

Request for Variance

Preamble

The following is the preamble to the variance request for Property 584 Crawford Drive. We are using this variance process because this is the method provided to us by the City that allows us to submit an expansion to our property that appears to have questionable code requirements. This document will explain the property situation and the desired expansion. We will highlight the code (19.50.020) that allows for our plan to proceed without a variance. However, if the City feels that the code is not enough information to allow for the project to move forward the document as a whole has overwhelming evidence why this is the best plan and that we are not gaining any further privileges not afforded to other neighbors. In fact, the rejection of the variance and our plan would be a direct discrimination to our family and our property that is being afforded by other property owners.

We are happy to meet with the proper City Authority to discuss the situation and request immediate approval to advance with our plan. We have been in extensive talks with various City officials and we have addressed each and every concern with conditions or situations that allow for the city to move forward with approval.

In order to address some immediate comments made by the City, see our response to your inquiries below:

1. Inquiry: Provide demolition plan showing which existing walls are to be demolished.
Answer: See floor plan A1.1 showing the expansion. The walls to the back of the house are the only walls that will be removed in order to create a great room concept. We will not be taking any front or side walls down. The wall to the garage will stay intact and we will work out those details with the designer and the City.
2. Inquiry: Provide elevations of ceiling height.
Answer: See attached schematic front elevation. The elevation is the same except there are window and door features that are different. This elevation represents the fact that you will not see the new structure in the back. As for ceiling heights, the existing ceiling height is 8' and we may increase the new great room and master bedroom to 10', which does not affect the look of the house.
3. Inquiry: The City has reiterated that we need to follow local codes and coordinate the sign-off process with the City and attain all required permits.
Answer: As for all other comments that were set as advisory comments, we understand that we need to coordinate with City agencies in order to get the proper permits. We fully intend to meet those requirements and all code requirements.

Variance Report

584 Crawford Drive

2 bedroom 1.5 bath home

This is our formal request for a variance to current building ordinances. The variance is being requested to allow us to have side yard setbacks less than the current 20% of the width of the lot. Therefore the request is to have a total of 12'-4" side yard setback instead of the required 15'. We have four people living in the house and we needed to expand our house to make our living space large enough for our family. My wife is a teacher and I work for a construction management company. We looked at options to move within the same area but we cannot afford to sell and buy another home in the same school district. I have been a Sunnyvale resident for 14 years and my wife's family has been residents since the 1930s. We truly believe that Sunnyvale is a great place to live and we want to reside here for the rest of our lives. In order to make that a reality we request that we can move forward with our home expansion with the requested variance.

The variance will first address the fact that a variance is not needed based on current code (19.50.020 Nonconforming residential building). We understand that this fact needs to be properly interpreted and utilizing this variance process will be the first step toward that interpretation. The report will then address the three major requirements necessary to allow for a variance. We have also included case studies showing how the city has allowed for other projects in our neighborhood to move forward that are extremely impactful, unlike our expansion that will not even be seen or felt by our next door neighbors. Finally, we also have a case study (666 Princeton Dr.) that shows precedents for allowing for reduced side setbacks, therefore allowing our property to have the same privileges afforded by other property owners.

The following are reasons for moving forward with our current plan:

1. Code 19.50.020 Nonconforming residential buildings allows for enlarging nonconforming structures as long as nonconformities are not increased, which is the case with our property.
2. Undue hardship to remove an existing legal but non-compliant structure.
3. With the suggested City solution of pushing in the eastside setback, this will result in an expansion of the project to the back yard which would require a removal of a mature tree that is over forty feet high.
4. Strict application of code is depriving us of privileges that are enjoyed by others. In addition, other neighbors have been allowed more egregious modifications to their houses that are extremely impactful to their neighbors.
5. Existing conditions, as a whole, still meet city codes for combined setbacks with existing properties. The property to the west is 45' away exceeding the 8' combined setbacks of two properties.
6. Precedence has been set with property 666 Princeton Drive, to expand without meeting the setback codes.

Code requirement voiding the need for a variance.

The major code interpretation that we are referencing is to allow for a legal but non-compliant garage and house to expand without increasing existing setbacks. Code 19.50.020 Nonconforming residential building, is the code that allows for existing legal but noncompliant situations to expand or modified as long as the existing setbacks do not have an increase in nonconformities, as written in the code. As is intended with all updates to new codes, the update is not to provide undue hardship to existing long-term residents. Long-term residents should not be punished by refusing to accept a variance because the current legal but non-compliant structure may not meet current code. Non-compliant structures are typically grandfathered in and this code is written with that in mind (see attached code 19.50.020). In fact this code is the reason that the City can allow for the project to move forward without a variance because there are no increases in nonconformities. See the interpretation of the code as intended:

Code 19.50.020 specifically states that an expansion of a nonconforming residential dwelling does not require a variance:

“A building legally built and occupied as a dwelling, in all zoning districts except R-1 and R-2, which does not meet current development standards except for lot area per dwelling unit may be repaired, altered, enlarged or replaced without requiring a variance provided:

- 1) No increase in non-conformities will result; and
- 2) Any required permits are obtained.”

The existing structure was legally built with permits through the County of Santa Clara. It is not an R-1 or R-2 structure and does not meet the current setback standards. However the code is specifically intended to guard against past codes that are now considered non-compliant. This code allows for the structure to be enlarged as long as the existing setbacks do not have an increase of nonconformities. Our intention is to extend the dwelling at the same 10 foot separation to the existing east property line. Therefore this plan does not increase any existing nonconformities.

The City suggested that their interpretation included the evaluation of the house and the garage being in the same plane going from east to west. Their interpretation mentioned that if both the house and garage are both in the same plane, then a one foot expansion to the south changes the non-conformity to a different condition. Even though that is an interpretation and that opinion is not sited in any code, it doesn't matter because our property structures are not in the same plane. See attachment A-0 of floor plan A2.1 that shows the existing overlap of the house and the garage.

Therefore, the code allows a legally built structure that does not meet current development standards (the garage) to be enlarged without requiring a variance. It is clear that this code is setup for this type of situation, to allow a long-term resident that has an exceptional or extraordinary circumstance that enables a structure to be enlarged as long as the non-conformity is not increased. Refer to floor plan A3.1 that shows the continual extension along

the existing setback. The non-conformity is a combined setback of 12'-4" instead of 15' and after completion of our expansion the combined setback will continue to be 12'-4".

Variance Requirements Above and Beyond Code Consideration

Because of exceptional or extraordinary circumstances or conditions applicable to the property, or use, including size, shape, topography, location or surroundings, the strict application of the ordinance is found to deprive the property owner of privileges enjoyed by other properties in the vicinity and within the same zoning district.

Our objective is to install an addition that flows with the interior and exterior of our existing home. By following current building setbacks this would impact the design on the side of the house causing us to jog the interior by three feet and creating offsets of the house inside and out and providing visual barriers and safety concerns. We would prefer to have a contiguous exterior wall that is in alignment with the existing wall. We have a neighbor that was able to install a pop-out window that is less than one foot from our fence but current setback codes does not allow for me to keep the flow of the house on a linear line that is 10' from the property line. This jog creates aesthetic and safety issues and cost increases.

Undue hardship:

The extraordinary circumstance is that the current detached garage was expanded upon and the current garage is 1200sf. This is a sizeable structure and it is currently a legal but non-conforming garage because it is only 2'-4" from the property line. We want to connect our house to the garage for safety and convenience reasons. This non-compliant issue started when the County allowed for the original construction in 1957 of the garage to be too close to the property line. The 1949 tract language (see top of page 2 of the Declaration of Restrictions) states that all new structures have to be minimum 5 feet from the property line. Again in 1996 the County allowed for an expansion of the garage to 1200 square feet including plumbing, a new electrical panel and finished interior walls. These continual allowances put us into an awkward situation unlike others within the neighborhood.

One of the suggestions by the City was to remove the garage to allow for setback compliance. With this expansion it would cost more than \$60,000 to remove and put back a compliant structure. We do not have enough of a budget to eliminate this structure and add a new garage. This would be an unusual hardship on a long-term resident of Sunnyvale. This existing condition is causing extreme difficulty to design a home that flows and meets our needs as a family. This undue hardship cannot be required of us since every other property does not have to remove their non-compliant structures in order to meet current codes.

The other hardship that may affect us is if this one story plan does not meet our needs then we may need to consider a two story addition. A two story design is much more expensive and much more obtrusive to our neighbors. We also know that our neighbors have voiced objections to a two story addition next to their home because there is already a two story on the other side of their home. We have a limited budget and the two story scenario is not a viable solution.

Our current plan is setup to save a tree:

The City has suggested that we can increase the setback on the east side of the property by 2'-8" to meet the current code. This will push the expansion to the back of the property to meet the same requirements we are looking for in this expansion. We were told that there is room on our property and this is needed to increase the setback. However, this expectations will result in pushing the expansion back into the dew line of a forty foot tree that is over 25 years old, requiring us to remove the tree. We would prefer to stay in our plan and not have to remove a historic tree, as suggested by the City.

Depriving us of privileges enjoyed by others:

We have sited many conditions within this variance that show that other neighbors are enjoying privileges that we are not. The first condition is case study three shown below. Our neighbor to the east is afforded the privilege of an expansion of their house but they do not have the minimum combined setback of 15'. They are enjoying the expansion and not having the proper setbacks. This is clearly why code 19.50.020 is in place to allow for older house to benefit of expansion without increasing the non-conformities. In fact, their gutter is less than one foot from the property line. To date, I cannot find an answer from the City, explaining the impact difference of a 10' setback or a 12'-8" setback on the east side of the property. But I can tell you the impact difference of a structure that is supposed to be a minimum of 4' away and is essentially right on the property line. Clearly there is a privilege that is enjoyed by our neighbor that we are not afforded. In fact, there house is less that one foot away and we are being asked to move our house to 12'-8" away. The City needs to have a full explanation of why one neighbor is granted such privileges and another neighbor is being forced to move a set back from 10' to 12'-8".

In addition, our request to stay at the same 10' setback is not an impact to any neighbors and our next door neighbor would prefer that opposed to a two story structure. Our proposed expansion will not even be seen and the neighbors will enjoy the benefit of higher housing prices in the area. Unlike our neighbor at 591 Crawford who is constructing a 4,100 square feet home that is three stories tall. This is major impact on our street and a benefit that is far beyond any request being asked of us. We want a simple expansion and not a structure that does not fit in the neighborhood.

The granting of the Variance will not be materially detrimental to the public welfare or injurious to the property, improvements, or uses within the immediate vicinity and within the same zoning district.

The addition will be in the back of the house and will not be noticed from the street. In addition, the left side of the house complies with the 4' minimum and in fact it is currently 10'. We are adding a single story to the existing structures and will not affect any neighboring houses. The City's suggestion is to move the setback to 12'-8" instead of the 10' that exists. I have not heard anyone explain the difference between 10' and 12'-8" setback and the affect it has on the properties as a whole. Moving in to 12'-8" does not create a more favorable situation for the house on the east or the west.

The west side of the structure, at the garage, is 2'-4" and does not meet the current code of 4'-0" minimum setback. However, the existing condition needs to be taken into account. The adjacent house on the west side is more than 45 feet away from my property. If the setback along the garage was for

safety, fire protection or privacy then the existing condition exceeds those requirements. The City needs to evaluate not just the existing condition of the property but the existing condition of both properties as a whole. This is the **exceptional or extraordinary circumstance or condition**, as stated in the variance language. No other property in this adjacent neighborhood can show a similar situation.

I was told by the City that, if I had an easement with the west property, stating that no structure can be built any closer than 5'-8" from the property line, then a variance was not needed because the condition would meet the minimum 8' setback for both properties. This suggests that a combined 8' separation is an acceptable setback. In this case it is over a 45' combined setback far exceeding the current code. Therefore the existing condition needs to be considered as an acceptable current condition. If an easement is acceptable then the existing condition is acceptable to meet the current code as it stands today.

Upon granting of the Variance, the intent and purpose of the ordinance will still be served and the recipient of the Variance will not be granted special privileges not enjoyed by other surrounding property owners within the same zoning district.

It is our understanding that the intent of the code is to provide safe barriers from each home. Our neighbor to the east has a pop-out window that is less than one foot from the property line and our current structure is ten feet along with the planned home addition. Our neighbor to the west side of our property is farther than forty five feet from the next home. So it appears that the safe setbacks zones would still be intact. Our house is located near the end of a dead-end street, away from regular traffic. We are next door to an acre lot and our house is more than forty five feet from that house. They would not have any objection to our expansion. In fact we are related to the Olson's and they encourage us to upgrade the house. Our next door neighbor to the east just renovated their house and would be happy to see additional upgrades to the street and would prefer that we are not pushed into doing a two story because of an additional 2'-8" setback. Our neighbor across the street also renovated their house and encourages us to do the same. We are not asking for anything more than allowing us to connect to a garage that was originally installed and then expanded upon in 1997 but is a non-conforming structure.

The benefit that we will be receiving is to allow us to connect to our existing non-conforming garage in order to increase our safety and convenience that is afforded by most other neighbors on our street. In addition, it allows for us to create a flow for the house on the inside and outside that is not observable from the street. We feel this is not an evasive project and it ultimately will be a benefit for the community, county and city, through increased property value and desire to be in Sunnyvale.

The following are case studies that exhibit the fact that we will not be granted special privileges not enjoyed by others.

Case Studies:

We have taken pictures throughout the neighborhood and have found many properties that are currently non-conforming with current codes. We wanted to review three case studies that show the true benefit other neighbors are receiving. These case studies show the benefits others are receiving and therefore not setting a precedent within the community.

1. 666 Princeton Dr., 94087 – They finished their remodel and expansion to their existing non-conforming house. The expansion appears to be a modification/expansion to the second story. Their expansion is clearly visible from the street. Their lot size is 62' in width with an 11' total setback. The reason for the identification of this property is because their modification/expansion is similar to our situation in the fact that they are expanding to a non-conforming structure. If this property has been able to expand to an existing non-conforming structure then I know precedence has been set and that we would be afforded the same benefit. See pictures A1 through A6 showing the renovation and the side yards.

As for drawings A5 and A6 those are before and after pictures of the property. I was told by the City that there was no increase of square footage on that renovation therefore there was no need to do a variance. The pictures actually show a pop-out in the front of the house that was not there before. This illustrates that a neighbor has already set precedence and that an expansion to a non-conforming structure is acceptable as this report already outlined in code 19.50.020.

2. 569 Sunnymount Dr., 94087 – This property had a recent expansion in the back that is clearly visible from the street. In addition, the lot size is approximately 75' across and the side yards total to less than the minimum 15' setback. It appears the expansion was done prior to the code change but that neighbor is currently reaping the benefit of a larger expansion with a non-conforming house. Therefore, we are not creating precedent and our expansion will not be seen from the street. See pictures B-1 through B-2 showing the side yards and expansion.
3. 582 Crawford Dr., 94087 – This property is our next door neighbor. They completely modified their property back in 2012, prior to the code change. There was an expansion in the back east side for their master bedroom along with an expansion on the west side for their living room. Their current setbacks are 5' on both sides for a 75' lot width. They are currently benefitting from a non-conforming home. In addition, they also made a pop-out on the west side toward our property and the gutter is less than 12" from the property line. This modification is an egregious privilege, far exceeding our request for staying with the same setback. See Picture C-1 showing the setback of the gutter.

We appreciate your consideration for our code evaluation and the variance. We are available to answer any questions regarding the property and the expansion. I can be reached at 408-828-9258.

Sincerely,

A handwritten signature in blue ink, appearing to be "Bob Fuselier" and "Lisa Orlando" joined together.

Home Owners Bob Fuselier and Lisa Orlando

Sunnyvale Municipal Code						
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[Title 19. ZONING](#)

[Article 4. GENERAL DEVELOPMENT STANDARDS](#)

[Chapter 19.50. NONCONFORMING BUILDINGS AND USES](#)

19.50.020. Nonconforming residential building.

(a) A building legally built and occupied as a dwelling, in all zoning districts except R-1 and R-2, which does not meet current development standards except for lot area per dwelling unit, may be repaired, altered, enlarged or replaced without requiring a variance provided:

- (1) No increase in nonconformities will result; and
- (2) Any required permits are obtained.

(b) A building legally built and occupied as a single-family or duplex dwelling in the R-0, R-1 and R-2 zoning districts may be repaired, altered, enlarged or replaced without a variance even if it does not meet current development standards for lot area per dwelling unit, provided all other current development standards are met and any required permits are obtained. (Ord. 2745-04 § 1; Ord. 2623-99 § 1; prior zoning code § 19.28.005).

View the [mobile version](#).

DECLARATION OF RESTRICTIONS

605383

This Declaration made and dated this 23rd day of November, 1949, by Elsie R. Kay.

WHEREAS, said parties are the owners of a certain tract of land situate in the County of Santa Clara, State of California, described as follows:

That certain Tract entitled, "Tract No. 671 Talisman Tract", which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, on November 21, 1949 in Book 24 of Maps, at page 46, to which said Map and the said record thereof, reference is hereby made, and

WHEREAS, said parties are about to sell property shown on said Map, which they desire to subject to certain restrictions, conditions, covenants and agreements between themselves and the purchasers of said property, as hereinafter set forth:

NOW THEREFORE, said parties declare that the property shown on the Map of Talisman Tract is held and shall be conveyed subject to restrictions, conditions, covenants, charges and agreements set forth in the Declaration, to-wit:

DEFINITION: The word "Lot" as herein used refers to one of the numbered lots as delineated upon the original recorded Map of the Tract within which the above described real property is located.

The word "Plots" as herein used refers to an individual site for a residence, together with the grounds in connection therewith, whether composed of one or more "lots" or portions or combination thereof, as said "Lots" are above defined.

a. All of the lots, plots and parcels hereinbefore described are declared to be residential in character and no structure shall be erected on Lots 1 and 10 to 23, inclusive, other than one detached single family dwelling, not to exceed two stories in height, with a private garage and other outbuildings incident to the residential use of the plot.

A Multiple family dwelling or one detached single family dwelling not to exceed two stories in height may be erected on Lots 2 to 9 inclusive, and Lot 24, together with a private garage with liveable quarter above and other outbuildings incident to the residential use of the plot.

A Multiple family dwelling, two family dwelling or one detached single family dwelling, not to exceed two stories in height, may be erected on Lot 25, together with a private garage and other outbuildings incident to the residential use of the plot.

b. No dwelling shall be erected on any building plot nearer than twenty-five (25) feet to the front property line nor nearer

than eight (8) feet to a side street line. No dwelling or structure shall be erected nearer than five (5) feet to any property line.

c. All of said lots are held and owned and shall be conveyed subject to the express condition that said real property shall not be used or occupied by any person of African, Japanese, Chinese, Mongolian or Malay descent; provided, however, that said conditions shall not be construed as prohibiting persons of such descent from residing upon said property while in the employment as servants of the persons occupying the said property.

d. No trailers, basement, tent, shack, garage, barn or other out-building shall at any time be used as a residence, temporarily or permanently, nor shall any structure of a temporary character be permitted.

e. No dwelling house having a ground floor area of less than 800 square feet, in the case of a single family dwelling; 1000 square feet in the case of a two family dwelling; 2000 square feet in the case of a multiple family dwelling, exclusive of garage, open porches, terraces and other appurtenances, shall be erected upon any building plot, within the area subject to these restrictions.

f. No commercial or manufacturing enterprise shall be carried on upon any plot nor shall anything be done which may be or become an annoyance or nuisance to the neighborhood.

g. No livestock rabbits nor creatures of any kind shall be kept or bred upon any lot for commercial purposes. ~~Nothing~~ herein contained shall be construed as restricting the right to keep household pets upon said premises.

h. No structure shall be moved onto any building plot without prior approval in writing by the subdivider's, their heirs or assigns.

i. All of the restrictions, conditions, covenants, and agreements shall affect all of the lots as hereinabove set forth and are made for the direct and reciprocal benefit thereof, and in furtherance of a general plan for the improvement of said Tract, and the covenants shall attach to and run with the land. Said restrictions, conditions and covenants shall be binding on all parties and all persons claiming under them until November 1, 1969, at which time they shall be automatically extended for successive periods of five years, provided, however, that such restrictions, conditions, covenants and agreements, or any of them, may be changed, rescinded or annulled in any or all particulars at any time by a majority of the then individual property owners in said Tract, evidenced by an instrument in writing executed by the said owners in the manner provided by law for the conveyance of real property, and duly recorded in the office of the Records aforesaid, and upon such recordation shall be valid and binding upon the Sellers and owners of the said lots in said Tract, and upon all other persons.

j. If the parties hereto, or their successors or assigns shall violate or attempt to violate any of the covenants herein before November 1,

1969, ordering any of the extended periods for which they are in force, it shall be lawful for any persons owning any real property subject thereto, to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants, and either to prevent him or them from so doing or to recover damages or other dues for such violation.

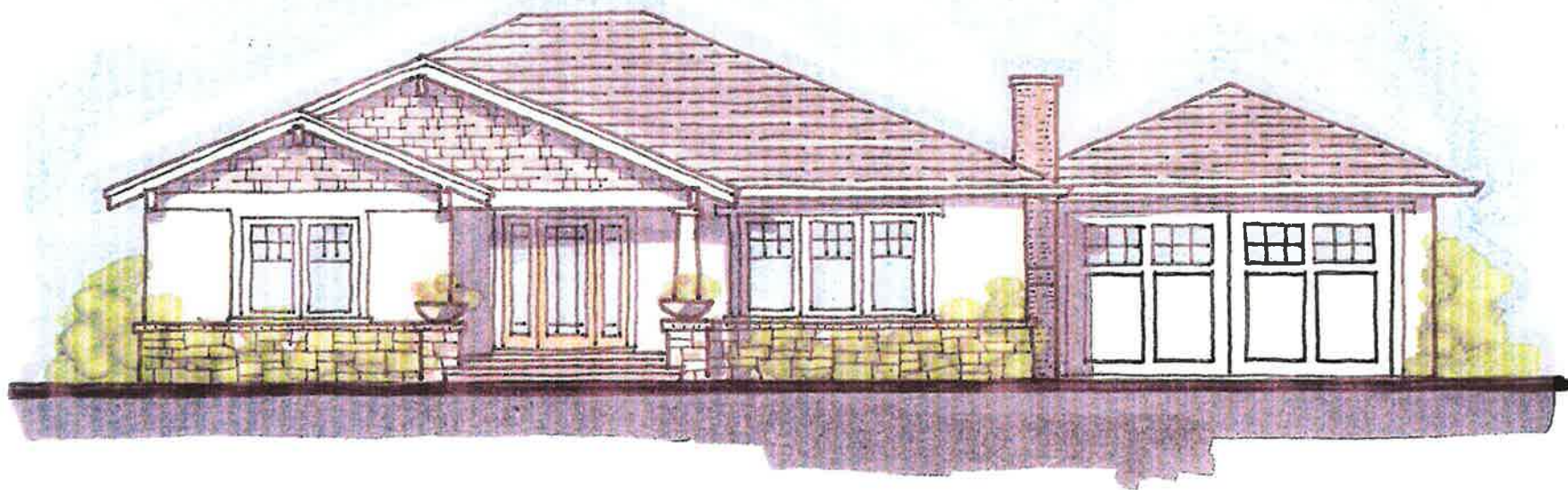
k. It is further provided that a breach of any of the conditions contained herein or of any re-entry by reason of such breach, shall not defeat or render invalid the lien of any Mortgage or Deed of Trust made in good faith and for value as to said premises or any part thereof; but said conditions shall be binding upon and effective against any owner of said premises whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

l. Invalidation of any one or more of these covenants by judgment or court order shall in no wise affect any of the other provision which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned has hereunto set their hands and seals the day and year first hereinabove written.

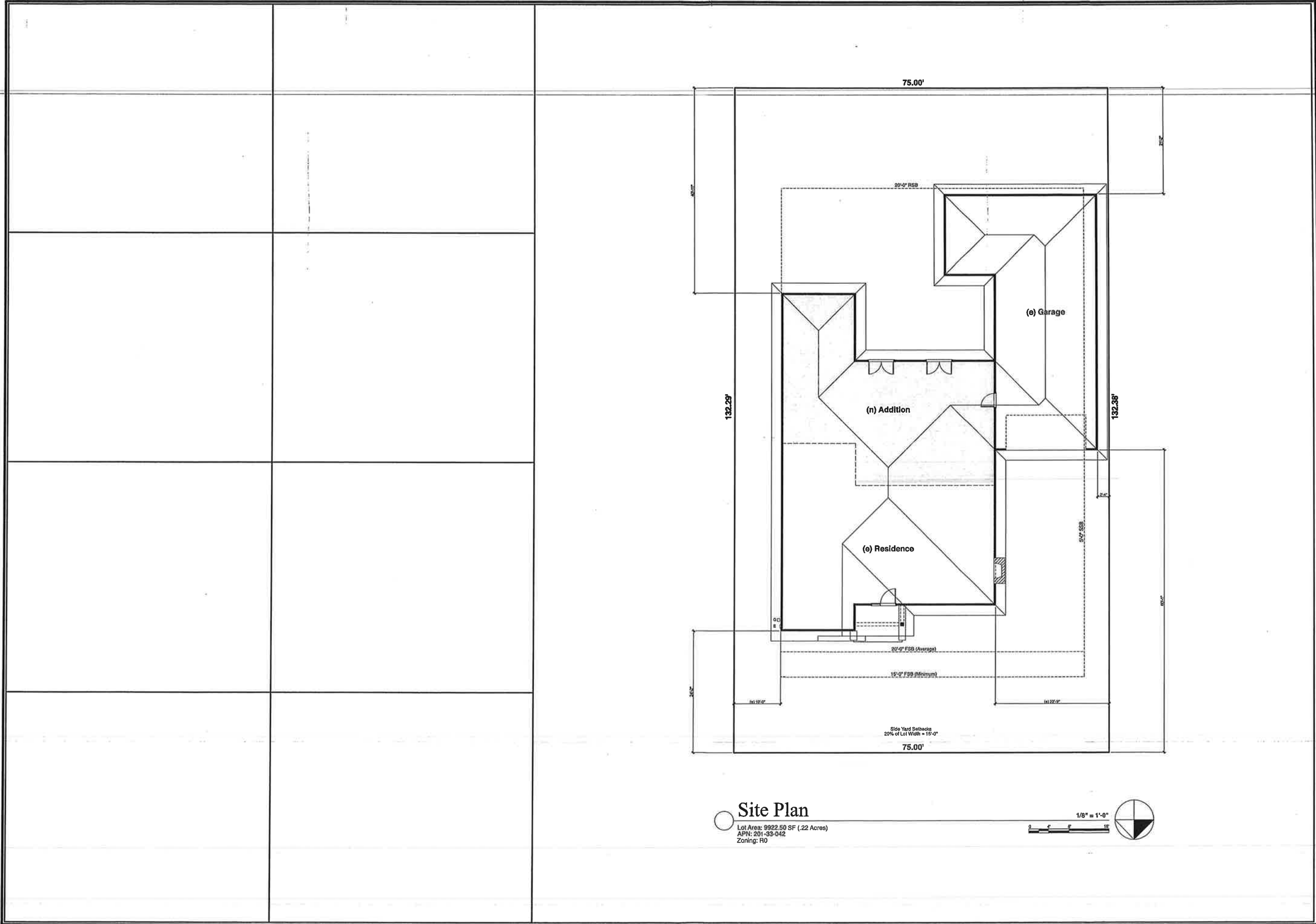
----- ELSIE R. KAY -----
Elsie R. Kay

Recorded November 29, 1949
Recorder's Serial Number 605383
Book 1882 Official Records, page 460



Schematic Front Elevation Ver. 1.0

1/8" = 1'-0"



REVISIONS:	
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BR

Britt • Rowe
108 N. Santa Cruz Ave.
Los Gatos, CA 95030

408.354.6224 (office)
408.354.6514 (fax)
www.britt-rowe.com

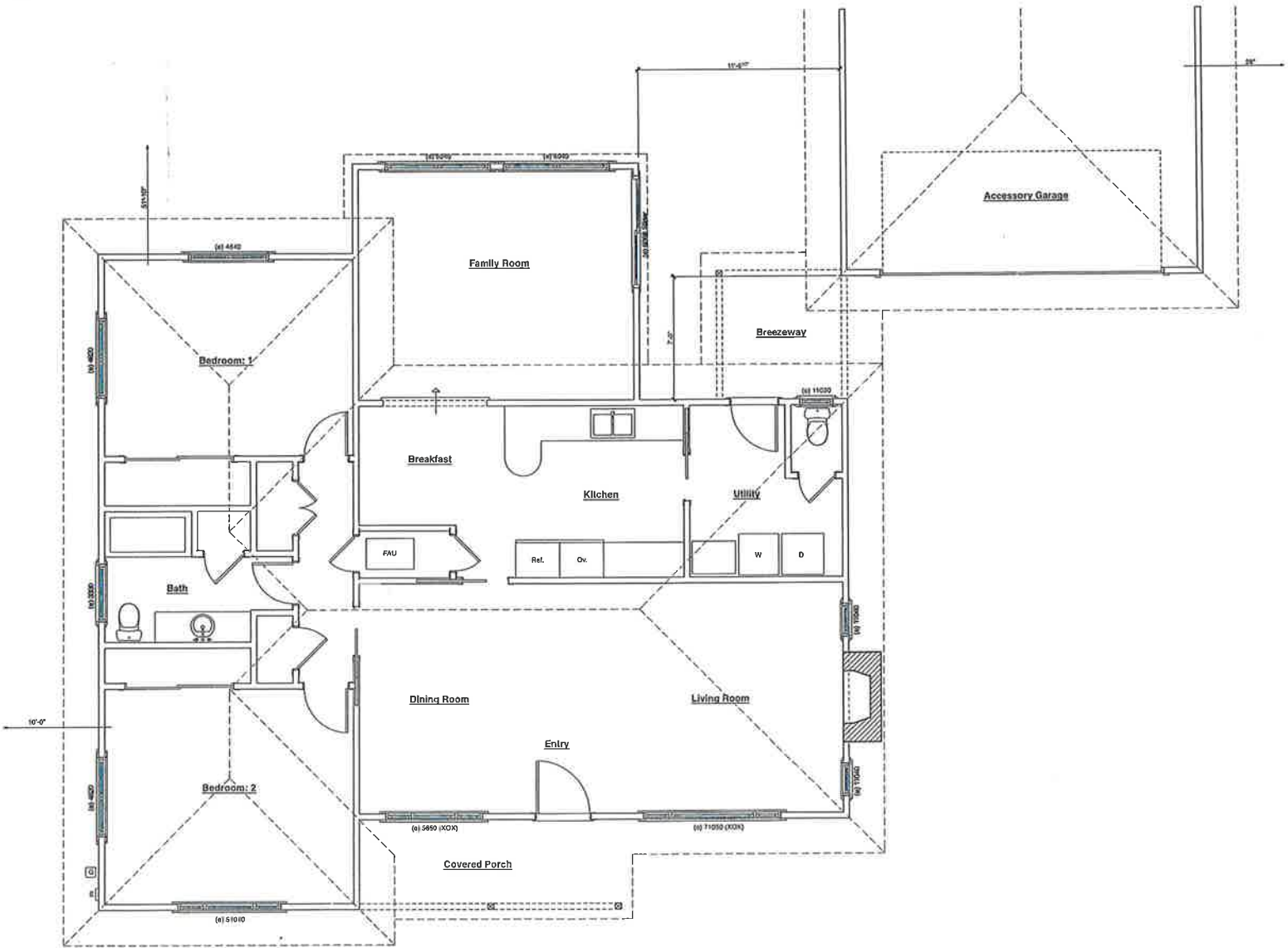
Britt Rowe shall retain all rights and ownership to all drawings and specifications. The contents of the drawings may not be used in whole, or in part, without expressed written consent given by Britt Rowe. All construction shall comply with all local codes and regulations. All contractors shall verify all conditions to assure conformance to these codes.

FUSILIER RESIDENCE

584 Crawford Drive
Sunnyvale, CA 94087

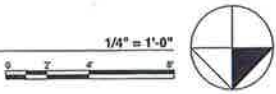
DRAWING:	Site Plan
DATE:	5/21/14
SCALE:	Noted
DRAWN BY:	MAR

A1.1



Existing Floor Plan

(e) Living Area: 1441.74 SF
(e) Front Porch: 75.88 SF
(e) Accessory Garage/Shop: 1222.47 SF



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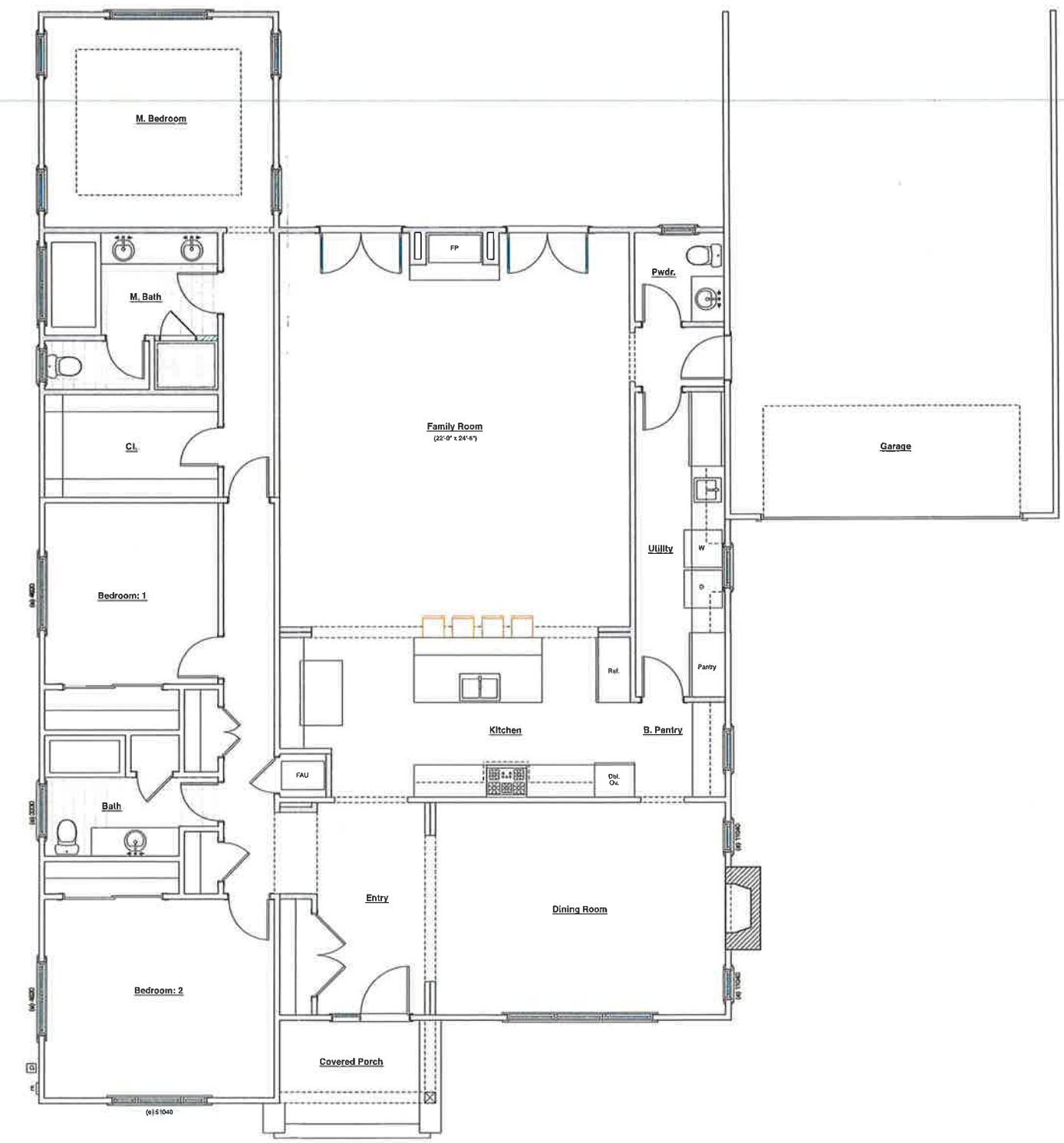
Britt Rowe shall retain all rights and ownership in and to the drawings and specifications. The contents of the drawings may not be used in whole, or in part, without expressed written consent given by Britt Rowe. All construction shall comply with all local & national building codes and regulations to ensure conformance to these codes.

FUSILIER RESIDENCE

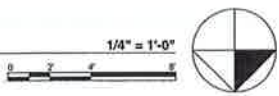
584 Crawford Drive
Sunnyvale, CA 94087

DRAWING:	Existing Floor Plan
DATE:	5/21/14
SCALE:	Noted
DRAWN BY:	MAR

A2.1



New Floor Plan
(e) Living Area: 1441.74 SF
(e) Front Porch: 75.88 SF
(e) Accessory Garage/Shop: 1222.47 SF
(n) Addition: 782.76 SF



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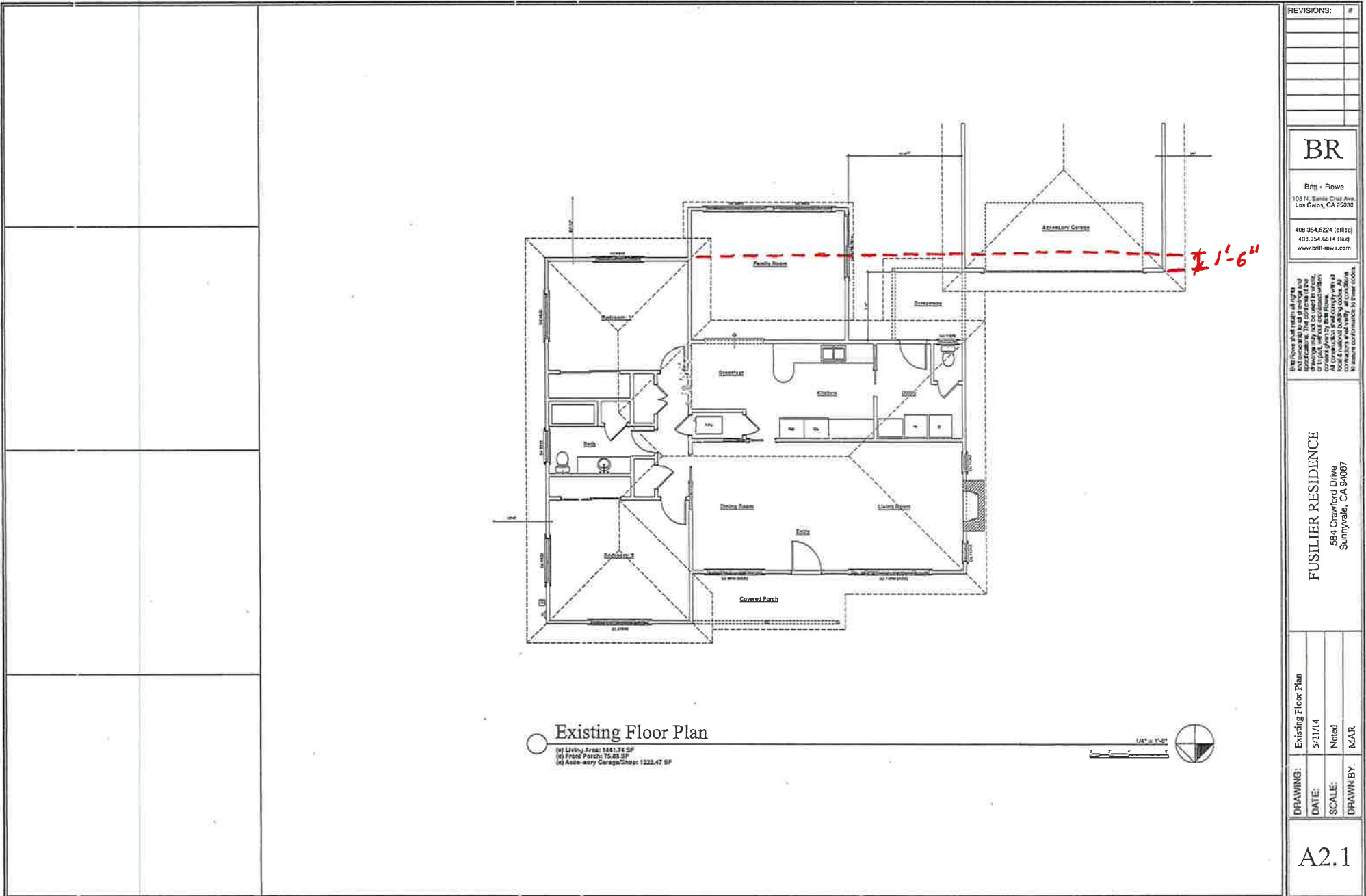
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FUSILIER RESIDENCE
584 Crawford Drive
Sunnyvale, CA 94087

DRAWING:	New Floor Plan
DATE:	5/21/14
SCALE:	Noted
DRAWN BY:	MAR

A3.1



**FLOOR PLAN EXISTING
A-D**





A-2



A-3

A-4



Google Maps

666 Princeton Dr
version 161209 picture

*666 PRINCETON
EXPANSION OF HOUSE*



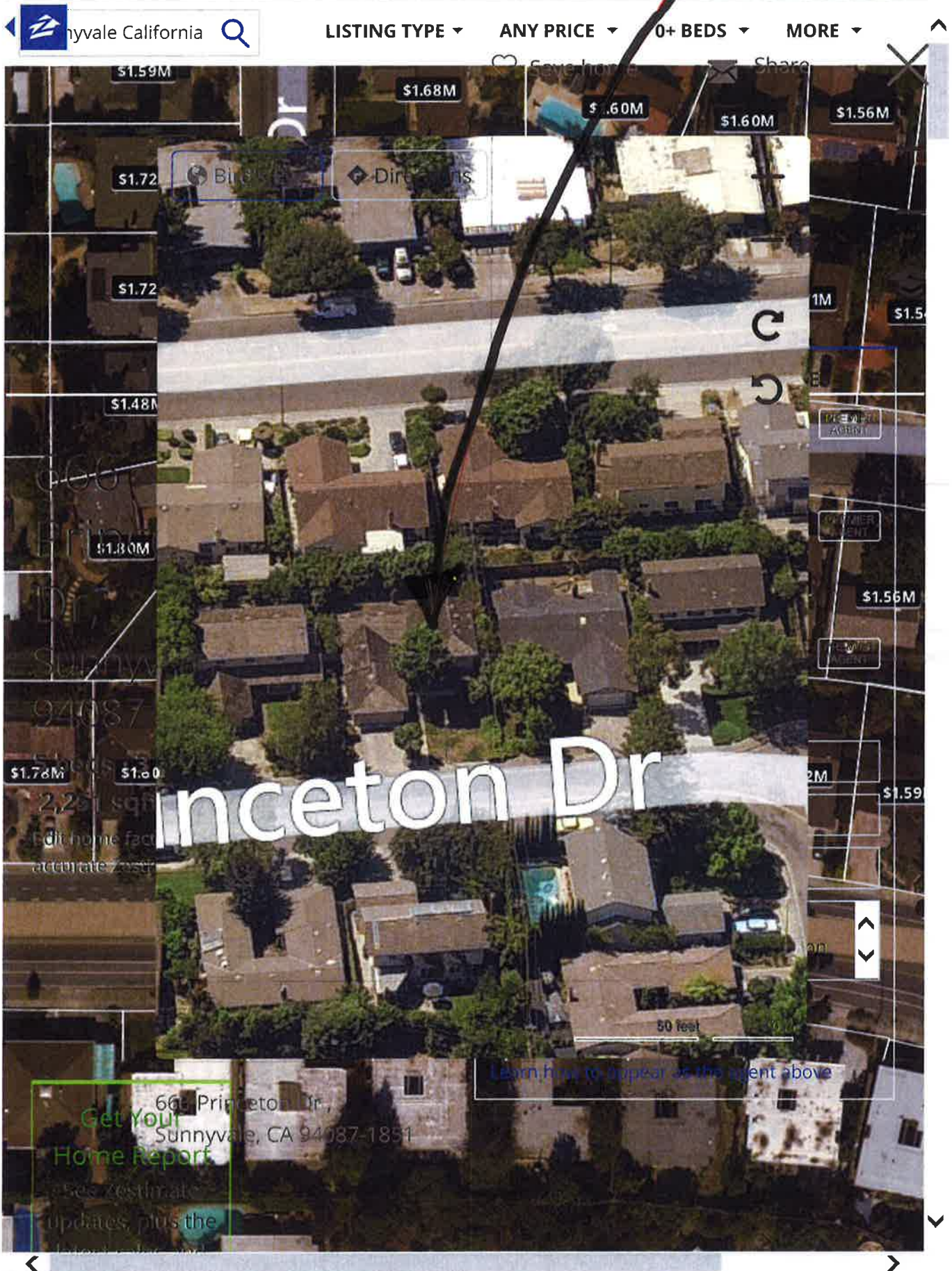
Imagery ©2016 Google, Map data ©2016 Google 20 ft



666 Princeton Dr
Sunnyvale, CA 94087



A-6







B-2

