

Cyndie Martel

From: Ellis F. Raskin <ERaskin@hansonbridgett.com>
Sent: Wednesday, April 12, 2023 11:30 AM
To: Beach Kuhl; Elizabeth Brekhus; Bill Kircher; Julie McMillan; Elizabeth Robbins
Cc: Cyndie Martel; Rebecca Markwick; Andrew A. Bassak
Subject: Agenda Item 16 -- 28 Walnut Avenue (A.P. No. 073-171-03)
Attachments: 2023-01-17 Ltr to Ross ADRG.pdf; 2023-02-15 Letter to ADR Group.pdf; 2023-03-21 Letter to ADRG.pdf

Dear Hon. Mayor Kuhl and Hon. Councilmembers,

My law firm and I represent Kate Lord, the owner of 15 Walnut Ave. and 10 Walnut Ave. My client's properties are located immediately across the street and downhill from the project at 28 Walnut Ave., which will be considered by the Town Council at this week's meeting (Agenda Item 16). We submitted three letters to the Ross ADR Group that show how the 28 Walnut Ave. Project does not comply with applicable development standards. We have attached those letter here for reference, and we intend to submit additional comments before tomorrow night's meeting. In particular, we encourage you to look at the pictures in the January 17 letter, which show that the Project is not consistent with the character and scale of the surrounding neighborhood. (See Town Code, § 18.41.100.)

We have reached out to the Project applicants to attempt to arrange a meeting so that we can discuss potential solutions that address all the parties' concerns. To ensure that the parties have sufficient time to discuss this matter, and to ensure that all parties have had sufficient time to evaluate the Project's consistency with applicable development standards, we respectfully request that this matter be continued to the May 2023 Town Council meeting.

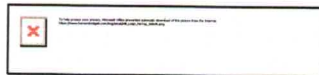
Please do not hesitate to contact us if you have any questions.

Best,
Ellis Raskin

Ellis F. Raskin

Senior Counsel

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January 17, 2023

VIA E-MAIL designreview@townofross.org

Advisory Design Review Group
Town of Ross
Town Hall
31 Sir Francis Drake Boulevard
Ross, CA 94957

Re: 28 Walnut Avenue (APN: 073-171-03; Applicant: Bressack and Wasserman Architects)

Dear Chair Kruttschnitt and Members of the Advisory Design Review Group:

My law firm and I represent Kate Lord, the owner of 15 Walnut Ave. and 10 Olive Ave. My client's properties are located immediately across the street and downhill from the project at 28 Walnut Avenue (APN: 073-171-03; hereafter "Project") to be considered at tonight's Advisory Design Group meeting. We have carefully reviewed the Project plans, and we have identified several aspects of the Project that do not comply with applicable development standards. (See Ross Town Code, Title 18.) Respectfully, the Project should not be recommended for approval without modification to address the concerns specified in this letter.

The Project will create adverse impacts on nearby properties, and the Project is incompatible with the existing neighborhood character. The proposed ADU exceeds the 16-foot height limit, and it is not eligible for an exemption from the height limit. The proposed exemption will create a significant adverse impact on adjacent properties and the surrounding neighborhood, and it will adversely affect privacy at adjacent properties (Town Code, § 18.42.065.) Furthermore, the proposed Project is out of character with its setting and with other dwellings in the surrounding neighborhood. (Town Code, § 18.41.100.) We urge you to take this opportunity to recommend that the Project be revised to address these (and other) mandatory code requirements.

1. Project Background:

Preliminarily, it bears emphasis that our client does not oppose the addition of an ADU at the subject property at 28 Walnut Ave. Our client understands and agrees with the proposed Draft Housing Element for the Town of Ross that aims to meet required state mandates to develop increased housing in Ross in part by developing ADUs. In addition, our client does not have a problem with the intended use of the ADU as informed by the property owners, who do not intend to rent the ADU, but instead plan to use the ADU for live in help such as a nanny.

As proposed, however, the Project is much more extensive than simply adding an ADU to the property, and many aspects of the proposed construction conflict with the criteria and standards outlined in the Ross General Plan and Chapters 18.41 and 18.42 of the Town Code. To summarize, two new 2-story structures are proposed (one of which will house the ADU), and

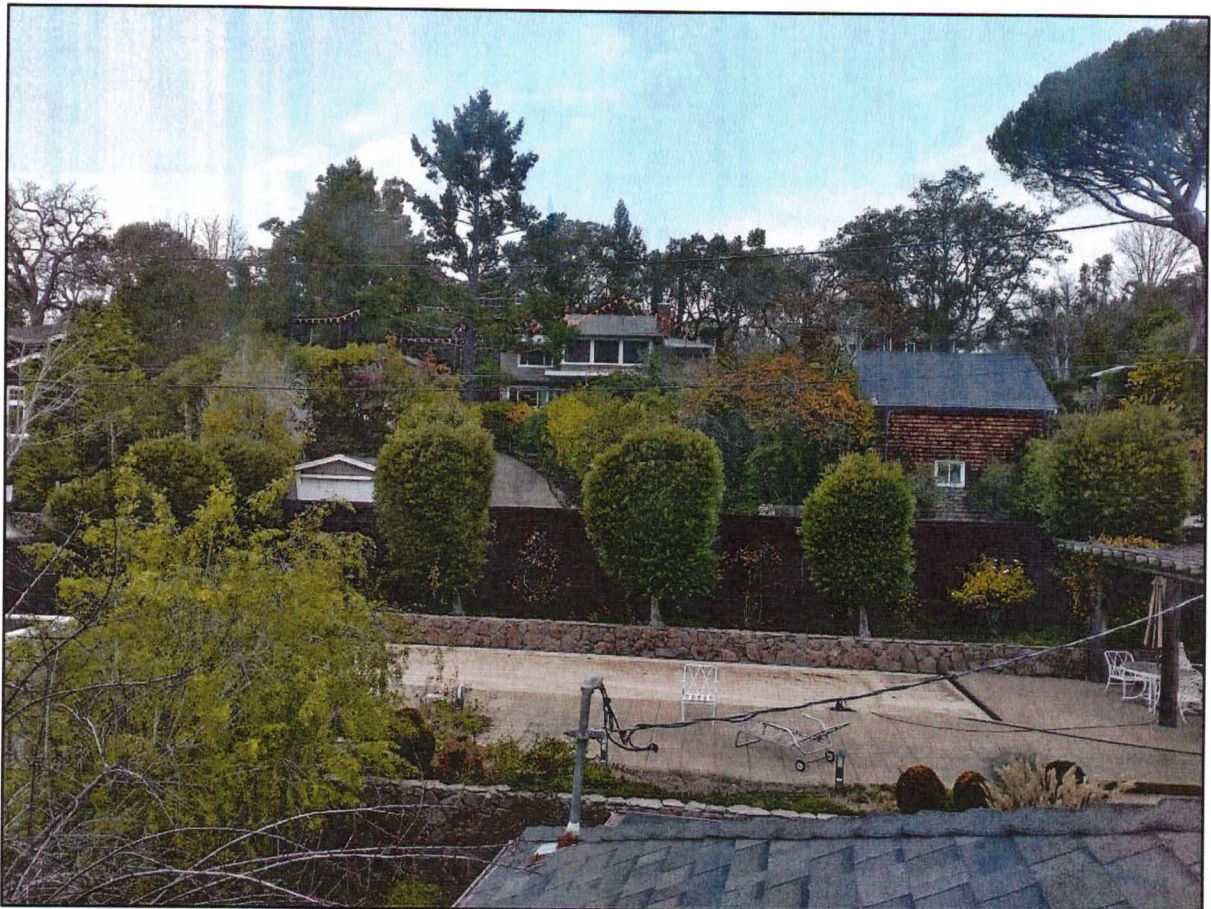
Hanson Bridgett LLP

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significant changes are proposed to be made to the existing primary residence at the top of the property and the garage at the bottom of the property, along with potentially impactful changes to the driveway and stormwater runoff system. In addition, multiple large trees will be removed, a new water pond feature is proposed and landscaping throughout the property will be overhauled. As proposed, the project is more in line with a complete site overhaul than simply adding an ADU.

The photo included immediately below demonstrates the current view of 28 Walnut Ave from one of the bedrooms of 15 Walnut Ave. Currently, the primary residence is visible as is the lower garage and the driveway. Of note, the vast majority of the view is dominated by greenery, not structures. The Project at 28 Walnut Ave. proposes removing the large tree in the center of the view as well as the acacia tree on the left side of the photo. The story poles for the Project at 28 Walnut Ave. are also visible and represent the lines and heights of the proposed structures, demonstrating how significantly the view will change. In summary, what was once predominately a view of greenery will become a view of massive buildings out of character with the neighborhood, with no large trees to soften the view.



On the following page is a photograph that is zoomed in on 28 Walnut Ave. and the story pole flags. This photograph shows the extent and massive scope of the proposed Project. As a reminder, removal of the large trees in the center and left of the photo is proposed as part of the

Project. Note that the roof line of the main residence is being increased as indicated by the story poles. The other two new proposed structures both will be two stories tall (and as tall as the raised primary residence). The combined structure will stretch nearly the entire width of the property. The proposed Project will adversely affect my client's privacy in most areas of the backyard of 15 Walnut Ave., as well as the kitchen, the dining room, and two of three bedrooms.



2. Inconsistencies with Applicable Development Standards:

ADUs cannot exceed 16 feet in height unless an exemption is granted. The Project proposes to develop an ADU that exceeds 16 feet in height, so an exception is required. To be eligible for an exemption, the Town must make certain findings. (Town Code, § 18.42.065.) At least two of those findings are relevant here:

- “(1) The exception will not create a significant adverse impact on any adjacent property, the surrounding neighborhood, or the general public good.”
- “(2) The lot and the arrangement of existing and proposed physical improvements on the lot can accommodate the exception without adversely affecting the views, privacy, or access to light and air of neighboring properties.”

The Project does not satisfy either of these criteria. As shown above, the Project will will create a significant adverse impact on adjacent properties and the surrounding neighborhood, and it will adversely affect privacy at adjacent properties (Town Code, § 18.42.065.)

Furthermore, the Project must comply with applicable Design Review standards. Those standards state, in relevant part:

“New structures and additions should avoid monumental or excessively large size out of character with their setting or with other dwellings in the neighborhood. Buildings should be compatible with others in the neighborhood and not attract attention to themselves.”

(Town Code, § 18.41.100, subd. (c)(1).) Again, for the reasons discussed above, the Project is out of character with the setting and demonstrably not compatible with other dwellings in the neighborhood.

3. Stormwater Runoff

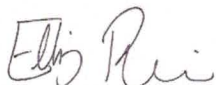
As both 15 Walnut Ave. and 10 Olive Ave. are directly downhill from the Project, my client has significant concerns about the proposed changes to the driveway, and how stormwater will be handled. The existing structures have reliably directed stormwater runoff into the storm drain system for decades, including during the recent heavy storms. The Project proposes changes to the existing system that must be verified by an appropriate engineers, including stormwater and soils engineers. As residents of Ross are well aware, the local clayey soils are not particularly water permeable, and the proposed Project's changes to the existing system and its reliance on permeable surfaces to address stormwater runoff create a significant potential risk of water and mudslide damage to properties downhill from the Project.

4. Conclusion:

We have identified additional inconsistencies between the Project plans and applicable development standards. However, in light of the significant issues identified in this letter, we hope that you will take the opportunity to recommend that the Project be revised to address these important development standards. We also hope that you will take this opportunity to encourage the Project applicants to explore design alternatives (e.g., setting the project further back, reducing its height, and placing windows so that they face away from Walnut Ave.) which will address the privacy concerns outlined in this letter.

Please do not hesitate to reach out to us if you have questions.

Very truly yours,



Ellis F. Raskin
Senior Counsel

EFR

cc: Andrew A. Bassak, Esq.
Kate Lord
Katherine Bossart

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February 15, 2023

VIA E-MAIL designreview@townofross.org

Advisory Design Review Group
Town of Ross
Town Hall
31 Sir Francis Drake Boulevard
Ross, CA 94957

Re: 28 Walnut Avenue (APN: 073-171-03; Applicant: Bressack and Wasserman Architects)

Dear Chair Kruttschnitt and Members of the Advisory Design Review Group:

My law firm and I represent Kate Lord, the owner of 15 Walnut Ave. and 10 Olive Ave. My client's properties are located immediately across the street and downhill from the project at 28 Walnut Avenue (APN: 073-171-03; hereafter "Project") to be considered at tonight's Advisory Design Group meeting. We submitted a letter to you on January 17, 2023, which identified several aspects of the Project that do not comply with applicable development standards. (See Ross Town Code, Title 18.) That letter is attached here as **Exhibit A**.

At this Group's January 17 meeting, all four members present agreed that that the Project was monumental, excessively large, and out of character with its setting and with other dwellings in the neighborhood. (See Town Code, § 18.41.100, subd. (c)(1).) Despite these findings, the Project's applicants have returned with a substantially identical design that is not responsive to the Group's guidance. To make matters worse, by submitting the ADU under a separate permit, the Project now introduces new violations of the Town Code. These issues are discussed in further detail below.

1. At the January 17 Meeting, This Group Advised the Project Applicants to Reduce the Mass of the ADU and Modify Its Location:

The draft minutes of the January 17, 2023 meeting, which are included in the agenda packet for tonight's meeting, show that this Group recommended significant changes to the Project:

- **Chair Kruttschnitt:**¹ Found that "the ADU should be diminutive to the house and garage, instead it exasperates the mass;" that the " main home seems secondary to the ADU;" and that the "[m]ass should step back with the slope."

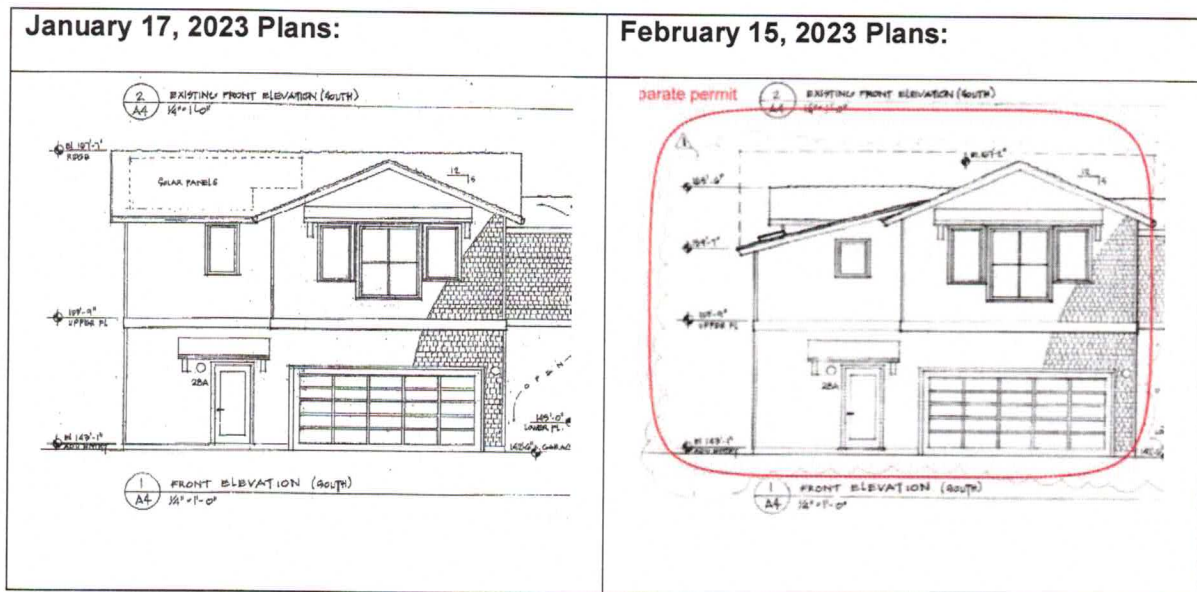
¹ It appears that some comments attributed to Chair Kruttschnitt may have been made by Advisory Design Review group Member Fritz, and some of the comments attributed to Member Fritz may have been made by Chair Kruttschnitt. In any event, it appears that Chair Kruttschnitt and Member Fritz generally shared the same opinions with respect to the Project.

- **Member Buckingham:** Noted that the ADU “looks monolithic in scale and almost commercial,” and recommended that the ADU be “stepped back” with a new design that will “push it back into the hillside.”
- **Member Dewar:** Agreed that “the massing of the ADU works against the design of the house and the topography of the site” and that development should be re-focused to the “space behind the garage.”
- **Member Fritz:** Observed that the “ADU has too much mass at the outside of the property” and “[w]ould like to see the ADU in a different location.”

All of these findings support the conclusion that the Project does not comply with applicable development standards. (See Ross Town Code, Title 18.)

2. The “Revised” Project Plans Are Not Responsive to This Group’s Guidance:

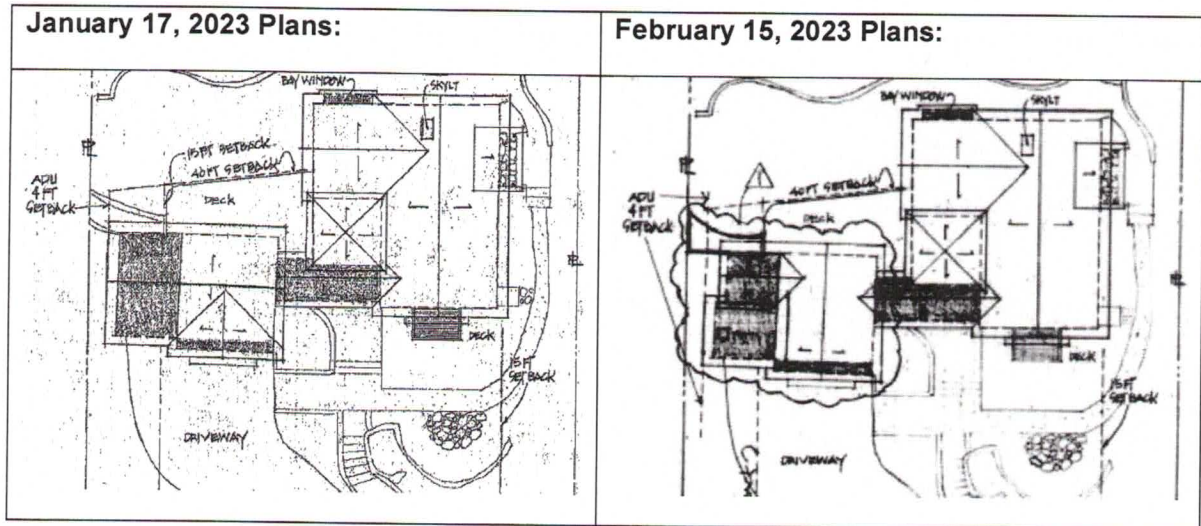
This Group gave clear guidance to the Project applicant that the Project’s ADU should be reduced in size, stepped back and integrated into the sloping hillside to the north of its current location, and integrated into the design of other development at the site by keeping the ADU proportionally smaller than the main house. The “revised” Project plans under consideration tonight merely pay lip service to this advice, and a side-by-side comparison of the plans show that the massing and scale of the ADU is substantially identical to the proposal that was considered on January 17:



The “revised” plans indicate that the south-facing elevation of the ADU is still the exact same height. When viewed from the public right of way and other surrounding properties, the “revised” design will look identical, with the same bulk and massing. Furthermore, there have been no changes to the placement of the south-facing windows, which still violate design review requirements that forbid locating or designing new structures in a manner that intrudes upon the

privacy of neighbors. (Town Code, § 18.41.100, subd. (m).) As noted in our January 17 letter, these windows peer directly into private areas of adjoining properties.

The “revised” design also completely ignore this Group’s finding that the location of the ADU should be changed so that it is set back into the hillside to the north:



The “revised” plans show that the ADU is in the **exact** same location, with only minor, inconsequential articulation added on the west-facing elevation. There are no changes that address this Group’s findings regarding the massing, scale, and location of the ADU.

In summary, the “revised” design still violates the Town’s development standards. Project will create a significant adverse impact on adjacent properties and the surrounding neighborhood, and it will adversely affect privacy at adjacent properties (Town Code, § 18.42.065.) The Project fails to abide by the requirement that “[n]ew structures and additions should avoid monumental or excessively large size out of character with their setting or with other dwellings in the neighborhood.” (Town Code, § 18.41.100, subd. (c)(1).) “Buildings should be compatible with others in the neighborhood and not attract attention to themselves.” (*Ibid.*)

3. The Submittal of the ADU Under a Separate Permit Introduces New Legal Violations:

The Town’s design review procedures forbid project applicants from segmenting separate aspects or portions of a project under separate permits when the **entire** project is subject to this Group’s review and consideration. Specifically, the Town Code requires all project components to be considered together.

In the section of the design review requirements titled “Relationship of Project to Entire Site,” the code specifies: “Development review should be a broad, overall site review, rather than with a narrow focus oriented only at the portion of the project specifically triggering design review.” (Town Code, § 18.41.100, subd. (o)(1).)

The decision to submit the ADU under a separate permit suggests that the Project applicant is attempting to avoid scrutiny. The Town Code does not permit this tactic, and we hope that this Group will summarily reject the applicant's attempts to avoid design review.

4. Conclusion:

We have identified additional inconsistencies between the Project plans and applicable development standards.² However, in light of the significant issues identified in this letter, we hope that you will take the opportunity to recommend that the Project be revised to address these important development standards. We also hope that you will take this opportunity to encourage the Project applicants to explore design alternatives (e.g., setting the project further back, reducing its height, and placing windows so that they face away from Walnut Ave.), which will address the privacy concerns outlined in this letter.

Please do not hesitate to reach out to us if you have questions.

Very truly yours,



Ellis F. Raskin
Senior Counsel

EFR

cc: Andrew A. Bassak, Esq.
Kate Lord
Katherine Bossart

Attachment

² Among other issues, we would like to point out that the "carriage house" at the Project site has not been used for vehicle parking for over 50 years. The previous property owners used it as a metal shop. Repurposing that portion of the property for parking is a new use, and it appears that the proposed design conflicts with mandatory Code requirements for parking and driveway design. (See Town Code, §§ 18.40.095 & 18.40.120.)

EXHIBIT A:

January 17, 2023 Letter to ADR Group

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January 17, 2023

VIA E-MAIL designreview@townofross.org

Advisory Design Review Group
Town of Ross
Town Hall
31 Sir Francis Drake Boulevard
Ross, CA 94957

Re: 28 Walnut Avenue (APN: 073-171-03; Applicant: Bressack and Wasserman Architects)

Dear Chair Kruttschnitt and Members of the Advisory Design Review Group:

My law firm and I represent Kate Lord, the owner of 15 Walnut Ave. and 10 Olive Ave. My client's properties are located immediately across the street and downhill from the project at 28 Walnut Avenue (APN: 073-171-03; hereafter "Project") to be considered at tonight's Advisory Design Group meeting. We have carefully reviewed the Project plans, and we have identified several aspects of the Project that do not comply with applicable development standards. (See Ross Town Code, Title 18.) Respectfully, the Project should not be recommended for approval without modification to address the concerns specified in this letter.

The Project will create adverse impacts on nearby properties, and the Project is incompatible with the existing neighborhood character. The proposed ADU exceeds the 16-foot height limit, and it is not eligible for an exemption from the height limit. The proposed exemption will create a significant adverse impact on adjacent properties and the surrounding neighborhood, and it will adversely affect privacy at adjacent properties (Town Code, § 18.42.065.) Furthermore, the proposed Project is out of character with its setting and with other dwellings in the surrounding neighborhood. (Town Code, § 18.41.100.) We urge you to take this opportunity to recommend that the Project be revised to address these (and other) mandatory code requirements.

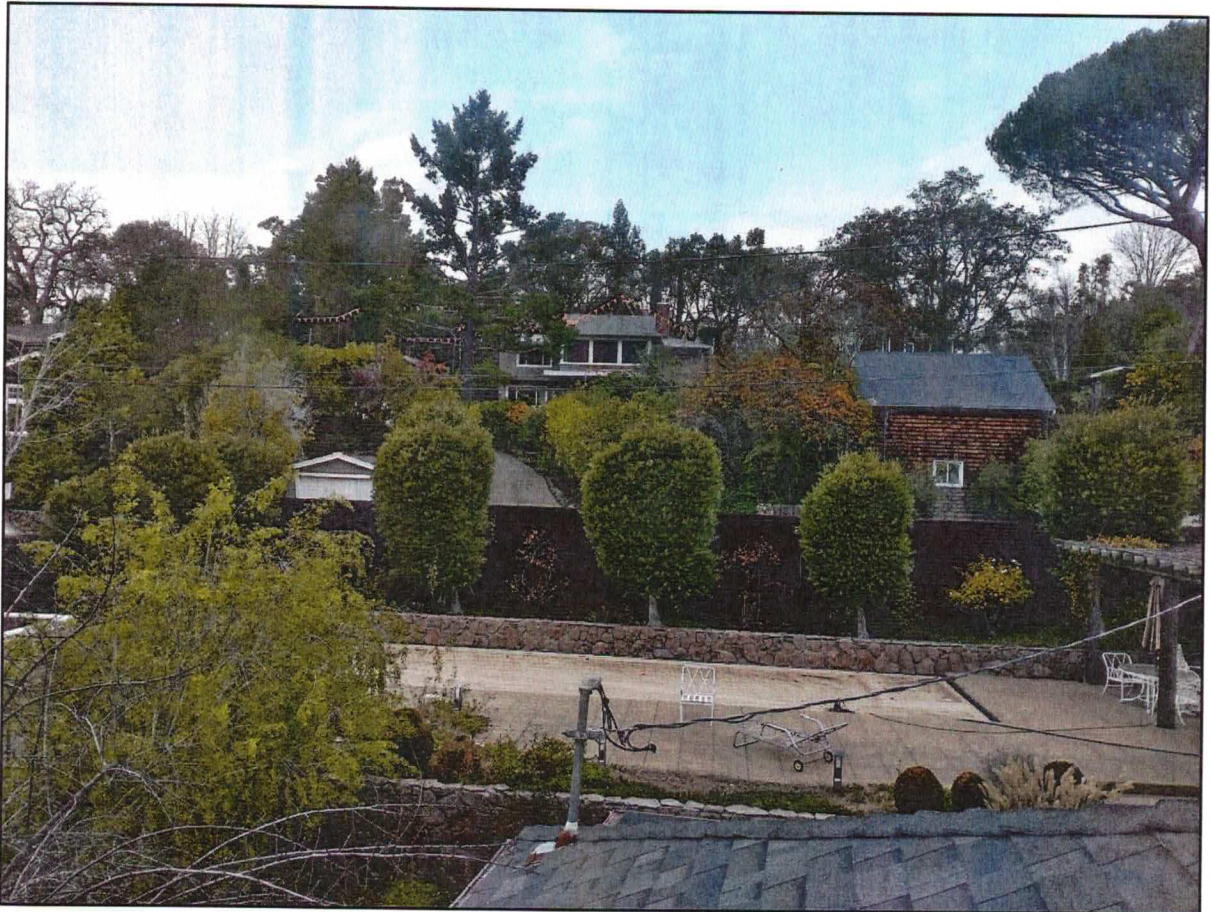
1. Project Background:

Preliminarily, it bears emphasis that our client does not oppose the addition of an ADU at the subject property at 28 Walnut Ave. Our client understands and agrees with the proposed Draft Housing Element for the Town of Ross that aims to meet required state mandates to develop increased housing in Ross in part by developing ADUs. In addition, our client does not have a problem with the intended use of the ADU as informed by the property owners, who do not intend to rent the ADU, but instead plan to use the ADU for live in help such as a nanny.

As proposed, however, the Project is much more extensive than simply adding an ADU to the property, and many aspects of the proposed construction conflict with the criteria and standards outlined in the Ross General Plan and Chapters 18.41 and 18.42 of the Town Code. To summarize, two new 2-story structures are proposed (one of which will house the ADU), and

significant changes are proposed to be made to the existing primary residence at the top of the property and the garage at the bottom of the property, along with potentially impactful changes to the driveway and stormwater runoff system. In addition, multiple large trees will be removed, a new water pond feature is proposed and landscaping throughout the property will be overhauled. As proposed, the project is more in line with a complete site overhaul than simply adding an ADU.

The photo included immediately below demonstrates the current view of 28 Walnut Ave from one of the bedrooms of 15 Walnut Ave. Currently, the primary residence is visible as is the lower garage and the driveway. Of note, the vast majority of the view is dominated by greenery, not structures. The Project at 28 Walnut Ave. proposes removing the large tree in the center of the view as well as the acacia tree on the left side of the photo. The story poles for the Project at 28 Walnut Ave. are also visible and represent the lines and heights of the proposed structures, demonstrating how significantly the view will change. In summary, what was once predominately a view of greenery will become a view of massive buildings out of character with the neighborhood, with no large trees to soften the view.



On the following page is a photograph that is zoomed in on 28 Walnut Ave. and the story pole flags. This photograph shows the extent and massive scope of the proposed Project. As a reminder, removal of the large trees in the center and left of the photo is proposed as part of the

Project. Note that the roof line of the main residence is being increased as indicated by the story poles. The other two new proposed structures both will be two stories tall (and as tall as the raised primary residence). The combined structure will stretch nearly the entire width of the property. The proposed Project will adversely affect my client's privacy in most areas of the backyard of 15 Walnut Ave., as well as the kitchen, the dining room, and two of three bedrooms.



2. Inconsistencies with Applicable Development Standards:

ADUs cannot exceed 16 feet in height unless an exemption is granted. The Project proposes to develop an ADU that exceeds 16 feet in height, so an exception is required. To be eligible for an exemption, the Town must make certain findings. (Town Code, § 18.42.065.) At least two of those findings are relevant here:

- “(1) The exception will not create a significant adverse impact on any adjacent property, the surrounding neighborhood, or the general public good.”
- “(2) The lot and the arrangement of existing and proposed physical improvements on the lot can accommodate the exception without adversely affecting the views, privacy, or access to light and air of neighboring properties.”

The Project does not satisfy either of these criteria. As shown above, the Project will will create a significant adverse impact on adjacent properties and the surrounding neighborhood, and it will adversely affect privacy at adjacent properties (Town Code, § 18.42.065.)

Furthermore, the Project must comply with applicable Design Review standards. Those standards state, in relevant part:

“New structures and additions should avoid monumental or excessively large size out of character with their setting or with other dwellings in the neighborhood. Buildings should be compatible with others in the neighborhood and not attract attention to themselves.”

(Town Code, § 18.41.100, subd. (c)(1).) Again, for the reasons discussed above, the Project is out of character with the setting and demonstrably not compatible with other dwellings in the neighborhood.

3. Stormwater Runoff

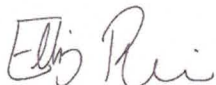
As both 15 Walnut Ave. and 10 Olive Ave. are directly downhill from the Project, my client has significant concerns about the proposed changes to the driveway, and how stormwater will be handled. The existing structures have reliably directed stormwater runoff into the storm drain system for decades, including during the recent heavy storms. The Project proposes changes to the existing system that must be verified by an appropriate engineers, including stormwater and soils engineers. As residents of Ross are well aware, the local clayey soils are not particularly water permeable, and the proposed Project's changes to the existing system and its reliance on permeable surfaces to address stormwater runoff create a significant potential risk of water and mudslide damage to properties downhill from the Project.

4. Conclusion:

We have identified additional inconsistencies between the Project plans and applicable development standards. However, in light of the significant issues identified in this letter, we hope that you will take the opportunity to recommend that the Project be revised to address these important development standards. We also hope that you will take this opportunity to encourage the Project applicants to explore design alternatives (e.g., setting the project further back, reducing its height, and placing windows so that they face away from Walnut Ave.) which will address the privacy concerns outlined in this letter.

Please do not hesitate to reach out to us if you have questions.

Very truly yours,



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cc: Andrew A. Bassak, Esq.
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March 21, 2023

VIA E-MAIL designreview@townofross.org

Advisory Design Review Group
Town of Ross
Town Hall
31 Sir Francis Drake Boulevard
Ross, CA 94957

Re: 28 Walnut Avenue (APN: 073-171-03; Applicant: Bressack and Wasserman Architects)

Dear Chair Kruttschnitt and Members of the Advisory Design Review Group:

As you know, my law firm and I represent Kate Lord, the owner of 15 Walnut Ave. and 10 Olive Ave. My client's properties are located immediately across the street and downhill beneath the project at 28 Walnut Avenue (APN: 073-171-03; hereafter "Project") to be considered, for a third time, at tonight's Advisory Design Group meeting. We previously submitted two letters to you on January 17 and February 15, 2023, which identified several aspects of the Project that do not comply with applicable development standards. (See Ross Town Code, Title 18.) Those two letters are attached here as **Exhibit A** and **Exhibit B**, respectively.

We are disappointed to see that the Project applicants have, for the most part, ignored the Advisory Design Review Group's recommendations (for the second time). As you know, when this Project was first presented to this Group on January 17, this Group unanimously agreed that the Project was monumental, excessively large, and out of character with its setting and with other dwellings in the neighborhood. (See Town Code, § 18.41.100, subd. (c)(1).) Despite these findings, the Project applicants returned on February 15 with a substantially identical design. Unsurprisingly, members of this Group made the following comments:¹

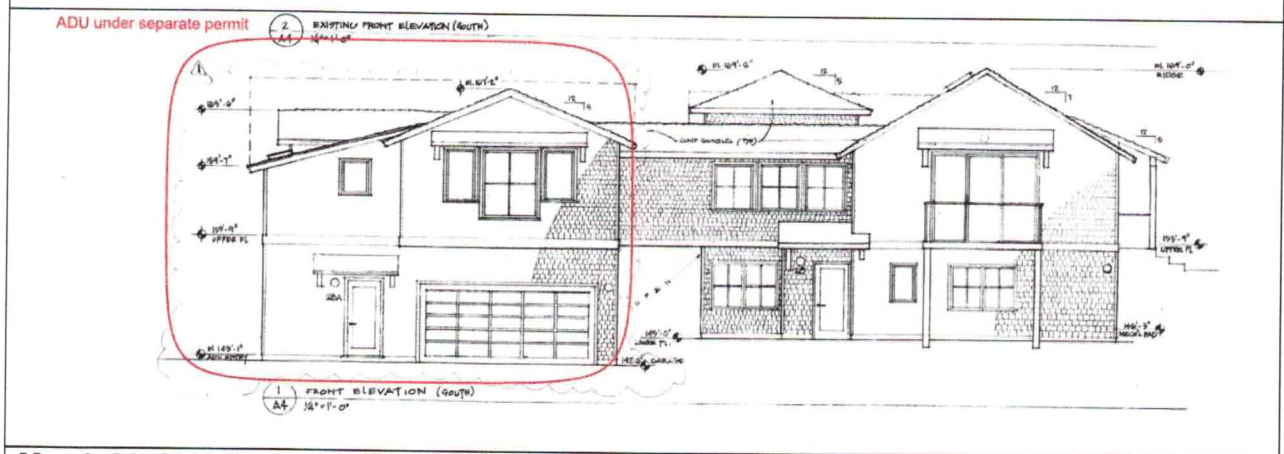
- **Member Dewar:** Noted that it "[d]oes not fee[l] that the comments were heard that the applicant found a work around instead;" and the bridge "increases bulk and mass"
- **Member Buckingham:** Stated that she was "[d]isappointed in the size of the ADU" and also opined that she was "[a]gainst the bridge, [and] thinks the buildings would be better separated which would provide more breathing room."
- **Chair Kruttschnitt:** Found that the "[m]ass is still too large" and "d[id] not like the bridge."

¹ These comments are found in the draft minutes of the February 15 meeting, which is attached to your agenda for tonight's meeting.

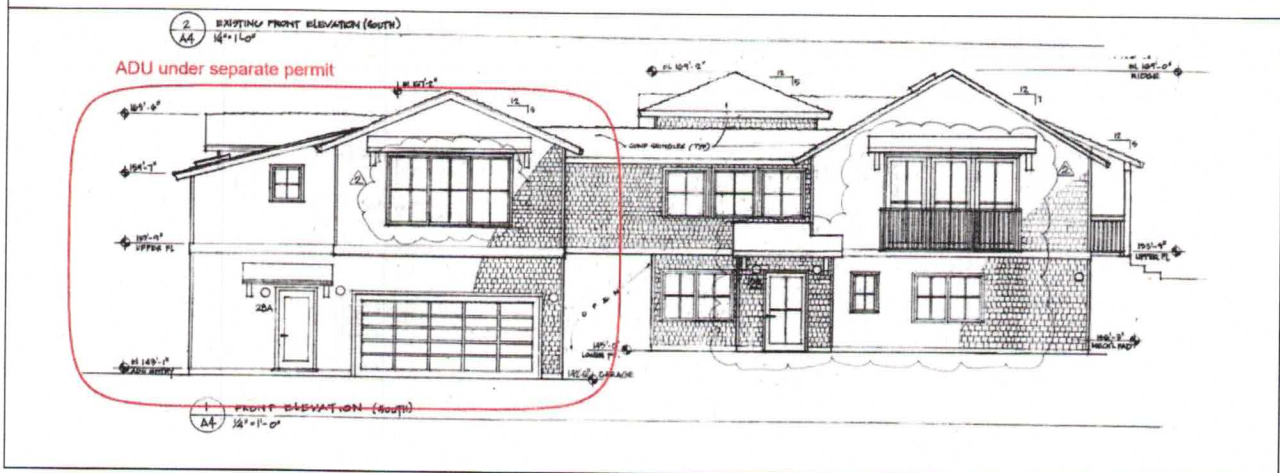
- **Member Fritts:** Found that the “[m]ass of the project is too large;” also “[a]gree[d] with the comments about the deck” and “[a]gree[d] on the bridge, adds to bulk and mass.”
- **Member Sutro:** Indicated his intent to defer to other members of the Group with respect to their comments about the bridge and the Project’s massing.

The plans before you tonight are substantially identical to the plans that were submitted on January 17 and February 15, and they do not respond to this Group’s comments regarding the Project’s mass and its consistency with applicable development standards. (See Ross Town Code, Title 18.) In particular, the Project applicants have not addressed the issues presented by the scale and location of the bridge:

February 15, 2023 Plans:



March 21, 2023 Plans:



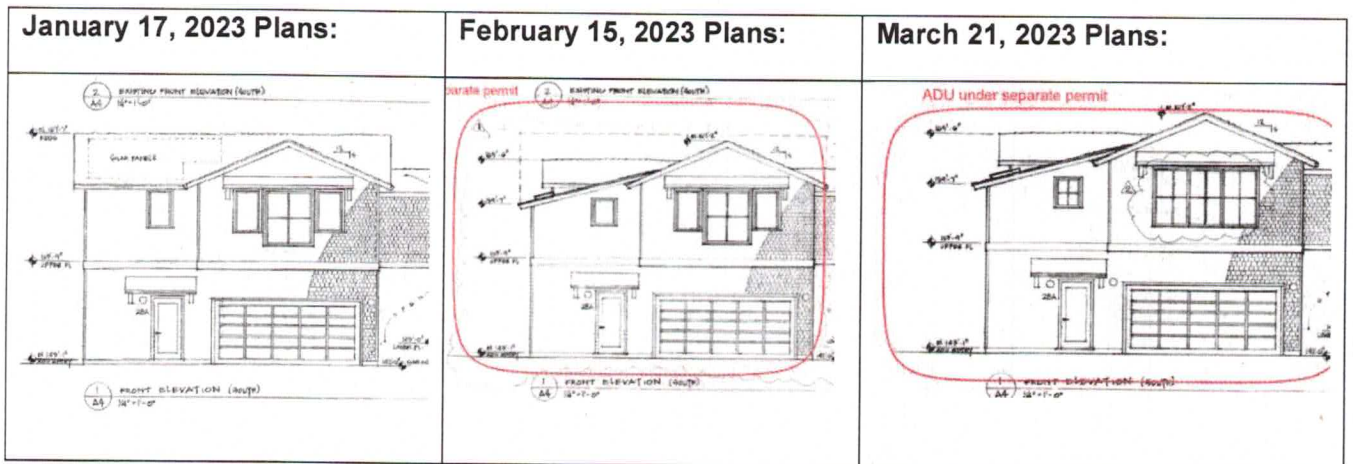
The “revised” plans indicate that the Project’s south-facing elevation will still have the exact same height and design. When viewed from the public right of way and other surrounding properties, the “revised” design will look identical, with the same bulk and massing. The Project

continues to create a significant adverse impact on adjacent properties and the surrounding neighborhood, and it will adversely affect privacy at adjacent properties (Town Code, § 18.42.065.) The Project fails to abide by the requirement that “[n]ew structures and additions should avoid monumental or excessively large size out of character with their setting or with other dwellings in the neighborhood.” (Town Code, § 18.41.100, subd. (c)(1).) “Buildings should be compatible with others in the neighborhood and not attract attention to themselves.” (*Ibid.*)

We assume that the bridge continues to be included in the project design so that the Project applicants can sidestep height limits for detached ADUs (which are, generally, 16 feet). But as we noted in our February 15 letter, the Town’s design review procedures forbid project applicants from segmenting separate aspects or portions of a project under separate permits when the **entire** project is subject to this Group’s review and consideration. “Development review should be a broad, overall site review, rather than with a narrow focus oriented only at the portion of the project specifically triggering design review.” (§ 18.41.100, subd. (o)(1).)

The decision to submit the ADU under a separate permit suggests that the Project applicant is attempting to avoid scrutiny. The Town Code does not permit this tactic, and we trust that this Group will summarily reject the applicant’s attempts to avoid design review.

Furthermore, there have been no meaningful changes to the placement of the south-facing windows, which still violate design review requirements that forbid locating or designing new structures in a manner that intrudes upon the privacy of neighbors. (Town Code, § 18.41.100, subd. (m).) As noted in our January 17 and February 15 letters, these windows peer directly into private areas of adjoining properties. In fact, the windows in the ADU now appear to be even bigger:



We have identified additional inconsistencies between the Project plans and applicable development standards.² However, in light of the significant issues identified in this letter, we

² As noted in our February 15 letter, “carriage house” at the Project site has not been used for vehicle parking for over 50 years. The previous property owners used it as a metal shop. Repurposing that portion of the property for parking is a new use, and it appears that the

hope that you will take the opportunity to recommend that the Project be revised to address these important development standards. We also hope that you will take this opportunity to encourage the Project applicants to explore design alternatives (e.g., removing the bridge, setting the project further back, reducing its height, and placing windows so that they face away from Walnut Ave.), which will address the privacy concerns outlined in this letter.

Please do not hesitate to reach out to us if you have questions.

Very truly yours,



Ellis F. Raskin
Senior Counsel

EFR

cc: Andrew A. Bassak, Esq.
Kate Lord
Katherine Bossart

Attachments

proposed design conflicts with mandatory Code requirements for parking and driveway design.
(See Town Code, §§ 18.40.095 & 18.40.120.)

EXHIBIT A:

January 17, 2023 Letter to ADR Group

ELLIS F. RASKIN
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January 17, 2023

VIA E-MAIL designreview@townofross.org

Advisory Design Review Group
Town of Ross
Town Hall
31 Sir Francis Drake Boulevard
Ross, CA 94957

Re: 28 Walnut Avenue (APN: 073-171-03; Applicant: Bressack and Wasserman Architects)

Dear Chair Kruttschnitt and Members of the Advisory Design Review Group:

My law firm and I represent Kate Lord, the owner of 15 Walnut Ave. and 10 Olive Ave. My client's properties are located immediately across the street and downhill from the project at 28 Walnut Avenue (APN: 073-171-03; hereafter "Project") to be considered at tonight's Advisory Design Group meeting. We have carefully reviewed the Project plans, and we have identified several aspects of the Project that do not comply with applicable development standards. (See Ross Town Code, Title 18.) Respectfully, the Project should not be recommended for approval without modification to address the concerns specified in this letter.

The Project will create adverse impacts on nearby properties, and the Project is incompatible with the existing neighborhood character. The proposed ADU exceeds the 16-foot height limit, and it is not eligible for an exemption from the height limit. The proposed exemption will create a significant adverse impact on adjacent properties and the surrounding neighborhood, and it will adversely affect privacy at adjacent properties (Town Code, § 18.42.065.) Furthermore, the proposed Project is out of character with its setting and with other dwellings in the surrounding neighborhood. (Town Code, § 18.41.100.) We urge you to take this opportunity to recommend that the Project be revised to address these (and other) mandatory code requirements.

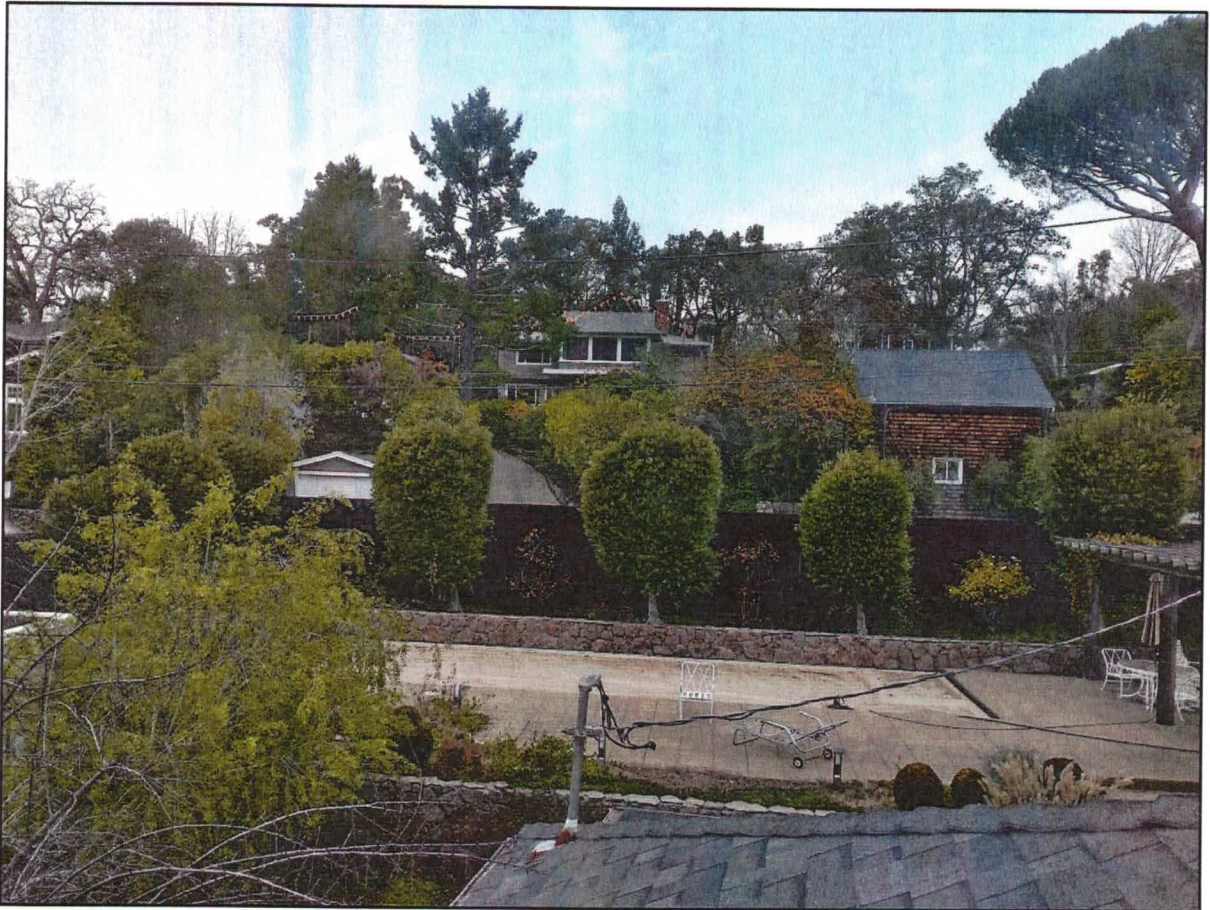
1. Project Background:

Preliminarily, it bears emphasis that our client does not oppose the addition of an ADU at the subject property at 28 Walnut Ave. Our client understands and agrees with the proposed Draft Housing Element for the Town of Ross that aims to meet required state mandates to develop increased housing in Ross in part by developing ADUs. In addition, our client does not have a problem with the intended use of the ADU as informed by the property owners, who do not intend to rent the ADU, but instead plan to use the ADU for live in help such as a nanny.

As proposed, however, the Project is much more extensive than simply adding an ADU to the property, and many aspects of the proposed construction conflict with the criteria and standards outlined in the Ross General Plan and Chapters 18.41 and 18.42 of the Town Code. To summarize, two new 2-story structures are proposed (one of which will house the ADU), and

significant changes are proposed to be made to the existing primary residence at the top of the property and the garage at the bottom of the property, along with potentially impactful changes to the driveway and stormwater runoff system. In addition, multiple large trees will be removed, a new water pond feature is proposed and landscaping throughout the property will be overhauled. As proposed, the project is more in line with a complete site overhaul than simply adding an ADU.

The photo included immediately below demonstrates the current view of 28 Walnut Ave from one of the bedrooms of 15 Walnut Ave. Currently, the primary residence is visible as is the lower garage and the driveway. Of note, the vast majority of the view is dominated by greenery, not structures. The Project at 28 Walnut Ave. proposes removing the large tree in the center of the view as well as the acacia tree on the left side of the photo. The story poles for the Project at 28 Walnut Ave. are also visible and represent the lines and heights of the proposed structures, demonstrating how significantly the view will change. In summary, what was once predominately a view of greenery will become a view of massive buildings out of character with the neighborhood, with no large trees to soften the view.



On the following page is a photograph that is zoomed in on 28 Walnut Ave. and the story pole flags. This photograph shows the extent and massive scope of the proposed Project. As a reminder, removal of the large trees in the center and left of the photo is proposed as part of the

Project. Note that the roof line of the main residence is being increased as indicated by the story poles. The other two new proposed structures both will be two stories tall (and as tall as the raised primary residence). The combined structure will stretch nearly the entire width of the property. The proposed Project will adversely affect my client's privacy in most areas of the backyard of 15 Walnut Ave., as well as the kitchen, the dining room, and two of three bedrooms.



2. Inconsistencies with Applicable Development Standards:

ADUs cannot exceed 16 feet in height unless an exemption is granted. The Project proposes to develop an ADU that exceeds 16 feet in height, so an exception is required. To be eligible for an exemption, the Town must make certain findings. (Town Code, § 18.42.065.) At least two of those findings are relevant here:

- “(1) The exception will not create a significant adverse impact on any adjacent property, the surrounding neighborhood, or the general public good.”
- “(2) The lot and the arrangement of existing and proposed physical improvements on the lot can accommodate the exception without adversely affecting the views, privacy, or access to light and air of neighboring properties.”

The Project does not satisfy either of these criteria. As shown above, the Project will create a significant adverse impact on adjacent properties and the surrounding neighborhood, and it will adversely affect privacy at adjacent properties (Town Code, § 18.42.065.)

Furthermore, the Project must comply with applicable Design Review standards. Those standards state, in relevant part:

“New structures and additions should avoid monumental or excessively large size out of character with their setting or with other dwellings in the neighborhood. Buildings should be compatible with others in the neighborhood and not attract attention to themselves.”

(Town Code, § 18.41.100, subd. (c)(1).) Again, for the reasons discussed above, the Project is out of character with the setting and demonstrably not compatible with other dwellings in the neighborhood.

3. Stormwater Runoff

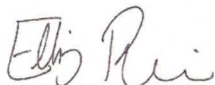
As both 15 Walnut Ave. and 10 Olive Ave. are directly downhill from the Project, my client has significant concerns about the proposed changes to the driveway, and how stormwater will be handled. The existing structures have reliably directed stormwater runoff into the storm drain system for decades, including during the recent heavy storms. The Project proposes changes to the existing system that must be verified by an appropriate engineers, including stormwater and soils engineers. As residents of Ross are well aware, the local clayey soils are not particularly water permeable, and the proposed Project's changes to the existing system and its reliance on permeable surfaces to address stormwater runoff create a significant potential risk of water and mudslide damage to properties downhill from the Project.

4. Conclusion:

We have identified additional inconsistencies between the Project plans and applicable development standards. However, in light of the significant issues identified in this letter, we hope that you will take the opportunity to recommend that the Project be revised to address these important development standards. We also hope that you will take this opportunity to encourage the Project applicants to explore design alternatives (e.g., setting the project further back, reducing its height, and placing windows so that they face away from Walnut Ave.) which will address the privacy concerns outlined in this letter.

Please do not hesitate to reach out to us if you have questions.

Very truly yours,



Ellis F. Raskin
Senior Counsel

EFR

Advisory Design Review Group
January 17, 2023
Page 5

cc: Andrew A. Bassak, Esq.
Kate Lord
Katherine Bossart

EXHIBIT B:

February 15, 2023 Letter to ADR Group

ELLIS F. RASKIN
SENIOR COUNSEL
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February 15, 2023

VIA E-MAIL designreview@townofross.org

Advisory Design Review Group
Town of Ross
Town Hall
31 Sir Francis Drake Boulevard
Ross, CA 94957

Re: 28 Walnut Avenue (APN: 073-171-03; Applicant: Bressack and Wasserman Architects)

Dear Chair Kruttschnitt and Members of the Advisory Design Review Group:

My law firm and I represent Kate Lord, the owner of 15 Walnut Ave. and 10 Olive Ave. My client's properties are located immediately across the street and downhill from the project at 28 Walnut Avenue (APN: 073-171-03; hereafter "Project") to be considered at tonight's Advisory Design Group meeting. We submitted a letter to you on January 17, 2023, which identified several aspects of the Project that do not comply with applicable development standards. (See Ross Town Code, Title 18.) That letter is attached here as **Exhibit A**.

At this Group's January 17 meeting, all four members present agreed that that the Project was monumental, excessively large, and out of character with its setting and with other dwellings in the neighborhood. (See Town Code, § 18.41.100, subd. (c)(1).) Despite these findings, the Project's applicants have returned with a **substantially identical design** that is not responsive to the Group's guidance. To make matters worse, by submitting the ADU under a separate permit, the Project now introduces new violations of the Town Code. These issues are discussed in further detail below.

1. At the January 17 Meeting, This Group Advised the Project Applicants to Reduce the Mass of the ADU and Modify Its Location:

The draft minutes of the January 17, 2023 meeting, which are included in the agenda packet for tonight's meeting, show that this Group recommended significant changes to the Project:

- **Chair Kruttschnitt:**¹ Found that "the ADU should be diminutive to the house and garage, instead it exasperates the mass;" that the "main home seems secondary to the ADU;" and that the "[m]ass should step back with the slope."

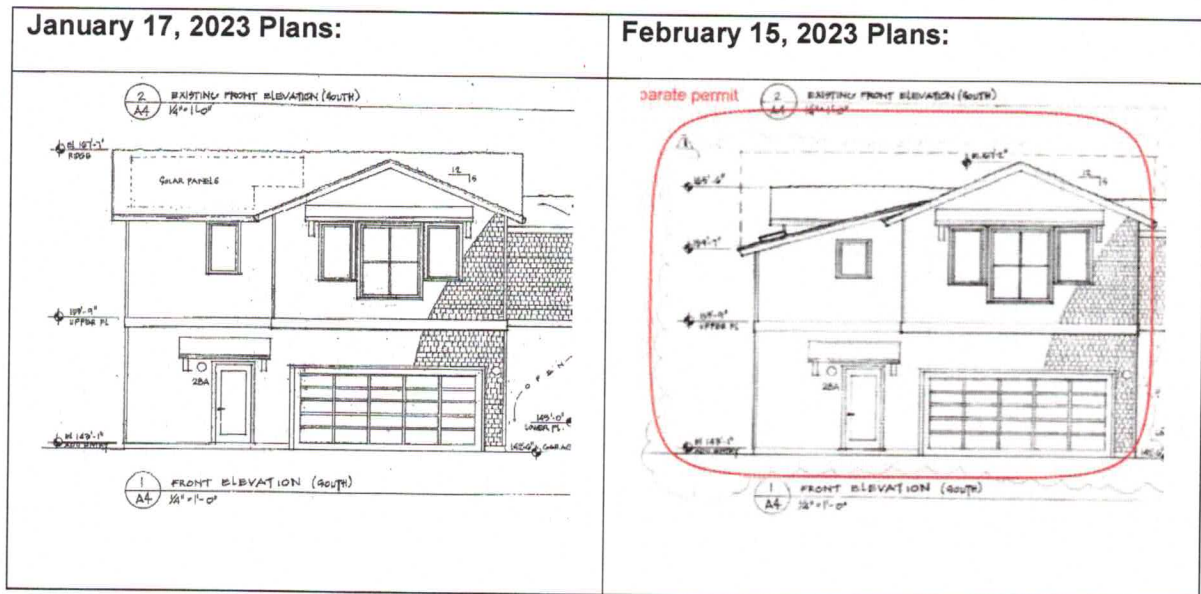
¹ It appears that some comments attributed to Chair Kruttschnitt may have been made by Advisory Design Review group Member Fritz, and some of the comments attributed to Member Fritz may have been made by Chair Kruttschnitt. In any event, it appears that Chair Kruttschnitt and Member Fritz generally shared the same opinions with respect to the Project.

- **Member Buckingham:** Noted that the ADU “looks monolithic in scale and almost commercial,” and recommended that the ADU be “stepped back” with a new design that will “push it back into the hillside.”
- **Member Dewar:** Agreed that “the massing of the ADU works against the design of the house and the topography of the site” and that development should be re-focused to the “space behind the garage.”
- **Member Fritz:** Observed that the “ADU has too much mass at the outside of the property” and “[w]ould like to see the ADU in a different location.”

All of these findings support the conclusion that the Project does not comply with applicable development standards. (See Ross Town Code, Title 18.)

2. The “Revised” Project Plans Are Not Responsive to This Group’s Guidance:

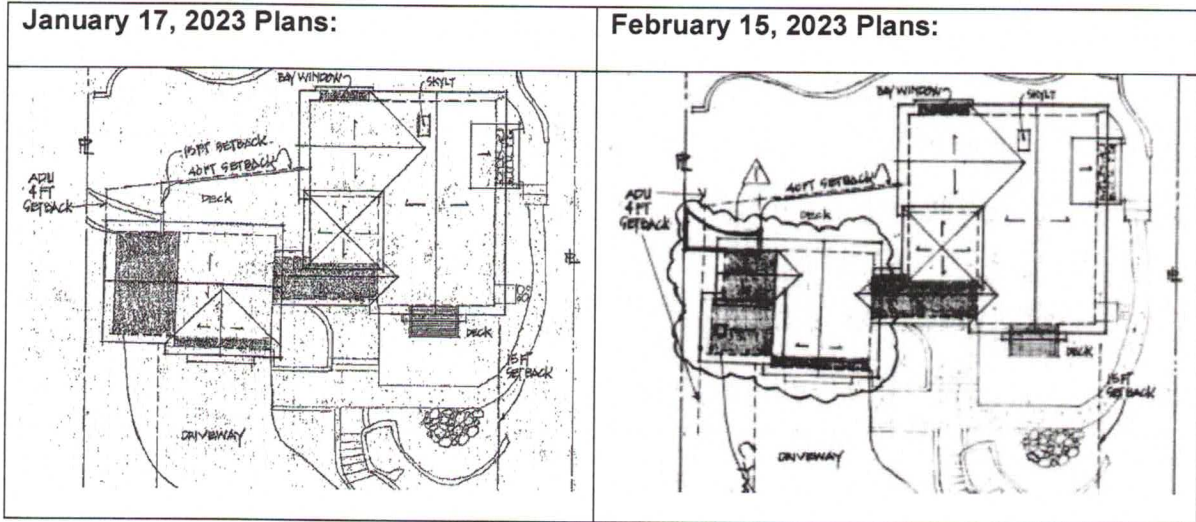
This Group gave clear guidance to the Project applicant that the Project’s ADU should be reduced in size, stepped back and integrated into the sloping hillside to the north of its current location, and integrated into the design of other development at the site by keeping the ADU proportionally smaller than the main house. The “revised” Project plans under consideration tonight merely pay lip service to this advice, and a side-by-side comparison of the plans show that the massing and scale of the ADU is substantially identical to the proposal that was considered on January 17:



The “revised” plans indicate that the south-facing elevation of the ADU is still the exact same height. When viewed from the public right of way and other surrounding properties, the “revised” design will look identical, with the same bulk and massing. Furthermore, there have been no changes to the placement of the south-facing windows, which still violate design review requirements that forbid locating or designing new structures in a manner that intrudes upon the

privacy of neighbors. (Town Code, § 18.41.100, subd. (m).) As noted in our January 17 letter, these windows peer directly into private areas of adjoining properties.

The “revised” design also completely ignore this Group’s finding that the location of the ADU should be changed so that it is set back into the hillside to the north:



The “revised” plans show that the ADU is in the **exact** same location, with only minor, inconsequential articulation added on the west-facing elevation. There are no changes that address this Group’s findings regarding the massing, scale, and location of the ADU.

In summary, the “revised” design still violates the Town’s development standards. Project will create a significant adverse impact on adjacent properties and the surrounding neighborhood, and it will adversely affect privacy at adjacent properties (Town Code, § 18.42.065.) The Project fails to abide by the requirement that “[n]ew structures and additions should avoid monumental or excessively large size out of character with their setting or with other dwellings in the neighborhood.” (Town Code, § 18.41.100, subd. (c)(1).) “Buildings should be compatible with others in the neighborhood and not attract attention to themselves.” (*Ibid.*)

3. The Submittal of the ADU Under a Separate Permit Introduces New Legal Violations:

The Town’s design review procedures forbid project applicants from segmenting separate aspects or portions of a project under separate permits when the **entire** project is subject to this Group’s review and consideration. Specifically, the Town Code requires all project components to be considered together.

In the section of the design review requirements titled “Relationship of Project to Entire Site,” the code specifies: “Development review should be a broad, overall site review, rather than with a narrow focus oriented only at the portion of the project specifically triggering design review.” (Town Code, § 18.41.100, subd. (o)(1).)

The decision to submit the ADU under a separate permit suggests that the Project applicant is attempting to avoid scrutiny. The Town Code does not permit this tactic, and we hope that this Group will summarily reject the applicant's attempts to avoid design review.

4. Conclusion:

We have identified additional inconsistencies between the Project plans and applicable development standards.² However, in light of the significant issues identified in this letter, we hope that you will take the opportunity to recommend that the Project be revised to address these important development standards. We also hope that you will take this opportunity to encourage the Project applicants to explore design alternatives (e.g., setting the project further back, reducing its height, and placing windows so that they face away from Walnut Ave.), which will address the privacy concerns outlined in this letter.

Please do not hesitate to reach out to us if you have questions.

Very truly yours,



Ellis F. Raskin
Senior Counsel

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² Among other issues, we would like to point out that the "carriage house" at the Project site has not been used for vehicle parking for over 50 years. The previous property owners used it as a metal shop. Repurposing that portion of the property for parking is a new use, and it appears that the proposed design conflicts with mandatory Code requirements for parking and driveway design. (See Town Code, §§ 18.40.095 & 18.40.120.)