



Z O N I N G
A D J U S T M E N T S
B O A R D
M E M O R A N D U M

FOR BOARD ACTION
SEPTEMBER 8, 2022

1151 Grizzly Peak Boulevard

Administrative Use Permit ZP#2021-0088 to legalize an accessory building in the rear yard of a single-family lot.

Current Proposal

At the April 28, 2022 ZAB meeting, there was lengthy discussion about measures to reduce impacts to the neighbor at 25 Stoddard Way, and a motion was made to approve the project with an added condition of approval to explore planting and landscaping as well as using obscured glass in the northern structure in the window facing 25 Stoddard Way. The motion failed (4-2-0-3-0). The item was continued to the next scheduled hearing, May 26, 2022, however neither the applicants or the neighbor was available on that date so it was continued again to September 8, 2022.

On August 16, 2022, the owners submitted a revised applicant statement and plans and have reduced the scope of this Administrative Use Permit (AUP) to include only the southern accessory building ("Unit 2") with an increased setback for the rear property line that is shared with 25 Stoddard Way. It was originally located 2-feet, 7-inches from the rear lot line and fence, and will be moved so that it is 4-feet from that shared lot line at its closest point. The proposed accessory building continues to meet development standards found in BMC 23.304.060.

The owners have also filed a building permit to convert the northern unit (previously "Unit 1") to an Accessory Dwelling Unit (ADU), which is permitted by-right under State Law and the City of Berkeley's ADU Ordinance, BMC 23.306. Although not subject to discretionary review or approval, the proposed ADU is shown on the proposed site plan for reference only. The building permit application includes a 34 square foot addition for a bathroom and moving the structure to be 4 feet from the rear and side lot lines, in compliance with the development standards for ADUs. Review and approval of the ADU is non-discretionary and is not within the purview of the ZAB.

Background

In May 2021, the owners installed two pre-fabricated custom-built accessory buildings within the rear yard of the subject property. The subject accessory building is 103 square feet in area, used as a home office and exercise space and is located on the southeast corner of the rear yard.

In researching the project, Land Use staff found that the applicants had requested information from the Zoning Counter in August 2020 regarding the installation and construction of accessory *structures*, each under 120 square feet in area, and were directed to review and follow the development standards for Accessory Buildings and Structures in residential districts (BMC Sections 23D.08.020-030). However, it was not clear that the applicants were intending to install *habitable* structures that would meet the land use definition for Accessory *Buildings*, and the applicants were not informed that the issuance of an AUP by the Zoning Officer would be required to proceed.

A neighbor contacted the City regarding the installation of the accessory buildings on the subject lot. Code Enforcement staff investigated the subject property in March 2021 and found that the structures are *habitable*, and therefore considered to be accessory buildings.

Because the project originated as a Code Enforcement case to legalize buildings and the neighbor to the rear of the subject property (25 Stoddard Way) raised concerns about the project, Land Use staff preemptively referred this AUP request to the Zoning Adjustments Board.

No formal approval or denial has been given on this project, and therefore an appeal has not been filed. Tonight's meeting is the fourth public hearing in front of the ZAB in a twelve-month period. Staff request that a decision be made so that either party – the owner or the neighbor – can have the opportunity to exercise their right to appeal to the City Council, per BMC 23.410, if desired.

PROJECT CHRONOLOGY

Date	Action
June 23, 2021	Application fees paid and deemed submitted
July 23, 2021	Application deemed complete
August 26, 2021	Public hearing notices mailed/posted
September 9, 2021	ZAB hearing – continued to date certain
December 9, 2021	Continued to date certain
January 13, 2022	ZAB hearing – continued to date certain
April 24, 2022	ZAB hearing – continued to date certain
May 26, 2022	Continued to date certain
September 8, 2022	ZAB hearing

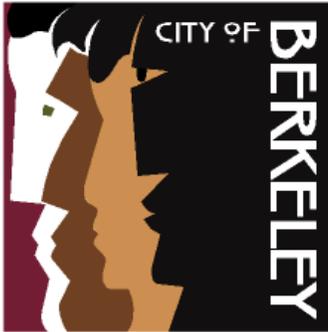
Staff Recommendation:

Because of the project's consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board: APPROVE ZP#2021-0088 pursuant to Section 23B.32.030 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Staff Report, dated September 9, 2021
2. Findings and Conditions, revised for reduced scope, dated September 8, 2022
3. Plans, received August 16, 2022 (site plans and renderings) and April 28, 2022 (floor plans)
4. Revised applicant statement, dated August 16, 2022
5. New correspondence received, dated August 31, 2022

Staff Planner: Samantha Updegrave, supdegrave@cityofberkeley.info, (510) 981-7414



Z O N I N G
A D J U S T M E N T S
B O A R D
S T A F F R E P O R T

FOR BOARD ACTION
SEPTEMBER 9, 2021

1151 Grizzly Peak Boulevard

Administrative Use Permit ZP#2021-0088 to legalize two Accessory Buildings in the rear yard of a Single-Family Dwelling.

I. Background

A. Land Use Designations:

- General Plan: LDR - Low Density Residential
- Zoning: R-1(H) - Single-Family Residential District, Hillside Overlay

B. Zoning Permits Required:

- Administrative Use Permit (AUP) to construct accessory buildings, under Berkeley Municipal Code (BMC) Section 23D.08.005.

C. CEQA Recommendation:

It is staff's recommendation that the project is categorically exempt pursuant to Section 15303 ("New Construction or Conversion of Small Structures") of the CEQA Guidelines. The determination is made by Zoning Adjustments Board (ZAB).

Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

A. Parties Involved:

- Applicant & Property Owner: Jeana Arabzadeh & Matt Jacobs,
1151 Grizzly Peak Boulevard, Berkeley

Figure 1: Vicinity Map

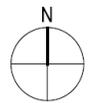
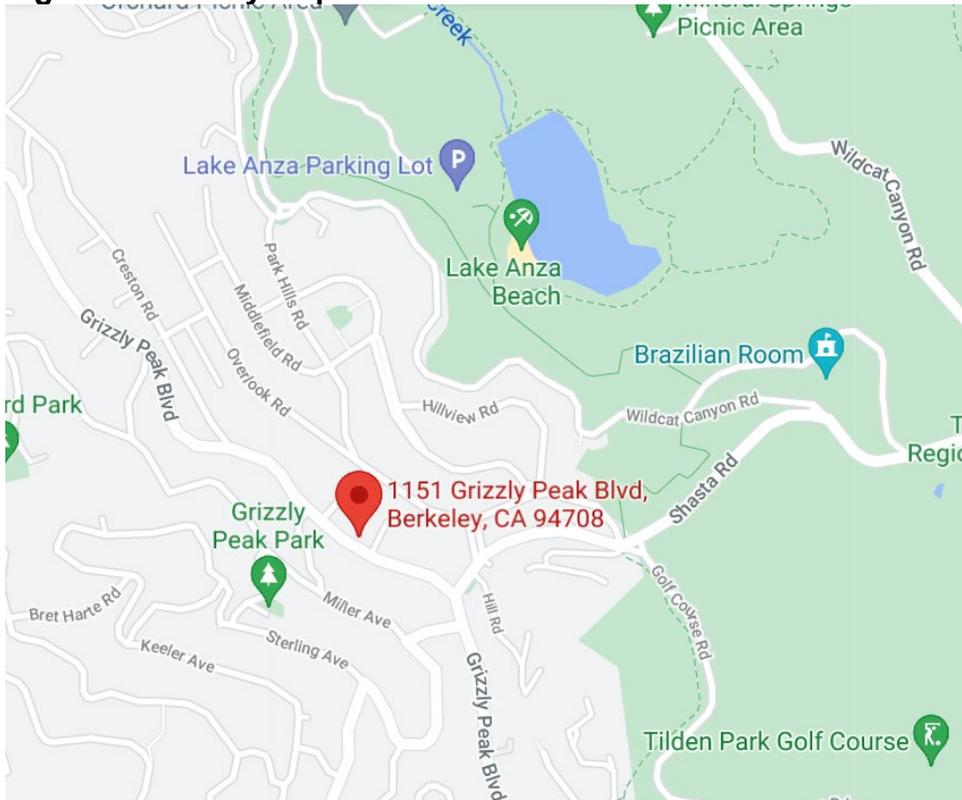


Figure 2: Area Map

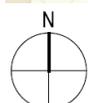


Figure 3: Site Plan

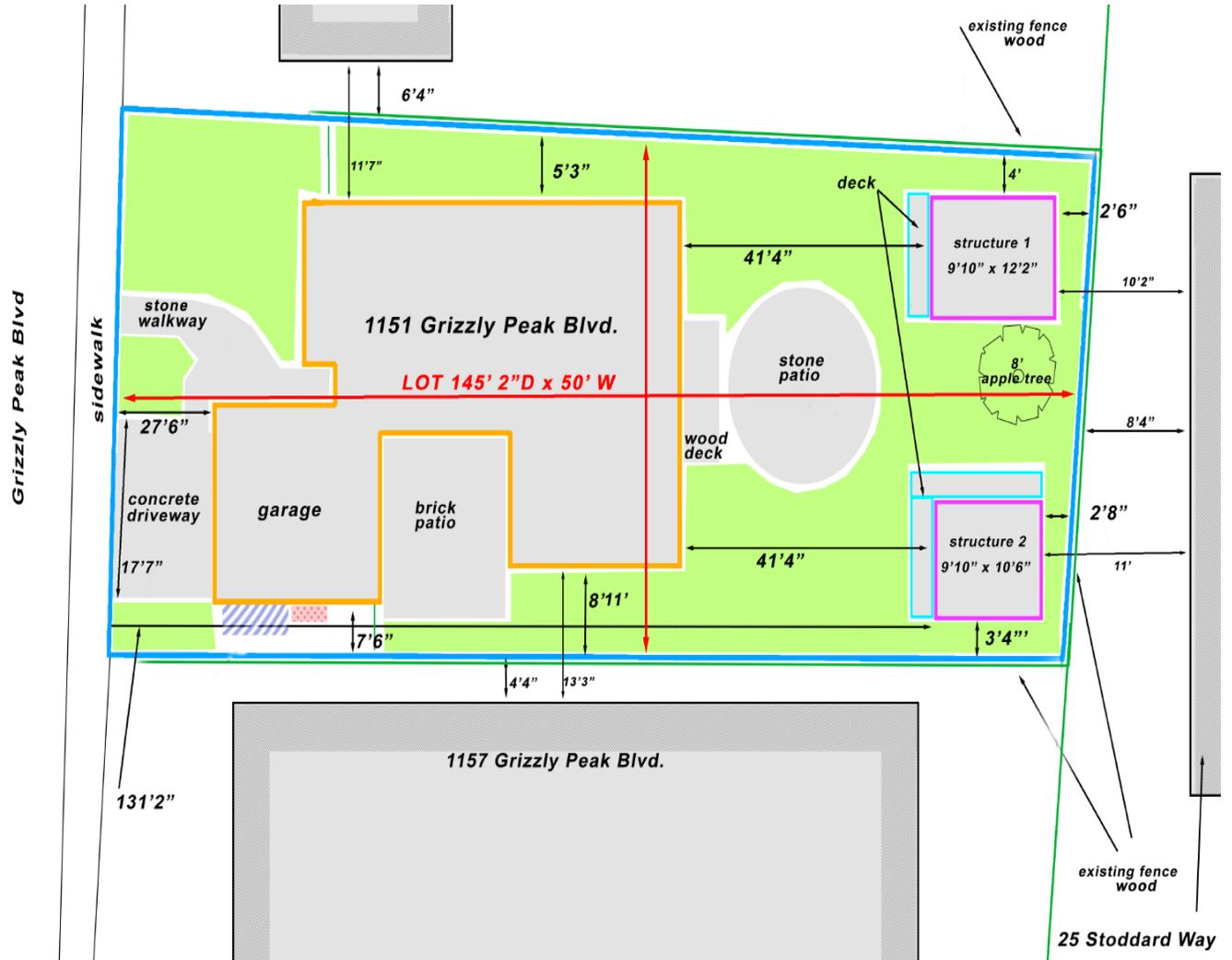


Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Single-Family Dwelling	R-1(H)	LDR, Low Density Residential
Surrounding Properties	North	Single-Family Dwellings	R-1(H)	LDR, Low Density Residential
	South			
	East			
	West			

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.)	No	The project would not include non-residential floor area and therefore the Affordable Housing and Childcare Mitigation Fees do not apply.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)		
Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)	No	This fee applies to projects that involve five or more dwelling units on the same lot. The applicant does not propose to create any new dwelling units, and thus is not subject to the Affordable Housing Mitigation Fee.
Creeks	No	There are no creeks on the site.
Natural Gas Prohibition (Per BMC 12.80.020)	Yes	This project includes the legalization of two new accessory buildings, however, natural gas is not proposed.
Historic Resources	No	There are no historic resources on the site.
Oak Trees	No	There are no Oak Trees on the project site.
Seismic Hazards (SHMA)	No	The site not located within an area susceptible to liquefaction, Fault Rupture, or Landslides as shown on the State Seismic Hazard Zones map.
Soil/Groundwater Contamination	No	There is no history of contamination on the project site and is not located within the City's Environmental Management Area, and is a not on a state Cortese List.

Table 3: Project Chronology

Date	Action
June 23, 2021	Application fees paid and deemed submitted
July 23, 2021	Application deemed complete
August 26, 2021	Public hearing notices mailed/posted
September 9, 2021	ZAB hearing

Table 4: Development Standards

Standard BMC Sections 23D.16.070-080; 23E.96.070-080; 23D.08.020; and 23.08.030		Existing	Proposed (Total)	Permitted/Required
Lot				
Lot Area (sq. ft.)		7,315	No Change	5,000 min
Gross Floor Area (sq. ft.)		1,713	1,936 (+223)	n/a
Dwelling Units		1	1	1 max
Lot Coverage (%)		23.4	26.5	40% max
Usable Open Space (sq. ft.)		> 400	> 400	400 sq. ft. min
Parking (Automobile)		2	No Change	1 min
Accessory Building #1 (ceramics studio)				
Average Building Height		-	9' 8"	10' max. (may be exceeded w/ AUP per 23D.08.010.B)
Building Setbacks	Front	-	> 130'	75' min. (may be decreased w/ AUP per 23D.08.010.B)
	Rear	-	2' 6"	0' – 4' min. if average height of building less than 10' (may be exceeded w/ AUP per 23D.08.010.B)
	Left Side	-	4' 1"	0' – 4' min. if average height of building less than 10' (may be exceeded w/ AUP per 23D.08.010.B)
	Right Side	-	> 36'	0' – 4' min. if average height of building less than 10' (may be exceeded w/ AUP per 23D.08.010.B)
Accessory Building #2 (home office and gym)				
Average Building Height		-	9'5"	10' max. (may be exceeded w/ AUP per 23D.08.010.B)
Building Setbacks	Front	-	> 130'	75' min (may be decreased w/ AUP per 23D.08.010.B)
	Rear	-	2' 8"	0' – 4' min. if average height of building less than 10' (may be exceeded w/ AUP per 23D.08.010.B)
	Left Side	-	> 36'	0' – 4' min. if average height of building less than 10' (may be exceeded w/ AUP per 23D.08.010.B)
	Right Side	-	3' 4"	0' – 4' min. if average height of building less than 10' (may be exceeded w/ AUP per 23D.08.010.B)

II. Project Setting

- A. Neighborhood/Area Description:** The project site is in the North Berkeley hills in an area that is a mix of one-, two-, and three-story single-family dwellings. Lots in the neighborhood are generally rectangular with some irregularities due to existing slopes and curved roadways. The neighborhood hills generally slope downwards towards the southwest and provide primary views westward towards the San Francisco Bay. Given the hilly terrain and limited availability of on-street parking, the dwellings in the neighborhood tend to include attached one- or two-car garages within front yards
- B. Site Conditions:** The project site is generally rectangular, with its front property line along Grizzly Peak Boulevard, and is approximately 55 feet in width and approximately 142 feet in depth. The site slopes slightly upward from Grizzly Peak Boulevard to the rear of the property. There are no protected oak trees on the site. The lot conforms to the development standards for the zoning district, including density, height, yards, lot coverage, and useable open space.

III. Project Description and Background

- A. Project Description:** The applicants are proposing to legalize two new detached Accessory Buildings in the rear yard that were fabricated off-site and installed without receiving the applicable use permit and Zoning approval.

The Accessory Buildings would be used as a ceramics studio, and a home office and exercise space for the owner-occupants of the residence. Because the project originated as a Code Enforcement case to legalize these buildings and the neighbor to the rear of the subject property (25 Stoddard Way) has raised concerns about the project, Land Use staff is preemptively referring this AUP request to the Zoning Adjustments Board. The applicants were invoiced double fees as the request is to legalize Accessory Buildings constructed without permits.

- B. Project Background:** In May 2021, the applicants installed two pre-fabricated custom-built Accessory Buildings within the rear yard of the subject property. Accessory Building #1 is 120 square feet in area, used as a ceramics studio and is located on the northeast corner of the rear yard of the property. Accessory Building #2 is 103 square feet in area, used as a home office and exercise space and is located on the southeast corner of the rear yard. The applicants stated that they installed both pre-fabricated buildings following the closure of their previously used ceramics studio, workplace office and gym in Berkeley due to the COVID-19 Pandemic.

A neighbor contacted the City regarding the installation of the Accessory Buildings on the subject lot. Code Enforcement staff investigated the subject property in March 2021 and found that the structures are *habitable*, and therefore considered to be Accessory Buildings.

BMC Section 23F (Definitions) differentiates between *Accessory Buildings* and

Accessory Structures, based on the use of the structure and whether it is considered habitable or non-habitable space:

Accessory Building: A detached building containing habitable space, which is smaller in size than the main building on the same lot, and the use of which is incidental to the primary use of the lot.

Accessory Structure: A detached structure, other than an Accessory Building, in which non-habitable uses or activities other than the principal use of the property are conducted. Residential Accessory Structures include, but are not limited to, enclosed structures such as garages, carports, garden or tool sheds, and non-enclosed structures such as, but not limited to, fences, gazebos, ground-mounted satellite dishes, skateboard ramps and wheelchair ramps. Non-residential Accessory Structures may include, but are not limited to, storage buildings, garages, sheds and other outbuildings.

Accessory Buildings, regardless of whether they meet the standards for size, location, and height, require zoning review and AUP approval¹, while Accessory Structures meeting those same standards are allowed outright. Based on the determination that these were Accessory Buildings, Code Enforcement staff directed the Applicants to submit an AUP to the Land Use Division. An application was submitted and accepted in June 2021.

In researching the project, Land Use staff found that the applicants had requested information from the Zoning Counter in August 2020 regarding the installation and construction of *Accessory Structures*, each under 120 square feet in area, and were directed to review and follow the development standards for Accessory Buildings and Structures in residential districts (BMC Sections 23D.08.020-030). However, it was not clear that the applicants were intending to install *habitable* structures that would meet the land use definition for *Accessory Buildings*, and the applicants were not informed that the issuance of an AUP by the Zoning Officer would be required to proceed.

The applicant is not requesting any additional AUP's to exceed the stated development standards of the Accessory Buildings and Structures. Additionally, as the subject property is not non-confirming due to lot coverage or density, a Use Permit application is not required.

IV. Community Discussion

- A. Neighbor/Community Concerns:** On August 26, 2021, the City mailed 126 public hearing notices to property owners and occupants, and to interested neighborhood organizations and the City posted notices within the neighborhood in three locations. At the time of this writing, staff has received one email communication regarding the project from the property owner of the property to the rear located at 25 Stoddard Way. See Attachment 5.

¹ Additional AUPs may be granted to exceed these standards pursuant to BMC 23.08.010.B.

- B. Committee Review:** The project is located in a residential district; therefore, Design Review is not applicable to the project.

V. Issues and Analysis

- A. Administrative Use Permit Approval for Accessory Buildings in Residential Districts:** Pursuant to BMC Section 23D.08.005.A.1, the two recently installed Accessory Buildings in the rear yard of the subject property without approval of a Zoning Permit must be authorized by an Administrative Use Permit.
- B. Development Standards for Accessory Buildings in Residential Districts:** BMC Sections 23D.08.020 and 23D.08.030 establish standards for the height and location of Accessory Buildings and Structures.

Per Table 4 above, the Accessory Buildings would meet or exceed all development standards required by BMC Sections 23D.08.020 and 23.08.030 including height limits and minimum setback distances. The Accessory Buildings would meet the required side setbacks which allow an Accessory Structure or Building up to 10 feet in average height within 4 feet of the side and rear property lines. They are setback 4 feet 2 inches and 3 feet 4 inches from the left- and right-side lot lines, respectively, and between 2 feet 6 inches – 2 feet 8 inches from the rear lot line. The Accessory Buildings are setback from the front property line by more than 75 feet.

The Accessory Buildings would meet the average height limit of 10-feet from grade. Accessory Building #1 would be used as a personal ceramic studio, and Accessory Building #2 would be used as a home office and gym. Neither contains bathroom facilities, and would not be used as dwelling units. Given the minimal windows facing the neighboring property, mature vegetation including trees, an existing wood fence, and the shadow studies provided by the applicant (See Attachment 3, Applicant Statement), it is not anticipated that the Accessory Buildings would be detrimental to the neighborhood or create significant impacts to light, air, views, or privacy.

Additionally, the Accessory Buildings also adhere to all site location and maximum length requirements (12 feet, 2 inches and 10 feet, 6 inches parallel to the side lot line where 24 feet is the maximum).

- C. General Plan Consistency:** The 2002 General Plan contains several policies applicable to the project, including the following:
1. Policy LU-7–Neighborhood Quality of Life, Action A: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.
 2. Policy UD-16–Context: The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.

3. Policy UD-24–Area Character: Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in.
4. Policy UD-32–Shadows: New buildings should be designed to minimize impacts on solar access and minimize detrimental shadows.

Staff Analysis: The impacts to neighboring properties would occur on limited areas, and would be further reduced by the existing vegetation that currently creates shading and shadows. The Accessory Buildings would only partially shade a neighboring property to the west (1147 Grizzly Peak) for a few hours in the morning during the summer solstice, and the neighboring property to the north (25 Stoddard Way) for a few hours in the afternoon during the winter solstice, and will not result in a significant loss of direct sunlight on abutting residences. The Accessory Buildings are not expected to create significant privacy impacts to the immediate neighbors given that the average height is below 10 feet and the Accessory Building' windows do not face directly into the adjacent properties.

The existing Accessory Buildings to be legalized would meet or exceed all Zoning development standards. The design, scale and placement of windows and lighting do not cause impacts on the adjacent properties or neighborhood and would not impact quality of life or area character. The proposed uses (ceramic studio, home office and gym) are consistent with the type of low intensity residential use typically found in accessory buildings, will function as extensions of the main dwelling, and will not generate excessive noise, dust, odors, or other similar impacts

VI. Recommendation

Because of the project's consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board: APPROVE ZP#2021-0088 pursuant to Section 23B.32.030 and subject to the attached Findings and Conditions (see Attachment 1).

Staff Planner: Loyal Nawfal, lnawfal@cityofberkeley.info, (510) 981-7424

ATTACHMENT 2

FINDINGS AND CONDITIONS

SEPTEMBER 8, 2022

1151 Grizzly Peak Boulevard

Administrative Use Permit ZP#2021-0088 to legalize an accessory building in the rear yard of a single-family lot.

PERMITS REQUIRED

- Administrative Use Permit (AUP) to construct Accessory Buildings, under Berkeley Municipal Code (BMC) Section 23D.08.005.

I. CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15303 of the CEQA Guidelines (“New Construction or Conversion of Small Structures”).
2. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

II. FINDINGS FOR APPROVAL

1. As required by BMC Section 23B.28.050.A, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:
 - A. The subject property will continue to conform to the applicable provisions of the Single-Family Residential District, Hillside Overlay, R-1(H) standards (BMC Section 23D.28.070) for maximum residential density (one dwelling unit, where only one is allowed), height (10 feet average height without approval of an AUP), lot coverage (26.5 percent lot coverage, where the maximum allowed is 40 percent), usable open space (in excess of 1,000 square feet provided where a minimum of 400 square feet is required), and parking (two off-street parking spaces where one is required). No changes will be made to the existing single-family dwelling; setbacks and building height will remain the same.
 - B. The proposed legalized accessory building will meet the height limits per BMC Section 23D.08.020.A (9 feet, 8 inches in average height proposed where no accessory building may exceed 12 feet in average height when any portion of the building or

structure is within 4 to 10 feet of a lot line). The accessory building will not encroach on the front half of the lot depth and is more than 75 feet from the front lot line and will not create new sightlines into abutting neighboring dwellings, and are adjacent to mature vegetation. For the reasons stated above, the proposed project will not have substantial impacts on sunlight or air, or views (as defined by BMC Section 23F.04.010 (Definitions) of adjacent properties.

- C. The proposed uses (ceramic studio, home office and gym) will be consistent with the type of low intensity residential use typically found in accessory buildings, will function as extensions of the main dwelling, and will not generate excessive noise, dust, odors, or other similar impacts.
- D. Per Condition of Approval #11, a "Notice of Limitation on Use of Property" will be signed and recorded with the County which will stipulate that no part of the accessory building shall be used or converted to use as a dwelling unit, and that a kitchen (as defined under BMC Section 23F.04.010 (Definitions)), will not be installed.
- E. The proposed project is required to meet current Building and Safety Code and therefore, would not present a safety hazard to the residents on site, on adjacent properties or within the neighborhood.

STANDARD CONDITIONS

The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

1. Conditions Shall be Printed on Plans

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions'. *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

2. Applicant Responsible for Compliance with Conditions

The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.

3. Uses Approved Deemed to Exclude Other Uses (BMC Section 23B.56.010)

- A. This Permit authorizes only those uses and activities actually proposed in the application, and excludes other uses and activities.
- B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

4. Modification of Permits (BMC Section 23B.56.020)

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Zoning Officer.

5. Plans and Representations Become Conditions (BMC Section 23B.56.030)

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

6. Subject to All Applicable Laws and Regulations (BMC Section 23B.56.040)

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

7. Exercised Permit for Use Survives Vacancy of Property (BMC Section 23B.56.080)

Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8, below.

8. Exercise and Lapse of Permits (BMC Section 23B.56.100)

- A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
- B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.

C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

9. Indemnification Agreement

The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney’s fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney’s fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant’s expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.

ADDITIONAL CONDITIONS IMPOSED BY ZAB

Pursuant to BMC Section 23B.28.050.D, the ZAB attaches the following additional conditions to this Permit:

Prior to Submittal of Any Building Permit:

10. Project Liaison. The applicant shall include in all building permit plans and post onsite the name and telephone number of an individual empowered to manage construction-related complaints generated from the project. The individual’s name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis.

Please designate the name of this individual below:

Project Liaison _____
Name Phone #

Prior to Issuance of Any Building Permit:

- 11. Accessory Building:** All owners of record of the subject property shall sign and record with the Alameda County Clerk-Recorder a “Notice of Limitation on Use of Property” (available from Land Use Planning Division) and provide a recorded copy thereof to the project planner. This Notice of Limitation shall stipulate that no part of this accessory building shall be used or converted to use as a dwelling unit unless and until permission is requested of the City of Berkeley and authorized a Use Permit, Administrative Use Permit, or Zoning Certificate, whichever is applicable. This limitation shall include the explicit acknowledgment that a full bathroom and cooking facilities may be installed, as long as the cooking facilities do not constitute a Kitchen per BMC Section 23F.04.010 (Definitions). This limitation may not be revised or removed from this property without the prior written permission of the Zoning Officer of the City of Berkeley.

Standard Construction-related Conditions Applicable to all Projects:

- 12. Transportation Construction Plan.** The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:
- Alterations, closures, or blockages to sidewalks, pedestrian paths or vehicle travel lanes (including bicycle lanes);
 - Storage of building materials, dumpsters, debris anywhere in the public ROW;
 - Provision of exclusive contractor parking on-street; or
 - Significant truck activity.

The applicant shall secure the City Traffic Engineer’s approval of a TCP. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be consistent with any other requirements of the construction phase.

Contact the Permit Service Center (PSC) at 1947 Center Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the surrounding neighborhood. A current copy of this Plan shall be available at all times at the construction site for review by City Staff.

- 13.** Construction activity shall be limited to between the hours of 8:00 a.m. and 6:00 p.m. on Monday through Friday, and between 9:00 a.m. and noon on Saturday. No construction-related activity shall occur on Sunday or on any Federal Holiday.
- 14.** If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.
- 15.** Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.

16. All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter in thickness and secured to the ground.
17. All active construction areas shall be watered at least twice daily, and all piles of debris, soil, sand or other loose materials shall be watered or covered.
18. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.
19. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.
20. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.
21. The applicant shall ensure that all excavation considers surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
22. Any construction during the wet season shall require submittal of a soils report with appropriate measures to minimize erosion and landslides, and the developer shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.
23. Halt Work/Unanticipated Discovery of Tribal Cultural Resources. In the event that cultural resources of Native American origin are identified during construction, all work within 50 feet of the discovery shall be redirected. The project applicant and project construction contractor shall notify the City Planning Department within 24 hours. The City will again contact any tribes who have requested consultation under AB 52, as well as contact a qualified archaeologist, to evaluate the resources and situation and provide recommendations. If it is determined that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.
24. Archaeological Resources (Ongoing throughout demolition, grading, and/or construction). Pursuant to CEQA Guidelines Section 15064.5(f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore:
 - A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.
 - B. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Berkeley. All significant cultural materials recovered shall be subject to scientific

analysis, professional museum curation, and/or a report prepared by the qualified professional according to current professional standards.

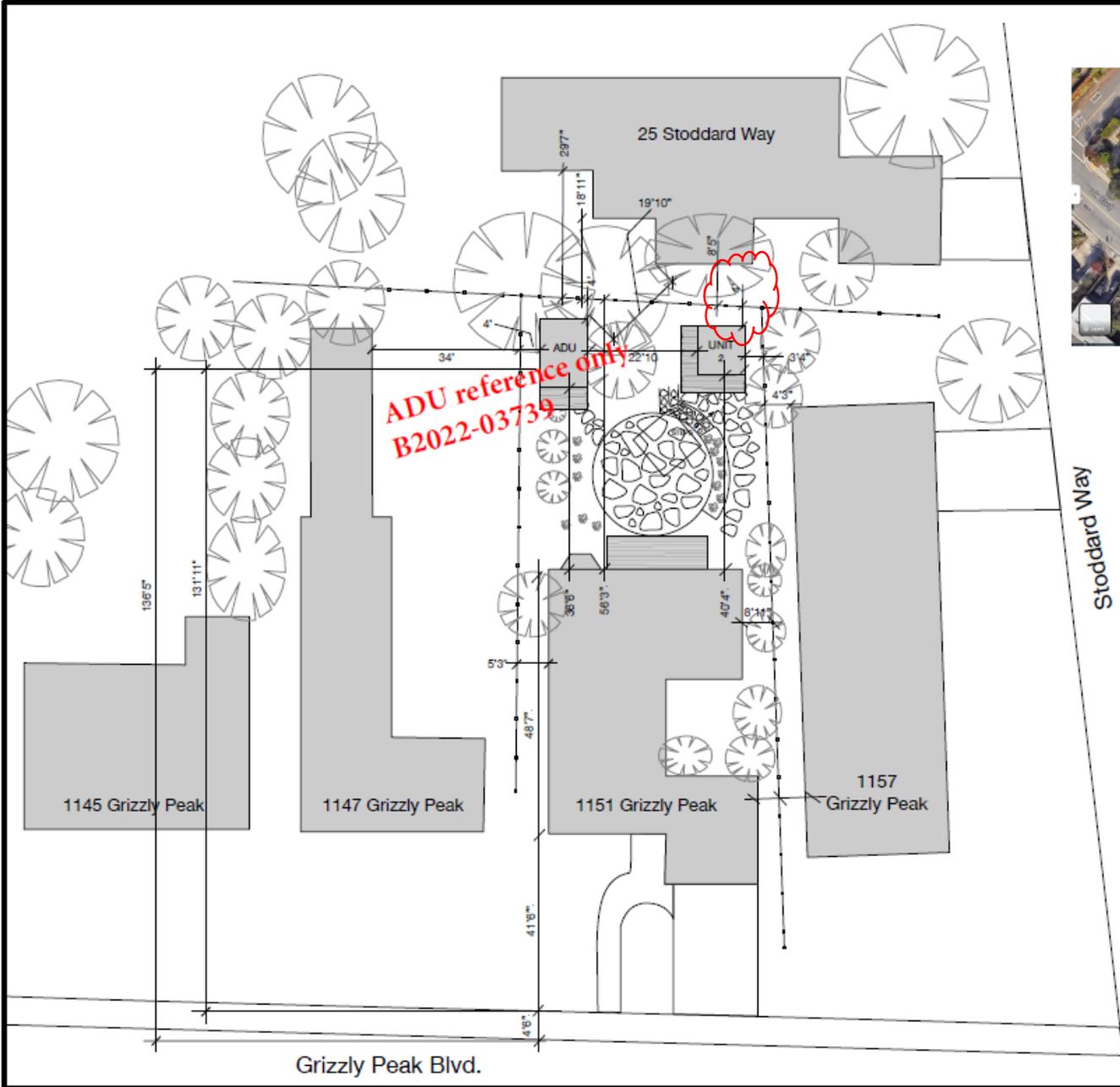
- C. In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.
 - D. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation measures for cultural resources is carried out.
 - E. If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.
- 25. Human Remains (Ongoing throughout demolition, grading, and/or construction).** In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to CEQA Guidelines Section 15064.5 (e)(1). If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to Health and Safety Code Section 7050.5(c), and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.
- 26. Paleontological Resources (Ongoing throughout demolition, grading, and/or construction).** In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards [SVP 1995,1996]). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.

Prior to Issuance of Occupancy Permit or Final Inspection:

- 27.** All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
- 28.** All landscape, site and architectural improvements shall be completed per the attached approved drawings dated August 16, 2022 (site plan) and April 28, 2022 (floor plans).

At All Times (Operation):

29. All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
 30. Drainage Patterns. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.
-

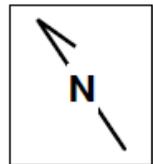


Google Earth Reference

PROPOSED

Accessory Building / UNIT 2

1151 Grizzly Peak Blvd
Berkeley CA 94708



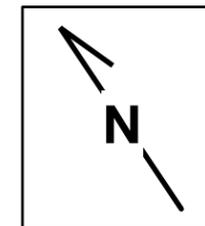


Google Earth Reference

EXISTING

ACCESSORY BUILDINGS

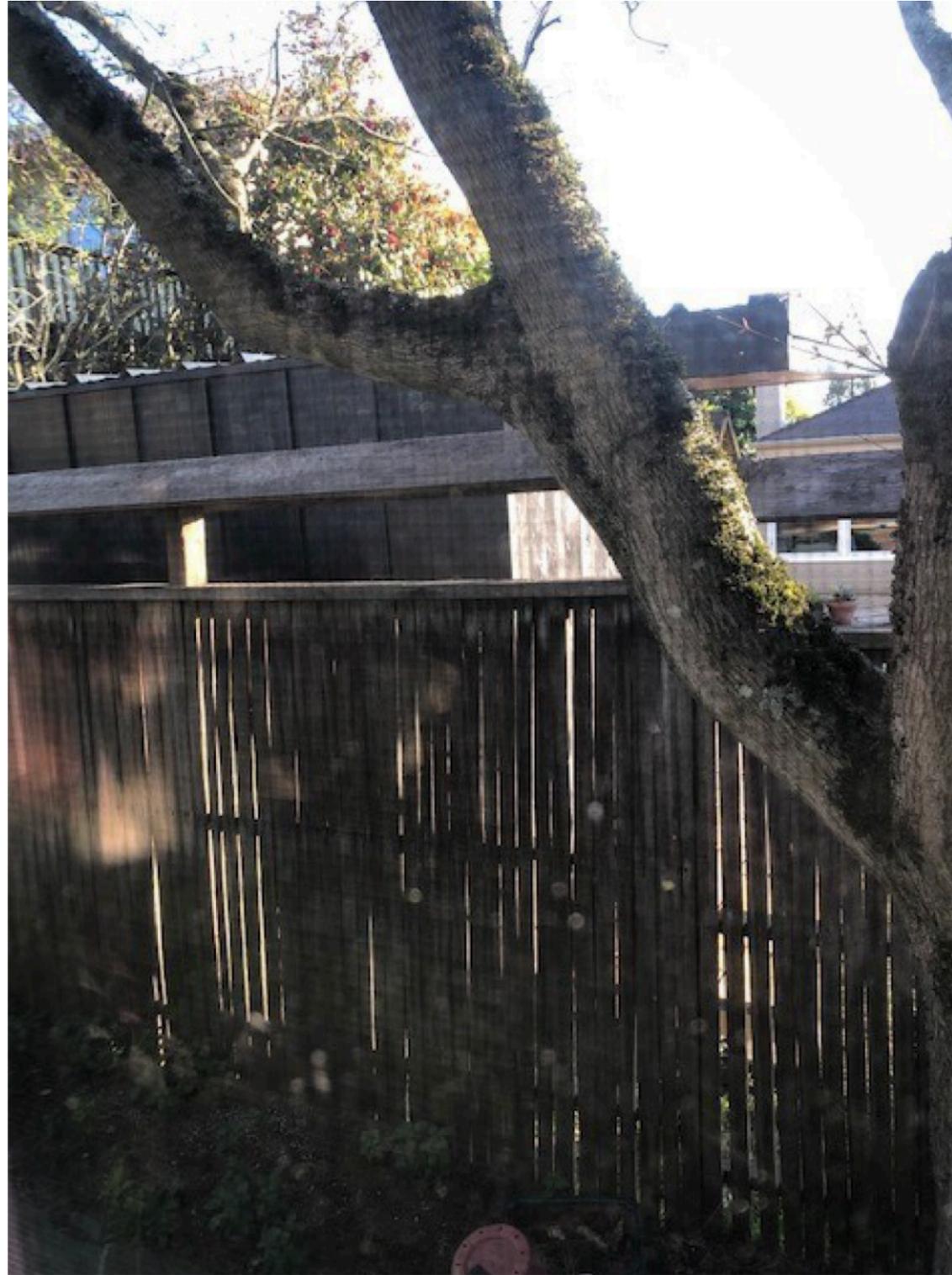
-
1151 Grizzly Peak Blvd
Berkeley CA 94708



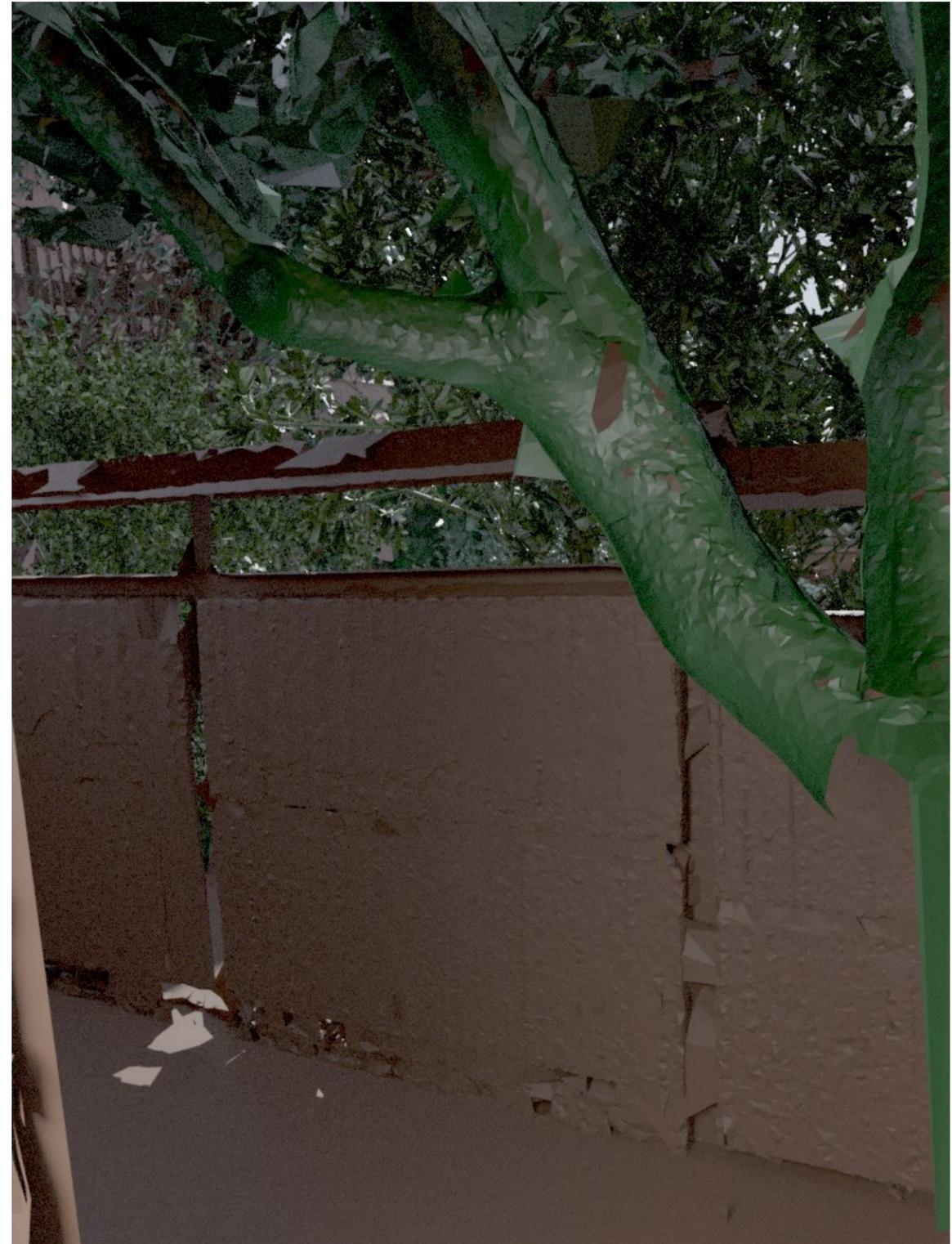
Unit 2

We are asking for approval of this building as an Accessory Building. We would like to remind the ZAB that when we reached out to the city building department we were told we were inquiring about a Accessory Structure and would need no permits.

We are now proposing, as and adjustment to the present location of the building, that we move it to a full 4' from the fence line we share with 25 Stoddard Way. We would like to be able to apply for an electrical permit for the building. The following renderings show moving the Unit to 4' from the fence.



25 Stoddard Way Reference Photo
Submitted by Joan Wager



Render of tree coverage before site prep and installation.
Through the tree cover a significant portion of the view is
blocked by 1157 and 1151 Grizzly Peak Blvd roofs.

This is a view from 25 Stoddard that faces South. In relation to this angle, the sun is at it's highest in the sky Year round. Removal of the trees we cut down during site prep has allowed for greater view into the distance as well as more ambient light.

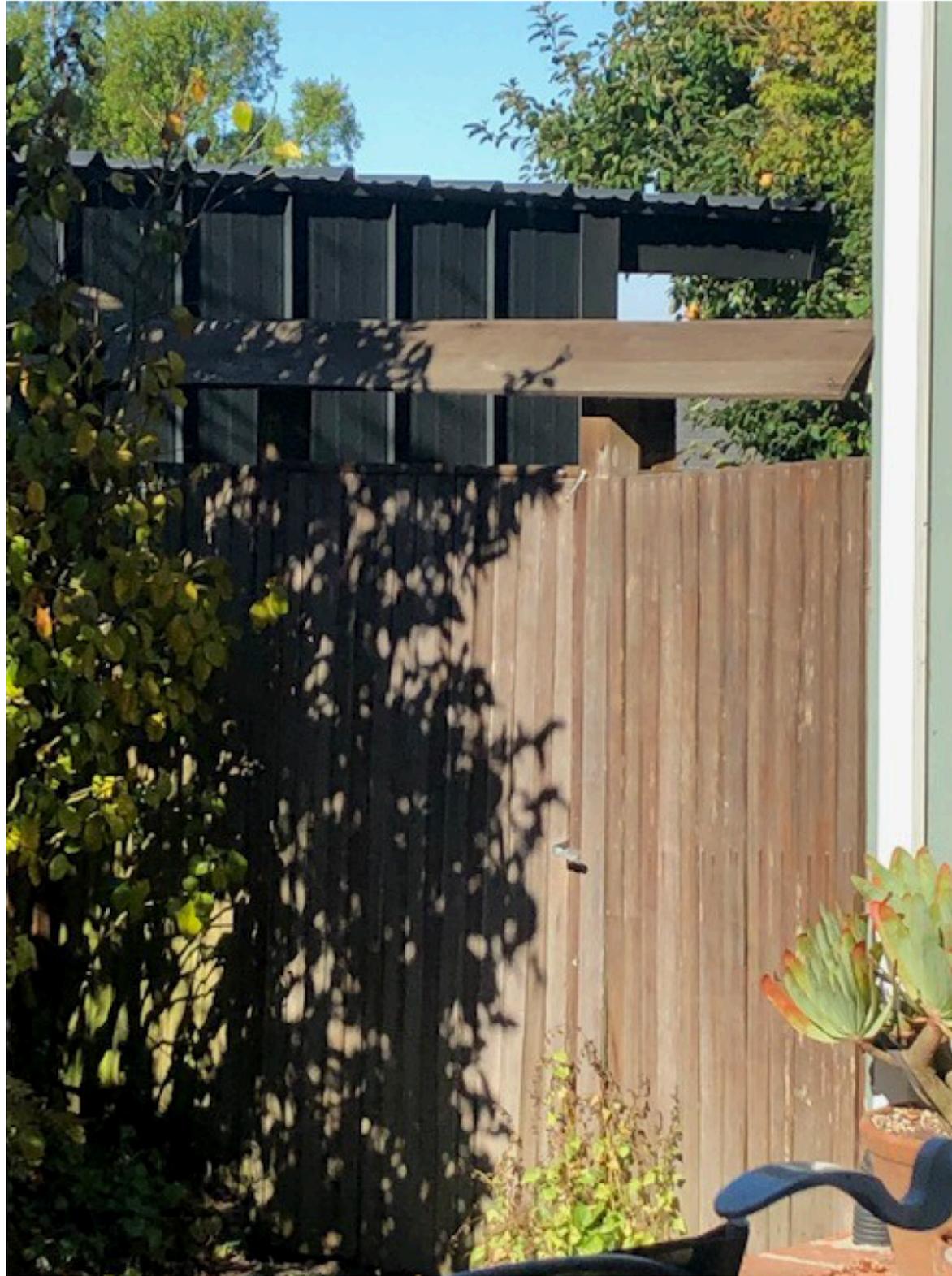


Render as exists

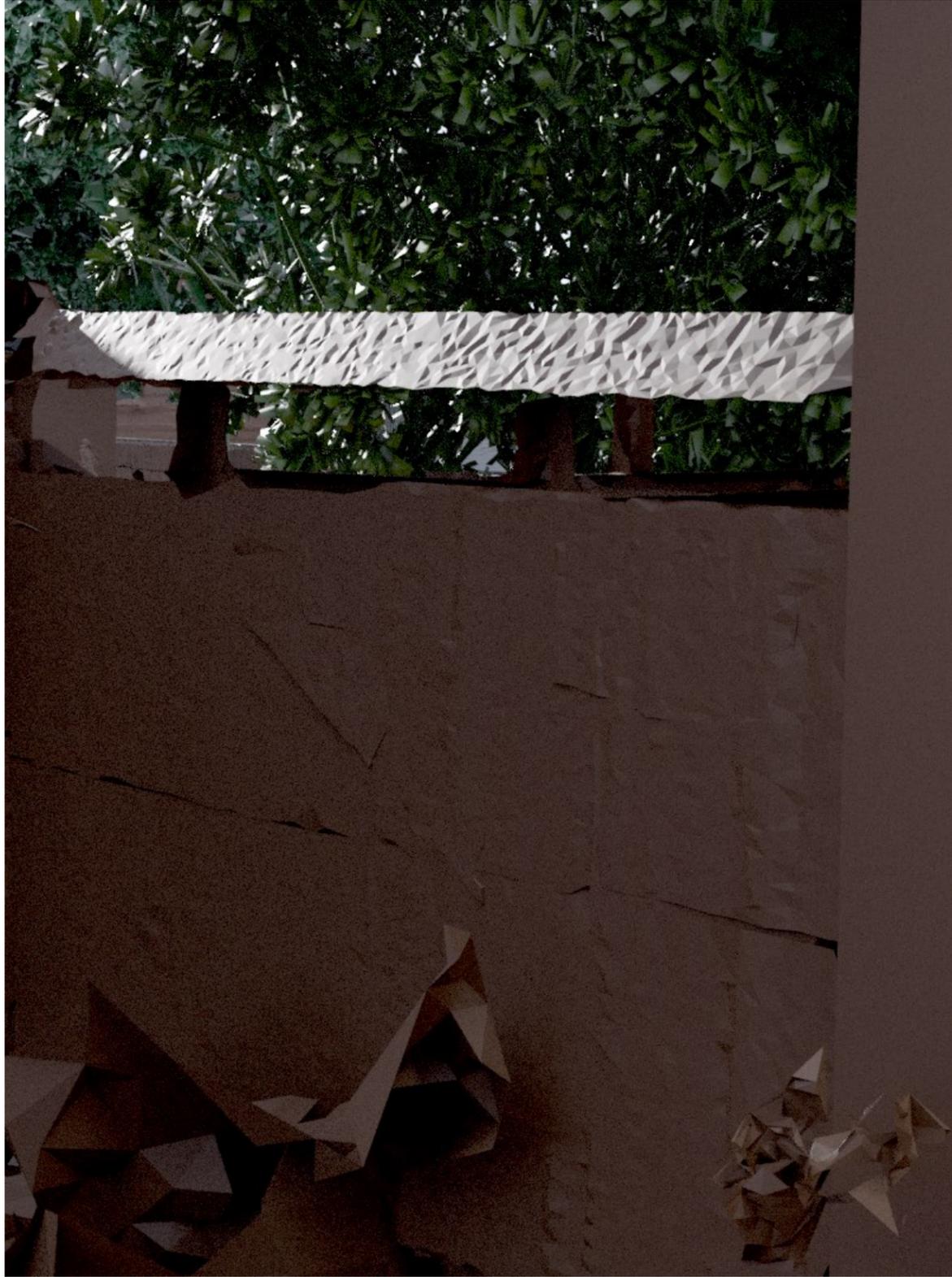


Render - Unit 2 moved to 4' from fence

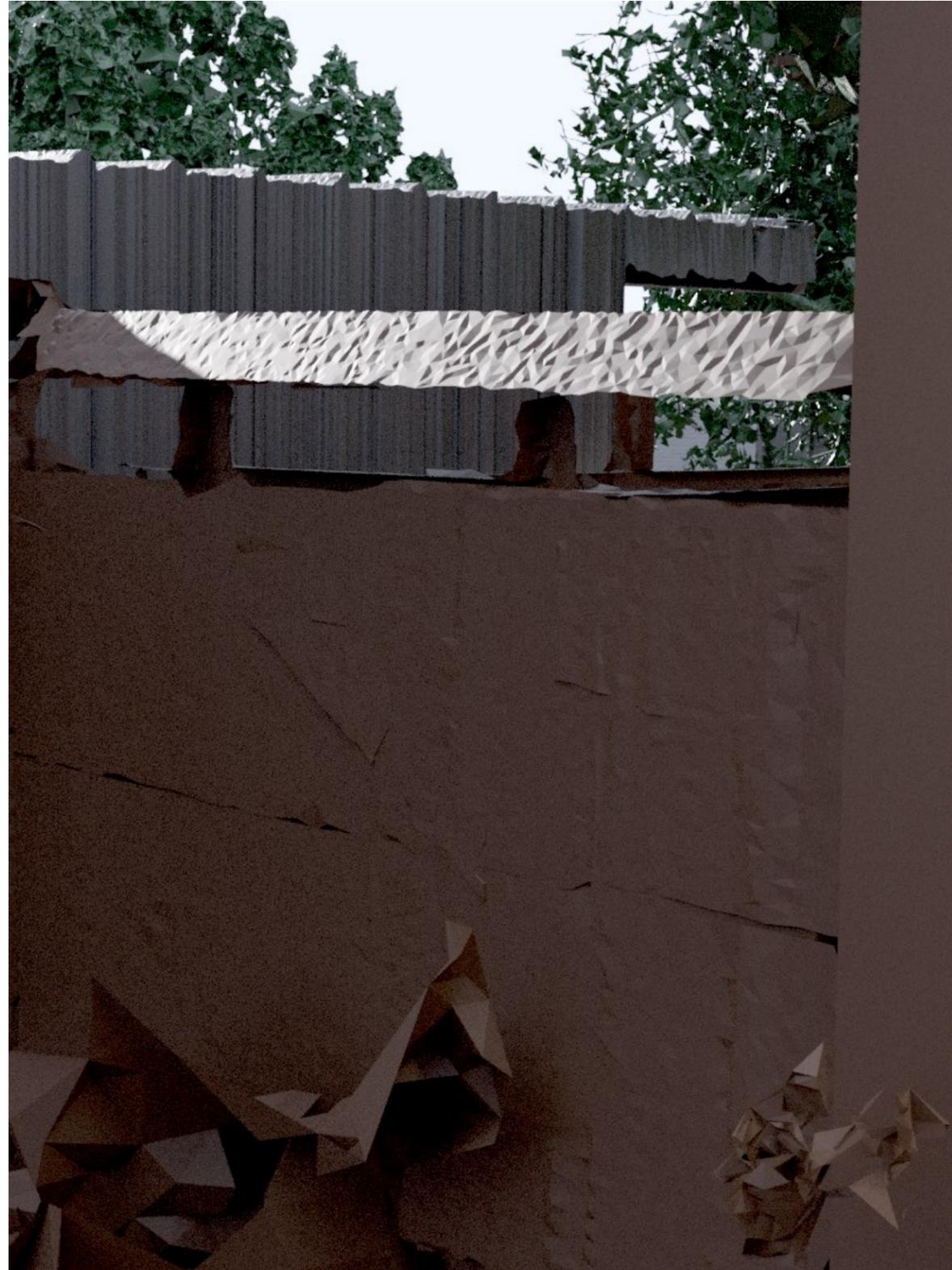
Removal of the roof overhand will only result in showing trees and our chimney. The distant tree line and roof line of surrounding buildings are higher than Unit 2 roofline.



25 Stoddard Way Reference Photo
Submitted by Joan Wager



Render of tree coverage before site prep and installation.
Through the tree cover a significant portion of the view is
blocked by 1147Grizzly Peak Blvd roof.

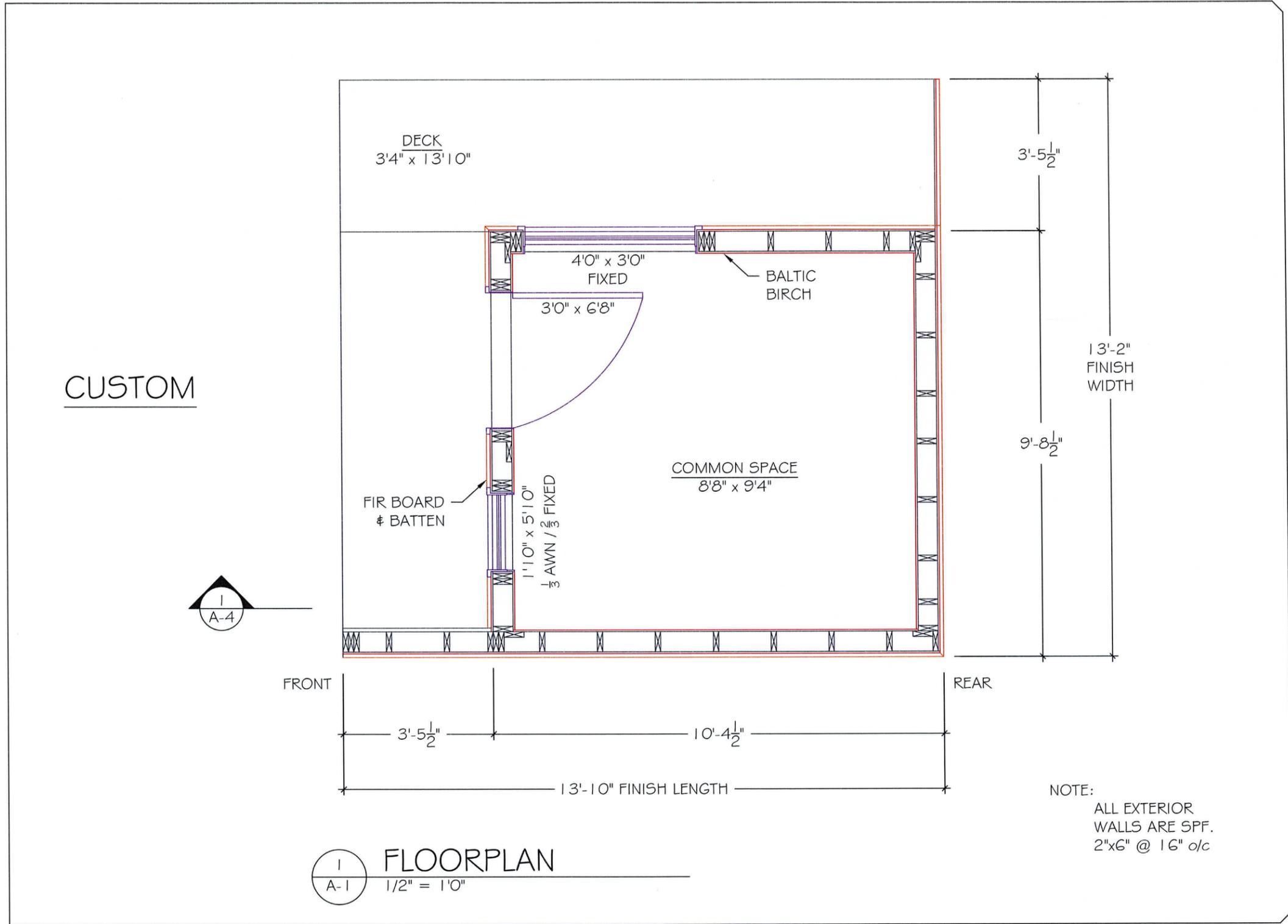


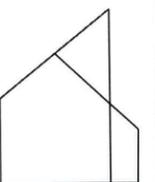
Present Roofline



Moved to 4' from fence

Floor Plans – April 28, 2022 ZAB Hearing





DROP STRUCTURES

#3 3320 18 AVE N
 LETHBRIDGE, AB
 Ph. 587.787.1656
 www.dropstructures.ca

REV.	DESCRIPTION

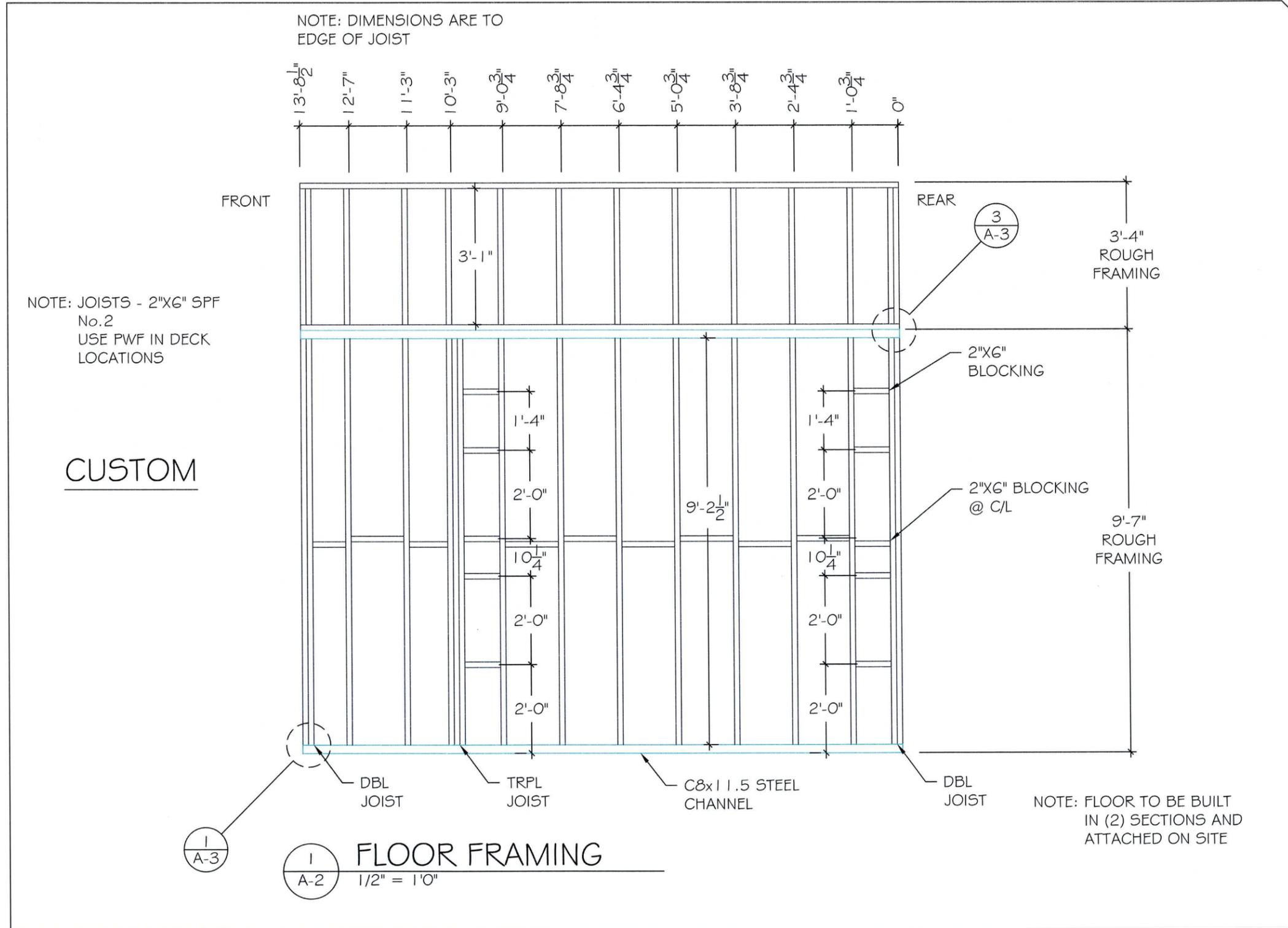
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PROJECT NO. CUSTOM
 CLIENT JACOBS
 ADDRESS BERKELEY, CA

SCALE 1/2" = 1'0"
 DRWN BY CDH
 DATE 2/8/2021

SHEET NAME
FLOOR PLAN

SHEET NO.
A-1



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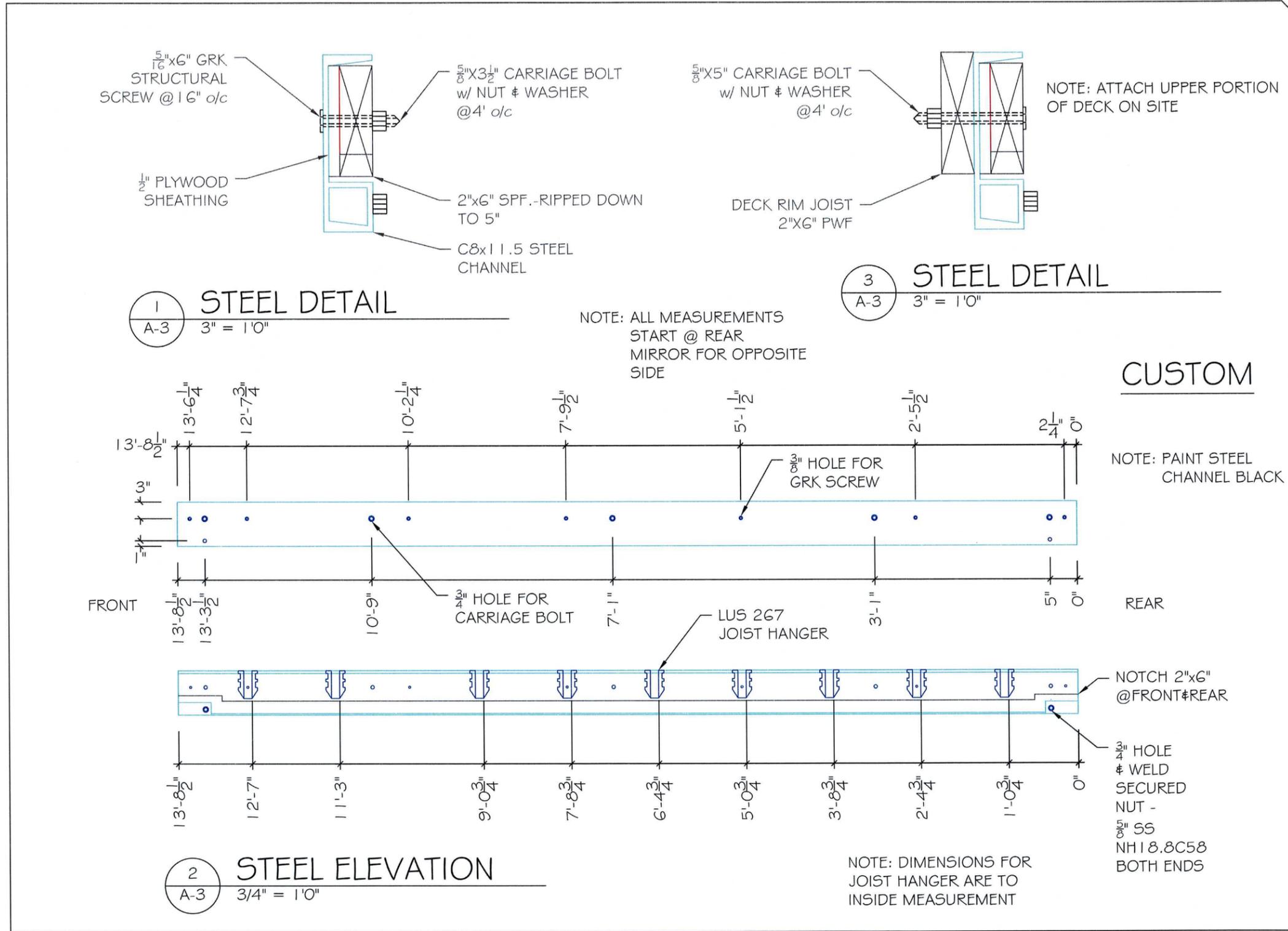
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PROJECT NO. CUSTOM
 CLIENT JACOBS
 ADDRESS BERKELEY, CA

SCALE 1/2" = 1'0"
 DRWN BY CDH
 DATE 2/4/2021

SHEET NAME
FLOOR FRAMING

SHEET NO.
A-2



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REV.	DATE	DESCRIPTION
1/8/2021		ADDED DIMS FOR WELDED ON NUT BOTH

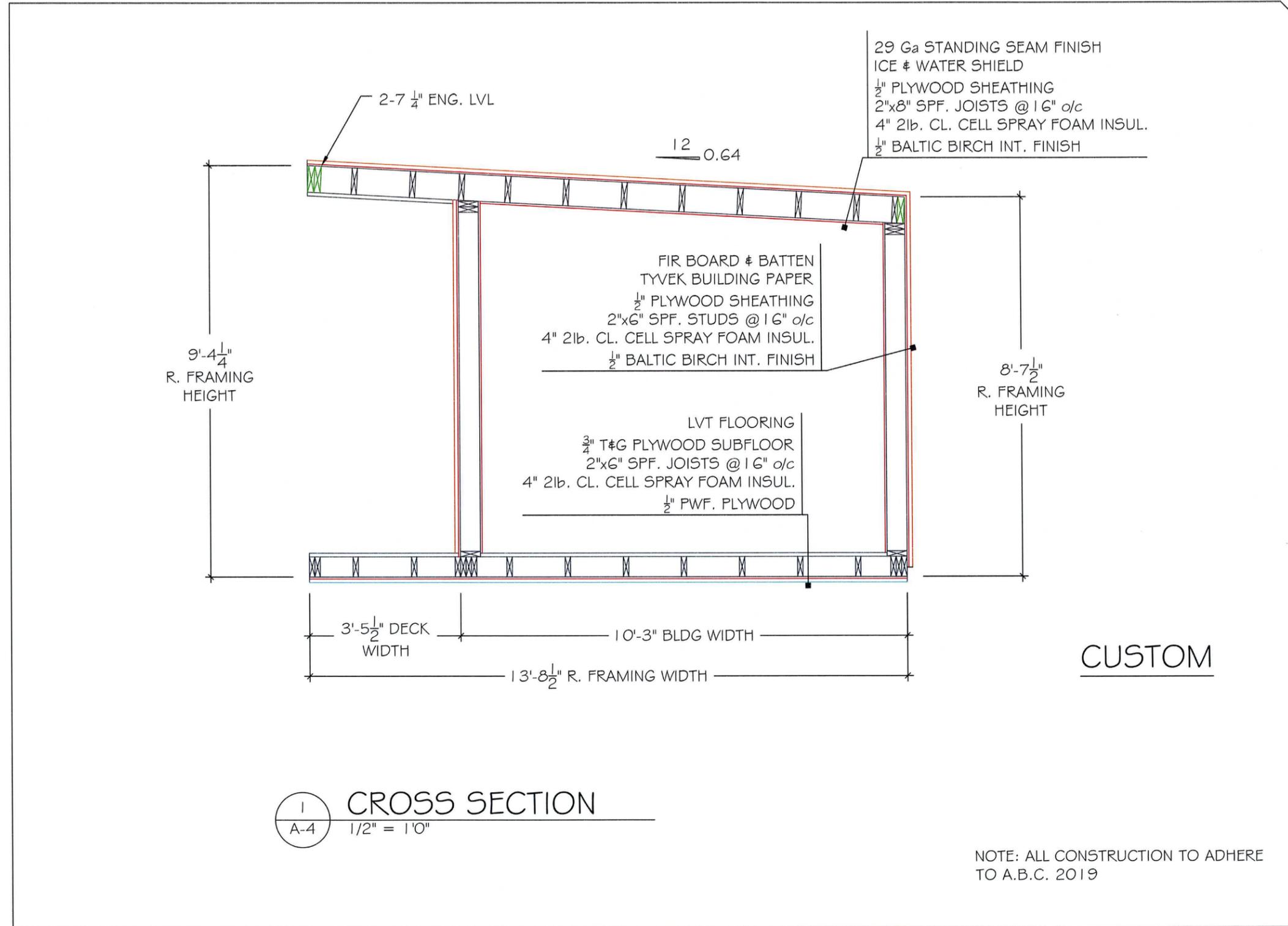
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PROJECT NO. CUSTOM
 CLIENT JACOBS
 ADDRESS BERKELEY, CA

SCALE AS SHOWN
 DRWN BY CDH
 DATE 2/4/2021

SHEET NAME
STEEL DETAIL

SHEET NO.
A-3



1 CROSS SECTION
 A-4 1/2" = 1'0"

CUSTOM

NOTE: ALL CONSTRUCTION TO ADHERE TO A.B.C. 2019

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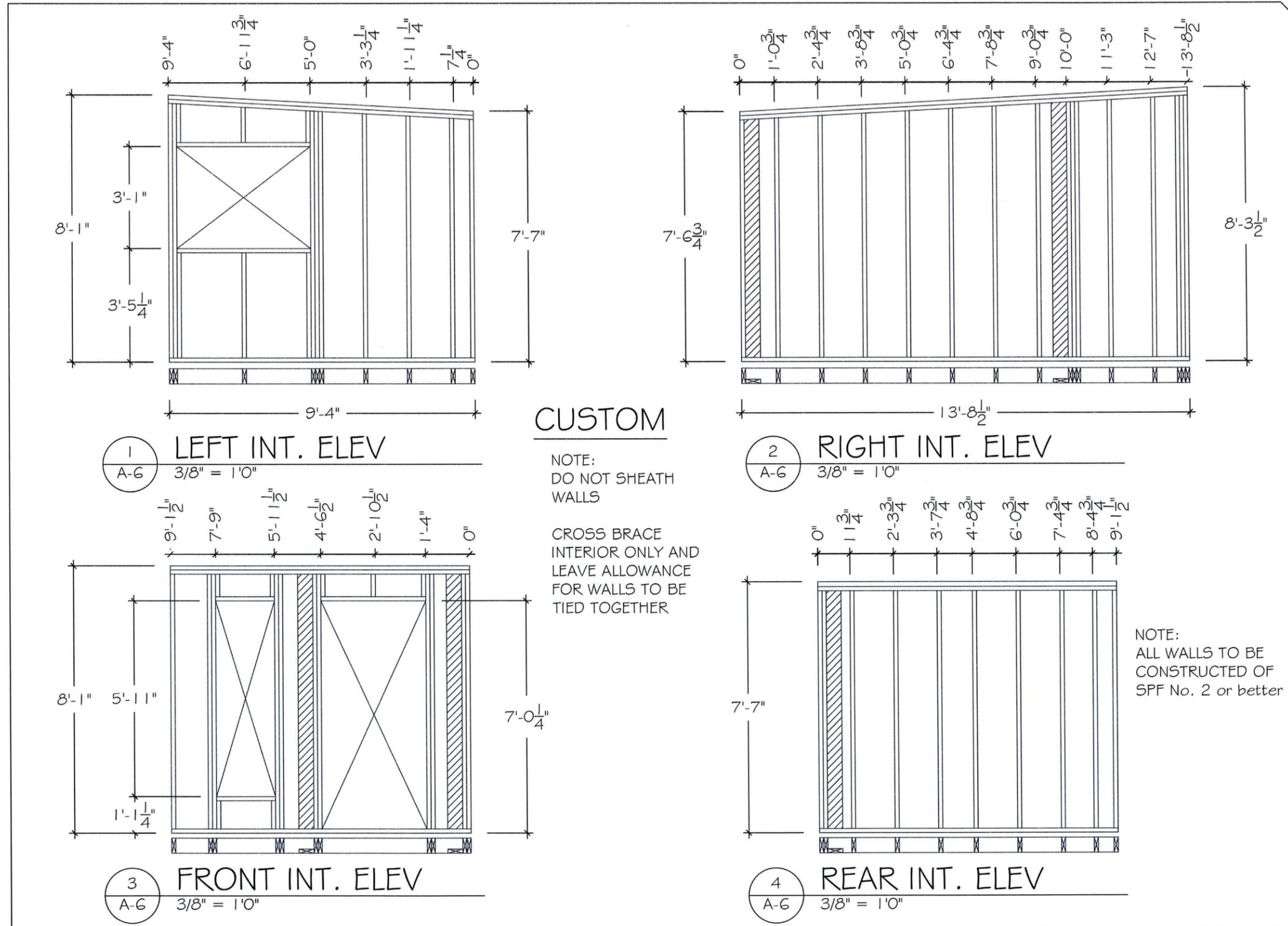
REV.	DESCRIPTION

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PROJECT NO. CUSTOM
 CLIENT JACOBS
 ADDRESS BERKELEY, CA
 SCALE 1/2" = 1'0"
 DRWN BY CDH
 DATE 1/14/2021

SHEET NAME
 CROSS SECTION

SHEET NO.
 A-4



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PROJECT NO. CUSTOM
 CLIENT JACOBS
 ADDRESS BERKELEY, CA

SCALE 3/8" = 1'0"
 DRWN BY CDH
 DATE 2/2/2021

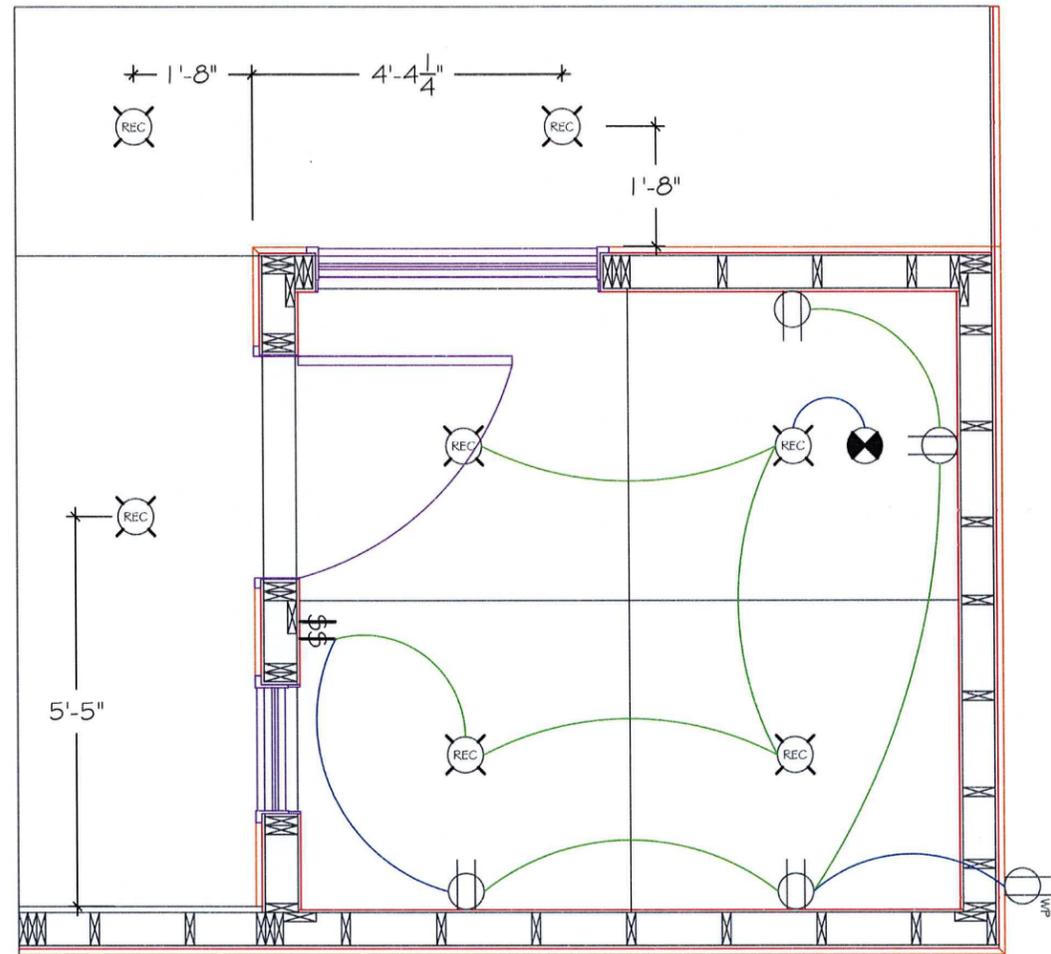
SHEET NAME
 INTERIOR WALL LAYOUTS

SHEET NO.
 A-6

CUSTOM

FRONT

REAR



ELECTRICAL LEGEND

Ⓢ	SINGLE SWITCH	SMOKE ALARM	⊗
Ⓢ ³	3-WAY SWITCH	BATH FAN	⊞
⊙	DUPLEX OUTLET	TV/COMM. OUTLET	▽
⊙ ^{GF1}	GROUND FAULT OUTLET	RECESSED POT-LIGHT	⊗ ^{REC}
⊙ ^{WP}	WEATHER PROOF OUTLET		

1
 A-7
 ELECTRICAL PLAN
 1/2" = 1'0"

NOTE: ALL ELECTRICAL TO ADHERE TO C.E.C 2018



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REV.	DESCRIPTION

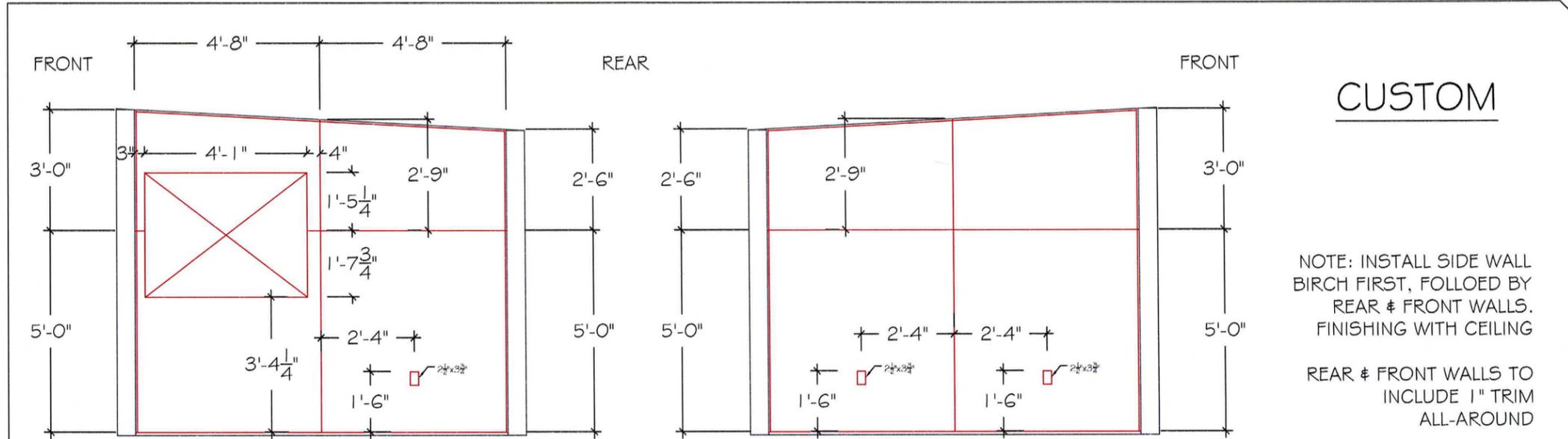
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 CLIENT JACOBS
 ADDRESS BERKELEY, CA

SCALE 1/2" = 1'0"
 DRWN BY CDH
 DATE 2/8/2021

SHEET NAME
 ELECTRICAL PLAN

SHEET NO.
 A-7

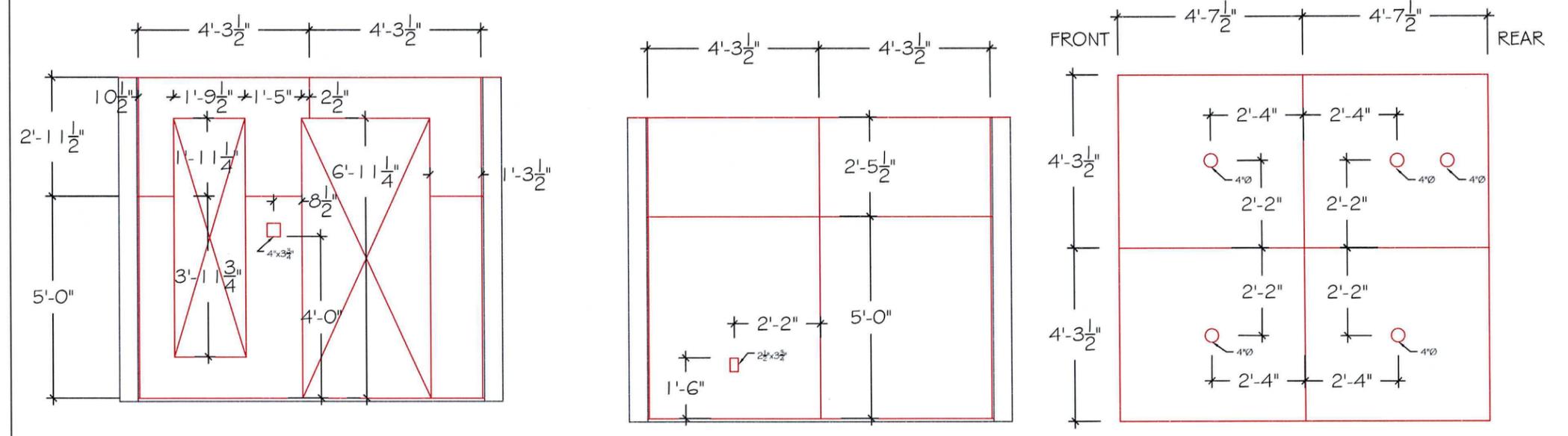


CUSTOM

NOTE: INSTALL SIDE WALL BIRCH FIRST, FOLLOED BY REAR & FRONT WALLS. FINISHING WITH CEILING
 REAR & FRONT WALLS TO INCLUDE 1" TRIM ALL-AROUND

1 LFT. INT. ELEVATION
 A-8 3/8" = 1'0"

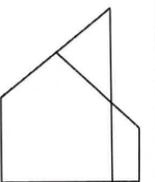
3 RT. INT. ELEVATION
 A-8 3/8" = 1'0"



2 F. INT. ELEVATION
 A-8 3/8" = 1'0"

4 R. INT. ELEVATION
 A-8 3/8" = 1'0"

5 RC PLAN
 A-8 3/8" = 1'0"



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REV.	DESCRIPTION

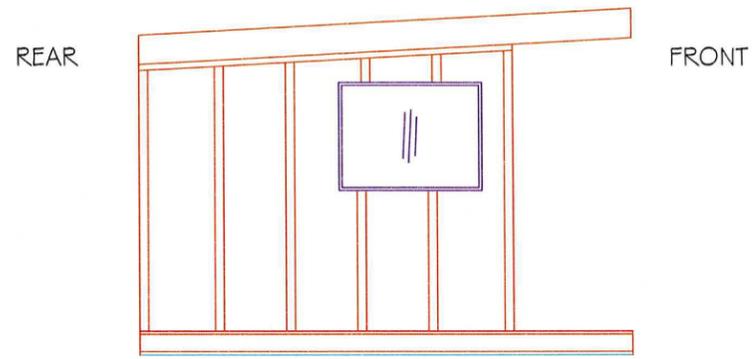
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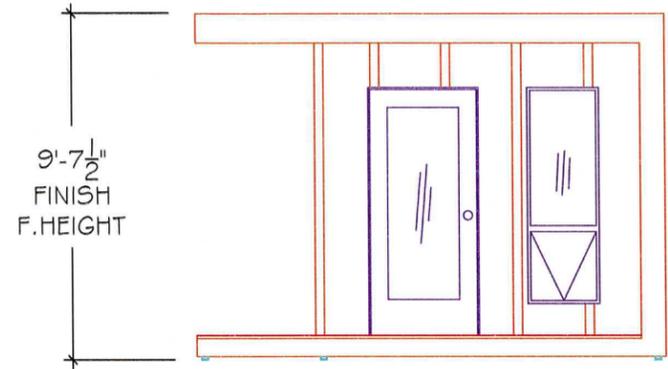
SCALE 3/8" = 1'0"
 DRWN BY CDH
 DATE 2/8/2021

SHEET NAME
INTERIOR ELEVATION

SHEET NO.
A-8

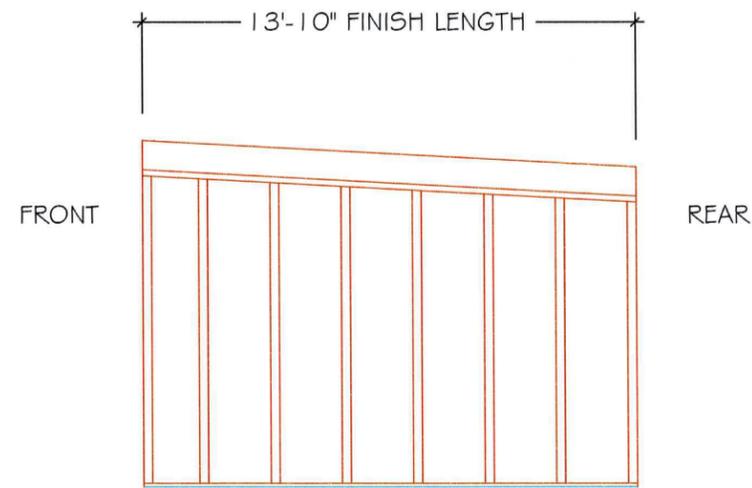


1 LEFT ELEVATION
 A-9 1/4" = 1'0"

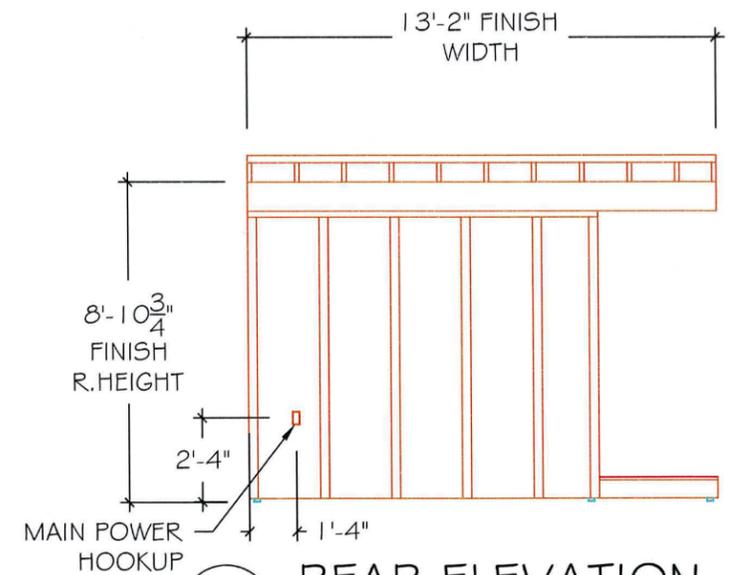


2 FRONT ELEVATION
 A-9 1/4" = 1'0"

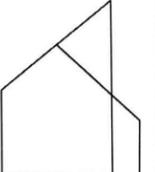
CUSTOM



3 RIGHT ELEVATION
 A-9 1/4" = 1'0"



4 REAR ELEVATION
 A-9 1/4" = 1'0"



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PROJECT NO. CUSTOM
 CLIENT JACOBS
 ADDRESS BERKELEY, CA

SCALE 1/4" = 1'0"
 DRWN BY CDH
 DATE 2/8/2021

SHEET NAME
 EXTERIOR ELEVATIONS

SHEET NO.
 A-9

From: [Matt Jacobs](#)
To: [Updegrave, Samantha](#)
Subject: ZAB Hearing September 8, 2022
Date: Monday, August 15, 2022 7:31:22 AM

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Hi Samantha,

Getting back to you regarding the September 8 ZAB hearing. We had requested an extension to a later date but would like to keep our appointed time.

We are submitting for the ZAB to review, new site plans showing several updates. We are removing the building known as Unit 1 from our Accessory Building Application. We are still asking ZAB to approve Unit 2 as an Accessory Building.

Tomorrow, on Tuesday July 15, I will drop off 12 copies of the site plans at the Planning Department. I would today but had to make a last minute work trip to Los Angeles this morning.

In the site plans you will see that we plan to move Unit 2 four feet from the fence line we share with 25 Stoddard Way. Presently it sits at ~26" from that fence. The unit is well within the zoning codes regarding a Accessory Building, but we plan on applying for a permit to run permanent electric power to the Unit upon approval.

In regards to Unit 1, we have submitted design plans and a full application to the city that would convert that Unit to a full ADU.

Please find attached site plans regarding the moving of Unit 2, where it is to date and where we plan to move it.

Best,
Matt Jacobs

--

Matt Jacobs
510-681-4309

From: [Rena Rickles](#)
To: [Updegrave, Samantha](#)
Cc: [noels1Joe.DeCredico \(jdec Credico@gmail.com\)](#); [joanwager2004@comcast.net](#)
Subject: 1151 Grizzly Peak--questions on status and review. Major irregularities; request for a Continuance
Date: Wednesday, August 31, 2022 2:42:47 PM
Attachments: [image001.png](#)
[image003.png](#)
Importance: High

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Hi Samantha,

Your email raised more questions and confusion as all parts just do not add up. This became even more so because of the results of our architect, Joe DeCredico's experience, as set out below, at the Building counter on Monday. Because of the time sensitivity and issues raised, this is being sent to you "delivery receipt" so I will know that it is delivered.

Here's what I understand to be the case:

- The original AUP's for the two unpermitted but constructed buildings, first heard on September 9, 2021, was continued to September 8, 2021;
- Per this email the scope of that hearing has now changed, even though we have been unable to see any new material;
- Before the date of this hearing, Applicants applied in the Building Department for a "conversion" of a "Building Structure " to an ADU;
- Because they are being evaluated by Building, our architect cannot come in and personally review the plans for the "conversion" (he tried and was turned away);
- Our architect reported that when he went to the Building Permit counter (and he has significant experience with building permits in Berkeley) he was told the following: 1)He cannot see the plans; 2) there are now two (2) processes, the first is the ZAB "conversion" of accessory structure and that process is now underway with a new hearing date; and, 3) plans are "in for plan check" and are not available until after Staff review;
- I know you said you sent, or tried to send to me, per my request, all correspondence from Applicants regarding this project;
- I have checked my in box and junk file and have no record of any correspondence from you;
- Trying to assess the new plans and current application through ZAB Website and Building, has been fruitless;
- My email requests to you for these plans, and changes have resulted in you saying you couldn't send them, they were bounced back and a referral to sites that do not have the requisite information.

Please let me know if any of that is incorrect.

This leaves me with the following questions, and what I believe to be a request that under all the circumstances (including the fact that Applicants stated that they would not be available for a next continued hearing for 3 months, and our timely request for a September 22nd date was either lost or ignored and set at great inconvenience for Appellant to September 8th):

- How is that that there is an application for a conversion of a building when said building has

- been constructed but not approved? All it can be is either a withdrawal of the application for approval as a building; and, a new application for an ADU;
- If it's a new application, how is it being reviewed?
 - You are stating that as an ADU building application, all that is required is a Building Permit. However, that permit falsely states that it is a conversion. How can Building evaluate it with an erroneous set of standards?
 - We have nothing we need to prepare for September 8th ZAB, the building is, as you state, "an Accessory Dwelling Unit (ADU), which is shown on the attached plans but is reference only." But nothing is attached; and,
 - We cannot, as you say, "We aren't able to email copies of building permit plans that are under review, but someone at the zoning counter could show them to you during the PSC walk-in hours, Mon-Thurs, 8:30 am – 2 pm" for the reasons stated above; therefore,

Because of all of these irregularities none of which caused by Appellant , rendering it all but impossible to prepare for a hearing next Thursday, we respectfully request a Continuance to a date off calendar until the above questions can be resolved.

-
Sincerely,
Rena

-

RENA RICKLES
Law offices of Rena Rickles
1970 Broadway, Suite 1200
Oakland, CA 94612
Phone: (510) 452-1600
Mobile: (510) 326-4899
Fax: (510) 451-4115
Rena@RicklesLaw.com

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From: Updegrave, Samantha <SUpdegrave@cityofberkeley.info>
Sent: Monday, August 29, 2022 12:55 PM
To: Rena Rickles <rena@rickleslaw.com>
Subject: RE: Correspondence on 1151 Grizzly Peak

Hi Rena –

The scope of the AUP has been reduced to only unit 2 (southern building), with the structure moved 4-feet from the rear lot line at the closet point (from 2 feet, 7 inches).

The owners have also applied for a building permit for an Accessory Dwelling Unit (ADU), which is

shown on the attached plans but is reference only. Under State Law and Berkeley's ADU Ordinance ([BMC 23.306](#)), ADUs are not subject to discretionary review and are permitted by-right through a building permit.

Building 1 is proposed to be moved to meet the 4-foot side and rear setbacks for ADUs, with a small addition to accommodate the required bathroom. We aren't able to email copies of building permit plans that are under review, but someone at the zoning counter could show them to you during the PSC walk-in hours, Mon-Thurs, 8:30 am – 2 pm.

Best,
Samantha

From: Updegrave, Samantha
Sent: Tuesday, August 23, 2022 7:26 PM
To: Rena Rickles <rena@rickleslaw.com>
Subject: FW: Correspondence on 1151 Grizzly Peak

Hi Rena –

I believe this bounced back from your Spam filter. Trying gain in hopes this one gets through.

--Samantha

From: Updegrave, Samantha
Sent: Tuesday, August 23, 2022 12:13 PM
To: Rena Rickles <rena@rickleslaw.com>
Subject: Correspondence re: 1151 Grizzly Peak

Hi Rena –

Please find the attached correspondence received for 1151 Grizzly Peak. It is from Matt Jacob, one of the owner/applicants, and includes an emailed revised applicant statement/project scope and revised plans. The scope of the AUP has been reduced to only unit 2 (southern building), with the structure moved 4-feet from the rear lot line at the closet point (from 2 feet, 7 inches).

The owners have also applied for a building permit for an Accessory Dwelling Unit (ADU), which is shown on the attached plans but is reference only. Under State Law and Berkeley's ADU Ordinance ([BMC 23.306](#)), ADUs are not subject to discretionary review and are permitted by-right through a building permit.

Best,
Samantha

Samantha Updegrave, LEED AP (she/her)
Zoning Officer, Principal Planner

Planning and Development, Land Use Division
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Website: www.cityofberkeley.info
Email: supdegrave@cityofberkeley.info

The Permit Service Center (PSC), including the zoning counter, is open between 8:30 am – 2:30 pm (final check in at 2:00 pm) Monday through Thursday.

To limit the spread of COVID-19, face masks and social distancing are required when visiting our offices, and some Planning staff continue to work remotely.

All permit-related and Zoning services are available online. Please visit us [online](#) for more information.