



REPORT TO DESIGN REVIEW BOARD

SUBJECT: 33/41 Ross Street Terrace – Request for a Lot Line Adjustment for property line adjustment, Exception, and Environmental and Design Review Permits to allow: (1) Construction of a 2,842-square foot, single-family residence on vacant hillside Lot 59; (2) Construction of a 2,885-square foot residence on vacant hillside Lot 60; and (3) Construction of a two-lane access driveway approximately 480 feet in length within the undeveloped Ross Street Terrace right-of-way; APN: 012-141-59 and 012-141-60; Single-family Residential (R7.5) District; Coby Freidman, applicant. File No(s): LLA19-008 / ED19-090 / ED19-091 / EX20-006.

*****Continued from the May 4, 2021 Design Review Board Meeting*****

PROPERTY FACTS

Location	General Plan Land Use Designation	Zoning Designation	Existing Land-Use
<i>Lot 59 (33 Ross Street Terrace)</i>	Low Density Residential	R7.5	Vacant
<i>Lot 60 (41 Ross Street Terrace)</i>	Low Density Residential	R7.5	Vacant
North:	Low Density Residential	R7.5	Vacant
South:	Low Density Residential	R7.5	Single-family Residence
East:	Low Density Residential	DR/MR2	Single and Multi-family Residences
West:	Low Density Residential	R7.5	Single-family Residence

SUMMARY

The proposed project is being referred to the Design Review Board Subcommittee (Board) for conceptual review of site and building design for the construction of two single-family residences on two separate vacant hillside lots and a new common driveway within the undeveloped Ross Street Terrace ROW, linking the project sites to Ross St. These lots were previously addressed as 33 and 41 Ross Street Terrace. But because the proposal involves a lot line adjustment that would move the access panhandle for the upper lot (41 Ross Street Terrace) in front of the lower lot (33 Ross Street Terrace), the project plans and staff report will refer to the upper lot as Lot 59 and the lower lot as Lot 60. The existing and proposed upper lot are both flag lots and are legal lots of record.

A Certificate of Compliance (COC) was issued by the Planning Commission on November 12, 1963. The key conditions of approval are as follows.

1. A road shall be constructed to the satisfaction of the City Engineer; it shall be 16 feet wide.
2. A water main shall be installed in front of the lots.
3. Connection to the sewer system is required.

The current project meets these requirements and is similar to the proposal presented to the Board on August 22, 2017 during a previous conceptual review. The primary differences include a change to the proposed Lot Line Adjustment and changes in the architectural design of the proposed structures. The layout of the current Lot Line Adjustment (LLA) is an improvement over the previous application which had a narrow strip of land along the eastern side of the property with the lower lot.

On May 4, 2021, the Board unanimously (4-0 vote, Blayney absent) approved a requested continuance by staff to a 'date certain', to the next scheduled Board meeting on May 18, 2021, to allow staff time to better provide the Board with plans in a format more usable for the complexities of the project. The DRB meeting previously scheduled for May 18, 2021 was also cancelled to today's date.

BACKGROUND

Site Description & Setting:

The project site consists of two single family lots located on the east slope of Moore Hill in the Gerstle Park Neighborhood. Because both lots have average slopes greater than 25% they are classified as hillside lots subject to the City's hillside development standards. The project also proposes a Lot Line Adjustment (LLA) to re-locate the panhandle portion of Lot 59 from the northside of Lot 60 to the southside of Lot 60. The LLA proposes to relocate the future driveway on Lot 60 to a less steep portion of the site and simplify the provision of a Fire Department turn around at the end of the Ross Street Terrace.

The previous project proposed similarly sized residential units, 2,808 sq. ft. vs. 2,842 sq. ft. for Lot 59, and 2,627 sq. ft. vs. 2,885 sq. ft. for Lot 60. Both versions of the proposed single-family residences were three bedroom, two and a half bath, twostory homes with two- car garages.

Access to the two parcels would be from Ross Street via Ross Street Terrace. Previous iterations of the project suggested access from Clayton Street. However, site topography, combined with the hairpin turn from Clayton Street onto Ross Street Terrace make this access (from the north side) impractical.

Like the previous project, the current proposal involves the use of a new Ross Street Terrace access drive to connect to the City's road network. Construction of the access drive would involve the construction of retaining walls along both sides of the access drive. Current plans show retaining wall heights on the west side, above the roadway ranging from 12' near the intersection with Ross Street to 3 – 5' along most of Ross Street Terrace. Retaining walls along the east side of the access drive would range in height from between two and six feet along most of its alignment. Like the previous proposal, the current proposal shows the width of the middle portion of Ross Street Terrace to be only 16 feet wide. The Fire Department has requested that the access drive be a minimum width of 20 feet wide. This will require that some of the retaining walls will be somewhat higher along much of the alignment (except for that portion near Ross Street which is already 20 feet wide).

The proposed project (with the 16-foot access drive) would require the removal of 2,030 cubic yards of earth. Approximately 690 cubic yards would be filled onsite. The remaining 1,340 cubic yards would be exported (removed from the site) to an appropriate location approved by the Department of Public Works.

Staff is looking for the Board's concurrence/comments on the proposed Lot Line Adjustment and resulting site plan. Does the LLA demonstrate the best layout to develop the properties? In addition to the layout of the LLA, staff has concerns about the requested Natural State Exception and Guest Parking and is looking for the Board's concurrence on the following items:

- *Exception to Natural State requirement - Pursuant to Section 14.12.030 of the Zoning Code, projects on Hillside lots need to reserve a minimum area of twenty-five percent (25%) of the lot area plus the percentage figure of average slope, not to exceed a maximum of eighty-five percent (85%), as natural state. Natural state includes all portions of lots that remain undeveloped and*

undisturbed. Grading, excavating, filling and/or the construction roadways, driveways, parking areas and structures are prohibited. Planting and landscaping which enhances the natural environment are permitted when approved through an environmental and design review permit. The applicant is requesting an exception to the Natural State which allows for the following:

- Lot 59 - The minimum natural state required for this lot is 3,610 square feet. The applicant's data (Sheet TS) proposes a total natural state of 1,957 square feet, which is less than the minimum required and therefore an exception to the natural state requirement is requested. In comparison, proposed lot is 78% in size (only 60% of the minimum lot size if the panhandle is removed from the calculation); 1,957 square feet is about 54% of the required minimum natural state.
- Lot 60 - The minimum natural state requirement for this lot is 3,283 square feet. The applicant's project data (Sheet TS) proposes a total natural state of 1,741 square feet, which is less than the minimum required and therefore an exception to the natural state requirement is requested. In comparison, proposed lot is 67% in size; 1,741 square feet is about 53% of the required minimum natural state.
- **Exception to Guest Parking requirement** – pursuant to Section 15.07.030(c) each lot created on substandard city and all private streets shall provide a minimum of two off-street parking spaces. These independently accessible guest parking spaces should be developed on each lot and shall not be located on the driveway apron. The proposed Ross Street Terrace roadway is between 16 and 20 feet wide.
 - Lot 59 - One guest parking space is proposed in front of the residence in what realistically is the backup and turnaround area for vehicle pulling out of the garage. This will be discussed in more detail later.
 - Lot 60 – One guest parking space is proposed in front of the residence.
- **Exception to Driveway Slope requirement** – pursuant to Section 15.07.030 the grade for new streets and driveways shall not exceed 18% unless an exception has been granted by the hearing body and the design has been recommended by the Design Review Board. The project includes a short segment when the grade is 24.86%.
- **Architecture:** Whether the design of the new residences incorporate appropriate design elements and contributes to the mix of architectural styles of the neighborhood and whether this style adequately incorporates architectural details to minimize height differences.
- **Materials and Colors:** Whether the colors and materials are appropriate for this site.

Project Information using the proposed lots and residences are provided below.

Lot 59 (Upper Lot)				
	Minimum Required or Maximum Allowed	Existing Lot (2)	Proposed Lot	Compliant Y/N
Min. Lot Size	7,500 sq. ft.	5,851 sq. ft.	5,851 sq. ft.	N (No Change)
Average Lot Slope	-	32.7%	36.7%	-
Max. Gross Building Area (2,500 square feet + 10% lot area)	3,085 sq. ft.	3,085 sq. ft.	2,842 sq. ft.	Y
Min. Natural State (25% + %Average Slope)	61.7% 3,610 sq. ft. (1)	100% 5,851 sq. ft.	54% 1,957 sq. ft.	N
Max. Lot Coverage	40%	0%	23.87%	Y
Max. Building Height	30 feet	0 feet	25.2 feet	Y

Lot 59 (Upper Lot)				
	Minimum Required or Maximum Allowed	Existing Lot (2)	Proposed Lot	Compliant Y/N
Stepbacks	Cannot exceed 20 feet over more than 25% of the length of each building side	0%	Side South – 0% Front – 0% Side North – 16%	Y Y Y
Parking	2	0	2	Y
Guest Parking	2	0	1	N
Min. Setbacks				
Front	15 feet	0 feet	15 feet	Y
Rear	10 feet	0 feet	10 feet	Y
Side-South	6 feet	0 feet	6.9 feet	Y
Side-North	6 feet	0 feet	17.4 feet	Y

Notes:

- (1) *The Minimum Natural State requirement for a 7,500 square foot lot with a 61.7% average slope would be 4,628 square feet.*
- (2) *The existing lot is vacant/undeveloped.*

Lot 60 (Lower Lot)				
	Minimum Required or Maximum Allowed	Existing Lot (2)	Proposed Lot	Compliant Y/N
Min. Lot Size	7,500 sq. ft.	5,028 sq. ft.	5,028 sq. ft.	N (No Change)
Average Lot Slope	-	45.1%	40.3%	-
Max Gross Building Area (2,500 square feet + 10% lot area)	3,003 sq. ft.	3,003 sq. ft.	2,885 sq. ft.	Y
Min. Natural State (25% + %Average Slope)	65.3% 3,283 sq. ft. (1)	100% 5,028 sq. ft.	53% 1,747 sq. ft.	N
Max. Lot Coverage	40%	0%	27.39%	Y
Max. Building Height	30 feet	0 feet	22 feet	Y
Stepbacks	Cannot exceed 20 feet over more than 25% of the length of each building side	0%	Side South – 0% Front – 0% Side North – 19%.	Y Y Y
Parking	2	0	2	Y
Guest Parking	2	0	1	N
Min. Setbacks				
Front	15 feet	0 feet	15 feet	Y
Rear	10 feet	0 feet	10 feet	Y
Side-South	6 feet	0 feet	6 feet	Y
Side-North	6 feet	0 feet	6 feet	Y

Notes:

- (1) *The Minimum Natural State requirement for a 7,500 square foot lot with a 65.3% average slope would be 4,898 square feet.*
- (2) *The existing lot is vacant/undeveloped.*

Previous 2017 Project

On August 22, 2017, the Design Review Board provided conceptual review comments on a previous project design. After reviewing the project, the Board acknowledged that providing access to the vacant lots was extraordinarily challenging and encouraged staff to meet with all stakeholders, including Fire Department, neighbors, and the applicant's team to help find a solution. The Board (Board) provide conceptual design review comments on the design of the prior project:

- Due to the necessity of overwhelmingly tall retaining walls, the Ross St. Terrace access option should be discouraged and access to the site should be from Clayton St.
- If project continues to propose access along Ross Street Terrace, ownership issues surrounding the roadway right-of-way (ROW) need to be resolved. If owned by the City, abandonment should be considered and allow the project to meet private driveway standards rather than public roadway standards.
- All guest parking should be on each parcel and not located off-site, within the new roadway ROW.
- If meeting the required Natural State standard is difficult, a shared access driveway should be considered and/or an Exception.
- The 'flagpole' portion of the flag lot should be included in the Natural State calculation.
- The Lot Line Adjustment should not create the proposed rear 'dog leg' area on the lower lot.
- Contemporary design of residences may be OK though it needs refinement such as lower ceiling heights and better setbacks.
- The removal of 'significant' trees should be replaced on a 3:1 ratio, if possible. Better landscape plans needed with additional details.
- Cross-sections should be added to plans showing the sites, the proposed residences and new roadway.
- Provide story poles for the proposed new structures and staking the location and height of the new roadway retaining walls.

Lot Line Adjustment

Like the current project, the previous project layout shifted the new driveway to Lot 59 to the southside of Lot 60. However, unlike the current project the applicant proposed a finger of land about ten feet wide along the northern property line. This layout increased the buildable area of Lot 59 at the expense of the buildable area for Lot 60 since about 700 square feet of the lot was unusable due to the narrow finger of land.

In response to the previous proposal, the Board recommended that the Lot Line Adjustment not include a rear dogleg on the lower lot. The current proposal has eliminated the rear dogleg from the LLA application to create a straight property line. This change has also resulted in an increase in the depth of (lower) Lot 60 by about five feet.

Site Design

Like the current project, the previous layout proposed to construct a single-family residence on each lot. The driveway for Lot 59 following the southern property line from Ross Street Terrace up toward the new residence. Both projects would utilize the Ross Street Terrace right-of-way to access Ross Street. This configuration improved access into and out of the garage by providing a straight approach from the driveway.

The Board did not comment on the proposed side yard reduction. The general orientation of the site had not changed except that the Lot 59 residence now complies with the required 6-foot setback.

Ross Street Terrace

According to the project plans both residences would utilize the Ross Street Terrace right-of-way to access the City street network at Ross Street. The Board’s previous recommendation was to try to reduce the need for tall retaining walls and consider site access from Clayton Street. As a result, staff had the applicant design a project access to the proposed residences from Clayton Street that meets the requirements of the Department of Public Works and the Fire Department.

The existing privately-owned section of Clayton Street (which goes up the hill toward the connection with Ross Street Terrace) is only one lane wide and would require the construction of a modified travel lane in a changed location to accommodate a fire truck. These improvements would require substantial grading and retaining walls since many of the structures along Clayton Street are built on or near the property lanes. It would require the approval of the existing property owners to allow construction of the modified roadway over their properties.

In addition, staff report Exhibit 4 provides a visual comparison of proposed retaining walls taller than four feet that are unique to each alternative. The exhibit also includes representative spot wall heights at different points. The exhibit does not show the retaining walls around the proposed residences since these are common to both access alternatives. Retaining walls shorter than four feet are not depicted. The four-foot retaining wall height criterion was selected because Code Section 14.16.140(A)(2)(a) states that retaining walls taller than four feet may be permitted with environmental and design review subject to Design Review Board recommendation.

Both access alternatives involve a variety of retaining walls both above and below the proposed access drive. Based upon the submitted information, the Clayton Street access has more tall retaining walls and would directly affect the daily access to six existing residences. The construction of a Clayton Street access would require the construction of a six-foot tall retaining wall in front of the existing residence at 53 Clayton Street.

	Access from Ross Street	Access from Clayton Street
Length of Access Drive (to centerline of the driveway for the upper residence)	400 feet	440 feet
Number of Existing Residences using the Roadway for Primary Access	0	6
Starting Elevation	242 feet	203 feet
Maximum Elevation	284 feet	272 feet
Elevation at Driveway to the Upper Unit	272 feet	272 feet
Average Slope (all vertical slopes ÷ distance)	13.5%	15.7%
Approximate Length of Retaining Walls 4’ or Taller (Excludes retaining walls around proposed residences)	350+/- feet	450+/- feet

All vertical elevations are measured as Above Mean Sea Level.

After evaluating both access points, it became clear that while both alternatives require the construction of retaining walls, access from Ross Street would have less direct impact to other properties in terms of off-site grading and access. The overall length of both access drives (including the necessary Fire Department turnaround) are similar. As demonstrated in the preceding table, access from Ross Street involves less elevation gain, fewer tall retaining walls, directly affects the primary access to fewer residences, and because the access drive is straighter, will provide easier access for emergency vehicles. A Ross Street access will also avoid a potential eminent domain acquisition by the City since a Clayton Street access would involve construction on private property. For these reasons, staff is recommending that the project retain its access from Ross Street.

On a related subject, the right-of-way for Ross Street Terrace was offered to the City but was never formerly accepted. Because the proposed access drive is functionally a long driveway to the proposed residences, it will be constructed by the applicant and maintained by the owners of the properties who might be using it for access. The properties to be included in any future maintenance agreement will be evaluated by the Planning Commission when the project is considered at a future date.

Retaining Walls

The project proposes a series of retaining walls on each side of the proposed access drive along the Ross Street Terrace right-of-way. Across the access drive from the lower residence there will be two sets of taller retaining walls with intermediate landscaping. The retaining wall design in this area is the same for both the Ross Street and Clayton Street access designs. As previously discussed, the use of Clayton Street to access the property would require more taller retaining walls.

The Board expressed concern about the heights of the retaining walls along the access drive and requested additional information on their height and location, including cross sections. The plans show cross sections in multiple locations across the access drive.

Access Driveway Grade

SRMC Section 15.07.030 indicates that the grades for new streets and driveways shall not exceed 18% unless an exception has been granted by the hearing body and the design has been recommended by the Design Review Board. The access drive from Ross Street contains a 68-foot long section where the slope is 24.86%. The rest of the access drive has grades less than 18%. Staff believes it is possible to construct the access drive to better comply with the 18% requirement, however, that would involve more grading and taller retaining walls. The applicant is requesting an Exception to this requirement.

Guest Parking

The project proposes to locate the required guest parking for Lot 59 on the east side of Ross Street Terrace across the street from the Lot 60 residence. The guest parking for Lot 60 is proposed within the right-of-way for Ross Street Terrace in front of the Lot 60 residence. The current proposal has removed the guest parking from the Ross Street Terrace right-of-way to on-site locations near the front doors of each unit. SRMC Section 15.07.030(c) requires the provision of two guest parking spaces per unit. The applicant is proposing to provide only one parking space per unit. As a result, an exception is being requested.

Natural State

The previous project, like the proposed project cannot meet the natural state requirement. When the project was previously submitted to the Board, no specific information was provided on the lower lot, Lot 60.

In response the Board indicated that if the required Natural State standard cannot be achieved, a shared access driveway should be considered, or an Exception requested. Given the onsite topography a shared driveway is not feasible, and, as a result, an exception is being requested.

Building Architecture

The project proposed a contemporary style rectilinear architecture. The exterior materials were a combination of stucco and painted Hardie board siding with metal frame windows. Patio railings consisted of horizontal black powder-coated railings. The overall designs were somewhat boxy in appearance.

In response the Board noted that the contemporary design may be okay though they felt that the proposed design needed additional refinement such as lower ceiling heights and better setbacks.

The general style of the buildings has not substantially changed though the structures do comply with the required setbacks.

Landscaping, Tree Removal and Replacement

The Board also felt that the significant trees identified for removal should be replaced on a 3:1 ratio and that more detailed landscape plans were needed. The applicant has provided more detailed landscape plans which are located in the project plans contained in Exhibit 2. To provide additional information of onsite trees, an arborist report was provided.

According to the initial arborist report, the combined site contains a total of 58 trees, though only 39 are significantly sized. There are also several trees located on adjacent sites that could be affected by project construction. As summarized below, the project proposes to remove 35 of the 39 significant trees. The City defines a tree as significant in the hillside overlay district when the diameter at breast height is 12 inches or larger (6 inches for larger for live oaks). The majority of these trees are located within the right-of-way for Ross Street Terrace. A summary of the significant trees on the project site is provided below.

Tree Species	Existing	To Be Removed	To Remain	New Trees	Proposed
Acacia sp.	13	13	0	0	0
Live Oak **	10	8	2	5	7
Eucalyptus sp.	3	3	0	0	0
California Bay **	3	1	2	0	2
Others (7 species)	10	10	0	0	0
<i>Western Redbud **</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>4</i>	<i>4</i>
<i>Santa Cruz Ironwood</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>6</i>	<i>6</i>
<i>Little Gem Magnolia</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>5</i>	<i>5</i>
<i>Strawberry Tree</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>1</i>	<i>1</i>
Total	39	35	4	20	24

** - Northern California native species

There are also nineteen other trees smaller than 12 inches in diameter (or smaller than 8 inches for the Live Oak) at breast height. These include 9 Acacia, 2 California Bay, 4 Live Oak, and 4 others. The proposed replacement trees are proposed to be 24" Box specimens. Most of these will be planted along the proposed access drive. The trees shown in italics are the trees that are the proposed replacement trees.

Other issues

Also, the Board requested additional information on the access drive, including cross-sections, to better show the sites and proposed residences, as well as the new roadway and that any future storypoles should also indicate the heights of the roadway retaining walls. The plans provide detailed information on the landscape material and include cross sections across the proposed access drive. Storypoles have been placed on site to show the locations and massing of the proposed residences.

PROJECT DESCRIPTION & ANALYSIS

Lot Line Adjustment:

The proposed site plan includes a lot line adjustment to reconfigure the two existing lots by moving the driveway flag portion of the upper lot (labeled as Lot 59) from the northside of Lot 60 to the south side and shifting the lower lot (labeled as Lot 60) twenty feet to the north. The relative areas of the two lots are the same and the overall size of the developable areas on each lot are similar.

Staff is requesting DRB Subcommittee input regarding:

- The proposed lot lines and the reorientation of the two lots.
- Whether the proposed site plan demonstrates efficient use of the site.

Site Plan:

The project proposes to construct a new two story, three-bedroom, two-and-a-half-bath single family residence on each lot. Each new house includes a two-car garage and a patio deck which is accessed directly from the kitchen/family room. The numerous retaining walls are discussed in more detail later in this staff report.

Lot 59: The driveway access for the upper lot is part of the required fire department turnaround. The middle twenty-foot long segment between the retaining walls is 11½ feet wide. The upper segment driveway provides access into and out of the garage. While turning motions into the garage appear functional, the movements to back out of the garage appear to be problematic. Exiting the garage will either require a three or more points turn, the use of the proposed guest parking space to turn around, or the driver to back down the hundred-foot driveway to reach Ross Street Terrace. A portion of the upper lot turn around is proposed to be located on the lower lot through an easement.

Lot 60: Access to the garage for the lower unit is directly from Ross Street Terrace via a 20-foot-long driveway. Access is simple and direct and is not problematic in any way. One guest parking space is being provided near the front door outside of the right of way for Ross Street Terrace.

Access Drive: The original Certificate of Compliance for the project site required the construction of a 16-foot wide access drive to either Ross Street or Clayton Street. The proposal is to connect to Ross Street involves the construction of a 16-foot-wide access drive back to the driveway to the upper lot; twenty feet wide at the transition to Ross Street. The northern end of the access drive will be 28 feet wide. At the end of the access drive, a barrier wall will be installed to prevent vehicles from driving off the edge. Except for a short section, the grade of the access drive complies with the City's 18% requirement.

Guest Parking: One guest parking space would be provided in front of each proposed residence. Other parking along the access drive would not be allowed since the drive is too narrow to allow parking. Additional guest parking would be available along Ross Street.

Staff is requesting DRB Subcommittee input regarding:

- The orientation of the two houses and the driveway to the upper lot.
- The design and grade of the access drive.
- Number and location of guest parking.

Architecture:

The design of both residences is a contemporary style incorporating a variety of wall planes and roof lines. Each building has three building massing elements, on the left side there a master bedroom with balcony over the two-car garage. On the left side is the kitchen/family/dining room area over two ground-floor bedrooms with an adjacent deck. In between there is a recessed entry and foyer that leads to the stairs which lead to the upper level. Each of these building massing elements one or more varied roof lines which also further diversify the massing.

The structure provides articulation in the following ways:

- Varying wall planes and heights.

- Varying materials with a combination of flat surfaces accented with vertical and horizontal wood trim.
- Roof lines with a combination of butterfly and flat roofs.

The primary exterior materials included Hardie Panels with reveals, with vertical T&G Wood siding and horizontal ship lap siding. The T&G Wood panels will also be used on the soffits. The Hardie Panels will be painted a gray-silver color (Benjamin Moore Revere Pewter). The windows system calls for black metal frames. The proposed window system does not include mullions. Composite shingles will be used on the roof.

The retaining walls near the structures will be board-formed concrete. It is unclear if all the retaining walls will use this system of construction.

The proposed materials are similar to the exterior materials in the surrounding area. Based upon a windshield survey, homes in the area include a variety of architectural styles utilizing both wood and stucco exteriors.

Staff would like the Subcommittee's input regarding:

- The design of the residences, including the colors and materials.

Gross Building Square Footage:

Lot 59: The new single-family residential structure on the upper lot consists of approximately 2,842 square feet. The allowable square footage on this hillside lot is 3,085 square feet. The second floor consists of about 1,445 square feet. The allowable second story square footage is 75% of the lot coverage (e.g. 40%) of 5,851 square feet, or 1,755 square feet. The proposed residence complies with these code requirements.

Lot 60: The new single-family residence on the lower lot is proposed to be developed with a gross building area of 2,492 which is less than maximum allowed of 3,158 square feet. The second floor consists of approximately 1,508 square feet, the allowable second floor square footage is 75% of the lot coverage (e.g. 40%) of 5,028 square feet or 1,508 square feet. The proposed residence complies with these code requirements.

Natural Open Space:

Lot 59: As shown in the Tables above, the proposed lot line adjustment and resulting development on the upper lot would result in a natural state area of 1,957 square feet (54% of the lot), where at least 61.7% or 3,610 square feet is required. The natural state requirement includes 945 square feet of drought tolerant native landscaping. Much of the landscaping is concentrated in the front of the proposed house near the guest parking space. The landscape plan includes the retention of a 47.9" Live Oak tree. The landscape plans show the removal of six significant trees on the upper lot. These includes a live oak, a silk oak, a glossy privet, an acacia, a California buckeye, and a cherry plum.

Lot 60: As shown in the Tables above, the proposed lot line adjustment and resulting development on the upper lot would result in a natural state area of 1,747 square feet (53% of the lot), where at least 65.3% or 3,283 square feet is required. The natural state requirement includes 1,548 square feet of drought tolerant native landscaping. Two-thirds of the landscaping is located behind the residence and consists of 1,070 square feet of a Native Mow Free lawn in the rear yard. The landscape plans show the removal of twenty-five significant trees along the Ross Street Terrace from the northern property line to Ross Street. These includes two live oaks and two cherry plums.

Access Drive: Construction of the access drive would require the removal of many trees in the Ross Street Terrace. The preliminary arborist report shows the removal of twenty-four significant trees in the Ross Street Terrace corridor. These include: eight Live Oak, six acacia, four eucalyptus, two olive, two California Bay, Cherry Plum, and a Monterey Cypress. However, staff would like to point out that

there is some confusion about exactly which trees may be affected by the project. When the arborist report was prepared, several trees that were identified for removal may not actually be removed. This is because of a lack of on-the-ground reference points in some areas. Once the project design is finalized an updated arborist report will be prepared.

Staff seeks input from the DRB Subcommittee regarding:

- The proposed Natural State and whether the proposed landscaped area enhances the natural environment and should therefore be considered part of natural state.
- The removal of the large number of significant-sized trees.

Landscaping:

Lot 59: The landscape plan shows a single 24" Box multi-trunked accent tree (Strawberry Tree) near the front door and will retain a significant sized live oak located in the south east corner of the site will be protected in place. All other existing trees will be removed.

Low water use native species will be planted in defined planters near the front door and in the rear yard, as well as the strip of landscaping between the driveway retaining wall and property line. The proposed shrubs include the Pink Flowered Currant, Oregon Grape Holly, Fuschiaflower Gooseberry, along with Mound San Bruno Coffeeberry in the bioretention basin. The groundcover is proposed to be California Lilac. The landscape plan proposes to irrigate 945 square feet of shrub and ground cover with drip/bubbler systems.

Lot 60: The landscape plan for the lower lot proposes to use different species that were proposed for the upper lot. The landscape plan shows three 24" Box Western Redbud trees in the rear of the new residence to create a degree of rear yard privacy screen between the two sites. None of the existing trees will be retained.

Low water use native species will be planted in defined planters near the front door and in the rear yard, as well as the strip of landscaping along the south edge of the driveway. The proposed shrubs include the Winnifred Gilman Blue Sage, Pine Muhly, along with Cape Rush in the bioretention basin. The landscaping includes 1,070 square feet of a Native Mow Free lawn consisting of Idaho fescue, Molate fescue, and Western Mokolumne fescue in most of the rear yard area. The landscape plan proposes to irrigate 1,548 square feet with drip/bubbler systems.

Access Drive: Most of the project landscaping is located within the right-of-way for Ross Terrace Street. The landscaping in this area also primarily includes low water use native species. The landscape plan shows 5 Live Oak, 6 Santa Cruz Island Ironwood, and 5 Little Gem Magnolia. The Little Gem Magnolia is a non-native tree and will be planted on the south side of Ross Street Terrace across from the lower residence to provide additional screening for the rear yard at 211 Marin Street. All of the trees will be 24" Box specimens. None of the existing trees will be retained in this area.

The proposed shrubs include the Elfin King Strawberry Tree, Fuschiaflower Gooseberry, and the Mound San Bruno Coffeeberry, and White Flowered Lantana below the access drive. Silk Tassel Bush, Catalina Currant, and Mound San Bruno Coffeeberry are proposed to be planted above the access drive. The landscape plan proposes to irrigate 3,999 square feet with drip/bubbler systems.

Staff would like the Subcommittee's recommendation about the appropriateness of the landscaping proposed as follows:

- Is the proposed landscape scheme, centered around predominantly low water use native species, consistent with the hillside conditions?

Retaining Walls:

There are three sets of retaining walls on the project. The first set is along the driveway to the residence on Lot 59. The second set of retaining wall is along both sides of the access drive from Ross Street. The third set is the double retaining walls east of the new unit on Lot 60.

Lot 59 Driveway: The retaining wall creating the driveway begins at the south east corner of Lot 59 and Ross Street Terrace. The retaining wall then follows the southern property line up to the corner of the upper residence. The height of the wall starts out at 5¾ feet before transitions up to a height of 10 feet in height near the upper residence. The height of the upper portion of this retaining wall is based upon the floor elevation of the garage that is about 7 below the surface of the ground at the front and 11 feet below ground surface at the rear.

The parallel retaining wall on the other side of the drive is much lower. For most of its length it is between two feet and four feet in height, though the wall making the proposed guest parking space near the front door is 5 feet high. The lower side of this retaining wall faces the backyard for the lower residence.

Ross Street Terrace Access Drive: The construction of the access drive will require the construction of retaining walls on both sides of the drive because of the existing cross slope. Virtually all of these retaining walls will back face the east with the exception of the wall on the east side of the access drive just off of Ross Street where the roadway ascends the existing slope created by the original construction of Ross Street. The tallest retaining wall is found near the intersection with Ross Street. In this area, on the west (uphill) side of the driveway, a retaining wall of up to 12 feet in height will be required as the access drive ascends the initial slope adjacent to Ross Street. Once on top, the heights of this retaining wall will vary from between two and four feet. The height of the downhill retaining wall, on the east side of the access drive, varies between four and six feet along most of its length, though just before the driveway to Lot 59, the wall is only two feet tall.

Ross Street Terrace Double Retaining Wall: At the north end of the proposed improvements to Ross Street Terrace in front of Lot 60 the proposes to accommodate the required Fire Department turn around using the driveway to Lot 59 and the Terrace in front of the Lot 60 residence. In this area because of the higher slope, the project would construct two retaining walls about six feet apart to reduce the apparent massing of the retaining structure. The height of the upper wall would vary from up to 12 feet near the connection to Ross Terrace. Most of the upper retaining walls on the northern half are less than 4 feet in height. The lower wall is between 5 and 6 feet tall over most of its length.

Staff would like the Subcommittee's input regarding:

- On the grades of the access drive.
- The use and location of the proposed retaining walls.

General Plan 2020 Consistency:

The property is located within the Low Density Residential (LDR) Land Use Designation. The following General Plan policies are relevant to the project site:

Land Use Policy – LU12 (Building Heights): General Plan Land Use Policy LU12 establishes a maximum building height of 30 feet for this property. The applicant proposes structures with a maximum heights less than 30 feet.

Hillsides – CD-6a (Hillside Design Guidelines): General Plan Policy CD-6a seeks to protect the visual identity of the hillsides by controlling development through the use of Hillside Design Guidelines. The following Hillside Design Guidelines are relevant to the project.

- Significant existing natural features should be integrated into new hillside residential development proposals to retain the desirable qualities of San Rafael's hillside setting.

- Site development plans should demonstrate that a diligent effort has been made to retain as many significant trees as possible while minimizing fire hazards in high fire hazard areas.
- Grading should be kept to a minimum and should be performed in a way that respects significant natural features and visually blends with adjacent properties.
- The visual prominence of hillside residential development should be minimized by taking advantage of existing site features.
- Development should avoid large expanses of a wall in a single plane on downhill elevations. Use horizontal and vertical building components to effectively reduce the bulk of hillside residential development.
- New Hillside Residential Architecture in San Rafael should continue the dominant pattern of one and two-story buildings with tree canopied spaces around them.
- Color selection should show evidence of coordination with the predominant colors and values of the surrounding landscape.
- Site lighting should be used efficiently to aid safety, security and compliment architectural character. Lighting should minimize intrusion into adjacent properties, roadways, the hillside silhouette and the night sky.

In general, the project demonstrates compliance with hillside design standards though the balancing of conflicting site access, grading, tree preservation, and fire safety requirements has resulted in a number of design compromises. But when viewed as a whole, the proposed design results in a project that fits well into the local context. However, as mentioned above, the applicant is requesting exceptions to the natural state and guest parking requirements. Staff is seeking the Board's concurrence on these two exceptions.

Zoning Ordinance Consistency:

The proposed land use is consistent with the R7.5 Zoning District. As noted in the development summary table, the project proposes to comply with the R7.5 Zoning District development standards as well as the development standards of the Hillside Development Overlay including building heights and stepbacks. The project would not comply with the following standards:

Natural State

The applicant is requesting an exception to the natural state requirement of the Hillside Development Overlay District.

Guest Parking

The applicant is requesting an exception to the amount of required guest parking.

Subdivision Ordinance Consistency:

Driveway Grade

The applicant is requesting an exception to the driveway grade standards.

San Rafael Design Guidelines:

The San Rafael Design Guidelines serve as a guide for evaluating development. The project is a single-family residential project. The project complies with the following criteria:

- All building facades should be varied and articulated. Long monotonous walls should be avoided.
- Transitional elements, such as stepped facades, roof decks and architectural details that help merge larger building into an existing neighborhood should be used.
- There should be a clear, well-defined sense of entry from the street to the building.

- The placement and size of windows in the building should be consistent with the overall building design and the neighborhood streetscape. Where windows do not reflect an existing pattern, greater attention should be paid to other means such as balcony overhangs, porches, materials, colors, etc. of articulating the façade.
- Window proportions should be consistent with the proportions of the building and with other windows on the building.
- Windows should overlook the street, parking and public areas to permit surveillance and increased safety.
- Limit the intensity of lighting to provide for adequate site security and for pedestrian and vehicular safety.
- Shield light sources to prevent glare and illumination beyond the boundaries of the property.
- Lighting fixtures should complement the architecture of the project.

The project incorporates varied wall plains and rooflines and uses building stepbacks to break up the volume of the building into smaller forms. There are a variety of building styles with varying setbacks in the adjacent areas along both sides of the Ross Street Terrace right-of-way. Except as noted above, the proposed building complies with the current hillside development standards. The entries to the buildings are well-defined. Light fixtures will be required to comply with the City's lighting requirements.

SUMMARY OF TOPICS

Staff seeks the Board's guidance regarding the following:

- Lot Line Adjustment
 - The lot lines and the reorientation of the two lots.
 - Whether the site plan demonstrates efficient use of the site.
- Site Design
 - The orientation of the two houses and the driveway to the upper lot.
 - The design and grade of the access drive.
 - Number and location of the guest parking.
- Retaining Walls
 - The use and location of the retaining walls.
- Building Design
 - The architectural design of the residences.
 - The proposed colors and materials.
- Natural State
 - The amount of Natural State on each lot.
 - Including the proposed landscaping as part of the Natural State.
- Landscape Design
 - The proposed landscape scheme involving predominantly low water use native species.
 - The removal of a large number of significant-sized trees.

DESIGN REVIEW BOARD

At the opening of the May 4, 2021 Board meeting on the project, staff requested a continuance to a 'date certain', to the next scheduled Design Review Board meeting, to May 18, 2021, to better provide the Board with plans in a more usable format. The Board unanimously (4-0 vote, Blayney absent) approved the requested continuance without staff introduction, acceptance of public comments or Board discussion on the project. Because of meeting issues, the project was pushed back to June 8, 2021.

NEIGHBORHOOD CORRESPONDENCE

Notice of the May 4, 2021 hearing was conducted in accordance with the requirements contained in Chapter 29 of the Zoning Ordinance. Following the Board's continuation to a 'date certain', a Notice of Continued Public Hearing was mailed to all property owners and occupants within a 300-foot radius of the project site, with the new online meeting details prior to the Board meeting. Additionally, notice which was previously posted near the project site on Ross Street, in the location of the proposed driveway and on Clayton Street, at the end of the public right-of-way, were also updated. Public comments on the project are included in Exhibit 5, which now contains forty-three public comments. Most of these comments are opposed to the project.

The most common reasons for their opposition to the project include, but are not limited to the following: that the property owner (the Applicant) has no legal right to improve Ross Street Terrace to access the home sites, emergency vehicles will not be able to access the site, the loss of parking on Ross Street, the additional traffic on Ross Street, the number and height of the retaining walls, that site access should be from Clayton Street, the loss of public use, impacts to wildlife habitat and open space, increased runoff, and construction impacts and noise. Because of the amount of public discussion, staff would like to address some of the concerns.

- **Community Comment: The property owner (the Applicant) has no legal right to improve Ross Street Terrace to access the site.** The City Attorney has evaluated this assertion and has determined that the property owner has the right to use Ross Street Terrace for access and to construct an access drive within the right-of-way.
- **Community Comment: The proposed access drive is too steep for fire engines to access the new residences.** The Department of Public Works and City Fire Department have evaluated the slope of the access drive and have indicated that, though steep near Ross Street, a fire engine can access the site and will be able to turnaround. Compliance will be verified prior to issuing permits to grade and construct an approved project.
- **Community Comment: Access from Clayton Street would be shorter and less intrusive.** The total length of the access drive from Ross Street and from Clayton Street, including necessary Fire Department turnaround are similar; both are about 480 feet in length. As discussed in the staff report, accessing from Clayton Street is potentially more difficult and disruptive than from Ross Street and would require the acquisition of private property to accommodate.
- **Community Comment: Loss of parking on Ross Street.** Construction of the access drive would eliminate two or three parking spaces along Ross Street.
- **Community comment: The loss of public use.** Construction of the access drive would not prevent public access, though it would alter how the site is currently used.
- **Community Comment: Construction impacts and construction noise.** Like all construction activities, there will be short-term disruption and noise impacts. However, construction activities will be subject to the City's construction noise restrictions in the San Rafael Municipal Code (7am to 6pm, Monday thru Friday, 9am to 6pm on Saturdays, and prohibited on Sunday).

CONCLUSION

As mentioned above, the applicant has submitted a Lot Line Adjustment and Environmental and Design Review application, the application for the Exception is pending, seeking input from the Board regarding architectural design approach, site plan and site design along with the mentioned exceptions. The Board's recommendations will help with the formal decision by the Planning Commission.

EXHIBITS

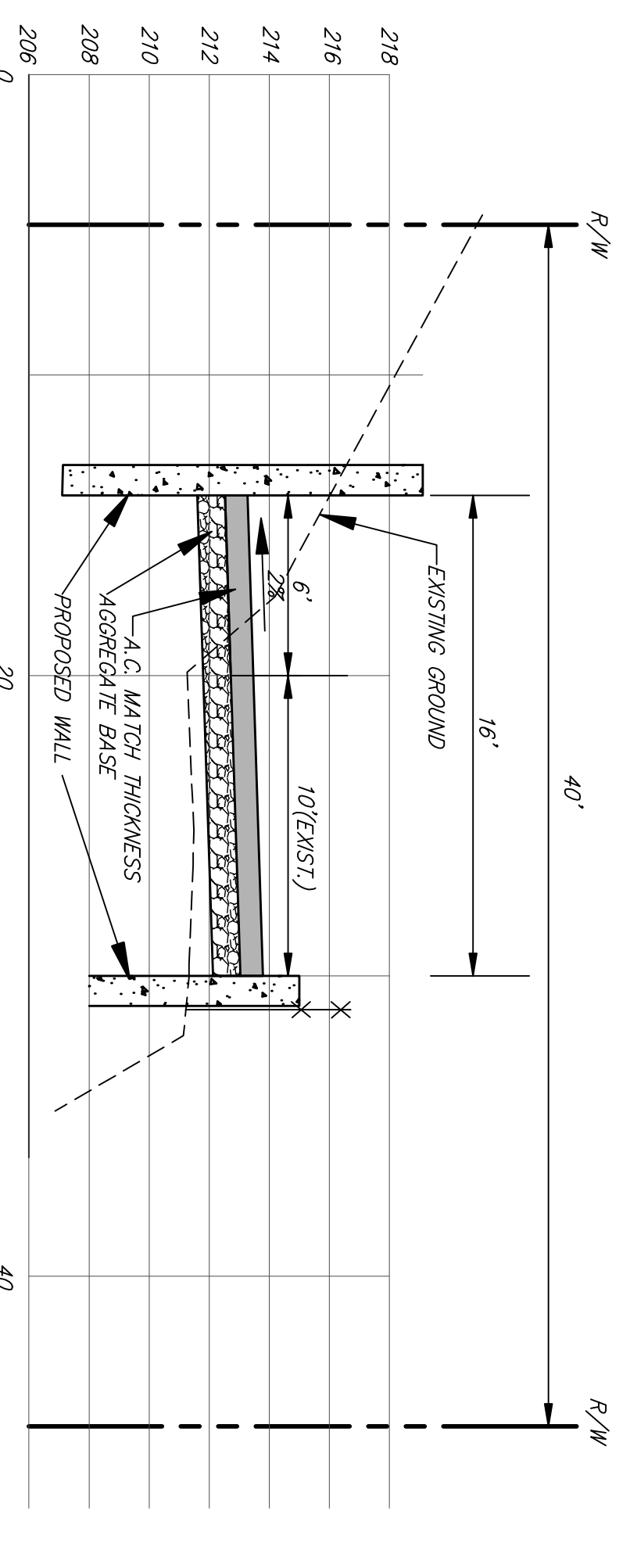
1. Vicinity Map
2. Reduced Project Plans
3. Updated Clayton Street Access Drive Plans
4. Retaining Wall Height Exhibit
5. Compiled Public Comments

Exhibit 1: Vicinity Map

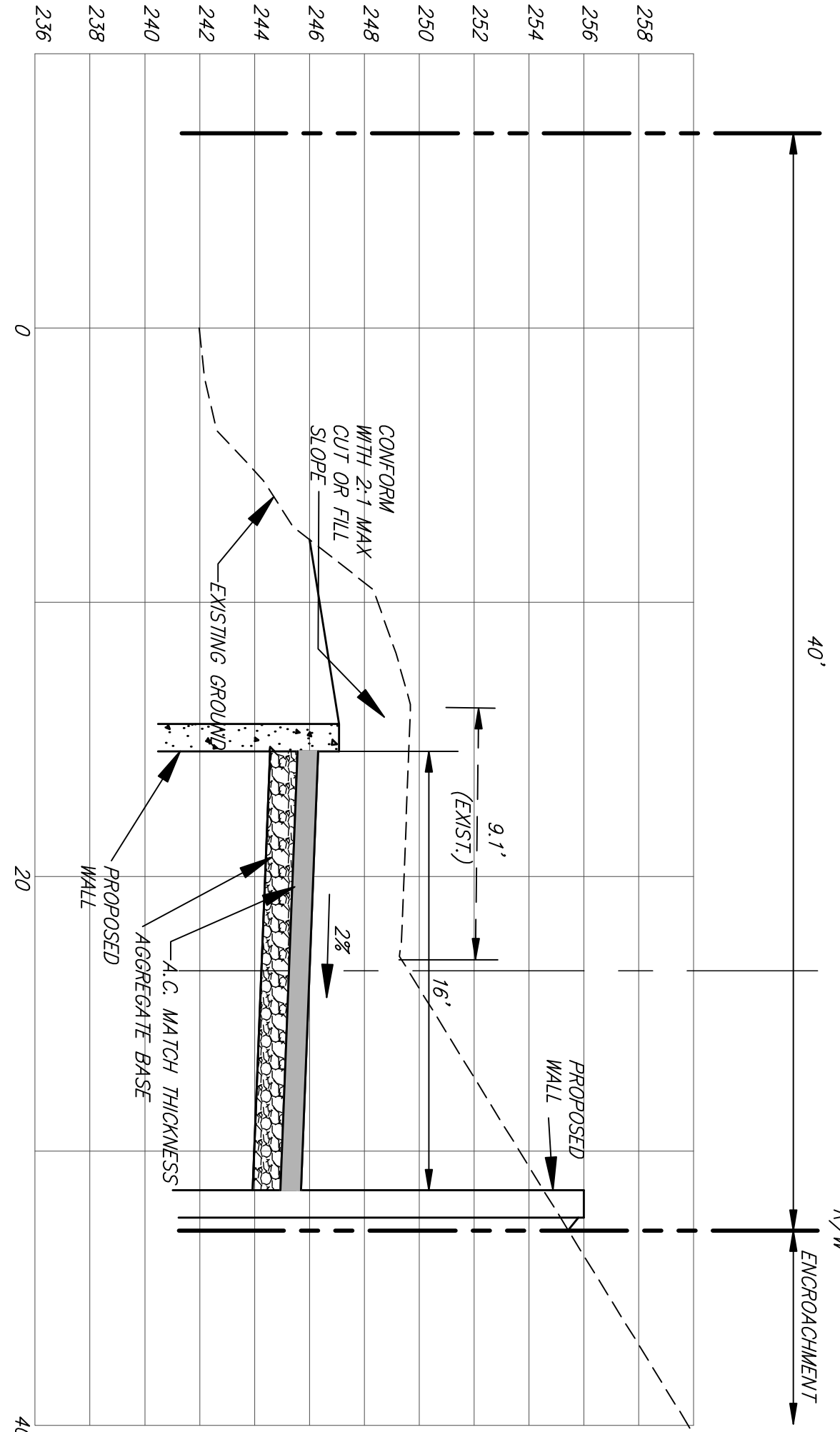


Exhibit 2. Plan Set

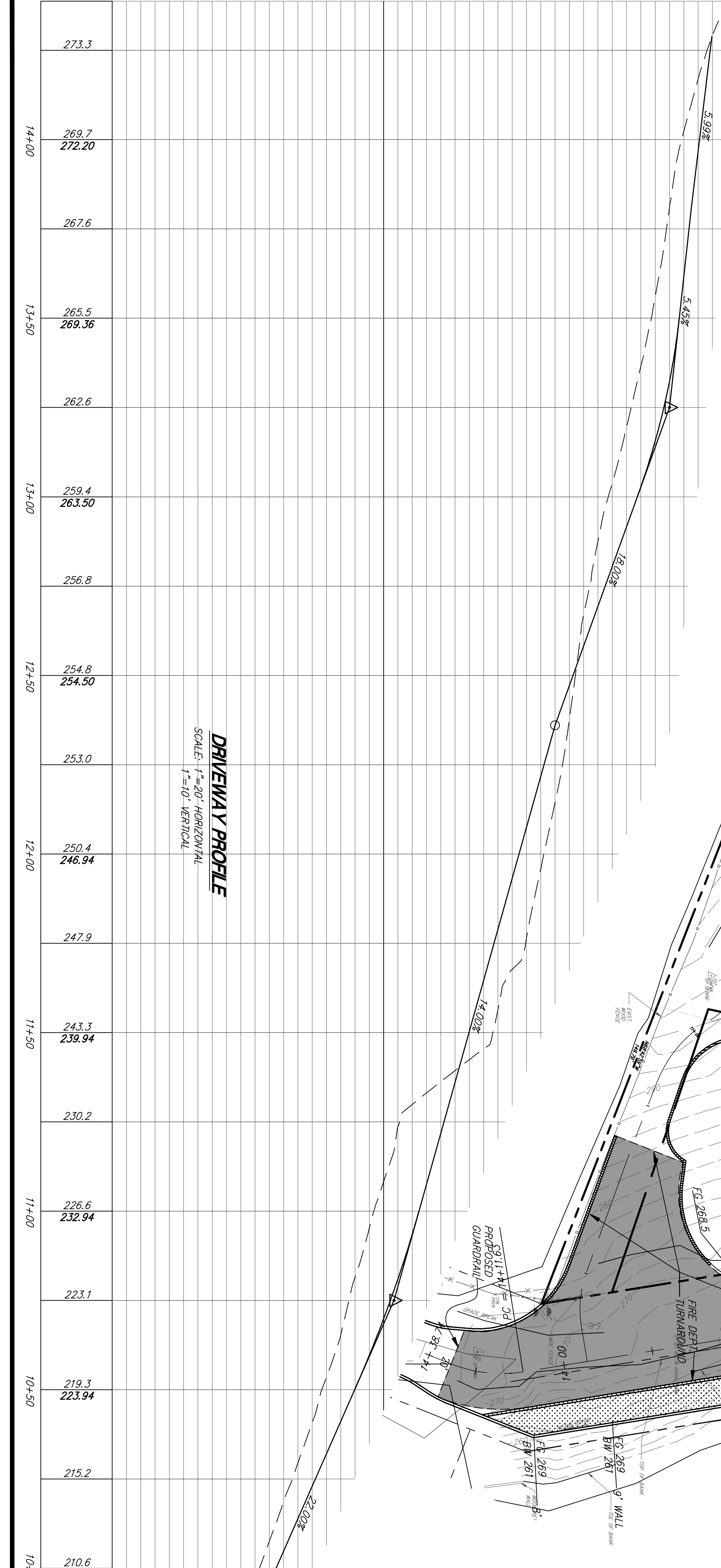
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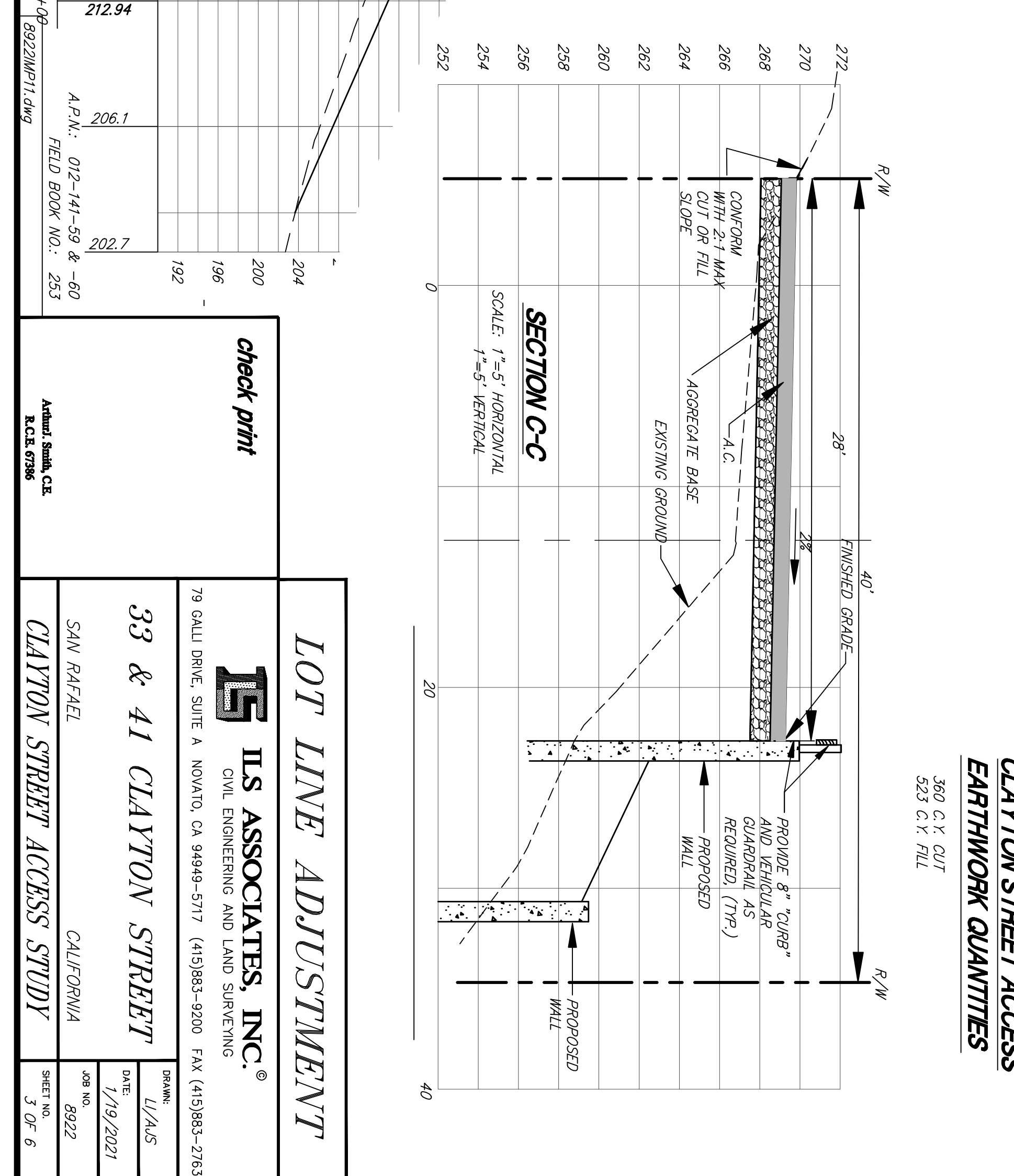
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1"=5' VERTICAL



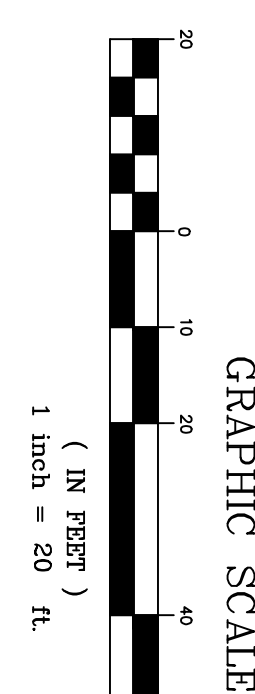
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1"=5' VERTICAL



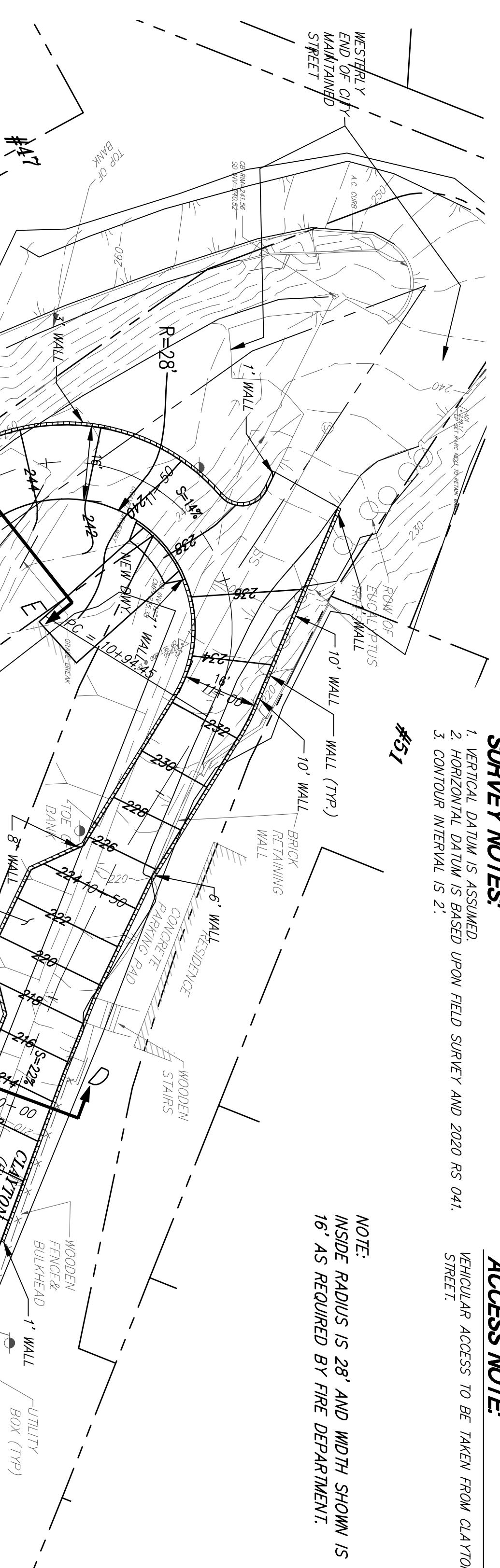
DRIVEWAY PROFILE
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1"=10' VERTICAL



SECTION C-C
SCALE: 1"=5' HORIZONTAL
1"=5' VERTICAL



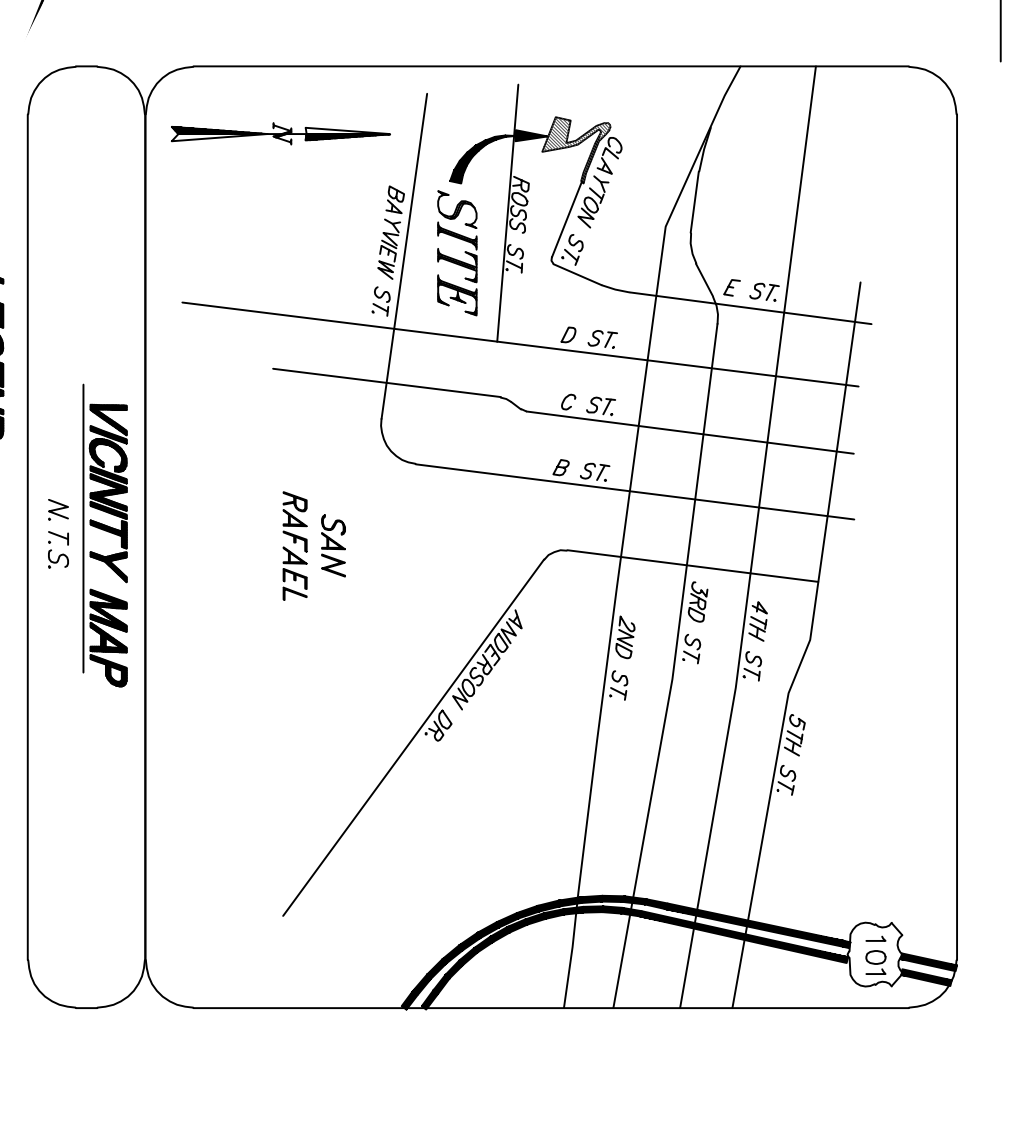
**CLAYTON STREET ACCESS
EARTHWORK QUANTITIES**
360 C.Y. CUT
523 C.Y. FILL



SURVEY NOTES:
1. VERTICAL DATUM IS ASSUMED.
2. HORIZONTAL DATUM IS BASED UPON FIELD SURVEY AND 2020 NS 041.
3. CONTOUR INTERVAL IS 2'.

ACCESS NOTE:
VEHICULAR ACCESS TO BE TAKEN FROM CLAYTON STREET.

NOTE:
INSIDE RADIUS IS 28' AND WIDTH SHOWN IS 16' AS REQUIRED BY FIRE DEPARTMENT.



VICINITY MAP
N.T.S.

- LEGEND**
- ▲ RANDOM CONTROL FOR SURVEY
 - EXISTING GUY ANCHOR
 - EXISTING JOINT POLE
 - ASPHALT CONCRETE
 - EXISTING TREE
 - EXISTING CONTOURS
 - PROPERTY LINE - SUBJECT
 - EXISTING EDGE OF PAVEMENT
 - PROPERTY LINE - ADJACERS
 - PROPOSED WALL
 - ENCROACHMENT
 - FINISHED GRADE
 - BOTTOM OF WALL
 - 200' FINISHED GRADE CONTOUR
 - 4' WALL
 - 4' WALL HEIGHT
 - S-108 ROAD GRADE

LOT LINE ADJUSTMENT

IUS ASSOCIATES, INC.
CIVIL ENGINEERING AND LAND SURVEYING
79 GALLI DRIVE, SUITE A NOVATO, CA 94949-5717 (415)983-9200 FAX (415)983-2763

check print

33 & 41 CLAYTON STREET
SAN RAFAEL CALIFORNIA

CLAYTON STREET ACCESS STUDY

DATE: 1/19/2021
JOB NO: 8922
SHEET NO: 3 OF 6

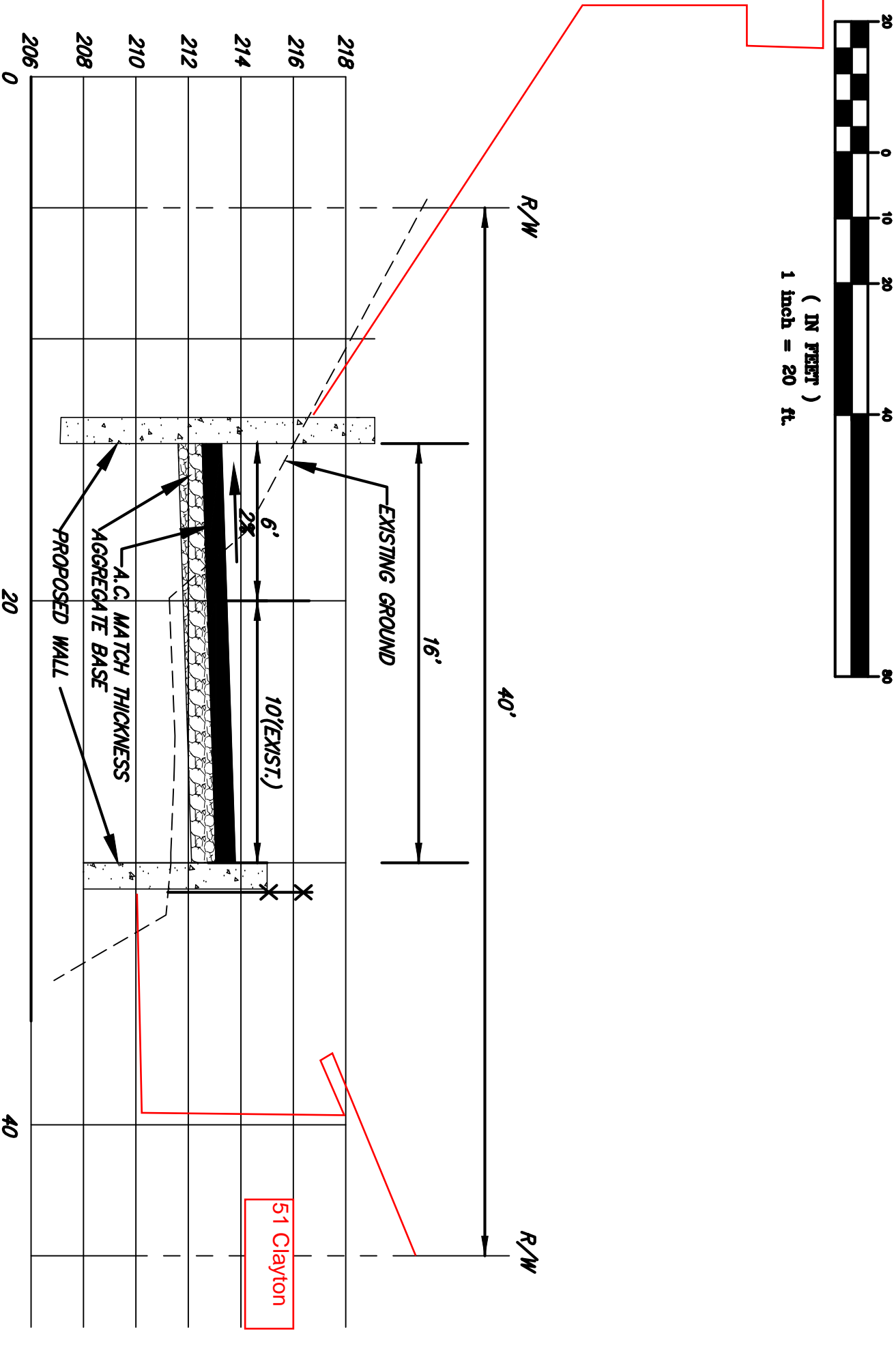
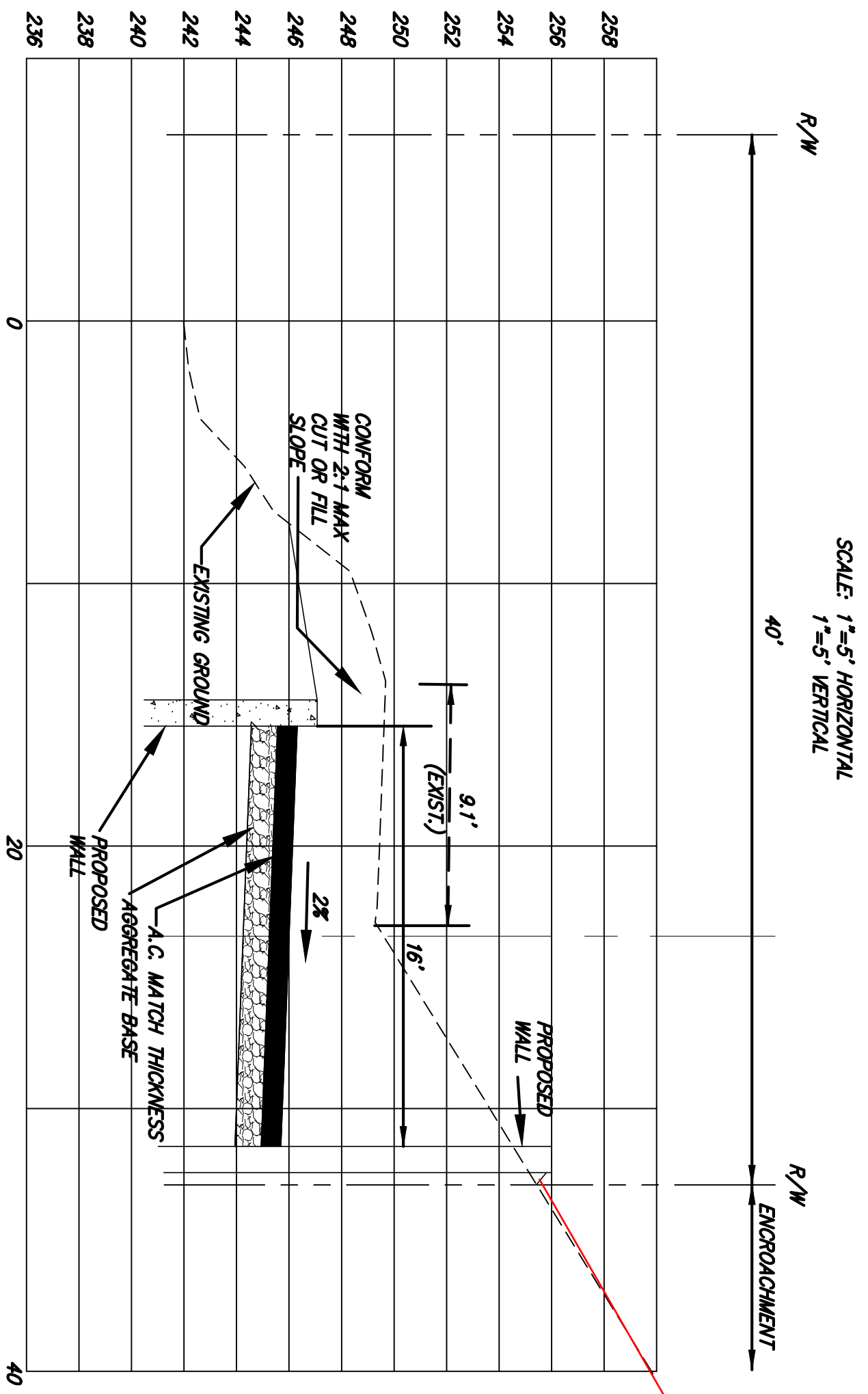
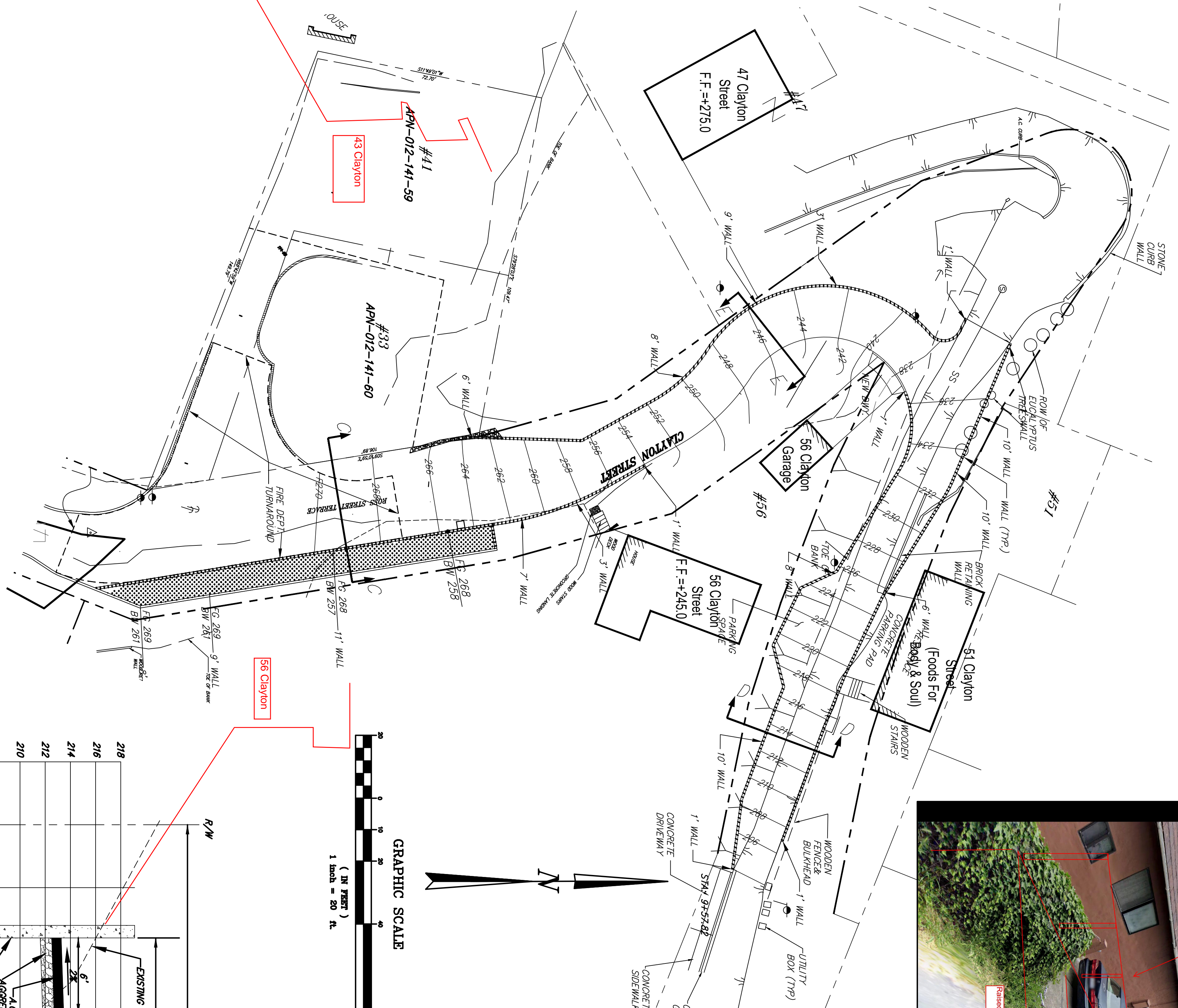
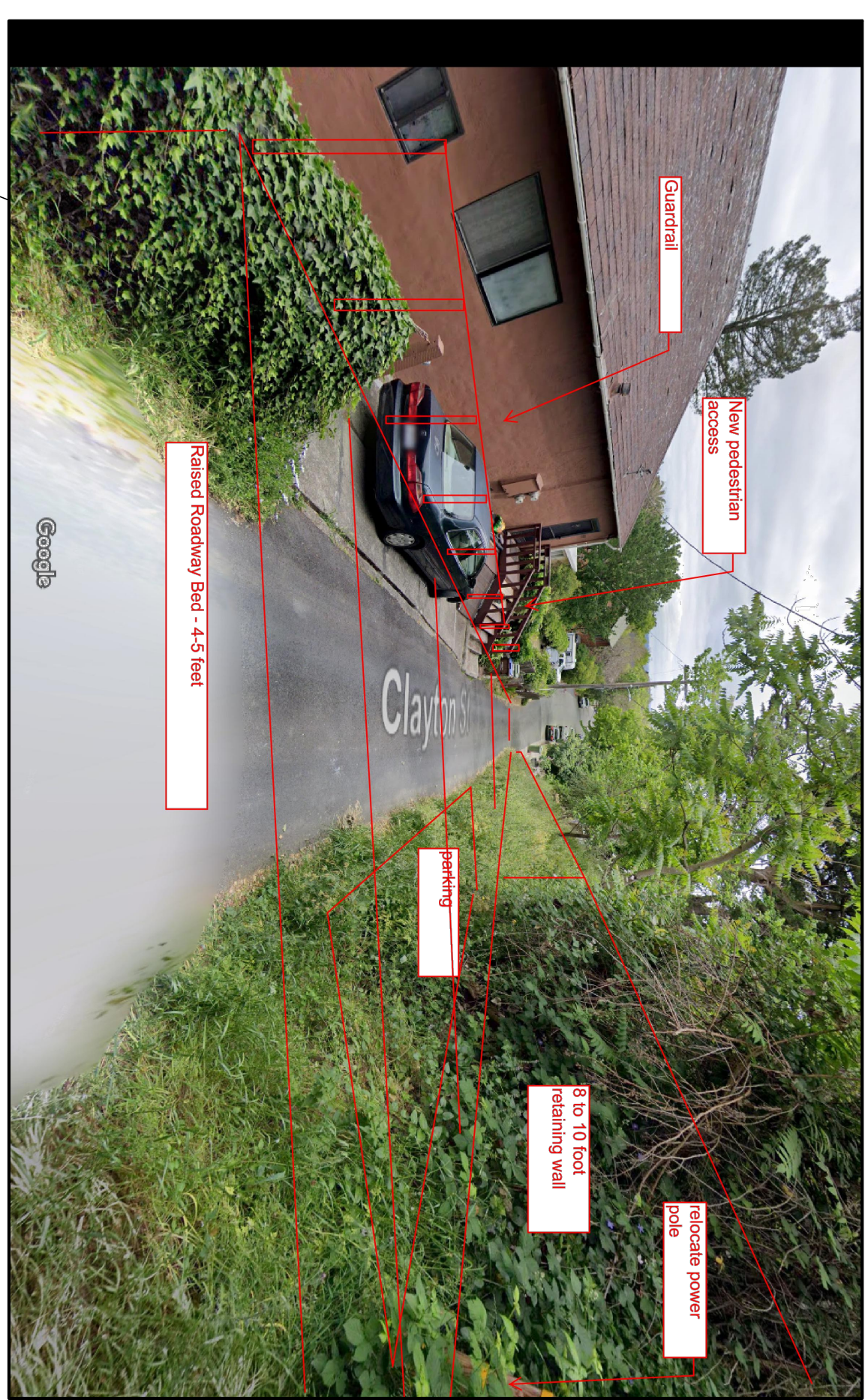
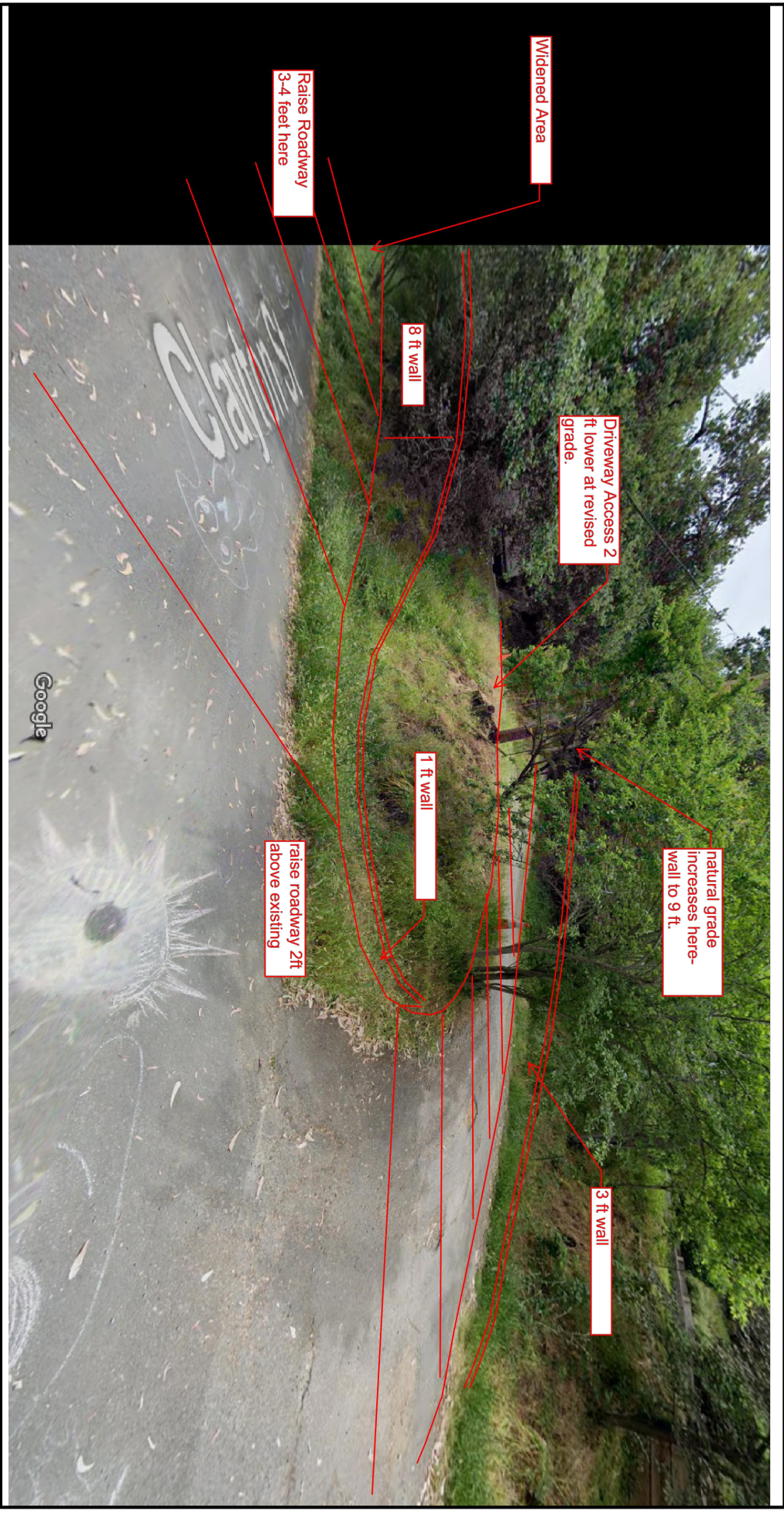
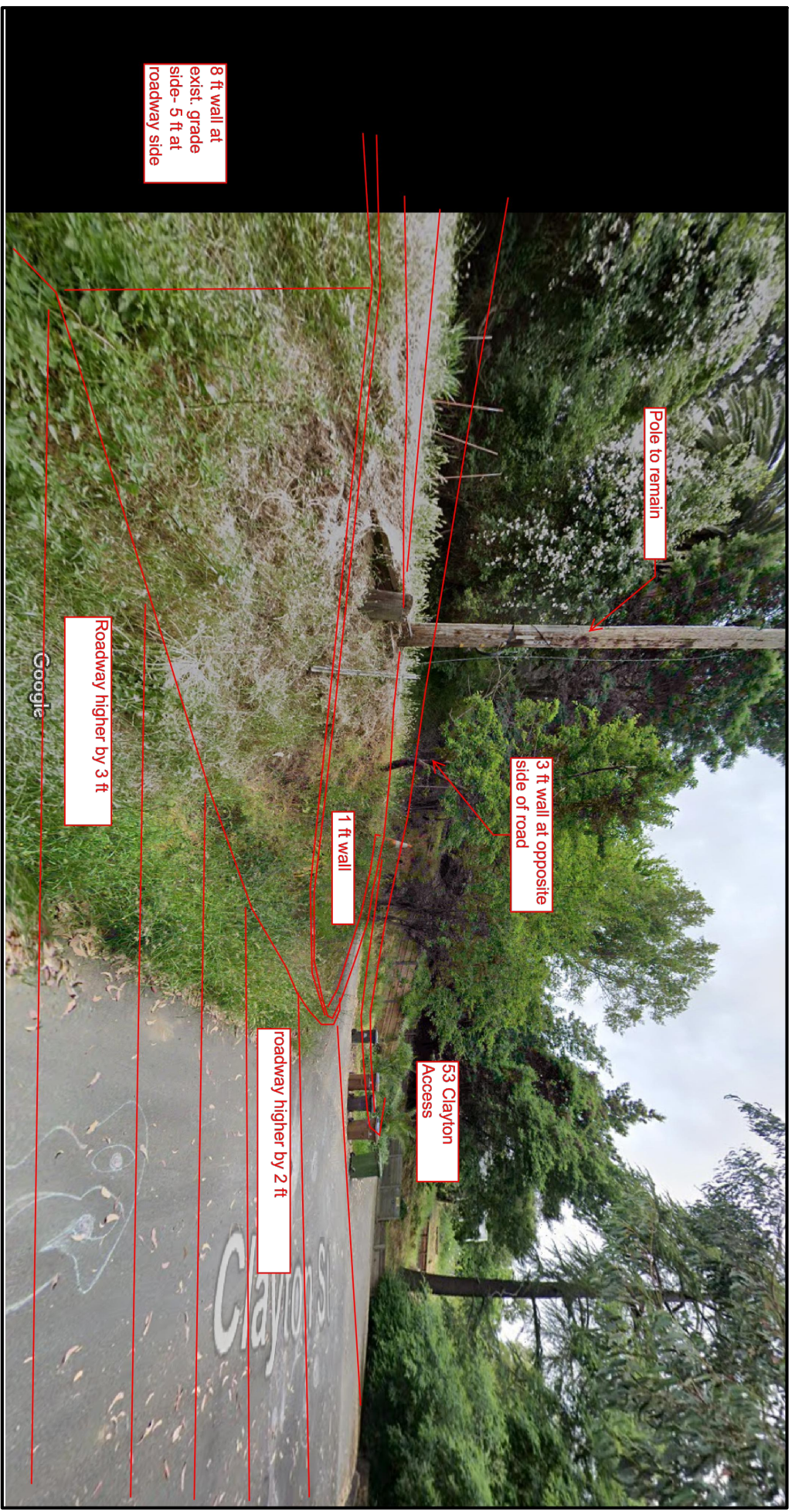
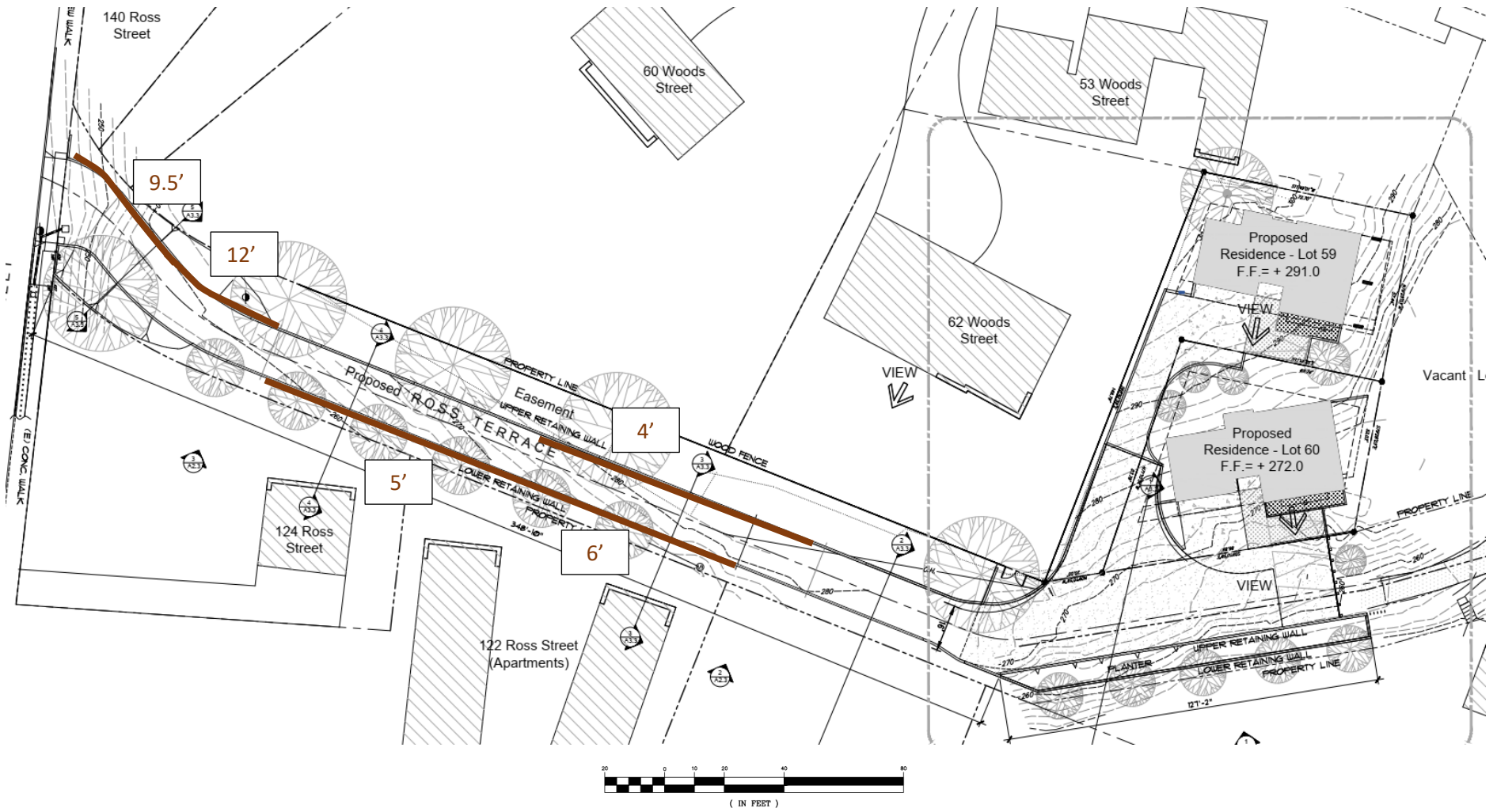


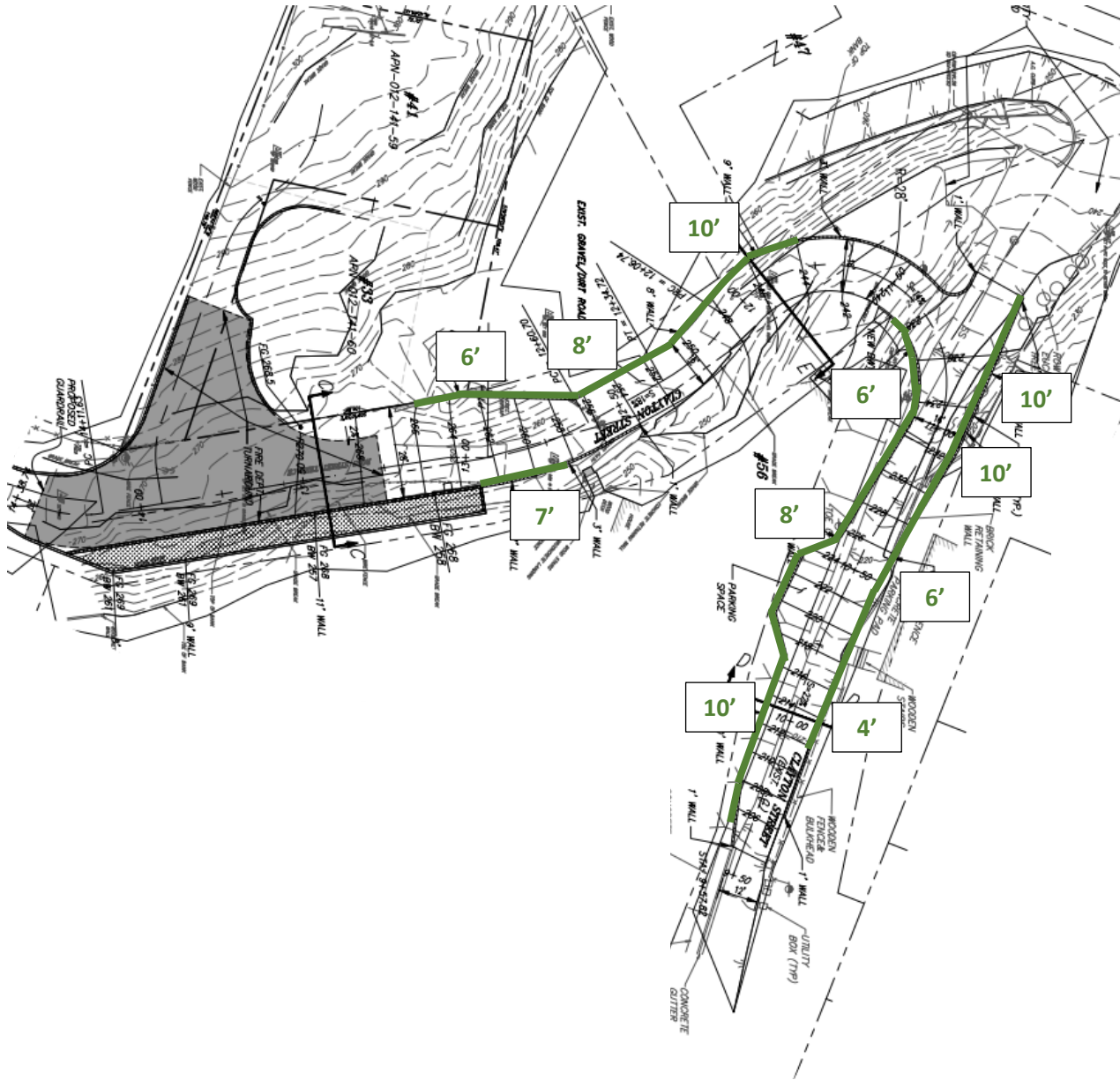
Exhibit 5

PROPOSED RETAINING WALLS – ROSS STREET ACCESS



Note: While pictorially accurate (i.e. approximate and generally in these locations) the location of the retaining walls taller than four feet are not exact.

PROPOSED RETAINING WALLS – CLAYTON STREET ACCESS



Note: While pictorially accurate (i.e. approximate and generally in these locations) the location of the retaining walls taller than four feet are not exact.

LAW OFFICES OF
NEIL SORENSEN

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TELEPHONE 415 499-8600
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EMAIL neil@sorensenlaw.com

December 12, 2019

VIA E-MAIL

Lisa A. Goldfien
Assistant City Attorney
City of San Rafael
1400 Fifth Avenue
San Rafael, CA 94901

**Re: ED 19-090 and 19-091
A.P. 12-141-59 and 60 (Friedman)**

Dear Lisa:

This letter is a follow-up to our telephone conference on December 11th regarding this project. I am the attorney for the applicant, Coby Friedman.

As we discussed, my client was surprised the City was raising an issue over access four years after he first applied to the City to develop these lots and after numerous City reviews and a staff report to the Planning Commission. Not once during this four year period has staff ever raised an issue with access or requested that my client submit documentation showing he has "rights to access and construct a new roadway on Ross Street Terrace."

The two lots my client seeks to develop were created by a subdivision approved by the City in 1963. Although access at that time was from Clayton Street, the relevant portion of Clayton Street is not a City street. The legality of the lots was confirmed through a Certificate of Compliance process in 2004. Clearly, the City would not have approved the initial lot split in 1963 or ratified it through the issuance of a Certificate of Compliance in 2004 if there was not legal access along Ross Street Terrace or the portion of Clayton Street that is not a City street.

We believe there is absolutely no question that these two lots have the right to access and construct a roadway on Ross Street Terrace based upon the following:

1. The property is part of the unrecorded map of Shorts Addition (copy enclosed). Specifically, it was shown on the unrecorded map of Shorts Addition as the property of "J. S. McDonald." The unrecorded map of Shorts Addition shows Ross Street Terrace extending from Ross Street (a City street) up to the property and continuing to Clayton Street. There are

numerous California Appellate Court cases that stand for the proposition that when lots are sold by map or with reference to the streets on a map, the streets as designated on the map are "open to the purchaser and to any subsequent purchaser." See *Day v. Robison* (1955) 131 Cal.App.2d 622, 623-24. The *Day* case references the famous California Supreme Court opinion in *Danielson v. Sykes* (157 Cal. 686, 689) which stands for the proposition that when lots are sold and refer to streets shown on maps (whether recorded or unrecorded) it creates private easement rights in the lot owners. See also *Douglas v. Lewin* (1933) 131 Cal.App. 159 which held that the sale of a lot with reference to an unrecorded map created rights in the purchaser of the lot to use that roadway for access (Mill Valley case). Thus, because the Friedman property was shown on the Map of Shorts Addition, it has easement rights over the adjacent street.

2. As the City knows, there is a deed recorded in 1886 that dedicated Ross Street Terrace starting at Ross Street (a City street) and extending all the way up to the portion of Clayton Street that is a City street. I am enclosing a copy of the deed, which is very difficult to read. We have had the deed transcribed and I am also enclosing a transcribed portion of the deed. The deed involves the sale of land in Shorts Addition by James S. McDonald (same as on Map of Shorts Addition) to Peter Williams and the creation of two public streets between Ross Street and the end of the City owned portion of Clayton Street.

"The object being a continuous street of the uniform width of 40 feet from Ross street to a point 130 feet West from the West end of Clayton street. The 130 feet having been otherwise dedicated by party of the first part and M. M. Jordan. Said new street to be known as Buena Vista street; the said Buena Vista street being dedicated hereby for the use of the parties of the first and second part and the public and the same extending along the North Easterly and the Westerly sides of the land having conveyed." (Emphasis added.)

The language in the 1886 deed creates both a public right-of-way and private rights in all lot owners in the area ("use of the parties"). Since James S. McDonald owned the Friedman property when he created Ross Street Terrace and reserved the street for his use, the Friedman property clearly has easement rights over Ross Street Terrace.

3. When Mr. Friedman purchased his property, he also purchased a Policy of Title Insurance from Fidelity National Title Company (copy enclosed). The Policy of Title Insurance (see page 2) specifically insures Mr. Friedman against "lack of right of access" to and from the land." As referenced in the title policy legal description (page 4) and in Mr. Friedman's deed, the description of his property clearly references that it borders "Ross Street Terrace (formerly Buena Vista) as described and dedicated to public use in the deed from James S. McDonald to Peter Williams recorded in Book 3 of Deeds at page 360, Marin County Records...." This alone creates access rights in Ross Street Terrace.

I trust that the above provides you with sufficient information to conclude that Mr. Friedman has adequate access rights over Ross Street Terrace. If not, I would ask that you put

December 12, 2019

Page 3

your objections in writing so that I may convey them to Mr. Friedman's title company and make a claim for lack of access to his property.

If you have any questions or wish to discuss this further, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Neil Sorensen". The signature is fluid and cursive, with a long horizontal stroke at the end.

NEIL SORENSEN

NS/mjs

Enclosures

cc: Coby Friedman

RECEIVED

DEC 02 2019

PLANNING

To: Community Development Department

Re: File No. ED19-090/ED19-091/LLA19-008

The Gerstle Park Neighborhood Association is opposed to the above project.

It is one function of GPNA to evaluate and comment on new exterior construction in Gerstle Park or construction that would impact views from Gerstle Park. The Vision of Gerstle Park includes "opportunities...to be more compatible with the historic neighborhood design character..." The 2040 General Plan for Gerstle Park includes "...encouraging new development or significant remodels that enhance the historic architectural character of the neighborhood".

Also, the 2040 General Plan encourages: "protecting hillside ridges and the visual backdrop of the ridges..." San Rafael and specifically Gerstle Park is a city of trees. The feeling of living in Gerstle Park is a feeling of being close and in touch with our environment.

The proposed project consists of developing two homes on small lots. We oppose the project as presented:

1. The homes are very "modern" in appearance and out of architectural character for Gerstle Park.
2. Construction of the homes will require tearing out an area which is filled in with large trees and vegetation to the point that the vegetation will be completely removed and change the wooded character of the area. The slope will have to be extensively graded with extensive artificial slope stabilization and reinforcement.

From: Tom Heinz, Planning and Development Committee, GPNA

Valerie A. C. Lels
San Rafael, California 94901

January 6, 2020

Caron Jo Parker
Associate Planner
City of San Rafael
1400 Fifth Avenue
San Rafael, California 94901

Re: Clayton Lots- Legal Issues

Dear Caron,

This letter is written in response to December 12, 2019 correspondence to City Attorney Lisa Goldfein from Neil Sorensen, the attorney for Mr. Friedman, who is the developer of the Clayton Street lots. In addition to raising legal issues related to the proposed Clayton Street project, this letter contains some comments and observations of my own. The issues I address are issues that come to mind at this time. However, should any additional issues come to my attention in the future, I would like to reserve the opportunity to address them with the Planning Department and/or other City departments as appropriate.

I would ask that you please forward this letter to Ms. Goldfein for her review and analysis, and also that you please take into consideration the issues raised in this letter when you prepare your Letter of Completeness that is due to be submitted by January 10th.

1. A right of access does not automatically confer a right to construct. Although these are demonstrably two separate rights, Mr. Sorensen presents in his December 12, 2019 letter a seamless segue from the right of access to the right to construct, offering authority for the former and none at all for the latter. No issue is taken with the developer's right to access his lots via ingress and egress along Ross Street Terrace. That principle of access to one's property is not in dispute here. However, the right of access does not confer upon the developer the right to perform construction along the entirety of Ross Street Terrace. No evidence has been presented to show that the developer owns the entirety of Ross Street Terrace, and he has no rights of construction or development on property he does not own.

2. There are multiple properties abutting Ross Street Terrace that are owned by others. It is well-established that the owners of properties existing along a roadway and abutting that roadway also own the property from the abutting property line to the center line of the given roadway. California Civil Code § 831: "An owner of land bound by a road or street is presumed to own to the center of the way; but the contrary may be shown." California Civil Code § 1112: "A transfer of land bounded by a highway passes the title of the person whose estate is transferred to the soil of the highway in front to the center thereof, unless a different intent appears from the grant."

The deeds by which the abutting property owners acquired title to their property show no intent to except from those transfers of title the above-described contiguous portions of Ross Street Terrace, and no evidence has been presented that any such exceptions occurred earlier in the relevant chains of title. Accordingly, when the current abutting property owners took title to their property, they also acquired a fee title to the portions of Ross Street Terrace that lie between the abutting

Caron Jo Parker
Associate Planner
City of San Rafael
January 6, 2020
Page 2 of 4

property line and the center line of Ross Street Terrace. *Jones v. Deeter* (1984) 152 Cal.App.3d 798,802; *Safwenberg v. Maquez* (1975) 50 Cal.App.3d 301,307-309. Therefore, the developer may not construct upon or in any way alter the portions of Ross Street Terrace belonging to the abutting property owners without permission from those property owners. For the developer to do so would constitute a basis for causes of action for trespass, nuisance, willful and malicious destruction of property, and any additional unlawful acts committed by the developer.

3. Beyond the above, each abutting property owner possesses an additional, private right of easement and use in Ross Street Terrace for purposes of access to his property. This right of easement arises as a matter of law particular to each abutting property owner based upon ownership of the abutting property, and it is separate and distinct from any rights of access the general public may have to pass along Ross Street Terrace. *Brown v. Board of Supervisors* (1899) 124 Cal. 274,280. It is as fully a property right as the property owner has in the property itself. This right may not be taken away, destroyed, or substantially impaired or interfered with, and any such infringement gives the property owner a basis for one or more causes of action. *Rose v. State of California* (1942) 19 Cal.2d 713, 726-729. "It is well settled that where there is evidence to support a finding that substantial and unreasonable interference with the landowner's easement of access or right of ingress and egress has been caused as the result of an obstruction in the street or highway on which his property abuts, an appellate court will not say as a matter of law that such finding is erroneous." *Ibid.*,728. Accordingly, the developer is prohibited from interfering with the abutting property owners' private easement of access rights either during the construction process, or by constructing or creating any permanent barriers and/or changes to Ross Street Terrace that would block, restrict, or impede these easement rights in any way.

4. The developer's plans as presented to the City would create numerous dangerous conditions for adjacent property owners, including but not limited to the dangerous conditions described in Victor Kunin's 12/2/19 email to you. Such dangerous conditions could result in serious damage to adjacent properties as well as serious injury to the property owners, their families, guests, and tenants. Further, such a dangerous condition on property belonging to the abutting property owners would open those property owners, their tenants, and anyone else who occupies or controls the property, to premises liability claims. California Civil Code §1714(a); see also *Sprecher v Adamson Companies* (1981) 30 Cal.3d 358,368: "...the duty to take affirmative action for the protection of individuals coming upon the land is grounded in the possession of the premises and the attendant right to control and manage the premises."

Alarminglly, the maintenance agreement suggested by the developer for the Ross Street Terrace roadway, the proposed retaining walls, and other structures included in the plans presented to the City, allows the adjacent property owners no means of enforcement regarding such maintenance should the responsible parties under the maintenance agreement fail to maintain. Yet all the while the adjacent property owners remain potentially liable for injuries and accidents caused by such failure to maintain. This creates an untenable and entirely unfair burden and risk for the adjacent property owners. Would homeowners' insurance cover such a situation? That would depend on the facts, the scope of coverage, the policy limits, etc. In any event, it is entirely foreseeable that such a situation would constitute a legal nightmare.

5. I would like to comment on some of Mr. Sorensen's assertions in his December 12, 2019 letter:

a) Mr. Sorensen states on page one of his letter "...the relevant portion of Clayton Street is not a City Street." It is not clear what portion of Clayton Street Mr. Sorensen means by "the relevant portion of Clayton street", on what information he

Caron Jo Parker
Associate Planner
City of San Rafael
January 6, 2020
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relies in making this statement, and what relevance this statement has to the issues he presents.

b) Mr. Sorensen further states on page one of his letter "Clearly, the City would not have approved the initial lot split in 1963 or ratified it through the issuance of a Certificate of Compliance in 2004 if there was not legal access along Ross Street Terrace...". This statement is entirely speculative and conclusory. Mr. Sorensen has no information regarding what the San Rafael City officials were thinking or intending when they approved the subdivision in 1963 and/or when they issued the Certificate of Compliance in 2004. The only information we have as to the true intent of the City of San Rafael is the information contained within the four corners of the referenced documents, as follows: (1) The 1963 lot subdivision approval specifically requires the construction of a road along Clayton Street in front of the proposed lots as a condition of the approval; there is no mention of any access along Ross Street Terrace. (2) The 2004 Certificate of Compliance specifically requires the owner of the property to satisfy the conditions of the 1963 City of San Rafael Planning Commission (which conditions include the construction of a road along Clayton Street in front of the proposed lots) prior to the issuance of any building permits, and the 1963 subdivision conditions are attached to the Certificate of Compliance as Exhibit B, incorporating these conditions by reference. There is nothing in either of these documents that indicates any intention on the part of the City of San Rafael regarding access to the lots from Ross Street Terrace. On the contrary, the plain language in both documents clearly indicates the intention that access to the lots would be from Clayton Street, and in fact the Certificate of Compliance shows the street address of the three lots in question to be 33, 37, and 41 Clayton Street (not 33, 37, and 41 Ross Street Terrace).

6. Further to the above, in reviewing the 1963 subdivision approval document and the 2004 Certificate of Compliance, I note that the subdivision plans approved in 1963 show only one structure to be built on one of the lots: a duplex on Parcel 2 (Lot 59), with no construction at all on Parcels 1 and 3. Further, it appears that the issuance of the 2004 Certificate of Compliance was done in reliance on the 1963 subdivision approval and the plans submitted therewith. Yet the current construction plans are a far cry from, and greatly exceed the scope of, the minimal construction shown on the plans submitted in 1963, when the application for subdivision approval was submitted.

7. The following comments relate to the 1886 deed provided by Mr. Sorensen, the maps he provided in conjunction with the deed, and Mr. Sorensen's analysis of the same. Much clarification and additional information is needed here.

a) Only one of the maps provided, the Shorts Addition map, is legible; the other map is nothing but a gray blur. The Shorts Addition map does not extend far enough up Ross Street Terrace to show Clayton Street or to illustrate what Mr. Sorensen asserts the 1886 deed is conveying and reserving/dedicating. It is impossible to understand from the deed and maps provided either the metes and bounds description shown in the 1886 deed, or what was actually conveyed and what was reserved/dedicated at that time. (For example, what/where are the all-important "courses three (3) to nine (9)" referred to in the deed?)

b) Notwithstanding the above, the minimal information I have been able to glean from the deed and maps provided seems to indicate that Mr. Sorensen's assertion on page two of his letter that the 1886 deed from McDonald to Williams dedicated Ross Street Terrace "starting at Ross Street (a City street) and extending all the way up to the portion of Clayton Street that is a City street" cannot be correct, because:

(1) The Shorts Addition map shows that McDonald did not own the two lots on either side of Ross Street Terrace where it intersects with Ross Street. He could not convey or reserve/dedicate Ross Street Terrace at that point because he did not own those lots.

Caron Jo Parker
Associate Planner
City of San Rafael
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(2) The 1886 deed states that the newly-dedicated roadway extends to "the north end of the 40 foot Street known as Ross Street Terrace", which is further evidence that the newly-dedicated roadway did not extend all the way to Ross Street, as Mr. Sorensen contends. It is also evidence that McDonald neither "created Ross Street Terrace" nor "reserved the street for his use", as Mr. Sorensen also contends. Under the circumstances, Mr. Sorensen's statement that the 1886 deed "creates both a public right-of-way and private rights in all lot owners in the area" seems at a minimum to be overly-broad, and he does not address by what means or legal authority McDonald could have reserved the entirety of Ross Street Terrace for his use or could have created private rights in all lot owners in the area.

(3) Further, Mr. Sorensen's reference to the term "use of the parties" to support his statement that the deed creates "private rights in all lot owners in the area" is incorrect and misleading. The 1886 deed actually reads "use of the parties of the first and second part", which refers specifically to McDonald and Williams respectively, and which, on the contrary, tends to indicate the dedication of an easement for the use of McDonald and Williams. "A dedication is legally equivalent to the granting of an easement." *Jones v. Deeter* (1984) 152 Cal.App.3d 798,802.

8. I see no evidence of a chain of title connecting whatever portion of land McDonald actually did convey and reserve/dedicate in 1886 with the land purchased by the developer in 2014. We know that the three lots the developer purchased in 2014 were owned by McPhee in 1963. But we have no information regarding what land transfers might have occurred in the 75+ years between the 1886 deed (which is at this time unclear) and the creation of the three lots that were owned by McPhee in 1963. Accordingly, any relationship or connection that Mr. Sorensen currently alleges between the land conveyed and reserved/dedicated by the 1886 deed and the lots the purchased by the developer in 2014 is without merit. Unless an appropriate and complete chain of title is provided, the 1886 deed cannot be offered as evidence of the developer's property ownership and/or property rights.

Further to the above, I respectfully request that the City of San Rafael revisit any previously-expressed opinions regarding the developer's rights pertaining to the proposed Clayton Street project.

Sincerely yours,

Valerie Lels

From: Valerie Lels <>
Sent: Wednesday, July 8, 2020 4:46 PM
To: Alicia Giudice <Alicia.Giudice@cityofsanrafael.org>
Cc: Victor Kunin <> Patrick Killian <>, Peter Marks<>
Subject: Clayton Street lots

Dear Ms. Guidice,

I own the property at [REDACTED] which borders the Clayton Street lots. I, along with many neighbors, have grave concerns regarding what we believe are significant health and safety issues as well as property rights regarding this development, and there has been much correspondence on these issues from many of us to Caron Parker, who was the Planner in charge of this project until last January, when she retired. Caron did an excellent job of keeping us all informed regarding the status of the project. The last information we had from Caron was that the developer's plans were incomplete.

Over the past few days, surveyors have been seen on the proposed roadway and on the lots themselves, where they have placed stakes that appear to relate to the placement of the houses. It is my understanding that you will now be in charge of this project. I would greatly appreciate it if you would bring us up to date on the status of the project, including: (1) whether the plans are still deemed incomplete; and (2) whether any permits have been issued.

Thank you sincerely,
Valerie Lels

Sent from my iPhone

From: [REDACTED] >
Sent: Friday, July 10, 2020 8:26 PM
To: Alicia Giudice <Alicia.Giudice@cityofsanrafael.org>
Subject: Re: Clayton Street lots

Hi Alicia,

Thank you so much for responding so quickly to the recent inquiries regarding the current status of the proposed development of the Clayton Street lots, and for sending along your incompleteness letter. I very much appreciate your timely response, particularly in light of the City being short-staffed due to its financial situation as well as constraints caused by the COVID-19 situation. I can only imagine that those circumstances, along with Caron's retirement, have resulted in overwhelm for you all. Caron was an absolute professional, and we all will miss her as well. Please be assured that my neighbors and I will do what we can to ease the burden with respect to the need for you to sift through the large amount of documentation that has been generated on this project over the past years.

Very shortly before Caron left in January, I met with her at the Planning Department and gave her the original of a letter to that I wrote to her dated January 6, 2020. The letter contains a request that it be forwarded to the City Attorney, in that it sets forth in detail several significant legal issues relating to this project. I am attaching a copy of my January 6th letter to this email.

I find myself wondering if this letter has ever been read, or if it ever reached the City Attorney. For example, your July 9, 2020 email confirms that the applicant has the right to use Ross Street Terrace to access his property. Please note, as expressed in paragraph #1. of my January 6th letter, that no one disputes the developer's right to use Ross Street Terrace to access his property. What is disputed, however, is his right to construct on Ross Street Terrace. This is quite a different issue, and one that must be addressed. My January 6th letter provides ample legal authority for the fact that the owners of the properties bordering Ross Street Terrace also own the property from the abutting property line to the center line of Ross Street Terrace. How is it that the City can issue a permit for a party to construct a retaining wall or anything else on private property that belongs to another party?

I, along with the neighbors who will be impacted by the Clayton Street project, believe strongly that this issue, as well as all the other issues raised by my January 6th letter, must be brought to the attention of the City Attorney, and that they must be addressed by the City before this project goes forward.

Further to the above, I would ask that you please read the attached letter, and that you please be certain to forward it to the City Attorney at your earliest convenience.

Thank you sincerely,
Valerie Lels

LAW OFFICES OF
NEIL SORENSEN

950 NORTHGATE DRIVE, SUITE 200
SAN RAFAEL, CALIFORNIA 94903
WEB www.sorensenlaw.com

TELEPHONE 415 499-8600
FACSIMILE 415 491-9515
EMAIL neil@sorensenlaw.com

August 26, 2020

VIA E-MAIL

Lisa A. Goldfien
Assistant City Attorney
City of San Rafael
1400 Fifth Avenue
San Rafael, CA 94901

**Re: ED 19-090 and 19-091
A.P. 12-141-59 and 60 (Friedman)**

Dear Lisa:

As you know, I am the attorney for Coby Friedman, the applicant for the above referenced applications.

I write concerning the emails sent by some of the property owners bordering Ross Street Terrace, which allege that Mr. Friedman has no right to construct a new roadway within the Ross Street Terrace right-of-way because the roadway would include grading and retaining walls that may impede access to adjacent lots. As I understand it, the issue is not whether Mr. Friedman has easement rights to use Ross Street Terrace. That issue was covered in my letter to you dated December 12, 2019 and we understand that the neighbors and the city are not questioning the right of access.

As you may know, because of the steepness of the slope along the Ross Street Terrace right-of-way and in order to meet the roadway width requirements imposed by the city (including a sidewalk on one side), it is necessary to grade the right-of-way and install retaining walls in certain areas along the proposed roadway. For the following reasons, this work is allowed under the existing easement.

I. The Grading and Retaining Wall Work are Necessary Incidents of the Access Easement Appurtenant to the Friedman Property.

As discussed more fully in my December 12th letter, the Ross Street Terrace right-of-way was created in 1886 by deed. The deed offered for dedication a public right-of-way over Ross Street Terrace and created private easement rights in favor of the grantor and grantee (in the deed) to use said street. The Friedman property is part of the property owned by James S. McDonald (grantor) and therefore has easement rights over Ross Street Terrace.

California appellate courts have consistently held that the holder of an access easement or right-of-way has the right to make improvements to an easement and make such changes “in the surface of the land as are necessary to make it available for travel in a convenient manner”. Ballard v. Titus (1910) 157 Cal. 673, 681. See also, Herzog v. Grosso (1953) 41 Cal.2d 219, 223, where the Supreme Court recognized the right of an easement holder to construct and maintain a wooden guardrail along a road easement. More specifically, the Court of Appeal in Dolnikov. Ekizian (2013) 222 Cal.App.4th 419, held that easement holders have certain secondary easement rights that allow them to undertake necessary improvements in the easement – including constructing retaining walls and grading the easement surface.

“As the grading and retaining wall are necessary incidents of, and not inconsistent with, the easement for ingress and egress, they are secondary easements, and so plaintiff was entitled to make the cut and build the wall in furtherance of her rights and her full enjoyment of the easement.” Dolnikov at 430.

As noted above, in order to meet the street standards imposed by the city and the fire department, Mr. Friedman must grade the street right-of-way and install retaining walls. However, all work will be done within the existing 40 foot right of way and will not encroach onto adjacent parcels.

II. There is no Evidence that all the Lots Bordering Ross Street Terrace Have Easement Rights to Use It. None of the lots use Ross Street Terrace for Access.

The emails sent to the city claim that all the lots bordering Ross Street Terrace have easement rights to use it and that the proposed retaining walls will somehow impede their access.

First, there is no evidence that other lot owners along Ross Street Terrace have easement rights to use Ross Street Terrace. The deed referenced above and Mr. Friedman’s policy of title insurance show that the Friedman property has an easement, but no other lot owners have submitted similar title documentation. Until they do, it is pure speculation to claim that they have an easement that will be blocked.

Second, even assuming an easement exists, it is our understanding that all the developed lots that border Ross Street Terrace, between Ross Street and the Friedman property, currently have access to their property from other streets, including Ross Street, Woods Street and Marin Street. None of these lots rely on Ross Street Terrace for access. Accordingly, the improvement of Ross Street Terrace will not block their access.

August 26, 2020

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Finally, if there is an issue concerning my client using a private easement in an inappropriate manner or overburdening it, that would seem to be a private issue between easement holders. The city should not insert itself into any such private dispute or take sides.

If you have any questions or wish to discuss this further, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Neil Sorensen". The signature is fluid and cursive, with a long horizontal stroke at the end.

NEIL SORENSEN

NS/mjs

Enclosures

cc: Coby Friedman

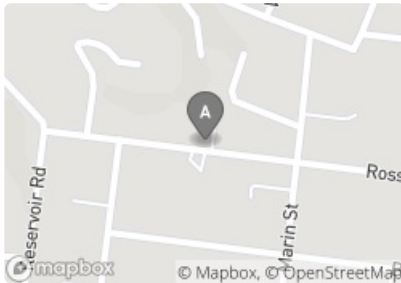
Steve Carter, Architect

Associated Constituent**Sara Romero**

C-1302926, added on October 28th, 2020 at 11:24 PM

Phone Numbers: None**Email Addresses:** xxxxxx**Locations:** None**Conversation:****First Name:** Sara**Last Name:** Romero**Email Address:** xxxxxxx**Phone Number:****Subject:** Friedman Residence Project on Ross Street

Message: This message is for the Design Review Board of San Rafael. I am a resident who currently resides on [REDACTED], right next to where the proposed road for the Friedman Residence Project Parcels is planning to be built. I am a mother with 2 young children, my neighbor also has 2 young children, the neighbors across the street has 2 young children, etc. Ross street and Gerstle Park in general is a family neighborhood with many young families and young children who play on the sidewalks and street. The road is already small and tight as it is due to the lack of parking and cars having to park on the street. I understand the concern for more housing in San Rafael but I do not think Ross street and our neighborhood is the right location. This area is already very concentrated with housing and it is unsafe to add more roads to an already populated area especially for the safety of our kids. They should be able to ride their bikes and play ball safely and as parents we should not have to worry that cars will harm our kids. Please reconsider allowing this project to pass. A concerned resident, Sara Romero

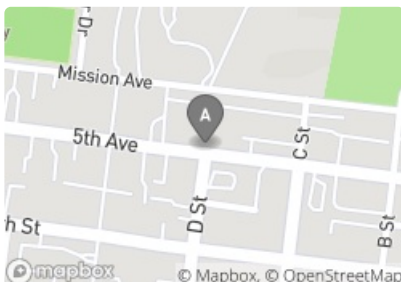
**A:** LOCATION

Inbound form submission from Sara Romero to Contact the City Clerk's Office on October 28th, 2020 at 11:24 PM

Thank you for your message. We value your input and strive to respond to any questions or concerns within 2 business days.
Thank you, City of San Rafael

Automated message sent to Sara Romero via City Clerk on October 28th, 2020 at 11:24 PM

Thank you for your feedback. I will forward this on to the project planner. Michele Ginn | City of San Rafael PERMIT SERVICES COORDINATOR Planning Division 1400 5th Avenue San Rafael, CA 94901 [Online Zoning Information] (<https://www.cityofsanrafael.org/zoning-information/>)



Valerie A. C. Lels, Attorney at Law
Kentfield, CA 94914

November 6, 2020

Lisa Goldfien
Assistant City Attorney
City of San Rafael
1400 Fifth Avenue
San Rafael, CA 94901

Re: Response to August 26, 2020 Letter from Neil Sorensen

Dear Ms. Goldfien:

Thank you for forwarding Mr. Sorensen's August 26, 2020 letter to my attention. Below you will find my comments regarding Mr. Sorensen's allegations disputing the fact that adjacent property owners have easement rights on Ross Street Terrace. These allegations are erroneous and misleading, as follows:

1. Mr. Sorensen states "...there is no evidence that other lot owners along Ross Street Terrace have easement rights to use Ross street Terrace". In fact, the 1880 deed Mr. Sorensen provided along with his December 12, 2019, letter confirms the very easement rights of adjacent Ross Street Terrace property owners that Mr. Sorensen denies. This deed contains a reservation/dedication of a 40' strip of land the entire length of Ross Street Terrace, Buena Vista Street, and Clayton Street for use as a public street. Thus, the owners of properties bordering Ross Street Terrace, as members of the public, have easement rights on Ross Street Terrace and all along the roadway described in the 1880 deed.
2. Mr. Sorensen also states "Mr. Friedman's policy of title insurance show[s] that the Friedman property has an easement...". However, Mr. Friedman's 2015 grant deed includes no conveyance of an easement along Ross Street Terrace/Clayton Street, nor need it do so, in that Ross Street Terrace/Clayton Street is a public street by virtue of the 1880 deed. It is unlikely that Mr. Friedman's policy of title insurance covers his right to traverse a public street.

Further to the above, Mr. Sorensen is in error contending that the 1880 deed along with Mr. Friedman's policy of title insurance somehow constitute evidence of an easement held exclusively by Mr. Friedman. These documents constitute no such evidence. On the contrary, the 1880 deed (a) establishes easement rights on behalf of the public, including but not limited to the adjacent property owners on Ross Street Terrace;

Lisa Goldfien
Assistant City Attorney
November 6, 2019
Page two

and (b) invalidates Mr. Sorensen's contention that the adjacent property owners must submit documentation of easement rights on Ross Street Terrace before such claim will constitute anything more than "pure speculation". No documentation beyond the 1880 deed is needed to substantiate the easement rights of adjacent property owners in Ross Street Terrace. Further, no documentation has been presented to show that Mr. Friedman has easement rights in Ross Street Terrace that are any greater than the easement rights of the public and of other property owners along Ross Street Terrace.

3. In addition, there is ample legal authority supporting the fact that the property owners adjacent to Ross Street Terrace possess private easement rights in Ross Street Terrace over and above the already-described easement rights of the public. This legal authority is set forth on page two, paragraph #3, of my January 6, 2020 letter, which has been sent to the City on several occasions. Another copy of my January 6, 2020 letter is attached to the email that accompanies this letter.
4. A written communication from the Planning Department confirms that the City Attorney's office itself "believes all the abutting property owners have a private right to use Ross Street Terrace."
5. The fact that the adjacent property owners can access their properties from other streets does not extinguish their easement rights in Ross Street Terrace.

Accordingly, easement rights of the public in Ross Street Terrace, as well as the enhanced easement rights of property owners adjacent to Ross Street Terrace, are not in dispute, as Mr. Sorensen alleges, and no further evidence of these easement rights need be presented. Mr. Friedman's easement rights in Ross Street Terrace are no greater than the easement rights of any other property owners along Ross Street Terrace. Construction on Ross Street Terrace will inevitably block the adjacent property owners' access and will unlawfully deprive them of their easement rights.

Very truly yours,

Valerie A. C. Lels
Attorney at Law

cc: Robert Epstein, City Attorney via email

Ross Street Terrace Project

george presson < >

Tue 4/20/2021 9:28 AM

To: Dave Hogan <Dave.Hogan@cityofsanrafael.org>

Hello David,

I am a 71 year old retiree, living at [REDACTED] directly below the proposed elephantine driveway project to the two proposed residences. I have lived in my apartment for 14 years and 20 plus years in the neighborhood. This project does not harmonize with the natural environment and surrounding area! When Mr. Friedman initially tried his "end run" around your department a couple of years back, I thought: you have got to be kidding me! A 480 foot drive carved through a pristine county landscape, for the benefit of two residences? This will hurt the neighborhood for the benefit of a very few.

These are my reasons for saying no to the project;

1. Ross Street is a narrow street with a great deal of congestion. The reason is a significant amount of on street parking. A result of several multi unit apartments along the street. Often, cars are required to pull over and await oncoming traffic because of the tight squeeze.
2. Parking spaces on the street will be lost as a result of this project, making the congested street worse.
3. A complex construction project will take more parking spaces and severely constrict the street even more.
4. The hill itself is fragile and our building recently underwent an expensive retrofit to prevent further movement downhill. More erosion is a certainty.
5. The loss of hillside vegetation would increase the speed of rainwater downhill and dramatically cut the absorption rate. This has happened all over the state where farmlands have been paved over to accommodate new construction.
6. This is not a project coveted by cities these days, as close to transit and affordable housing. Rather, this is a money maker benefiting the few to the detriment of the neighborhood.
7. The issue of quiet enjoyment. Months of dirt, noise and construction chaos will make this "in fill" a living hell. My residence is within feet of the roadway.

In conclusion, this project is a pure money grab that is out of scale and harmony with the neighborhood. Please convey my thoughts to the Design Review Board, and I thank you for your hard work.

Sincerely, George Presson

Re: hearing on Ross St Terrace/Clayton Street lots matter

Jessica Yarnall Loarie <>

Mon 4/19/2021 4:02 PM

To: Dave Hogan <Dave.Hogan@cityofsanrafael.org>

Cc: planning <planning@cityofsanrafael.org>; Alicia Giudice <Alicia.Giudice@cityofsanrafael.org>

 1 attachments (13 KB)

Outlook-1487714976.png;

Thanks for your reply.

I will write a more complete set of comments. The project is basically across the street from us and my kids do sometimes hike up the hill there so we have some familiarity with the geography.

The physical distance between the proposed homes and Clayton St is much shorter than building an entirely new road to Ross St. Access from Clayton, not Ross, should most certainly be explored as an alternative given traffic and parking concerns.

I also understand (2nd hand) that any easement or right-of-way from this property to Ross St went away as part of another deal years ago so adding a road here shouldn't be the first choice. Neighbors mentioned this to us so I don't have any specifics. Adding a road to Ross St is a terrible idea for parking and traffic. It's also inconsistent with a recent Planning Commission decision on the 147 Ross Street apartment renovation. If memory serves, the Commission downsized the number of 2 BR units citing neighborhood parking concerns.

I'd request to be added to the current notice list. And I'd also request that the City update its website to reflect that there is an upcoming hearing for this project. Not everyone will see the sign.

Thanks,

Jessica Yarnall Loarie

To: Dave Hogan,
Planning Department
City of San Rafael
Transmitted by email.

From: Victor Kunin
San Rafael, CA 94901

Re: proposed Ross Street Terrace construction

Dave,

Thank you for engaging us in discussion about this project. My wife and I are the owners of the 7-unit multi-family property at [REDACTED]. We live on the property with our 3 children, alongside our tenants. This property is located immediately downhill from the proposed development site.

We provided feedback for the Application over the last several years. So far I'm not aware of any changes made in response to our concerns. As a result, our concerns are essentially the same as presented previously. If it's possible, please attach the following comments to the application for the consideration of the Board.

Coby Friedman, the property owner and developer, asks for special exceptions and permissions for a project that will create dangerous conditions for neighbors, legal trouble, maintenance trouble, access restrictions and environmental damage. We are asking the city planners and the Design Review Board to request a significant modification of the project before it can be approved. We hereby object to, among other things, **the proposed adjustment of the property lines, the proposed design of the road and the driveway, retaining walls, developer's proposed non-compliance with the City's parking, Natural State and Floor Area Ratio requirements.**

First, a statement of legal ownership.

Ross Street Terrace belongs to the owners of the abutting properties, as confirmed by California Civil Code sections 831 and 1112. Those sections read:

831. An owner of land bounded by a road or street is presumed to own to the center of the way, but the contrary may be shown.

1112. A transfer of land, bounded by a highway, passes the title of the person whose estate is transferred to the soil of the highway in front to the center thereof, unless a different intent appears from the grant.

A different intent does not appear in the grants, and the contrary has not otherwise been shown. Hence abutting property owners own Ross Street Terrace from the abutting property line up to the center of the Ross Street Terrace. As our property abuts Ross Street Terrace, **my wife and I own a part of Ross Street Terrace that abuts our property. Any construction, including but not limited to retaining walls on the portion of Ross Street Terrace owned by my wife and me would be without our consent.**

Second, a brief discussion of some of our concerns.

Retaining walls. The plans specify the construction of tall retaining walls on both sides of Ross Street Terrace to support the access road. A portion of these walls is planned to be located just inches away from our property. Here are some of our concerns with those walls.

- 1) **Access.** Our property will be cut off from Ross Street Terrace by retaining walls at least 5ft high. The retaining walls will deprive us of the access to the portion of Ross Street Terrace that we legally own, that we have used almost daily for the last 8 years, and that we continue to use. In addition, the walls will block off Ross Street Terrace where it adjoins Clayton Street, depriving us of the access to Clayton Street that we have used for years. This is unacceptable.
- 2) **Fire escape route.** Currently, we can use Ross Street Terrace as a **secondary escape route** in the event a fire or other disaster blocks the main access to our property. The

main access to our property is through a 400-foot long private driveway with a single exit to Marin Street. **The developer's proposed retaining walls, as well as proposed closing of Ross Street Terrace where it borders the developer's property will create barriers that will block my family and me, as well as my tenants, from using this vital secondary escape route, potentially trapping us all in the event of a fire or other disaster.** Please recall the tragic events of the Camp Fire of 2018, where inadequate escape routes were a major factor in the loss of 85 lives. If the existing developer's plans are approved, it is foreseeable that such a scenario could be repeated in San Rafael.

- 3) **Maintenance.** A malfunction of tall retaining walls on the edge of our back yard would unleash huge landslides. The slope towards our house ensures that our property will be directly in the line of the landslides. It is entirely foreseeable that such landslides just feet from my backyard would cause significant property damage and bodily harm. Because of the severe consequences of retaining wall failure, a proper inspection schedule and an agreement addressing maintenance of the walls are of paramount importance. No provision has been made for either one.

Maintaining large retaining walls is an expensive undertaking. City planners have made it clear that the City will not take responsibility for the maintenance of these walls. It is important to note that maintenance of and liability for these retaining walls will affect the homeowners who live below the walls to a far greater extent than they will affect the owners of the proposed houses, which are located above the walls. Whereas the collapse of the retaining walls will not directly endanger those living in the proposed new houses, the collapse of the same walls has the potential to cause significant damage to our home and cause bodily harm to my family and my tenants. With no maintenance and liability agreement between ourselves and the future homeowners, this imbalance of the potential impact of the retaining walls' failure will make it easy for the new homeowners to defer, or completely ignore, needed maintenance and repairs, particularly if they are not in a financial position to pay for costly work on hundreds of feet of retaining walls. It is well established that deferred maintenance will hasten the failure of retaining walls. Thus, the burden for maintenance and repair of the walls will fall on the abutting property

owners who are most affected by the failing condition of the walls. This is certain to lead to disputes among neighbors and will undoubtedly create a legal nightmare.

Mr. Friedman, the developer, has not proposed any solution for the above scenario, and when these issues were raised in his presence they have been completely ignored. Moreover, Mr. Friedman has already demonstrated utter disregard for the neighbors' safety. On July 6-8th 2020 surveyors hired by Mr. Friedman cut vegetation on Ross Street Terrace and dumped it in heaps on the road, creating a fire hazard. Mr. Friedman stonewalled our repeated requests to clean up, even with fire department and police involvement. Only after the involvement of the city planners several months later did he partially remove the dry vegetation. Almost a year later much of the dumped dry vegetation still remains on the road, presenting fire danger to the neighbors. This incident does not add credibility to Mr Friedman's claims that maintenance concerns will be promptly addressed.



Figure 1. View of the Ross Street Terrace from my house at 211 Marin St. Road bend and a 24 ft cliff are shown.

- 4) **Unclear plans.** The Roadway Section page (A 3.3) shows a small gradual hill at the bottom of the proposed retaining walls at our property. It doesn't show a 24' cliff between the road and our property (see Figure 1). We believe that the representation on the

developer's plans doesn't accurately reflect the existing conditions, and we are asking for clarification on how the proposed 5' walls will support the 24' cliff. The current plans are unclear, and vague markings on the site make it impossible to visualize how the road will be constructed in relation to the existing terrain. We kindly ask that the plans be deemed incomplete until any and all ambiguities are resolved.

- 5) **Fall hazard.** The retaining walls are proposed to get as high as 12', and are 5' to 8' in the immediate proximity to our property. They present a significant fall hazard in a public right of way, particularly so for small children, potentially endangering my own 3 little children. It is entirely foreseeable that children, adults or the elderly could fall from the proposed retaining walls on the Ross Street Terrace, resulting in severe injury and even loss of life.

Fall accidents are common. Here are links to some accidents resulting from falls from retaining walls:

12/12/2017, Employee Falls From Retaining Wall And Injures Head:

<https://bit.ly/37dbHuX>

09/26/2019: A woman injured after falling over a retaining wall:

<https://bit.ly/2NQLb7I>

- 6) **Noise.** The natural hill under Ross Street Terrace absorbs noise and contributes to a highly desirable quiet location. Retaining walls will reflect and redistribute noise that is currently muffled by the existing landscape. Nothing in the current plans suggests ways of mitigating the noise that will be exacerbated by the retaining walls.

In light of the objections noted above we kindly request that the City not approve construction of retaining walls as they appear on the current plans.

Road and driveway hazards.

The developer proposes a Lot line adjustment. At present Lot #59 can be accessed via a dedicated area connecting it to the Ross Street Terrace on the northern side of Lot #60. The developer proposes to transfer the Lot #59 access from the northern side of Lot #60 to the southern Lot #60. The proposed newly constructed driveway will be on a 24.3% grade for a

distance of approximately 60 feet, pointing directly towards my house. This is in contrast to the existing driveway location which does not point towards any existing structure.

A further dangerous condition is the fact that there is a bend on Ross Street Terrace separated from our back yard only by a **24ft cliff**. The plans for the road are specified to accommodate a load of 75,000 pounds, i.e. a 53-foot semi-trailer truck. Should a truck of this size roll out of control on the Lot #59 driveway, or should a driver lose control on Ross Street Terrace, the out of control vehicle will have no opportunity to stop before crashing into my backyard and possibly into my house. Nothing in the proposed plans will stop large out of control vehicles. This directly threatens the safety of my wife, three small children, myself and our tenants.

Accidents involving out of control vehicles happen for a number of reasons (e.g., road or weather conditions, mechanical failure, driver's carelessness/distraction/health or mental condition/inexperience/impairment due to alcohol or other substances, etc.). Such accidents are not uncommon as you can see in the references below. In just a single week we had three such accidents right here in Marin County, two of them on Sep 26th alone. It is entirely foreseeable that an accident such as this could take place as a result of the proposed Lot #59 driveway and/or the proposed path of Ross Street Terrace, resulting in property damage, severe injury and even loss of life to my family and others.

Here are some links to relevant accidents:

Car plunges 80 feet into Tiburon backyard, Aug 30 2017:

<http://www.mercurynews.com/2017/08/31/marin-crash-hurts-teen-brothers-as-car-falls-80-feet-in-to-backyard>

Car going through home in Novato, Sep 26 2017:

<http://www.marinij.com/article/NO/20170829/NEWS/170829768>

Car crashing into Mill Valley shopping center, Sep 26 2017:

<http://www.mercurynews.com/2017/09/26/8-hurt-in-marin-county-wreck-after-truck-hurtles-off-highway-101/>

We therefore kindly request that, for the sake of safety, the City reject the developer's proposed lot line adjustment, construction of the lot #59 driveway and the road on Ross Street Terrace as they appear on the current plans.

Utilities. In the **absence of a utilities plan and absence of utilities easement** on Ross Street Terrace it's not clear how the developer proposes to supply the future houses with water, gas and sewer services. We kindly ask the City to request the developer to clarify this issue.

Parking. The plans do not provide for the required off-street parking on the subject lots. This is a major problem for Ross Street, which is already overwhelmed with limited parking, and will lose several existing parking spaces if these plans are approved. Moreover, Ross Street will lose several existing parking spaces if those plans are approved, and approving this plan will likely set a precedent for other applications lacking adequate parking. **We kindly request that the City not approve the developer's plans until a solution to parking is found.**

Environment, Floor Area Ratio and Natural State requirements. The current plans are non compliant with the City's Natural State and Floor Area Ratio requirements. This is out of character with the neighboring properties and ignores the basic reasons for those requirements. The Natural State Exception will contribute to water runoffs, which have the potential to flood neighboring properties, including my own. The proposed removal of large numbers of stately trees, as well as removal of over 2,000 cubic yards of soil will change the neighbourhood, create soil instability, and destroy an important, long-established wildlife corridor. Landfill of over 500 cubic yards will add to destabilization of the soil, making it prone to landslides. **We kindly request that the City reject the developer's plans where they call for non compliance with the City's regulations on Floor Area Ratio and Natural State.**

Construction safety. Excavation of over 2000 cubic yards of soil, bringing in over 500 cubic yards of fill, and construction of massive retaining walls and two houses as specified in the plans will require the use of heavy construction vehicles and equipment. My understanding is that the existing roadway cannot support such heavy equipment. A roadway that does not safely support the heavy-duty equipment required by this project will subject my family, my tenants, and me to the ever-present danger of a construction vehicle falling into my backyard.

We understand that the existing dirt road will have to be substantially widened and strengthened before it will be capable of safely supporting the on-going transit of construction vehicles such as bulldozers and dump trucks carrying heavy loads. Such a road will depend upon retaining walls sufficient to support and stabilize it. This presents a "catch-22" situation, in that 1) heavy

construction equipment will be required to construct retaining walls sufficient to support and stabilize a roadway that will 2) support the heavy construction equipment required to construct the retaining walls. I respectfully request that the developer address this situation and advise what plans he has to resolve it.

Another concern is that the construction of retaining walls requires extensive excavation and the use of heavy metal support beams tens of feet long. A small mistake by the construction crew can send these heavy metal beams flying onto my property and into my home, causing damage and bodily harm. We kindly request that the developer specify the ways they intend to guard against these dangers during construction.

In summary, proposed plans create multiple significant health and safety hazards, environmental and legal problems. Such foreseeably dangerous conditions will deprive us of peace of mind and the quiet enjoyment of our property. Therefore, ***we respectfully request that, per §14.23.070(D) of the San Rafael Code of Ordinances, the City not approve the plans to the extent that they call for these conditions.***

Sincerely yours,

Victor Kunin.

April 26 2021.

Dave Hogan

From: Jamey Chan < >
Sent: Tuesday, April 27, 2021 9:13 PM
To: Dave Hogan
Subject: Opposition

I am in opposition to the 2-house project at 33 and [41 Clayton Street, San Rafael](#).

Thank you,
Jamey

Sent from my iPhone

Dave Hogan

From: Jason Chan < >
Sent: Wednesday, April 28, 2021 9:08 AM
To: Dave Hogan
Subject: NO THANK YOU - 2-house project at 33 and 41 Clayton Street, San Rafael

Hi Dave,

I'm writing in opposition to the proposed 2-house project and a new road being built off Ross St. I've lived on Woods street for close to ten years and Ross Street is already highly congested and a nightmare to drive down. Its virtually possible to drive down Ross uninterrupted without running into a car double parked, delivery trucks, garbage trucks etc and the street is barely wide enough for two cars to pass anyways (its a joke). In addition, I have concerns about the light pollution, environment, and wildlife that inhabits this area.

Adding a new road off Ross for this project will only make matters worse due to the overcrowding that already exists. If they want this project to exist than they need build access off Clayton St (since these are Clayton St houses) NOT Ross St.

Thanks,
Jason

Dave Hogan

From: Donna Pierce < >
Sent: Wednesday, April 28, 2021 1:15 PM
To: Dave Hogan
Subject: Opposition to 2-house project at 33 and 41 Clayton

Dear Mr. Hogan;

I am writing to you as a homeowner off Ross St in San Rafael and am extremely opposed to the private road being considered for a 2-house project at 33 and 44 Clayton. The current Clayton St could be extended for this purpose and not add additional traffic on an already very busy street on Ross. In addition it would create an unnecessary and unreasonably steep access for emergency vehicles and create additional noise, parking and loss of undeveloped open space.

Please do not approve this plan.

Best regards,
Donna J Pierce
San Rafael

Dave Hogan

From: MARK STRAUSS <[REDACTED]>
Sent: Wednesday, April 28, 2021 2:12 PM
To: Dave Hogan
Subject: Clayton and Ross Street project

Dear Mr. Hogan,

I want to voice my opposition to the project of widening the street I am adding additional units above Clayton St.. There is a very difficult Parking Problem as well as lots of bike traffic now that Clayton St. is designated an official bike path. In addition, I've always liked the woods above my house as I see birds and wildlife up there. I've been a resident here at 2 Weld St. on the corner of Clayton and Welch for the past 31 years. And I have seen the neighborhood get more and more congested. After consulting with my neighbors at four Welch one Welch and others on Clayton St. we all feel this would be a big mistake.

Thank you for considering our opposition.

Sincerely,

Mark Strauss

[REDACTED]
SanRafael CA 94901

Mr. Dave Hogan
City of San Rafael Project Manager
1400 Fifth Avenue
San Rafael, CA
Dave.hogan@cityofsanrafael.org.

April 29, 2021

Re: Two-house project at 33 and 41 Clayton Street, San Rafael

Good Day Dave,

We are the current owners of the [REDACTED] which is adjacent to the to the entire southern boundary of the 41 Clayton Street parcel and portion of the western boundary of Ross Terrace Road. The 62 Woods Street property has been owned by our family for over 50 years. We currently have two tenants residing at 62 Woods Street who also support our opposition.

We are opposed to the proposed two-house project based on the inadequate emergency vehicle access, negative environmental impacts without adequate mitigation, loss of access to Ross Terrace and Clayton Road from our property and the other properties adjacent to Ross Terrace and Clayton Road, and our potential liabilities associated with construction and maintenance of the private driveway.

The 25% grade from Ross Street to proposed new Ross Terrace is unrealistically steep. Therefore, emergency vehicles will not have adequate access to the 33 and 41 Clayton Street properties. Emergency vehicles do not currently have access to the 33 and 41 Clayton Street properties. The fire risk to structures on adjacent properties from fires originating from the 33 and 41 Clayton Street properties is significant. There should not be any activities that could start fires on the 33 and 41 Clayton Street properties until emergency vehicles have adequate access to those properties.

The proposed exceptions to the required lot sizes and maximum building heights should not be allowed. The proposed structures allowed by these exceptions negatively affect the views from our property and the property west of the project and the available light to the property west of the project.

The project also fails to adequately mitigate the loss of parking on Ross Street and increased noise due to additional automobile and truck traffic.

All of Ross Terrace and the portion of Clayton Road fronting the 33 and 41 Clayton Road properties will be converted to a private drive way. Clayton road is a City of San Rafael street and the owner of the 33 and 41 Clayton Road properties does not own Ross Terrace. The owner of the 33 and 41 Clayton Road properties should not be allowed to convert to portion of a City of San Rafael Street and unowned property to a private driveway.

The blocking of Clayton Road at the northern boundary of the 33 Clayton Road property and the retaining walls as tall as 14' on both sides of the private driveway prevents the adjacent residents from accessing an historical pedestrian and vehicular route to downtown San Rafael. The residents of 62 Woods street have used Ross Street Terrace – Clayton Road to access downtown for over 50 years.

The extensive excavation and grading required for construction of the private driveway and associated retaining walls has a probability of creating slope stability issues on our property and the other properties adjacent to the private driveway. Any project approvals should be withheld until an adequate geotechnical analysis is conducted and confirms there will not be any slope stability issues that affect adjacent properties.

The responsibility for the maintenance and policing of the private driveway and retaining walls are extremely important. Improper maintenance of the private driveway and retaining walls will adversely affect the adjacent property owners. There should be an adequate maintenance and policing plan securely funded by the owners of 33 and 41 Clayton Road, in perpetuity, that releases the adjacent property owners from any liabilities associated with construction, maintenance, and policing of the private driveway the project should not be approved.

Respectively Submitted,

Lori Stickel

Ronald Stickel

Dave Hogan

From: Peter Marks (Peter R. Marks) <[REDACTED]>
Sent: Thursday, April 29, 2021 8:17 PM
To: Dave Hogan
Subject: Project 33/41 Ross Street Terrace ** Statement of Opposition **
Attachments: Letter to Dave Hogan April 29 2021.pdf

** Kindly Acknowledge Receipt **

April 29, 2021

Dear Mr. Hogan,

I'm writing you **IN OPPOSITION** to project 33/41 Ross Street Terrace and the proposed access via Ross Street.

I oppose this project's access via Ross Street for the following main reasons, among others.

1. Access via Ross Street will have a major impact over 45 residents both short-term and long-term (when the proposed road is completed). Access via the existing Clayton Street road will only impact 5 residents in the short-term, and none in the long-term, while improving access to their properties. Please see attached diagram.
2. Access via Ross Street has a substantially greater environmental impact. The deeded Clayton Street access to these lots will only require an estimated 150' of new pavement along an existing graded roadway. The existing road would need to be widened and improved which would benefit the current residents on Clayton. **Access from Ross Street to these lots will require 480' of entirely new roadway**, removing existing greenspace that has been enjoyed by both wildlife and residents, and generating unnecessary hard-scape, light and noise pollution for all adjoining residents. This is an environmental blunder.
3. Access via Ross Street will hinder existing fire escape routes and access to town for current residents along Ross Terrace, while doing nothing to enhance fire protection (other than undergrounding utilities which should be required irrespective of access route). **Access to these lots via Clayton will improve fire safety**, access and existing drainage issues for all residents on upper Clayton.
4. Mr. Friedman has told property owners along Ross Terrace that he doesn't prefer one access option over the other.

The City, DPW and Fire Department should work with Friedman Residential to find:

- **A solution that protects the vast majority of residents who would be impacted,**
- **A solution that improves an existing street, and**
- **A solution that enhances fire protection for residents.**

This is access via Clayton Street.

Respectfully,

Peter R. Marks
(property borders Ross Terrace)
San Rafael, CA

April 29, 2021

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- **A solution that improves an existing street, and**
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This is access via Clayton Street.

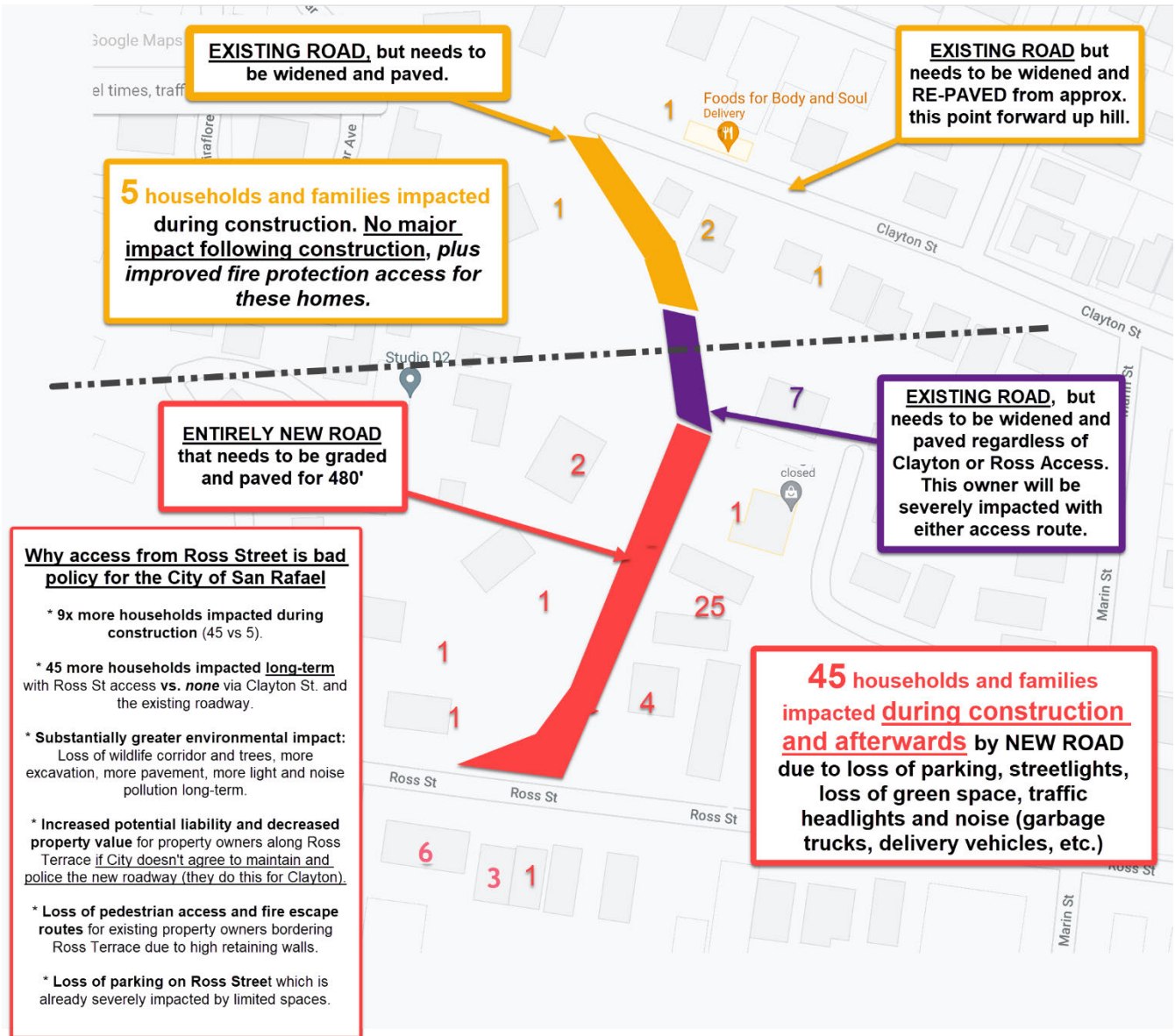
Respectfully,

Peter R. Marks

 (property borders Ross Terrace)

San Rafael, CA

Residents Impacted by Access Route (Ross St. vs. Clayton St.)



Valerie A. C. Lels
Attorney at Law
Post Office Box 812
Kentfield, CA 94914

April 29, 2021

Sent via email attachment

Mr. David Hogan
Planning Department
City of San Rafael
1400 Fifth Avenue
San Rafael, CA 94901

Re: 33/41 Ross Street Terrace (Friedman Residential)
Objections to be submitted to Design Review Board prior to 5/4/2021 7:00pm meeting

Dear Mr. Hogan:

By way of background, Coby Friedman, owner of the referenced property and developer of this project, proposes to construct two single family dwellings: one on Lot #59 and one on Lot#60 with access from Clayton Street/Ross Street Terrace, as shown on the plans he has submitted to the City of San Rafael. I own the property known as [REDACTED] in Gerstle Park, which borders on Lot #59. I am writing to you to register my strong objections to this project, and I respectfully request that you forward this correspondence to the Design Review Board prior to the May 4, 2021 public meeting to be held at 7:00pm. My objections concern the variances/exceptions required by the plans currently submitted by this developer, as follows:

Natural State.

The most recent set of plans that I have shows the Natural State calculations on Page A0.1.

Lot #59 - The Natural State requirement is 3610 square feet (5851 square foot lot with a 36.7% slope); however, the proposed plans allow for only 1950 square feet of Natural State, which is only 54% of the Natural State requirement. This would result in the loss of 1660 square feet of required Natural State

Lot #60 - .The Natural State requirement is 3283 square feet (5028 square foot lot with a 40.3% slope); however the proposed plans allow for only 1730 square feet of Natural State, which is only 52.7% of the Natural State requirement. This would result in the loss of 1553 square feet of required Natural State.

Mr. David Hogan
Planning Department, City of San Rafael
April 29, 2021
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Further to the above, the developer's proposed plans for this construction project would result in a loss of approximately 3200 total square feet of required Natural State.

Maintaining the required Natural State not only prevents over-building and preserves the beauty of unspoiled landscape, it also ensures absorption of precipitation, which, along with undisturbed established vegetation, stabilizes the soil and helps protect against erosion. In addition, Natural State provides vital food, shelter and nesting for an abundance of wildlife, including many species of animals, local and migratory birds, and pollenating insects, all of which help keep our ecosystem in balance.

For the above reasons, I respectfully request that the proposed variance/exception with respect to required Natural State be **denied**.

Off Street Parking.

According to Table 14.18.040 of the San Rafael Municipal Code, single-family residential hillside properties located on streets less than 26 feet wide, shall provide a minimum of two additional on-site parking spaces per unit (not to be located on the driveway apron). The developer is requesting a variance/exception to this requirement, and his plans propose the widening of Clayton Street/Ross Street Terrace to 26 feet. However, even a cursory on-site inspection of the existing narrow, undeveloped roadway leads one to question whether this can be accomplished without invading the private residential properties located along the roadway.

Thus, for good reason, both the Design Review Board and the Planning Commission have been clear with the developer that they recommend the two required guest parking spaces be located on the project site. To my knowledge, this recommendation has not been incorporated into the plans. On a practical level, it seems unlikely that this can be accomplished, in that the lots, which are significantly sub-standard in size, are already over-burdened with construction to the extent that the Natural State requirements cannot even be met and are approximately only half of what is required.

Further to the above, I respectfully request that, until and unless the developer can stake out the proposed roadway and demonstrate that it can indeed be widened to 26 feet, any proposed on-street guest parking be **denied**.

Development of sub-standard size lots.

The developer proposes construction of two single family dwellings on two lots that are far too small to accommodate the extensive driveway paving and multiple retaining walls that

Mr. David Hogan
Planning Department, City of San Rafael
April 29, 2021
Page 3

he incorporates into his design. This is due to the extremely difficult site he has chosen for his project. Lot #59, at 5851 square feet, is 1,649 feet smaller than the 7500 square foot lot required for R7.5 zoning; Lot #60 at 5028 is 2472 smaller than required. The proposed construction on lots of this sub-standard size is what gives rise to the request for variances/exceptions as to Natural state and on-site guest parking requirements. If these two lots are developed as proposed, it would result in over-building, compromising and seriously altering the character of the neighborhood.

It should be noted that on January 10, 2020 the developer was informed in writing by the Planning Department that the 2004 Certificate of Compliance does not ensure that the parcels he purchased are buildable parcels, nor does it entitle him as the parcel owner to a construction permit or other permits. It merely verifies that the three lots created by the 1963 three-lot split are legal lots of record. The developer was further reminded that to obtain a construction permit or other land use approval for the parcels he must complete the appropriate application process and meet all existing regulations.

In that the developer is unable to meet all existing regulations for the proposed construction on Lot #59 and Lot#60, construction on those lots should be **denied based on the sub-standard size of the lots alone.**

Having said that, I would like to suggest that a potential way to resolve this situation would be for the developer to construct one residential dwelling on a double lot. That approach would provide a building site of almost 11,000 square feet, which would allow for construction of a residence of substantial size, would enable compliance with the City's Natural State requirements, and would allow for two on-site guest parking spaces. It would also provide more flexibility with driveway location as well as the approach to the residence on this extremely difficult site.

With sincere thanks for your attention to the above, I remain,

Very truly yours,

Valerie A. C. Lels
Attorney at Law

cc:

Raffi Boloyan, City of San Rafael
Alicia Giudice, City of San Rafael

Dave Hogan

From: Prem Byrne < >
Sent: Friday, April 30, 2021 11:31 AM
To: Dave Hogan
Subject: Opposition to Clayton Street project

Dear David,

I live at [REDACTED] and am strongly opposed to the Clayton Street project because:

It creates an unnecessary new road through the middle of an existing neighborhood.

Clayton Street project should be served by Clayton Street, not Ross Street.

Major excavation creates retaining walls as tall as 14 feet high.

It creates unreasonable steep access for emergency vehicles with 25% grade from Ross Street to proposed new Ross Terrace.

Leads to loss of parking on Ross Street.

Light impacts from vehicles entering and existing new proposed 500 foot private driveway.

Noise impacts from increased vehicles, particularly on the 25% grade section.

Loss of undeveloped open space.

Loss of public pathway to downtown used by the entire neighborhood.

Loss of emergency fire access to residents because new large retaining walls block access.

Leaves the end of Clayton Street with existing inadequate emergency vehicle access that can be improved by providing access to the project via Clayton Street.

I will be attending the town meeting on this issue. Thank you for taking the time to read my opposition.

Best Regards,

Jonathan Steel
San rafael

Rifkind Law Group

1010 B Street, Suite 200, San Rafael, CA 94901
Telephone: (415) 785-7988 * www.rifkindlawgroup.com

Leonard A. Rifkind
len@rifkindlawgroup.com

April 30, 2021

VIA EMAIL: dave.hogan@cityofsanrafael.org; Alicia.giudice@cityofsanrafael.org

City of San Rafael Design Review Board

Re: Conceptual Design Review 33 and 41 Clayton Street

Dear Design Review Board Members:

Our firm represents Robert and Emily Foehr, 122 Ross Street (25 units), Michelle and Patrick Killian, 209 Marin Street, Peter and Leslie Marks, 60 Woods, Kurt Scheidt, 137 Ross Street, and Ronald and Lori Stickel, 62 Woods, all of whom **oppose** the proposed access for the referenced project via a *new* to be constructed private street some 500 feet in length to be named "Ross Terrace." Our clients oppose the proposed Ross Terrace access for several reasons:

1. **45 Units Impacted by Ross Terrace Access Compared to 5 Units on Clayton Street.** Ross Terrace will be massively disruptive to 45 housing units. Building a new 20-foot wide, 500-foot road with retaining walls up to 14-foot high is an anathema to the neighborhood, replacing green space that provides public pedestrian access towards downtown and an alternative emergency egress.
2. **Clayton Street Needs Improved Emergency Vehicle Access.** Improving existing Clayton Street will *enhance* existing poor emergency vehicle access.
3. **Ross Terrace Access Will Require Retaining Walls 14 Feet High.** Ross Terrace will require retaining walls collectively equal to 14 feet in height in some locations. Such walls will be unsightly, massive and block access to adjoining property owners that have prescriptive rights on undeveloped Ross Terrace.
4. **Ross Terrace Access Has Excessive Grade.** Ross Terrace as designed calls for an initial 25% grade, and will cause a standard fire truck to bottom out/scrape its undercarriage on the transition from Ross Street to Ross Terrace. A 25% grade for a fire truck and other emergency vehicles is objectively unreasonable. The only way to reduce the grade is to increase grading resulting in even higher retaining walls.
5. **Loss of Existing Public Access.** Developing Ross Terrace will cut off public access to Clayton Street that has been used by the public for over a hundred years as access towards downtown.

6. **Loss of Alternative Emergency Escape.** Developing Ross Terrace with massive retaining walls will cut off alternative public emergency egress, e.g., a fire escape route for the 45 units affected.
7. **Loss of Parking Spaces on Ross Street.** Developing Ross Terrace will cause the loss of at least four (4) valuable parking spaces on overparked Ross Street.
8. **Light, Noise and Traffic Impacts to Residents.** Developing Ross Terrace will create headlight impacts on Ross Street housing facing the new driveway. Additionally, because of the excessively steep grade vehicles will have to go into low gear and generate significant engine noise affecting 45 housing units. The hidden nature of the new roadway, with its massive retaining walls, is an invitation to criminal activity.
9. **Drainage Impacts.** A Ross Terrace access will increase the amount of surface waters draining towards Clayton Street.
10. **Utility Impacts.** A Ross Terrace access will adversely affect existing utilities for several adjacent units that have been in place decades.
11. **Loss of Green Space and Wildlife Habitat.** Developing Ross Terrace eliminates a public social trail in place for over 100 years, and eliminates green space.
12. **Developer Does Not Have Preference on the Access Route.** The developer does not care which access, Ross Terrace or Clayton, only that he is approved to construct his two-unit project. The majority of the neighborhood deeply cares and is strongly opposed to constructing a new 500-foot roadway through the middle of the neighborhood. Even the developer believed Clayton Street was the correct access for the project, having directed his engineer, ILS and Associates to prepare engineering plans for Clayton access in 2016, and again in 2019.
13. **Maintenance.** Imposing the maintenance of 500-foot private road and adjacent retaining walls on the proposed two new homes invites the likelihood of abdication by future homeowners of the two-unit project, leaving the surrounding neighbors with a concrete eyesore. A shorter 150-foot private access route from Clayton is more feasible.

There are several provisions of the City's design review ordinance that require the Board to recommend that the project does NOT receive conceptual design review approval:

No Balance Between the Project and the Natural Environment. The Board cannot support or recommend conceptual design review approval for this project with a Ross Terrace access. The very purpose of design review fails: "first and foremost, maintain a proper balance between development and the natural environment." SRMC Sec.

14.25.010. A Ross Terrace access obliterates the natural environment. The project access creates a Caltrans level infrastructure in a small residential neighborhood.

Project Access on Ross Terrace Fails to Comply with Design Review Requirements in Multiple Respects:

- The proposed Ross Terrace access fails to “display sensitivity to the natural hillside setting and compatibility with nearby hillside neighborhoods, and maintain a strong relationship to the natural setting.” SRMC Sec. 14.25.050C(1).
- The proposed Ross Terrace access fails to *minimize* grading, retain more of the project site in its natural state, minimize visual impacts . . . and with sensitivity to nearby structures. SRMC Sec. 14.25.050C(2).
- The proposed Ross Terrace access *maximizes* grading. Site design requires a project to minimize grading and removal of natural vegetation. Highly visible hillsides and wildlife habitat should be preserved and respected. SRMC Sec. 14.25.050E(2).
- The project solution for access by creation of a new 500-foot road bounded by massive retaining walls fails the fails the “good” circulation test. SRMC Sec. 14.25.050E(3)
- Ross Terrace access fails to preserve the natural landscape in its natural state as much as practical and should be rejected in favor of the shorter less intrusive Clayton Street access. SRMC Sec. 14.25.050G.
- Construction impacts will be increased with a Ross Terrace access and cause substantial disruption to 45 households. SRMC Sec. 14.25.050H.

We anticipate that the developer will claim the Clayton access is not viable because the Fire Department does not support it and it requires acquisition of private property for right of way purposes. Given the incredible impacts that will occur with a Ross Terrace access, we respectfully request the Board direct staff, including the Fire Department, to explore every opportunity to enhance fire safety access on Clayton Street, which is demonstrably deficient, before allowing a new freeway level of improvement on Ross Terrace.

Respectfully submitted,

RIFKIND LAW GROUP

By: 

Len Rifkind

neighbors letter of oposition

Victor Kunin <>

Mon 5/3/2021 10:40 AM

To: Dave Hogan <Dave.Hogan@cityofsanrafael.org>

 1 attachments (131 KB)

neighbors_letter.pdf;

Dave,

Our neighbors and tenants signed the attached letter of opposition to this project. I apologize for sending it this late, and I hope it's not too late.

Please let me know if it can be attached to the report.

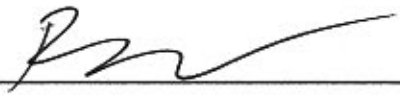


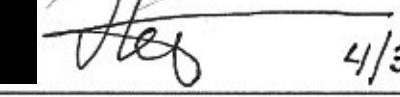
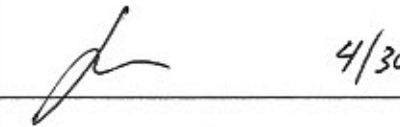
Victor.

To David Hogan, Planner

Re: Opposition to the plans for development of Lots on Ross Street Terrace.

We oppose the plans for development of Ross Street Terrace and lots 012-141-59 and -60 dated 5-10-2020.

The developer seeks to create a new private driveway on Ross Street Terrace, which presently is an open space used by the public, with up to 12 foot retaining walls on both the uphill and downhill sides. The current design will block our alternative emergency egress, block access to Clayton Street, remove existing parking, and will not to comply with city's parking, Natural State and Floor Area Ratio requirements. We kindly request not to approve the plans until those issues are resolved.

Name	Address	Signature	Date
1. River Matta	[REDACTED]		4/28/21
2. Charlie Brown	[REDACTED]	Charlie = Brown	4/28/21
3. Chris Peacock	[REDACTED]		
4. Dylan Johnson	[REDACTED]		4/29/21
5. Peter Perminov	[REDACTED]		4/30/21
6. Maria Kunin	[REDACTED]		4/30/21
7.			
8.			
9.			

33/41 Ross Street Terrace Project

Wilfried <>

Mon 5/3/2021 10:37 AM

To: Dave Hogan <Dave.Hogan@cityofsanrafael.org>

Hello David,

this note is in regards to the proposed development at 33/41 Ross Street Terrace (formerly referred to as Clayton Street lots 59 & 60).

My name is Wilfried Kruse. I live at [redacted] Clayton Street, and am the owner of the third undeveloped lot [redacted]. I would like to request that any approved proposal to provide street access for lots 59 & 60 will not "orphan" my undeveloped lot and allow for the access road to be extended in the future with reasonable effort. I am especially concerned about an approach that would require agreement of the owners at 33/41 Ross Street Terrace for a future expansion. I would appreciate if the Design Review Board can incorporate this topic into their review and recommendations for the proposed project.

Kind regards,
Wilfried Kruse

Opposed to the Ross Terrace lots #59 and #60 project

Sandra Luna Corcoran Global Living < >

Mon 5/3/2021 3:45 PM

To: Dave Hogan <Dave.Hogan@cityofsanrafael.org>

Hello Mr Hogan,

I am a resident of Gerstle Park.

I am also a realtor, much in favor of new housing but not this project.

If you've been to the site you know Ross is already a very narrow road with tons of cars and nowhere to park and it's difficult for two cars to get through if going opposite directions.

This new development, if approved, should access through Clayton St.

There is no reason to pave over 4,800'+++ of wild lands servicing wildlife to make way for two households.

As you may know, Gerstle Park goes back to the building of our town before the Gold Rush.

I'm not writing here to preserve a house, I'm writing to keep green space where it is and has been for hundreds of years. This undeveloped land in our neighborhood is precious and must be preserved.

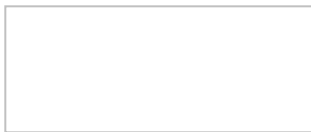
The current use of the public walkway to downtown is a charming feature of any historic area.

Please please don't remove it.

--

Sandi Luna

REALTOR



WIRE FRAUD WARNING: Do not respond to ANY wire instructions that appear to be from me or anyone at Corcoran Global Living. They are likely to be an attempt to steal your money. Coordinate all wire transfers via phone conversation with your escrow officer.

This email may be confidential. If you are not the intended recipient, please notify me immediately and delete this copy from your system.

5/4/2021

Fw: Objection to 33/41 Ross Street Terrace

Sandy Baker < >

Mon 5/3/2021 4:19 PM

To: Dave Hogan <Dave.Hogan@cityofsanrafael.org>

 1 attachments (14 KB)

Lindsay Lara 5.3.21.docx;

From: Sandy Baker

Sent: Monday, May 3, 2021 4:08 PM

To: davehogan@cityofsanrafael.org <davehogan@cityofsanrafael.org>

Cc: billb@xxxxxxx

Subject: Objection to 33/41 Ross Street Terrace

Hello again Mr. Hogan - I spoke with you last Tuesday voicing my "vehement objection" to this project. My husband and I have become much more engaged and educated about it and we really think it's a horrible plan. Please see my attached letter, and let me know if there is anything else we can do...besides attend and speak up at tomorrow night's meeting (I've already asked Lindsay Lara to put us on the Agenda).

Many thanks. Sandy Baker

Sandy Baker, MBA

www.mamabakes.org

May 3, 2021

Lindsay Lara, SR City Clerk

Cc: Planning Commission

(please make sure this letter is forwarded to all members prior to the meeting).

RE: Planning Commission Meeting – Tuesday May 4, 2021 7:00 pm
Discussion about Agenda Item, entitled 33/41 Ross Street Terrace

Dear Ms. Lara –

This letter is in Strong Opposition to the development project proposed at 33/41 Ross Vista Terrace, which is physically located at the top end of Clayton Street. This project has been rejected numerous times, beginning back in 2014. In 2019, the Planning Department advised the lot owner that the “Certification of Compliance” he received did NOT ensure that the parcels he’d purchased are buildable parcels”. **We do not understand why this is again under consideration.** Nothing has changed. The land demographic remains the same. The density of surrounding neighborhoods has not changed.

My husband (a building contractor) and I live in the Gerstle Park neighborhood; our home is above the proposed property. We have walked this property multiple times. The proposed building sites do not have sufficient lot size to build compliant homes. The property is not buildable.

We understand the developer is requesting unreasonable exemptions to build the two homes in question. This violates regulations/building codes, and creates safety issues for surrounding homes/streets.

We believe that allowing this project to move forward would result in serious Safety and Fire issues for our neighborhood. It has also already resulted in very divisive “Access” issues throughout the neighborhood.

Please, rightly, reject this project!

Sincerely, Sandy and Bill Baker

Sandy Baker, MBA

Bill Baker, General Building Contractor

Ross Terrace issues

Patrick Killian < >

Mon 5/3/2021 4:40 PM

To: Dave Hogan <Dave.Hogan@cityofsanrafael.org>; Alicia Giudice <Alicia.Giudice@cityofsanrafael.org>; Raffi Boloyan <Raffi.Boloyan@cityofsanrafael.org>

To: dave.hogan@cityofsanrafael.org

alicia.giudice@cityofsanrafael.org

Raffi.Boloyan@cityofsanrafael.org

Dear Dave, Alicia, and Raffi

My wife Michele and I have lived at [REDACTED] for around 25 years. We have particularly enjoyed the quiet and natural setting that we have been lucky enough to have lived in all these years. Our house backs up to the "fire road" which the city is calling Ross Terrace.

Now that there is a potential development of the fire road directly behind our house, we and our neighbors feel that much of that pristine quality we have enjoyed is being threatened for no good reason.

The property bought by Coby Friedman stated in its documents that the access was to be via Clayton St. This contractual stipulation seems to have been set aside simply because of some of the challenges required to make the Clayton access viable. The fire road called Ross Terrace has at least as many challenges and would affect far more people and really the whole neighborhood.

This weighing of the pros and cons has got to be the determining factor in the decision of which way the access to this development is to go. It really is up to Coby Friedman to work out the hurdles no matter what direction is chosen.

There are so many issues when considering the Ross Terrace access and they should not be dismissed.

- There has been much discussion about the fire trucks accessibility to the new development. Even though Clayton has a steep road and a sharp curve to deal with much of the same issues are present with the Ross Terrace entrance.
 - The road would be very steep coming off Ross St.
 - The trucks would not be able to access this entrance going west on Ross St. for the angle of the turn would be too tight. They would instead have to drive around the block down Bayview, right on Clark, then east on Ross St. What happens if the drivers do not know that is the only way to gain access? They would lose valuable time responding to an emergency.
- The Gerstle Park neighborhood is already tight on street parking, but Ross St. is the worst. There is never enough parking on Ross St. right now. An entrance off Ross St. would remove at least 3 to 4 essential parking spaces.
 - Access from Ross St. creates an unnecessary new road through the middle of an existing neighborhood, whereas Clayton Street has existed for many years.
- Access from Ross St would require major excavation which would create retaining walls as tall as 14 feet high, all visible when driving down Ross St. and making an unsightly look in our old and beautiful neighborhood

- Emergency vehicles would have to navigate a very steep 25% grade from Ross Street to proposed new Ross Terrace. The retaining walls would also prevent emergency egress for residents.
- The impacts from vehicle headlights entering and exiting a new proposed 450-plus foot private driveway would disturb many of the neighbors on Ross St. as well as the properties that border Ross Terrace.
- There would be impacts from noise, light & exhaust from delivery vehicles, garbage and cars that would affect many more people than the Clayton St access. Not only are there single-family homes bordering the Ross Terrace road, but one 4-plex, one very large apartment complex with over 20 units, and one 6-unit apartment building. The proposed road would come within feet of many of those who live in the large apartment building.
- Therefore, if you weigh the impact on the local residents there is no question that developing Ross St Terrace would affect far more people detrimentally.
- This undeveloped open space, the “fire road” called Ross Terrace has served as a wildlife corridor as well as a public pathway to downtown used by the entire neighborhood. That is one major reason Hugo Landecker was so vehemently opposed to this road being developed during his lifetime.
- Therefore, one major question to ponder is how this development is going to affect the character, quality, and even property value of the highly sought Gerstle Park neighborhood.
- It also leaves the end of Clayton Street with existing inadequate emergency vehicle access that can be improved by providing access to the project via Clayton Street.
- One of the issues that has not been addressed is the maintenance of the proposed new Ross Terrace road. To assume that the owners of the new properties are going to be liable and maintain a 400 plus foot road is untenable and absurd. That is not acceptable to all the homeowners adjacent to the road.

Please take the wishes of the local residents, and the wildlife corridor in our very special neighborhood into account when determining the access to this new development.

Thank you,

Patrick and Michele Killian

33/41 Ross St Terrace Proposed Project

David Campbell < >

Tue 5/4/2021 11:03 AM

To: Dave Hogan <Dave.Hogan@cityofsanrafael.org>; alicia.guidice@cityofsanrafael.org <alicia.guidice@cityofsanrafael.org>

Ross St Terrace Proposed Project

Dear Design Review Board,

We write to express our serious concerns about the wisdom and viability of the proposed building project on lots 59 & 60 on Ross St Terrace.

According to the original deed, the Ross Terrace road cut that has been slated for improvement for the purpose of executing this building project and for the future daily use of the eventual home owners, was originally declared as an easement dedicated to public use. Does the city intend to perform these roadway improvements, or will the contractor? Who will be responsible for future maintenance and liabilities associated with these proposed roadway improvements? What is the process by which the city permits conversion of dedicated public use property to private use?

We have recently been informed by City Planner Alice Guidice that this unimproved roadway is not a publicly maintained roadway and the City does not control the use of the road. Having lived here for over 40 years, we can attest that the city, nor anyone other than ourselves, has ever provided any maintenance or exercised authority over conditions on this unimproved road. This road cut has suffered landslides and significant erosion over the years, and is only drivable adjacent to our 56 Clayton St address as result of our personal efforts to make it so. We have been informed that an independent environmental impact report for the proposed project has not yet been filed. We need and expect to review such documentation as it concerns past and probable future soils migration and deleterious moisture drainage conditions that have historically beset the general area.

This unimproved section of roadway serves as sole and primary entry access for the residents of our upper duplex apartment (56B). We cannot tolerate any unsafe conditions likely to be imposed by construction traffic and obstructive parking of vehicles impeding proper and safe access to the residence entry

The upper portion of Clayton St where we live is a one lane street with virtually no street parking available. It is a dead end street, our sole means of accessing or exiting our residences. There are six residences on this slope. The imposition of ongoing periods of closure to this section of the street that this construction project will likely create would at very least cause a profound inconvenience to our daily lives, but also impose a persistent health and safety threat by its interference with emergency services access, and/or our ability to exit the vicinity in event of emergency.

Page 26 of the building plans posted on the San Rafael website shows plans for modifications to this upper portion of Clayton St that involve accessing and usurping portions of multiple properties to install retaining walls, widen the road, and modify the turning radius and steepness of the sharp turn at the top of the existing Clayton street. A large portion of our driveway is to be taken by this plan. We do not understand how the city will approve a plan for

a private developer to use properties he does not own to achieve his proposed project goals. As I understand, none of these properties has granted such permission, and no one is inclined to allow such transgression.

We strongly oppose the approval of this building project. It seems quite certain to cause a monstrous headache for our immediate neighborhood, for the Gerstle Park neighborhood in general, and inevitably for the City of San Rafael.

We strongly urge any and all individuals involved in decisions concerning this project to visit the site and witness the conditions here at play. Merely looking at a set of plans does not and cannot provide adequate basis for making informed decisions concerning the many, many challenges of this proposed development. We would gladly meet with any such persons to share our perspective in detail. Thank you for your kind attention,

Jeanne and David Campbell

San Rafael

33/41 Ross Street Terrace

Susan Miltner < >

Mon 5/3/2021 10:32 PM

To: Dave Hogan <Dave.Hogan@cityofsanrafael.org>

Dear San Rafael Design Review Board,

We would like to express our concern as to the building of two large homes on two small lots in a hillside area. Are these buildable lots? Of great concern to us is that the properties to meet the natural state requirements.

We also are writing this letter in response to the suggestion by some that Clayton Street provides a better access to 33/41 Ross Street Terrace.

When Clayton Street was being repaved, we were told by the city that Clayton Street ended at the top and they would not pave the road further to the existing two homes further up the way.

We kindly request that the Design Review Board walk along Clayton Street up to the proposed lots to understand more fully the impact that this project will have on us and our neighbors.

From the drawings presented, the impact to our property specifically (51-53 Clayton) will be devastating and have long term impact on us.

1. The stairs to 51 Clayton Street will have to be taken down to provide for a widened street. This is our entryway and part of our property.
2. The access to 53 Clayton Street would no longer be at grade level, but would be six feet below street level. How will we access 53 Clayton Street?
3. The proposal is to put a guard rail about 2 feet away from our house. A metal guard rail 2 feet away from our house, the length of our house.
4. In addition, the proposal is to put a 6 foot retaining wall right next to our house. We will be below the street. We will no longer be able to look out the windows.
5. With the street being raised, the retaining walls on our property at the backyard will be more than 10 feet high.
6. Property will be taken away from us to make the street larger. We have a very tiny lot and taking away any property will impact us negatively.
7. A parking space will be taken away from our property and be created for public use across the street. Parking is highly impacted on Clayton Street. It is not uncommon to have to park two blocks away. Taking away private parking from a residence does not make sense.
8. I am concerned for the ability of the house directly above us and for our house to sustain the level of work involved on building a road and continuing road traffic.
9. We are right on the road. I am fearful for our animals and us.

Thank you for consideration of our concerns.

Sincerely,

Susan Miltner and Marco Berti

Clayton Street

DRB Agenda Item #1 - 33/41 Ross St. Terrace

Amy Likover <>

Mon 5/3/2021 8:16 PM

To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>; Alicia Giudice <Alicia.Giudice@cityofsanrafael.org>; Dave Hogan <Dave.Hogan@cityofsanrafael.org>

To The Design Review Board,

Cc to Planners Dave Hogan and Ali Giudice

Re: File No(s).: LLA19-008/ED19-090/ED19- 091/EX20-006. We object to the proposed project. The exceptions to the Hillside Design Guidelines should never be granted on such a steep and inaccessible lot. The proposed structures are too large for the parcels and the proposed roadway Ross Street Terrace is too narrow given the lots' topography and the applicant's request for exemptions. The first exemption requests a hugely diminished natural state. There is a sound rationale for this regulation on hillside lots, they are best practices, and this requirement must be maintained. The second exception requests an exemption from the City's requirement for 2 covered and 2 guest parking spaces (not in the driveway). The proposed Ross Street Terrace is a narrow street due to the topography; any blockage from guest parking is an evacuation and fire safety hazard. There are some lots that are simply unbuildable as proposed, and this proposal on these lots, is so far out of compliance that the City must reject it as unbuildable. In the City's estimation as described in the December 6, 2019 correspondence to the applicant, Mr. Coby Friedman, the Certificate of Compliance does not ensure the parcels he purchased are buildable. We are in agreement with the City's 2019 estimation. Property owners who build on a hillside lot have a responsibility to comply, as we did when we built our home. We are safer for it, and so is our neighborhood. Mr. Friedman's proposal puts the entire neighborhood at risk.

Yours truly,

Amy and Joe Likover

Rd. San Rafael, CA 94901

Natural State

Valerie Lels < >

Mon 5/3/2021 8:07 PM

To: Dave Hogan <Dave.Hogan@cityofsanrafael.org>

Cc: Alicia Giudice <Alicia.Giudice@cityofsanrafael.org>; Raffi Boloyan <Raffi.Boloyan@cityofsanrafael.org>

Hi Dave,

Please see the below photos, taken today, of a mother deer and her just-born twin babies. They are standing mere feet from the Friedman property, where the developer is requesting a Natural State variance/exception that would leave remaining just over half of the Natural State required by the San Rafael Municipal Code.

If this variance/exception is granted, 3200 square feet of required Natural State would be eliminated from the Friedman lots.

Please do not deprive the wildlife as well as the neighborhood of this vital Natural State. Please deny the developer's request for the Natural State variance/exception.

Thank you sincerely,

Valerie Lels
Gerstle Park





Sent from my iPhone

Ross Terrace St - San Rafael

Katy Chamberlin < >

Tue 5/4/2021 11:52 AM

To: Dave Hogan <Dave.Hogan@cityofsanrafael.org>

Hello Dave,

As a resident of [REDACTED] I am writing to oppose the proposed new house project for 33 and 41 Clayton St in San Rafael (Ross Terrace).

This proposed road to access is approx 25ft from my front door. While I don't know the timeline of the project, I am starting chemotherapy for cancer treatment shortly. I can't see getting much rest with construction and excavation equipment outside my front door. As well as future noise impact for those of us who live along the proposed road.

This is a Clayton St project and any access roads should not cut through the existing neighborhood resulting in loss of open space.

The road would not be adequate for emergency response vehicles via Ross St. or emergency fire access for residents because of the proposed retaining walls that would block access.

Thank you,
Katy Chamberlin
San Rafael, Ca 94901

Opposition Regarding Project 33/41 Ross Street Terrace, (Freidman Residential)

Megan Gordon <>

Tue 5/4/2021 11:37 AM

To: Dave Hogan <Dave.Hogan@cityofsanrafael.org>

Cc: travis turner <tturner03@gmail.com>

Hi Dave,

I hope your day is going well. My husband (copied here) and I are new residents in San Rafael, having moved on 4/17/2021 from Oakland.

The property we now reside in [REDACTED] is owned by my mother, Donna Mickelson, of Berkeley CA. Previously it belonged to my grandmother, Katherine Ettienne of Fairfax, since the mid 50's.

We were thrilled to move into this family home, and excited to live in a quiet area, with a calm pace of life. So, imagine our distress upon seeing notice (forwarded by my mother) of the planned project in our beautiful new community.

As I'm sure you are aware, Clayton is a very narrow street. Parking is already problematic. If the planned project goes forward, all residents of Clayton St will be deeply inconvenienced, possibly even in a life threatening manner.

If construction vehicles block Clayton St, residents may be denied ingress and egress, even in the event of emergencies. I'm sure I don't need to tell you that the upcoming fire season is likely to be very dangerous, potentially deadly.

Adding more residences in this already crowded area also reduces defensible space for much needed fire prevention activities.

One must also take into account the disruption and noise pollution of jackhammers, earth movers, dump trucks, etc. I work primarily from home. It is also highly likely our driveway would be impacted, and frequently blocked. I need to leave my home to give site tours to potential clients as a regular function of my job. These are at varied times, and sometimes with little warning. This planned project will therefore impact my livelihood.

It's unclear to me why residents of Clayton St should be forced to live in an at best inconvenient and at worst dangerous situation, just so a developer can make a buck. I hope the City of San Rafael will prioritize existing residents and longtime landowners, over new developers.

I plan to attend this evening's Design Review Board Meeting to register our complete disapproval of this project personally. I know many other Clayton St residents plan to do the same.

Please feel free to contact me directly with any questions or points of clarification. I look forward to hearing from you.

Best,

--

Megan Gordon

Dave Hogan

From: Veronica Page < >
Sent: Tuesday, May 4, 2021 2:58 PM
To: Dave Hogan
Subject: Proposed Ross Street driveway.

Dear Mr. Hogan,

For this evenings Zoom Meeting
897-5606-9694

I am one of many concerned actually, annoyed neighbors that do not want to see this pass.

I can't even believe this proposal is even being considered as a possibility.

As one of my other neighbors pointed out, if this steep driveway can be engineered, then so can the gravel portion of Clayton street. That's where the driveway belongs, closer to the actual site.

I would never begrudge someone who wants to build a home or two, but a driveway where there isn't supposed to be one? That's different, it's a big no.

Let's really think about the dangers and the impact this will have on the entirety of the residents on Ross street. Please DO NOT PASS this portion of the project proposal.

Thank you for listening and for your consideration.

Veronica Page-Affoumado
Ross Street Resident

Dave Hogan

From: Jessica Yarnall Loarie < >
Sent: Tuesday, May 4, 2021 4:10 PM
To: Dave Hogan; Alicia Giudice; planning
Cc: Scott Loarie
Subject: Comments for Design Review Board on Ross Terrace St project
Attachments: May 3 letter re design review board_final.pdf

Please see the attached comments and picture of the already congested parking situation on Ross St.

Thanks,

Jessica L Yarnall Loarie, esq. and Scott Loarie



May 4, 2021

City of San Rafael

Dave Hogan and Alicia Giudice
Planning Department
Design Review Board
1400 Fifth Ave
San Rafael, CA 94901

Re: Letter of Opposition to Ross Terrace Road and Homes Project

Dear Mr. Hogan, Ms. Giudice and Members of the Design Review Board:

We join our many neighbors and write to oppose the Ross Terrace project homes and the new private two lane 500ft Ross Terrace road. We purchased [REDACTED] which is across the street from the proposed road, and are the parents to two young children, ages 6 and 3. We frequently walk, bike, scoot and play on Ross Street and its sidewalks with our children and pass this area daily while en route to Gerstle Park. We have grave concerns about this entire development project, a few of which are outlined below.

1. Inadequate notice

We live across the street from the project and newly proposed 2 lane private access road and have requested to be added to the project notice list several times, to no avail. We have never received notice from the city or the developer of this project.

Moreover, in at least one place noticing the May 4 Design Review Board meeting, the notice lacked the date and the zoom link which was only found on the street sign. The City's website for the Ross Terrace project indicates that there are no decision points at this time-- <https://www.cityofsanrafael.org/ross-clayton/>. This is not adequate notice.

2. The New Two-Lane Road and Two Large Single-Family Homes Will Take Away Necessary Parking

Parking along Ross Street is extremely constrained and is worse than in many neighborhoods in San Francisco. I'm attached a picture of a normal day on Ross Street. When cars are parked on both sides of Ross Street, there is only room for one car to pass and not two lanes of traffic. Thus, having a two-lane access road of a width of 16-20 feet (**Staff report at p. 2**) take 2-4 parking spaces out of commission for Ross Street presents a serious problem for our already congested neighborhood.

Moreover, the two proposed houses apparently lack adequate off-street guest parking under city regulations. This is unacceptable and will further add to the parking congestion. The homes can be downsized to accommodate the required parking on the existing lots.

Finally, the San Rafael Planning Commission recently approved a remodel for the 147 Ross Street apartments. I understand the developer there had asked for additional 2-bedroom units but was denied due to the site having inadequate off-street parking. Two new single-family homes should be subject to these same standards—and should not be built as presented if they cannot meet the parking requirements.

3. Traffic

Ross Street is a main access route for many parts of Gerstle Park. It is not unusual for many cars and delivery vehicles to be on the street in any given day, many of which are traveling far above a residential speed limit. Adding a new private road and two large, single family homes will add more traffic to an already congested area. This will be even worse during construction, but presents a long-term issue with the addition of two large single-family homes and a new 2 lane road.

Ross street is not a very wide street and when cars are parked, only a single car can safely pass. This means there is a rather constant stream of cars pulling into driveways and stopping for other cars to pass, a dangerous situation for young kids and pedestrians.

4. Pedestrian and Vehicle Safety from Addition of Two-lane road with High Retaining Walls

The proposed two-lane road at Ross Terrace is at a steep grade and apparently will require 6-12 foot+ high retaining walls. When coupled with congested neighborhood parking, any driver pulling out of this Ross Terrace road and onto Ross Street will have an incredibly difficult time viewing passing pedestrians, such as young children walking or on bikes, or the other cars driving down Ross Street. It's analogous to coming out of a parking garage in an urban area (most of which have alarms to alert pedestrians). **(Staff report at p. 10).**

The staff report even notes that the present design with inadequate guest parking and garage exit space may require a car to *back down* the full 500 ft Ross Terrace road. This is absurd and extraordinarily dangerous. (Staff Report at p. 7—erroneously stating that Ross Terrace is only 100 ft.).

I foresee the potential for accidents for both pedestrians and vehicles. We often have a tough time safely pulling out of our own driveway that does not have 6-12 foot retaining walls blocking our view. The line of sight issue poses a severe safety issue.

5. Drainage concerns from Road and New Homes

The new 2 lane road is on an extremely steep grade. Adjacent property owners have already expressed concern about how those steep retaining walls could impact their properties, and

questioned who will be responsible for maintaining the walls over the long-term. Another concern is how changing the grading and slope of the natural hillside and paving it will impact drainage for nearby property owners, including those of us across the street. Essentially, the new two-lane Ross Terrace road will channel water directly at our properties. The natural dirt and trees on the property that currently absorb water will be removed. **The project includes the removal of more than 25 trees for the access road alone (Staff Report. P. 8).** No drainage study has been conducted to assess this issue my knowledge.

6. Fire access

Improving Clayton Street would provide safer fire access for a number of homes already on Clayton. This alternative should be analyzed for this project.

Adding Ross Terrace to Ross Street is not a great fire access alternative. A recent fire alarm at an apartment building on Ross Street required closure to traffic for the entire street for fire trucks to access an at-grade property. With congested parking and a steep hill, Ross Terrace is not a great fire access point.

Further, if the new homes pose a fire danger in that area, one should question whether this is an appropriate location to site two new homes.

7. Character of homes is not aligned with Historic Gerstle Park

The staff report for this meeting is the first place we've seen any sort of design plans for the homes on Ross Terrace. The homes appear to be very modern, which is out of character for the historic Gerstle Park area. The homes should be designed to harmonize with the surroundings of this unique and special area.

8. Granting numerous exemptions—natural state, guest parking is not warranted

City policies requiring a certain amount of natural space and guest parking exist for good reason. This project requires so many exceptions that it is not a viable and compliant design. No exemptions should be granted here.

a. Loss of natural state

The developer here is asking for a large exception to the natural state requirement. This requirement exists for good reason. Green space is important. The current property is an important wildlife habitat and corridor. We regularly see deer, wild turkeys and even foxes in this area. The large mature trees provide vital shade, retain carbon, and the soil absorbs moisture. Taking out more than 25 trees, paving over this area with a road and two large homes—as the design currently suggests—does not comply with city policies and does not warrant any exemption.

b. Guest Parking

As previously outlined, parking is a massive problem on Ross Street already. This 16-20ft access road will take 2-4 parking spaces out of commission. Adding two new homes without adequate guest parking would take away another 2-4 spaces for a net loss of 8+ parking spaces.

This is an extremely bad idea. Moreover, the Planning Commission recently scaled back the 147 Ross St apartment design plans due to inadequate off-street parking. The policy should be consistently applied. No exemption should be granted to the Ross Terrace homes for guest parking.

9. Alternatives

a. Clayton Street Access as Viable, Preferred Access Alternative

The Design Review Board should re-consider access via Clayton Street instead of a massive new road being constructed off of Ross St. It would benefit the homes on Clayton street to have better fire access. And a less extreme road would need to be built from the Clayton side and the Ross Street parking and pedestrian safety would be preserved. Apparently, a 2017 recommendation from the Design Review Board endorsed the Clayton Street access alternative (**Staff Report at p. 12**). Nothing has changed to necessitate access from a new road at Ross Terrace.

b. Downsizing project to One House

At a certain point, the exceptions swallow the rule. That's the present situation. Two large homes just do not fit into this very small, sloped space. One home would be enough of a stretch. A one home alternative should be explored.

c. Downsizing size and scope of the two houses

The homes are too large for the space given. If two homes will be built, they must be greatly scaled back to accommodate the natural space requirements and adequate guest parking. No exceptions should be granted.

d. Designing home(s) to be more in character with an historic neighborhood

If this Board requires the developer to reconfigure the homes, they should be designed with the historic character of this neighborhood in mind.

e. No Build alternative

A no build alternative should also be examined.

These comments are based on a very quick review of the staff report and public information available about the project and we reserve the right to make additional comments at a later time.

In sum, we would ask the Design Review Board to not approve the proposed plans or, at minimum, delay a decision on this project while other viable alternatives are explored. The plans in their current form are wholly unacceptable.

Sincerely,

Jessica L. Yarnall Loarie, esq. and Scott Loarie
San Rafael, CA 94901

Dave Hogan

From: Seth Affoumado < >
Sent: Tuesday, May 4, 2021 6:22 PM
To: Dave Hogan
Cc: Dave Hogan
Subject: Re: Proposed Ross Street driveway.

Dear Mr. Hogan,

I am a neighbor that lives at the top of Ross Street crossing Reservoir Road.

There are many ways to avoid the unnecessary construction of a private driveway on Ross Street which I hope you consider before making your decision.

The private road will impact more than 50 residents on Ross Street with unnecessary construction noise, inconvenience and environmental impact. This project only will benefit the person who builds the house and not the general public.

The engineering opportunity to design a better more efficient road to Clayton street should be the priority since that is where the homes will be situated.

Ross Street is our home too. My wife and I strongly urge you to vote against this construction and find a better more equitable solution for all.

Thank you for considering our request.

With respect and gratitude,

Seth and Veronica Page-Affoumado

Seth Affoumado
Musician Teacher Photographer

San Rafael, CA

Dave Hogan

From: Carol Smith < >
Sent: Wednesday, May 5, 2021 1:21 PM
To: Dave Hogan
Subject: Lot 59 and 60 Ross Terrace

Hi Dave,

I am a property owner on Welch Street in San Rafael and I approve of this project as detailed in the plans on view dated 5-10-20 drawn by Joseph Farrell. Please make sure that my approval is noted in the Planning Review meeting which I believe is slated for tmwr. I am unable to attend remotely.

Thank you,
Carol Poshepny

Dave Hogan

From: David Campbell <>
Sent: Thursday, May 6, 2021 9:56 AM
To: Dave Hogan; Alicia Giudice; Jeanne Cronis Campbell
Subject: Ross St. Terrace Proposal

Dear San Rafael Planning Department,

We applaud the design review board's decision to carry over consideration of this Ross St. Terrace project to May 18. Hopefully, that will allow time to properly consider the massive body of complaints and opposition that have been presented against the approval of this project.

On the web link to the recent design review board meeting, we noticed that you have recommended approval of the building plans submitted. We are curious as to how you could recommend a project prior to the submission of an independent environmental impact report? The environmental impact this project threatens is a matter of critical importance, and we anxiously await the opportunity to review contents of such report. This project requires multiple variances/exceptions for approval, and is not compliant with San Rafael Hillside Design Guidelines.

Also, the plans currently posted on the San Rafael website show significant building activity to be performed on properties not owned by the applicant, particularly to the ___ Clayton property where we live. Page 26 of the plans in fact shows a significant portion of our property being usurped by the modifications shown to be performed on Clayton St. Surely you understand this is something we will not allow, and such being the case, why would you recommend approval?

Thank you for your careful consideration,

Jeanne and David Campbell

Mr. Pavil Wilkinson
San Rafael California 94901

5 5 2021

[Sent via email attachment]

Mr. David Hogan
Planning Department
City of San Rafael
1400 5th Ave
San Rafael CA, 94901

Reg: 33/41 Ross St Terrace [Friedman Residential]
Objections submitted to Design review board prior to the 5 18 2021 7:00 PM meeting.

Dear Mr. Hogan,

I live on Clayton St. and will be directly affected by the widening of the road to access the 2 building sites proposed on substandard lots, with inadequate parking.

Issue #1: Parking

We currently have 4 rental units on Clayton St. that have no off-street parking. According to Table 14.18.040 of the San Rafael Municipal Code these new homes are required to be built with 2 off street parking spaces. To build 2 additional homes that do not have the required off-street parking would be using very bad judgment. Additionally, the proposed approach from Clayton St would remove the existing off-street parking at 51 Clayton St. of 4 cars.

Issue #2: Open space.

I walk my dogs long the nature trail at Ross St Terrace that will be lost if this project moves forward.

Issue #3: Retaining walls

The plans provide by the developer do not adequately show the grade properly. If the approach comes from Clayton st. it will require installing +/- 200' of retaining walls, one running right through the neighborhood garden in front of 51 Clayton St where we host neighborhood parties 4-6 times a year, this is a terrible idea and I vehemently oppose it. This would ruin our quant neighborhood and our neighborhood gatherings. You and the design review board should come and enjoy the food.

In conclusion: The proposed plans for an approach from Clayton St. would significantly impact our quant neighborhood making it a worse place to live.

Best regards,
Pav Wilkinson

5/11/21

To: Dave Hogan, Ali Giudice , planners; City of San Rafael.

Re : 33/41 Ross Street Terrace

Development of Ross Street Terrace for development access.

Dear Mr Hogan, Ms. Giudice and members of design review board.

My Name is Jeff McPhail. I am the managing member of Canal Front Properties LLC which owns the four-unit building at 124 Ross Street. Our property is downhill and East of proposed development of Ross Street Terrace as a driveway to serve two proposed homes. The deepest excavation proposed is abutting our property.

I am writing because the development as proposed will negatively affect our property and prohibit future access to Ross Street Terrace.

Like the applicant's property, our property does not have vehicular access.

We would like to enjoy the same consideration as applicant and to maintain our legal right to access the property by way of Ross Valley Terrace.

Adjacent landowners should have rights to access the right-of-way which current design makes difficult or impossible.

I spoke to the architect of the project several months ago regarding my concerns but the current drawings of high retaining walls do not reflect any consideration for neighbor access.

We would strongly urge the city to reject the project as drawn and would suggest a redesign that would respect our property rights and provide equal access to Ross Street Terrace.

Thank you for your attention.

Jeff McPhail

San Rafael CA. 94901

May 9, 2021

Dear Members of the Design Review Board,

Thank you for your volunteer efforts in support of our community.

We would like to bring three issues to your attention in reference to the application for 33/41 Ross Street Terrace.

1. This project deserves a full public hearing up through the Planning Commission and beyond, if necessary. There should be no shortcuts. Streamlining of this process has been opposed by other neighborhoods in San Rafael. The City Hillside Design Review has worked for 30 plus years and represents a fair public process.
2. We object to granting the exceptions to the minimum natural state requirement. The charm of Gerstle Park is the spacious character, trees, gardens and natural surroundings. We are already a closely crowded neighborhood in need of more natural state rather than less.
3. The approval of exceptions for on street guest parking and natural state requirements will set a negative precedent. Gerstle Park will evolve into an area with large houses on small lots with little natural habitat and increased fire risk. This will become a pattern of "exception creep" that others will follow. These exceptions will negatively impact the character, health, safety and welfare of the neighborhood currently and into the future.

With Respect,

Megan Gordon and Travis Turner

[Redacted]

Susan Meltzer + Marco Beretti

[Redacted]

Chris Griffiths + Mark Strauss -

[Redacted]

Jeanne Campbell + David Campbell

[Redacted]

Wilfred Krause -

[Redacted]

From: Patrick Killian <>
Sent: Wednesday, May 12, 2021 5:33 PM
To: Distrib- City Clerk <City.Clerk@cityofsanrafael.org>
Subject: letter to design review board regarding Ross Terrace development

Please see that this letter is forwarded to all on the Design Review board and the appropriate agents of the City of San Rafael.

To: Design Review Board of San Rafael

From: Patrick and Michele Killian

Re: Proposed development of Two homes and Ross Terrace driveway

Dear Folks,

We would like to summarize our feelings of what is going on with the proposed development of two homes on steep and relatively inaccessible lots on Ross Terrace.

It should be obvious that these lots would have been developed long ago if there was a simple and reasonable way for a development to go forward. That is not the case.

What we have now is a developer who wanted to roll the dice and thought he could bully his way into forcing the surrounding neighbors and the City of San Rafael into accepting what he wants to develop, with the only motivating factor to make a profit.

He does not care what chaos he might unleash on the neighborhood

He does not care if it removes a large area of wildlife land.

He does not care if he is putting the adjoining neighbors in a precarious situation because he himself will not be responsible to maintain or be liable for the road and retaining walls he proposes to create.

He does not care if he does not meet the requirements for allowing natural habitat on his properties. He is not even trying to get close to meeting the requirements. The natural habitat reserved on his land is barely over 50% of what is required, and he is asking for an exception. Why? Because he is proposing to build two properties on land that does not have room for two properties.

He is not meeting the required parking requirements because he does not have the space to do so. Why? Once again, he is overbuilding.

He is trying to cram two large properties on land that should only house one home with the appropriate natural habitat, parking, and turnarounds. Why is he doing that? Because he cannot make a profit on building just one home considering that he will have to spend a considerable amount of money developing the road access no matter which direction it goes. He is rolling the dice and hoping he can steamroll his way to approval.

This developer has only been antagonistic to the neighborhood and downright offensively aggressive in his interactions with individuals who live nearby. He has no interest in working together or to find common solutions other than ways he can put more money into his pocket.

I would think it would be eye-opening to have anyone approach the Design Review Board when their proposal does not even come close to meeting requirements and yet they are asking for a stamp of approval. What is alarming and unconscionable is that the city seems to want to give him the stamp of approval.

The Board of Review and the City of San Rafael have a moral, legal, and ethical obligation to not cave to this kind of activity. It is wrong and should not be entertained.

There is absolutely no reason to grant exceptions to a developer that wants to push his agenda and his disregard for rules and regulations forward. The entire local neighborhood supports this stance and we demand that his current proposal be rejected.

Sincerely,

Patrick and Michele

Additional Comments: Project 33/41 Ross Street Terrace ** Statement of Opposition **

Peter Marks (Peter R. Marks) < >

Thu 5/13/2021 4:57 PM

To: Dave Hogan <Dave.Hogan@cityofsanrafael.org>; Alicia Giudice <Alicia.Giudice@cityofsanrafael.org>

Cc: Leslie Marks [REDACTED]

Dear Dave and Alicia,

*** Kindly Acknowledge Receipt ***

We're submitting this additional letter of opposition to the project as proposed after having further reviewed the plans. This project clearly proposes **overbuilding the two lots, requiring significant variances to the detriment of the environment and the neighborhood**. The size of the homes and impact on the neighborhood should be reduced in scope.

The applicant should not be granted these **gross exceptions** for his sole benefit (profit) at the expense of the environment and all neighborhood residents. The rules and guidelines set by the City should be applied to this project and followed as closely as possible. **The exceptions being requested are not minor in nature or magnitude, and only serve the interests of the developer**, and perhaps the City in terms of future tax revenue.

- Minimum Natural State. The proposed development is not just a few percent off; **it's 53% and 54% short of the required minimum. This is over building the lots to maximizing profit for the developer instead of developing a home or homes that are suitable for the site and stay within the rules.**
- Parking Exception: Why after proposing to build a 480' drive way should the developer be granted a **50% reduction in the required guest parking requirement**, with one of the spaces actually impeding the use of a garage? Again, this only serves to maximize the size of the homes and the profit for the developer.
- Existing Lot Size: Both lots are tiny – **less than 78% and 67% of the 7,500 sq/ft minimum** respectively, with large proposed homes that are completely out of character with the nearby houses. The homes should be smaller (or maybe only a single home be built) which will easily solve the issues outlined above (but not the developers desire to maximize profit).

There are also several inaccuracies in the report, and other items left unaddressed:

- **Height of retaining walls at Ross St Entrance.** *The drawings do not show the wall heights at the steepest part of the proposed Ross St entrance to Ross Terrace, instead they only show section A-A after where the road starts to level out and where the walls are still over 12' tall on the west side. The actual height of all retaining walls along the entire route should be detailed for both the uphill (west side) and downhill (east side) – the actual impact is far greater than it looks on the drawings.*
- The **developer did not deliver the same photographic representation of the road for the Ross Street access, as he did for Clayton**. This should be done to provide a true perspective of the impact of the proposed Ross Terrace entrance for the DBR to see.
- **Why has the CEQA report not been delivered** for review? This is an important aspect of this project, and we believe it would be a critical part of the DBR's analysis.
- **Destruction of existing open space:** *The proposed Ross Street roadway will destroy current open space far in excess of the foot prints of the proposed homes, creating more hard-scape and pavement contributing to global warming. The Clayton Street access largely exists, thus would be far less environmentally impactful, while at the same time improving fire access for all properties along Clayton St. How does preservation of*

habitat and open space factor into the City's analysis in light of it's current and future (2040) planning?
How does the developer propose to offset the environmental impact, loss of natural state, and loss of open space?

- Access for current property owners **all along Ross Terrace will be blocked by a Ross Street entrance due to high retaining walls and fences on both sides of the proposed road.** Owners rights to continuously and safely access Ross Terrace cannot simply be taken or given away, especially since it's a critical fire escape route for all property owners along Ross Terrace.
- **There is another undeveloped, triangular, lot to the north of the subject lots.** If access is granted from Ross Street this lot will effectively be blocked from future development, *or the City would need to approve a plan for access via Clayton Street.* Providing access from Clayton will solve access for all lots on Ross Terrace, not just the two lots currently in question, in addition to many other benefits outline by various neighbors.
- There is an **unaddressed issue where the proposal located the garage level of the single-family residence on Lot 59 approximately 1½ feet from the property line.** This is exactly the type of exception that causes future problems, and is only being considered so the developer can maximize the size of the homes and his profit.
- **The Planner discuss the impact on neighbors with access via Clayton, but did not do the same for property owners along Ross Terrace should be access be via Ross St.** (where 9x's as may families would be impacted). No property owners along Ross Terrace have been approached about the impact to them by either the applicant or the design review board, while at the same time there have been repeated (unanswered) requests for information.
- **The City seems happy to relinquish any responsibility for the Ross Terrace street,** putting the responsibly and liability, upkeep, maintenance and policing on adjacent property owners. These responsibilities already fall upon the City for a Clayton St access, and if access is granted via Ross St, the City should not be released of its obligation to manage, maintain and police.

These are just a few of the concerns we have. We urge the DBR to carefully consider all the exceptions being granted, the impact of the proposed access routes, and adjust the scope of this project accordingly.

Respectfully,

Peter & Leslie Marks

[REDACTED]
San Rafael, CA 94901
[REDACTED]