



Department of Conservation and Development

County Planning Commission

Wednesday, August 12, 2020 – 6:30 P.M.

STAFF REPORT

Agenda Item # _____

Project Title:	Appeal of Zoning Administrator's Approval of a Kensington Design Review for a 326-square-foot Addition and Deck Replacement
County File(s):	#DP19-3019
Applicant:	Howard McNenny
Owner:	Mary Hanley
Appellant:	Jillian Blanchard, representing Nicole Ashar and Joseph Petroziello
Zoning/General Plan:	Single-Family Residential (R-6), Tree Obstruction of Views (-TOV), and Kensington (-K) Combining Districts / Single-Family Residential-High Density (SH)
Site Address/Location:	120 St. Albans Road, Kensington / APN: 572-124-006
California Environmental Quality Act (CEQA) Status:	The proposed project is exempt under CEQA Guidelines Section 15301(e).
Project Planner:	Margaret Mitchell, Planner I (925) 674-7804
Staff Recommendation:	Approve (See Section II for Full Recommendation)

I. PROJECT SUMMARY

This is an appeal of the Zoning Administrator's decision to approve a Development Plan for a Kensington Design Review for an approximately 326-square-foot two-story addition, an interior remodel of the upstairs, and replacement of an existing deck at the rear of the existing single-family residence.

II. RECOMMENDATION

Staff recommends that the County Planning Commission DENY the appeal and UPHOLD the

Zoning Administrator’s decision for #DP19-3019, based on the attached findings and subject to the attached conditions of approval.

III. BACKGROUND

This hearing is an appeal of the Zoning Administrator’s January 22, 2020 decision to approve a Kensington design review for a 326-square-foot addition to a residence located at 120 St. Albans Road in the Kensington area. The Kensington design review request is for the construction of an approximately 326-square-foot two-story addition to the rear of an existing single-family residence. The project was first submitted as County File #VR18-1032, requesting approval of a three-story addition (where two and a half stories is allowed) located towards the northern side of the rear of the residence where the existing residence is three stories due to a small basement/storage space. The project was then redesigned to a two-story addition relocated towards the southern side of the rear of the residence where the existing residence is two stories above a crawl space, thus eliminating the variance. A Kensington design review application (County File #KR19-0011) was submitted on July 26, 2019. Two hearing requests were received during the required 34-day public comment period for the Kensington design review. A development plan application (County File #DP19-3019) for the two-story addition was then submitted on September 18, 2019.

The project was scheduled at the December 16, 2019 Zoning Administrator hearing. The Zoning Administrator opened the public hearing for this item, public comments were heard, and the item was continued to an open public hearing on January 6, 2020. At the January 6, 2020 meeting, additional public comments were heard. The Zoning Administrator closed and continued the item to the January 22, 2020 meeting. At the January 22, 2020 meeting, the Zoning Administrator re-opened the public hearing for this item, and more testimony was heard. The Zoning Administrator approved the item with changes to finding #3 and finding #7, and changes to Condition of Approval (COA) #3 and the addition of COA #4 and COA #5.

Staff received one letter on February 3, 2020, appealing the Zoning Administrator’s decision to the County Planning Commission.

IV. GENERAL INFORMATION

- A. General Plan: The subject property is located within the Single-Family Residential- High Density (SH) General Plan Land Use designation.
- B. Zoning: The subject property is located within a Single-Family Residential (R-6) zoning district, Tree Obstruction of Views (-TOV), and Kensington (-K) combining district.
- C. California Environmental Quality Act (CEQA): The proposed project is exempt under CEQA

Guidelines Section 15301(e), which includes additions to existing structures that are less than 2,500 square feet or do not exceed 50 percent of the existing structure, whichever is less.

D. Lot Creation: The subject property is Lot 7 of Berkeley Highlands Terrace, Block 5. The existing single-family residence was constructed in 1938.

E. Previous Applications:

a. VR18-1032: A variance application for a 371-square-foot three-story addition (where two and a half stories is allowed) at the rear of an existing three-story residence was submitted on October 31, 2018. The project was redesigned and submitted under County File #KR19-0011.

b. KR19-0011: A Kensington design review application for a 326-square-foot two-story addition to the rear of an existing three-story residence was submitted on July 26, 2019. A hearing was requested and County File #DP19-3019 was filed.

V. SITE/AREA DESCRIPTION

The subject property is located within a residential neighborhood in the area of Kensington. The subject property is surrounded by residential lots ranging in size from 3,696 square feet to 8,400 square feet in area, all of which have been developed with residential dwellings and related accessory structures. Interstate 80 is located approximately 1.8 miles west of the property, the El Cerrito city limit is approximately 0.6 miles west and 0.6 miles north of the property, and the Richmond city limit is approximately 0.3 miles east of the property.

Properties within the surrounding neighborhood are rectangular in shape, are approximately 35 to 50 feet in average width, and are approximately 90 to 120 feet deep. As such, many of the surrounding parcels are substandard in size with respect to the 6,000 square-foot minimum lot size and 60-foot average width required for the R-6 Zoning District. Like the surrounding properties, the subject property is a rectangular shaped 4,641 square feet in size parcel, is 39 feet in average width, and is approximately 119 feet deep.

There is one 2,006-square-foot single-family residence located towards the front (east side) of the property, there are no associated accessory structures, and there are two trees located in the front of the property. The subject property is gently sloped at the very front of the property, and then continues at a steeper slope downhill from the front of the existing residence to the rear of the property. The existing two bedroom, one and a half bathroom, three-story residence was built on the subject property in 1938. The main floor of the residence contains a small entry way, a living room (with access to a deck), a dining room, a kitchen with a breakfast nook, a half bathroom, and a one-car garage. The deck extends approximately 9

feet from the rear of the residence. The upper floor contains a master bedroom, a smaller bedroom that is accessed through the office space (which has access to a small balcony at the rear of the residence), and a bathroom. The lower level contains a 140-square-foot storage room in the northwest corner of the residence, with the rest of the lower level containing unfinished and unconditioned crawl space that is less than seven feet in height to the floor above.

VI. PROJECT DESCRIPTION

The applicant requests approval of a Kensington design review development plan for an approximately 326-square-foot two-story addition at the rear of the existing three-story single-family residence, an interior remodel of the upper floor, and replacement of an existing deck at the rear of the residence. The addition to the main floor will extend the living room and dining room by five feet to the west, with a second access to the deck from the dining room. The existing deck will be replaced by a new deck that extends approximately 10.5 feet west from the addition. The addition to the upper floor will extend the master bedroom and bathroom approximately seven feet to the west, creating an approximately two-foot overhang over the new deck. The remodel of the existing interior space, plus the small addition, will allow for a master bedroom with an ensuite master bathroom and walk-in closet, three smaller bedrooms, and an additional bathroom. The addition to the lower level of the residence will add five square feet of space to the existing storage room (above which will only be one floor at this new addition), and the rest will contain unfinished and unconditioned crawl space that is less than seven feet in height to the floor above.

VII. KENSINGTON MUNICIPAL ADVISORY COUNCIL (KMAC)

The project was heard at the Tuesday, October 29, 2019 KMAC meeting. KMAC voted unanimously to approve the project.

VIII. APPEAL OF THE ZONING ADMINISTRATOR'S DECISION

On February 3, 2020, Jillian Blanchard, representing Nicole Ashar and Joseph Petroziello (neighbors at 118 St. Albans Road, Kensington) filed an appeal with the Department of Conservation and Development against the decision of the Zoning Administrator to approve the proposed project. The appeal points have been summarized and addressed below.

- A. Summary of Appeal Point #1: The ground floor of the existing residence is considered a story, and therefore the entire house is three stories. The addition would extend all three stories (where only two and a half stories is allowed), and therefore a variance is required.

Staff Response: The Kensington Combining District ordinance defines crawl spaces as “an area at, just above, or just below grade and enclosed within the building or structure, which

is unconditioned and not habitable as a result of insufficient ceiling height to meet applicable building code standards (Section 84-74.404(d))” and defines basements as “any area in a building or structure where the finished floor directly above the area is *less than* four feet above preconstruction grade or finished grade, whichever is lower (Section 84-74.404(b)).” As defined, basements and crawl spaces are not included in gross floor area calculations and are not considered living areas. Per Section 82-4.266, a basement or cellar is considered a story when the “finished floor level directly above a basement or cellar is more than six feet above grade at any point.”

The existing residence contains a 140-square-foot storage room in the rear or northwest corner of the lower level of the residence that has a ceiling height of approximately seven feet with two stories located above and is therefore three stories in this location of the residence only. Aside from the northwest corner of the residence, the remainder of the existing residence is two stories above an area that is inaccessible, uninhabitable, unfinished, and unconditioned, and is therefore considered a crawl space. The new addition extends an area that is two stories above a crawl space, and the addition itself is also two stories above a crawl space, and therefore, the new construction does not require a variance for the number of stories.

- B. Summary of Appeal Point #2: The project does not comply with setback requirements and requires a variance.

Staff Response: Since the lot was created prior to the adoption of zoning for the area and the width of the front of the property is 35 feet, sliding scale applies and side yards of 3 feet and with an aggregate side yard of 8 feet is allowed for any *new construction* (Section 82-14.004). The existing residence has a 1.5-foot side yard setback with a 3.5-foot aggregate side yard setback. The new addition and deck meet the minimum 3-foot side yard setback required, and when combined with the existing 5-foot side yard setback to the existing nook at the rear of the residence depicted on the plans submitted with the application, met the minimum 8-foot aggregate side yard setback required. The applicant later submitted a site plan at the Zoning Administrator hearing showing that the actual existing side yard setback to the existing nook at the rear of the residence is 4-feet 10-inches; therefore, the aggregate side yard setback is 7-feet 10-inches. The Zoning Administrator added condition of approval (COA) #5, which states that the deck and addition must be set back by 3-feet 2-inches in order to comply with the 8-foot aggregate setback. Plans are reviewed by the Community Development Division (CDD) prior to issuance of a building permit, and CDD will confirm that the required setback is met. The Building Inspection Division conducts inspections during construction to ensure that projects are built to the approved specifications.

- C. Summary of Appeal Point #3: The project may cause significant impacts to long-range views of the Bay Bridge and downtown San Francisco by extending at least 3.5 feet into the appellants' current views. The deck is not a replacement deck; it is an unnecessarily large deck that will extend an additional 5.5 feet into the best part of the appellants' Bay Bridge view from their kitchen sink window. County staff repeatedly avoided the appellants' requests for meetings and site visits to see the impacts to the views.

Staff Response: The appellant's residence is located adjacent to the subject property to the north. The views of the San Francisco Bay from the subject property and the appellants' property are to the west (including southwest and northwest). Although the upper floor of the addition will extend approximately seven feet from the existing residence, the addition will only extend approximately 2.5-feet beyond the existing nook of the subject property which is located on the opposite end of the rear of the residence, which is what will be visible to the appellants. The new deck extends approximately an additional 8.5 feet beyond the new upper floor.

As seen on the attached aerial imagery, the appellants' residence extends approximately 20 feet further to the west than the subject residence, providing many views of the bay that will remain beyond the addition. As also seen on aerial imagery, many of the residences in the surrounding neighborhood have rear decks of a similar size or larger, including the appellants' residence, which has two rear decks of a similar size, one of which was extended under County File #DP08-3016. To address the concerns regarding the new deck, the Zoning Administrator added COA #4, which states that the deck railing shall be cable or glass material to minimize the impacts to the neighboring property.

Staff contacted the appellants several times to set up a site visit prior to the Zoning Administrator hearing, but the appellants were repeatedly unavailable and asked if photos were sufficient. Therefore, Staff's analysis of the views are based on the analysis of the plans, and photos provided by the appellants, the applicant, and the Kensington Municipal Advisory Council (KMAC). Photos of the south facing views from the master bathroom and the kitchen submitted by the appellants to illustrate the impacts to their bay views, differ from those taken by KMAC and the applicant at a site visit conducted by KMAC. Despite the differences, all of the photos show that a small portion of the views to the southwest will be impacted by the addition, but none of the western facing bay views will be impacted by this project. Therefore, the impact to the views will not be significant.

- D. Summary of Appeal Point #4: The large size of the new deck will impact the appellants' privacy from the master bathroom upstairs, and "every time the applicants have people out on their deck, the Neighbors will be forced to look at them from their kitchen sink window instead of their previous Bay Bridge and Bay views" (Appeal letter, page 7).

Staff Response: The plans submitted by the applicant identify a window in the master bathroom portion of the addition that faces northwest, which may have impacted the privacy of the appellants' residence. In order to reduce privacy impacts, the Zoning Administrator revised COA #3, stating that the applicant shall remove this window from the addition.

The intent of the proposed deck is to be used and enjoyed by the owners of the subject property. Residences are allowed to have decks, and much like other residences within the neighborhood, the appellants' residence even has more than one deck. The deck does not increase impacts to privacy more than what is existing. The proposed deck is on the lower level of the residence and the appellants' master bathroom is on the top level of the residence, so the privacy of the master bathroom is not compromised. As stated previously, the Zoning Administrator added COA #4 to reduce impacts to the neighboring views.

- E. Summary of Appeal Point #5: As stated by the real estate agent that sold the property to the appellants, the impacts to the appellants' views and privacy will in turn impact the value of the property.

Staff Response: The view is to the west and the addition will not block the existing western views. Typically, additions add value to the subject property and the neighborhood. Given the scale of this modest addition of 326 square feet and extension of the existing deck, the project is consistent with the other neighbors that have added to their residences. The Kensington Combining district standards recognize the rights of property owners to improve the value and enjoyment of their property. In general, adding square footage to a residence, creating a better floor plan that is consistent with the existing residence, and increasing views adds enjoyment and value to a property.

- F. Summary of Appeal Point #6: The Kensington Combining District Ordinance adds another layer of review required by the County to protect neighboring views, privacy, and property values. As currently designed, the project violates these standards and the Zoning Administrator based their decision on the applicant's interests. As previously suggested, the project should be reduced so that the upper floor of the addition does not extend further than the existing house on the north side, and so the deck does not extend further than the existing deck. Story poles should be installed to determine the projects' true impacts to the views.

Staff Response: The purpose of the Kensington Combining District is to ensure that "future development recognizes the rights of property owners to improve the value and

enjoyment of their property while minimizing impacts upon surrounding neighbors and not substantially impairing the value and enjoyment of their neighbors' property [and to] promote the community's values of preservation of views, light and solar access, privacy, parking, residential noise levels and compatibility with the neighborhood with regard to bulk and scale (Section 84-74.204)." As previously stated, COA #3 has been modified to reduce the privacy impacts caused by the northern facing window in the master bathroom portion of the addition, and COA #4 has been added to ensure the railing of the deck does not impact the appellants' views to the southwest. As shown in photos provided by the appellant, the applicant, and KMAC, the views to the southwest will be minimally impacted by the modest addition, and none of the views to the west will be impacted. As seen in aerial photographs, the appellants' residence extends much farther to the west than the subject residence, and therefore has full views to the west that will not be impacted by this project. Therefore, the project has been designed and modifications have been made to ensure that the project meets the Kensington Combining District requirements.

- G. Summary of Appeal Point #7: It is possible that this project has aesthetic impacts that have not been properly reviewed under CEQA, and could potentially have significant environmental impacts, making a categorical exemption inappropriate.

Staff Response: Additions to existing structures that are less than 2,500 square feet or do not exceed 50 percent of the existing structure are exempt from review. Single-family residences are also exempt. The addition of 326 square feet to an existing single-family residence and potential impacts to views from private property does not constitute a significant impact to the environment.

- H. Summary of Appeal Point #8: Through the entire process, the County stonewalled the appellants' attempts to learn about the proposed project by denying them access to the file on multiple visits to the County. The appellants were forced to hire land use counsel, who have filed 12 Public Records Act (PRA) requests to learn about the project. County staff did not respond to the neighbors until they hired a land use firm.

Staff Response: County staff returned concerned phone calls and emails from the appellants, even prior to the hiring of a land use firm, and has met with them in person on multiple occasions. The project file has been available to the appellants, and County staff is unaware of the appellants being denied access to the file. County staff followed proper procedures for reviewing the project and informed the appellants of the process.

- I. Summary of Appeal Point #9: The County has failed to provide mandatory notice of the various land use proposals at the subject property, even after the appellants requested to be noticed. County staff failed to respond to meeting requests. County staff refused to

visit the appellants' property to better understand the issues. After meeting with County staff, who did not take the appellants' concerns seriously, County staff verbally guaranteed approval to the applicants.

Staff Response: The County properly noticed neighbors within 300-feet of the subject property, which includes the appellants (property owners of 118 St. Albans Road), for County File #KR19-0011. In accordance with the County Code, no other public notifications have been sent for the project other than the original notification for the Kensington design review, and the noticing for the Zoning Administrator hearings. An affidavit has been prepared for these County notifications to neighbors.

When County staff was asked about a site visit to the appellants' property, it was regarding a site visit conducted by KMAC as part of their review process. As previously stated, when County staff requested a site visit prior to the Zoning Administrator hearing, the appellants were repeatedly unavailable and offered photos instead. County staff met with the appellants when they arrived at the County office without an appointment multiple times when staff was available.

- J. Summary of Appeal Point #10: The staff report includes various falsehoods and inaccuracies, including the dimension of the proposed deck, the dimensions of the upper level, the elevation of the property, and stating that there are no views to the south. The applicant has repeatedly misrepresented the project, and even admitted that the project requires a variance.

Staff Response: To clarify previous explanations and descriptions, dimensions of the project have been further explained in this staff report. The views to the south are of the subject property's single-family residence. The views to the west, including those to the southwest, are minimally impacted by this very modest addition to the existing residence. The misunderstanding of a crawl space versus a story has led to the belief that a variance is required.

IX. STAFF ANALYSIS

The existing single-family residence is located within the R-6 Zoning District, and the addition continues the existing residential use of the property. The existing residence already consists of a third story due to the 140-square-foot storage room in the northwest corner of the lower level of the residence. The addition is on the southern portion of the west side of the residence where there are two stories above an unfinished and unconditioned crawl space that is less than seven feet in height to the floor above. The addition is also two stories above an unfinished and unconditioned crawl space that is less than seven feet in height to the floor above. The existing residence is 31 feet 5 inches in height with a pitched roof. The addition is

26 feet in height, is located downhill from the tallest portion of the existing residence and has a flat roof. The existing residence has a 1.5-foot side yard setback with a 3.5-foot aggregate side yard setback. Based on the year the lot was established, reduced side yard setbacks are allowed for new construction. The addition and deck meet the minimum three-foot side yard setback required, and with the addition of COA #5, the deck and addition will also meet the required aggregate side yard setback of 8 feet. Overall, the project meets the required setbacks and the maximum height allowed in the R-6 zoning district.

The Kensington Combining District (-K) includes seven criteria for approval of residential projects. As detailed in the attached Kensington Combining District Findings, staff finds that the project satisfies all seven criteria. The existing views of the bay are to the west. The addition extends five feet to the west beyond the existing residence, and the new deck extends approximately 10.5 feet to the west beyond the addition. The additions are minimal and therefore, will not substantially impact views to the west. As the patterns of the sun are generally in an east to west direction, the small addition would not impact light or solar access to the adjacent properties. Although the new deck extends further west than the existing deck, the neighbors' privacy will be minimally impacted, since there is an existing deck and the same view of the neighboring homes can be seen from the back yard. There are new windows in the addition that face northwest and southwest, but they are angled such that the subject property owners will be able to enjoy the bay views without looking directly into the neighbors' homes.

The proposed project does not substantially alter the existing residence that has been located on the subject property since 1938 and will maintain the existing design of the residence, which includes painted wood siding that matches the existing residence. The proposed interior remodeling will not change the footprint or exterior design of the residence. As such, no part of this project will significantly affect the architectural appearance of the residence, or the neighborhood in general as seen from the public roadway. Based on the parcel size of 4,641 square feet, the maximum gross floor area allowed is 2,400 square feet. Although the proposed project would increase the gross floor area of the residence from 2,006 square feet to 2,332 square feet, it is still below the allowed threshold. Therefore, the project is compatible with the community's values of preservation of views, light and solar access, privacy, parking, residential noise levels and compatibility with the neighborhood with regard to bulk and scale.

The Tree Obstruction of Views Combining District (-TOV) regulations do not apply to the proposed project, because no new trees, nor removal, nor alteration of existing trees are proposed which would alter views in the neighborhood.

X. CONCLUSION

Staff finds that the proposed development is consistent with the Single-Family Residential High-Density (SH) General Plan land use designation and complies with the intent and

purpose of the Single-Family Residential District (R-6), Kensington Combining District (-K), and Tree Obstruction of Views Combining District (-TOV). Two conditions of approval have been added to the attached Findings and Conditions of Approval; one that requires the deck and addition to be setback 3-feet 2-inches in order to comply with the 8-foot aggregate side yard setback, and one that requires the deck railing to be cable or glass. The Zoning Administrator also modified COA #3 to address concerns brought up by the appellant regarding privacy. No compelling evidence has been provided by the appellant to overturn the decision of the Zoning Administrator to approve the project. Therefore, staff recommends that the County Planning Commission deny the appeal and approve County File #DP19-3019, based on the attached findings and subject to the attached conditions of approval.

Attachments:

- Findings and Conditions of Approval
- Maps: Parcel Map, General Plan, Zoning, Aerial Photograph
- Photos: Aerial Views, Site Photos, Photos from Appellant, Applicant, and KMAC
- Site Plan with Additional Setback Measurements
- Project Plans
- Appeal Letter
- Public Comments: 2 Letters of Opposition
- ZA Staff Reports
- PowerPoint Presentation

**FINDINGS AND CONDITIONS OF APPROVAL FOR COUNTY FILE #DP19-3019;
HOWARD MCNENNY (APPLICANT) AND MARY HANLEY (OWNER)**

FINDINGS

A. Growth Management Performance Standards

1. Traffic: Policy 4-c under the Growth Management Program (GMP) requires a traffic impact analysis be conducted for any project that is estimated to generate 100 or more AM or PM peak-hour trips. The addition to the existing residence will generate minimal traffic trips to and from the project site during construction and no additional traffic trips post construction. Therefore, a traffic impact analysis is not required.
2. Water: The GMP requires new development to demonstrate that adequate water quantity and quality can be provided. The subject property currently receives water service from the East Bay Municipal Utility District (EBMUD). EBMUD has reviewed the project, and the project is not anticipated to significantly increase the demand for water service in the area.
3. Sanitary Sewer: The GMP requires that new development demonstrate that adequate sanitary sewer quantity and quality can be provided. The subject property currently receives sanitary sewer service from the Stege Sanitary District. The project is not anticipated to significantly increase the demand for sanitary sewer service in the area.
4. Fire Protection: The fire protection standards under the GMP require that a fire station be within one and one-half miles of development in urban, suburban and central business district areas, or requires that automatic fire sprinkler systems be installed to satisfy this standard. The project site is within the El Cerrito/Kensington Fire Department jurisdiction and will be required to comply with current fire codes and regulations. The addition to the existing residence would not increase demand for fire services. The Fire Department will review the project for a building permit.
5. Public Protection: Public protection standards under the GMP require that a Sheriff Facility standard of 155 square feet of station area and support facilities per 1,000 in population shall be maintained within the unincorporated area of the County. The addition to the existing residence and will not increase the demand for police service facilities as the project will not increase the population.
6. Parks & Recreation: Parks and recreation standards under the GMP require three acres of neighborhood park area per 1,000 in population. The project will not

increase the demand for parks or recreation facilities, as the project will not increase the housing stock in the County.

7. Flood Control & Drainage: No portion of the subject property is located within a 100-year flood area as determined by the Federal Emergency Management Agency. In addition, the project does not involve the removal, construction, or alteration of any dams or levees within the County. Therefore, further analysis in relation to increased flood risks as a result of the project is not required.

B. Kensington Combining District Findings

The Kensington Combining District (-K) requires that any permit for development or expansion of the envelope of a building or structure satisfy seven criteria before a project is approved:

1. Recognizing the rights of property owners to improve the value and enjoyment of their property;

Staff Finding: The project includes an approximately 326-square-foot two-story addition, an interior remodel of the upstairs, and replacement of an existing deck at the rear of the existing three-story single-family residence. The addition creates more living space and the interior remodel of the upstairs allows for additional bedrooms and an additional bathroom. The development enhances the livability of the residence, and thereby improves the value and enjoyment of the residence.

2. Recognizing the rights of property owners of vacant lots to establish a residence that is compatible with the neighborhood in terms of bulk, scale and design;

Staff Finding: The subject property is not vacant, so this criterion does not apply.

3. Minimizing impacts upon surrounding neighbors;

Staff Finding: The development has been designed to minimally impact surrounding neighbors. Partly in response to comments from the neighbor to the north, the addition is located on the southern portion of the west side of the residence. The addition to the main floor will extend the living room and dining room by five feet to the west and the deck will extend another 10.5 feet. The addition to the upper floor will extend the master bedroom and bathroom approximately seven feet to the west, creating an approximately two-foot overhang over the new deck. The addition and deck meet the required minimum side yard setback, and have been designed so as to minimally impact the neighbors

while still allowing the enjoyment of the views. The applicant has agreed to eliminate the northwestern facing master bathroom window, which in turn minimizes impacts to the neighboring residence on the north side. The project has minimal impact upon surrounding neighbors.

4. Protecting the value and enjoyment of the neighbors' property;

Staff Finding: As previously mentioned, the overall project will have minimal impacts on the surrounding neighbors. The addition has been designed so as to extend the existing residence as little as possible, while still allowing for a remodel of the interior to increase the usability and enjoyment of the existing living space. Although the addition extends to the west and will be visible to the neighbors when looking north and south, the views of the San Francisco Bay are to the west, and will not be blocked by the addition. The existing house is located downhill of the neighbors to the east, and the addition will be lower than the existing residence, so the addition will not impact views of the San Francisco Bay visible from properties at a higher elevation. Therefore, the project preserves the value and enjoyment of neighboring properties.

5. Maintaining the community's property values;

Staff Finding: The project has minimal impacts on views, light and solar access, privacy, parking, and residential noise levels. The addition will increase the property value of the subject property by adding more living space to the existing residence, including more bedrooms and an additional bathroom, and will therefore increase the property value of the surrounding neighborhood. As a result, existing community's property values are preserved.

6. Maximizing the use of existing interior space;

Staff Finding: The addition will add approximately 326-square-feet of living space to the existing residence, which allows for an interior remodel of the upper floor, including the addition of bedrooms and another bathroom. The overall scope of the project maximizes the use of existing interior space, and minimally increases the existing footprint of the residence.

7. Promoting the general welfare, public health, and safety;

Staff Finding: The project does not change the land use of the subject property and, as described earlier, has minimal impact on surrounding properties. The new development improves the value of the property. Also, the project will not use or

emit hazardous substances beyond what is normal for a residential property. The project will be required to comply with applicable building and fire codes. Based on the foregoing reasons, the project promotes the general welfare, public health and safety of the Kensington community.

CONDITIONS OF APPROVAL FOR COUNTY FILE #DP19-3019

Project Approval

1. Development is approved as generally described in the application materials received by the Department of Conservation and Development, Community Development Division (CDD) on September 18, 2019, and is subject to the conditions listed below.

General Provisions

2. Any development or expansion beyond the limits of this permit approved under this application may require the review and approval of CDD and may require the filing of an application for modification to a Development Plan and a public hearing, if deemed necessary.
3. The applicant shall eliminate the northwestern facing master bathroom window and the plans shall be reviewed and approved by CDD prior to obtaining a building permit.
4. The deck railing shall be cable railing as shown on sheet A5 elevation dated September 18, 2019, OR shall be glass in compliance with the Building Code requirement to minimize impacts to neighboring property.
5. The deck and the addition on the southern side shall be setback by 3' 2" in order to comply with the 8' 0" aggregate setback.

Payment of Fees

6. This application is subject to an initial application deposit of \$1000.00, which was paid with the application submittal, plus time and material costs if the application review expenses exceed 100% of the initial deposit. Any additional costs due must be paid within 60 days of the permit effective date or prior to use of the permit, whichever occurs first. The applicant may obtain current costs by contacting the project planner. If the applicant owes additional fees, a bill will be sent to the applicant shortly after permit issuance.

Construction Period Restrictions and Requirements

7. The applicant shall comply with the following restrictions and requirements:

- A. Construction activities shall be limited to the hours of 8:00 A.M. to 5:00 P.M., Monday through Friday, and are prohibited on state and federal holidays on the calendar dates that these holidays are observed by the state or federal government as listed below:

New Year's Day (state and federal)
Birthday of Martin Luther King, Jr. (state and federal)
Washington's Birthday (federal)
Lincoln's Birthday (state)
President's Day (state and federal)
Cesar Chavez Day (state)
Memorial Day (state and federal)
Independence Day (state and federal)
Labor Day (state and federal)
Columbus Day (state and federal)
Veterans Day (state and federal)
Thanksgiving Day (state and federal)
Day after Thanksgiving (state)
Christmas Day (state and federal)

For information on the calendar dates that these holidays occur, please visit the following websites:

Federal Holidays:

http://www.opm.gov/Operating_Status_Schedules/fedhol

California Holidays:

<http://www.sos.ca.gov/holidays.htm>

- B. Transportation of large trucks and heavy equipment is subject to the same restrictions that are imposed on construction activities, except that the hours are limited to 9:00 AM to 4:00 PM.
- C. A good faith effort shall be made to avoid interference with existing neighborhood traffic flows.
- D. All internal combustion engines shall be fitted with mufflers that are in good condition and stationary noise-generating equipment such as air compressors shall be located as far away from existing residences as possible.
- E. Construction equipment and materials shall be stored onsite.

- F. The construction site shall be maintained in an orderly fashion. Litter and debris shall be contained in appropriate receptacles and shall be disposed of as necessary.
- G. Any debris found outside the site shall immediately be collected and deposited in appropriate receptacles.

ADVISORY NOTES

ADVISORY NOTES ARE NOT CONDITIONS OF APPROVAL; THEY ARE PROVIDED TO ALERT THE APPLICANT TO ADDITIONAL ORDINANCES, STATUTES, AND LEGAL REQUIREMENTS OF THE COUNTY AND OTHER PUBLIC AGENCIES THAT MAY BE APPLICABLE TO THIS PROJECT.

- A. NOTICE OF OPPORTUNITY TO PROTEST FEES, ASSESSMENTS, DEDICATIONS, RESERVATIONS OR OTHER EXACTIONS PERTAINING TO THE APPROVAL OF THIS PERMIT.

Pursuant to California Government Code Section 66000, et seq., the applicant has the opportunity to protest fees, dedications, reservations or exactions required as part of this project approval. To be valid, a protest must be in writing pursuant to Government Code Section 66020 and must be delivered to the Community Development Division within a 90-day period that begins on the date that this project is approved. If the 90th day falls on a day that the Community Development Division is closed, then the protest must be submitted by the end of the next business day.

- B. Prior to applying for a building permit, the applicant is strongly encouraged to contact the following agencies to determine if additional requirements and/or additional permits are required as part of the proposed project:
 - Contra Costa County Building Inspection Division
 - Contra Costa County Environmental Health Division
 - East Bay Municipal Utility District
 - Stege Sanitary District
 - El Cerrito/Kensington Fire Department

Maps

Parcel Map

General Plan Map

Zoning Map

Aerial Photograph

CT. 3920.00

TAX CODE AREA

M.B. 11-252

BERKELEY HIGHLANDS TERRACE

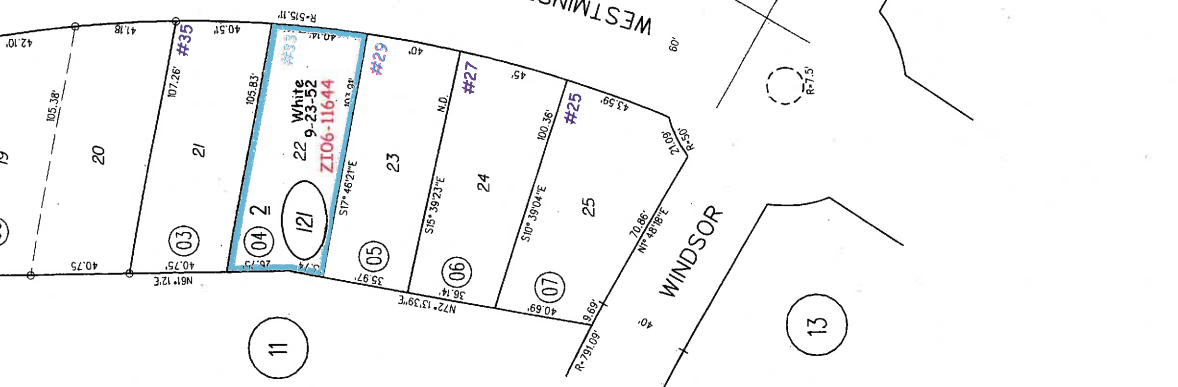
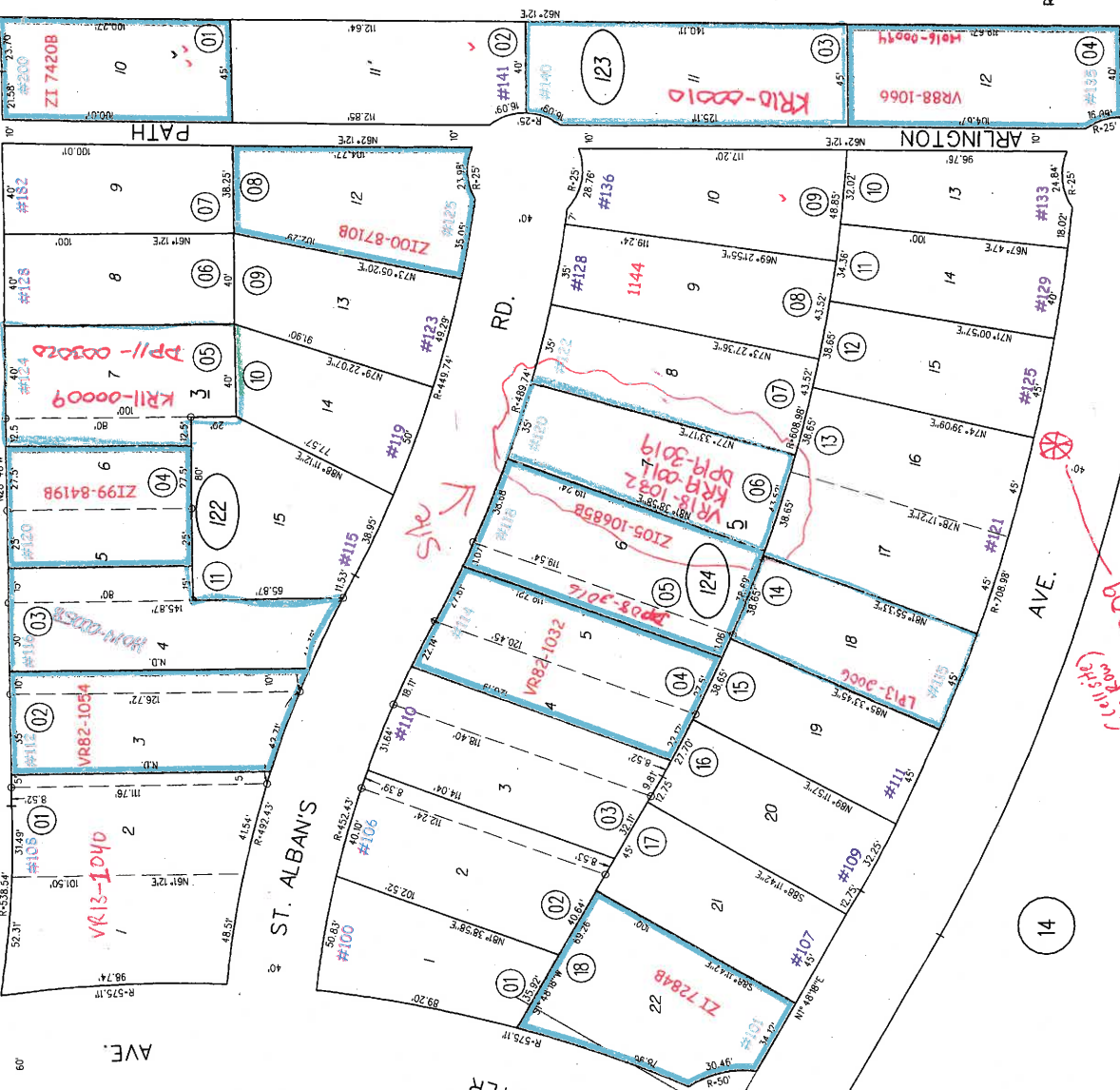
KENYON

10

AVE.

AVE.

19



P.B. 570



- 121
- 122
- 123
- 124

ZM: M-7

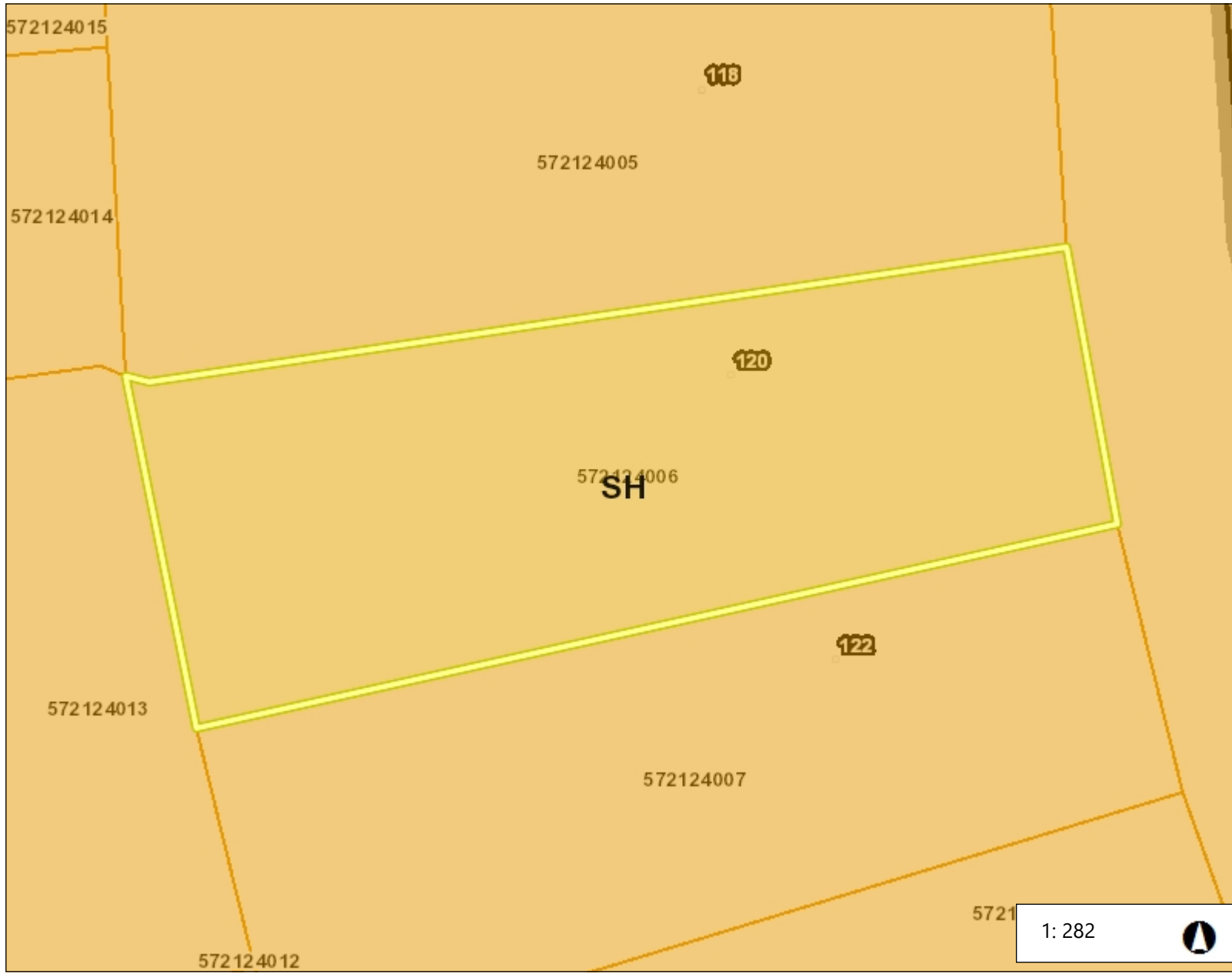
II SF 6-4 1982 ROLL

ASSESSOR'S MAP

BOOK 572 PAGE 12

R-6

General Plan: SH

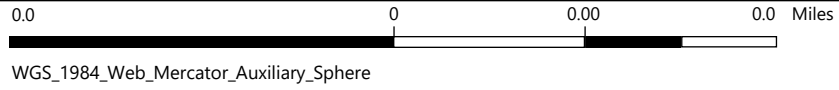


Legend

General Plan

- SV (Single Family Residential - Ver)
- SL (Single Family Residential - Low)
- SM (Single Family Residential - Me)
- SH (Single Family Residential - Hig)
- ML (Multiple Family Residential - Lc)
- MM (Multiple Family Residential - Iv)
- MH (Multiple Family Residential - H)
- MV (Multiple Family Residential - V)
- MS (Multiple Family Residential - V)
- CC (Congregate Care/Senior Housi)
- MO (Mobile Home)
- M-1 (Parker Avenue Mixed Use)
- M-2 (Downtown/Waterfront Rodeo I)
- M-3 (Pleasant Hill BART Mixed Use)
- M-4 (Willow Pass Road Mixed Use)
- M-5 (Willow Pass Road Commercia)
- M-6 (Bay Point Residential Mixed U)
- M-7 (Pittsburg/Bay Point BART Sta)
- M-8 (Dougherty Valley Village Cent)
- M-9 (Montalvin Manor Mixed Use)
- M-10 (Willow Pass Business Park A)
- M-11 (Appian Way Mixed Use)
- M-12 (Triangle Area Mixed Use)
- M-13 (San Pablo Dam Road Mixed)
- M-14 (Heritage Mixed Use)

1: 282 

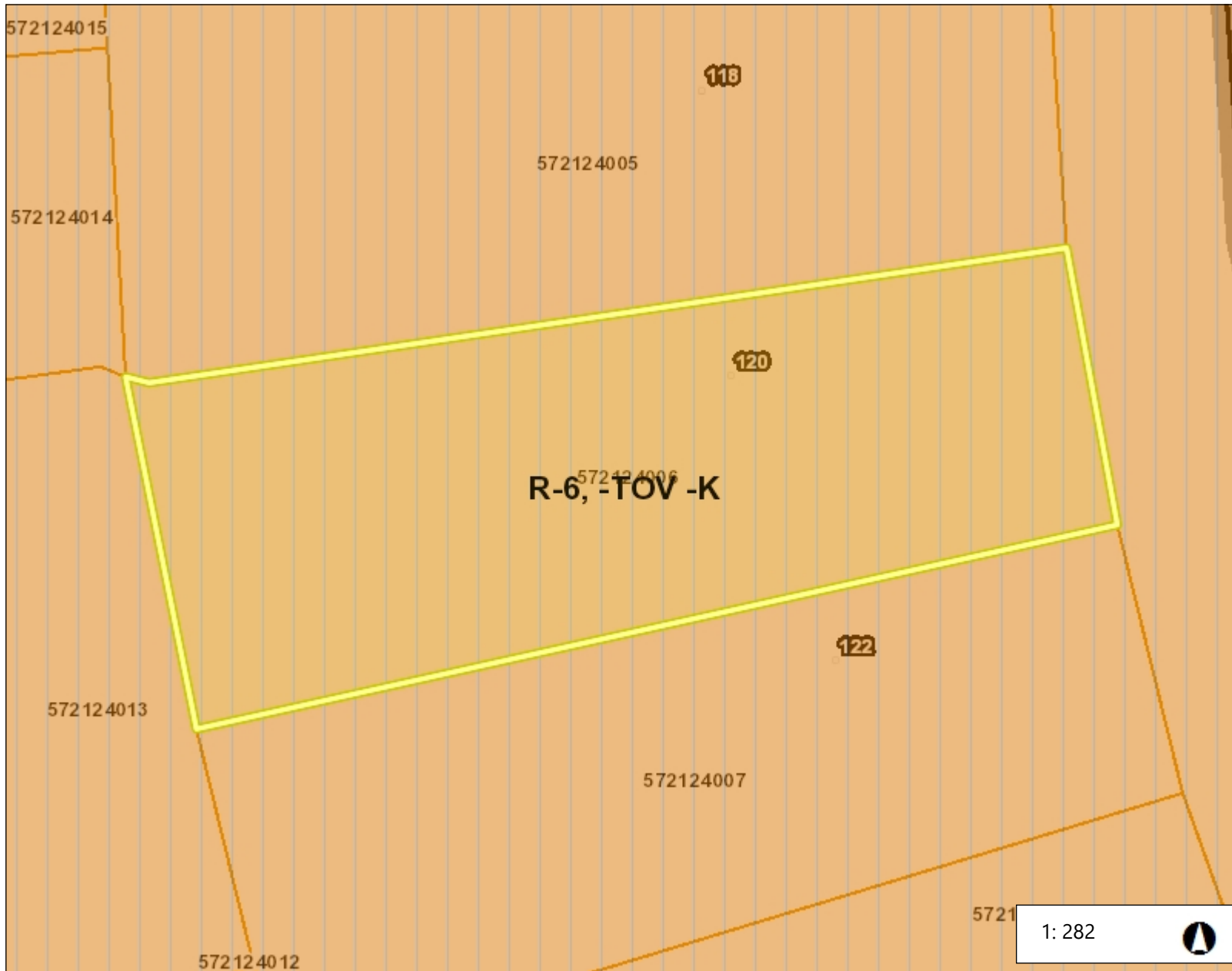


This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.
THIS MAP IS NOT TO BE USED FOR NAVIGATION

Notes

Contra Costa County -DOIT GIS

Zoning: R-6, -TOV -K



Legend

Zoning

- R-6 (Single Family Residential)
- R-6, -FH -UE (Single Family Resid Urban Farm Animal Exclusion Com
- R-6 -SD-1 (Single Family Resident Hillside Development Combining Di
- R-6 -TOV -K (Single Family Reside View Ordinance and Kensington Cc
- R-6, -UE (Single Family Residential Exclusion Combining District)
- R-6 -X (Single Family Residential - Combining District)
- R-7 (Single Family Residential)
- R-7 -X (Single Family Residential - Combining District)
- R-10 (Single Family Residential)
- R-10, -UE (Single Family Residenti Exclusion Combining District)
- R-12 (Single Family Residential)
- R-15 (Single Family Residential)
- R-20 (Single Family Residential)
- R-20, -UE (Single Family Residenti Exclusion Combining District)
- R-40 (Single Family Residential)
- R-40, -FH -UE (Single Family Resic Urban Farm Animal Exclusion Com
- R-40, -UE (Single Family Residenti Exclusion Combining District)
- R-65 (Single Family Residential)
- R-100 (Single Family Residential)
- D-1 (Two Family Residential)
- D-1 -T (Two Family Residential - Tr District)

Notes

Contra Costa County -DOIT GIS

0.0 0 0.00 0.0 Miles

WGS_1984_Web_Mercator_Auxiliary_Sphere

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.
THIS MAP IS NOT TO BE USED FOR NAVIGATION

Aerial Photograph



Legend

- Address Points
- ▬ Streets
- ▭ Assessment Parcels
- World Imagery
- Low Resolution 15m Imagery
- High Resolution 60cm Imagery
- High Resolution 30cm Imagery
- Citations

Notes

Contra Costa County -DOIT GIS

0.0 0 0.01 0.0 Miles

WGS_1984_Web_Mercator_Auxiliary_Sphere

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

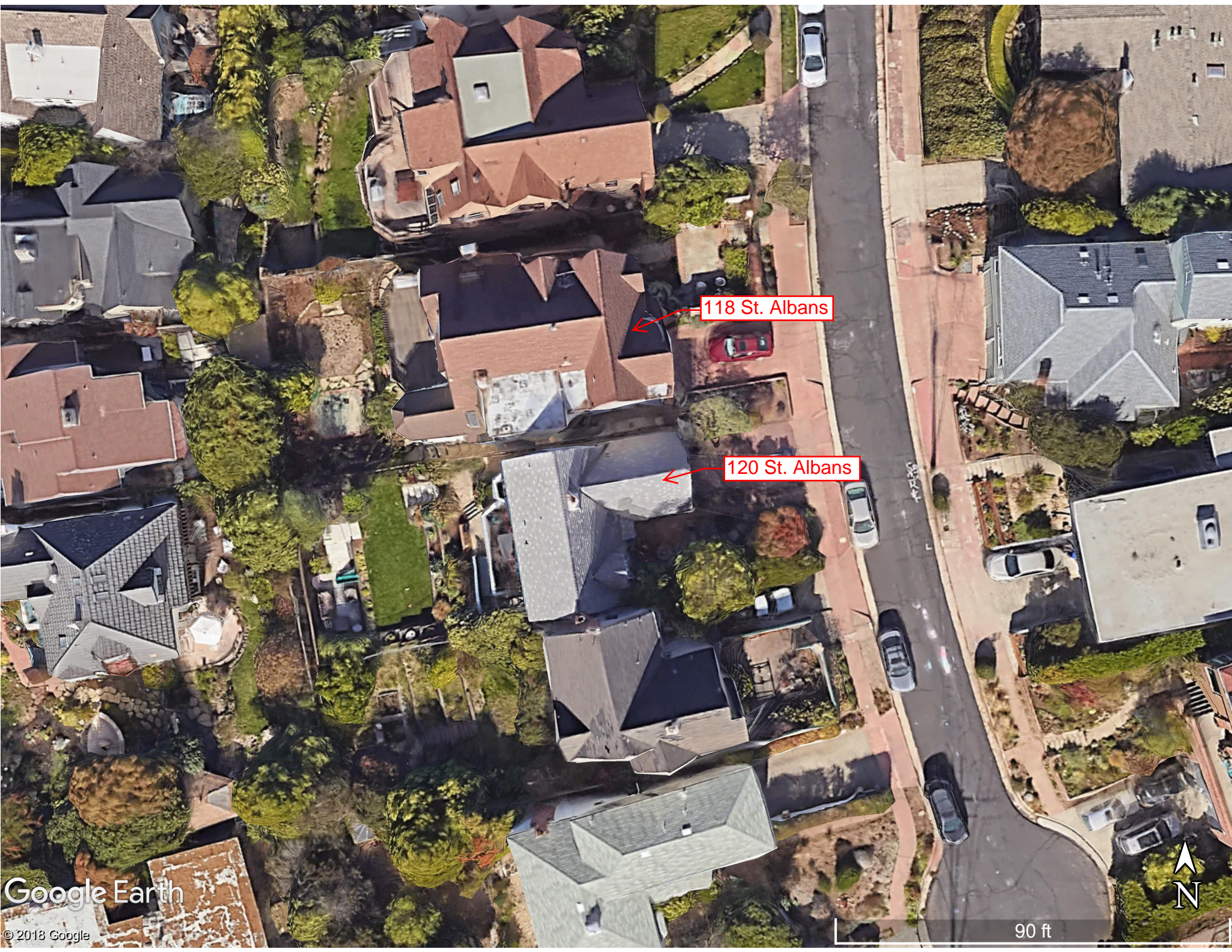
THIS MAP IS NOT TO BE USED FOR NAVIGATION

Photographs

Aerial Images

Site Visit Photographs

Photographs from the Appellant, the Applicant, and KMAC



118 St. Albans

120 St. Albans

Google Earth

© 2018 Google

90 ft





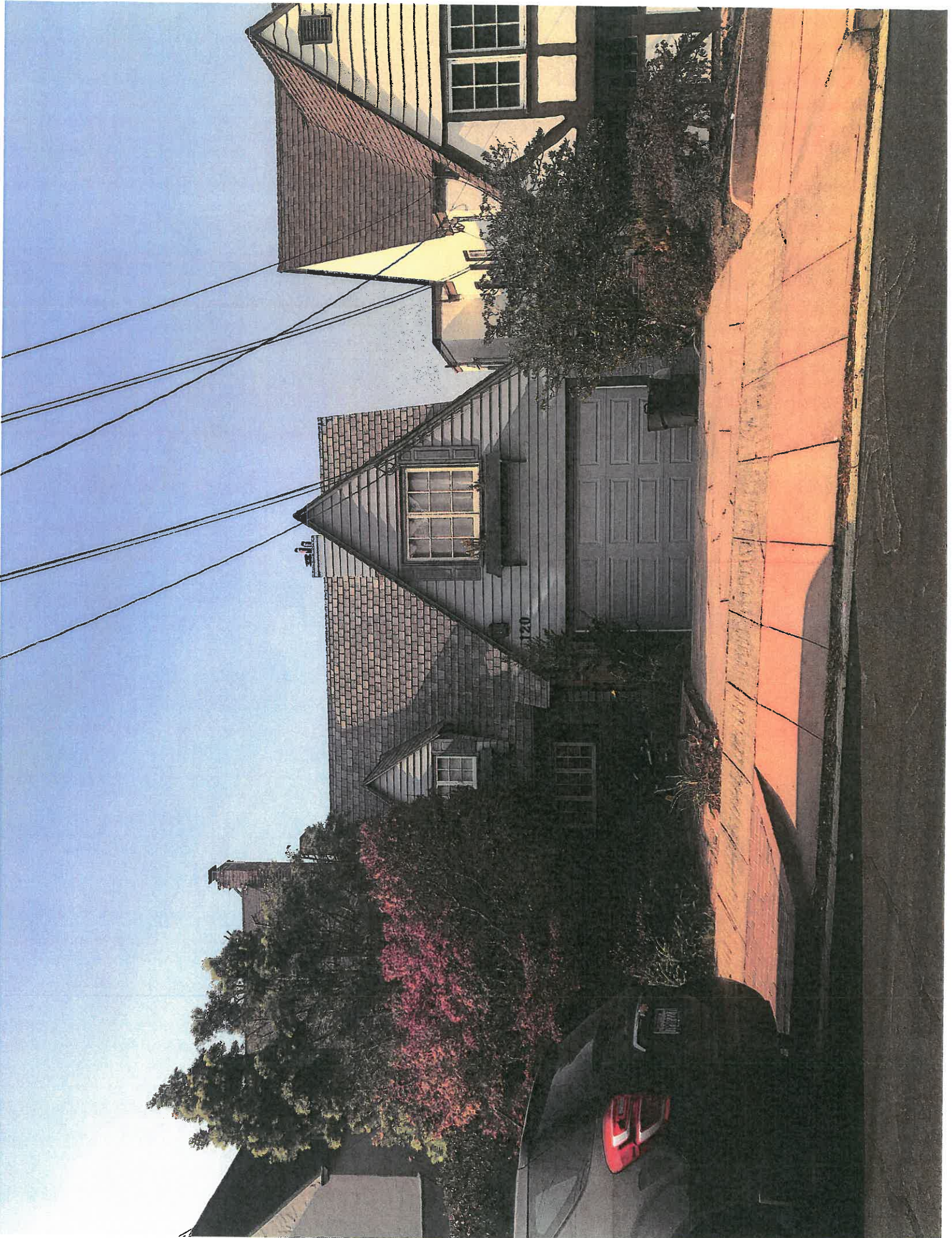
Master Bathroom Window

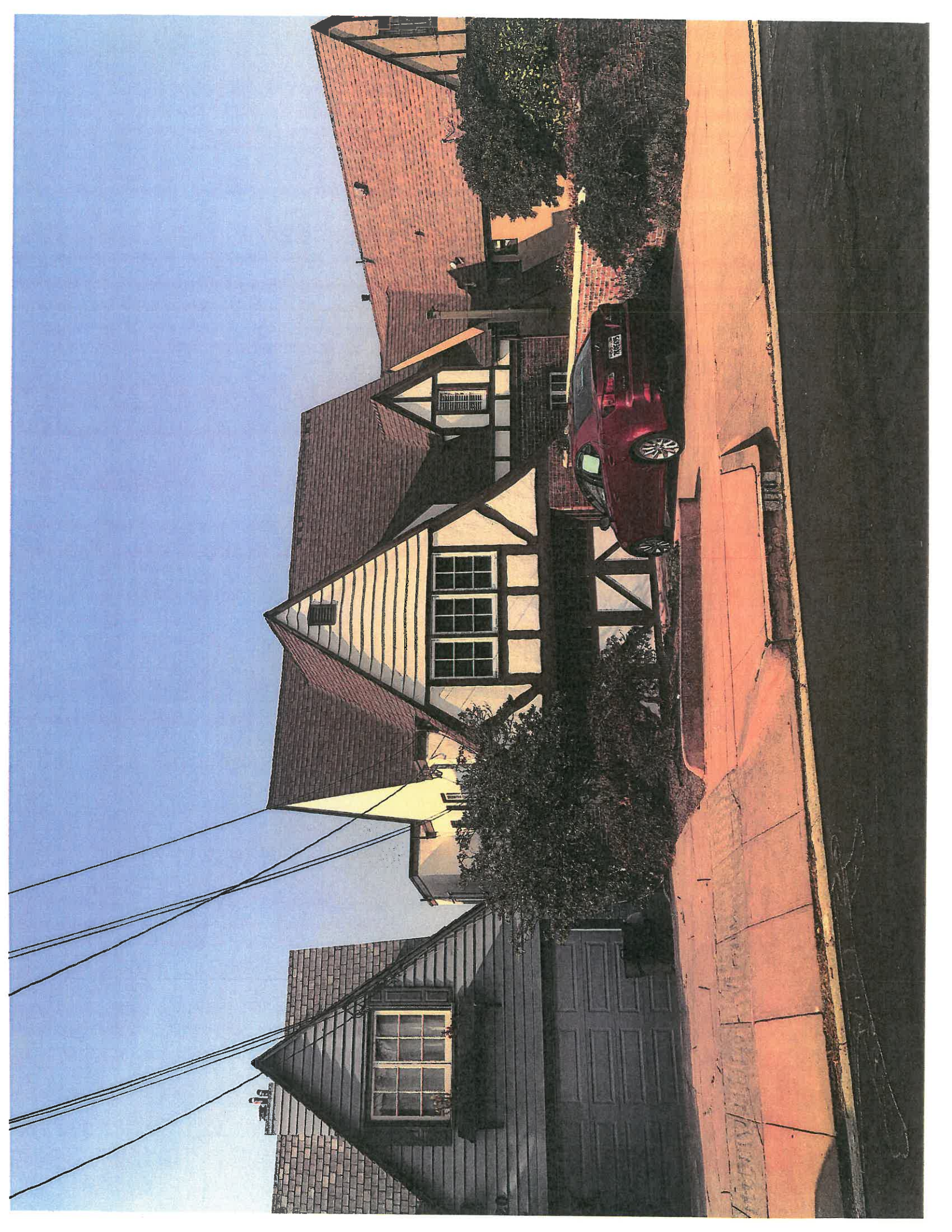
118 St. Albans

120 St. Albans

Kitchen Window

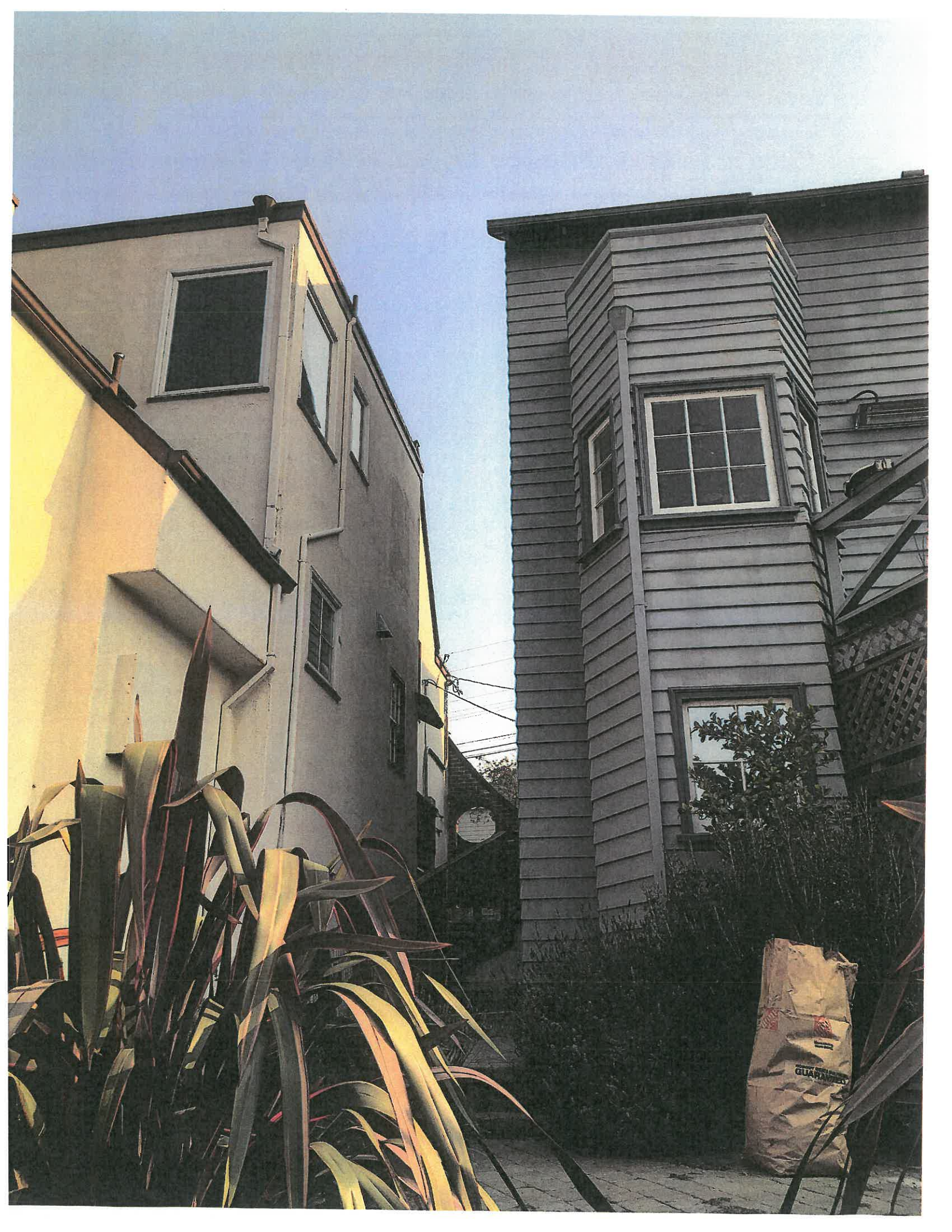














Photographs from Appellant

Attachment D – Picture #2

Existing View of Bay and Bay Bridge



Conservative Estimate of View Impacts from Proposed Deck



**Attachment C-2, Picture #1:
View from Upper Level**

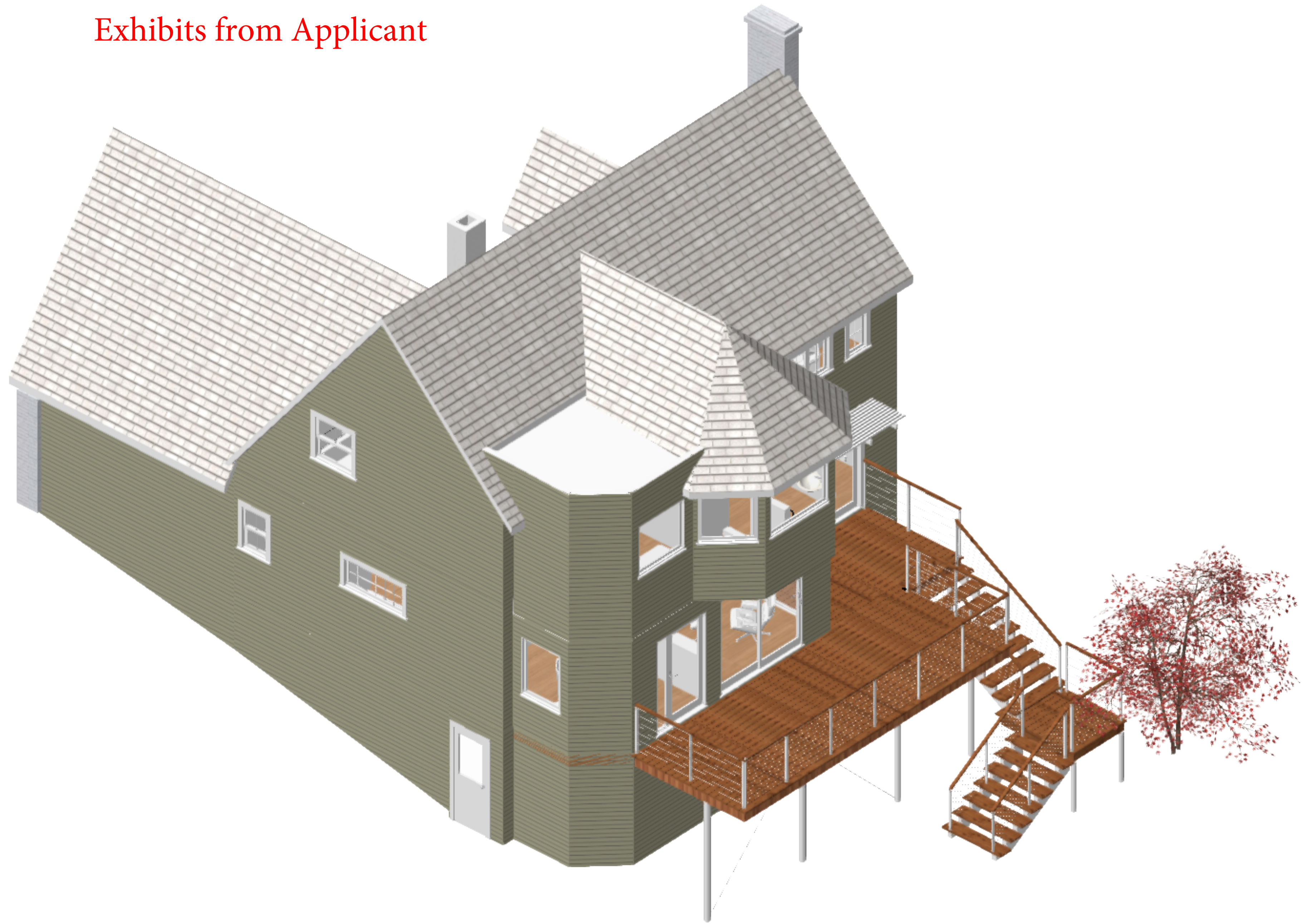
**Conservative Estimate of View Impacts from
Expansion Beyond the Existing Nook**



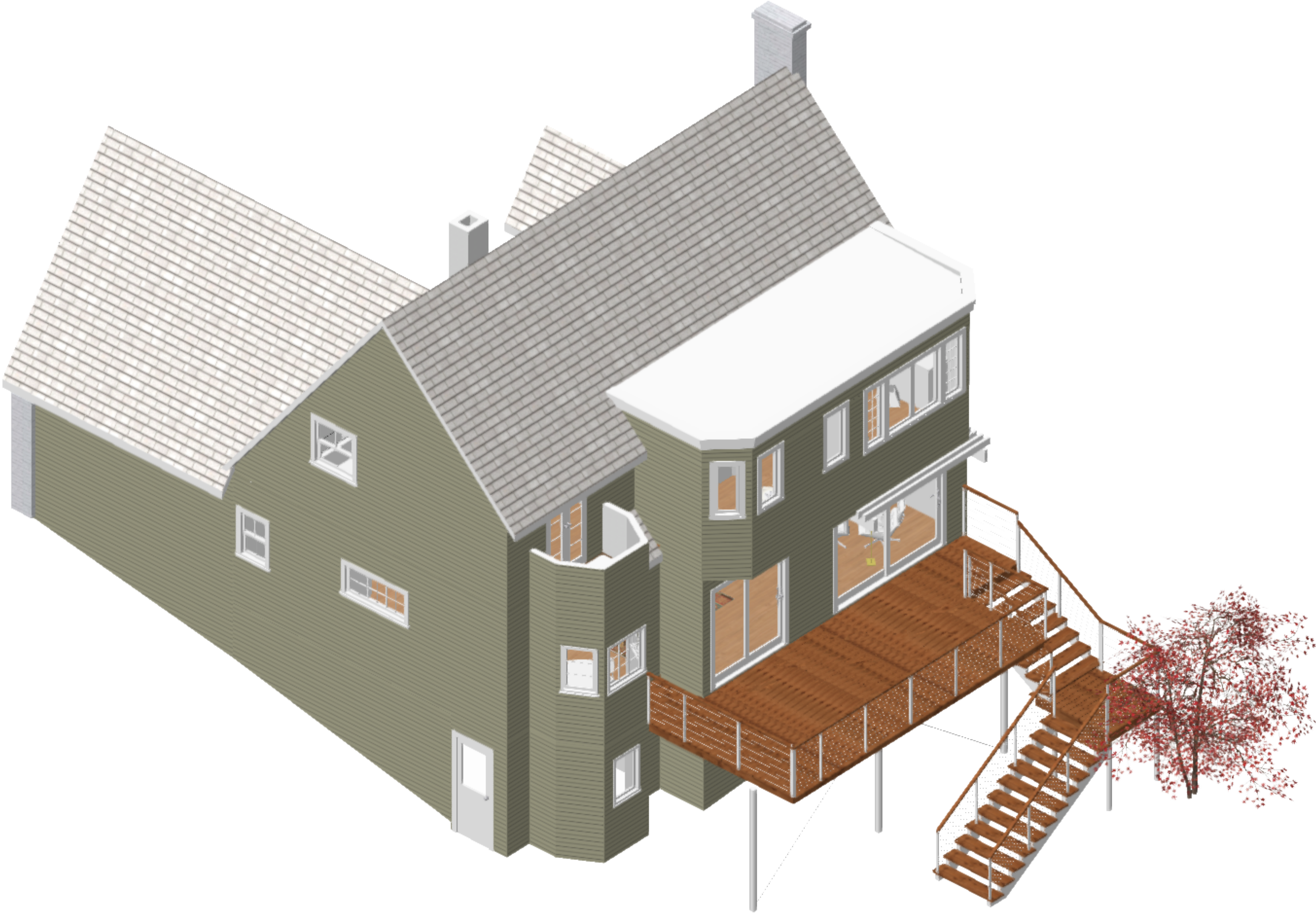
Existing View from Master Bathroom



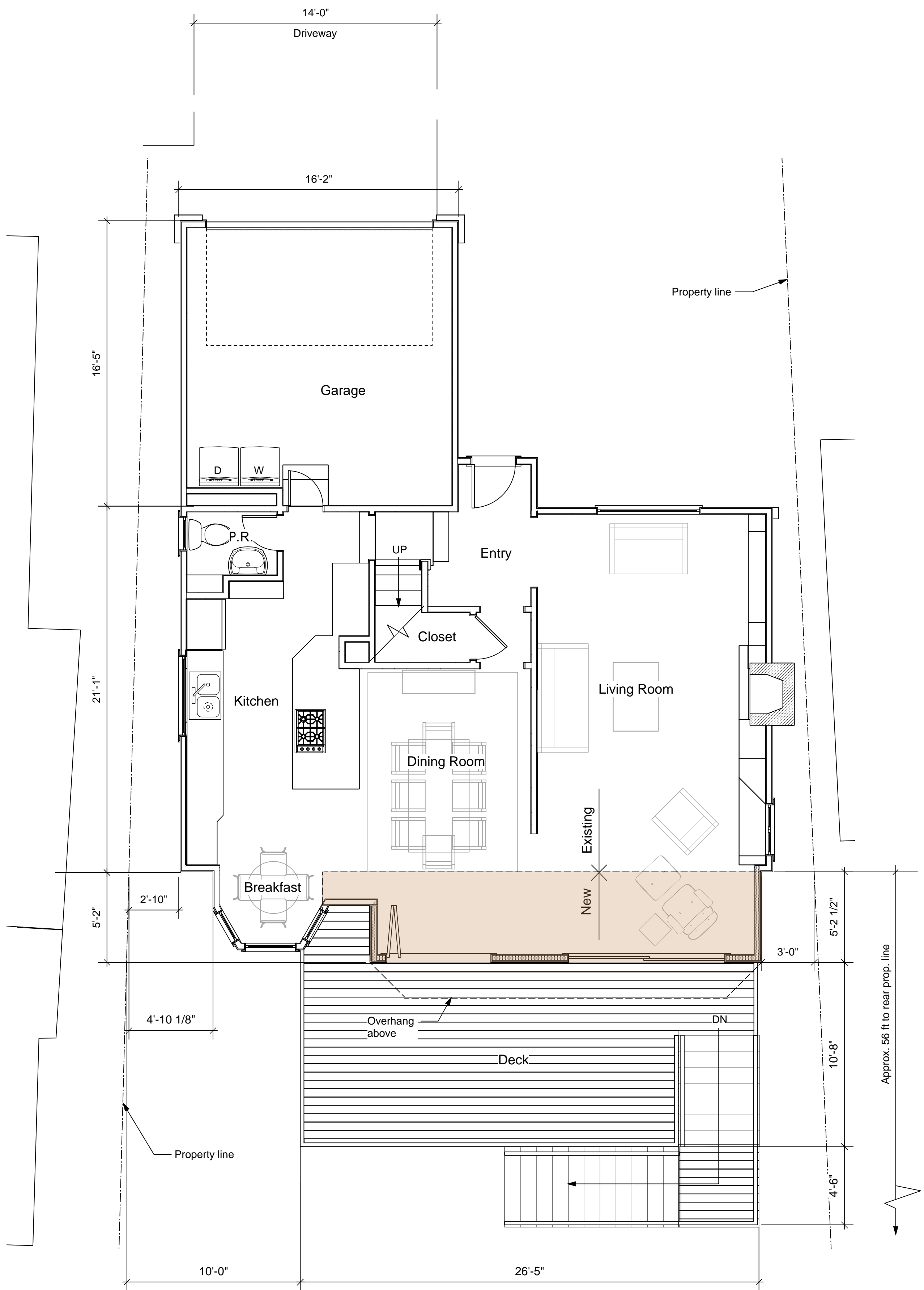
Exhibits from Applicant



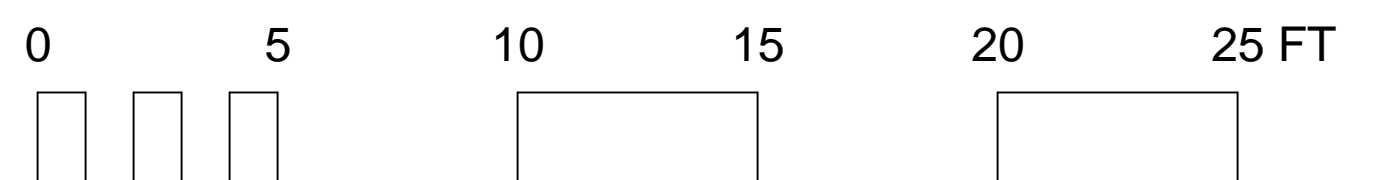
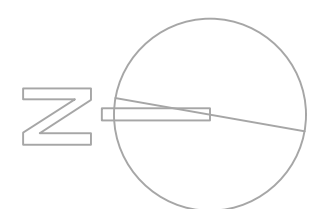
Exterior Perspective--Previous Design

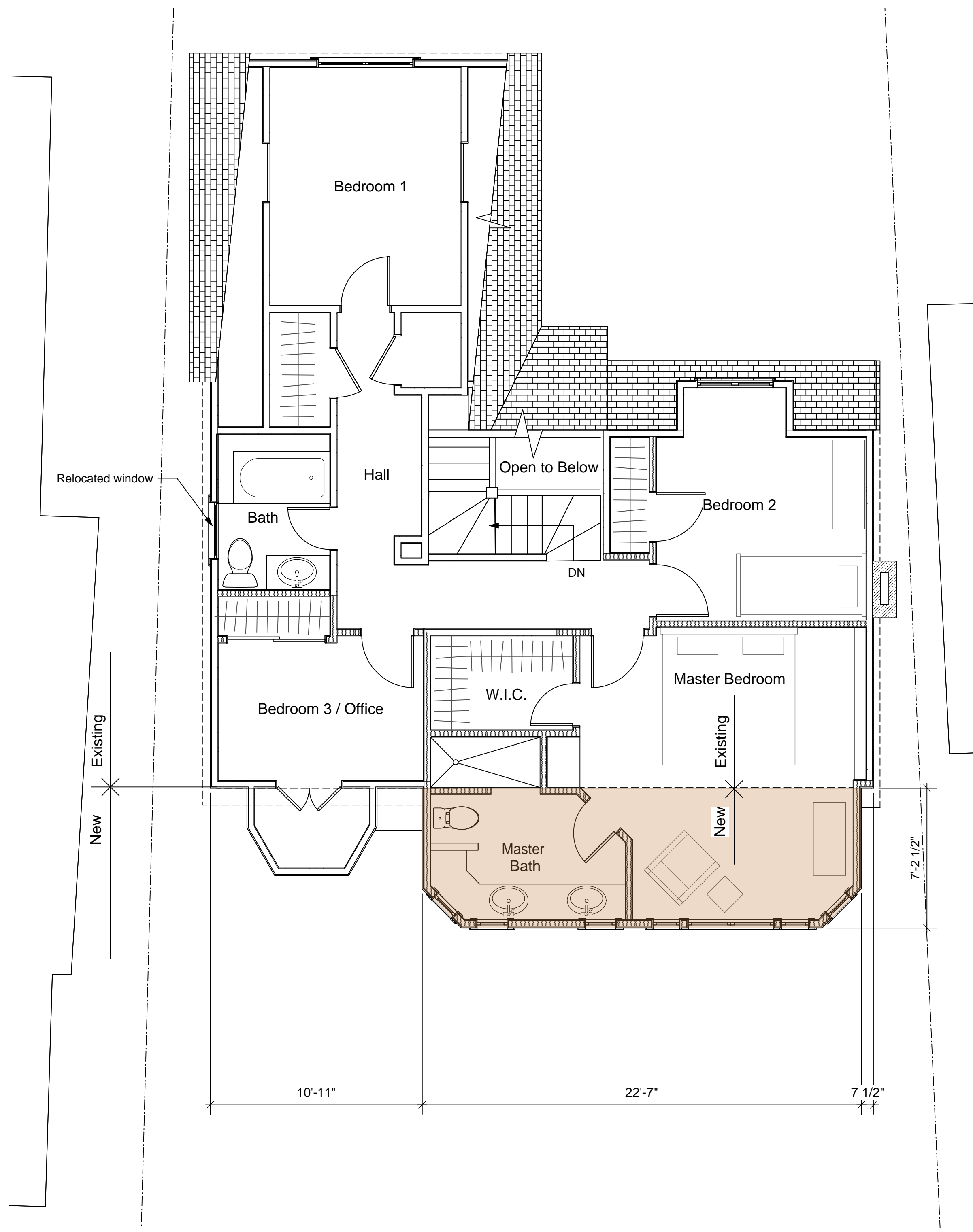


Exterior Perspective- 7/25/19 Design

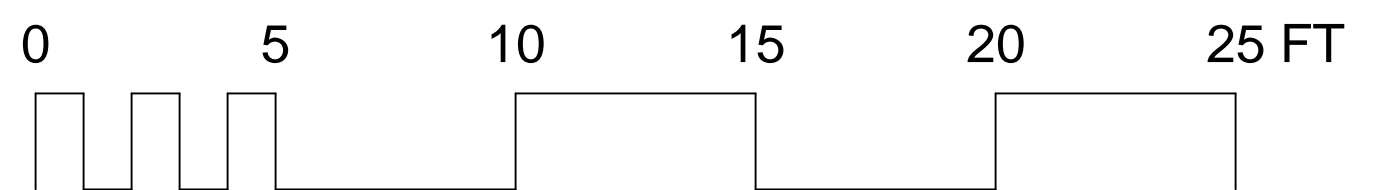
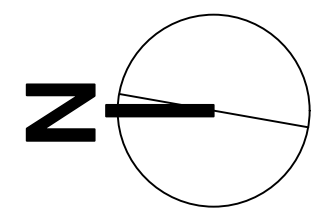


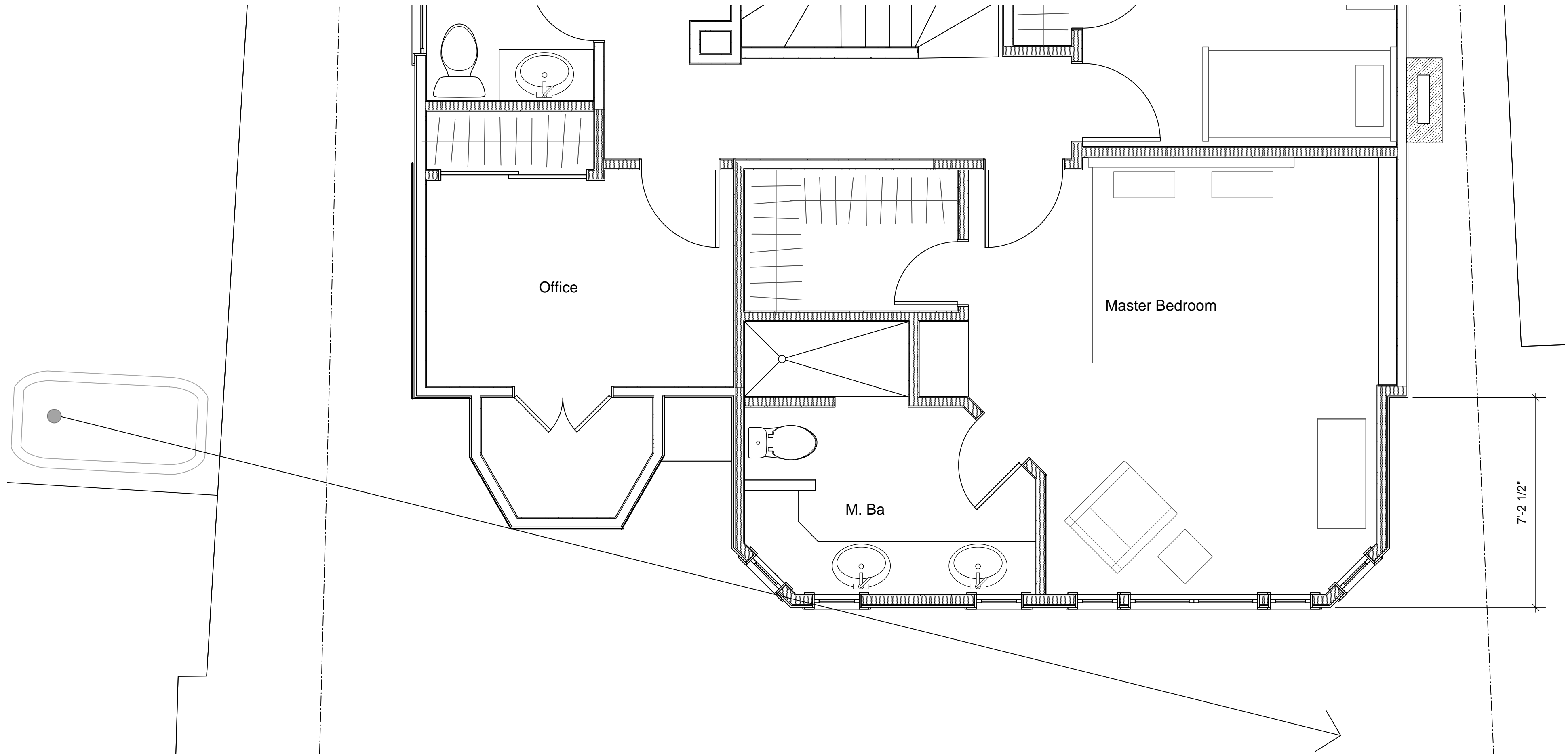
First Floor Plan





Second Floor Plan





Sightline Analysis from 118 St. Albans 7/17/19

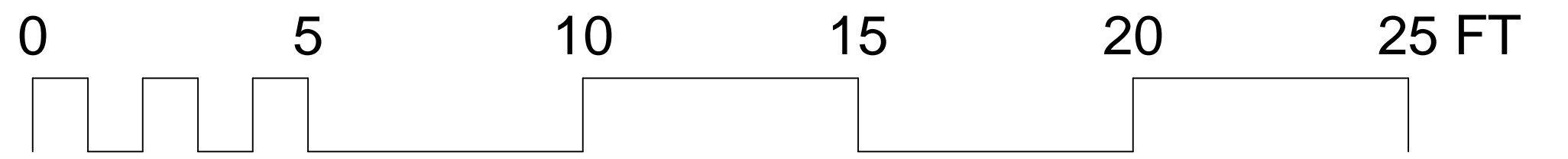
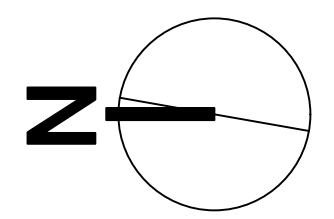




Photo from 118 St. Albans (KMAC Photo with story poles from previous proposal)



Rendered View from 118 St. Albans (Proposed)

Photos from KMAC

RECEIVED

12/16/2019

ZONING ADMINISTRATOR HEARING

AGENDA ITEM # 8A



Southwest bay view
from master
bathroom window.

RECEIVED

12/16/2019

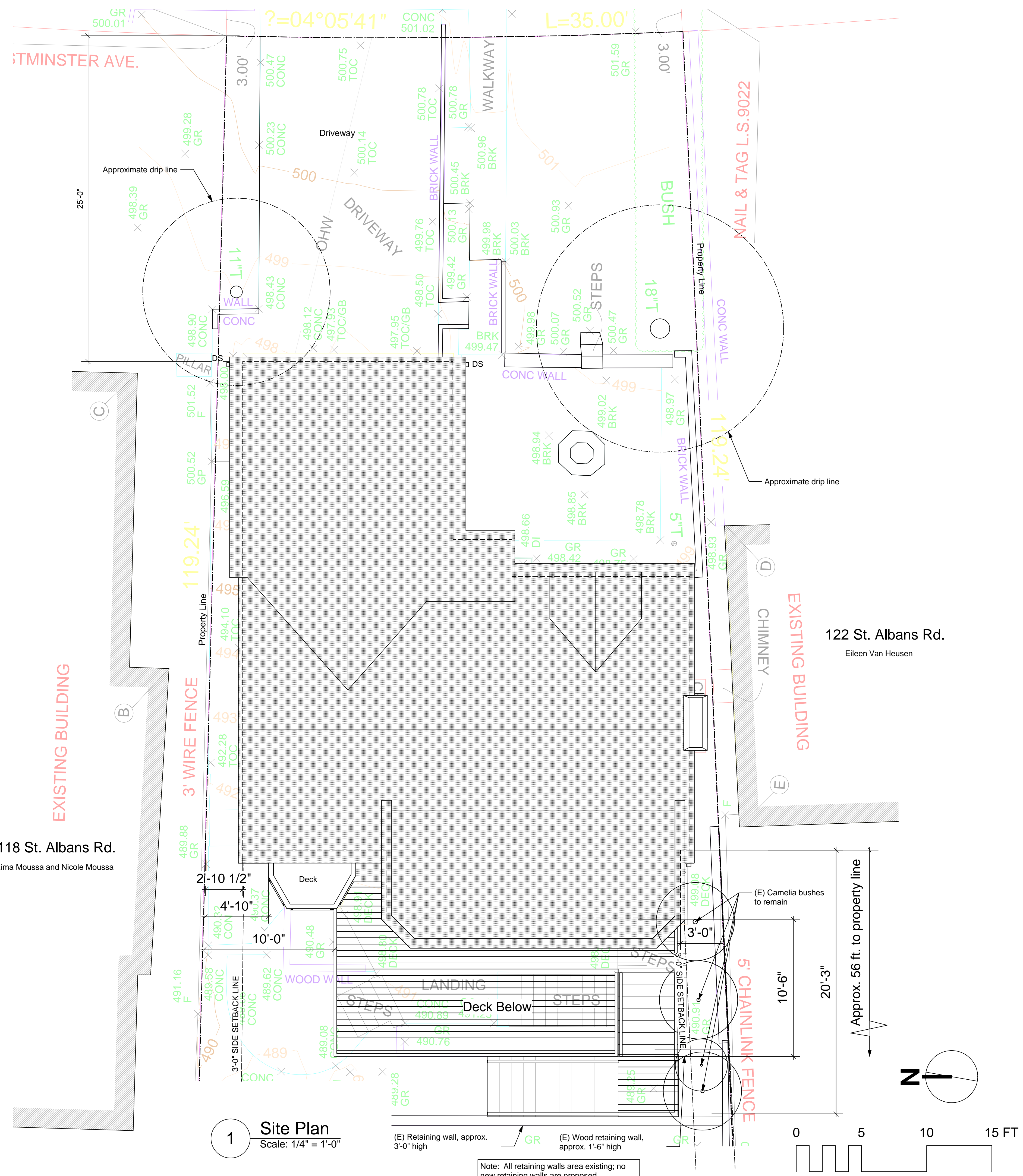
ZONING ADMINISTRATOR HEARING

AGENDA ITEM # 3A



Southwest bay view
from kitchen window.

Site Plan with Additional Setback Measurements



1 Site Plan
Scale: 1/4" = 1'-0"

(E) Retaining wall, approx. 3'-0" high
(E) Wood retaining wall, approx. 1'-6" high
Note: All retaining walls area existing; no new retaining walls are proposed.

architect
Howard F. McNenny, AIA
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ALBANY, CA 94706
phone (510) 705-1671
email hmcnenny@comcast.net
stamp



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consultant

project title
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Kensington CA
client
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Mary Hanley
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email mc4hanley@gmail.com

sheet title
Site Plan

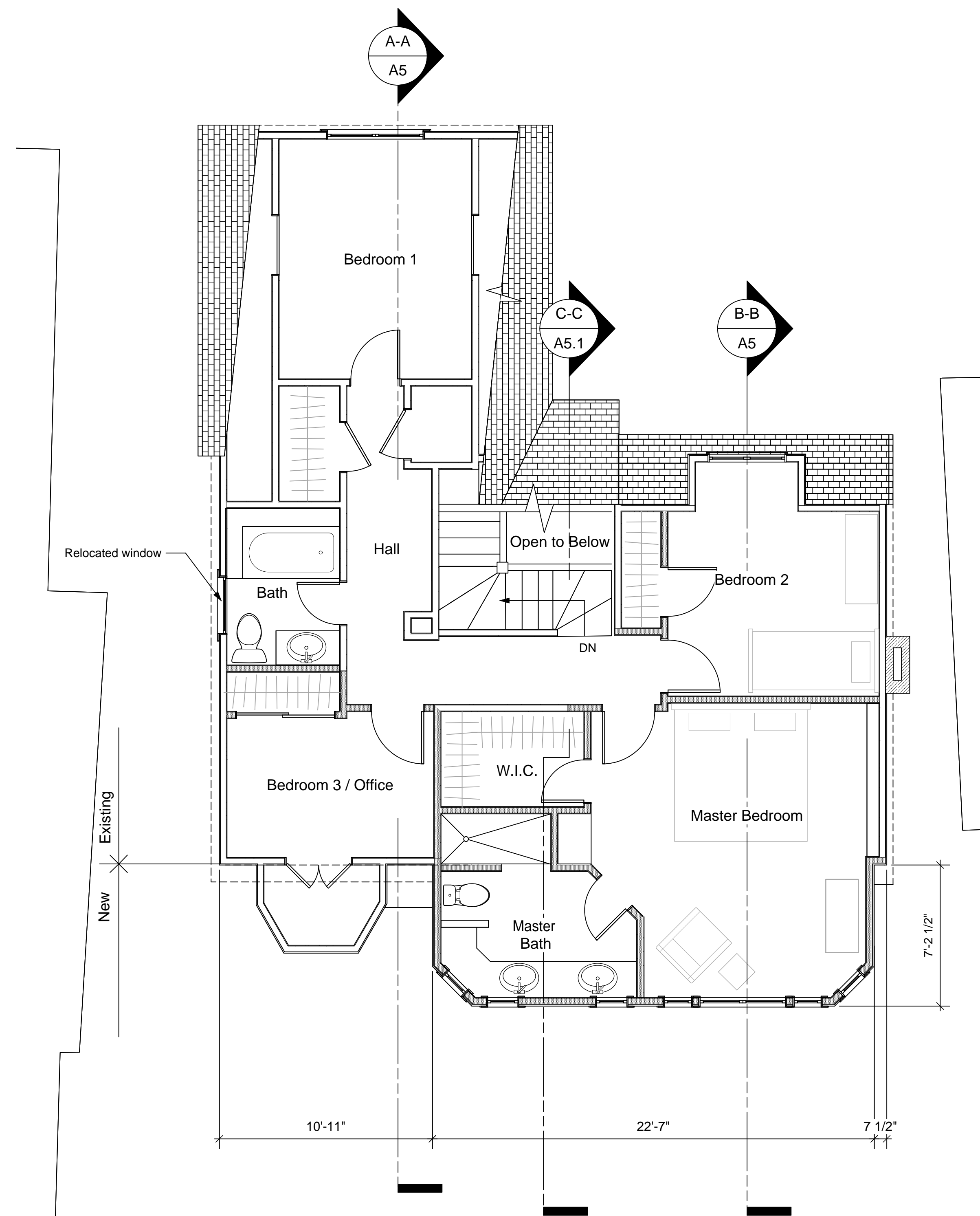
issue date
07/25/2019

revisions

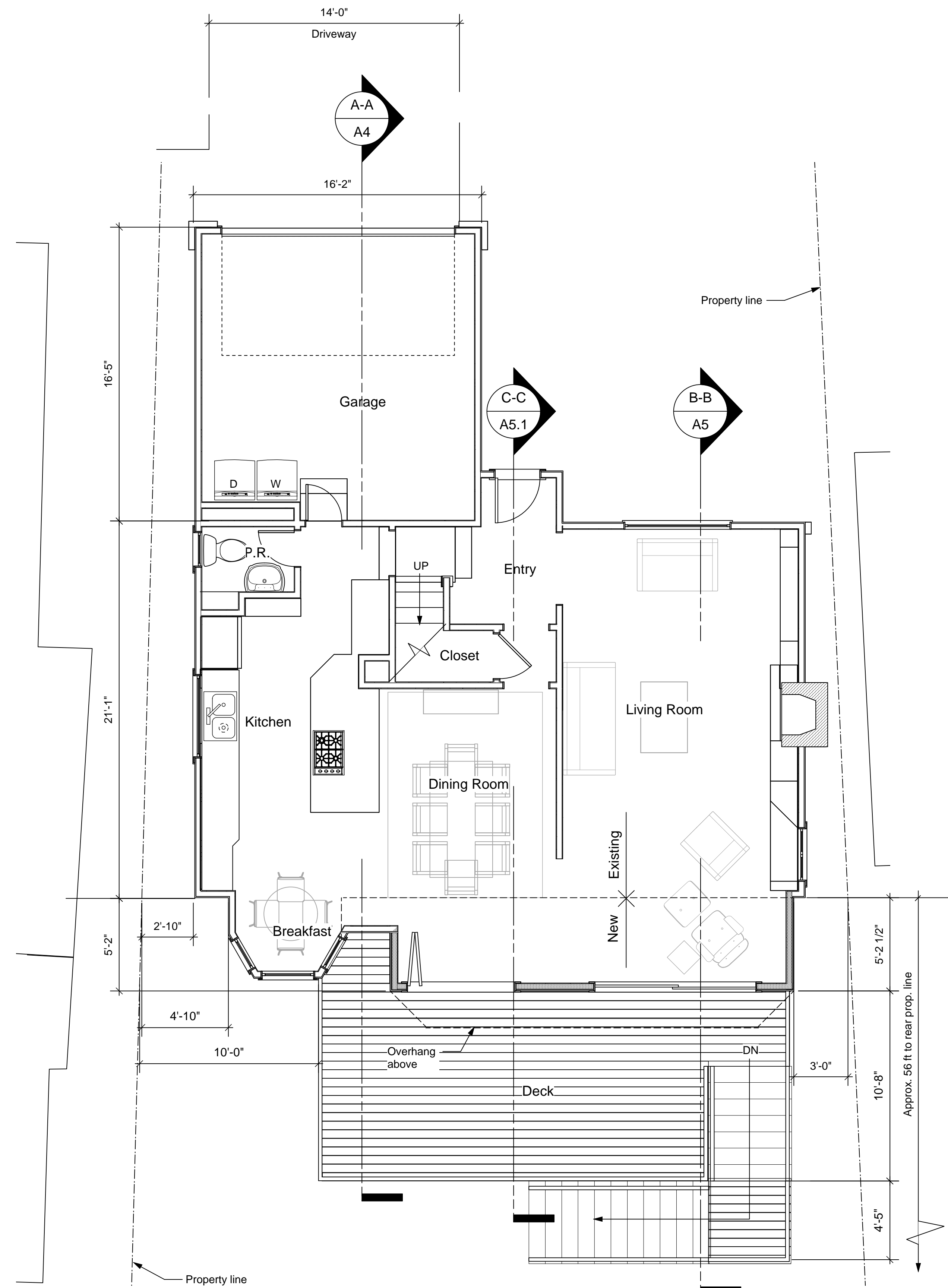
NO.	DESCRIPTION

scale
1/4" = 1'-0"
sheet number

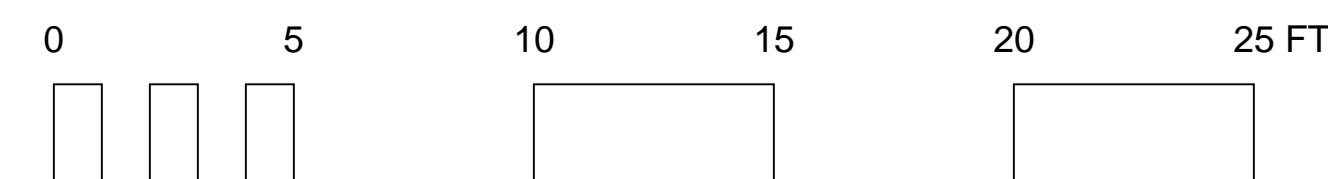
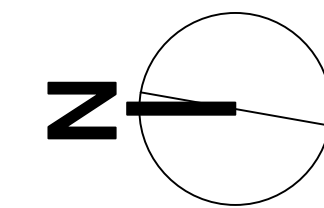
C-2



Second Floor Plan



First Floor Plan



architect

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sheet title

Floor Plans (Proposed)

issue date

07/25/2019

revisions

scale

sheet number

A-3

Project Plans

Residential Addition 120 St. Albans Road Kensington, CA

DA-19-3019
2019-07-15 11:08

Howard F. McHenry, AIA
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Kensington CA 94706
phone (510) 333-0246
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Title Sheet

07/25/2019

T-1

Index of Drawings

- T-1 Title Sheet
- C-1 Survey
- C-2 Site Plan
- A-1 Floor Plans (Existing)
- A-2 Elevations (Existing)
- A-3 First / Second Floor Plans (Proposed)
- A-4 Basement / Roof Plans (Proposed)
- A-5 Cross Section C-C (Proposed)
- A-5.1 Elevations (Proposed)
- A-6 Elevations (Proposed)
- A-7 Perspectives

Photos



Front



Rear

Symbols and Abbreviations

- | | | | |
|----|-----------------------|----|-----------------------|
| AB | Architect Book | AS | As Built |
| AD | Area Drain | AT | As Told |
| AF | Above Finished Floor | BA | Below Average |
| AG | Area Grade | BB | Below Best |
| AL | Area Level | CB | Cabinet |
| AN | Area Note | CC | Concrete |
| AO | Area Offset | CD | Concrete Deck |
| AP | Area Point | CE | Ceiling |
| AQ | Area Quarter | CF | Concrete Foundation |
| AR | Area Radius | CG | Concrete Grout |
| AS | As Shown | CH | Concrete Hollow |
| AT | As Told | CI | Concrete Insulation |
| AV | Area Vertical | CJ | Concrete Joint |
| AW | Area Width | CK | Concrete Kerf |
| AX | Area X | CL | Concrete Ledge |
| AY | Area Y | CM | Concrete Mass |
| AZ | Area Z | CN | Concrete Niche |
| BA | Below Average | CO | Concrete Overlay |
| BB | Below Best | CP | Concrete Pad |
| BC | Below Code | CQ | Concrete Pier |
| BD | Below Deck | CR | Concrete Recess |
| BE | Below Elevation | CS | Concrete Slab |
| BF | Below Finish | CT | Concrete Trench |
| BG | Below Grade | CU | Concrete Underlayment |
| BH | Below Height | CV | Concrete Veneer |
| BI | Below Interior | CW | Concrete Wall |
| BJ | Below Joint | CX | Concrete Wall |
| BK | Below Level | CY | Concrete Wall |
| BL | Below Line | CZ | Concrete Wall |
| BM | Below Material | DA | Decorative |
| BN | Below Note | DB | Decorative |
| BO | Below Offset | DC | Decorative |
| BP | Below Point | DD | Decorative |
| BQ | Below Quarter | DE | Decorative |
| BR | Below Radius | DF | Decorative |
| BS | Below Setback | DG | Decorative |
| BT | Below Thickness | DH | Decorative |
| BU | Below Unit | DI | Decorative |
| BV | Below Vertical | DJ | Decorative |
| BW | Below Width | DK | Decorative |
| BX | Below X | DL | Decorative |
| BY | Below Y | DM | Decorative |
| BZ | Below Z | DN | Decorative |
| CA | Concrete | DO | Decorative |
| CB | Cabinet | DP | Decorative |
| CC | Concrete | DQ | Decorative |
| CD | Concrete Deck | DR | Decorative |
| CE | Ceiling | DS | Decorative |
| CF | Concrete Foundation | DT | Decorative |
| CG | Concrete Grout | DU | Decorative |
| CH | Concrete Hollow | DV | Decorative |
| CI | Concrete Insulation | DW | Decorative |
| CJ | Concrete Joint | DX | Decorative |
| CK | Concrete Kerf | DY | Decorative |
| CL | Concrete Ledge | DZ | Decorative |
| CM | Concrete Mass | EA | Existing |
| CN | Concrete Niche | EB | Existing |
| CO | Concrete Overlay | EC | Existing |
| CP | Concrete Pad | ED | Existing |
| CQ | Concrete Pier | EE | Existing |
| CR | Concrete Recess | EF | Existing |
| CS | Concrete Slab | EG | Existing |
| CT | Concrete Trench | EH | Existing |
| CU | Concrete Underlayment | EI | Existing |
| CV | Concrete Veneer | EJ | Existing |
| CW | Concrete Wall | EK | Existing |
| CX | Concrete Wall | EL | Existing |
| CY | Concrete Wall | EM | Existing |
| CZ | Concrete Wall | EN | Existing |
| DA | Decorative | EO | Existing |
| DB | Decorative | EP | Existing |
| DC | Decorative | EQ | Existing |
| DD | Decorative | ER | Existing |
| DE | Decorative | ES | Existing |
| DF | Decorative | ET | Existing |
| DG | Decorative | EU | Existing |
| DH | Decorative | EV | Existing |
| DI | Decorative | EW | Existing |
| DJ | Decorative | EX | Existing |
| DK | Decorative | EY | Existing |
| DL | Decorative | EZ | Existing |
| DM | Decorative | FA | Finish |
| DN | Decorative | FB | Finish |
| DO | Decorative | FC | Finish |
| DP | Decorative | FD | Finish |
| DQ | Decorative | FE | Finish |
| DR | Decorative | FF | Finish |
| DS | Decorative | FG | Finish |
| DT | Decorative | FH | Finish |
| DU | Decorative | FI | Finish |
| DV | Decorative | FJ | Finish |
| DW | Decorative | FK | Finish |
| DX | Decorative | FL | Finish |
| DY | Decorative | FM | Finish |
| DZ | Decorative | FN | Finish |
| EA | Existing | FO | Finish |
| EB | Existing | FP | Finish |
| EC | Existing | FQ | Finish |
| ED | Existing | FR | Finish |
| EE | Existing | FS | Finish |
| EF | Existing | FT | Finish |
| EG | Existing | FU | Finish |
| EH | Existing | FV | Finish |
| EI | Existing | FW | Finish |
| EJ | Existing | FX | Finish |
| EK | Existing | FY | Finish |
| EL | Existing | FZ | Finish |
| EM | Existing | GA | General |
| EN | Existing | GB | General |
| EO | Existing | GC | General |
| EP | Existing | GD | General |
| EQ | Existing | GE | General |
| ER | Existing | GF | General |
| ES | Existing | GG | General |
| ET | Existing | GH | General |
| EU | Existing | GI | General |
| EV | Existing | GO | General |
| EW | Existing | GP | General |
| EX | Existing | GQ | General |
| EY | Existing | GR | General |
| EZ | Existing | GS | General |
| FA | Finish | GT | General |
| FB | Finish | GU | General |
| FC | Finish | GV | General |
| FD | Finish | GW | General |
| FE | Finish | GX | General |
| FF | Finish | GY | General |
| FG | Finish | GZ | General |
| FH | Finish | HA | Hardware |
| FI | Finish | HB | Hardware |
| FJ | Finish | HC | Hardware |
| FK | Finish | HD | Hardware |
| FL | Finish | HE | Hardware |
| FM | Finish | HF | Hardware |
| FN | Finish | HG | Hardware |
| FO | Finish | HH | Hardware |
| FP | Finish | HI | Hardware |
| FQ | Finish | HJ | Hardware |
| FR | Finish | HK | Hardware |
| FS | Finish | HL | Hardware |
| FT | Finish | HM | Hardware |
| FU | Finish | HN | Hardware |
| FV | Finish | HO | Hardware |
| FW | Finish | HP | Hardware |
| FX | Finish | HQ | Hardware |
| FY | Finish | HR | Hardware |
| FZ | Finish | HS | Hardware |
| GA | General | HT | Hardware |
| GB | General | HU | Hardware |
| GC | General | HV | Hardware |
| GD | General | HW | Hardware |
| GE | General | HX | Hardware |
| GF | General | HY | Hardware |
| GG | General | HZ | Hardware |
| GH | General | IA | Insulation |
| GI | General | IB | Insulation |
| GO | General | IC | Insulation |
| GP | General | ID | Insulation |
| GQ | General | IE | Insulation |
| GR | General | IF | Insulation |
| GS | General | IG | Insulation |
| GT | General | IH | Insulation |
| GU | General | II | Insulation |
| GV | General | IJ | Insulation |
| GW | General | IK | Insulation |
| GX | General | IL | Insulation |
| GY | General | IM | Insulation |
| GZ | General | IN | Insulation |
| HA | Hardware | IO | Insulation |
| HB | Hardware | IP | Insulation |
| HC | Hardware | IQ | Insulation |
| HD | Hardware | IR | Insulation |
| HE | Hardware | IS | Insulation |
| HF | Hardware | IT | Insulation |
| HG | Hardware | IU | Insulation |
| HH | Hardware | IV | Insulation |
| HI | Hardware | IW | Insulation |
| HJ | Hardware | IX | Insulation |
| HK | Hardware | IY | Insulation |
| HL | Hardware | IZ | Insulation |
| HM | Hardware | JA | Joints |
| HN | Hardware | JB | Joints |
| HO | Hardware | JC | Joints |
| HP | Hardware | JD | Joints |
| HQ | Hardware | JE | Joints |
| HR | Hardware | JF | Joints |
| HS | Hardware | JG | Joints |
| HT | Hardware | JH | Joints |
| HU | Hardware | JI | Joints |
| HV | Hardware | JJ | Joints |
| HW | Hardware | JK | Joints |
| HX | Hardware | JL | Joints |
| HY | Hardware | JM | Joints |
| HZ | Hardware | JN | Joints |
| IA | Insulation | JO | Joints |
| IB | Insulation | JP | Joints |
| IC | Insulation | JQ | Joints |
| ID | Insulation | JR | Joints |
| IE | Insulation | JS | Joints |
| IF | Insulation | JT | Joints |
| IG | Insulation | JU | Joints |
| IH | Insulation | JV | Joints |
| II | Insulation | JW | Joints |
| IJ | Insulation | JX | Joints |
| IK | Insulation | JY | Joints |
| IL | Insulation | JZ | Joints |
| IM | Insulation | KA | Kitchen |
| IN | Insulation | KB | Kitchen |
| IO | Insulation | KC | Kitchen |
| IP | Insulation | KD | Kitchen |
| IQ | Insulation | KE | Kitchen |
| IR | Insulation | KF | Kitchen |
| IS | Insulation | KG | Kitchen |
| IT | Insulation | KH | Kitchen |
| IU | Insulation | KI | Kitchen |
| IV | Insulation | KJ | Kitchen |
| IW | Insulation | KK | Kitchen |
| IX | Insulation | KL | Kitchen |
| IY | Insulation | KM | Kitchen |
| IZ | Insulation | KN | Kitchen |
| JA | Joints | KO | Kitchen |
| JB | Joints | KP | Kitchen |
| JC | Joints | KQ | Kitchen |
| JD | Joints | KR | Kitchen |
| JE | Joints | KS | Kitchen |
| JF | Joints | KT | Kitchen |
| JG | Joints | KU | Kitchen |
| JH | Joints | KV | Kitchen |
| JI | Joints | KW | Kitchen |
| JJ | Joints | KX | Kitchen |
| JK | Joints | KY | Kitchen |
| JL | Joints | KZ | Kitchen |
| JM | Joints | LA | Landing |
| JN | Joints | LB | Landing |
| JO | Joints | LC | Landing |
| JP | Joints | LD | Landing |
| JQ | Joints | LE | Landing |
| JR | Joints | LF | Landing |
| JS | Joints | LG | Landing |
| JT | Joints | LH | Landing |
| JU | Joints | LI | Landing |
| JV | Joints | LJ | Landing |
| JW | Joints | LK | Landing |
| JX | Joints | LL | Landing |
| JY | Joints | LM | Landing |
| JZ | Joints | LN | Landing |
| KA | Kitchen | LO | Landing |
| KB | Kitchen | LP | Landing |
| KC | Kitchen | LQ | Landing |
| KD | Kitchen | LR | Landing |
| KE | Kitchen | LS | Landing |
| KF | Kitchen | LT | Landing |
| KG | Kitchen | LU | Landing |
| KH | Kitchen | LV | Landing |
| KI | Kitchen | LV | Landing |
| KJ | Kitchen | LW | Landing |
| KL | Kitchen | LX | Landing |
| KM | Kitchen | LY | Landing |
| KN | Kitchen | LZ | Landing |
| KO | Kitchen | MA | Masonry |
| KP | Kitchen | MB | Masonry |
| KQ | Kitchen | MC | Masonry |
| KR | Kitchen | MD | Masonry |
| KS | Kitchen | ME | Masonry |
| KT | Kitchen | MF | Masonry |
| KU | Kitchen | MG | Masonry |
| KV | Kitchen | MH | Masonry |
| KW | Kitchen | MI | Masonry |
| KX | Kitchen | MJ | Masonry |
| KY | Kitchen | MK | Masonry |
| KZ | Kitchen | ML | Masonry |
| LA | Landing | MM | Masonry |
| LB | Landing | MN | Masonry |
| LC | Landing | MO | Masonry |
| LD | Landing | MP | Masonry |
| LE | Landing | MQ | Masonry |
| LF | Landing | MR | Masonry |
| LG | Landing | MS | Masonry |
| LH | Landing | MT | Masonry |
| LI | Landing | MU | Masonry |
| LJ | Landing | MV | Masonry |
| LK | Landing | MW | Masonry |
| LM | Landing | MX | Masonry |
| LN | Landing | MY | Masonry |
| LO | Landing | MZ | Masonry |
| LP | Landing | NA | Notes |
| LQ | Landing | NB | Notes |
| LR | Landing | NC | Notes |
| LS | Landing | ND | Notes |
| LT | Landing | NE | Notes |
| LU | Landing | NF | Notes |
| LV | Landing | NG | Notes |
| LV | Landing | NH | Notes |
| LW | Landing | NI | Notes |
| LX | Landing | NJ | Notes |
| LY | Landing | NK | Notes |
| LZ | Landing | NL | Notes |
| MA | Masonry | NM | Notes |
| MB | Masonry | NO | Notes |
| MC | Masonry | NP | Notes |
| MD | Masonry | NQ | Notes |
| ME | Masonry | NR | Notes |
| MF | Masonry | NS | Notes |
| MG | Masonry | NT | Notes |
| MH | Masonry | NU | Notes |
| MI | Masonry | NV | Notes |
| MJ | Masonry | NW | Notes |
| MK | Masonry | NX | Notes |
| ML | Masonry | NY | Notes |
| MM | Masonry | NZ | Notes |
| MN | Masonry | OA | Other |
| MO | Masonry | OB | Other |
| MP | Masonry | OC | Other |
| MQ | Masonry | OD | Other |
| MR | Masonry | OE | Other |
| MS | Masonry | OF | |

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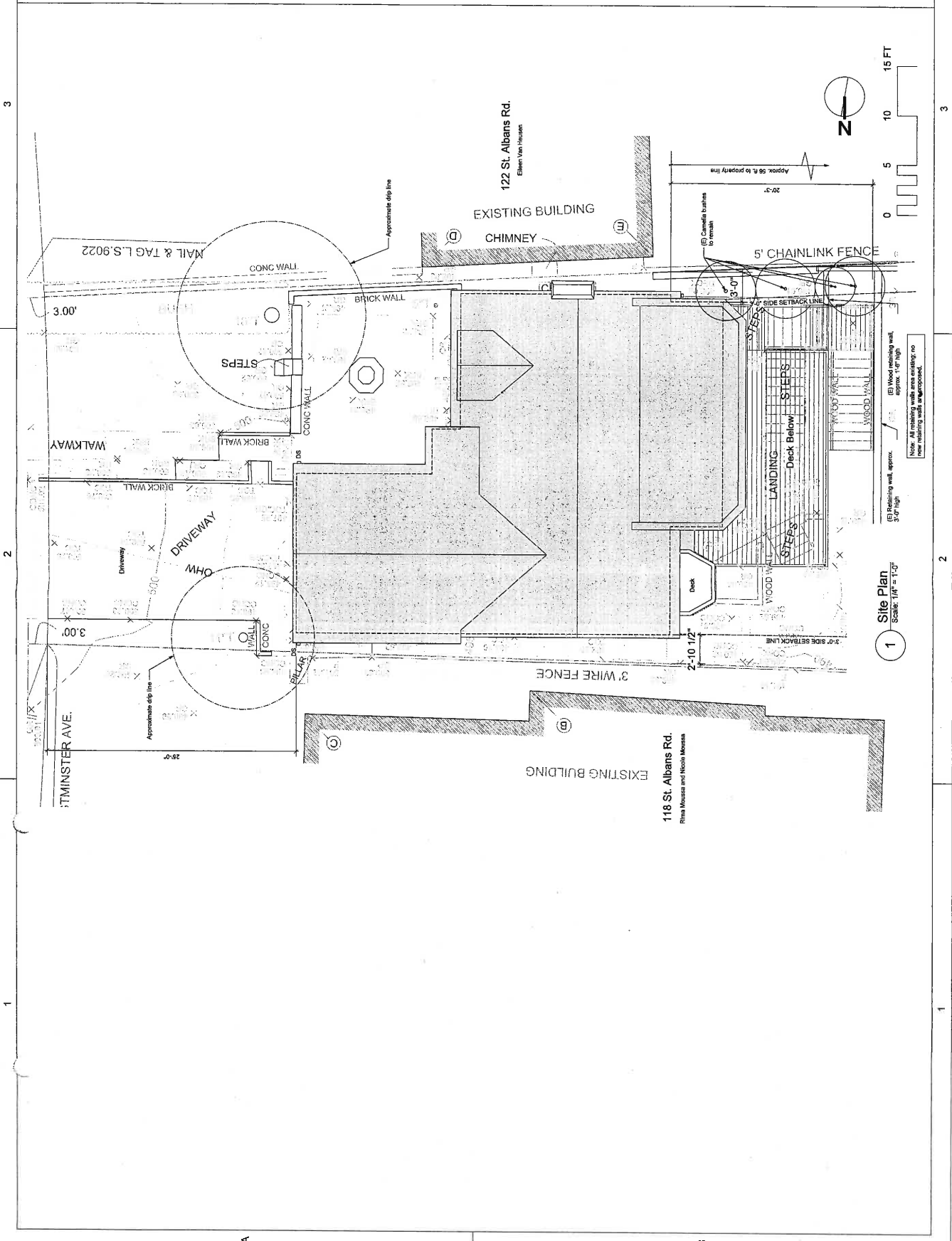
120 St. Albans Road
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contact: David Herbenich
 Priya Hanley
 address: 120 St. Albans Road
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 email: hmchenry@gmail.com

Site Plan

07/25/2019

C-2



- (E) Existing wall, approx. 5' high
 - (F) Wood framing wall, approx. 4' high
 - (G) Wood framing wall, approx. 4' high
 - (H) Concrete foundation to remain
 - (I) Concrete foundation to remain
- Note: All setbacks are approximate and may vary slightly from what is shown on the site plan.

1 Site Plan
 Scale: 1/4" = 1'-0"

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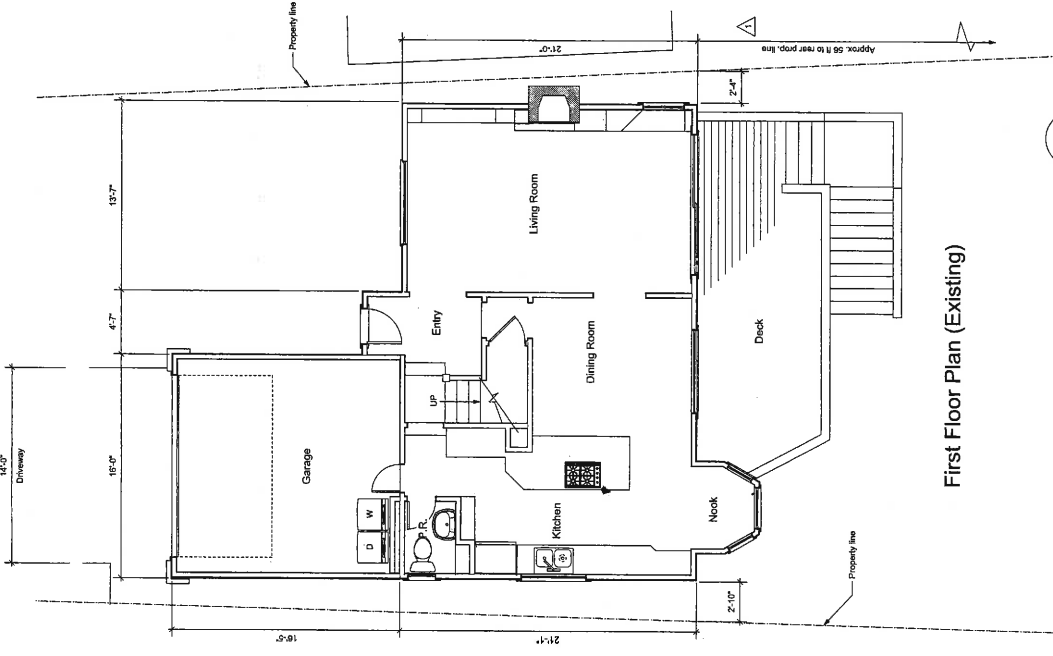
120 St. Albans Road
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Floor Plans (Existing)

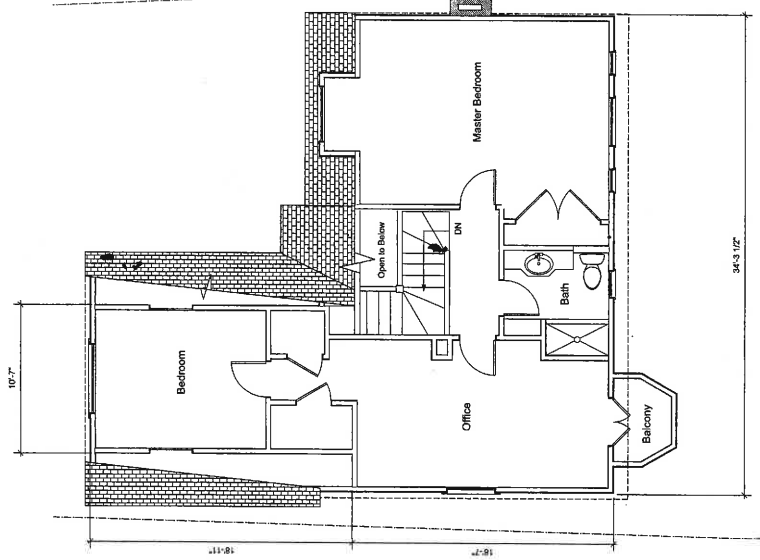
07/25/2019

1. UNLESS NOTED OTHERWISE, ALL DIMENSIONS ARE IN FEET AND INCHES.
2. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
3. ALL DIMENSIONS ARE TO CENTERLINE UNLESS NOTED OTHERWISE.
4. ALL DIMENSIONS ARE TO CENTERLINE UNLESS NOTED OTHERWISE.
5. ALL DIMENSIONS ARE TO CENTERLINE UNLESS NOTED OTHERWISE.
6. ALL DIMENSIONS ARE TO CENTERLINE UNLESS NOTED OTHERWISE.
7. ALL DIMENSIONS ARE TO CENTERLINE UNLESS NOTED OTHERWISE.
8. ALL DIMENSIONS ARE TO CENTERLINE UNLESS NOTED OTHERWISE.
9. ALL DIMENSIONS ARE TO CENTERLINE UNLESS NOTED OTHERWISE.
10. ALL DIMENSIONS ARE TO CENTERLINE UNLESS NOTED OTHERWISE.

A-1



First Floor Plan (Existing)



Second Floor Plan (Existing)

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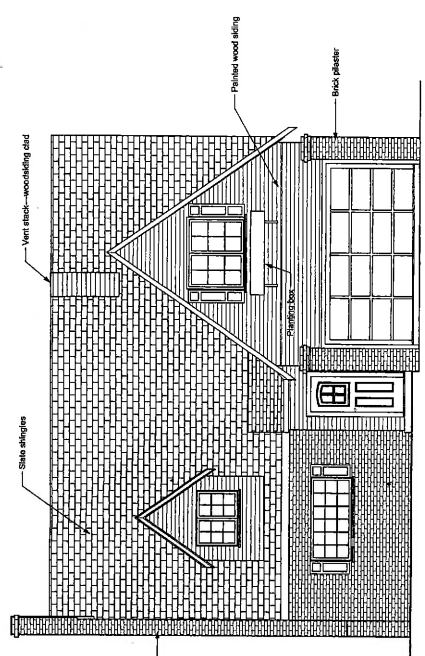
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Elevations (Existing)

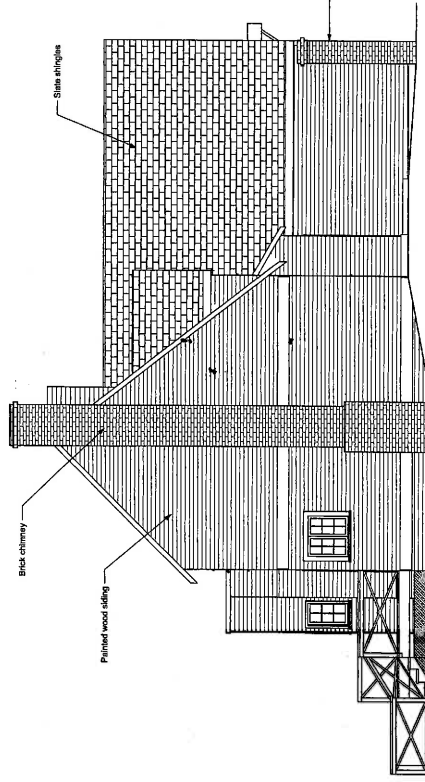
07/25/2019



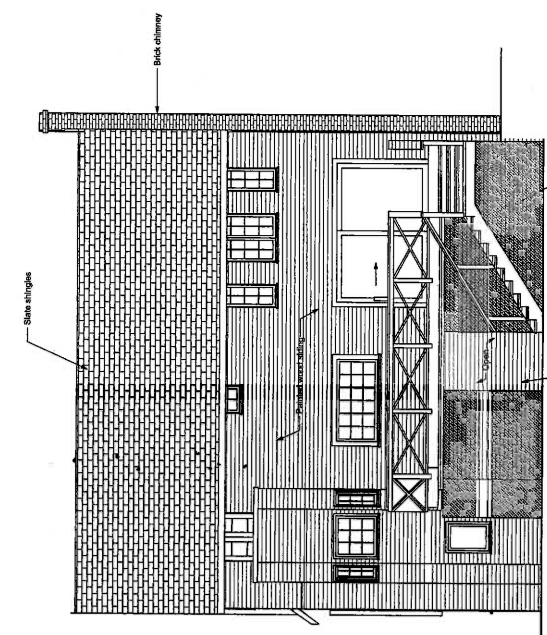
A-2



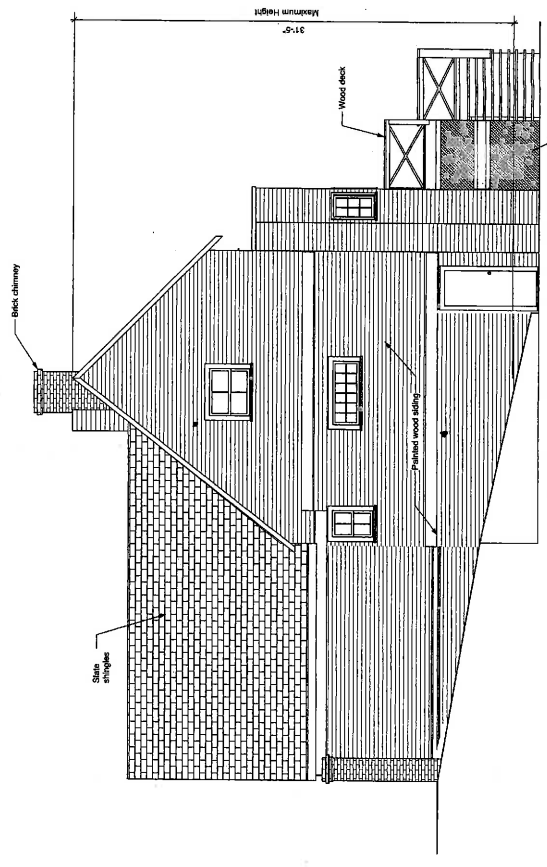
1 East Elevation
 Scale: 1/4" = 1'-0"



2 South Elevation
 Scale: 1/4" = 1'-0"



3 West Elevation
 Scale: 1/4" = 1'-0"



4 North Elevation
 Scale: 1/4" = 1'-0"

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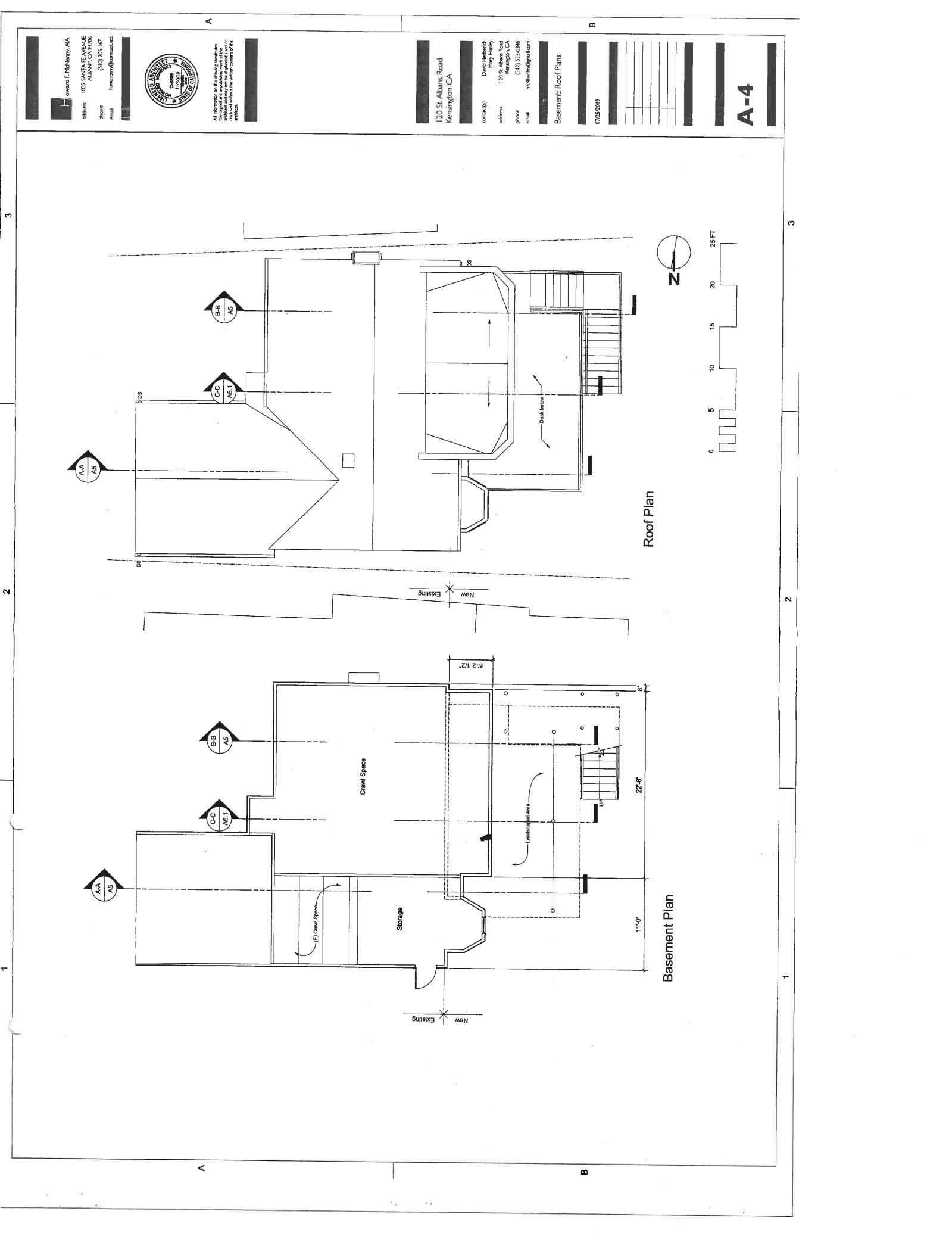
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Basement: Roof Plans

07/25/2019

A-4



Roof Plan

Basement Plan

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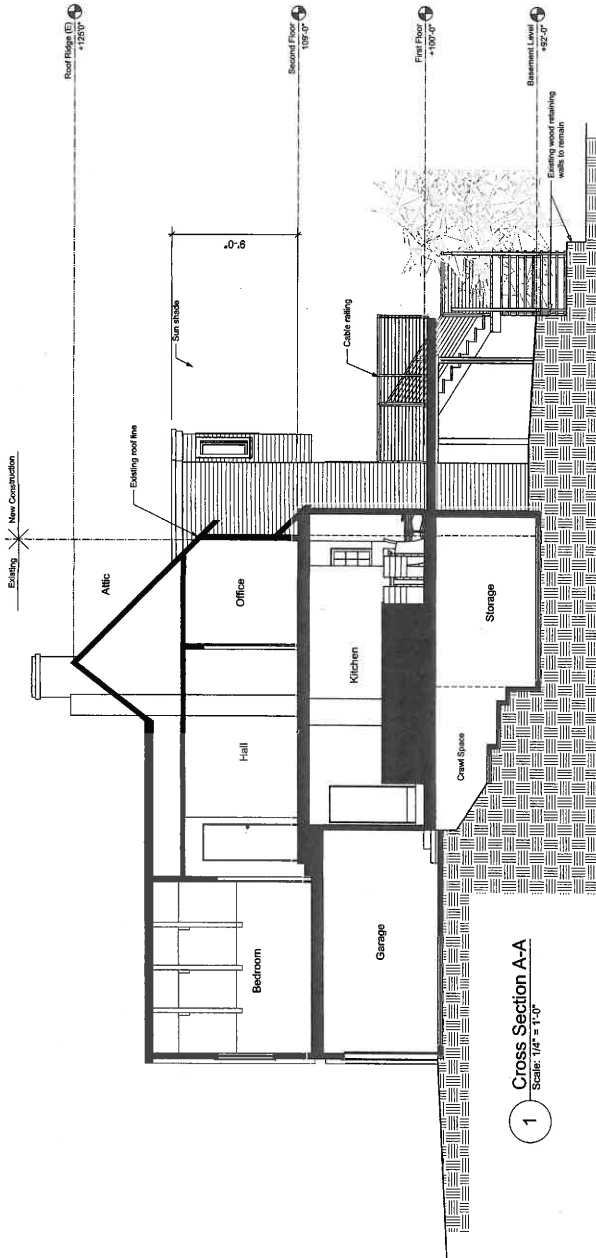
170 St. Albans Road
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 email: mcshenry@gnat.com

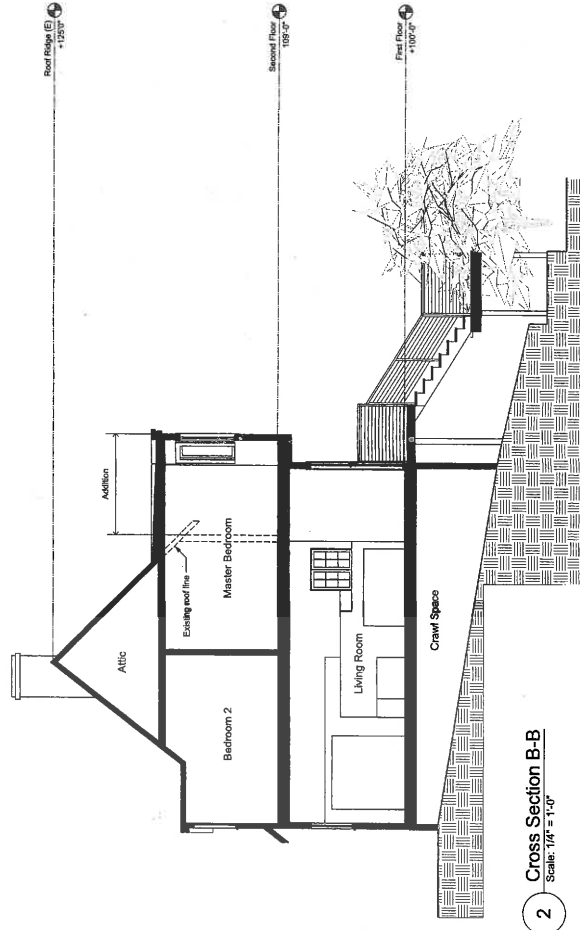
Cross Sections A-A, B-B

07/25/2019

A-5



1 Cross Section A-A
 Scale: 1/4" = 1'-0"



2 Cross Section B-B
 Scale: 1/4" = 1'-0"

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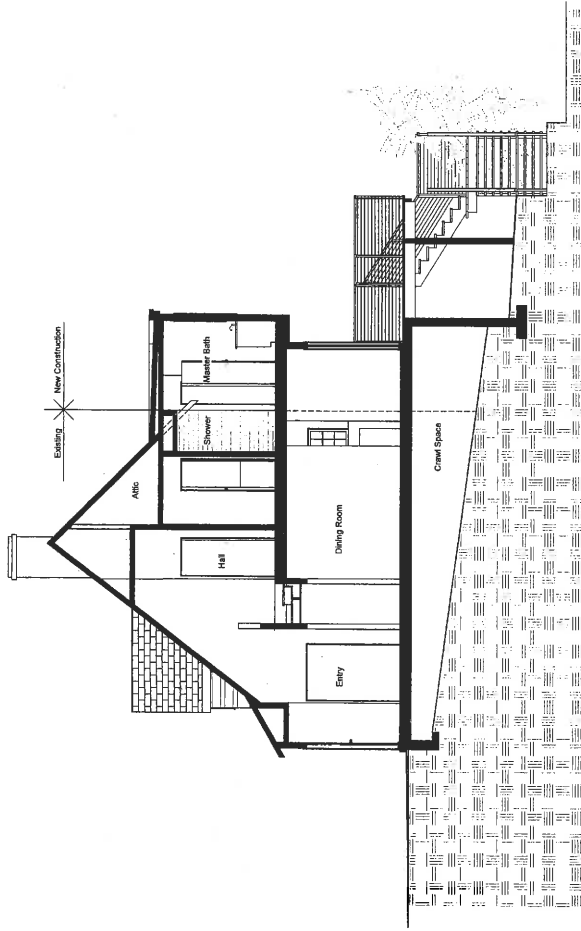
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Cross Section C-C

07/25/2019

A-5.1



1 Section C-C
Scale: 1/4" = 1'-0"

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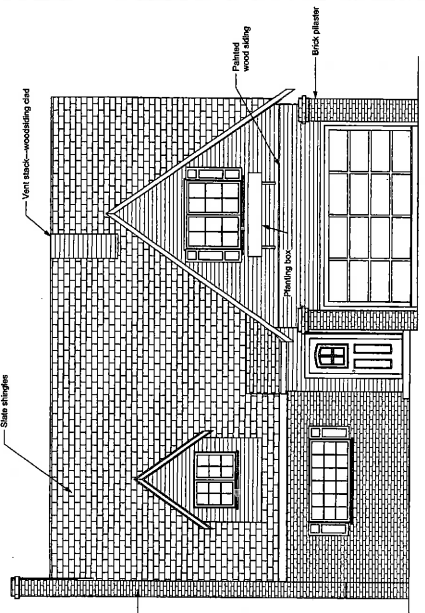
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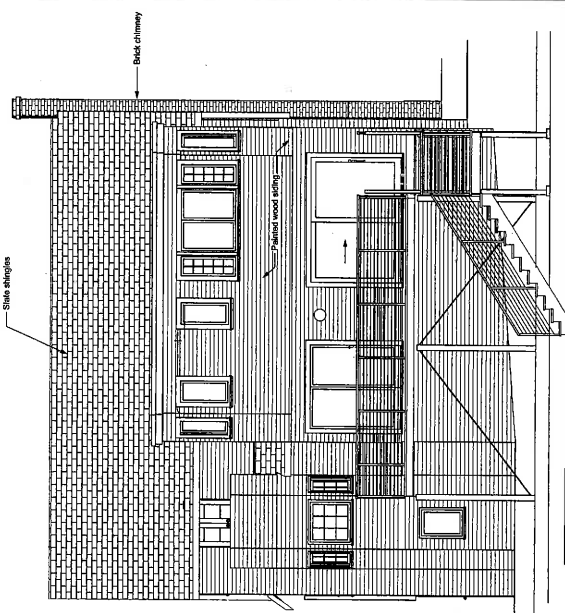
Elevations (Proposed)
 07/25/2019

1/1/2019: Ready for printing
 1/1/2019: Ready for printing
 1/1/2019: Ready for printing

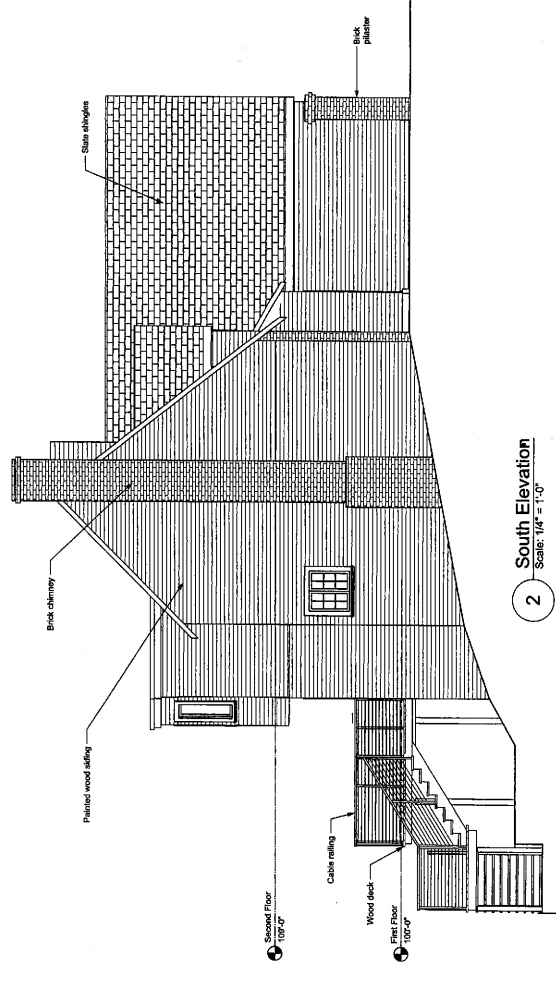
A-6



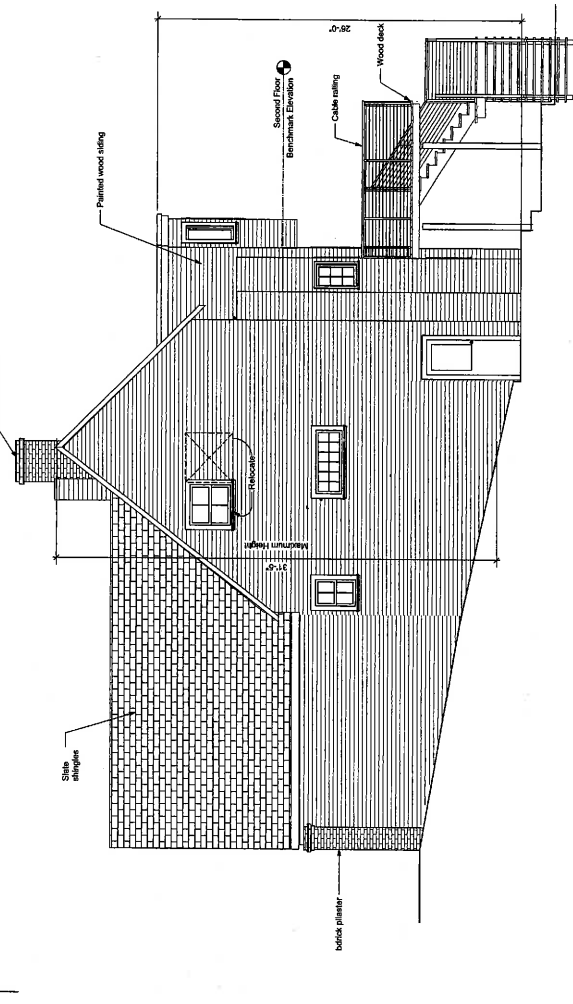
1 East Elevation
 Scale: 1/4" = 1'-0"



3 West Elevation
 Scale: 1/4" = 1'-0"



2 South Elevation
 Scale: 1/4" = 1'-0"



4 North Elevation
 Scale: 1/4" = 1'-0"

3

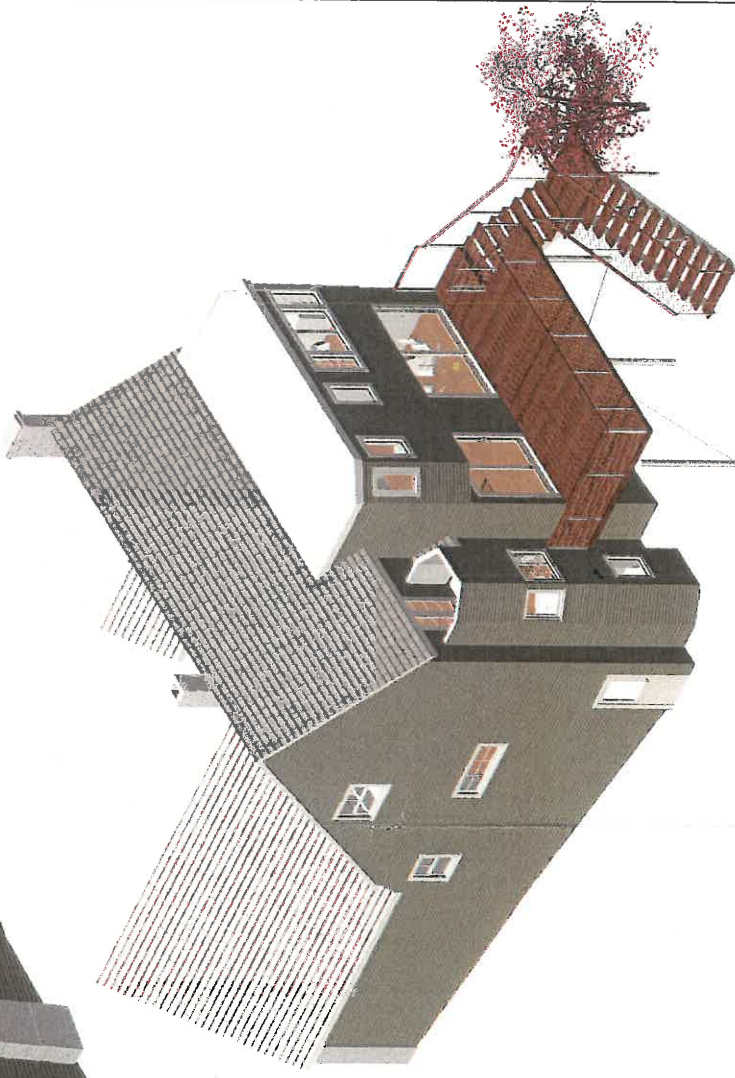
2

1

3

2

1



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120 St. Albans Road
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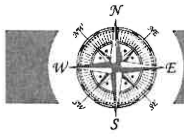
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Perspectives

07/25/2019

A-7

Appeal Letter



REQUEST FOR APPEAL REGARDING ZA RULING ON DP#19-3019

Dear Planning Commissioners:

On behalf of the owners of 118 St. Albans Road (the “Neighbors”), we submit this request to Appeal the Zoning Administrator’s Approval of a Development Plan Application DP#19-3019 to construct an expansion to a three story residence in Kensington (the “Project”). The approval process has been fraught with land use inconsistencies, misrepresentations, due process violations, and bias. Most importantly, the Zoning Administrator (“ZA”) ignored the substantial evidence on the record establishing that the Project requires a variance and has the potential to cause significant impacts to neighboring long-range views, privacy, and property values. We are hopeful that the impartial review of the Planning Commissioners will correct the due process violations that have occurred to date and ensure that any project approved on this property complies with planning and zoning law and preserves the Neighbors’ long-range views, privacy, and property values.

I. INTRODUCTION

The applicant proposes to build an expansion to the second and third stories on their three-story house - in violation of current zoning height restrictions- that would potentially cause significant aesthetic impacts to the neighboring property.

The approval process for this Project has been riddled with due process violations that the Planning Commission must address to avoid a protracted legal battle. The County has repeatedly failed to properly inform neighbors about the proposed Project, failed to provide adequate notice of meetings, failed to consider the substantial evidence on the record, failed to follow its own code requiring a variance, and failed to address the Neighbors’ very reasonable concerns regarding significant impacts to long-range views, privacy, and property values.

First, the County violated planning and zoning laws by approving the Project without issuing a variance. Second, the County repeatedly ignored the substantial evidence on the record that establishes the potential for the Project to cause significant aesthetic impacts. Finally, the County violated due process protections by failing to provide the Neighbors with adequate notice and information related to the Project, by misrepresenting key dimensions relevant to environmental impacts, and by biasedly advocating on behalf of the applicant in a wholly inappropriate manner. In doing so, the County failed to protect the Neighbors’ privacy, long-range views, and property values all of which are specifically protected under the unique Kensington Combining District (“KCD”) Ordinance that applies to this neighborhood. For these reasons, the Planning Commission must overturn the ZA decision, require a variance for this Project, and require the applicant to install story poles to determine the actual impacts that the Project, or any redesigned project, will cause before approving it.



We note that the applicant has made repeated personal attacks on the Neighbors, suggesting that their goal is to stop the Project. This is simply not the case. All the Neighbors want – all they have ever wanted- is fair play, impartial decision-making, compliance with County Code, and protection of their long-range views, privacy, and property values as required by the KCD Ordinance.

II. VIOLATIONS OF PLANNING AND ZONING LAWS

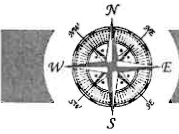
Despite substantial evidence on the record to the contrary, the ZA approved the Project without issuing a variance and without confirming compliance with both the variance requirements and the KCD Ordinance standards.

A. A VARIANCE IS REQUIRED FOR THIS PROJECT

i. A Variance Is Required to Expand an Existing Three Story Structure.

The Project proposes to expand the second and third story of a house in violation of CCC Code §84-4.802, which requires that all building heights be capped at 2 ½ stories. Any proposed expansion of the third story requires a variance – pure and simple. Many houses on the street currently have three stories, and are nonconforming structures, which does not in itself require a variance. But when an applicant proposes to expand that nonconforming element of their house, a variance is required. The applicant’s own architect acknowledged the need for a variance in his February 2019 testimony to the Kensington Municipal Advisory Committee (“KMAC”): “A variance is required due to the fact that the house as it already exists is considered a 3-story structure, due to the fact that is built on a down-slope lot that places the first floor in excess of 4-feet above grade at the rear of the structure. Current zoning places a limit of 2 ½ stories on houses in this zoning district.” (Testimony of Howard McNenny, applicant’s architect, KMAC meeting February 2019.)

For purposes of determining the number of stories of a structure, a basement counts as a story if the finished floor level directly above the basement is more than six feet above grade at any point (CCC Code §82-4.266). A basement is further defined in the KCD Ordinance as “any area in a building or structure where the finished floor directly above the area is less than four feet above preconstruction grade or finished grade, whichever is lower.” (CCC Code §82- 74.404). Based on these definitions, the ground floor of the existing structure at 120 St. Albans Road is a story, and the entire house is three stories. Even the Staff Report acknowledges that the house is three stories. (See Staff Report, p.2.) We have made clear in extensive documentation to County Staff (See Public Records Act request March 3, 2019 [Exhibit A]; Hearing Request to the County, dated August 30, 2019 [Exhibit B]; Second Hearing Request and Update to the County from KMAC Meeting, dated November 4, 2019 [Exhibit C]; and Corrections to the Staff Report, dated



December 13, 2019 [**Exhibit D**]) that the CCC Code requires the applicant to obtain a variance for the proposed expansion of this three story structure. County staff has ignored the substantial evidence on the record and the law and issued a Project approval without a variance.

The Staff Report incredulously suggests that while a variance would be required for a proposed expansion of the third story on the north side of the house, a variance is no longer required for a similar sized expansion *on the same third story* - because it is now constructed on the south side of the building. This tortured definition defies logic and common sense. A building either is, or is not, three stories. It is not two stories on one side and three stories on another. An expansion of the top two floors of a three-story building, when proposed in Kensington – which establishes a 2 ½ story limit requirement - requires a variance.

Even the applicant’s own architect was confused by County staff’s novel efforts to avoid variance requirements. In an email from the architect to the County planner on April 16, 2020, he stated: “It appears to us that we are being encouraged to only build on the south side of the house in order to avoid having to file for a variance. However, I do not see personally how it is possible to avoid the variance no matter where we build.” (See **Exhibit B, Attachment A.**) He goes on to state: “my understanding is that any addition where the lowest full floor is more than 4 feet above existing grade, the level below that floor must be considered a floor also.” (See **Exhibit B, Attachment B.**) We note that this same architect conveniently reversed his conclusions two months later once he realized that County staff might offer this particular applicant a special loophole. Indeed, the subsequent application filed by the architect in July erroneously suggests that the Project is now a “2-story addition to existing 2-story house.” (See **Exhibit E**, Application dated July 25, 2019.) This is patently false and belies the Neighbors’ concern that the applicants repeatedly misrepresent key facts to the County. Moreover, the County’s efforts to guide the applicant in ways to avoid a variance is also troubling, particularly given the Neighbors’ reasonable concerns.

We asked County staff to provide any example, any legal precedent, in which it has ever relied on the novel – and legally unsupportable - interpretation that a variance only applies for the proposed expansion of a three-story structure on one side of the building, or any similar ruling, and the County has produced nothing. County staff sent us a letter on December 13, 2019, stating that “[t]he Department has not identified any other ‘legal precedent, findings, records, memorandum, or guidance that would support the Legal Conclusion’” that a variance is not required. (See **Exhibit F.**) The County’s failure to identify any legal precedent is not surprising as such an approach not only defies common sense, but would likely lead to chaos and legal disputes in processing land use applications throughout the County. Indeed, we can think of several instances in which this tortured interpretation would set terrible precedent for the County and its ability to consistently regulate development. More to the point, it is not appropriate for the



County to bend over backwards looking for loopholes to avoid variance standards, particularly when significant impacts to neighbors would result from allowing such exceptions.

The notion that a proposed expansion to the third story in violation of the County Code would be granted without a variance also suggests the potential for substantive due process violations as well. (*See Neighbors in Support of Appropriate Land Use v. County of Tuolumne*, 157 Cal. App. 4th 997, 998 (2007).) Development that causes environmental impacts and directly steals the long-range views of another house, and use and enjoyment of a neighbor's property, not to mention significantly reduces their property values, is exactly what the Kensington height restriction was created to protect against.

Unfortunately, County staff seems bound and determined to avoid a variance for the Project, which is particularly troublesome given the significant concerns of surrounding neighbors. It is well settled law in California that a County cannot pick and choose which portions of the code to apply. (*See Broadway, Laguna etc. Assn. v. Board of Permit Appeals*, (1967) 66 Cal.2d 767, 779-780; *See also Orinda Assn v Board of Supervisors*, 182 Cal.App.3d 1145 (1986).) County staff has made a finding that squarely conflicts with its own code. This decision must be overturned and a variance must be required for the proposed expansion of the third story of a three-story building that violates the zoning limit to protect not only the rights of the aggrieved neighbors, but also the County's precedent and integrity in consistently applying land use law.

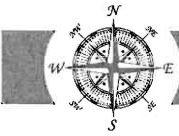
ii. SETBACKS REQUIRE A VARIANCE OR A REDESIGN

Similarly, the Project as proposed does not comply with setback requirements and requires a variance for this reason as well.

The Staff Report correctly cites the CCC Code requirement that "a reduced side yard minimum of 3 feet and a [minimum] aggregate side yard of 8 feet is allowed for any new construction (CCC Section §82-14.004)." It then goes on to incorrectly conclude that the Project meets these setback requirements.

Sheet A-3 of the revised application (**Exhibit D, Attachment A.**) shows that the Project will result in 3 feet on one side, and 2'10" on the other, for an aggregate of 5'10" with the proposed new construction. While three feet may be allowed for a single side yard, the new addition falls well short of the aggregate requirement to have a minimum of 8' for both side yards. Accordingly, a variance is required to allow for this continued inconsistency with the County's Code.

What's worse, the applicant has repeatedly filed misrepresentations regarding the dimensions of the proposed Project regarding setbacks. The revised July Application filed by the architect initially identified the setback as 2' 3 ½" on one side and 2' 10 ½" on the left side for a total of 5' 2" aggregate – *well below* the setback requirements. (**Exhibit G-1.**) When the architect realized that the setbacks might become an issue, he filed a revised application to show that the same

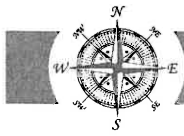


area on the right side was now 3” (See Exhibit G-2.) These plans show two different measurements for the same side without any redesign or explanation as to why this measurement would have changed. The only explanation we can fathom is that the number on the page was changed in an effort to meet setbacks on paper, but not in reality. The architect went further in an email to the County on December 31, 2019, by filing another revised application sheet and stating that: “Our proposal shows . . .the setback on the north sides is 10'-0”, or twice what is required.” (See Exhibit G-3.) As the plan shows, the 10’ measurement does not address the measurements closer to the existing structure which do not comply with setback requirements. These factual misstatements and misrepresentations highlight the lengths to which this applicant appears willing to go to misrepresent the actual dimensions and facts surrounding the Project. Facts matter and so does protecting the residents of Kensington.

At the January 6, 2020, ZA hearing continuance, the applicant’s architect submitted the revised plan view in an effort to establish that the Project complies with setback requirements; however, the architect’s own diagram establishes the opposite. Even if viewed in a light most favorable to the applicant, one side of the proposed addition is 3 feet, while the other is 4’10”. (Exhibit G-2.) While it is close, this does not comply with the 8’ foot aggregate CCC Code requirements. Again, the County cannot ignore its own code requirements simply because the measurement is ‘close’.

Rather than confirm the dimensions by measuring them independently, and requiring the applicant to submit an application that complies with setback requirements or obtain a variance, the ZA made a vague finding on January 22, 2020, that it would approve the Project as long as the Project was redesigned to avoid setback issues. This abdication of duty is unacceptable. If the Project requires a redesign to meet setback requirements, then the applicant must submit an actual redesign, and the County should independently confirm these dimensions to avoid any misrepresentation by the applicant. The County cannot rely on a verbal commitment to meet setback requirements. Independent confirmation and revised designs are particularly important when the applicant has previously misrepresented the dimensions and components of the Project.

It is paramount that the County vigorously implement its variance regulations to adequately protect the community. Any court reviewing the County’s decision would “meaningfully review grants of variances [or failure to require a variance] in order to protect the interests of those who hold rights in property nearby the parcel for which a variance is sought.” (See *Orinda Assn v. Board of Supervisors*, 182 Cal.App.3d 1145, 1162 (1986). CA courts have clarified that if the interest of neighboring property owners in preventing unjustified variance awards [or exemptions] for neighboring land is not sufficiently protected, the consequences would be dire. See *Id.* On the contrary, the County’s primary responsibility is to ensure that such ordinances are fairly and consistently applied to protect the entire community it regulates.



III. THE PROJECT HAS THE POTENTIAL TO CAUSE SIGNIFICANT IMPACTS

We implore the Planning Commission to correctly and consistently implement the CCC Code to protect neighboring long-range views, privacy, and property values.

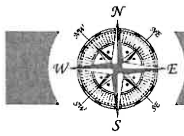
A. The Project May Cause Significant Impacts to Long-Range Views of the Bay Bridge and Downtown San Francisco.

The Neighbors have a very unique view of downtown San Francisco and the Bay Bridge, which are key selling points of their home. The Staff Report both misstates facts and glosses over the significant long-range view impacts potentially caused by the Project. First, the Staff Report incorrectly suggests that the Neighbors' property only has west facing views and relies on this falsehood to claim that views will not be impacted. As is clear from the many photos we have provided to staff (See **Exhibit D**, Attachment B -1 & B-2 and C-1 & C-2), the Neighbors' property has views to the southwest of the South Bay, including the Bay Bridge, that may be affected by the Project on both the upper and lower levels.

The Staff Report also incorrectly states that "the existing house is located downhill of the neighbors . . . and the addition will be lower than the existing residence. So the addition will not impact views of the San Francisco Bay. . . ." (Staff Report, p. 15, Finding 4.) This is not correct. Any simple search on Google Maps will show that the existing house is actually slightly uphill from the Neighbors' property. Again, this faulty logic has led to unsubstantiated findings by the ZA.

Indeed, the expansion of the third story proposed in the Project will impact the Neighbors' views of the Bay and the Bay Bridge. (See **Exhibits B, C, & D**.) The Staff Report incorrectly suggests that the upper addition proposed will only extend 2 feet beyond the existing house. (Staff Report, p.7, Finding 3.) On the contrary, what is shown in the application is that the upper level addition will extend 7' 2 1/2" from the existing house, and at least 3 1/2 feet from the existing structure, directly into the Neighbors' current views. (**Exhibit H**.) We provided several pictures to County staff and to the KMAC to establish this, but rather than consider this substantial evidence, the County has ignored this evidence without providing any contrary evidence through the use of story poles to clarify the actual impacts of the Project.

To further highlight staff's lack of care, due diligence, and concern during this process, the Staff Report erroneously asserts that the new deck, which barely overlaps the existing deck, is a *replacement deck* that extends 1 1/2 feet more than the existing. (Staff Report, p.8). Once again, the County misstates the facts and relies on falsehoods to approve the Project. First, it is clear from the Application Sheet C-2 (**Exhibit G-2**), that the new deck proposed will not be located within the existing deck footprint, but rather will be constructed behind the new addition and will extend 5 2 1/2 feet into the Neighbors' long-range views. We explained this inaccuracy to the ZA and received absolutely no response, acknowledgement, or suggestion that the Staff Report should be revised. (**Exhibit D**.) As described in extensive correspondence to the County, the new



deck proposed will extend directly into the best part of the Neighbors' Bay Bridge view from their kitchen sink window, a key selling point of their home. (See Exhibits B-D.)

County staff has never once visited the Neighbors' property to address the situation. Staff was invited back in February 2019 and declined the request. The County planner for the project has never met directly with the Neighbors to discuss their concerns. Indeed, until late 2019, County staff repeatedly avoided the Neighbors' requests for meetings and site visits. Instead, the ZA relied on incorrect dimensions in the Staff Report to suggest that southern views, which very much exist, will not be impacted. Had the County visited the property or required the applicant to install story poles before recommending approval, staff would have realized their mistake, and one would hope, requested that the applicants reduce the size of their unnecessarily large new deck structure to minimize impacts to the Neighbors' long-range views of the Bay Bridge and downtown San Francisco.

B. The Proposed Project Will Impact the Neighbors' Privacy.

As repeatedly described to the County, if a deck this large is approved, not only will the Neighbors' unique view of the Bay Bridge and downtown San Francisco be gone from this side of the house, but their privacy will be significantly impacted as well. Every time the applicants have people out on their deck, the Neighbors will be forced to look at them from their kitchen sink window instead of their previous Bay Bridge and Bay views. The proposed new deck is so large that it could also impact privacy from the master bathroom upstairs as well, as indicated on the rendering recently submitted by the applicant to the County. (See Exhibit I.) Having a deck this size impacts both long-range views and privacy and does not comply with the KCD Ordinance requirement to "protect the value and enjoyment of the neighbor's property". (CCC Code §84-74.1206.)

C. The Project Will Significantly Impact Property Values.

The Staff Report erroneously concludes that the Neighbors' property values will not be impacted and does not provide any evidence to refute the substantial evidence on the record to the contrary. As stated in a letter we provided from the prominent real estate agent who sold the Neighbors' property, impacts to the Neighbors' privacy and views from the kitchen window and master bath, will be impacted by the proposed project, and are major selling points to this particular home. (See Exhibit D, Attachment D.) Rather than address this evidence, and ask the applicants to reduce the size of their structure to avoid these significant impacts, the County suggests in the Staff Report that "since the addition will be increasing the enjoyment and value of the [applicant's] property, it will in turn increase the value of the neighboring properties". (Staff Report, p.7). This sentence is nonsensical. Ironically, the applicant's property values would be increased by directly stealing the Neighbors' views. This is exactly the type of project the KCD Ordinance was created to protect against. The ZA ignored the substantial evidence from a



prominent realtor stating that property values would be significantly impacted and approved the Project anyway.

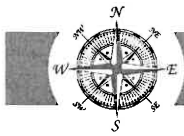
D. The Project Does Not Comply with the Kensington Combining District Standards.

The County has recognized Kensington as a particularly special place with exceptional long-range views of the Bay and downtown San Francisco. To protect these unique features, the County has established the KCD Ordinance specifically to “promote the community’s values of *preservation of views*, light and solar access, *privacy*, parking, residential noise levels, and compatibility with the neighborhood with regard to bulk and scale. (CCC §84-74.204(b).) The KCD Ordinance creates an additional layer of required review by the County to ensure that neighboring views, privacy, and property values are protected.

Even if the County was not required to issue a variance here – which it clearly is – the Project will violate KCD Ordinance standards and should not be approved as currently designed. The KCD Ordinance requires the ZA to evaluate siting, size, height, setbacks, window placement, etc. of even the smallest projects to determine a project’s actual “impact on the neighboring properties, with regard to view protection, obstructions, privacy in living areas, . . .” (KCD §84-74.1206.) Under the KCD Ordinance, the County MUST confirm that the project both “minimize[es] impacts upon surrounding neighbors; [and] protect[s] the value and enjoyment of the neighbors’ property” (Id.) The KCD Ordinance goes so far as to allow hearings for small building permits and requires sun shadow analysis for even the smallest structures to protect the neighbors. These protections explain why the County – in all other instances – has taken a very hard look at proposed additions in Kensington and regularly denies variances for height expansions.

As evidenced above and on the record, the Project – even on the south side of the house, has the potential to impact long-range views, privacy, and property values of the neighbors, which directly flouts KCD Ordinance requirements. While the County is allowed to balance interests, the ZA has focused her decision exclusively on the applicant’s interests. During her ruling on January 22, 2020, the ZA only read out loud Section 84-74.204(a) of the KCD Ordinance to benefit the applicant and neglected to read Sections 84-74.204 (b), 84-74.1206 (a) and 84-74.1206(b), all of which require the County to protect the surrounding neighbor’s long-range views, use, value, enjoyment, and privacy.

As previously proposed to County staff, a smaller addition could be constructed on the property that would avoid these significant impacts and would comply with the KCD Ordinance requirements. Rather than deny any development – as the applicant dramatically suggests–the Neighbors only wants to have their views and privacy protected. The applicants could easily accomplish this by limiting the upper level addition to the size of the existing house on the north side and reducing the deck to the previous footprint, to be an actual replacement deck. These changes would provide the applicant with a significant addition to their house while protecting the value of the Neighbors’ privacy, and property values and minimizing impacts to long-range



views as required by the KCD Ordinance. These reasonable requests were not even considered in the ZA hearing. Instead, the ZA relied on incorrect dimensions and falsehoods in rendering a decision.

When two sides posit such differing positions regarding precious views and privacy, the only reasonable approach is to require the installation of story poles to confirm that the Project will not cause aesthetic impacts. In the unlikely event that story poles establish that view and privacy impacts will in fact be protected, then the Neighbors would have no issue with the Project. As stated repeatedly, the Neighbors have no interest in stopping development, and have never before challenged a land use decision by the County. But given the County's current failure to follow its own code, the apparent bias in decision-making, and the very real impacts this Project could cause to their enjoyment of their home, the Neighbors have been left with no other choice but to challenge the ZA's decision.

E. This Project May Cause Potentially Significant Impacts that Need to be Analyzed Under CEQA.

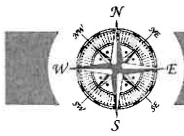
Without story poles to confirm otherwise, it's very possible that the Project could cause significant aesthetic impacts that have not been properly reviewed under CEQA. "A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." (Public Resources Code §21084(d); CEQA Regulations §15300.2(c).) The record contains evidence to suggest potentially significant environmental impacts associated with this Project that could make use of a categorical exemption inappropriate here.

IV. DUE PROCESS CONCERNS

The land use approval process for this Project has been plagued with due process violations ranging from inadequate notice to potential bias from what should be impartial decision-makers.

A. Failure to Inform Interested Parties.

From the beginning, the County has stonewalled the Neighbors' attempts to learn about the proposed project, a development that will directly impact their home. The Neighbors were denied access to the file on multiple visits to the County starting back in late 2018. Even though the Neighbors repeatedly voiced their reasonable concerns to the Project planner, County staff failed to keep them informed. The Neighbors were ultimately forced to hire land use counsel, who have had to file not one, *but 12* Public Records Act ("PRA") requests with the County to learn about the Project. (See discussion of the issue in **Exhibit A**, PRA request to the County March 3, 2019.) California law requires the land use process to be open and transparent, and the planner's job is to inform the public. Unfortunately, County staff did not take the Neighbors seriously – or even respond to them- until they hired a land use firm to handle the matter.



B. Inadequate Notice.

As discussed extensively with the County (See Exhibits A, B, C, and D), throughout the process, the County has failed to provide mandatory notice of the various land use proposals for a property located next door – even after the Neighbors specifically requested to be notified.

In February, County staff misrepresented the status of the revised application and told the Neighbors that the Project was on hold when in fact a meeting was scheduled to review a revised application in front of the KMAC two weeks later. The Neighbors were forced to scramble to attend the February 26, 2019, KMAC meeting to ensure their property rights would be protected.

As an advisory committee that represents the County charged with providing valuable input to the Board of Supervisors regarding land use decisions, the KMAC is required to hold meetings that follow Brown Act requirements and provide objective recommendations based on the legal standards established in California planning and zoning law. Unfortunately, the KMAC repeatedly failed to comply with these legal protections when reviewing the Project.

At the February 2019 KMAC meeting, KMAC members appeared to be coaching the applicant on ways to avoid a variance (discussion below). The Neighbors were naturally concerned after this meeting and emailed County staff requesting a meeting to discuss the likely impacts of the Project. County staff never responded to this request. The Neighbors then asked County staff to visit their property to better understand the issues, but County staff refused. The Neighbors were forced to go directly into the DCD office wherein they met with Mr. Ruben Hernandez, who listened to their plight, but did not indicate that such facts would be considered, and upon seeing the significant impacts the Project would cause to long-range views, mysteriously stated that he would need to recuse himself from reviewing this application. We learned later that Mr. Hernandez was the one who had verbally guaranteed approval to the applicants back in September (See Exhibit J, applicant email confirming his understanding from County supervisor that a variance would be approved.)

The October KMAC meeting was even more troubling. The KMAC members failed to comply with the Brown Act's requirement to provide adequate notice to the public. (CA Gov Code 54956.) Ms. Snyder, who volunteered to provide KMAC notice -and consequently was the same KMAC member who coached the applicant in February- provided notice of the meeting to all other neighbors surrounding the Project, except to the two opponents of the Project, the Neighbors and Ms. Donna Stanton, the owner of 134 Windsor Road in Kensington.

When the issue of adequate notice was raised at the October meeting by Ms. Stanton, the KMAC members did not apologize or suggest a new process to ensure adequate notice going forward, they instead suggested that Ms. Stanton's property must have fallen outside the noticing area. This assertion is patently false. Through PRA requests, we have learned that both Ms. Stanton's



and the Neighbors' properties fall within the notification area for this KMAC meeting (See **Exhibit K** which contains the KMAC's list of all properties within the KMAC noticing area for this Project—relevant properties highlighted.) Indeed, both of Ms. Stanton's neighbors on either side received notice of the KMAC meeting.

When individual rights are being deliberated in an administrative hearing or similar meeting, interested parties are required to be apprised of the application "so that [they] may have an opportunity to refute, test, and explain it, and the requirement of a hearing necessarily contemplates a decision in light of the evidence there introduced. (*Clark v. City of Hermosa Beach*, 48 Cal. App. 4th 1152, 1172 (1996).) Without adequate notice, it "would be tantamount to requiring a hearing in form but not in substance, for the right of a hearing before an administrative tribunal would be meaningless if the tribunal were permitted to base its determination upon information received without the knowledge of the parties." (*Id.*) Without such required notice, the KMAC meeting should not have been held and should have been rescheduled. At the very least, the KMAC members could have suggested a more robust notice process going forward to avoid these due process issues.

C. Bias.

Perhaps most troubling, is the evidence on the record of bias by KMAC members in what the law requires must be an impartial decision-making process. At the February 26, 2019, KMAC meeting a KMAC member provided the applicant with specific guidance on how they could "avoid a variance" in what could be viewed as a spurious effort to circumvent the variance requirements. Sadly, when the Neighbors raised the concern about this KMAC member with the Supervisor's Office back in March of 2019, the Supervisor's assistant dismissed the issue saying that rather than work with the Neighbors, they could always appeal it to the Board of Supervisors. (See **Exhibit L.**) Rather than address direct issues early on, the County has ignored the problem, probably hopeful that the Neighbors would simply give up. It should not be this difficult for a County resident to receive fairness and consideration in the land use process.

The same KMAC member who coached the applicant in February and failed to provide adequate notice to Project opponents in October, Ms. Snyder, appears to have a clear conflict of interest. The Neighbors have learned from various neighbors in the area that Ms. Snyder solicited support for the Project when notifying them about the October KMAC meeting. The Neighbors obtained signatures from 35 different neighbors confirming that Ms. Snyder asked them to attend the meeting in support of the Project, which would be clear evidence of campaigning in violation of California laws protecting impartial decision-making.

If there is evidence of an "unacceptable probability of actual bias on the part of a decision-maker", that decision-maker must be disqualified from reviewing the application. (See *Nasha LLC v. City of Los Angeles*, 125 Cal. App. 4th 470, in which a Planning Commission decision was vacated because one of the Commissioners showed clear bias by speaking out against a pending



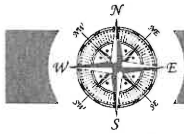
project.) While it may not be objectionable for a KMAC member to have a personal preference regarding a project, California law prohibits public representatives from campaigning for any project that they are reviewing.

With these legal standards in mind, we sent an email to Ms. Snyder before the KMAC meeting respectfully asking her to either explain the situation or to recuse herself from deliberating on the Project. (**Exhibit C**, Attachment A). Ms. Snyder did not respond to our email request. When the KMAC Chair raised the issue with Ms. Snyder at the meeting, she said the accusation was false, but provided no evidence to counter the 35 signatures from neighbors establishing her efforts to campaign for the Project. The KMAC Chair accepted Ms. Snyder's statements without any further precautions and allowed her to vote on the Project. To avoid even the appearance of bias, Ms. Snyder should have recused herself from deliberating on this Project.

The KMAC Chair himself seemed to show bias against the Neighbors when he snidely discounted the Neighbors' concerns in an email to the Supervisor's office on August 1, 2019, asking "is [Nicole] worked up even over this [revised application]." (**Exhibit M**.) It appears that the KMAC members have been irritated with the Neighbors all along. Perhaps they are friends with the applicant, we do not know. But one of the potential flaws in having residents without government experience sit on advisory committees to the County, is that they are less familiar with the requirement to be impartial and can let personal issues cloud their rulings.

During the October KMAC Meeting, evidence of potentially significant impacts to the Neighbors' privacy and long-range views resulting from the proposed construction were ignored by the KMAC. Rather than request to have story poles installed to confirm actual impacts, the KMAC members found that while the Project may "block the view," it wouldn't be "that bad". They made this arbitrary finding without any evidence, just the word of the applicant. The KMAC members appeared to believe that because the applicants had moved their project to the other side of the house, they should now be entitled to build. Thankfully, California law prevents such arbitrary decisions.

The most egregious display of bias came at the ZA hearing in December 16, 2019, when the two relevant KMAC members, Ms. Snyder and Mr. Tahara, testified **on behalf** of the Project applicant. These 'impartial decision-makers' testified on behalf of the Project, directly violating their legal obligation to remain impartial. Rather than chastise the KMAC members for testifying on behalf of a project in violation of their duties as impartial decision-makers, the ZA considered the KMAC testimony and cited it during her ruling on January 22, 2020. When we followed up with the ZA on this point and requested to receive a copy of the written testimony provided by the KMAC members, the ZA did not respond. (**Exhibit N**, Email to ZA.) Indeed, the County has yet to provide us with a copy of the written testimony from the KMAC despite repeated requests, including a PRA request. (See **Exhibit O**, PRA Request dated January 16, 2020). It simply should not be this difficult to ensure fairness in a land use approval process.



All affected parties have the right to an impartial tribunal and unbiased decision makers such that “even the probability of unfairness is to be avoided.” (*Clark v. City*, 48 Cal. App. 4th at 1170. Due process “demands an appearance of fairness and the absence of even a probability of outside influence on the adjudication. In fact, the broad applicability of administrative hearings to the various rights and responsibilities of citizens and businesses, and the undeniable public interest in fair hearings in the administrative adjudication arena, militate in favor assuring that such hearings are fair.” (*Nightlife Partners, Ltd. v. City of Beverly Hills*, 108 Cal. App. 4th 81, 83 (2003)(emphasis added).) Any agency action that reflects an abuse of discretion must be disregarded to avoid further tainting the land use process.

The Planning Commission must overturn the previous decision to rectify these critical wrongs and prevent another protracted legal battle against the County for due process violations. (See *Fratus v. Contra Costa Cty. Dep't of Conservation & Dev.*, 2017 Cal. App. Unpub. LEXIS 5877 in which the court issued a writ against Contra Costa County DCD representatives for failing to follow CCC Code.) To protect the Neighbors’ civil rights, there must be due process to ensure fairness in the process. The Planning Commission can do this by overturning the ZA’s decision and requiring a variance, by the having County come to the property to see the impacts for themselves, and by requiring the applicant to install story polls. Without implementing such simple safeguards to protect property and civil rights, the system appears rigged.

D. Additional Falsehoods in the Record.

The Planning Commission must reverse this decision not only to rectify due process concerns, but to correct the various misstatements made by both County staff and the applicant throughout this process.

As described above, the Staff Report includes numerous falsehoods and inaccuracies, including the dimension of the proposed deck, the dimensions of the upper level, the elevation of the property, and stating that there are no views to the south from the Neighbors’ property.

The applicant’s architect has repeatedly misrepresented the Project. Early on in the process, he explained clearly why a variance would be required, but then flip flopped once he realized the County was willing to create a loophole for this Project. During his ZA testimony and in the application, he described the addition as a “two story addition on a two story house” in an effort to support the variance loophole, even though the Staff Report clearly states that the subject property is a three-story house. The architect then claimed setback requirements had been met while submitting an application that clearly shows that while close, the current design does not meet the aggregate 8’ setback requirement. The architect has gone so far as to accuse the Neighbors of ‘leaning out the window’ when taking the relevant photos, a ridiculous claim made to the ZA in private after the hearing. (See Exhibit P.) These misstatements and misrepresentations underscore the need for the Planning Commission – a neutral body- to review the facts and ensure that the CCC Code is correctly enforced, that dimensions are confirmed by



County staff through site visits, and story poles are installed to confirm actual impacts before approving a Project that could permanently destroy long-range views of the Bay Bridge and downtown San Francisco.

V. CONCLUSION

All of this could have been avoided. Had the applicants, or their architect, contacted the Neighbors to have an honest discussion about the type of expansion that would preserve the Neighbors' views and privacy, this could have been avoided. Rather than work with their neighbors, the applicants instead worked with County staff to identify nonexistent loopholes to variances.

By ignoring the substantial evidence in the record and avoiding CEQA review, the ZA approved a Project that is inconsistent with current zoning, and ignored potentially significant aesthetic impacts to long-range views, privacy, and property values. The residents of Kensington deserve a County review process that consistently applies the law and protects its citizens. They deserve a ZA who does not rubber stamp bad projects and waive CEQA review, but rather one that takes the necessary time to thoroughly review the project and ensure that the County addresses the substantial evidence on the required and confirms compliance with land use laws without bias or favoritism.

We understand that this County has been held legally liable for failing to consistently and fairly apply its regulations in the past. Fortunately, there is still time for the Planning Commission to comply with its code and require a variance for the Project and a revised application to address setback issues and to minimize aesthetic impacts.

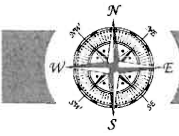
Based on all of the above, we respectfully request that the Planning Commission reverse the ZA's decision, require a variance for the Project, and require story poles to confirm the actual extent of impacts. To the extent that the Project does not preserve long-range views, privacy, and property values, it must be rejected and redesigned.

Respectfully submitted,

Jillian Blanchard, Rudder Law Group, LLP

cc: Supervisor John Gioia
Contra Costa County Attorney
DCD Planning Director
Ms. Nicole Ashar
Mr. Joseph Petrizello

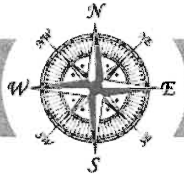
EXHIBITS TO FOLLOW



RUDDER LAW GROUP

EXHIBIT A

EXHIBIT A



RUDDER LAW GROUP
NAVIGATING THROUGH ENVIRONMENTAL REGULATION

JILLIAN B. BLANCHARD
415.867.6769
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Ms. Margaret Mitchell
Department of Conservation and Development
30 Muir Road
Martinez, CA 94553

Public Records Request re 120 St. Albans Road, Kensington, CA

Dear Ms. Mitchell:

We have been retained by parties interested in the development proposed for 120 St. Albans Road, Kensington, CA (the “**Property**” as defined below) in application #VR18-1032. Based on the approach the Kensington Municipal Advisory Committee (“**KMAC**”) and the County have followed to date, we have serious procedural due process concerns, substantive due process concerns, and land use and zoning consistency concerns related to the processing of this application and the proposed development of the Property. We are making this Public Records Act request to better understand the County’s and the KMAC’s respective processes in reviewing this application to ensure that the proper procedures and review standards are followed before any formal decision is rendered by the County.

The applicant proposes to build an addition to the structure on the Property that would violate current height restrictions and would cause significant aesthetic impacts and significantly damage the long-range views, incoming sunlight, use, enjoyment, and property values of the neighboring property. The applicants have presented the project to the KMAC (with two different proposals) on two occasions and both times, the KMAC has recommended denying a variance because the project cannot meet the statutory requirements for such an approval.

Due Process Concerns

Throughout the process, the County has failed on several occasions to provide mandatory notice to our clients even though their property will be directly affected by the County’s decision. After repeatedly voicing their concerns and requesting status updates from the County, the County failed to inform our clients that the applicants had submitted revised plans on February 12th and failed to provide them notice that the KMAC would be reviewing these plans at the February 26, 2019 meeting. Indeed, when our clients spoke with you by phone on February 11th to learn the status of the application, you stated that since revised plans had not yet been filed, the project would be very unlikely to make it onto the February 26th KMAC agenda. Unfortunately, when the revised plans arrived the following day, you failed to notify our clients when they were undeniably an interested party to the proceedings. When individual rights are being deliberated in an administrative hearing, interested parties are required to be apprised of the application “so that [they] may

have an opportunity to refute, test, and explain it, and the requirement of a hearing necessarily contemplates a decision in light of the evidence there introduced. (*Clark v. City of Hermosa Beach*, 48 Cal. App. 4th 1152, 1172 (1996).) Without adequate notice, it “would be tantamount to requiring a hearing in form but not in substance, for the right of a hearing before an administrative tribunal would be meaningless if the tribunal were permitted to base its determination upon information received without the knowledge of the parties.” (*Id.*) Our clients have a known, vested interest in the subject application, will be uniquely and directly impacted by the project proposed, and have indicated they have substantial evidence to submit into the record. Yet, the County failed to notify them of the revised plans ostensibly designed to address their concerns.

Our clients emailed you immediately after the February 26, 2019 KMAC meeting and requested a meeting to provide substantial evidence regarding the potential impacts the revised plans will cause, to which the County has yet to respond. Our clients were forced to go directly to the DCD office wherein they met with Mr. Rubin Hernandez, who listened to their plight, but did not indicate that such facts would be considered in the application and upon seeing the very real long-term views impacted by this project, mysteriously stated that he would need to recuse himself from reviewing this application. You can imagine our confusion at this kind of reaction and the need to better understand the history of communications between the parties related to this application.

The KMAC process has been equally fraught with due process concerns. While the revised designs were ostensibly created to address the impacts to our clients’ long-range and impressive views of San Francisco and the Bay Bridge, the applicants did not even bother to install new story poles to identify the location of the new design. Neither the KMAC nor the County have yet required the applicant to install these poles to better analyze the very real impacts this addition would cause.

At the February 26, 2019, meeting, one of the KMAC members appeared to be coaching the applicant through the process rather than offering an objective viewpoint based on the facts. Indeed, at one point, a KMAC member provided the applicant with specific guidance on how they could “avoid a variance” in what could be viewed as a spurious effort to circumvent the variance requirements, which this application clearly cannot meet. All affected parties have the right to an impartial tribunal and unbiased decision makers such that “even the probability of unfairness is to be avoided.” (*Id.* at 1170.) Due process “demands an appearance of fairness and the absence of even a probability of outside influence on the adjudication. In fact, the broad applicability of administrative hearings to the various rights and responsibilities of citizens and businesses, and the undeniable public interest in fair hearings in the administrative adjudication arena, militate in favor assuring that such hearings are fair.” (*Nightlife Partners, Ltd. v. City of Beverly Hills*, 108 Cal. App. 4th 81, 83 (2003).) And while the KMAC may only be an “advisory” committee, its recommendations are a significant factor in informing the County’s ultimate land use decision and is instrumental in supporting the County’s staff report regarding the application and the subsequent determination by the Zoning Administrator.

Unfortunately, it is impossible to confirm exactly how KMAC members handled the meeting, or the reasoning for any of their findings for that matter, because the meeting “minutes” are not minutes as that term is used by all other public agencies in California.

They do not include *any* details or findings, and simply list the members' votes on the project.

Having a transcript or detailed minutes of the February KMAC meeting is particularly important here to understand the support, reasoning, or findings related to the KMAC's critical, and dumbfounding, recommendation to "approve the revised plans, but deny the variance," which plans would cause significant, unmitigated environmental impacts.

The notion that a proposal to increase the height of a structure in violation of the Kensington Planning Ordinance and the Contra Costa County Code would be granted without a variance boggles the mind and suggests the potential for substantive due process violations as well. (*See Neighbors in Support of Appropriate Land Use v. County of Tuolumne*, 157 Cal. App. 4th 997, 998 (2007), in which the Court overturned a county's approval of a nightclub that was inconsistent with the zoning ordinance without a variance.) Development that causes environmental impacts and directly steals the long-range views of another house, sunlight, and use and enjoyment of a neighbor's property, not to mention significantly reduces their property values, is exactly what the height restriction was created to protect against. It is unclear how the KMAC believed it was authorized to "approve the revised plans" but "deny the variance." Unfortunately, the non-existent meeting minutes do not shed any light on the reasoning or basis for such a conclusion. We remain hopeful that the KMAC kept a transcript of the meeting, or at least detailed notes, to help us better understand the KMAC's reasoning on the matter.

Land Use and Zoning Consistency Issues

At base, our primary concern is that the applicants' revised proposal violates the standards stated in the Kensington Planning Ordinance (Section 84-74.1206) and the variance standards required in County Code Section 26-2.2006.

- The proposed project does not *minimize* impacts to its neighbors, it creates significant impacts on the long-term use and enjoyment of our clients' property.
- The revised design does not protect the value and enjoyment of our clients' property and we have substantial evidence to this effect;
- Creating this type of addition to one of the highest houses on the street to block other views is not consistent with a neighborhood dependent on long-range views for its property values;
- There is nothing unique about the Property that would justify a variance to the specific height requirements;
- Granting this application would constitute a special privilege to increase heights in a neighborhood in which the subject house is already one of the tallest;
- There are no special circumstances applicable to the Property that justify such a special privilege. Indeed, the applicants are able to construct the addition on the other side of the house while gaining the same benefits and avoiding *all* impacts to our clients' property. They simply don't want to.
- The proposed variance does not meet the intent and purpose of the Kensington Combining District, which unlike many other neighborhoods, has a specific planning ordinance to protect neighbor's use, view, privacy, and light and solar access, all of which will be significantly impacted under the revised plans.

Variances should only be granted when the applicant has made a clear showing of undue hardship. “The essential requirement of a variance is a showing that a strict enforcement of the zoning limitation would cause unnecessary hardship.” (*Neighbors in Support of Appropriate Land Use v. County of Tuolumne*, 157 Cal. App. 4th 997, 998 (2007.)) The applicants have made no showing that allowing for a third-floor addition to their house is in anyway necessary to avoid an undue hardship on their property. Indeed, the applicants could construct this addition on the other side of their house and not in any way affect the neighbor’s property. It is clearly the applicant’s burden of demonstrating that a variance is necessary to avoid an undue hardship. (*See Orinda Ass'n v. Bd. of Supervisors*, 182 Cal. App. 3d 1145, 1150 (1986) (judgment vacating approval of a height variance because the applicant failed to make the affirmative showing that a variance was warranted where less impacting alternatives were available.)

Our clients are reasonable people, but they have very serious and reasonable concerns regarding the environmental impacts of the proposed project, including specific impacts to their use, enjoyment, sunlight, long-range views, and property values. The applicants are proposing a project that violates the Kensington Planning Ordinance and does not meet the high standards necessary to justify a height variance under the County Code. Indeed, there is a clear alternative to the proposed design that would avail applicants of a larger house with a third story and avoid all of these impacts. We will contact you soon to schedule a meeting to discuss these alternatives in greater detail to facilitate the County’s decision-making process.

To better understand the development proposed on the Property and to address the serious concerns we have regarding this application process, we submit this request for public records pursuant to the California Constitution (as amended by Proposition 59) and the Public Records Act (Government Code §§ 6250 *et seq.*).

For purposes of this request, we provide the following clarifying definitions for the following terms:

“**All**” and “**any**” each mean “any and all.”

“**Communications**” mean all verbal and written communications of every kind between and among the parties specified, including but not limited to telephone calls, conferences, conversations, meetings, notes, correspondence, emails, and memoranda.

“**County**” means Contra Costa County, including its officers, staff, managers, appointees, employees, contractors, agents, representatives, attorneys, and consultants, including in particular, employees of the Department of Conservation and Development.

“**KMAC**” means the Kensington Municipal Advisory Committee, including its officers, staff, managers, employees, contractors, agents, representatives, attorneys, and consultants.

“**Property**” mean that certain real property commonly referred to as 120 St. Albans Road in Kensington, California.

“Records” include, without limitation, all writings and documents of every type in your possession, control, or custody, including but not limited to the following items, whether printed or reproduced by any process, including documents sent and received by electronic mail, or written or produced by hand: computer data files, information stored in electronic media, including on computer tapes, disks, or diskettes, tapes, inputs, outputs, and printouts; notes; letters; correspondence; communications; telegrams; memoranda; summaries and records of telephonic and telegraphic communications; summaries and records of personal conversations; diaries; appointment books; reports (including any and all draft, preliminary, intermediate, and final reports); surveys; studies; comparisons; tabulations; budgets; workpapers; charts; plans; maps; drawings; engineering and other diagrams; photographs; film; microfilm; microfiche; tape and other mechanical and electrical audio and video recordings; data compilations; log sheets; ledgers; vouchers; accounting statements; books; pamphlets; bulletins; minutes and records of meetings; transcripts; stenographic records; testimony and exhibits, including workpapers; copies, reports, and summaries of interviews and speeches; reports and summaries of investigations; opinions and reports of consultants; reports and summaries of negotiations; press releases; newspaper clippings; drafts and revisions of draft of documents; and any and all other records, written, electrical, mechanical, and otherwise.

“Relating To” means concerning, pertaining to, referring to, describing, mentioning, containing, evidencing, constituting, dealing with, discussing, considering, analyzing, studying, reporting on, commenting on, setting forth, supporting, recommending or otherwise concerning in any manner whatsoever the subject matter of the request.

“Writing” means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by email or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

We hereby request the following categories of Records:

1. All Records and Writings Relating To the Property within the last four years.
2. All Records and Writings Relating To improvements proposed for or conducted upon the Property within the last four years.
3. All Records and Writings Relating To Communications by and between the County and the owners of the Property (including David Herberich and Mary Hanley) within the last four years.
4. All Records and Writings Relating To Communications by and between the KMAC and the owners of the Property (including David Herberich and Mary Hanley) within the last four years.

5. All Records and Writings Relating To Communications by and between the County and individuals known to the County to be working for the owners of the Property within the last four years (including architect Howard McNenny).
6. All Records and Writings Relating To Communications by and between the KMAC and individuals known to the KMAC to be working for the owners of the Property within the last four years (including architect Howard McNenny).
7. All Records and Writings Relating To Communications by and between the County and the KMAC Relating To the Property within the last four years.
8. All Records or Writings Relating To plans, submittals, applications, or requests submitted to the County Relating To the Property within the last four years.
9. All Records and Writings Relating To the KMAC meetings on November 27, 2018, January 8, 2019, and February 26, 2019.

Pursuant to Government Code § 6253.1, if you have any difficulty identifying responsive Records, we request that you provide assistance and suggestions for identifying responsive Records and for overcoming any practical basis for denying access.

We believe that no express provisions of law exist that exempt the Records from disclosure. As you determine whether this request seeks copies of disclosable public records, be mindful that Article I, Section 3 (b)(2) of the California Constitution requires the County to broadly construe a statute, court rule, or other authority if it furthers the right of access to the information we have requested and to narrowly construe a statute, court rule, or other authority if it limits the public's right of access.

To the extent that there are any responsive Records, or portions thereof, which the County or the KMAC determines to be exempt from disclosure and seeks to withhold, please provide us with prompt notification of the County's or the KMAC's intent to withhold such Records, together with an index and general description of such Records, the names and titles or positions of each person responsible for the denial of our request, and the reason(s) for the denial. If a portion of the information we have requested is exempt from disclosure by express provisions of law, Government Code Section 6253(a) additionally requires segregation and deletion of that material in order that the remainder of the information may be released.

We agree to appropriately reimburse you for your copying, scanning, and reproduction costs. Where feasible, we strongly prefer electronic copies of all responsive Records. It is our understanding that, by submitting this single request to your office, you will notify all appropriate divisions and departments within the County to produce any and all responsive Records.

Pursuant to Government Code Section 6253(b), we ask that you make the Records "promptly available," for inspection and copying, based on our payment of "fees covering direct costs of duplication, or statutory fee, if applicable." Given that the County's 30-day review period for the revised application is coming to a close, time is of the essence, and we therefore request a reply with responsive Records within 10 days. To expedite the process, we agree to receive responsive Records on a rolling basis, as they are identified.

Thank you for your cooperation in this matter, and please do not hesitate to contact me with any questions.

Sincerely,

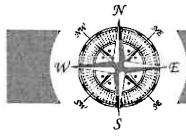


Jillian Blanchard
Rudder Law Group, LLP

Cc (by electronic mail):

Supervisor District 1, John M. Gioia
Sharon L. Anderson, County Counsel
John Kopchik, DCD Director
Aruna Bhat, DCD

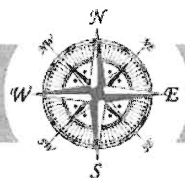
w/attention to KMAC Members: Patrick Tahara, Lloyd Cowell,
Larry Nucci, Christopher Brydon, and Melissa Holmes Snyder
Ms. Nicole Ashar and Mr. Joseph Petroziello



RUDDER LAW GROUP

EXHIBIT B

EXHIBIT B



RUDDER LAW GROUP
NAVIGATING THROUGH ENVIRONMENTAL REGULATION

JILLIAN B. BLANCHARD
415.867.6769
JBLANCHARD@RUDDERLAWGROUP.COM

Application and Permit Center
Community Development Counter
30 Muir Road
Martinez, CA 94553
Attn: File #CD KR19-0011 and Margaret Mitchell

August 30, 2019

Hearing Request re 120 St. Albans Road, Kensington, CA

Dear Ms. Mitchell and County Staff:

We have been retained by parties interested in the development proposed for 120 St. Albans Road, Kensington, CA (the “Property” as defined below) in application #KR19-00111 (the “Application”). As described further below, there are several issues with the current Application that need to be resolved before a permit can issue for the proposed construction, but the primary issues are: 1) a land use permit and a variance is required for this type of construction, not just a Building Permit and Design Review; and 2) a hearing is required to confirm that the proposed construction will comply with the strict variance standards and the Kensington Combining District requirements to minimize impacts to a neighboring property’s privacy, sunlight, and views. Unfortunately, the County has once again failed to follow its own land use process, but there is still time to rectify the situation and potentially approve construction that does not impact the sunlight, privacy, and views of neighboring properties, and complies with the County’s land use code.

I. The Proposed Project Requires a Variance

a. Variance Required to Expand Existing Nonconforming Use

The existing property currently contains a nonconforming use, which automatically requires a variance to approve any expansion or extension of such use. The existing residential structure appears to violate both the 2 ½ story and setback requirements, and potentially other existing land use requirements. The Contra Costa County (“CCC”) Code requires that: 1) building heights must be capped at 2 ½ stories and 35-feet from grade. (CCC Code §84-4.802); and 2) side yards must be setback to a minimum of five feet (CCC Code §84-4.1002).

For purposes of determining the number of stories, a basement counts as a story if the finished floor level directly above the basement is more than six feet above grade at any point (CCC Code §82-4.266). A basement is defined in the Kensington Combining District as “any area in a building or structure where the finished floor directly above the area is less than four feet above preconstruction grade or finished grade, whichever is lower.”

(CCC Code §82- 74.404). The existing lower level on the property clearly falls within this definition, thereby establishing three stories on the existing structure, in violation of County Code.

Moreover, the existing residential structure at 120 St. Albans Rd. does not currently meet minimum side yard setback requirements. The existing side yards are well below the five foot requirement.

Accordingly, the existing structure is currently, *without any proposed expansion*, already a nonconforming use. We note that the County's Code regards any structure maintained contrary to its Zoning Ordinance to be unlawful and a public nuisance. (CCC §82-2.006).

Courts have a strict policy against the extension or enlargement of nonconforming uses (*See County of San Diego v McClurken*, 37 Cal.2d 683, 686-87 (1951)). Indeed, California courts regularly allow municipalities to require the termination of a nonconforming use without compensation if it provides a reasonable amortization period commensurate with the investment involved. (*See Metromedia, Inc. v. City of San Diego*, 26 Cal. 3d 848 (1980)). In this instance, our clients are not proposing a termination of the existing use, but merely a careful examination and strict scrutiny against any proposed expansion of that nonconforming use, particularly, when such expansion could cause negative environmental impacts and impact a neighboring property's use, enjoyment, privacy, and views.

Any proposal to increase a nonconforming use clearly requires a land use permit under the County's Code. (CCC §82-8.006.) The work proposed in Application# KR 19-00111 involves a substantial increase to the existing nonconforming use. Accordingly, it is unclear why County staff would ever suggest to the applicant that a simple Building Permit and Design Review would be sufficient. The County must follow its required land use process, including public hearings and KMAC review, and land use permit and variance review and approval, before allowing any construction of the proposed project.

b. Proposed New Construction Requires a Land Use Permit & Variance

Even if the existing structure were in compliance with the County Code, the work proposed in the Application clearly requires a variance pursuant to the County Code. The architect in charge of designing the project did not understand staff's suggestion that an expansion could be constructed on either the north or the south side of the property without a variance (See Exhibit A, Email from Howard McNenny to Margaret Mitchell, p. 1.) County staff based its faulty reasoning on a tortured definition of a 'crawl space,' which has no relevance to the issue. (See Exhibit B, Email from Margaret Mitchell, p. 1.) Not only is this reasoning incorrect, but it smacks of bias to coach an applicant on ways to avoid certain permitting requirements, particularly, when those permitting requirements help protect the rights of neighboring properties.

The proposed substantial upgrade requires a land use permit because the existing structure is already nonconforming (as described above) and a variance to address proposed construction on a three story building, the proposed height increase, the proposed roof overhang, and perhaps most importantly, the exceedance of the Kensington Combining District's threshold standards (CCC §84-74.802).

Based on the Application, the proposed work would expand the existing three-story structure. The Application erroneously claims that it's a "two-story addition to a two-story structure." It's clear from every depiction in the Application, that the existing structure is more than two and one-half stories. It's precisely these types of misstatements that the County needs to identify and correct through a more rigorous land use review and approval process, including the required hearings.

It also appears that the while the pitched roof may not increase in height, the proposed addition to the third story would involve a slight increase in height, which clearly triggers the variance requirement for height increases. The notion that a proposal to increase the height of a structure in violation of the Kensington Planning Ordinance and the Contra Costa County Code would be granted without a variance boggles the mind and suggests the potential for substantive due process violations as well. (*See Neighbors in Support of Appropriate Land Use v. County of Tuolumne*, 157 Cal. App. 4th 997, 998 (2007), in which the Court overturned a county's approval of a nightclub that was inconsistent with the zoning ordinance without a variance.) Moreover, the increased roof overhang itself may require a variance.

Development that causes environmental impacts and directly steals the long-range views of another house, sunlight, privacy, and use and enjoyment of a neighbor's property, not to mention significantly reduces their property values, is exactly what the variance standards were created to protect against.

Moreover, the proposed project exceeds the threshold standards established in the County Code. The threshold standard based on the existing parcel area is 2320.5 square feet, and the applicant proposes to increase the total gross floor area ("GFA") to 2,332 square feet. The County Code unequivocally requires a hearing when the GFA thresholds will be exceeded. (CCC 84-74.802).

While we appreciate the applicant's willingness to re-design their project on the south side of the property, the proposed project, in its current design, still likely will impact our clients' privacy and potentially their long-range views of San Francisco Bay. In addition to completing all necessary reviews associated with a land use permit, it is paramount that the County hold a public hearing to: 1) confirm that a land use permit and variance is required; 2) address existing nonconforming uses; 3) address the threshold standard exceedance; and 4) confirm whether the proposed construction meets both the strict standards for a variance and the Kensington Combining District Standards, which were created to "minimize[e] impacts upon surrounding neighbors and not substantially impair the value and enjoyment of their neighbors' property; maintain the community's property values; and promote[] the general welfare, public health and safety." (CCC §84-74.204). Based on the current Application, is it likely that some design changes may be required to avoid negative impacts to the neighboring property's privacy, views, and sunlight.

II. Project May Not Comply with Variance Standards or the Kensington Combining District Standards

At base, our primary concern is that we need further investigation to confirm that the applicants' revised proposal complies with both the Kensington Planning Ordinance

(Section 84-74.1206) and the variance standards required in County Code Section 26-2.2006.

- While moving the project to the south side does minimize impacts to its neighbors somewhat, the currently proposed design, with attendant windows on the north side, may create new impacts to the long-term use, privacy, and enjoyment of our clients' property.
- A hearing and story poles are required to confirm that the revised design protects the value and enjoyment of our clients' property;
- To the extent the proposed addition to one of the highest houses on the street continues to block our clients' views, it would be inconsistent with a neighborhood dependent on long-range views for its property values;
- There is nothing unique about the Property that would justify a variance to the specific height requirements;
- Granting the Application without modification to protect neighboring properties could constitute a special privilege to increase heights in a neighborhood in which the subject house is already one of the tallest;
- There are no special circumstances applicable to the Property that justify such a special privilege; and
- The proposed variance may not meet the intent and purpose of the Kensington Combining District, which unlike many other neighborhoods, has a specific planning ordinance to protect neighbor's use, view, privacy, and light and solar access, all of which could be impacted under the revised plans.

Variations should only be granted when the applicant has made a clear showing of undue hardship. "The essential requirement of a variance is a showing that a strict enforcement of the zoning limitation would cause unnecessary hardship." (*Neighbors in Support of Appropriate Land Use v. County of Tuolumne*, 157 Cal. App. 4th 997, 998 (2007).)

We need a hearing to determine whether applicants have made the prerequisite showing that extending a three story addition to their house is appropriate and necessary to avoid an undue hardship on their Property. It is clearly the applicant's burden of demonstrating that a variance is necessary to avoid an undue hardship. (*See Orinda Ass'n v. Bd. of Supervisors*, 182 Cal. App. 3d 1145, 1150 (1986) (judgment vacating approval of a height variance because the applicant failed to make the affirmative showing that a variance was warranted where less impacting alternatives were available.) We also need confirmation through the use of story poles and other methods, that the project as proposed will not impact our clients' long range views, sunlight, and privacy. The project, as currently designed, still extends far enough to impact long range views and includes a window that would look directly into our clients' house, significantly impacting their privacy.

Not only is a hearing required as part of the land use process, it is absolutely essential here to establish that the proposed construction complies with both the Kensington Combining District and variance standards.

III. Hearing Is Required to Ensure Land Use Laws Are Being Followed and Neighboring Rights are Protected

All affected parties have the right to an impartial tribunal and unbiased decision makers such that “even the probability of unfairness is to be avoided.” (*Id* at 1170.) Due process “demands an appearance of fairness and the absence of even a probability of outside influence on the adjudication. In fact, the broad applicability of administrative hearings to the various rights and responsibilities of citizens and businesses, and the undeniable public interest in fair hearings in the administrative adjudication arena, militate in favor assuring that such hearings are fair.” (*Nightlife Partners, Ltd. v. City of Beverly Hills*, 108 Cal. App. 4th 81, 83 (2003).)

As indicated above, a hearing is required here for several reasons, including: 1) to ensure the project meets land use permit, variance, and Kensington Combining District requirements; 2) because threshold standards will be exceeded under County Code; and 3) because a hearing is required whenever an interested party submits a written request.

Our clients are reasonable people, but they have very serious and reasonable concerns regarding the environmental impacts of the proposed project, including specific impacts to their use, enjoyment, sunlight, long-range views, and property values. The applicants are proposing a project for an existing nonconforming structure that requires a land use permit, a variance, potentially violates the Kensington Planning Ordinance, and may not meet the high standards necessary to justify a variance under the County Code. We believe that a hearing will help address these land use concerns and help the applicants design a project that does not impact the sunlight, privacy, and long-range views of their neighbors. Please schedule a hearing at your earliest convenience.

IV. Adequate Notice

We also note that the County continues to falter on providing adequate notice to our clients. Even though County staff committed to providing direct notice to our clients as real parties in interest (see Exhibit C, Email from Margaret Mitchell to Jillian Blanchard, May 2, 2019, p. 1), the County failed once again to notify our clients of this new application. When individual rights are being deliberated, interested parties are required to be apprised of the application “so that [they] may have an opportunity to refute, test, and explain it, and the requirement of a hearing necessarily contemplates a decision in light of the evidence there introduced.” (*Clark v. City of Hermosa Beach*, 48 Cal. App. 4th 1152, 1172 (1996).) Our clients have a known, vested interest in the Application, will be uniquely and directly impacted by the project proposed, and have indicated they have substantial evidence to submit into the record. Yet, the County failed to notify them of the revised plans ostensibly designed to address their concerns. Accordingly, please provide any future notices or information related to this Application directly to our clients, Nicole Ashar and Joseph Petroziello (118 St. Albans Rd), and to me, as their representative, on all matters related to this Application.

Thank you for your cooperation in this matter, and please do not hesitate to contact me with any questions. We look forward to receiving notice of the hearing date as soon as it set.

Sincerely,



Jillian Blanchard

Rudder Law Group, LLP

Cc (by electronic mail):

John Kopchik, DCD Director

Ms. Nicole Ashar and Mr. Joseph Petroziello

Attachment A

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

From: Howard McNenny <h.mcnenny@comcast.net>

Sent: Tuesday, April 16, 2019 4:22 PM

To: Margaret Mitchell <Margaret.Mitchell@dcd.cccounty.us>

Cc: Mary Hanley <mc4hanley@gmail.com>; David Herberich <dherberich@gmail.com>

Subject: Fwd: 120 St. Albans

Margaret:

At this point, we have received at least some of the information on comparable variance applications we requested. Unfortunately, we only got examples from the last 3 years, and some of the attachments we were unable to open. Also, some of the applications were apparently too recent to have been resolved. I have requested an estimate of what it would take to go back at least an additional 3-4 years, but have not to date received any response to that request.

Notwithstanding the sparsity of information received, I have discussed with my clients your offer to set up a meeting with Mr. Hernandez, and we agree it would be useful. The absolute best would be if he could agree to meet us on the site as you did initially, to see for himself the issues involved. It appears to us that we are being encouraged to only build on the south side of the house in order to avoid having to file for a variance. However, I do not see personally how it is possible to avoid the variance no matter where we build. As it is, we have configured our proposed addition to avoid as best we can any infringement on the views from the adjacent house. We do not think it would make much difference if we were to confine the addition to the south portion of the house, and in any event building there would not solve the circulation issues we are trying to address.

Absent a meeting with Mr. Hernandez, I do not see how we will ever get a resolution to our dilemma. You have told us to we should submit for a variance, but you have already told us you do not believe the required findings can be made. We would like to submit something that does not require a variance, but that seems impossible. We have to admit that we are unclear on the rules as currently being interpreted, and have very little information on how similar situations have been resolved. We also are afraid that the hearing before the zoning administrator will not result in clarity. That is why we are requesting your help.

Let me know if such a meeting with Mr. Hernandez will be possible. We are fairly open as to time and date.

Howard McNenny, AIA

1039 Santa Fe Ave, Albany CA

Tel: (510) 705-1671

Cell: (510) 207-7019

h.mcnenny@comcast.net

Attachment B

Margaret Mitchell

From: Margaret Mitchell
Sent: Tuesday, April 09, 2019 8:19 AM
To: 'Howard McNenny'
Cc: David Herberich; Mary Hanley; Ruben Hernandez; Jennifer Cruz
Subject: RE: 120 St. Albans

Hi Howard,

If the lowest level of the addition is left unfinished, unconditioned, and at natural grade, regardless of height, it will not be considered a story. If the area between the lowest floor and the ground below does not meet the definition of a crawl space per section 84-74.404(d), it would need to be included in the gross floor area calculation.

You will receive the information regarding other third story variance applications from Lawrence Huang.

Thank you,
Margaret

From: Howard McNenny <h.mcnenny@comcast.net>
Sent: Wednesday, April 03, 2019 1:45 PM
To: Margaret Mitchell <Margaret.Mitchell@dcd.cccounty.us>
Cc: David Herberich <dherberich@gmail.com>; Mary Hanley <mc4hanley@gmail.com>; Ruben Hernandez <Ruben.Hernandez@dcd.cccounty.us>; Jennifer Cruz <Jennifer.Cruz@dcd.cccounty.us>
Subject: Re: 120 St. Albans

Margaret:

Thank you for the response, however it is one thing to say that our application for a variance must be weighed against the rights of the neighbors (and possibly could be denied), but quite another thing to say that this project does not meet even the basic qualifications for a variance application. This makes it all the more critical that we understand under what circumstances variances have been granted in the past. We look forward to getting that information so that we can make a reasoned judgement on next steps.

Also, to be clear, my understanding is that any addition where the lowest full floor is more than 4 feet above existing grade, the level below that floor must be considered a floor also. Am I correct? Unless there are exceptions to your position on variances, I do not see how any addition could be built on the west side of this house that includes the bedroom level—even on the southern portion. Or, might you be saying that it would still be a variance, but one that might be more likely to be approved?

Howard McNenny, AIA

1039 Santa Fe Ave, Albany CA

Tel: (510) 705-1671

Cell: (510) 207-7019

h.mcnenny@comcast.net

Attachment C

On Thu, May 2, 2019 at 5:03 PM Jillian Blanchard <jblanchard@rudderlawgroup.com> wrote:

Thank you, Margaret.

On Thu, May 2, 2019 at 4:55 PM Margaret Mitchell <Margaret.Mitchell@dcd.cccounty.us> wrote:

Good afternoon, Jillian,

Yes, those statements from our conversation yesterday are correct. We will update you on any changes to the status of the application. Please contact Lawrence regarding the PRA requests.

Thank you,

Margaret

From: Jillian Blanchard <jblanchard@rudderlawgroup.com>
Sent: Thursday, May 02, 2019 3:36 PM
To: Margaret Mitchell <Margaret.Mitchell@dcd.cccounty.us>
Cc: Nicole Ashar <nicoleashar@ymail.com>
Subject: Re: 120 St Albans Road - Follow Up and Confirmation

Margaret:

I would appreciate your response to my email below as soon as possible.

Thank you,

Jillian

On Wed, May 1, 2019 at 3:43 PM Jillian Blanchard <jblanchard@rudderlawgroup.com> wrote:

Margaret:

Thanks for talking with me this morning.

As we discussed, it has been difficult to ensure the protection of my clients' property rights because the County insists on requiring us to file repeated Public Records Act ("PRA") requests to determine the status of the 120 St. Albans application. Requiring repeated PRA requests rather than simply sharing the information with my clients as real parties in interest places an unfair burden on both my clients and the County, and puts us at least 10-15 days behind the process as it unfolds. Given the direct way in which my clients could be affected (i.e. by a wall blocking their SF Bay views), and the potentially significant environmental impacts at stake, the County should be providing direct notice to my clients (copied here) and me as their legal representative with application updates. Please pass this request along to your supervisors. In the meantime, we will continue to make PRA requests to understand the status of the application.

Through the response to our fourth PRA request, we noticed an email that made it appear as if County staff was counseling the applicants on how to build the same devastating structure and avoid a variance, which would be extremely concerning and create obvious legal exposure for the County. Specifically, in your email to Howard McNenny dated April 9, 2019, you counseled: "If the lowest level of the addition is left unfinished, unconditioned, and at natural grade, regardless of height, it will not be considered a story" and accordingly, would not require a variance. You can imagine how the suggestion that the project could be constructed without a variance on the north side of the building at the same height (with the same significant environmental impacts, including impacts to my clients' long-range views of SF Bay, sunlight, use and enjoyment of their property, etc.), based on a tortured definition of a "crawl space" under the County Code would be extremely problematic.

However, during our conversation this morning, you clarified that this reference to construction without a variance was for construction on the south side of the home only. Please confirm that this is correct as there is no other email correspondence in the documents we have received to date to confirm this.

You also confirmed today that the current application for construction on the north side would require a variance, and that you have counseled the applicants that the County will recommend denial of the application if the applicants choose to continue with a proposed project on the north side of the building. You also stated that the application is currently complete, but that you are waiting to hear back from the applicants to determine whether they will withdraw the application before issuing the Notice of Intent to Render a Decision.

Given some of the misinformation offered to my clients by the County in the past, I would appreciate your specific confirmation by response email that the underlined statements above are correct. Thanks very much.

Again, I urge the County to let us know immediately once you have heard back from the applicants, given the potential issues at stake here and potential legal exposure to the County for hindering my clients' due process rights.

With respect to the Notice of Intent to Render a Decision, if one is issued, please be sure to send both a hard copy by mail and email it to both me and my clients (copied here). Unfortunately, the KMAC failed to provide sufficient notice to my clients in previous proceedings which limited their ability to defend themselves at the hearing. Providing email notice directly to both me and my clients will help avoid having the same procedural issues here.

Finally, I would note that construction proposed on the southern side of the property would of course need to be designed to avoid impacting the neighbor's long range views, sunlight, etc. and likely would require a variance if it involves three stories, has certain overhangs, or has the potential to cause significantly environmental impacts.

Thanks again for talking with me this morning. Please respond as soon as you're able with email confirmation regarding the information stated above.

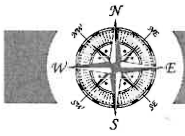
Jillian

--

Jillian B. Blanchard

Rudder Law Group, LLP
1101 Marina Village Pkwy, Suite 201

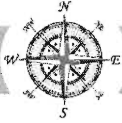
Alameda, CA 94501
Direct: 415.867.6769



RUDDER LAW GROUP

EXHIBIT C

EXHIBIT C



RUDDER LAW GROUP
NAVIGATING THROUGH ENVIRONMENTAL REGULATION

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Application and Permit Center
Community Development Counter
30 Muir Road
Martinez, CA 94553
Attn: File #CD KR19-0011 and Margaret Mitchell

November 4, 2019

120 St. Albans Road, Kensington, CA Application -
2nd Hearing Request and KMAC Update

Dear Ms. Mitchell and County Staff:

On behalf of my clients, the owners of 118 St. Albans Road, I am writing this update as an addendum to the Hearing Request letter sent to you on August 30 2019, to inform you of the unlawful hearing that occurred before the KMAC on October 29, 2019, and more importantly, to articulate my clients outstanding concerns regarding the development proposed for 120 St. Albans Road, Kensington, CA (the "Project " as defined below) in application #DP- 19-3019.

I. KMAC Meeting Did Not Comply with Legal Requirements; KMAC Recommendation Is Not Based on an Objective Review of the Facts

The Kensington Municipal Advisory Committee ("KMAC") Meeting held on October 29, 2019 ("KMAC Meeting") to discuss the Project violated planning and zoning laws, the Brown Act, and the KMAC's own by-laws. The KMAC is an advisory committee that represents the County and is charged with providing valuable input to the Board of Supervisors regarding land use decisions. As such, they are required to hold meetings that follow Brown Act requirements and provide objective recommendations based on the legal standards established in California planning and zoning law. Unfortunately, the KMAC failed to comply with these legal requirements when reviewing the Project.

First, the KMAC Meeting failed to comply with the Brown Act's requirement to provide adequate notice to the public. (CA Gov Code 54956.) Ms. Snyder, who volunteered to provide KMAC notice, managed to provide notice of the KMAC Meeting to all other neighbors surrounding the Project, but failed to provide it to the two interested parties who are on the record in opposition to the Project, my clients and Ms. Donna Stanton, the owner of 134 Windsor Avenue in Kensington.

When this issue was raised at the KMAC Meeting by Ms. Stanton, the KMAC members did not concede the error or suggest a new process to ensure adequate notice going forward, they instead suggested that Ms. Stanton's property must have fallen outside the noticing area. The fact that both of Ms. Stanton's immediate neighbors on either side did receive notice shows the fallacy of this claim. Strangely, the KMAC members did not appear to have any concern that neither Ms. Stanton, nor my clients, the owners most likely to be impacted by the Project, failed to receive notice of the meeting. The Brown Act absolutely requires adequate notice to all interested parties. Without it, the meeting should not have been held and should have been rescheduled. At the very least, the KMAC members could have suggested a more robust notice process going forward to avoid these due process issues.

The same KMAC member, Ms. Snyder, who failed to provide adequate notice to Project opponents also had a clear conflict of interest. We learned from various neighbors in the area that Ms. Snyder affirmatively solicited support for the Project when notifying them about the KMAC meeting. My clients obtained signatures from 35 different neighbors who stated that Ms. Snyder asked them to attend the meeting in support of the Project, which is clear evidence of campaigning in violation of California laws protecting impartial decision-making.

Under California law, all interested parties have the right to a hearing in front of "a fair and unbiased decision-maker under the due process clause." (*See Noble v. City of Palo Alto* (1928) 89 Cal.App.47, 51.) If there is evidence of an "unacceptable probability of actual bias on the part of a decision-maker", that decision-maker must be disqualified from reviewing the application. (*See Nasha LLC v. City of Los Angeles*, 125 Cal. App. 4th 470, in which a Planning Commission decision was vacated because one of the Commissioners showed clear bias by speaking out against a pending project.) While it may not be objectionable for a KMAC member to have a personal preference regarding a project, California law clearly prohibits public representatives from campaigning for or against any project that they are reviewing. Asking neighbors to attend a meeting to vocally support the Project while failing to provide Project opponents with adequate notice would be clear examples of unacceptable bias and due process violations.

With these legal standards in mind, we sent the attached email to Ms. Snyder before the KMAC Meeting respectfully asking her to recuse herself from deliberating on the Project based on the facts available (**Attachment A**). Ms. Snyder did not respond to our email request. The KMAC Chair, Mr. Tahara, raised the issue at the KMAC Meeting, wherein Ms. Snyder claimed to not have seen the email request. She then reviewed the email and dismissed it without any concern whatsoever for the appearance of bias. She said the accusation was false, but provided no evidence to counter the 35 signatures from neighbors establishing her efforts to campaign for the Project. Mr. Tahara accepted Ms. Snyder's statements without any further precautions and allowed her to vote on the Project.

To avoid even the appearance of bias, Ms. Snyder should have recused herself from deliberating on this Project. She failed to provide adequate notice to the Project opponents, and was presented with 35 signatures of neighbors stating their belief that she attempted to coerce them into supporting the Project. There were five KMAC members in attendance at the meeting. Ms. Snyder could have recused herself to protect the process and allowed the remaining four members to make an objective determination. Instead, she insisted on participating, speaking forcefully in favor of the Project during deliberations. The experience left all of us with the impression that the KMAC had decided well before the meeting that they would approve the Project and that my clients' and other residents' reasonable concerns simply did not matter.

The substance of the deliberations provided further evidence of the KMAC's pre-ordained conclusions. During the meeting, we presented evidence of potentially significant impacts to my clients' privacy and long-range views resulting from the revised application. Rather than acknowledge these points, and at the very least request that story poles be put in, the KMAC members found that while the Project may "block the view" it wouldn't be "that bad". They made this extremely arbitrary finding without any evidence. We provided clear evidence that anything beyond the existing nook (described further below) and the expansive deck would block my clients' view of the Bay and the Bay Bridge, but the KMAC ignored these concerns. Apparently, KMAC members believed that because the applicants had moved their project to the other side of the house, they should be entitled to build. Thankfully, California law prevents such arbitrary decisions.

KMAC members stated that it was acceptable for views to be blocked, which would be a violation of the Kensington Combining District Ordinance. As the only attorney in the room, I offered to read for the KMAC members the standards from the actual code to help them apply the law to their deliberation, but they refused my offer, apparently unconcerned with the legal standards or the applicable law.

Land use decisions must be conducted impartially, based on the facts of the Project at hand with real evidence to determine whether the Project will comply with the applicable legal standards to avoid the abuse of discretion. Unfortunately, none of that happened at the KMAC Meeting. As a result, the KMAC abused its discretion by ignoring evidence of potential bias and significant impacts to long range views and privacy.

The KMAC also disregarded the variance requirement. When we referenced the County Code provisions that require a variance to approve an expansion to an existing non-conforming use, which understanding is shared by the applicant's own architect, the KMAC deemed this law irrelevant to their findings.

For these reasons, we respectfully ask the County to disregard the KMAC recommendation in making its determination regarding the Project. It is clear that the KMAC has little regard for the law it is required to follow in administering its duties. Any agency action that reflects an abuse of discretion must be disregarded to avoid further tainting the land use process.

II. The Project Requires a Variance for an Existing Non-Conforming Use.

As described in detail in our August 30, 2019, letter (attached as **Attachment B** for convenience), the Project, as proposed, requires a variance to approve the existing non-conforming use both for setback and story requirements under the Contra Costa Code. When we raised this issue with the KMAC, they stated that they were not required to consider the law here, and accordingly, did not make any findings related to the variance.

Any proposal to increase a nonconforming use clearly requires a land use permit under the County's Code. (CCC §82-8.006.) For an existing non-conforming use, the land use permit required here is a variance. (CCC §82-28.516.)

The Project application incorrectly describes the proposed development as a "2-story expansion on a 2-story structure". The existing structure is, and has always been, three stories. As correctly described by the applicant's architect at the February KMAC: "A variance is required due to the fact that the house as it already exists is considered a 3-story structure, due to the fact that is built on a down-slope lot that places the first floor in excess of 4-feet above grade at the rear of the structure. Current zoning places a limit of 2 ½ stories on houses in this zoning district." (Howard McNenny, February 2019, KMAC Meeting.) Mr. McNenny's interpretation is correct. The structure does not magically become two stories when the project is constructed on the other side of the house. The existing structure is three stories, as defined under Contra Costa County's Code, and accordingly, requires a variance for any expansion of the existing non-conforming use, whether on the north or south side.

Accordingly, we request that you ask the applicant to demonstrate how the necessary variance findings may be colorably made, including a clear showing of an undue burden on the property justifying the Project, before issuance of a staff report on this Project. As described further below, we believe these findings cannot be made based on the current design of the Project, but it may be possible to meet the high variance standards if the applicant eliminates or significantly reduces the size of the deck, removes the north-facing window, and does not expand beyond the existing upper level nook.

III. The Project, As Currently Proposed, Will Cause Significant Impacts to My Clients Long-Range Views, Privacy, and Property Values.

As confirmed in your May 2, 2019, email to us, the Project, even when constructed on the south side of the property must be designed "to avoid impacting the neighbor's long range views, privacy" and property values. Unfortunately, the Project on the south side still causes significant impacts to my clients' long range views, privacy, and property values.

As described in detail at the KMAC meeting (which facts were sadly ignored), the proposed Project will cause impacts to my clients' long-range views on both the first and second floors because: 1) the proposed expansion will go beyond the existing nook; and 2) the expansive deck will block Bay views. Both the upper expansion beyond the existing house and the enormous deck will impact my clients side view of the Bay Bridge and the Bay. While the full extent of the impact cannot be determined because the application lacks specific dimensions for either component, it is clear from a conservative review that any expansion beyond the nook will impact Bay views (see **Picture #1, Attachment C-2**) and that the expansive deck will impact my clients' view of the Bay and the Bay Bridge (see **Picture #2, Attachment D**). My clients only desire is to have their views of the Bay and the Bay Bridge and privacy preserved. That is what the Kensington Combining District and the variance standards require.

We also note that at the KMAC Meeting, the applicants showed a figure that misplaced the location of the bathtub in the master bath where views will be impeded. The correct angle is shown in Attachment C, in which it is undeniable that any expansion beyond the nook will cause long-range view impacts.

Also, as indicated at the KMAC Meeting, the proposed window on the top floor will look directly into my clients' master bathroom. My clients bought their house in part because of the master bathroom, which allows you to view the Bay Bridge from the tub and the shower. Having a window on the north side of the proposed Project will kill that privacy.

In addition, the proposed expansive deck would cause significant impacts to my clients' privacy, use, and enjoyment of their home. If a deck this large is approved, not only will my clients' unique view of the Bay Bridge be gone from this side of the house, but their privacy will be significantly impacted as well. Every time the applicants have people out on the new deck, my clients will be forced to look at them instead of their previous spectacular Bay Bridge view. Having a deck this size impacts both long-range views and privacy and does not comply with either the Kensington Combining District or the County Code regarding variances.

We have included a letter from the realtor (**Attachment E**) who sold the house previously, Ms. Bebe McRae, that identifies the importance of both privacy and long-range views as a selling point of this particular house. It is clear that any impacts to these two factors will cause a significant decrease in my clients' property value.

If the applicants are willing to remove the north facing window, eliminate or significantly reduce the deck, and avoid expansion beyond the existing nook, it would significantly improve the Project.

IV. Hearing Is Required to Ensure Land Use Laws Are Being Followed and Neighboring Rights are Protected

While we appreciate the applicant's willingness to re-design their project on the south side of the property, the Project, in its current design, will still impact our clients' privacy and long-range views of San Francisco Bay. In addition to completing all necessary reviews associated

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with a land use permit, it is paramount that the County hold a public hearing to: 1) confirm that a land use permit and variance is required; 2) address existing nonconforming uses; and 3) confirm whether the proposed construction meets both the strict standards for a variance and the Kensington Combining District Standards, which were created to "minimize[e] impacts upon surrounding neighbors and not substantially impair the value and enjoyment of their neighbors' property; maintain the community's property values; and promote[] the general welfare, public health and safety." (CCC §84-74.204).

Our clients are reasonable people, but they have very serious concerns regarding the environmental impacts of the Project, including specific impacts to their use, enjoyment, privacy, long-range views, and property values. The applicants are proposing a project for an existing nonconforming structure that requires a variance, violates the Kensington Planning Ordinance, and does not currently meet the high standards necessary to justify a variance under the County Code. We believe that a hearing will help address these land use concerns and help the applicants design a project that complies with the existing code.

Thank you for your cooperation in this matter, and please do not hesitate to contact me with any questions. We look forward to receiving notice of the hearing date as soon as it set.

Sincerely,



Jillian Blanchard
Rudder Law Group, LLP

Cc (by electronic mail):

Ruben Hernandez, CDCD
Jennifer Cruz, CDCD
Sharon Anderson, County Counsel
Ms. Nicole Ashar and Mr. Joseph Petroziello



Jillian Blanchard <jblanchard@rudderlawgroup.com>

KMAC Meeting October 29, 2019

7 messages

Jillian Blanchard <jblanchard@rudderlawgroup.com>

Mon, Oct 28, 2019 at 8:14 PM

To: melissaanneholmes@gmail.com

Cc: patricktahara@comcast.net, jgioi@bos.cccounty.us, sande@cc.cccounty.us, sarena.burke@cc.cccounty.us, Nicole Ashar <nicoleashar@ymail.com>

Bcc: Jillian Blanchard <jblanchard@rudderlawgroup.com>

Dear Ms. Snyder:

We represent the owners of the 118 St. Albans property in connection with Land Use Application #DP19-3019 to expand the 120 St. Albans Rd Property (the "Project").

On the basis of our discussions with neighbors of the Project, we understand that you approached several neighbors to solicit their specific support for the Project. We have signatures from 35 different neighbors who stated that you asked them to come to the KMAC meeting to support the Project, which, if true, is very troubling for my clients, who are concerned about receiving a fair and objective review of the Project.

We also understand from a public records act ("PRA") response that you personally volunteered to provide to the neighborhood the necessary notice of the KMAC meeting tomorrow night. Unfortunately, my clients and one other neighbor, Donna Stanton at 134 Windsor Ave in Kensington, who are both known to have raised concerns about the Project, did not receive notice from you regarding the October 29, 2019 KMAC meeting. My clients instead learned about the KMAC meeting by calling County staff and through PRA responses. Ms. Stanton received notice about the meeting from my clients. This lack of required notice to Project opponents is particularly troubling given the statements from neighbors regarding your alleged efforts to campaign in favor of the Project.

Under California law, all interested parties have the right to a hearing in front of "a fair and unbiased decision-maker under the due process clause." (See Noble v. City of Palo Alto (1928) 89 Cal.App.47, 51.) If there is evidence of an "unacceptable probability of actual bias on the part of a decision-maker", that decision-maker must be disqualified from reviewing the application. (See Nasha LLC v. City of Los Angeles, 125 Cal. App. 4th 470, in which a Planning Commission decision was vacated because one of the Commissioners showed clear bias by speaking out against a pending project.) While it may not be objectionable for a KMAC member to have a personal preference regarding a project, California law clearly prohibits public representatives from campaigning for or against any project that they are reviewing. Asking neighbors to attend a meeting to vocally support the Project while failing to provide these Project opponents with adequate notice, if true, would be clear examples of unacceptable bias and due process violations. It is particularly important for decision-makers to remain impartial when they live in the same area or have ties to a project applicant, in order to ensure a fair hearing and non-biased decision making in connection with land use decisions.

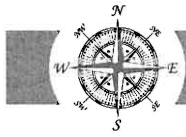
Assuming the information we have received from such neighbors (stating that you campaigned in favor of the Project) is true, and we have no reason to believe that it is not, and given the fact that my clients still have not received notice from you about the KMAC meeting, we respectfully ask that you recuse yourself from discussing the Project at the October 29, 2019, KMAC meeting to ensure that KMAC holds a fair and impartial review of this Project.

Thank you in advance for your consideration.

Jillian

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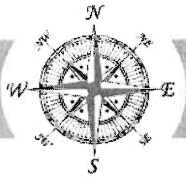
CONFIDENTIAL MESSAGE



RUDDER LAW GROUP

EXHIBIT D

EXHIBIT D



RUDDER LAW GROUP
NAVIGATING THROUGH ENVIRONMENTAL REGULATION

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Attn: File #DP 19-3019, Aruna Bhat, and Telma Moreira

December 13, 2019

120 St. Albans Road, Kensington, CA Application
Corrections to Staff Report

Dear Ms. Bhat and Ms. Moreira:

On behalf of our clients, the owners of 118 St. Albans Road, I am writing to clarify certain facts on the record and correct misstatements in the Staff Report issued by the County on December 10, 2019 (“Staff Report”), in advance of the public hearing set for December 16, 2019. We want to ensure that as the potential Zoning Administrators (“ZA”) for this hearing, you have all of the facts regarding the development proposed for 120 St. Albans Road, Kensington, CA (the “Project”) in application #DP- 19-3019 before issuing a decision.

1. Variance Required for an Expansion of the Three Story Structure and Setbacks

a. The House is Three Stories

The Staff Report suggests that while a variance was required for the expansion of the three-story house on the north side, a variance is no-longer required for a similar sized expansion *on the same nonconforming structure* – because it is now constructed on the south side of the building.

This tortured definition defies logic and common sense. A building either is, or is not, three stories. It is not two stories on one side and three stories on another. An expansion of the top two floors of a three-story building requires a variance whether it is on the north or south side. The applicant’s own architect made this clear when he stated correctly in the February KMAC meeting that “A variance is required due to the fact that the house as it already exists is considered a 3-story structure, due to the fact that is built on a down-slope lot that places the first floor in excess of 4-feet above grade at the rear of the structure. Current zoning places a limit of 2 ½ stories on houses in this zoning district.” (Oral Testimony of Howard McNenny, applicant’s architect, KMAC meeting February 2019.)

As repeatedly described in previous correspondence to County staff, for purposes of determining the number of stories, a basement counts as a story if the finished floor level directly above the basement is more than six feet above grade at any point (CCC Code §82-4.266). A basement is further defined in the Kensington Combining District (“KCD”) as “*any area* in a building or structure where the finished floor directly above the area is less than four feet above preconstruction grade or finished grade, whichever is lower.” Based on these definitions, the ground floor is considered a story, and the entire house is three stories.

We asked the County to provide any example, any legal precedent, in which the County relied on the novel interpretation that a variance only applies for expansion to a three story structure on one

side of the building, and the County has produced nothing. County staff has not provided any other example in which the County has used this twisted and inconsistent interpretation to avoid variance requirements. In determining whether a variance applies, the question is whether the proposed project expands a nonconforming use. Here, the proposed development expands the top two floors of a three-story structure, and clearly requires a variance.

The practical implications of implementing the inconsistent approach suggested in the Staff Report would lead to chaos and legal disputes. Indeed, we can think of several instances in which this particularly tortured interpretation would set terrible precedent for the County and its ability to regulate development, leading applicants to design contorted additions to avoid variance requirements. Moreover, it is not appropriate for the County to bend over backwards looking for loopholes to avoid applying variance standards, particularly in this situation where million dollar views are at stake and significant impacts to neighbors would result from allowing such nonexistent loopholes.

b. Setbacks

Similarly, as stated several times previously, the proposed project does not comply with setback requirements, and accordingly, requires a variance.

The Staff Report correctly cites the Contra Costa Code (“CCC”) Code requirement that “a reduced side yard minimum of 3 feet and a [minimum] aggregate side yard of 8 feet is allowed for any new construction (CCC Section 82-14.004).” It then goes on to incorrectly conclude that the addition and deck meet these setback requirements.

Sheet A-3 of the application (attached for convenience as “**Exhibit A**”) shows that the new construction will allow for 3 feet on one side, and 2’10” existing on the other, for an aggregate of 5’10” with the proposed new construction. While three feet may be allowed for a single side yard, the new addition will fall well short of the aggregate requirement to have a minimum of 8’ for both side yards. Accordingly, a variance is required to allow for this continued inconsistency with the County’s Code.

Unfortunately, County staff seems bound and determined to avoid a variance for this project, which seems particularly odd and troublesome given the significant concerns of surrounding neighbors and the need to avoid significant impacts to long-range views. It is well settled law in California that a County cannot pick and choose which portions of the code to apply. (*See Broadway, Laguna etc. Assn. v. Board of Permit Appeals*, (1967) 66 Cal.2d 767, 779-780; *See also Orinda Assn v Board of Supervisors*, 182 Cal.App.3d 1145 (1986).) We respectfully request that the County correctly apply its land use regulations and require a variance for the proposed construction.

2. Land Use Permit is Required

The Staff Report also suggests that a land use permit is not required to authorize the existing non-conforming 3-stories and setbacks. The Staff Report states: “The applicant proposes to expand the existing residential building, as allowed under the R-6 Zoning District. Contra Costa County (CCC) Section 82-8.006 requires a land use permit for expansion of non-conforming uses. The use in this case is residential, permitted by right in the R-6 Zoning District, and therefore, does not require a land use permit.”

The CCC Code clearly defines “nonconforming use” to include a “building or structure on land that does not conform to Divisions 82 and 84 for the district in which it is situated” in addition to inconsistent uses (CCC 82-4.280.) This definition does not only include zoning ‘uses’ but also includes buildings and structures that do not conform with zoning requirements. In this case, as described in painstaking detail in previous correspondence to the County, the existing structure at 120 St. Albans Road does not comply either with the 2 ½ story requirement or the minimum setback

requirements. Accordingly, as acknowledged by staff, a land use permit is required to expand the existing nonconforming use. The Staff Report should be revised and the land use process amended for this reason alone. At the very least, a variance for the proposed continued inconsistency should be required, per the discussion above.

3. Views Will Be Affected– Upper and Lower Level

a. Upper Level – Master Bathroom Views Significantly Impacted

The Staff Report glosses over the most important issue to our clients – the significant view impacts caused by the proposed project. The Staff Report incorrectly suggests that the property only has west facing views. As is clear from the photos we have provided to staff, our clients' property has expansive views of the South Bay, including the Bay Bridge and downtown San Francisco, that will be affected by the proposed project, on both the upper and lower level.

Rather than visit the subject property, staff provides an incorrect description in the Staff Report based on inaccurate dimensions to suggest that southern views, which very much exist, will not be impacted by the proposed project.

The Staff Report incorrectly states that the upper floor of the addition to the rear (west side) of the subject residence will only extend two and a half feet beyond the existing residence. It is unclear how staff determined this measurement because these specific dimensions are never identified in the application, which we note is a glaring omission. To the contrary, what is shown in the application, as indicated in the attached sheet A-3 (Exhibit A), is that the upper level addition will extend 7' 2 ½" from the existing house. As shown, there is an existing nook that extends approximately 4 feet from the house on the upper level on the north side, leaving the proposed addition to extend approximately 3' 2 ½" into our client's expansive master bath views. It is hard to know the exact size of the existing nook because this critical dimension has been left out of the application, but *any extension* beyond the existing nook will block our clients' expansive views from the master bath. (See attached **Exhibit B**.)

At the very least, the application needs to be revised, and story poles installed, to confirm the extent of impacts to our clients' master bath views. Unfortunately, the KMAC ignored our requests to have story polls installed.

b. Lower Level – Kitchen Window Views Significantly Impacted

To further highlight staff's lack of care, due diligence, and concern in this process, the Staff Report erroneously asserts that "[t]he new deck is to replace the existing deck and extends 10.5 feet to the west from the new addition, which is only one and a half feet more than the existing deck." (p.8).

This statement is wrong for a number reasons. First, it is clear from the Application Sheet A-3 (Exhibit A), that the new deck proposed will not be located within the existing deck footprint, but rather will be constructed behind the new addition, which will be 5' 2 ½" beyond the existing structure. The Staff Report states that the new deck is 10.5 feet (or 10' 5"). The application notably fails to include this *critical* dimension of the deck, but assuming the Staff Report is correct, the project would result in a deck that extends at least 15' 7 ½" out from the existing structure (5' 2 ½" of the additional house plus 10' 5" feet of the proposed new deck). The existing deck currently extends only 9 feet from the existing house. Accordingly, the new deck will extend nearly 6 feet (5' 7 ½") directly into the best part of our clients' Bay Bridge and downtown San Francisco views from their kitchen sink window. (See attached **Exhibit C** for a rendering of likely impacts.) Staff's suggestion that there will only be 1 ½ feet of new deck is not only wrong, but reflects a complete lack of concern for the very significant view impacts that this project will cause. Had the County required the applicant to install story poles before recommending approval, staff would have realized their mistake, and one would hope, required the applicants to reduce the size of their

unnecessarily large new deck structure. Unfortunately, the County has ignored our request to have story poles installed and has recommended approval based on incorrect calculations.

The fact that the Staff Report describes a proposed deck that is almost entirely outside of the original deck footprint as a 'replacement deck' further illustrates staff's misunderstanding of the size and extent of the proposed project.

These facts may seem like trivial numbers on a page to County staff, but as shown in the various photos that have been repeatedly provided to the County –attached here as Exhibits B and C for convenience – the proposed deck will significantly impact our clients' current view from their kitchen sink window, a key selling point of their home.

If a deck this large is approved, not only will our clients' view of the Bay Bridge and downtown San Francisco be gone from this side of the house, but their privacy will be significantly impacted as well. Every time the applicants have people out on their deck, our clients will be forced to look at them instead of their previous Bay Bridge and San Francisco views. Having a deck this size impacts both long-range views and privacy and does not comply with either the KCD or the County Code requirements regarding variances.

As confirmed in Ms. Margaret Mitchell's May 2, 2019, email to us, the Project, even when constructed on the south side of the property must be designed "to avoid impacting the neighbor's long range views, privacy" and property values. Unfortunately, the Project as designed still causes significant impacts to our clients' long range views, privacy, and property values.

As described in detail at the KMAC meeting on October 29, 2019, (which substantial evidence was sadly ignored), the proposed Project will cause impacts to our clients' long-range views on both the first and second floors because: 1) the proposed expansion will go beyond the existing nook; and 2) the expansive deck will block Bay, Bay Bridge, and San Francisco views. While the full extent of the impacts cannot be determined because the application lacks specific dimensions for either component, and there are no story poles, it is clear that any expansion beyond the nook will impact long-range, million dollar views (see Picture #1, Exhibit B) and that the expansive deck (15' 2 1/2") will impact our clients' view of the Bay, downtown San Francisco, and the Bay Bridge (see Picture #2, Exhibit C). Our clients only desire is to have their views of the Bay, downtown San Francisco, and the Bay Bridge and privacy preserved. That is what the KCD and the variance standards require.

We note that for other projects in the KCD, the County has taken a very hard look to preserve these kinds of views on other properties and always required a variance. It is unclear why the County is working so hard in this instance against our clients and recommending approval of such significant impacts in violation of its own regulations.

4. Property Values Will Be Affected

The Staff Report erroneously suggests that our clients' property values will not be impacted. Significant impacts to the kitchen window and master bath views will unquestionably impact our clients' property values. Our clients currently have significant and long range views facing south, contrary to what the Staff Report suggests. Rather than address this issue and ask the applicants to reduce the size of their project to avoid these significant impacts, County staff glosses over the issue by laughably suggesting that "since the addition will be increasing the enjoyment and value of the [applicant's] property, it will in turn increase the value of the neighboring properties. Therefore, the Petroziello property values will not decrease from the addition to the subject property. (p.7). This analysis is not only wrong, but it's insulting.

We have included a letter from the prominent real estate agent who sold our clients' property who confirms that the property's privacy and views from the kitchen window and master bath, which

views will be significantly impacted by the proposed project, are major selling points to this particular home. (See **Exhibit D**.) We provided this letter to County staff and to the KMAC, and they both chose to ignore this substantial evidence on the record regarding specific impacts to our clients' views and property values. It is disingenuous for staff to suggest our clients' property values will not be impacted because the neighboring property will increase in value. Ironically, the applicant's property values would be increased by stealing our clients' views. This is exactly the type of project the KCD Ordinance was created to prohibit.

Even if the County was not required to issue a variance – which it clearly is – the project will violate KCD standards and should not be approved as currently designed. We have repeatedly explained to staff that a smaller addition could be constructed that would avoid these significant impacts simply by limiting the upper level addition to the size of the existing nook, removing the proposed window facing our clients' master bath, and reducing the deck to the previous footprint size or very close thereto.

While we appreciate County staff's addition of Condition #3 regarding the upper level window, the vague language in this condition should be revised to clarify that this window needs to be removed to preserve our clients' privacy, not simply frosted.

5. Notice and Due Process

As indicated in previous correspondence to the County, the County's review of this project, including the KMAC review, has been fraught with due process violations now exacerbated by the Staff Report. Rather than go into painstaking detail of each violation, we have included the relevant correspondence outlining the various due process violations that have occurred from the beginning, starting with a verbal commitment from a County planner to approve a variance before even reviewing the application, followed by countless failures by the KMAC to follow its own regulations to provide adequate notice, followed by coaching from an interested KMAC representative to avoid a variance, (See **Exhibit E**, letter to the County March 8, 2019), followed by active advocating on behalf of the project by a KMAC representative (See **Exhibit F**, Update to County re: KMAC Hearing, dated November 4, 2019), followed by a failure by County staff to ever meet with our clients, update our clients, or visit our clients' property to adequately assess the situation.

Perhaps most egregious was the latest KMAC meeting on October 29, 2019, which led to staff's most recent approval. When presented with evidence that one of the KMAC members actively advocated on behalf of the project and failed to provide required notice to the two project opponents, the biased KMAC member not only refused to recuse herself to preserve fair and impartial decision-making, but then proceeded to vigorously advocate in favor of the project. For these reasons, we respectfully ask the County to disregard the KMAC recommendation in making its determination regarding the Project. Any agency action that reflects an abuse of discretion must be disregarded to avoid further tainting the land use process.

In addition, the County has repeatedly failed to provide timely and adequate Public Records Act ("PRA") responses to our clients to help us understand the proposed project and the very real ways in which their property will be significantly impacted. The County has forced our clients to hire land use counsel simply to understand the proposed development next door. Sadly, County staff has made it very difficult for our clients to protect their property rights, rights that are specifically protected by the KCD and land use law. We are hopeful that with this additional information, you can help rectify the situation and directly address our clients' very real legal and property concerns.

6. Conclusion

As indicated above and in the attached, this process has been fraught with due process issues and violations of planning and zoning law. The County has repeatedly failed to comply with its own


regulations to avoid significant impacts to our clients' long range views, privacy, and property values. We are confident that a reviewing court would find serious land use violations and abuse of discretion by the County throughout this process, and possibly even violations of CEQA.

However, there is a way forward that would start to address the County's past failures, address our clients' very real concerns, and potentially avoid a protracted legal battle. We have stated repeatedly that if the applicants are willing to remove the north facing window, eliminate or significantly reduce the deck to its original footprint (to make it an actual replacement deck), and avoid an upper level expansion beyond the existing nook, it would significantly improve the project. These changes may even make the project eligible to meet the strict variance standards. While we appreciate the changes that the applicant has made to move the addition to the south side of the structure, additional changes are absolutely necessary to avoid significantly impacting our clients' long range views, privacy, and property values. At the absolute minimum, we request that you require the applicants install story poles before approving the project to help clarify the actual view and privacy impacts this project will cause.

Thank you for your consideration. We look forward to discussing this further during Monday's hearing.

Sincerely,

Jillian Blanchard
Rudder Law Group, LLP

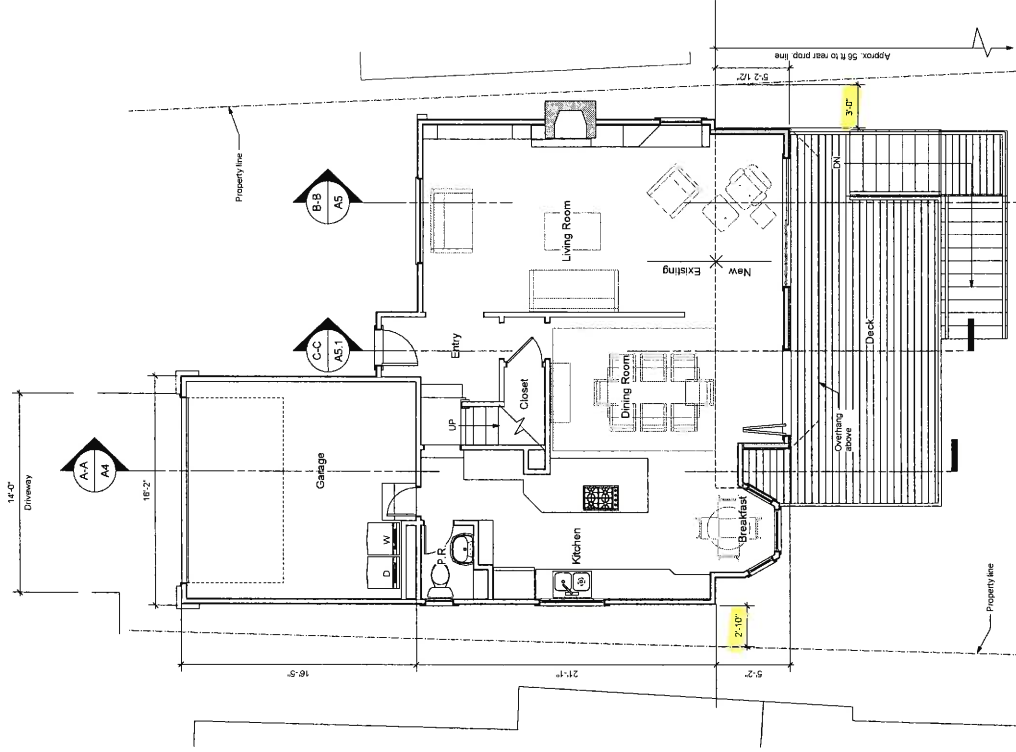


Cc (by electronic mail):

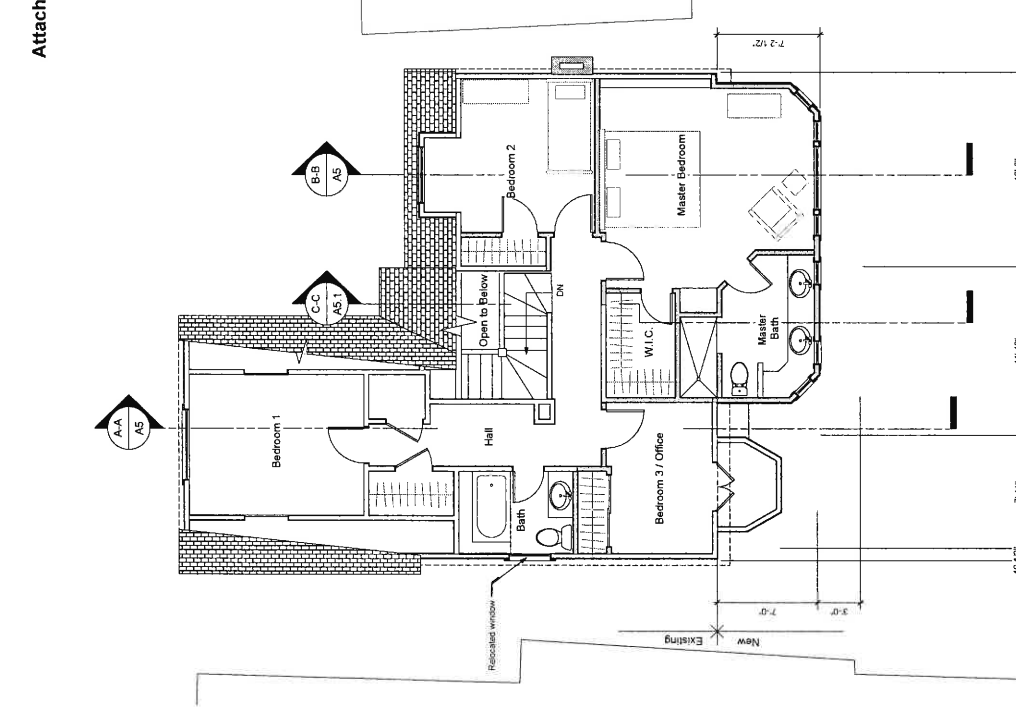
Supervisor District 1, John M. Gioia
Sharon L. Anderson, County Counsel
John Kopchik, DCD Director
Margaret Mitchell, DCD
Ms. Nicole Ashar and Mr. Joseph Petroziello

Exhibits Enclosed

Attachment A



First Floor Plan



Second Floor Plan

David F. McHenry, AIA
 address: 1095 SANTA FE AVENUE, ALBANY, CA 94706
 phone: (916) 765-1671
 email: dmchenry@comcast.net



All information on this drawing is the property of the architect. It is to be used for the project and site only, and may not be reproduced, used for any other project, or distributed without the written consent of the architect.

120 St. Albans Road
 Kensington, CA

contact(s): David McHenry, May Henry
 address: 120 St. Albans Road, Kensington, CA
 phone: (916) 373-0346
 email: dmchenry@gmail.com

Floor Plans (Proposed)
 Date: 07/25/2019
 Project: 120 St. Albans Road

A-3

Edward E. McHenry, AIA
 address 029 SASTA ST. NORWICH
 ALBANY, CA 94706
 phone (530) 705-1571
 email hmcHenry@comcast.net

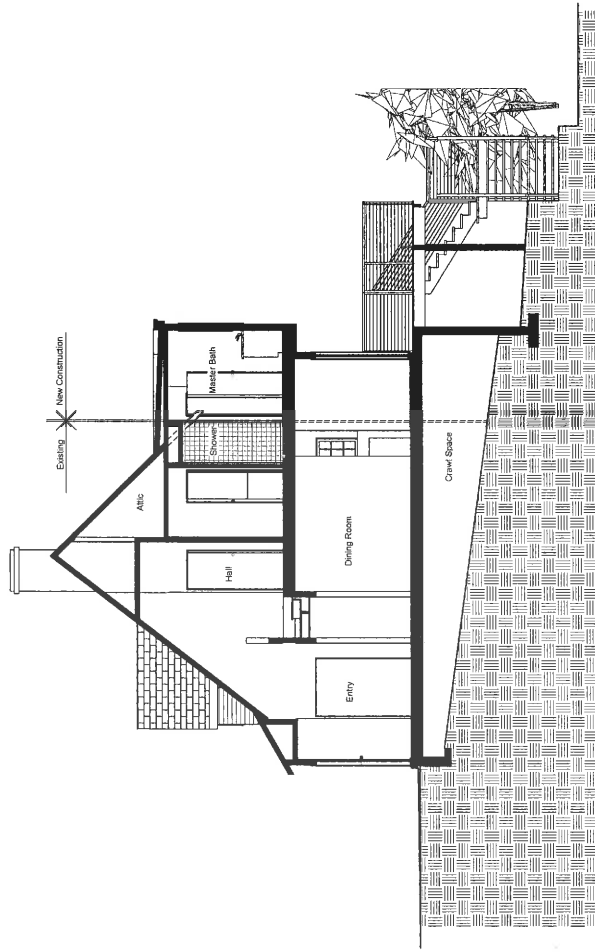
**David McHenry
 Project Manager**
 address 120 St. Albans Road
 Kensington, CA
 phone (916) 313-0316
 email dmchenry@gsa.com

**David McHenry
 Project Manager**
 address 120 St. Albans Road
 Kensington, CA
 phone (916) 313-0316
 email dmchenry@gsa.com

Cross Section C-C

07/25/2019

A-5.1



1 Section C-C
 Scale: 1/4" = 1'-0"

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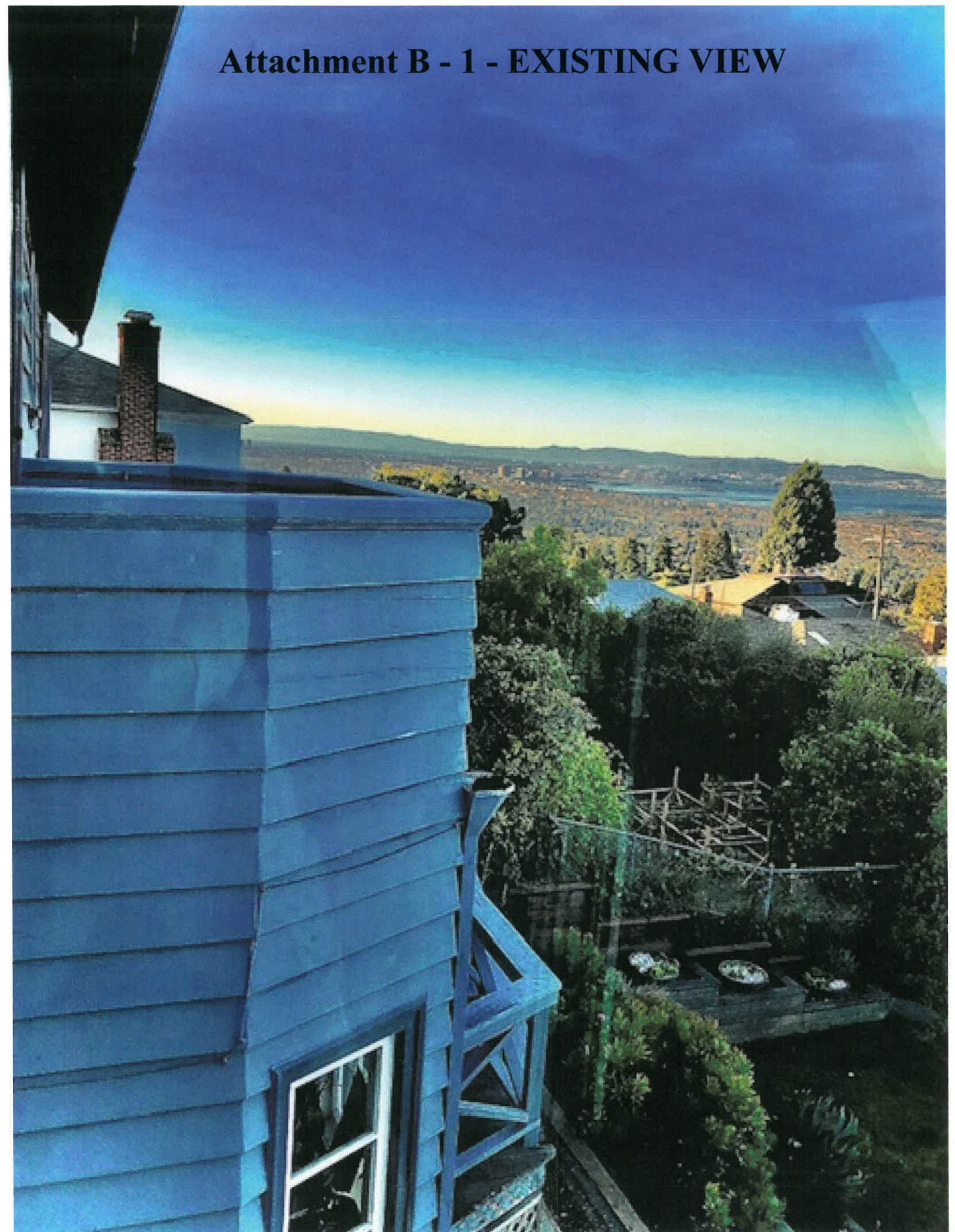
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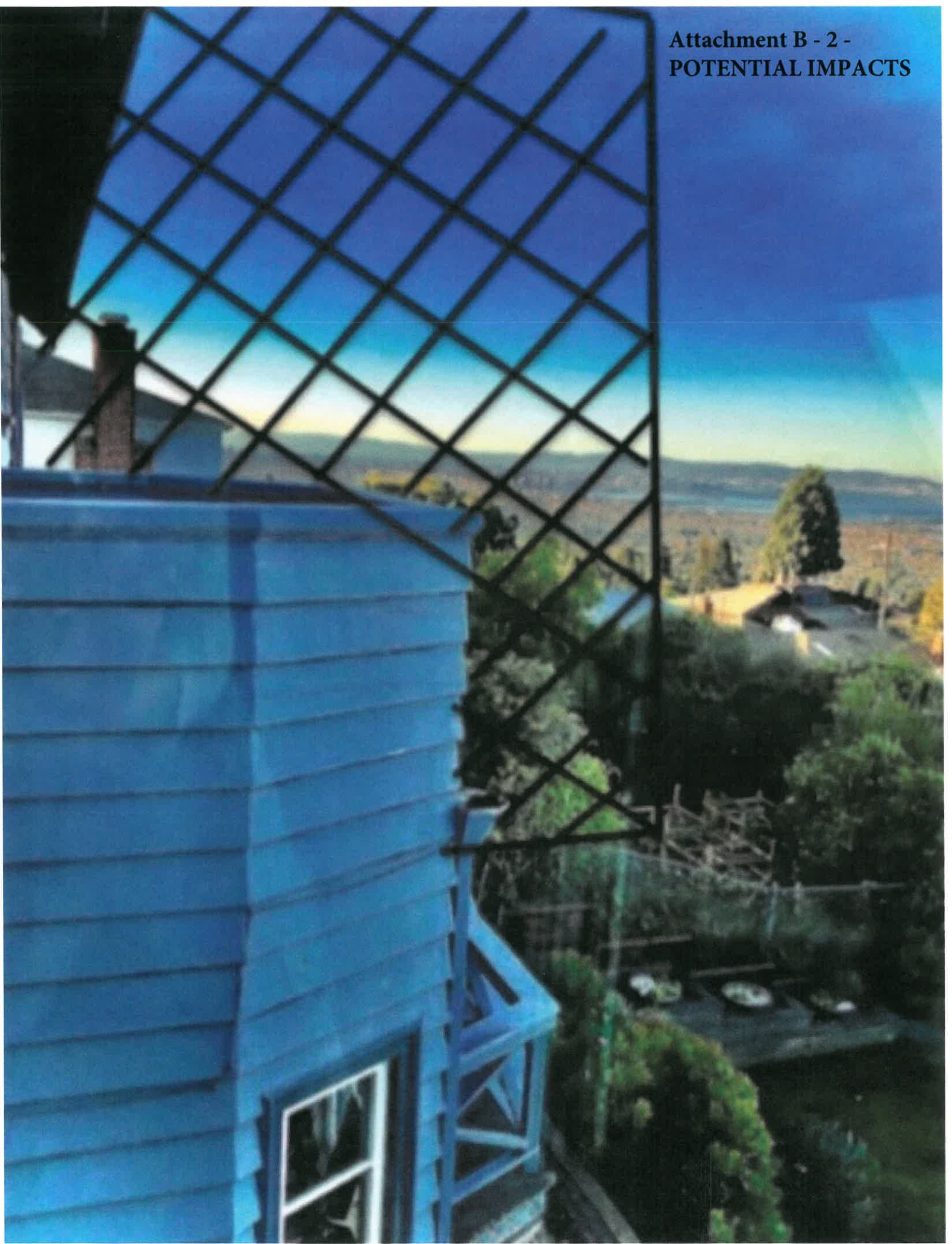
2

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Attachment B - 1 - EXISTING VIEW



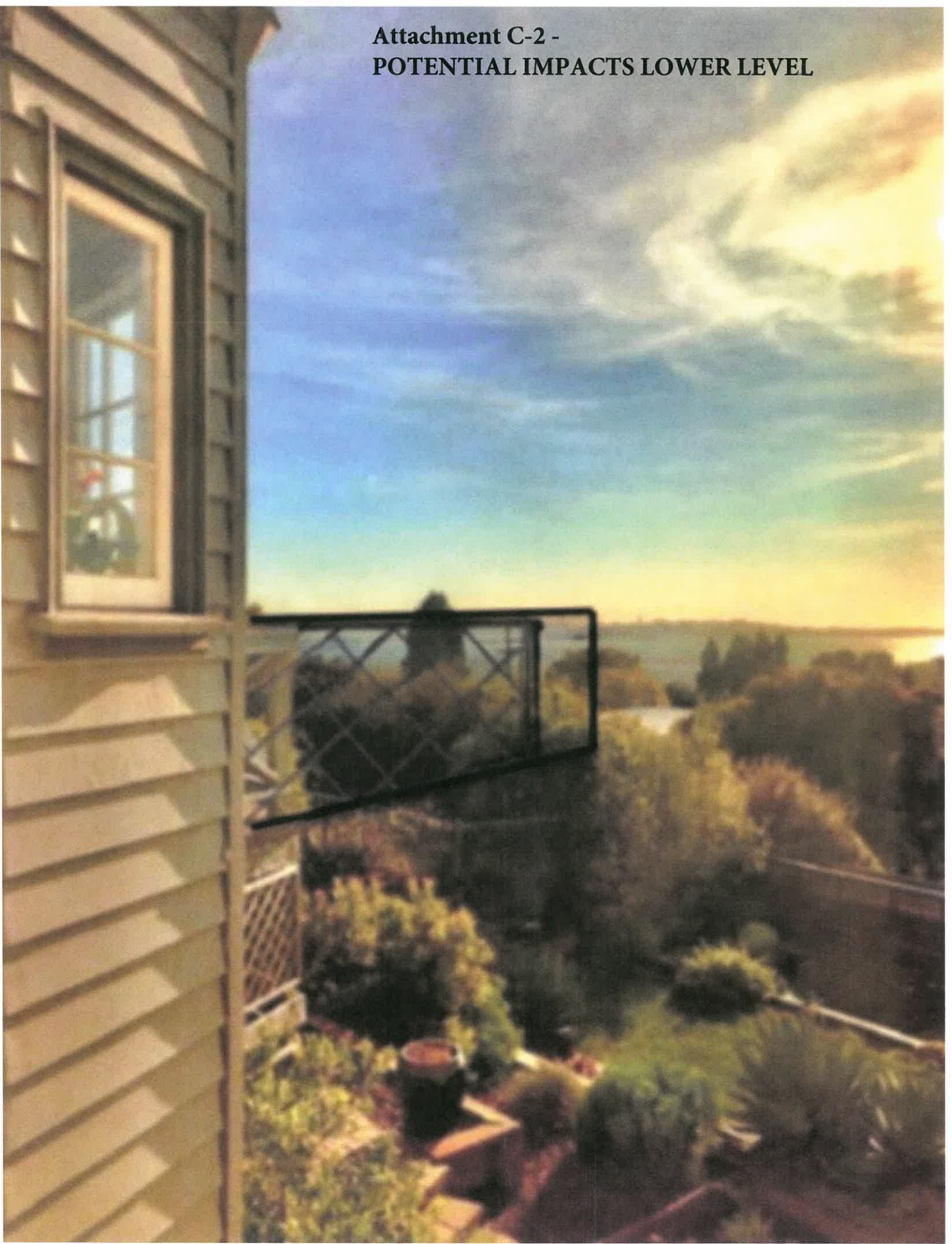
**Attachment B - 2 -
POTENTIAL IMPACTS**



**Attachment C-1 -
EXISTING VIEW - LOWER LEVEL**



**Attachment C-2 -
POTENTIAL IMPACTS LOWER LEVEL**



Attachment D



Nicole Ashar
118 St. Albans
Kensington, CA.

Re: proposed addition to the home adjacent to 118 St. Albans

Dear Nicole,

As discussed, I have looked at the potential obstruction of the views from your home's kitchen and master bath, and the diminished light for the family room if the proposed additions were to be constructed next door.

In our market, views in general represent great value, and in particular, the view from a kitchen sink and the master suite is extremely important.

Having represented the sellers when you purchased the property, I am aware of how the property has benefitted from the specific views that the property presently offers.

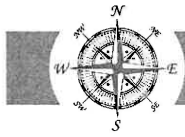
In areas such as Kensington, which are generally very densely built, there is also a decidedly value for privacy. The addition proposed for your neighbor's home appears to potentially diminish your privacy in important areas.

I look forward to hearing of a satisfactory resolution to this neighborhood concern.

Yours,

A handwritten signature in cursive script that reads "Bebe".

Bebe McRae



RUDDER LAW GROUP

EXHIBIT E



Design Review Application

Department of Conservation and Development
Community Development Division
30 Muir Road
Martinez, CA 94553
(925) 674-7200
www.cccounty.us

EXHIBIT E-1



CONTRA COSTA COUNTY
2019 JUL 25 AM 11:56

APPLICANT: PLEASE PRINT CLEARLY AND FILL IN ALL APPLICABLE SECTIONS

TYPE OF APPLICATION (Mark the one that applies):

SMALL LOT DESIGN

KENSINGTON DESIGN REVIEW

PROPERTY OWNER OR AGENT AUTHORIZATION

APPLICANT CONTACT INFORMATION

NAME: DAVID HERBERICH / MARY HANLEY

NAME: HOWARD McKENNY

ADDRESS: 120 ST. ALBANS

ADDRESS: 1039 SANTA FE AVE

CITY, STATE: KENSINGTON ZIP: 94708

CITY, STATE: ALBANY CA ZIP: 94706

PHONE #: (312) 533-0346

PHONE #: (510) 705-1671

EMAIL: mchanley@gmail.com

EMAIL: h.mckenny@comcast.net

I am the property owner and hereby authorize the filing of this application.

Check here if billings are to be sent to applicant rather than owner.

SIGNATURE: *[Signature]*

SIGNATURE: *[Signature]*

Request description (attach supplemental statement if necessary):
2-STORY ADDITION TO EXISTING
2-STORY HOUSE w/ UNFINISHED CRAWL SPACE BELOW

Materials required for submittal: All drawings must be of sufficient clarity to effectively communicate the proposed design, including exterior materials, and proposed heights of structure to the public.

Small Lot Design Review (Hand deliver do not mail): A legible plot plan, floor plan(s), and elevations (from all relevant/altered sides) no larger than 11 x 17.

*Additional information will be required on sloped lots or where the structure is within 5 feet of maximum height. A drawing prepared by a licensed civil engineer may be required in some circumstances.

Kensington: For projects in Kensington, provide one full size set of plans 24" x 36" and one reduced set 11 x 17.

A REQUEST FOR ANY CHANGES TO THE APPROVED DESIGN SHALL REQUIRE THE FILING OF ANOTHER APPLICATION AND RENOTICING. THE SETBACKS SHOWN WILL BE THE MINIMUM, AND THE HEIGHT SHOWN ON THE PLANS WILL BE THE MAXIMUM HEIGHT REQUIRED FOR THE PROJECT. Applicant/Owner Initials: _____

***** FOR OFFICE USE ONLY *****

Project Description:

THE APPLICANT REQUESTS A KENSINGTON DESIGN REVIEW TO ALLOW AN APPROXIMATELY 335 FT² 2-STORY LIVING SPACE ADDITION AND REMODEL/EXPANSION OF AN EXISTING UNCOVERED REAR DECK.

Property Description:

LOT-5, BLOCK-5, OF BERKELEY HIGHLANDS TERRACE

AREA	FILING FEES	FEE	CODE	ASSESSOR'S #
KENSINGTON				572-124-006
Ord. Small Lot 82-10.002(c)	Small Lot Design Review	\$150.00	S-036A	Site Address:
Ord. Kensington 84-74.10	Kensington Design Review (if under FAR threshold)	\$500.00	S-036B	120 ST. ALBANS ROAD
X-Ref Files: VLR-1032	Late Filing Penalty (+50% of above if applicable)		S-066	Supervisor District: ONE
	Notification Fee	\$30.00	S-052B	Date Filed: 7/26/19
Concurrent Files:				Received by: <i>[Signature]</i>
	TOTAL	\$ 530-	File #: 14R19-0011	

CHECKING YOUR PLANNING PERMIT STATUS IS EASY, JUST GO TO: <https://epermits.cccounty.us/CitizenAccess/>. (No Registration required, just scroll to the bottom of the page and click on Planning, Search Application For Status.)

EXHIBIT E-2

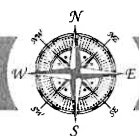
Plan review and parcel information

2

To be completed by Community Development Staff

PARCEL INFORMATION	NO	YES	COMMENTS or CONDITIONS
1 Zoning: <u>R-6, T-0, K</u>			
2 General Plan: <u>SH</u>			
3 Flood Zone <u>X</u> (if flood plain is required, refer applicants to Public Works prior to moving on to building.)			Refer to Public Works? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
4 Does the lot comply with Subdivision Map Act? (example: Parcel number for minor subs. and lot number for major subs.)		X	
5 Review previous & concurrent files. Check for restrictions to proposed project, and special conditions that may apply. MAKE SURE ALL FEES ARE PAID IN FULL ON PREVIOUS APPLICATIONS PRIOR TO APPROVAL FOR BI PERMIT.			
6 Sliding scale allowed? (82-14.004 for any lot or parcel of land which was established by record in the Office of the Recorder before 1947)		X	
8 Child Care is required if a lot was established or development plan approved after November 14, 1992.	X		
9 Park Dedication or Impact fee required?	X		
10 Trees must show on site plan (816-6): • Are there any trees that are possibly effected by development? (within 50 feet) • Are any of the effected trees protected?	X		PROPOSED ADDITION WILL BE ADDED AN EXISTING REAR DECK, AND THE WESTWARD DECK EXPANSION WILL NOT IMPACT TREES.
11 Do structure setbacks apply to the edge of a private road easement? (Ord. 82-4.244)	X		
12 Is MWEL (500 sq. ft. for new and 2,500 for rehabbed landscape) Required?	X		
13 C3 Storm water Control (2500 - 10,000 sq. ft. of impervious space) required?	X		
14 Retaining Walls proposed?	X		
15 Grading proposed? (if so, how much?)	X		MINOR GRADING MAY BE NEEDED
16 HOA required?	X		
17 Historical District?	X		
18 Sphere of Influence?			EL CERRITO
19 Fire District?			KENSINGTON FIRE
20 Supervisor District?			ONE
7 KENSINGTON DESIGN REVIEW ONLY Total Parcel Size: <u>4641 FT²</u> Existing Gross Floor Area: <u>1,997</u> Proposed New Gross Floor Area: <u>335</u> Proposed Total Gross Floor Area: <u>2,332</u> (Gross floor area definition-84-74.404(h))			

Conditions/comments:



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EXHIBIT F

EXHIBIT F

Department of Conservation and Development

30 Muir Road
Martinez, CA 94553

Phone: 1-855-323-2626

Contra Costa County



John Kopchik
Director

Aruna Bhat
Deputy Director

Jason Crapo
Deputy Director

Maureen Toms
Deputy Director

Kelli Zenn
Business Operations Manager

December 13, 2019

Jillian B. Blanchard
Rudder Law Group
1101 Marina Village Parkway, Suite 201
Alameda, CA 94501
jblanchard@rudderlawgroup.com

RE: 120 St. Albans Road, Kensington, CA

Ms. Blanchard:

This responds to your December 10, 2019 email to the Department of Conservation and Development. You request that the Department produce "any other case in which the County has not required a variance to expand an existing non-conforming use when constructed on the other side of the house." Your request would require the Department to conduct an extensive review of every development approved by the Department to identify records responsive to your request. The request is unduly burdensome. The PRA does not require a local agency to perform a "needle in the haystack" search to locate requested records. *Cal. First Amend. Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 166. If you wish to make a more specific request, the Department may be able to identify and provide responsive records.

Your email also asserts that the Department's December 10 response to your November 27, 2019 Public Records Act request was insufficient. The Department disagrees with your assertion. Your November 27 request asked for all County records "that provide legal precedent, findings, records, memorandum, or guidance that would support the Legal Conclusion." The "Legal Conclusion" referenced in your request is the Department's determination that the proposed development at 120 St. Albans Road, Kensington, CA does not require a variance.

On December 10, 2019, the Department responded by providing responsive records including development plans provided by the applicant's architect and a communication from the project planner to the applicant that development based on the submitted plans would not require a variance. The Department's response also directed you to the forthcoming, and now publicly available, Department staff report for the December 16, 2019 Zoning Administrator meeting.

The Department has not identified any other "legal precedent, findings, records, memorandum, or guidance that would support the Legal Conclusion." The Public Records Act does not require a local agency to conduct a legal analysis or produce new records in response to a request by the

public. *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1075. Accordingly, the Department considers its obligations under the Public Records Act with respect to your November 27, 2019 request met.

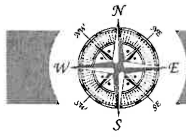
Your December 10, 2019 communication also requests that the Department “suspend the proceedings” and require a variance for the proposed development. No approval for the proposed development will be granted without a public hearing. As with any member of the public, you and your client may attend and comment at any public hearing where the proposed development is considered, including the scheduled December 16, 2019 public hearing before the Zoning Administrator.

Please contact Ruben Hernandez at (925) 647-7785 if you have any questions.

Sincerely,



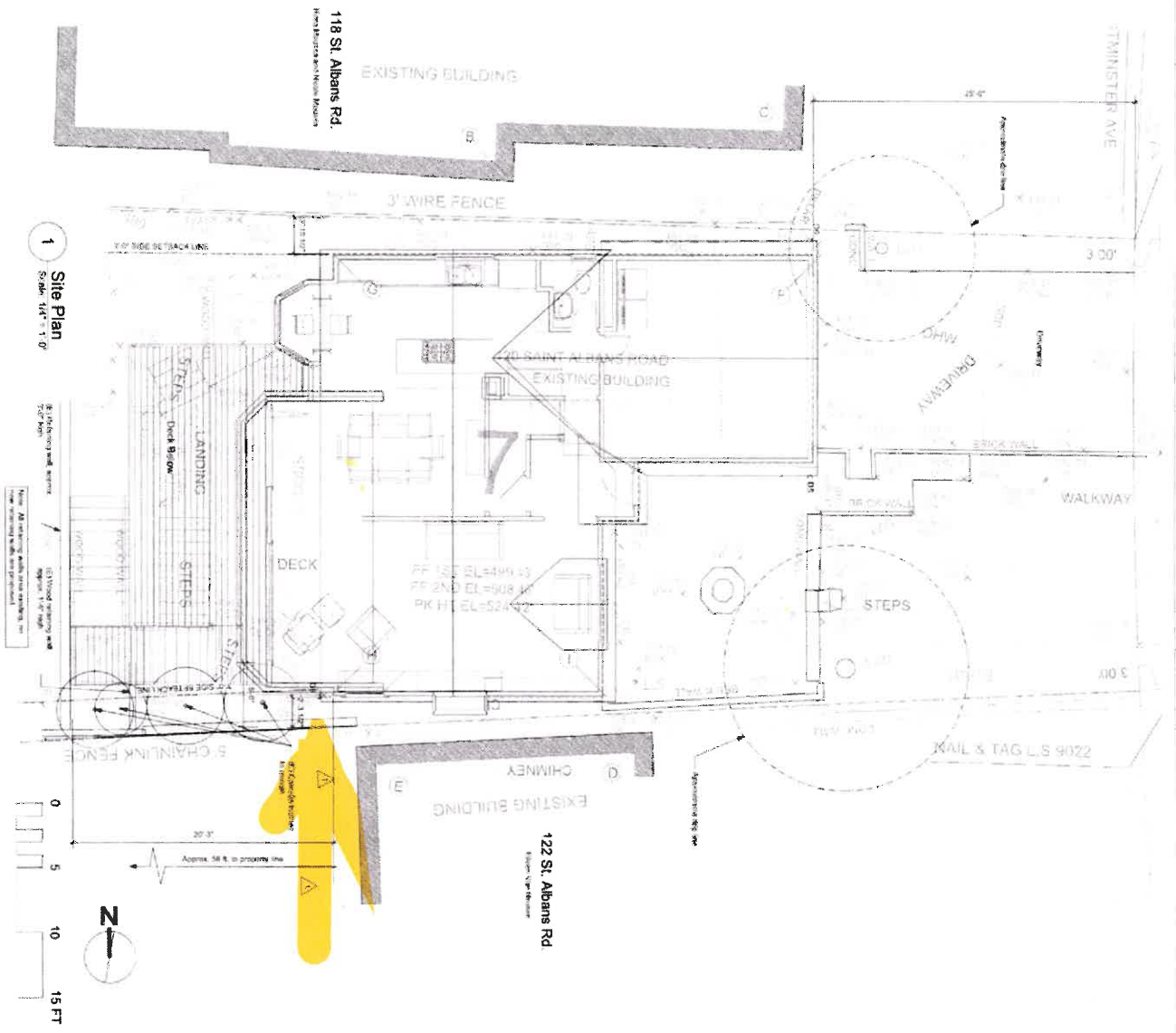
John Kopchik
Director
Department of Conservation and Development



RUDDER LAW GROUP

EXHIBIT G

EXHIBIT G-1



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

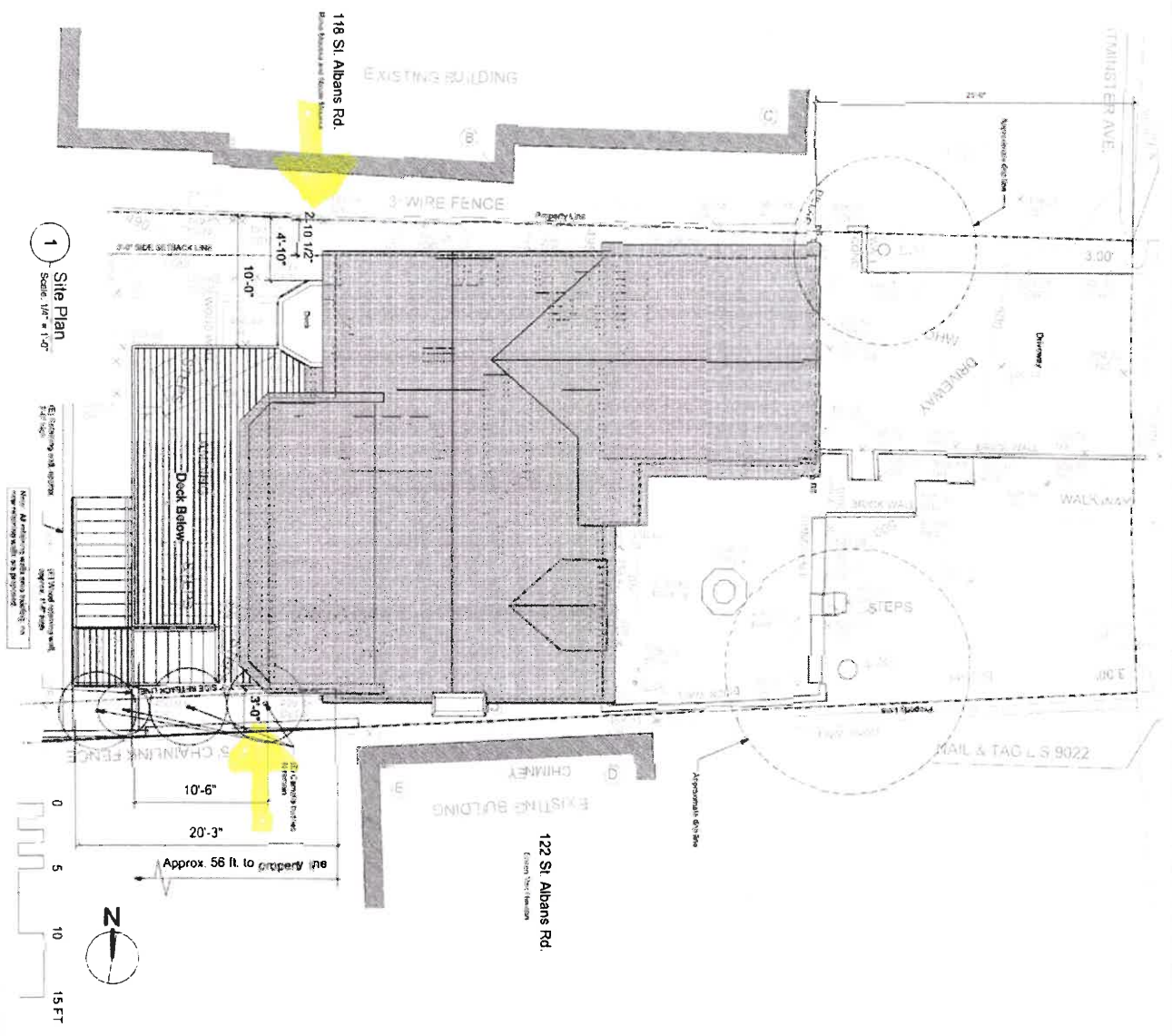
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120 St. Albans Road
Kearneyton, CA

Contractor: [Name]
Address: 120 St. Albans Road, Kearneyton, CA
Phone: (530) 332-1111
Email: [Email]

C-2

EXHIBIT G-2



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

1. All existing walls are shown in grey. All new walls are shown in black. All existing windows are shown in white. All new windows are shown in black. All existing doors are shown in white. All new doors are shown in black. All existing fences are shown in grey. All new fences are shown in black. All existing decks are shown in grey. All new decks are shown in black. All existing chimneys are shown in grey. All new chimneys are shown in black. All existing steps are shown in grey. All new steps are shown in black. All existing driveways are shown in grey. All new driveways are shown in black. All existing walkways are shown in grey. All new walkways are shown in black. All existing setbacks are shown in grey. All new setbacks are shown in black. All existing dimensions are shown in grey. All new dimensions are shown in black. All existing notes are shown in grey. All new notes are shown in black. All existing titles are shown in grey. All new titles are shown in black. All existing legends are shown in grey. All new legends are shown in black. All existing scales are shown in grey. All new scales are shown in black. All existing north arrows are shown in grey. All new north arrows are shown in black. All existing property lines are shown in grey. All new property lines are shown in black. All existing fences are shown in grey. All new fences are shown in black. All existing decks are shown in grey. All new decks are shown in black. All existing chimneys are shown in grey. All new chimneys are shown in black. All existing steps are shown in grey. All new steps are shown in black. All existing driveways are shown in grey. All new driveways are shown in black. All existing walkways are shown in grey. All new walkways are shown in black. All existing setbacks are shown in grey. All new setbacks are shown in black. All existing dimensions are shown in grey. All new dimensions are shown in black. All existing notes are shown in grey. All new notes are shown in black. All existing titles are shown in grey. All new titles are shown in black. All existing legends are shown in grey. All new legends are shown in black. All existing scales are shown in grey. All new scales are shown in black. All existing north arrows are shown in grey. All new north arrows are shown in black. All existing property lines are shown in grey. All new property lines are shown in black.



C-2

Project: Economy AB
Client: OFFSHORE FARM
Address: 170 St. Albans Road, Kensington, CA
Phone: (610) 294-1411
Email: economy@offshorefarm.com

Site Plan

170 St. Albans Road
Kensington, CA

Project: Economy AB
Client: OFFSHORE FARM
Address: 170 St. Albans Road, Kensington, CA
Phone: (610) 294-1411
Email: economy@offshorefarm.com

EXHIBIT G-3

Margaret Mitchell

From: Margaret Mitchell
Sent: Tuesday, December 31, 2019 2:50 PM
To: Howard McNenny
Cc: Mary Hanley; David Herberich
Subject: RE: 120 St. Albans

Hi Howard,

I will get a copy of your attachment to Aruna for Monday.

Happy New Year!
Margaret

From: Howard McNenny <h.mcnenny@comcast.net>
Sent: Tuesday, December 31, 2019 11:31 AM
To: Margaret Mitchell <Margaret.Mitchell@dcd.cccounty.us>
Cc: Mary Hanley <mc4hanley@gmail.com>; David Herberich <dherberich@gmail.com>
Subject: 120 St. Albans

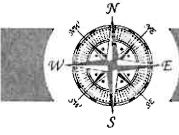
Dear Margaret:

I hope you are back from jury duty by now, and will be available for the January 6 continuation of our hearing. At the initial hearing, there were some issue raised that I am sure you would be well able to answer. One concerned setbacks—something I did not expect to be in contention at all. Our proposal shows the addition on the south side to be set back 3'-0" from the property line, which is allowed as long as the setback on the other side is at least 5'-0". **In our case, the setback on the north sides is 10'-0", or twice what is required.** This dimension was left out of the floor plan, so I have added it, and attach below. Please verify that we are in compliance on this issue.

Thank you and best wishes for the new year.

Howard McNenny, AIA

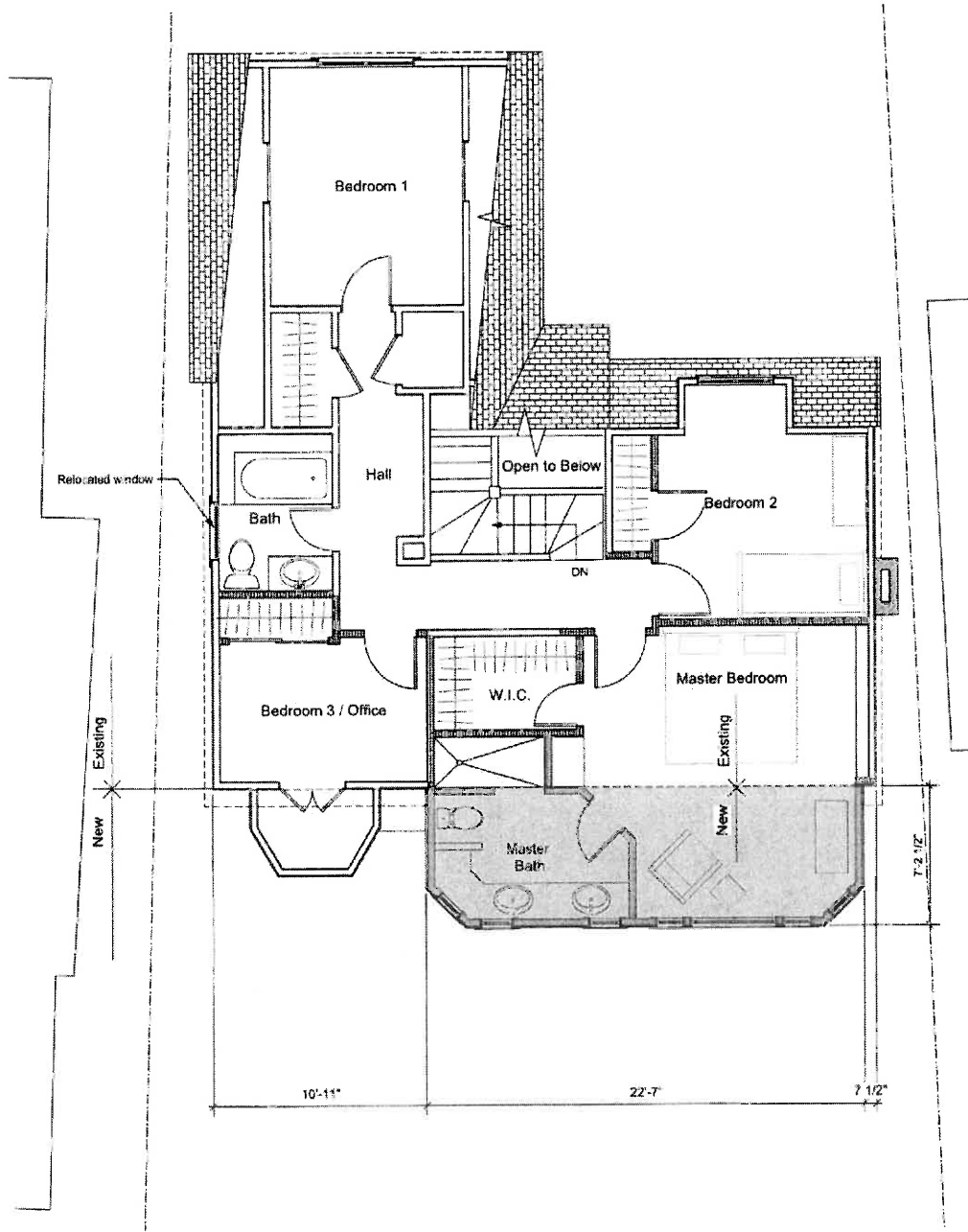
1039 Santa Fe Ave, Albany CA
Tel: (510) 705-1671
Cell: (510) 207-7019
h.mcnenny@comcast.net



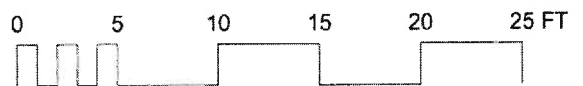
RUDDER LAW GROUP

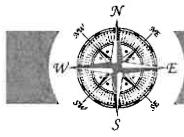
EXHIBIT H

EXHIBIT H



Second Floor Plan

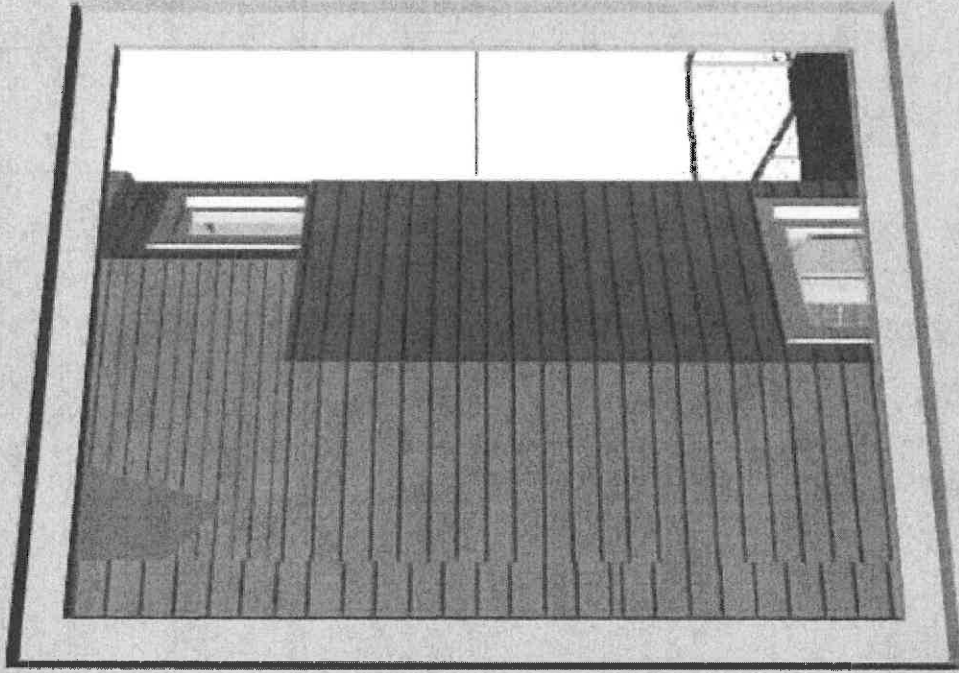




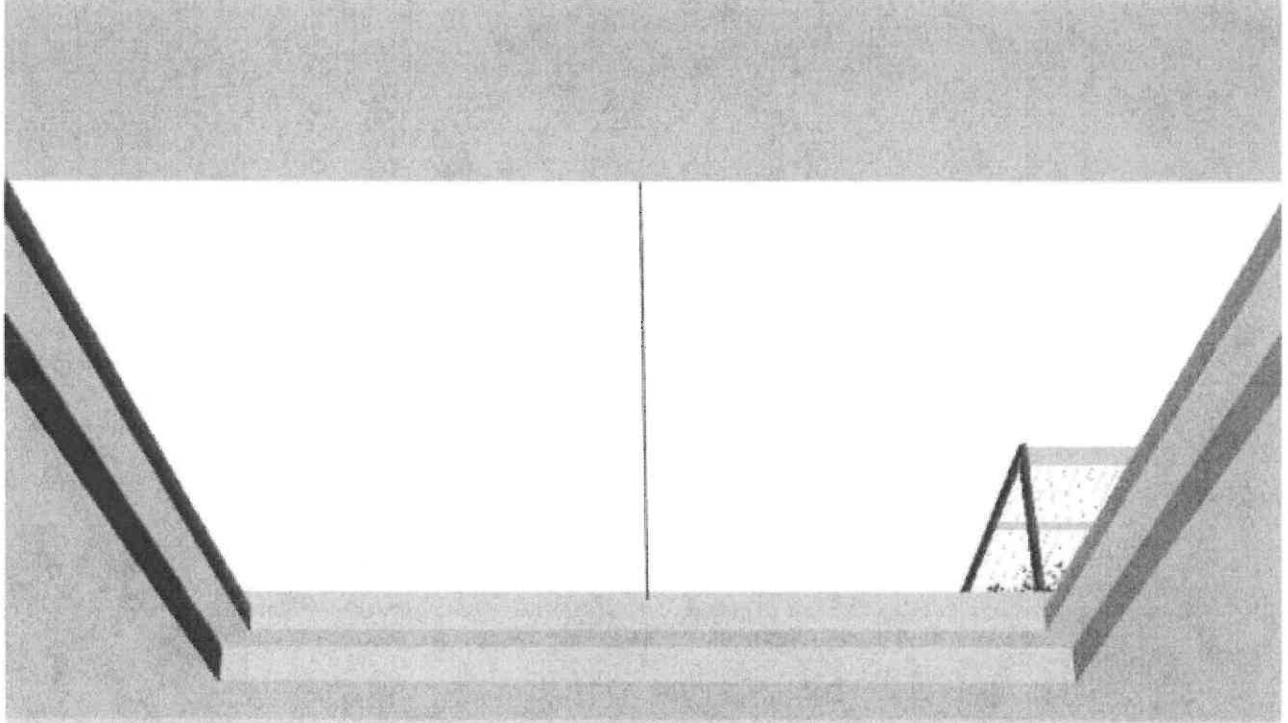
RUDDER LAW GROUP

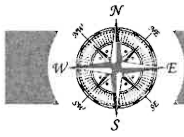
EXHIBIT I

EXHIBIT I



View from Bath @ 118 St. Albans





RUDDER LAW GROUP

EXHIBIT J

EXHIBIT J

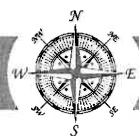
From: Howard McNenny <h_mcnenny@comcast.net>
Sent: Friday, March 15, 2019 11:32 AM
To: Margaret Mitchell <Margaret.Mitchell@dcd.cccounty.us>
Cc: Mary Hanley <mc4hanley@gmail.com>; David Herberich <dherberich@gmail.com>
Subject: Re: 120 St. Albans

Margaret:

The obvious question we have is on what basis does staff "not believe that the required variance findings can be made".

As I stated previously, when I first came to the permit center on August 31 of last year, I met with Joseph Lawlor, who reviewed the plans with me, left to review the plans with his supervisor, and returned to let me know that he saw no problems with the variance. He indicated that it was in fact the type of variance that the county routinely grants. Based on that information, my clients have gone to considerable effort and expense to get to the point where we are now. This includes a complete re-design to preserve the view of the neighbor to the north.

As you know, KMAC has recommended design approval. Their reluctance to recommend approval of the concurrent variance request made no sense to me and they did not give an explanation, other than they did not



RUDDER LAW GROUP

EXHIBIT K

EXHIBIT K-1

300 FT LIST

KR19-00011

7/30/2019-----

Parcel/ParcelID	Owner-FullName	Owner-Mailing Address 1	Owner-Mailing City	Owner	Owner-Mailing	Site St	Site Street Name	Site St	Site City	Site St	Site Zip
1	572140018	ABRAHAM MICHAEL D & MARY C	KENSINGTON	CA	94708-1044	125	YORK	AVE	KENSINGTON	CA	94708-1044
2	572140025	BRASFIELD WENDY TRE	KENSINGTON	CA	95046-0981	10	WESTMINSTER	AVE	KENSINGTON	CA	94708-1056
3	572140013	BYCEL LEE TRE	KENSINGTON	CA	94708-1044	143	YORK	AVE	KENSINGTON	CA	94708-1044
4	570020002	CAPONE RICHARD & CYNTHIA	KENSINGTON	CA	94708-1011	705	WELLESLEY	AVE	KENSINGTON	CA	94708-1011
5	572140001	CARUTHERS WILLIAM PHILIP	KENSINGTON	CA	94708-1043	100	WINDSOR	AVE	KENSINGTON	CA	94708-1043
6	572122010	CHAN DEREK & LYDIA TRE	EL CERRITO	CA	94530-1465	119	ST ALBANS	RD	KENSINGTON	CA	94708-1034
7	570020003	CHAN ROSALYN SHY-TONG TRE	KENSINGTON	CA	94707-1102	709	WELLESLEY	AVE	KENSINGTON	CA	94708-1011
8	572100010	CHANG CHENG-FONG	KENSINGTON	CA	94708-1038	203	WILLAMETTE	AVE	KENSINGTON	CA	94708-1038
9	572124009	CHARPENTIER ROBERT L	KENSINGTON	CA	94708-1035	136	ST ALBANS	RD	KENSINGTON	CA	94708-1035
10	572124003	CHRISTBAUM RYAN J TRE	KENSINGTON	CA	94708-1035	110	ST ALBANS	RD	KENSINGTON	CA	94708-1035
11	572140005	DAY WILLIAM H & SUSAN P TRE	KENSINGTON	CA	94708-1043	118	WINDSOR	AVE	KENSINGTON	CA	94708-1043
12	572121007	DEDRICK RUSSELL L TRE	KENSINGTON	CA	94708-1054	25	WESTMINSTER	AVE	KENSINGTON	CA	94708-1054
13	572124014	DICKINSON JOOSHUA M	KENSINGTON	CA	94708-1042	115	WINDSOR	AVE	KENSINGTON	CA	94708-1042
14	572140012	DIENER S ROBERT TRE	KENSINGTON	CA	94708-1044	161	YORK	AVE	KENSINGTON	CA	94708-1044
15	570020004	DOWNLING ROBERT T & ROBERTA TRE	KENSINGTON	CA	94708-1011	715	WELLESLEY	AVE	KENSINGTON	CA	94708-1011
16	570011012	DRAEGER HAROLD T & MARIA TRUST	KENSINGTON	CA	94708-1009	685	WELLESLEY	AVE	KENSINGTON	CA	94708-1009
17	572140027	DUFFY DENYS	PIEDMONT	CA	94610-1134	109	YORK	AVE	KENSINGTON	CA	94708-1044
18	570020001	EAMES COLLEEN J TRE	KENSINGTON	CA	94708-1011	703	WELLESLEY	AVE	KENSINGTON	CA	94708-1011
19	572121005	EASTON JOSEPH D TRE	KENSINGTON	CA	94708-1054	29	WESTMINSTER	AVE	KENSINGTON	CA	94708-1054
20	572140007	EMERY MICHAEL R & ELAINE TRE	KENSINGTON	CA	94708-1043	124	WINDSOR	AVE	KENSINGTON	CA	94708-1043
21	572124010	EVERETT SYLVIA L	KENSINGTON	CA	94708-1042	133	WINDSOR	AVE	KENSINGTON	CA	94708-1042
22	572124017	FAN ELIOT TRE	KENSINGTON	CA	94708-1042	105	WINDSOR	AVE	KENSINGTON	CA	94708-1042
23	572123002	FRACCHIA MARIO & BARBARA TRE	KENSINGTON	CA	94708-1034	141	ST ALBANS	RD	KENSINGTON	CA	94708-1034
24	572140017	FREHLING SHIRA TRE	KENSINGTON	CA	94708-1044	129	YORK	AVE	KENSINGTON	CA	94708-1044
25	572122002	GARFIN DAVID E & SUSAN B TRE	KENSINGTON	CA	94708-1027	112	KENYON	AVE	KENSINGTON	CA	94708-1027
26	572100012	GUTMAN KATHLEEN R TRE	KENSINGTON	CA	94708-1026	125	KENYON	AVE	KENSINGTON	CA	94708-1026
27	572124006	HERBERICH DAVID H	KENSINGTON	CA	94708-1035	120	ST ALBANS	RD	KENSINGTON	CA	94708-1035
28	572122011	HINES GEORGE & STEPHANIE A	KENSINGTON	CA	94708-1034	115	ST ALBANS	RD	KENSINGTON	CA	94708-1034
29	572100015	HOTSON CLAYTON P	KENSINGTON	CA	94708-1026	111	KENYON	AVE	KENSINGTON	CA	94708-1026
30	572124011	ILVIN JOHN	KENSINGTON	CA	94708-1042	129	WINDSOR	AVE	KENSINGTON	CA	94708-1042
31	572122003	KASHYAP BHARAT R	SEATTLE	WA	98199-2176	116	KENYON	AVE	KENSINGTON	CA	94708-1027
32	570020014	KINGSLEY MADELINE ANDERSON TRE	KENSINGTON	CA	94708-1000	202	KENYON	AVE	KENSINGTON	CA	94708-1000
33	572122008	KIRKBY RICHARD J & LISA J	KENSINGTON	CA	94708-1034	125	ST ALBANS	RD	KENSINGTON	CA	94708-1034

TOTAL: 85

PARCEL: 572-124-006

KENSINGTON DESIGN REVIEW

EXHIBIT K-2

300 FT LIST

KR19-00011

7/30/2019

34	572124018	KOSEL CATHIE TRE	101 WINDSOR AVE	KENSINGTON	CA	94708-1042	101	WINDSOR	AVE	KENSINGTON	CA	94708-1042
35	572124016	KOSEL JANICE E	109 WINDSOR AVE	KENSINGTON	CA	94708-1042	109	WINDSOR	AVE	KENSINGTON	CA	94708-1042
36	570020005	KWOCK MICHAEL RICHARD TRE	4221 217TH ST	BAYSIDE	NY	11361-2946	719	WELLESLEY	AVE	KENSINGTON	CA	94708-1011
37	572140014	LAYERLE SEAN K	1190 HUNTINGDON DR	SAN JOSE	CA	95129-4110	139	YORK	AVE	KENSINGTON	CA	94708-1044
38	572100013	LEE BETTY V TRE	119 KENYON AVE	KENSINGTON	CA	94708-1026	119	KENYON	AVE	KENSINGTON	CA	94708-1026
39	572140022	LEE BRENDA	107 YORK AVE	KENSINGTON	CA	94708-1044	107	YORK	AVE	KENSINGTON	CA	94708-1044
40	572122001	LEE JAN TRE	108 KENYON AVE	KENSINGTON	CA	94708-1027	108	KENYON	AVE	KENSINGTON	CA	94708-1027
41	572123003	LEEMANS WIM & ANNETTE	140 ST ALBANS RD	KENSINGTON	CA	94708-1035	140	ST ALBANS	RD	KENSINGTON	CA	94708-1035
42	572124015	LEVIN RICHARD	111 WINDSOR AVE	KENSINGTON	CA	94708-1042	111	WINDSOR	AVE	KENSINGTON	CA	94708-1042
43	572124002	LEWIS DAVID A & JULIA A	2047 LOS ANGELES AVE	BERKELEY	CA	94707-2428	106	ST ALBANS	RD	KENSINGTON	CA	94708-1035
44	572140016	LOCHER FELIX C	131 YORK AVE	KENSINGTON	CA	94708-1044	131	YORK	AVE	KENSINGTON	CA	94708-1044
45	570011011	LOW EVELYN A	351 CALIFORNIA ST #600	SAN FRANCISCO	CA	94104-2404	667	WELLESLEY	AVE	KENSINGTON	CA	94708-1009
46	572140008	MAYYALI LAURENT & CHANTAL	126 WINDSOR AVE	KENSINGTON	CA	94708-1043	126	WINDSOR	AVE	KENSINGTON	CA	94708-1043
47	572122007	MCKENZIE RALPH & KATHIE TRE	PO BOX 121174	NASHVILLE	TN	37212-1174	182	KENYON	AVE	KENSINGTON	CA	94708-1027
48	572122006	MILLER ELINORE M	128 KENYON AVE	KENSINGTON	CA	94708-1027	128	KENYON	AVE	KENSINGTON	CA	94708-1027
49	572140019	MOHIT BEHRANG	123 YORK AVE	KENSINGTON	CA	94708-1044	123	YORK	AVE	KENSINGTON	CA	94708-1044
50	572140003	MORRISON GLENN A & GLORIA TRE	112 WINDSOR AVE	KENSINGTON	CA	94708-1043	0	WINDSOR	AVE	KENSINGTON	CA	94708
51	572140004	MORRISON GLENN A & GLORIA TRE	112 WINDSOR AVE	KENSINGTON	CA	94708-1043	112	WINDSOR	AVE	KENSINGTON	CA	94708-1043
52	572124012	NADOLNY EYLEEN S	125 WINDSOR AVE	KENSINGTON	CA	94708-1042	125	WINDSOR	AVE	KENSINGTON	CA	94708-1042
53	572121006	NEDDERSEN CHRISTOPHER	27 WESTMINSTER AVE	KENSINGTON	CA	94708-1054	27	WESTMINSTER	AVE	KENSINGTON	CA	94708-1054
54	572124008	NG JUDITH TRE	128 ST ALBANS RD	KENSINGTON	CA	94708-1035	128	ST ALBANS	RD	KENSINGTON	CA	94708-1035
55	572140028	ORETSKY DONIA J TRE	1020 W 12TH AVE	CHICO	CA	95926-2144	117	YORK	AVE	KENSINGTON	CA	94708-1044
56	572123001	PECK RHODA	200 KENYON AVE	KENSINGTON	CA	94708-1000	200	KENYON	AVE	KENSINGTON	CA	94708-1000
57	570011010	PERRY DOUGLAS F & HODA A TRE	653 WELLESLEY AVE	KENSINGTON	CA	94708-1009	653	WELLESLEY	AVE	KENSINGTON	CA	94708-1009
58	572124005	PETROZIELLO JOSEPH M	118 ST ALBANS RD	KENSINGTON	CA	94708-1035	118	ST ALBANS	RD	KENSINGTON	CA	94708-1035
59	572140006	RAMM ANDREW	120 WINDSOR AVE	KENSINGTON	CA	94708-1043	120	WINDSOR	AVE	KENSINGTON	CA	94708-1043
60	572122004	ROTHACHER WILLIAM & KATHERINE	120 KENYON AVE	KENSINGTON	CA	94708-1027	120	KENYON	AVE	KENSINGTON	CA	94708-1027
61	570020006	SANDFORD ILDIKO M TRE	725 WELLESLEY AVE	KENSINGTON	CA	94708-1011	725	WELLESLEY	AVE	KENSINGTON	CA	94708-1011
62	572140009	SANDLER SIV M	130 WINDSOR AVE	KENSINGTON	CA	94708-1043	130	WINDSOR	AVE	KENSINGTON	CA	94708-1043
63	572100014	SAKENA KRISHAN M S & SAROJ TRE	113 KENYON AVE	KENSINGTON	CA	94708-1026	113	KENYON	AVE	KENSINGTON	CA	94708-1026
64	572123004	SCHMITT ROBERT J	135 WINDSOR AVE	KENSINGTON	CA	94708-1042	135	WINDSOR	AVE	KENSINGTON	CA	94708-1042
65	572122009	SHERWOOD STEPHEN M & KELLY L	123 ST ALBANS RD	KENSINGTON	CA	94708-1034	123	ST ALBANS	RD	KENSINGTON	CA	94708-1034
66	570011013	SHIRYON NILY	1625 OCEAN VIEW AVE	KENSINGTON	CA	94707-1250	695	WELLESLEY	AVE	KENSINGTON	CA	94708-1009
67	572100016	STADELHOFFER LISA TRE	109 KENYON AVE	KENSINGTON	CA	94708-1026	109	KENYON	AVE	KENSINGTON	CA	94708-1026

TOTAL: 85

PARCEL: 572-124-006

KENSINGTON DESIGN REVIEW

EXHIBIT K-3

300 FT LIST

KR19-00011

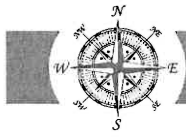
7/30/2019-----

68	572140010	STANTON LLEWELLYN F TRE	134 WINDSOR AVE	KENSINGTON	CA	94708-1043	134	WINDSOR	AVE	KENSINGTON	CA	94708-1043
69	570020013	STRITT STEVEN	204 KENYON AVE	KENSINGTON	CA	94708-1000	204	KENYON	AVE	KENSINGTON	CA	94708-1000
70	572100011	TOOMBS CHARLES E & NANCY E	127 KENYON AVE	KENSINGTON	CA	94708-1026	127	KENYON	AVE	KENSINGTON	CA	94708-1026
71	572122005	VANDENEEDEN STEPHEN TRE	124 KENYON AVE	KENSINGTON	CA	94708-1027	124	KENYON	AVE	KENSINGTON	CA	94708-1027
72	572124007	VANHEUIT EILEEN J TRE	122 ST ALBANS RD	KENSINGTON	CA	94708-1035	122	ST ALBANS	RD	KENSINGTON	CA	94708-1035
73	572124013	WARD GILBERT II & LINDA M TRE	121 WINDSOR AVE	KENSINGTON	CA	94708-1042	121	WINDSOR	AVE	KENSINGTON	CA	94708-1042
74	572140015	WEBB MATTHEW T	135 YORK AVE	KENSINGTON	CA	94708-1044	135	YORK	AVE	KENSINGTON	CA	94708-1044
75	572124001	WHISTLER JENNIFER L	100 ST ALBANS RD	KENSINGTON	CA	94708-1035	100	ST ALBANS	RD	KENSINGTON	CA	94708-1035
76	572140011	WU JUNQIAO	3620 SKYPARK PL	SAN PABLO	CA	94806-6104	136	WINDSOR	AVE	KENSINGTON	CA	94708-1043
77	572140002	YILMAZ DURMUS & SEBNEM	108 WINDSOR AVE	KENSINGTON	CA	94708-1043	108	WINDSOR	AVE	KENSINGTON	CA	94708-1043
78	572124004	ZHOU DESHENG	114 ST ALBANS RD	KENSINGTON	CA	94708-1035	114	ST ALBANS	RD	KENSINGTON	CA	94708-1035
79		HOWARD MCKENNY	1039 SANTE FE AVENUE	ALBANY	CA	94706						
80	KENSINGTON MA	ATTN: PATRICK TAHARA	15 ARLMONT	KENSINGTON	CA	94707						
81	KENSINGTON MA	ATTN: CHRISTOPHER BRYDON	220 STANFORD AVE	KENSINGTON	CA	94708						
82	KENSINGTON MA	ATTN: MELISSA HOLMES-SNYDER	144 ARDMORE RD	KENSINGTON	CA	94707						
83	KENSINGTON MA	ATTN: DAM NOVICKAS	239 WILLAMETTE AVE	KENSINGTON	CA	94708						
84	KENSINGTON MA	ATTN: LLOYD COWELL	107 ARLINGTON AVE	KENSINGTON	CA	94707						
85	KENSINGTON MA	ATTN: LARRY NUCCI	636 WELLESLEY AVE	KENSINGTON	CA	94708						

TOTAL: 85

PARCEL: 572-124-006

KENSINGTON DESIGN REVIEW



RUDDER LAW GROUP

EXHIBIT L

EXHIBIT L

Subject: Talked to Nicole

Date: Friday, March 1, 2019 at 3:16:40 PM Pacific Standard Time

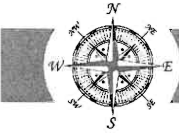
From: Kate Rauch

To: Sonia Bustamante

She doesn't need to talk to John at this point. Her neighbor's project is winding through the process and could always get appealed to the Board of Supervisors. I took her complaint against a specific KMAC member.

Kate

Sent from my iPhone



RUDDER LAW GROUP

EXHIBIT M

EXHIBIT M

Friday, October 4, 2019 at 2:13:23 PM Pacific Daylight Time

Subject: Re: 120 St. Albans Kensington
Date: Thursday, August 1, 2019 at 2:13:01 PM Pacific Daylight Time
From: patricktahara
To: Kate Rauch

interesting change in plan.

I am assuming that the neighbor, nicole, had seen this change? or she worked up even over this one.

Patrick Tahara
415-307-4042

----- Original message -----

From: Kate Rauch <Kate.Rauch@bos.cccounty.us>
Date: 8/1/19 10:11 AM (GMT-08:00)
To: Aruna Bhat <Aruna.Bhat@dcd.cccounty.us>
Cc: patricktahara@comcast.net
Subject: Re: 120 St. Albans Kensington

I assume this redesign needs to go back the the KMAC?
Kate

Sent from my iPhone

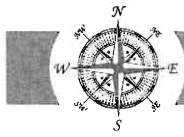
On Aug 1, 2019, at 9:58 AM, Aruna Bhat <Aruna.Bhat@dcd.cccounty.us<mailto:Aruna.Bhat@dcd.cccounty.us>> wrote:

Please see the attached Small Lot application KR19-00011 that is out for public review.

Danielle Kelly
Department of Conservation and Development
30 Muir Road
Marinez, CA 94553
925-674-7789
925-674-7205- Main Line
danielle.kelly@dcd.cccounty.us<mailto:danielle.kelly@dcd.cccounty.us>

<image002.png>

From: Kate Rauch <Kate.Rauch@bos.cccounty.us<mailto:Kate.Rauch@bos.cccounty.us>>
Sent: Wednesday, July 31, 2019 10:28 AM
To: Aruna Bhat <Aruna.Bhat@dcd.cccounty.us<mailto:Aruna.Bhat@dcd.cccounty.us>>; Jennifer Cruz <Jennifer.Cruz@dcd.cccounty.us<mailto:jennifer.cruz@dcd.cccounty.us>>; patricktahara@comcast.net<mailto:patricktahara@comcast.net>
Subject: 120 St. Albans Kensington



RUDDER LAW GROUP

EXHIBIT N

EXHIBIT N

Jillian Blanchard <jblanchard@rudderlawgroup.com>

120 St. Albans Road - DP# 19-3019 - ZA Review

Jillian Blanchard <jblanchard@rudderlawgroup.com>

Wed, Jan 8, 2020 at 12:25 PM

To: aruna.bhat@dcd.cccounty.us

Cc: Nicole Ashar <nicoleashar@gmail.com>

Bcc: Jillian Blanchard <jblanchard@rudderlawgroup.com>

Ms. Bhat:

Thank you for reconsidering DP # 19-3019 regarding the proposed development at 120 St. Albans Road. As a follow up to Monday's hearing, and before you make your determination, I wanted to reach out to you regarding a few items.

First, you mentioned receiving written testimony from KMAC representatives. As this testimony most likely addresses the claims we have raised on the record, I would appreciate the chance to respond to this testimony, or at the very least, to review it. It is highly unusual for an 'impartial decision-maker' to file testimony *in support* of a project and does not in anyway support KMAC representative claims that they have been impartial. I would appreciate it if you would forward the KMAC testimony at your earliest convenience, which will save my clients from having to file a 9th Public Records Act request with the County to receive information relevant to their property rights.

At Monday's hearing, the architect for the applicant suggested that the proposed expansion was a two-story addition on a two-story structure. That is simply not correct. Both the Staff Report and the Application make clear that the existing structure is three stories, which is prohibited by CCC §84-4.802. The applicant's architect made this clear when he stated *correctly* in the February KMAC meeting that "a variance is required due to the fact that the house as it already exists **is considered a 3-story structure.**" (Oral Testimony of Howard McNenny, applicant's architect, KMAC meeting February 2019.) This fact remains true whether the addition is on the north or south side of the structure. As described in extensive correspondence to the County, a proposed expansion of the top two floors of a three-story building requires a variance - pure and simple.

For purposes of determining the number of stories, a basement counts as a story if the finished floor level directly above the basement is more than six feet above grade **at any point** (CCC Code §82-4.266), which is absolutely the case here. A basement is further defined in the Kensington Combining District ("KCD") as "any area in a building or structure where the finished floor directly above the area is less than four feet above preconstruction grade or finished grade, whichever is lower." Again, this is the case with the house on 120 St. Albans Road. The analysis does not hinge in anyway on the definition of a 'crawl space' as suggested by County staff and repeated by the applicant's architect in Monday's hearing. Moreover, it is unclear why the County would rely on a novel - and unsupported - legal interpretation to avoid a variance in violation of its own Code, particularly in this situation, in which a neighbor has very real, legitimate concerns about significant impacts to long-range views, privacy, and property values. Approving the current design without a variance would not be legally supportable and would lead to a protracted legal battle to force the County to comply with its own laws.

The primary goals here are to avoid significant impacts to long-range views, privacy, and property values, and of course, to comply with planning and zoning laws. Some suggestion was made yesterday that the County is allowed to authorize *some* impacts to views and privacy. We would remind you of the Kensington Combining District Ordinance, which requires the County to: a) **minimize** impacts to surrounding neighbors; b) **protect** the value and enjoyment of the neighbor's property; and c) **maintain** property values. Authorizing obstructions to my client's *only* long range views of the Bay Bridge on the upper floor would not serve to minimize impacts or protect my client's value and enjoyment of their property. We have provided substantial evidence to suggest that there will be significant impacts to long range views from the upper level and out of the kitchen sink window on the lower level, which will also significantly impact my clients' privacy and property values. If the County believes the project will not cause such significant impacts, it is critical that they require the applicant to install story poles to establish this fact before allowing applicants to construct a permanent expansion. Without story poles to prove otherwise, the County will be making a finding contradictory to the substantial evidence on the record.

We also remind you that the variance standards require that the County (indeed the applicant) make a showing that there is no grant of special privilege here. Allowing one neighbor to essentially steal the view of another would clearly be a grant of special privilege without a proper showing of special need.

We also note that the County continues to reference the new deck as a replacement. As described at length at the first hearing on December 16, 2019, the new deck is proposed to start approximately 5 1/2 feet out from the existing structure,

which would lead to an additional **6-7 feet** from the existing house, significantly impacting my clients' long range views, privacy, and property values. The Staff Report incorrectly states a critical dimension of the deck, claiming that it will only stick out 1.5 feet. Given the proposed house addition plus the new 10.5 foot deck, the new deck will be mostly outside of the existing deck footprint (which is only 9 feet from the existing structure). These critical miscalculations could cost my clients the loss of an astounding long-range view and privacy from their kitchen sink window, key selling points of their home. These inaccuracies also could be avoided by installing story poles to show the actual impacts associated with the proposed design.

There are simple solutions that the County must employ to avoid a protracted legal battle. Require the applicants to install story poles to establish the actual impacts from the project. If the project does not permanently damage my client's long range views, privacy, and property values, then perhaps a variance and DP can be approved. Another, more direct, solution, if the applicants are unwilling to install story poles, would be to have the applicants redesign the project to actually minimize impacts on my clients' views by: 1) reducing the size of the enormous deck footprint to 3.5 feet, (to stay within the existing footprint and be a true replacement deck); and 2) reducing the extent of the upper level to sit behind the existing structure (or 'nook') to preserve my client's long range views on the upper level. If the County fails to follow its own Code, acknowledge the substantial evidence on the record, and approves the project as designed without sufficient minimization measures, my clients will be left with no option but to appeal the decision.

Finally, any proposal to revise the design to address the setback issue, remove the window, or reduce the size of the deck/upper level should include resubmittal of project designs to ensure proper review and vetting before approval. This approval process has been fraught with due process violations and inattention to detail that has cost my clients (and the applicants) dearly. In addition to the extensive PRA requests we've been forced to file to simply understand the project, the County has failed to provide adequate notice or adequate meeting minutes of administrative decisions. Indeed, one cannot even hear the audio from Monday's hearing on this matter on the County's website. We strongly recommend that the County carefully work to address these laps in procedure and rectify our due process concerns by following the solutions suggested above.

Sincerely,
Jillian

--

Jillian B. Blanchard

Rudder Law Group, LLP

1101 Marina Village Pkwy, Suite 201

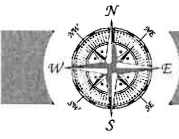
Alameda, CA 94501

Direct: 415.867.6769

www.RudderLawGroup.com

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RUDDER LAW GROUP

EXHIBIT O

EXHIBIT O

Jillian Blanchard <jblanchard@rudderlawgroup.com>

120 St. Albans Road - DP# 19-3019 - ZA Review

Jillian Blanchard <jblanchard@rudderlawgroup.com>

Thu, Jan 16, 2020 at 1:55 PM

To: Lawrence Huang <Lawrence.Huang@dcd.cccounty.us>, Margaret Mitchell <Margaret.Mitchell@dcd.cccounty.us>

Cc: Nicole Ashar <nicoleashar@gmail.com>

Bcc: Jillian Blanchard <jblanchard@rudderlawgroup.com>

Lawrence and Margaret:

Unfortunately, the County has chosen yet again to stonewall my clients -instead of considering their very reasonable requests and concerns- by failing to respond to a simple request for a copy of the KMAC written testimony regarding DP#19-3019, which testimony directly addresses my clients' arguments - See below. This continued effort to stonewall my clients and prohibit a transparent look into the County's land use processes only further evidences the County's bias against my clients and the various due process violations associated with this particular land use approval. **A simple request for relevant written testimony that will directly affect my clients' property should not be withheld and should not require a formal Public Records Act ("PRA") request to obtain.** And yet, here we are again, forced to submit the **12th PRA Request** for this project, simply to understand the arguments being raised against my clients.

Please consider this a supplemental PRA request to receive Any and All "Records" or "Writings" (as defined below) relating to any plans, submittals, applications, or Communications from or to the County relating to the Property (120 St. Albans Road), including any reference to land use application DP#19-3019, #KR19-0011 and/or any other applications for development ("collectively, Land Use Applications") that have been submitted regarding the Property between October 9, 2019- today (January 16, 2020), including any communications between the County and the applicants regarding any Land Use Applications. Specifically, please provide us with a copy of any and all written submittals from KMAC members to the County's Zoning Administrator regarding the Property and the ongoing Land Use Applications.

For purposes of this request and the avoidance of doubt, we provide the following clarifying definitions for the following terms:

"All" and "any" each mean "any and all."

"Communications" mean all verbal and written communications of every kind between and among the parties specified, including but not limited to telephone calls, conferences, conversations, meetings, notes, correspondence, emails, and memoranda.

"County" means Contra Costa County, including its officers, staff, managers, appointees, employees, contractors, agents, representatives, attorneys, and consultants, including in particular, employees of the Department of Conservation and Development.

"KMAC" means the Kensington Municipal Advisory Committee, including its officers, staff, managers, employees, contractors, agents, representatives, attorneys, and consultants.

"Property" mean that certain real property commonly referred to as 120 St. Albans Road in Kensington, California.

"Records" include, without limitation, all writings and documents of every type in your possession, control, or custody, including but not limited to the following items, whether printed or reproduced by any process, including documents sent and received by electronic mail, or written or produced by hand: computer data files, information stored in electronic media, including on computer tapes, disks, or diskettes, tapes, inputs, outputs, and printouts; notes; letters; correspondence; communications; telegrams; memoranda; summaries and records of telephonic and telegraphic communications; summaries and records of personal conversations; diaries; appointment books; reports (including any and all draft, preliminary, intermediate, and final reports); surveys; studies; comparisons; tabulations; budgets; workpapers; charts; plans; maps; drawings; engineering and other diagrams; photographs; film; microfilm; microfiche; tape and other mechanical and electrical audio and video recordings; data compilations; log sheets; ledgers; vouchers; accounting statements; books; pamphlets; bulletins; minutes and records of meetings; transcripts; stenographic records; testimony and exhibits, including workpapers; copies, reports, and summaries of interviews and speeches; reports and summaries of investigations; opinions and reports of consultants; reports and summaries of negotiations; press releases; newspaper clippings; drafts and revisions of draft of documents; and any and all other records, written, electrical, mechanical, and otherwise.

"Relating To" means concerning, pertaining to, referring to, describing, mentioning, containing, evidencing, constituting, dealing with, discussing, considering, analyzing, studying, reporting on, commenting on, setting forth, supporting, recommending or otherwise concerning in any manner whatsoever the subject matter of the request.

"Writing" means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by email or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

We believe that no express provisions of law exist that exempt the Records from disclosure. As you determine whether this request seeks copies of disclosable public records, be mindful that Article I, Section 3 (b)(2) of the California Constitution requires the County to broadly construe a statute, court rule, or other authority if it furthers the right of access to the information we have requested and to narrowly construe a statute, court rule, or other authority if it limits the public's right of access.

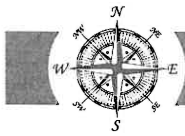
To the extent that there are any responsive Records, or portions thereof, which the County determines to be exempt from disclosure and seeks to withhold, please provide us with prompt notification of the County's intent to withhold such Records, together with an index and general description of such Records, the names and titles or positions of each person responsible for the denial of our request, and the reason(s) for the denial. If a portion of the information we have requested is exempt from disclosure by express provisions of law, Government Code Section 6253(a) additionally requires segregation and deletion of that material in order that the remainder of the information may be released.

We agree to appropriately reimburse you for your copying, scanning, and reproduction costs. Where feasible, we strongly prefer electronic copies of all responsive Records. It is our understanding that, by submitting this single request to your office, you will notify all appropriate divisions and departments within the County to produce any and all responsive Records.

Pursuant to Government Code Section 6253(b), we ask that you make the Records "promptly available," to avoid impeding my clients' rights to a fair appeal of any County decisions regarding this Project.

Sincerely,
Jillian

[Quoted text hidden]



RUDDER LAW GROUP

EXHIBIT P

EXHIBIT P

Margaret Mitchell

From: Howard McNenny <h.mcnenny@comcast.net>
Sent: Tuesday, January 07, 2020 12:13 PM
To: Margaret Mitchell
Cc: Mary Hanley
Subject: 120 St. Albans

Dear Margaret:

As you probably know, after the hearing yesterday, the Zoning Administrator decided to take all under consideration and render the verdict in two weeks. I don't know if she will be conferring with you or with Ruben in the mean time, but if so, there is something I might suggest you clarify. This would be on the subject of Ms. Blanchard's position that we should be required to go through the variance process. She made the claim that she could find on precedent for an addition being approved to an existing non-conforming house without going through this process. I am sorry I was not quick enough to mention it, but there is in fact a very obvious example of exactly that: the neighbor's own house at 118 St. Albans. I remember asking you if the addition to that house ever got a variance and you said no...only a Development Plan. Clearly, this is a 3-story house.

Just as an aside, I also would ask that the photos used as evidence in Ms. Blanchard's brief be viewed with some skepticism. I have heard that someone at the neighboring house may have been leaning out a window to get the most extreme perspective possible. Nothing I saw myself, but I do think the KMAC photos should carry the most weight.

Thanks for the assistance.

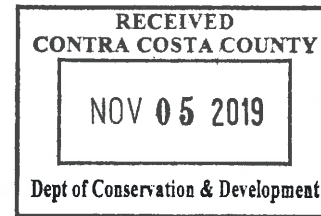
Howard McNenny, AIA

1039 Santa Fe Ave, Albany CA
Tel: (510) 705-1671
Cell: (510) 207-7019
h.mcnenny@comcast.net

Public Comments



Application and Permit Center
Community Development Counter
30 Muir Road
Martinez, CA 94553
Attn: File #CD KR19-0011 and Margaret Mitchell



November 4, 2019

120 St. Albans Road, Kensington, CA Application -
2nd Hearing Request and KMAC Update

Dear Ms. Mitchell and County Staff:

On behalf of my clients, the owners of 118 St. Albans Road, I am writing this update as an addendum to the Hearing Request letter sent to you on August 30 2019, to inform you of the unlawful hearing that occurred before the KMAC on October 29, 2019, and more importantly, to articulate my clients outstanding concerns regarding the development proposed for 120 St. Albans Road, Kensington, CA (the "Project " as defined below) in application #DP- 19-3019.

I. KMAC Meeting Did Not Comply with Legal Requirements; KMAC Recommendation Is Not Based on an Objective Review of the Facts

The Kensington Municipal Advisory Committee ("KMAC") Meeting held on October 29, 2019 ("KMAC Meeting") to discuss the Project violated planning and zoning laws, the Brown Act, and the KMAC's own by-laws. The KMAC is an advisory committee that represents the County and is charged with providing valuable input to the Board of Supervisors regarding land use decisions. As such, they are required to hold meetings that follow Brown Act requirements and provide objective recommendations based on the legal standards established in California planning and zoning law. Unfortunately, the KMAC failed to comply with these legal requirements when reviewing the Project.

First, the KMAC Meeting failed to comply with the Brown Act's requirement to provide adequate notice to the public. (CA Gov Code 54956.) Ms. Snyder, who volunteered to provide KMAC notice, managed to provide notice of the KMAC Meeting to all other neighbors surrounding the Project, but failed to provide it to the two interested parties who are on the record in opposition to the Project, my clients and Ms. Donna Stanton, the owner of 134 Windsor Avenue in Kensington.

When this issue was raised at the KMAC Meeting by Ms. Stanton, the KMAC members did not concede the error or suggest a new process to ensure adequate notice going forward, they instead suggested that Ms. Stanton's property must have fallen outside the noticing area. The fact that both of Ms. Stanton's immediate neighbors on either side did receive notice shows the fallacy of this claim. Strangely, the KMAC members did not appear to have any concern that neither Ms. Stanton, nor my clients, the owners most likely to be impacted by the Project, failed to receive notice of the meeting. The Brown Act absolutely requires adequate notice to all interested parties. Without it, the meeting should not have been held and should have been rescheduled. At the very least, the KMAC members could have suggested a more robust notice process going forward to avoid these due process issues.

The same KMAC member, Ms. Snyder, who failed to provide adequate notice to Project opponents also had a clear conflict of interest. We learned from various neighbors in the area that Ms. Snyder affirmatively solicited support for the Project when notifying them about the KMAC meeting. My clients obtained signatures from 35 different neighbors who stated that Ms. Snyder asked them to attend the meeting in support of the Project, which is clear evidence of campaigning in violation of California laws protecting impartial decision-making.

Under California law, all interested parties have the right to a hearing in front of "a fair and unbiased decision-maker under the due process clause." (*See Noble v. City of Palo Alto* (1928) 89 Cal.App.47, 51.) If there is evidence of an "unacceptable probability of actual bias on the part of a decision-maker", that decision-maker must be disqualified from reviewing the application. (*See Nasha LLC v. City of Los Angeles*, 125 Cal. App. 4th 470, in which a Planning Commission decision was vacated because one of the Commissioners showed clear bias by speaking out against a pending project.) While it may not be objectionable for a KMAC member to have a personal preference regarding a project, California law clearly prohibits public representatives from campaigning for or against any project that they are reviewing. Asking neighbors to attend a meeting to vocally support the Project while failing to provide Project opponents with adequate notice would be clear examples of unacceptable bias and due process violations.

With these legal standards in mind, we sent the attached email to Ms. Snyder before the KMAC Meeting respectfully asking her to recuse herself from deliberating on the Project based on the facts available (**Attachment A**). Ms. Snyder did not respond to our email request. The KMAC Chair, Mr. Tahara, raised the issue at the KMAC Meeting, wherein Ms. Snyder claimed to not have seen the email request. She then reviewed the email and dismissed it without any concern whatsoever for the appearance of bias. She said the accusation was false, but provided no evidence to counter the 35 signatures from neighbors establishing her efforts to campaign for the Project. Mr. Tahara accepted Ms. Snyder's statements without any further precautions and allowed her to vote on the Project.

To avoid even the appearance of bias, Ms. Snyder should have recused herself from deliberating on this Project. She failed to provide adequate notice to the Project opponents, and was presented with 35 signatures of neighbors stating their belief that she attempted to coerce them into supporting the Project. There were five KMAC members in attendance at the meeting. Ms. Snyder could have recused herself to protect the process and allowed the remaining four members to make an objective determination. Instead, she insisted on participating, speaking forcefully in favor of the Project during deliberations. The experience left all of us with the impression that the KMAC had decided well before the meeting that they would approve the Project and that my clients,' and other residents' reasonable concerns simply did not matter.

The substance of the deliberations provided further evidence of the KMAC's pre-ordained conclusions. During the meeting, we presented evidence of potentially significant impacts to my clients' privacy and long-range views resulting from the revised application. Rather than acknowledge these points, and at the very least request that story poles be put in, the KMAC members found that while the Project may "block the view" it wouldn't be "that bad". They made this extremely arbitrary finding without any evidence. We provided clear evidence that anything beyond the existing nook (described further below) and the expansive deck would block my clients' view of the Bay and the Bay Bridge, but the KMAC ignored these concerns. Apparently, KMAC members believed that because the applicants had moved their project to the other side of the house, they should be entitled to build. Thankfully, California law prevents such arbitrary decisions.

KMAC members stated that it was acceptable for views to be blocked, which would be a violation of the Kensington Combining District Ordinance. As the only attorney in the room, I offered to read for the KMAC members the standards from the actual code to help them apply the law to their deliberation, but they refused my offer, apparently unconcerned with the legal standards or the applicable law.

Land use decisions must be conducted impartially, based on the facts of the Project at hand with real evidence to determine whether the Project will comply with the applicable legal standards to avoid the abuse of discretion. Unfortunately, none of that happened at the KMAC Meeting. As a result, the KMAC abused its discretion by ignoring evidence of potential bias and significant impacts to long range views and privacy.

The KMAC also disregarded the variance requirement. When we referenced the County Code provisions that require a variance to approve an expansion to an existing non-conforming use, which understanding is shared by the applicant's own architect, the KMAC deemed this law irrelevant to their findings.

For these reasons, we respectfully ask the County to disregard the KMAC recommendation in making its determination regarding the Project. It is clear that the KMAC has little regard for the law it is required to follow in administering its duties. Any agency action that reflects an abuse of discretion must be disregarded to avoid further tainting the land use process.

II. The Project Requires a Variance for an Existing Non-Conforming Use.

As described in detail in our August 30, 2019, letter (attached as **Attachment B** for convenience), the Project, as proposed, requires a variance to approve the existing non-conforming use both for setback and story requirements under the Contra Costa Code. When we raised this issue with the KMAC, they stated that they were not required to consider the law here, and accordingly, did not make any findings related to the variance.

Any proposal to increase a nonconforming use clearly requires a land use permit under the County's Code. (CCC §82-8.006.) For an existing non-conforming use, the land use permit required here is a variance. (CCC §82-28.516.)

The Project application incorrectly describes the proposed development as a "2-story expansion on a 2-story structure". The existing structure is, and has always been, three stories. As correctly described by the applicant's architect at the February KMAC: "A variance is required due to the fact that the house as it already exists is considered a 3-story structure, due to the fact that is built on a down-slope lot that places the first floor in excess of 4-feet above grade at the rear of the structure. Current zoning places a limit of 2 ½ stories on houses in this zoning district." (Howard McNenny, February 2019, KMAC Meeting.) Mr. McNenny's interpretation is correct. The structure does not magically become two stories when the project is constructed on the other side of the house. The existing structure is three stories, as defined under Contra Costa County's Code, and accordingly, requires a variance for any expansion of the existing non-conforming use, whether on the north or south side.

Accordingly, we request that you ask the applicant to demonstrate how the necessary variance findings may be colorably made, including a clear showing of an undue burden on the property justifying the Project, before issuance of a staff report on this Project. As described further below, we believe these findings cannot be made based on the current design of the Project, but it may be possible to meet the high variance standards if the applicant eliminates or significantly reduces the size of the deck, removes the north-facing window, and does not expand beyond the existing upper level nook.

III. The Project, As Currently Proposed, Will Cause Significant Impacts to My Clients Long-Range Views, Privacy, and Property Values.

As confirmed in your May 2, 2019, email to us, the Project, even when constructed on the south side of the property must be designed "to avoid impacting the neighbor's long range views, privacy" and property values. Unfortunately, the Project on the south side still causes significant impacts to my clients' long range views, privacy, and property values.

As described in detail at the KMAC meeting (which facts were sadly ignored), the proposed Project will cause impacts to my clients' long-range views on both the first and second floors because: 1) the proposed expansion will go beyond the existing nook; and 2) the expansive deck will block Bay views. Both the upper expansion beyond the existing house and the enormous deck will impact my clients side view of the Bay Bridge and the Bay. While the full extent of the impact cannot be determined because the application lacks specific dimensions for either component, it is clear from a conservative review that any expansion beyond the nook will impact Bay views (see **Picture #1, Attachment C-2**) and that the expansive deck will impact my clients' view of the Bay and the Bay Bridge (see **Picture #2, Attachment D**). My clients only desire is to have their views of the Bay and the Bay Bridge and privacy preserved. That is what the Kensington Combining District and the variance standards require.

We also note that at the KMAC Meeting, the applicants showed a figure that misplaced the location of the bathtub in the master bath where views will be impeded. The correct angle is shown in Attachment C, in which it is undeniable that any expansion beyond the nook will cause long-range view impacts.

Also, as indicated at the KMAC Meeting, the proposed window on the top floor will look directly into my clients' master bathroom. My clients bought their house in part because of the master bathroom, which allows you to view the Bay Bridge from the tub and the shower. Having a window on the north side of the proposed Project will kill that privacy.

In addition, the proposed expansive deck would cause significant impacts to my clients' privacy, use, and enjoyment of their home. If a deck this large is approved, not only will my clients' unique view of the Bay Bridge be gone from this side of the house, but their privacy will be significantly impacted as well. Every time the applicants have people out on the new deck, my clients will be forced to look at them instead of their previous spectacular Bay Bridge view. Having a deck this size impacts both long-range views and privacy and does not comply with either the Kensington Combining District or the County Code regarding variances.

We have included a letter from the realtor (**Attachment E**) who sold the house previously, Ms. Bebe McRae, that identifies the importance of both privacy and long-range views as a selling point of this particular house. It is clear that any impacts to these two factors will cause a significant decrease in my clients' property value.

If the applicants are willing to remove the north facing window, eliminate or significantly reduce the deck, and avoid expansion beyond the existing nook, it would significantly improve the Project.

IV. Hearing Is Required to Ensure Land Use Laws Are Being Followed and Neighboring Rights are Protected

While we appreciate the applicant's willingness to re-design their project on the south side of the property, the Project, in its current design, will still impact our clients' privacy and long-range views of San Francisco Bay. In addition to completing all necessary reviews associated

with a land use permit, it is paramount that the County hold a public hearing to: 1) confirm that a land use permit and variance is required; 2) address existing nonconforming uses; and 3) confirm whether the proposed construction meets both the strict standards for a variance and the Kensington Combining District Standards, which were created to "minimize[e] impacts upon surrounding neighbors and not substantially impair the value and enjoyment of their neighbors' property; maintain the community's property values; and promote[] the general welfare, public health and safety." (CCC §84-74.204).

Our clients are reasonable people, but they have very serious concerns regarding the environmental impacts of the Project, including specific impacts to their use, enjoyment, privacy, long-range views, and property values. The applicants are proposing a project for an existing nonconforming structure that requires a variance, violates the Kensington Planning Ordinance, and does not currently meet the high standards necessary to justify a variance under the County Code. We believe that a hearing will help address these land use concerns and help the applicants design a project that complies with the existing code.

Thank you for your cooperation in this matter, and please do not hesitate to contact me with any questions. We look forward to receiving notice of the hearing date as soon as it set.

Sincerely,



Jillian Blanchard
Rudder Law Group, LLP

Cc (by electronic mail):

Ruben Hernandez, CDCD
Jennifer Cruz, CDCD
Sharon Anderson, County Counsel
Ms. Nicole Ashar and Mr. Joseph Petroziello



Jillian Blanchard <jblanchard@rudderlawgroup.com>

KMAC Meeting October 29, 2019

7 messages

Jillian Blanchard <jblanchard@rudderlawgroup.com>

Mon, Oct 28, 2019 at 8:14 PM

To: melissaanneholmes@gmail.com

Cc: patrickahara@comcast.net, jgioi@bos.cccounty.us, sande@cc.cccounty.us, sarena.burke@cc.cccounty.us, Nicole Ashar <nicoleashar@ymail.com>

Bcc: Jillian Blanchard <jblanchard@rudderlawgroup.com>

Dear Ms. Snyder:

We represent the owners of the 118 St. Albans property in connection with Land Use Application #DP19-3019 to expand the 120 St. Albans Rd Property (the "Project").

On the basis of our discussions with neighbors of the Project, we understand that you approached several neighbors to solicit their specific support for the Project. We have signatures from 35 different neighbors who stated that you asked them to come to the KMAC meeting to support the Project, which, if true, is very troubling for my clients, who are concerned about receiving a fair and objective review of the Project.

We also understand from a public records act ("PRA") response that you personally volunteered to provide to the neighborhood the necessary notice of the KMAC meeting tomorrow night. Unfortunately, my clients and one other neighbor, Donna Stanton at 134 Windsor Ave in Kensington, who are both known to have raised concerns about the Project, did not receive notice from you regarding the October 29, 2019 KMAC meeting. My clients instead learned about the KMAC meeting by calling County staff and through PRA responses. Ms. Stanton received notice about the meeting from my clients. This lack of required notice to Project opponents is particularly troubling given the statements from neighbors regarding your alleged efforts to campaign in favor of the Project.

Under California law, all interested parties have the right to a hearing in front of "a fair and unbiased decision-maker under the due process clause." (See Noble v. City of Palo Alto (1928) 89 Cal.App.47, 51.) If there is evidence of an "unacceptable probability of actual bias on the part of a decision-maker", that decision-maker must be disqualified from reviewing the application. (See Nasha LLC v. City of Los Angeles, 125 Cal. App. 4th 470, in which a Planning Commission decision was vacated because one of the Commissioners showed clear bias by speaking out against a pending project.) While it may not be objectionable for a KMAC member to have a personal preference regarding a project, California law clearly prohibits public representatives from campaigning for or against any project that they are reviewing. Asking neighbors to attend a meeting to vocally support the Project while failing to provide these Project opponents with adequate notice, if true, would be clear examples of unacceptable bias and due process violations. It is particularly important for decision-makers to remain impartial when they live in the same area or have ties to a project applicant, in order to ensure a fair hearing and non-biased decision making in connection with land use decisions.

Assuming the information we have received from such neighbors (stating that you campaigned in favor of the Project) is true, and we have no reason to believe that it is not, and given the fact that my clients still have not received notice from you about the KMAC meeting, we respectfully ask that you recuse yourself from discussing the Project at the October 29, 2019, KMAC meeting to ensure that KMAC holds a fair and impartial review of this Project.

Thank you in advance for your consideration.

Jillian

--

Jillian B. Blanchard

Rudder Law Group, LLP

1101 Marina Village Pkwy, Suite 201

Alameda, CA 94501

Direct: 415.867.6769

www.RudderLawGroup.com

CONFIDENTIAL MESSAGE

**ATTACHMENT B -
8/30/19 HEARING REQUEST**



RUDDER LAW GROUP
NAVIGATING THROUGH ENVIRONMENTAL REGULATION

JILLIAN B. BLANCHARD
415.867.6769
JBLANCHARD@RUDDERLAWGROUP.COM

Application and Permit Center
Community Development Counter
30 Muir Road
Martinez, CA 94553
Attn: File #CD KR19-0011 and Margaret Mitchell

August 30, 2019

Hearing Request re 120 St. Albans Road, Kensington, CA

Dear Ms. Mitchell and County Staff:

We have been retained by parties interested in the development proposed for 120 St. Albans Road, Kensington, CA (the “Property” as defined below) in application #KR19-00111 (the “Application”). As described further below, there are several issues with the current Application that need to be resolved before a permit can issue for the proposed construction, but the primary issues are: 1) a land use permit and a variance is required for this type of construction, not just a Building Permit and Design Review; and 2) a hearing is required to confirm that the proposed construction will comply with the strict variance standards and the Kensington Combining District requirements to minimize impacts to a neighboring property’s privacy, sunlight, and views. Unfortunately, the County has once again failed to follow its own land use process, but there is still time to rectify the situation and potentially approve construction that does not impact the sunlight, privacy, and views of neighboring properties, and complies with the County’s land use code.

I. The Proposed Project Requires a Variance

a. Variance Required to Expand Existing Nonconforming Use

The existing property currently contains a nonconforming use, which automatically requires a variance to approve any expansion or extension of such use. The existing residential structure appears to violate both the 2 ½ story and setback requirements, and potentially other existing land use requirements. The Contra Costa County (“CCC”) Code requires that: 1) building heights must be capped at 2 ½ stories and 35-feet from grade. (CCC Code §84-4.802); and 2) side yards must be setback to a minimum of five feet (CCC Code §84-4.1002).

For purposes of determining the number of stories, a basement counts as a story if the finished floor level directly above the basement is more than six feet above grade at any point (CCC Code §82-4.266). A basement is defined in the Kensington Combining District as “any area in a building or structure where the finished floor directly above the area is less than four feet above preconstruction grade or finished grade, whichever is lower.”

(CCC Code §82- 74.404). The existing lower level on the property clearly falls within this definition, thereby establishing three stories on the existing structure, in violation of County Code.

Moreover, the existing residential structure at 120 St. Albans Rd. does not currently meet minimum side yard setback requirements. The existing side yards are well below the five foot requirement.

Accordingly, the existing structure is currently, *without any proposed expansion*, already a nonconforming use. We note that the County's Code regards any structure maintained contrary to its Zoning Ordinance to be unlawful and a public nuisance. (CCC §82-2.006).

Courts have a strict policy against the extension or enlargement of nonconforming uses (*See County of San Diego v McClurken*, 37 Cal.2d 683, 686-87 (1951)). Indeed, California courts regularly allow municipalities to require the termination of a nonconforming use without compensation if it provides a reasonable amortization period commensurate with the investment involved. (*See Metromedia, Inc. v. City of San Diego*, 26 Cal. 3d 848 (1980)). In this instance, our clients are not proposing a termination of the existing use, but merely a careful examination and strict scrutiny against any proposed expansion of that nonconforming use, particularly, when such expansion could cause negative environmental impacts and impact a neighboring property's use, enjoyment, privacy, and views.

Any proposal to increase a nonconforming use clearly requires a land use permit under the County's Code. (CCC §82-8.006.) The work proposed in Application# KR 19-00111 involves a substantial increase to the existing nonconforming use. Accordingly, it is unclear why County staff would ever suggest to the applicant that a simple Building Permit and Design Review would be sufficient. The County must follow its required land use process, including public hearings and KMAC review, and land use permit and variance review and approval, before allowing any construction of the proposed project.

b. Proposed New Construction Requires a Land Use Permit & Variance

Even if the existing structure were in compliance with the County Code, the work proposed in the Application clearly requires a variance pursuant to the County Code. The architect in charge of designing the project did not understand staff's suggestion that an expansion could be constructed on either the north or the south side of the property without a variance (See Exhibit A, Email from Howard McNenny to Margaret Mitchell, p. 1.) County staff based its faulty reasoning on a tortured definition of a 'crawl space,' which has no relevance to the issue. (See Exhibit B, Email from Margaret Mitchell, p. 1.) Not only is this reasoning incorrect, but it smacks of bias to coach an applicant on ways to avoid certain permitting requirements, particularly, when those permitting requirements help protect the rights of neighboring properties.

The proposed substantial upgrade requires a land use permit because the existing structure is already nonconforming (as described above) and a variance to address proposed construction on a three story building, the proposed height increase, the proposed roof overhang, and perhaps most importantly, the exceedance of the Kensington Combining District's threshold standards (CCC §84-74.802).

Based on the Application, the proposed work would expand the existing three-story structure. The Application erroneously claims that it's a "two-story addition to a two-story structure." It's clear from every depiction in the Application, that the existing structure is more than two and one-half stories. It's precisely these types of misstatements that the County needs to identify and correct through a more rigorous land use review and approval process, including the required hearings.

It also appears that the while the pitched roof may not increase in height, the proposed addition to the third story would involve a slight increase in height, which clearly triggers the variance requirement for height increases. The notion that a proposal to increase the height of a structure in violation of the Kensington Planning Ordinance and the Contra Costa County Code would be granted without a variance boggles the mind and suggests the potential for substantive due process violations as well. (*See Neighbors in Support of Appropriate Land Use v. County of Tuolumne*, 157 Cal. App. 4th 997, 998 (2007), in which the Court overturned a county's approval of a nightclub that was inconsistent with the zoning ordinance without a variance.) Moreover, the increased roof overhang itself may require a variance.

Development that causes environmental impacts and directly steals the long-range views of another house, sunlight, privacy, and use and enjoyment of a neighbor's property, not to mention significantly reduces their property values, is exactly what the variance standards were created to protect against.

Moreover, the proposed project exceeds the threshold standards established in the County Code. The threshold standard based on the existing parcel area is 2320.5 square feet, and the applicant proposes to increase the total gross floor area ("GFA") to 2,332 square feet. The County Code unequivocally requires a hearing when the GFA thresholds will be exceeded. (CCC 84-74.802).

While we appreciate the applicant's willingness to re-design their project on the south side of the property, the proposed project, in its current design, still likely will impact our clients' privacy and potentially their long-range views of San Francisco Bay. In addition to completing all necessary reviews associated with a land use permit, it is paramount that the County hold a public hearing to: 1) confirm that a land use permit and variance is required; 2) address existing nonconforming uses; 3) address the threshold standard exceedance; and 4) confirm whether the proposed construction meets both the strict standards for a variance and the Kensington Combining District Standards, which were created to "minimize[e] impacts upon surrounding neighbors and not substantially impair the value and enjoyment of their neighbors' property; maintain the community's property values; and promote[] the general welfare, public health and safety." (CCC §84-74.204). Based on the current Application, is it likely that some design changes may be required to avoid negative impacts to the neighboring property's privacy, views, and sunlight.

II. Project May Not Comply with Variance Standards or the Kensington Combining District Standards

At base, our primary concern is that we need further investigation to confirm that the applicants' revised proposal complies with both the Kensington Planning Ordinance

(Section 84-74.1206) and the variance standards required in County Code Section 26-2.2006.

- While moving the project to the south side does minimize impacts to its neighbors somewhat, the currently proposed design, with attendant windows on the north side, may create new impacts to the long-term use, privacy, and enjoyment of our clients' property.
- A hearing and story poles are required to confirm that the revised design protects the value and enjoyment of our clients' property;
- To the extent the proposed addition to one of the highest houses on the street continues to block our clients' views, it would be inconsistent with a neighborhood dependent on long-range views for its property values;
- There is nothing unique about the Property that would justify a variance to the specific height requirements;
- Granting the Application without modification to protect neighboring properties could constitute a special privilege to increase heights in a neighborhood in which the subject house is already one of the tallest;
- There are no special circumstances applicable to the Property that justify such a special privilege; and
- The proposed variance may not meet the intent and purpose of the Kensington Combining District, which unlike many other neighborhoods, has a specific planning ordinance to protect neighbor's use, view, privacy, and light and solar access, all of which could be impacted under the revised plans.

Variances should only be granted when the applicant has made a clear showing of undue hardship. "The essential requirement of a variance is a showing that a strict enforcement of the zoning limitation would cause unnecessary hardship." (*Neighbors in Support of Appropriate Land Use v. County of Tuolumne*, 157 Cal. App. 4th 997, 998 (2007).)

We need a hearing to determine whether applicants have made the prerequisite showing that extending a three story addition to their house is appropriate and necessary to avoid an undue hardship on their Property. It is clearly the applicant's burden of demonstrating that a variance is necessary to avoid an undue hardship. (*See Orinda Ass'n v. Bd. of Supervisors*, 182 Cal. App. 3d 1145, 1150 (1986) (judgment vacating approval of a height variance because the applicant failed to make the affirmative showing that a variance was warranted where less impacting alternatives were available.)) We also need confirmation through the use of story poles and other methods, that the project as proposed will not impact our clients' long range views, sunlight, and privacy. The project, as currently designed, still extends far enough to impact long range views and includes a window that would look directly into our clients' house, significantly impacting their privacy.

Not only is a hearing required as part of the land use process, it is absolutely essential here to establish that the proposed construction complies with both the Kensington Combining District and variance standards.

III. Hearing Is Required to Ensure Land Use Laws Are Being Followed and Neighboring Rights are Protected

All affected parties have the right to an impartial tribunal and unbiased decision makers such that “even the probability of unfairness is to be avoided.” (*Id* at 1170.) Due process “demands an appearance of fairness and the absence of even a probability of outside influence on the adjudication. In fact, the broad applicability of administrative hearings to the various rights and responsibilities of citizens and businesses, and the undeniable public interest in fair hearings in the administrative adjudication arena, militate in favor assuring that such hearings are fair.” (*Nightlife Partners, Ltd. v. City of Beverly Hills*, 108 Cal. App. 4th 81, 83 (2003).)

As indicated above, a hearing is required here for several reasons, including: 1) to ensure the project meets land use permit, variance, and Kensington Combining District requirements; 2) because threshold standards will be exceeded under County Code; and 3) because a hearing is required whenever an interested party submits a written request.

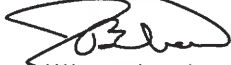
Our clients are reasonable people, but they have very serious and reasonable concerns regarding the environmental impacts of the proposed project, including specific impacts to their use, enjoyment, sunlight, long-range views, and property values. The applicants are proposing a project for an existing nonconforming structure that requires a land use permit, a variance, potentially violates the Kensington Planning Ordinance, and may not meet the high standards necessary to justify a variance under the County Code. We believe that a hearing will help address these land use concerns and help the applicants design a project that does not impact the sunlight, privacy, and long-range views of their neighbors. Please schedule a hearing at your earliest convenience.

IV. Adequate Notice

We also note that the County continues to falter on providing adequate notice to our clients. Even though County staff committed to providing direct notice to our clients as real parties in interest (see Exhibit C, Email from Margaret Mitchell to Jillian Blanchard, May 2, 2019, p. 1), the County failed once again to notify our clients of this new application. When individual rights are being deliberated, interested parties are required to be apprised of the application “so that [they] may have an opportunity to refute, test, and explain it, and the requirement of a hearing necessarily contemplates a decision in light of the evidence there introduced.” (*Clark v. City of Hermosa Beach*, 48 Cal. App. 4th 1152, 1172 (1996).) Our clients have a known, vested interest in the Application, will be uniquely and directly impacted by the project proposed, and have indicated they have substantial evidence to submit into the record. Yet, the County failed to notify them of the revised plans ostensibly designed to address their concerns. Accordingly, please provide any future notices or information related to this Application directly to our clients, Nicole Ashar and Joseph Petroziello (118 St. Albans Rd), and to me, as their representative, on all matters related to this Application.

Thank you for your cooperation in this matter, and please do not hesitate to contact me with any questions. We look forward to receiving notice of the hearing date as soon as it set.

Sincerely,



Jillian Blanchard
Rudder Law Group, LLP

Cc (by electronic mail):

John Kopchik, DCD Director
Ms. Nicole Ashar and Mr. Joseph Petroziello

EXHIBIT A

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

From: Howard McNenny <h.mcnenny@comcast.net>

Sent: Tuesday, April 16, 2019 4:22 PM

To: Margaret Mitchell <Margaret.Mitchell@dcd.cccounty.us>

Cc: Mary Hanley <mc4hanley@gmail.com>; David Herberich <dherberich@gmail.com>

Subject: Fwd: 120 St. Albans

Margaret:

At this point, we have received at least some of the information on comparable variance applications we requested. Unfortunately, we only got examples from the last 3 years, and some of the attachments we were unable to open. Also, some of the applications were apparently too recent to have been resolved. I have requested an estimate of what it would take to go back at least an additional 3-4 years, but have not to date received any response to that request.

Notwithstanding the sparsity of information received, I have discussed with my clients your offer to set up a meeting with Mr. Hernandez, and we agree it would be useful. The absolute best would be if he could agree to meet us on the site as you did initially, to see for himself the issues involved. It appears to us that we are being encouraged to only build on the south side of the house in order to avoid having to file for a variance. However, I do not see personally how it is possible to avoid the variance no matter where we build. As it is, we have configured our proposed addition to avoid as best we can any infringement on the views from the adjacent house. We do not think it would make much difference if we were to confine the addition to the south portion of the house, and in any event building there would not solve the circulation issues we are trying to address.

Absent a meeting with Mr. Hernandez, I do not see how we will ever get a resolution to our dilemma. You have told us to we should submit for a variance, but you have already told us you do not believe the required findings can be made. We would like to submit something that does not require a variance, but that seems impossible. We have to admit that we are unclear on the rules as currently being interpreted, and have very little information on how similar situations have been resolved. We also are afraid that the hearing before the zoning administrator will not result in clarity. That is why we are requesting your help.

Let me know if such a meeting with Mr. Hernandez will be possible. We are fairly open as to time and date.

Howard McNenny, AIA

1039 Santa Fe Ave, Albany CA

Tel: (510) 705-1671

Cell: (510) 207-7019

h.mcnenny@comcast.net

EXHIBIT B

Margaret Mitchell

From: Margaret Mitchell
Sent: Tuesday, April 09, 2019 8:19 AM
To: 'Howard McNenny'
Cc: David Herberich; Mary Hanley; Ruben Hernandez; Jennifer Cruz
Subject: RE: 120 St. Albans

Hi Howard,

If the lowest level of the addition is left unfinished, unconditioned, and at natural grade, regardless of height, it will not be considered a story. If the area between the lowest floor and the ground below does not meet the definition of a crawl space per section 84-74.404(d), it would need to be included in the gross floor area calculation.

You will receive the information regarding other third story variance applications from Lawrence Huang.

Thank you,
Margaret

From: Howard McNenny <h.mcnenny@comcast.net>
Sent: Wednesday, April 03, 2019 1:45 PM
To: Margaret Mitchell <Margaret.Mitchell@dcd.cccounty.us>
Cc: David Herberich <dherberich@gmail.com>; Mary Hanley <mc4hanley@gmail.com>; Ruben Hernandez <Ruben.Hernandez@dcd.cccounty.us>; Jennifer Cruz <Jennifer.Cruz@dcd.cccounty.us>
Subject: Re: 120 St. Albans

Margaret:

Thank you for the response, however it is one thing to say that our application for a variance must be weighed against the rights of the neighbors (and possibly could be denied), but quite another thing to say that this project does not meet even the basic qualifications for a variance application. This makes it all the more critical that we understand under what circumstances variances have been granted in the past. We look forward to getting that information so that we can make a reasoned judgement on next steps.

Also, to be clear, my understanding is that any addition where the lowest full floor is more than 4 feet above existing grade, the level below that floor must be considered a floor also. Am I correct? Unless there are exceptions to your position on variances, I do not see how any addition could be built on the west side of this house that includes the bedroom level—even on the southern portion. Or, might you be saying that it would still be a variance, but one that might be more likely to be approved?

Howard McNenny, AIA

1039 Santa Fe Ave, Albany CA

Tel: (510) 705-1671

Cell: (510) 207-7019

h.mcnenny@comcast.net

EXHIBIT C

On Thu, May 2, 2019 at 5:03 PM Jillian Blanchard <jblanchard@rudderlawgroup.com> wrote:

Thank you, Margaret.

On Thu, May 2, 2019 at 4:55 PM Margaret Mitchell <Margaret.Mitchell@dcd.cccounty.us> wrote:

Good afternoon, Jillian,

Yes, those statements from our conversation yesterday are correct. We will update you on any changes to the status of the application. Please contact Lawrence regarding the PRA requests.

Thank you,

Margaret

From: Jillian Blanchard <jblanchard@rudderlawgroup.com>
Sent: Thursday, May 02, 2019 3:36 PM
To: Margaret Mitchell <Margaret.Mitchell@dcd.cccounty.us>
Cc: Nicole Ashar <nicoleashar@ymail.com>
Subject: Re: 120 St Albans Road - Follow Up and Confirmation

Margaret:

I would appreciate your response to my email below as soon as possible.

Thank you,

Jillian

On Wed, May 1, 2019 at 3:43 PM Jillian Blanchard <jblanchard@rudderlawgroup.com> wrote:

Margaret:

Thanks for talking with me this morning.

As we discussed, it has been difficult to ensure the protection of my clients' property rights because the County insists on requiring us to file repeated Public Records Act ("PRA") requests to determine the status of the 120 St. Albans application. Requiring repeated PRA requests rather than simply sharing the information with my clients as real parties in interest places an unfair burden on both my clients and the County, and puts us at least 10-15 days behind the process as it unfolds. Given the direct way in which my clients could be affected (i.e. by a wall blocking their SF Bay views), and the potentially significant environmental impacts at stake, the County should be providing direct notice to my clients (copied here) and me as their legal representative with application updates. Please pass this request along to your supervisors. In the meantime, we will continue to make PRA requests to understand the status of the application.

Through the response to our fourth PRA request, we noticed an email that made it appear as if County staff was counseling the applicants on how to build the same devastating structure and avoid a variance, which would be extremely concerning and create obvious legal exposure for the County. Specifically, in your email to Howard McNenny dated April 9, 2019, you counseled: "If the lowest level of the addition is left unfinished, unconditioned, and at natural grade, regardless of height, it will not be considered a story" and accordingly, would not require a variance. You can imagine how the suggestion that the project could be constructed without a variance on the north side of the building at the same height (with the same significant environmental impacts, including impacts to my clients' long-range views of SF Bay, sunlight, use and enjoyment of their property, etc.), based on a tortured definition of a "crawl space" under the County Code would be extremely problematic.

However, during our conversation this morning, you clarified that this reference to construction without a variance was for construction on the south side of the home only. Please confirm that this is correct as there is no other email correspondence in the documents we have received to date to confirm this.

You also confirmed today that the current application for construction on the north side would require a variance, and that you have counseled the applicants that the County will recommend denial of the application if the applicants choose to continue with a proposed project on the north side of the building. You also stated that the application is currently complete, but that you are waiting to hear back from the applicants to determine whether they will withdraw the application before issuing the Notice of Intent to Render a Decision.

Given some of the misinformation offered to my clients by the County in the past, I would appreciate your specific confirmation by response email that the underlined statements above are correct. Thanks very much.

Again, I urge the County to let us know immediately once you have heard back from the applicants, given the potential issues at stake here and potential legal exposure to the County for hindering my clients' due process rights.

With respect to the Notice of Intent to Render a Decision, if one is issued, please be sure to send both a hard copy by mail and email it to both me and my clients (copied here). Unfortunately, the KMAC failed to provide sufficient notice to my clients in previous proceedings which limited their ability to defend themselves at the hearing. Providing email notice directly to both me and my clients will help avoid having the same procedural issues here.

Finally, I would note that construction proposed on the southern side of the property would of course need to be designed to avoid impacting the neighbor's long range views, sunlight, etc. and likely would require a variance if it involves three stories, has certain overhangs, or has the potential to cause significantly environmental impacts.

Thanks again for talking with me this morning. Please respond as soon as you're able with email confirmation regarding the information stated above.

Jillian

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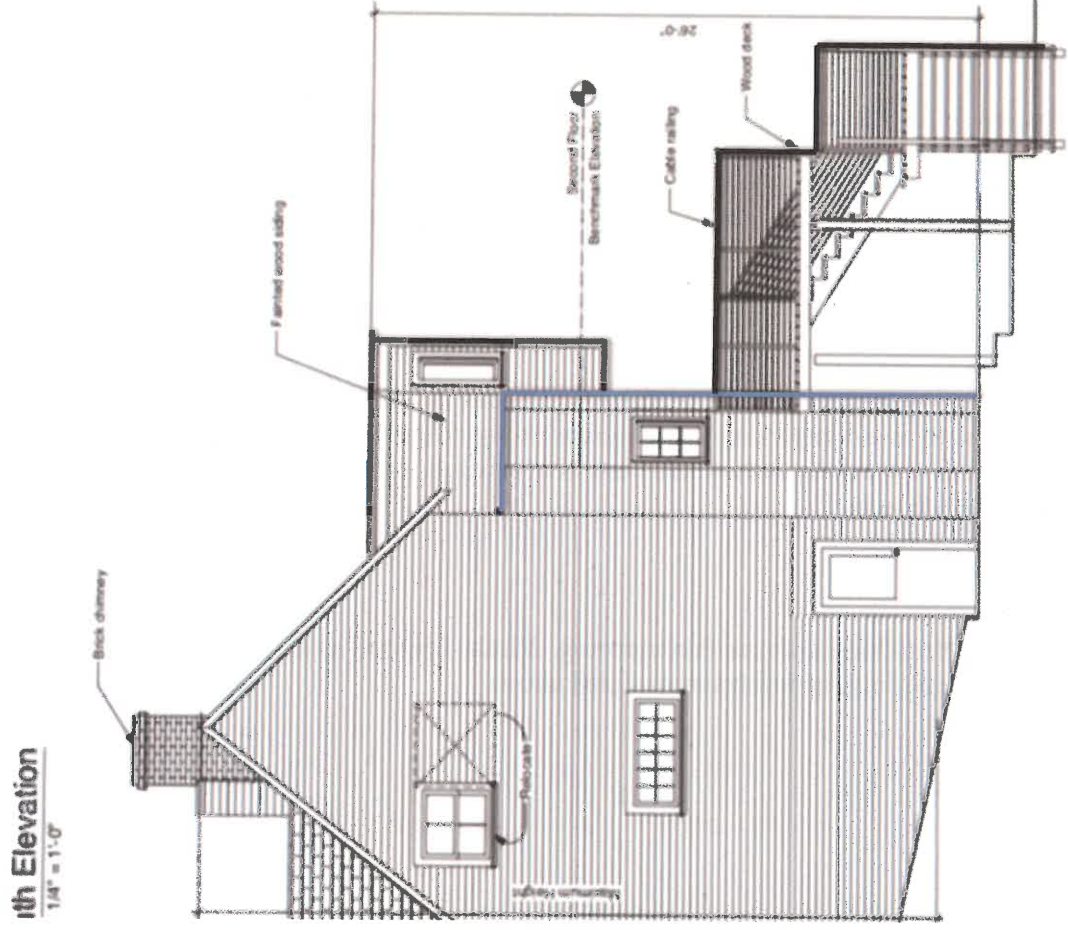
Jillian B. Blanchard

Rudder Law Group, LLP
1101 Marina Village Pkwy, Suite 201

Alameda, CA 94501
Direct: 415.867.6769

Attachment C – 1

Proposed Construction



Attachment D – Picture #2

Existing View of Bay and Bay Bridge



Conservative Estimate of View Impacts from Proposed Deck



Attachment C -2, Picture #1:
View from Upper Level

Conservative Estimate of View Impacts from
Expansion Beyond the Existing Nook



Existing View from Master Bathroom





ATTACHMENT E - LETTER FROM REALTOR
RE: PROPERTY VALUES

Nicole Ashar
118 St. Albans
Kensington, CA.

Re: proposed addition to the home adjacent to 118 St. Albans

Dear Nicole,

As discussed, I have looked at the potential obstruction of the views from your home's kitchen and master bath, and the diminished light for the family room if the proposed additions were to be constructed next door.

In our market, views in general represent great value, and in particular, the view from a kitchen sink and the master suite is extremely important.

Having represented the sellers when you purchased the property, I am aware of how the property has benefitted from the specific views that the property presently offers.

In areas such as Kensington, which are generally very densely built, there is also a decidedly value for privacy. The addition proposed for your neighbor's home appears to potentially diminish your privacy in important areas.

I look forward to hearing of a satisfactory resolution to this neighborhood concern.

Yours,

A handwritten signature in cursive script that reads "Bebe".

Bebe McRae

Margaret Mitchell

From: Jon Van Heuit <jvhinxs@gmail.com>
Sent: Tuesday, October 29, 2019 8:34 AM
To: Margaret Mitchell
Subject: Proposed addition to 120 St. Albans Rd. Kensington

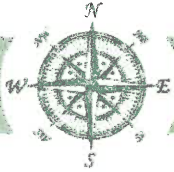
Ms. Mitchell,

My family owns the house next door, 122 St. Albans Rd. I attended the previous advisory planning meeting and stated that we didn't have any objections to their addition, though the neighbor on the opposite side did. I later suggested to Mary Hanley that they shift their addition over to our side of their house. I had looked at the sight lines from our windows and we would not lose anything "important".

I have seen their revised plans, and again checked sight lines, and have not found it to be objectionable. The view from the windows would see a little bit of house, but not looking directly West, where the bay view is located.

Their house was built after the houses on either side, so it is a bit smaller, and I can understand them wanting to add a bit more room to accommodate their family. Unless one lives out in the country, one has to get along with neighbors wanting to live their lives right next door. We don't have any objections to the proposed addition to 120 St. Albans Rd.

Jon Van Heuit



Application and Permit Center
Community Development Counter
30 Muir Road
Martinez, CA 94553
Attn: File #CD KR19-0011 and Margaret Mitchell

** SEE ENVELOPE
STAMP*

CONTRA COSTA COUNTY
COMMUNITY DEVELOPMENT CENTER
SEP 4 PM 3:27

August 30, 2019

Hearing Request re 120 St. Albans Road, Kensington, CA

Dear Ms. Mitchell and County Staff:

We have been retained by parties interested in the development proposed for 120 St. Albans Road, Kensington, CA (the "Property" as defined below) in application #KR19-00111 (the "Application"). As described further below, there are several issues with the current Application that need to be resolved before a permit can issue for the proposed construction, but the primary issues are: 1) a land use permit and a variance is required for this type of construction, not just a Building Permit and Design Review; and 2) a hearing is required to confirm that the proposed construction will comply with the strict variance standards and the Kensington Combining District requirements to minimize impacts to a neighboring property's privacy, sunlight, and views. Unfortunately, the County has once again failed to follow its own land use process, but there is still time to rectify the situation and potentially approve construction that does not impact the sunlight, privacy, and views of neighboring properties, and complies with the County's land use code.

I. The Proposed Project Requires a Variance

a. Variance Required to Expand Existing Nonconforming Use

The existing property currently contains a nonconforming use, which automatically requires a variance to approve any expansion or extension of such use. The existing residential structure appears to violate both the 2 ½ story and setback requirements, and potentially other existing land use requirements. The Contra Costa County ("CCC") Code requires that: 1) building heights must be capped at 2 ½ stories and 35-feet from grade. (CCC Code §84-4.802); and 2) side yards must be setback to a minimum of five feet (CCC Code §84-4.1002).

For purposes of determining the number of stories, a basement counts as a story if the finished floor level directly above the basement is more than six feet above grade at any point (CCC Code §82-4.266). A basement is defined in the Kensington Combining District as "any area in a building or structure where the finished floor directly above the area is less than four feet above preconstruction grade or finished grade, whichever is lower."

(CCC Code §82- 74.404). The existing lower level on the property clearly falls within this definition, thereby establishing three stories on the existing structure, in violation of County Code.

Moreover, the existing residential structure at 120 St. Albans Rd. does not currently meet minimum side yard setback requirements. The existing side yards are well below the five foot requirement.

Accordingly, the existing structure is currently, *without any proposed expansion*, already a nonconforming use. We note that the County's Code regards any structure maintained contrary to its Zoning Ordinance to be unlawful and a public nuisance. (CCC §82-2.006).

Courts have a strict policy against the extension or enlargement of nonconforming uses (*See County of San Diego v McClurken*, 37 Cal.2d 683, 686-87 (1951)). Indeed, California courts regularly allow municipalities to require the termination of a nonconforming use without compensation if it provides a reasonable amortization period commensurate with the investment involved. (*See Metromedia, Inc. v. City of San Diego*, 26 Cal. 3d 848 (1980)). In this instance, our clients are not proposing a termination of the existing use, but merely a careful examination and strict scrutiny against any proposed expansion of that nonconforming use, particularly, when such expansion could cause negative environmental impacts and impact a neighboring property's use, enjoyment, privacy, and views.

Any proposal to increase a nonconforming use clearly requires a land use permit under the County's Code. (CCC §82-8.006.) The work proposed in Application# KR 19-00111 involves a substantial increase to the existing nonconforming use. Accordingly, it is unclear why County staff would ever suggest to the applicant that a simple Building Permit and Design Review would be sufficient. The County must follow its required land use process, including public hearings and KMAC review, and land use permit and variance review and approval, before allowing any construction of the proposed project.

b. Proposed New Construction Requires a Land Use Permit & Variance

Even if the existing structure were in compliance with the County Code, the work proposed in the Application clearly requires a variance pursuant to the County Code. The architect in charge of designing the project did not understand staff's suggestion that an expansion could be constructed on either the north or the south side of the property without a variance (See Exhibit A, Email from Howard McNenny to Margaret Mitchell, p. 1.) County staff based its faulty reasoning on a tortured definition of a 'crawl space,' which has no relevance to the issue. (See Exhibit B, Email from Margaret Mitchell, p. 1.) Not only is this reasoning incorrect, but it smacks of bias to coach an applicant on ways to avoid certain permitting requirements, particularly, when those permitting requirements help protect the rights of neighboring properties.

The proposed substantial upgrade requires a land use permit because the existing structure is already nonconforming (as described above) and a variance to address proposed construction on a three story building, the proposed height increase, the proposed roof overhang, and perhaps most importantly, the exceedance of the Kensington Combining District's threshold standards (CCC §84-74.802).

Based on the Application, the proposed work would expand the existing three-story structure. The Application erroneously claims that it's a "two-story addition to a two-story structure." It's clear from every depiction in the Application, that the existing structure is more than two and one-half stories. It's precisely these types of misstatements that the County needs to identify and correct through a more rigorous land use review and approval process, including the required hearings.

It also appears that the while the pitched roof may not increase in height, the proposed addition to the third story would involve a slight increase in height, which clearly triggers the variance requirement for height increases. The notion that a proposal to increase the height of a structure in violation of the Kensington Planning Ordinance and the Contra Costa County Code would be granted without a variance boggles the mind and suggests the potential for substantive due process violations as well. (*See Neighbors in Support of Appropriate Land Use v. County of Tuolumne*, 157 Cal. App. 4th 997, 998 (2007), in which the Court overturned a county's approval of a nightclub that was inconsistent with the zoning ordinance without a variance.) Moreover, the increased roof overhang itself may require a variance.

Development that causes environmental impacts and directly steals the long-range views of another house, sunlight, privacy, and use and enjoyment of a neighbor's property, not to mention significantly reduces their property values, is exactly what the variance standards were created to protect against.

Moreover, the proposed project exceeds the threshold standards established in the County Code. The threshold standard based on the existing parcel area is 2320.5 square feet, and the applicant proposes to increase the total gross floor area ("GFA") to 2,332 square feet. The County Code unequivocally requires a hearing when the GFA thresholds will be exceeded. (CCC 84-74.802).

While we appreciate the applicant's willingness to re-design their project on the south side of the property, the proposed project, in its current design, still likely will impact our clients' privacy and potentially their long-range views of San Francisco Bay. In addition to completing all necessary reviews associated with a land use permit, it is paramount that the County hold a public hearing to: 1) confirm that a land use permit and variance is required; 2) address existing nonconforming uses; 3) address the threshold standard exceedance; and 4) confirm whether the proposed construction meets both the strict standards for a variance and the Kensington Combining District Standards, which were created to "minimize[e] impacts upon surrounding neighbors and not substantially impair the value and enjoyment of their neighbors' property; maintain the community's property values; and promote[] the general welfare, public health and safety." (CCC §84-74.204). Based on the current Application, is it likely that some design changes may be required to avoid negative impacts to the neighboring property's privacy, views, and sunlight.

II. Project May Not Comply with Variance Standards or the Kensington Combining District Standards

At base, our primary concern is that we need further investigation to confirm that the applicants' revised proposal complies with both the Kensington Planning Ordinance

(Section 84-74.1206) and the variance standards required in County Code Section 26-2.2006.

- While moving the project to the south side does minimize impacts to its neighbors somewhat, the currently proposed design, with attendant windows on the north side, may create new impacts to the long-term use, privacy, and enjoyment of our clients' property.
- A hearing and story poles are required to confirm that the revised design protects the value and enjoyment of our clients' property;
- To the extent the proposed addition to one of the highest houses on the street continues to block our clients' views, it would be inconsistent with a neighborhood dependent on long-range views for its property values;
- There is nothing unique about the Property that would justify a variance to the specific height requirements;
- Granting the Application without modification to protect neighboring properties could constitute a special privilege to increase heights in a neighborhood in which the subject house is already one of the tallest;
- There are no special circumstances applicable to the Property that justify such a special privilege; and
- The proposed variance may not meet the intent and purpose of the Kensington Combining District, which unlike many other neighborhoods, has a specific planning ordinance to protect neighbor's use, view, privacy, and light and solar access, all of which could be impacted under the revised plans.

Variations should only be granted when the applicant has made a clear showing of undue hardship. "The essential requirement of a variance is a showing that a strict enforcement of the zoning limitation would cause unnecessary hardship." (*Neighbors in Support of Appropriate Land Use v. County of Tuolumne*, 157 Cal. App. 4th 997, 998 (2007.)

We need a hearing to determine whether applicants have made the prerequisite showing that extending a three story addition to their house is appropriate and necessary to avoid an undue hardship on their Property. It is clearly the applicant's burden of demonstrating that a variance is necessary to avoid an undue hardship. (*See Orinda Ass'n v. Bd. of Supervisors*, 182 Cal. App. 3d 1145, 1150 (1986) (judgment vacating approval of a height variance because the applicant failed to make the affirmative showing that a variance was warranted where less impacting alternatives were available.) We also need confirmation through the use of story poles and other methods, that the project as proposed will not impact our clients' long range views, sunlight, and privacy. The project, as currently designed, still extends far enough to impact long range views and includes a window that would look directly into our clients' house, significantly impacting their privacy.

Not only is a hearing required as part of the land use process, it is absolutely essential here to establish that the proposed construction complies with both the Kensington Combining District and variance standards.

III. Hearing Is Required to Ensure Land Use Laws Are Being Followed and Neighboring Rights are Protected

All affected parties have the right to an impartial tribunal and unbiased decision makers such that “even the probability of unfairness is to be avoided.” (*Id* at 1170.) Due process “demands an appearance of fairness and the absence of even a probability of outside influence on the adjudication. In fact, the broad applicability of administrative hearings to the various rights and responsibilities of citizens and businesses, and the undeniable public interest in fair hearings in the administrative adjudication arena, militate in favor assuring that such hearings are fair.” (*Nightlife Partners, Ltd. v. City of Beverly Hills*, 108 Cal. App. 4th 81, 83 (2003).)

As indicated above, a hearing is required here for several reasons, including: 1) to ensure the project meets land use permit, variance, and Kensington Combining District requirements; 2) because threshold standards will be exceeded under County Code; and 3) because a hearing is required whenever an interested party submits a written request.

Our clients are reasonable people, but they have very serious and reasonable concerns regarding the environmental impacts of the proposed project, including specific impacts to their use, enjoyment, sunlight, long-range views, and property values. The applicants are proposing a project for an existing nonconforming structure that requires a land use permit, a variance, potentially violates the Kensington Planning Ordinance, and may not meet the high standards necessary to justify a variance under the County Code. We believe that a hearing will help address these land use concerns and help the applicants design a project that does not impact the sunlight, privacy, and long-range views of their neighbors. Please schedule a hearing at your earliest convenience.

IV. Adequate Notice

We also note that the County continues to falter on providing adequate notice to our clients. Even though County staff committed to providing direct notice to our clients as real parties in interest (see Exhibit C, Email from Margaret Mitchell to Jillian Blanchard, May 2, 2019, p. 1), the County failed once again to notify our clients of this new application. When individual rights are being deliberated, interested parties are required to be apprised of the application “so that [they] may have an opportunity to refute, test, and explain it, and the requirement of a hearing necessarily contemplates a decision in light of the evidence there introduced.” (*Clark v. City of Hermosa Beach*, 48 Cal. App. 4th 1152, 1172 (1996).) Our clients have a known, vested interest in the Application, will be uniquely and directly impacted by the project proposed, and have indicated they have substantial evidence to submit into the record. Yet, the County failed to notify them of the revised plans ostensibly designed to address their concerns. Accordingly, please provide any future notices or information related to this Application directly to our clients, Nicole Ashar and Joseph Petroziello (118 St. Albans Rd), and to me, as their representative, on all matters related to this Application.

Thank you for your cooperation in this matter, and please do not hesitate to contact me with any questions. We look forward to receiving notice of the hearing date as soon as it set.

Sincerely,



Jillian Blanchard
Rudder Law Group, LLP

Cc (by electronic mail):

John Kopchik, DCD Director
Ms. Nicole Ashar and Mr. Joseph Petroziello

EXHIBIT A

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

From: Howard McNenny <h.mcnenny@comcast.net>

Sent: Tuesday, April 16, 2019 4:22 PM

To: Margaret Mitchell <Margaret.Mitchell@dcd.cccounty.us>

Cc: Mary Hanley <mc4hanley@gmail.com>; David Herberich <dherberich@gmail.com>

Subject: Fwd: 120 St. Albans

Margaret:

At this point, we have received at least some of the information on comparable variance applications we requested. Unfortunately, we only got examples from the last 3 years, and some of the attachments we were unable to open. Also, some of the applications were apparently too recent to have been resolved. I have requested an estimate of what it would take to go back at least an additional 3-4 years, but have not to date received any response to that request.

Notwithstanding the sparsity of information received, I have discussed with my clients your offer to set up a meeting with Mr. Hernandez, and we agree it would be useful. The absolute best would be if he could agree to meet us on the site as you did initially, to see for himself the issues involved. It appears to us that we are being encouraged to only build on the south side of the house in order to avoid having to file for a variance. However, I do not see personally how it is possible to avoid the variance no matter where we build. As it is, we have configured our proposed addition to avoid as best we can any infringement on the views from the adjacent house. We do not think it would make much difference if we were to confine the addition to the south portion of the house, and in any event building there would not solve the circulation issues we are trying to address.

Absent a meeting with Mr. Hernandez, I do not see how we will ever get a resolution to our dilemma. You have told us to we should submit for a variance, but you have already told us you do not believe the required findings can be made. We would like to submit something that does not require a variance, but that seems impossible. We have to admit that we are unclear on the rules as currently being interpreted, and have very little information on how similar situations have been resolved. We also are afraid that the hearing before the zoning administrator will not result in clarity. That is why we are requesting your help.

Let me know if such a meeting with Mr. Hernandez will be possible. We are fairly open as to time and date.

Howard McNenny, AIA

1039 Santa Fe Ave, Albany CA

Tel: (510) 705-1671

Cell: (510) 207-7019

h.mcnenny@comcast.net

EXHIBIT B

Margaret Mitchell

From: Margaret Mitchell
Sent: Tuesday, April 09, 2019 8:19 AM
To: 'Howard McNenny'
Cc: David Herberich; Mary Hanley; Ruben Hernandez; Jennifer Cruz
Subject: RE: 120 St. Albans

Hi Howard,

If the lowest level of the addition is left unfinished, unconditioned, and at natural grade, regardless of height, it will not be considered a story. If the area between the lowest floor and the ground below does not meet the definition of a crawl space per section 84-74.404(d), it would need to be included in the gross floor area calculation.

You will receive the information regarding other third story variance applications from Lawrence Huang.

Thank you,
Margaret

From: Howard McNenny <h.mcnenny@comcast.net>
Sent: Wednesday, April 03, 2019 1:45 PM
To: Margaret Mitchell <Margaret.Mitchell@dcd.cccounty.us>
Cc: David Herberich <dherberich@gmail.com>; Mary Hanley <mc4hanley@gmail.com>; Ruben Hernandez <Ruben.Hernandez@dcd.cccounty.us>; Jennifer Cruz <Jennifer.Cruz@dcd.cccounty.us>
Subject: Re: 120 St. Albans

Margaret:

Thank you for the response, however it is one thing to say that our application for a variance must be weighed against the rights of the neighbors (and possibly could be denied), but quite another thing to say that this project does not meet even the basic qualifications for a variance application. This makes it all the more critical that we understand under what circumstances variances have been granted in the past. We look forward to getting that information so that we can make a reasoned judgement on next steps.

Also, to be clear, my understanding is that any addition where the lowest full floor is more than 4 feet above existing grade, the level below that floor must be considered a floor also. Am I correct? Unless there are exceptions to your position on variances, I do not see how any addition could be built on the west side of this house that includes the bedroom level—even on the southern portion. Or, might you be saying that it would still be a variance, but one that might be more likely to be approved?

Howard McNenny, AIA

1039 Santa Fe Ave, Albany CA

Tel: (510) 705-1671

Cell: (510) 207-7019

h.mcnenny@comcast.net

EXHIBIT C

On Thu, May 2, 2019 at 5:03 PM Jillian Blanchard <jblanchard@rudderlawgroup.com> wrote:

Thank you, Margaret.

On Thu, May 2, 2019 at 4:55 PM Margaret Mitchell <Margaret.Mitchell@dcd.cccounty.us> wrote:

Good afternoon, Jillian,

Yes, those statements from our conversation yesterday are correct. We will update you on any changes to the status of the application. Please contact Lawrence regarding the PRA requests.

Thank you,

Margaret

From: Jillian Blanchard <jblanchard@rudderlawgroup.com>
Sent: Thursday, May 02, 2019 3:36 PM
To: Margaret Mitchell <Margaret.Mitchell@dcd.cccounty.us>
Cc: Nicole Ashar <nicoleashar@ymail.com>
Subject: Re: 120 St Albans Road - Follow Up and Confirmation

Margaret:

I would appreciate your response to my email below as soon as possible.

Thank you,

Extremely Urgent

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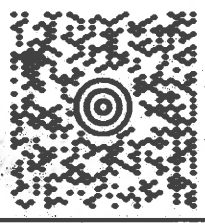
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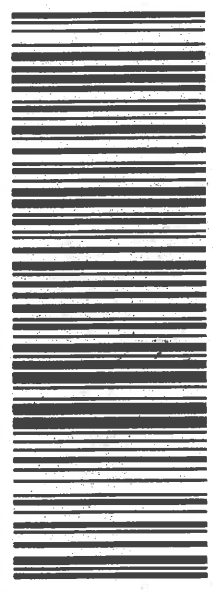
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134 Windsor Ave
Kensington, CA 94708
August 26, 2019

Application and Permit Center
Community Development Counter
30 Muir Road
Martinez, CA 94553
Attn: File#~~CDR19-0011~~ **KP19-00011**

Request a public hearing for site address 120 St. Albans Road, Kensington 94708

APN: 572-124-006

I am requesting that a public hearing should occur before issuing a building permit for this address noted above. The building itself is already sitting tight between the neighboring buildings. The drawings are very unclear as to exactly what is the 335 sq foot room addition. The setback next to 122 St. Albans is already only 3ft and appears the deck addition is too close to property line.

The drawings need to be clearer to show exactly which parts of the drawings indicate new versus existing parts of the house.

I hope the comments make sense but due to lack of clarity with the drawings it made it difficult to be fully clear in comments other than those above.

Thank you,


Donna Breger Stanton

2019 AUG 26 PM 2:33

Zoning Administrator Staff Reports



Department of Conservation and Development

County Zoning Administrator

Monday, December 16, 2019 – 1:30 P.M.

STAFF REPORT

Agenda Item # _____

Project Title:	Kensington Design Review for a 326-square-foot addition and deck replacement
County File(s):	#DP19-3019
Applicant:	Howard McNenny
Owner:	Mary Hanley
Zoning/General Plan:	Single-Family Residential (R-6), Tree Obstruction of Views (-TOV), and Kensington (-K) Combining Districts / Single-Family Residential-High Density (SH)
Site Address/Location:	120 St. Albans Road, Kensington / APN: 572-124-006
California Environmental Quality Act (CEQA) Status:	The proposed project is exempt under CEQA Guidelines Section 15301(e), which identifies additions to existing structures that are less than 2,500 square feet or do not exceed 50 percent of the existing structure as being exempt from review.
Project Planner:	Margaret Mitchell, Planner I (925) 674-7804
Staff Recommendation:	Approve (See Section II for Full Recommendation)

I. PROJECT SUMMARY

The applicant requests approval of a Kensington Design Review Development Plan for an approximately 326-square-foot two-story addition, an interior remodel of the upstairs, and replacement of an existing deck at the rear of the an existing single-family residence.

II. RECOMMENDATION

Staff recommends that the Zoning Administrator approve County File #DP19-3019, based on the attached findings and subject to the attached conditions of approval.

III. BACKGROUND

The Kensington design review request is for the construction of an approximately 326-square-foot two-story addition to the rear of an existing three-story single-family residence. The project was first submitted as County File #VR18-1032, requesting approval of a three-story addition (where two and a half stories is allowed) located towards the northern side of the rear of the residence where the existing residence is three stories due to a small basement/storage space. The project was then redesigned to a two-story addition relocated towards the southern side of the rear of the residence where the existing residence is two stories above a crawl space, thus eliminating the variance. A Kensington design review application (County File #KR19-0011) was then submitted on July 26, 2019. Two hearing requests were received during the required 34-day public comment period for the Kensington design review. A development plan application (County File #DP19-3019) was then submitted on September 18, 2019.

IV. GENERAL INFORMATION

- A. General Plan: The subject property is located within the Single-Family Residential- High Density (SH) General Plan Land Use designation.
- B. Zoning: The subject property is located within a Single-Family Residential (R-6), Tree Obstruction of Views (-TOV), and Kensington (-K) zoning district.
- C. California Environmental Quality Act (CEQA): The proposed project is exempt under CEQA Guidelines Section 15301(e), which includes additions to existing structures that are less than 2,500 square feet or do not exceed 50 percent of the existing structure, whichever is less.
- D. Lot Creation: The subject property is Lot 7 of Berkeley Highlands Terrace, Block 5. The existing single-family residence was constructed in 1938.

E. Previous Applications:

- a. VR18-1032: A variance application for a 371-square-foot three-story addition (where two and a half stories is allowed) at the rear of an existing three-story residence was submitted on October 31, 2018. The project was redesigned and submitted under County File #KR19-0011.
- b. KR19-0011: A Kensington design review application for a 326-square-foot two-story addition to the rear of an existing three-story residence was submitted on July 26, 2019. A hearing was requested and County File #DP19-3019 was filed.

V. SITE/AREA DESCRIPTION

The subject property is located within a residential neighborhood in the area of Kensington. The subject property is surrounded by residential lots ranging in size from 3,696 square feet to 8,400 square feet in area, all of which have been developed with residential dwellings and related accessory structures. Interstate 80 is located approximately 1.8 miles west of the property, the El Cerrito city limit is approximately 0.6 miles west and 0.6 miles north of the property, and the Richmond city limit is approximately 0.3 miles east of the property.

Properties within the surrounding neighborhood are rectangular in shape, are approximately 35 to 50 feet in average width, and are approximately 90 to 120 feet deep. As such, many of the surrounding parcels are substandard in size with respect to the 6,000 square-foot minimum lot size and 60-foot average width required for the R-6 Zoning District. Like the surrounding properties, the subject property is a rectangular shaped 4,641 square feet in size parcel, is 39 feet in average width, and is approximately 119 feet deep.

There is one 2,006-square-foot single-family residence located towards the front (east side) of the property, there are no associated accessory structures, and there are two trees located in the front of the property. The subject property is gently sloped at the very front of the property, and then continues at a steeper slope downhill from the front of the existing residence to the rear of the property. The existing two bedroom, one and a half bathroom, three-story residence was built on the subject property in 1938. The main floor of the residence contains a small entry way, a living room (with access to a deck), a dining room, a kitchen with a breakfast nook, a half bathroom, and a one-car garage. The deck extends

approximately 9 feet from the rear of the residence. The upper floor contains a master bedroom, a smaller bedroom that is accessed through the office space (which has access to a small balcony at the rear of the residence), and a bathroom. The lower level contains a 140-square-foot storage room in the northwest corner of the residence, with the rest of the lower level containing unfinished and unconditioned crawl space that is less than seven feet in height to the floor above.

VI. PROJECT DESCRIPTION

The applicant requests approval of a Kensington design review development plan for an approximately 326-square-foot two-story addition at the rear of the existing three-story single-family residence, an interior remodel of the upper floor, and replacement of an existing deck at the rear of the residence. The addition to the main floor will extend the living room and dining room by five feet to the west, with a second access to the deck from the dining room. The existing deck will be replaced by a new deck that extends approximately 10.5 feet west from the addition. The addition to the upper floor will extend the master bedroom and bathroom approximately seven feet to the west, creating an approximately two-foot overhang over the new deck. The remodel of the existing interior space, plus the small addition, will allow for a master bedroom with an ensuite master bathroom and walk-in closet, three smaller bedrooms, and an additional bathroom. The addition to the lower level of the residence will add five square feet of space to the existing storage room (above which will only be one floor at this new addition), and the rest will contain unfinished and unconditioned crawl space that is less than seven feet in height to the floor above.

VII. AGENCY COMMENTS

- A. Department of Conservation and Development, Building Inspection Division: In a returned agency comment request form dated October 8, 2019, Building Inspection staff commented that compliance with current building codes is required and that a one-hour fire rated wall is required at new perimeter walls located five feet or less from the property line.
- B. Contra Costa Environmental Health (CCEH): In a letter dated October 28, 2019, CCEH stated that a permit will be required for any well or soil boring, and that abandoned wells and septic tanks must be destroyed under a permit from the CCEH.

- C. El Cerrito/Kensington Fire Protection District: No comments have been received to date.
- D. Stege Sanitary District: In a returned agency comment request form dated October 3, 2019, the Sanitary District approved the project “as-is”.
- E. East Bay Municipal Utility District (EBMUD): In a letter dated October 1, 2019, EBMUD indicated that if additional water service is needed, a request for a water services estimate to determine the costs and conditions of providing additional water service to the development will need to be submitted.
- F. City of El Cerrito: No comments have been received to date.
- G. Kensington Municipal Advisory Council (KMAC): At the KMAC meeting held on Tuesday, October 29, 2019, KMAC recommended approval of the project with no conditions.
- H. Contra Costa Mosquito & Vector Control District: In a returned agency comment request dated September 25, 2019, the District staff stated that they had no comments.

VIII. PUBLIC COMMENT

Staff received two letters in opposition to the Kensington Design Review application during the 34-day public comment period. An updated hearing request letter was also received, but after the 34-day public comment period. The following contains staff’s response to each public comment.

A. Donna Breger Stanton – 134 Windsor Ave., Kensington

Comment: The drawings are unclear as to what is existing versus what is new, and the deck is too close to the property line.

Staff Response: A full set of plans are available and can be viewed at the Department of Conservation and Development. The new deck is three feet from the property line, which meets the required three-foot minimum side yard setback and will have to meet fire safety standards required by building code.

B. Jillian Blanchard, representing Nicole Ashar and Joseph Petroziello – 118 St. Albans Rd., Kensington

Comment: A land use permit is required for the expansion of a nonconforming use.

Staff Response: The applicant proposes to expand the existing residential building, as allowed under the R-6 Zoning District. Contra Costa County (CCC) Section 82-8.006 requires a land use permit for expansion of non-conforming uses. The use in this case is residential, permitted by right in the R-6 Zoning District, and therefore, does not require a land use permit.

Comment: A variance is required due to the number of stories, height, setbacks, and exceedance of the Kensington Combining District's threshold standards.

Staff Response: The existing residence is three stories (where two and a half stories is allowed) due to a 140-square-foot storage room in the lower level of the northwest corner of the residence. The addition is expanding the southern portion of the west side of the residence, where the existing residence is two stories above an unfinished and unconditioned crawl space that is less than seven feet in height to the floor above. The addition is also two stories above a an unfinished and unconditioned crawl space that is less than seven feet in height to the floor above, and therefore, a variance is not required for the number of stories.

The existing residence is 31 feet 5 inches in height (where 35 feet maximum is allowed) and has a pitched roof. The proposed addition is 26 feet in height, is located downhill from the tallest portion of the existing residence, and has a flat roof. Overall, a variance is not required for the height of the project.

Since the lot was created prior to the establishment of the R-6 Zoning District standards and the front property line is 35 feet wide, a reduced side yard minimum of 3 feet and a reduced aggregate side yard of 8 feet is allowed for any new construction (CCC Section 82-14.004). The addition and deck meet the minimum 3-foot side yard setback required. Therefore, a variance is not required for the setbacks.

Based on the subject property's size of 4,641 square feet, the maximum gross floor area (GFA) allowed is 2,400 square feet. The existing residence is 2,006

square feet and the addition is 326 square feet, so the GFA will be 2,332 square feet. This GFA remains below the threshold.

Comment: The addition does not meet the intent and purpose of the Kensington Combining District, as the addition blocks their views, includes a window that would look directly into their house, and decreases their property values.

Staff Response: The 118 St. Albans Road property is north of the subject property. The views of the San Francisco Bay from the subject property and the 118 St. Albans Road property are to the west. The upper floor of the addition to the rear (west side) of the subject residence extends approximately two and a half feet beyond the existing residence, and the deck at the lower level extends an additional approximately 8.5 feet beyond the upper floor. The residence at 118 St. Albans Road extends approximately 20 feet further to the west than the subject residence, and will therefore remain approximately 17.5 feet further to the west than the subject residence. Photos of the south facing views from the master bathroom of the 118 St. Albans Road residence were submitted to planning staff to illustrate the impacts to their bay views. Based on these photos, a small portion of the views to the south will be slightly impacted, but none of the western facing bay views will be impacted by the addition at the subject property. Therefore, there will not be a significant impact to views.

The addition at the subject property includes a window in the master bathroom that faces northwest, which may impact the privacy of the Petroziello residence. In order to reduce privacy impacts, revisions to this window will be required for the review and approval of the Conservation and Development Department prior to the issuance of building permits (see Condition of Approval #3).

The Kensington combining district standards recognize the rights of property owners to improve the value and enjoyment of their property. In general, adding square-footage to a residence, creating a better floor plan, and increasing views adds enjoyment and value to a property. Since the addition will be increasing the enjoyment and value of the subject property, it will in turn increase the value of the neighboring properties. Therefore, the Petroziello property values will not decrease from the addition to the subject property.

Comment: The County failed to provide adequate notice regarding planning

applications pertaining to the subject property.

Staff Response: The County properly noticed neighbors within 300-feet of the subject property, which includes the property owners of 118 St. Albans Road for County File #KR19-0011. In accordance with the County Code, no other public notifications have been sent for the project other than the original notification for the Kensington design review, and the noticing for this hearing.

Comment: The project would be significantly improved if the applicant would remove the north facing window, eliminate or significantly reduce the deck, and avoid expansion beyond the existing nook.

Staff Response: Condition of Approval #3 has been added to address the privacy impacts due to the northern facing window in the addition to the subject residence. The existing deck of the subject residence extends 9 feet to the west. The new deck is to replace the existing deck and extends 10.5 feet to the west from the new addition, which is only one and a half feet more than the existing deck. Therefore, staff is recommending that the deck may remain as proposed. The addition extends approximately two and a half feet beyond the existing nook. As previously stated, the Petroziello residence will extend approximately 17.5 feet further than the proposed addition which means that the proposed addition will have a minimal impacts to south facing views and no impacts to views of the bay to the west.

IX. STAFF ANALYSIS AND DISCUSSION

- A. General Plan: The subject property is located in an area of the County with a Single-Family Residential-High Density (SH) Land Use designation. The primary uses permitted in this land use designation include detached single-family homes and accessory structures. The proposed project involves the construction of an approximately 326-square-foot two-story addition to the rear of the existing single-family residence, an interior remodel of the upper level, and replacement of an existing deck at the rear of the residence. The proposed addition and modifications to the existing single-family residence will not change the existing residential use, which is consistent with the primary uses permitted in this land use designation.

The County General Plan has adopted policies for specific geographic areas of the County in addition to the countywide policies. Pursuant to the General

Plan's Map of Unincorporated Communities with Adopted Area Policies, the subject property is located within the Kensington specific geographical area. The policies for the Kensington area provide reasonable protection for existing residences, preservation of views of scenic natural features and the developed environment, design compatibility with nearby development, and provisions for adequate parking. The proposed development on the subject property will not increase the total height of the residence and is located at the rear of the residence which is downhill from the tallest portion of the existing residence. The views of the bay enjoyed by the neighboring properties are mainly to the west, so although the addition will be visible when looking north or south towards the neighboring properties, the bay views will not be impacted. The addition is located at the rear of the property and will not be visible from the street. The proposed project does not substantially alter the existing residence that has been located on the subject property since 1938 and will maintain the existing design of the residence, which includes painted wood siding that matches the existing residence. The addition will not increase the need for more parking or eliminate any of the existing parking. The addition is small enough that it will minimally impact light or solar access to the adjacent properties, especially the property to the north which extends approximately 20 feet further to the west than the subject property. Therefore, this project will not disturb the protections of existing residences with regard to views, design compatibility, parking, privacy and access to sunlight and thus will not conflict with the adopted policies of the Kensington specific geographic area.

- B. Zoning: The subject property is located within a Single-Family Residential (R-6) Zoning District, a Kensington Combining District (-K) and a Tree Obstruction of Views Combining District (-TOV). Generally speaking, the intent of the R-6 Zoning District is provide for orderly development of single-family residential uses, accessory structures and the uses normally auxiliary to them. The proposed project involves the construction of an approximately 326-square-foot two-story addition to the rear of the existing single-family residence, an interior remodel of the upstairs, and replacement of an existing deck at the rear of the residence.

The existing single-family residence is located within the R-6 Zoning District, and the addition continues the existing residential use of the property. The existing residence already consists of a third story due to the 140-square-foot storage room in the northwest corner of the lower level of the residence. The addition is on the southern portion of the west side of the residence where

there are two stories above an unfinished and unconditioned crawl space that is less than seven feet in height to the floor above. The addition is also two stories above an unfinished and unconditioned crawl space that is less than seven feet in height to the floor above. The existing residence is 31 feet 5 inches in height with a pitched roof. The addition is 26 feet in height, is located downhill from the tallest portion of the existing residence, and has a flat roof. The existing residence has a 1.5-foot side yard setback with a 3.5-foot aggregate side yard setback. Based on the year the lot was established, reduced side yard setbacks are allowed for new construction. The addition and deck meet the minimum three-foot side yard setback required. Overall, the project meets the required setbacks and the maximum height allowed in the R-6 zoning district.

In part, the intent of the Kensington (-K) Combining District is to provide specific regulations to fairly and efficiently implement the Contra Costa County General Plan policies for the Kensington Area. The regulations of the combining district are also intended to promote the community's values of preservation of views, light and solar access, privacy, parking, residential noise levels and compatibility with the neighborhood with regard to bulk and scale. The existing views of the bay are to the west. The addition extends five feet to the west beyond the existing residence, and the new deck extends approximately 10.5 feet to the west beyond the addition. The additions are minimal and therefore, will not substantially impact views to the west. As the patterns of the sun are generally in an east to west direction, the small addition would not impact light or solar access to the adjacent properties. Although the new deck extends further west than the existing deck, the neighbors' privacy will be minimally impacted, since there is an existing deck and the same view of the neighboring homes can be seen from the back yard. There are new windows in the addition that face northwest and southwest, but they are angled such that the subject property owners will be able to enjoy the bay views without looking directly into the neighbors' homes.

The proposed project does not substantially alter the existing residence that has been located on the subject property since 1938 and will maintain the existing design of the residence, which includes painted wood siding that matches the existing residence. The proposed interior remodeling will not change the footprint or exterior design of the residence. As such, no part of this project will significantly affect the architectural appearance of the residence, or the neighborhood in general as seen from the public roadway. Based on the

parcel size of 4,641 square feet, the maximum gross floor area allowed is 2,400 square feet. Although the proposed project would increase the gross floor area of the residence from 2,006 square feet to 2,332 square feet, it is still below the allowed threshold. Therefore, the project is compatible with the community's values of preservation of views, light and solar access, privacy, parking, residential noise levels and compatibility with the neighborhood with regard to bulk and scale.

The –TOV Combining District furthers the Kensington Combining District's goals, as its intent is to provide a method for property owners to gain restoration of views and sunlight lost due to tree growth by another property owner. The proposed development does not include any alteration, addition or removal of any trees; therefore the –TOV ordinance does not apply to the proposed project.

- C. Appropriateness of Use: The project site is within an established single-family residential neighborhood. The proposed project involves the construction of an approximately 326-square-foot two-story addition to the rear of the existing single-family residence, an interior remodel of the upstairs, and replacement of an existing deck at the rear of the residence. The proposed development is residential in nature and is an addition to an existing single-family residence. Therefore, the proposed project is consistent with the established use of the property.

X. CONCLUSION

The applicant requests approval of an approximately 326-square-foot two-story addition, to include an interior remodel of the upstairs and replacement of an existing deck, at the rear of the existing three-story single-family residence. The proposed development is consistent with the Single-Family Residential-High Density (SH) General Plan land use designation and complies with the intent and purpose of the Single-Family Residential (R-6), Kensington (-K) Combining, and the Tree Obstruction of Views (-TOV) Combining Districts. Therefore, staff recommends that the Zoning Administrator approve County File #DP19-3019, based on the attached conditions of approval.

Attachments:

- Findings and Conditions of Approval
- Maps – Parcel Map, General Plan, Zoning, and Aerial Photograph
- Public Comments
- Agency Comments
- Project Plans
- Photographs

File Path: G:\Current Planning\curr-plan\Staff Reports\Development Plans (DP)\DP19-3019\DP19-3019_SR_12_16_19.doc

**FINDINGS AND CONDITIONS OF APPROVAL FOR COUNTY FILE #DP19-3019;
HOWARD MCNENNY (APPLICANT) AND MARY HANLEY (OWNER).**

I. FINDINGS

A. Growth Management Performance Standards

1. Traffic: Policy 4-c under the Growth Management Program (GMP) requires a traffic impact analysis be conducted for any project that is estimated to generate 100 or more AM or PM peak-hour trips. The addition to the existing residence will generate minimal traffic trips to and from the project site during construction and no additional traffic trips post construction. Therefore, a traffic impact analysis is not required.
2. Water: The GMP requires new development to demonstrate that adequate water quantity and quality can be provided. The subject property currently receives water service from the East Bay Municipal Utility District (EBMUD). EBMUD has reviewed the project, and the project is not anticipated to significantly increase the demand for water service in the area.
3. Sanitary Sewer: The GMP requires that new development demonstrate that adequate sanitary sewer quantity and quality can be provided. The subject property currently receives sanitary sewer service from the Stege Sanitary District. The project is not anticipated to significantly increase the demand for sanitary sewer service in the area.
4. Fire Protection: The fire protection standards under the GMP require that a fire station be within one and one-half miles of development in urban, suburban and central business district areas, or requires that automatic fire sprinkler systems be installed to satisfy this standard. The project site is within the El Cerrito/Kensington Fire Department jurisdiction and will be required to comply with current fire codes and regulations. The addition to the existing residence would not increase demand for fire services. The Fire Department will review the project for a building permit.
5. Public Protection: Public protection standards under the GMP require that a Sheriff Facility standard of 155 square feet of station area and support facilities per 1,000 in population shall be maintained within the unincorporated area of the County. The addition to the existing residence and will not increase the demand for police service facilities as the project will not increase the population.
6. Parks & Recreation: Parks and recreation standards under the GMP require three acres of neighborhood park area per 1,000 in population. The project will not

increase the demand for parks or recreation facilities, as the project will not increase the housing stock in the County.

7. Flood Control & Drainage: No portion of the subject property is located within a 100-year flood area as determined by the Federal Emergency Management Agency. In addition, the project does not involve the removal, construction, or alteration of any dams or levees within the County. Therefore, further analysis in relation to increased flood risks as a result of the project is not required.

B. Kensington Combining District Findings

The Kensington Combining District (-K) requires that any permit for development or expansion of the envelope of a building or structure satisfy seven criteria before a project is approved:

1. Recognizing the rights of property owners to improve the value and enjoyment of their property;

Staff Finding: The project includes an approximately 326-square-foot two-story addition, an interior remodel of the upstairs, and replacement of an existing deck at the rear of the existing three-story single-family residence. The addition creates more living space and the interior remodel of the upstairs allows for additional bedrooms and an additional bathroom. The development enhances the livability of the residence, and thereby improves the value and enjoyment of the residence.

2. Recognizing the rights of property owners of vacant lots to establish a residence that is compatible with the neighborhood in terms of bulk, scale and design;

Staff Finding: The subject property is not vacant, so this criterion does not apply.

3. Minimizing impacts upon surrounding neighbors;

Staff Finding: The development has been designed to minimally impact surrounding neighbors. Partly in response to comments from the neighbor to the north, the addition is located on the southern portion of the west side of the residence. The addition to the main floor will extend the living room and dining room by five feet to the west and the deck will extend another 10.5 feet. The addition to the upper floor will extend the master bedroom and bathroom approximately seven feet to the west, creating an approximately two-foot overhang over the new deck. The addition and deck meet the required minimum side yard setback, and have been designed so as to minimally impact the neighbors

while still allowing the enjoyment of the views. Therefore, the project has minimal influence on the surrounding neighbors.

4. Protecting the value and enjoyment of the neighbors' property;

Staff Finding: As previously mentioned, the overall project will have minimal impacts on the surrounding neighbors. The addition has been designed so as to extend the existing residence as little as possible, while still allowing for a remodel of the interior to increase the usability and enjoyment of the existing living space. Although the addition extends to the west and will be visible to the neighbors when looking north and south, the views of the San Francisco Bay are to the west, and will not be blocked by the addition. The existing house is located downhill of the neighbors to the east, and the addition will be lower than the existing residence, so the addition will not impact views of the San Francisco Bay visible from properties at a higher elevation. Therefore, the project preserves the value and enjoyment of neighboring properties.

5. Maintaining the community's property values;

Staff Finding: The project has minimal impacts on views, light and solar access, privacy, parking, and residential noise levels. The addition will increase the property value of the subject property by adding more living space to the existing residence, including more bedrooms and an additional bathroom, and will therefore increase the property value of the surrounding neighborhood. As a result, existing community's property values are preserved.

6. Maximizing the use of existing interior space;

Staff Finding: The addition will add approximately 326-square-feet of living space to the existing residence, which allows for an interior remodel of the upper floor, including the addition of bedrooms and another bathroom. The overall scope of the project maximizes the use of existing interior space, and minimally increases the existing footprint of the residence.

7. Promoting the general welfare, public health, and safety;

Staff Finding: The project does not change the land use of the subject property and, as described earlier, has minimal impact on surrounding properties. The new development improves the value of the neighboring properties. Also, the project will not use or emit hazardous substances beyond what is normal for a residential property. The project will be required to comply with applicable building and fire

codes. Based on the foregoing reasons, the project promotes the general welfare, public health and safety of the Kensington community.

I. CONDITIONS OF APPROVAL FOR COUNTY FILE #DP19-3019:

Project Approval

1. Development is approved as generally described in the application materials received by the Department of Conservation and Development, Community Development Division (CDD) on September 18, 2019, and is subject to the conditions listed below.

General Provisions

2. Any development or expansion beyond the limits of this permit approved under this application may require the review and approval of CDD and may require the filing of an application for modification to a Development Plan and a public hearing, if deemed necessary.
3. The applicant shall provide revisions to the northwestern facing master bathroom window (such as removing the window, frosting the window, orienting the window horizontally, etc.), to be reviewed and approved by CDD prior to obtaining a building permit.

Payment of Fees

4. This application is subject to an initial application deposit of \$1000.00, which was paid with the application submittal, plus time and material costs if the application review expenses exceed 100% of the initial deposit. Any additional costs due must be paid within 60 days of the permit effective date or prior to use of the permit, whichever occurs first. The applicant may obtain current costs by contacting the project planner. If the applicant owes additional fees, a bill will be sent to the applicant shortly after permit issuance.

Construction Period Restrictions and Requirements

5. The applicant shall comply with the following restrictions and requirements:
 - A. Construction activities shall be limited to the hours of 8:00 A.M. to 5:00 P.M., Monday through Friday, and are prohibited on state and federal holidays on the calendar dates that these holidays are observed by the state or federal government as listed below:

New Year's Day (state and federal)
Birthday of Martin Luther King, Jr. (state and federal)
Washington's Birthday (federal)

Lincoln's Birthday (state)
President's Day (state and federal)
Cesar Chavez Day (state)
Memorial Day (state and federal)
Independence Day (state and federal)
Labor Day (state and federal)
Columbus Day (state and federal)
Veterans Day (state and federal)
Thanksgiving Day (state and federal)
Day after Thanksgiving (state)
Christmas Day (state and federal)

For information on the calendar dates that these holidays occur, please visit the following websites:

Federal Holidays:

http://www.opm.gov/Operating_Status_Schedules/fedhol

California Holidays:

<http://www.sos.ca.gov/holidays.htm>

- B. Transportation of large trucks and heavy equipment is subject to the same restrictions that are imposed on construction activities, except that the hours are limited to 9:00 AM to 4:00 PM.
- C. A good faith effort shall be made to avoid interference with existing neighborhood traffic flows.
- D. All internal combustion engines shall be fitted with mufflers that are in good condition and stationary noise-generating equipment such as air compressors shall be located as far away from existing residences as possible.
- E. Construction equipment and materials shall be stored onsite.
- F. The construction site shall be maintained in an orderly fashion. Litter and debris shall be contained in appropriate receptacles and shall be disposed of as necessary.
- G. Any debris found outside the site shall immediately be collected and deposited in appropriate receptacles.

ADVISORY NOTES

ADVISORY NOTES ARE NOT CONDITIONS OF APPROVAL; THEY ARE PROVIDED TO ALERT THE APPLICANT TO ADDITIONAL ORDINANCES, STATUTES, AND LEGAL REQUIREMENTS OF THE COUNTY AND OTHER PUBLIC AGENCIES THAT MAY BE APPLICABLE TO THIS PROJECT.

- A. NOTICE OF OPPORTUNITY TO PROTEST FEES, ASSESSMENTS, DEDICATIONS, RESERVATIONS OR OTHER EXACTIONS PERTAINING TO THE APPROVAL OF THIS PERMIT.

Pursuant to California Government Code Section 66000, et seq., the applicant has the opportunity to protest fees, dedications, reservations or exactions required as part of this project approval. To be valid, a protest must be in writing pursuant to Government Code Section 66020 and must be delivered to the Community Development Division within a 90-day period that begins on the date that this project is approved. If the 90th day falls on a day that the Community Development Division is closed, then the protest must be submitted by the end of the next business day.

- B. Prior to applying for a building permit, the applicant is strongly encouraged to contact the following agencies to determine if additional requirements and/or additional permits are required as part of the proposed project:
- Contra Costa County Building Inspection Division
 - Contra Costa County Environmental Health Division
 - East Bay Municipal Utility District
 - Stege Sanitary District
 - El Cerrito/Kensington Fire Department



Department of Conservation and Development

County Zoning Administrator

Monday, January 6, 2020 – 1:30 P.M.

STAFF REPORT

Agenda Item # _____

Project Title:	Kensington Design Review for a 326-square-foot addition and deck replacement
County File(s):	#DP19-3019
Applicant:	Howard McNenny
Owner:	Mary Hanley
Zoning/General Plan:	Single-Family Residential (R-6), Tree Obstruction of Views (-TOV), and Kensington (-K) Combining Districts / Single-Family Residential-High Density (SH)
Site Address/Location:	120 St. Albans Road, Kensington / APN: 572-124-006
California Environmental Quality Act (CEQA) Status:	The proposed project is exempt under CEQA Guidelines Section 15301(e), which identifies additions to existing structures that are less than 2,500 square feet or do not exceed 50 percent of the existing structure as being exempt from review.
Project Planner:	Margaret Mitchell, Planner I (925) 674-7804
Staff Recommendation:	Approve

I. PROJECT DESCRIPTION Continued Open Public Hearing Item

This is a continued public hearing for a Kensington Design Review Development Plan application. The applicant requests approval of an approximately 326-square-foot two-story addition, an interior remodel of the upstairs, and replacement of an existing deck at the rear of the an existing single-family residence.

II. BACKGROUND

At the December 16, 2019 meeting, the Zoning Administrator opened the public hearing for this item. Public comments were heard, and the item was left open and continued to the January 6, 2020 hearing.

III. CONCLUSION

Staff recommends that the Zoning Administrator APPROVE County File #DP19-3019.



Department of Conservation and Development

County Zoning Administrator

Wednesday, January 22, 2020 – 1:30 P.M.

STAFF REPORT

Agenda Item # _____

CONTINUED CLOSED PUBLIC HEARING ITEM

Project Title:	Kensington Design Review for a 326-square-foot addition and deck replacement
County File(s):	#DP19-3019
Applicant:	Howard McNenny
Owner:	Mary Hanley
Zoning/General Plan:	Single-Family Residential (R-6), Tree Obstruction of Views (-TOV), and Kensington (-K) Combining Districts / Single-Family Residential-High Density (SH)
Site Address/Location:	120 St. Albans Road, Kensington / APN: 572-124-006
California Environmental Quality Act (CEQA) Status:	The proposed project is exempt under CEQA Guidelines Section 15301(e), which identifies additions to existing structures that are less than 2,500 square feet or do not exceed 50 percent of the existing structure as being exempt from review.
Project Planner:	Margaret Mitchell, Planner I (925) 674-7804
Staff Recommendation:	Approve

I. PROJECT DESCRIPTION

This is a continued public hearing for a Kensington Design Review Development Plan application. The applicant requests approval of an approximately 326-square-

foot two-story addition, an interior remodel of the upstairs, and replacement of an existing deck at the rear of the an existing single-family residence.

II. BACKGROUND

At the December 16, 2019 meeting, the Zoning Administrator opened the public hearing for this item. Public comments were heard, and the item was left open and continued to the January 6, 2020 meeting. At the January 6, 2020 meeting, additional public comments were heard. The Zoning Administrator closed and continued the item to the January 22, 2020 meeting.

III. CONCLUSION

Staff recommends that the Zoning Administrator APPROVE County File #DP19-3019.

PowerPoint Presentation



DEVELOPMENT PLAN APPEAL COUNTY FILE #DP19-3019

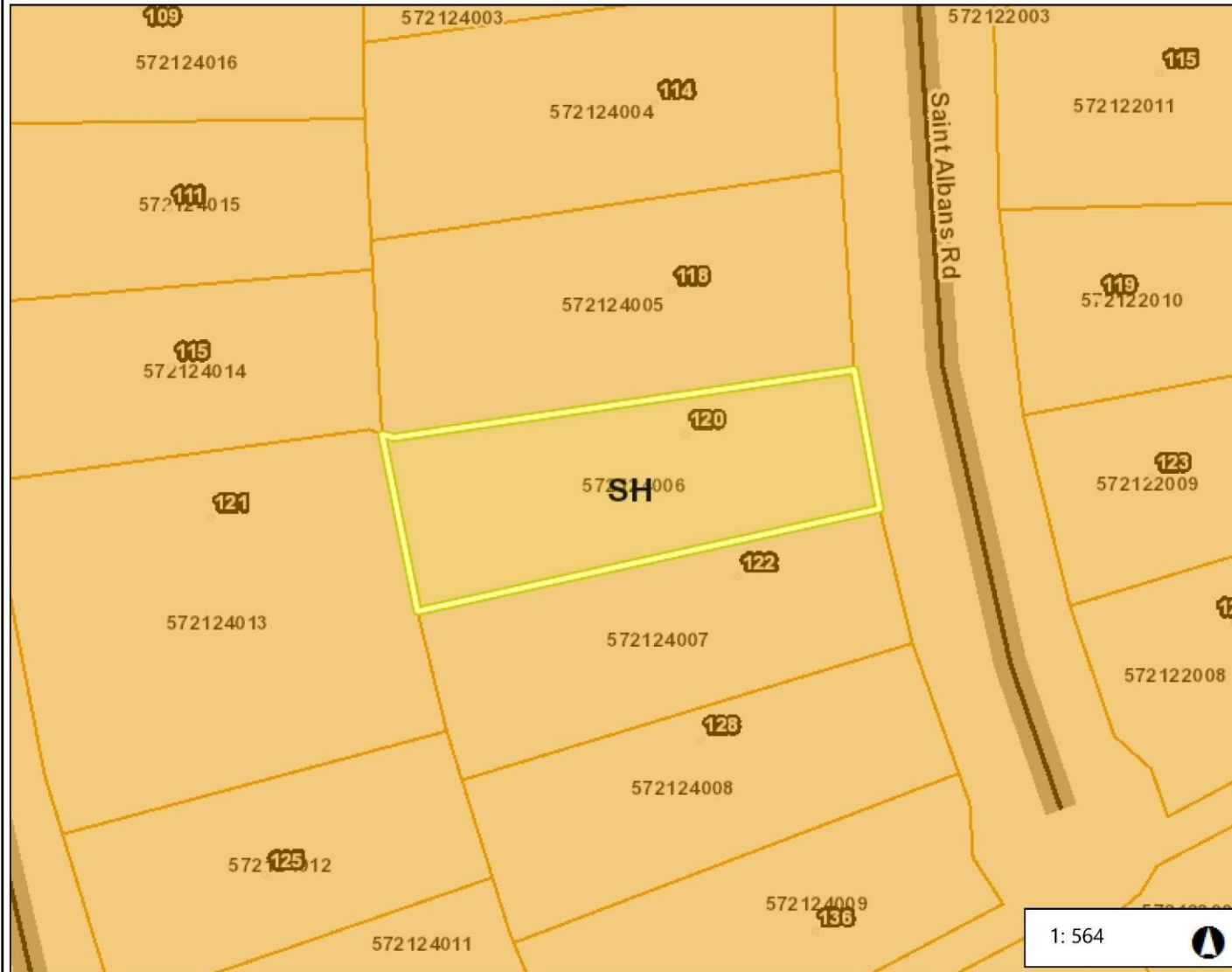
120 St. Albans Road, Kensington

Contra Costa County Planning Commission
Wednesday, August 12, 2020
6:30 P.M.

PROJECT DESCRIPTION

This is an appeal of the Zoning Administrator's decision to approve a Development Plan for a Kensington Design Review for an approximately 326-square-foot two-story addition and construction of a new deck at the rear of the existing single-family residence located at 120 St. Albans Road in the Kensington area of unincorporated Contra Costa County.

General Plan Map: Single-Family Residential - High Density



Legend

General Plan

- SV (Single Family Residential - Ver)
- SL (Single Family Residential - Low)
- SM (Single Family Residential - Me)
- SH (Single Family Residential - Hig)
- ML (Multiple Family Residential - Lc)
- MM (Multiple Family Residential - Iv)
- MH (Multiple Family Residential - H)
- MV (Multiple Family Residential - V)
- MS (Multiple Family Residential - V)
- CC (Congregate Care/Senior Hous)
- MO (Mobile Home)
- M-1 (Parker Avenue Mixed Use)
- M-2 (Downtown/Waterfront Rodeo I)
- M-3 (Pleasant Hill BART Mixed Use)
- M-4 (Willow Pass Road Mixed Use)
- M-5 (Willow Pass Road Commercia)
- M-6 (Bay Point Residential Mixed L)
- M-7 (Pittsburg/Bay Point BART Sta)
- M-8 (Dougherty Valley Village Cent)
- M-9 (Montalvin Manor Mixed Use)
- M-10 (Willow Pass Business Park I)
- M-11 (Appian Way Mixed Use)
- M-12 (Triangle Area Mixed Use)
- M-13 (San Pablo Dam Road Mixed)
- M-14 (Heritae Mixed Use)

Notes

Contra Costa County -DOIT GIS

0.0 0 0.01 0.0 Miles

WGS_1984_Web_Mercator_Auxiliary_Sphere

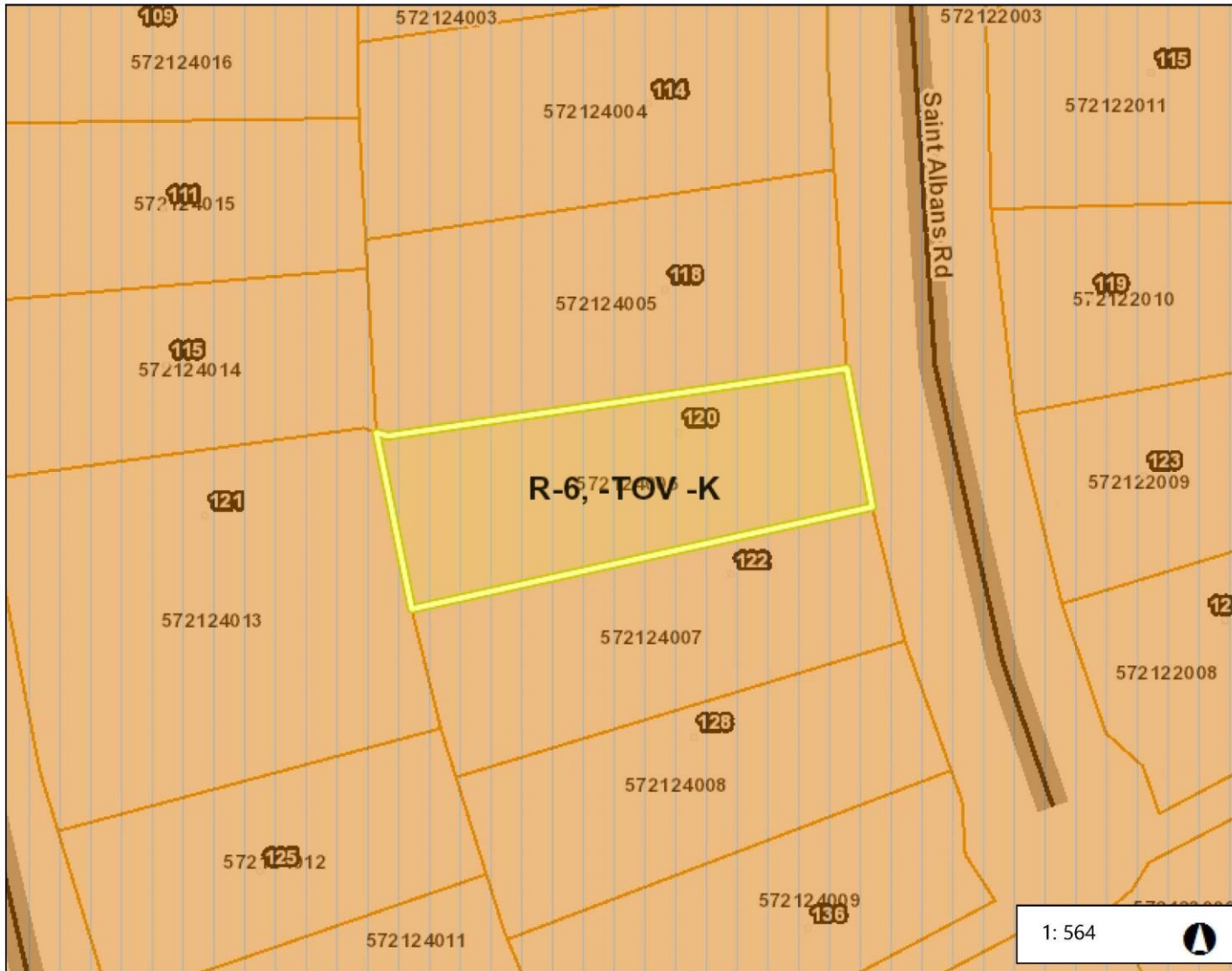
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THIS MAP IS NOT TO BE USED FOR NAVIGATION

1: 564



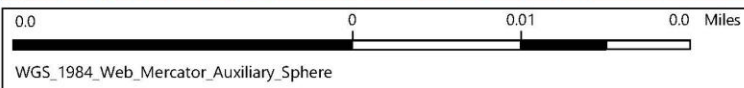
Zoning Map: R-6, -TOV, -K



Legend

- Zoning**
- R-6 (Single Family Residential)
 - R-6, -FH -UE (Single Family Resid Urban Farm Animal Exclusion Corn
 - R-6 -SD-1 (Single Family Resident Hillside Development Combining Di
 - R-6 -TOV -K (Single Family Reside View Ordinance and Kensington Cc
 - R-6, -UE (Single Family Residential Exclusion Combining District)
 - R-6 -X (Single Family Residential - Combining District)
 - R-7 (Single Family Residential)
 - R-7 -X (Single Family Residential - Combining District)
 - R-10 (Single Family Residential)
 - R-10, -UE (Single Family Resident Exclusion Combining District)
 - R-12 (Single Family Residential)
 - R-15 (Single Family Residential)
 - R-20 (Single Family Residential)
 - R-20, -UE (Single Family Resident Exclusion Combining District)
 - R-40 (Single Family Residential)
 - R-40, -FH -UE (Single Family Resic Urban Farm Animal Exclusion Corn
 - R-40, -UE (Single Family Resident Exclusion Combining District)
 - R-65 (Single Family Residential)
 - R-100 (Single Family Residential)
 - D-1 (Two Family Residential)
 - D-1 -T (Two Family Residential - Tr District)

1: 564



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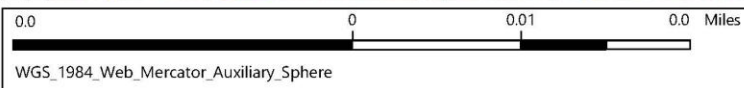
Notes

Contra Costa County -DOIT GIS

Aerial Photograph



- Legend**
- Address Points
 - ▬ Streets
 - ▭ Assessment Parcels
 - World Imagery
 - Low Resolution 15m Imagery
 - High Resolution 60cm Imagery
 - High Resolution 30cm Imagery
 - Citations



1: 564

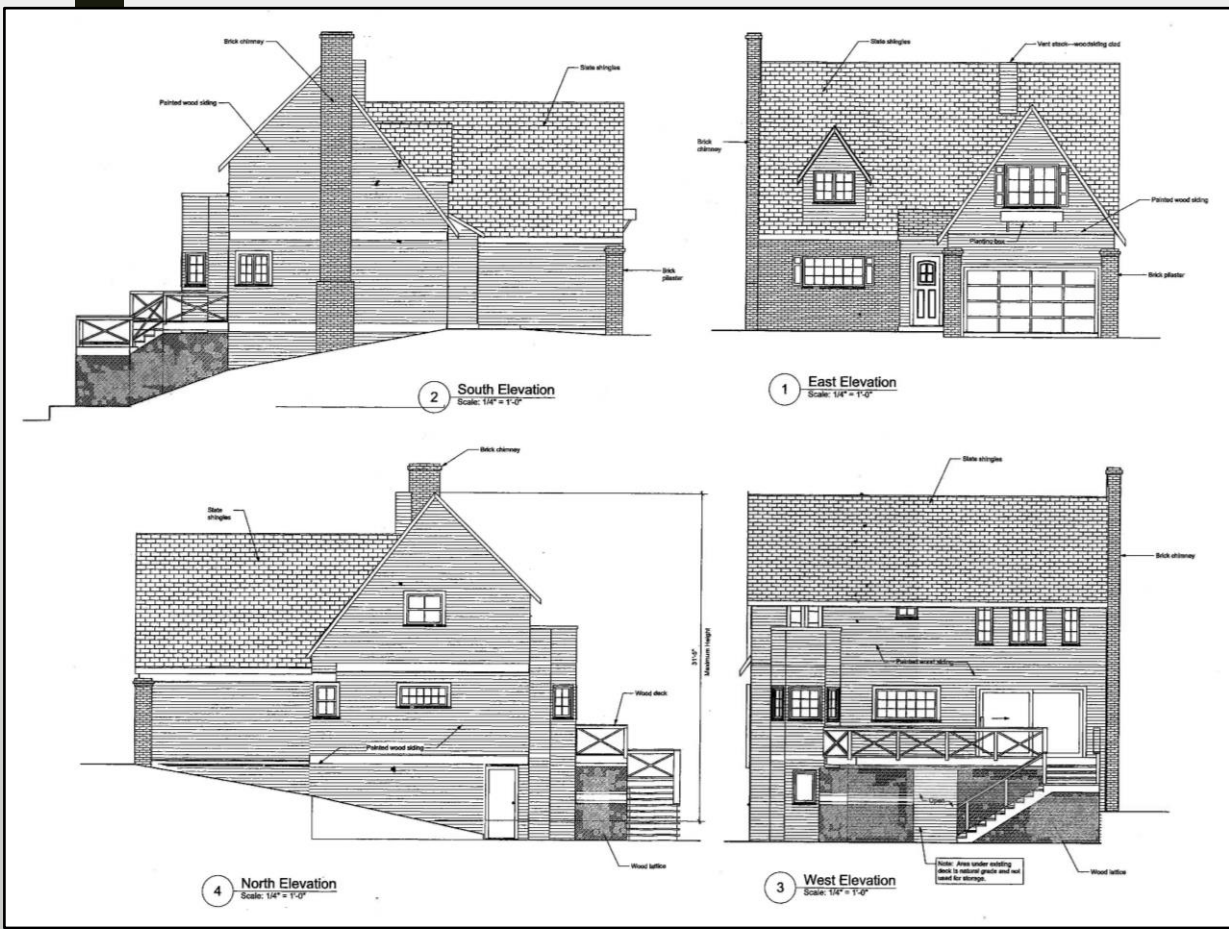
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Notes
 Contra Costa County -DOIT GIS

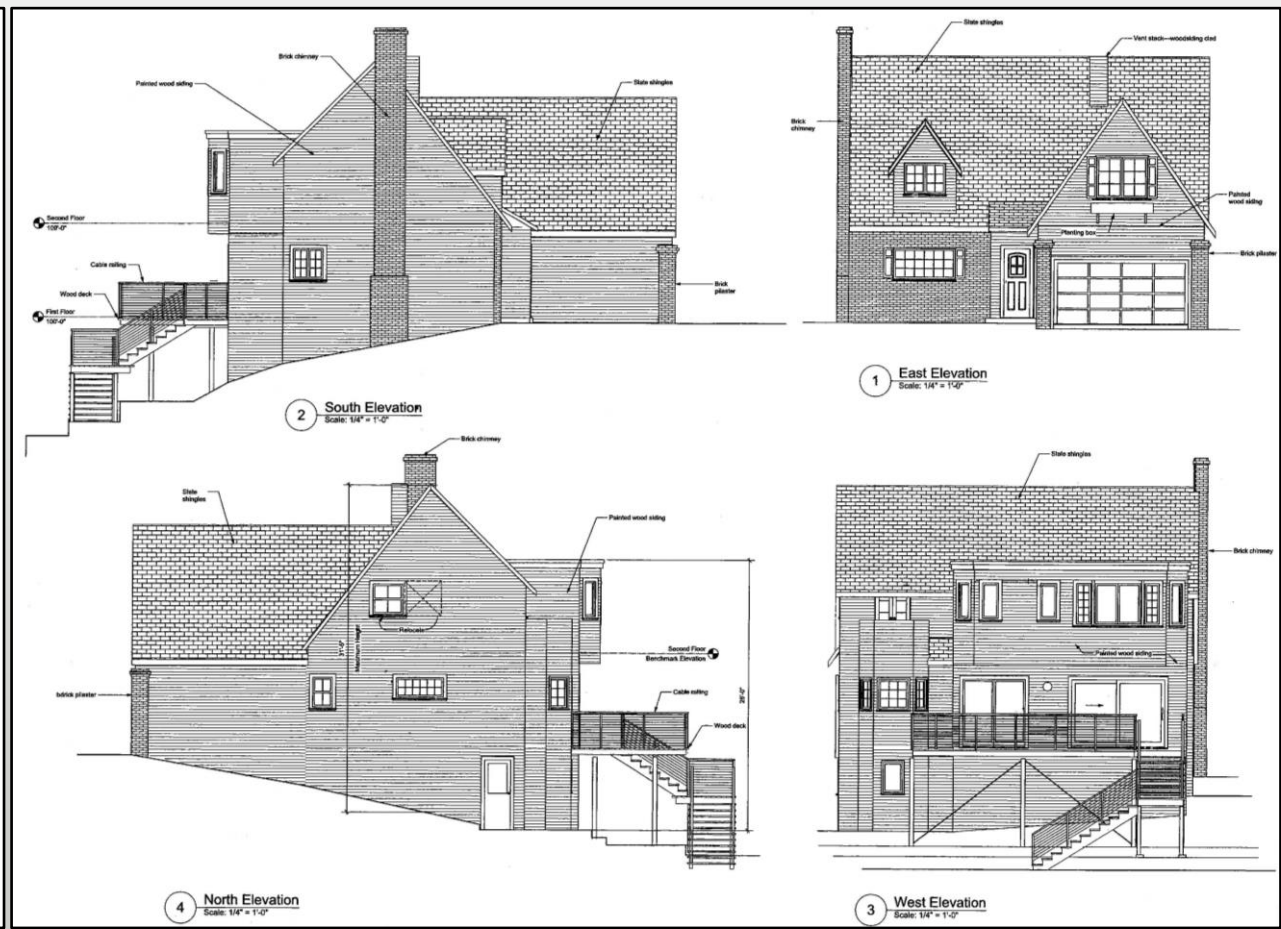
BACKGROUND

- A Kensington design review application (County File #KR19-0011) was submitted on July 26, 2019.
- Two hearing requests were received during the required 34-day public comment period.
- A development plan application (County File #DP19-3019) was then submitted on September 18, 2019.
- The project was scheduled at the December 16, 2019 Zoning Administrator hearing. The project was continued twice until the Zoning Administrator approved the item at the January 22, 2020 meeting with changes to finding #3 and finding #7, and changes to Condition of Approval (COA) #3 and the addition of COA #4 and COA #5.
- Staff received one letter on February 3, 2020, appealing the Zoning Administrator's decision to the County Planning Commission.

ELEVATIONS

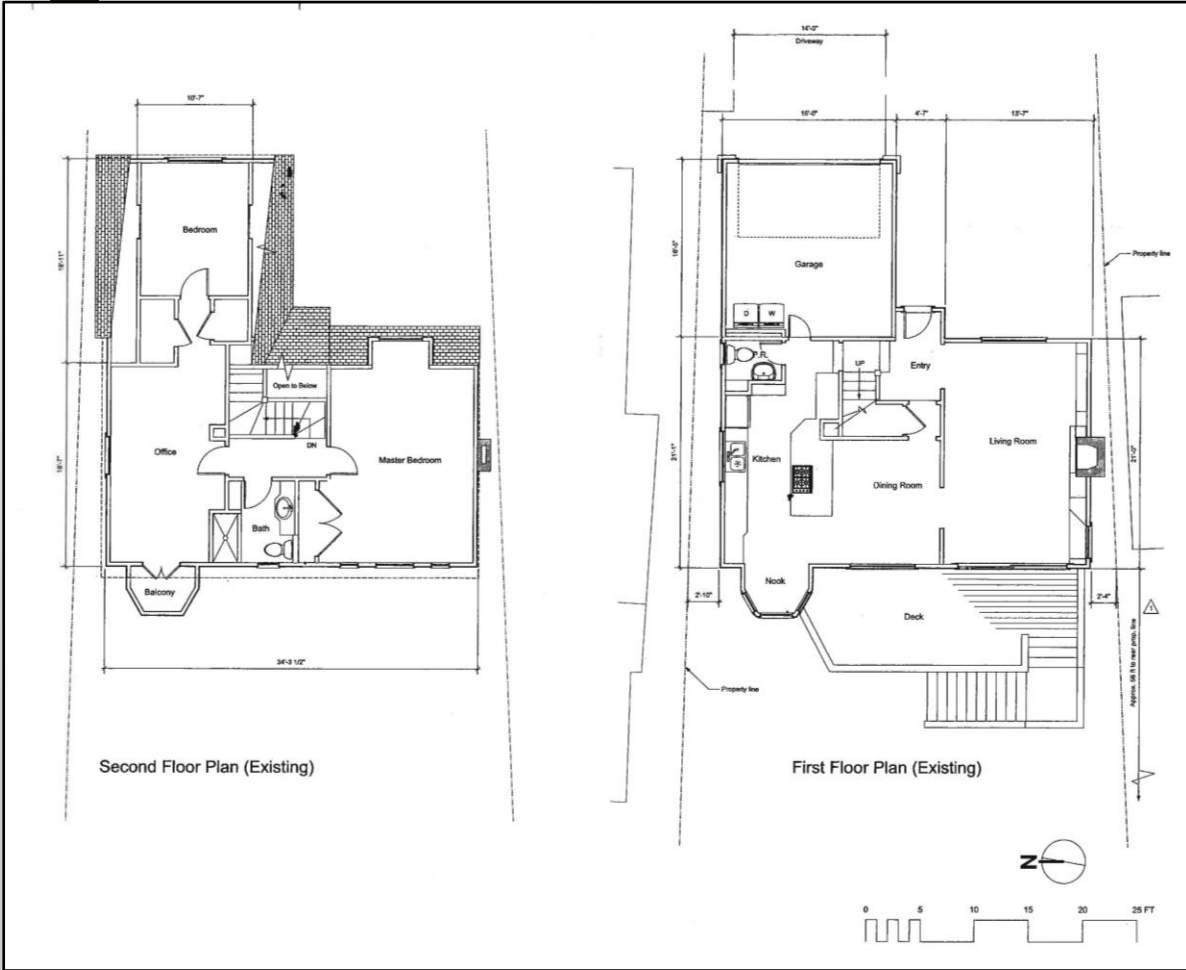


Existing

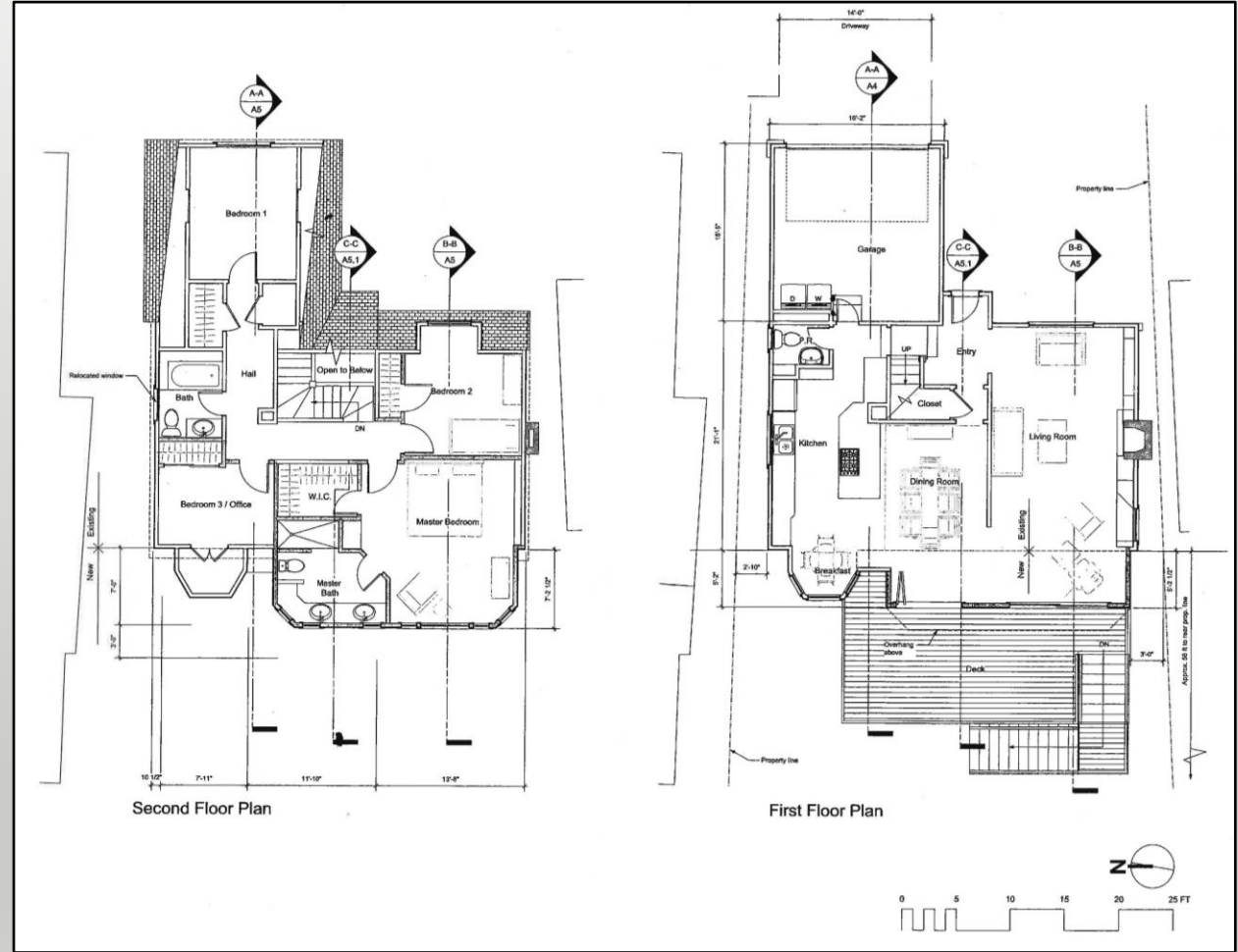


Proposed

FLOOR PLAN

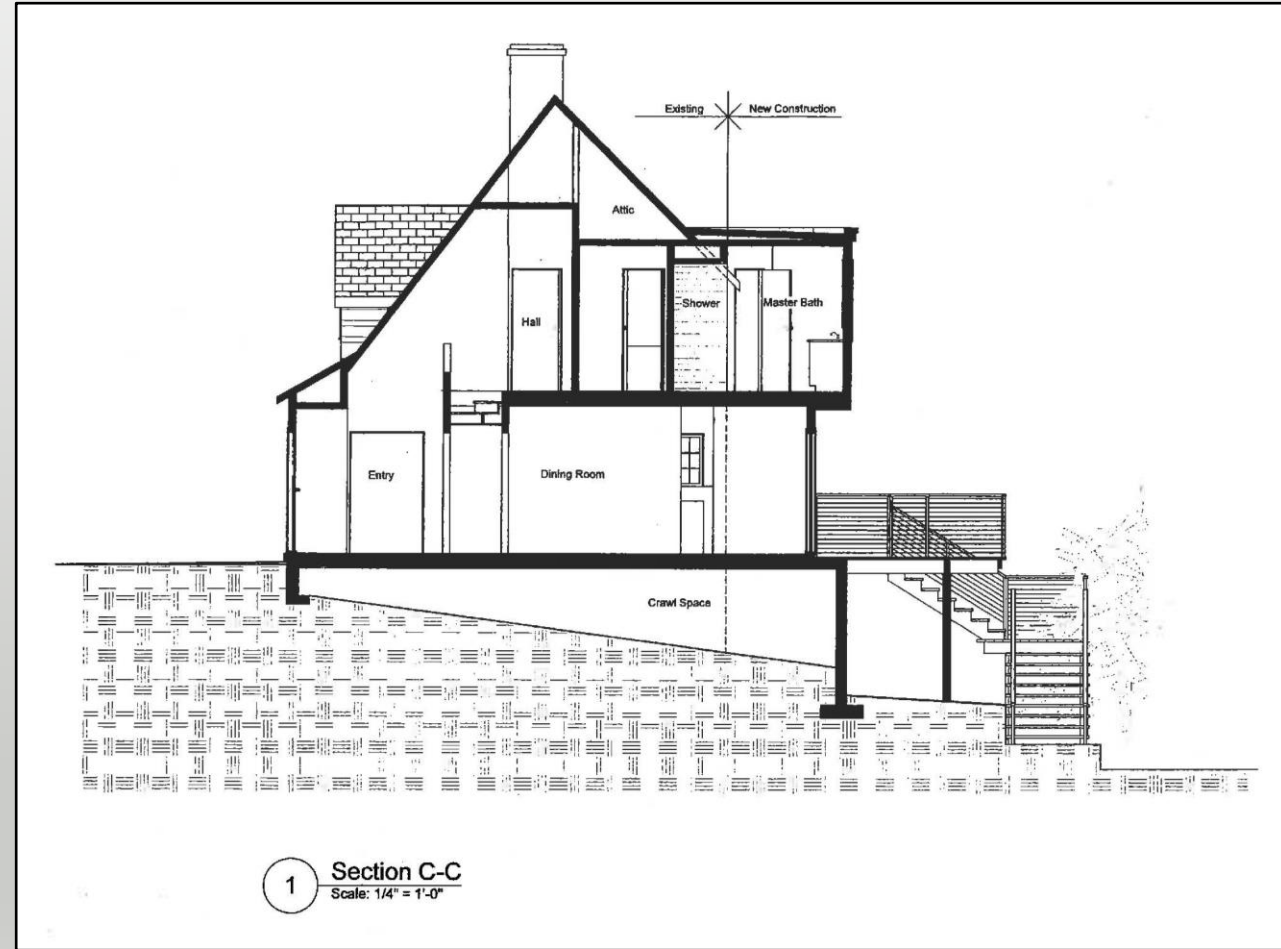
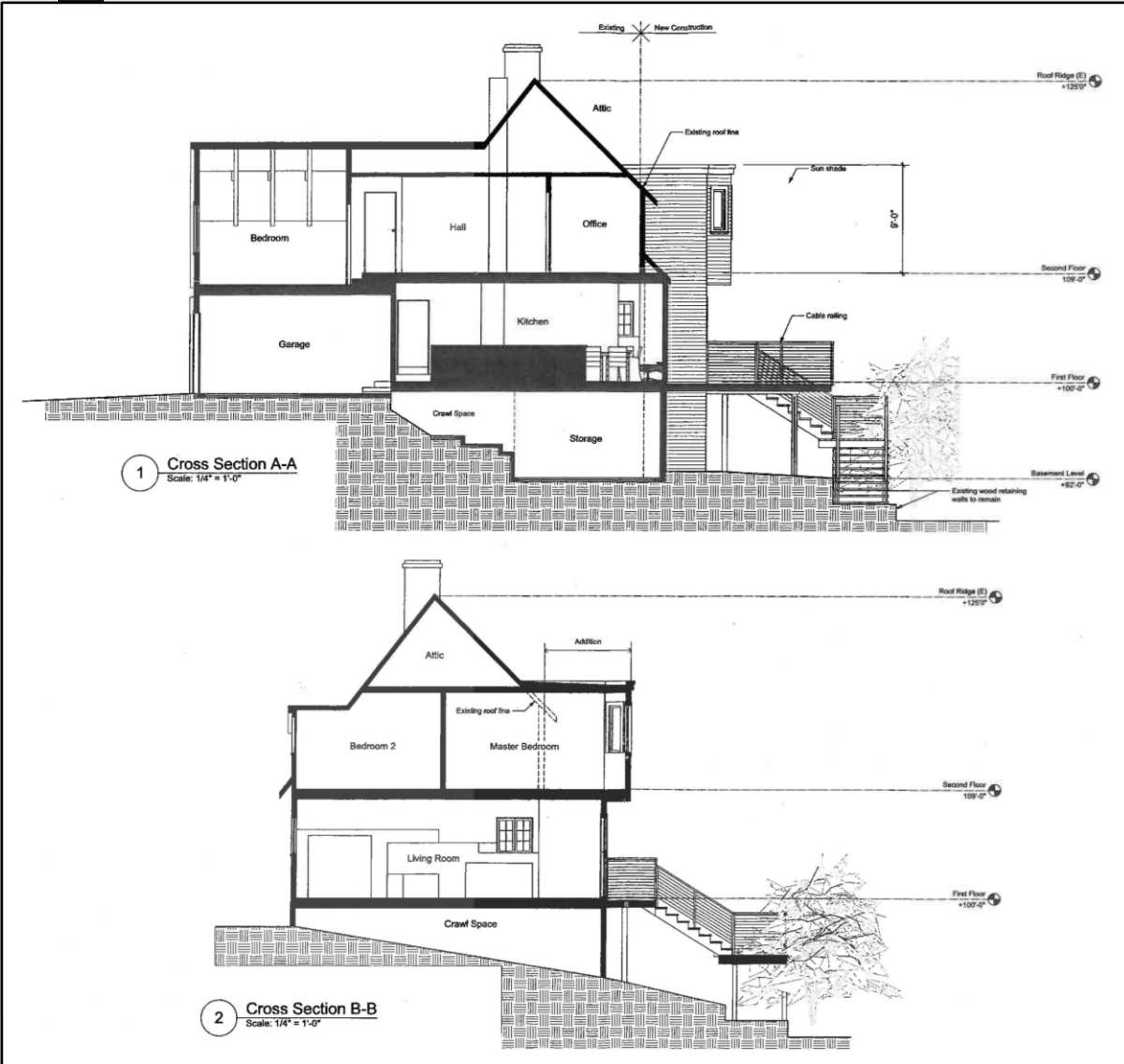


Existing



Proposed

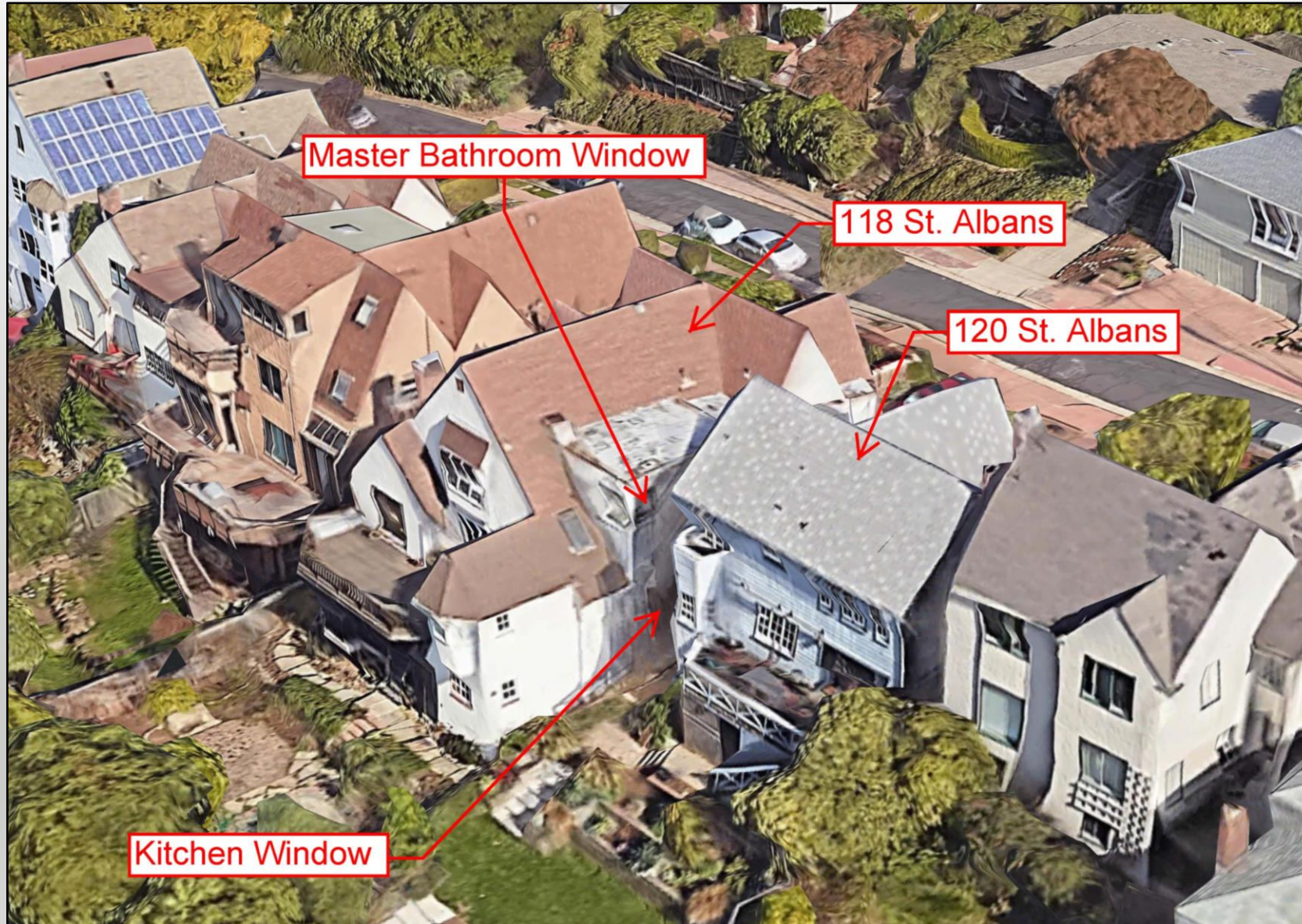
PROPOSED CROSS SECTIONS



SUMMARY OF APPEAL POINTS

- Variances for three stories and the setbacks should be required for the addition.
- The project will impact views.
- The project will impact privacy for the master bathroom and kitchen.
- The project will impact the property value.
- The project violates the standards of the Kensington Combining District Ordinance.
- Concerns regarding aesthetic impacts under CEQA.
- The appeal also discusses concerns with County processes related to noticing and access to files.

AERIAL PHOTO



VIEW FROM APPELLANT'S WINDOWS

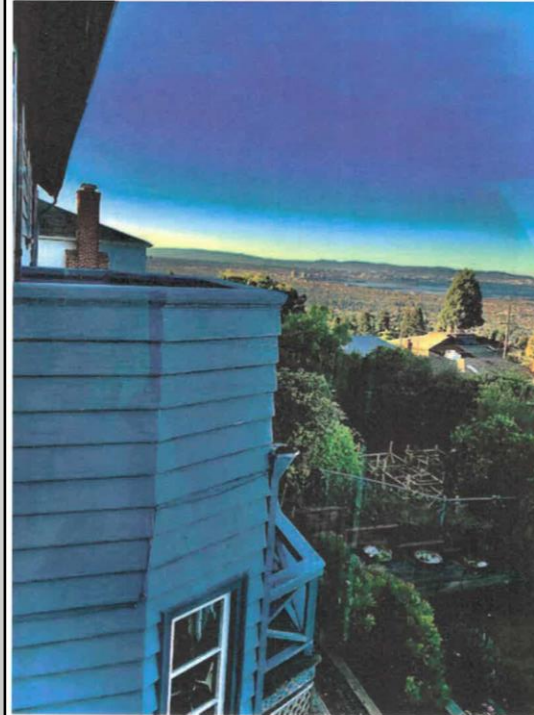
Existing View of Bay and Bay Bridge



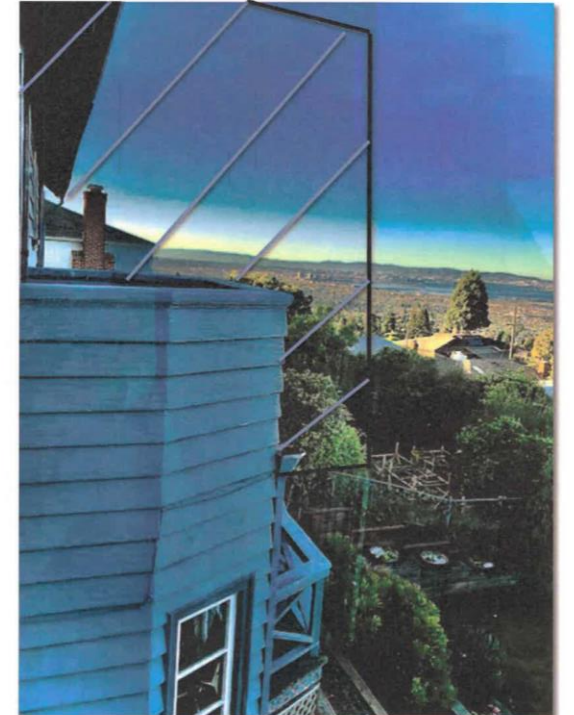
Conservative Estimate of View Impacts from Proposed Deck



Existing View from Master Bathroom



Conservative Estimate of View Impacts from Expansion Beyond the Existing Nook



STAFF RECOMMENDATION

Staff recommends that the County Planning Commission DENY the appeal and UPHOLD the Zoning Administrator's decision to approve County File #DP19-3019.



QUESTIONS?