### CITY OF DANA POINT PLANNING COMMISSION AGENDA REPORT

**DATE:** AUGUST 24, 2020

TO: DANA POINT PLANNING COMMISSION

FROM: COMMUNITY DEVELOPMENT DEPARTMENT

BRENDA WISNESKI, DIRECTOR SEAN NICHOLAS, SENIOR PLANNER

SUBJECT: PRELIMINARY REVIEW (PA20-0025) FOR THE DEMOLITION OF AN

EXISTING RESIDENCE, LOT MERGER, ADDITION OF BETWEEN TEN AND FOURTEEN FEET OF FILL FOR THE DEVELOPMENT OF A TRIPLEX (DUPLEX AND DETACHED SINGLE FAMILY RESIDENCE)

ON A LOT LOCATED AT 34456 VIA GOMEZ.

**RECOMMENDATION**: That the Planning Commission receive a presentation from

the applicant/property owner on the potential project concepts and provide feedback regarding potential issues which may

be raised during consideration of a formal submittal.

APPLICANT: Arman Vakili

**PROPERTY OWNER:** Arman Vakili

**REQUEST**: Preliminary Review for the demolition of a single family

residence, lot merger, addition of between ten (10) and fourteen (14) feet of fill for the development of a triplex (a duplex and detached single family residence) on a lot located

at 34456 Via Gomez.

**LOCATION**: 34456 Via Gomez (123-152-48)

**NOTICE**: No noticing is required.

**ENVIRONMENTAL**: Not applicable at this time.

### **ISSUES**:

- Project consistency with the Dana Point General Plan and the Dana Point Zoning Code (DPZC).
- Project land use compatibility and community values.

Findings for a Variance and Site Development Permit.

### **BACKGROUND**:

The subject site is improved with a single family residence and is located within the Residential Duplex 14 (RD14) zoning district. The site is surrounded by a mix of multifamily and single-family development. The lot is sloped with a low point approximately 14 feet below the street level. The lot is encumbered by various private drainage easements, as well as naturally occurring drainage from surrounding properties that daylights and collects on the lot and then infiltrates back below grade. The existing topographic condition is a result of this drainage pattern, based on City staff records review, and has existed since Capistrano Beach originally began developing in the 1920s.

The applicant proposes a lot merger and the development of three residential units, comprised of a duplex and a detached single family residence. On-site drainage would also be addressed. The applicant is seeking feedback from the Planning Commission on potential issues which may be raised during consideration of a formal submittal.

### **PRELIMINARY REVIEW:**

While the plans are preliminary, and have not been fully evaluated for DPZC compliance, staff has confirmed that a Variance would be required for the addition of 10 to 14 feet of fill to the lot. Because the application would include a residential subdivision, per DPZC Section 9.05.110(a)(5), building height would be measured from finished grade from the raised pad grade, rather than the standard limitations pursuant to DPZC Section 9.05.110, Measurement of Building Height.

Preliminary review by the Planning Commission is a more formal option available to applicants for a potential project that may involve more significant issues of sensitivity or compatibility. Discussion may address General Plan consistency, development standards, land use compatibility and community values. This process includes a brief presentation by City staff and then the applicant will present their project concept and their thought process in developing the concept. The objective of the preliminary review is for the Planning Commission to provide the applicant with a sense of the issues necessary to be addressed in a formal application, although it is not intended and cannot be used as a process to determine the ultimate decision on a subsequent formal application. The Planning Commission is legally limited in the type and amount of input they can provide during preliminary review.

### **CORRESPONDENCE:**

None.

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### CONCLUSION:

Staff requests that the Planning Commission consider the applicant's project concepts and provide the applicant with comments and feedback intended to identify the issues that may need to be addressed as part of a formal application.

Sean Nicholas, AICP Senior Planner Brenda Wisneski, AICP Director Community Development Department

### **SUPPORTING DOCUMENTS**

- 1. Vicinity Map
- 2. Variance and Site Development Permit Findings
- 3. DPZC Section 9.05.110, Measurement of Building Height
- 4. Conceptual Grading and Building Plans

### Supporting Document 1: Vicinity Map

### Vicinity Map



**Project:** Planning Commission Preliminary Review (PA20-0025)

Applicant: Arman Vakili, Property Owner

Location: 34456 Via Gomez

### Supporting Document 2: Variance and Site Development Permit Findings

### Dana Point Zoning Code Section 9.67.050 (a)-Variance Findings

- (1) That the strict or literal interpretation and enforcement of the specified regulation(s) would result in practical difficulty or unnecessary physical hardships inconsistent with the objectives of this Chapter; and
- (2) That there are exceptional or extraordinary circumstances or conditions applicable to the subject property or to the intended use of the property which do not apply generally to other properties in the same zoning district; and
- (3) That the strict or literal interpretation and enforcement of the specified regulation(s) would deprive the applicant of privileges enjoyed by the owners of other properties in the same zoning district with similar constraints; and
- (4) That the granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the same zoning district with similar constraints; and
- (5) That the Variance request is made on the basis of a hardship condition and not as a matter of convenience; and
- (6) That the granting of the Variance will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity;
- (7) That the Variance approval places suitable conditions on the property to protect surrounding properties and does not permit uses which are not otherwise allowed in the zone.

### Dana Point Zoning Code Section 9.71.050-Site Development Permit Findings

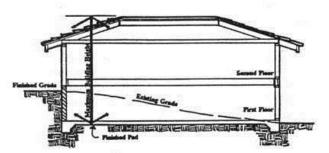
- (a) Compliance of the site design with development standards of this Code.
- (b) Suitability of the site for the proposed use and development.
- (c) Compliance with all elements of the General Plan and all applicable provisions of the Urban Design Guidelines.
- (d) Site and structural design which is appropriate for the site and function of the proposed use(s), without requiring a particular style or type of architecture.

### Supporting Document 3: DPZC Section 9.05.110, Measurement of Building Height

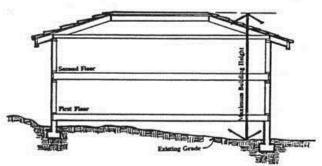
### Dana Point Zoning Code Section 9.05-110-Measurement of Building Height

- (a) Residential Building Height.
  - (1) The maximum building height for residential buildings is described in Chapter 9.09 for each of the individual zoning districts.
  - (2) For residential structures, building height is defined as the vertical distance, by which the uppermost portion of the roof of a structure extends above the existing grade, finished pad elevation, (excluding the basement finished pad elevation), ceiling of a maximum ten (10) foot, zero (0) inch high basement, or eighteen (18) inches above the flood protection level, whichever is lower, as measured from the lowest portion of the structure. In no case may this vertical distance exceed the maximum height limit specified in Section 9.05.110(a)(6). For residential structures on Beach Road, building heights shall be measured at eighteen (18) inches above the FP-3 elevation, or the elevation of Beach Road, whichever is higher. For residential structures on lots with hillside conditions, in cases where the garage is the lowest floor level, the building height is measured from the garage floor or existing grade, whichever is lower.

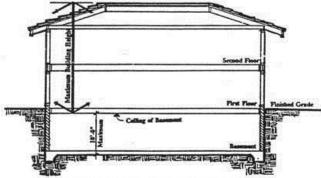
# SECTION 9.05.110 (a)(2) MEASUREMENT OF BUILDING HEIGHT



Building Height Measured from Finished Pad



Building Height Measured from Existing Grade



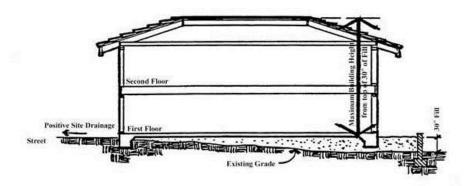
Building Height Measured from Ceiling of Basement

- (3) Subject to the approval of a minor Site Development Permit, nonresidential or residential building height may be measured from the top of not
  more than thirty (30) inches of fill. Approval of such a minor Site
  Development Permit, by the Director of Community Development, may only
  be granted if the applicant can demonstrate compliance with the following
  criteria:
  - (A) That the proposed fill is required only for the purpose of creating positive drainage flow (via gravity) to the street or to otherwise correct an existing drainage problem; and
  - (B) That the proposed fill is necessary to create a minimum percentage grade for drainage flow consistent with a gravity flow drainage pattern as verified by the Director of Public Works; and
  - (C) That the amount of fill proposed is the minimum amount necessary to create the desired drainage pattern.

Should the proposed fill be deemed by the Director of Community Development to be proposed for any purpose other than providing the drainage pattern promoted by this Section, the application shall be denied. Structures shall only be granted credit for enough height to achieve positive (gravity) drainage flow.

Should additional (more than thirty (30) inches) fill be required to create the desired drainage pattern, it may be allowed through the approval of the minor Site Development Permit, however the height of the structure cannot be measured from any point higher than thirty (30) inches above existing grade.

# SECTION 9.05.110(a)(3) MEASUREMENT OF BUILDING HEIGHT ATOP THIRTY (30) INCHES MAXIMUM FILL

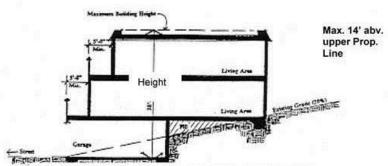


Building Height Measured from Top of Not More than Thirty (30) Inches of Fill

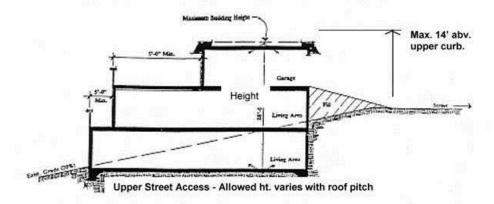
- (4) Subject to the approval of a Site Development Permit, a residential structure proposed in a hillside condition may be allowed to have three (3) stories in accordance with the following provisions:
  - (A) For purposes of this Section, a hillside condition shall mean a lot with a topographic slope percentage, as defined in Section 9.75.190 of this Title, either front to rear or side to side, of twenty (20) percent or greater. The topographic slope percentage shall be calculated by determining the vertical differential between the highest elevation point of the property at the front or rear property line (whichever is higher) and the lowest elevation point along the opposing rear or front property line (whichever is lower) or between the highest elevation point along the higher side property line to the lowest elevation point along the opposing, lower side property line and dividing that vertical differential by the horizontal distance between the two (2) points.
  - (B) Three (3) story structures shall be designed so that the second story has an average, additional yard setback area of five (5) feet times the total width of the structure at the street elevation and the third story, an average additional yard setback area of ten (10) feet times the total width of the structure at the street elevation. This additional setback area shall occur on the portions of the structure having three (3) stories exposed above grade. Maximum allowed projections into the additional setback areas are as specified in Section 9.05.080 (Projections into Required Yard Areas) of this Chapter.
  - (C) Residential structures having three (3) stories shall be limited to a maximum Floor Area Ratio (FAR) of .75 the area of the lot, excluding garage area. The amount of garage area in excess of that required for minimum compliance with parking standards, as specified in Section 9.35.070 of this Title, shall be considered part of the floor area when calculating the FAR.
  - (D) Building height shall be measured as specified in Subsection (a)(2) of this Section, and in no case may the overall height of the structure exceed thirty-three (33) feet or as specified in Subsection (a)(7) of this Section.
  - (E) The applicant shall demonstrate that the proposed design will result in a reduction in grading and the disruption to existing topography that would be incurred with a standard two (2) story design on the subject site, pursuant to Subsection (a)(2) of this Section, to the satisfaction of the Director of Community Development.
  - (F) The height of the third story shall not exceed a height of fourteen (14) feet above the upper property line or upper street curb elevation, as measured perpendicular to any point along said line or curb.
  - (G) Applications for Site Development Permits to allow three (3) story developments on hillside properties shall include story pole staking as

described in the City's application requirements for a Site Development Permit.

# SECTION 9.05.110(a)(4) MEASUREMENT OF BUILDING HEIGHT IN HILLSIDE CONDITIONS



Lower Street Access - Allowed ht. varies with roof pitch



### **Supporting Document 4:** Conceptual Grading and Building Plans

Mr. Sean Nicholas, Senior Planner City of Dana Point Community Development Department 33282 Golden Lantern Dana Point, CA 92629

RE: Preliminary Review PA20-0025 - 34455 via Gomez, CA 92624

Dear Mr. Nicholas

As requested, we are excited to provide you with our responses to the City's preliminary review comments dated 4/30/20 for aforementioned properties (lot 30 & 31).

Following is the list of first review comments from the City Planning and Engineering Division and our responses. We are eager our responses and new submittal to be deemed as complete for presentation to the planning commission.

#### **Planning Comments:**

- 1) The project narrative you have provided has several issues that need to be addressed, including:
  - a. Clearly describe what preliminary comments you are looking to receive from Planning Commission.

Response: Chapter 9.09 Residential Districts Section 9.09.010 Intent and Purpose

This project meets the definition, intent and purpose of a Medium Density residential development. Medium density residential districts have a combined maximum density of 14 dwelling units per acre. The proposed project utilizes one duplex on 0.119 acre and one single family unit on 0.110 acres. The combined density of these two buildings is 3 units per 0.23 acres, or 13.05 dwelling units per acre, which is less than the maximum 14 du/ac.

#### This project asks for confirmation of our understanding of this code section.

b. What the project scope is

**Response:** The proposed project envisions obtaining project entitlements which would allow construction of two buildings, one with a single family dwelling unit and one with a duplex dwelling unit. The two parcels will be merged together to provide one development. Resulting densities are noted above.

c. The type of Variance requested.

**Response:** The proposed site exists over an old drainage cavern, which, in many places exceeds 14 feet in depth, and is where both public and private drainage from as far north as Via Lopez ends up. This drainage cavern has been known over the years to fill and overflow into and out of neighboring lots, flooding garages and rear yards, causing flood damage and mud flows. This area of

the proposed site provides for the storm water drainage needs of approximately 43 lots north of the subject site and approximately 5 lots adjacent to the subject site, with storm waters flowing within the confines of public street rights of way including Via Lopez, Via California, Via Fortuna, Via San Juan and Via Sacramento. The water within these streets drain into a concrete culvert running along the side property line of the northerly adjacent lot, and then outlets over ground to this proposed site.

Combining storm flows of both privately and publicly generated runoff is against stated drainage policy of most every City in Orange County. It provides a means for increased litigation and goes against sound engineering judgements when dealing with storm water flows and trying to provide storm protection. It the overland flows of this area were drained in a more conventional method, outside of the boundary of the project site, natural ground elevations would be more in line with the neighboring lots. The existing 14 foot deep cavern not be needed, and would no doubt have ever been built. It could be filled and the natural ground elevations brought up more equal to street level, as have most of the adjoining neighboring lots along Via Gomez.

This project's requested variance is to allow this development to fill in the cavern, providing an engineered solution to the long standing drainage issues of this neighborhood by capturing the overland flows in a man-made vault. The storm flows would instead drain into existing underground facilities constructed in Via Gomez. This pipe system was part of a four-street storm drain project constructed in 1993 by the City of Dana Point as a means of helping to minimize flooding in this area via underground pipe drainage network. Earth would then be placed over the top of the vault, and building height elevations would then be subject to code compliance with the resulting elevations. The 14 foot high cavern would be eliminated, and code compliance would be measured upward from elevation 196.0. Building pads would be set at this elevations, and roof heights would be measured against the pad elevation of 196.0.

d. Provide justification as to why the subject site warrants a Variance based on the required findings stipulated in Dana Point Zoning Code (DPZC) Section 9.67.050, listed below:

 That the strict or literal interpretation and enforcement of the specified regulation(s) would result in practical difficulty or unnecessary physical hardships inconsistent with the objectives of this Chapter;

**Response:** The regulations noted in this Chapter stipulate building heights be measured from the natural ground elevations within the proposed building pad envelope. As stated above, adherence to this code regulation prohibits this owner from enjoying the same freedoms of his adjacent neighbors and others within his neighborhood, by restricting him to elevations that were the direct result of drainage provisions installed to help prohibit storm water flooding, property damage, over flows and out flows into and out of neighboring parcels, including this site. If this drainage concern was eliminated, the property would enjoy the same benefits for development as neighboring lots.

ii. The there are exceptional or extraordinary circumstances or conditions applicable to the subject property or to the intended use of the property which do not apply generally to other properties in the same zoning district; **Response:** The circumstances which apply to this lot were man made and created as a solution to a drainage concern which is unlike any other in this area. This condition is generally not present in other similarly zoned parcels.

iii. That the strict or literal interpretation and enforcement of the specified regulations would deprive the applicant of privileges enjoyed by the owners of other properties in the same zone district with similar constraints;

**Response:** As described in i) above, requiring the applicant to measure his available building height envelope from existing ground elevations within the proposed building pad puts him at a distinct disadvantage and renders this site as "unbuildable", depriving him of building heights enjoyed by other residents within this neighborhood. The existing contours were created as a function of drainage storage and damage control for the surrounding lots within this subdivision.

iv. That the granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the same zoning district with similar constraints;

**Response:** Granting of this variance request affords this applicant the same abilities and constraints as enjoyed by similar properties in this zoning district and provides entitlements to construct two units that are consistent in height with the surrounding lots

 That the Variance request is made on the basis of a hardship condition and not as a matter of convenience;

**Response:** As described above in i) above, the regulations noted in this Chapter stipulate building heights be measured from the natural ground elevations within the proposed building pad envelope. As stated above, adherence to this code regulation prohibits this owner from enjoying the same freedoms of his adjacent neighbors and others within his neighborhood, by restricting him to elevations that were the direct result of drainage provisions installed to help prohibit storm water flooding, property damage, over flows and out flows into and out of neighboring parcels, including this site.

 That the granting of the Variance will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity;

**Response:** Granting of this variance will not prohibit nor inhibit other property improvements for the surrounding parcels, and will not be detrimental to any public health, safety or welfare needs of this community.

vii. That the Variance approval places suitable conditions on the property to protect surrounding properties and does not permit uses which are not otherwise allowed in the zone.

**Response:** The approval of this variance request will only provide the applicant with a ground based elevation constraint, consistent with surrounding parcels in this neighborhood, within which he must still meet applicable building height requirements of the City of Dana Point. The proposed uses are consistent with applicable zoning requirements for this neighborhood.

**e**. Please more clearly define how your project site is a "disadvantaged lot" as you note in your narrative. Please note, the fact that there are private agreements for drainage that have existed prior to your ownership is not a basis for a Variance.

Response: This lot is disadvantaged over other lot in this zone in that the neighboring lots to the north both have agreed, through recorded documents between each other and with the County of Orange, to accept street flows, public drainage, and to share the responsibility of dealing with this storm water runoff. The method they chose was to construct a concrete u-channel along the common property line from the right of way of Via San Juan to their rear property line. The volume of run off is then dissipated into energy reducing devices constructed with the u-channel, and allowed to continue off-site. Off-site in this case is off their parcels and onto the applicant's property, into a manmade cavern that was created to store the runoff until it has time to infiltrate into the natural ground. During the infiltration process, much of the applicant's property is unusable, and remains wet and saturated for days after the storm. Two thirds of Lot 30 is taken up with this cavern drainage pit. This is clearly not normal in this neighborhood, and is an extreme disadvantage to the applicant for development.

- 2) The plans provided with the preliminary review materials are incomplete and missing basic required information, including, but not limited to:
  - a. Please provide an analysis of the project's conformance with development standards of the RD 14 zoning designation.

**Response:** The development standards for RD 14, together with the proposed project's compliance, is shown below:

Description	RD 14 Code Requirement	Proposed Development
Front Yard	20'	20'
Rear Yard	15'	20'
Side Yard	4'	4'
Lot Area	5,000	10,010
Minimum Lot Depth	100′	130′
Maximum Lot Coverage	50%	48%
Minimum Land Area Per Unit	2500 sf	3336.7 sf
Maximum Height	28'	22'
Minimum Open Space	20% ac - private	20%
Minimum Landscape Coverage	15%	15%
Minimum Building Separation	10'	N/A

b. The Site Plan is incomplete and all applicable setbacks, property lines, existing public improvements, building separations need to be provided and clearly labeled.

**Response:** The plans have been revised to provide a Conceptual Grading Plan and a Conceptual Drainage Plan. All plans have appropriate setbacks, property lines, existing public improvements and building separations shown.

**c.** On the Site Plan please accurately show the existing topography, the proposed finished pad, and the finished floor elevations, for both the garages and the main structures.

**Response:** The plans have been revised to provide a Conceptual Grading Plan and a Conceptual Drainage Plan. All plans have appropriate existing topography, proposed finished pad and finished floor elevations shown, for both the garages and the main structure.

d. Where will trash cans be stored on-site.

**Response:** The trash cans have been provided a storage area within the garages as shown on architectural drawings.

e. Please provide elevations and cross sections that illustrate and identify existing topography elevations, proposed pad elevations, maximum height elevations, and roof pitch.

Response: Noted, please see architectural drawings for building height.

3) The preliminary grading plan inaccurately illustrates the existing topography and the lowest point of the site that the building touches on both lots: essence, where you measure your building height from has been omitted.

Response: Plan has been revised per your comment.

4) Please provide the proposed finished pads for both the garages and the main structures on the preliminary grading plan.

**Response:** This information has been added to the revised Concept Grading Plan and the Concept Drainage Plan.

5) Please clearly indicate the amount of fill proposed for each of the lots.

**Response:** The fill amount will be depicted on conceptual grading plan in next submittal.

Should have any question or need additional information, please do not hesitate to contact me at (949) 289-1847 or via mail at <a href="mailto:acmconstructionbuilder@gmail.com">acmconstructionbuilder@gmail.com</a>.

Sincerely

Arman Vakili

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### **ATTACHMENT**



# 34456 Via Gomez Dana Point, CA 92624

# SHEET INDEX

## **ARCHITECTURAL**

- 1- COVER SHEET
- 2- SITE PLAN
- **3- FLOOR PLANS**
- **4- CONCEPTUAL SECTIONS**
- 5- CONCEPTUAL VIEW
- 6- CONCEPTUAL VIEW

- 7- CONCEPTUAL ELEVATIONS
- **8- CONCEPTUAL ELEVATIONS**
- 9- CONCEPTUAL ELEVATIONS CIVIL
- **C-1 CONCEPT GRADING PLAN**
- C-2 CONCEPT DRAINAGE PLAN

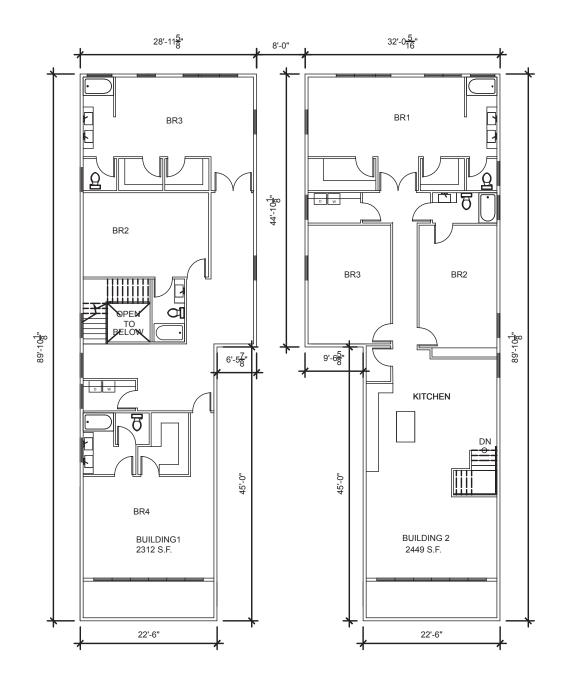
ACM CONSTRUCTION DEVELOPER/BUILDING GROUP (949)-2891847





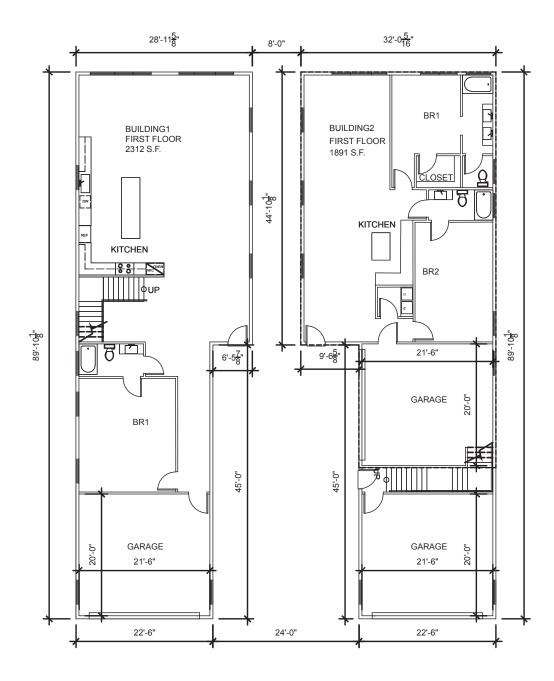
## **SITE PLAN**







SCALE: NTS

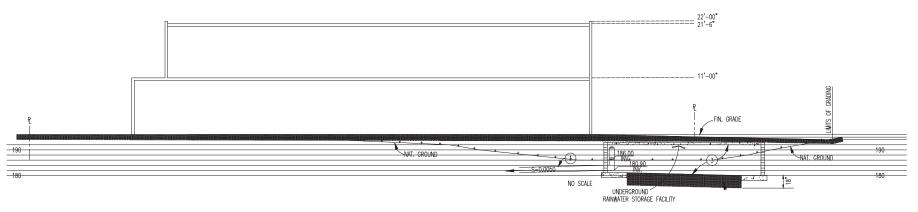


# FIRST LEVEL FLOOR PLANS

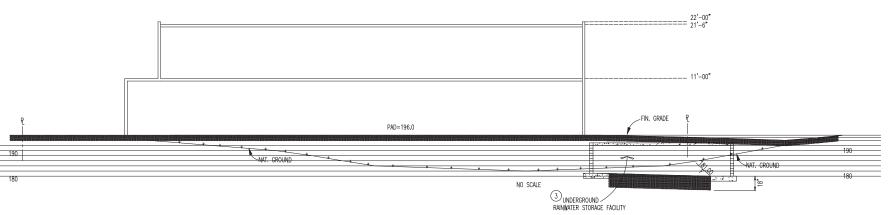
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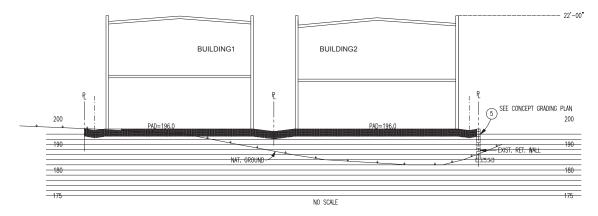




## SECTION A-A CONCEPTUAL



### SECTION B-B CONCEPTUAL



SECTION D-D CONCEPTUAL





34456 Via Gomez Dana Point, CA 92624





34456 Via Gomez Dana Point, CA 92624





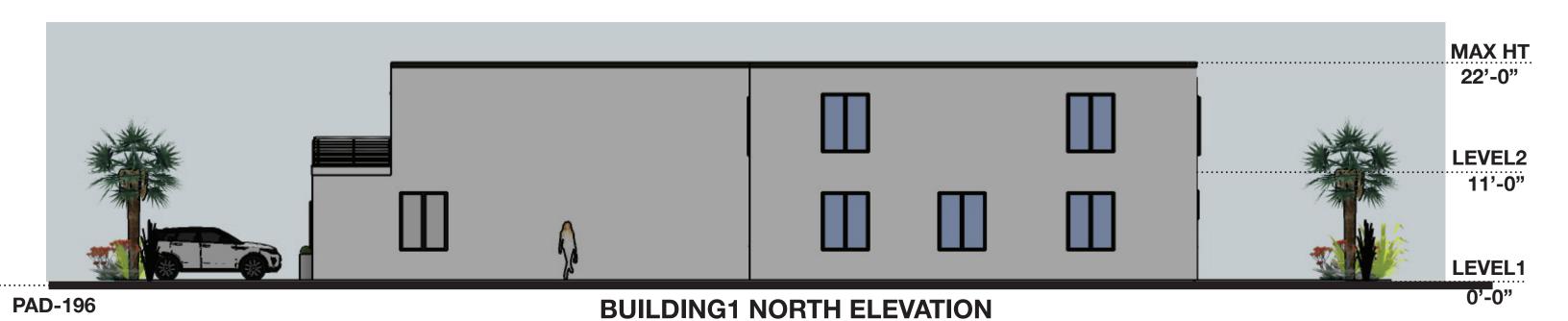
**EAST ELEVATION** 

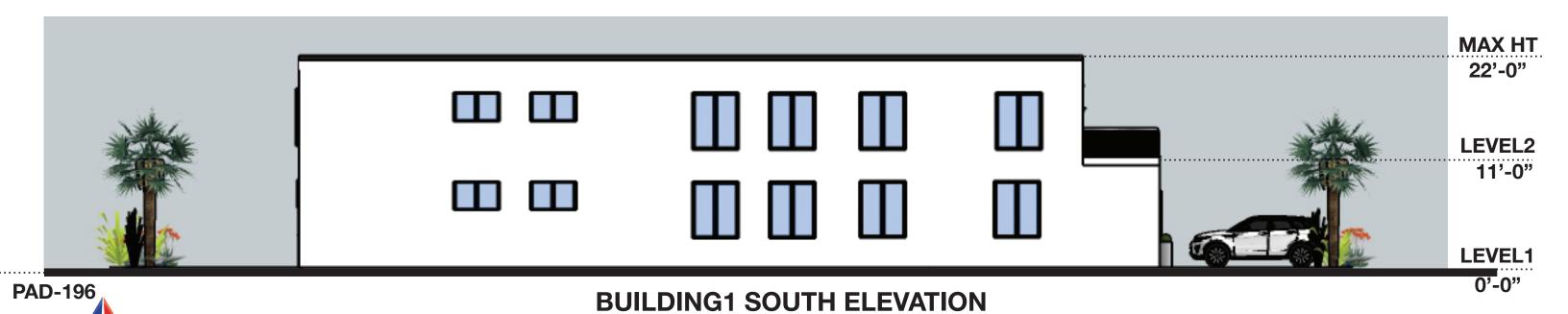


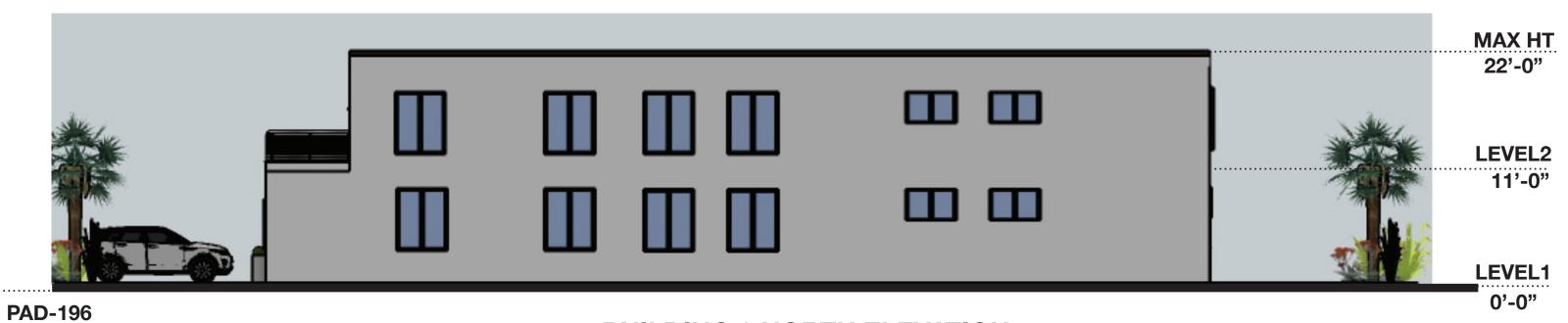
**PAD-196** 



**WEST ELEVATION** 







# **BUILDING 2 NORTH ELEVATION**



CONSTRUCTION/BUILDER GROUP

