

Rushworth Appeal

Ruth Kiskaddon and John Wright

Appeal of Planning Commission
overturning Planning Division approval for
new single-family residence on vacant lot
on Pt. San Pedro Road



Background:

- Submitted for planning approval, 5/14/21
- Project approved by Planning Department, 3/22/22
- Neighbor filed appeal, 3/31/22
- Planning Commission granted appeal, 6/13/22
- Final motion: “grant the appeal and direct the applicant to return with a project that is somewhat smaller in FAR, steps down on the site, that reduces the volume underneath, and steps away where it can from the oak and wetland”
- Clarifications were made that “some” wetland buffer intrusion would be acceptable and that FAR should be “closer” to the 30% allowed in R1 zoning districts but no specifics were given

We believe the Planning Commission's decision should be overturned because that decision was based on:

1. Application of Floor Area Ratio (FAR) requirement that does not apply to the subject property
2. Failure to accept expert opinion and planning staff conclusions that proposed minor wetland buffer encroachments would not harm the adjacent wetland
3. Failure to accept expert opinion and planning staff conclusions that proposed pruning of the heritage oak tree would not harm that tree

1. Application of Floor Area Ratio (FAR) requirement that does not apply to the subject property

Project Information:

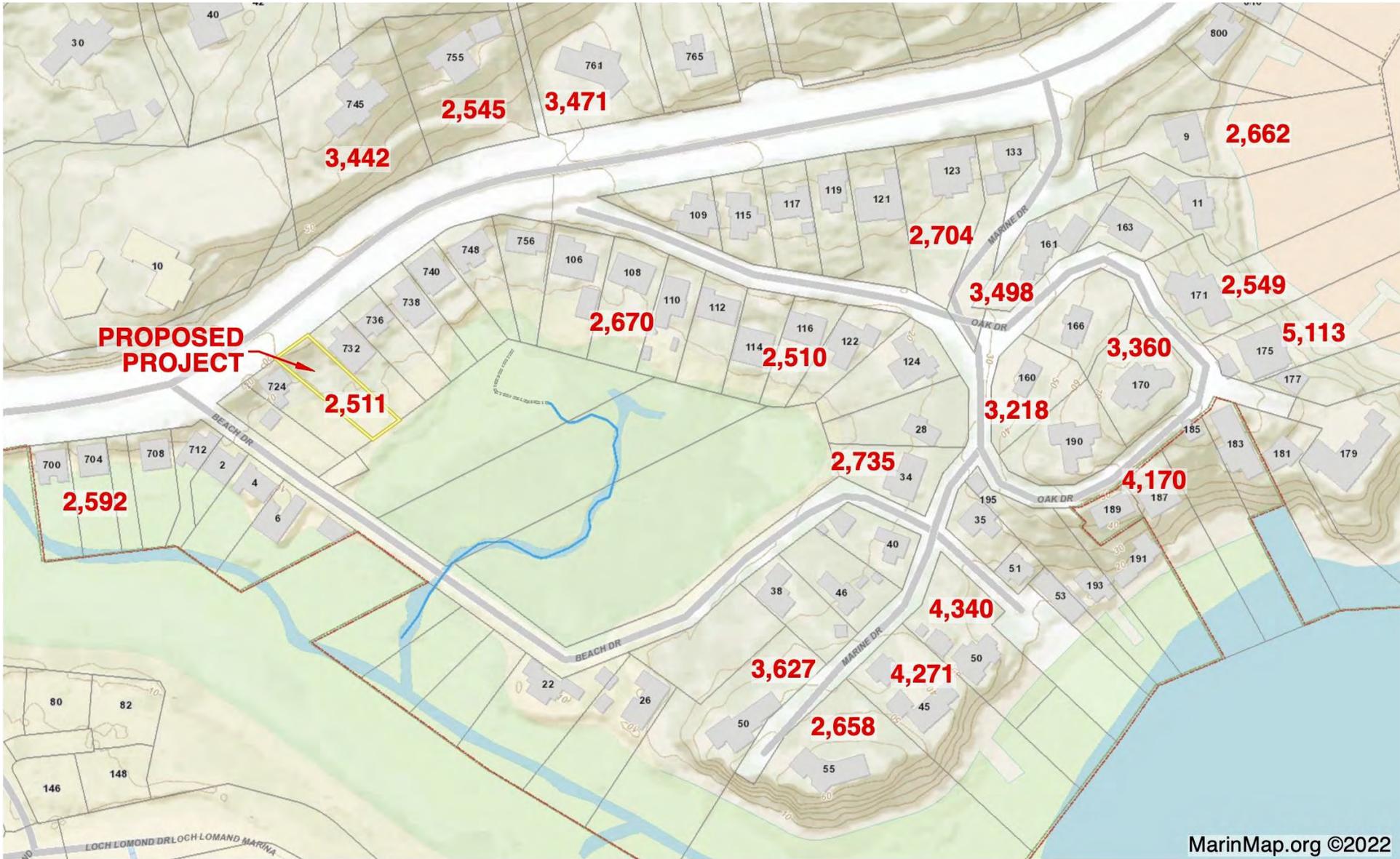
Zoning:	BFC-RSP-7.26
Max. FAR:	None
Min. Setbacks:	None
Max. Height:	30'-0" (proposed project does not exceed)
Design Review:	Administrative review required
Living Area:	2,511 SF
Crawlspace >7':	808 SF (non-habitable, in flood zone)
Total	3,319 SF
Lot Area:	6,959 SF
FAR	48%

- Planning Commission stated concerns about “bulk and mass”, but was clearly focused on FAR and concerns about setting a precedent in approving a 48% FAR.
- Commission repeatedly called attention to the fact that the crawlspace area inflated the FAR
- Final motion was to “grant the appeal and direct the applicant to return with a project that is **somewhat smaller in FAR** and steps down on the site to **reduce the volume underneath...**”.
- Neither Planning Department nor Planning Commission were able to compare FAR of the proposed project with nearby properties because Marin County does not collect data on non-habitable crawlspace area.
- If the first floor was lowered by just 4”, none of the crawlspace area would be included and FAR would be reduced to 36% (a 25% reduction.)

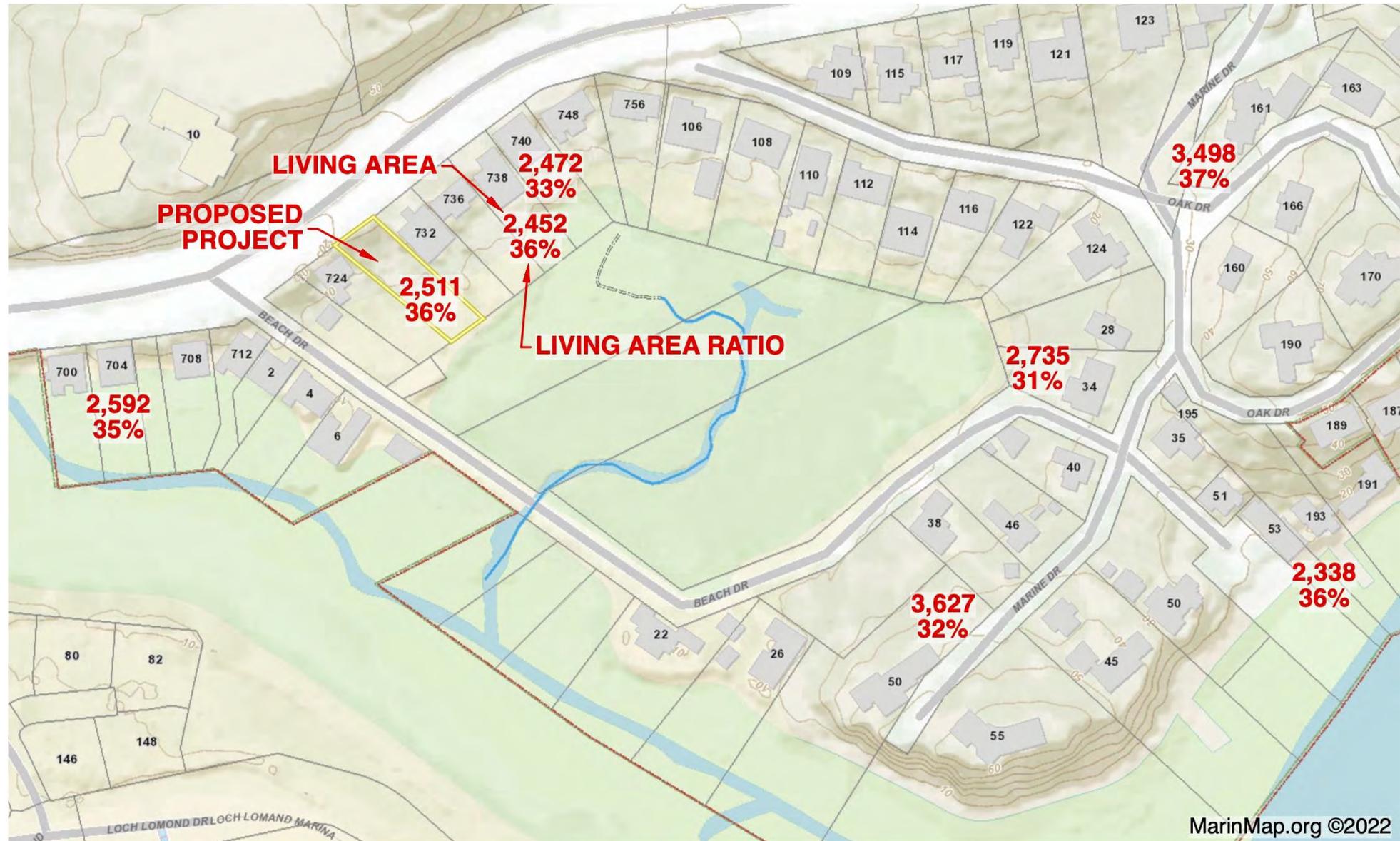
Proposed project:

- Utilizes visual bulk reduction techniques identified in the Marin County Residential Design Guidelines (set-backs, step-backs, wall articulation, etc.)
- Is below allowable height
- Is in a zone where there is no FAR requirement
- Has a smaller living area than 28% of homes in the neighborhood
- Has Living Area Ratio (living area / lot area) similar to 7 homes in the neighborhood
- Is only a few hundred feet to the East of new homes under construction that are over 3,000 SF on much smaller lots (The Strand at Loch Lomond, highly visible from the project site and neighborhood)

Nearby homes with 2,500 SF of living area or greater (19/65 = 29%)



Nearby homes with similar "Living Area Ratio" (Living Area/Lot Area)



Proposed project in context (Note height is below that of 738 and 740)



Rear of 740 Point San Pedro Rd (150 feet from proposed project)



2. Failure to accept expert opinion and planning staff conclusions that proposed minor wetland buffer encroachments would not harm the adjacent wetland

Marin Countywide Plan BIO-3.1

For parcels within the Baylands Corridor, a minimum 100-foot development setback from wetlands is required. The Plan recognizes that areas within setbacks may contain significant resource values similar to those within wetlands and also provide a transitional protection zone. An additional buffer may be required, based on the results of a site assessment, if such an assessment is determined to be necessary. **Exceptions to full compliance with the WCA setback standards may apply only in the following cases:**

1. Parcel is already developed with an existing use, provided no unauthorized fill or other modifications to wetlands have occurred as part of ongoing use of the property.
2. Parcel is undeveloped and falls entirely within the WCA.
3. Parcel is undeveloped and potential impacts on water quality, wildlife habitat, or other sensitive resources would be greater as a result of development outside the WCA than development within the WCA, as determined by a site assessment.
4. **Wetlands are avoided and a site assessment demonstrates that minimal incursion within the minimum WCA setback distance would not result in any significant adverse direct or indirect impacts on wetlands.**

Biological site assessment concluded:

“The Project would not result in any significant adverse impacts on special-status plant or animal species...”

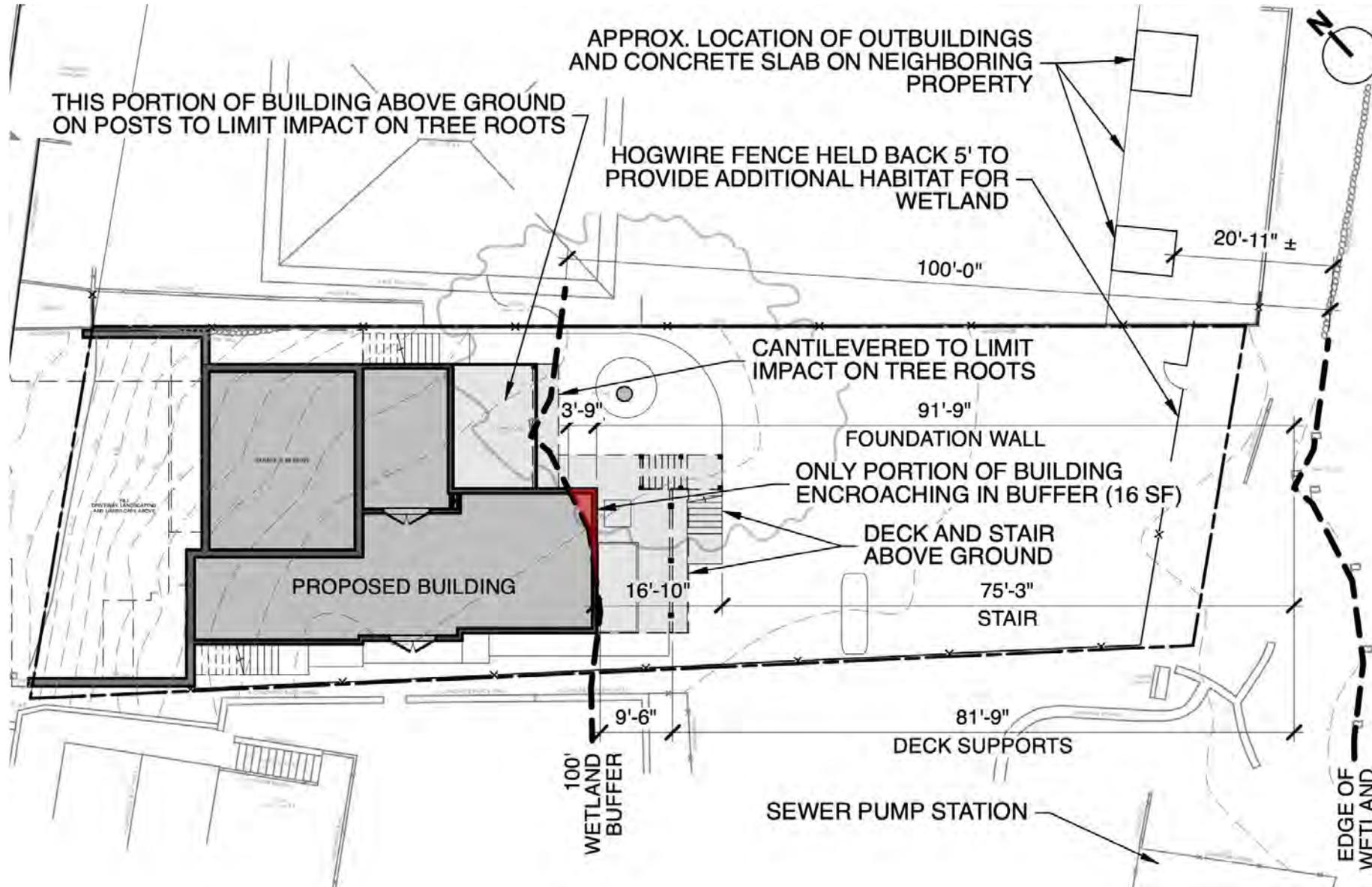
“The project would not directly adversely affect significant riparian lands, wetlands, marshes, or other significant wildlife habitats.”

“...the proposed construction (to include the new residence, driveway access, installation of utilities, landscape plan) would not result in significant biological impacts at this disturbed urban site. **Much of the construction area within the proposed 0.16-acre parcel has been previously cleared and is vegetated almost entirely with non-native species.**”

Supplemental biological report indicated:

“These incursions are **minor in the context of this particular parcel**. This is **not a pristine, untrammelled site**. It is an infill lot within an existing residential neighborhood. The area of the buffer zone that would be impacted is **covered with non-native vegetation, and the ground is already heavily disturbed** given the location of the parcel between two already developed parcels; the parcel has been walked on and **used as an occasional refuse dump for years if not decades**. The **two neighboring parcels have ancillary structures already built well into the buffer zone**, far more intrusively than anything proposed by this project. The presence of shallow foundation walls, deck posts, gravel, and the planter/AC boxes at the upper end of, and in some cases barely within, the buffer zone **will have an insignificant impact on the wetlands given the physical distance of the work from the wetlands and its small footprint.**”

Site plan showing proposed minor incursion into wetland buffer



Aerial view showing proposed project and existing 100' wetland buffer incursions



Existing incursions at 732 Point San Pedro Rd (~21 feet from edge of wetland)



740 Point San Pedro Rd (deck ~30 feet & house ~68 feet from edge of wetland)



740 Point San Pedro Rd (pool ~44 feet from edge of wetland)



3. Failure to accept expert opinion and planning staff conclusions that proposed pruning of a heritage oak tree would not harm that tree

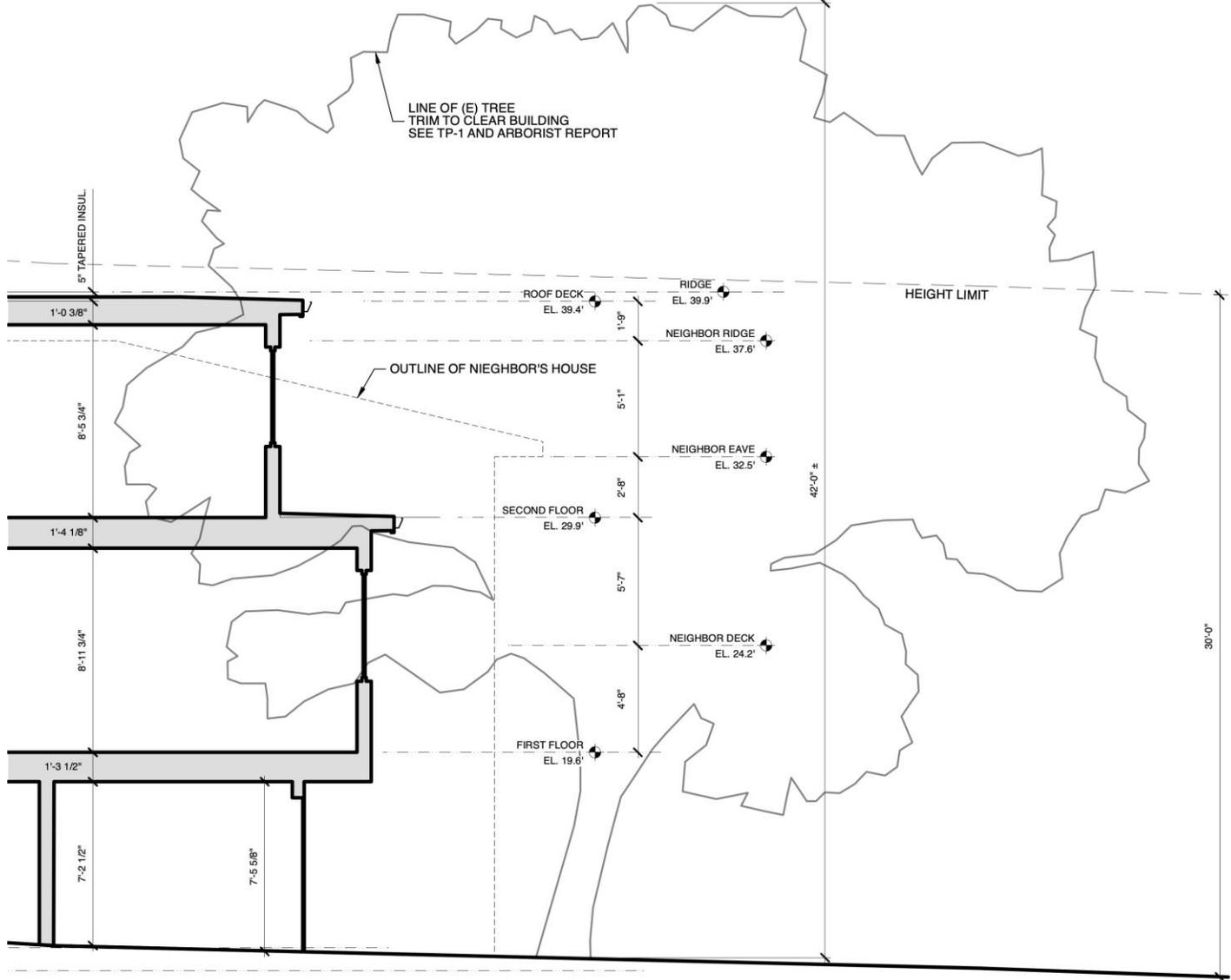
Three arborist reports:

- Arborist report was submitted with initial planning application which indicated that proposed project would not cause substantial harm to the tree
- Same arborist submitted a second report, after story-poles were in place, reiterating opinion that proposed project would not cause substantial harm to the tree but suggested reducing roof overhangs near tree from three feet to one foot (applicants agreed to make this change)
- Applicants commissioned a third arborist report (from a second arborist) which reached the same conclusion, that the proposed project will not cause substantial harm to the tree
- Neighbors have provided no evidence or expert reports to substantiate their assertion that the proposed project would harm the tree

Proposed project complies with County requirements:

- Planning Division staff determined that, in accordance with BIO-1.3 and Marin County Code Chapter 22.27, the project did not require the removal of a protected tree
- There is no County ordinance that would require a permit for the pruning required by this project
- Proposed pruning could be done today, without a permit

Section showing overlap with tree



4. Conclusion

We ask that the Board reinstate planning approval because:

- The proposed project meets zoning requirements, and its size is similar to other homes in the neighborhood
- The proposed project meets Countywide Plan requirements, will not cause any significant adverse impact on the wetland, and there is no evidence on the record to the contrary
- Three arborist reports indicate the oak tree will not be substantially harmed by the proposed project and there is no evidence on the record to the contrary

If the Board is also concerned about FAR:

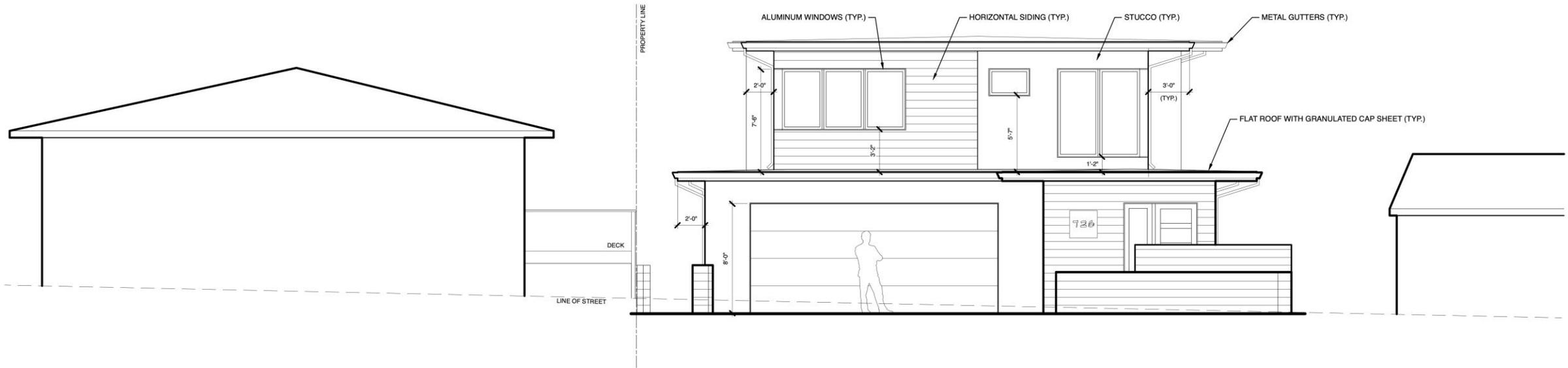
- While we believe the Board should reinstate the Planning Division staff approval in its entirety, we would be open to lowering the first floor by 4” in order to reduce FAR to 36%.
- This would require a step down from the garage and so would not be our preference but would not otherwise alter the proposed design.
- If the Board deems this change necessary, we ask that it be made as a condition of approval so the project would not have to go back through the planning process, and we could proceed directly to a building permit.

5. Approved resolution does not accurately reflect Planning Commission hearing proceedings or zoning requirements

- Approved resolution suggests the proposed project would “cause irreversible and permanent damage” to the oak tree, “substantially alter the margins of wetlands,” “eliminate significant sun and light exposure,” “eliminate privacy,” and “reduce vegetation screening”
- None of these conclusions were stated by the Planning Commission at the hearing, nor are they supported by facts on the record
- The approved resolution asserts that the proposed project will have an impact that is “greater than necessary” and has “unnecessary encroachments”
- Those are not the applicable standards
- We hope the Board was able to review our comments on the approved resolution

6. Supplemental Information





1 FRONT (WEST) ELEVATION
 Scale: 1/4" = 1'-0"

FINISHES



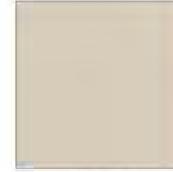
ALUMINUM WINDOWS
BRONZE



HORIZONTAL SIDING
BENJAMIN MOORE 1599
"MARINA GRAY"



GUTTERS & FASCIA
BENJAMIN MOORE 1601
"HEARTHSTONE"



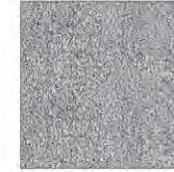
STUCCO
BENJAMIN MOORE 982
"CEDAR KEY"



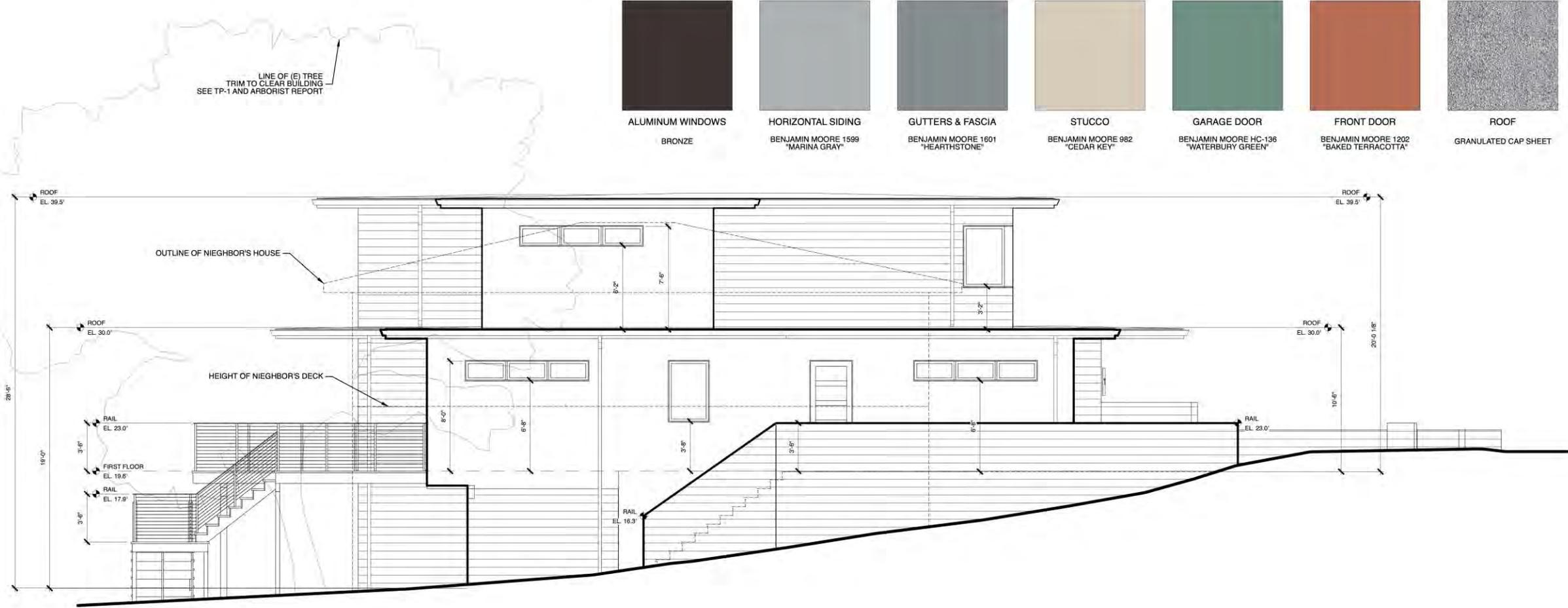
GARAGE DOOR
BENJAMIN MOORE HC-136
"WATERBURY GREEN"



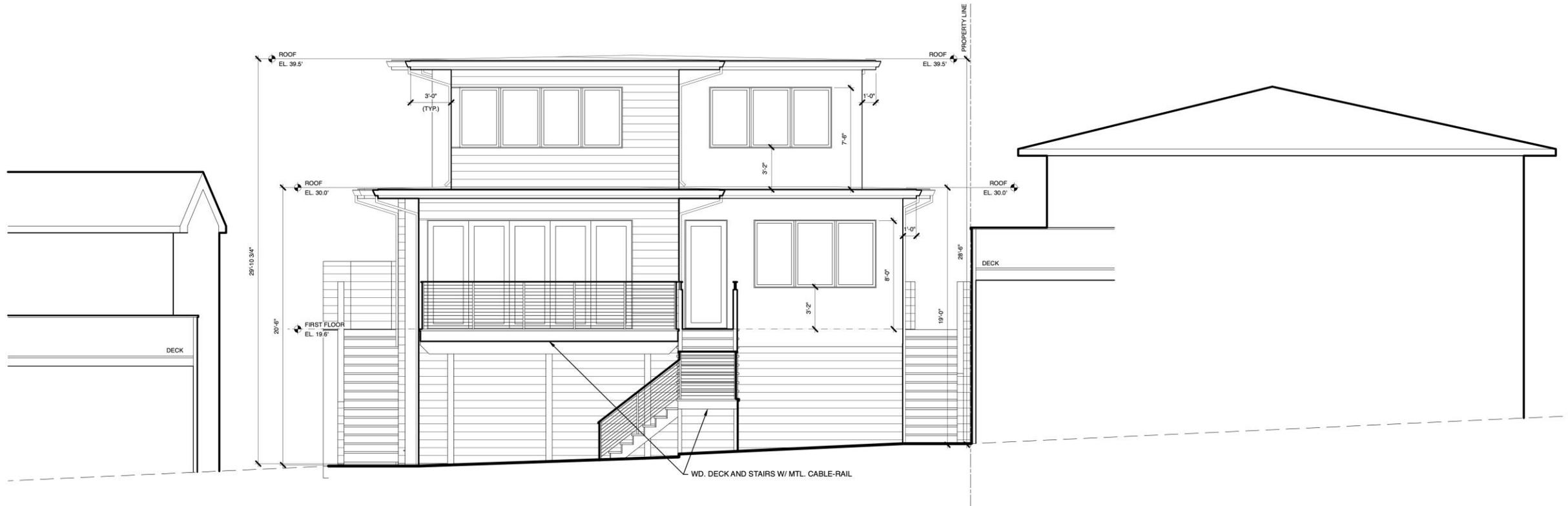
FRONT DOOR
BENJAMIN MOORE 1202
"BAKED TERRACOTTA"



ROOF
GRANULATED CAP SHEET



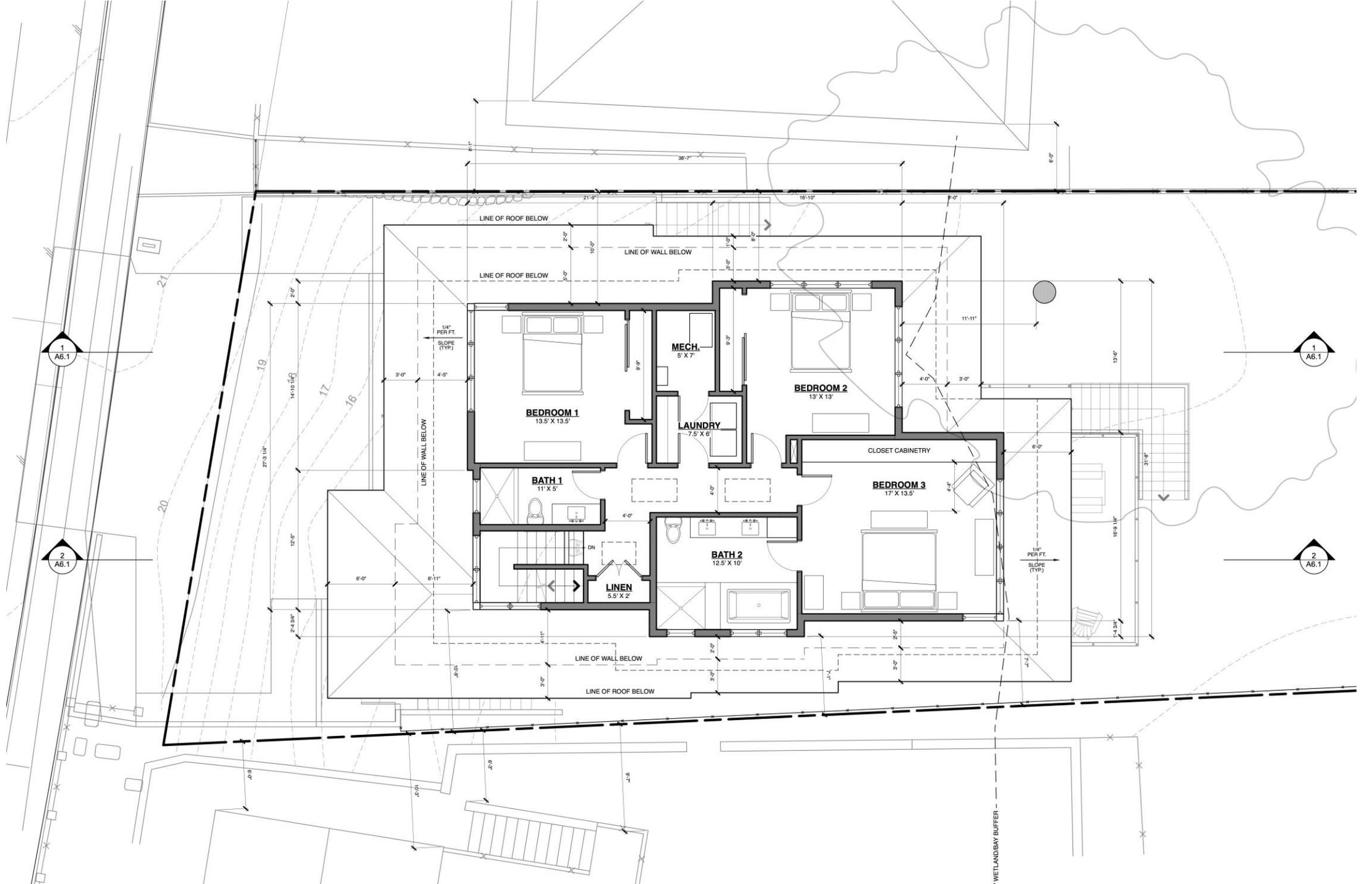
2 LEFT (NORTH) ELEVATION
Scale: 1/4" = 1'-0"



1 REAR (EAST) ELEVATION
 Scale: 1/4" = 1'-0"



2 RIGHT (SOUTH) ELEVATION
 Scale: 1/4" = 1'-0"



Complete drawing set:

<https://drive.google.com/open?id=1cUXwM3PEFTGw8zSvIhXN49yHKYzF-MB5>