

# Oakland City Planning Commission

## Residential Appeals Committee

# STAFF REPORT

Case File Number: PLN23039-A01

September 25, 2024

<b>Location:</b>	7009 Shirley Drive
<b>Assessor's Parcel Number:</b>	048D729602100
<b>Proposal:</b>	Appeal of a project to construct a new multi-story 3,690 square-foot single-family home with a two-car garage and an attached 500 square-foot junior accessory dwelling unit (JADU).
<b>Applicant:</b>	Timothy Quayle, Cass Calder Smith Architecture / (415) 864-2800
<b>Owner:</b>	Kerry McCracken
<b>Appeal Case File Number:</b>	PLN23039-A01
<b>Planning Permits Required:</b>	Regular Design Review for the construction of a new single-family dwelling with a JADU (2 units in total).
<b>General Plan:</b>	Hillside Residential
<b>Zoning:</b>	RH-4, Hillside Residential Zone - 4; S-10 Scenic Route Combining Zone, and S-9 Fire Safety Protection Combining Zone.
<b>Environmental Determination:</b>	The project is exempt under the following sections of the State CEQA Guidelines: Sections 15183 - Projects Consistent with a Community Plan, General Plan, or Zoning; and 15303 - New Construction or Conversion of Small Structures.
<b>Historic Status:</b>	Non-Historic Property (vacant lot)
<b>City Council District:</b>	4
<b>Project Status:</b>	An appeal of an administrative decision approving the project was filed on May 13, 2024.
<b>Staff Recommendation:</b>	Deny the appeal and uphold the Zoning Manager's decision.
<b>Finality of Decision:</b>	The decision of the Residential Appeals Committee is final.
<b>For Further Information:</b>	Contact Case Planner Mike Rivera at (510) 238-6417 or by email at <a href="mailto:mriviera@oaklandca.gov">mriviera@oaklandca.gov</a>

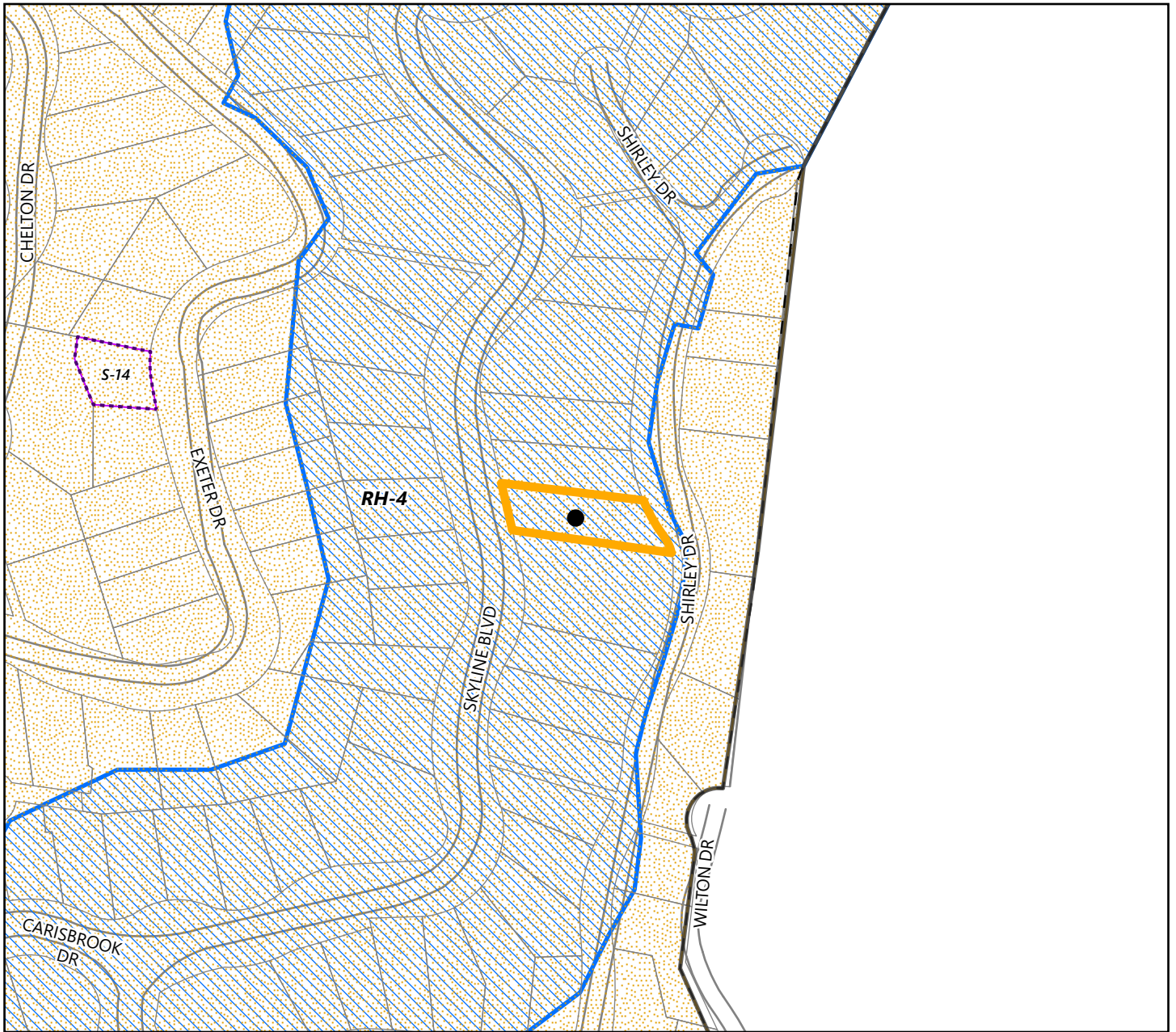
## SUMMARY


This item is an appeal of a staff approval for the construction of a 3,690 square foot single-family home with attached two-car garage and a 500 square-foot junior accessory dwelling unit (JADU) on a vacant hillside lot (see **Attachment A** for plans). The appellants raised concerns related to the bulk and massing of the home, fire safety, respect for the topography, resident and emergency vehicle access during and after construction, views, shadows, and privacy.

As discussed in the "Appeal Arguments and Staff Responses" section of this report, the issues raised by neighbors are either out of the City's scope due to the applicability of the Housing Accountability Act to projects consisting of two or more units, addressed in the proposal, or addressed through conditions of approval. Further, the appellants have not identified an error or abuse of discretion by the Planning Director, which is required for a successful appeal.

Therefore, staff recommends denial of the appeal, which would uphold the City's approval of the project.

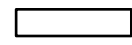
# CITY OF OAKLAND PLANNING COMMISSION



 Site Boundary

 S-9

 S-10

 Feet  
100



Case File: PLN23039-A01  
Applicant: Timothy Quayle, Cass Calder Smith Architecture  
Appellants: Soutter & Sagisi, Kenward & Armstrong, Jennings & Smith, Moldenhauer & Salazar  
Address: 7009 Shirley Drive  
Base Zone(s): RH-4  
Combining Zone(s): S-9, S-10

**BACKGROUND**

On March 15, 2023, the applicant applied for entitlements to construct a 3,690 square-foot single-family home and a 500 square-foot junior accessory dwelling unit (JADU) on a vacant hillside lot (see **Attachment A** for plans).

Throughout the public comment period, Planning staff received comments from surrounding neighbors expressing concerns about the project. These concerns generally related to the bulk and massing of the home, fire safety, respect for the topography, resident and emergency vehicle access during and after construction, views, shadows, and privacy. Following the comment period, staff met with and responded to neighbors to review the project and discuss their concerns. In general, the applicant responded to privacy issues but did not make significant changes to the building envelope.

On May 2, 2024, the Zoning Manager issued an approval letter on the project based on applicable objective Zoning standards and findings, and the objective criteria in the City’s Design Review Manual for One- and Two-Unit Residences” (see **Attachment B** for the approval letter and **Attachment E** for the Manual).

Four neighbors filed a timely appeal of the project relating to the issues listed above (see **Attachment D**) and described in more detail in the appeal and the “Appeal Arguments and Staff Responses” section of this report.

**PROJECT SITE AND SURROUNDING NEIGHBORHOOD**

The subject property is located east of Highway 13 and west of Redwood Regional Park. The project site is a vacant 8,344 square foot hillside through lot that slopes from its principal frontage on Shirley Drive down to Skyline Boulevard. Shirley Drive is a dead-end street that measures approximately 1,000 feet long, is accessed from Burton Drive, and provides access to all twenty-three lots on the street. The proposal is on the only undeveloped lot on Shirley Drive, which is a street that is almost entirely on top of a ridge. The homes on the east side of Shirley Drive have views of Redwood Regional Park while homes on the west side have views of the Bay. The sizes of homes on the street range from approximately 1,000 square feet to 3,680 square feet, and their garages are located approximately 8 to 30 feet from the edge of road.

**PROJECT PROPOSAL**

The project proposal is for the construction of a multi-story 3,690 square-foot single-family home with attached two-car garage and a 500 square-foot junior accessory dwelling unit (JADU) within the building envelope. The proposed new home would be set back from the property lines by at least 20 feet from the front, 70 feet from the rear and five to 8.5 feet from the sides. The attached two-car garage, located to the left side of the residence, is approximately 33 feet from the front property line. The exterior building height measures approximately 13.5 feet on the front, 26.5 feet on the right side, 31 feet on the left side and 33 feet on the rear side. The building footprint somewhat steps down with the hillside and staggers from the side property lines. The proposal also includes a mix of gable and slanted roofs, a front patio and rear decks, wood and cement plaster siding, dark aluminum frame windows, and new landscaping. The plans are shown in **Attachment A**.

**GENERAL PLAN ANALYSIS**

The property is classified as “Hillside Residential” by the City’s Land Use and Transportation Element (LUTE) of the General Plan. The intent of the “Hillside Residential” land use classification is to create, maintain and enhance neighborhood residential areas that are characterized by detached, single unit structures on hillside lots. The desired character and uses for future development within this classification should remain residential. The project is for a single-family home, and it is consistent with this intent. The project conforms to the following applicable policies:

- Policy N3.1-Facilitating Housing Construction: Facilitating the construction of housing units should be considered a high priority for the City of Oakland.
  - *The project is for the construction of a single-family home with an attached two-car garage that will contribute to the housing production in the City.*
- Policy N3.2-Encouraging Infill Development: In order to facilitate the construction of needed housing units, infill development that is consistent with the General Plan should take place throughout the City of Oakland.
  - *The project is for the construction of a new residence in the last underutilized vacant lot on Shirley Drive.*
- Policy N3.3-Facilitating Development of Second Units: [Accessory Dwelling Units] (also known as second or secondary unit) per property should be permitted outright in all residential zones provided that it meets the setback requirements for the primary structure, is clearly secondary to the primary structure, is compatible with other structures on the site and in the vicinity...The permitting procedures and performance criteria applied to these units should facilitate construction of units, and not be prohibitive in their requirements. Accessory units should be allowed when a new primary residence is being constructed or may be added to properties with an existing residence.
  - *The project for the construction of the primary single-family home includes an outright permitted accessory dwelling unit within the envelope of the main home.*

**ZONING ANALYSIS**

The project is in the RH-4 Hillside Residential Zone. The intent of the RH-4 Zone is to create, maintain, and enhance areas for single-family dwellings on lots of 6,500 to 8,000 square feet and is typically appropriate in already developed areas of the Oakland hills. The project meets the intent for the construction of a single-family home on a 8,344 square feet lot, and complies with all objective standards of the Planning Code and the City’s Design Review Manual for One- and Two-Unit Residences.

The Housing Accountability Act (HAA) states that only objective standards can be applied to housing development projects, which include projects that consist of two or more residential units.<sup>1</sup> The HAA

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<sup>1</sup> A “housing development project” means a use consisting of residential units only, mixed use developments consisting of residential and non-residential uses with at least two-thirds of the square footage designated for residential use, or transitional or supportive housing. Because the term “units” is plural, a development must consist of more than one unit to qualify under the HAA. The development can consist of attached or detached units and may occupy more than one parcel, so long as the development is included in the same development application. (*See* State of California Housing and Community Development Department’s (“State HCD’s”) Technical Assistance

states that objective standards are those that involve no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official. Therefore, as described in the decision letter and in staff’s responses to the appeal, below, several Planning Code findings are inapplicable.

**ENVIRONMENTAL DETERMINATION**

The project was evaluated per the California Environmental Quality Act (CEQA). The project was found to be exempt from further environmental review under the following sections of the State CEQA Guidelines: Section 15183 - Projects Consistent with a Community Plan, General Plan, or Zoning; and Section 15303 - New Construction or Conversion of Small Structures.

**APPEAL ARGUMENTS AND STAFF RESPONSES**

The following summarizes the arguments made in the appeal. The summary of each appeal argument is in *italics* and staff responses are in normal font. This section provides a brief review of the lengthy appeal, but the reader can read the full appellant arguments in **Attachment D**. For context, Section 17.136.080 of the Planning Code says that: “The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Director or wherein his or her decision is not supported by the evidence in the record.”

Soutter/Sagisi Appeal Arguments

The following is a summary of the appellants’ arguments written by Elizabeth Soutter and Patrick Sagisi who live across from the subject site at 7016 Shirley Drive.

1. *Appellant Argument*

*The appellant argues that the Housing Accountability Act requirements do not apply to this project because it is not a multi-family development. Therefore, subjective design requirements and findings can apply to the development even though they are not permitted under the HAA.*

*The applicant states that the Accessory Living Quarter (ALQ)<sup>2</sup> was permitted by the City under SB 9<sup>3</sup>, and, under that law, a new home with an ALQ is not considered multi-unit because it is significantly subordinate in size to a main house, the ALQ is subordinate to the primary home under local law, and the site is located in a Very High Fire Hazard Severity Zone where ministerial review of ALQs does not apply. The applicant states that the project is in the RH-4 Zone, which is a single-family zone, and, therefore, the project cannot be a multi-family development. The appellant also states that the project does not meet other requirements of SB-9.*

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Advisory (Government Code Section 65589.5), available at: <https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/hcd-memo-on-haa-final-sept2020.pdf>

<sup>2</sup> The applicant uses the term ALQ interchangeably with the term Junior Accessory Dwelling (JADU)

<sup>3</sup> Senate Bill (SB) 9 requires ministerial approval of a housing development with no more than two primary units in a single-family zone, the subdivision of a parcel in a single-family zone into two parcels, or both. SB 9 facilitates the creation of up to four housing units in the lot area typically used for one single-family home.

*The applicant states that, even if the City were limited to objective design standards, the project should have been denied because a ‘reasonable person’ would find the Planning Code’s Design Review Criteria and Design Review Manual for One- and Two-Unit Residences objective and balanced ways to evaluate housing projects.*

Staff Response

The Housing Accountability Act (HAA) applies to all multifamily housing projects, and the project is considered a multi-family development under the HAA because it contains two residential units: a single-family home and a JADU. Therefore, the City must follow the HAA requirement that only objective design standards apply to the project. In the memorandum to Planning Directors and Interested Parties regarding Housing Accountability Act Technical Assistance (September 15, 2020), the California Department of Housing and Community Development (State HCD) clearly states: “Since an application for both a single-family residence and an ADU includes more than one residential unit, the HAA applies (Gov. Code, § 65589.5, subd. (h)(2).)”<sup>4</sup>

The HAA requires that only objective development requirements be applied to multifamily projects such as that proposed. The applicant misrepresents the standard by which the HAA considers a requirement objective when they say it is whether a “‘reasonable person’ would find the criteria objective.” The HAA defines “objective” as “involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official.” (Gov. Code, § 65589.5, subd. (h)(2)(B)). For instance, the following Regular Design Review Criteria for the project are from Section 17.136.050 of the Planning Code:

1. That the proposed design will create a building or set of buildings that are well-related to the surrounding area in their setting, scale, bulk, height, materials, and textures;
2. That the proposed design will be sensitive to the topography and landscape;
3. That, if situated on a hill, the design and massing of the proposed building relates to the grade of the hill;
4. That the proposed design conforms in all significant respects with the Oakland General Plan and with any applicable design review guidelines or criteria, district plan, or development control map which have been adopted by the Planning Commission or City Council.

Requirements with the terms “well-related to the surrounding area”, “relates to the grade”, or “sensitive to the topography or landscape” cannot be used to evaluate a proposal because they involve personal or subjective judgment and are not uniformly verifiable to an external uniform benchmark. Therefore, Regular Design Review Findings 1. through 3. cannot apply to this project. Even Finding 4. cannot be applied because there is no uniform benchmark or criterion available for what constitutes a project conforming to the many subjective and competing policies in the General Plan.

Section 17.90.050 of the Planning Code also contains the following S-10 Zone criteria:

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<sup>4</sup> *Id.* at p. 19. See State HCD’s responses to frequently asked questions: **Does the Housing Accountability Act apply to an application that includes both a single-family residence and an Accessory Dwelling Unit?** Yes. Since an application for both a single-family residence and an ADU includes more than one residential unit, the HAA applies (Gov. Code, § 65589.5, subd. (h)(2).)

1. That the siting, grading, and design will, to the maximum extent feasible, preserve existing live trees and other desirable natural features;
2. That the proposed development will, as far as practicable, maintain existing vistas or panoramas which can be seen from the abutting public road and maintain the visual value of the total setting or character of the surrounding area.

Again, the terms “maximum extent feasible” and “as far as practicable” make these S-10 Zone findings subjective because they require a subjective judgement from a public official and are not uniformly verifiable to an external uniform benchmark.

The application was not filed under the provisions of SB-9, so any definitions or requirements contained in that law are not relevant to this project. Similarly, local regulations regarding whether a site is in a single-family zone or an ADU is subordinate to the primary unit is not relevant as to whether a project is considered multi-family under the HAA. Notably, the RH-4 Zone is not a single-family zone because it permits two units on lots that are 8,000 square feet or greater.

2. *Appeal Argument*

*The appeal argues that the project should not have been approved because Attorney General Bonta recommended extreme caution in building in a Very High Fire Severity Zone and conditions of approval in the decision letter have not been met.*

Staff Response

Per Federal and State takings law, the applicant has a right to develop a home on the legally created parcel in a manner that is consistent with local zoning, public health, safety and welfare and in compliance with environmental regulations. Staff worked closely with the Fire Prevention Bureau to place conditions on the parcel to minimize the fire hazards (see **Attachment C** for the conditions). The Department of Planning and Building and Department of Transportation will assure that all conditions of approval will be complied with at the appropriate stage of development and permit processing. Conditions are not required to be complied with prior to final approval of project.

3. *Appeal Argument*

*The appellants living in 7016 Shirley Drive, which is directly across the street from the lot proposed for development, claim that Oakland Zoning Manager erred in granting approval to the proposal, because it does not maintain the most significant views from their primary living spaces as required by Design Review Criterion 1-1 of the Design Review Manual. They argue that 7016 Shirley Drive is eligible for view protection because it is an upslope lot that has significant views from primary living spaces.*

Staff Response

Design Review Criterion 1-1 of the One- and Two-Unit Design Review Manual states that views from front elevations are only eligible for protection on lots that are both up-sloped and have houses with vantage points at least one level (about ten feet) above the street pavement. The 7016 Shirley Drive residence sits on the crest of the hill and the lot significantly slopes down towards the Redwood Regional Park. Site visits by staff and views from Google Earth confirm that the lot significantly

downslopes to the rear. Staff estimates from the City’s publicly available Geographic Information System (GIS) maps that the parcel drops approximately 32 feet from the highest point at the front to the lowest point at the rear of the lot. 7016 Shirley Drive also has a significant cross slope, sloping down from the south to the north.

Even if 7016 Shirley Drive were an upslope lot (which it is not), Guideline 1.1 C.2 of the One- and Two-Unit Design Review Manual states that eligible view corridors are sight lines from primary living spaces extending outward from front elevations at least one level (about 10 feet) above the street pavement. The master bedroom of 7016 Shirley Drive, which the appellant’s claim has view protection, does not meet this criterion from the Manual.

4. Appeal Argument

*The applicant states: “In the S-10 Scenic Route Combining Zone Regulations of the Oakland Planning Code, Chapter 17.136 have both of the following additional Criteria: “B. That the proposed development will maintain existing vistas or panoramas which can be seen from the abutting public road and maintain the visual value of the total setting or character of the surrounding area” The appellant claims that this is an objective criteria that the proposal does not meet.*

Staff Response

Staff disagrees with the appellant. The Finding states: “That the proposed development will, as far as practicable, maintain existing vistas or panoramas which can be seen from the abutting public road and maintain the visual value of the total setting or character of the surrounding area.” The term “as far as practicable” makes this finding nonobjective as defined by the HAA. The HAA requires that only objective regulations be applied to the project.

5. Appeal Argument

*The appeal states that the project does not meet the following regulation in Section 17.90.070 of the Planning Code: “The following height restriction shall apply to each lot which abuts Skyline Boulevard and which has an average elevation of finished grade less than that average elevation of the nearest edge of the paved roadway of such boulevard or road.”*

Staff Response

The full text of this regulation in Section 17.90.070, which states: “The following height restriction shall apply to each lot which abuts Grizzly Peak Boulevard, Skyline Boulevard, or Tunnel Road and which has an average elevation of finished grade less than the average elevation of the nearest edge of the paved roadway of such boulevard or road. Except for the projections allowed by Section 17.108.030, no building or other facility or portion thereof shall extend above any line beginning three (3) feet above any point on the nearest edge of the aforesaid roadway and extending outward at right angles to said edge and downward over the lot at an angle of six (6) degrees to the horizontal.”

The words “such Boulevard or Road” and “aforesaid roadway” indicate that the regulation applies to parcels that are downslope from either Grizzly Peak Boulevard, Skyline Boulevard, or Tunnel Road. 7009 Shirley Drive is upslope from Skyline Boulevard; therefore, the regulation does not apply to the project.



6. Appeal Argument

*The applicant argues that the project is inconsistent with Objective N3.9 of the Land Use and Transportation Element (LUTE) of the General Plan, which states that: “Residential developments should be encouraged to face the street and to orient their units to desirable sunlight and views, while avoiding unreasonably blocking sunlight and views for neighboring buildings, respecting the privacy needs of residents of the development and surrounding properties, providing for sufficient conveniently located on-site open space, and avoiding undue noise exposure.”*

Staff Response

The objective the appellant cites is a general policy in the LUTE, and the phrases “avoiding unreasonably blocking sunlight and views” and “respecting the privacy needs” indicate the policy is not objective. As noted in staff’s response to Issue 2, the view protections provided in the City’s One- and Two-Unit Design Review Manual do not apply to 7016 Shirley Drive.

7. Appeal Argument

*The appeal states that the following criterion from the Manual is objective: “The building shall be sited in a manner that is compatible with adjacent properties and any existing site features, respects the configuration and natural amenities of the lot.” The appeal states that the dictionary definition of compatible is (of two things) able to exist or occur together without conflict. The appeal states that having the largest, bulkiest, most view-obstructing home on the west side of Shirley Drive is objectively not compatible with adjacent properties and existing site features.*

Staff Response

The terms “compatible” and “respects” make this criterion nonobjective as defined by the HAA. The HAA requires that only objective regulations be applied to the project.

8. Appeal Argument

*The appeal states that the following Criteria 5 of the Manual is objective, and the project does not meet the requirement: “Each building shall have an architectural composition of forms that are well related to one another and the site in proportion, scale, geometry and style. [Buildings shall] complement neighborhood scale, development patterns and orientation of structures and not disrupt neighborhood appearance.” The definition of related is: “make or show a connection between”. The appeal states that of definition of well (adj.) is: “sensible” and together means “make a sensible connection”. According to the appeal, that would mean that the proposal should show a connection, or similarity, to the surrounding buildings in proportion, scale, geometry, and style. The appeal argues that it is not well related because it does not step down the hillside, blocks views, is larger than other homes on Shirley Drive, and casts shadows on 7019 Shirley Drive. The appeal states that arguing over semantics is to effectively question the entire basis of the legal system.*

Staff Response

The terms “well related” and “complement” make this criterion nonobjective as defined by the HAA. The HAA requires that only objective regulations be applied to the project.

9. Appeal Argument

*The appeal argues that project does not meet Criteria 6 and 7 of the Manual, which state, respectively: “The project shall manage mass, scale and composition, including materials and detailing, to minimize the building’s actual and perceived bulk.” and “Hillside projects shall use methods that blend with the hillside setting and minimize the building’s prominence.”*

*The appeal states the project does not minimize the building’s actual or perceived bulk because it is sited at the top of the lot, and it does not sufficiently step down the hillside. The appeal describes the proposal as a “bulky monolith” that dominates instead of being part of the hill. The appeal states that, at 36’-6”, the proposal is six inches over the height limit, and that complying with the height limit would limit the bulk of the home.*

Staff Response

The terms “minimize” and “manage” make these criteria nonobjective as defined by the HAA. The HAA requires that only objective regulations be applied to the project.

The plans show a building slope of 43.3 percent, which allows a maximum building height of 38 feet (see Section 17.13.050(C)/Table 17.13.05 of the Planning Code).

10. Appeal Argument

*The appeal states that the project does not meet Criterion 8 of the Manual: “New construction within 40 feet of a front lot line shall relate well to any strong, positive visual patterns. These visual patterns shall include those created by: (i) roof forms and pitch; (ii) principal entryway treatment; (iii) front setback.”*

*The appeal argues that the strongest visual pattern is that of the Bay, which the project obstructs and that the project’s roofline, entryway, and front setback are analogous to that of the seven neighbors adjacent with similar topography.*

Staff Response

This criterion does not apply to the project because it only applies if the slope of the site is 20 percent or less. Regardless, the terms “compatible” and “respects” make this criterion nonobjective as defined by the HAA. The HAA requires that only objective regulations be applied to the project.

11. Appeal Argument

*The appellants state that the project does not meet Criterion 9 of the Manual, which states: “Parking areas, garages, driveway and other parking provisions shall be sited to minimize their visual impact on the street and shall be subordinated to the house, landscape, and pedestrian entrance... Unenclosed parking spaces shall be visually screened from the street and the significant vantage points.” The appellants claim that this criteria is not met because the proposed unenclosed parking area would obstruct the view from their home.*

Staff Response

As discussed above, the appellants property across the street from the proposal is not eligible for view protection under the One- and Two-Unit Design Review Manual because it is a down-sloped lot. Further, the terms “minimize”, “subordinated”, and “visual impact” make this criterion nonobjective as defined by the HAA. The HAA requires that only objective regulations be applied to the project.

12. Appeal Argument

*The appellants include a summary of Criterion 10 of the manual, which states, “Fences shall be sensitive to adjacent property conditions and public views.” As a result, the appellant argues that the privacy fence as proposed must be lowered to not block the view of the Bay.*

Staff Response

The term “sensitive” makes this criterion non-objective and thus cannot be legally applied under the HAA and State HCD’s supporting technical advisories. The HAA requires that only objective regulations be applied to the project.

13. Appeal Argument

*The appellant claims that:*

- *The City should have required the applicants to provide evacuation modeling because Shirley Drive is in the S-9 Safety Protection Combining Zone and only 15 feet wide, in parts, and significant chokepoints exist on Shirley Drive and adjacent streets;*
- *Projects that would result in a specific, adverse impact upon the public health or safety... ” can be denied under the HAA [Gov. Code 65589.5, subd.(j)(1)];*
- *It would be reasonable for the neighbors to argue that the lot shouldn’t be developed at all, given Attorney General Bonta’s stated position on development in a Very High Fire Hazard Safety Zone (VHFHSZ) and a California Court upheld a disapproval of the development of a home larger than existing residences in the VHFHSZ (Reznitskiy v. Cnty);*
- *Waiving rules for a 4,200 square foot house in a dangerous fire area with difficult egress/ingress for cars and emergency vehicles is an abuse of discretion; and*
- *They have concerns regarding the street blocked by construction vehicles and machinery during emergencies and the impact the vehicles would have on the physical condition of Shirley Drive.*

Staff Response

- The project has been reviewed and approved by the Fire Prevention Bureau with Conditions for the applicant to widen the paved road in front of the subject property to 20 feet at the time of construction, construct an onsite emergency access pathway for firefighters that connects Skyline Boulevard to Shirley Drive, and install a fire sprinkler system (see **Attachment C** for all the conditions imposed by the Fire Prevention Bureau).
- The applicant is not proposing a subdivision which would increase the development capacity in the hills. Such a subdivision could trigger additional requirements by the Bureau of Fire or possibly be denied in a fire hazard area.
- The appellant’s suggestion that the City should not allow any development is inconsistent with Constitutional Law and would be considered a taking under the 5<sup>th</sup> Amendment.

- Staff has not “waived any rules” for the development of the home. No Variances have been approved and staff has enforced all objective design standards.
- Condition 36(b) of the Zoning Manager’s approval letter (see Attachment B) requires a Traffic Control Plan to assure passage of vehicles. This plan is required to be approved and enforced by the Department of Transportation.
- Condition 36(c) requires the developer to repair any damage to the public right-of way, including streets and sidewalks, caused by project construction.

14. Appeal Argument

*The appellant requests the City to remind the applicants to fulfill Conditions of Approval 19 and 20, and 21(b), which regard nesting bats and removing trees during bird nesting season due to the existing of birds and bats in the area, and tree protection during construction.*

The City will enforce conditions of approval through its standard processes.

15. Appeal Argument

*The appellant states that the Zoning Manager: 1) should not have approved a design that will hurt or kill a healthy protected tree, which is primarily on 7019 Shirley Drive; and 2) should have required a certified arborist to assess the impact of excavation on the tree.*

Staff Response

Among other items, Condition of Approval 21 requires that, during construction:

- The tree be fenced off at a distance determined by an arborist;
- There is no change in existing ground level within a distance around the tree to be determined by an arborist; and
- There is no storage or dumping of oil, gas, chemicals, or other substances that may be harmful to trees within a distance to be determined by the project’s consulting arborist.

Conditions attached to the Tree Permit also require the applicant to retain an arborist to monitor preservation measures. Furthermore, on a separate and independent basis, the Tree Services Division of the Oakland Public Works Agency approved the tree permit on May 14, 2024. This permit had a separate appeal process and no one challenged the decision to remove the trees as a part of this project.

16. Appeal Argument

*The Bureau of Planning should have required staking of the lot lines to assure the accurate siting of the home and protection of the tree.*

Staff Response

The Planning application requires the developer to submit a topographic survey but does not require lot corners marked in the field during entitlement review. Enforcement of setback requirements are performed by the Bureau of Building during the inspection process.

17. Appeal Argument

*The appellant states that OMC 15.52.010 D. requires “a reasonable balance between tree and view related values for both private views and protected public views corridor,” and that the reasonable balance for this is to plant non-flammable vegetation that will not block their view but can still offer privacy to 7009 Shirley and habitat for wildlife. The appellant also states that the project is inconsistent with OMC 15.52.040 regarding a view plane from a corridor.*

Staff Response

Oakland Municipal Code (OMC) Title 15 (Building and Construction) is enforced by the Bureau of Building during the Building Permit Plan Review phase of the project and is, therefore, not a relevant Planning Permit appeal issue.

18. Appeal Argument

*The appeal states that Condition 21.c of the approval letter does not require a replacement tree for the removal of non-native trees. According to the appellant, most of the trees on 7009 Shirley Drive are non-native. Therefore, applicant does not need to plant trees that would block their view.*

Staff Response

Requirements for views related to landscaping are contained in Title 15 of the OMC, which is enforced by the Bureau of Building. The condition will be enforced through standard City processes.

19. Appeal Argument

*In the decision letter, Condition 27 requires a vegetation management plan that include planting and placement of fire-resistant plants around the house and the phasing out flammable vegetation. The condition states that the plan shall not include ornamental vegetation planted within five feet of the foundation of the residential structure. The appellant states that Condition 43, which requires a five-gallon Carolina Laurel that grows to be at least ten feet tall, contradicts the requirement in Condition 27 because it is flammable, non-native, and can grow to 35' feet tall. The appellant also claims that the trees violate OMC 15.52.010 regarding view protection.*

Staff Response

The vegetation management plan required by this condition will be reviewed by the Fire Department to assure fire safety. Notably the Carolina Laurel referred to in the appeal is considered to be drought tolerant and evergreen, thus less susceptible to fire. This vegetation is included in the plan in response to a neighbor with privacy concerns.

20. Appeal Argument

*The appellant argues that the plans conflict with Condition 29f of the Approval letter, which requires permeable surfaces on driveways and the plans show concrete.*

Staff Response

The subject condition is one of a menu of items that the applicant can choose to incorporate into the plans to comply with C.3 stormwater requirements. These plans will be reviewed by the Bureau of Building to assure compliance with stormwater regulations.

21. Appeal Argument

*Condition 36 of the approval letter requires that, in the event of obstructions to vehicle or bicycle travel lanes, the project applicant submit a Traffic Control Plan to the City for review and approval prior to obtaining an obstruction permit. They argue that the plan should have been incorporated into the proposal because the nature of the traffic control plan was not outlined in the approval letter.*

Staff Response

This plan is only required prior to obtaining an obstruction permit from the Department of Transportation. The City did not make an error because an Obstruction Permit has not been issued.

Kenward and Armstrong Appeal Arguments

The following appeal arguments are made by Mark Kenward and Megan Armstrong, who live at 7000 Shirley Drive.

22. Appeal Argument

*The size of this project could contribute to deaths in the event of a sudden evacuation because larger homes will demand more cars, and the project does not meet the evacuation guidelines from the Office of California Attorney General Rob Bonta.*

Staff Response

The project was reviewed by the Fire Prevention Bureau, who included conditions such as requiring the applicant to widen Shirley Drive in front of the site to 20 feet, construct an onsite emergency access pathway for firefighters that connects Skyline Boulevard to Shirley Drive, and install a fire sprinkler system (see **Attachment C** for all the conditions imposed by the Fire Prevention Bureau). Further, as described previously, the project meets all objective design standards in the Planning Code and the Design Review Manual. As required by the S-9 Zoning Combining Zone, the project provides one additional parking space than normally required by the underlying zoning to avoid street parking that could potentially block traffic in case of an evacuation or emergency vehicles require access. Condition 36(b) of the Zoning Manager’s approval letter (see **Attachment B**) requires a Traffic Control Plan to assure passage of vehicles. This plan is required to be approved and enforced by the Department of Transportation.

The document from the State Attorney General’s Office is entitled “Best Practices for Analyzing and Mitigating Wildfire Impacts of Development Projects Under the California Environmental Quality Act,” and was issued in 2022. As stated in the document, it provides best practices and does not contain requirements for local governments: “This document does not impose additional requirements on local governments or alter any applicable laws or regulations. Rather, it is intended to provide guidance on some of the issues, alternatives, and mitigation measures that should be considered during the environmental review process.” (page 2). Also, the memorandum applies to larger scale developments, and not individual single-family homes with JADUs (which can be ministerially

approved separately under State law.) The project, coupled with the standard conditions in the decision letter, is clearly exempt from further CEQA review under Section 15301 and 15183 of the State CEQA Guidelines. The following is a link to the document from the Attorney General’s office: <https://oag.ca.gov/system/files/attachments/press-docs/2022.10.10%20-%20Wildfire%20Guidance.pdf>.

23. Appeal Argument

*The large size of the home prevents the applicant from meeting the view finding in the S-10 Zone. This finding states: “B. That the proposed development will, as far as practicable, maintain existing vistas or panoramas which can be seen from the abutting public road and maintain the visual value of the total setting or character of the surrounding area.”*

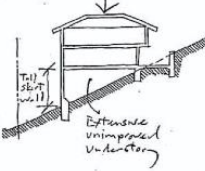
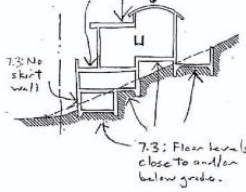
Staff Response

See staff’s response to Appeal Argument #1. Further, the term “a far as practicable” make this finding nonobjective as defined by the HAA. The HAA requires that only objective regulations be applied to the project.

24. Appeal Argument

*The appellant argues the following: “But in addition to consideration and protection of views, there is also the aesthetic matter of bulk, as outlined in the Oakland Design Review Manual, Criterion 7: Bulk Special Methods for Hillsides. The current design has a bulky monolithic design with no roofline variation. This design is out of character with the neighboring houses (which all have rooflines that step down the hillside). Not only does this “massed” design unnecessarily block views, but it leaves much to be desired aesthetically. Which is why the Oakland Design Review Manual provides guidelines such as this:*

OAKLAND DESIGN REVIEW MANUAL FOR ONE AND TWO UNIT RESIDENCES  
Criterion 7: Bulk- Special Methods for Hillsides

<p><b>CRITERION 7: BULK: SPECIAL METHODS FOR HILLSIDES</b></p> <p>(a) Hillside projects shall use methods that blend with the hillside setting and minimize the building's prominence.</p> <p>(b) On sloped sites, the project shall minimize perceived bulk when viewed along with neighboring structures from the downslope side.</p> <p><b>INTRODUCTION:</b> See Introduction for Criterion 6 (Bulk: All Projects)</p> <p><b>GUIDELINES:</b></p> <p>7.1 Step building massing with terrain.</p> <p>7.2 Break the building into multiple volumes with staggered setbacks to reflect the irregularity of hillside terrain.</p> <p>7.2A Use smaller massing elements to soften taller elements.</p> <p>7.2B Use one-story and lower scale elements such as terraces to transition from the building to the ground.</p>	<p><b>INITIAL DESIGN:</b></p> <p>Overscaled by form that does not relate to the terrain.</p> 	<p><b>REVISED DESIGN:</b></p> <p>7.1, 7.2: Multiple massing elements that step with terrain with taller elements softened by smaller elements.</p> 
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Staff Response

Each of the cited guidelines and criterion are either subjective as defined by the HAA and cannot be considered or are met by the project. For instance, the design does step the building massing with the terrain, just not to the extent preferred by the appellant, and the terms “lower scale elements”, “transition”, “minimize” and “soften” are subjective. The HAA requires that only objective

regulations be applied to the project. The project meets bulk and floor area ratio requirements in the Planning Code.

25. *Appeal Argument*

*The appellant argues that the project does not meet the Design Review Finding contained in 17.90.050(B) of the S-10 Scenic Route Combining Zone, which states: “That the proposed development will, as far as practicable, maintain existing vistas or panoramas which can be seen from the abutting public road and maintain the visual value of the total setting or character of the surrounding area.”*

Staff Response

The term “as far as practicable” makes this finding nonobjective as defined by the HAA. The HAA requires that only objective regulations be applied to the project.

Sheri Jennings and Ian Smith Arguments

The following appeal arguments are made by Sheri Jennings and Ian Smith, who live at 8850 Skyline Boulevard, but their residence is accessed from Shirley Drive.

26. *Appeal Argument*

*The appellants state that their chief concern is in regard to compromised access for medical, fire and police services both during and after construction. They state that the project does not meet the evacuation guidelines from the Office of California Attorney General Rob Bonta.*

Staff Response

See Staff Response to Appeal Argument #22.

Sarah Moldenhauer-Salazar Arguments

The following appeal arguments are made by Sarah Moldenhauer-Salazar, who lives at 7019 Shirley Drive.

27. *Appeal Argument*

*The appellant states she is concerned that the tall tree that sits on both properties will not have the space it needs to continue to flourish.*

Staff Response

The project received a Tree Protection Permit from the Tree Services Division that evaluates whether the construction will affect the tree. The approval includes conditions requiring tree preservation and protection measures.

28. *Appeal Argument*



*“I am concerned that since they are building in the widest footprint possible and building so close to our home that, as they excavate, they will compromise the stability of my hill right next to our house.”*

Staff Response

The project meets the required setbacks and portions of the building are setback more than the minimum required in the Planning Code. Further, Condition #25 of the approval letter requires that the applicant submit a soils report prepared by a registered geotechnical engineer for City review and approval. The soils report will contain, at a minimum, field test results and observations regarding the nature, distribution and strength of existing soils, and recommendations for appropriate grading practices and project design. Structural and stability issues such as that described by the appellant are evaluated during the Grading and Building Permit phase of permitting process, not the entitlement phase.

29. Appeal Argument

*“I am concerned about the value and character of our neighborhood diminishing as the panoramic view that so many neighbors and visiting strangers come to enjoy will be lost.”*

Staff Response

The project will place a home in a neighborhood with a residential character. As described above, the project is meeting all objective standards regarding view impacts.

30. Appeal Argument

*“I am concerned about the safety of my family during the build and after the build due to the increased density of people, cars, and trucks that this large build will produce; it is already difficult to come and go on our narrow cul-de-sac road.”*

Staff Response

See Staff Response to Appeal Argument #22.

31. Appeal Argument

*“I am concerned about the noise and the length of time the build will take due to such a big project, given that both I and my husband work from home; a smaller building project would make for a shorter time of intense disruption.”*

Staff Response

Conditions 30 through 32 of the approval letter require the applicant to implement noise reduction measures during construction and regulate hours of construction. The City does not regulate length of construction in relation the size of a project.

32. Appeal Argument

*“I am concerned for the loss of beautiful well-established trees that will be removed from the property and for the well-being of the wildlife that perches in those many trees and that walks under those trees. I am also concerned that the newly planted trees will not be fire resistant.”*

**Staff Response**

The project received a Tree Removal Permit from the Tree Services Division indicating that the proposal is consistent with the City’s Tree Ordinance. Condition #20 of the approval letter regulates the manner of tree removal to protect nesting birds. The Condition of Approval #40 requires a final landscaping plan that contains predominantly drought tolerant plants.

**33. Appeal Argument**

*“I am concerned that the lot owners are underestimating how much this building project will cost and that they might start but not finish this home, thus marring the street with an unfinished eye sore.”*

**Staff Response**

This issue is a possibility for any development and is not regulated during the entitlement phase of a project.

**34. Appeal Argument**

*“I am concerned about how disproportionately large this home is from the houses in its vicinity and about its overall overwhelmingly bulky appearance, especially from all of our south-facing windows.”*

**Staff Response**

The project meets all objective City standards and requirements relating to bulk.

**35. Appeal Argument**

*“I am concerned with how much the proposed build is so out of alignment with the Criteria for hillside homes, especially taking into consideration that it is in a scenic corridor in a very high fire hazard zone.”*

**Staff Response**

As described in previous staff responses, the project meets all objective standards and requirements in the City’s Planning Code and Design Review Manual for One- and Two-Unit Residences. Staff believes that the argument the appellants are making is that the Design Review Finding for the S-10 Scenic Route (Section 17.90.050.B) is objective and applies to the project. the Finding states: “That the proposed development will, as far as practicable, maintain existing vistas or panoramas which can be seen from the abutting public road and maintain the visual value of the total setting or character of the surrounding area.” However, the term “as far as practicable” makes this finding nonobjective as defined by the HAA. The HAA requires that only objective regulations be applied to the project.

**36. Appeal Argument**

*“I am concerned about the solar access we will lose along the south side of our home—our primary source of light--especially on our patio and in our entertainment/art room as shown in the shadow study. I also cannot attest to the veracity of their shadow study; I was not invited to be present. My neighbor Elizabeth tells me that online calculations indicate a bigger shadow than their drawings show.”*

Staff Response

The project submittals included a solar access study completed by a licensed architect and consistent with the Design Review Manual. The study indicated that the proposal will not have a solar impact as defined in the Manual. The appellants also claim that a bedroom should have been included in the solar access study because they planned to convert the bedroom to an entertainment/art room. However, the space was a bedroom at the time the study was conducted, which the Manual directs should not be considered in solar impact studies.

37. Appeal Argument

*“I am concerned about our loss of privacy.”*

Staff Response

The application for the project included a privacy study and the proposal meets the privacy requirements in the Design Review Manual. The window locations are not directly across from the adjacent residences’ windows.

38. Appeal Argument

*“I am concerned, because the corners of the lot’s property line were never marked and because of the overall characteristics of their survey with its lack of ties to monuments and lack of boundary markers, that the building will be put closer to our home than it is allowed to be. (I have begun to address this concern by paying \$3000 to get the property line marked and will soon know how accurate their survey actually is.)”*

Staff Response

The Planning application for the project requires the submittal of a topographic survey but does not require other elements on the field such as ties to monuments or boundary markers. These may be required during the construction phase at the discretion of the Bureau of Building.

39. Appeal Argument

*“I am generally concerned about the width of their proposed build, that it is so very close to our home and that the neighborhood will not have the required view corridors.”*

Staff Response

The approved project is between five and 8.5 feet from the northerly property line and approximately ten to 13 feet to the adjacent house at 7019 Shirley Drive. No Variances are required for the project. As discussed in this report, view requirements are not applicable per the Design Review Manual and the requirement for objective standards in the HAA.

40. Appeal Argument

*“I am concerned that the addition of a trellis to cosmetically cover up the existence of a large bulky wall may not meet fire code and thus be no solution at all.”*

Staff Response

The project meets all objective City standards and requirements relating to bulk.

41. Appeal Argument

*The appellant argues that the project does not meet Criterion 2 (Solar Access) of the “Design Review Manual for One- and Two-Unit Residences”, because the study shows the proposal would deny solar access to an actively used outdoor area two out of three designated times. The appellant also states that they are in the process of converting a bedroom into an entertainment and arts and crafts space, and that this “actively used indoor area” will be completely in shadow two out of three times a day (and half in shadow the third time) thus denying them solar access throughout the day.*

The project meets the criteria in the City’s One- and Two-Unit Design Review Manual for solar access based on the architect’s shadow study. As directed by the Design Review Manual, the study models 9am, 12pm and 3pm, for shadow casting during the spring/fall equinox on the appellants front patio, which is an open area in front of the main residence. The study shows no shadows over 50 percent of this space for any of these times, which indicates under Criterion 2 of the Manual that a solar impact has not been established.

The shadow study prepared in 2023 did not analyze the solar impact on bedrooms, because the Manual specifically excludes them from the criterion. The room continues to be a bedroom until it is legally converted under the Building Code and recorded to the County Assessor.

42. Appeal Argument

*The appellant argues that the project does not meet Criterion 3 (Privacy) of the “Design Review Manual for One- and Two-Unit Residences” because the tenants will easily be able to look into their family room through their large window and French doors. They state that staff assured them that a condition would be included in the decision letter requiring tall, dense shrubs be planted in front of the lower eastern windows on the northern wall closest to the family room.*

*They also state that tenants will easily be able to look into their living room from “all their decks”. They state that all decks, not just one, should have a screen to protect their privacy. They further state there is nothing to stop the owners from removing the slats.*

Staff Response

The project contains no north facing windows directly opposite windows into the appellant’s primary living spaces. Also, the applicant has reduced the size and removed some windows to address the appellants’ concerns. Regarding landscaping, the approved plans include shrubs along the northside of the building and conditions of approval require the installation of additional landscaping along and to the north side of the light well. Notably, the lightwell is not directly facing the appellants’ master bedroom, but a concrete wall.

The project approval includes screening on the north side of the upper deck and a condition to include a six-foot tall vertical wood angled slat wall on the sides of the ground and first level decks. The One- and Two-Unit Design Review Manual suggests this type of architectural solution when there is a potential privacy impact as defined in the document.

**43. Appeal Argument**

*The appellant argues that the project does not meet Criterion 4 (Site Design) of the Design Review Manual due to the wide design of the home. This criterion contains Guideline 4.7, which states: “On hillsides, avoid filling up side yards with concrete stairs or paved areas that limit landscaping and potential usable space.”. They also claim that the project is inconsistent with Criterion 4(e), which states: “On hillsides, open spaces shall reinforce natural landforms (especially in canyon areas), provide for visual openness between houses and include livable outdoor areas such as courts, yards, or terraces at or near grade”.*

**Staff Response**

The approved plans show significant landscaping on the northern side of the property, and the proposed steps are a requirement of the Fire Department to allow access for firefighters during an emergency. The plans show varied setbacks along the northern elevation of the home. Regardless, the terms “avoid”, “filling up”, “reinforce”, and “visual openness” make the criterion and guideline nonobjective as defined by the HAA. The HAA requires that only objective regulations be applied to the project.

**44. Appeal Argument**

*The appellant argues that the project does not meet Criterion 5 (Building Design) of the “Design Review Manual for One- and Two-Unit Residences” because the proposal maximizes “perceived and actual bulk that looks exactly like what the Manual indicates one should not build”. They state that this Criterion is objective because a diagram in the Manual is similar to the proposed design. This diagram is an unfavorable home design due to nondescript walls and openings and tacked on decks.*

**Staff Response**

A perceived similarity of a project to a diagram in the City’s One- and Two-Unit Manual does not mean that the subject Criterion is objective. Each part of the subject Criterion contains terms that require subjective judgement from staff as defined by the HAA, such as “well related”, “shall complement”, “visually prominent”, “...so that they are not dominant features of facades”, “shall enhance”, etc. The HAA requires that only objective regulations be applied to the project.

**45. Appeal Argument**

*The appellant argues that the project does not meet Criteria 6 (Bulk – All Projects) or 7 (Bulk – Special Methods for Hillsides) of the “Design Review Manual for One- and Two-Unit Residences”.*

**Staff Response**

The criteria highlighted by the appellant contain terms such as “minimize”, “manage”, “effective”, “deemphasize”, and “sufficient”. These terms require a public official to make a nonobjective

judgement. The HAA requires that only objective regulations be applied to the project. Determining whether a building is “blending” into a hillside also requires subjective judgement. The HAA requires that only objective regulations be applied to the project. The project meets the floor area ratio requirements in the Planning Code.

46. Appeal Argument

*The appellant argues that the project does not meet Criteria 9 (Site Access and Parking) because of the scarcity of street parking and the inclusion of a JADU in the project. The appellants complains that the proposed 40-foot driveway should have decorative paving and landscape screening meet criteria related to visual impact. The appellant is also concerned that parking for the house will spill over to the narrow, dead-end street, creating access problems for residents and emergency vehicles. The appellant is also concerned about access during construction.*

Staff Response

The project meets the objective requirements for off-street parking in the Planning Code, additional parking will be available on the driveway, and proposed landscaping will provide screening from the street. Fire Bureau conditions require widening Shirley Drive to 20 feet in front of the project site along with other fire prevention measures. As conditioned, the applicant will be required to submit a traffic control plan that allows access on Shirley Drive.

In addition, the criterion and associated guidelines contain terms such as “minimize”, “visual impact”, “architecturally consistent”, “where possible”, and “sufficient”, which make the criteria subjective as defined by the HAA. The HAA requires that only objective regulations be applied to the project.

47. Appeal Argument

*The appellants cite Criterion 12 of the Manual, which reads: “The S-10 Zone is intended to create, preserve, and enhance areas where hillside terrain, wooded canyons and ridges, and fine vistas or panoramas of Oakland, Neighboring areas, or the Bay can be seen from the road.” The appellant also cites several required findings in the S-10 Zone, stating that they are objective.*

Staff Response

See staff responses to Appeal Arguments #1, #4, #23, #25, and #35.

**RECOMMENDATION**

Staff recommends that the Residential Appeals Committee uphold the Zoning Manager’s decision and deny the Appeal due to the reasons stated above. Staff’s responses to the appellant arguments indicate that there was not error or abuse of discretion by the Director and the decision to approve the project is supported by the evidence in the record. The responses further indicate that the complaints about the project are either out of the City’s scope due to the Housing Accountability Act, addressed in the proposal, or addressed through conditions of approval.

Specifically, staff recommends:

1. Affirm staff's environmental determination, and
2. Uphold the Zoning Manager's decision and CEQA determination based on the Findings and Conditions of Approval.

Prepared by:

*Mike Rivera*

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Mike Rivera  
Planner III

Reviewed by:



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Robert Merkamp  
Zoning Manager

Approved for forwarding to the  
City Planning Commission:



for

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Edward Manasse  
Deputy Director

**ATTACHMENTS**

- A. Project Plans
- B. Zoning Manager's Approval Letter
- C. City of Oakland Fire Prevention Bureau Letter with Conditions
- D. Appeal
- E. Design Review Manual for One- and Two-Unit Residences