



Venice Neighborhood Council

LAND USE AND PLANNING COMMITTEE
PO Box 550, Venice, CA 90294 | www.VeniceNC.org
Email: Chair-LUPC@VeniceNC.org



Land Use & Planning Committee (LUPC)

STAFF REPORT

May 19, 2026

City Case No: [DIR-2026-903-CDP-ADJ-MEL-SPPC](#)

CEQA Case No: ENV-2026-904-CE

Related City Case No(s): n/a

Address of Project: 1231 Abbot Kinney Blvd

Applicant/Property Owner: 1231 Abbot LLC and 1231 AK BC LLC

Applicant's Representative: Jimmy Toetz. Crest Real Estate

Standard of Review: Coastal Act, with certified Land Use Plan (LUP) as guidance (for CDPs)
Venice Community Plan
Other applicable State laws: Assembly Bill 2097, Mello Act, Density Bonus law
Other applicable City laws: Conditional Use (CU), Al Fresco Dining, Zoning Administrator Adjustment (ZAA), Adjustment (ADJ), Specific Plan Project Permit Compliance (SPPC), Specific Plan Exception (SPPE)

Coastal Zone: Single Permit Jurisdiction Coastal Zone

City Hearing: Not yet scheduled

Email for City Planner: Ira.Brown@lacity.org

LUPC Staff assigned: Mark Mack

I. Detailed Project Description:

Demo of existing 1,350 SF SFD (built in 1910) (on ZIMAS as Residential – Single Family Residence) & detached garage & construction of a 2-story mixed-use building with 2,830 SF of ground floor retail & a 1,496 SF live/work unit on the 2nd floor, for a total of 4,326 SF, with an 888 sf rooftop deck, with no parking provided. Adjustment (ADJ) requested for 0' side yard to permit a new 2nd floor residential access stair in the east side yard setback. Total lot area is 3,405.1 sf and the property is zoned C2-1-O-CA.

II. Motion:

The Venice Neighborhood Council recommends denial of the project at 1231 Abbot Kinney Blvd.

Moved by Mark Mack, Seconded by Gabriel Ruspini

Vote: 8-0-0 (1 absent)

LUPC suggestions for follow up (can be part of motion)

III. Pros & Cons of Project:

Positive aspects of project:

The project would create a use that is consistent with the character of Abbott Kinney Blvd as a mixed use environment. It would continue the retail on the street level with a housing unit on the second floor. However, the requirement of the Mello Act to maintain residential structures in the Coastal Zone overrides the desire of many owners and operators to convert their residential structures to commercial use or commercial-residential mixed use. This section of Abbot Kinney is zoned commercial and is a mixed-use street that includes commercial buildings, residential buildings, and commercial-residential mixed use buildings, similar to Rose Ave and Ocean Front Walk. The residential buildings on Abbot Kinney Blvd are allowed by the zone and are protected by the Mello Act to prevent them from being commercialized and to maintain affordable units.

Negative aspects of project:

The main reason for our recommendation for denial of the project and the overriding problem is that a commercial-residential mixed-use project cannot be allowed to replace a residential structure as per the state Mello Act law (see section V.D. below). The project entails a demolition of an existing single-family residential structure and proposes a predominantly commercial use of the building. The Mello Act prohibits the demolition or conversion of residential structures for non-residential use unless the City first finds, based on evidence, that residential use is no longer feasible at that location. No such finding has been made, and nothing suggests residential use is infeasible. The existing building is legally permitted as residential and as it is in the Coastal Zone it is protected by the Mello Act, regardless of the underlying commercial zoning. The building may have been used for other unpermitted uses, but a prior or current unpermitted use is irrelevant for purposes of the Mello Act Compliance Review, which is done in conjunction with the CDP determination and is appealable. In this case, any redevelopment must maintain the 100% residential structure, in compliance with the Mello Act state law. Coastal housing cannot be lawfully converted into more lucrative mixed use commercial space. The project must be changed to a 100% residential project.

Also, the cumulative impact of commercializing the Coastal Zone's housing by demolishing two existing residential structures on the same block (1209 Abbot Kinney Blvd and 1231 Abbot Kinney Blvd) and converting them to commercial-residential mixed use significantly magnifies this issue. Over the years there have been a few properties that have done this and gotten away with it but that is only due to confusion and/or errors by the City. The City attempted to change the law to allow demolition of a residential structure for purposes of a mixed use project in the draft of the City's Mello

Act Ordinance (see detailed explanation in V.D. below), but that draft Mello Act ordinance was never approved and thus that change was not made. Therefore, demolition of a residential structure for purposes of a commercial-residential mixed use project is still not allowed by either the Mello Act state law or the City's Interim Administrative Procedures for the Complying With the Mello Act.

See Interim Administrative Procedures for Complying with the Mello Act in the Coastal Zone Portions of the City of Los Angeles in Supporting Documents.

In addition, one of the overarching goals of the City is to increase housing, not reduce it. Not only because of the Mello Act requirement to keep the structure 100% residential (see Section V.D. above) but also due to the housing crisis that L.A. and the state are experiencing, a project to commercialize what is now a residential structure must not be allowed.

The following points are additional reasons for denial other than the Mello Act violation:

The project provides no parking for either the retail or the housing portions of the project, whereas previous permitted projects for mixed use and live/work required parking that is in most cases accessible from the rear through an alley.

The project provides a housing unit on the second floor that would be separately accessed via a side yard stairway from Abbot Kinney Blvd. The same stairway also accesses a live/work office area facing Abbot Kinney Blvd.

The project also has an extremely large roof deck, 888 sf, with no indication of who/which use will have access to that roof top use.

The project requests setback relief for the easterly part of the property to enclose the staircase to the second floor.

The project maximizes retail use, lot line to lot line, without providing anything back to the public right-of-way or open space. While commercial utilization does not require open space benefits for the public, doing so is in the interest of making Abbot Kinney Blvd a more pedestrian and greener boulevard in the future. A bigger front set back could provide shade trees and a permeable surface for better rainwater management.

The project could provide more needed housing by turning the work office space into another dwelling unit.

Overall, the project does not enhance the unique character of Venice and Abbot Kinney Blvd as a one of a kind place and in fact could degrade it as the historic status of the building and the historic status of this section of Abbot Kinney Blvd were not considered, as required by certified Land Use Plan Policy I.F.1. (see Section V.A.5. below). New development in this special area shall have unique architectural character that further contributes to this uniqueness. This project offers a very bland cookie cutter retail/residential space. Furthermore, compared to similar live/work buildings on the street that have been recently created, this project lacks any innovation of the live/work and mixed use typology, offers no interesting architectural features and lacks sustainable and green contributions to the immediate neighborhood.

The project reduces the square footage allocated to housing.

As a commercial-residential mixed-use project, the following should be considered: 1) setback relief, 2) alternative parking accommodations or a contribution to the in lieu fee parking fund, 3) addition of publicly accessible space on Abbot Kinney, a larger sidewalk, 4) green elements and permeable surfacing, 5) rainwater management, 6) no rooftop use on top of second floor due to residential buildings abutting to the north, and 7) an additional residential unit.

Lastly, the “previous actions in the community plan area” provided by the applicant are not relevant. Both 1319 Abbot Kinney Blvd and 1311 Abbot Kinney Blvd were already mixed use structures and did not involve demolition of a residential structure; thus, there is no Mello Act violation. 1132 Abbot Kinney Blvd was approved in error, before several Mello Act violations were identified by the community and the West Los Angeles Area Planning Commission and procedures corrected. The Mello Act Compliance Review findings in that determination omitted consideration of Rule 1 that existing residential structures shall be maintained unless the local jurisdiction finds that residential uses are no longer feasible and only considered Rules 2 and 3. See summary of Mello Act requirements at section V.D. below, on page 9.

IV. Neighborhood Outreach/Summary of Community Input:

Describe neighborhood outreach by Applicant’s Representative and by LUPC Staff Member, in detail.

No outreach is evident

Summary of Community Input

Favorable comments from Neighbors:

None recorded so far

Concerns expressed by Neighbors:

None recorded so far

Suggestions from Neighbors:

None

V. Findings re. Entitlements:

For your use in determining the entitlements, here is the link to the City Planning Prefix (approving entity) and Suffix (entitlements) Report where you can look up the City Case No.

coding abbreviations:

<https://planning.lacity.gov/resources/prefix-suffix-report>

A. Coastal Development Permit (CDP) – Coastal Act & certified Land Use Plan (LUP) are the standard of review

1. Parking/Coastal Access – Assembly Bill 2097 must also be considered in the standard of review

Coastal Act section 30252 states:

The location and amount of new development should maintain and enhance public access to the coast by:

1. facilitating the provision or extension of transit service
2. providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads
3. providing non-automobile circulation within the development
- 4. providing adequate parking facilities or providing substitute means of serving the development with public transportation**

Insert applicable LUP policies from Policy Group II Shoreline Access of the LUP and analyze compliance.

The property falls within the AB 2097 entitlement area (purple shading):



The project does *not* conform with Coastal Act section 30252 “providing adequate parking facilities or providing substitute means of serving the development with public transportation”; however, as it is in the AB 2097 entitlement area this does not prevent the issuance of a CDP.

2. **Scenic and Visual Qualities**

Coastal Act section 30251 Scenic and visual qualities states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

Insert applicable LUP policies and development standards from Policy Group I Locating and Planning New Development/Coastal Visual Resources and Special Communities and analyze compliance.

The project conforms with the Coastal Act and LUP policies for Scenic and Visual Qualities because the building appears to be compatible with other surrounding structures.

3. **Environmental Justice Policy (if applicable)**

The Coastal Commission’s Environmental Justice Policy states:

The Commission recognizes that the elimination of affordable residential neighborhoods has pushed low-income Californians and communities of color further from the coast, limiting access for communities already facing disparities with respect to coastal access and may contribute to an increase in individuals experiencing homelessness.

Coastal Act section 30604(f) states:

The Commission shall encourage housing opportunities for persons of low and moderate income.

Coastal Act section 30604(g) states:

The legislature finds and declares that it is important for the Commission to encourage the protection of existing and the provision of new affordable housing opportunities for persons of low and moderate income in the coastal zone.

Coastal Act section 30116 states:

Sensitive coastal resource areas" means those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity. "Sensitive coastal resource areas" include... areas that provide existing coastal housing or recreational opportunities for low- and moderate-income persons. (Emphasis added)

The project violates the Coastal Act's Environmental Justice Policies as it violates the Mello Act state law and the City's Interim Administrative Procedures for the Complying With the Mello Act and reduces housing opportunities in the Coastal Zone.

4. Cumulative Effect

Coastal Act section 30250 (a) states:

New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources...

The project is very likely to create an adverse cumulative effect and an adverse precedent for other similar projects because it violates important Coastal Act policies. It would have a classic adverse cumulative effect of a reduction in housing and commercialization of housing because two properties on the same block, 1209 Abbot Kinney Blvd and 1231 Abbot Kinney Blvd, are residential structures being converted to commercial mixed use projects, in violation of the state Mello Act law, the City's Interim Administrative Procedures for the Complying With the Mello Act, as well as the Coastal Act's Environmental Justice Policies.

5. Protection of Special Coastal Communities

Coastal Act section 30253(e) states:

*New development shall do all of the following...(e) Where appropriate, protect special communities and neighborhoods that, **because of their unique characteristics, are popular visitor destination points for recreational uses.***

LUP Policy Preservation of Venice as a Special Coastal Community states:

Policy I. E. 1. General. ***Venice's unique social and architectural diversity should be protected as a Special Coastal Community*** pursuant to Chapter 3 of the California Coastal Act of 1976.

Policy I. E. 2. Scale. *New development within the Venice Coastal Zone shall respect the scale and character of community development. Buildings which are of a scale compatible with the community (with respect to bulk, height, buffer and setback) shall be encouraged. All new development and renovations should respect the scale, massing, and landscape of existing residential neighborhoods. Lot consolidations shall be restricted to protect the scale of existing neighborhoods. **Roof access structures shall be limited to the minimum size necessary to reduce visual impacts while providing access for fire safety. In visually sensitive areas, roof access structures shall be set back from public recreation areas, public walkways, and all water areas so that the roof access structure does not result in a visible increase in bulk or height of the roof line as seen from a public** recreation area, public walkway, or water area. No roof access structure shall exceed the height limit by more than ten (10') feet. Roof deck enclosures (e.g. railings and parapet walls) shall not exceed the height limit by more than 42 inches and shall be constructed of railings or transparent materials. Notwithstanding other policies of this LUP, chimneys, exhaust ducts, ventilation shafts and other similar devices essential for building function may exceed the specified height limit in a residential zone by five feet.*

Policy I. E. 3. Architecture. **Varied styles of architecture are encouraged with building facades which incorporate varied planes and textures while maintaining the neighborhood scale and massing.**

The proposed project would *not* protect the Special Coastal Community status of Venice because it commercializes existing housing, negatively impacting the social diversity of Venice as a Special Coastal Community, a Coastal Resource to be protected as per the Coastal Commission in all of its prior CDP determinations.

Also, the structure was built in 1910 and, as such, should be analyzed for its historic status, but it was not.

In addition, LUP Policy I.F.1. Historic and Cultural Resources states: *The historical, architectural and cultural character of structures and landmarks in Venice should be identified, protected and restored where appropriate, in accordance with historical preservation guidelines. The following buildings, streets, and trees have been identified through the coordinated efforts of surveys performed by the Venice Historical Society, Venice Community, State Coastal Conservancy and City of Los Angeles as significant architectural, historical and cultural landmarks in the Venice Coastal Zone....**Abbot Kinney Boulevard between Venice Boulevard and Brooks...***

As per the certified LUP, the definition of Venice as a Special Coastal Community is:

An area recognized as an important visitor destination center on the coastline, characterized by a particular cultural, historical, or architectural heritage that is

distinctive, provides opportunities for pedestrian and bicycle access for visitors to the coast, and adds to the visual attractiveness of the coast.

The City and the Coastal Commission designated Venice as a Special Coastal Community, a designation applicable to very few areas of the entire California Coastal Zone. This designation is based on the definition above, for which Venice's historic and architectural heritage is key. Thus, to the extent historic resources are not protected, Venice's status as a Special Coastal Community is degraded.

B. Density Bonus Act (DB): not applicable

C. Conditional Use (CU) cite LAMC CU Section: not applicable

D. Mello Act (MEL)(if applicable)

As per ZIMAS, the permitted use for the existing structure is "Residential – single-family residence," built in 1910:

Use Code:	0100 - Residential - Single Family Residence
Assessed Land Val.:	\$1,942,868
Assessed Improvement Val.:	\$203,584
Last Owner Change:	09/11/2025
Last Sale Amount:	\$4,250,000
Tax Rate Area:	67
Deed Ref No. (City Clerk):	2192389
Deed Ref No. (City Clerk):	1662584
Deed Ref No. (City Clerk):	0830798
Deed Ref No. (City Clerk):	0626880
Deed Ref No. (City Clerk):	0043972
Deed Ref No. (City Clerk):	0-253
Building 1	
Year Built:	1910
Building Class:	DSA
Number of Units:	1
Number of Bedrooms:	3
Number of Bathrooms:	1
Building Square Footage:	1,350.0 (sq ft)

This project violates the Mello Act (Gov. Code §§65590–65590.1). The Mello Act state law protects housing in the Coastal Zone. The purpose of the Mello Act is three-fold: to maintain existing residential structures, to protect existing affordable units, and to provide new affordable housing in new developments.

The Mello Act law states:

“The conversion or demolition of any residential structure for purposes of a nonresidential use which is not coastal dependent...shall not be authorized unless the local government has first determined that a residential use is no longer feasible in that location.”

The statute flatly prohibits demolishing or converting an existing residential structure to a non-residential use that is not coastal-dependent unless the local government first determines, based on evidence, that residential use is no longer feasible at that location. No such feasibility finding has been made here, and the facts show the opposite:

- The legal, permitted use of the existing structure is residential.

- The structure is functional residential housing in an area with other residential housing.
- Nothing in the record shows that continued residential use is infeasible – only that the applicant prefers a more lucrative commercial/mixed-use project.

The legal, permitted use for the existing structures is residential; thus, the residential structure is protected by the Mello Act regardless of the underlying zoning designation, and any project for this property must be residential use only. The Mello Act state law does not distinguish between zones, it protects all residential structures and affordable units, regardless of what zone they are in. The project cannot be approved as a mixed-use project that converts coastal housing into any portion of commercial space.

The Mello Act was enacted to prevent exactly this pattern – the erosion of coastal housing stock, especially lower-cost units, in favor of high-profit commercial uses, just like this project. Approving this project would defeat the very purpose of the statute and would be inconsistent with both state law and the City’s own Mello Act implementation procedures, the Interim Administrative Procedures for complying with the Mello Act (IAP). The following is an excerpt from the IAP, showing an overview of the Mello Act and clearly indicating that the key threshold requirement is that residential structures be maintained:

1.3. OVERVIEW OF THE MELLO ACT

The Mello Act was adopted by the State Legislature in 1982. The Act sets forth requirements concerning the demolition, conversion and construction of housing within California’s Coastal Zone. Each local jurisdiction shall enforce three basic rules:

- Rule 1. Existing residential structures shall be maintained, unless the local jurisdiction finds that residential uses are no longer feasible. A local jurisdiction may not approve the Demolition or Conversion of residential structures for purposes of a non-Coastal-Dependent, non-residential use, unless it first finds that a residential use is no longer feasible at that location.
- Rule 2. Converted or demolished Residential Units occupied by Very Low, Low or Moderate Income persons or families shall be replaced. Converted or demolished Residential Units occupied by Very Low, Low or Moderate Income persons or families shall be replaced on a one-for-one basis.
- Rule 3. New Housing Developments shall provide Inclusionary Residential Units. If feasible, New Housing Developments shall provide Inclusionary Residential Units affordable to Very Low, Low or Moderate Income persons or families.

When discussing other cases, the applicant’s representative has indicated that they believe that because the City, in 2019, proposed a Mello Act ordinance that would have allowed demolition of a residential structure for purposes of a mixed use project if the project provided all required replacement affordable and inclusionary units, that they can do so with the proposed project. However, this provision would have constituted a change to the Mello Act law and the City’s Mello Act policy/procedure, the IAP, and the draft ordinance was never approved. The Council File (15-0129-S1) expired in November 2023 and in fact no effort has been made since then to resurrect this significant proposed change. Proposed new LAMC 12.21H.c.7.:

“Mixed Use Development. A proposed mixed use development may not result in a net reduction in the total number of existing Residential Units unless a residential use is no longer feasible. A mix of uses is permitted, so long as the structure provides all required Replacement Affordable and Inclusionary Units.”

The fact that City Planning was requesting this change in their draft of the Mello Act ordinance makes clear that it is not currently allowed; otherwise, they would not have wanted or needed to add this provision. The ordinance was never approved and thus the proposed change was not approved, and it is still not allowed. The City of Los Angeles operates on a prescriptive regulatory structure. Thus, especially for land use and zoning, if something is not explicitly allowed, it is generally prohibited.

See Attachment I for a May 4, 2021 letter from housing rights and environmental/land use attorney Venskus & Associates and the California Women's Law Center that explains why this proposed change to allow demolition of a residential structure for purposes of a commercial-residential mixed use project would be unlawful and could not have been lawfully approved. As stated in this letter:

"One of the main avenues the Mello Act proscribes for protecting residential housing is to limit the ability to convert existing residential structures to nonresidential uses. To allow such conversions would not only violate both the letter and the spirit of the Mello Act, but it would plainly threaten housing, by allowing its destruction for purposes of a more lucrative commercial use, including mixed use projects, thus displacing families and damaging coastal communities that are already holding on by a thread, exactly what the Mello Act was intended to prevent."

The Applicant's demolition of the existing residential structures for purposes of a non-residential mixed-use project is a violation of the Mello Act and the IAP, and thus this mixed-use project is a non-starter.

In addition, in its letter dated October 19, 2021 regarding the draft Mello Act ordinance, the Coastal Commission Staff stated:

"The mixed-use development policy outlined [in the draft Mello Act ordinance, proposed new LAMC 12.21.H.5.c.7] is therefore not consistent with the Mello Act, since it expands the definition of "residential structure" beyond the intent of the Mello Act. Commission staff is aware of several recent developments, especially in Venice, that have already incorporated draft language of this ordinance to justify approval of the demolition or conversion of residential properties for purposes of mixed-use properties along commercial corridors."

The City's Mello Act Compliance Review Determination must be included in the related discretionary permit, the Coastal Development Permit, and all three Mello Act requirements must be considered: whether existing residential structures are being replaced only with residential structures, whether existing affordable units are being replaced, and whether inclusionary affordable housing is being provided.

- E. **Housing Crisis Act (HCA):** not applicable
- F. **Priority Housing Program (PHP):** not applicable
- G. **Add any other applicable entitlements here, such as SPPE (Specific Plan Project Exception), ZAA (Zoning Administrator Adjustment), ADJ, etc.**

1. ADJ (Adjustment)

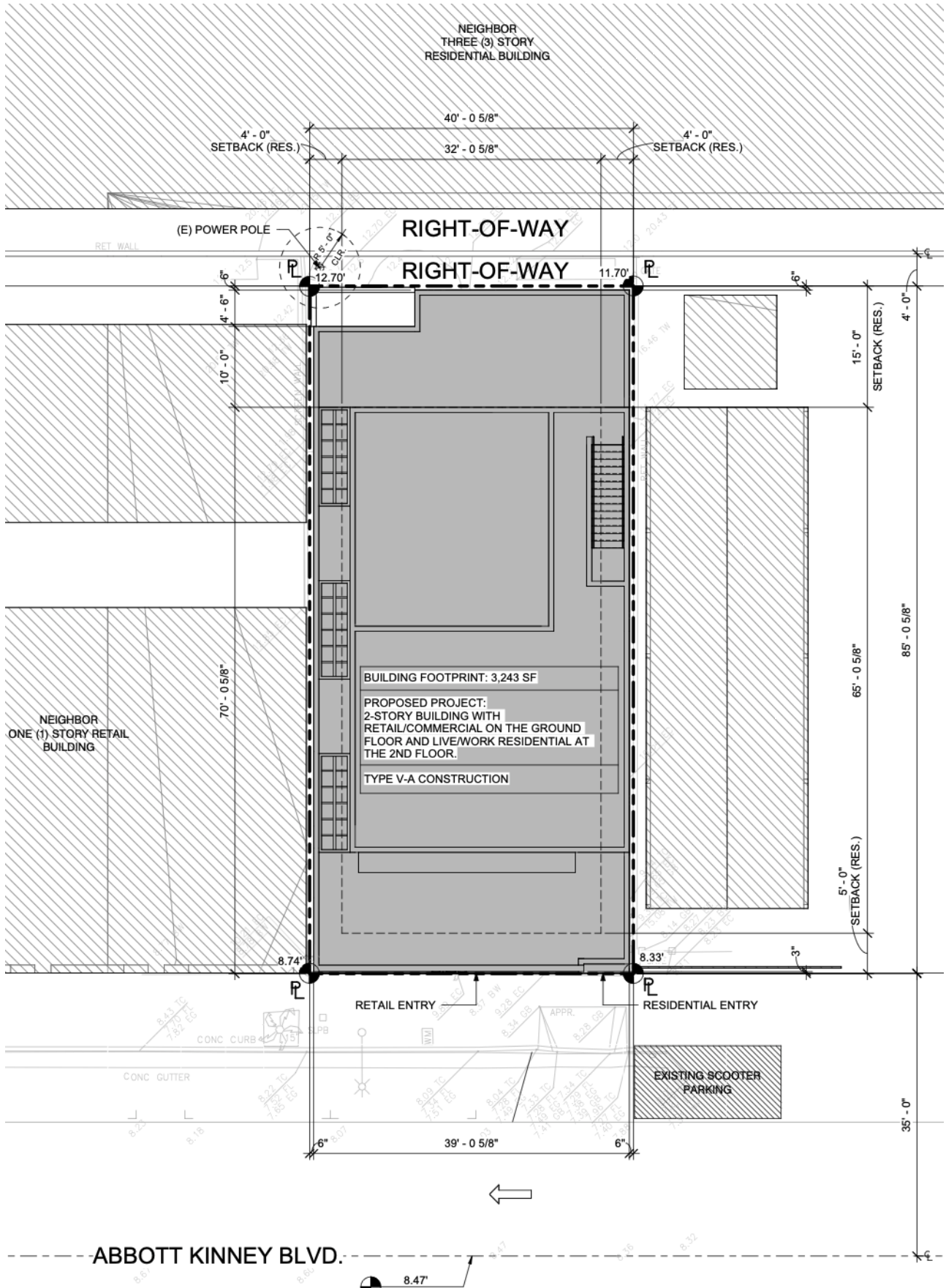
Relief is requested from LAMC 12.11.C.2 for a reduction to a 0' side yard setback along the east property line to allow for enclosed stairs, to provide access to the second floor live/work unit.

The findings for approval of an ADJ (adjustment) are in LAMC 12.28-A. Nothing in the applicant's proposed findings is evidence that site characteristics make strict adherence to the zoning regulations impractical or infeasible. As the applicant states in its proposed findings, the request "...allows for additional retail space for the neighborhood..." and states that the project is for the "...enjoyment of the property for the entire community by providing the additional retail space." On the contrary, the request appears to be a way to maximize square footage of the retail use of the building to maximize value for the applicant. It is not a necessity due to hardship or any site characteristic that makes compliance with the regulations impractical or infeasible. The statement in the applicant's findings that "...the proposed stairs will provide access to a residential unit that would otherwise have no access" is simply not true. As the stairs could be built within the building and not in the setback area. In addition, prior unpermitted commercial use at this property or any other surrounding property is not a special circumstance supporting this request.

VI. Existing structure:



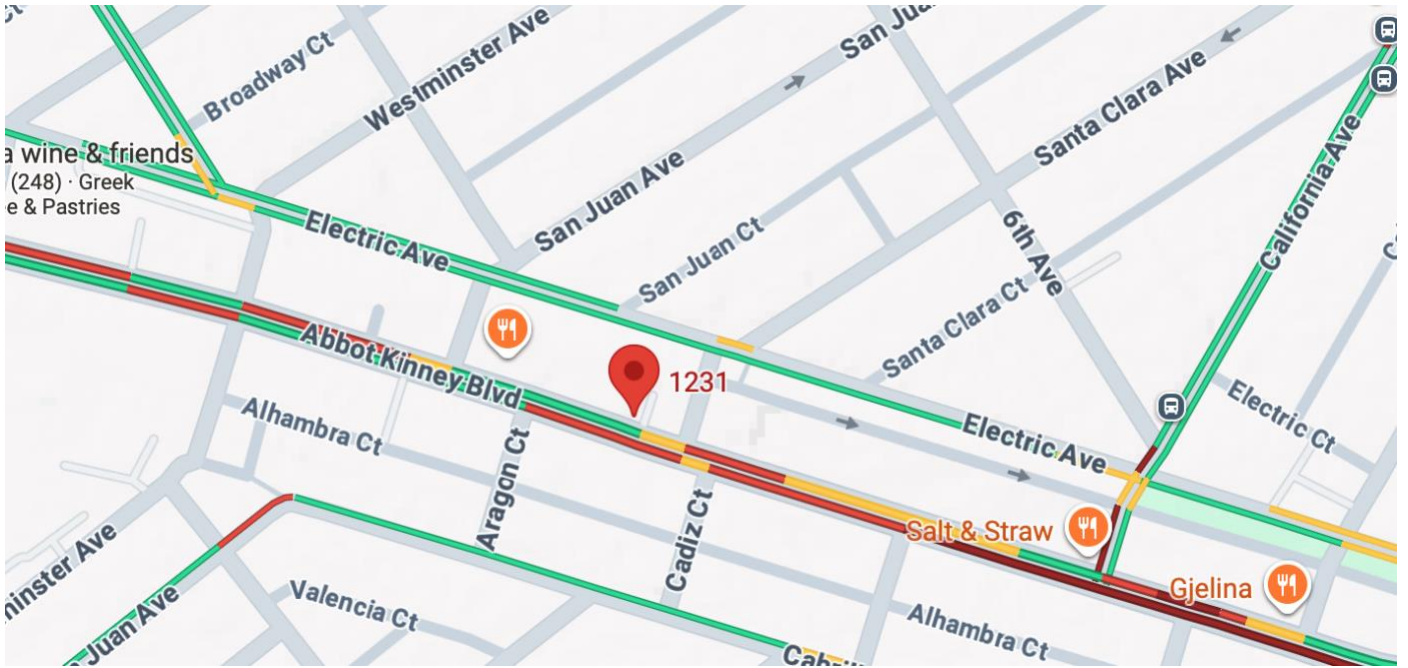
VII. Existing Site Plan:



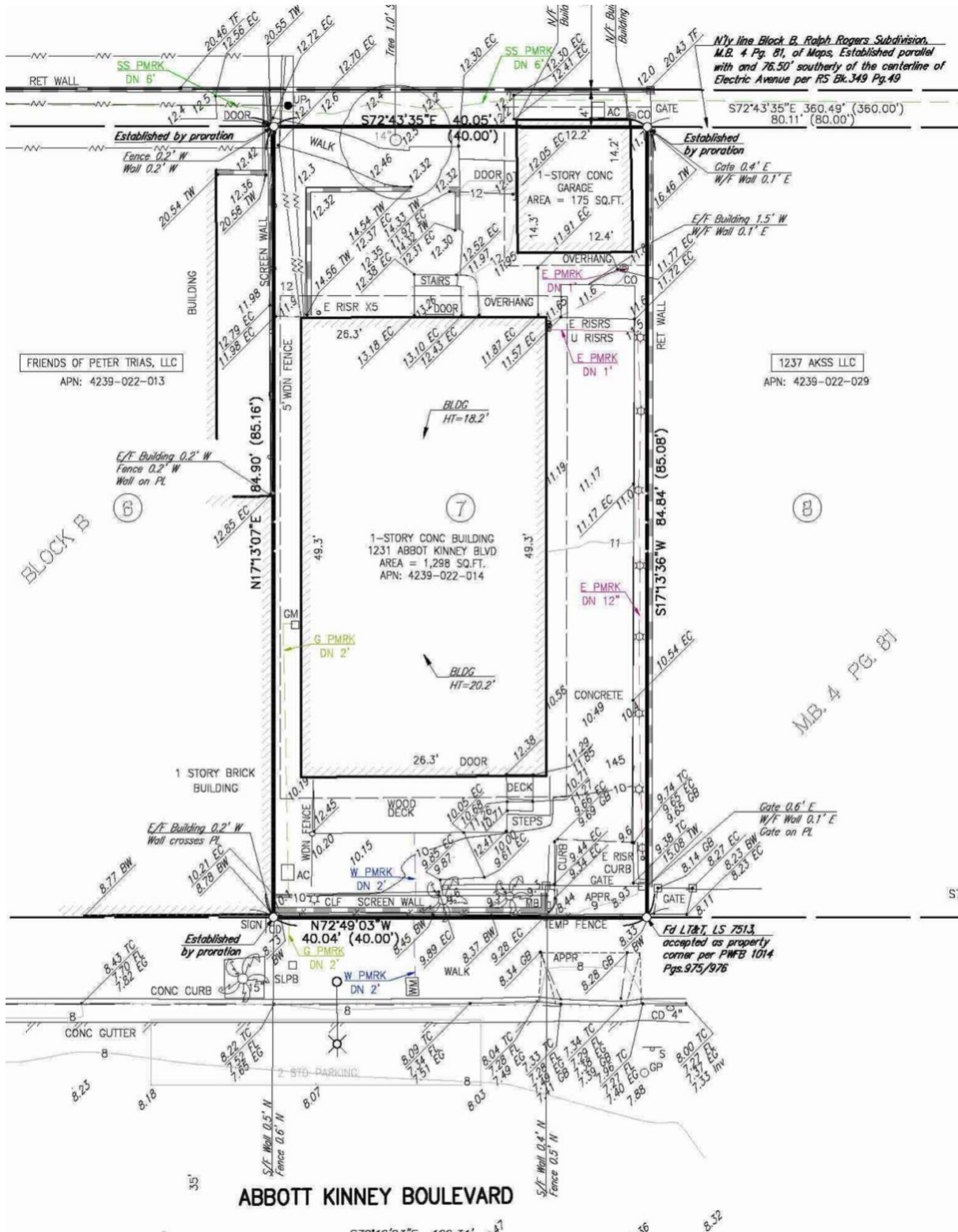
VIII. Rendering of proposed project:

None provided

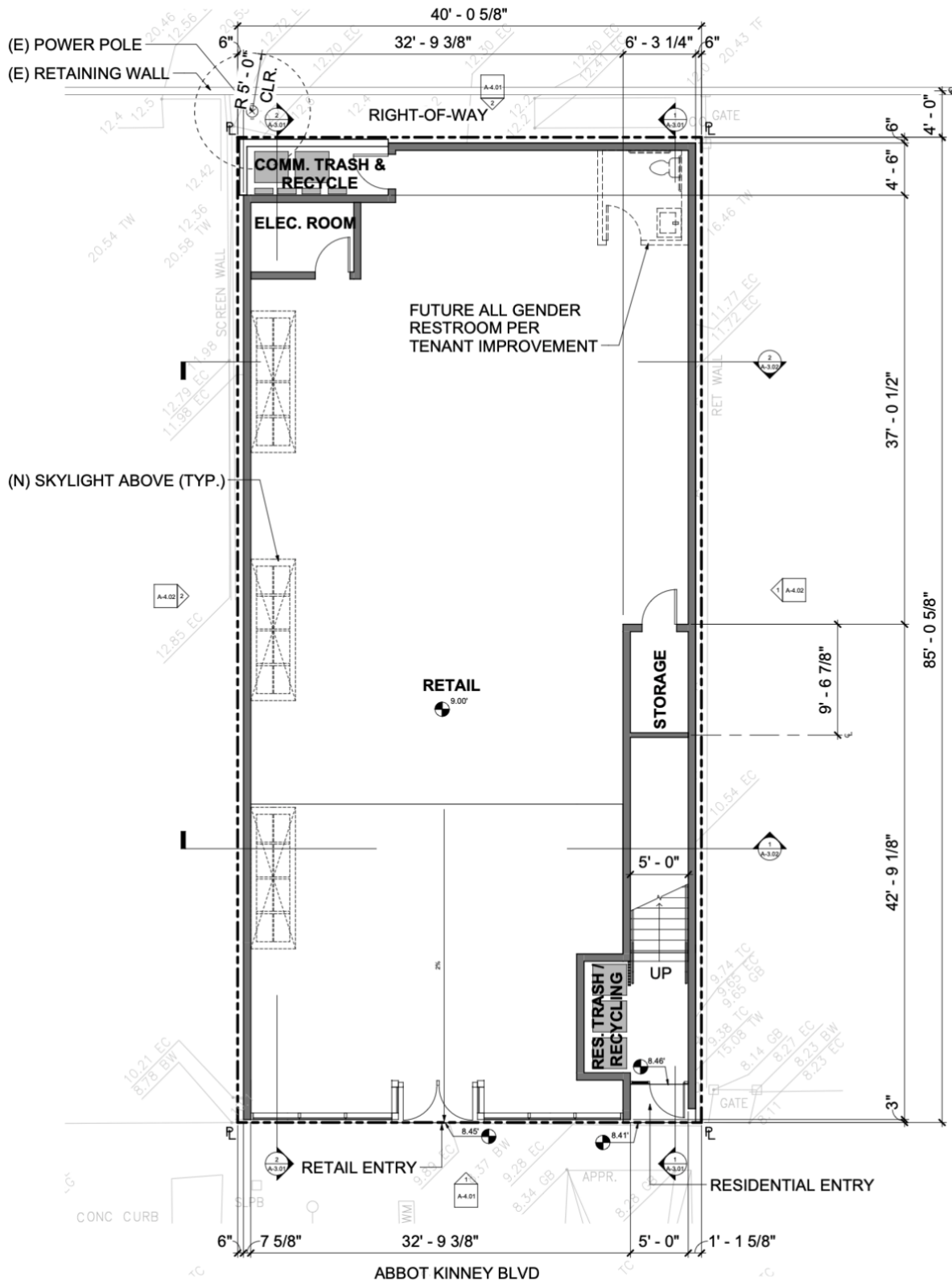
IX. Location:



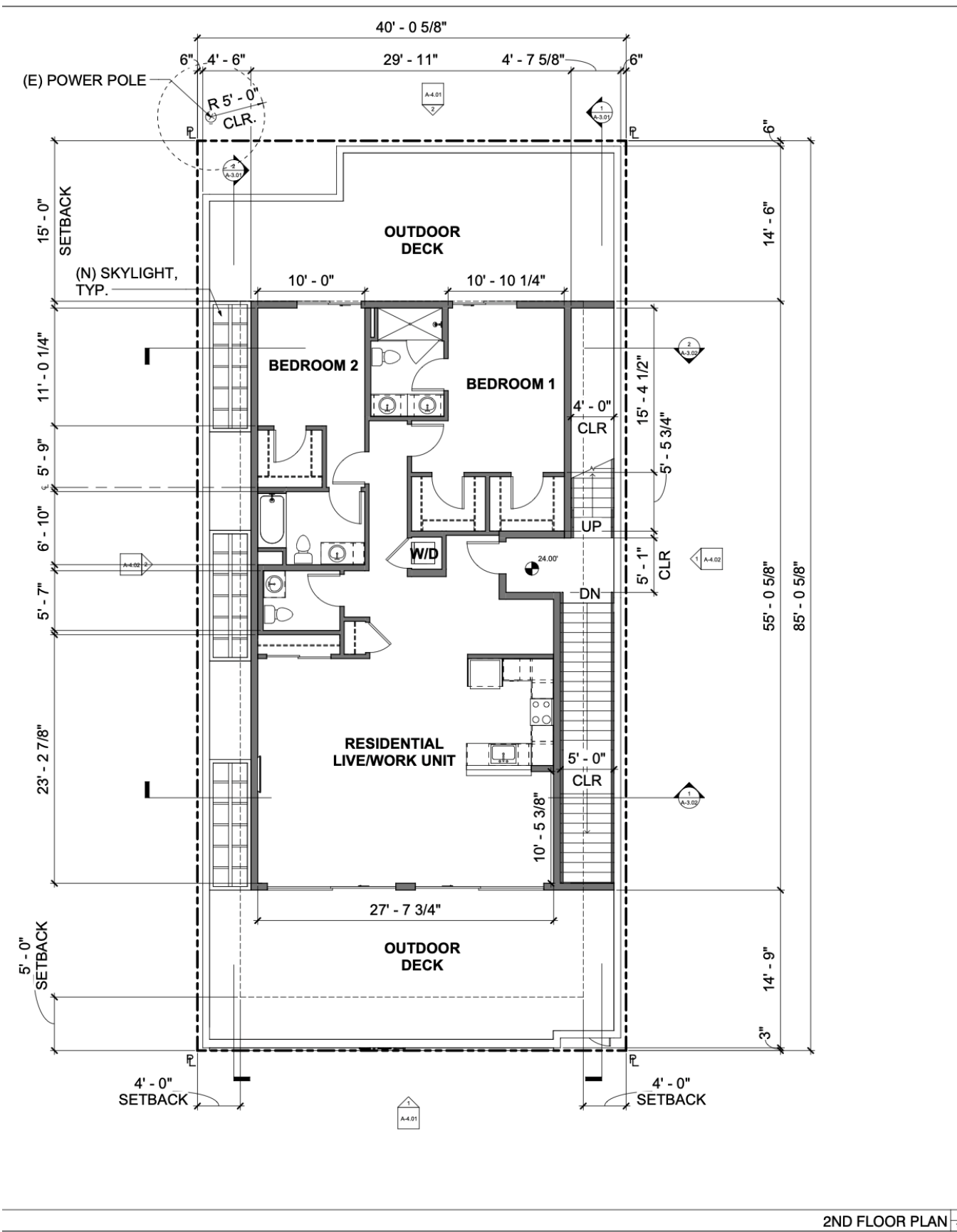
X. Survey:



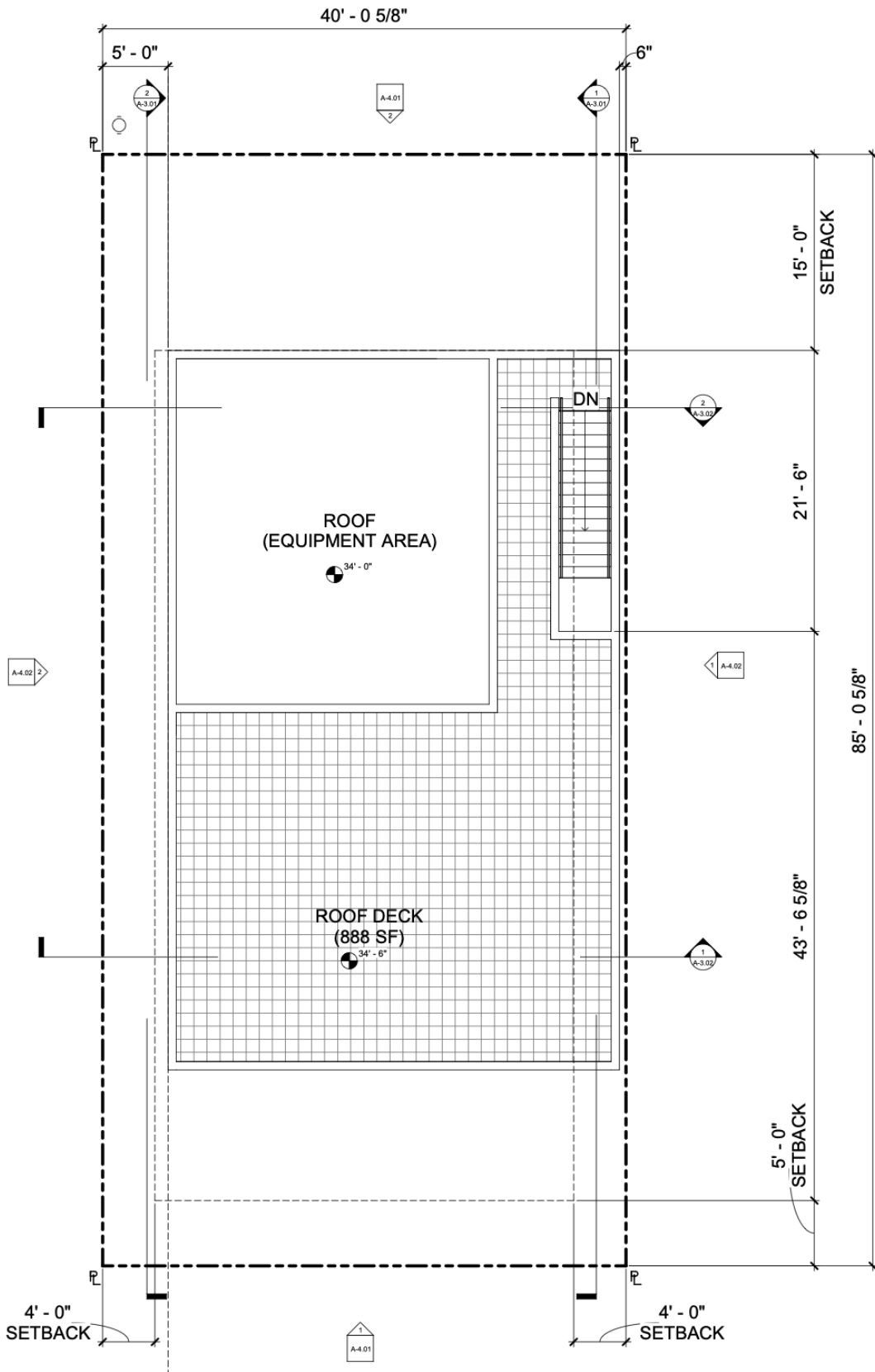
XI. Floor Plans:



1ST FLOOR / GROUND LEVEL FLOOR PLAN SCALE: 1/4" = 1'-0" (1)

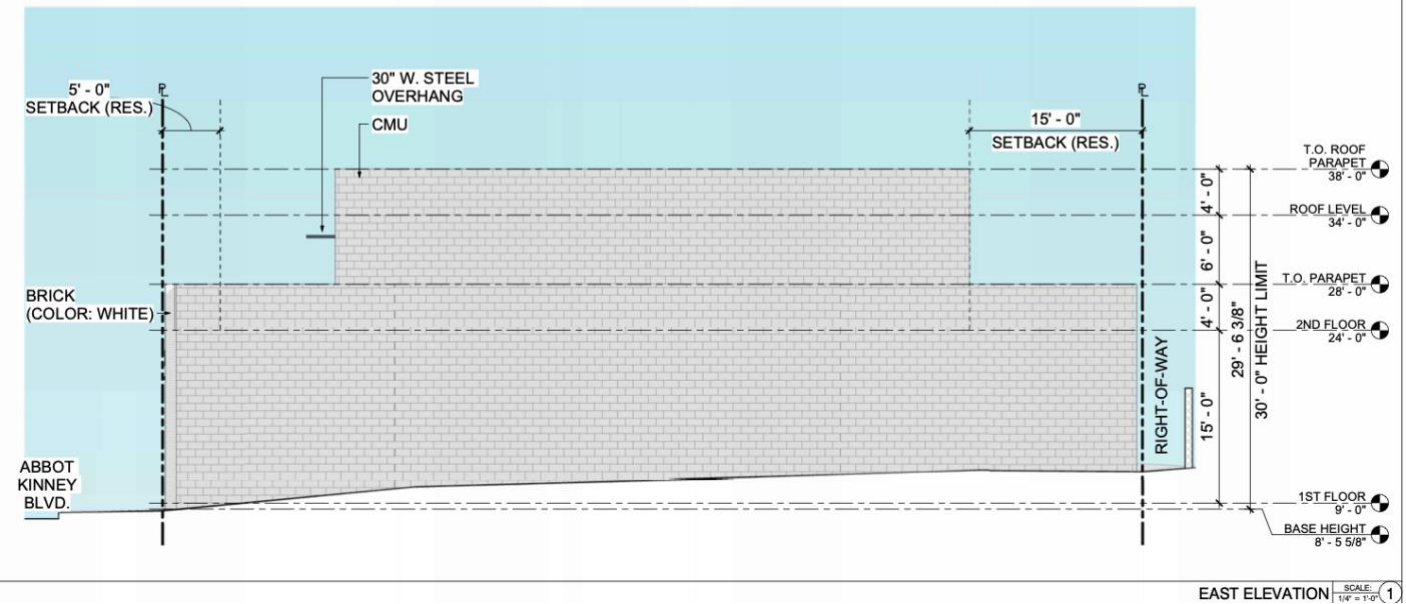
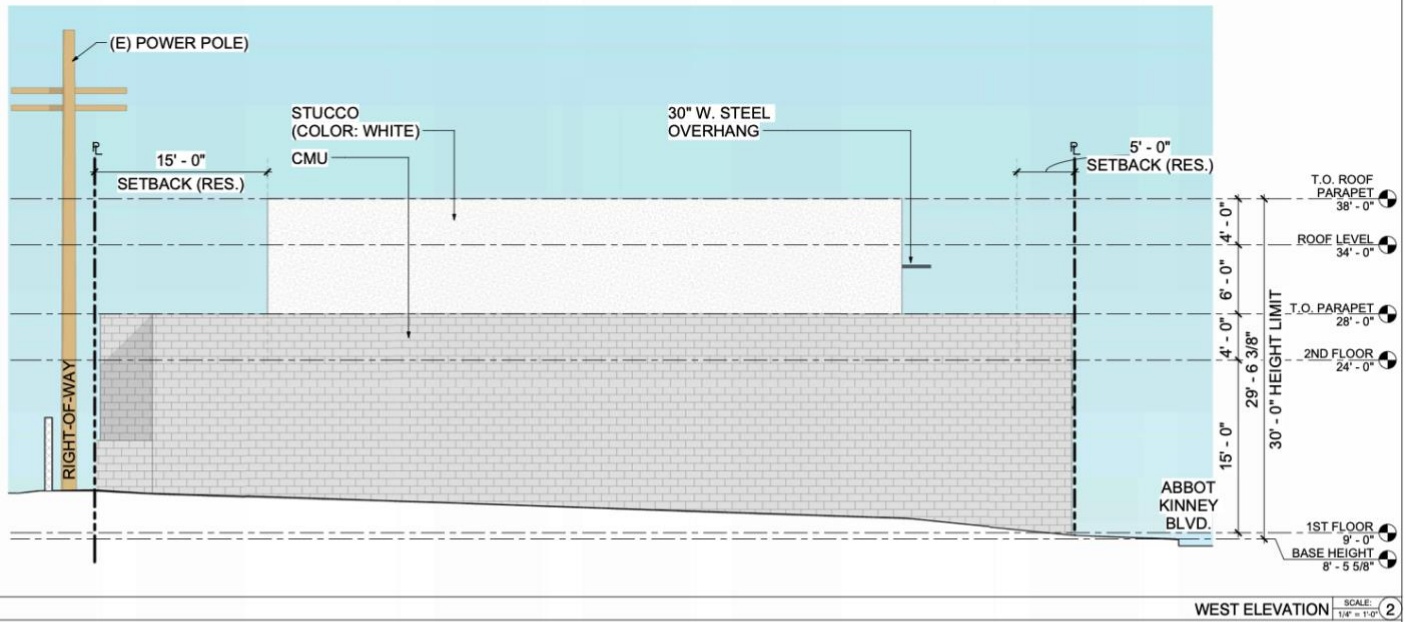


2ND FLOOR PLAN

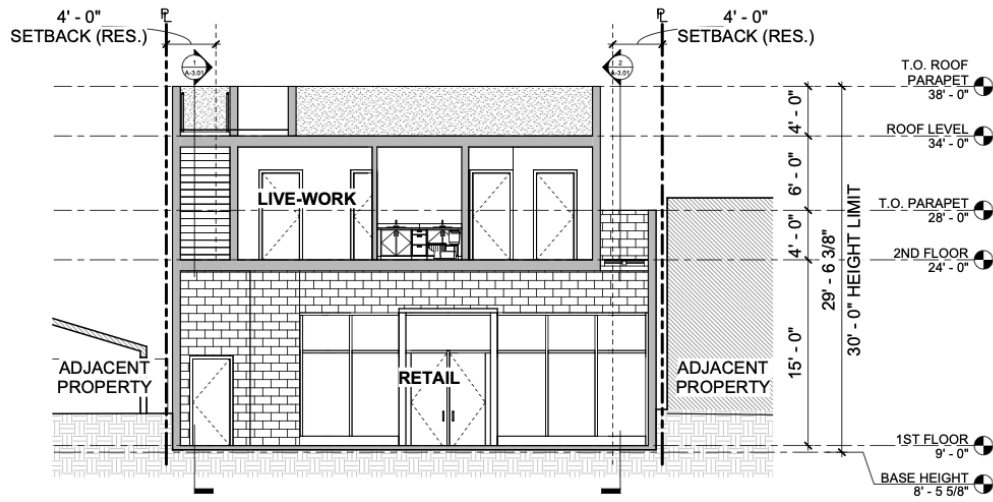


Elevations/Sections:

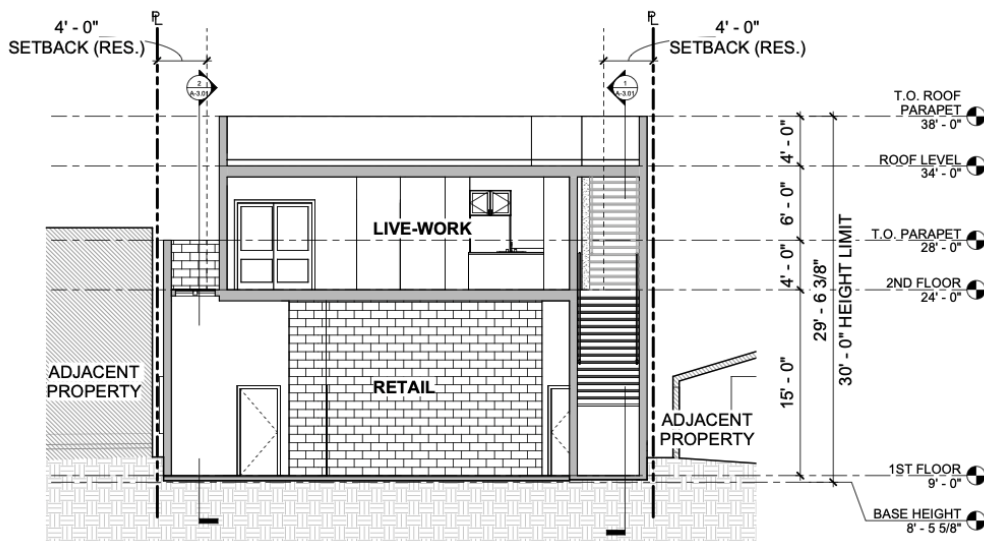
A. West and East elevations:



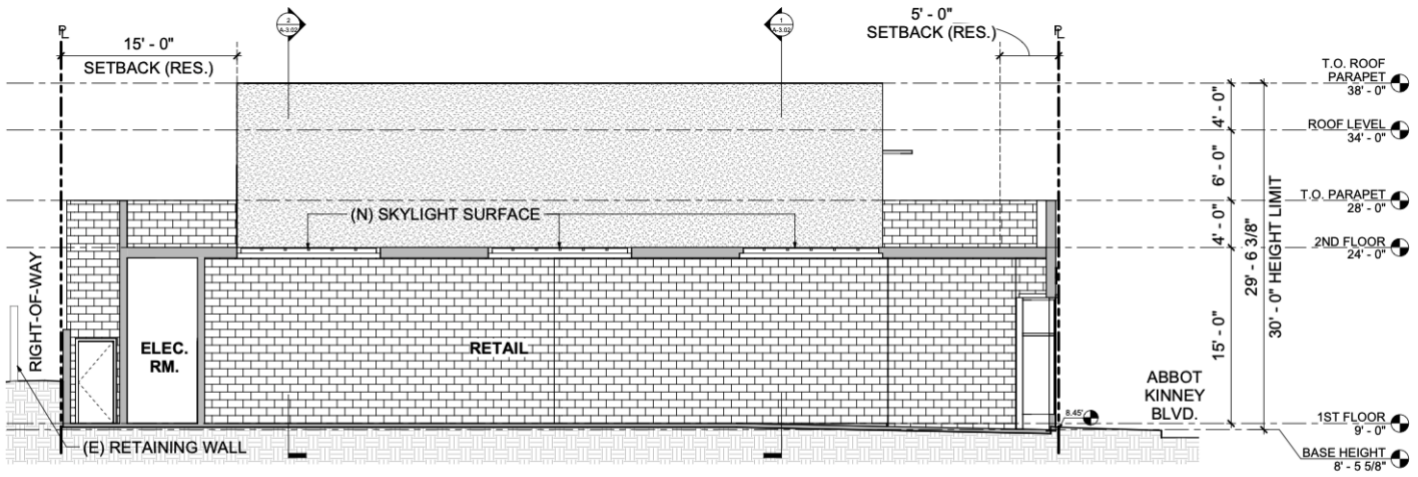
B. North & South Elevations



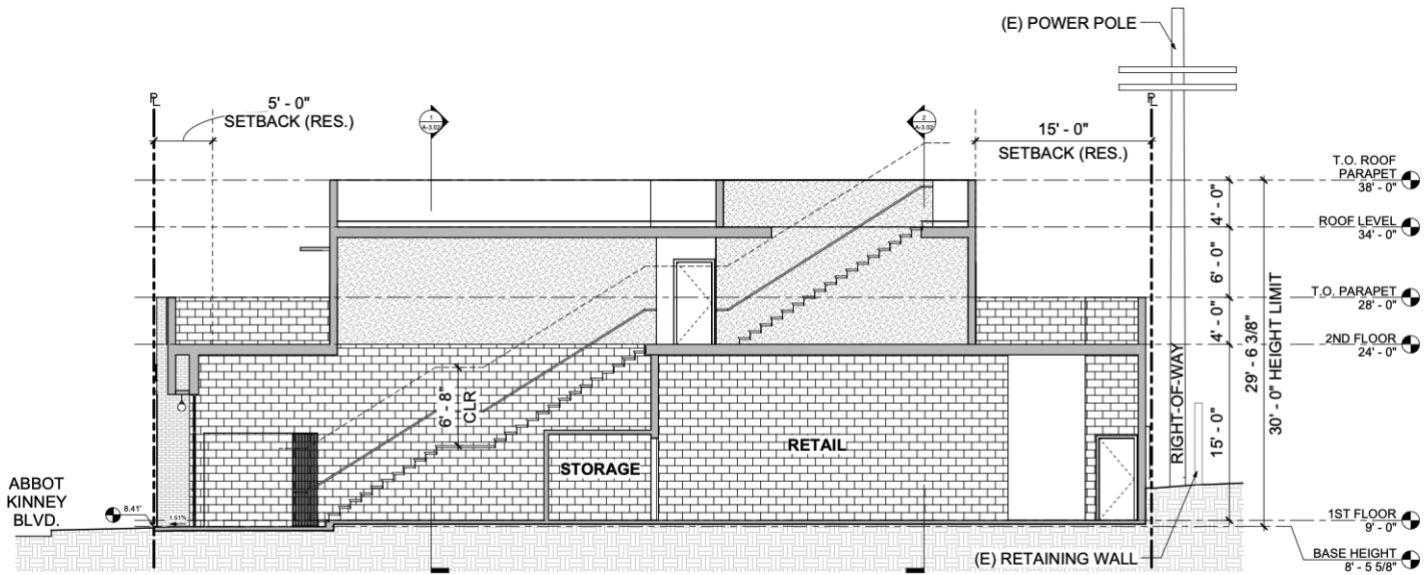
SECTION 4 SCALE: 1/4" = 1'-0"



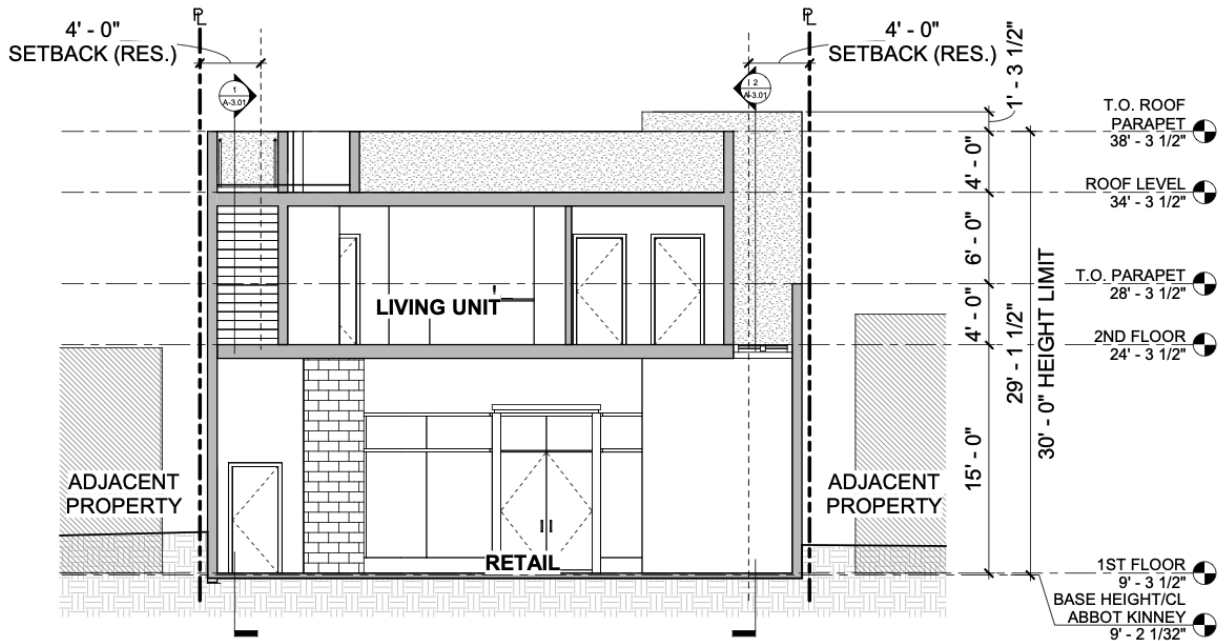
SECTION 3 SCALE: 1/4" = 1'-0"



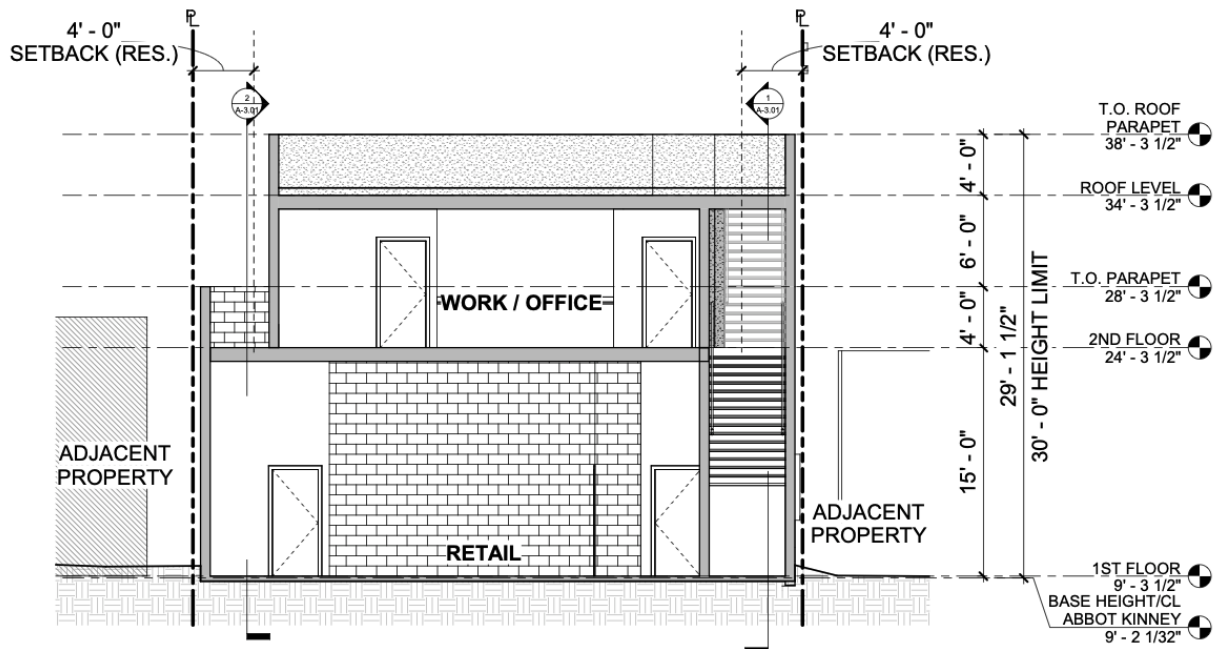
SECTION 2 SCALE: 1/4" = 1'-0" 2



SECTION 1 SCALE: 1/4" = 1'-0" 1



SECTION 4



SECTION 3

NOTE: Add or attach Applicant-drafted Findings, Streetscape, Character Study or Neighborhood Photos and Index Map, or other information included in the application that you consider significant and have included in your analysis.

ATTACHMENT I



May 4, 2021

CPC-2019-7393-CA
ENV-2019-7394-ND

Re: Mello Act Ordinance must not allow demolitions/conversion of residential structures for purposes of mixed-use projects

Dear Los Angeles City Planning Commissioners:

The California Women's Law Center ("CWLC") is a non-profit law and policy center whose mission is to create a more just and equitable society by breaking down barriers and advancing the potential of women and girls through transformative litigation, policy advocacy and education. We focus on addressing economic justice, gender discrimination, violence against women, and women's health.

Venskus & Associates, APC is a boutique law firm litigating in the areas of housing rights and environmental/land use. The law firm represents and advocates for traditionally under-represented plaintiffs, such as low-income tenants, community organizations and environmental groups.

We write to urge the Los Angeles City Planning Commission ("Planning Commission") to ensure that its proposed Mello Act Ordinance (CPC-2019-7393-CA) does not:

- exceed the City's jurisdiction by conflicting with, or changing the meaning of, state law;
- run afoul of the Settlement Agreement Concerning Implementation of the Mello Act in the Coastal Zones within the City of Los Angeles ("Settlement Agreement");
- establish a law that is weaker than the City of Los Angeles' ("City") Mello Act Interim Administrative Procedures ("IAP").

The Settlement Agreement provided that the City must adopt Interim and Permanent Ordinances to implement both the Mello Act and the provisions of the Agreement. In response, the City adopted the IAP in 2000. In 2015, the City Council requested that City Planning prepare a permanent ordinance, but one was not adopted at that time. In April 2019, the City Council directed the Planning and Housing Departments to prepare and present a permanent ordinance to implement the Mello Act. In December 2019, the City's proposed Mello Act Ordinance was released. On February 25, 2021, the Planning Commission reviewed the proposed ordinance, but the vote was continued to May 13, 2021.

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Adopting a permanent ordinance is an important step to protect housing stock including, specifically, affordable and Rent Stabilized (RSO) housing in the City's coastal zones, and to prevent displacement of people and communities. The ordinance must be in accordance with controlling state law and the Settlement Agreement. As currently proposed, the Mello Act Ordinance is not in accordance with controlling authority and thus exceeds the City's jurisdiction.

I. The purpose of the Mello Act is to preserve residential structures in the coastal zone, to protect existing affordable housing, and to provide new affordable housing

As stated in the IAP, under the Mello Act each local jurisdiction shall enforce three basic rules—

1. maintain existing residential structures,
2. replace converted or demolished affordable units
3. provide inclusionary residential units in new housing developments.

However, by adding clause 12.21.H.c.7. Mixed Use in the draft Mello Act Ordinance, the City is not honoring the first requirement, which states:

“Existing residential structures shall be maintained, unless the local jurisdiction finds that residential uses are no longer feasible.” (IAP pg. 7.)

California courts also have made clear that the Mello Act's purpose is to preserve housing in the Coastal Zone. The Court of Appeal stated that the purpose of the Mello Act is:

“to preserve residential units occupied by low or moderate-income persons or families in the coastal zone.”¹

The California Supreme Court similarly explained that:

“[t]he Mello Act supplements the housing elements law, establishing minimum requirements for housing within the coastal zone for persons and families of low or moderate income.”²

In fact, the Mello Act specifically mentions the housing elements state law, making it clear that the Mello Act is a law that protects housing for all income levels and certainly not one that would allow for non-residential uses. One of the main avenues the Mello Act proscribes for protecting residential housing is to limit the ability to convert existing residential structures to non-residential uses. To allow such conversions would not only violate both the letter and the spirit of the Mello Act, but it would plainly threaten housing, by allowing its destruction for purposes of a more lucrative commercial use, including mixed use projects, thus displacing families and damaging coastal communities that are already holding on by a thread—exactly what the Mello Act was intended to prevent.

¹ *Venice Town Council v. City of L.A.*, 47 Cal. App. 4th 1547, 1552-53 (1996).

² *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles*, 55 Cal. 4th 783, 798 (2012) (emphasis added).

The Mello Act states:

“The conversion or demolition of any **residential structure** for purposes of a nonresidential use which is not ‘coastal dependent,’ as defined in Section 30101 of the Public Resources Code, shall not be authorized unless the local government has first determined that a residential use is no longer feasible in that location.”

This language is repeated in IAP section 4.1 (also covered in the Settlement Agreement, section VI.C.1.):

“The Mello Act states that the Demolition or Conversion of **residential structures** for the purposes of a non-Coastal-Dependent, non-residential use is prohibited, unless the local jurisdiction first finds that a residential use is no longer feasible at that location.”

II. As proposed, the draft Mello Act Ordinance exceeds the City’s jurisdiction and violates the Settlement Agreement

The draft Mello Act Ordinance exceeds the City’s jurisdiction. Under article XI, section 7 of the California Constitution, “[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”³ The Mello Act is a state statute; therefore, any attempt to enact an ordinance in conflict with it is in excess of the City’s authority.

The City must also comply with the Settlement Agreement in enacting the Mello Act Ordinance. The permanent ordinance must be consistent with both the Mello Act and the provisions of the Settlement Agreement. Adopting an ordinance that is contrary to the provisions of the Settlement Agreement would be in violation of the Settlement Agreement itself.

III. Words have meaning: terminology in land use law is specific

The draft Mello Act Ordinance new proposed provision (LAMC 12.21H.c.7.) for conversion to mixed uses changes the meaning and application of the Mello Act by stating:

“Mixed Use Development. A proposed mixed use development may not result in a net reduction in the total number of existing Residential Units unless a residential use is no longer feasible. A mix of uses is permitted, so long as the structure provides all required Replacement Affordable and Inclusionary Units.”

This new provision would allow for the conversion of one hundred percent residential structures to non-residential mixed uses and by doing so, change the meaning, spirit, and purpose of the Mello Act. This change is in direct violation of the Mello Act and the Settlement Agreement, which explicitly forbid the conversion of a residential structure to a non-residential use.

³ *Sherwin-Williams Co. v. City of L.A.*, 4 Cal. 4th 893, 897 (1993).

This new conversion provision included in the draft Mello Act Ordinance essentially changes the Mello Act, as follows:

“Conversion or demolition of any Residential Structure **residential unit or residential use**, for purposes of a non-residential use that is not Coastal-Dependent, is prohibited, unless a residential use is no longer feasible at that location.”

This new provision has the effect of replacing the word “structure,” as used in the Mello Act, the Settlement Agreement and IAP, with “unit or use.” The words “structure” and “unit” are not interchangeable. Nor are the words “unit” and “use.” The word “structure” refers to an entire building as an entity, while the word “unit” refers to an individual dwelling, which may be one of many within a single structure. This is an important distinction, because the use of the word “structure” in both the Mello Act and the IAP intentionally protects the entire residential building.

The terminology used in land use law is specific and purposeful. The use of “unit” in the Mello Act pertains to sections of the law related to protecting existing affordable housing or providing inclusionary affordable housing, whereas “structure” relates to the protection of housing from the desires of developers for more lucrative commercial uses, including mixed use.

A residential structure in a commercial zone may also not be changed to a mixed use, as the Mello Act specifically protects housing regardless of zoning. Furthermore, the definition of a “residential structure” does not include “mixed use,” which is considered a commercial use and is restricted to commercial zones. A “residential structure,” on the other hand, is permitted in both residential and commercial zones. They are far from equivalent. Therefore, the substitution of “unit or use” in the proposed ordinance amounts to a sleight of hand, *apparently to promote the substitution of mixed use structures in place of residential structures*. This was clearly not the intent of the clear and carefully chosen language of the Mello Act, the Settlement Agreement and the IAP.

Municipalities are permitted to strengthen the local implementation of a statute, but not to weaken it. As per the Mello Act, Government Code Section 65590(k):

...[t]his section establishes minimum requirements for housing within the coastal zone for persons and families of low or moderate income. It is not intended and shall not be construed as a limitation or constraint on the authority or ability of a local government, as may otherwise be provided by law, to require or provide low- or moderate-income housing within the coastal zone which is in addition to the requirements of this section.

The present use of the term, “residential structure” protects an entire building, whereas “residential unit or use” does not, necessarily. It would therefore weaken the implementation of the statute and is thus beyond the jurisdiction of the City.

IV. Conversion to mixed use is used as loophole to allow unpermitted conversions to commercial uses

The result of the change in terminology will destroy housing by allowing for conversion to commercial uses. Replacing the word “structure” with the words “unit” or “use” is beyond the jurisdiction of the City because it contradicts the Mello Act, a state law.

The City’s Mello Act Ordinance must also comply with the Mello Act’s intent. Since this new mixed use provision would effectively change the meaning, in direct contradiction to the Act’s intent, the City would be acting in excess of its jurisdiction.

The harm from the City’s attempt to exceed its jurisdiction by allowing conversion or demolition of residential structures for purposes of non-residential use is not just theoretical. Several recent projects have already seized on the current, draft language of the proposed Mello Act Ordinance, regarding “residential units” or “residential uses,” to justify approval of the conversion of residential properties to mixed-use properties. Many of these properties have then illegally converted the entire structure to commercial, non-residential use, with no consequence.

Thus, already the use of “units or uses” rather than “structures” has created a loophole to allow developers to convert one hundred percent residential use structures to “mixed use” and then fail to actually maintain any residential uses, in violation of state law and the Settlement Agreement.

A. Example #1: 1214 Abbot Kinney Blvd.

First, for the property at 1214 Abbot Kinney Blvd., in 2014, the City approved a change of use from residential to mixed use, in violation of the Mello Act. Since then the property has been used illegally as commercial office use, even though it was only approved for conversion to “mixed use.” Yet another example of ongoing use of residential structures for commercial use is 619-701 Ocean Front Walk, aka Thornton Lofts. When the tech industry moved in they took over residential structures for offices. There are numerous other similar examples of unpermitted mixed uses or full commercial uses where the structures are only permitted for residential use.

B. Examples #2 & #3: 811-815 Ocean Front Walk, and 1310 Abbot Kinney Blvd.

Other Coastal Zone projects are pending that would violate the Mello Act by allowing demolition of 100% residential structures for purposes of a mixed-use development. One example is the project at 811-815 Ocean Front Walk, which proposes the demolition of three residential structures for purposes of a mixed-use commercial development. Another example is the project proposed at 1301-1303 Abbot Kinney, which is requesting a change of use from a 100% residential triplex structure to two live/work mixed use units. The approvals of both of these projects have been appealed. If these projects are ultimately approved by the City it will be in clear violation of the state Mello Act and the Settlement Agreement. There are other examples where the City approved a residential structure to be replaced by “artist in residence” use, a mixed use, but they do not meet the code’s definition of artist and thus the structures have become essentially all commercial use.

C. Example #4: 1047 Abbot Kinney Blvd.

One final example is the three bungalows at 1047 Abbot Kinney Blvd., which have certificates of occupancy as residential units but have for years been illegally used for a non-residential use. The City recently approved the demolition of those bungalows for purposes of the Venice Place mixed use project, for which they will be covered by the hotel's CUB, and they will be included in the hotel buildings, very likely losing their identity as housing.

These examples illustrate that because the as-now-proposed Mello Act Ordinance provisions regarding conversion to mixed use contradict the Mello Act's language and intent to protect housing, developers have exploited, are currently exploiting, and will likely continue to exploit this "mixed-use" loophole to effectively destroy residential housing, including and especially affordable housing for low-income residents and communities of color, thus causing a gross, unacceptable, adverse cumulative impact on housing, including affordable housing, in the Los Angeles Coastal Zones.

All of this is an unfortunate, perhaps unconscious, continuance of the City's practices of institutional racism.⁴

V. If not amended, the draft Mello Act Ordinance will disproportionately harm low income communities of color in the Coastal Zone as new mixed use development will be encouraged

The impact of the destruction of housing that has and will continue to result from the Mello Act Ordinance if the ability to convert residential structures to mixed uses is not eliminated, disproportionately harms communities of color. In 2017, California had nearly two million rent burdened households of color that spent more than thirty-percent of the household income on rent and utilities.⁵ There were also 1.6 million extremely low-income renter households, two-thirds of which were households of color.⁶ During the COVID-19 pandemic, there has been a disproportionate financial impact on populations of color, which has created even greater disparities.⁷ All housing will be put in jeopardy in the Coastal Zone if the draft Mello Act Ordinance is not amended to prohibit demolition or conversion of residential structures for purposes of mixed use developments, and those who will be impacted most are low-income people and communities of color.

This is especially true because by allowing such mixed use developments to replace residential structures the current draft of the Ordinance actually encourages, rather than discourages,

⁴ On top of these egregious practices, the City has a pattern and practice of using the rent paid by existing unpermitted commercial uses (this was done for 1301-1303 Abbot Kinney and 1047 Abbot Kinney, among many others) to determine whether affordable housing must be replaced, a gross double violation of the Mello Act and a practice that the City must never allow, and yet it openly does allow it.

⁵ AMEE CHEW & CHIONE LUCINA MUÑOZ FLEGAL, POLICY LINK, FACING HISTORY, UPROOTING INEQUALITY: A PATH TO HOUSING JUSTICE IN CALIFORNIA 14 (2020), https://www.policylink.org/sites/default/files/pl_report_calif-housing_101420a.pdf.

⁶ *Id.*

⁷ See Kelly Anne Smith, *Covid and Race: Households of Color Suffer Most From Pandemic's Financial Consequences Despite Trillions in Aid*, FORBES (Sept. 17, 2020), <https://www.forbes.com/advisor/personal-finance/covid-and-race-households-of-color-suffer-biggest-pandemic-consequences/>.

displacement. With the “mixed use” loophole, developers are encouraged to demolish the building and erect a new building in its place, thus displacing families currently living in older housing stock which is always, by definition, more affordable than new units deemed “affordable” pursuant to federal and state law. It makes no sense for the City to encourage destruction of existing housing, including affordable housing, so that more lucrative commercial mixed use projects can be built in the Coastal Zone, especially when such a concept runs completely contrary to the Mello Act’s intent. This would be a boon to developers and would cause a steady stream of property owners getting richer on the backs of our existing renters in the L.A. Coastal Zones as they will be displaced when mixed use projects replace residential structures.

VI. Conclusion

We understand that the City’s priority is to increase housing, but it must be done within the confines of the law and not by allowing conversions of residential structures to mixed use, in violation of the Mello Act.

We too support mixed use developments, but only where they replace existing commercial uses and thus add housing.

The Mello Act’s purpose is to protect all housing in the Coastal Zone, as well as to protect existing and provide for new affordable housing.

For the foregoing reasons, we respectfully urge you to eliminate any and all proposed Mello Act Ordinance language that would allow for demolition or conversion of residential structures for purposes of non-residential/commercial mixed use projects, in order to comply with state law and the Settlement Agreement and to ensure the City is acting within its jurisdiction.

Sincerely,

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