

**ATTACHMENT G**  
**BOARD OF ZONING APPEALS: APPLICANT COMMENT LETTER/PRESENTATION**  
**Dated November 18, 2021**

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**VIA E-MAIL**

November 18, 2021

Chairman David Coher  
Vice-Chairman Jason Lyon  
Hon. Commissioners Hansen, Hernandez & Rawlings  
Board of Zoning Appeals, City of Pasadena  
100 North Garfield Avenue  
Pasadena, California 91109

Re: Item 3.b: 1820 Linda Vista Avenue (Hillside Development Permit #6838)

Dear Chairman Coher, Vice-Chairman Lyon, and Honorable Commissioners Hansen, Hernandez & Rawlings:

**I. THE APPLICANT HAS REVISED THE PROJECT IN GOOD-FAITH TO ADDRESS THE NEIGHBOR'S AND LVAA'S CONCERNS.**

Matthew Feldhaus is the homeowner who, with his partner and parents, seeks nothing more than to remodel their home for their family. Toward that end, he appealed the BZA's prior April 22 decision to the City Council so that he could address the issues raised by the neighbor and the LVAA. After presenting a revised project, the City Council thought it best to remand the matter back to the BZA, which is why we are here.

Significantly, after hearing the neighbor's concerns about his views, Matthew reached out to the neighbor and offered to maintain his roof height, lower his garage roof 18 inches, and to work with the neighbor on a mutually agreeable landscape plan for the common property line to protect the neighbor's privacy. For whatever reason, the neighbor rejected the offer.<sup>1</sup>

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1. Not to be deterred in building his family home, Matthew also reached out to the LVAA to discuss their concern about the excess square footage above the neighborhood compatibility limit, which the LVAA routinely has objected to in most projects as a matter of principle. Rather



Instead, the neighbor's attorney has submitted a letter for tonight's hearing. Like before, he continues to mischaracterize the project, misrepresent the existence and location of the liquification zone, and misstate and misapply the applicable law. For example, counsel states on page 2 that, "The Statutory framework for the BZA to reevaluate its own decision by way of remand from the City Council does not exist." He then cites Zoning Code section 17.72.070.B.3, which expressly allows the City Council to remand the matter to the BZA to consider the revised design that addresses the neighbor's concerns, and claims that "the BZA is not listed" and thus has no jurisdiction. He even goes so far as to say that it requires a new application.

In so arguing, however, counsel intentionally ignores the words "For example", "as applicable", and 17.72.070.2. C, which expressly states that "Changes to the original submittal to address objections of the review authority need not be the subject of a new application."

Counsel's further statements about the size of the revised design also are incorrect. The application for a Hillside Development Permit ("HDP") originally proposed a residence that exceeded the maximum allowable Neighborhood Compatibility floor area of 3,816 square feet by 844 square feet (i.e., 4,660 in total). Under Code Section 17.29.080.G.a, therefore, a finding that, "No additional view impacts will occur to neighboring properties as a result of granting additional square footage" was required to be made in addition to the findings required under 17.29.080.F.

Now, however, the proposed HDP project entails the construction of only a 1,401 square-foot addition to the existing 2,452 square-foot, single-story single-family residence at the Property, with an attached 754 square-foot garage, and the removal of the attached 439 square-foot carport (the, "Project").<sup>2</sup>

Further, since the proposed addition already was located on the interior and rear of the lot, it already had reduced any view impacts to the maximum extent feasible, thus complying with the Code. Nonetheless, the neighbor to the south – who has a two-story home that exceeds

than re-design the project to construct an addition closer to Linda Vista Avenue, add a second story, or pursue other options under recently enacted State laws, Matthew decided to address the LVAA's concerns by using an accessory dwelling unit for his parents that has a separate entrance for them and eliminates the square footage in excess of the Neighborhood Compatibility requirements so as to respect the LVAA's position.

2. A new swimming pool and an 807 square-foot Accessory Dwelling Unit (ADU) are also planned, but do not require a HDP and thus are not part of the Project. In addition, the ADU is permitted by right, but only constructs three quarters of what is permitted under State Law, i.e., only 807 sq. ft., not the full 1,200 sq. ft. Last, SB8 was signed into law on September 16, 2021, and clarifies that a "housing development project" includes projects that involve no discretionary approvals, projects that involve both discretionary and nondiscretionary approvals, and projects that include a proposal to construct a single dwelling unit, thereby triggering the provisions of the Housing Criss Act of 2019, the Housing Accountability Act and other, related state laws.



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5,000 square feet with unobstructed views from all protected places -- complains that the view from his dining room/kitchen is impacted.

We will show by photographic evidence, however, that his view shed is to the southeast, not the north as he claims, that his claims of view obstruction are inaccurate at best, and misleading at worst, and that his photographs are purposefully distorted. In fact, we understand that Staff requested access to the neighbor's interior to verify his claims of view obstruction, but the neighbor refused to grant them access. The neighbor to the north and several other neighbors fully support the Project.

Last, counsel's arguments under CEQA misstate the law. As explained below, and as we will show, there are no unusual circumstances that create a reasonable possibility that the project may result in a significant environmental impact, and no historical resource at issue. The proposed project, therefore, is exempt from environmental review pursuant to Categorical Exemption 1 of the CEQA Guidelines.

Accordingly, given the revisions that specifically address the basis for the BZA's prior decision, the findings for the HDP can be made. We, therefore, request that the BZA uphold the Zoning Hearing Officer's ("HO") decision and approve it.

## **II. FACTUAL BACKGROUND**

### **A. Project Description and HDP Application**

The Property is located within the RS-4-HD (Single-Family Residential, 0-4 dwelling units per acre, Hillside Overlay District) zoning district. The Property descends east down a hillside toward the Arroyo Seco. The site topography is generally flat at the location of the existing and proposed improvements, and the average slope across the site is 29 percent.

On June 29, 2020, Applicant submitted his HDP application. On November 19, 2020, the City Planning Department deemed the application complete.

On December 6, 2020, Kevin Kang, a neighbor residing at 1812 Linda Vista Avenue, contacted City staff with questions about the Project. On December 15, 2020, Applicant virtually met with City staff and Mr. Kang to discuss the Project and the HDP process. Mr. Kang did not identify any issues or concerns with the proposed project at this meeting.

Thereafter, on January 6, 2021, the HO considered and approved the HDP at its regularly noticed hearing. There, the staff report analyzed and concluded that all of the findings required to approve the Project could be made and that the Project was exempt from CEQA review. Based upon its analysis, Staff recommended approval of the HDP application with additional conditions of approval to address the neighbor's and other concerns raised at the hearing.

Further, the applicant provided a brief presentation. Three public comments in opposition to the Project were submitted to the HO, including two from the same attorney.



Specifically, the neighbor to the south of the Property opposed the Project, citing privacy as the main concern. Additional concerns were raised by the neighbor related to potential impact on protected views, the proximity of the addition to the top edge of the slope, grading impacts, and the alleged incorrect application of a CEQA exemption. The Hearing Officer acknowledged the concerns and discussed them in relation to the City staff's recommendation. At the conclusion of the public hearing and after public testimony, the Hearing Officer approved the HDP with conditions and adopted the environmental determination.<sup>3</sup>

On January 11, 2021, the HO notified the Applicant in writing that that the HDP was approved ("HO January 11 Letter"). HO January 11 Letter, at 1. The Specific Findings for HDP # 6838 expressly stated, among other things, that:

- "As analyzed, *the project will meet all applicable development standards* for the RS-4-HD zoning district and Hillside Overlay such as setbacks, lot coverage and floor area, height and *neighborhood compatibility*." *Id.* at 3 (emphasis added).
- "The proposed two-story addition to the existing single-story residence complies with all the development standards set forth in the City's Zoning Code. . . . *the project would be consistent with General Plan objectives and policies*." *Id.* (emphasis added).
- "The proposed addition will be constructed in such a manner as to minimize impacts to surrounding property owners. . . . *the proposed project will not be detrimental to the public health, safety, or welfare of persons or properties within the surrounding neighborhood*." *Id.* at 4 (emphasis added).
- "The project is not located on the top of any prominent ridgelines and *will not block protected views from neighboring properties*. The proposed project will *meet the guidelines related to exceeding the Neighborhood Compatibility requirements*." *Id.* (emphasis added).
- "The size of the proposed project (not including the proposed garage) is 4,660 square feet, which exceeds the maximum allowable Neighborhood Compatibility floor area of 3,816 square feet by 844 square feet. However, the additions are designed not to impact views, be in compliance with the ridgelines protection standard, and have a floor area ratio consistent with the properties within a 500 foot radius. . . . Furthermore, as designed, *the placement of the proposed additions would not impede the protected view of an adjoining property*." *Id.* (emphasis added).

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3. "An agency's determination that a project falls within a categorical exemption includes an implied finding that none of the exceptions identified in the Guidelines is applicable. The burden then shifts to the challenging party to produce evidence showing that one of the exceptions applies to take the project out of the exempt category." *San Francisco Beautiful v. City and Cnty. of San Francisco*, 226 Cal. App. 4th 1012, 1022-23 (2014) (citation omitted).



- “The proposed two-story addition to the existing single-story dwelling will be located towards the interior of the lot away from the public rights-of-way and the most steeply sloping portions of the site. As a result, *the project requires minimal changes to the grading, drainage, and landscaping.*” *Id.* at 5 (emphasis added).

**B. Neighbor’s Appeal to the BZA, Staff’s Recommendation to Approve the HDP, and BZA’s Decision to Overturn HO’s Approval of HDP # 6838**

On January 19, 2021, Jin Ser Park, the abutting property owner at 1812 Linda Vista Avenue (“Objecting Neighbor”), filed an appeal of the HO’s decision to approve HDP # 6838 on the grounds that the Project is an out of scale development, fails to consider view rights, presents unusual circumstances, has cumulative impacts, and is a threat to historic/natural resources.

On April 21, 2021, the LVAA wrote to the BZA, to reiterate its concerns that were set-forth in its January 5, 2021 letter to the HO, and to further explain its complaints about the project description, reference to a deck and minimal grading, and excess neighborhood compatibility square footage.

In the Staff Report to the BZA dated April 22, 2021 (“April 22 Staff Report”), City staff recommended that the BZA: (1) adopt the Environmental Determination that the Project is exempt from CEQA pursuant to CEQA Guidelines Section 15301<sup>4</sup> (Class 1, Existing Facilities), recognizing that there are no features that distinguish the Project from others in the exempt class and therefore there were no unusual circumstances, and (2) uphold the HO’s January 6, 2021 decision to approve the HDP based on the City staff’s findings and conditions. April 22 Staff Report, at 20. The April 22 Staff Report found that the Project “*meets* all applicable development standards required by the Zoning Code for the RS-4-HD zoning district and the *additional development standards required within the Hillside Overlay District including the Neighborhood Compatibility guidelines of the Hillside Ordinance.*” *Id.* (emphasis added). Furthermore, “[e]xisting views and privacy would be maintained after the project. It is anticipated that the proposed location would not be detrimental or injurious to surrounding properties or improvement.” *Id.* (emphasis added). Therefore, “based on staff’s analysis, as conditioned, *[the Project] would be compatible with the adjacent land uses and would not result in any adverse impacts to the surrounding area with the recommended conditions of approval.*” *Id.* (emphasis added).

The April 22 Staff Report also found that all of the requisite findings for a HDP approval could be made (*id.* at 20), and specifically noted the following:

4. Specifically, Section 15301 exempts additions to existing structures, provided that the addition will not result in an increase of more than 10,000 square feet when the project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan, and the area in which the project is located is not environmentally sensitive. The Project did not exceed this threshold. April 22 Staff Report, at 1, 15-16.



- With respect to neighborhood compatibility, the Project's 4,660 square feet of floor area (excluding the garage) exceeds the Neighborhood Compatibility threshold by 844 square feet. However, pursuant to Municipal Code § 17.29.080.G, guidelines are available for exceeding Neighborhood Compatibility floor area. The Project complies with the criteria for exceeding it because: (1) the Project has been designed to avoid blocking culturally significant structures, downslope views, prominent ridgelines, and/or the horizon line from neighboring properties; and (2) the Project is in scale with the context and character of the development in the neighborhood. *Id.* at 6-7.
- With regard to the deck, "[b]oth the upper floor and lower floor additions are placed to the rear of the property and are set in such an area and designed in a manner that visibility from off the property would be limited and that **any protected** view corridors are maintained for adjacent properties." *Id.* at 8 (emphasis added). Furthermore, the "additions are setback more than 100 feet from the top edge of the Arroyo Seco Slope Bank, and more than 250 feet from the rear property line, thereby **preserving the privacy of surrounding lots to the north, south, and east.**" *Id.* (emphasis added).
- With regard to view protection for Objecting Neighbor's property, "views from within the interior of the adjacent two-story structure at 1812 Linda Vista Avenue are limited to portions of the neighboring project site's existing roof's ridgeline and the sky above. Since the proposed project will continue to maintain the general height of the existing residence, **these existing view conditions would not be impacted.**" *Id.* (emphasis added). After the Applicant installed temporary silhouette (story poles) on the Property, the City staff concluded that Project "would not reasonably impact any protected views from adjacent properties. Although portions of the silhouette are visible from various vantage points, there is **no protected view obstruction.** In addition, portions that are visible, are not reasonably centered directly in the view of the abutting properties, consistent with the intent of the Zoning Code. Therefore, staff has determined the project minimizes view impacts and is **consistent with the view protection standards of the Zoning Code.**" *Id.* at 9 (emphasis added).
- With regard to geotechnical investigation, Irvine Geotechnical, Inc. excavated seven test pits on the project site and concluded that the grading and proposed structure will be safe against hazard from landslide, settlement, or slippage and the Project will have "**no adverse effect on the geologic stability of the adjacent properties**", including the consideration of constructing a pool in the proposed location, "provided recommendations are followed." *Id.* (emphasis added).

Significantly, pages 11 through 18 of the April 22 Staff Report expressly addressed in great detail each of the objections raised by Appellant and the LVAA, as summarized below:



- Regarding the claim that the Project is an out of scale development, the City staff stated that the claim “does not relate to how staff analyzes neighborhood character as part of the required neighborhood compatibility analysis.” *Id.* at 11. As summarized on pages 6-7 of the April 22 Staff Report, projects subject to a HDP are to consider the character and scale of the existing development in the neighborhood of the lots located within a 500-foot radius of the site, and for lots larger than 20,000 square feet, the review authority may approve additional floor area above the maximum permitted by Neighborhood Compatibility after reviewing site conditions and compliance with Hillside District standards. Here, the City staff was able to make the findings to support an approval of additional floor area because: the Project was in compliance with the neighborhood compatibility analysis and the maximum FAR allowances for the Property, and the Project is in scale with the context and character of the development. *Id.* at 11-12. ***Objecting Neighbor’s focus on the average building size thus was misplaced because the median building size is the relevant criteria.*** *Id.* at 11-12. Last, Objecting Neighbor did not provide substantial evidence in support of the claim that the Project was not consistent with the General Plan. *Id.* at 12-13.
- Regarding the claim that the City failed to consider view rights, the City staff found that the proposed location of the addition “***would not block views from neighboring properties that the City would otherwise protect.***” *Id.* at 14 (emphasis added). The April 22 Staff Report reiterated its statements from pages 8-9 of the same report, specifically addressing views from 1812 Linda Vista (Objecting Neighbor’s property) to reach the conclusion that the Project ***would not impact protected views*** from that residence. *Id.* at 14-15. City staff took photos from the Appellant’s property towards the location of the proposed addition and concluded that there were no view obstructions. Photos were presented as part of the staff report.
- Regarding the claim that unusual circumstances apply, the City staff confirmed the Project is exempt from environmental review under CEQA Guidelines because there are no features that distinguish the Project and therefore there are no unusual circumstances. *Id.* at 15. The full scope of the work and the modification to the existing residence were considered and were determined to meet the standards of the Class 1 Categorical Exemption. *Id.* at 16. The April 22 Staff Report reiterated its analysis from page 2 of the same report, as well as the HO’s addendum,<sup>5</sup> in support of the recommendation that the Project is exempt from CEQA. *Id.* at 16-17.

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5. In connection with the appeal to the BZA, the HO submitted an addendum dated March 20, 2021 (“HO March 20 Addendum”) addressing the issues raised by Objecting Neighbor. With respect to the neighborhood compatibility calculations, the HO noted that Objecting Neighbor sought to exclude the two largest homes and to exclude vacant lots from the analysis, but that the City’s code, policies, and procedures do not allow individuals to be selective about which lots are included in the Neighborhood Compatibility calculations. HO March 20



- Regarding the claim that there are cumulative impacts, the City staff found that there was no evidence of unusual circumstances and cited to the HO's addendum as evidence that "several homes have been safely built, and safely expanded, on the east side of Linda Vista Avenue, going back several decades." *Id.* at 17. The property owners directly adjacent to the north and the west have existing pools and decks that face downslope to the east without any historical issues. The City enforces municipal codes that "ensure the safety of new development; as verified through the City's grading permit, demolition permit, and building permit plan-check review process; and through a series of on-site inspections by city staff during site grading, demolition and construction." *Id.*
- Regarding the claim that there is a threat to historic/natural resources, the City staff pointed to the Design & Historic Preservation Section's review of the Property and determination that the Property was substantially altered with an addition of enclosed floor area, an open courtyard, and a carport, in 1965 and was not eligible for historical designation. *Id.* Also, the City staff cited to the HO's addendum to highlight several conditions of approval which address the safety concerns raised by Appellant. *Id.* at 17-18.

At the April 22, 2021 hearing, the BZA heard from the City staff, the Applicant, the Objecting Neighbor's counsel and LVAA. The City staff's Powerpoint presentation concluded that Objecting Neighbor's claims were unsubstantiated due to lack of supporting facts or evidence and highlighted the following points, among others:

- There was "no merit to the argument that a smaller house being proposed on an immediately adjacent lot is 'out of scale.'"
- The City does not protect Objecting Neighbor's views across the subject Property site.
- That the Property did not include features that would preclude the Project from qualifying for a categorical exemption under CEQA.
- Two of the alleged "unusual circumstances" (steepness of the lot and location adjacent to open space in a liquefaction zone) apply to many properties on the East side of Linda Vista Avenue. Objecting Neighbor did not provide evidence showing that the property being adjacent to a liquefaction zone is "in any way, unique or unusual." The subject property is not considered to be in a liquefaction zone.

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Addendum, at 3. The HO concluded that Objecting Neighbor had not provided a sufficient basis upon which to overturn the January 6, 2021 decision to approve the HDP and that the appeal should be denied. *Id.*



- The preliminary geotechnical report did not find any significant concerns with the Project and includes recommendations for continued slope stability. The Project could be safely built-in light of the permitting process, plan-check review process, and on-site City inspections.
- The Design & Historic Preservation Section found that the Property was substantially altered in 1965 and the house at the Property was not eligible for historical designation. The Project qualifies for the specified CEQA categorical exemption and does not meet the eligibility requirements for the exception clause because the Project would not cause a substantial adverse change in the significance of a historic resource.
- Objecting Neighbor's contention that Applicant was attempting to piecemeal the project and/or hide the Project from public input was based on emails taken out of context. Indeed, Applicant simply inquired about options with regard to the proposed project, and was advised to comply with the HDP rules and rules regarding ADUs. ADUs are subject to ministerial review, allowed by-right, and are not subject to CEQA. The City staff found that there was no project segmentation or serial permits.

At the conclusion of the public hearing on April 22, 2021, however, the BZA disapproved the Project on the grounds that the finding under 17.29.080.G for additional square footage in excess of the Neighborhood Compatibility maximum could not be made.

### III. RECENT REVISIONS RESOLVE ANY ISSUES

We understand that the BZA overturned the HO's approval of the HDP on the grounds that granting excess neighborhood compatibility and blocking of views could not be permitted. The recent revisions to the Project eliminate them in their entirety.

In particular, the Applicant's plans dated September 30, 2021 ("Revised Plans") demonstrate that the Project has been revised to remove the 844 square feet in excess Neighborhood Compatibility floor area (the, "Revised Project"). As such, with respect to the BZA's concern about excess Neighborhood Compatibility floor area, the Revised Plans show that the square footage of the proposed building is now 3,853, which is 605 square-feet *less than the maximum allowable square footage of 4,458*. See Revised Plans, at 2 (Neighborhood Compatibility Analysis RS-4-HD Properties Only table). The proposed FAR is 7.7%, *below* both the Median FAR of 8.90% and the average FAR of 12%. *Id.*<sup>6</sup> As a result, *the Revised Project no longer calls for any excess Neighborhood Compatibility floor area*.

The revised Project also continues to comply with Section 17.29.060.G of the Code, which provides as follows:

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6. The Neighborhood Compatibility Analyses are set-forth in Attachments C and D to your Staff Report. The difference between the use of them would be no more than 37 sq. ft.



**View protection.** A proposed structure shall be designed and located so that it avoids blocking views from surrounding properties *to the maximum extent feasible*, as determined by the review authority, and including, but not limited to, consideration of the following:

1. The feasibility of relocating the proposed structure to another part of the site;
2. The feasibility of modifying the massing of the proposed structure such that views from surrounding properties would not be impacted; and
3. The feasibility of minimizing architectural features that may intrude upon views from surrounding properties.

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1. New structures and tall landscaping shall not be centered directly in the view of any room of a primary structure on a neighboring parcel. Views shall be considered from windows of any room in the primary structure. New structures shall avoid blocking the following from any room of a main dwelling on a neighboring property:

1. Culturally significant structures such as the Rose Bowl, Colorado Street Bridge, City Hall, etc.;
2. Downslope views of the valley floor;
3. Prominent ridgelines; and/or
4. The horizon line.

*Views of open sky, existing foliage, private yards, and existing structures on surrounding properties shall not be taken into consideration by the review authority.*

Municipal Code § 17.29.060.G (emphasis added). As explained above, the proposed residence already is located on the interior and rear of the lot, and thus already has reduced any view impacts to the maximum extent feasible. We will present photographs and elevations to show that the additions also have been designed to avoid blocking views to the maximum extent feasible and that none of the neighbor's protected views are impacted.

#### **IV. THE PROJECT IS CATEGORICALLY EXEMPT UNDER CEQA GUIDELINES**

The Revised Project was and is categorically exempt as matter of law. The following supports that conclusion.



**A. CEQA Categorical Exemptions from Environmental Review**

CEQA applies only to activities that meet the definition of a “project”<sup>7</sup> under the statute and its implementing administrative regulations. *May v. City of Milpitas*, 217 Cal. App. 4th 1307, 1319-20 (2013). Under CEQA, a project is any activity undertaken, assisted, or authorized by a public agency that may have a significant effect on the environment. *May*, 217 Cal. App. 4th at 1320. “Significant effect on the environment” means “a substantial, or potentially substantial, adverse change in the environment.” Cal. Pub. Res. Code § 21068.

The first step in CEQA analysis is a determination whether the activity in question amounts to a “project.” *May*, 217 Cal. App. 4th at 1320. Once a lead agency determines that an activity falls within the statutory definition of a “project,” it must then determine whether the project is nevertheless exempt from CEQA. *Id.* CEQA authorizes the adoption of regulatory exemptions for classes of projects. *Id.* at 1321. The CEQA Guidelines refer to them as categorical exemptions and they are set forth in the CEQA Guidelines. *Id.* (citing to CEQA Guidelines, § 15300 et seq.). There is 1 categorical exemption applicable to the Project: Categorical Exemption 1 pursuant to Cal. Code Regs. tit. 14, § 15301 (for existing facilities).<sup>8</sup>

“An agency’s determination that a project falls within a categorical exemption includes an implied finding that none of the exceptions identified in the Guidelines is applicable. The burden then shifts to the challenging party to produce evidence showing that one of the exceptions applies to take the project out of the exempt category.” *San Francisco Beautiful*, 226 Cal. App. 4th at 1022-23. The CEQA Guidelines specify six exceptions to the categorical exemptions. Cal. Code Regs. tit. 14, § 15300.2.

The Objecting Neighbor may assert that three potential exceptions apply: (1) exemptions are inapplicable where the “cumulative impact of successive projects of the same type in the same place, over time is significant”; (2) categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a “significant effect on the environment due to unusual circumstances,” and (3) categorical exemption shall not be used for

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7. CEQA defines “project” to mean: “an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following: (a) An activity directly undertaken by any public agency. (b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies. (c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.” Cal. Pub. Res. Code § 21065.

8. “Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. The types of “existing facilities” itemized are not intended to be all-inclusive of the types of projects which might fall within Class 1.” Cal. Code Regs. tit. 14, § 15301.



a project which may cause a substantial adverse change in the significance of a historical resource.” Cal. Code Regs. tit. 14, § 15300.2, subsections (b), (c) & (f).

For the reasons explained below, none do, nor can the requisite showing be made.

**B. There Is No Cumulative Impact of Successive Projects**

As explained above, the City staff has already considered and rejected the notion that there is any cumulative impact of successive projects at the Property. As evidenced by the City staff’s Powerpoint presentation for the April 22, 2021 BZA hearing and a review of the emails attached as Exhibit II to Objecting Neighbor’s letter dated April 21, 2021, Applicant simply inquired about options with regard to the proposed project via e-mail correspondence with the City staff, and was advised by the City to comply with the HDP rules. The City staff found that there was no project segmentation or serial permits. Therefore, there is no merit to any allegation of improper piecemealing of projects at the Property.<sup>9</sup>

**C. There Are No Unusual Circumstances**

One of the exceptions to the categorical exemptions arises “where there is a reasonable possibility the activity will have a significant environmental effect ‘due to unusual circumstances.’ (Guidelines, § 15300.2, subd. (c).)” *San Francisco Beautiful*, 226 Cal. App. 4th at 1023. The CEQA Guidelines do not define the term “unusual circumstances,” nor what is required to prove it. *See, e.g., id.* In *Berkeley Hillside*, therefore, the California Supreme Court first clarified that a party must show an unusual circumstance by demonstrating that the project has some characteristic or feature that distinguishes it from others in the exempt class. *Berkeley Hillside Preservation v. City of Berkeley*, 60 Cal.4th 1086, 1105 (2015).<sup>10</sup>

In so doing, the Supreme Court held that the “unusual circumstances” exception can *only* be used to preclude the use of a categorical exemption if an “unusual circumstance” differentiates the project *from the general class of similarly situated projects*, and, if so, when that unusual circumstance creates a “reasonable possibility” that the project may result in a “significant environmental impact.” *Id.* at 1105 (emphasis added). The Supreme Court expressly rejected the appellate court’s interpretation of the “unusual circumstances” test, finding

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9. The enactment of SB8 further supports this conclusion.

10. In *Berkeley Hillside*, the applicant sought a hillside permit for a 6,478-square-foot house with an attached 3,394-square-foot 10-car garage, covering 16% of a steeply sloped (about 50% grade) lot in a heavily wooded area on Rose Street in Berkeley. *Berkeley Hillside*, 60 Cal. 4th at 1093. The trial court denied the petition for a writ of mandate by the neighborhood group holding there were no unusual circumstances, but the Court of Appeal reversed and granted it. *Id.* at 1096. The Supreme Court then took up the issue of how the unusual circumstances exception to categorical exemptions should be analyzed and applied by lead agencies such as the City. *Id.* at 1097.



that “the Court of Appeal erred by holding that a potentially significant environmental effect itself constitutes unusual circumstances.” *Id.* at 1104.

Following the Supreme Court’s decision, the First District Court of Appeal filed its opinion affirming the trial court’s judgment, and later ordered its opinion to be published. *Berkeley Hillside Preservation v. City of Berkeley*, 241 Cal. App. 4th 943 (2015).<sup>11</sup> The later Court of Appeal opinion states that a party challenging a categorical exemption decision by seeking to establish the unusual circumstances exception cannot prevail merely by providing substantial evidence that the project may have a significant environmental effect. *Id.* at 952. Rather, such a party must first establish an unusual circumstance by distinguishing the project from others in the exempt class. *Id.*

Indeed, “a challenger must prove **both** unusual circumstances **and** a significant environmental effect **that is due to those circumstances**. In this method of proof, the unusual circumstances relate to some feature of the project that distinguishes the project from other features in the exempt class.” *Citizens for Env’tl. Responsibility v. State ex rel. 14<sup>th</sup> Dist. Agric. Ass’n.*, 242 Cal. App. 4th 555, 574 (2015) (citing to *Berkeley Hillside*, 60 Cal. 4th at 1105) (emphasis added). “Once an unusual circumstance is proved under this method, then the ‘party need only show a **reasonable possibility** of a significant effect **due to that** unusual circumstance.” *Id.* (emphasis added). Anyone who claims the proposed project is not entitled to a categorical exemption, therefore, must prove both parts of this two-pronged test and cannot prevail simply by claiming that the project may have a significant environmental effect.

Whether a project presents unusual circumstances is thus a factual inquiry subject to the traditional substantial evidence standard of review. *Berkeley Hillside*, 60 Cal. 4th at 1114. Under CEQA, “[s]ubstantial evidence includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. [Citations]. **It does not** include ‘[a]rgument, speculation, unsubstantiated opinion or narrative, [or] evidence which is clearly inaccurate or erroneous. . . .’ [Citations.]” *Joshua Tree Downtown Bus. All. v. Cnty. of San Bernardino*, 1 Cal. App. 5th 677, 690 (2016) (emphasis added). “Complaints, fears, and suspicions about a project’s potential environmental impact likewise do not constitute substantial evidence.” *Id.* “Members of the public may . . . provide opinion evidence where special expertise is not required. . . . However, “[i]nterpretation of technical or scientific information requires an expert evaluation. Testimony by members of the public on such issues does not qualify as substantial evidence. . . . “[I]n the absence of a specific factual foundation in the record, dire predictions by nonexperts regarding the consequences of a project do not constitute substantial evidence.” *Id.* at 690-91 (citations omitted).

To preclude the use of the categorical exemptions, any opponent of a project must show that the “unusual circumstances exception” to the exemption somehow applies, which Objecting Neighbor cannot do under California law. As the record reflects, there is no evidence, let alone substantial evidence, of any unusual circumstance because there are no features that distinguish

11. On February 3, 2016, the California Supreme Court denied further review of the case, thus letting the Court of Appeal’s decision stand, *i.e.*, there were no unusual circumstances that precluded the use of the categorical exemption for the proposed residence in *Berkeley Hillside*.



the Project from the general class of similarly situated projects. April 22 Staff Report, at 15, 17, 20. The proposed addition to the existing single-story residence complies with all the development standards set-forth in the City's Zoning Code, as stated by the HO and the City staff. HO January 11 Letter, at 3. The full scope of the work and the modification to the existing residence were considered and were determined to meet the standards of the Class 1 Categorical Exemption. April 22 Staff Report, at 16.

In addition, "several homes have been safely built, and safely expanded, on the east side of Linda Vista Avenue, going back several decades." *Id.* at 17; HO March 20 Addendum, at 2. None of the purported "unusual circumstances" identified by Objecting Neighbor was actually "unusual, unique, or specific to" the subject Property. HO March 20 Addendum, at 2. "Most, if not all of these 'unusual circumstances' apply, as well, to [Objecting Neighbor's] existing home." *Id.* Indeed, there is no evidence documenting how the existence of the liquefaction zone adjacent to the Property is "in any way, unique or unusual." HO March 20 Addendum, at 2.

As such, because there is no evidence of any unusual circumstance based on the features of the project, let alone substantial evidence, the BZA Council does need not to address the second prong of the test, *i.e.*, whether there is a reasonable possibility of a significant environmental impact as a result of unusual circumstances. *Citizens*, 242 Cal. App. 4th at 588, n.24. ("A negative answer as to the question of whether there are unusual circumstances means the exception does not apply" and the use of the categorical exemption is affirmed). Even if the BZA chose to address it, there is no showing that any purported unusual circumstances create a "reasonable possibility" that the Project may result in a "significant environmental impact." This is true because the HO imposed conditions of approval which address safety concerns raised by the Objecting Neighbor. April 22 Staff Report, at 17-18; HO January 11 Letter, Attachment B. The City enforces municipal codes that "ensure the safety of new development; as verified through the City's grading permit, demolition permit, and building permit plan-check review process; and through a series of on-site inspections by city staff during site grading, demolition and construction." April 21 Staff Report, at 17. Indeed, any purported environmental impact relating to soil displacement, stress on the hillside and liquefaction zones, is not only speculative and unsupported by expert opinion, but the "merits of the claim are questionable." HO March 20 Addendum, at 2.<sup>12</sup>

#### **D. There Is No Historical Resource on the Property**

The City's Design & Historic Preservation Section determined that the Property was substantially altered with an addition of enclosed floor area, an open courtyard, and a carport, in 1965 and was not eligible for historical designation. April 22 Staff Report, at 17. There is no evidence to support Objecting Neighbor's claim that the house currently on the Property has existed since 1948 in its present form. HO March 20 Addendum, at 2. As a result, no historical resource is at issue that would make a categorical exemption under CEQA inapplicable.

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12. The November 15, 2021 supplemental expert opinion letter by Irvine Geotechnical, Inc. conclusively shows that the neighbor's claim of danger from the alleged liquification zone are unfounded, inaccurate and without merit.



Letter to Board of Zoning Appeals  
City of Pasadena  
November 18, 2021

**V. CONCLUSION**

All of the requisite findings for the HDP can be made and none of the issues that prompted the BZA to disapprove the HDP last time remain. Further, the Class 1 Categorical Exemption under the CEQA Guidelines applies and there are no cumulative impact, unusual circumstances, or historical resource exceptions to it. Accordingly, the Project is exempt from environmental review and the Applicant requests that the BZA uphold the HO's decision and approve the HDP accordingly.

Sincerely,

A handwritten signature in blue ink, appearing to read "Richard A. McDonald", followed by a large checkmark.

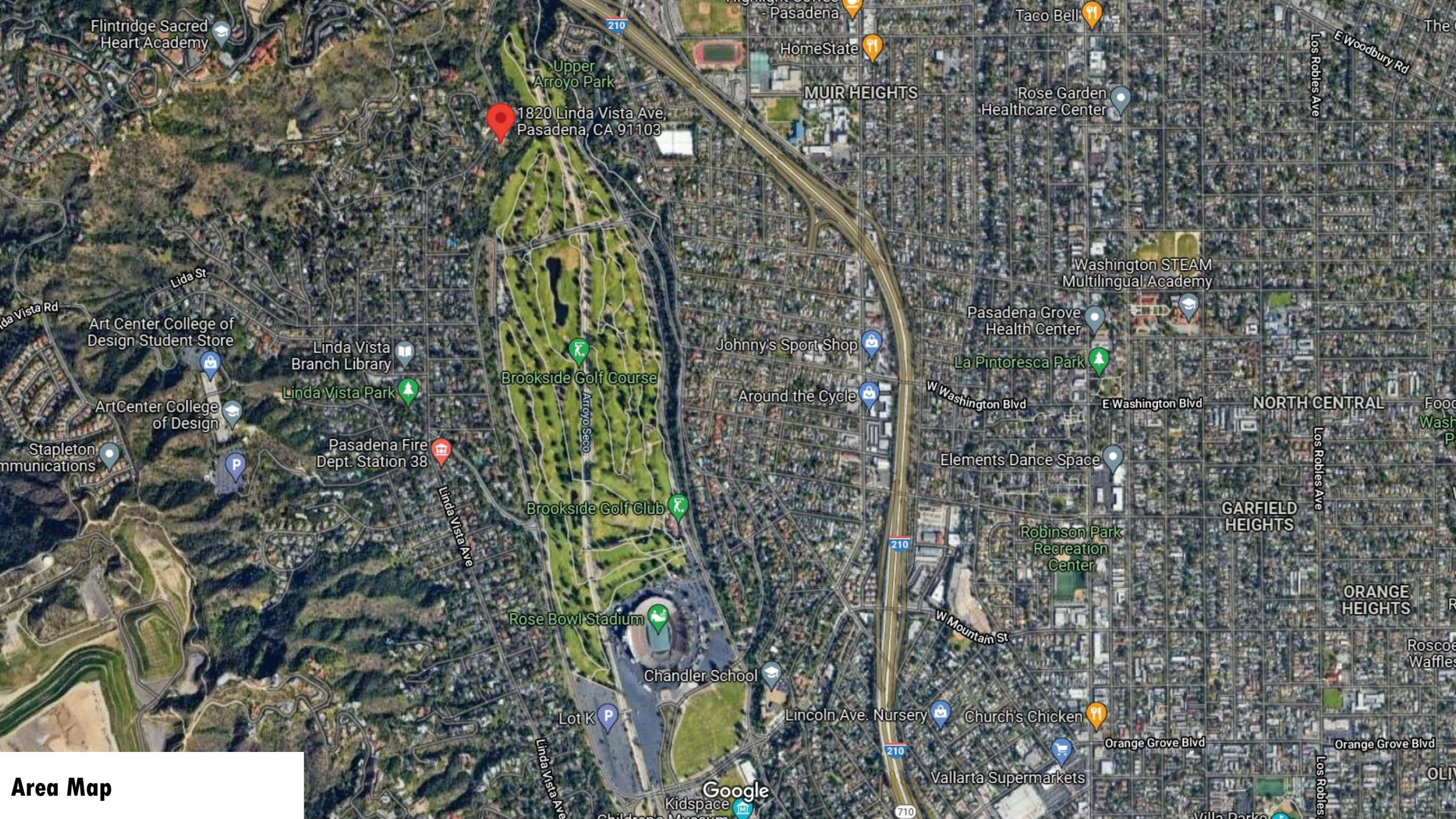
Richard A. McDonald, Esq.



# **1820 Linda Vista Ave. (HDP #6838)**

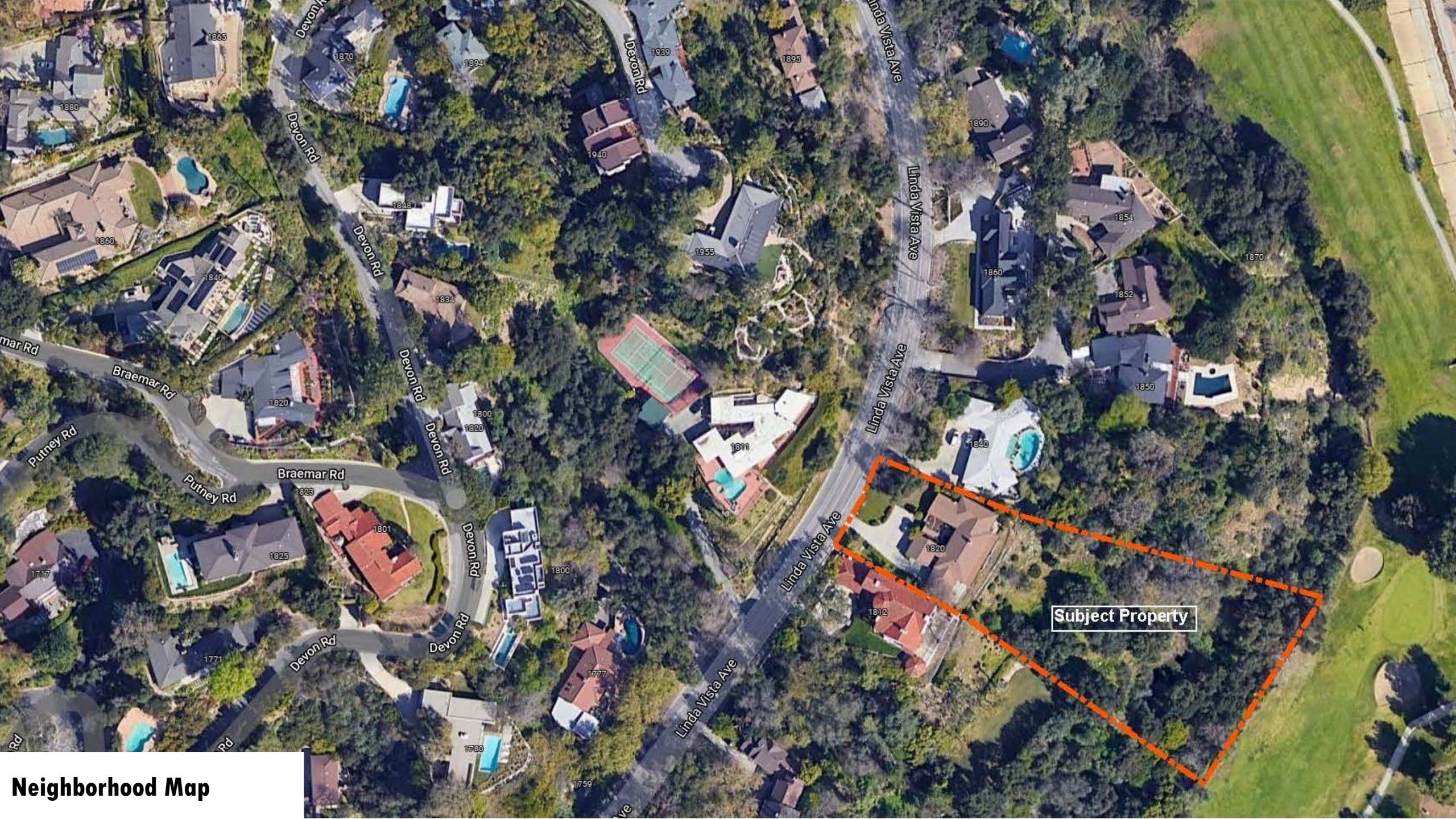
**Board of Zoning Appeals Presentation November  
18, 2021**





**Area Map**





Subject Property

Neighborhood Map



# Site Design: Option #1

- **Addition in Front yard adjacent to Linda Vista Ave.**
- **This option was rejected since it was too disruptive to the character of the streetscape along Linda Vista Ave.**





# Site Design: Option #2

- **Addition on second level**
- **Neighbors to the west and south have impacted view corridors.**
- **Adding a second story impacts the views from the appellant's second story windows on their north façade.**
- **Second story addition affects the street-facing character of Linda Vista Ave.**





# Site Design: Option #3

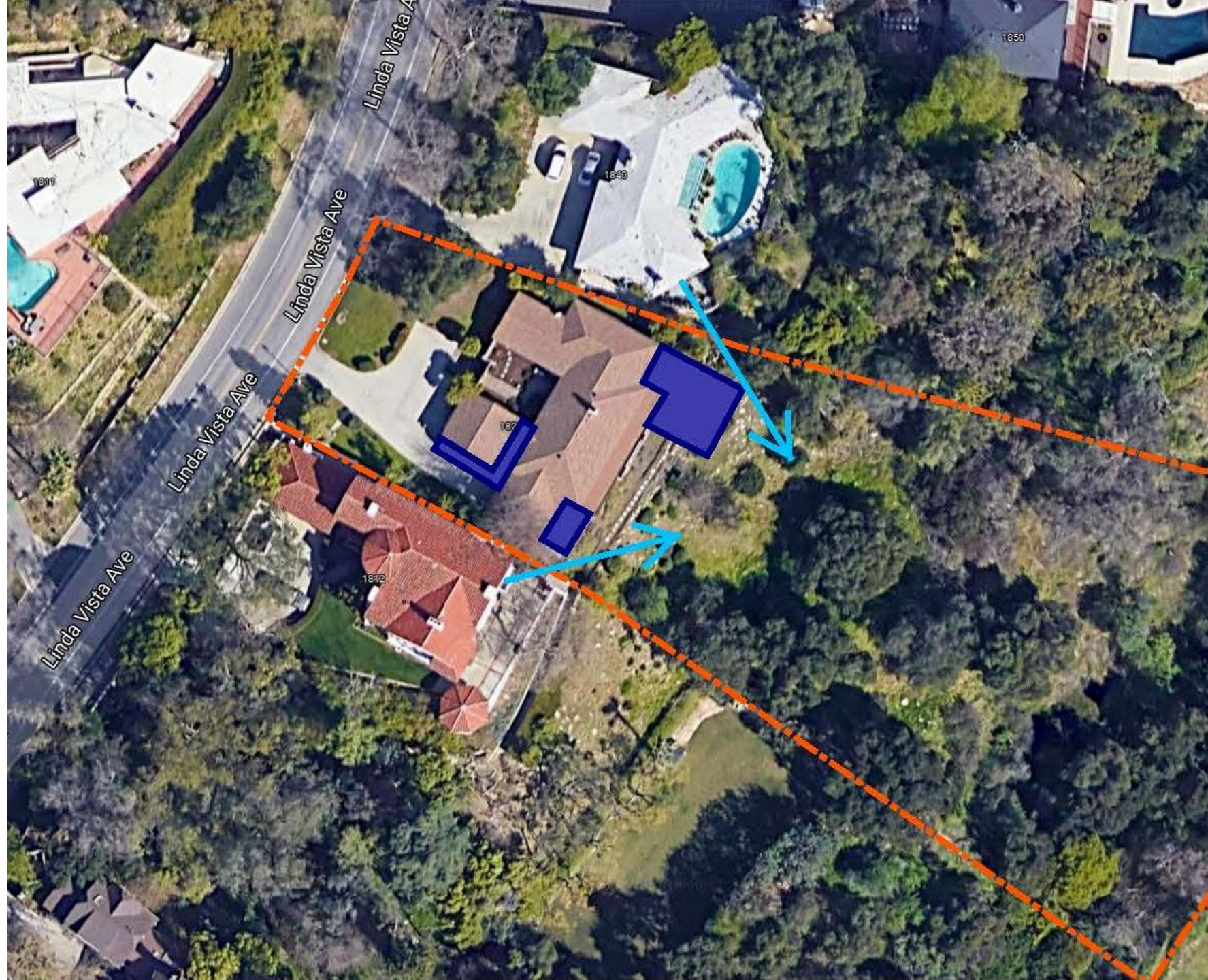
- **Addition in Rear yard on first floor with no lower level.**
- **Converts carport to enclosed garage and existing garage to living space.**
- **Provides a separate wing to care for our elderly parents, but does not allow for their privacy and independence.**
- **Appellant has impacted views from first story windows along the east façade.**
- **First story views at the appellant's north façade are already impacted by the existing residence and dense foliage.**





# Site Design: Option #4 Selected Option

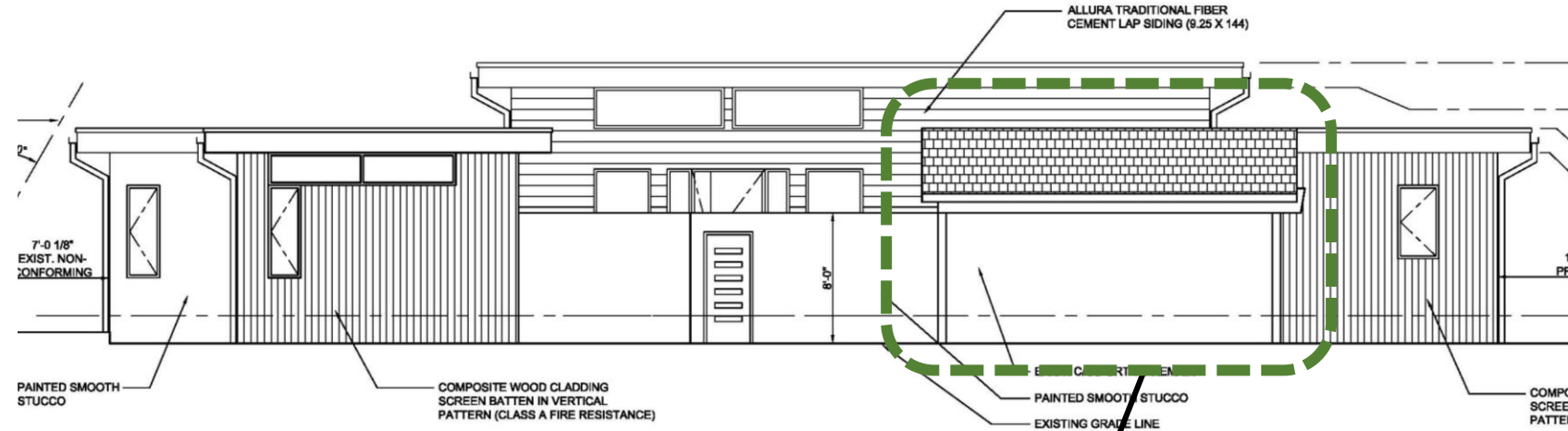
- **Addition in Rear yard on first floor and a ADU on the lower floor**
- **Converts carport to enclosed garage and existing garage to living space.**
- **Reduces addition to the South on the first floor to avoid view obstruction from appellant's east façade windows.**
- **Avoids view obstructions from all neighbors to the maximum extent feasible.**
- **Allows for a separate unit to care for our elderly parents yet still gives them independence.**





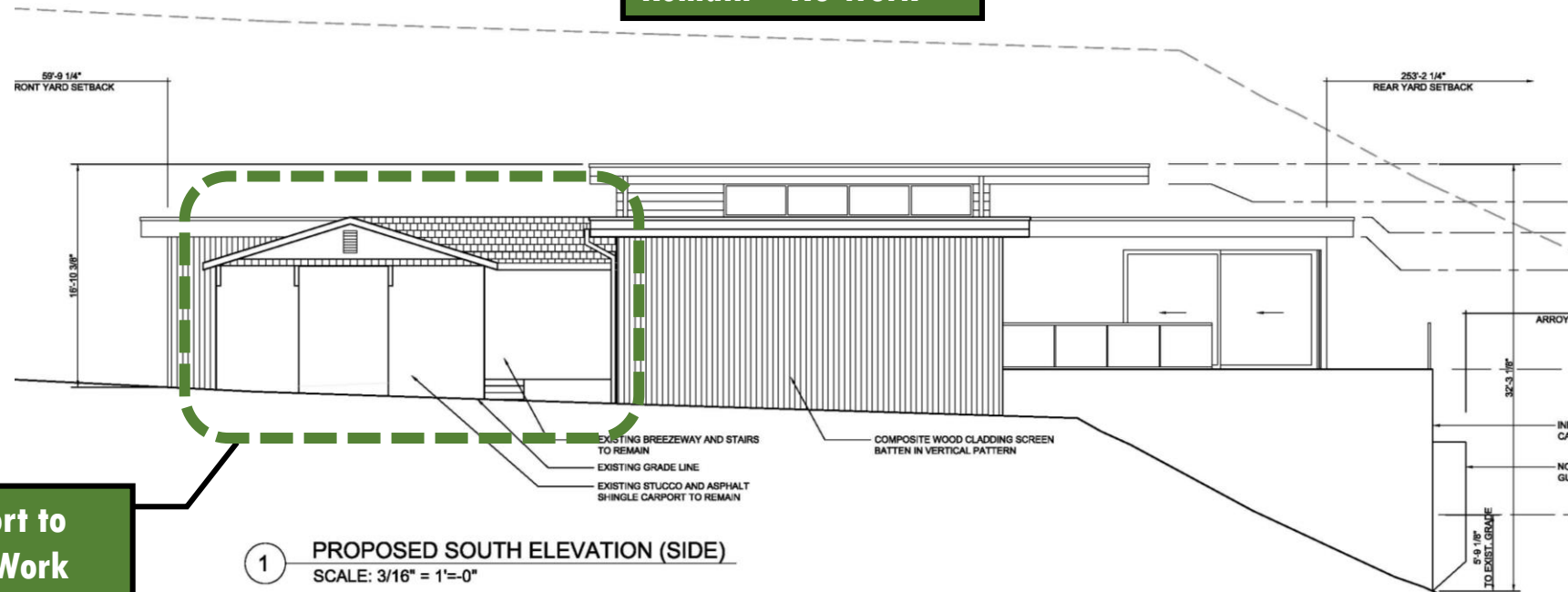
# Proposed Changes: Not Pursued

- Analyzed leaving the carport as-is to move the project forward.
- Created a worse final project since it negatively impacts the Linda Vista Ave streetscape.
- Hodgepodge of architectural styles and rooflines created the appearance of an incomplete project and was an eyesore from the public street.
- Would not function as desired since the carport has an exterior breezeway and does not have a direct connection to the house.
- City staff ultimately agreed this change resulted in a project unfavorable to the neighborhood and this option was not pursued.



2 PROPOSED WEST ELEVATION (FRONT)  
SCALE: 3/16" = 1'-0"

Existing Carport to  
Remain – No Work



1 PROPOSED SOUTH ELEVATION (SIDE)  
SCALE: 3/16" = 1'-0"

Existing Carport to  
Remain – No Work



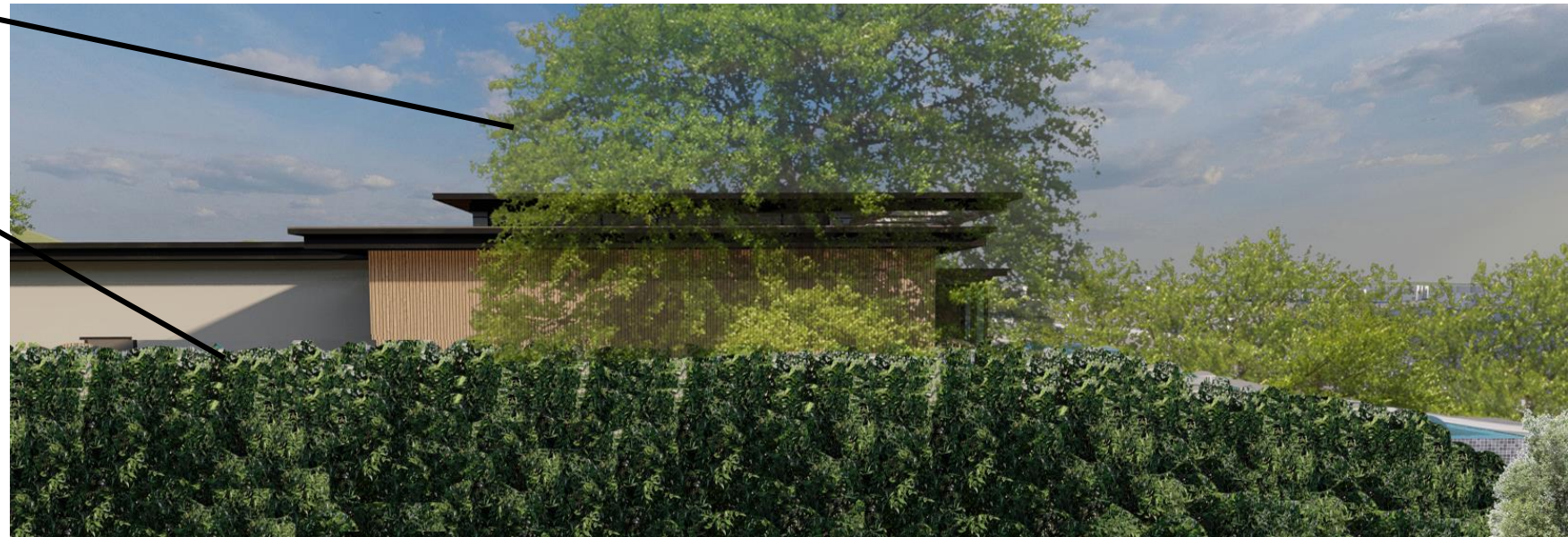
# Proposed Compromises: Not Accepted

- Offered to reduce the height of the garage roof by 18-inches.
- Offered to install landscaping at the southern property line to enhance privacy.



Existing Chinese Elm Tree

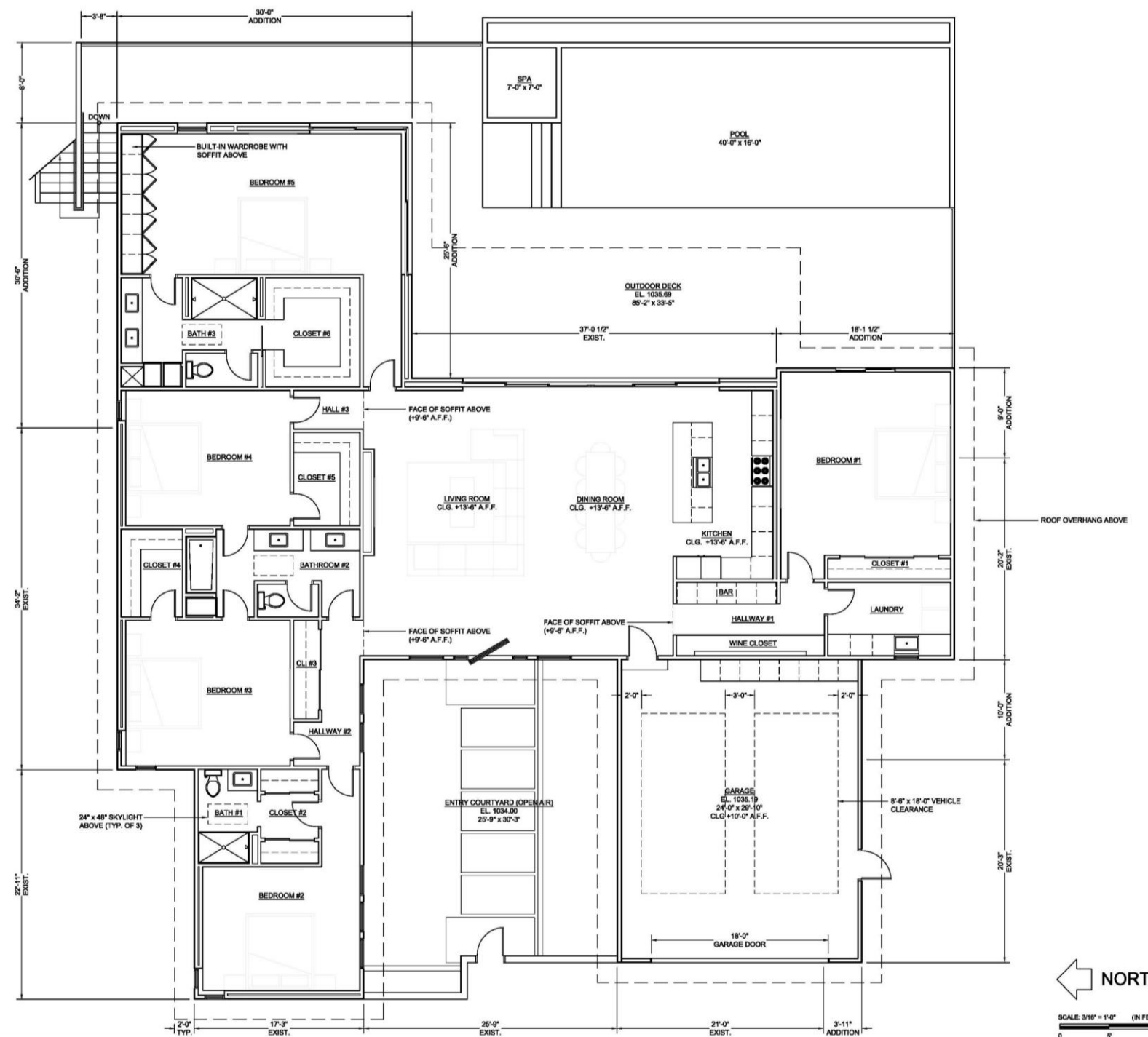
Proposed Landscaping Along  
South Property Line





# Building Design: Upper Floor Plan

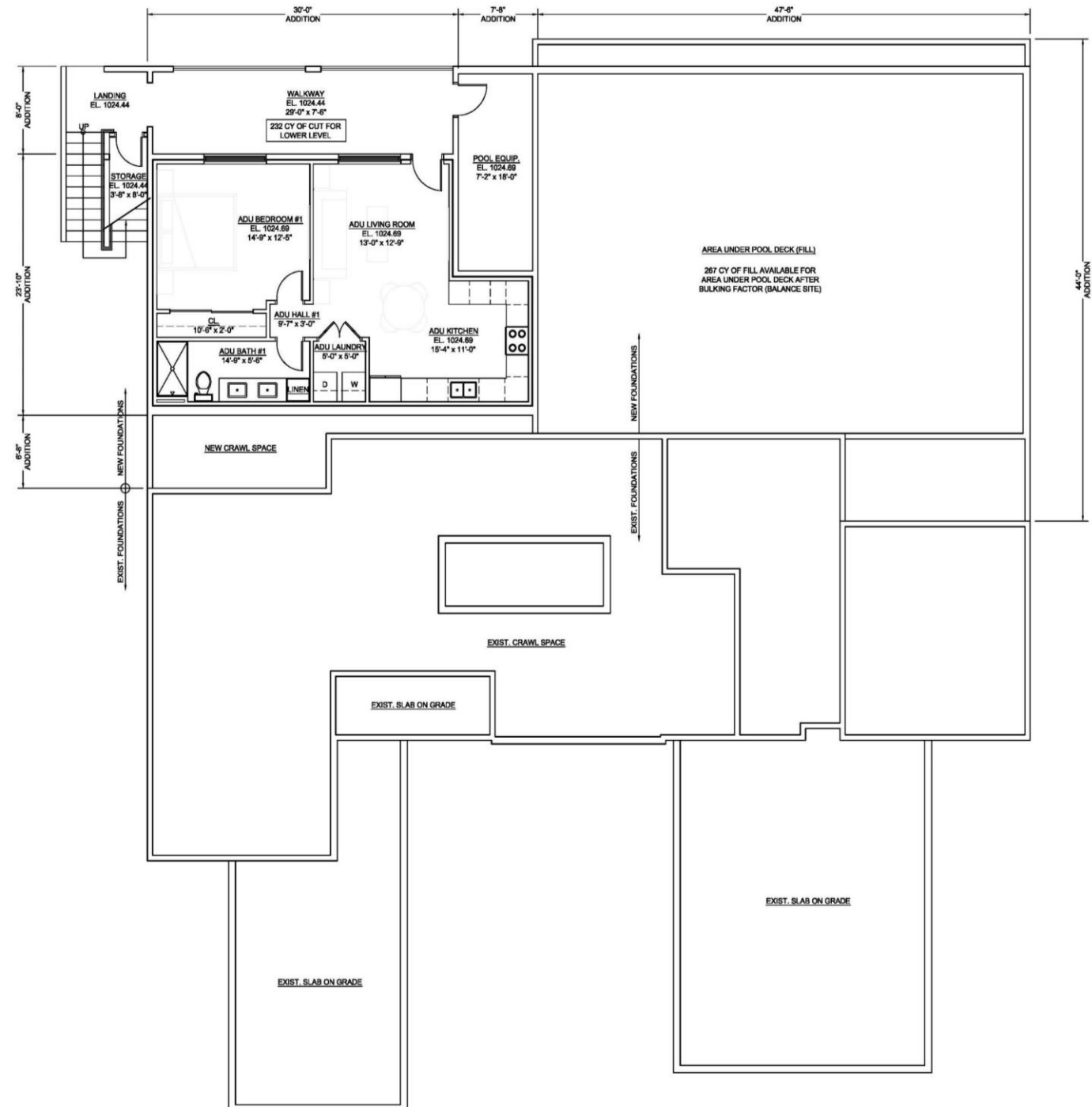
- **62% of the exterior walls are maintained creating an ecological re-use solution.**
- **Provides a main level 3,853 SF of living space.**
- **Maintains scale of the residence from Linda Vista Ave.**
- **Retained the entry courtyard feature that is unique to the existing building.**
- **Organized the floor plan to create public/community spaces at the core of the property with taller volumes flooded by natural light, flanked by more intimate private spaces like bedrooms and bathrooms at the edges of the home.**
- **Large glass expanses to the rear of the property capture sunlight and natural ventilation while taking advantage of the integration with nature.**
- **Clerestory windows allow additional sunlight into the living spaces and bedrooms from the north and south facades.**
- **No windows along the south façade at bedroom #1 and the laundry room for enhanced privacy from the appellant's residence.**





# Building Design: Lower Floor Plan

- Provides a separate unit of only 807 SF instead of 1,200 SF allowed to care for our parents.
- Allows for their independence and freedom of movement.
- Captures space below the upper floor that would otherwise be an open void due to existing topography changes.
- Provides pool equipment room and additional storage space captured under the proposed exterior stair.

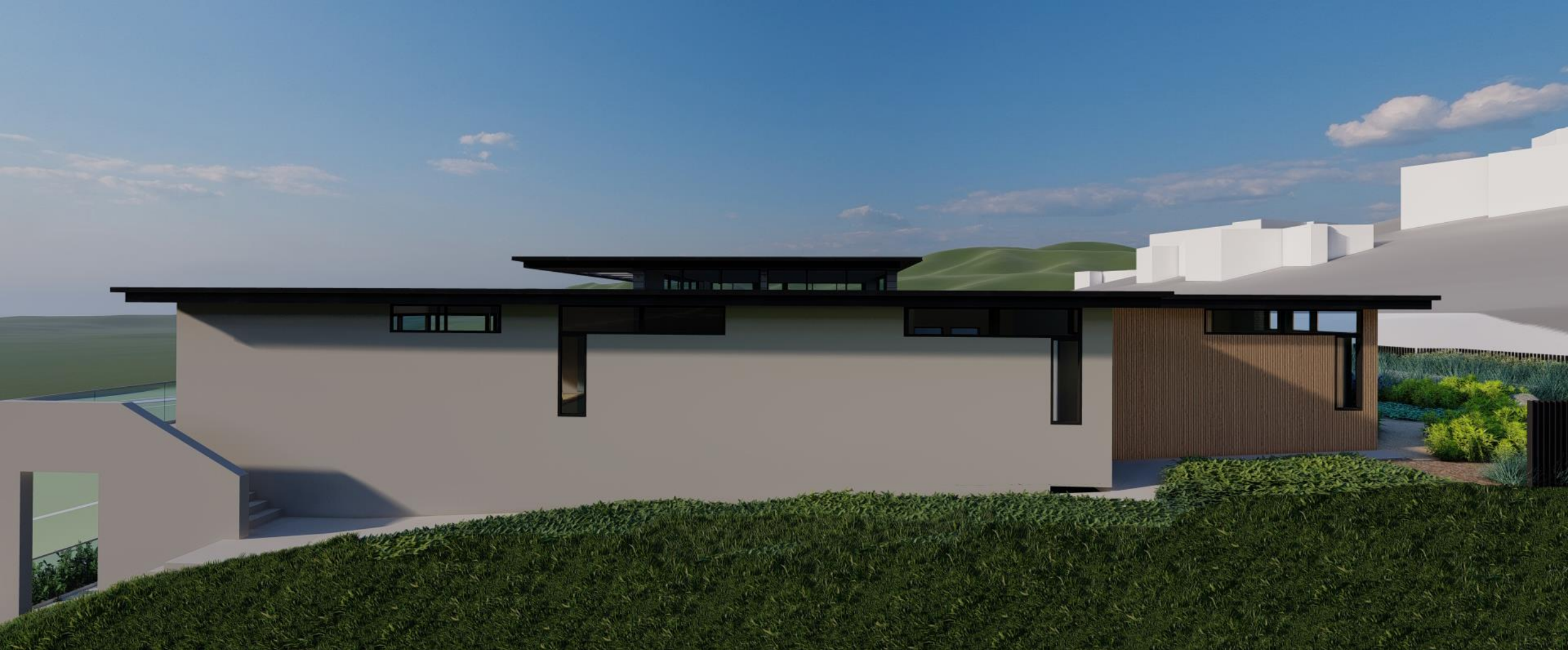






**Front Elevation (From Linda Vista Ave.)**





**North Elevation**





**South Elevation**





**Rear Elevation**





**1820 Linda Vista Ave.  
(HDP #6838)**

**Addressing Neighbor's Concerns**





# PMC: Hillside Overlay Building Design Standards

## 17.29.060.G: View Protection

A proposed structure shall be designed and located so that it avoids blocking views from surrounding properties to the *maximum extent feasible*, as determined by the review authority, and including, but not limited to, consideration of the following:

1. The feasibility of relocating the proposed structure to another part of the site;
  2. The feasibility of modifying the massing of the proposed structure such that views from surrounding properties would not be impacted; and
  3. The feasibility of *minimizing* architectural features that may intrude upon views from surrounding properties.
1. New structures and tall landscaping *shall not be centered directly in the view of any room* of a primary structure on a neighboring parcel. Views shall be considered from windows of any room in the primary structure. New structures shall avoid blocking the following from any room of a main dwelling on a neighboring property:
    1. Culturally significant structures such as the Rose Bowl, Colorado Street Bridge, City Hall, etc.;
    2. Downslope views of the valley floor;
    3. Prominent ridgelines; and/or
    4. The horizon line.

Views of *open sky, existing foliage, private yards, and existing structures* on surrounding properties shall not be taken into consideration by the review authority.

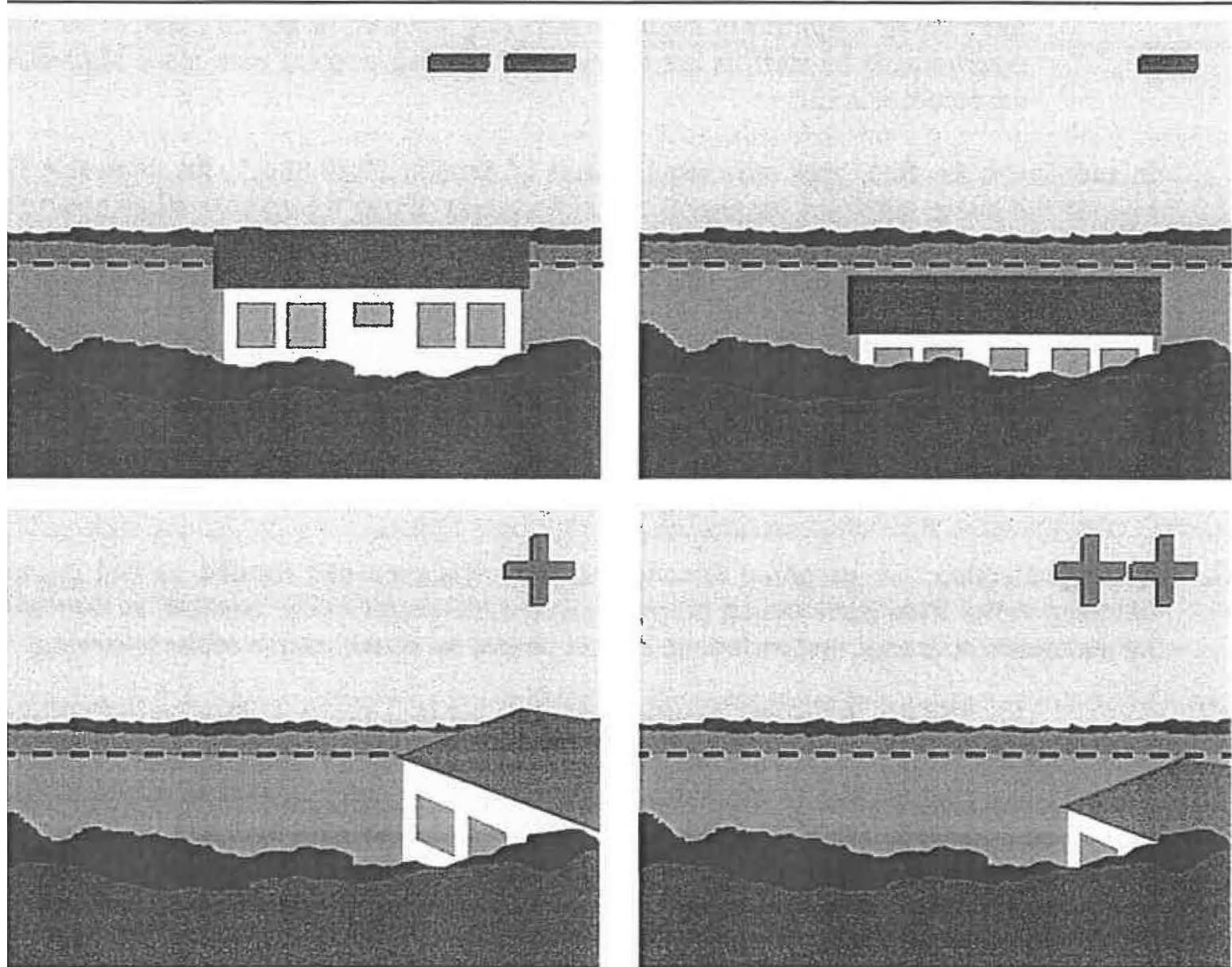
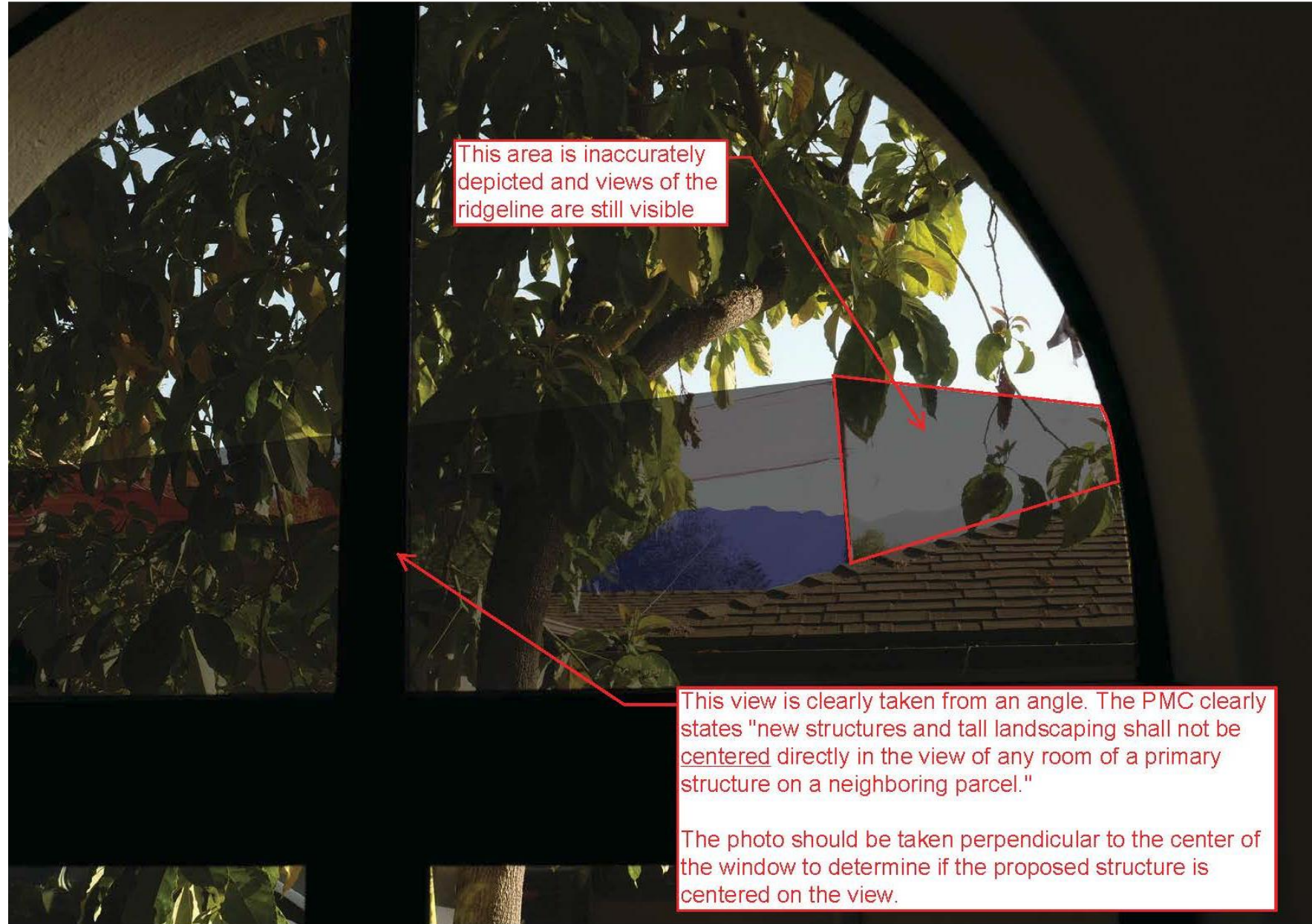


Figure 2-7—Example of Preferred Locations of a Structure to Preserve Views



# View Obstructions: Neighbor's Photo #1

- **Photo not taken "centered" on the window**
- **View is already impacted by existing foliage and structures; this is not a protected view according to 17.29.060.G**
- **Story pole views have been incorrectly depicted by the neighbor**
- **Ridgeline still visible when the story pole area is shown correctly**





# View Obstructions: Neighbor's Photo #2

- **Photo not taken “centered” on the window**
- **View is already impacted existing foliage and structures; this is not a protected view according to 17.29.060.G**
- **Story pole views have been incorrectly depicted by the neighbor**
- **Ridgeline still visible when the story pole area is shown correctly**





## View Obstructions: Neighbor's Photo #3

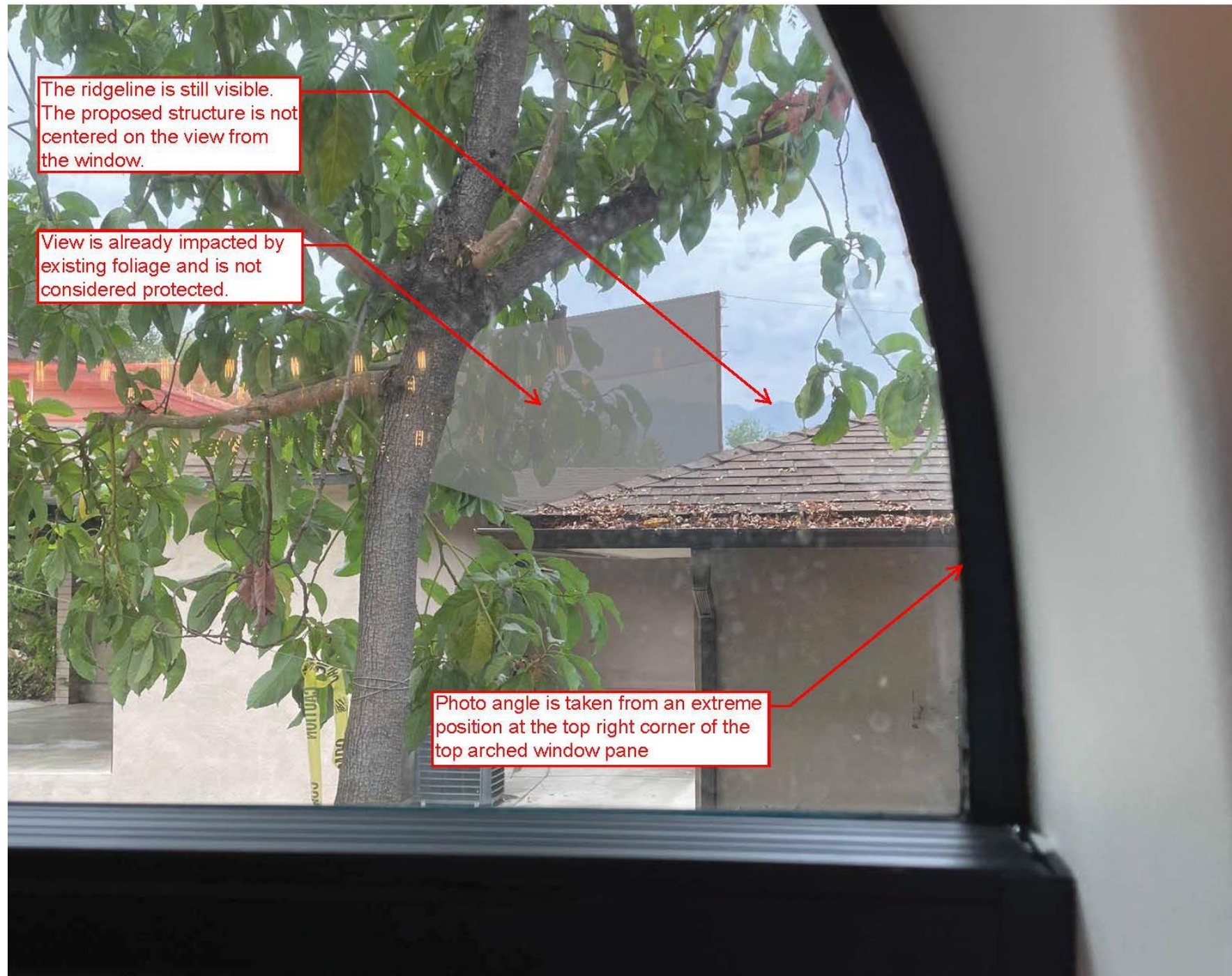
- **Photo not taken “centered” on the window**
- **View is already impacted existing foliage and structures; this is not a protected view according to 17.29.060.G**





## View Obstructions: Neighbor's Photo #4

- **Photo not taken “centered” on the window**
- **View is already impacted existing foliage and structures; this is not a protected view according to 17.29.060.G**
- **Story pole views have been incorrectly depicted by the neighbor**
- **Ridgeline still visible when the story pole area is shown correctly**





## View Obstructions: Neighbor's Photo #4

- This depicts the perspective where the previous photo was taken from (upper right corner of the window from the interior)
- Existing foliage currently blocks views





# View Obstructions: Neighbor's Photo #5

- **Photo not taken “centered” on the window**
- **View is already impacted existing foliage and structures; this is not a protected view according to 17.29.060.G**
- **Story pole views have been incorrectly depicted by the neighbor**
- **Ridgeline still visible when the story pole area is shown correctly**





## View Obstructions: Neighbor's Photo #5

- This depicts the perspective where the previous photo was taken from (upper left corner of the window from the interior)
- Existing foliage currently blocks views





## View Obstructions: Neighbor's Photo #6

- Photo not taken "centered" on the window
- View is already impacted existing foliage and structures; this is not a protected view according to 17.29.060.G



View is already impacted by existing foliage and is not considered protected.

Photo is taken from an angle



## View Obstructions: Neighbor's Photo #7

- **Ridgeline still visible when the story pole area is shown correctly**
- **View is mostly impacted from the existing covered patio**
- **No windows were added to the proposed bedroom on the south side to enhance privacy**





# Unusual Circumstances: Pool and Deck

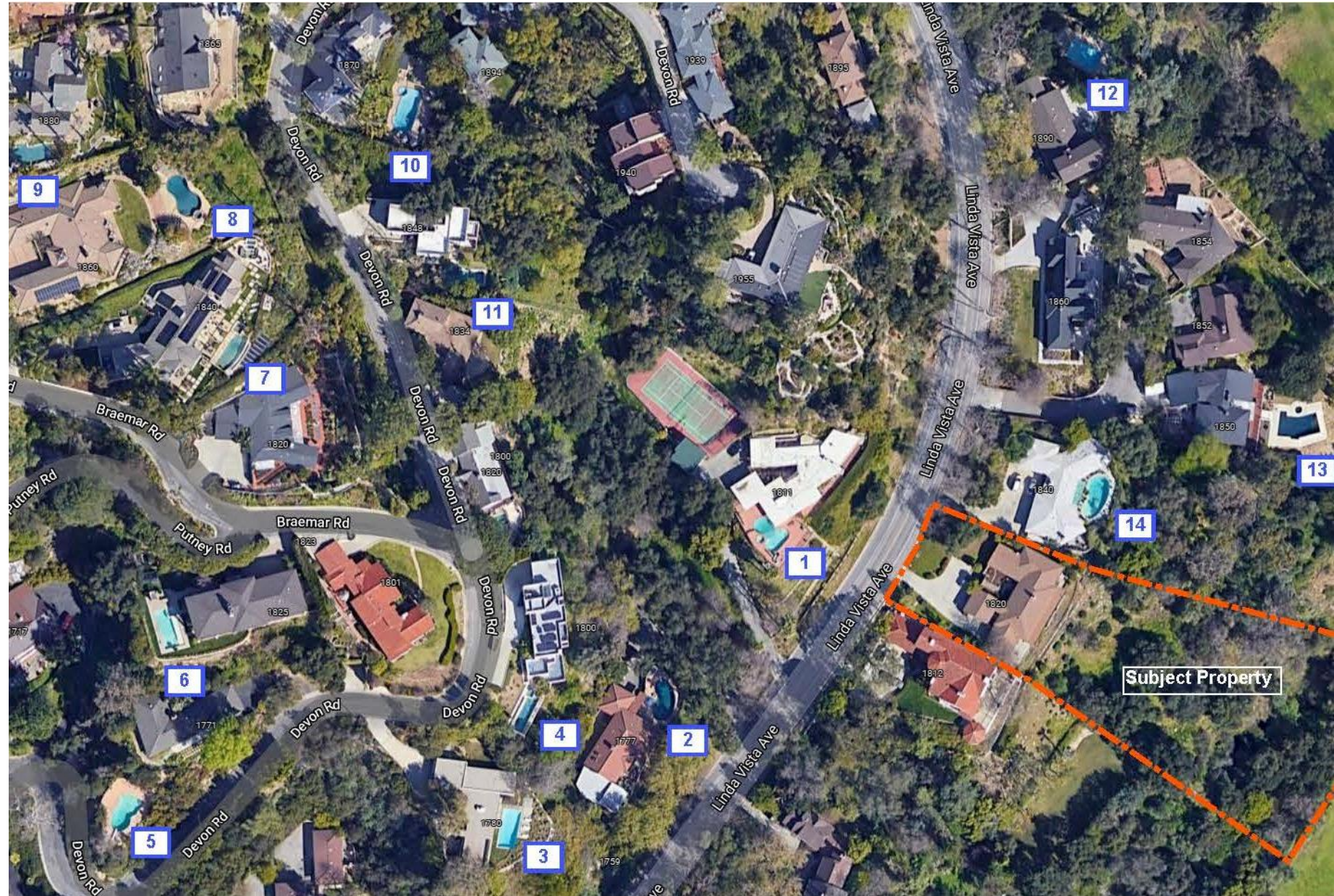
- There are 6 hillside swimming pools and decks on the same hillside as the subject property.
- Neighbor directly to the north has an existing pool and deck.
- His neighbor has a pool and deck much further down the Arroyo Seco Slope Bank.





# Unusual Circumstances: Pool and Deck

- There are 14 hillside swimming pools and decks in the neighborhood.
- Almost all pools and decks are downslope, facing east, like our proposed project.
- The geotechnical engineer has provided a supplemental letter and has indicated:
  - The original calculations include a uniform surcharge pressure of 500 psf, which is considered conservative to account for loading from the proposed improvements and the infinity edge pool.





# Unusual Circumstances: Liquefaction

- Appellant submitted an inaccurate and misleading Liquefaction map exhibit.
- The edge of the liquefaction zone is located 380 feet from the edge of the existing house and 125 feet into the golf course measured from the toe of slope.
- No portion of the subject property is located within an area that is subject to liquefaction.
- Age of the soils and depth of groundwater further confirm the subject property is not subject to liquefaction.

