



# FAIRFAX TOWN COUNCIL SPECIAL MEETING STAFF REPORT

**MEETING DATE:** September 13, 2023  
**PREPARED FOR:** Mayor and Town Council  
**PREPARED BY:** Mark Lockaby Building Official  
**SUBJECT:** Appeal of Suspension of Building Permit - 79 Wood Lane, Coby Freidman (Appellant)

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## RECOMMENDATION

That the Town Council receive the staff report and reject the appeal of the building permit suspension at 79 Wood Lane.

## BACKGROUND

On January 20, 2022, the Planning Commission approved application #21-17 for a new residence, garage and ADU at 79 Wood Lane. To allow for the construction of the proposed project, the Commission made the appropriate findings and approved the following permits and variances:

- Hill Area Residential Development
- Excavation
- Tree Removal
- Design Review
- Minimum and Combined Side-yard Setback and Retaining Wall Height Variances

The site has topographical constraints with a relatively flat front yard that extend about 92 feet. After that point the lot slopes up at a rate of 42% for 320 feet. Due to the topographic constraints the Planning Commission was careful to review and approve a project that could be safely constructed, with limited risk of landslide. This included a limit on the excavation for a basement and the careful placement of structures on the site.

The Planning Commission also worked carefully to address the concerns of adjacent neighbors that considered limits on the height, massing and orientation of the structures to limit the visual and physical impact on adjacent properties. The Commission approved the design review permit and made the appropriate findings.

All building permits issued are required to be consistent with the Commission approvals and on August 4, 2022, a building permit was issued to Coby Friedman to construct a single-family dwelling, and a detached garage with an accessory dwelling unit attached to the garage, under the assumption that the site would be built as approved by the Commission.

Shortly after the permit was issued a Stop Work Order was posted due to the building footprint for the house being over excavated, beyond what was approved by the Planning Commission. The approved plans were to have a basement for 1/3 of the area, and then step up to the other

2/3rds of the under-floor area. Instead, the entire area under the house was excavated to the same depth. Coby Friedman's attorney filed a writ to have the Stop Work Order removed. After the court hearing and discussions Mr. Friedman agreed to construct the under-floor area with a stepped-up foundation system. The foundation was installed, and then the project went dormant through most of the winter. Construction resumed in the Spring.

On June 5, 2023 I went to do a framing inspection. During the inspection I noticed that there were numerous changes to the plans without the required town approvals. A stop work notice was posted. Discussions ensued between Mr. Friedman, his attorney, the Fairfax town attorney, and staff. We came up with the following agreement that would allow him to continue with some portions of the construction while seeking approval for the unpermitted items. Following is the agreement all parties agreed to:

*[Coby,*

*During a requested framing inspection, I noticed that there were several changes to your approved plans. You submitted new plans for the current design. The changes are either shown on the plans, or have been started as follows:*

- 1. A portion of the basement is shown to be an accessory dwelling unit, with an addition to meet egress requirements for the bedroom. We believe this can proceed.*
- 2. A portion of the top floor has been prepared to be a junior accessory dwelling unit, including enclosing an upper deck, and the addition of an exterior stairway. We believe the JADU can proceed however the enclosure of the deck, and exterior stairway must go to the planning commission for approval. No work can proceed on the rear stairs or enclosed area until planning commission approvals are obtained. Additionally there will be a deed restriction required stating that the home is to be owner occupied (State Law).*
- 3. A portion of the of the basement is shown as additional living space (office) for the main residence. You have agreed to remove this from the plans, or seek approval from the planning commission.*
- 4. A rear deck is shown at the rear of the structure at ground level. You have agreed to remove the deck from the plans, or seek approval from the planning commission.*
- 5. The front low roof is shown as being eliminated, and a deck above a portion of the lower floor even with the top floor is shown. This must go to the planning commission for approval. No work can continue further with the deck until planning commission approval is obtained.*
- 6. The new plans show a garage without out the ADU that was shown on the plans previously approved by the Planning Commission. The limit for the parcel is the main house, 1 ADU, and 1 JADU. In the future the garage cannot be converted to an ADU, or have an ADU added to it (unless state laws change).*
- 7. You agreed to be cordial during any interactions with town staff, and the planning commission.*

*At this point only foundation inspections, and under slab plumbing inspections have been completed. At some point very soon framing, plumbing, mechanical, and electrical inspections will need to be scheduled and passed before any work can continue.*

*Please update your new plans to reflect the agreed upon deletions, and work with the planning department for the changes that need planning commission approvals.*

*I let you know that if any work is continued in the areas that need planning commission approvals a "Stop Work" order will be issued.*

*Please let me know if you have any questions regarding this matter.*

*Regards,*

*Mark Lockaby*

*Building Official]*

On 8-10-2023 I went to 79 Wood Lane due to concerns by the adjacent neighbor regarding excavations at the site. While there I noticed the construction had commenced, again inconsistent with Planning Commission approvals Mr. Friedman had agreed to seek Planning Commission approval for before proceeding. Mr. Friedman's permit was suspended. The permit issuance, which included the changes detailed above, resulted in changes to the exterior of the house and garage designs that can only be approved by the Planning Commission. The building permit issuance to allow the appellant to continue work on the property that did not include the unapproved exterior changes to the buildings, was based on the appellant indicating that he would, in a timely fashion, submit the required planning application for the unapproved exterior changes. To date he has not followed through on this agreement to submit his planning application for the exterior changes proposed to both the approved house and the garage/ADU structure.

After I had discussions with Mr. Friedman, and his attorney had discussions with the Town attorney, I provided a letter of suspension of building permit to Mr. Friedman and posted at the construction address along with a Stop Work Order. Some discussions were started between Mr. Friedman's attorney, and the Town attorney, and on 8-23-2023 Mr. Friedman's attorney sent an email that they would not be complying with the orders and would continue construction. Construction resumed without Town approval.

On 8-25 2023 I went to 79 Wood Lane with an officer from the Fairfax Police Department, and informed the work crew that if they continued construction, they would be individually cited for ignoring the posted stop work order.

On 8-29-2023 Mr. Friedman's attorney filed a writ to have the permit suspension and stop work order lifted. On 9-5-2023 the Judge set a future court date, and directed parties to meet and confer regarding the issues. On 9-6-2023 Mr. Friedman filed an appeal to have the Town Council lift the suspension and stop work order. At present, excavation for the garage is in a hazardous state as appropriate support has not been provided. There is a potential for collapse of the sides of the excavation, causing damage to the adjacent property. Mr. Friedman has declined the Town's request to stabilize this excavation pending the resolution of the building permit suspension.

## **DISCUSSION**

Mr. Friedman has continued work that is inconsistent with the approval of the Planning Commission and has repeatedly violated stop work orders. Staff has suggested a possible cure to Mr. Friedman of applying for a design review amendment, which would be processed by staff and taken to the Planning Commission for a decision. Note that the Planning Commission would need to consider any amendments to the project entitlements and make appropriate findings, so it is not clear that the Commission could approve the changes without a thorough review.

As part of the Planning Commission review process, the applicant would also be required to demonstrate that the homes as proposed are consistent with the Town's design review requirements. During the approval process in 2021 and 2022, the Planning Commission directed that the applicant change several aspects of the project's design to consider the Town's design guidelines and the concerns of adjacent property owners. The applicant's designer made several changes and the Planning Commission approved the project. The Commission would need to consider the alterations to the designs made "in the field" and make the appropriate findings prior to approval and/or direct that changes are made to the project "as built".

At this time Town staff cannot approve Mr. Friedman's building plans without approval of the appropriate planning entitlements by the Town of Fairfax Planning Commission. Due to the fact that the applicant has so far built a project that is inconsistent with the approved plans, staff recommends that the appeal be denied and the suspension be upheld pending review and action by the Planning Commission

## **FISCAL IMPACT**

None at this time.

## **ATTACHMENTS**

Attachment 1a: Approved lower roof

Attachment 1b: As built lower roof eliminated with deck in its place

Attachment 2a: Approved basement

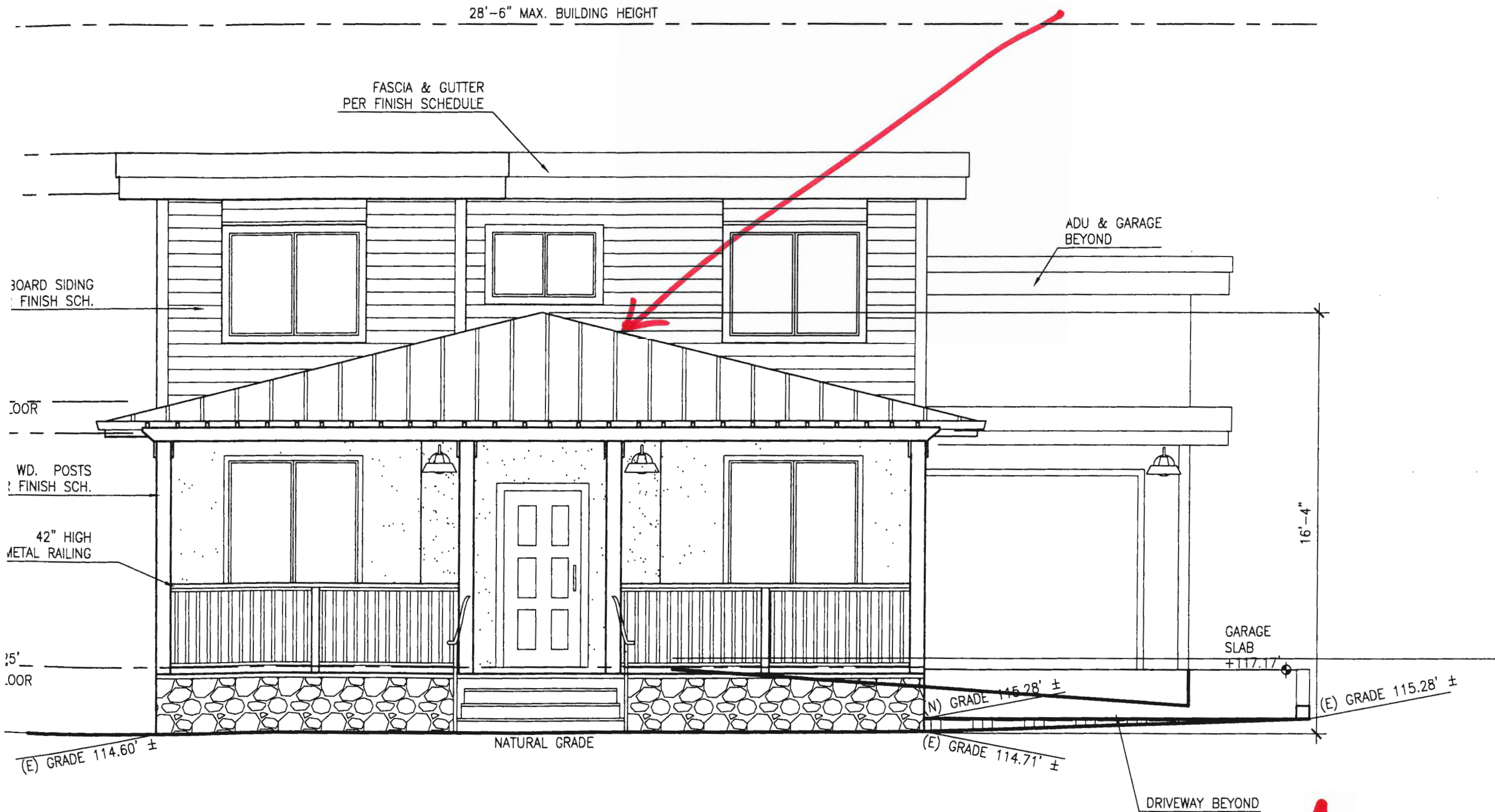
Attachment 2b: As built basement

Attachment 3a: Approved upper floor

Attachment 3b: As built upper floor

LOW ROOF OVER  
FIRST STORY APPROVED

1a

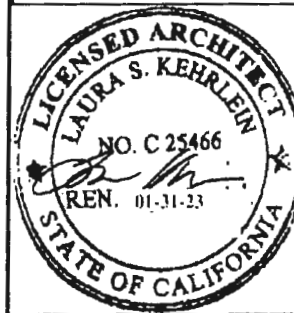


ARCHITECTS

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RESIDENCE AND ADU

79 WOOD LANE  
FAIRFAX, CA 94930  
APN: 002-062-03  
FOR: COBY FRIEDMAN

1a

RESIDENCE - NORTH ELEVATION

SCALE: 1/4" = 1'-0"

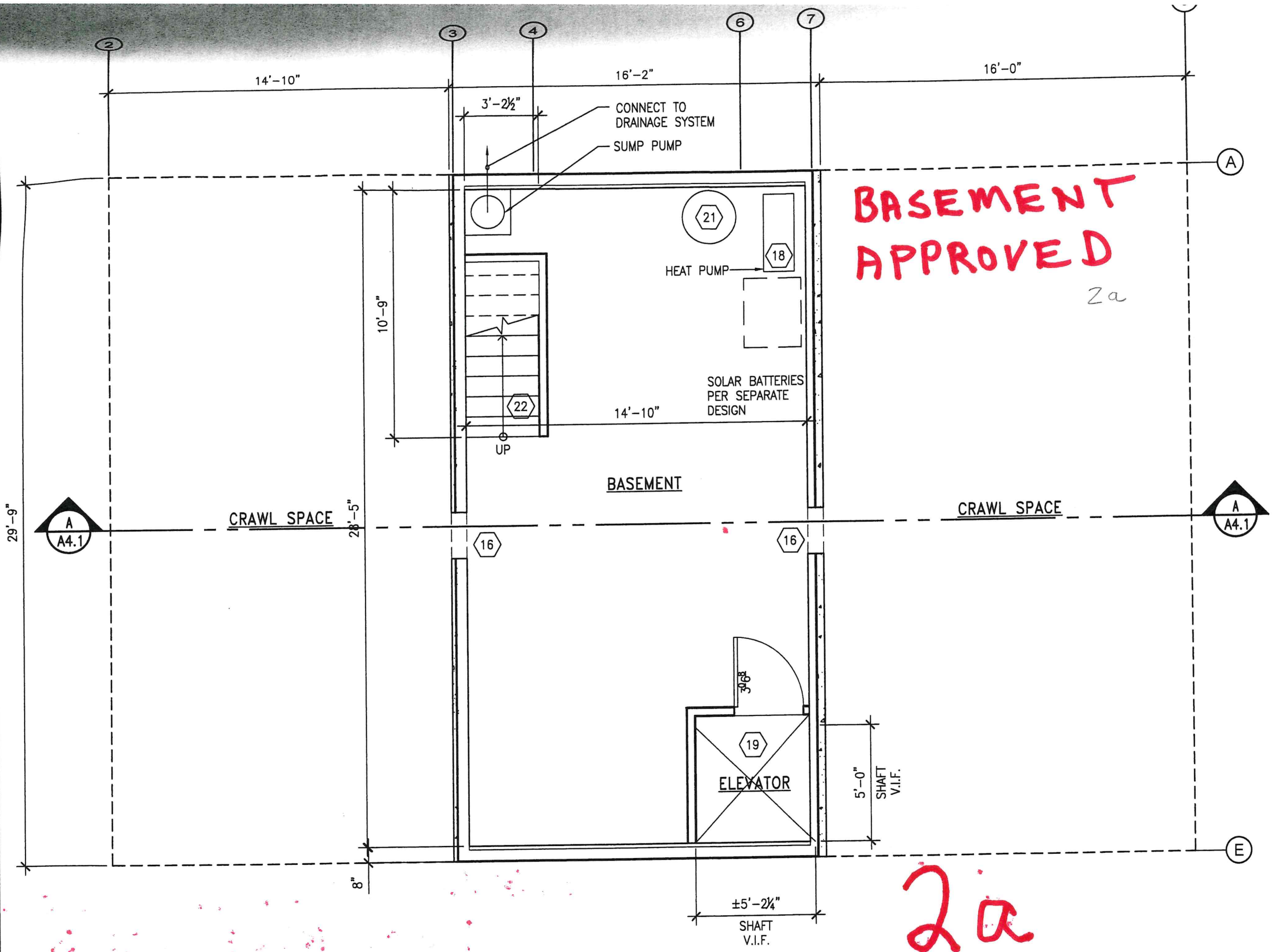
3  
A24



DECK OVER FIRST  
STORY NOT APPROVED

1 b

1 b

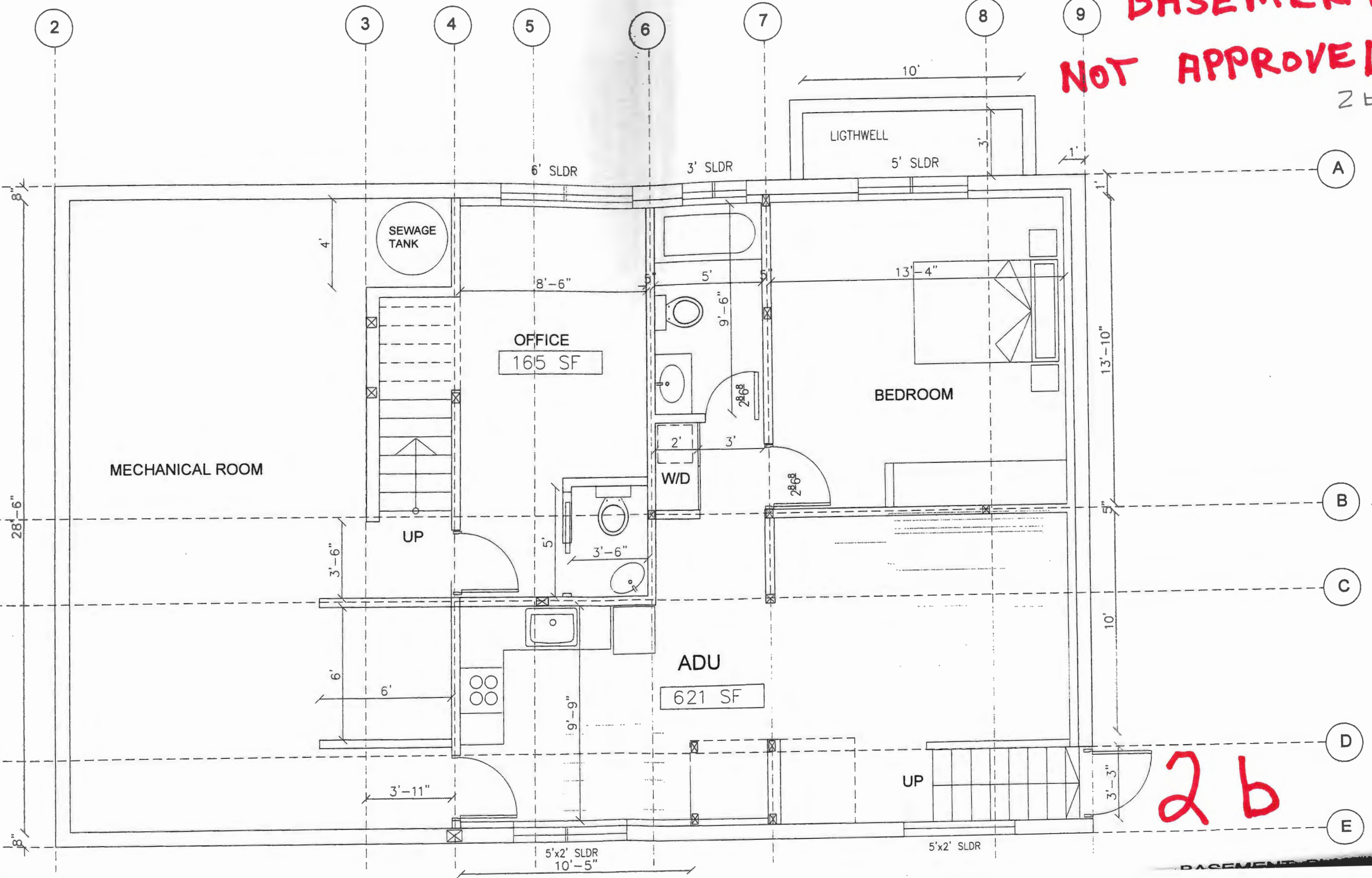


**BASEMENT APPROVED**  
2a

2a

**BASEMENT**  
**NOT APPROVED**

2b



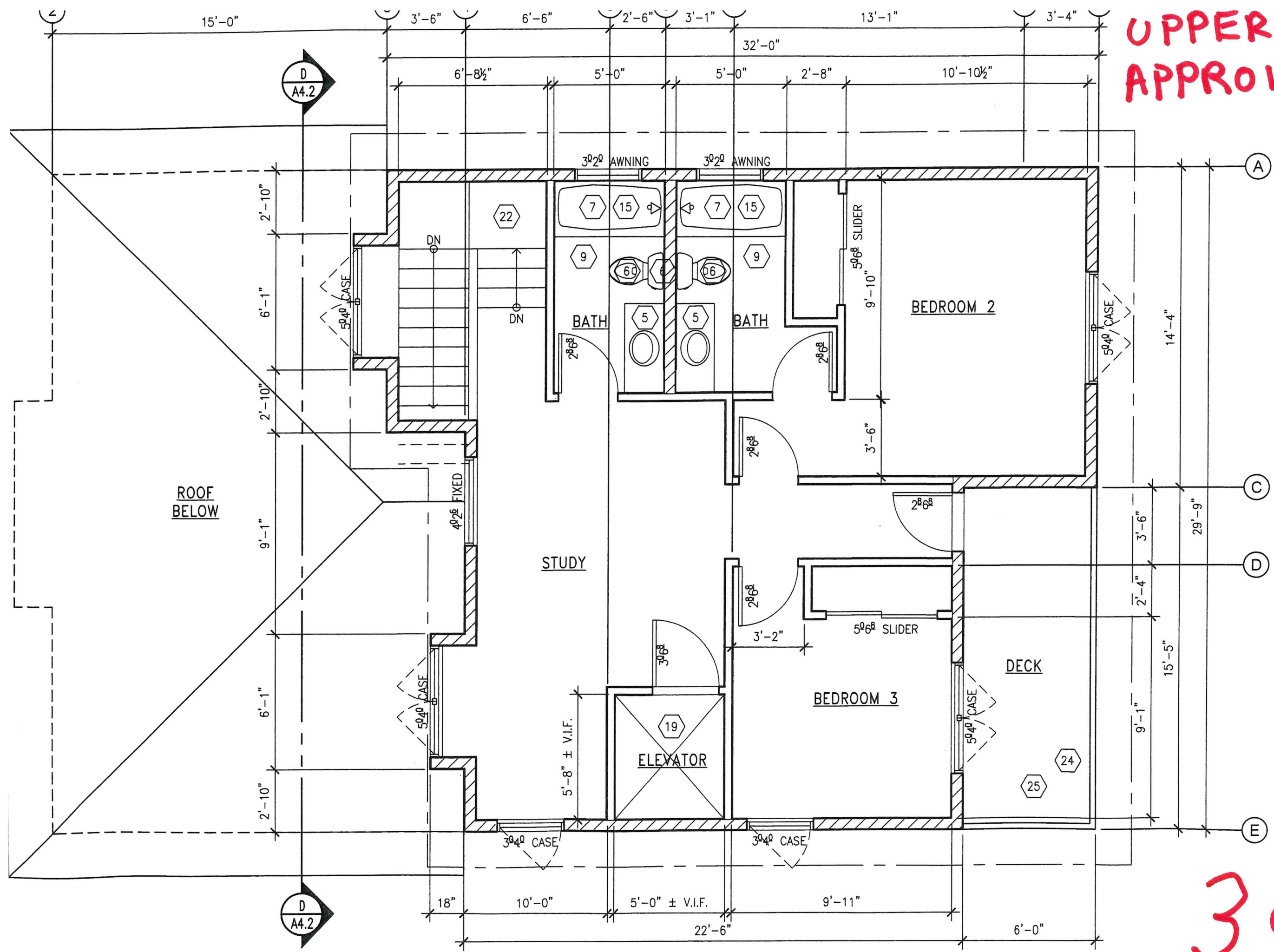
2b

BASEMENT

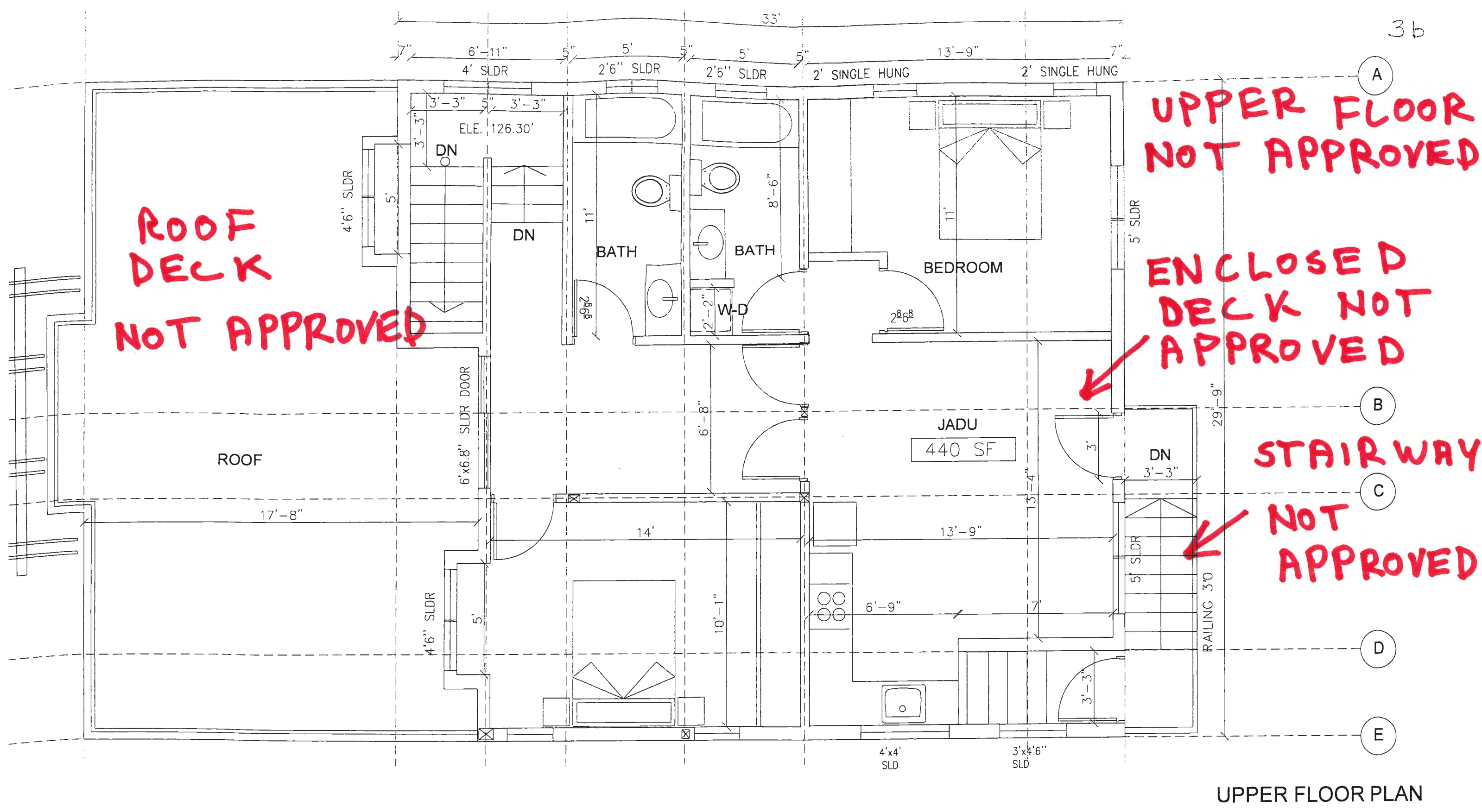


UPPER FLOOR  
APPROVED

3a



3a



**UPPER FLOOR NOT APPROVED**

**ROOF DECK NOT APPROVED**

**ENCLOSED DECK NOT APPROVED**

**STAIRWAY NOT APPROVED**

**NOT APPROVED**

UPPER FLOOR PLAN