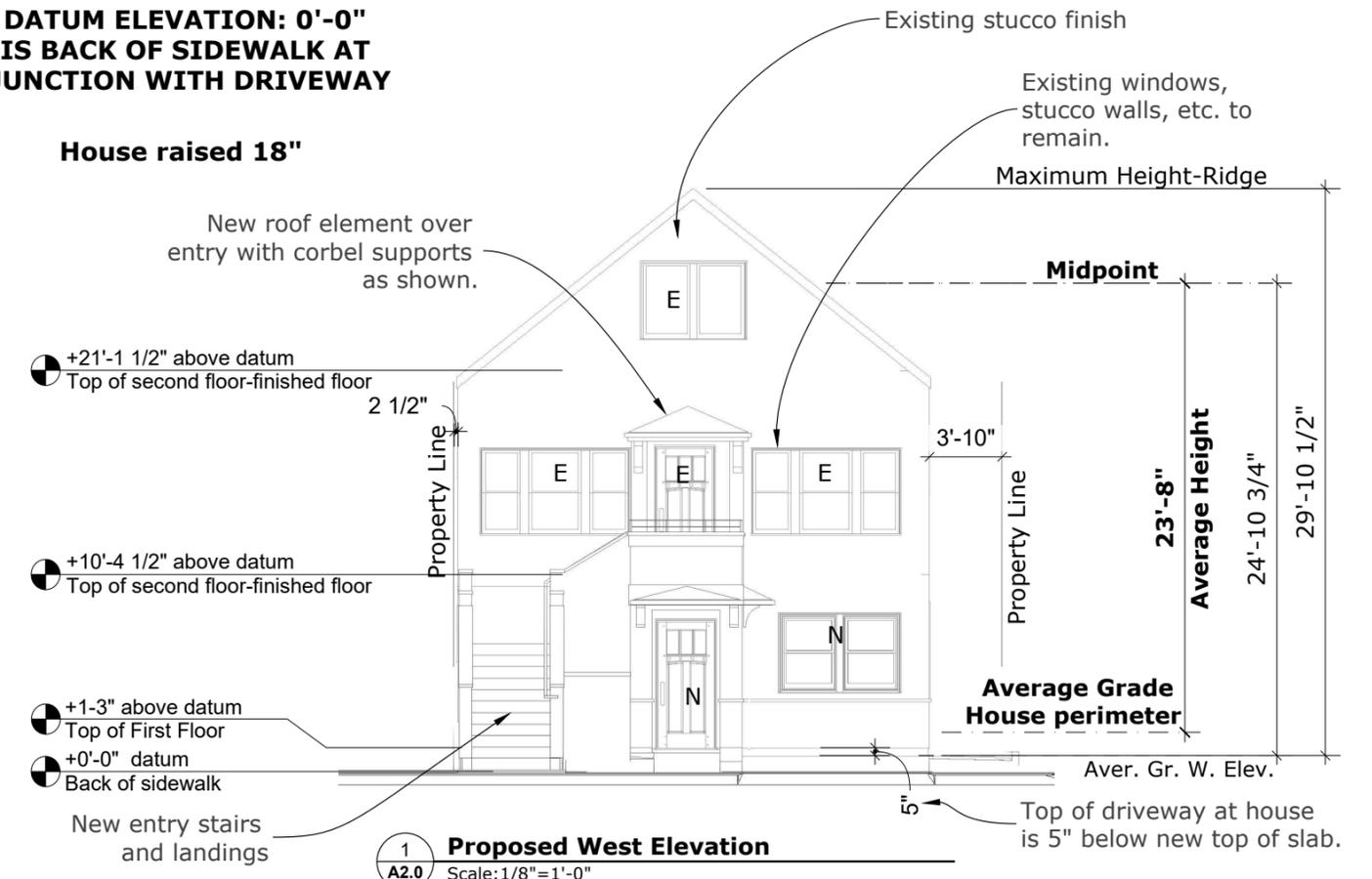
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1b Existing West Elevation
 A2.0 Scale: 1/8"=1'-0"

DATUM ELEVATION: 0'-0" IS BACK OF SIDEWALK AT JUNCTION WITH DRIVEWAY

House raised 18"

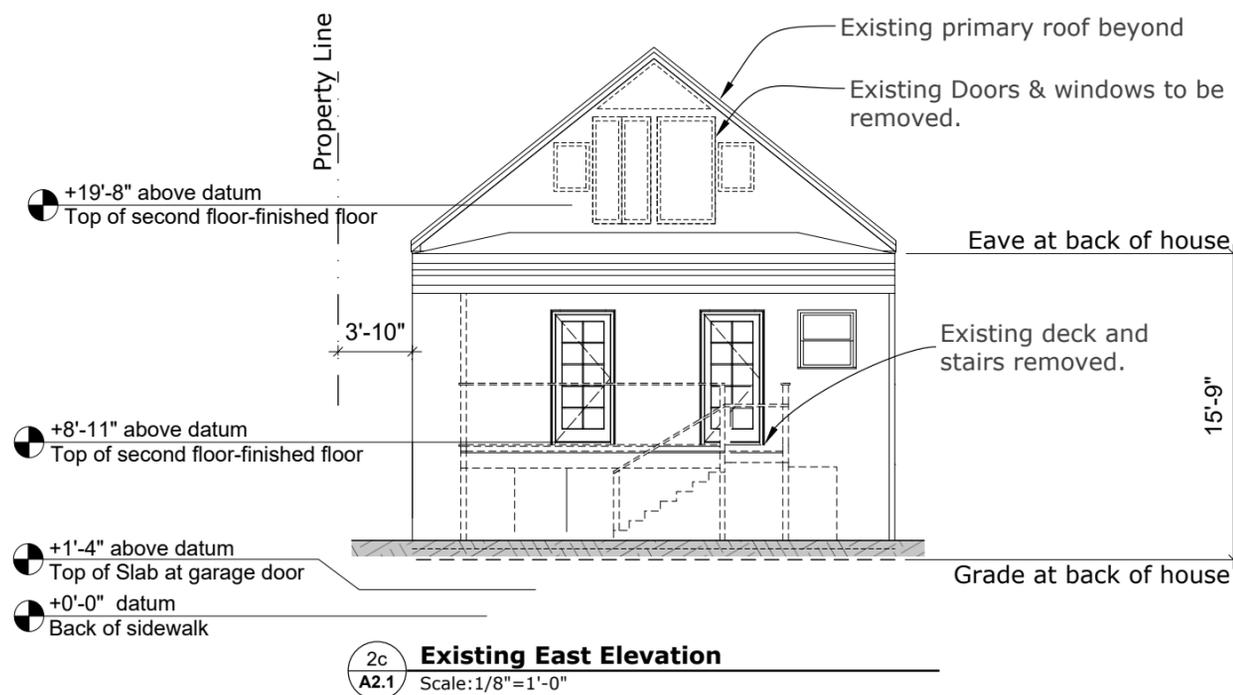


1 Proposed West Elevation
 A2.0 Scale: 1/8"=1'-0"

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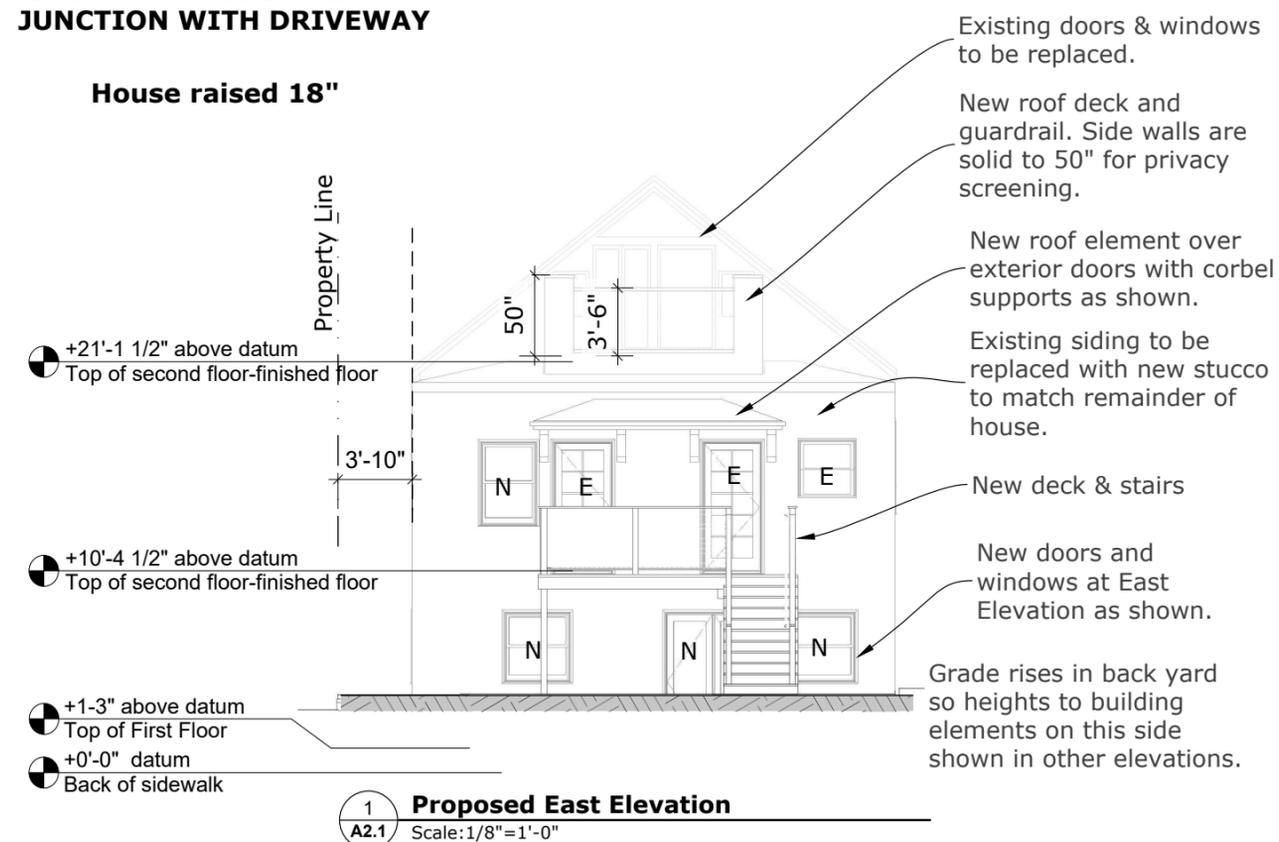
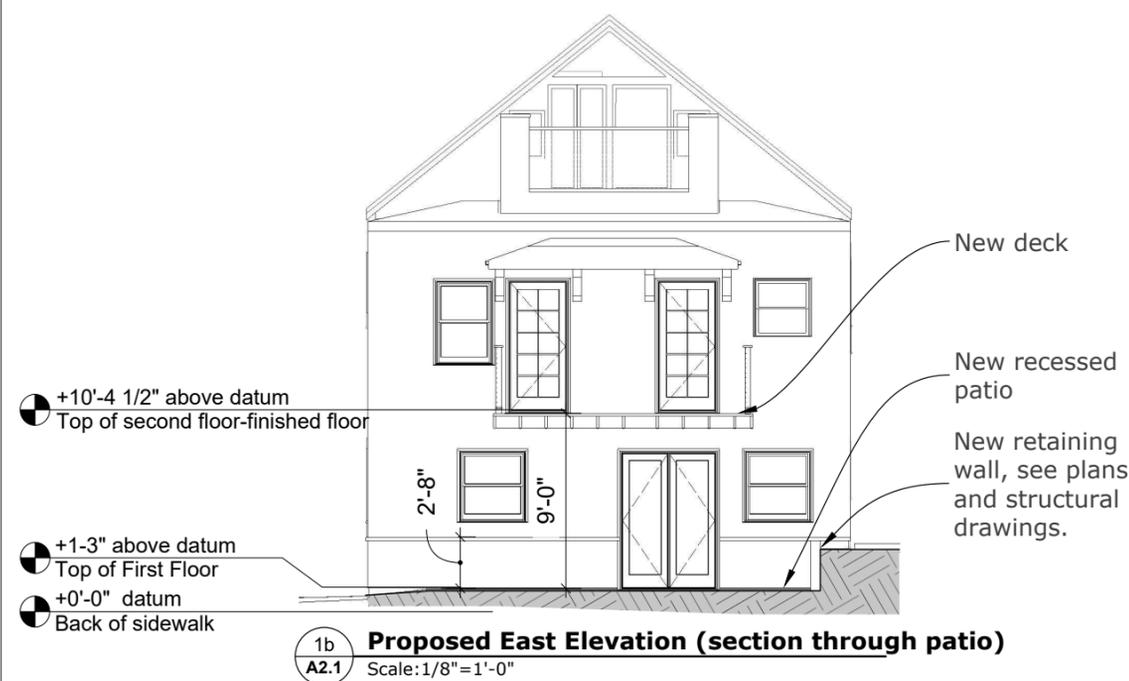


1205 Kains Ave.
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DATUM ELEVATION: 0'-0" IS BACK OF SIDEWALK AT JUNCTION WITH DRIVEWAY

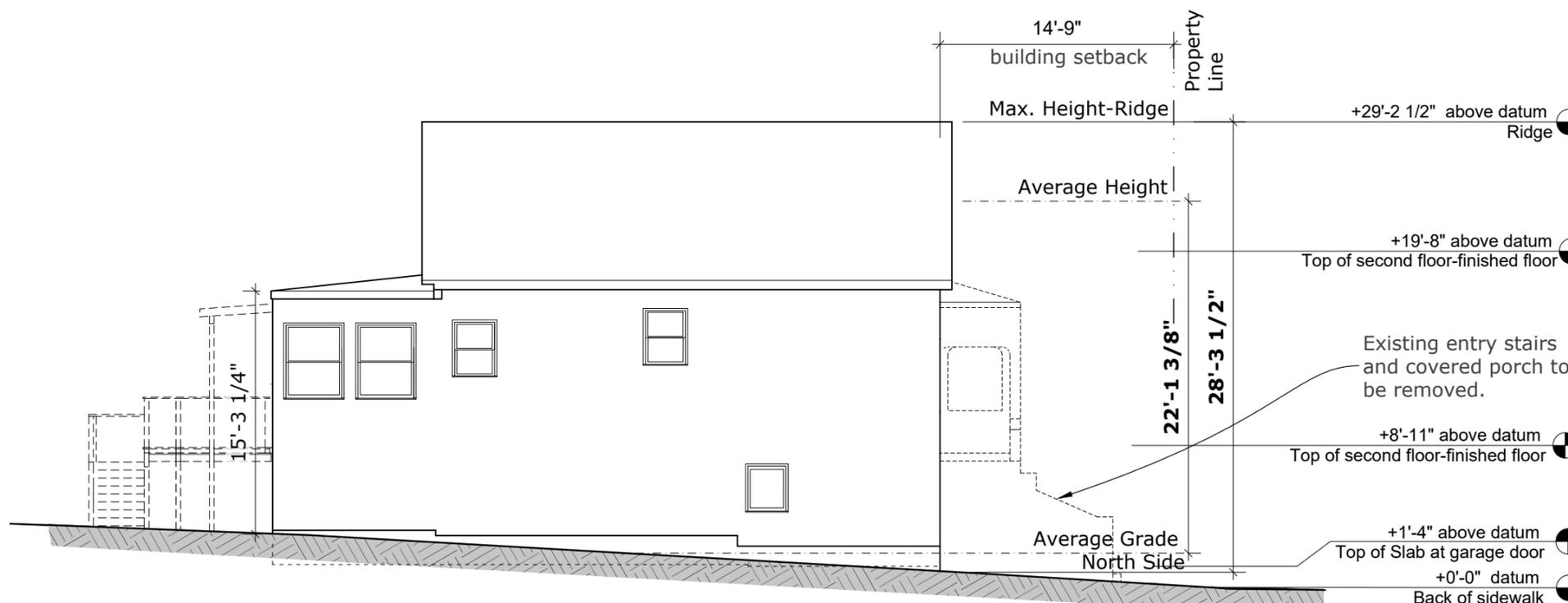
House raised 18"



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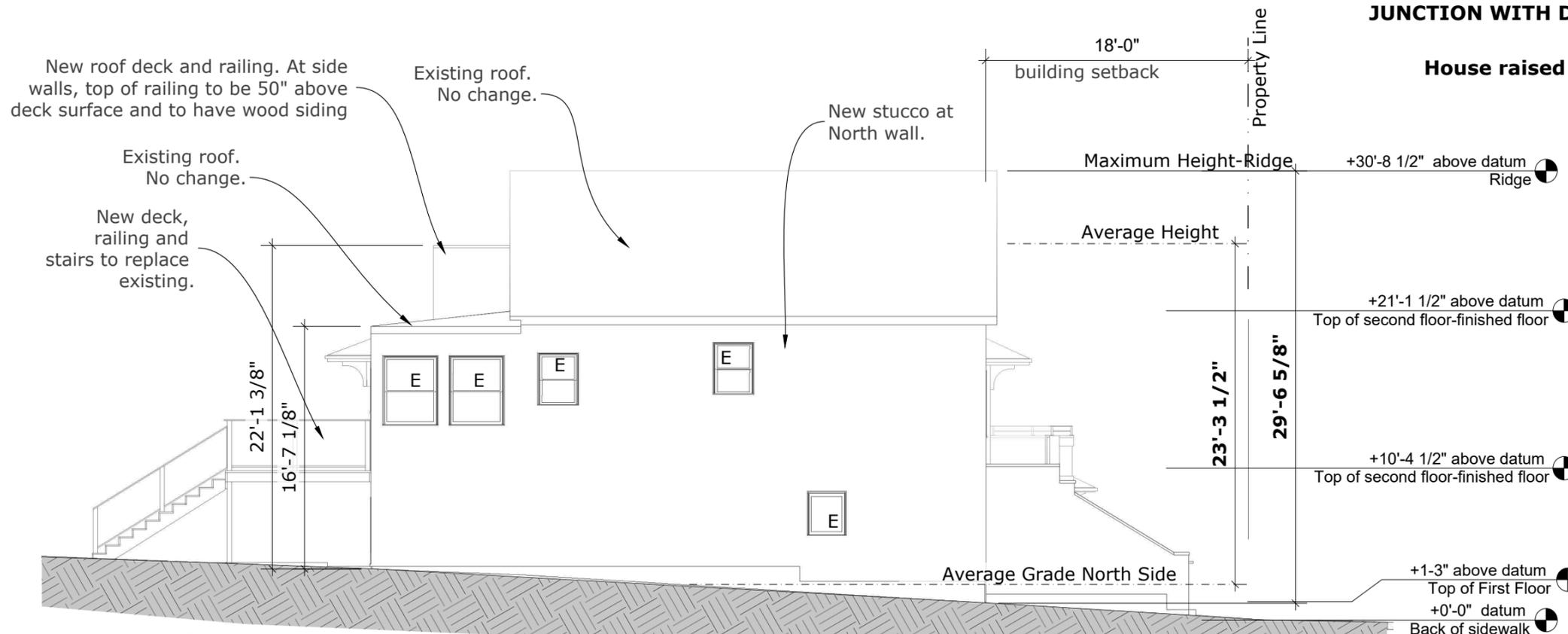


1205 Kains Ave.
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New ADU,
structural repair &
remodel



1b Existing North Elevation
A2.2 Scale: 1/8" = 1'-0"

DATUM ELEVATION: 0'-0"
IS BACK OF SIDEWALK AT
JUNCTION WITH DRIVEWAY



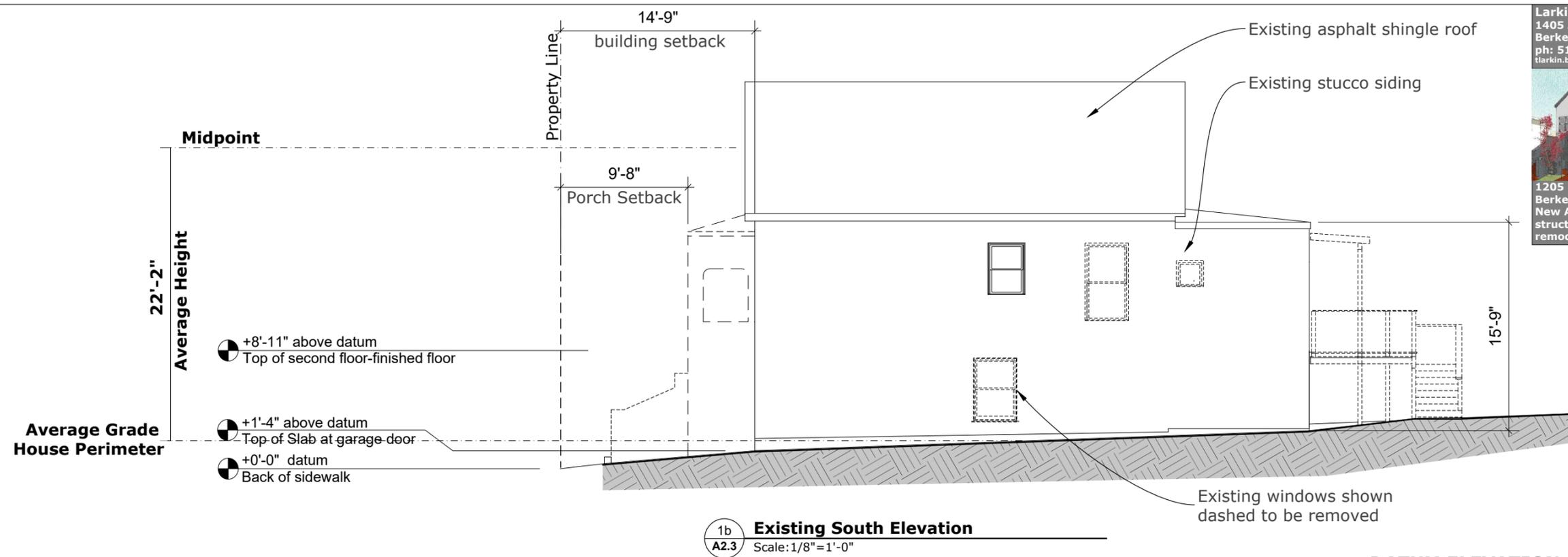
1 Proposed North Elevation
A2.2 Scale: 1/8" = 1'-0"

House raised 18"

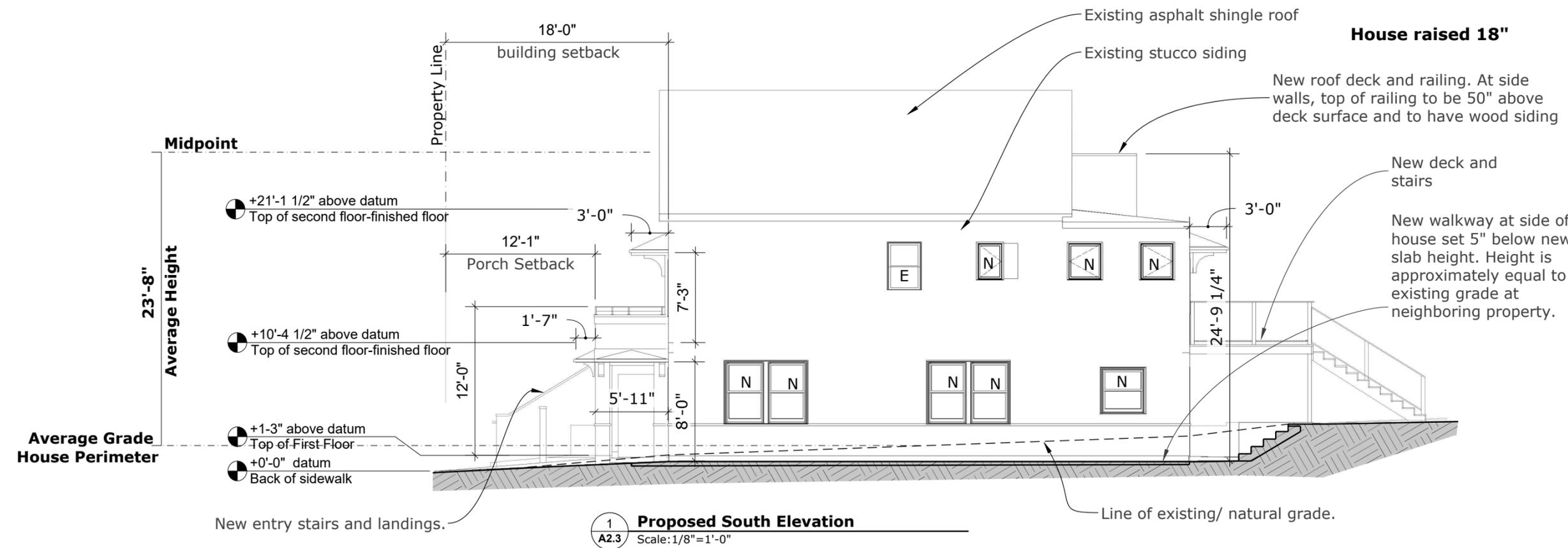
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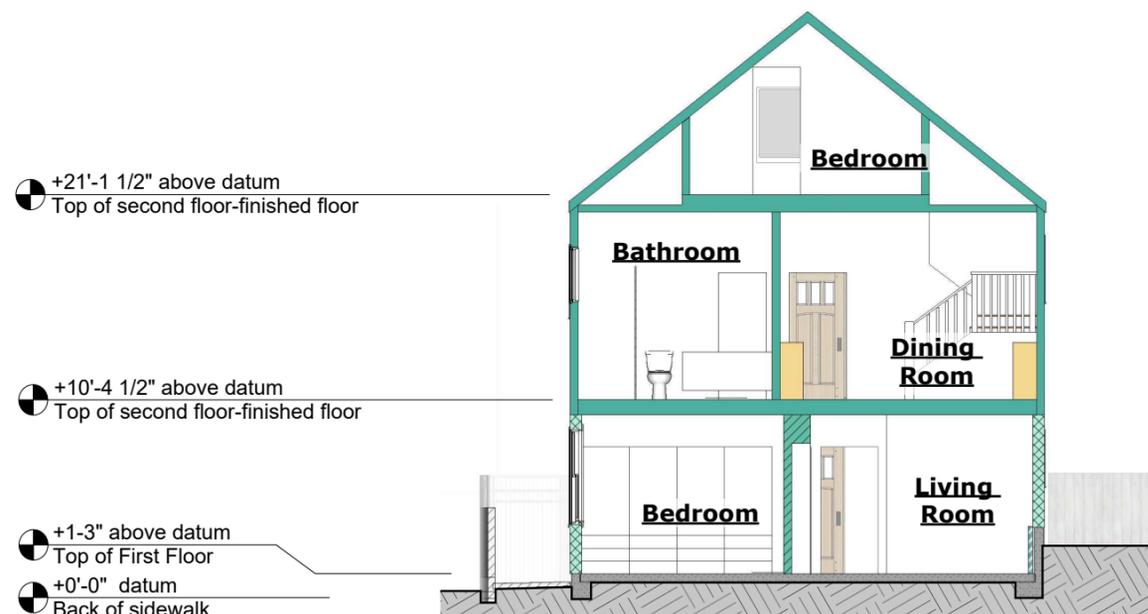


DATUM ELEVATION: 0'-0" IS BACK OF SIDEWALK AT JUNCTION WITH DRIVEWAY



House raised 18"

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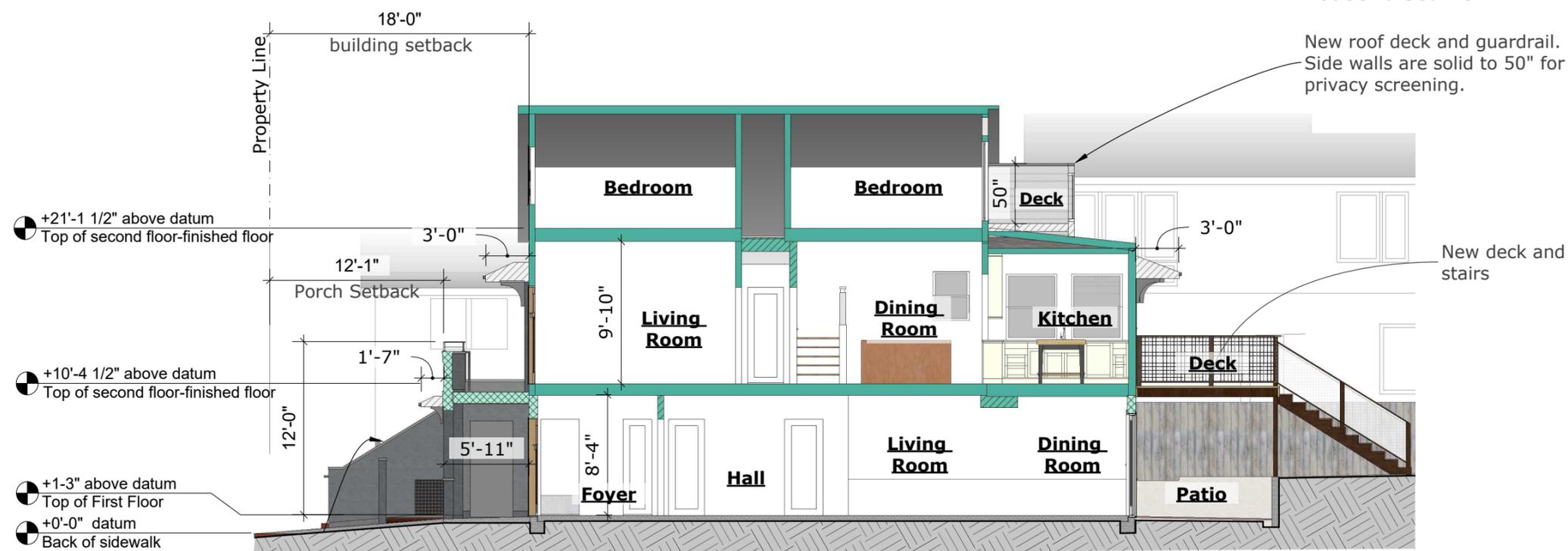


2 North-South Section
 A3.0 Scale: 1/8"=1'-0"

DATUM ELEVATION: 0'-0" IS BACK OF SIDEWALK AT JUNCTION WITH DRIVEWAY

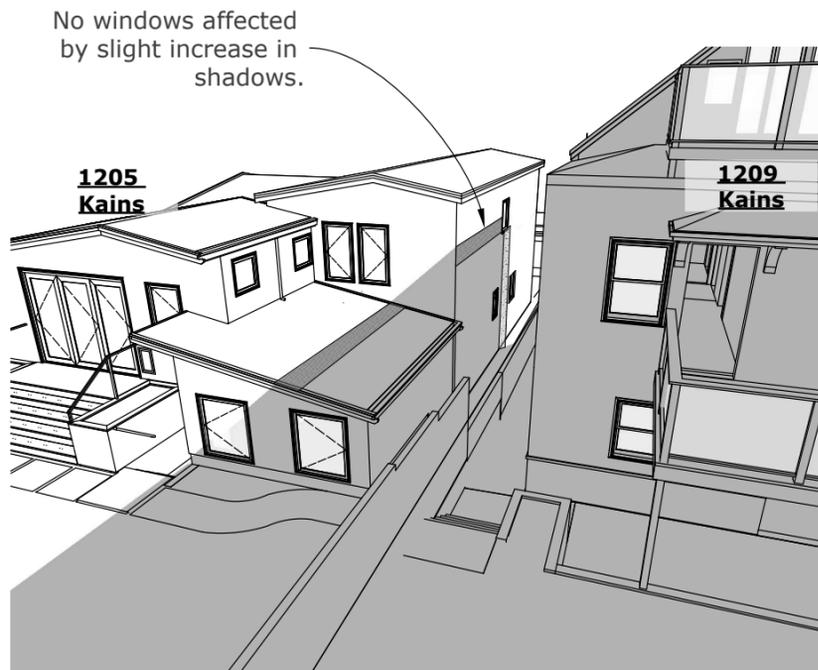
House raised 18"

New roof deck and guardrail. Side walls are solid to 50" for privacy screening.



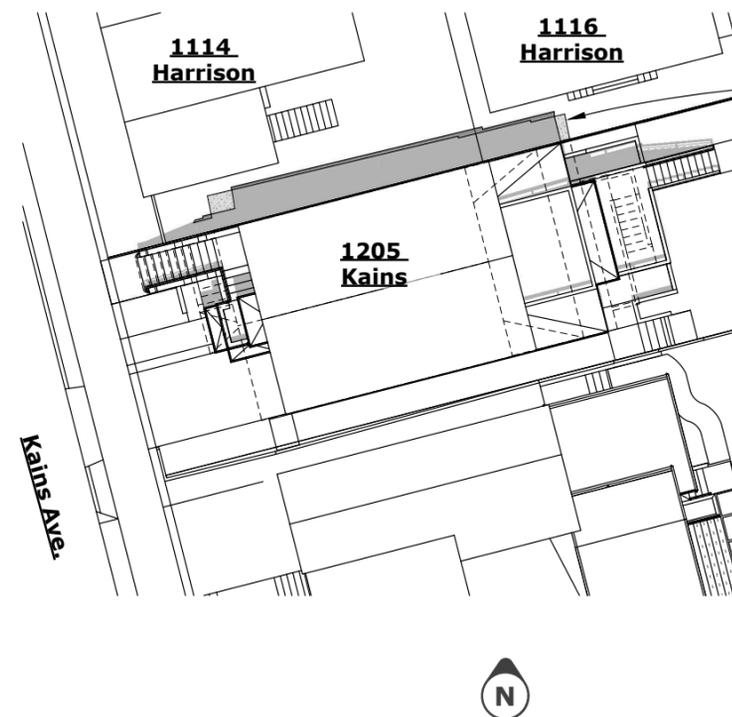
New entry stairs and landings.

1 East-West Section
 A3.0 Scale: 1/8"=1'-0"



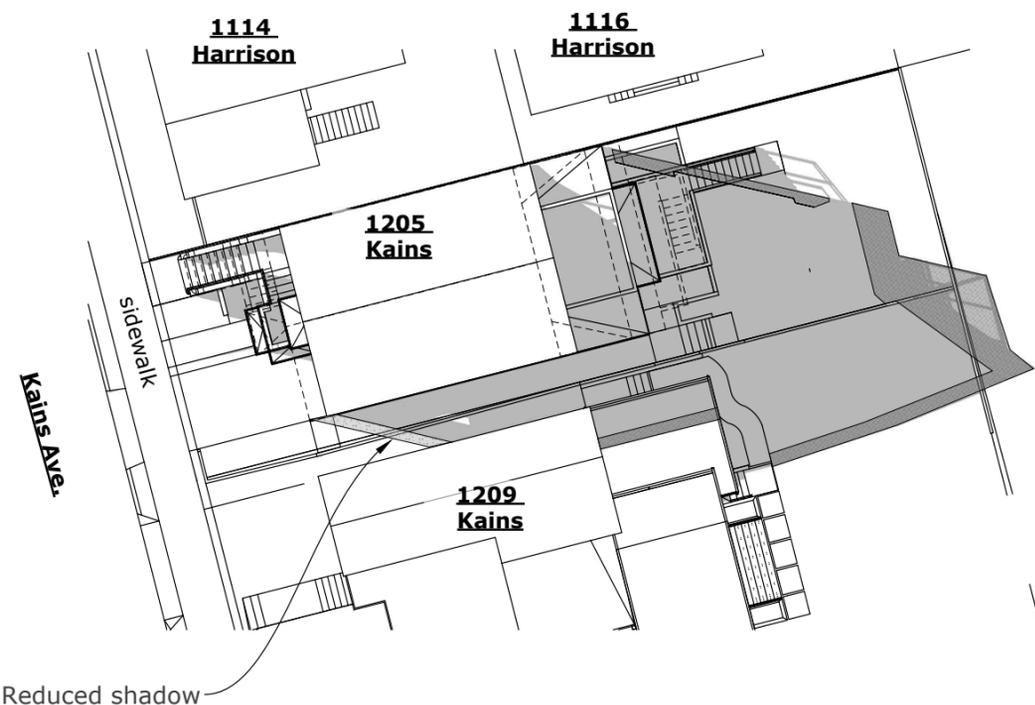
June 21- 2 hours before sunset -6:34 pm
Perspective View

Overhead Perspective views utilized to show faces of walls and ground plane. Shadow study created with 3d model geolocated and includes showing ground with real world grades. All buildings affected by shadows are shown in diagrams. Hatches indicate the additional or reduced shadows after work.

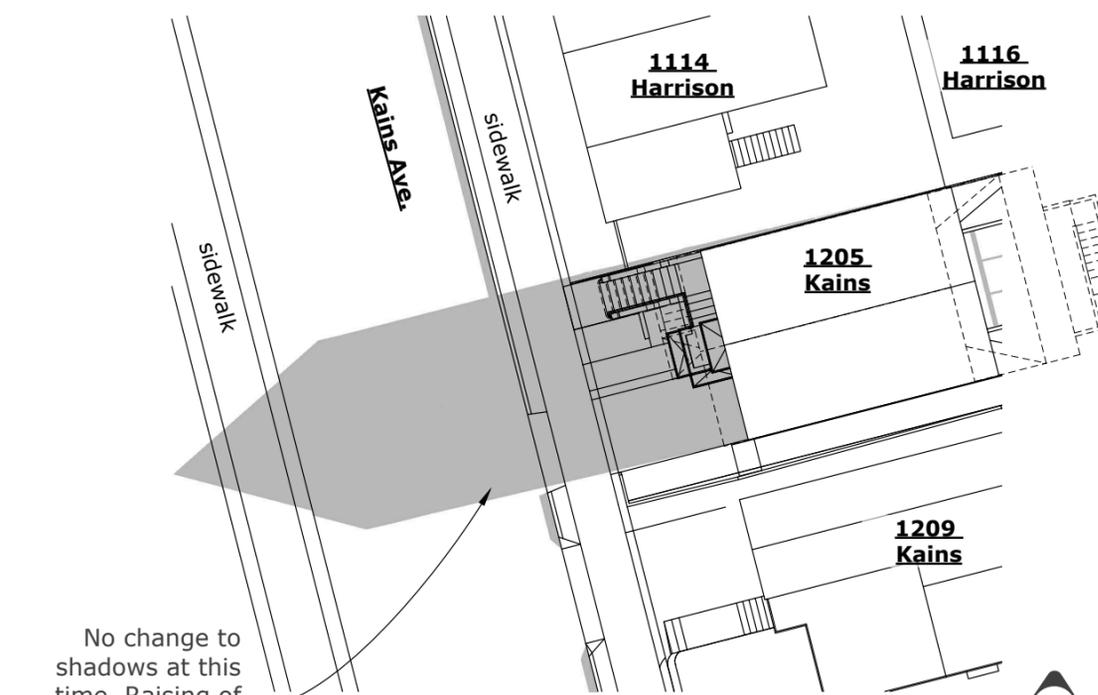


June 21- Noon
Plan View

Small areas of increased shadows and decreased shadows on ground of neighboring properties.



June 21- 2 hours before sunset -6:34 pm
Plan View



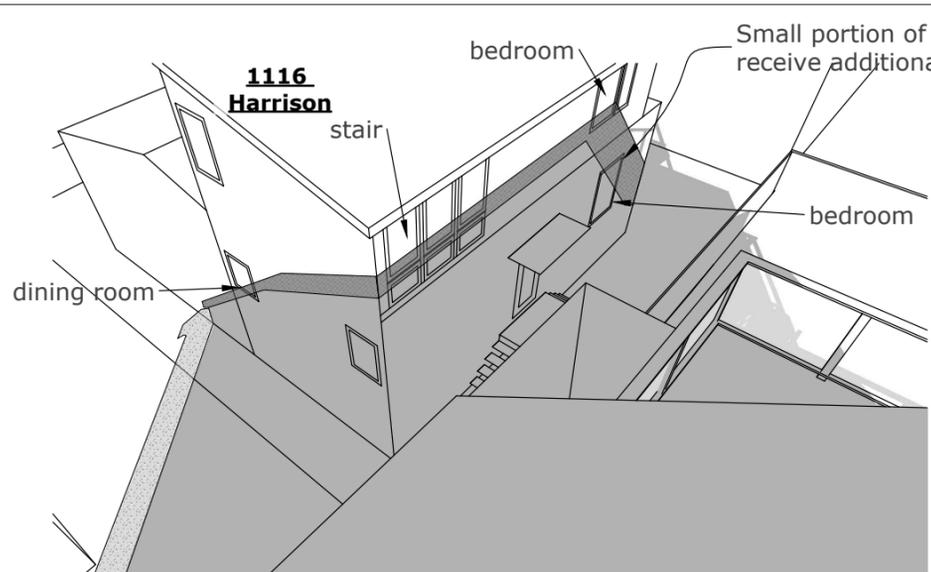
June 21- 2 hours after sunrise- 7:47am
Plan View

June 21 shadow study is also the application date shadow study.

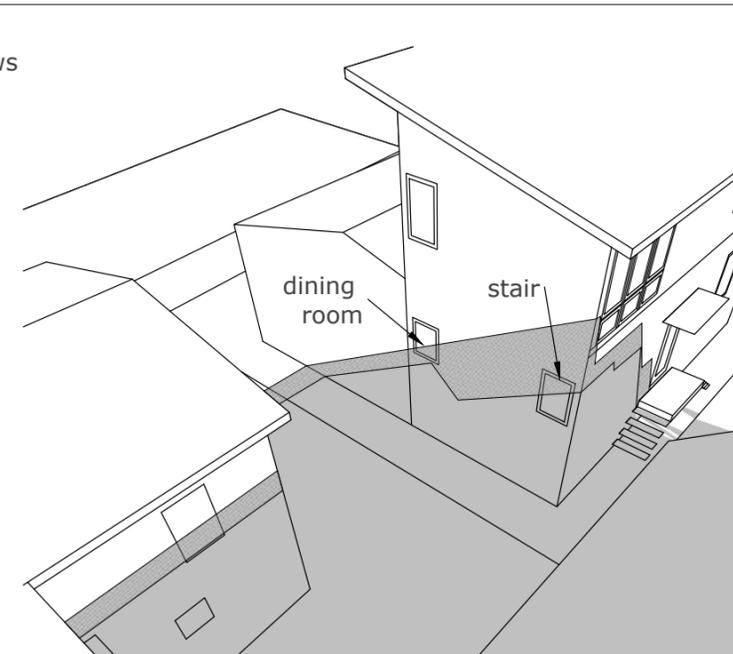
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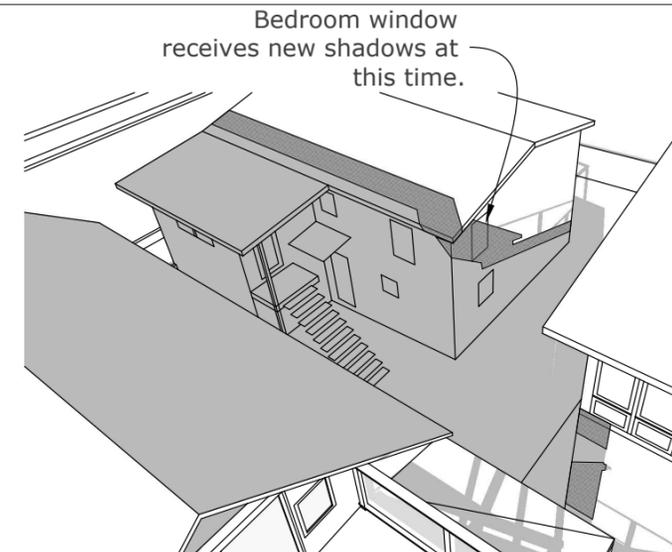
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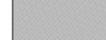
**December 21- 2 hours
 before sunset- 2:53 pm
 Perspective View**



**December 21- Noon
 Plan View**



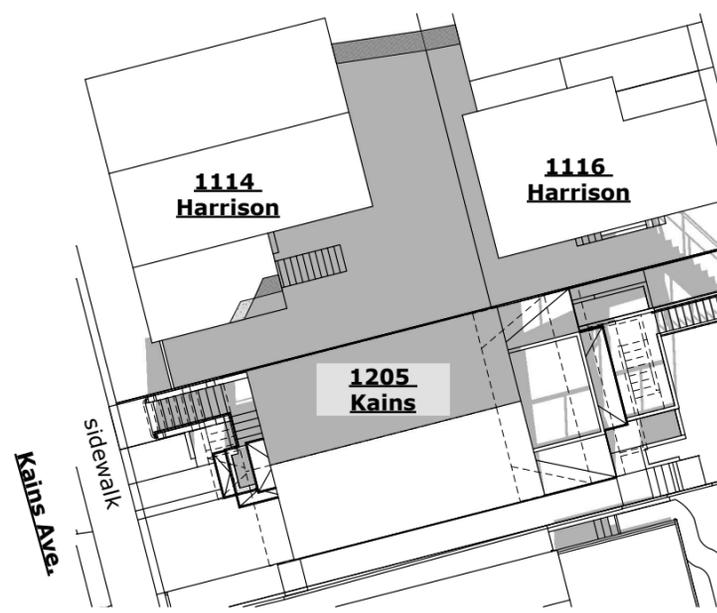
**December 21- 2 hours
 after sunrise- 9:21 am
 Perspective View**

-  Increased Shadows
-  Decreased Shadows
-  Existing Building

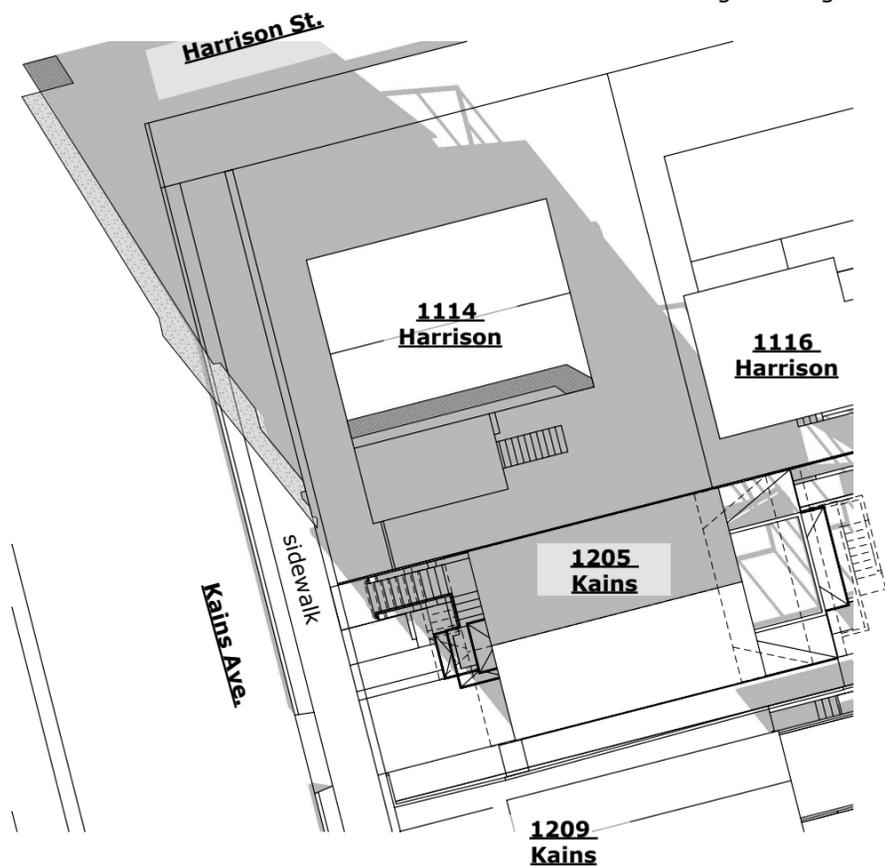
Overhead Perspective views utilized to show faces of walls and ground plane. Shadow study created with 3d model geolocated and includes showing ground with real world grades. All buildings affected by shadows are shown in diagrams. Hatch indicates the additional shadows after work.



**December 21- 2 hours
 before sunset- 2:53 pm
 Plan View**



**December 21- Noon
 Plan View**



**December 21- 2 hours
 after sunrise- 9:21 am
 Plan View**





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

1205 Kains Avenue

Use Permit #ZP2023-0102 for a residential addition to a single-family dwelling on a lot that is non-conforming for setbacks and lot coverage. The project would lift the dwelling and the height by 18-inches, resulting in an average height of 23-feet, 8-inches, move the dwelling back 3 feet, 3 inches toward the eastern boundary, and construct a balcony on the third floor at the rear of the dwelling.

The Zoning Adjustments Board of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance, Section [23.404.050 \(Public Hearings and Decisions\)](#)

When: Thursday, February 22, 2024, 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: LMDR - Low Medium Density Residential
- Zoning: R-2 - Restricted Two-Family Residential District

B. Zoning Permits Required:

- Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.324.050(D)(3) for an addition to a structure that exceeds the maximum allowed lot coverage;
- Administrative Use Permit pursuant to BMC Section 23.202.080(D) to construct a residential addition over 14-feet in average height; and
- Administrative Use Permit pursuant to BMC Section 23.324.050(D)(2) to vertically and horizontally extend a building wall projecting into a minimum required setback.

C. CEQA Recommendation: Categorically exempt pursuant to Section 15301 of the CEQA Guidelines (“Existing Facilities”).

D. Parties Involved:

- Applicant Tim Larkin, Larkin Design, 1405 Josephine Street, Berkeley
- Property Owner Mary Mulvehill & David Smith, 1205 Kains, 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, Vicky Schlepp, at (510) 981-7422 or vschlepp@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@berkeleyca.gov) to request hard-copies or electronic copies.

Notice Concerning Your Legal Rights:

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

1. If you challenge the decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice.
2. You must appeal to the City Council within 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 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 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.