“B”

Application Packet and Project Statements

Solar Pavilion Variance P24-00122-VAR
Planning Commission Hearing Date (December 4, 2024)

Variance P24-00122

FILE #_____

A Tradition of Stewardship
A Commitment to Service

NAPA COUNTY
PLANNING, BUILDING, AND ENVIRONMENTAL SERVICES
1195 Third Street, Suite 210, Napa, California, 94559 • (707) 253-4417

APPLICATION FORM

FOR OFFICE USE ONLY

ZONING DISTRICT: _____ Date Submitted: _____
TYPE OF APPLICATION: _____ Date Published: _____
REQUEST: _____ Date Complete: _____

TO BE COMPLETED BY APPLICANT

PROJECT NAME: Solar Pavilion Variance

Assessor's Parcel #: 042-081-012-000 Existing Parcel Size: 7019 SF

Site Address/Location: 2234 Sandra Drive (No. Street) Napa (City) CA (State) 94558 (Zip)

Property Owner's Name: Gregory Siewert and Heather Siewert

Mailing Address: 2234 Sandra Drive (No. Street) Napa (City) CA (State) 94558 (Zip)

Telephone #: (707) 478 - 9214 Fax #: (____) _____ - _____ E-Mail: gregsiewert@gmail.com

Applicant's Name: Gregory Siewert

Mailing Address: 2234 Sandra Drive (No. Street) Napa (City) CA (State) 94558 (Zip)

Telephone #: (707) 478 - 9214 Fax #: (____) _____ - _____ E-Mail: gregsiewert@gmail.com

Status of Applicant's Interest in Property: Current homeowner

Representative Name: _____

Mailing Address: _____ (No. Street City State Zip)

Telephone # (____) _____ Fax #: (____) _____ E-Mail: _____

I certify that all the information contained in this application, including but not limited to the information sheet, water supply/waste disposal information sheet, site plan, floor plan, building elevations, water supply/waste disposal system site plan and toxic materials list, is complete and accurate to the best of my knowledge. I hereby authorize such investigations including access to County Assessor's Records as are deemed necessary by the County Planning Division for preparation of reports related to this application, including the right of access to the property involved.

[signature] 5/4/24
Signature of Property Owner Date

Gregory Siewert
Print Name

[signature] 5/4/24
Signature of Applicant Date

Gregory Siewert
Print Name

TO BE COMPLETED BY PLANNING, BUILDING, AND ENVIRONMENTAL SERVICES
Total Fees: $ 6,100.90 Receipt No. _____ Received by: RH Date: 5/8/24

REASONS FOR GRANTING A VARIANCE

1. Please describe what exceptional or extraordinary circumstances or conditions apply to your property (including the size, shape, topography, location or surroundings), which do not apply generally to other land, buildings, or use and because of which, the strict application of the zoning district regulations deprives your property of the privileges enjoyed by other property in the vicinity and under identical zoning classification.

See project narrative.

2. Please state why the granting of your variance request is necessary for the preservation and enjoyment of your substantial property rights.

See project narrative.

3. Please state why the granting of your variance request will not adversely affect the health or safety of persons residing or working in the neighborhood of your property, and will not be materially detrimental to the public welfare or injurious to property or improvements in your neighborhood.

See project narrative.

INDEMNIFICATION AGREEMENT

Pursuant to Chapter 1.30 of the Napa County Code, as part of the application for a discretionary land use project approval for the project identified below, Applicant agrees to defend, indemnify, release and hold harmless Napa County, its agents, officers, attorneys, employees, departments, boards and commissions (hereafter collectively "County") from any claim, action or proceeding (hereafter collectively "proceeding") brought against County, the purpose of which is to attack, set aside, void or annul the discretionary project approval of the County, or an action relating to this project required by any such proceeding to be taken to comply with the California Environmental Quality Act by County, or both. This indemnification shall include, but not be limited to damages awarded against the County, if any, and cost of suit, attorneys' fees, and other liabilities and expenses incurred in connection with such proceeding that relate to this discretionary approval or an action related to this project taken to comply with CEQA whether incurred by the Applicant, the County, and/or the parties initiating or bringing such proceeding. Applicant further agrees to indemnify the County for all of County's costs, attorneys' fees, and damages, which the County incurs in enforcing this indemnification agreement.

Applicant further agrees, as a condition of project approval, to defend, indemnify and hold harmless the County for all costs incurred in additional investigation of or study of, or for supplementing, redrafting, revising, or amending any document (such as an EIR, negative declaration, specific plan, or general plan amendment) if made necessary by said proceeding and if the Applicant desires to pursue securing approvals which are conditioned on the approval of such documents.

In the event any such proceeding is brought, County shall promptly notify the Applicant of the proceeding, and County shall cooperate fully in the defense. If County fails to promptly notify the Applicant of the proceeding, or if County fails to cooperate fully in the defense, the Applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the County. The County shall retain the right to participate in the defense of the proceeding if it bears its own attorneys' fees and costs, and defends the action in good faith. The Applicant shall not be required to pay or perform any settlement unless the settlement is approved by the Applicant.

Gregory Siewert
Applicant

Property Owner (if other than Applicant)

5/4/24
Date

Variance Application - 2234 Sandra Drive
Project Identification

Variance Application for Solar Pavilion

Greg and Heather Siewert
2234 Sandra Drive – Napa, CA
APN: 042-081-012-000

Variance Application 5-4-24

Figure 1: - Solar Pavilion

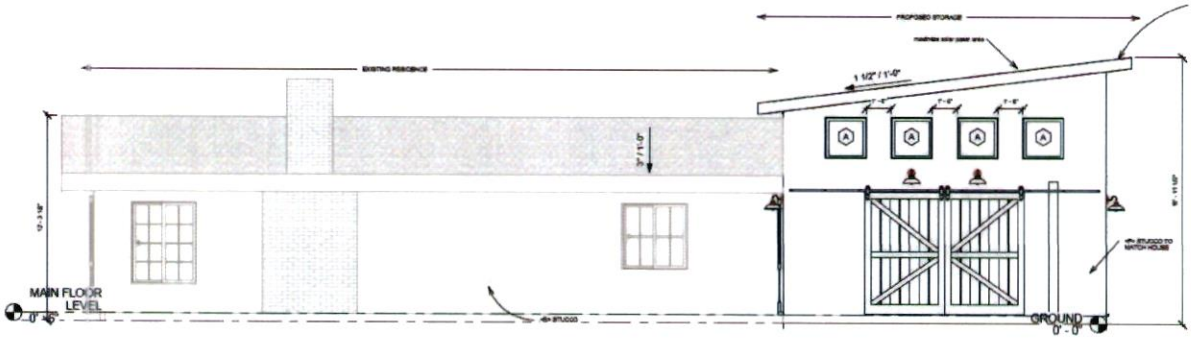

Figure 2: Proposed Enclosed Carport

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Site Plan 2234 Sandra Drive:

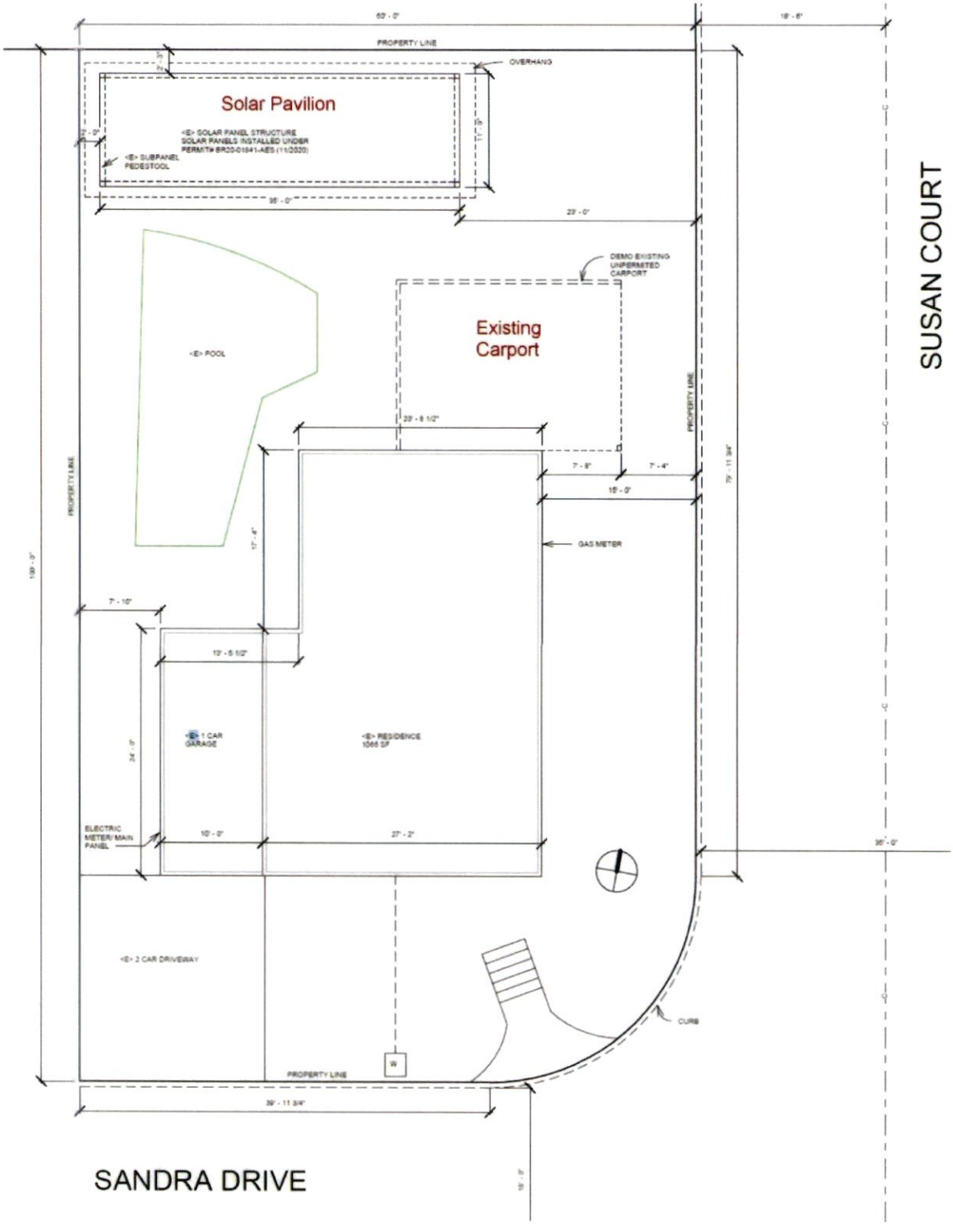


Figure 3: Site Plan Overview 2234 Sandra Drive

Figure 4: Carport seen to the right of house. Structure to be demolished.

Figure 5: Solar Pavilion Side View

Executive Summary:

- A Code Violation has been filed on 2 structures at this address. Both structures were un-permitted and violate county setback requirements.
- Both structures were built in an un-known time period, long before the applicants purchased the property. Satellite records show them at least back to 2002 – the earliest date satellite imagery is available in adequate resolution. The property was purchased by the applicants in 2011.
    1. The "Carport" *Figure 3* and *Figure 4*, is an open air structure and a complaint was filed against it which resulted in the involvement of Napa County Code Enforcement. A permit has been obtained to demolish this structure and it is the applicant's intent to rebuild a smaller, enclosed structure which complies with all setbacks except the required 8' to the solar pavilion. *Figure 2*
    2. The "Solar Pavilion" *Figure 1* and *Figure 3* has had no known complaint. It came to the attention of Code Enforcement when they were on site regarding the Carport.
- The applicants seek a variance with the following components:
    1. The new carport structure will be closer to the Solar Pavilion than the required 8'.
        - Note: The focus of this variance application is the solar pavilion. The only variation from county zoning requirements which regards the carport is the setback to the pavilion. By necessity, this setback includes both structures.
    2. The Solar Pavilion would be preserved in its existing location with no significant modifications. This structure does not meet the setbacks for the side and rear lot lines. It also does not meet the setback to the existing carport and after the new structure is built, it will still be closer than the required 8 feet.
- The reasons why the applicants believe a variance is justified are as follows:
    1. The solar pavilion houses 10 panels of a solar array which was approved by Napa County in 2020. This is a unique and exceptional circumstance which does not apply to neighboring properties.
    2. The pavilion has been in place for decades. The applicants understand that this does not justify a non-compliant structure. However, it has been a part of the neighborhood without incident or complaint.
    3. Non-compliant utility structures are common in this area of Napa and legalizing this structure would not amount to a special privilege. Rather, it would prevent an unnecessary and unfair hardship to the applicants and allow them to exercise their property rights in the same manner as their neighbors.

Project Narrative

County Application Prompt 1:

Please describe what exceptional or extraordinary circumstances or conditions apply to your property (including the size, shape, topography, location or surroundings), which do not apply generally to other land, buildings, or use and because of which, the strict application of the zoning district regulations deprives your property of the privileges enjoyed by other property in the vicinity and under identical zoning classification.

Solar Pavilion – What makes this a unique and exceptional circumstance?

1) **The presence of a county-approved solar array.**

The "Solar Pavilion" is a roofed structure at the rear corner property line *Figure 1*. It houses 10 panels of a solar array which was permitted by Napa County in 2020. The permit for the solar array clearly shows the location of the structure, which was known to County planning and building at that time *Figure 6*. In their lifetime, these panels have generated over 16 Megawatt hours of electricity. In fact, the applicants are contracted to add 4 more panels to the pavilion in the coming years.

The presence of this solar array and the fact that it was installed with an approved permit constitutes a unique and exceptional circumstance that is inherent to the property. To the applicant's knowledge, there are no other properties in the vicinity who have been required to demolish a structure with an approved solar installation. A variance to allow the continued existence of this structure would not amount to a special privilege to the applicants, but would instead prevent the suffering of practical difficulties and unnecessary hardships caused by its removal.

California has set forth aggressive targets for reducing greenhouse gas emissions and transitioning towards renewable energy sources. By investing in solar panels, the applicants are actively contributing to the state's renewable energy objectives. Solar power is a clean, renewable energy source that produces electricity without emitting harmful greenhouse gases or pollutants into the atmosphere. Therefore, the pavilion not only serves their personal energy needs but also aids in reducing the carbon footprint associated with traditional energy sources.

California has enacted various policies and incentives to promote the adoption of solar energy systems. These include rebates, tax credits, and streamlined permitting processes aimed at facilitating the installation of solar panels. By allowing the continued use of these solar panels, Napa County would not only be in compliance with state mandates but would also demonstrate its commitment to supporting environmentally friendly initiatives within the community.

Integrating solar panels into structures like pavilions enhances their functionality and sustainability. The panels provide shade and protection from the elements while simultaneously generating clean energy. This dual-purpose design optimizes land use and promotes resource efficiency, which is in line with California's principles of sustainable development and smart growth. The applicants urge Napa County to consider these factors favorably when reviewing the application.

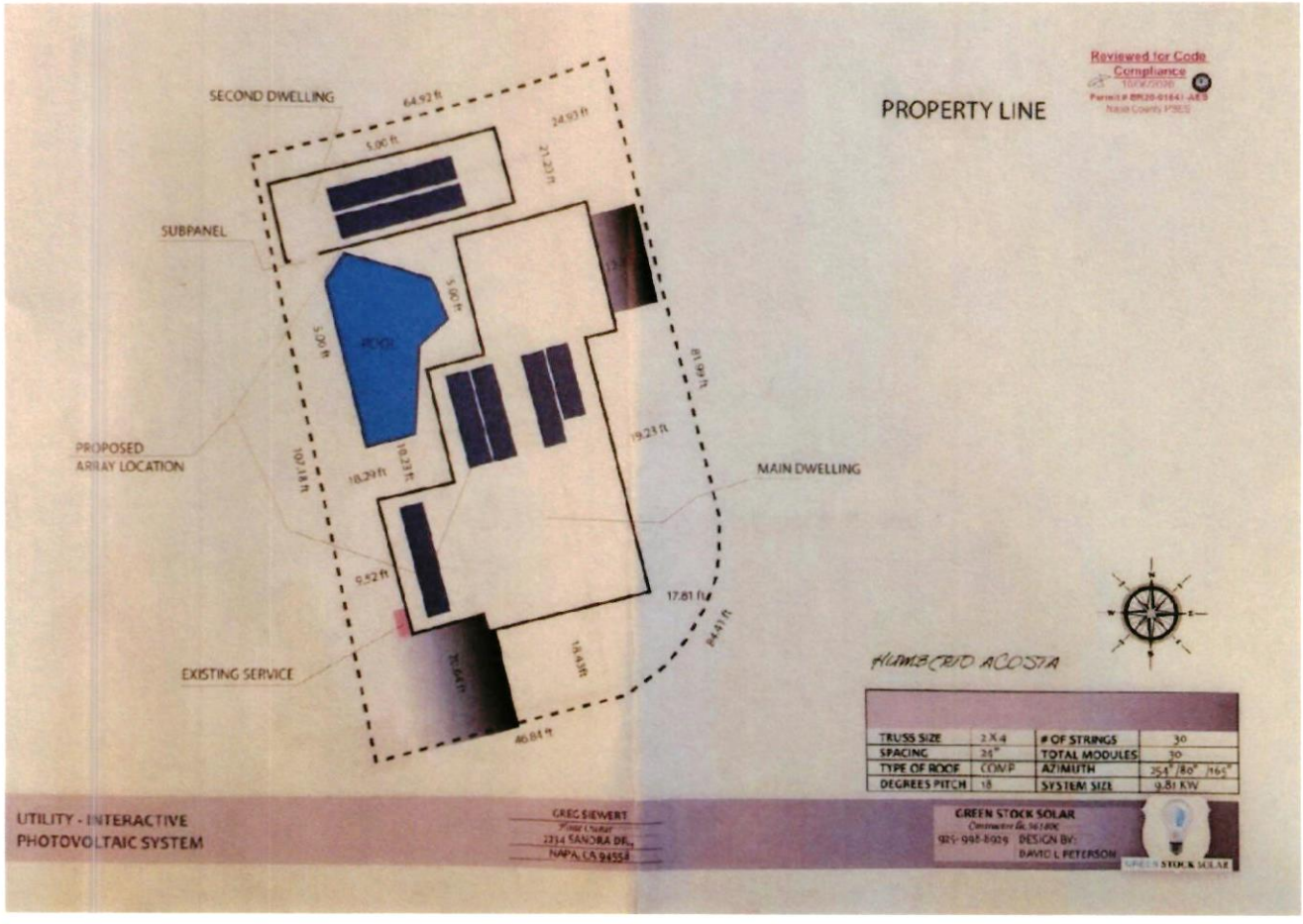


Figure 6: Solar Permit Site Plan 2020

2) This structure has existed without complaint for over 20 years

The applicants understand that the mere passage of time without complaints does not constitute a legal justification for the non-compliance of a structure.

However, when considering the impact on the neighborhood from this pavilion, its age is important context. Satellite imagery shows that it has existed at least as far back as 2002 – as far back as Google Earth has imagery of sufficient resolution *Figure 7*. So, the structure is more than 20 years old, and possibly much older. It certainly existed long before the applicants purchased the property in 2011. In all of this time, there has been no known complaint against it. The matter that brought the property to the attention of Napa County Code Enforcement was unrelated to the pavilion.

There are several reasons why the County should take into account the age of this structure when considering its decision:

a) **Evidence of Community Acceptance**: The fact that it has existed for over two decades without complaints suggests it has blended into the community without causing issues or grievances. This should be interpreted as tacit acceptance by the local community, indicating the structure does not negatively impact the neighbors or the neighborhood's character.

b) **Reliance on the Existing Structure**: Over the years, both the current and former property owners have come to rely on the existence of the structure. Its utility and aesthetic values contribute positively to its surroundings.

c) **No Safety or Health Complaints**: The lack of complaints over an extended period implicitly suggests that the structure does not pose a safety or health hazard. This is an important consideration, as one of the primary reasons for zoning and building codes is to ensure public safety.

d) **Change in Regulations**: Sometimes, structures become non-compliant due to changes in zoning laws, building codes or neighborhood norms, not because they were initially built illegally. Because the date that the structure was built is unknown, so too is the precise climate of zoning regulations that prevailed in Napa County at the time.

Figure 7: Pavilion is visible as far back as 2002

3) An exterior corner lot is space-limiting for utility structures

The applicants enjoy having a house on an exterior corner for its ample parking and opportunities to garden in the front yard etc. However, the nature of the setbacks with the road means that the "rear" of the property becomes shrunken and the practical area for utility structures is diminished greatly. The setback to any structure on the property is 28 ft from the centerline of the road plus 6 feet. This amounts to 20 feet from the edge of the road. 2722 square feet of the property are within this road setback. That represents 39% of the 6969 square foot property. This figure does not include the side or rear setbacks. When those are taken into account, the practical area to put such a structure is non-existent.

Having a house on an exterior corner is a unique feature in the unincorporated area of this property. A survey of the area encompassed by the County-required title search showed that of the 405 properties, only 64 of them were on an exterior corner – less than 16%. *Figure 8*

Figure 8: Setback constraints of a corner lot

County Application Prompt 2:

Please state why the granting of your variance request is necessary for the preservation and enjoyment of your substantial property rights.

Solar Pavilion – The Benefits Provided and the Hardships if Removed

1) **Without a variance, the county would require the demolition of a solar installation that it permitted**

The granting of the variance is necessary for the preservation of the applicant's property rights because without it, they will be required to demolish a structure that Napa County permitted for solar.

There is no other space on the property for these 10 panels. The roof of the house, which already contains the rest of the solar array, has no other location where the roofing material is suitable for installation. If the variance isn't granted and the structure has to be demolished, then the panels will have to be removed and disposed of along with the associated electronic components. Without the variance, the structure cannot be put to effective use consistent with its existing zoning.

The demolition of this structure would prejudicially harm the Applicants in financial losses of:

- The recent improvements that were made to accommodate the solar.
- The cost of the demolition itself.
- The aesthetic damage it would create to the yard area and the resulting remediation which would be required.

2) **The structure is an essential component of the property and its demolition would cause a serious and unnecessary Hardship to the Applicants**

This pavilion is essential for the full utilization and enjoyment of the applicant's property. It not only provides a shaded, outdoor space for gatherings but also helps them to significantly reduce their carbon footprint by generating clean, renewable energy. The panels on this pavilion generate over 5 Megawatt-hours of electricity every year. This aligns with broader environmental sustainability goals and supports Napa County's commitment to green energy solutions. Granting this variance would allow them to enjoy their property in a manner that respects their environmental responsibilities and personal values.

In Napa County, where summer temperatures can be intense, the solar pavilion is not just as an architectural enhancement but a critical safeguard for the homeowners against the dangers of the sun. This structure provides essential shade while enjoying the outdoor space, thereby aligning with California's proactive stance on heat illness prevention.

California has been at the forefront of addressing the impacts of heat on health, implementing policies that extend beyond the workplace to ensure all residents are protected from the dangers of excessive heat exposure.

The dual benefit of the solar pavilion—providing essential shade while harnessing renewable energy—exemplifies a commitment to environmental sustainability and public health. This aligns with California's

renewable energy initiatives and its public health directives aimed at minimizing heat-related health risks.

The applicants did not build the solar pavilion but they have maintained and improved it over the years. It serves as a seating area out of the sun and shade from which the rest of the backyard and the pool can be enjoyed. It's a great spot for entertaining and is architecturally in line with the Napa Valley Aesthetic. It is an asset to the property and the working-class neighborhood in which it resides. Granting a variance for this solar pavilion will not only enhance the quality of life for the homeowners but will also support Napa County's leadership in promoting health-conscious and environmentally sustainable living spaces.

3) The structure is consistent with other non-compliant buildings in the area

Does this matter? The applicants understand that their neighbor's non-compliant structures do not justify their own non-compliant structure. This is not a case of: "well, they did it too so we get to do it". However, the commonplace presence of other non-compliant structures in Union is important for 2 reasons:

1. "Parity" is an important concept to establish in the granting of a variance. The existence of other non-compliant structures in the area establishes an implicit property right that is being afforded to other homeowners and is being denied to the applicants. The reality of building practices in Union should be taken into account when considering this structure. The solar pavilion is by no means exceptional and the granting of a variance would merely allow the applicants to enjoy their property rights in a matter similar to their neighbors, it would not amount to a special privilege.
2. Selective enforcement of the law is problematic. The complaint-based system used by Napa County Code enforcement causes the law to be applied sporadically based on an arbitrary, anonymous process. The complaint that brought this property to the attention of code enforcement was not about the solar pavilion, it was about the carport. The applicants are committed to working with code enforcement to demolish the carport and bring it into compliance. The solar pavilion should be allowed to remain as-is.

The applicants have made the decision not to catalog or describe other non-compliant structures in the area. Making specific comparisons with other properties is one way of making a case for a variance and is the method suggested by the County. The applicants are not taking this action for reasons that are both altruistic and practical.

The altruistic reason is that the applicants understand first-hand the hardships that ensue when a property is targeted by code enforcement. It has cost them greatly in time, money and anxiety. If unsuccessful, they will be forced to pay for the destruction of their own property. The applicants do not wish any of their neighbors to be subjected to this. Napa County Code enforcement has made it clear that they would be obligated to act on any specific information about non-compliant structures that were included in this document.

The practical reason why these specific comparisons will not be made is that unlike the anonymous complaint which was lodged against the applicants, the variance process is not anonymous. This document will be a matter of public record. If the applicants caused unsuspecting neighbors to be targeted by Code Enforcement it would expose them to a credible threat of retaliation.

The reality is that in the unincorporated area known as "Union", non-compliant utility structures are extremely common. People are trying to make the most of their small properties and building utility structures is often the means to do this. Given the setback constraints on these small lots, these buildings are almost universally non-compliant.

As a compromise to detailing specific non-compliant structures, the applicants have surveyed a randomly selected, non-adjacent cluster of 18 houses that is in a different part of Union. See *Figure 9*. In the figure shown, rooflines and other distinctive property details were obscured to protect the privacy of the homeowners. A structure was deemed to be "likely non-compliant" if it was more than 6 feet tall and violated the setback requirements to the lot lines. Careful measurement was not necessary because in every case these structures were built directly against the lot lines.

The unsurprising result of this survey was that 14 of the 18 properties (78%) had likely non-compliant structures. See *Figure 10* It is possible that this is an undercount, as there may be unlawful additions to houses which would not obviously be non-compliant. For example, the applicant's carport would not have been flagged by this survey as it is not close to the lot line and appears to be a part of the house.

Figure 9: Random House Cluster in Union Surveyed for Likely Non-Compliant Structures

Survey of Random House Cluster in Union
For Likely Non-Compliant Utility Structures

Property Reference Number:	Likely Non-Compliant Structures Present	# of Likely Non-Compliant Structures
1	Yes	1
2	Yes	1
3	Yes	1
4	Yes	1
5	No	0
6	Yes	2
7	Yes	1
8	Yes	1
9	Yes	1
10	No	0
11	No	0
12	Yes	1
13	Yes	2
14	Yes	1
15	No	0
16	Yes	1
17	Yes	2
18	Yes	1

Total:	14
Percent:	78%

Figure 10: Results of Survey for Likely Non-Compliant Utility Structures

County Application Prompt 3:

Please state why the granting of your variance request will not adversely affect the health or safety of persons residing or working in the neighborhood of your property, and will not be materially detrimental to the public welfare or injurious to property or improvements in your neighborhood.

In the history of the solar pavilion, which is over 20 years old, there has never been a single known neighbor complaint regarding it. It is a well-built, attractive structure that improves the quality of the applicant's property. The applicants will ensure that this structure meets building and zoning requirements in all respects other than meeting setbacks.

In regards to the carport, a complaint was made to code enforcement only about repair work that was being done to the roof, not about the structure itself. It was this complaint which brought the property and the solar pavilion to the attention of code enforcement. The applicants are cooperating with code enforcement to remediate the violation by demolishing the structure in order to build a compliant building. The permit for the demolition has already been obtained and when the structure is re-built, it will materially improve the quality of their property and the neighborhood generally.

In preparation for the solar installation, improvements were made to the pavilion structure which enhanced its fire safety. The roof of the pavilion is metal and the rear privacy wall is made of concrete board.

There are no health or safety issues regarding the solar pavilion and it is now the applicant's intent to legalize its presence through the Variance process. No neighboring homes have direct frontage from living space windows or functional yard areas to this structure. It creates material substantial benefit to the Applicants property, without hardship upon any other property or property owners.

The applicants look forward to incorporating the input of their neighbors and implementing whatever reasonable suggestions are put forth during this process. For example, they would be willing to make modifications to the rear of the privacy wall to make it more attractive as viewed from other properties. They are confident that the end result will be a better, more attractive neighborhood.

Conclusion:

Greg and Heather Siewert are committed to finding a successful path forward in dealing with the code violations that were filed against their property. They believe that the Variance process along with the demolition and re-building of the carport are the best means to achieve this. The applicants acknowledge the need to remediate the conditions that existed on their property prior to its purchase. They have put forth substantial hard work and finances to this effort and they expect that much more of both will be required. The applicants hope that the County can be a partner in finding a solution that respects the zoning regulations of Napa County while also protecting their right to enjoy their property to its full use.

Amelung, Andrew

From: Greg Siewert <gregsiewert@gmail.com>
Sent: Sunday, October 6, 2024 12:38 PM
To: Amelung, Andrew
Cc: Hawkes, Trevor; Encinas, Anthony
Subject: Re: P24-00122-VAR - Solar Pavilion Variance
Attachments: Site Plan Overview_New.jpg

[External Email - Use Caution]

All,

Thank you all again for meeting with me a few weeks back. I haven't had the time to finish the new draft of the application yet, but I know that Andrew is on a deadline to get some clarification on your key questions about the carport demo and rebuild. I hope the attached image makes things more clear.

The new "Carport" will be an attached structure that has a 20 foot setback to the rear property line. I took some measurements and this will put it 7 feet from the solar pavilion. This is short of the 8 foot setback required for utility structures. In the variance we will ask for a minimum 5 foot setback to accommodate any errors in measurement etc, but I believe it will be 7 feet from the pavilion to the new structure. This boils our variance request down to the following 3 items:
- The pavilion is 2 feet from the rear property line instead of the required 5 feet
- The pavilion is 2 feet from the side property line instead of the required 5 feet
- The pavilion will have a minimum setback of 5 feet to the new "Carport" structure instead of the required 8 feet

I hope this information is enough for Andrew to complete what he needs to do, if it's not then let me know. I will revise the variance application in time for submission before the planning commission hearing.

Thanks, let me know if you need anything else,

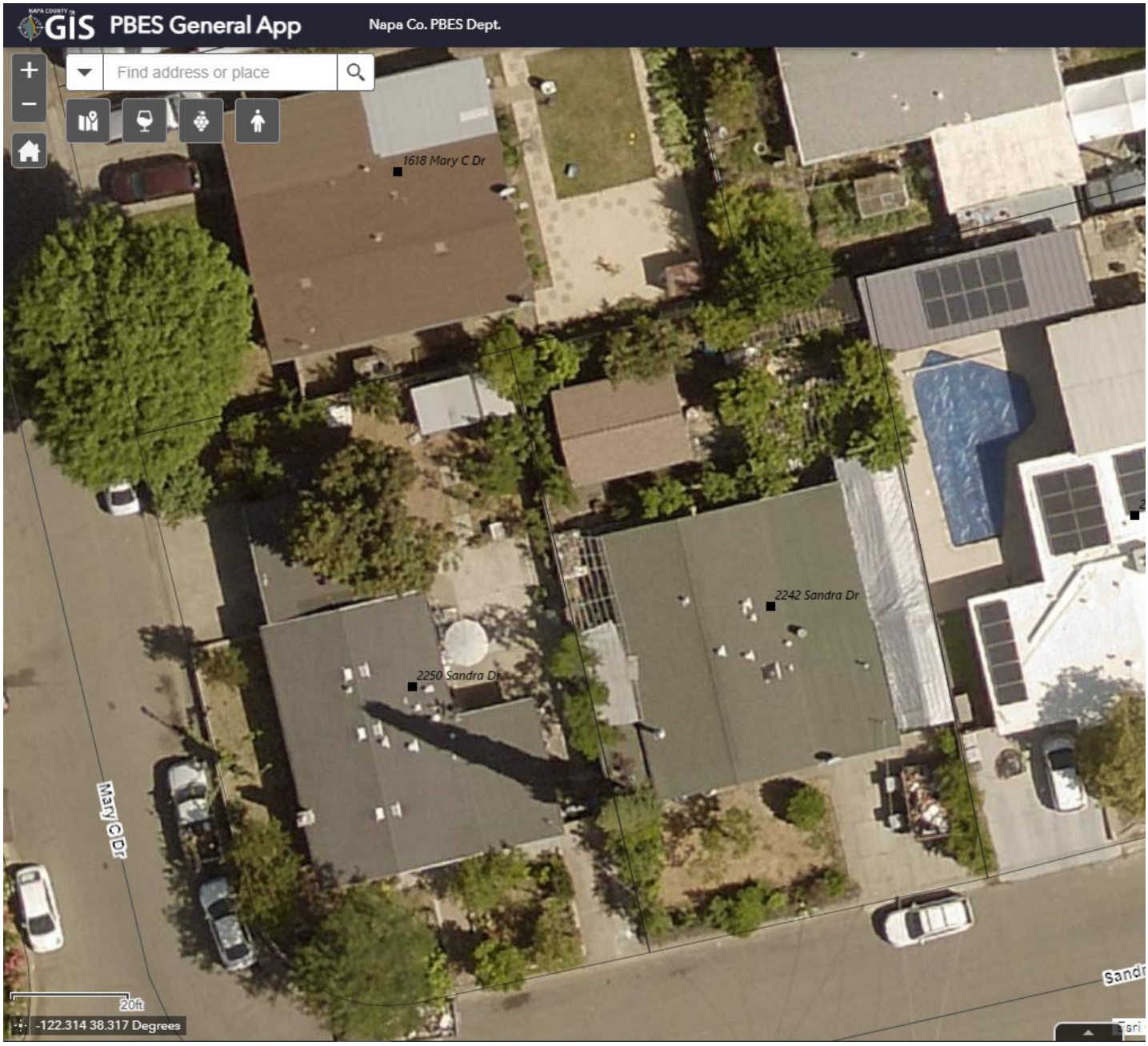
Greg

On Thu, Jul 25, 2024 at 11:38 AM Amelung, Andrew <andrew.amelung@countyofnapa.org> wrote:

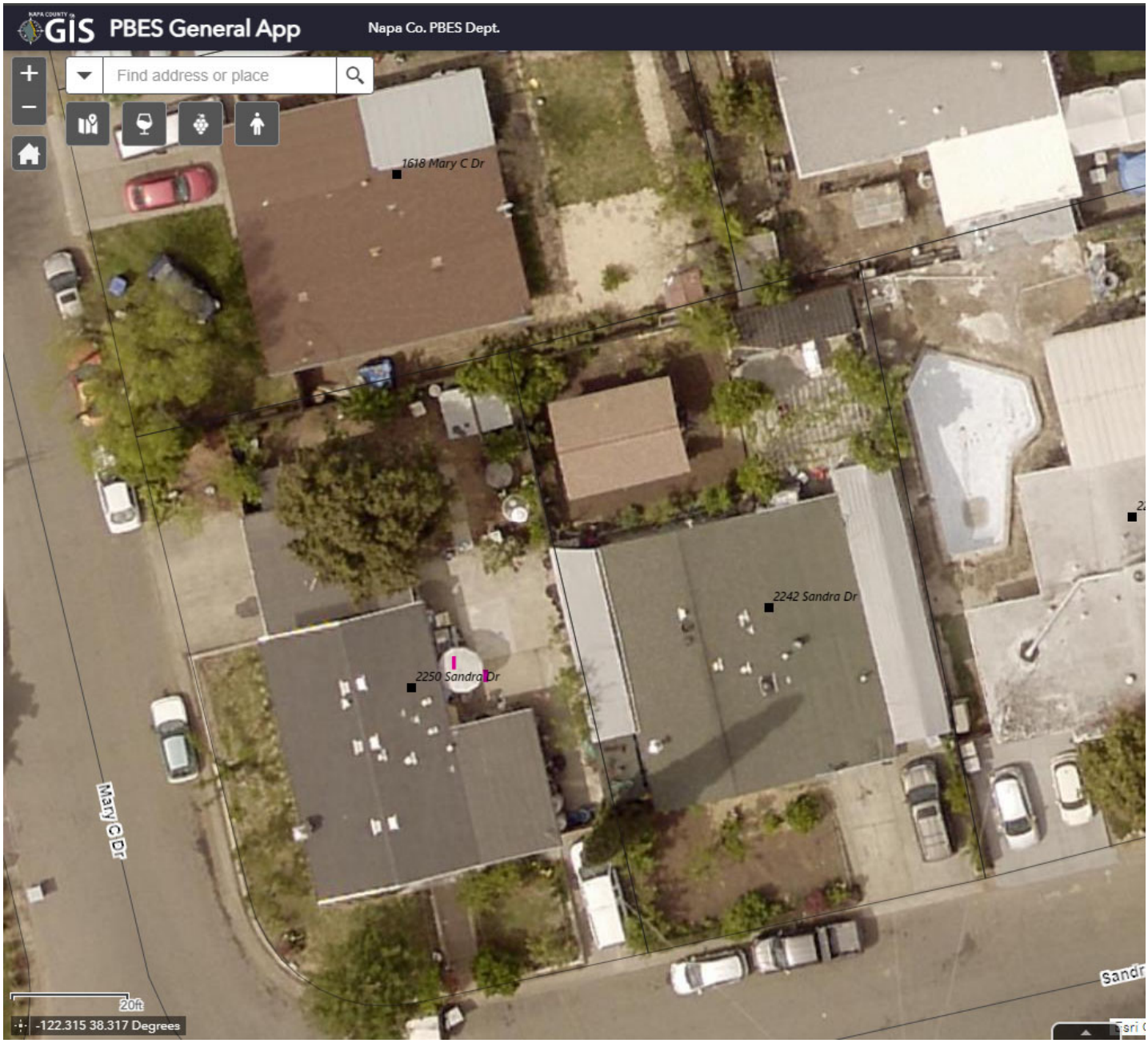
> Hello Greg,
>
> As I work on preparing the final documents for the denial recommendation of your variance application, my Supervisor, Trevor Hawkes, requested that I forward the following Aerial Imagery that will be included in the presentation, which clearly show that the original structure was demolished and rebuilt in 2018 without the appropriate building permits. We are sharing this with you for your awareness ahead of a public hearing.
>
> In addition to this, the Director of the Planning, Building and Environmental Services Department, Brian D. Bordona, has determined that this application, according to Napa County Code (NCC) Section 18.10.020, is of unique nature such that it is judged not to be a routine matter, and as such the hearing will be elevated from a Zoning Administrator Hearing to a Planning Commission Hearing.

Should you decide to bring the property into compliance and pursue new permits for a compliant shade structure the department would be happy to help you through that process, otherwise I will continue to keep you updated as we complete our analysis and County Counsel completes their review. Once these steps are completed we will let you know when your hearing date is scheduled. Feel free to contact me if you have any further questions or concerns.

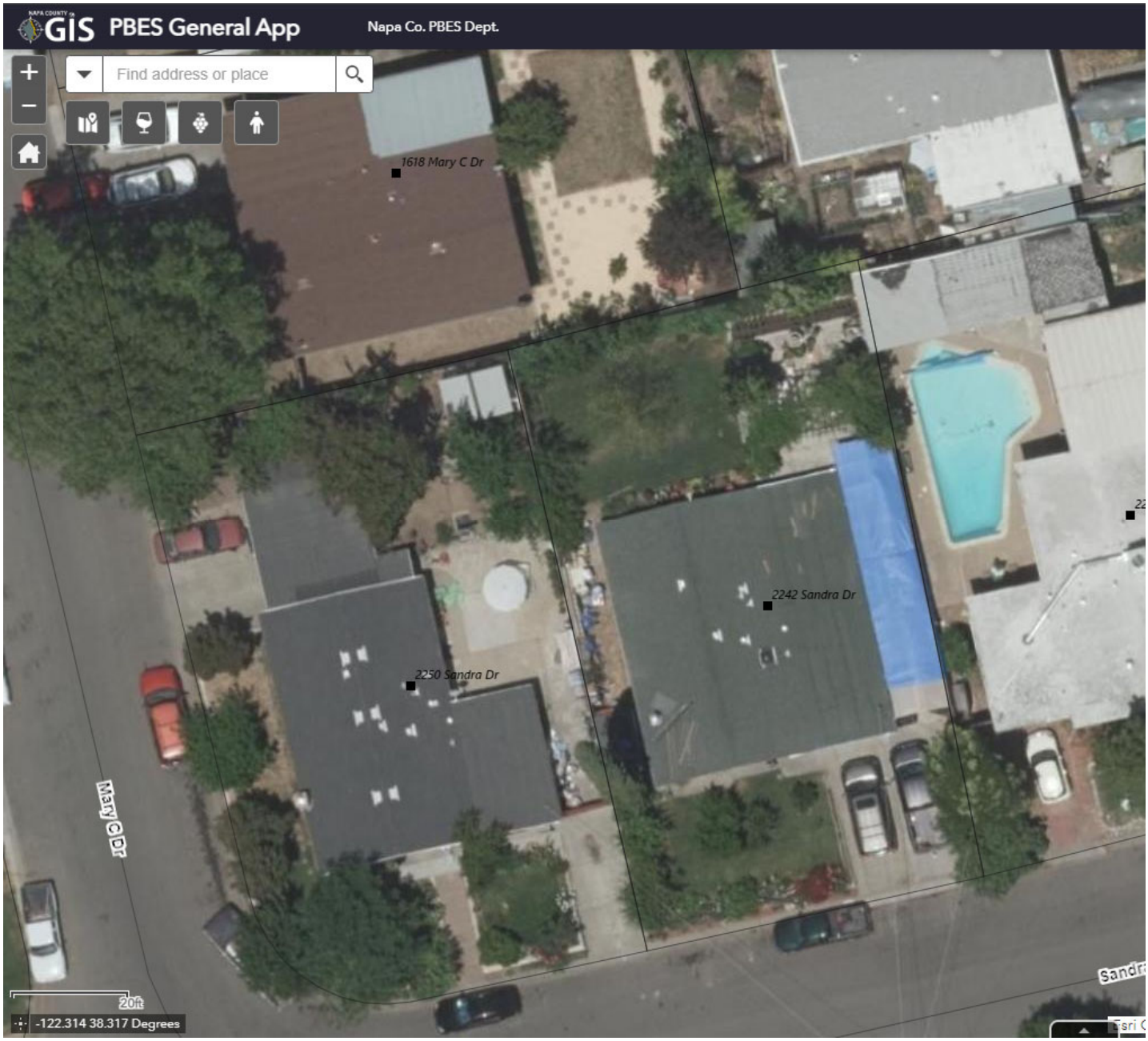
2021



2018


GIS PBES General App
Napa Co. PBES Dept.
Find address or place
1618 Mary C Dr
2242 Sandra Dr
2250 Sandra Dr
Mary C Dr
20ft
-122.315 38.317 Degrees

2014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Sincerely,

A Tradition of Stewardship
A Commitment to Service

Andrew Amelung

Planner II

Planning, Building, & Environmental Services

Napa County

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Napa, CA 94559

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