

# Appeal for Moderation: 7009 Shirley Drive

*"The care of human life and happiness, and not their destruction, is the first and only object of good government." Thomas Jefferson*

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# CEQA and Oakland Agree: Views Are a Public Resource

Ceqa On Views:

I. AESTHETICS. Except as provided in Public Resources Code Section 21099, would the project:

a) Have a substantial adverse effect on a scenic vista? (Yes)

...

c) In nonurbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from publicly accessible vantage point). If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality? (Yes)

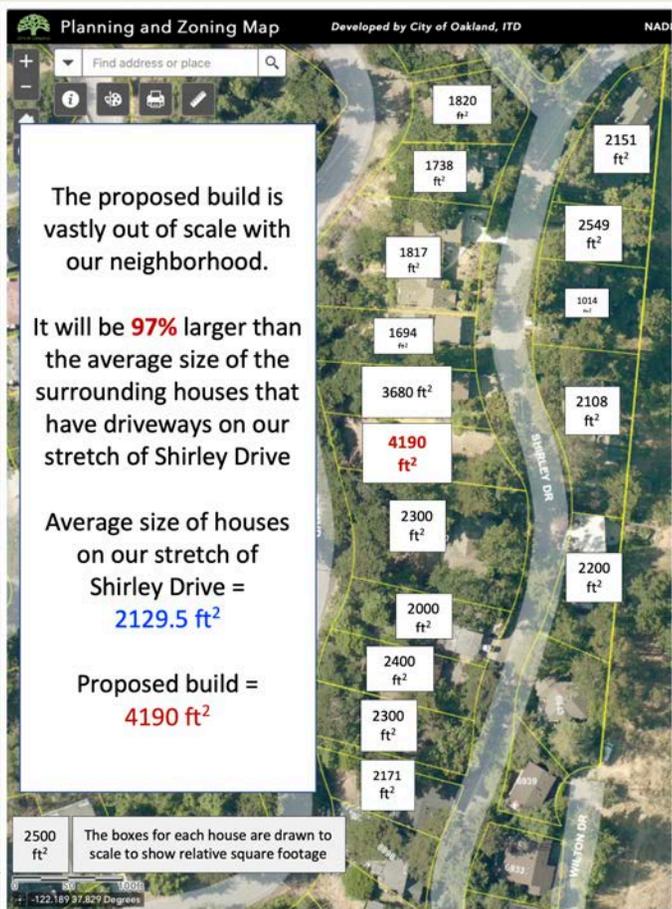
Oakland on Views: The Scenic Route Combining (S-10) Zone is intended to create, preserve, and enhance areas where hillside terrain, wooded canyons and ridges, and fine vistas or panoramas of Oakland, neighboring areas, or the Bay can be seen from the road, and is typically appropriate to roads along or near ridges.

*“No house should ever be on any hill ... It should be of the hill, belonging to it, so hill and house could live together each the happier for the other.” Frank Lloyd Wright*



# Build To Enhance the Neighborhood, Not Divide and Impose Unnecessary Risk

## *Neither NIMBY nor YIMBY Extremes*



- 1) Site build within the lot lines (the proposal currently has the build partially on Shirley Drive). **Situating the build to the west, further downslope, could alleviate the view obstruction, and reduce unnecessary shadow on 7019 Shirley**; the proposal violates Oakland's own Criteria on both accounts, but can easily be remedied with this adjustment.
- 2) **Reducing the build size**, aligning closer to the neighborhood average of approx. 2,200 ft<sup>2</sup>, and applicant's original vision and promise, would alleviate some ingress / egret concerns. A smaller build would shorten construction time, and also result in fewer cars parked on the narrow, dead-end street.
- 3) **Neighboring homes, sited further down the hill, still have spectacular views**; citing the build west wouldn't significantly impact Applicant's view.
- 4) **All neighboring hillside lots have 12 - 25 entry stairs, yet this proposal minimizes stairs due to their own preference, and to maximize their own views, at the expense of the Scenic View Corridor.** If applicant didn't want many stairs to entry, she should've bought a flatter lot.

# Inadequate Infrastructure Responsible for Most Wildfire Deaths



## **Oakland Hills Fire, 1991**

25 people died, unable to escape, trapped on narrow streets.

**Oakland still lacks adequate evacuation routes, including on dead-end Shirley Drive. It is irresponsible to approve a large build on such a narrow street. 20' wide in front of 7009 doesn't matter if we can't get past the 12' chokepoint!**



## **Lahaina Fire, 2023**

Most of the 102 who perished died trying to flee in their vehicles, but were blocked by narrow streets, fallen power lines, and gridlock, esp. on the streets with only one egress point.

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# Reduce Oakland's and Applicant's Liability

**“Developers should not be allowed to build on steep slopes in such fire-prone areas. This is the new normal. When it comes to development, we can't continue business as usual. We must adjust. We must change. Not following the guidelines creates legal risks.”**  
**AG Rob Bonta**

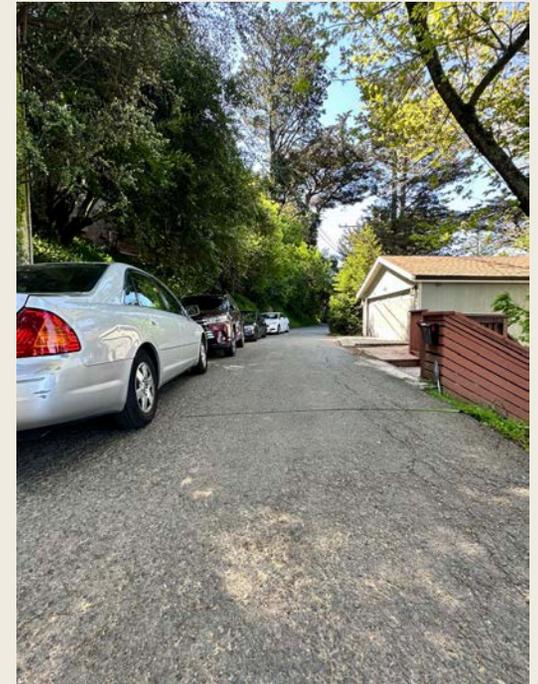
Oakland Fire Code Lesson from Deadly Wildfires: Two Point Ingress Required for Streets Longer than 600 Feet. OMC 16.16.150, 16.16.020D

Shirley Drive is a constricted, dead-end street of approximately 1250'. Building may require Applicant to Connect Shirley 120' to Skyline, Or Build Up From Skyline.

Building required the Simms Drive applicant to connect the street to create two-point ingress / egress. Shirley Drive lots are part of the Subdivision Forestland Manor.

To reduce Oakland's and Applicant's liability, we are asking Oakland to enforce OMC sections developed in response to the 1991 Fire. 7009 Shirley does not qualify for an exemption, for this street is in the VHFHSZ, with inadequate ingress / egress.

This is NOT an 'undue taking', for building upslope from Skyline is feasible, has been done by many other builders, and also solves the view, bulk, and parking problems.



*Shirley Drive Chokepoint: 8' Wide*



## CITY POLICY BULLETIN

ISSUANCE DATE: April 15, 2016

PERTINENT OMC SECTIONS: 16.16.020D (Width of Streets, Non-Hillside)  
16.16.025D (Width of Streets, Hillside)  
16.16.150 (600-Foot Maximum Length to a Dead End Street)  
16.04.060 (Exceptions to Requirements)  
15.12.010C (Fire Chief Discretion to Revise Requirements)  
15.12.020 App. D, Table D103.5 (Secondary Access Road required for Dead End Streets in Excess of 600 Feet)

QUESTION/ISSUE: In what instances would the Planning Director, Fire Chief, and City Engineer potentially revise/modify the requirement for secondary access for deadend streets exceeding 600 feet in length?

This Bulletin clarifies and memorializes the circumstances under which the City would consider revising/modifying the requirement of a secondary access for subdivisions that result in dead end streets in excess of 600 feet in length.<sup>1,2</sup>

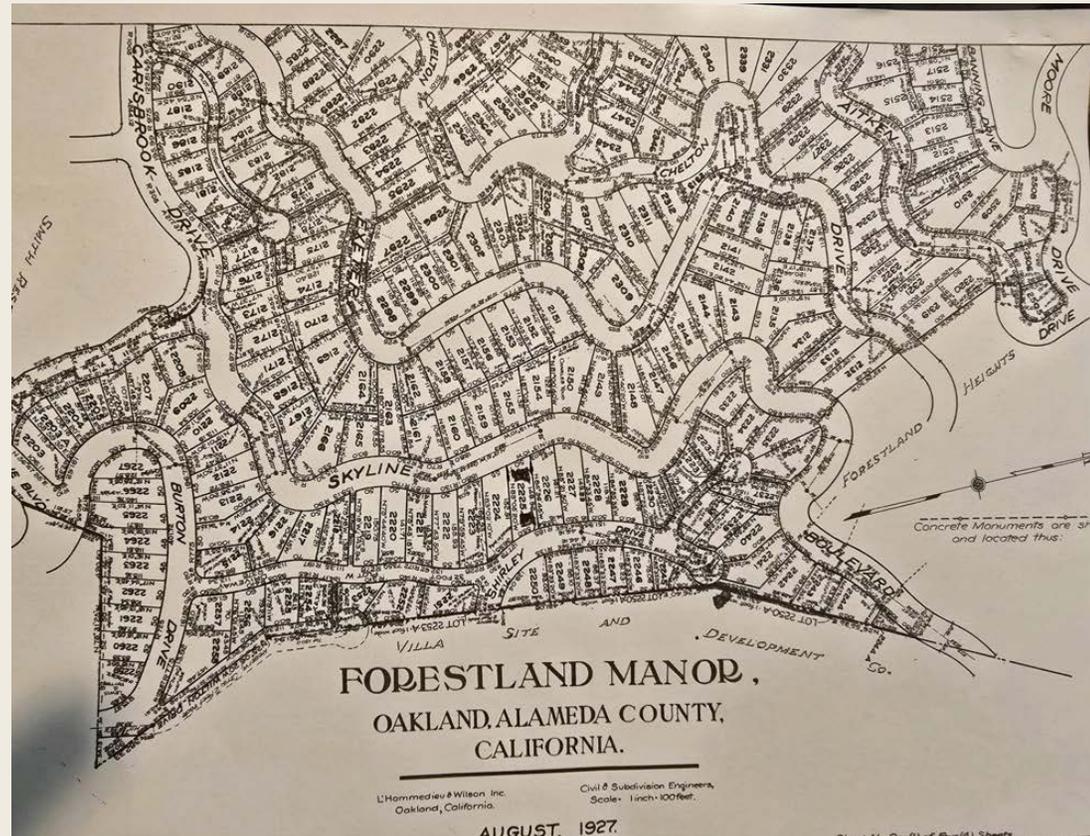
### BACKGROUND

The Oakland Subdivision Regulations prohibit streets that result in a dead end in excess of 600 feet (OMC sections 16.16.150, 16.16.020D and 16.16.0225D); however, the Planning Commission and Planning Director have authority to consider exceptions to this requirement and has previously granted exceptions (pursuant to OMC section 16.04.040) to allow for a dead end street length in excess of 600 feet.<sup>3</sup> Likewise, the Oakland Fire Code (OMC section 15.12.020, App. D, Table D103.5 ) also prohibits streets

<sup>1</sup> This policy bulletin addresses subdivisions. For existing legal lots of record on dead end streets, consult with the Planning Bureau which will consult with the Building Division, Fire Services Bureau, and City Attorney's office to determine adequate requirements for development. However, generally speaking, the City should waive the secondary access requirements if the applicant demonstrates to the City's satisfaction that the application of the secondary access requirement to a specific project would create an unconstitutional "taking" of property without just compensation (e.g., there are no feasible alternatives to a secondary access and without City approval of the project the applicant would be deprived of all economically viable use of their property) and that the project, if permitted, would be carried out only to the extent necessary to avoid a "taking."

<sup>2</sup> A "dead end street" is any street or private roadway that contains no additional outlet other than the single entry point; also defined as a "blind street" in OMC Section 16.04.030. The distance measurement for a "dead end street" shall begin at the nearest intersecting "through street." A "through street," while not specifically defined in the OMC, is a street or private roadway that contains multiple outlets to other streets and itself is not a "dead end street."

<sup>3</sup> OMC section 16.04.060 states: "The Advisory Agency may in the exercise of reasonable judgment grant such variances as it determines warranted where the size of the subdivision or topographic or other physical conditions of the property make it impractical to conform to all of the provisions prescribed by this title, provided, however, that no variances may be made to any requirements imposed by the Subdivision Map Act; and provided further, however, that no variances may be made to any requirements imposed by Section 16.20.010." For Tentative Tract Maps, the Advisory Agency is the Planning Commission. For Tentative Parcel Maps, the Advisory Agency is the Planning Director.



Codes recommend two-point entry for streets longer than 600'.

Shirley Drive is over 1200'. Simms Drive builder was required to connect two points; Shirley would similarly benefit, and was created as part of a planned subdivision.

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## Beautiful Design and Mostly Native Habitat - Without Blocking Views

To comply with CEQQ and Oakland on Views, applicant can site further within the lot line, can reduce the build size, and / or step the home into the hillside. Regardless, applicant must choose plantings which don't block neighborhood views.

**Applicant chose non-native, view-blocking, flammable trees for their site design, counter to good sense and Oakland's codes and ordinances on choosing trees, particularly in the VHFHSZ.**

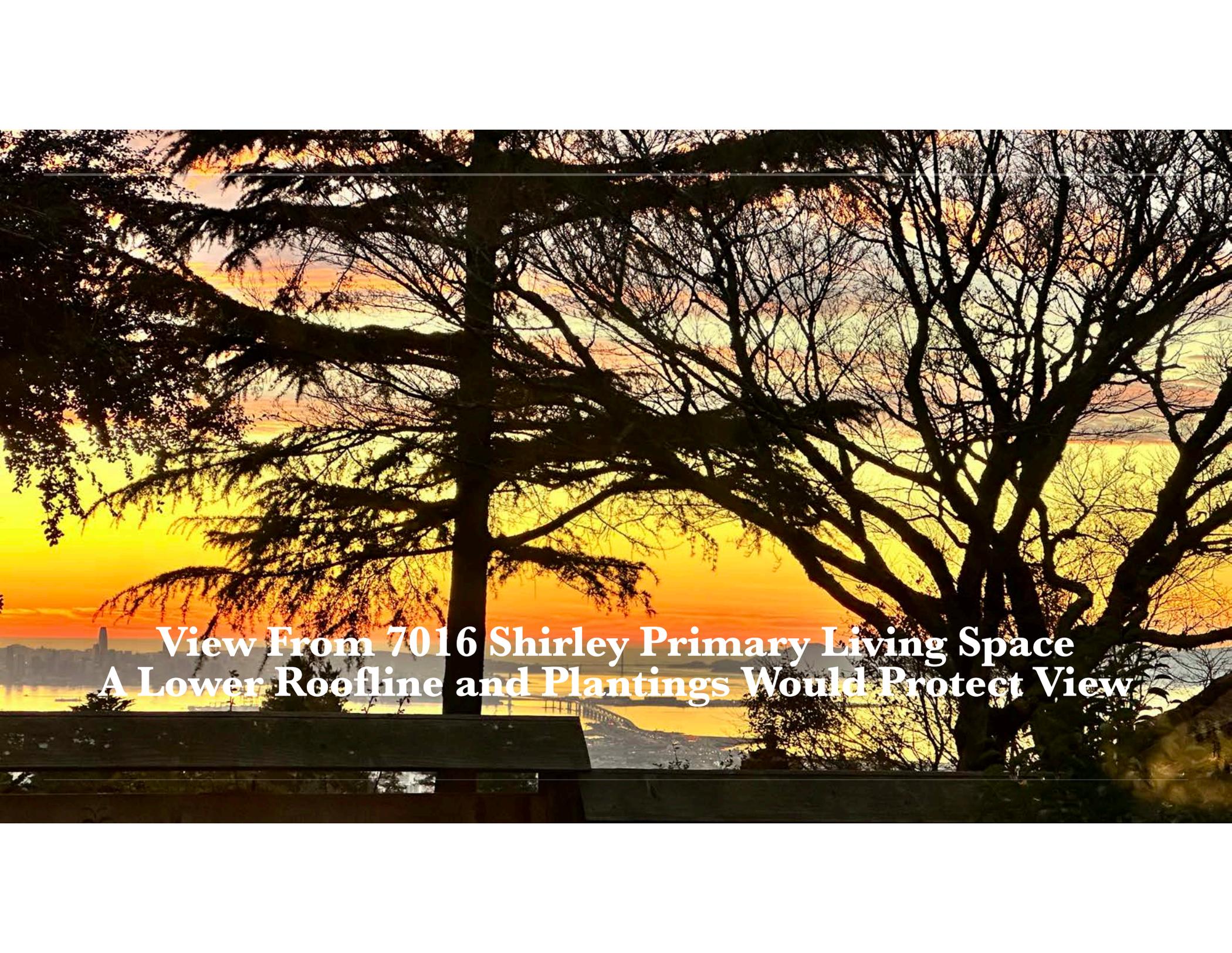
**This is an easy fix, since landscaping comes much later in the build process.** The Board can easily direct Applicant to choose trees that don't block our view.

Oakland View Ordinance was found in Bishop vs Hanes to apply to all of Oakland, and this was upheld:

“In 2004, the View Ordinance was amended “to clarify that ... OMC section 1.52 applies throughout the City of Oakland.”

**“The planting of vegetation which blocks views is prohibited.”  
15.52.010**



A photograph showing a sunset view from a living space. The sky is a vibrant orange and yellow, with the sun low on the horizon. In the background, a city skyline is visible across a body of water, with a prominent tower on the left. The foreground is dominated by the dark silhouettes of large trees, including a tall, thin tree in the center and a large, spreading tree on the right. A dark wooden railing is visible at the bottom of the frame.

**View From 7016 Shirley Primary Living Space  
A Lower Roofline and Plantings Would Protect View**

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# **A House Can't Be Shroedinger's Cat!**

## ***Bypassing CEQA In a Quest to Have It All***

Is this project a SFR and subject to Criteria, as initially proposed, or is it Multi-unit, as applicant's attorney essentially argued? The application states SFR, but the legal arguments presented claim that the build is multi-unit, and hence not subject to Criteria. Applicant tried to claim that the Criteria are subjective and hence needn't be followed, but that claim hasn't been upheld in Court, and isn't what reasonable people find. As a SFR, the proposal is subject to Oakland's very reasonable, easy to follow, Criteria, and we have been asking, with tremendous diligence, to have Oakland Building enforce the Criteria which any reasonable person would find objective and feasible. For Zoning purposes, CA legislated that SFR + JR. ADU counts as single-family, and hence not subject to HAA.

To imply that due to the Jr. ADU that Applicant needn't follow Criteria is "absurd", in the words of a senior HCD employee.

CEQA: We have legitimate concerns regarding protecting the View from the S-10 Scenic View Corridor, recognized by Oakland as a public resource. We also have significant concerns re: building on a constricted street in the VHFHSZ. A CEQA review is required, but we have not been notified of the results of the CEQA inquiry.

An objective CEQA review would have to address both of these concerns, and as a State law, cannot be bypassed.

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## **Modifying the Law is the Court's Jurisdiction, Not Board of Appeals**

California has not repealed all zoning. HAA does not exempt SFR + Jr. ADU from local Ordinances and Codes. All the pro-housing legislation is still *subject to* existing Codes, Ordinances, and other Criteria and restrictions.

Oakland's Criteria is well thought-out. It is Building's job, and now the Board of Appeals, to uphold the reasonable, easy-to-understand, feasible Criteria already on the books. Thousands of builders have managed to understand and comply with the Criteria that have been thoughtfully devised over the decades. They are not onerous or not feasible, as all the neighborhood homes illustrate.

The Applicant wants to minimize front-entry stairs, yet they bought a hillside lot. All other hillside lots, throughout the Oakland hills, including all the lots on either side of 7009, have many stairs going to the front entry (between 12 - 20). Yet they wanted a graduated entry. For that they needed to buy a more level lot, not build up at the top of the lot, even on Shirley Drive itself, in their own preference to minimize stairs. Their preference then imposes a large, bulky structure that blocks views in the Scenic View Corridor, which adversely impacts the neighborhood and public.

Instead they could site the house lower down, have stairs like the rest of the hillside lots, and protect the Scenic View Corridor, which is an Objective Requirement.

It is Building and now the Appeals Board's job to enforce the Criteria. It is not your jurisdiction to overturn the reasonable Criteria on the books. Only a judge in court could make such rulings, since Oakland and CA have not repealed all Ordinances, Codes, and other local Zoning.

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## Adjust Site Build to Entirely Within Lot Lines, Using Claimed Setbacks



The patio, fence, stairs, a concrete wall, and some trees are planned on Shirley Drive itself, as owned by Oakland. Rather than a variance, they could set entirely within their property line.

If they would situate the entire build, including the fence, patio, walls, and trees on their own lot line, and within the claimed setbacks, the view would be less obstructed. It is not clear without a survey marker that the planned garage is 33' from the property boundary.

Stepping into the hillside would further mitigate shadow concerns, but locating the build further west, downslope, would reduce the impact.

Only half of Shirley Drive is paved, and Applicant may have confused the pavement for the property line. These are approximately 20' apart. People park on Shirley Drive, not on their private property. If they paid to have the southeastern point survey marked, that would clarify the line.

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“Many people believe that purchasing land gives them the right to do whatever they want with their new property. Unfortunately, this is not the case. A collection of federal, state, and local laws controls the activities that owners can undertake on their land as well as what they can do with it. It is not unusual for a landowner to purchase land with a specific goal in mind only to find that other landowners or government entities are now objecting to this use.”  
Estavillo Law

We the neighbors initially welcomed the new lot owners and their promises: to build a house of not more than 3,000 ft<sup>2</sup>, which would not block the view, impose itself unduly on the landscape, or be so large that it would take long to build.

Their proposal contradicted our understanding of their intention around harmonizing the build with the neighborhood. The plans were shocking to us, and a violation of trust, since they had also promised to come to our homes to check that they wouldn't block view or impose undue shadow.

In response to their proposal, which is 97% larger than the median neighboring house size, we have

asked for a few reasonable adjustments, to bring the build proposal in line with Oakland's own reasonable Criteria. We worked with Building to bring the plan into compliance, by situating the build correctly onto the lot (it's currently partially on Oakland-owned Shirley Drive), siting it a few feet further west downhill, to protect the public protected view, stepping into the hillside to reduce shadow onto 7019 Shirley Drive. A smaller home would also reduce the build time and parking pressures both during and after the build; these are valid emergency ingress / egress concerns.

Building originally agreed with our concerns, and tried to work with the Applicant to adjust their plans. Applicant then hired an attorney to make wildly contorted legal arguments, and Oakland Building unfortunately capitulated. Unfortunately, Oakland has a history of making mistakes and then getting sued later, which costs Oakland more money, reduces trust in local government, and depresses property values and hence revenue. This short-sighted approach is one that the Board of Appeals need not replicate. Instead, the Board of Appeals can course-correct, and require the adjustments we have outlined in our Appeal.

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# Solutions

- 1) Situate build, including fence and patio, entirely within lot lines, further west downslope.
- 2) Lower roofline differential with Shirley Drive by siting build further west.
- 3) Step build into the hillside so projection doesn't obstruct view and impose undue shadow.
- 4) Select vegetation that doesn't obstruct the view.
- 5) Reduce the size of the build to align with the neighborhood character, reduce ingress egress and parking pressures. Would also facilitate preserving public views and reducing shadow.
- 6) To improve ingress /egress access and comply with Oakland Fire Department Codes and recommendations, either connect Shirley Drive to Skyline, or build up from Skyline.

If the Applicant had adhered to her original vision, she likely would be close to moving into her home by now, welcomed by the neighbors; her original vision complied with Oakland's own Criteria. We have been reasonable, while Applicant has been obstinate, but modifications can lead to a solution we can agree upon.

**However, we will not accept fallacious legal arguments so that Applicant can have everything on her wishlist, at the expense of neighborhood safety, cohesion, protected community views, and in direct violation of Ordinances, Codes, and legislation.**

**“You're always one decision away from a totally different life.”**

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