

# STAFF REPORT



## COMMUNITY DEVELOPMENT

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**DATE:** February 28, 2023

**TO:** Justin Hess, City Manager

**FROM:** Patrick Prescott, Community Development Director  
VIA: Fred Ramirez, Assistant Community Development Director – Planning  
Scott Plambaeck, Planning Manager  
Leonard Bechet, Principal Planner  
BY: Maciel Medina, Associate Planner

**SUBJECT:** Consideration of the Appeal of the Planning Commission’s Approval of a Conditional Use Permit for Project No. 22-0003178 – Located at 1521 E. Alameda Avenue

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### **RECOMMENDATION**

Adopt A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BURBANK DENYING AN APPEAL OF THE PLANNING COMMISSION’S APPROVAL OF PROJECT NO. 22-0003178 FOR A CONDITIONAL USE PERMIT TO ALLOW THE HEIGHT OF A PROPOSED SINGLE-FAMILY DWELLING LOCATED AT 1521 E. ALAMEDA AVENUE TO BE MEASURED FROM THE AVERAGE GRADE IN LIEU OF BEING MEASURED FROM THE EXISTING GRADE, PURSUANT TO BURBANK MUNICIPAL CODE SECTION 10-1-603(C)(1) (Attachment 1).

### **BACKGROUND**

On May 19, 2022, the Community Development Department received a Conditional Use Permit (CUP) Application from Ara Abrahamian (Applicant) under the provisions of Burbank Municipal Code (BMC) Section 10-1-603(C)(1). The proposed project is located at 1521 E. Alameda Avenue (Project) and the site is within the R-1, Single Family Residential Zone. The Project scope includes the demolition of the existing home and the construction of a two-story single family residential dwelling structure that complies with all applicable development standards in the BMC, including the City’s R-1 zoning regulations. The proposed two-story single family residential dwelling structure is permitted by right (Table 10-1-602, BMC). However, the Applicant is requesting a CUP that would allow the height of the proposed dwelling to be measured using the average grade, in lieu of the existing grade, as authorized by the BMC. While the overall Project involves new construction of a single-family residence, the subject of this CUP only involves the

methodology used for measuring building height. The remainder of the residence will be reviewed for development standard compliance in plan check.

The CUP was considered by the Planning Commission, formerly known as the Planning Board, at a noticed public hearing on November 14, 2022. The Planning Commission voted to approve the CUP. After the Planning Commission makes a decision on a Project, there is a 15-calendar day period that allows for that decision to be appealed, whether it is from the applicant or a member of the public. The appellant for this Project, Pat Tomski filed an appeal (Attachment 6) in opposition to the Commission’s decision to approve the CUP request. Pursuant to BMC Section 10-1-1907.3 the appeal of the Commission’s decision must be reviewed by the City Council as part of a new (de novo) public hearing on the CUP request.

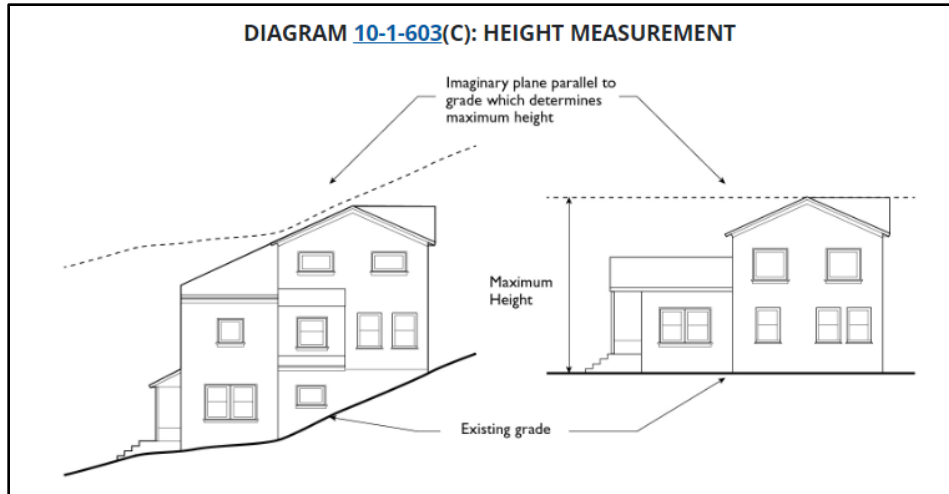
**DISCUSSION**

Table 1: General Property Information	
Site Address	1521 E. Alameda Avenue
Cross Street	Watson Street
Assessor’s Parcel Number	5620-005-030
General Plan Designation	Low Density Residential
Zoning	R-1 Single Family Residential
Property Size	13,000 SF
Maximum Height to top of Pitched Roof Permitted Per Zone	30 feet
Maximum Top of Plate Height Permitted Per Zone	20 feet
Maximum Height Proposed Measured from Average Grade	24 feet 8 inches

**Measurement of Structure Height in the R-1, Single Family Residential Zone**

Pursuant to BMC Section 10-1-603(C)(1), height is measured as follows:

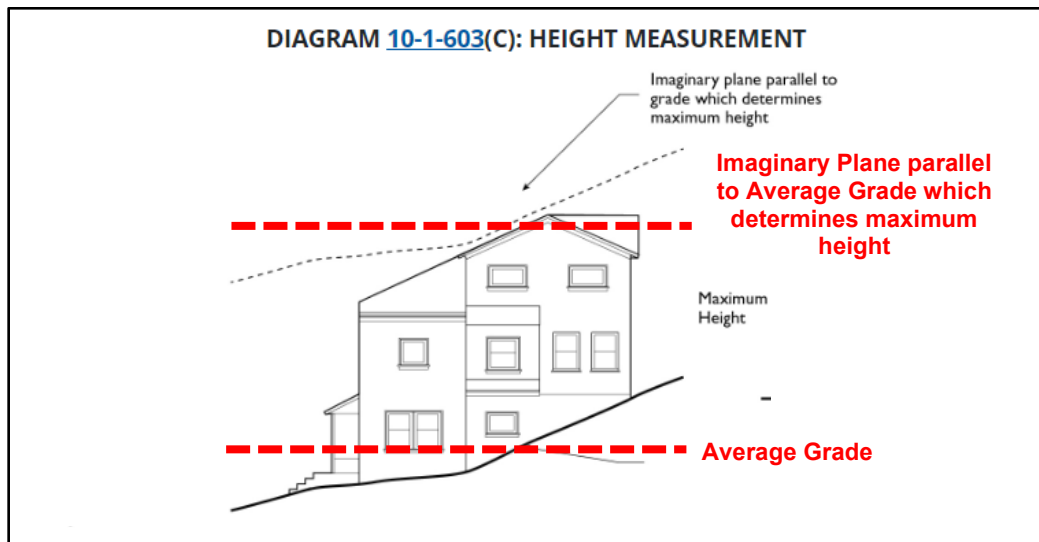
*“...as the vertical distance from grade to an imaginary plane located the allowed number of feet (as listed in Table 10-1-603(A)) above and parallel to the grade. The measurement is taken at each point along the face of the structure at no less than one foot intervals, and the reference grade shall be established as the existing ground surface of the lot, prior to any grading, cut, or fill activity or the finished ground surface of the lot, after any grading, cut, or fill activity, whichever is lower.”*



BMC Diagram 10-1-603(C) above, illustrates how height is measured on a sloped lot and flat lot when measured from the existing grade to the top of the roof. A separate imaginary plane also parallel to the grade determines the maximum top plate height, which is the upper horizontal framing of a stud wall.

Additionally, with approval of a CUP, BMC Section 10-1-603(C)(1) allows height measurements to be taken from the average grade, rather than the existing grade.

*“...With approval of a Conditional Use Permit, height may be measured from the average grade in lieu of being measured [from the existing grade]. In this instance, average grade shall be the average of the highest and lowest finished ground surface elevations at the perimeter of the structure, whether or not the finished ground surface is higher than the existing ground surface.”*



The red lines on Diagram 10-1-603(C) above, illustrates how height is measured on a sloped lot when measured from the average grade to the top of the roof. A separate imaginary plane also parallel to the average grade similarly determines the maximum top plate height.

### **Topography of the Property**

The Project site at 1521 E. Alameda Avenue is located on a sloped lot that has a varying grade difference, going from a higher grade to a lower grade going north to south on the site. As noted in Attachment 5, the natural grade difference on the lot has a difference of approximately four feet from the northern property line to the southern property line. Due to the natural grade difference on the lot, the applicant applied for a CUP pursuant to BMC Section 10-1-603(C)(1), which allows the top of plate height to be measured from the average grade of the lot when there is a varying grade on the lot rather than from the lot's existing grade.

Due to the varying grade difference of approximately four feet on the lot, it is difficult to construct a home that would have a flat and even finished floor level without seeking the current CUP request. Absent the CUP, the BMC requires that height be measured as the vertical distance from existing sloped grade to an imaginary plane located the allowed number of feet above and parallel to the sloped grade. Measuring from existing grade requires that the height measurement is taken at each point along the face of the structure at no less than one-foot intervals, where the reference grade is the existing sloped ground surface of the lot, prior to any grading, cut, or fill activity. Using this method of measuring height, the proposed home would be required to have a split-level interior design. The requested CUP and resulting measurement of maximum allowable height from average grade would result in a home with continuous first and second floor levels that is the typical layout for similarly zoned residential properties, while still maintaining the character of the surrounding single-family neighborhood that includes one story and two-story residential structures.

### **Staff Analysis**

BMC Section 10-1-603(C)(1) indicates that with the approval of a CUP, the height of a home may be measured from the average grade in lieu of being measured by the existing grade of the lot. This conditionally permitted use is an objective development standard in the City's applicable R-1 zoning regulations. Pursuant to State law, objective standards are those that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the project applicant and the public official. This method of measurement is included in the BMC to provide flexibility for homes located on lots that have varying grade differences and allows for homes on these lots to match the character of neighboring homes. To approve a CUP, certain findings outlined in BMC 10-1-1936 must be made (as further described below). It is staff's assessment and the Planning Commission's determination that all the applicable findings can be made for the approval of this CUP.

To establish whether all the applicable findings can be made for approval of the CUP, the Project was analyzed for consistency with the Burbank2035 General Plan, consistency with the zoning regulations in the BMC, and compatibility with the surrounding neighborhood.

### Consistency with the General Plan

The Burbank2035 General Plan Land Use designation for the Project site is Low-Density Residential. This land use designation characterizes neighborhoods with single-family residential dwellings that are free from adverse effects from surrounding land uses. Specifically, this Project site is located within an established single-family residential neighborhood that contains one-story and two-story dwellings built in a variety of architectural styles. The Project supports Land Use Goal 1 (Quality of Life) and Policy 1.8, which ensures that development in Burbank is consistent with the land use designations presented in the Burbank2035 General Plan. The granting of a CUP to allow the building height to be measured from the average grade is consistent with the Low-Density Residential land use designation of the Burbank2035 General Plan and the BMC Zoning standards which regulate development in the R-1 (Single Family Residential) zone, because it supports the development of a single-family dwelling in this location.

### Consistency with the Zoning Regulations

On sheet A1.1 of the project plans (Attachment 5), the highest and lowest finished grade surface elevation points around the perimeter of the home are called out and are noted as 772.61 feet at the highest point and 768.67 feet at the lowest point (an approximate height difference of just under 4 feet (3.94 feet)). Using the average grade measurement methodology, the point at which the height of the home will be measured is the middle point (average) between 772.61 feet and 768.67 feet which means that the height would be measured along a line that is parallel from the point of the lot that has a finished surface elevation height of 770.64 feet. This means that the top of plate height of the new home will be measured from one point on the lot (770.64) instead of having to follow the existing slope of the lot, which would create an uneven ceiling placement. This established midpoint allows for flexibility so that the homeowner can build a home with a flat and even finished floor as well as flat and even ceiling level.

Due to the varying grade difference of the subject lot, the applicant has requested a CUP to allow for the height to be measured using the average grade of the lot rather than the existing grade of the lot pursuant to BMC Section 10-1-603(C)(1). It is important to note that the CUP request being made is not a Variance from existing development standards given that it is an objective standard currently offered in the BMC that is available to properties located in an R-1 Single-Family zone.

Notably, measuring the height from the average grade height of the lot does not allow the proposed home to exceed the height limitations set by the BMC. The BMC allows a top of plate height of up to 20-feet, and an overall roof height of up to 30-feet. This CUP request does not allow the top of plate height or the overall roof height of the home to exceed the BMC required limits. Instead, the CUP merely provides an alternative way to measure height on a sloped lot. The southern portion of the lot is the lowest point of the Project site. When comparing the natural grade height of the lot in this area to the average grade height, the difference between these two points is approximately 1 foot-11 inches. This means that the CUP allowing the average-grade measurement methodology will allow a building height at the southern point of the structure that is up to a maximum of approximately 1 foot-11 inches higher than what would be allowed using the existing grade to measure height. Based on the project plans, only the

top of plate height will fall within this allowable exceedance by approximately 1 foot-9 inches. The overall roof height will still remain lower than the maximum 30-foot allowance, regardless of whether existing or average grade is used.

Establishing a single point (the average height of the lot) where the top of plate can be measured allows for the applicant to measure their top of plate height from a single plane on the property, rather than having to follow the varying grade differences of the lot. The average grade height of the lot is not the lowest portion of the Project site, but it is also not the highest portion of the property. The average grade height is obtained by calculating the average of the highest and the lowest finished ground surface elevations at the perimeter of the structure, this ensures that when built, the home is consistent with the homes in the surrounding neighborhood and allows the top of plate to be measured from one single point across the property rather than following the varying grade difference along the face of the building. This method provides some flexibility for the applicant and other R-1 zoned properties with similar physical constraints (i.e., sloping grade) while also maintaining the overall neighborhood character.

### **Planning Commission Determination**

The Project was reviewed by the Planning Commission on November 14, 2022, as part of the CUP Public Hearing process. The BMC requires that any Project requesting a CUP, must be reviewed by the Planning Commission who will then approve or deny the request at a noticed public hearing. After consideration of the project, which included a presentation from City staff and the project applicant as well as public input in favor of and against the Project, the Planning Commission determined that the Project met all the required CUP findings and voted unanimously (5-0) to approve the request to allow the height of the proposed home to be measured from the average grade height of the lot, rather than the existing grade of the lot.

### **Appeal of the Planning Commission's Decision**

The Planning Commission's decision on a CUP may be appealed within 15 calendar days of the determination. If the City receives an appeal during the appeal period, the City Council must hold a de novo public hearing to consider and act on the CUP application. During the 15-day appeal period, the Planning Division received one appeal to the Planning Commission's approval of the CUP (Attachment 6). The appeal was submitted by Pat Tomski; the neighbor residing at 1515 E. Alameda Avenue. The comments on the appeal application are as follows:

- "Appealing the top [of] plate height, 20-foot top [of] plate height is exceeded because it is not being measured from the lowest point of the property; and
- "Lowest height of roof and new build is wanted for privacy with neighbors = 5 total."

A copy of the appeal application is included as Attachment 6.

### **Response to Appeal**

As previously noted, BMC Section 10-1-603(C)(1) allows for the top of plate height to be measured from the average grade height, rather than from the existing grade height. Through the CUP request, the top of plate height will be measured from the mid-point or average of the highest and lowest point where the home will be located. Issuing the CUP will not allow the

applicant to exceed a 20-foot top of plate height, as required by the BMC. The applicant's proposed plans indicate that the proposed top of plate height will be 19 feet-10 inches, which is within the 20-foot allowance. In compliance with the BMC, the applicant is also proposing an overall roof height at 24 feet-8 inches, which is lower than the R-1 zoning code maximum allowable height of 30-feet. Approval of the CUP will allow the applicant to measure surface grade in a way that accounts for the natural slope of the lot. The CUP will not change the permissible structural height requirements established by the BMC.

### **Conditional Use Permit Findings**

As part of the CUP review, City staff analyzed the Project's compliance with all applicable development standards including the required CUP findings under BMC 10-1-1936. Through this review, City staff found that the design, square footage and overall layout of the Project meet all of the zoning standards for the construction of a new single-family home in an R-1 zone. In addition, consistent with the Planning Commission's approval and determination, it is City staff's assessment and recommendation to the City Council that all the required findings for approval of the CUP request have been met as follows:

1. *The use applied for at the location set forth in the application is properly one for which a Conditional Use Permit is authorized by Chapter 1, Title 10, of the BMC.*

The proposed Project request is permitted under BMC Section 10-1-603(C)(1). Under BMC Section 10-1-603(C)(1), height can be measured from the average grade in lieu of using the existing grade of a lot with the approval of a CUP.

2. *The use is not detrimental to existing uses or to uses specifically permitted in the zone in which the proposed use is to be located.*

The requested CUP to allow the height of a proposed single-family dwelling to be measured utilizing the average grade up to 20-feet for top plate height, and up to 30-feet for roof pitch, in lieu of the existing grade of the lot will not be detrimental to uses permitted in the R-1 zone. The proposed request will accommodate the construction of a two-story single-family dwelling, which is an allowed use in the R-1 zone. Allowing overall height of the dwelling to be measured from the average grade in lieu of the existing grade of the lot will ensure that the proposed structure will have a consistent top plate height with continuous first and second floor levels that improve functionality of the dwelling. The resulting two-story single family dwelling structure will provide for an architectural design that is compatible with the scale and design of similar single-family dwellings in the surrounding neighborhood.

3. *The use will be compatible with other uses on the same lot, and in the general area in which the use is proposed to be located.*

The Project site is zoned R-1 (Single-Family Residential) and the Project request will facilitate the construction of a new single-family dwelling that is an allowed use in the R-1 zone. The Project request to allow structure height to be measured utilizing average grade will result in a dwelling structure that has a consistent top plate height of up to 20-feet that

will improve functionality of the dwelling and result in an architectural design that is compatible with the scale and design of dwellings in the surrounding neighborhood. The overall height of the single-family dwelling will be in compliance with the maximum allowable top plate and top of pitched roof and architectural features in this area, and therefore maintain the compatibility, with surrounding single-family dwellings.

4. *The site for the proposed use is adequate in size and shape to accommodate the use and all of the yards, setbacks, walls, fences, landscaping and other features required to adjust the use to the existing or future uses permitted in the neighborhood.*

The Project site is zoned R-1 (Single-Family Residential). The CUP request is to allow the height of the proposed dwelling to be measured utilizing average grade in lieu of existing grade of the lot, not to exceed 20-feet for top of plate and 30-feet for top of pitched roof. Allowing the dwelling to be measured utilizing the average grade will support the proposed dwelling's compatibility with all development standards for single-family dwellings in this zone by allowing the applicant to construct the proposed structure with a consistent top plate height across the entire width of the structure, resulting in flat and even finished floors as well as flat and even ceiling levels. Additionally, as part of the Project's Conditions of Approval (Exhibit A to Attachment 1), the applicant is required to adhere to all applicable development standards that include compliance with required yard setbacks, walls, fences, and landscaping standards.

5. *The site for the proposed use relates to streets and highways properly designed and improved to carry the type and quantity of traffic generated or to be generated by the proposed use.*

The CUP is requested to allow the height of the proposed dwelling to be measured utilizing the average grade, in lieu of the existing grade of the lot. As part of the Conditions of Approval (Exhibit A to Attachment 1), the proposed development will provide for the construction of a two-story single family residential dwelling structure that complies with all applicable development standards in the BMC, including the City's R-1 zoning regulations. Subject to the approval of the CUP request, the resulting single family dwelling structure will ensure that the proposed dwelling does not have any negative impact to the street and highways and does not negatively impact the traffic in the general vicinity. Approval of the CUP will not expand the existing use on the site as a single-family dwelling, and therefore it is not anticipated to generate any additional traffic demand.

6. *The conditions imposed are necessary to protect the public health, convenience, safety and welfare.*

The recommended conditions of approval will ensure that the Project, which provides for the construction of a new two-story single family residential dwelling is completed in a manner that protects the public health, convenience, safety, and welfare. These conditions of approval include compliance with all applicable development standards in the BMC and includes all R-1 objective development standards.



## **DEPARTMENT COMMENTS**

Department comments have been incorporated into the Project's Conditions of Approval and are noted in the attached Resolution (Exhibit A to Attachment 1).

## **ENVIRONMENTAL REVIEW**

The Project is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303(a), Class 3 of the State CEQA Guidelines pertaining to the construction of a new single-family dwelling in a residential zone. The Class 3, categorical exemption is applicable because the Project involves the ultimate construction of a new single-family dwelling unit on a Project site located at 1521 E. Alameda Avenue in the R-1 (Single Family Residential) zone.

## **PUBLIC NOTIFICATION**

Public notice for the City Council hearing to consider the Project was provided in accordance with State and local law. Notices were mailed to all property owners and tenants within a 1,000-foot radius of the Project site, a public notice was published in the Los Angeles Times Newspaper, and a notice was posted on-site 10 business days prior to the City Council Hearing. The notice directed the public to review the Project request, staff report, and associated attachments and application via the City's website at: [www.burbankca.gov/pendingprojects](http://www.burbankca.gov/pendingprojects) and included information on how to participate in the City Council meeting scheduled on February 28, 2023. As of the writing of this report, no comments have been submitted to the City regarding the Project.

## **FISCAL IMPACT**

There will be no fiscal impacts with the approval of the Project. No additional resources from the City or revenue generated by the City will be impacted based on approving the Project. The applicant will be responsible to pay for all applicable permit fees and development impact fees associated with the construction of the Project. Furthermore, the completion of the project would result in a reassessment of property taxes, which will in turn result in new revenue to the City's General Fund.

## **CONCLUSION**

City Staff assessed and the Planning Commission determined that the Project meets all of the findings required for approval of a CUP to allow for the top of plate height to be measured from the average grade height of the lot, rather than measuring from the existing grade of the lot. Approval of the CUP ensures the Project's ongoing compliance with all applicable R-1 (Single Family Residential) Zoning development standards. Therefore, City staff recommends the City Council adopt the Resolution denying the appeal and upholding the Planning Commission's decision on the Project.

## **ATTACHMENTS**

Attachment 1 – Resolution

Attachment 2 – Zoning/ Public Noticing/Fair Political Practices Act Compliance Map; Aerial Photo

Attachment 3 – Application Form

Attachment 4 – November 14, 2022 Planning Commission Minutes

Attachment 5 – Project Plans

Attachment 6 – Appeal Application (Of the Planning Commission’s Decision)

Attachment 7 – November 14, 2022 Planning Commission Meeting - Staff Report and  
Adopted Planning Commission Resolution No. 3050

Correspondences