



**City of Ketchum
Planning & Building**

IN RE:)
)
The Perry Building) KETCHUM PLANNING AND ZONING COMMISSION
Variance Request) FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
Application File Number: P22-045D) DECISION
)
Date: March 28, 2023)
)

PROJECT: The Perry Building

APPLICATION TYPE: Variance

FILE NUMBER: P22-045D

ASSOCIATED APPLICATIONS: Design Review (Application File No. P22-045C)
Lot Consolidation—Preliminary Plat (Application File No. P22-045A)
Condominium Subdivision – Preliminary Plat (Application File No. P22-045B)

PROPERTY OWNER: Carson Palmer and Broderick Smith, Managing Members, The Perry Building LLC

REPRESENTATIVE: Tiina Ritval (Architect), GGLO

LOCATION: 131 W 4th Street and 471 & 431 N 1st Avenue
(Ketchum Townsite: Block 56: Lots 2, 3A, and 4A)

ZONING: Community Core – Subdistrict 2 – Mixed-Use Subdistrict (CC-2)

OVERLAY: None

RECORD OF PROCEEDINGS

The Planning and Zoning Commission (the “Commission”) considered The Perry Building Variance Application File No. P22-045D during their meeting on March 14, 2023. The application was considered concurrently with Design Review Application File No. P22-045C, Lot Consolidation Preliminary Plat Application File No. P22-045A, and Condominium Subdivision Preliminary Plat Application File No. P22-045B and the public hearings were combined in accordance with Idaho Code §67-6522.

Public Hearing Notice & Public Comment

A public hearing notice for the project was mailed to all owners of property within 300 feet of the project site and all political subdivisions on February 22, 2023. The public hearing notice was published in the Idaho Mountain Express on February 22, 2023. A notice was posted on the project site and the city's website on January 30, 2023. The building corners were staked and the story pole was installed on the project site on February 27, 2023. After considering Staff's analysis, the applicant's presentation, and public comment, the Commission approved Variance Application File No. P22-045D subject to conditions.

FINDINGS OF FACT

The Commission having reviewed the entire project record, provided notice, and conducted the required public hearing does hereby make and set forth these Findings of Fact, Conclusions of Law, and Decision as follows:

The applicant is proposing to develop a new 53,756-gross-square-foot mixed-use building, called The Perry Building (the "project"), at the northwest corner of 4th Street and 1st Avenue (the "subject property") located within the Mixed-Use Subdistrict of the Community Core ("CC-2 Zone"). The project site is adjacent to: (a) the Westside Office Condominiums to the north on 1st Avenue, (b) the post office across the alley to the west, and (c) the Gail Severn Gallery building across 1st Avenue to the east. The 1st & 4th Mixed-Use Building is currently under construction across 4th Street south of the project site. The subject property is comprised of 3 lots within the original Ketchum townsite that was created in 1948. The corner lot is developed with an existing building that was originally constructed as a racquetball court in 1975 and was the home of Perry's Restaurant for 37 years and a variety of local businesses. The two interior lots are vacant.

As proposed, the project includes 5,929 square feet of retail space on the ground-level with frontage along both 4th Street and 1st Avenue and 23 multi-family dwelling units. Seven of these multi-family dwelling units will be deed-restricted as community housing rentals. The community housing units are one- and two-bedroom apartments ranging in size from 624 to 976 square feet located on the ground floor. The 16 market-rate multi-family dwelling units range in size from 648 to 3,751 square feet.

The applicant has requested a variance for the proposed parking garage. Ketchum Municipal Code ("KMC") §17.08.020 defines underground parking as, "an enclosed off street parking area within the lowest floor of a building; provided, that a minimum of 75 percent of the ceiling surface area of such floor is not more than four feet above the basement invisible plane." Underground parking that meets the dimensional requirements specified in KMC §17.08.020 is not included in the gross floor area calculation.

The proposed parking garage does not meet the definition of underground parking. The variance request plan set is attached as Exhibit A. As shown on page 46 of the project plans, most of the garage's ceiling surface area is more than 4 feet above the invisible plane. The applicant has requested a variance seeking relief from the dimensional standards required for underground parking because the strict application of the code results in an undue hardship that would significantly impact the building design lowering the street corner retail unit's ground-level finished floor 8 feet below the sidewalk grade.

FINDINGS REGARDING VARIANCE CRITERIA (KMC §17.148.010)

Pursuant to KMC §17.148.010, a variance shall not be considered a right or special privilege but may be granted to an applicant only upon a showing of undue hardship because of unique characteristics of the site and that the variance is not in conflict with the public interest. A variance may be granted by the Commission only if the applicant demonstrates compliance with all of the variance criteria as outlined in KMC §17.148.010 and listed with associated Commission findings below.

- A. *The strict enforcement of the provisions of this title creates an undue hardship to the property owner; however, economic feasibility shall not be considered an undue hardship.*

Commission Findings: Additional excavation would be required to lower the garage to meet the definition of underground parking. Lowering the garage utilizing standard construction practices would significantly impact the building design resulting in a sunken hole at the street corner—the retail unit's ground-level finished floor would be 8 feet below sidewalk grade. The applicant explains on page 46 of the project plans that, "the unique result of meeting this dimensional definition on this particular site with steep slopes on both frontages is that it pushes the underground parking significantly below (over 8.5') the adjacent sidewalk grade at the limited location of primary entrance relative to the corner intersection and the only flat area suited for accessing the first floor." The sunken hole would significantly diminish the quality of the pedestrian experience, activation of the ground floor, and vibrancy at the street corner.

The proposed parking garage does not add to the visual appearance of building mass along the street frontage. The portion of the parking garage extending above finished grade along 4th Street and 1st Avenue is screened by landscaped planters. The parking garage has the most significant visual impact along the interior side and alley facades. The exposed parking garage wall extends almost 14.5 feet above finished grade at the northwest corner of the property. The exposed parking garage wall at the interior side façade is comprised of board-formed concrete with no window openings or exterior material differentiation. During their review of the Pre-Application, the Commission requested that the applicant provide an exhibit showing the interior side wall within the context of the adjacent Westside Office Condominiums. The exhibit provided on page 66 of the project plans shows that the West Side Office Condominiums building covers most of the parking garage wall leaving only 14 linear feet exposed. The applicant has proposed installing Virginia Creeper vines to soften the exposed parking garage wall.

- B. *The variance is necessary because of the unique size, shape, topography or location of the subject property.*

Commission Findings:

As shown on page 43 of the project plans, the subject property is characterized by topographical constraints with steep slopes along both street frontages. From the street corner, the grade drops 8 feet down 1st Avenue and 12 feet down 4th Street. Along the alley property line, the grade drops 4 feet down from 4th Street. Along the interior side property line, the grade drops 8 feet from 1st Avenue to the alley. The project site slopes approximately 17 feet from its highest grade at the street corner (elevation: 5826.30') to its lowest grade at the northwest corner of the property (elevation 5809.50'). The strict application of the underground parking dimensional

requirements on this steeply-sloped parcel creates a hardship that impedes the construction of a parking garage that complies with the required dimensional standards.

- C. *The subject property is deprived, by provision of this title, of rights and privileges enjoyed legally by other properties in the vicinity and under an identical zone.*

Commission Findings: The subject property is denied the same rights and privileges enjoyed by other properties in the vicinity within the Community Core as the topography of the subject property precludes the construction of a parking garage that complies with the dimensional requirements for underground parking. The zoning code allows a portion of the garage ceiling surface area to extend above finished grade, which increases visible building mass. The above-grade portions of the parking garage are exempt from the gross floor area calculation. On page 48 of the project plans, the applicant explains that, "On a typical flat or moderately sloped site the underground parking definition allows 4 feet (up to 33%) of the parking level be visible above the sidewalk grade and contribute to the bulk of structure which FAR restrictions are intended to limit."

- D. *The need for the variance is not the result of actions of the applicant or property owner.*

Commission Findings: The need for the variance is not the result of actions by the applicant or property owner. While the consolidation of the three Ketchum townsite lots exacerbates these topographical challenges, the hardship is not self-created by the applicant as the subdivision code allows for the consolidation of multiple lots and the subject property meets the required dimensions for lots located in the CC-2 Zone.

FAR and underground parking have historically been inextricably linked in Ketchum's zoning code. The regulation of building size and mass through FAR was first introduced into Ketchum's zoning code in 1985 through the adoption of Ordinance 396. This ordinance added the definition for underground parking as, "a space with less than one-half of its floor-to-ceiling height above the average finished grade for at least 75% of the total area." The permitted FAR in the B-1 Business Shopping Zoning District, which was the precursor to the Community Core, was 1.4, and a bonus of 0.6 gross FAR was given to developments that provided underground parking. In addition, developments that provided underground parking were also eligible for a 5-foot height bonus. Ordinance 652 permitted 1.4 gross FAR by right with incentive options to increase the gross FAR subject to design review approval. Developments that provided underground parking could increase the gross FAR up to a maximum of 2.0. Adopted in 2003, Ordinance 912 amended the gross floor area calculation to exempt underground parking areas and include parking areas covered by a roof and enclosed on three or more sides by building walls. The underground parking regulations added to Ketchum's zoning code in 1985 were crafted for single Ketchum townsite developments on flat or slightly sloped sites. The standards did not contemplate the topographical challenges that may result from the consolidation of multiple Ketchum townsite lots.

E. *The variance does not create health and safety hazards.*

Commission Findings: The parking garage is accessed from the alley and meets the circulation design standards specified in KMC §17.96.060. Vehicular traffic will flow safely within the parking and onto adjacent streets. The variance does not create health or safety hazards.

F. *The variance does not relieve an applicant from any of the procedural provisions of this title.*

Commission Findings: The variance request does not relieve the applicant from any of the procedural provisions of the zoning code (Title 17 of Ketchum Municipal Code). Excepting relief from dimensional requirements required for underground parking as requested through the variance, the project complies with all applicable zoning code standards.

G. *The variance does not relieve an applicant from any standard or provision that specifically states that no variance from such standard or provision is permitted.*

Commission Findings: A variance provides relief from the requirements of the zoning code, including lot dimensional standards, building coverage, setbacks, building height, parking space and parking area standards, affecting the size of a structure or the placement of the structure upon a lot. The applicant's variance requests for relief from the underground parking dimensional requirements. The variance does not relieve the applicant from any standard or provision that specifically states that no variance from such standard or provision is permitted.

H. *The variance does not relieve an applicant from conditions established during prior permit review.*

Commission Findings: The variance does not relieve the applicant from any conditions established during prior permit review. The Pre-Application Design Review is the only prior application that has been submitted for this project. The Planning and Building Department received the Pre-Application Design Review for the project on July 1, 2022. The Planning and Zoning Commission reviewed the Pre-Application on August 9, 2022 and unanimously advanced the project to final Design Review. During their review of the Pre-Application, the Commission provided feedback to the applicant but did not establish conditions for the project.

I. *The variance does not allow establishment of a use that is not otherwise permitted in the zone in which the property is located.*

Commission Findings: The variance does not allow the establishment of a prohibited use within the Community Core. The proposed development includes 4 ground-level retail units fronting 4th Street and 1st Avenue, 7 community housing units, and 16 market-rate multi-family dwelling units. Retail and multi-family dwelling units are permitted in the CC-2 Zone pursuant to Ketchum Municipal Code §17.12.020.

J. *The variance is the minimum necessary to grant relief to applicant.*

Commission Findings: Additional excavation would be required to lower the garage to meet the definition of underground parking. Lowering the garage utilizing standard construction practices

would significantly impact the building design resulting in a sunken hole at the street corner—the retail unit's ground-level finished floor would be 8 feet below sidewalk grade.

CONCLUSIONS OF LAW

1. The City of Ketchum is a municipal corporation established in accordance with Article XII of the Constitution of the State of Idaho and Idaho Code Title 50 and is required and has exercised its authority pursuant to the Local Land Use Planning Act codified as Chapter 65 of Title 67 Idaho Code and pursuant to Chapters 3, 9, and 13 of Title 50 Idaho Code to enact the ordinances and regulations, which ordinances are codified in Ketchum Municipal Code and are identified in the Findings of Fact and which are herein restated as Conclusions of Law by this reference and which City ordinances govern the applicant's Variance Application for the development and use of the project site.
2. This Variance Application is governed under Chapter 17.148 of Ketchum Municipal Code.
3. The Planning and Zoning Commission has the authority to hear the applicant's Variance Application pursuant to Ketchum Municipal Code §17.148.010.
4. The Ketchum Planning Department provided adequate notice for the review of this application in accordance with Ketchum Municipal Code §17.148.020.C.
5. The applicant's variance request complies with the criteria specified in Ketchum Municipal Code §17.148.010 and meets the standards of approval under the zoning code.

DECISION

THEREFORE, the Ketchum Planning and Zoning Commission **approves** this Variance Application File No. P22-045D this Tuesday, March 14th, 2023 subject to the following conditions of approval.

CONDITIONS OF APPROVAL

1. The variance is subject to the Design Review Application File No. P22-045C. All associated conditions of approval shall apply to the project.
2. The term of the variance approval shall run concurrently with the term of approval for Design Review Application File No. P22-045C, including any extensions thereof.

Findings of Fact **adopted** this 28th day of March 2023.

Neil Morrow, Chair
City of Ketchum
Planning and Zoning Commission

Exhibit A

Variance

Application

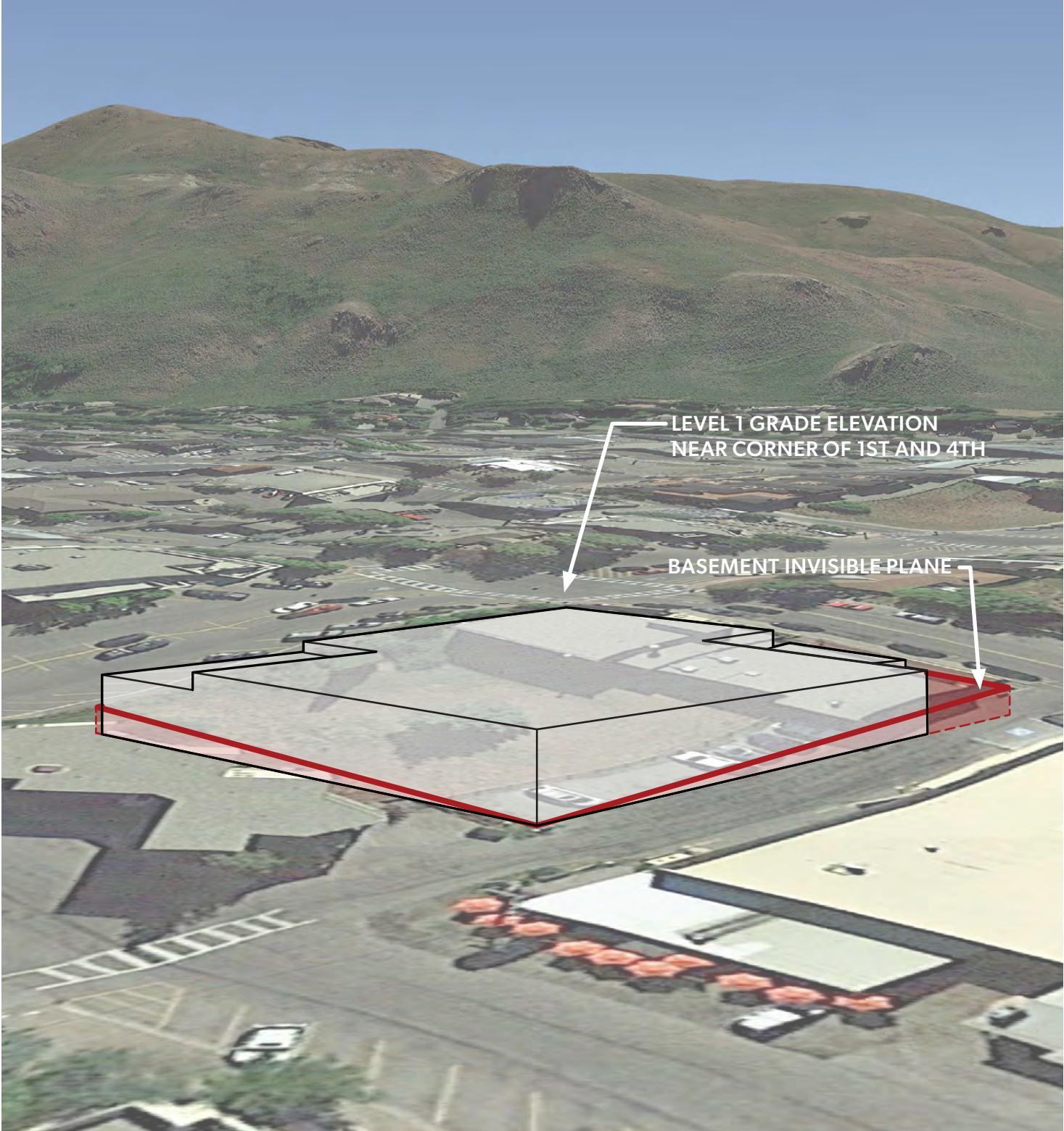
File No. P22-045D

Plan Set

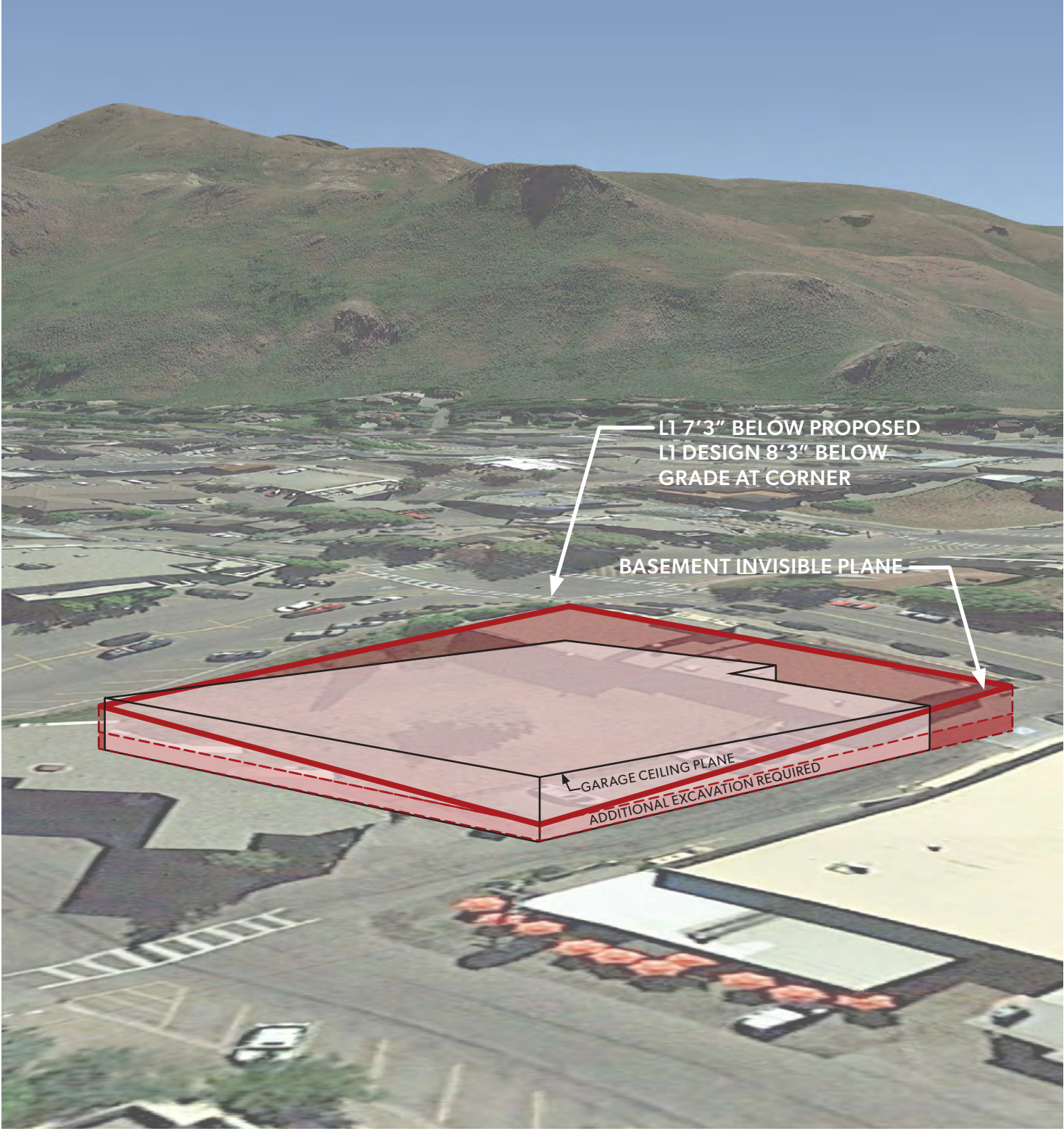
SITE CONSTRAINTS



PROPOSED GARAGE



CODE COMPLIANT GARAGE



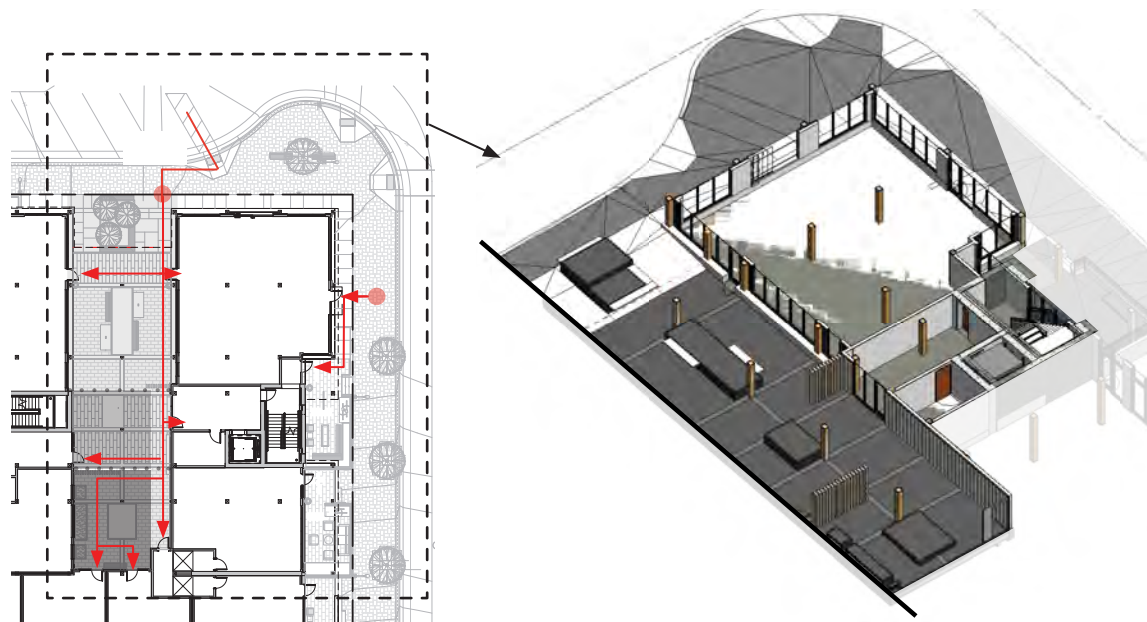
PROPOSED DESIGN



CODE COMPLIANT DESIGN

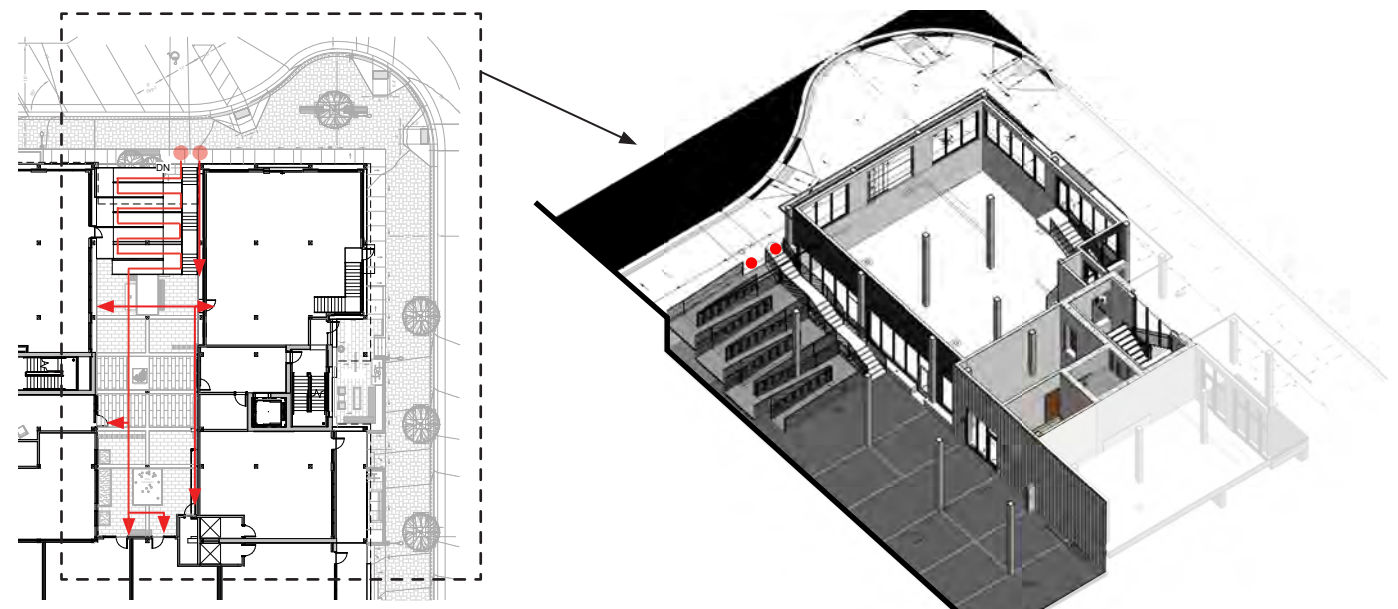


L1 CORNER RETAIL - GARAGE AT PROPOSED VARIANCE



ACCESSIBLE ROUTE FROM GRADE

L1 CORNER RETAIL - GARAGE AT CODE COMPLIANT HEIGHT



ACCESSIBLE ROUTE FROM GRADE

UNDERGROUND PARKING - DEVIATION FROM ZONING

DEFINITIONS FROM CODE OF ORDINANCES CITY OF KETCHUM, IDAHO 17.08.020

FLOOR AREA, GROSS

The horizontal area of the building measured along the outside walls of each floor of a building or portion of a building, including stair towers and elevators on the ground floor only, but not including basements or underground parking areas (see definition following). Parking areas covered by a roof or portion of the building and enclosed on three or more sides by building walls are included.

UNDERGROUND PARKING

An enclosed off street parking area within the lowest floor of a building; provided, that a minimum of 75 percent of the ceiling surface area of such floor is not more than four feet above the basement invisible plane

Seeking variance to:

1. Exceed 75 percent of ceiling surface area.
2. Exclude underground parking from FAR

No visual difference between Code Compliant version and Variance version from anywhere along the street

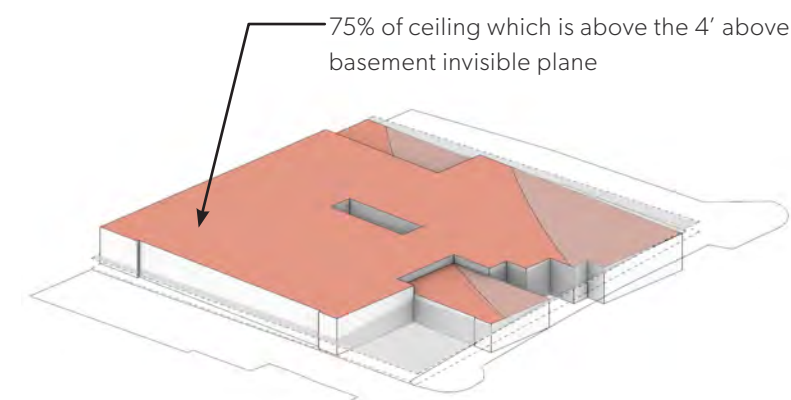
CODE COMPLIANT OPTION:

- **4 less parking stalls** provided on site
- **Extended 23 days** of excavation
- **613 additional dump truck loads** for soil removal (77 MJ/m³ for transportation and excavation of soil, very energy intensive)

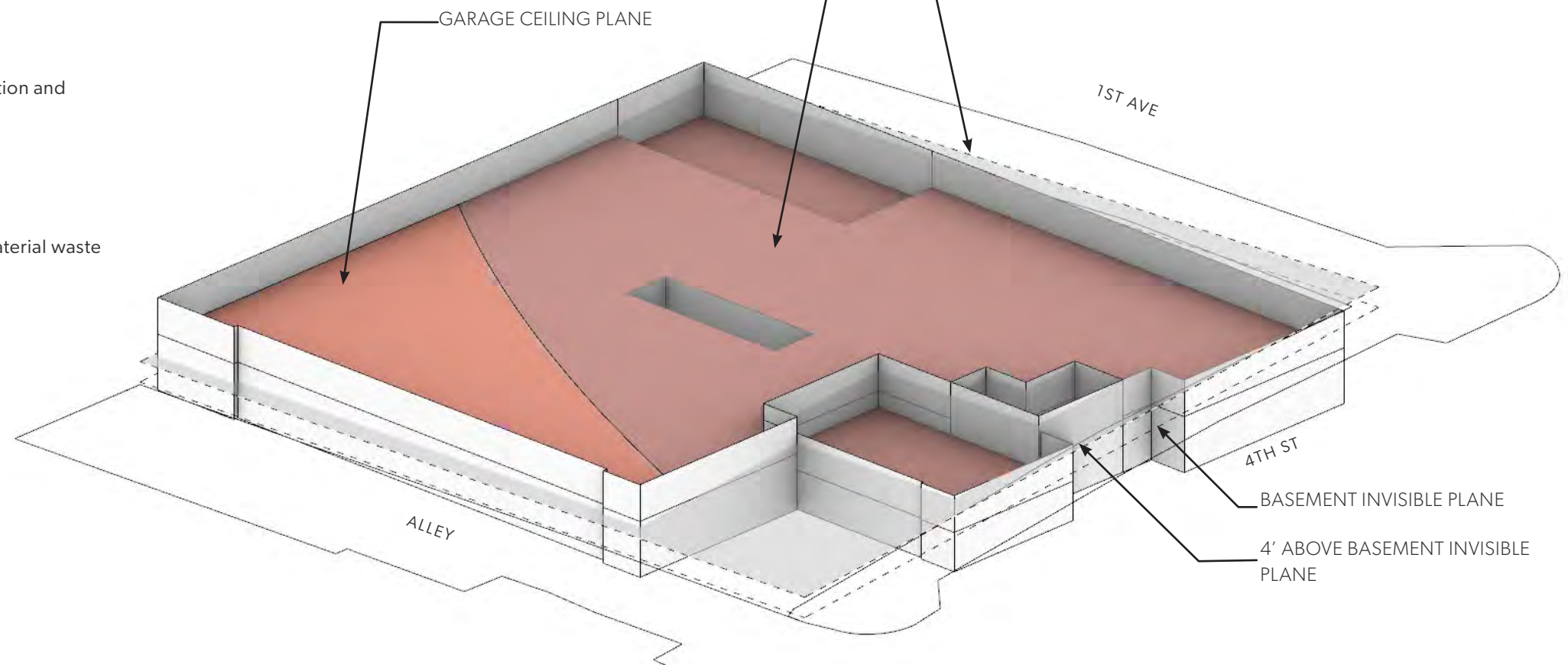
PROPOSED DESIGN WITH VARIANCE:

- **Minimizes** impact at grade at 1st Ave N. & 4th St.
- **Reduce** accessible route issues
- **Reduce** excavation at parking (to meet vertical clearances) and construction material waste
- Maintain height clearance in parking garage
- No dangerous precedent set due to unique site topography

Zoning code excludes underground parking from FAR, provided the underground parking meets the definition by being located at least 75% below the basement plane. The unique result of meeting this dimensional definition on this particular site with steep slopes on both frontages is that it pushes the underground parking level significantly below (over 8.5') the adjacent sidewalk grade at the limited location of primary entrance relative to the corner intersection and only flat area suited for accessing the first floor.



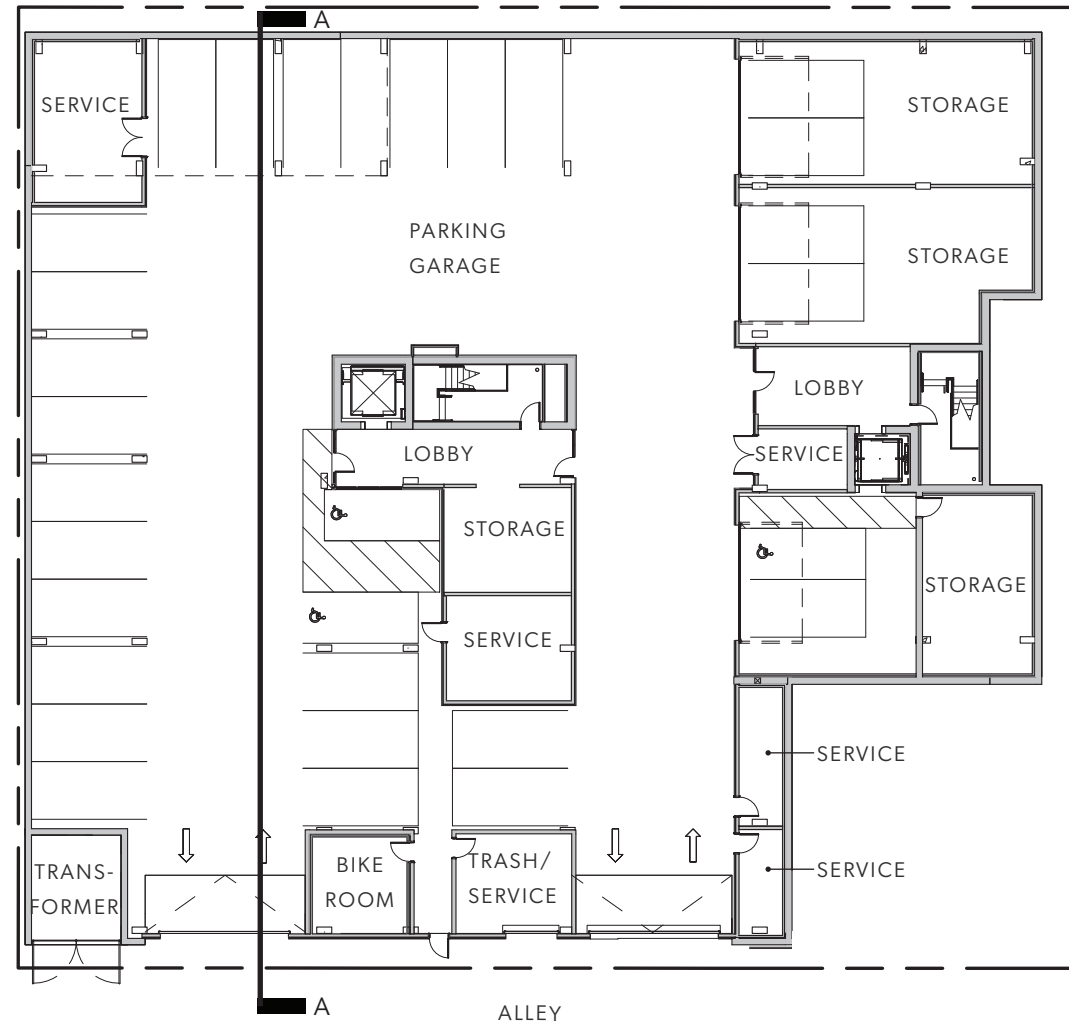
PROPOSED DESIGN



CODE COMPLIANT DESIGN

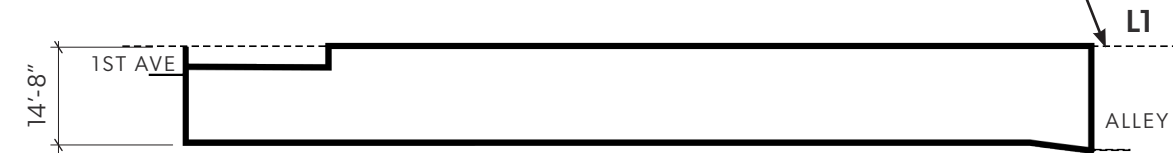
UNDERGROUND PARKING - DEVIATION FROM ZONING

PROPOSED DESIGN



LEVEL P1 PLAN
1" = 30'-0"

L1 IS NEAR GRADE ALONG 1ST AVE FOR ACCESSIBLE ENTRY FOR PEDESTRIANS



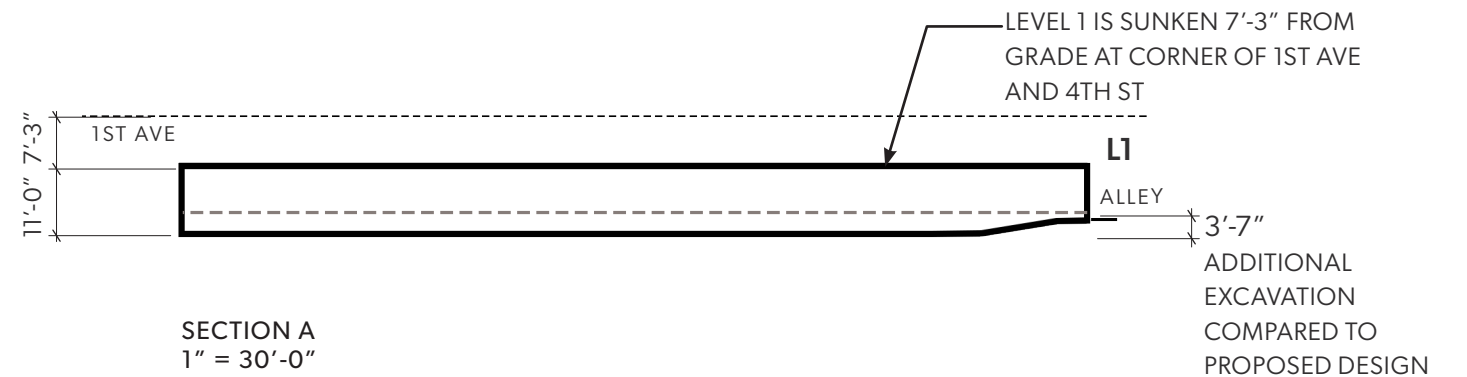
SECTION A
1" = 30'-0"

CODE COMPLIANT DESIGN



LEVEL P1 PLAN
1" = 30'-0"

LOSS OF 4 STALLS FOR RAMP

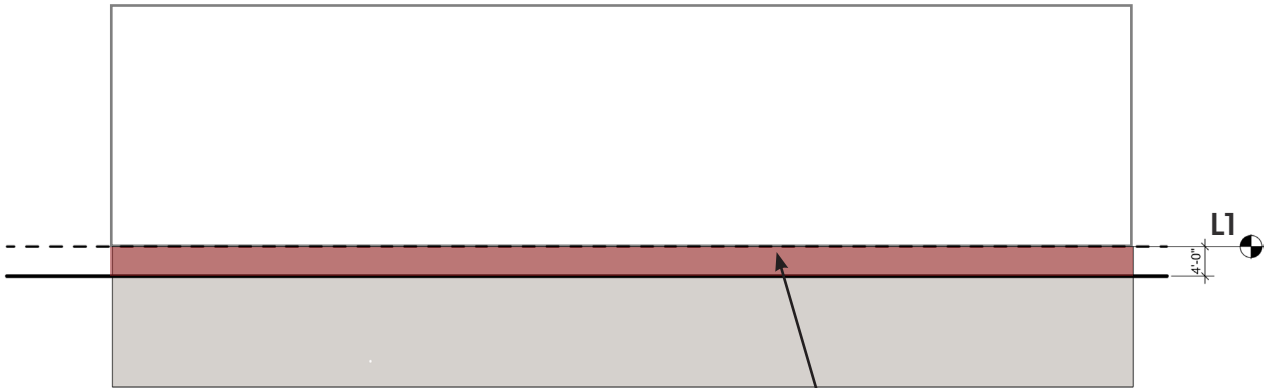


SECTION A
1" = 30'-0"

UNDERGROUND PARKING - DEVIATION FROM ZONING

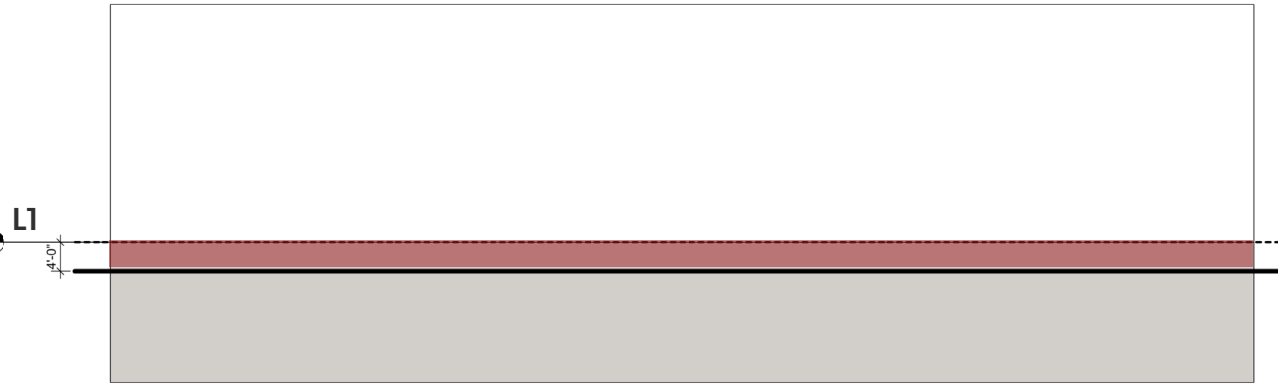
CODE COMPLIANT DESIGN

ON A TYPICAL FLAT OR MODERATELY SLOPED SITE THE UNDERGROUND PARKING DEFINITION ALLOWS 4 FEET (UP TO 33%) OF THE PARKING LEVEL BE VISIBLE ABOVE THE SIDEWALK GRADE AND CONTRIBUTE TO BULK OF STRUCTURE WHICH FAR RESTRICTIONS ARE INTENDED TO LIMIT.



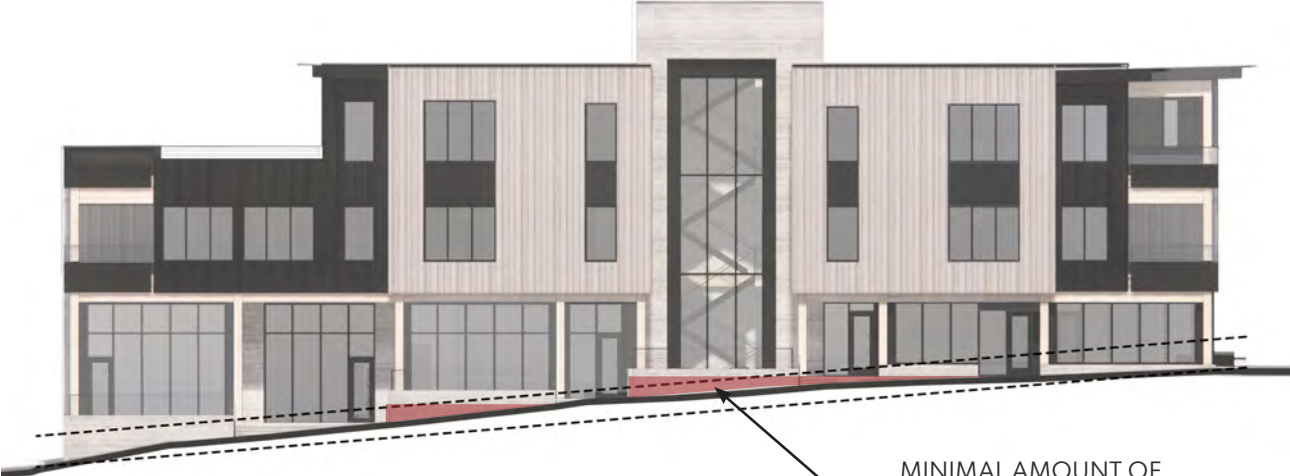
ELEVATION ALONG 4TH STREET

LARGE AMOUNT OF BASEMENT WALL VISIBLE FROM THE STREET, AND WOULD BE ALLOWED PER CODE ON A FLAT SITE



ELEVATION ALONG 1ST AVE

PROPOSED DESIGN



ELEVATION ALONG 4TH STREET

MINIMAL AMOUNT OF BASEMENT WALL VISIBLE FROM THE STREET



ELEVATION ALONG 1ST AVE