



Office of the City Manager

PUBLIC HEARING
February 27, 2024

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Jordan Klein, Director, Planning and Development Department
 Subject: ZAB Appeal: 2924 Russell Street, Administrative Use Permit #ZP2023-0081

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the decision of the Zoning Adjustments Board to approve Administrative Use Permit ZP#2023-0081 to install an unenclosed hot tub in the rear yard.

SUMMARY

The applicant proposes an unenclosed outdoor hot tub in the rear yard at 2924 Russell Street. The approval of the Administrative Use Permit by the Zoning Officer was appealed to the Zoning Adjustments Board (ZAB), who upheld the approval and dismissed the appeal. The ZAB approval was appealed to the City Council, and this hearing is required to resolve the appeal.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On June 2, 2023 Pennell Phillips filed an Administrative Use Permit (AUP) application for a hot tub in the rear yard on behalf of the property owner, Homayoon Kazerooni.

On July 20, 2023 the Notice of Administrative Decision of the Zoning Officer's approval was issued, which included posting the decision at the site and mailing the notice of approval.

On August 9, 2023 an appeal of the Zoning Officer's approval was filed by Richard Spohn, owner of 2928 Russell Street, the property to the east of the project site.

On October 12, 2023 the appeal was heard by ZAB at a duly noted public hearing. After receiving presentations from staff, the appellant, and applicant, hearing public comment, and holding a discussion, the ZAB upheld the Zoning Officer approval and dismissed the appeal by a vote of 6-0-0-2-1 (Yes: Duffy, Gaffney, Thompson, Lunaparra, Blackaby, Yung; No: None; Abstain: None; Absent: Tregub, O'Keefe; Recused: Sanderson (resides within 500 feet of project site)).

On October 17, 2023 the ZAB Notice of Decision was mailed.

On October 31, 2023 an appeal of the ZAB's approval was filed with the City Clerk's Office by Richard Spohn, owner of 2928 Russell Street, the property to the east of the project site.

On or before February 13, 2024 staff posted the public hearing notices near the site, and mailed notices to property owners and occupants within 300 feet of the project site, and to all registered neighborhood groups that cover this area.

BACKGROUND

The subject site is located in South Berkeley, outside of the Elmwood District between Ashby Avenue and Avalon Avenue, and is in the Single-Family Residential District (R-1). The surrounding area is composed of one- to three-story single-family dwellings and has many mature street trees and vegetation. The property is within a five-minute walk from several commercial and community uses, including the Claremont Club & Spa and John Muir Elementary School.

The project site is a rectangular, interior lot, located on the south side of Russell Street. The street slopes gently uphill heading east towards Claremont Avenue. It is developed with a two-story single-family dwelling and a two-car detached garage in the rear southeast corner. There is a 6-foot 5-inch concrete wall along the east side lot line that runs from the back of the existing dwelling to the rear lot line. The site also has some mature trees and vegetation.

The project approved by the Zoning Officer would allow an unenclosed hot tub in the rear yard, off of an attached deck. The hot tub would have enclosed equipment and be installed on top of a sound-reducing mat to ensure compliance with the zoning and noise ordinances, and additional screening hedges would be planted on the subject site along both the east and west lot lines to provide additional sound mitigation and privacy.

At the hearing on October 12, 2023, the ZAB discussed the applicability of the noise regulations in Berkeley Municipal Code (BMC) 13.40, Community Noise, and confirmed that there are standards for interior and exterior noise that apply throughout the City. Additionally, anyone has the ability to report violations should concerns arise. ZAB found that the applicant had already taken additional steps to mitigate potential noise impacts by proposing a sound-reducing mat and additional vegetation planted along the side lot lines, adjacent to the existing concrete wall along the shared lot line with the neighbor to the east. ZAB also acknowledged that the appeal raised several issues that were outside of its purview, and expressed hope that the neighbors could come together to resolve issues.

For additional project background, please see the ZAB Staff Report, dated October 12, 2023 (Attachment 4).

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The project approved by the ZAB complies with all state and local environmental requirements.

RATIONALE FOR RECOMMENDATION

The neighbor to the east filed an appeal of the ZAB's decision during the 14-day appeal period. The issues raised in the appellant's letter and staff's responses are provided below. For the sake of brevity, the appeal issues are not restated in their entirety. Please refer to the appeal letter (Attachment 2) for the full text.

Issue 1: There is no evidence that the tub will meet the requirements of the City's Zoning Ordinance and Community Noise Ordinance.

The appellant states that there was not empirical evidence to prove that the noise impacts would be nondetrimental.

Response 1:

BMC Section 23.304.070(D)(2), Hot Tubs, Jacuzzis, and Spas, requires "any pump associated with an unenclosed outdoor hot tub, jacuzzi, or spa [to] be mounted and enclosed so that its sound is not auditable on an adjacent lot." This requirement applies to all outdoor hot tubs, regardless of their location.

The proposed hot tub is located approximately 11 feet behind the main dwelling, 5 feet, 7 inches from the eastern lot line and 35 feet from western side lot line, and 23 feet from the rear lot line. There is a 6-foot, 5-inch concrete wall that runs along the lot line shared with the appellant's lot, and additional vegetation would be planted along this wall, on the subject site. The appellant's residence is approximately 25-30 feet away from the hot tub. There is also an existing single-story accessory building located on the appellant's lot, discussed further under Issue 2, located approximately 7 feet, 5 feet from the hot tub.

The applicant demonstrated that the pump associated with the hot tub would be mounted and enclosed. The plans provided during neighborhood outreach (Attachment 1, Exhibit B, reference-only Sheet L2.0¹) showed the hot tub equipment under the deck², however the plans were revised prior to submittal and include the statement, "no separate equipment under the deck will be required; hot tub to include enclosed equipment and be quieter than industry standards" (Attachment 1, Exhibit B, Sheet L2.0). Based on initial feedback that the appellant provided when signing the plans during community outreach on April 4, 2023, the applicant sought hot tub models that would be quieter than industry standards. The plans also show that a sound-reducing

¹ There are two sheets numbered L2.0 in the final plans. The first L2.0 sheet reflects the plan that was approved by the Zoning Officer and the ZAB; the second L2.0 is marked as "reference only," and is the sheet that was used to gather signatures during the pre-application neighborhood contact.

² Deck is allowed by-right and is being reviewed under Building Permit No. B2023-01579.

mat would be placed between the concrete pad and the hot tub to further reduce sounds caused not just from the pump, but from the full operation of the hot tub. The standard conditions of approval (COA) for hot tubs also require that “the pump shall be mounted, enclosed, and maintained to prevent noise from disturbing the occupants of neighboring properties,” and for “mechanical operation and use [to] adhere to the exterior noise standards of BMC 13.40.050, Exterior Noise Standards” (Attachment 1, Exhibit A, COA #31 and 34). Should the pump be audible on the adjacent lot and/or the mechanical operation and use exceed the levels allowed, the hot tub would be required to come into compliance with the Zoning Ordinance and condition of approval. ZAB added two conditions of approval. The first requires that “the hot tub shall be installed on a sound-proofing mat” and second that the “vegetation shown on the site plans shall be maintained at all times” (Attachment 1, Exhibit A, COA #29-30). There is no way to measure the sound of the pump on the adjacent lot nor the noise generated by the mechanical use and operation prior to installation and operation.

The existing concrete screening wall that runs between the properties and the additional plantings would provide additional sound mitigation beyond what is required (Attachment 1, Exhibit A, COA #30). The proposed hot tub would be located a significant distance from the main dwellings on all abutting lots, even exceeding the standard setback requirements for main buildings in the R-1 Zoning District. The accessory building on the appellant’s lot is not a dwelling unit, and has no openings along the façade facing the shared lot line. The existing concrete wall and new plantings would extend further than the location where the hot tub and accessory buildings are immediately adjacent to one another. Hot tubs are a common feature on residential lots in the City of Berkeley, and the siting of the proposed hot tub provides more separation from the adjacent dwelling units than is required for main or accessory buildings. Noise generated by the hot tub would not be beyond what would be reasonably expected in a developed, residential neighborhood within the City of Berkeley, where people use both the indoor and outdoor spaces in the places they reside.

Between 2019 and 2023, the City approved 60 zoning permits for unenclosed, outdoor hot tubs. During that same time period, Land Use has not received any code enforcement requests for service related to potential violations of the hot tub conditions of approval. Staff conferred with an inspector from Environmental Health, the City division responsible for enforcing the noise ordinance standards, and the most recent complaint about hot tub mechanical equipment was four years ago. Based on the number of zoning permits approved and low rates of complaints about the sound generated from hot tub operations, staff believes that the requirements in the Zoning Ordinance and standard conditions of approval provide sufficient assurances that compliance is readily achievable.

The appellant also raised issues with the use of the hot tub by residents and guests. While outside of the purview of the Zoning Ordinance, staff notes that the Community Noise Ordinance, BMC Chapter 13.40, applies throughout the City, and contains

standards for general, exterior, and interior noise, and provides enforcement authority should the standards be violated. The City-adopted standards are in place citywide, including all residential districts, and would be adequate to address potential noise for both the operation and the use of the hot tub.

Issue 2: Location of hot tub relative to appellants' dwelling and accessory building.

The appellant states that the location of their dwelling was misrepresented by the applicant, and that the applicant also withheld information from the City about the location of the desk inside of the appellant's accessory building in the application submitted for review.

Response 2:

The proposed hot tub was correctly shown on the application plans that were submitted and the approved plans. There were typos in the original findings that described the hot tub location, incorrectly stating that the "common living areas of the adjacent residents of 2928 Russell Street are located 10-feet, 10 inches above ground and 2928 Russell Street is approximately 50 feet away from the proposed location." This staff drafting error incorrectly refers to above ground living area at 2928 Russell Street twice, and omits other dimensions. Based on the submitted and approved plans, the hot tub is located 10 feet, 10 inches from the rear of the subject residence and around 50 feet from the residence at 2920 Russell Street. Further, it is located approximately 25-30 feet from the appellant's residence, and 7 feet, 7 inches from their accessory building. Staff corrected the findings and conditions prior to the ZAB hearing to properly describe the location of the proposed hot tub. This correction is reflected in the ZAB's approval. The findings and conditions are provided again with track changes to show the corrections clearly (Attachment 1, Exhibit A, page 1).

The accessory building on the appellant's lot was converted from a garage to a workshop / study with an Administrative Use Permit in 2014. The approved plans show that the single-story structure sits approximately 2 feet from the side lot line shared with the subject site, and 5 feet from the rear lot line, with an open floor plan and bathroom, and no windows facing the subject property. This accessory building was shown in the application plans on the survey and site photos as well as the proposed site plan (Attachment 1, Exhibit A, Sheets L1.0-L2.0).

Applicants are not required to show furniture on the site or floor plans for their own or adjacent buildings. The location of furniture such as desks is not within the purview of the Zoning Ordinance. The appropriate information was provided in the application submittal, and the Zoning Officer used the correct and required information when assessing the project for compliance with the Zoning Ordinance and the non-detriment findings. The appellant included the location of the desk inside their accessory building in the appeal letter to ZAB; however, ZAB did not modify the location of the hot tub,

screening and vegetation, project findings, or conditions of approval based on this information.

As discussed above in Issue 1 and in further detail in Issue 3 below, the appellant noted their concerns over noise generated from the operation and use of the hot tub with their signature during the community outreach process. The applicant responded by including measures to proactively address these concerns in their application – consideration of hot tub models that would be quieter than industry standards, installation of a sound-reducing mat between the hot tub and concrete pad, and additional plantings along both the east and west side lot lines.

The adjacent residences, including the appellant's, are located more than 20 feet from the hot tub in all directions. This distance exceeds the standard distance for front, rear, and side setbacks in the R-1 Zoning District and provides separation between living spaces and the hot tub. The existence of an accessory building, regardless of the activities that may take place within it, do not preclude outdoor site improvements typically associated with a residential use on adjacent lots. Berkeley is an urban environment, and normal outdoor activity is expected where people live. Additionally, the Community Noise Ordinance, BMC Chapter 13.40, applies throughout the City, and contains standards for general, exterior, and interior noise, and provides enforcement authority should the standards be violated.

Considering the location of the hot tub relative to the adjacent buildings, the existing 6-foot, 5-inch concrete wall, addition of a sound-reducing mat and new plantings, and standard conditions of approval, both the Zoning Officer and the ZAB found that the hot tub was sited in a manner that would not create detrimental impacts on neighboring properties.

Issue 3: Neighborhood Notice process.

The appellant states that the applicant did not properly follow the pre-application requirements for neighborhood contact and outreach, and that the owner did not inform them in advance of the plan to install a hot tub.

Response 3:

The requirements for a discretionary application are established in BMC Section 23.404.020, Application Submittal. An applicant must provide all the applicable submittal requirements per BMC 23.404.020(B), Application Form and Contents. The code states that an agent, with written authorization to represent the owner, is eligible to file a zoning permit application on their behalf (BMC 23.404.020(C), Eligibility for Filing). Further, before applying, the applicant is required to post a pre-application notice at the project site, visible from the front of the subject property (BMC 23.404.020(D), Pre-Application Notice Posted by Applicant).

In addition to posting a notice on site, pre-application neighborhood contact is listed as a requirement for any discretionary permit in the Zoning Project Submittal Requirements (Attachment 4³). This is a procedural issue that is not explicitly required by code. Per the Submittal Requirements, “all projects located in a Residential District... are required to contact all abutting and confronting residential occupants and residential property owners to advise them of the proposed development prior to submitting a zoning project application.” The Instructions Regarding Community Outreach (Attachment 4⁴) states that “the City strongly encourages owners to meet with their neighbors” and “projects in a Residential (R) Districts require contact between the property owner and the abutting and confronting property owners and tenants,” and requires that “once an applicant is ready to submit the application, he/she should request their neighbors' signatures on the site plan drawing....” While it is preferred that contact occur directly between neighbors, the owner can designate an applicant to act on their behalf, including gathering signatures prior to submitting a zoning permit.

The yellow pre-application poster was also posted in April 2023 in the front yard of the site prior to the application submittal. The applicant collected signatures from the owners at 2928, 2929, and 2932 Russell Street between April 3-4, 2023 (Attachment 1, Exhibit B, reference-only Sheet L2.0), including the signature of the appellant. Notice was sent via certified mail to 2920 Russell Street and 2923 and 2929 Ashby Avenue on April 5, 2023 (Attachment 4⁵). The application was submitted to the City on June 2, 2023 with the signatures on the site plan and the certified mail receipts. All abutting and confronting owners were contacted, including the appellant, prior to the application submittal according to the Submittal Requirements. The appellant signed a copy of the proposed site plan on April 4, 2023 (Attachment 1, Exhibit B, reference-only Sheet L2.0) and noted “concerns about operational noise of tub and usage.” The applicant satisfied the pre-application neighborhood contact requirement by notifying neighbors and obtaining signatures, including that of the appellant, on the site plan drawing submitted at the time of application, or by sending certified mail. The appellant’s concerns are recorded on the signed site plan, and the applicant addressed the appellant concerns in their initial submittal, both in the plans as well in their Applicant Statement (Attachment 4⁶). The application contained the required information to confirm that the pre-application neighborhood contacts and notice had occurred prior to submittal.

³ Attachment 4, ZAB Staff Report; see Attachment 6, Zoning Project Submittal Requirements

⁴ Attachment 4, ZAB Staff Report; see Attachment 7, Instructions Regarding Community Outreach

⁵ Attachment 4, ZAB Staff Report; see Attachment 8, Certified Mail

⁶ Attachment 4, ZAB Staff Report; see Attachment 9, Applicant Statement

ALTERNATIVE ACTIONS CONSIDERED

Pursuant to BMC 23.410.040(G)(2), the Council may (1) continue the public hearing, (2) reverse, affirm, or modify the ZAB's decision, or (3) remand the matter to the ZAB.

ACTION DEADLINE

Pursuant to BMC Section 23.410.040(I), if the disposition of the appeal has not been determined within 30 days from the date the public hearing was closed by the Council (not including Council recess), then the decision of the Board shall be deemed affirmed and the appeal shall be deemed denied.

CONTACT PERSON

Jordan Klein, Director, Planning & Development Department, (510) 981-7534
Anne Hersch, Land Use Planning Manager, (510) 981-7411
Samantha Updegrave, Zoning Officer, (510) 981-7414

Attachments:

- 1: Resolution
 - Exhibit A: Findings and Conditions
 - Exhibit B: Project Plans, received June 2, 2023
- 2: Appeal letter, dated October 31, 2023
- 3: ZAB Notice of Decision, dated October 17, 2023
- 4: ZAB Staff Report and Attachments, dated October 12, 2023
- 5: Index to Administrative Record
- 6: Administrative Record
- 7: Public Hearing Notice, dated February 13, 2024

RESOLUTION NO. ##,###-N.S.

AFFIRMING THE ZONING ADJUSTMENTS BOARD'S APPROVAL OF ADMINISTRATIVE USE PERMIT # ZP2023-0081 TO INSTALL AN UNENCLOSED HOT TUB IN THE REAR YARD, AND DISMISSING THE APPEAL

WHEREAS, on June 2, 2023 Pennell Phillips filed an Administrative Use Permit (AUP) application (ZP2023-0081) for a hot tub in the rear yard on behalf of the property owner, Homayoon Kazerooni; and

WHEREAS, on July 20, 2023 the Notice of Administrative Decision of the Zoning Officer's approval was issued, which included posting the site and mailed notice; and

WHEREAS, on August 9, 2023, an appeal of the Zoning Officer's approval was filed by Richard Spohn, owner of 2928 Russell Street, the property to the east of the project site; and

WHEREAS, on October 12, 2023 the appeal was heard by the Zoning Adjustments Board (ZAB) at a duly noted public hearing. After presentations from staff, the appellant, and applicant, and hearing public comment and holding a discussion, the ZAB upheld the Zoning Officer approval and dismissed the appeal by a vote of 6-0-0-2-1; and

WHEREAS, on October 17, 2023 the ZAB Notice of Decision was mailed; and

WHEREAS, on October 31, 2023 an appeal of the ZAB's approval was filed with the City Clerk's Office by Richard Spohn, owner of 2928 Russell Street, the property to the east of the project site; and

WHEREAS, on or before February 13, 2024 staff posted the public hearing notices near the site and mailed notice to property owners and occupants within 300 feet of the project site and to all registered neighborhood groups that cover this area; and

WHEREAS, on February 27, 2024 the City Council held a duly noticed public hearing to consider the ZAB's decision, and, in the opinion of this Council, the facts stated in, or ascertainable from the public record, including comments made at the public hearing, warrant approving the project.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council hereby adopts the findings made by the ZAB in Exhibit A, affirms the decision of the ZAB to approve Administrative Use Permit #ZP2023-0081, adopts the conditions in Exhibit A and the project plans in Exhibit B, and dismisses the appeal.

Exhibits

A: Findings and Conditions, dated February 27, 2024

B: Project Plans, dated June 2, 2023

ATTACHMENT 1,
EXHIBIT A

FINDINGS AND CONDITIONS
FEBRUARY 27, 2024

2924 Russell Street

Administrative Use Permit #ZP2023-0081

To install an unenclosed hot tub in the rear yard.

PERMITS REQUIRED

- Administrative Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.304.070(D) to install an unenclosed hot tub.

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 CEQA Guidelines Section 15301 (Existing Facilities).
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.

FINDINGS FOR APPROVAL

3. As required by BMC Section 23.406.030(F), 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 hot tub will be located approximately 11 feet from the back of the dwelling, and setback approximately 23 feet from the rear lot line (south), 36 feet from the west side lot line, and 5 feet, 7 inches from the eastern side lot line. The proposed location is screened by a retaining wall, fencing and vegetation. ~~The common living areas of the adjacent residents of 2928 Russell Street are located 10 feet, 10 inches and 2928 Russell Street is approximately 50 feet away from the proposed location.~~ The hot tub is 7.5 feet x 7.5 feet and the applicant has proposed additional vegetation around the location of the hot tub to increase privacy to neighboring dwelling and is installing a pad between the tub and concrete pad to further reduce noise. In addition, because the hot

tub is at grade there will be no reduction to privacy, light, views, or air for abutting residence and is therefore not detrimental.

4. Pursuant to BMC Section 23.304.070(D)(2), the Zoning Officer finds that:

- A. Any pump associated with an unenclosed outdoor hot tub, jacuzzi, or spa shall be mounted and enclosed so that its sound is not audible on an adjacent lot. The hot tub will be subject to the conditions of this permit, which will ensure that neighbors are not adversely affected by noise impacts that may result from the use of the hot tub. In particular, the operation of the hot tub equipment is subject to the controls imposed under BMC Chapter 13.40 as it relates to maximum noise levels and Conditions of Approval #29-32.
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STANDARD CONDITIONS

The following conditions, as well as all other applicable provisions of the Berkeley Municipal Code, 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. Compliance Required (BMC Section 23.102.050)

All land uses and structures in Berkeley must comply with the Zoning Ordinance and all applicable City ordinances and regulations. Compliance with the Zoning Ordinance does not relieve an applicant from requirements to comply with other federal, state, and City regulations that also apply to the property.

3. Approval Limited to Proposed Project and Replacement of Existing Uses (BMC Sections 23.404.060.B.1 and 2)

- A. This Permit authorizes only the proposed project described in the application. In no way does an approval authorize other uses, structures or activities not included in the project description.
- B. When the City approves a new use that replaces an existing use, any prior approval of the existing use becomes null and void when permits for the new use are exercised (e.g., building permit or business license issued). To reestablish the previously existing use, an applicant must obtain all permits required by the Zoning Ordinance for the use.

4. Conformance to Approved Plans (BMC Section 23.404.060.B.4)

All work performed under an approved permit shall be in compliance with the approved plans and any conditions of approval.

5. Exercise and Expiration of Permits (BMC Section 23.404.060.C)

- A. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.
- B. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.
- C. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except if the applicant has applied for a building permit and begun construction. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant. A determination that a permit has lapsed may be appealed to the ZAB in accordance with Chapter 23.410 (Appeals and Certification).
- D. A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant must apply for and receive City approval of a new permit.

6. Permit Remains Effective for Vacant Property (BMC Section 23.404.060.D)

Once a Permit for a use is exercised and the use is established, the permit authorizing the use remains effective even if the property becomes vacant. The same use as allowed by the original permit may be re-established without obtaining a new permit, except as set forth in Standard Condition #5 above.

7. Permit Modifications (BMC Section 23.404.070)

No change in the use or structure for which this Permit is issued is permitted unless approved by the review authority which originally approved the permit. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.

8. Permit Revocation (BMC Section 23.404.080)

The City may revoke or modify a discretionary permit for completed projects due to: 1) violations of permit requirements; 2) Changes to the approved project; and/or 3) Vacancy for one year or more. However, no lawful residential use can lapse, regardless of the length of time of the vacancy. Proceedings to revoke or modify a permit may be initiated by the Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.

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 THE ZONING OFFICER

Pursuant to BMC Section 23.404.050(H), the Zoning Officer 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 #

Standard Construction-related Conditions Applicable to all Projects:

11. 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.

12. 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.

13. 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.

14. 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.
15. 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.
16. 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.
17. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.
18. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.
19. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.
20. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
21. 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.
22. 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.
23. 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.

24. 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.

25. 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:

26. All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
27. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated June 2, 2023.

At All Times (Operation):

28. 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.

Hot Tub Conditions

29. The hot tub shall be installed on a sound-proofing mat.
30. Vegetation shown on the site plans shall be maintained at all times.
31. The pump shall be mounted, enclosed and maintained to prevent noise from disturbing the occupants of neighboring properties.
32. The hot tub shall be equipped with safety features in accordance with the California Building Code.
33. This permit shall be subject to review and modification as necessary to alleviate excessive noise or disturbance to the neighborhood.
34. Mechanical operation and use must adhere to the exterior noise standards of BMC Section 13.40.050.

Samella Stover

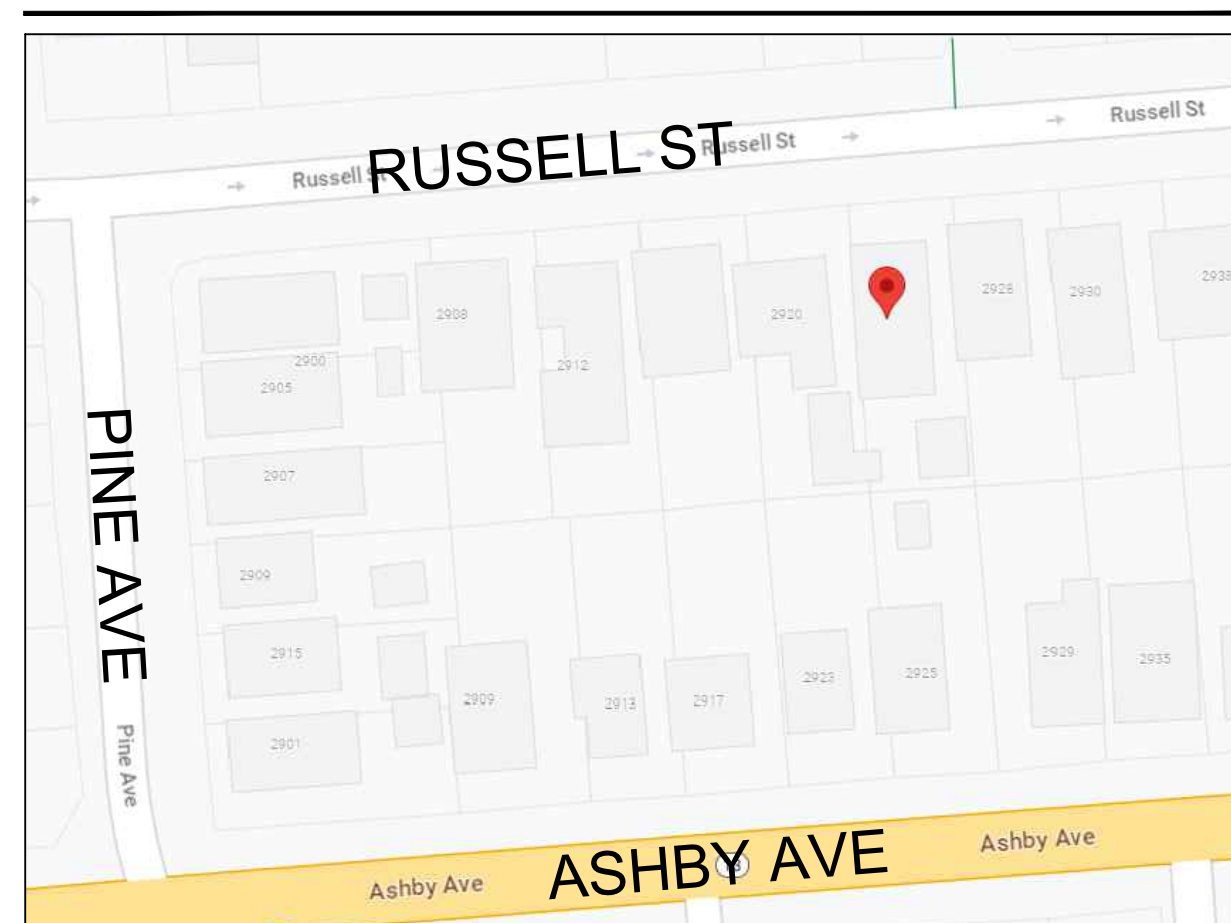
Prepared by: Samella Stover, Planning Technician
For Samantha Updegrave, Zoning Officer

2924 Russell Street — Administrative Use Permit

General Notes

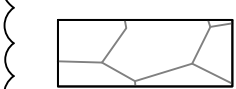
- The contractor shall inspect the site and be familiar with all existing site conditions prior to submitting bid. Contractor shall not willfully proceed with construction as shown when it is obvious that obstructions, landscape area and/or grade differences exist that may not have been known during design. Such conditions shall immediately be brought to the attention of the landscape architect. The contractor shall assume sole responsibility for all necessary revisions due to failure to give such notification. Contractor shall be responsible for making herself/himself familiar with all underground utilities, pipes, structures and obstructions. Contractor shall assume sole responsibility for all costs incurred due to damage and/or replacement of these items. Contractor shall be responsible for coordination among trades and subcontractors as required to accomplish the work. The contractor shall be responsible for any damage to existing features caused by contractor's work. All repairs shall be made at no additional cost to the owner. Planting shall be installed in conformance with all applicable local codes and ordinances by experienced workmen and a licensed landscape contractor who shall obtain all necessary permits and pay all required fees. The garden is a pesticide and herbicide free zone. Contractor shall use organic material to fertilize and to maintain all plant material. No chemical fertilizer will be allowed. Contractor shall verify all grades, existing conditions and dimensions in the field prior to commencing work. All discrepancies or questions shall be brought to the attention of the landscape architect for resolution. Redirect work to avoid delay. All curves and all transitions between curves and straight edges shall be smooth. Take all dimensions perpendicular to any reference line, work line, face of building, face of wall or centerline.
- Demolition**
Contractor shall remove and carry all demolition materials off site. Protect (E) trees as indicated during construction. Contractor shall perform selective trimming of existing trees within the area of work per the direction of the owner.
- Drainage/Grading (Permit #B2023-01579)**
Contractor shall verify if existing drains are in good condition. All drainage systems shall be per City of Berkeley codes. Grade per indicated swales. Sleeving to be Schedule 40 PVC. Cover PVC pipe so that it not visible. All grading to be smooth to achieve a natural aspect. No finish grades shall exceed 2.5:1 slopes.
- Stone paving & stone work**
See Permit #B2023-01579
- Concrete work (Permit #B2023-01579)**
Proposed 18" concrete retaining wall shall be less than three feet in total height including footing. See S2.0, Detail 12 for typical retaining wall and drainage. See L3.0 of Permit set #B2023-01579 for location of subsurface drainage line to (E) sump pump.
- Electrical**
For rear deck perimeter GFCI, please refer to Permit #B2023-01579. Dedicated hot tub GFCI to be processed under separate application, pending AUP approval.
- Wood work (Permit #B2023-01579)**
All new wood decking. Structural engineer to determine partial salvage of structural components of existing wood landing. SSD for final wood sizing, anchors and concrete footing.
- Clean up**
At the end of each work day, at the inspection for substantial completion and before acceptance of project, clean paved areas that are dirtied or stained by construction operations, by sweeping or washing, and remove defacements and stains. Remove construction equipment, excess materials and tools. Haul from owners property the debris resulting from construction, and dispose of legally. Remove remaining temporary protection at time of acceptance by owner unless otherwise agreed.

Location



Legend

- (PA) Planting Area
- (TS) Top of stair
- (BS) Bottom of stair
- (TW) Top of wall
- (BW) Bottom of wall
- R Radius
- ⊕ POB Layout Starting Point
- SIM Similar
- (TYP.) Typical
- SAD See Architectural Drawings
- EQ Equal
- O.C. On Center
- (E) Existing
- > Align
- ↶ 90 Degrees angle
- (824.76) Existing spot elevation
- + 824.76 Proposed spot elevation
- ▭ Existing contour line
- ▭ Proposed contour line
- ▭ Property line
- ▨ Existing retaining wall to be demolished



Flagstone paving
Random Full Range Connecticut Bluestone
Available at Bay Area Bluestone
(415) 453-2262



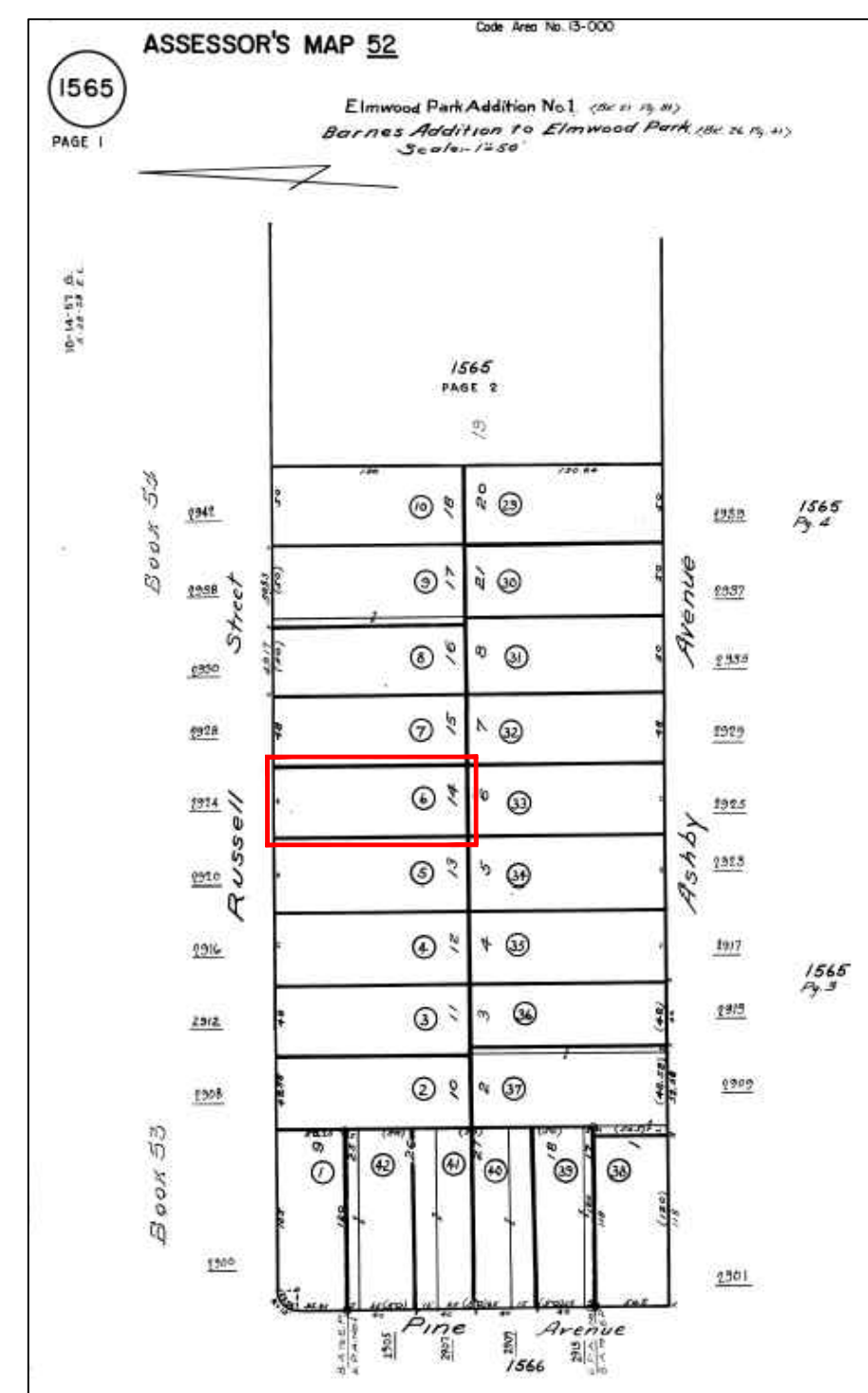
Cable railing

Sheet Index

- L0.0 Cover Sheet
- L1.0 Existing Site Plan
- L2.0 Proposed Site Plan
- L3.0 Elevations
- L3.1 Elevations
- L4.0 Details
- SV Survey

Assessor's Map

APN: 52-1565-6



Scope of Work

Installation of new hot tub.

Per neighbor request, hot tub selection criteria include low noise relative to industry standards. Hot tub installation to include a sound-reducing mat that complies with manufacturer specifications. Planting of dense screening vegetation along eastern and western fences to further buffer hot tub sound and provide privacy for residents and neighbors.

NOTE: For rear deck and associated perimeter GFCI, please refer to Permit #B2023-01579.

NOTE: Dedicated hot tub GFCI and revisions to Permit #B2023-01579 to accommodate hot tub to be processed under separate application, pending AUP approval.

Project Team

Client Hami Kazerooni 2924 Russell St. Berkeley, CA 94705	Landscape Architect InsideOut Design, Inc. 6000 Harwood Ave Oakland CA 94618 (510) 655-7674 Penn Phillips	Contractor TBD	Structural Engineer Daniel A. Bastião P.O. Box 1891 Union City, CA 94587 510-676-8457
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- 05.12.2023 AUP APPLICATION REVISION IN RESPONSE TO NEIGHBOR COMMENT

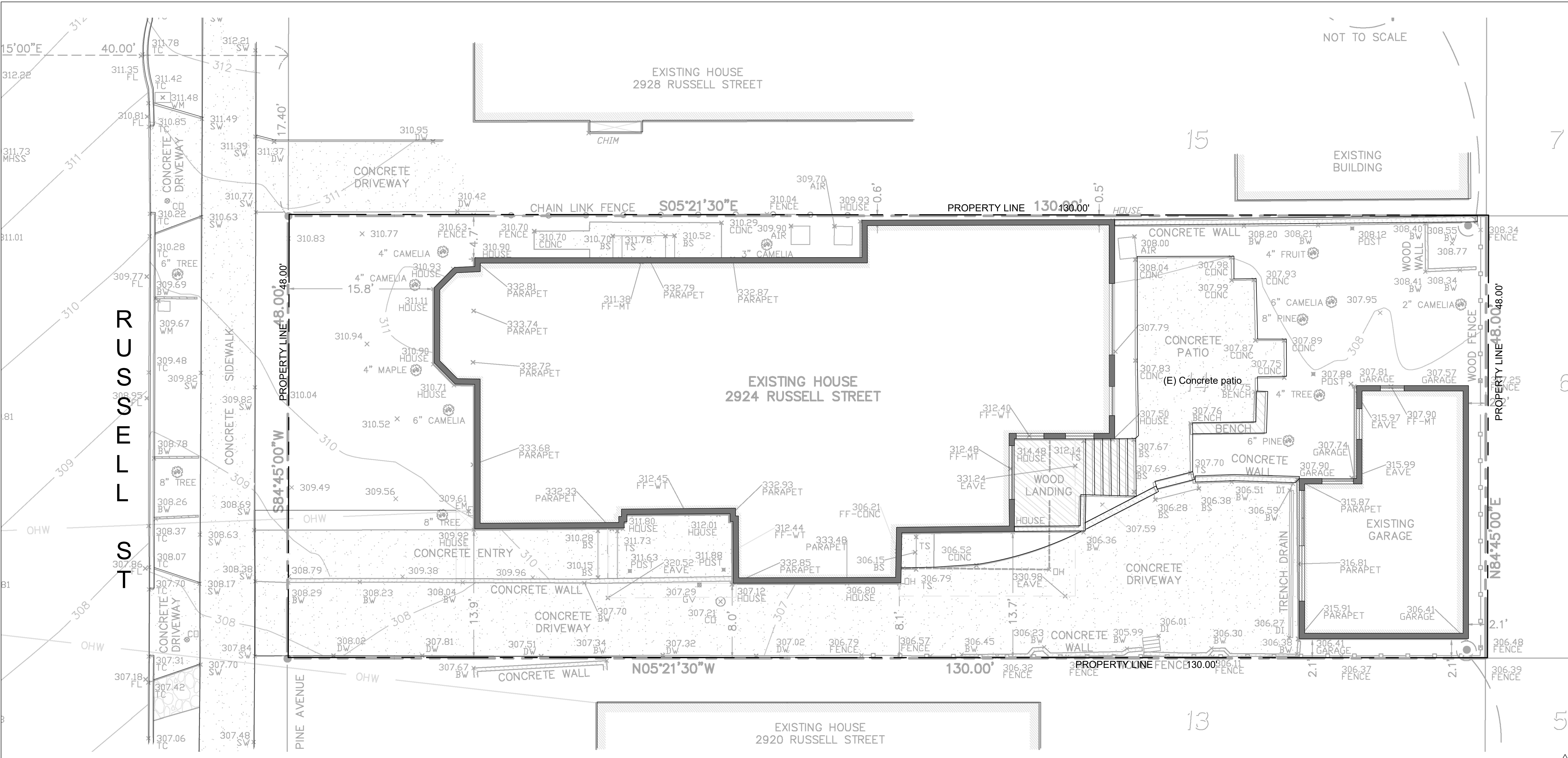
Kazerooni Residence
2924 Russell St.
Berkeley, CA

TITLE:
Cover Sheet,
Notes & Legend

SCALE: N/A
DATE: MAY 15, 2023

DRAWING NO:

L0.0



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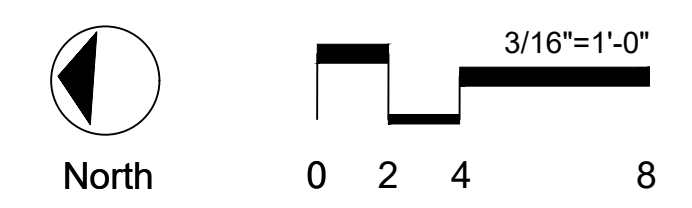
TITLE:
 Existing Site Plan



Existing Conditions

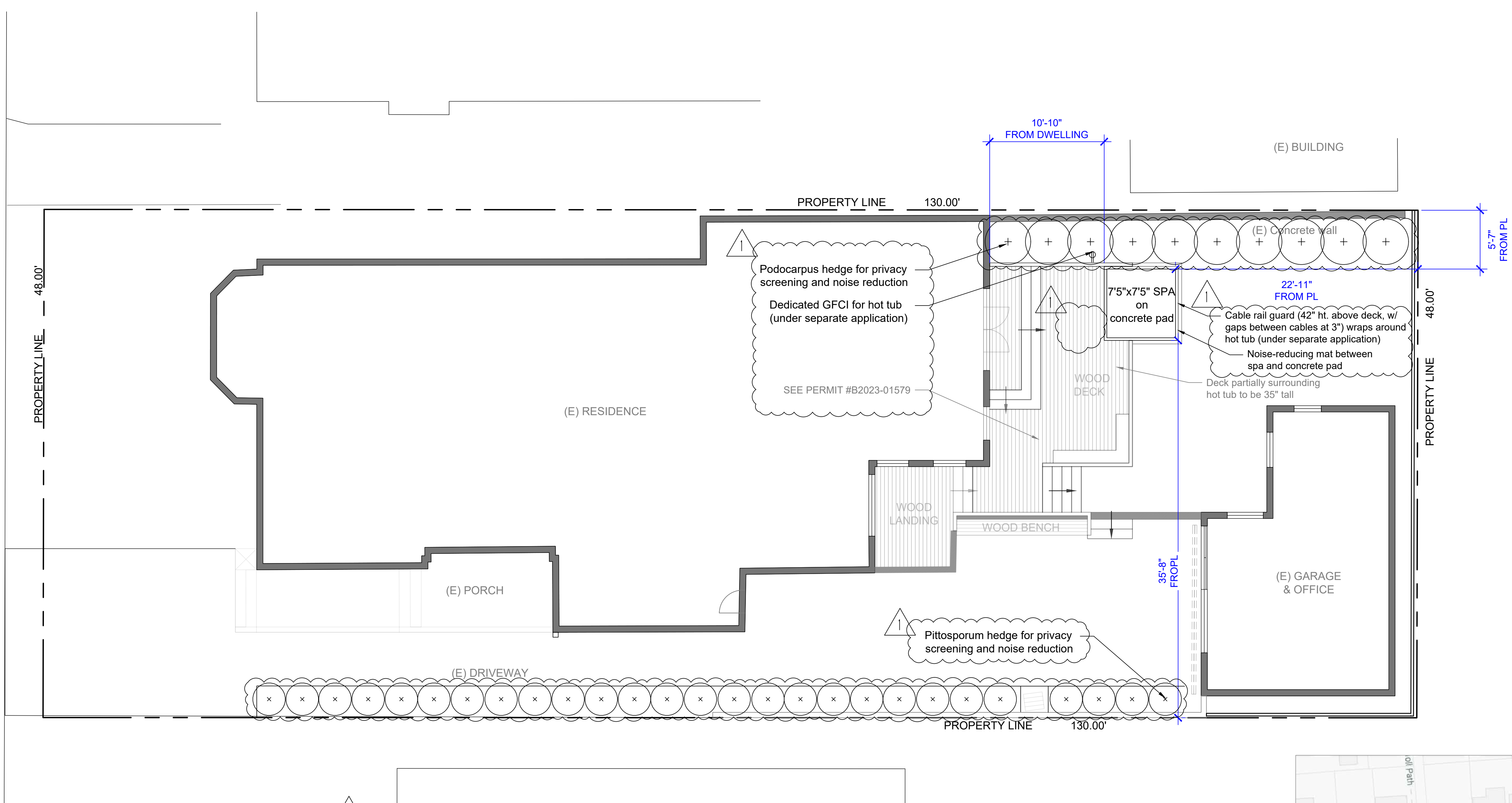
SCALE: 3/16"=1'-0"
 DATE: MAY 15, 2023

DRAWING NO:
L1.0



RUSSELL ST

(E) SIDEWALK



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Kazerooni Residence
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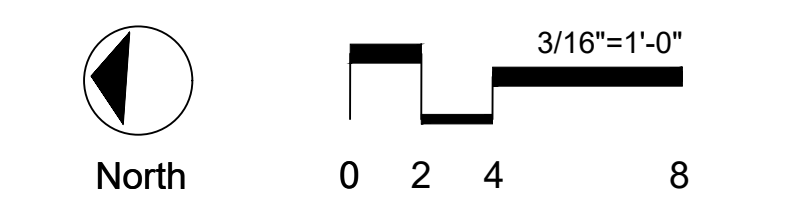
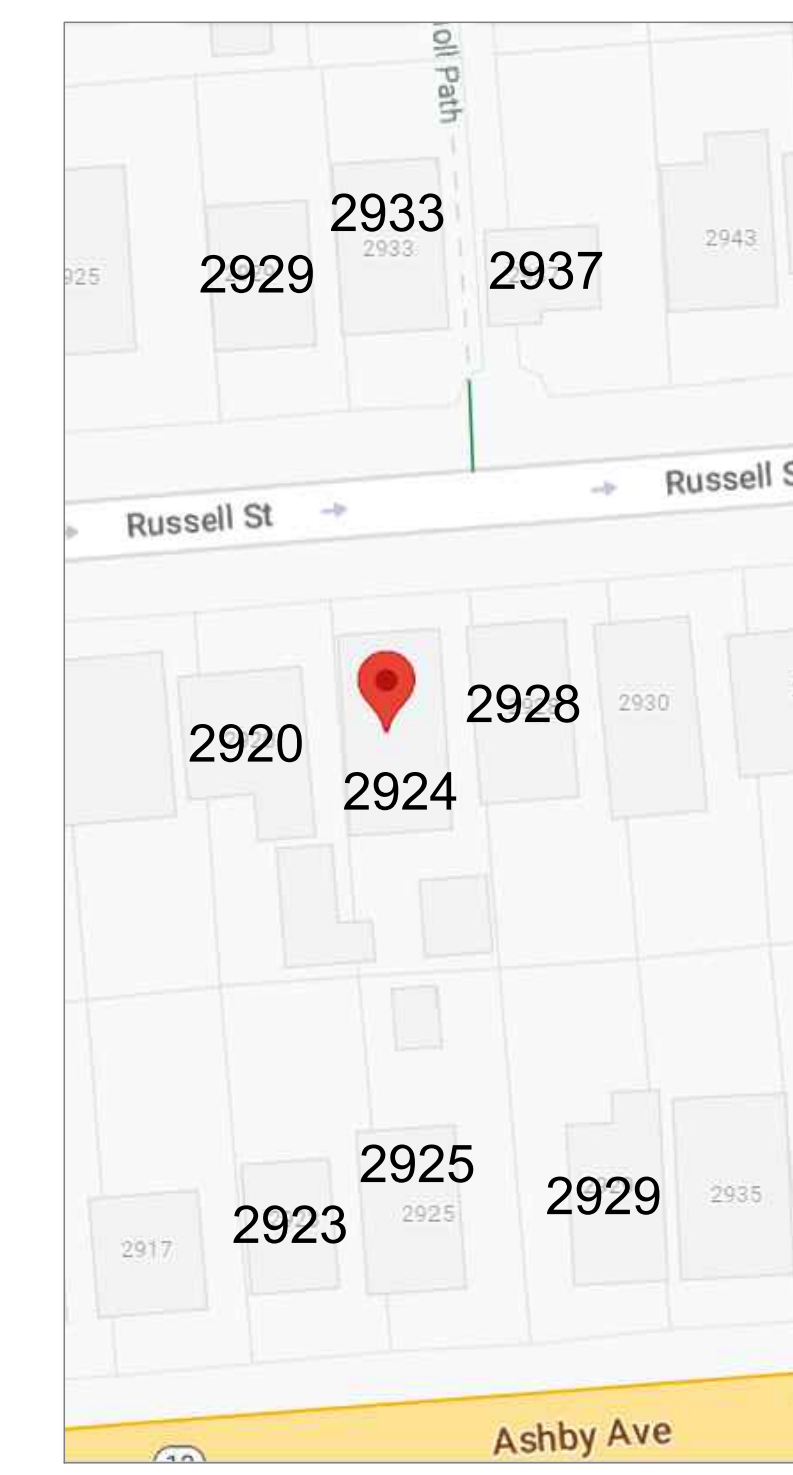
TITLE:
Proposed Site Plan

Community Outreach

I have reviewed the plans for a 7.5' x 7.5' hot tub at 2924 Russell Street.

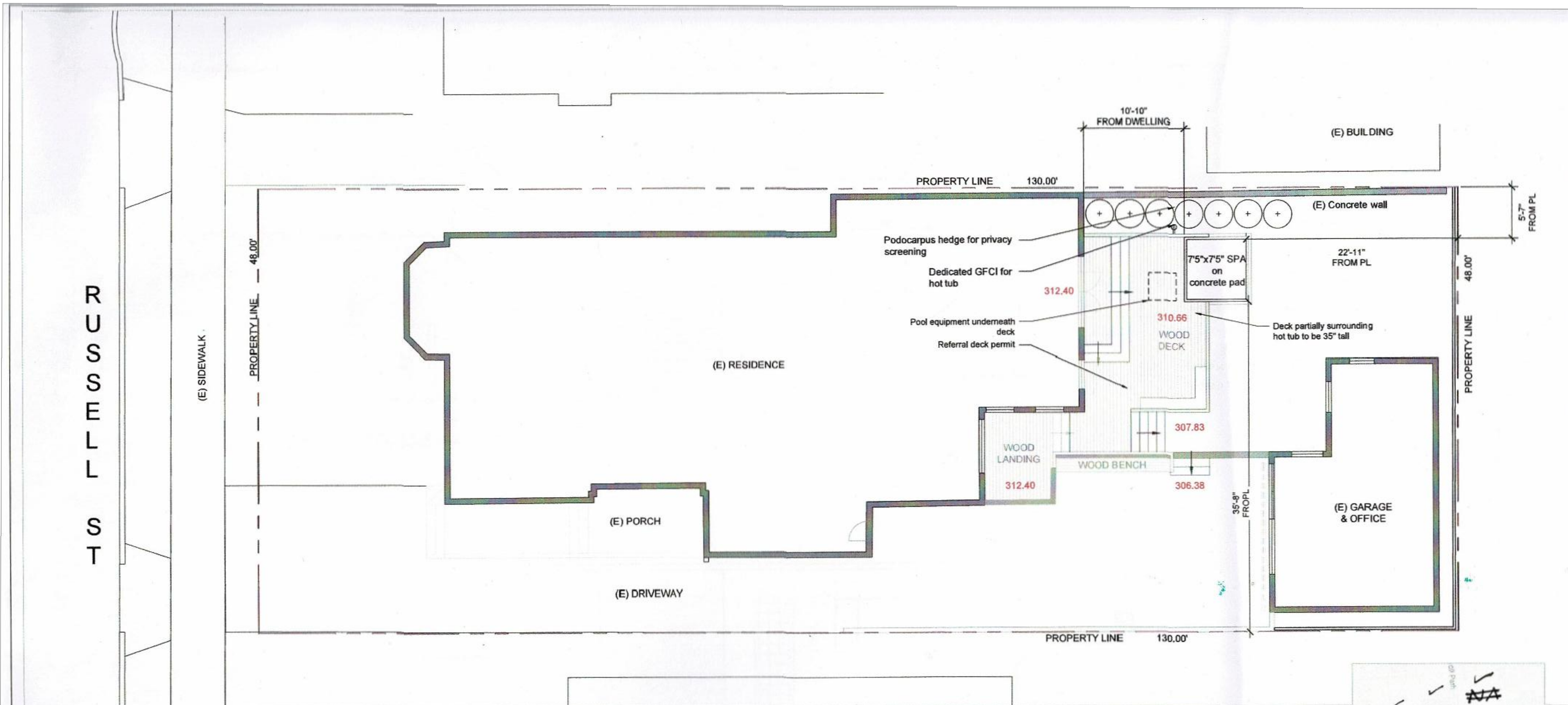
NOTE: Please see scanned L2.0 (dated 03.29.23) with neighbor signatures from 04.03.23 and 04.04.23. This set has been revised to add additional noise mitigation measures in response to neighbor concerns. No separate equipment under deck will be required; hot tub to include enclosed equipment and be quieter than industry standards.

Name (printed)	Signature	Address	Renter or Owner	Date	Have no objections	Have objections (please state briefly)	Have no comment
		2920 Russell St.					
		2920 Russell St.					
		2928 Russell St.					
		2928 Russell St.					
		2929 Russell St.					
		2929 Russell St.					
		2933 Russell St.					
		2933 Russell St.					
		2937 Russell St.					
		2937 Russell St.					
		2923 Ashby Ave.					
		2923 Ashby Ave.					
		2925 Ashby Ave.					
		2925 Ashby Ave.					
		2929 Ashby Ave.					
		2929 Ashby Ave.					



SCALE: 3/16"=1'-0"
DATE: MAY 15, 2023

DRAWING NO:
L2.0



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ISSUES:
00.00.0000 XX

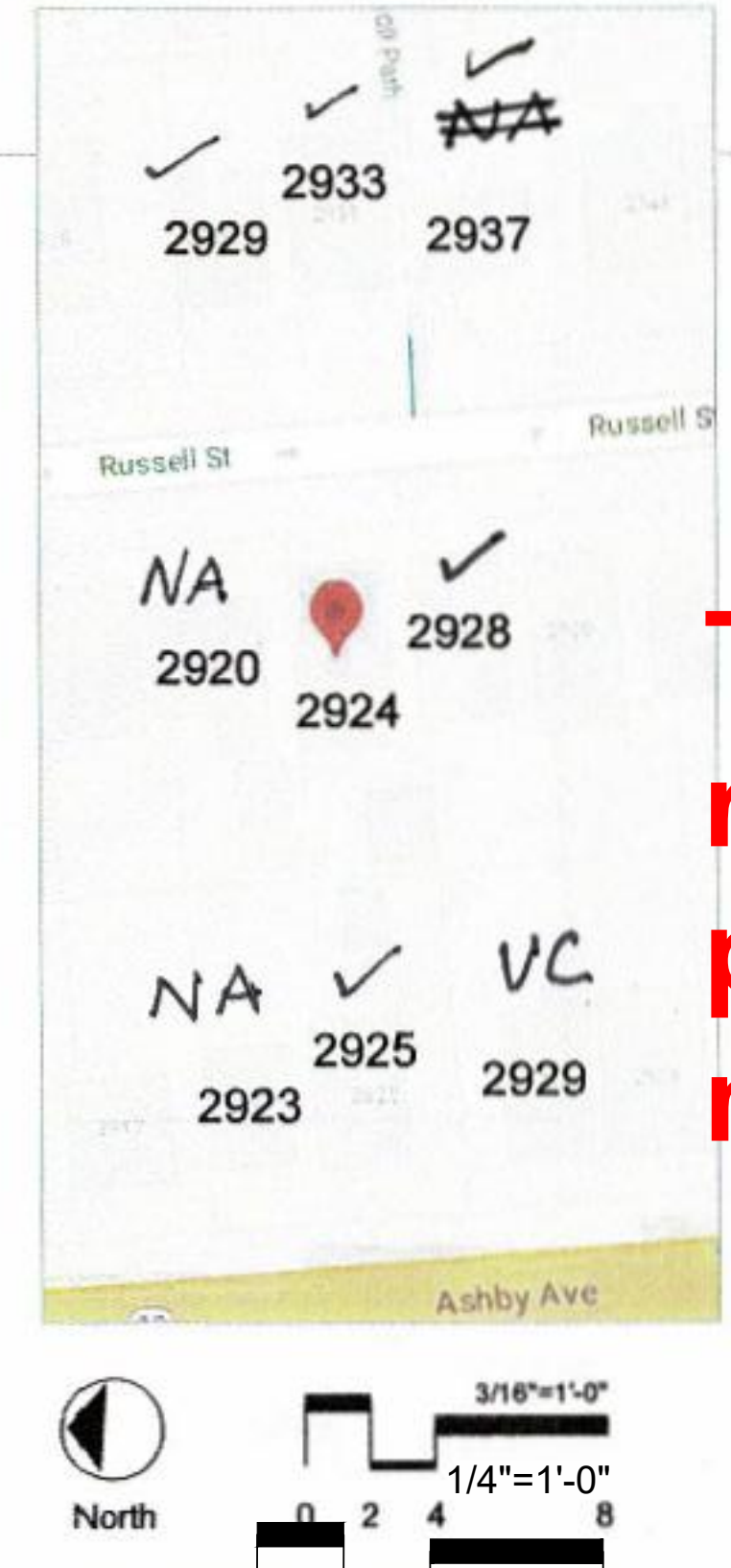
Kazerooni
Residence
2924 Russell St.
Berkeley, CA

TITLE:
Proposed site plan

Community Outreach

I have reviewed the plans for a 7.5' x 7.5' hot tub at 2924 Russell Street.

Name (printed)	Signature	Address	Renter or Owner	Date	Have no objections	Have objections (please state briefly)	Have go comment
Beverly Doane	<i>Beverly Doane</i>	2920 Russell St.	Owner	4/3/23			✓
RICHARD SPORN	<i>Richard Sporn</i>	2928 Russell St.	OWNER	4/4/23		Concerns about operational noise of tub + usage	
Ronald Lee	<i>Ronald Lee</i>	2933 Russell St.	Owner	4/3/23	X		X
T. R. DIRSH	<i>T.R. Dirsh</i>	2937 Russell St.	OWNER	4/4/23	✓		
Amir Bahan	<i>Amir Bahan</i>	2925 Ashby Ave.	Owner	4-3-23	✓		



**This sheet
reference only;
pre-application
neighbor notice**

DATE: MARCH 29, 2023
1/4"=1'-0"
DRAWING NO:
L2.0

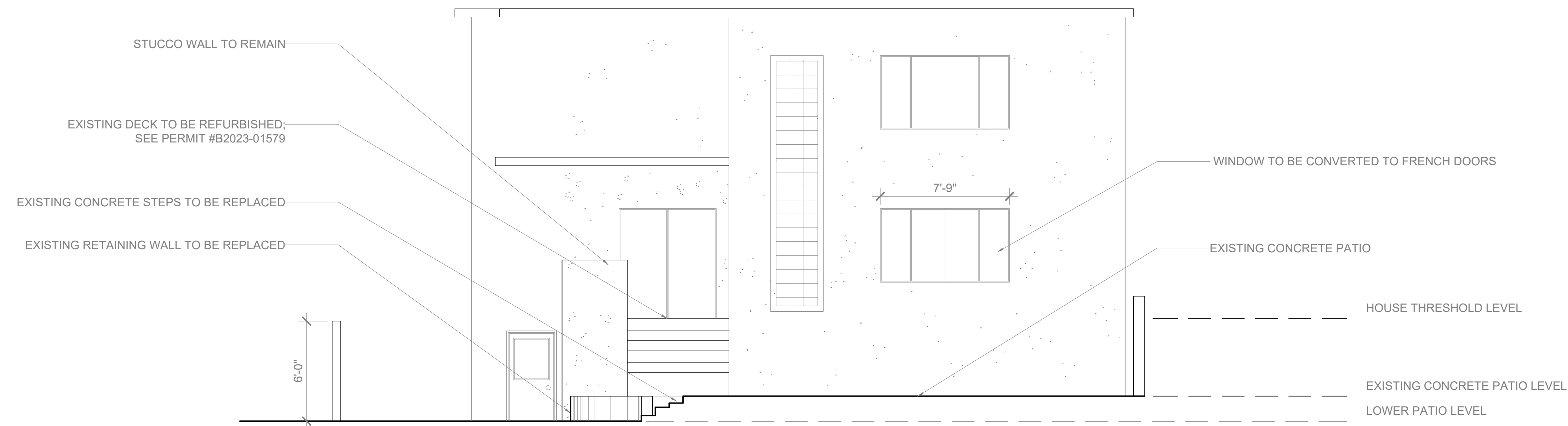
VC = under construction? - 4 plans mailed
NA = no answer - plans mailed

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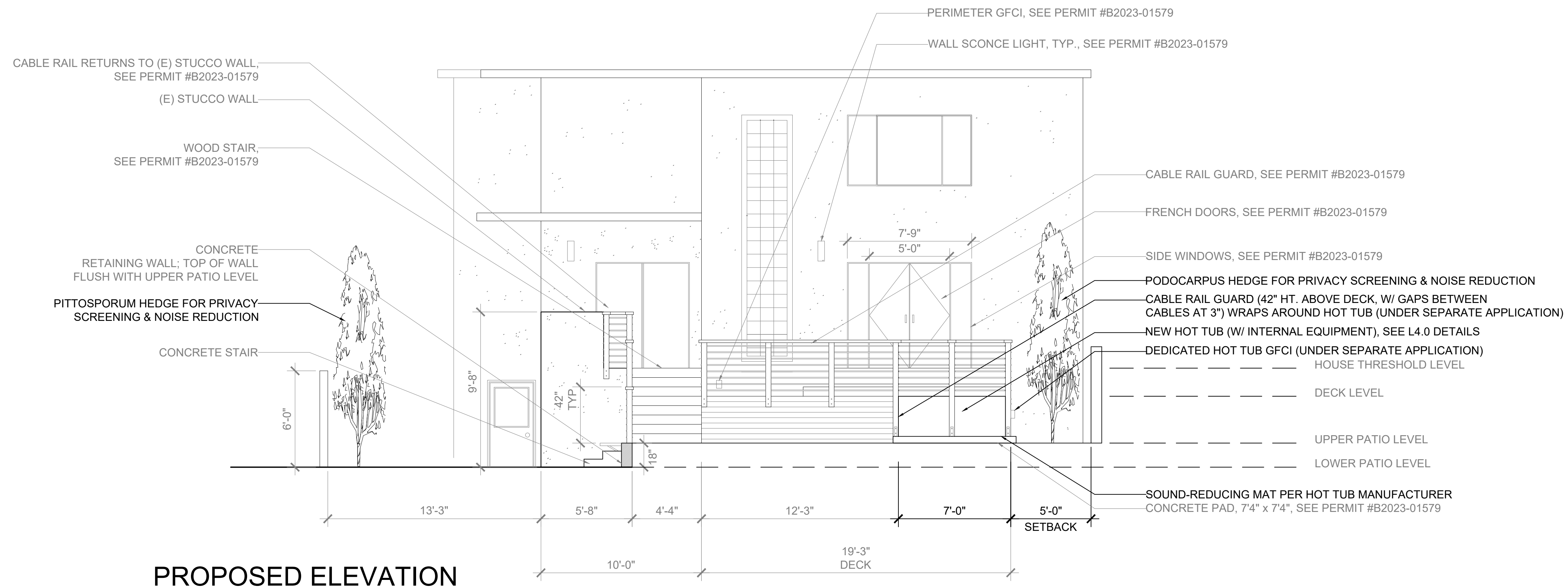


ISSUES:
04.04.2023 AUP COMMUNITY OUTREACH
05.12.2023 AUP APPLICATION REVISION IN RESPONSE TO NEIGHBOR COMMENT

Kazerooni Residence
2924 Russell St.
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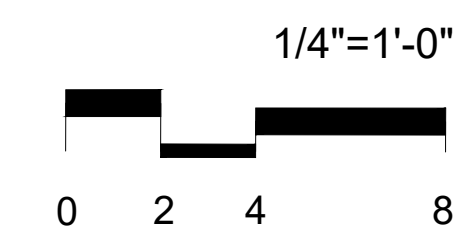
EXISTING ELEVATION



PROPOSED ELEVATION

NOTE: THE GREATEST RISER HEIGHT AND TREAD DEPTH WITHIN ANY FLIGHT OF STAIRS SHALL NOT EXCEED THE SMALLEST BY MORE THAN 3/8 INCH.

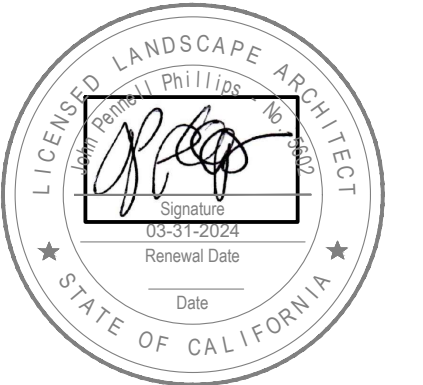
NOTE: Revisions to L3.0 since Community Outreach (04.03.23 - 04.04.23) reflect changes required for issuance of Permit #B2023-01579 and the addition of further sound reduction measures (in consideration of neighbor feedback) only.



SCALE: 1/4"=1'-0"
DATE: MAY 15, 2023

DRAWING NO:
L3.0

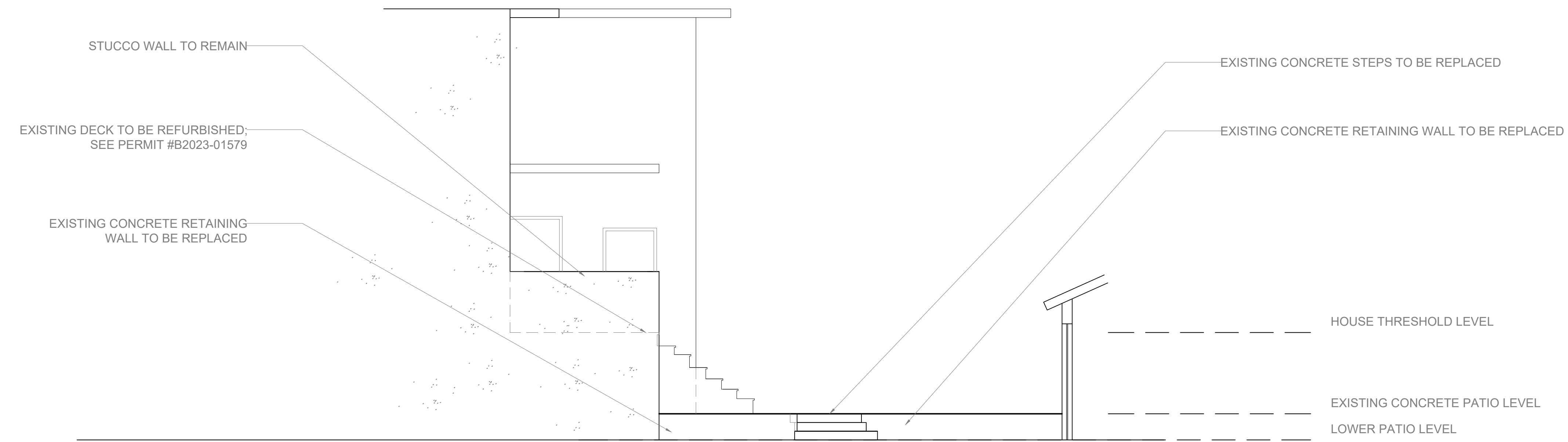
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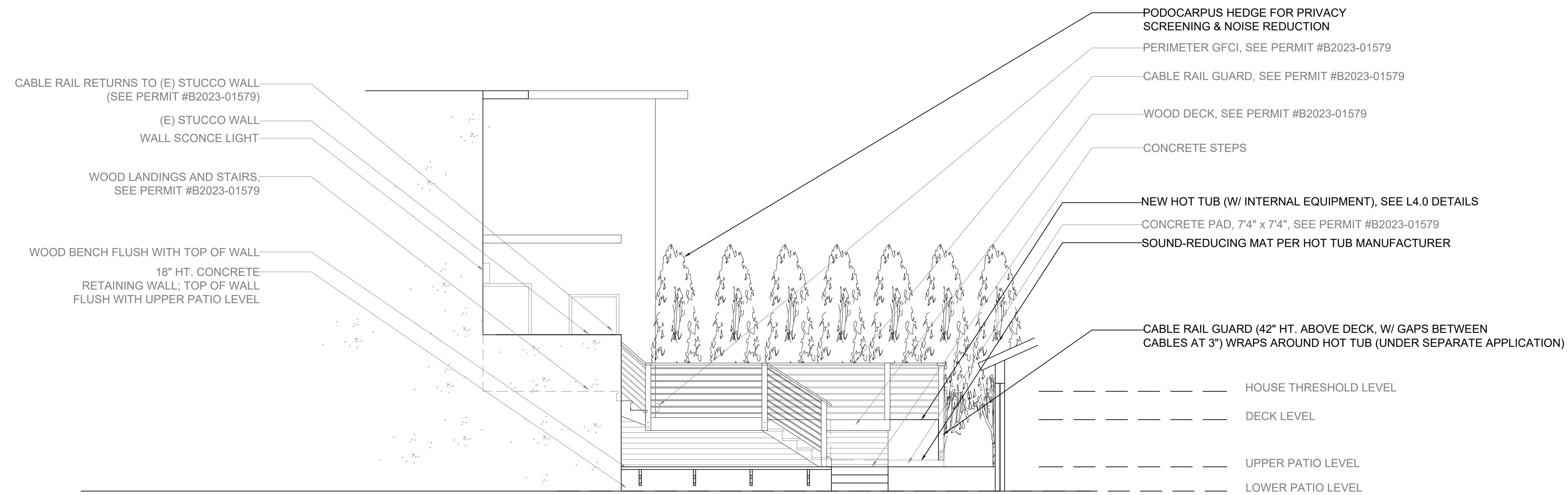
ISSUES:

- 04.04.2023 AUP COMMUNITY OUTREACH
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Kazerooni Residence
2924 Russell St.
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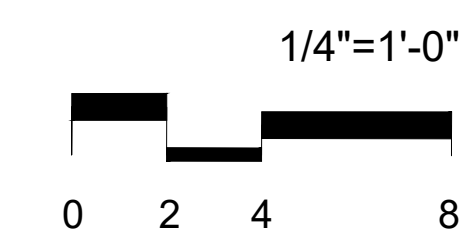
EXISTING ELEVATION



PROPOSED ELEVATION

NOTE: THE GREATEST RISER HEIGHT AND TREAD DEPTH WITHIN ANY FLIGHT OF STAIRS SHALL NOT EXCEED THE SMALLEST BY MORE THAN 3/8 INCH.

NOTE: The addition of L3.1 since Community Outreach (04.03.23 - 04.04.23) reflects changes required for issuance of Permit #B2023-01579 and the addition of further sound reduction measures (in consideration of neighbor feedback) only.



SCALE: 1/4"=1'-0"
DATE: MAY 15, 2023

DRAWING NO:
L3.1



SUNDANCE CAMEO - 880 SERIES



Specs

Volume: 370 gal / 1400.60 liters

Dry Weight: 962 lbs / 436.35

Jets: 54

Primary Pump: North America (60 Hz): 1-Speed/2.5 HP Continuous, 11.3A Max., 56 Frame

Secondary Pump: North America (60 Hz): 1-Speed/2.5 HP Continuous, 11.3A Max., 56 Frame

Circulation Pump (Y/N): Yes

Diverter Valves #: 2

Filtration System: ClearRay

Filters: 1

Seat Jets: Lounge

Water Management System: ClearRay Active Oxygen™

View Less ☹

Dimensions

Height (in): 37.5

Length (in): 89.0

Width (in): 89.0

Volume (gals): 370.0

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Berkeley, CA

TITLE:

Details

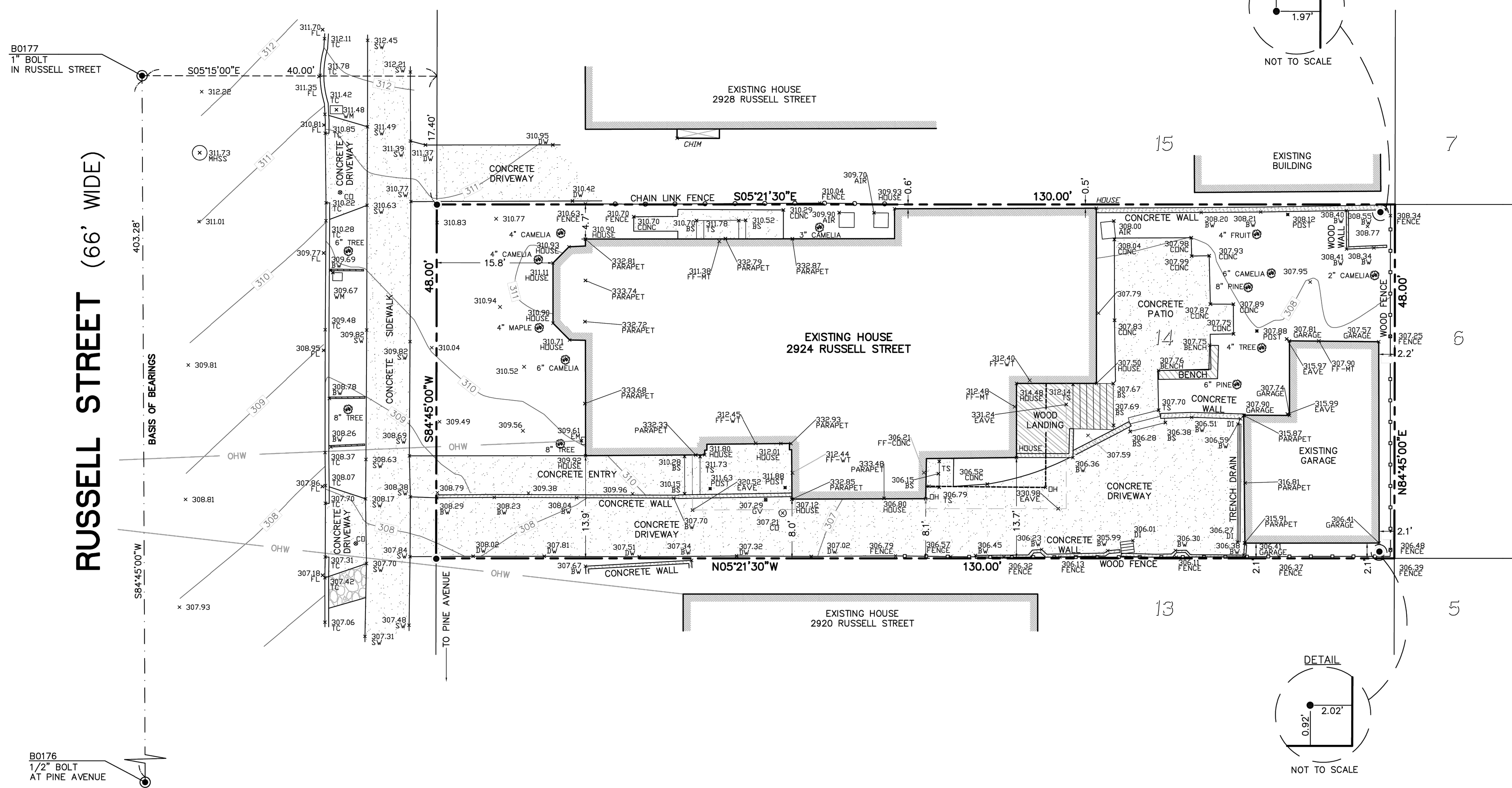
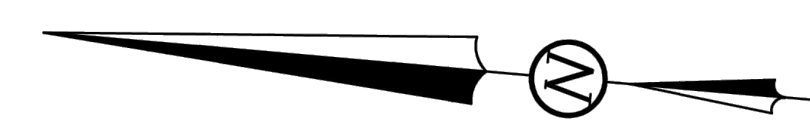
SCALE: NOT TO SCALE

DATE: MAY 15, 2023

DRAWING NO:

L4.0

NOTE: Per neighbor request, hot tub selection criteria include low noise relative to industry standards. Hot tub to have internal equipment only. Hot tub installation to include a sound-reducing mat that complies with manufacturer specifications.



LEGEND

- AIR AIR CONDITIONING UNIT
- BS BASE OF STEPS
- BW BASE OF WALL
- CHIM CHIMNEY
- CO CLEANOUT
- CONC CONCRETE
- DI DRAIN INLET
- DW DRIVEWAY
- EM ELECTRIC METER
- FF FINISHED FLOOR
- GV GAS VALVE
- FL FLOWLINE
- MH MAINTENANCE HOLE
- MT METAL THRESHOLD
- OH OVERHANG
- OHW OVERHEAD WIRES
- SS SANITARY SEWER
- SW SIDEWALK
- TC TOP OF CURB
- TS TOP OF STEPS
- WW WATER METER
- WT WOOD THRESHOLD

- BUILDING FOOTPRINT
- CONCRETE
- CONCRETE WALL
- FLAGSTONE
- WOOD
- WOOD WALL
- CHAIN LINK FENCE
- WOOD FENCE
- FOUND MONUMENT IN WELL, AS NOTED
- FOUND REBAR AND CAP, LS 5311
- CITY OF BERKELEY MONUMENT ID

GENERAL NOTES:
DIMENSIONS ARE IN FEET AND DECIMAL FEET.
DIMENSIONS SHOWN FROM BUILDINGS TO PROPERTY LINES ARE MEASURED AT BUILDING CORNERS FROM THE EXTERIOR BUILDING FACE PERPENDICULAR TO THE PROPERTY LINE.
NO TITLE REPORT PROVIDED, EASEMENTS MAY EXIST.
ASSESSOR'S PARCEL NUMBER: 052-1565-006
PROPERTY AREA = 6,240± SQUARE FEET
DATE OF FIELD SURVEY: NOVEMBER 17, 2022

BASIS OF BEARINGS:
THE MONUMENT LINE IN RUSSELL STREET WAS TAKEN AS SOUTH 84°45'00" WEST AS SHOWN ON CORNER RECORD 6073 (58 CR 23).

BENCHMARK:
ELEVATIONS ARE BASED ON CITY OF BERKELEY DATUM.
THE WESTERN MOST MONUMENT REFERENCE CROSS, FOR CITY OF BERKELEY MONUMENT B1846, LOCATED IN THE SIDEWALK AT THE SOUTH WEST CORNER OF THE INTERSECTION OF AVALON AVENUE AND CLAREMONT BOULEVARD, WAS TAKEN AS ELEVATION = 355.99 FEET PER CORNER RECORD 9875 (103 CR 68).

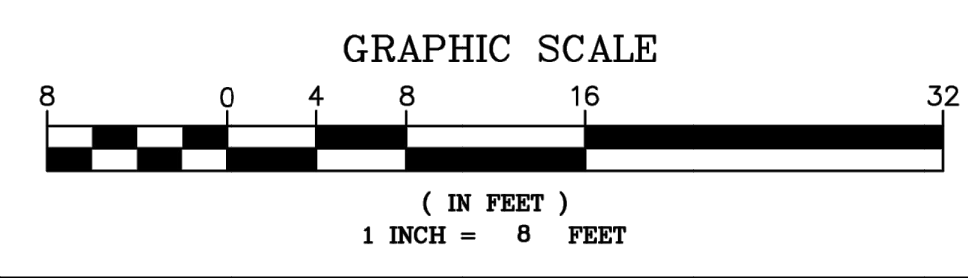
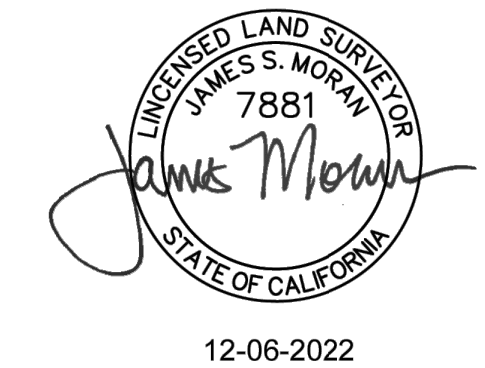
BOUNDARY AND TOPOGRAPHIC SURVEY

LOT 14, BARNES ADDITION OF ELMWOOD PARK (26 M 41)
LOCATED AT 2924 RUSSELL STREET
CITY OF BERKELEY, COUNTY OF ALAMEDA, CALIFORNIA

DECEMBER 6, 2022 SCALE: 1" = 8'

MORAN ENGINEERING, INC.
CIVIL ENGINEERS \ LAND SURVEYORS
1930 SHATTUCK AVENUE, SUITE A
BERKELEY, CALIFORNIA 94704
(510) 848-1930

F.B. NO. 1922 RUSSELL-TOP0.DWG JOB NO. 22-11022



October 31, 2023

Richard B. Spohn
2928 Russell Street
Berkeley, CA 94705

Honorable Members, Berkeley City Council
%. City Clerk
2180 Milvia Street, 1st Floor
Berkeley, CA. 94704

Re: Appeal of Decision by Zoning Adjustments Board, October 12, 2023, re
AUP ZP#2023-0081

Honorable Members:

Appellant has lived at 2928 Russell Street for 40 years, where they raised five children, three stepchildren and two adopted children. All are now professionals, productive members of society. Appellant is presently a member of the Board of Directors of the Claremont Elmwood Neighborhood Association and for many years practiced as a regulatory/corporate lawyer. Prior to private practice, Appellant was the Director of the California Department of Consumer Affairs.

This Appeal presents several challenging issues that at once comprise and transcend Appellant's immediate concerns, pertaining as they do to your oversight responsibilities.

ISSUE PRESENTED (A MATTER OF HOT TUB NOISE)

Whether a residential property Owner should be officially permitted by the City of Berkeley to install a Hot Tub 10 feet from a neighbor's office Desk after the Owner Applicant:

- 1) failed to present empirical evidence or data-based analysis of the noise impact of the Tub that could demonstrate the Tub would be in compliance with the City's noise abatement Code requirements;
- 2) concealed from the City's permitting process the essential, pivotal fact of the 10-foot proximity of the Hot Tub to the Desk; and

- 3) ignored the City's stated policy that an Owner is to contact adjacent neighbors about the projected installation of the Tub.

Inexplicably the ZAB decision being appealed answers this question in the affirmative, on all three negative counts, establishing bad precedent and bad public policy.

Appellant will address each of these issues and will then propose a process for resolution that would both honor the City's requirements and procedures and be fair to the Parties:

Remand its decision back to ZAB, ordering verification and formal certification by a qualified noise expert, jointly chosen by the parties, that noise caused by the operation and use of the proposed Tub and its pump would meet the City's noise abatement Code requirements. In short, demonstration of compliance. (Brief paraphrase of formal motion, which may be found in Section "D" below.)

A. Proponent Has Offered No Data-based Analysis That The Tub's Noise Will or Can Meet the City's Regulatory Requirements.

- 1) The Noise Abatement Requirements
 - a) The Pump

As stated in the initial Zoning Officer Approval of AUP #ZP2023-0081 (July 20, 2023) and in the ZAB Decision of October 12, 2023, "Findings for Approval," No. 4, "Any pump associated with an unenclosed outdoor hot tub, jacuzzi, or spa shall be mounted and enclosed so that its sound is not audible on an adjacent lot." (emphases added). This is an absolute requirement, yet no showing has been made that the Tub will meet it.

- 1) The Noise Abatement Requirements
 - b) Use and operation of The Tub

As stated in both the initial AUP Approval and in the ZAB Decision (see B.1.a above), both "the operation of the Tub equipment" and the "noise impacts that may result from the use of the hot tub" are "subject to the controls imposed

under BMC Chapter 13.40 as it relates to maximum noise levels.” (emphases added)

The text of Section 13.40.050, “Exterior noise standards,” may be found at Exhibit “2” to this letter. It reportedly is considered technically proficient and commendable. Although this is the City regulation that dictates the permissible levels of noise emanating from the use and the operation of the Tub, to the non-expert its technical specificity is virtually impenetrable. As such, in its unadorned state the Regulation will be virtually useless to the Proponent in their gauging given real-time levels of either operational or usage noise.

The reader is invited to review and ponder Exhibit “2” and consider how as the host of a party they would use Section 13.40.050 to gauge the acceptable level of noise rising from the Tub when it has several jolly hot tubbers whooping it up over a long soak.

1) The Noise Abatement Requirements

c) Miscellaneous: These tight standards could fall away

Conditions No. 30 of the AUP and No. 33 of the ZAB Decision both state: “This permit shall be subject to review and modification as necessary to alleviate excessive noise or disturbance to the neighborhood.” (emphasis added). If the regulatory requirements of Sections “1) a)” and “b)” above promise protection from Tub-related noise, then these Conditions portend taking them away. Gone would be the “inaudible” standard and the exquisite specificity of the “use” and the “operations” limits, in favor of a standard of “not excessive.” In other words, the tighter standards would be abandoned if they did not work, or if the Tub did not work, to be replaced by a standard that admitted of noise, as long as it were not “excessive.” Small comfort to the hapless next-door neighbors.

2) The Tub Features Provide NO Affirmative Prediction of Noise Abatement

a) The Staff Analysis for the ZAB (p. 8) reports that according to the Proponent’s Application Statement, “recommendations on [hot tub] models with enclosed equipment and quieter operations than industry standards were being considered.” (emphases added)

This is transparently worthless for any assurance of noise abatement: 1) "being considered" is merely a thought process, not a commitment. 2) Moreover, even if such a model were chosen, the noise would merely be less, by some unstated degree, than the standard set by the purveyors of hot tubs.

b) Condition Number 29 of the ZAB Decision states that "The hot tub shall be installed on a sound-proofing mat." However, the Proponent's architectural plan (Drawing L3.0) anticipates a "sound-reducing mat per hot tub manufacturer." In other words, the Tub professional anticipates being able to reduce noise, whereas the ZAB's "soundproofing" hikes that standard up to eliminating all noise. The difference is central to the noise issue: yet nothing is adduced to suggest that what the ZAB has required ("sound proofing") can be achieved. (emphases added)

c) A "podocarpus hedge" is planned for the narrow space between the Tub and Appellant's property.

d) Yet despite these numerous clearly empty blandishments, "Finding" Number 4 of the ZAB decision contains the gratuitous conclusory assertion that the Conditions of the AUP "will ensure that neighbors are not adversely affected by the noise impacts that may result from the use of the hot tub."

3) The Fundamental Shortcoming: Nothing is Adduced to Demonstrate That the City's Noise Abatement Requirements Can or Will Be Met

On none of the City's sound abatement regimens for the Tub – neither the absolute provision of BMC Section 23.304.070(D)(2) covering noise from its pump nor those of BMC Section 13.40.050 controlling noise levels resulting from the Tub's operation or use nor the abatement efficacy of the mat under the Tub nor the hedge -- does the Proponent offer any empirical evidence or data-based analysis whatsoever to demonstrate that the Tub can meet the City's Code requirements. No attempt is even assayed. The Proponent apparently believes it is exempt from the responsibility to demonstrate regulatory compliance as a condition of receiving a Permit or that this responsibility cannot be discharged, that regulatory compliance cannot be achieved.

The City should require the Proponent to come clean on what is technically possible, whether their Tub will be in compliance with the City's noise-abatement Code requirements, before it issues a Permit to install the Tub, 10 feet from the professional desk of Appellant's noise-sensitive spouse.

B. The Desk and the Tub: Distance Metrics Withheld, City and ZAB Deceived

Appellant apprised Proponent and their architectural firm on several occasions in writing, prior to their Permit Application, that their Hot Tub was positioned 10 feet from his noise-sensitive wife's professional office Desk. They ignored these good-faith communications and withheld this pivotal, central fact in applying for their City permits.

1) The Proponent Concealed from the City the Tub-Desk 10-foot Proximity.

This was a deliberate deception, concealing the core fact that might imperil their Tub permit; noise from the Tub might be considered by the City to be too close to the Desk and office. People deceive either by commission or by omission. Here the Proponent implicitly represented to the City in their application materials that there was "nothing there" by neither identifying on their plans or in their narrative the 10-foot relationship of the Tub to the office Desk. But there WAS something there -- the Desk and the office were there, in the space labeled on the plan as "Building," and their relationship to the Tub (see the "X"'s on Exhibit 1 hereto). Proponent omitted this central fact. This deliberate concealment constituted deception by omission.

2) The Staff Analysis Ignored the 10-foot Tub-Desk Proximity, Rather It Erroneously Determined that the Tub would be located 50 feet From Appellant's House

Although the Appellant identified in his Appeal to the ZAB -- as he had previously to the Proponent and to their landscape architectural firm -- the 10-foot proximity of the Tub and the Desk, this utterly critical fact was ignored in the Staff Analysis for the ZAB. It is never mentioned. Instead of addressing the issue of the noise impact of the Tub on the use of the Desk and office, the central issue of the

Appeal, the Staff Analysis stated the irrelevant *non sequitur* that “The presence of an accessory structure or building does not preclude the applicant from having a hot tub on their lot.” (sic) The “Analysis” made no acknowledgement whatsoever of the 10-foot Tub-Desk relationship and attendant noise impact, although this was the core issue of the Appeal.

There was also no noise analysis made in the Staff Analysis when they gratuitously dismissed the noise impact of the Tub on the use of Appellant’s bedroom and large back living space -- where the family’s cooking, eating, congregating, watching tv, reading, resting, meditating, etc. go on -- by asserting that the 25-foot distance identified in the Appeal was “adequate separation [from the Tub] for potential impacts.” Such a conclusory statement, without the burden of empirical support, is hardly reliable guidance.

From the time of the award of the Administrative Use Permit for the Tub (July 20, 2023) until the ZAB hearing on Appellant’s Appeal thereof (October 12, 2023), the public record of the award contained the staff’s determination that the proposed Hot Tub would be located 50 feet from the Appellant’s house – this in the face of actual measurements provided by Appellant, *e.g.*, 10 feet from the office Desk and 25 feet from the principal living space in the house. When the staff was asked where the 50-foot distance came from, the response was “from the plans. “ The plans contained no such figure. This error and a related error were corrected at the ZAB hearing.

Such a glaring deviation from such a basic physical reality compromises the trust one should be able to place in professional work prepared for a major public administrative decision-making process.

C. Proponent Did Not Contact The Neighbors About Their Intention to Install The Hot Tub, Contrary to City Policy; ZAB Establishes a Two-Tier System of “Contact,” One for the Wealthy, Another for the Not-Wealthy

1) The City’s “require[d] contact” policy provisions

The Proponent did not inform their neighbors in advance of their intention to install a hot tub in their back yard, nor have they engaged in any conversation about the project thereafter. Proponent's disregard of their neighbors violated the language and spirit of the City of Berkeley's "Instructions Regarding Community Outreach," promulgated by its Land Use Planning Division (the "Instructions"), which state in part:

[1] For all projects: Early in the design process, the City strongly encourages owners to meet with their neighbors, whenever possible, to present plans and try to identify and resolve issues of concern. Applicants can meet with neighbors one-on-one or at a gathering; whichever seems more appropriate to them.

[2]. Projects in a Residential (R) District require contact between the subject property owner and the abutting and confronting property owners and tenants...

[3] Projects of Community or Neighborhood Interest require a meeting with owners, residents, and community groups within 300 feet of the project."

(Emphases added) (<https://berkeleyca.gov/sites/default/files/2022-02/Instructions-Regarding-Community-Outreach.pdf>)

Please note that there are three (3) levels of requirements for meetings between owners and neighbors. Proponents of all projects are "strongly encourage[d]" to meet with neighbors; Residential projects "require contact" between owners and neighbors; community interest projects "require a meeting." (emphases added)

The purpose of the Instruction's "require[d] contact" is for the proponent of a Residential project to hear early and directly from potentially affected neighbors, to understand, consider and reckon with their concerns. Indeed, the City's Policy Instructions state that "If a neighbor voices concerns about the proposed project, the City advises that mediation take place early in the process." (p. 2)

2) The Proponent Ignores the City's Instructions, Absents Self from the Process, Hires the Duties Out

Proponent ignored the Instruction of this sound, unambiguous public policy mandate of the City and ignored their neighbors. There was no "require[d] contact" between Proponent and their neighbors. This is not a large development affecting many people, it is a Residential Project, of one property situated between two neighboring properties, involving a hot tub. The "require[d]

contact" should have been exceedingly easy. In the matter under consideration, all principals are mature, accomplished professionals who once actually communicated with each other.

However, rather than reaching out to their neighbors as required by the City's policy and Instruction – to say nothing of fundamental canons of neighborliness and civility -- Proponent instead had their landscape architect send a young Canvasser around to perform that critically important, distinctly neighbor's "contact" function. It was a cursory, very unsatisfactory experience for Appellant, hardly fulfilling the salutary objectives of the Instructions. (See details described in Appellant's Appeal to the ZAB, attached hereto as Attachment "A.")

Appellant (both spouses, at the referenced times very busy professionals and raising children) has performed this obligation at different times in the many years they have lived in their house. These City-mandated consultations with neighbors are an exercise of respect, comity and consideration between people living in close urban proximity to each other. Yet Proponent sank substantial time and money into the Tub project without ever discussing it with their neighbors. Asked why the Proponent was not contacting, the Canvasser replied, "He's too busy."

3) Staff Analysis Gratuitously Abandons "require[d] contact," Obliterates Objectives of City's Instructions

Nowhere in the City's Instructions is it stated that the "require[d] contact" between an owner-proponent and their neighbors may be conducted by a representative or other third party. Standard drafting canons would dictate that if such an alternative, a deviation from the direct language of "require[d] contact," were encompassed or even envisioned, then it would have been so stated. It's not an alternate policy option that can simply be breathed into the plain-language requirement of owner-neighbor contact in the Instructions. Such an "alternate reality" is radically inconsistent with, indeed inimical to, the entire array of public policy objectives of the Instructions invoked above.

Yet the Staff Analysis advising the ZAB, blithely and without reference to any justifying authority, announced the whole-cloth, gratuitous position: "Property owners may designate an applicant [sic] to act on their behalf during all stages of permitting. While it is preferred that contact occur directly between neighbors,

the owner can designate someone else to make contact and gather signatures prior to submitting a zoning permit [sic]."

Taking additional license with clarity, the word "applicant" in the excerpt above is used to refer to refer to a third party, whereas in the very same paragraph it had been used twice to refer to the Proponent. The Staff Analysis then confuses the reader further by ascribing to "applicant" in the 2924 Russell Street context the collection of signatures and notification of neighbors, but this is the third party *qua* "applicant," not the Proponent. To reiterate, the Owner Proponent *qua* "applicant" never surfaced in the entire process: no contact, no heads-up, no neighborliness, no neighborly respect. None of the sound public policy objectives of the Instructions are realized when the owner-neighbor "contact" required in the City's Instructions is farmed out.

4) ZAB Decision Establishes Two-Tier Construct for "Contact": One for the Wealthy, Another for the Not-Wealthy

The ZAB's apparent acquiescence in the staff's gratuitous evisceration of the City's "contact" rule establishes a two-tier construct of owner-proponent "contacting": one for the wealthy, another for the not-wealthy. If an owner can afford to hire someone to do the potentially challenging work of contacting the neighbors, explaining the project, fielding questions and objections, discussing alternatives, getting them to sign the acknowledgement, and so forth – they are spared grubby human interaction with their neighbors, they are spared the possibly awkward work of "contact." No fuss, no muss. It's little more than hiring a kid to mow the lawn. But it obliterates the City's objective of getting neighbors together "to identify and resolve issues of concern."

The City even urges mediation to arrive at resolution. The Instructions have laudable, virtuous objectives, but they are also very practical, clearly born of experience: "Folks, please work your differences out ahead of filing for a permit so they don't clog up and drag out our government processes and resources! Please try to bring us a clean, non-controversial application."

If you are not wealthy and can't afford a hired "applicant" (sic!), you must go out and talk with and do the work with the neighbors yourself. However, although it may take some time, and perhaps the expenditure of some emotional and

political capital, the results can be far more harmonious and enduring in the end -- precisely because the neighbors worked it through, even if they had to go to mediation to get to "ok."

D) A Proposed Process for Resolution

In the interest of securing a resolution of this fraught neighborly matter, Appellant in good faith is prepared to transcend for the time being the disturbing realities described above in Sections "B" and "C" hereof in order to focus on the core problematic of this Appeal, as described in Section "A" -- the complete lack of empirical evidence or data-based analysis adduced by Proponent or his landscape architectural firm that would demonstrate that Proponent's Hot Tub and attendant apparatus are capable of meeting and will predictably comply with the City's noise-abatement codes and requirements as prescribed in the ZAB Decision of October 12, 2023.

Therefore, Appellant urges

That the ZAB Decision be stayed and remanded by this City Council to the ZAB, instructing the ZAB to submit Proponent's Hot Tub project for zero-based analysis by a qualified noise expert in the private sector, jointly chosen by the private parties herein, to determine whether the operation and use of Proponent's Hot Tub and all attendant apparatus together are capable of meeting and will predictably comply with the City's noise-abatement codes and requirements as prescribed in the ZAB Decision of October 12, 2023.

If the expert's conclusion is in the affirmative, they shall so verify and formally certify these findings to the ZAB and to this City Council. If the expert finds that certain specific modifications of the Tub and/or its associated apparatus would be needed in order to enable compliance with such City requirements, they shall report these findings to the parties and to the ZAB. If the expert finds that such compliance is not possible, it shall so state and certify.

Moreover, in consideration of Proponent's having ignored the obligation to demonstrate its Tub's compliance with the City's codified noise abatement requirements, Proponent shall bear all costs incurred by the independent expert in discharging its responsibilities hereunder.

Further, the ZAB shall ensure that the provisions of BMC Section 13.40.050 ("Exterior noise standards") are rendered intelligible, accessible and useful to a non-expert person of average intelligence and are placed on its website by appropriate linkage.

In short, Appellant proposes a process simply for demonstrating the Tub's compliance with the City's stated noise abatement requirements. This should have been a standard, indispensable function that had been performed earlier in the City's regulatory process.

As a matter of public protection and of civic self-respect, the City should not authorize a project or usage that does not meet its codified requirements.

Thank you for your consideration of this Appeal. Appellant would fervently hope that your City Council will adopt the good-faith recommended process to resolve this matter.

Sincerely,

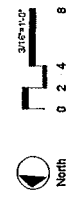
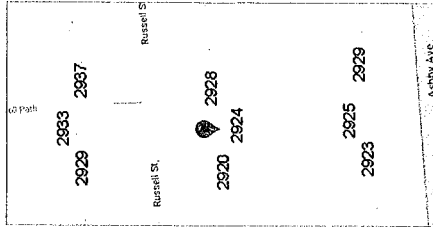
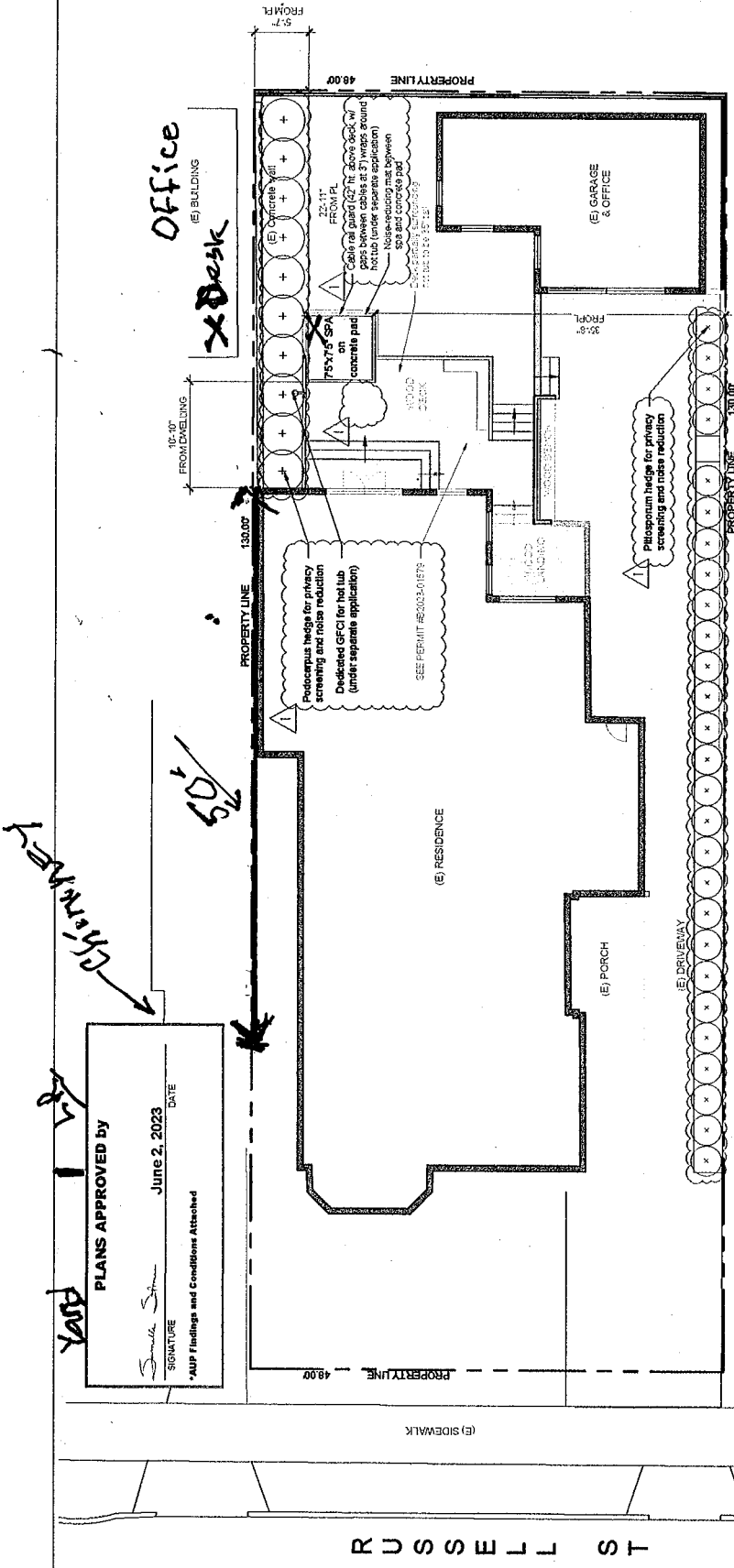

Richard B. Spohn, Appellant

Attachments

Exhibit "1": Landscape Architectural plan, illustrating 10-foot Tub-Desk proximity

Exhibit "2": BMC Section 13.40.050

Exhibit 1



PLANS APPROVED by
 YASD
 June 2, 2023
 DATE
 SIGNATURE
 *AUP Findings and Conditions Attached

NOTE: Please see scanned L2.0 (dated 03.29.23) with neighbor signatures from 04.03.23 and 04.04.23. This set has been revised to add additional noise mitigation measures in response to neighbor concerns. No separate equipment under deck will be required, hot tub to include enclosed equipment and be quieter than industry standards.

Community Outreach
 I have reviewed the plans for a 7.5' x 7.5' hot tub at 2924 Russell Street

Name (printed)	Signature	Address	Renter or Owner	Date	Have no objections	Have objections (please state briefly)	Have no comment
		2920 Russell St.					
		2920 Russell St.					
		2928 Russell St.					
		2928 Russell St.					
		2929 Russell St.					
		2933 Russell St.					
		2933 Russell St.					
		2937 Russell St.					
		2923 Ashby Ave.					
		2925 Ashby Ave.					
		2925 Ashby Ave.					
		2929 Ashby Ave.					
		2929 Ashby Ave.					

Exhibit 2

13.40.050. Exterior noise standards.

A. Maximum permissible sound levels shall be determined by the zoning district of the property subject to the noise, not the property from which the noise originates.

1. The noise standards for the various categories of land use in Table 13.40-1 or 13.40-2 shall, unless otherwise specifically indicated in other codes, apply to all such property within a designated zone.

2. No person shall operate or cause to be operated any source of sound at any location within the incorporated City or allow the creation of any noise on property owned, leased, occupied or otherwise controlled by such person, which causes the sound level when measured on any other property to exceed:

(a) The noise standard for that land use as specified in Table 13.40-1 for a cumulative period of more than 30 minutes in any hour; or

(b) The noise standard for that land use as specified in Table 13.40-1 plus 5 dBA for a cumulative period of more than 15 minutes in any hour; or

(c) The noise standard for that land use as specified in Table 13.40-1 plus 10 dBA for a cumulative period of more than 5 minutes in any hour; or

(d) The noise standard for that land use as specified in Table 13.40-1 plus 15 dBA for a cumulative period of more than 1 minute in any hour; or

(e) The noise standard for that land use as specified in Table 13.40-1 plus 20 dBA for any period of time.

Table 13.40-1. EXTERIOR NOISE LIMITS

(Levels not to be exceeded more than 30 minutes any hour)

Zoning District	Time Period	Noise Level (dBA)
R-1, R-2, R-1A, R-2A, and ESR	7:00 a.m. – 10:00 p.m.	55
	10:00 p.m. – 7:00 a.m.	45
R-3 and above	7:00 a.m. – 10:00 p.m.	60
	10:00 p.m. – 7:00 a.m.	55
Commercial	7:00 a.m. – 10:00 p.m.	65
	10:00 p.m. – 7:00 a.m.	60
Industry	Anytime	70

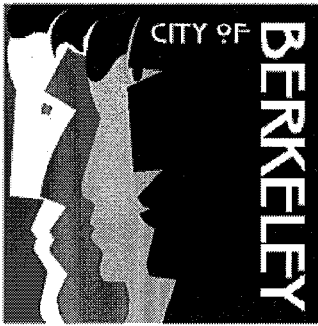
3. If the measured ambient noise level is greater than the level permissible within any of the noise limit categories above, the sound level when measured on any other property shall not exceed:

- (a) The ambient noise level for a cumulative period of more than 30 minutes in any hour; or
- (b) The ambient noise level plus 5 dBA for a cumulative period of more than 15 minutes in any hour; or
- (c) The ambient noise level plus 10 dBA for a cumulative period of more than 5 minutes in any hour; or
- (d) The ambient noise level plus 15 dBA for a cumulative period of more than 1 minute in any hour; or
- (e) The ambient noise level plus 20 dBA for any period of time.

4. If the measurement location is on a boundary between two different zones, the sound level limit applicable to the quieter noise zone shall apply.

5. If possible, the ambient noise level may be measured at the same location along the property line utilized in subsection A.2 of this section with the alleged offending noise source inoperative. If the intruding noise source is continuous and cannot reasonably be discontinued or stopped for a time period whereby the ambient noise level can be measured, the ambient noise level may be determined by traveling away from the noise source to a point where a steady state decibel reading is achieved. If this test is not possible, the noise level measured while the source is in operation shall be compared directly to the noise level standards.

B. The classification of additional areas of the community not listed in Table 13.40-1 in terms of environmental noise zones shall be determined by the EHD. Industrial noise limits are intended primarily for use at the boundary of industrial zones rather than for noise reduction within the zone. (Ord. 7122-NS § 5, 2009; Ord. 5500-NS § 1 (part), 1982)



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

DATE OF BOARD DECISION: October 12, 2023

DATE NOTICE MAILED: October 17, 2023

APPEAL PERIOD EXPIRATION: October 31, 2023

EFFECTIVE DATE OF PERMIT (Barring Appeal or Certification)¹: November 1, 2023

2924 Russell Street

Appeal of Zoning Officer's Decision to approve Administrative Use Permit ZP#2023-0081 to install unenclosed hot tub in rear yard.

The Zoning Adjustments Board of the City of Berkeley, after conducting a public hearing, **APPROVED** the project and **DISMISSED** the appeal of the following permit:

- Administrative Use Permit to install an unenclosed hot tub, under Berkeley Municipal Code (BMC) Section 23.304.070(D)

ZONING: Single-Family Residential District (R-1)

APPLICANT: Pennell Phillips, 6000 Harwood Avenue, Oakland, CA 94618

PROPERTY OWNER: Homayoon Kazerooni, 2924 Russell Street, Berkeley, CA 94705

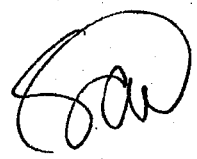
APPELLANT: Richard Spohn, 2928 Russell Street, Berkeley, CA 94705

ENVIRONMENTAL REVIEW STATUS: Categorically exempt pursuant to CEQA Guidelines Section 15301 ("Existing Facilities").

FINDINGS, CONDITIONS AND APPROVED PLANS ARE ATTACHED TO THIS NOTICE

¹ Pursuant to BMC Section 23.410.050(C), the City Council may certify any ZAB decision for review during the 14-day appeal period after the notice of the ZAB's decision is issued. Certification has the same effect as an appeal. However, BMC Section 1.04.070 suspends or "tolls" the Council's deadline to certify when the Council is on recess. Thus, in cases where the 14-day appeal period is scheduled to *end* during a Council recess, the certification deadline is extended past the end of the recess for the remainder of the appeal period. In cases where the appeal period *begins* during a Council recess, the certification deadline is extended until 14 days after the first Council meeting after the recess. *Extension of the certification deadline has no effect on the appeal deadline.*

	Yes	No	Abstain	Absent	Recused
DUFFY	x				
BLACKABY	x				
YUNG	x				
O'KEEFE				x	
LUNAPARRA	x				
SANDERSON					x
THOMPSON	x				
GAFFNEY	x				
TREGUB				x	
BOARD VOTE:	6	0	0	2	1



ATTEST:
Samantha Updegrave, Zoning Adjustments Board
Secretary

PUBLICATION OF NOTICE:

Pursuant to BMC Section 23.404.050, this notice shall be mailed to the applicant at the mailing address stated in the application and to any person who requests such notification by filing a written request with the Zoning Officer on or before the date of the Board action. This notice shall also be filed with the City Clerk. In addition, the notice shall be forwarded to the Zoning Adjustments Board and to the Main Library. The notice shall also be posted at a bulletin board at the Zoning Counter. The City Clerk shall make the notice available to interested members of the Council and the public.

FURTHER INFORMATION:

Questions about the project should be directed to the project planner, Samella Stover, at (510) 981-7425 or [sstover@berkeleyca.gov](mailto:ssstover@berkeleyca.gov). All project application materials, including full-size plans, may be viewed online at: <https://aca.cityofberkeley.info/CitizenAccess/Welcome.aspx>. or in the Permit Service Center at the Zoning Counter at 1947 Center Street, Third Floor, during normal office hours.

TO APPEAL THIS DECISION (see Section 23.410 of the Berkeley Municipal Code):

To appeal a decision of the Zoning Adjustments Board to the City Council you must:

1. Submit a letter clearly and concisely setting forth the grounds for the appeal to the City Clerk, located at 2180 Milvia Street, 1st Floor, Berkeley. The City Clerk's telephone number is (510) 981-6900.
2. Submit the required appeal fee (checks and money orders payable to "City of Berkeley"):
 - A. The fee for persons other than the applicant is \$1500. This fee may be reduced to \$500 if the appeal is signed by persons who lease or own at least 50 percent of the parcels or dwelling units within 300 feet of the project site, or at least 25 such persons (not including dependent children), whichever is less.
 - B. The fee for all appeals by Applicants is \$5,520.
3. The appeal must be received prior to 5:00 p.m. on the "APPEAL PERIOD EXPIRATION" date shown on page 1 (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).

If no appeal is received, the permit will be issued on the first business day following expiration of the appeal period, and the project may proceed at that time.

NOTICE CONCERNING YOUR LEGAL RIGHTS:

If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Zoning Adjustments Board at, or prior to, the public hearing.
2. You must appeal to the City Council within fourteen (14) days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must include the following information:
 - A. That this belief is a basis of your appeal.
 - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
 - C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.

ATTACHMENT 1

FINDINGS AND CONDITIONS

OCTOBER 12, 2023

2924 Russell Street

Administrative Use Permit #ZP2023-0081

To install an unenclosed hot tub in the rear yard.

PERMITS REQUIRED

- Administrative Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.304.070(D) to install an unenclosed hot tub.

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 CEQA Guidelines Section 15301 (Existing Facilities).
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.

FINDINGS FOR APPROVAL

3. As required by BMC Section 23.406.030(F), 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 hot tub will be located approximately 11 feet from the back of the dwelling, and setback approximately 23 feet from the rear lot line (south), 36 feet from the west side lot line, and 5 feet, 7 inches from the eastern side lot line. The proposed location is screened by a retaining wall, fencing and vegetation. ~~The common living areas of the adjacent residents of 2928 Russell Street are located 10 feet, 10 inches and 2928 Russell Street is approximately 50 feet away from the proposed location.~~ The hot tub is 7.5 feet x 7.5 feet and the applicant has proposed additional vegetation around the location of the hot tub to increase privacy to neighboring dwelling and is installing a pad between the tub and concrete pad to further reduce noise. In addition, because the hot

tub is at grade there will be no reduction to privacy, light, views, or air for abutting residence and is therefore not detrimental.

4. Pursuant to BMC Section 23.304.070(D)(2), the Zoning Officer finds that:

- A. Any pump associated with an unenclosed outdoor hot tub, jacuzzi, or spa shall be mounted and enclosed so that its sound is not audible on an adjacent lot. The hot tub will be subject to the conditions of this permit, which will ensure that neighbors are not adversely affected by noise impacts that may result from the use of the hot tub. In particular, the operation of the hot tub equipment is subject to the controls imposed under BMC Chapter 13.40 as it relates to maximum noise levels and Conditions of Approval #29-32.
-

STANDARD CONDITIONS

The following conditions, as well as all other applicable provisions of the Berkeley Municipal Code, 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. Compliance Required (BMC Section 23.102.050)

All land uses and structures in Berkeley must comply with the Zoning Ordinance and all applicable City ordinances and regulations. Compliance with the Zoning Ordinance does not relieve an applicant from requirements to comply with other federal, state, and City regulations that also apply to the property.

3. Approval Limited to Proposed Project and Replacement of Existing Uses (BMC Sections 23.404.060.B.1 and 2)

- A. This Permit authorizes only the proposed project described in the application. In no way does an approval authorize other uses, structures or activities not included in the project description.
- B. When the City approves a new use that replaces an existing use, any prior approval of the existing use becomes null and void when permits for the new use are exercised (e.g., building permit or business license issued). To reestablish the previously existing use, an applicant must obtain all permits required by the Zoning Ordinance for the use.

4. Conformance to Approved Plans (BMC Section 23.404.060.B.4)

All work performed under an approved permit shall be in compliance with the approved plans and any conditions of approval.

5. Exercise and Expiration of Permits (BMC Section 23.404.060.C)

- A. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.
- B. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.
- C. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except if the applicant has applied for a building permit or has made a substantial good faith effort to obtain a building permit and begin construction. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant. A determination that a permit has lapsed may be appealed to the ZAB in accordance with Chapter 23.410 (Appeals and Certification).
- D. A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant must apply for and receive City approval of a new permit.

- 6. Permit Remains Effective for Vacant Property (BMC Section 23.404.060.D)**
Once a Permit for a use is exercised and the use is established, the permit authorizing the use remains effective even if the property becomes vacant. The same use as allowed by the original permit may be re-established without obtaining a new permit, except as set forth in Standard Condition #5 above.
- 7. Permit Modifications (BMC Section 23.404.070)**
No change in the use or structure for which this Permit is issued is permitted unless approved by the review authority which originally approved the permit. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.
- 8. Permit Revocation (BMC Section 23.404.080)**
The City may revoke or modify a discretionary permit for completed projects due to: 1) violations of permit requirements; 2) Changes to the approved project; and/or 3) Vacancy for one year or more. However, no lawful residential use can lapse, regardless of the length of time of the vacancy. Proceedings to revoke or modify a permit may be initiated by the Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.
- 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 THE ZONING OFFICER

Pursuant to BMC Section 23.404.050(H), the Zoning Officer 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 #

Standard Construction-related Conditions Applicable to all Projects:

11. 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.

12. 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.

13. 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.

14. 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.
15. 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.
16. 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.
17. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.
18. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.
19. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.
20. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
21. 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.
22. 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.
23. 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.
24. 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.
25. 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:

26. All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
27. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated June 2, 2023.

At All Times (Operation):

28. 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.

Hot Tub Conditions

29. The hot tub shall be installed on a sound-proofing mat.
30. Vegetation shown on the site plans shall be maintained at all times.
31. The pump shall be mounted, enclosed and maintained to prevent noise from disturbing the occupants of neighboring properties.
32. The hot tub shall be equipped with safety features in accordance with the California Building Code.
33. This permit shall be subject to review and modification as necessary to alleviate excessive noise or disturbance to the neighborhood.
34. Mechanical operation and use must adhere to the exterior noise standards of BMC Section 13.40.050.

Samella Stover


Prepared by: Samella Stover, Planning Technician
For Samantha Updegrave, Zoning Officer

2924 Russell Street — Administrative Use Permit

General Notes

- The contractor shall inspect the site and be familiar with all existing site conditions prior to submitting bid. Contractor shall not willfully proceed with construction as shown when it is obvious that obstructions, landscape area and/or grade differences exist that may not have been known during design. Such conditions shall immediately be brought to the attention of the landscape architect. The contractor shall assume sole responsibility for all necessary revisions due to failure to give such notification. Contractor shall be responsible for making herself/himself familiar with all underground utilities, pipes, structures and obstructions. Contractor shall assume sole responsibility for all costs incurred due to damage and/or replacement of these items. Contractor shall be responsible for coordination among trades and subcontractors as required to accomplish the work. The contractor shall be responsible for any damage to existing features caused by contractor's work. All repairs shall be made at no additional cost to the owner. Planting shall be installed in conformance with all applicable local codes and ordinances by experienced workmen and a licensed landscape contractor who shall obtain all necessary permits and pay all required fees. The garden is a pesticide and herbicide free zone. Contractor shall use organic material to fertilize and to maintain all plant material. No chemical fertilizer will be allowed. Contractor shall verify all grades, existing conditions and dimensions in the field prior to commencing work. All discrepancies or questions shall be brought to the attention of the landscape architect for resolution. Redirect work to avoid delay. All curves and all transitions between curves and straight edges shall be smooth. Take all dimensions perpendicular to any reference line, work line, face of building, face of wall or centerline.
- Demolition**
Contractor shall remove and carry all demolition materials off site. Protect (E) trees as indicated during construction. Contractor shall perform selective trimming of existing trees within the area of work per the direction of the owner.
- Drainage/Grading (Permit #B2023-01579)**
Contractor shall verify if existing drains are in good condition. All drainage systems shall be per City of Berkeley codes. Grade per indicated swales. Steeving to be Schedule 40 PVC. Cover PVC pipe so that it not visible. All grading to be smooth to achieve a natural aspect. No finish grades shall exceed 2.5:1 slopes.
- Stone paving & stone work**
See Permit #B2023-01579
- Concrete work (Permit #B2023-01579)**
Proposed 18" concrete retaining wall shall be less than three feet in total height including footing. See S2.0, Detail 12 for typical retaining wall and drainage. See L3.0 of Permit set #B2023-01579 for location of subsurface drainage line to (E) sump pump.
- Electrical**
For rear deck perimeter GFCI, please refer to Permit #B2023-01579. Dedicated hot tub GFCI to be processed under separate application, pending AUP approval.
- Wood work (Permit #B2023-01579)**
All new wood decking. Structural engineer to determine partial salvage of structural components of existing wood landing. SSD for final wood sizing, anchors and concrete footing.
- Clean up**
At the end of each work day, at the inspection for substantial completion and before acceptance of project, clean paved areas that are dirtied or stained by construction operations, by sweeping or washing, and remove defacements and stains. Remove construction equipment, excess materials and tools. Haul from owners property the debris resulting from construction, and dispose of legally. Remove remaining temporary protection at time of acceptance by owner unless otherwise agreed.

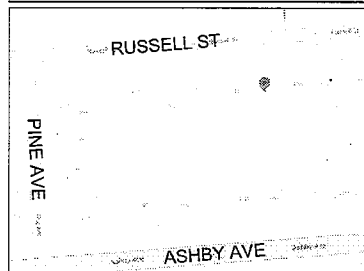
PLANS APPROVED BY ZONING ADJUSTMENTS BOARD

 **October 12, 2023**

SIGNATURE DATE

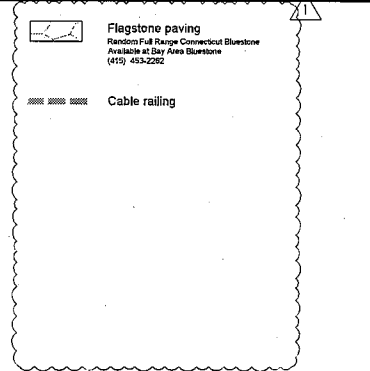
Findings and Conditions Attached

Location



Legend

- (PA) Planting Area
- (TS) Top of stair
- (BS) Bottom of stair
- (TW) Top of wall
- (BW) Bottom of wall
- R Radius
- POB Layout Starting Point
- SIM Similar
- (TYP.) Typical
- SAD See Architectural Drawings
- EQ Equal
- O.C. On Center
- (E) Existing
- Align
- 90 Degrees angle
- (824.76) Existing spot elevation
- + 824.76 Proposed spot elevation
- Existing contour line
- Proposed contour line
- Property line
- Existing retaining wall to be demolished

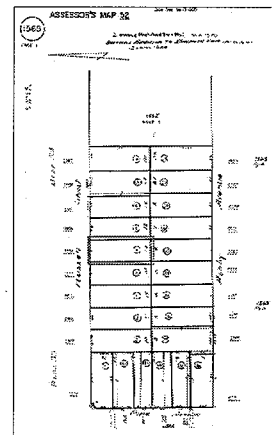


Sheet Index

- L0.0 Cover Sheet
- L1.0 Existing Site Plan
- L2.0 Proposed Site Plan
- L3.0 Elevations
- L3.1 Elevations
- L4.0 Details
- SV Survey

Assessor's Map

APN: 52-1565-6



Scope of Work

Installation of new hot tub.

Per neighbor request, hot tub selection criteria include low noise relative to industry standards. Hot tub installation to include a sound-reducing mat that complies with manufacturer specifications. Planting of dense screening vegetation along eastern and western fences to further buffer hot tub sound and provide privacy for residents and neighbors.

NOTE: For rear deck and associated perimeter GFCI, please refer to Permit #B2023-01579.

NOTE: Dedicated hot tub GFCI and revisions to Permit #B2023-01579 to accommodate hot tub to be processed under separate application, pending AUP approval.

Project Team

Client Hami Kazerooni 2924 Russell St. Berkeley, CA 94705	Landscape Architect InsideOut Design, Inc. 6000 Harwood Ave Oakland CA 94618 (510) 655-7674 Penn Phillips	Contractor TBD	Structural Engineer Daniel A. Bastiao P.O. Box 1891 Union City, CA 94587 510-876-8457
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6000 Harwood Ave
Oakland, CA 94618
510 655 7674
insideout.com



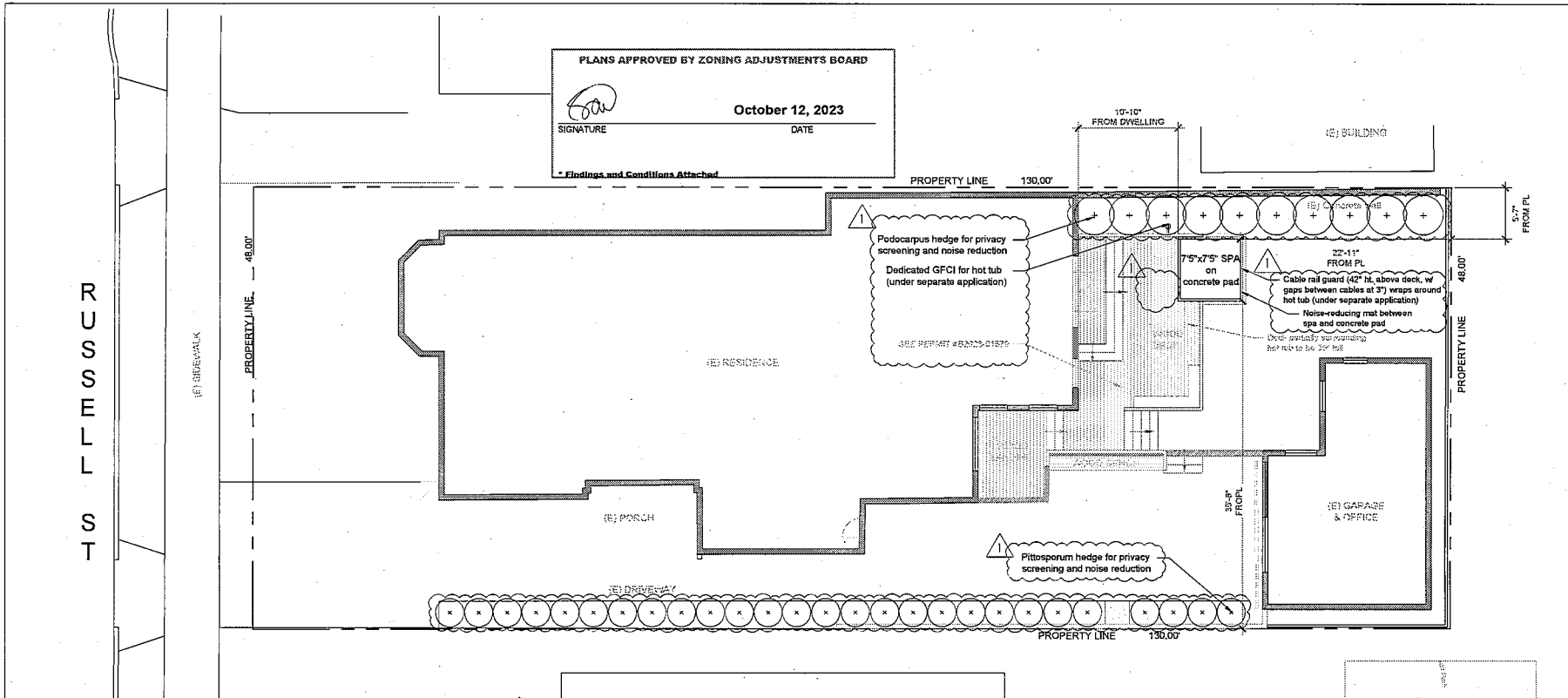
ISSUES:
04/04/2023 AUP COMMUNITY OUTREACH
05/12/2023 AUP APPLICATION REVISION IN RESPONSE TO NEIGHBOR COMMENT

Kazerooni Residence
2924 Russell St.
Berkeley, CA

TITLE:
Cover Sheet,
Notes & Legend

SCALE: N/A
DATE: MAY 15, 2023

DRAWING NO:
L0.0



PLANS APPROVED BY ZONING ADJUSTMENTS BOARD

[Signature]
SIGNATURE

October 12, 2023
DATE

* Findings and Conditions Attached

INSIDEOUT
Interior Design & Construction
6000 HAWTHORN AVE
OAKLAND CA 94618
510 659 7674
info@insideout.com

ISSUES:
04.04.2023 AUP COMMUNITY OUTREACH
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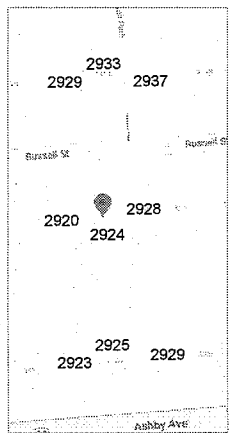
Kazerooni Residence
2924 Russell St.
Berkeley, CA

Community Outreach

I have reviewed the plans for a 7.5' x 7.5' hot tub at 2924 Russell Street.

NOTE: Please see scanned L2.0 (dated 03.29.23) with neighbor signatures from 04.03.23 and 04.04.23. This set has been revised to add additional noise mitigation measures in response to neighbor concerns. No separate equipment under deck will be required; hot tub to include enclosed equipment and be quieter than industry standards.

Name (printed)	Signature	Address	Renter or Owner	Date	Have no objections	Have objections (please state briefly)	Have no comment
		2920 Russell St.					
		2920 Russell St.					
		2928 Russell St.					
		2928 Russell St.					
		2929 Russell St.					
		2929 Russell St.					
		2933 Russell St.					
		2933 Russell St.					
		2937 Russell St.					
		2937 Russell St.					
		2923 Ashby Ave.					
		2923 Ashby Ave.					
		2925 Ashby Ave.					
		2925 Ashby Ave.					
		2929 Ashby Ave.					
		2929 Ashby Ave.					



TITLE:
Proposed Site Plan

SCALE: 3/16"=1'-0"
DATE: MAY 15, 2023

DRAWING NO:
L2.0



INSIDEOUT
[Logo]
4000 BISHOP AVENUE
DANFORTH, CA 94618
510-458-7674
www.insideout.com



ISSUE #:
00.00.0000 XX

Kazerooni Residence
2924 Russell St.
Berkeley, CA

TITLE:
Proposed site plan

2928 ✓
2933 ✓
2937 ✓

NA ✓
2920 ✓
2924 ✓

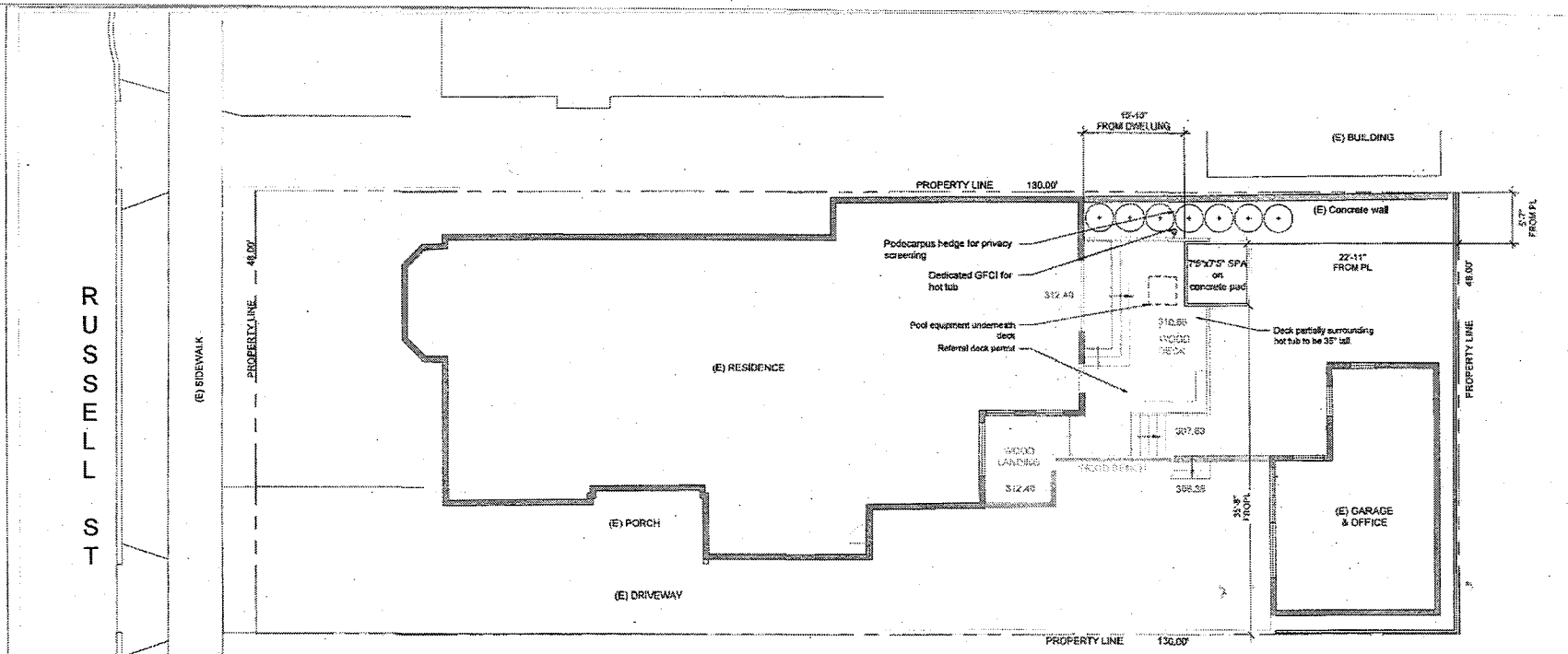
NA ✓ VC
2923 ✓ 2925 ✓ 2929 ✓

SCALE: 3/8"=1'-0"
DATE: MARCH 20, 2023
1/4"=1'-0"

DRAWING NO.
L2.0



VC = under construction - plans mailed
NA = no answer - plans mailed

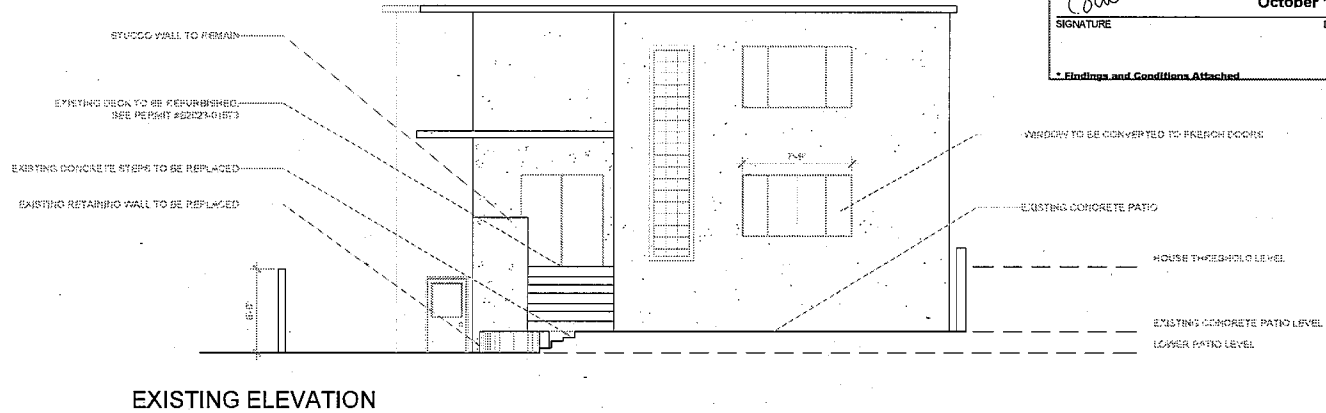


PLANS APPROVED BY ZONING ADJUSTMENTS BOARD
[Signature]
October 12, 2023
SIGNATURE DATE

Community Outreach

I have reviewed the plans for a 7.5' x 7.5' hot tub at 2924 Russell Street.

Name (printed)	Signature	Address	Renter or Owner	Date	Have no objections	Findings and Conditions Attached	Have no comment
Beverly Deane	<i>[Signature]</i>	2920 Russell St.	Owner	4/5/23			✓
RICHARD SPYK	<i>[Signature]</i>	2928 Russell St.	OWNER	4/4/23		Concern about operational noise of tub + usage	
Ronald Lee	<i>[Signature]</i>	2933 Russell St.	Owner	4/7/23	X		X
T.R. RIRSH	<i>[Signature]</i>	2937 Russell St.	OWNER	4/4/23	✓		
FUKA BAKAR	<i>[Signature]</i>	2925 Ashby Ave.	Owner	4-3-23	✓		



PLANS APPROVED BY ZONING ADJUSTMENTS BOARD

[Signature] **October 12, 2023**
SIGNATURE DATE

* Findings and Conditions Attached

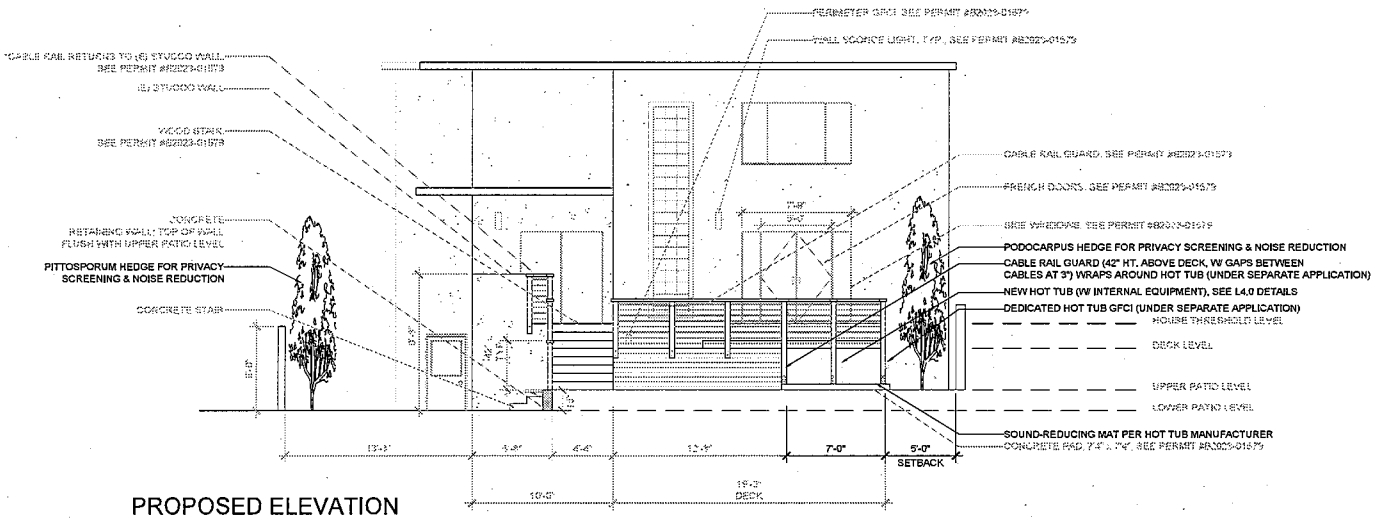
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Architect | Interior | Landscape
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ISSUES:
04.04.2023 AUP COMMUNITY OUTREACH
05.12.2023 AUP APPLICATION REVISION IN RESPONSE TO NEIGHBOR COMMENT

Kazerooni Residence
2924 Russell St.
Berkeley, CA

EXISTING ELEVATION



PROPOSED ELEVATION

NOTE: THE GREATEST RISER HEIGHT AND TREAD DEPTH WITHIN ANY FLIGHT OF STAIRS SHALL NOT EXCEED THE SMALLEST BY MORE THAN 1/4" INCH.

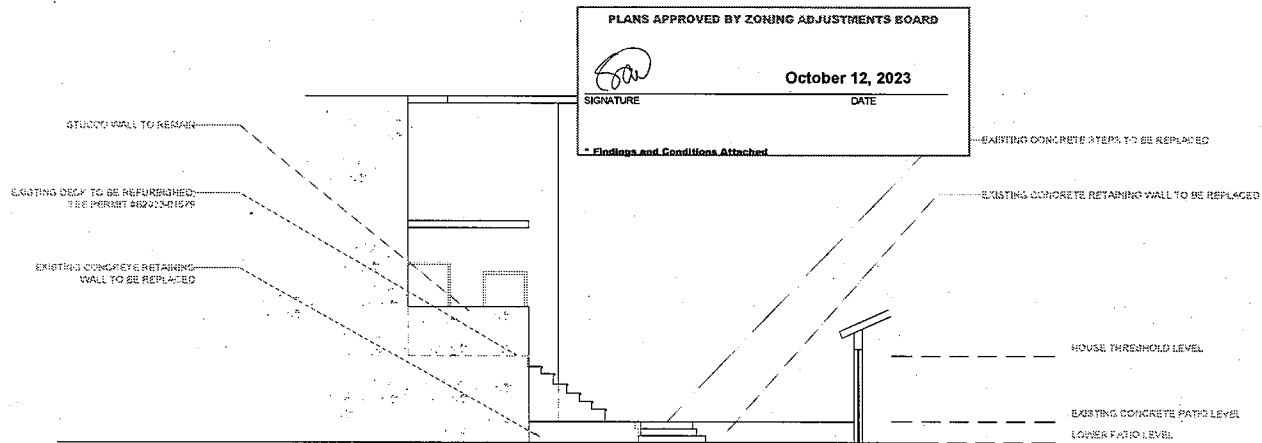
NOTE: Revisions to L3.0 since Community Outreach (04.03.23 - 04.04.23) reflect changes required for issuance of Permit #B2023-01579 and the addition of further sound reduction measures (in consideration of neighbor feedback) only.



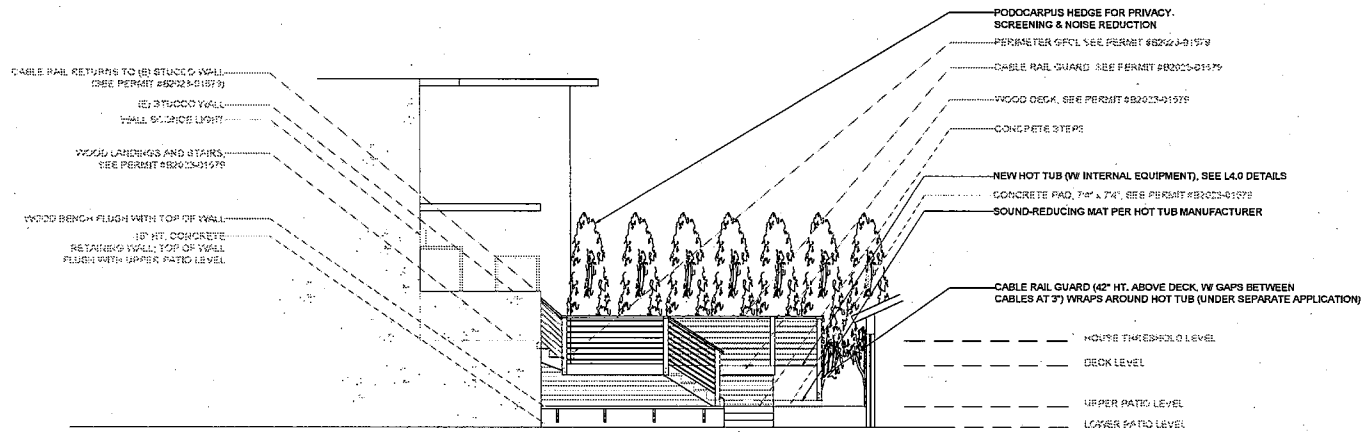
TITLE:
Elevations

SCALE: 1/4"=1'-0"
DATE: MAY 15, 2023

DRAWING NO:
L3.0




EXISTING ELEVATION



PROPOSED ELEVATION

NOTE: THE GREATEST RISER HEIGHT AND TREAD DEPTH WITHIN ANY FLIGHT OF STAIRS SHALL NOT EXCEED THE SMALLEST BY MORE THAN 3/8 INCH.

NOTE: The addition of L3.1 since Community Outreach (04.03.23 - 04.04.23) reflects changes required for issuance of Permit #B2023-01579 and the addition of further sound reduction measures (in consideration of neighbor feedback) only.

PLANS APPROVED BY ZONING ADJUSTMENTS BOARD

 October 12, 2023
 SIGNATURE DATE
 * Findings and Conditions Attached

INSIDEOUT
 architects | interior | landscape
 4000 HARDWOOD AVE
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 510.653.7674
 insideout.com



ISSUES:
 04.04.2023 AUP COMMUNITY OUTREACH
 05.12.2023 AUP APPLICATION REVISION IN RESPONSE TO NEIGHBOR COMMENT

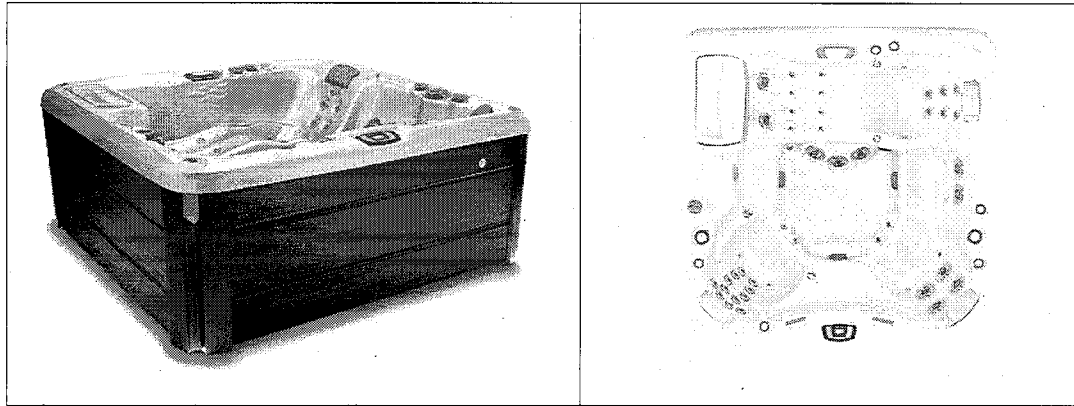
Kazerooni Residence
 2924 Russell St.
 Berkeley, CA

TITLE:
Elevations

SCALE: 1/4"=1'-0"
 DATE: MAY 15, 2023



DRAWING NO.
L3.1



SUNDANCE CAMEO - 880 SERIES

Specs

Volume: 370 gal / 1400.60 liters

Dry Weight: 962 lbs / 436.25

Jets: 54

Primary Pump: North America (60 Hz): 1-Speed/2.5 HP Continuous, 11.3A Max., 56 Frame

Secondary Pump: North America (60 Hz): 1-Speed/2.5 HP Continuous, 11.3A Max., 56 Frame

Circulation Pump (Y/N): Yes

Diverter Valves #: 2

Filtration System: ClearRay

Filters: 1

Seat Jets: Lounge

Water Management System: ClearRay Active Oxygen™

View Less ☺

Dimensions


Height (in): 37.5

Length (in): 89.0

Width (in): 89.0

Volume (gals): 370.0

PLANS APPROVED BY ZONING ADJUSTMENTS BOARD



SIGNATURE

October 12, 2023

DATE

* Findings and Conditions Attached

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 6500 HARBORWOOD AVE
 OAKLAND, CA 94618
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 www.insideout.com



ISSUES:

04.04.2023 AUP COMMUNITY OUTREACH

05.12.2023 AUP APPLICATION RESPONSE TO NEIGHBOR COMMENT

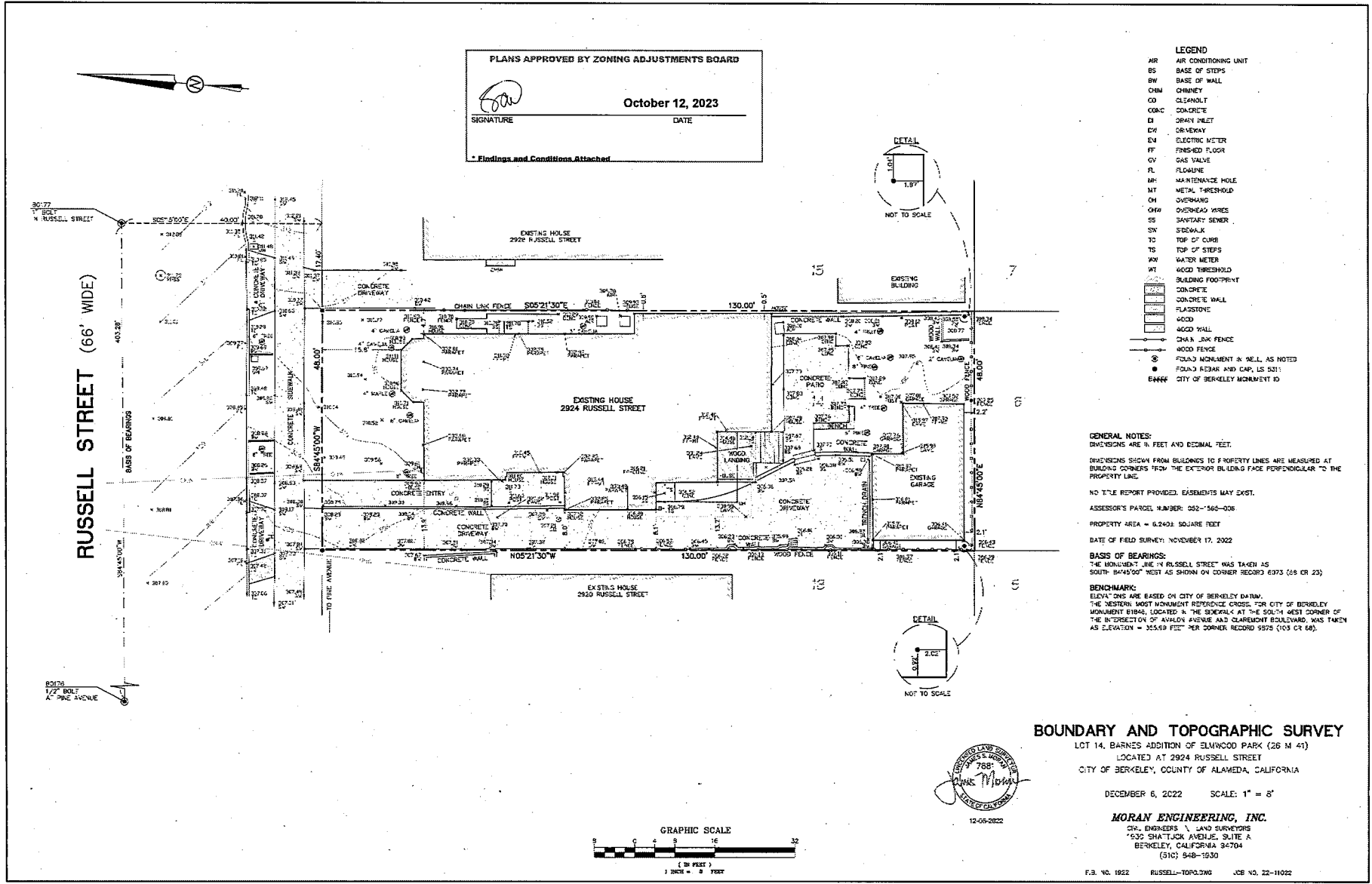
Kazerooni Residence
 2924 Russell St.
 Berkeley, CA

TITLE:
 Details

SCALE: NOT TO SCALE
DATE: MAY 15, 2023

DRAWING NO:
L4.0

NOTE: Per neighbor request, hot tub selection criteria include low noise relative to industry standards. Hot tub to have internal equipment only. Hot tub installation to include a sound-reducing mat that complies with manufacturer specifications.





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

DATE OF BOARD DECISION: October 12, 2023
DATE NOTICE MAILED: October 17, 2023
APPEAL PERIOD EXPIRATION: October 31, 2023
EFFECTIVE DATE OF PERMIT (Barring Appeal or Certification)¹: November 1, 2023

2924 Russell Street

Appeal of Zoning Officer's Decision to approve Administrative Use Permit ZP#2023-0081 to install unenclosed hot tub in rear yard.

The Zoning Adjustments Board of the City of Berkeley, after conducting a public hearing, **APPROVED** the project and **DISMISSED the appeal of** the following permit:

- Administrative Use Permit to install an unenclosed hot tub, under Berkeley Municipal Code (BMC) Section 23.304.070(D)

ZONING: Single-Family Residential District (R-1)

APPLICANT: Pennell Phillips, 6000 Harwood Avenue, Oakland, CA 94618

PROPERTY OWNER: Homayoon Kazerooni, 2924 Russell Street, Berkeley, CA 94705

APPELLANT: Richard Spohn, 2928 Russell Street, Berkeley, CA 94705

ENVIRONMENTAL REVIEW STATUS: Categorically exempt pursuant to CEQA Guidelines Section 15301 ("Existing Facilities").

FINDINGS, CONDITIONS AND APPROVED PLANS ARE ATTACHED TO THIS NOTICE

¹ Pursuant to BMC Section 23.410.050(C), the City Council may certify any ZAB decision for review during the 14-day appeal period after the notice of the ZAB's decision is issued. Certification has the same effect as an appeal. However, BMC Section 1.04.070 suspends or "tolls" the Council's deadline to certify when the Council is on recess. Thus, in cases where the 14-day appeal period is scheduled to *end* during a Council recess, the certification deadline is extended past the end of the recess for the remainder of the appeal period. In cases where the appeal period *begins* during a Council recess, the certification deadline is extended until 14 days after the first Council meeting after the recess. *Extension of the certification deadline has no effect on the appeal deadline.*

	Yes	No	Abstain	Absent	Recused
DUFFY	x				
BLACKABY	x				
YUNG	x				
O'KEEFE				x	
LUNAPARRA	x				
SANDERSON					x
THOMPSON	x				
GAFFNEY	x				
TREGUB				x	
BOARD VOTE: 6		0	0	2	1



ATTEST:
Samantha Updegrave, Zoning Adjustments Board
Secretary

PUBLICATION OF NOTICE:

Pursuant to BMC Section 23.404.050, this notice shall be mailed to the applicant at the mailing address stated in the application and to any person who requests such notification by filing a written request with the Zoning Officer on or before the date of the Board action. This notice shall also be filed with the City Clerk. In addition, the notice shall be forwarded to the Zoning Adjustments Board and to the Main Library. The notice shall also be posted at a bulletin board at the Zoning Counter. The City Clerk shall make the notice available to interested members of the Council and the public.

FURTHER INFORMATION:

Questions about the project should be directed to the project planner, Samella Stover, at (510) 981-7425 or sstover@berkeleyca.gov. All project application materials, including full-size plans, may be viewed online at: <https://aca.cityofberkeley.info/CitizenAccess/Welcome.aspx>, or in the Permit Service Center at the Zoning Counter at 1947 Center Street, Third Floor, during normal office hours.

TO APPEAL THIS DECISION (see Section 23.410 of the Berkeley Municipal Code):

To appeal a decision of the Zoning Adjustments Board to the City Council you must:

1. Submit a letter clearly and concisely setting forth the grounds for the appeal to the City Clerk, located at 2180 Milvia Street, 1st Floor, Berkeley. The City Clerk's telephone number is (510) 981-6900.
2. Submit the required appeal fee (checks and money orders payable to "City of Berkeley"):
 - A. The fee for persons other than the applicant is \$1500. This fee may be reduced to \$500 if the appeal is signed by persons who lease or own at least 50 percent of the parcels or dwelling units within 300 feet of the project site, or at least 25 such persons (not including dependent children), whichever is less.
 - B. The fee for all appeals by Applicants is \$5,520.
3. The appeal must be received prior to 5:00 p.m. on the "APPEAL PERIOD EXPIRATION" date shown on page 1 (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).

If no appeal is received, the permit will be issued on the first business day following expiration of the appeal period, and the project may proceed at that time.

NOTICE CONCERNING YOUR LEGAL RIGHTS:

If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Zoning Adjustments Board at, or prior to, the public hearing.
2. You must appeal to the City Council within fourteen (14) days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must include the following information:
 - A. That this belief is a basis of your appeal.
 - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
 - C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.

ATTACHMENT 1

FINDINGS AND CONDITIONS

OCTOBER 12, 2023

2924 Russell Street

Administrative Use Permit #ZP2023-0081

To install an unenclosed hot tub in the rear yard.

PERMITS REQUIRED

- Administrative Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.304.070(D) to install an unenclosed hot tub.

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 CEQA Guidelines Section 15301 (Existing Facilities).
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.

FINDINGS FOR APPROVAL

3. As required by BMC Section 23.406.030(F), 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 hot tub will be located approximately 11 feet from the back of the dwelling, and setback approximately 23 feet from the rear lot line (south), 36 feet from the west side lot line, and 5 feet, 7 inches from the eastern side lot line. The proposed location is screened by a retaining wall, fencing and vegetation. ~~The common living areas of the adjacent residents of 2928 Russell Street are located 10 feet, 10 inches and 2928 Russell Street is approximately 50 feet away from the proposed location.~~ The hot tub is 7.5 feet x 7.5 feet and the applicant has proposed additional vegetation around the location of the hot tub to increase privacy to neighboring dwelling and is installing a pad between the tub and concrete pad to further reduce noise. In addition, because the hot

tub is at grade there will be no reduction to privacy, light, views, or air for abutting residence and is therefore not detrimental.

4. Pursuant to BMC Section 23.304.070(D)(2), the Zoning Officer finds that:

- A. Any pump associated with an unenclosed outdoor hot tub, jacuzzi, or spa shall be mounted and enclosed so that its sound is not audible on an adjacent lot. The hot tub will be subject to the conditions of this permit, which will ensure that neighbors are not adversely affected by noise impacts that may result from the use of the hot tub. In particular, the operation of the hot tub equipment is subject to the controls imposed under BMC Chapter 13.40 as it relates to maximum noise levels and Conditions of Approval #29-32.
-

STANDARD CONDITIONS

The following conditions, as well as all other applicable provisions of the Berkeley Municipal Code, 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. Compliance Required (BMC Section 23.102.050)

All land uses and structures in Berkeley must comply with the Zoning Ordinance and all applicable City ordinances and regulations. Compliance with the Zoning Ordinance does not relieve an applicant from requirements to comply with other federal, state, and City regulations that also apply to the property.

3. Approval Limited to Proposed Project and Replacement of Existing Uses (BMC Sections 23.404.060.B.1 and 2)

- A. This Permit authorizes only the proposed project described in the application. In no way does an approval authorize other uses, structures or activities not included in the project description.
- B. When the City approves a new use that replaces an existing use, any prior approval of the existing use becomes null and void when permits for the new use are exercised (e.g., building permit or business license issued). To reestablish the previously existing use, an applicant must obtain all permits required by the Zoning Ordinance for the use.

4. Conformance to Approved Plans (BMC Section 23.404.060.B.4)

All work performed under an approved permit shall be in compliance with the approved plans and any conditions of approval.

5. Exercise and Expiration of Permits (BMC Section 23.404.060.C)

- A. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.
- B. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.
- C. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except if the applicant has applied for a building permit and begun construction. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant. A determination that a permit has lapsed may be appealed to the ZAB in accordance with Chapter 23.410 (Appeals and Certification).
- D. A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant must apply for and receive City approval of a new permit.

6. Permit Remains Effective for Vacant Property (BMC Section 23.404.060.D)

Once a Permit for a use is exercised and the use is established, the permit authorizing the use remains effective even if the property becomes vacant. The same use as allowed by the original permit may be re-established without obtaining a new permit, except as set forth in Standard Condition #5 above.

7. Permit Modifications (BMC Section 23.404.070)

No change in the use or structure for which this Permit is issued is permitted unless approved by the review authority which originally approved the permit. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.

8. Permit Revocation (BMC Section 23.404.080)

The City may revoke or modify a discretionary permit for completed projects due to: 1) violations of permit requirements; 2) Changes to the approved project; and/or 3) Vacancy for one year or more. However, no lawful residential use can lapse, regardless of the length of time of the vacancy. Proceedings to revoke or modify a permit may be initiated by the Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.

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 THE ZONING OFFICER

Pursuant to BMC Section 23.404.050(H), the Zoning Officer 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 #

Standard Construction-related Conditions Applicable to all Projects:

11. 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.

12. 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.

13. 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.

14. 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.
15. 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.
16. 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.
17. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.
18. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.
19. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.
20. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
21. 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.
22. 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.
23. 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.

24. 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.

25. 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:

26. All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
27. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated June 2, 2023.

At All Times (Operation):

28. 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.

Hot Tub Conditions

29. The hot tub shall be installed on a sound-proofing mat.
30. Vegetation shown on the site plans shall be maintained at all times.
31. The pump shall be mounted, enclosed and maintained to prevent noise from disturbing the occupants of neighboring properties.
32. The hot tub shall be equipped with safety features in accordance with the California Building Code.
33. This permit shall be subject to review and modification as necessary to alleviate excessive noise or disturbance to the neighborhood.
34. Mechanical operation and use must adhere to the exterior noise standards of BMC Section 13.40.050.

Samella Stover


Prepared by: Samella Stover, Planning Technician
For Samantha Updegrave, Zoning Officer

2924 Russell Street — Administrative Use Permit

General Notes

- The contractor shall inspect the site and be familiar with all existing site conditions prior to submitting bid. Contractor shall not willfully proceed with construction as shown when it is obvious that obstructions, landscape area and/or grade differences exist that may not have been known during design. Such conditions shall immediately be brought to the attention of the landscape architect. The contractor shall assume sole responsibility for all necessary revisions due to failure to give such notification. Contractor shall be responsible for making herself/himself familiar with all underground utilities, pipes, structures and obstructions. Contractor shall assume sole responsibility for all costs incurred due to damage and/or replacement of these items. Contractor shall be responsible for coordination among trades and subcontractors as required to accomplish the work. The contractor shall be responsible for any damage to existing features caused by contractor's work. All repairs shall be made at no additional cost to the owner. Planting shall be installed in conformance with all applicable local codes and ordinances by experienced workmen and a licensed landscape contractor who shall obtain all necessary permits and pay all required fees. The garden is a pesticide and herbicide free zone. Contractor shall use organic material to fertilize and to maintain all plant material. No chemical fertilizer will be allowed. Contractor shall verify all grades, existing conditions and dimensions in the field prior to commencing work. All discrepancies or questions shall be brought to the attention of the landscape architect for resolution. Redirect work to avoid delay. All curves and all transitions between curves and straight edges shall be smooth. Take all dimensions perpendicular to any reference line, work line, face of building, face of wall or centerline.
- Demolition**
Contractor shall remove and carry all demolition materials off site. Protect (E) trees as indicated during construction. Contractor shall perform selective trimming of existing trees within the area of work per the direction of the owner.
- Drainage/Grading (Permit #B2023-01579)**
Contractor shall verify if existing drains are in good condition. All drainage systems shall be per City of Berkeley codes. Grade per indicated swales. Sleeving to be Schedule 40 PVC. Cover PVC pipe so that it not visible. All grading to be smooth to achieve a natural aspect. No finish grades shall exceed 2.5:1 slopes.
- Stone paving & stone work**
See Permit #B2023-01579
- Concrete work (Permit #B2023-01579)**
Proposed 18" concrete retaining wall shall be less than three feet in total height including footing. See S2.0, Detail 12 for typical retaining wall and drainage. See L3.0 of Permit set #B2023-01579 for location of subsurface drainage line to (E) sump pump.
- Electrical**
For rear deck perimeter GFCI, please refer to Permit #B2023-01579. Dedicated hot tub GFCI to be processed under separate application, pending AUP approval.
- Wood work (Permit #B2023-01579)**
All new wood decking. Structural engineer to determine partial salvage of structural components of existing wood landing. SSD for final wood sizing, anchors and concrete footing.
- Clean up**
At the end of each work day, at the inspection for substantial completion and before acceptance of project, clean paved areas that are dirtied or stained by construction operations, by sweeping or washing, and remove defacements and stains. Remove construction equipment, excess materials and tools. Haul from owners property the debris resulting from construction, and dispose of legally. Remove remaining temporary protection at time of acceptance by owner unless otherwise agreed.

PLANS APPROVED BY ZONING ADJUSTMENTS BOARD



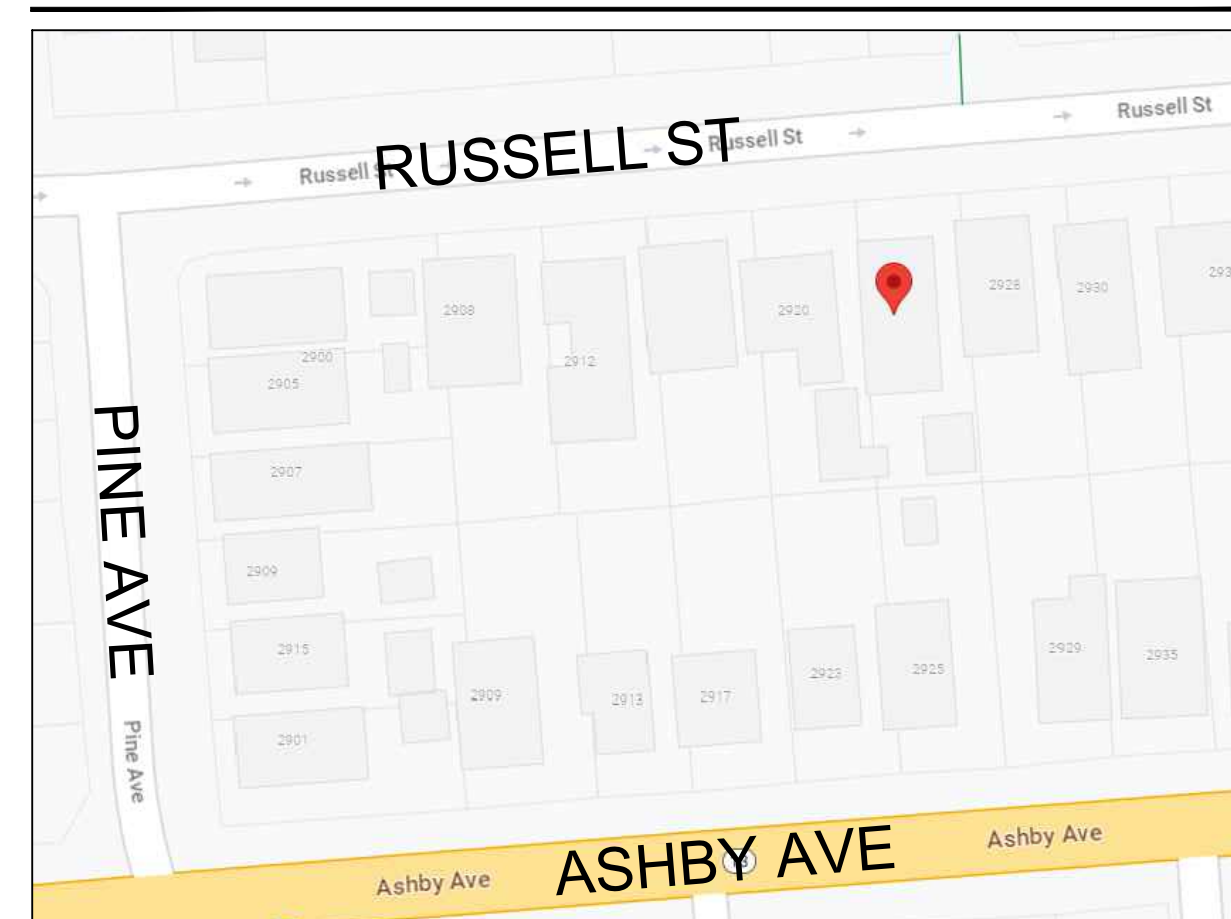
October 12, 2023

SIGNATURE

DATE

* Findings and Conditions Attached

Location



Legend

- (PA) Planting Area
- (TS) Top of stair
- (BS) Bottom of stair
- (TW) Top of wall
- (BW) Bottom of wall
- R Radius
- ⊕ POB Layout Starting Point
- SIM Similar
- (TYP.) Typical
- SAD See Architectural Drawings
- EQ Equal
- O.C. On Center
- (E) Existing
- > Align
- ↶ 90 Degrees angle
- (824.76) Existing spot elevation
- + 824.76 Proposed spot elevation
- ▭ Existing contour line
- ▭ Proposed contour line
- ▭ Property line
- ▭ Existing retaining wall to be demolished

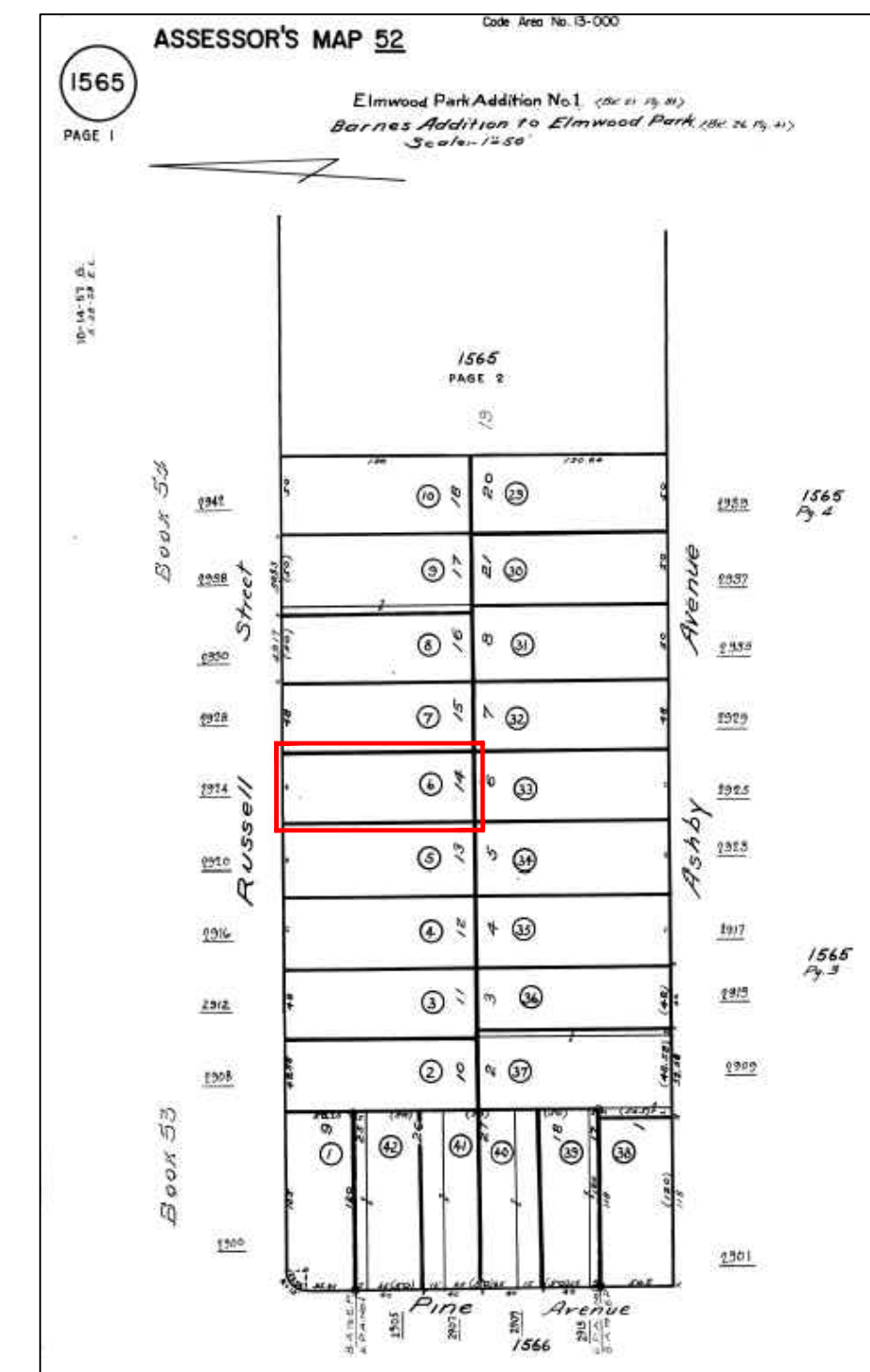
-  Flagstone paving
Random Full Range Connecticut Bluestone
Available at Bay Area Bluestone
(415) 453-2262
-  Cable railing

Sheet Index

- L0.0 Cover Sheet
- L1.0 Existing Site Plan
- L2.0 Proposed Site Plan
- L3.0 Elevations
- L3.1 Elevations
- L4.0 Details
- SV Survey

Assessor's Map

APN: 52-1565-6



Scope of Work

Installation of new hot tub.

Per neighbor request, hot tub selection criteria include low noise relative to industry standards. Hot tub installation to include a sound-reducing mat that complies with manufacturer specifications. Planting of dense screening vegetation along eastern and western fences to further buffer hot tub sound and provide privacy for residents and neighbors.

NOTE: For rear deck and associated perimeter GFCI, please refer to Permit #B2023-01579.

NOTE: Dedicated hot tub GFCI and revisions to Permit #B2023-01579 to accommodate hot tub to be processed under separate application, pending AUP approval.

Project Team

Client Hami Kazerooni 2924 Russell St. Berkeley, CA 94705	Landscape Architect InsideOut Design, Inc. 6000 Harwood Ave Oakland CA 94618 (510) 655-7674 Penn Phillips	Contractor TBD	Structural Engineer Daniel A. Bastião P.O. Box 1891 Union City, CA 94587 510-676-8457
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ISSUES:

- 04.04.2023 AUP COMMUNITY OUTREACH
- 05.12.2023 AUP APPLICATION REVISION IN RESPONSE TO NEIGHBOR COMMENT

Kazerooni Residence


2924 Russell St.
Berkeley, CA

TITLE:
Cover Sheet,
Notes & Legend

SCALE: N/A
DATE: MAY 15, 2023

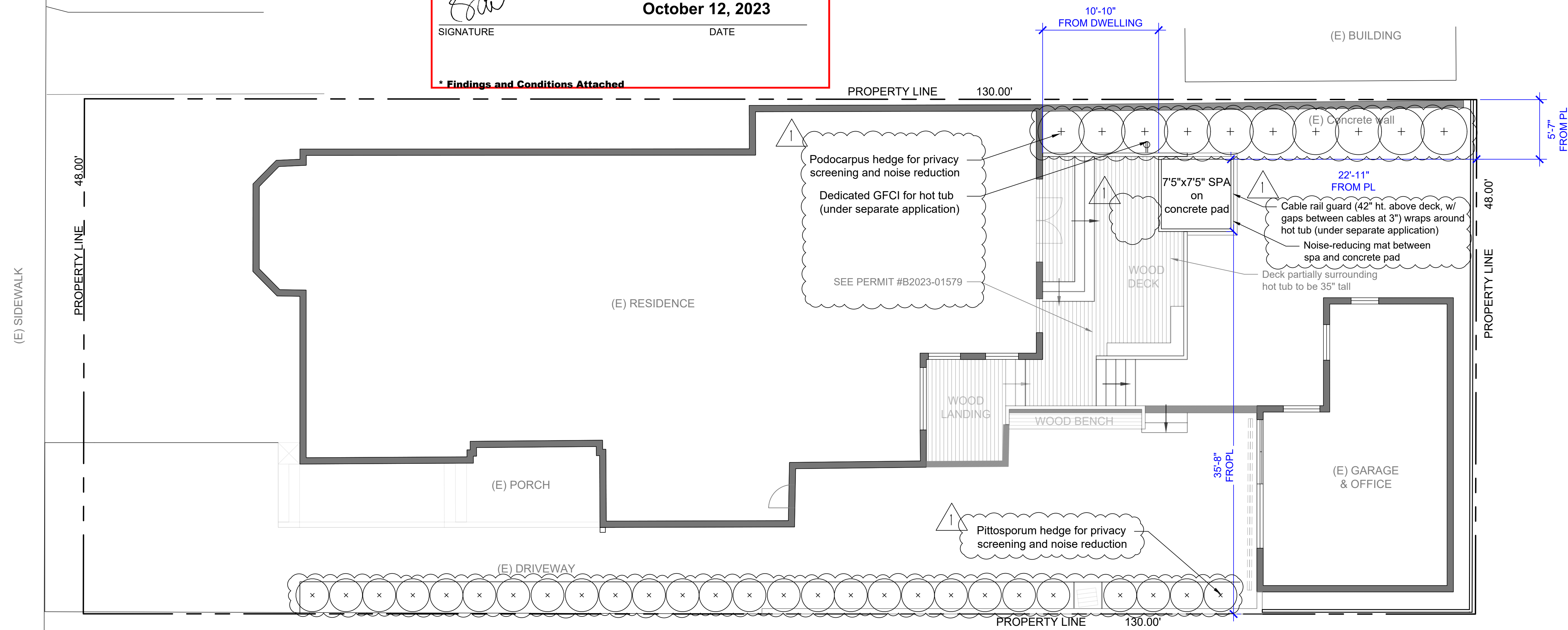
DRAWING NO:
L0.0

PLANS APPROVED BY ZONING ADJUSTMENTS BOARD


 SIGNATURE

October 12, 2023
 DATE

* Findings and Conditions Attached



INSIDEOUT
architecture | interiors | landscape
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OAKLAND, CA 94618
510 655 7674
aboutinsideout.com



ISSUES:

04.04.2023 AUP COMMUNITY OUTREACH

05.12.2023 AUP APPLICATION REVISION IN RESPONSE TO NEIGHBOR COMMENT

Kazerooni Residence
2924 Russell St.
Berkeley, CA

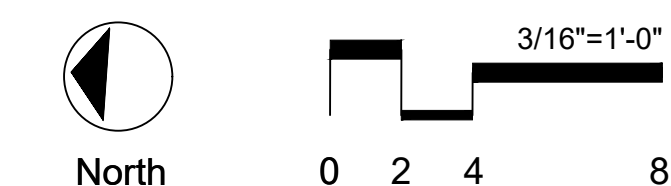
TITLE:
Proposed Site Plan

Community Outreach

I have reviewed the plans for a 7.5' x 7.5' hot tub at 2924 Russell Street.

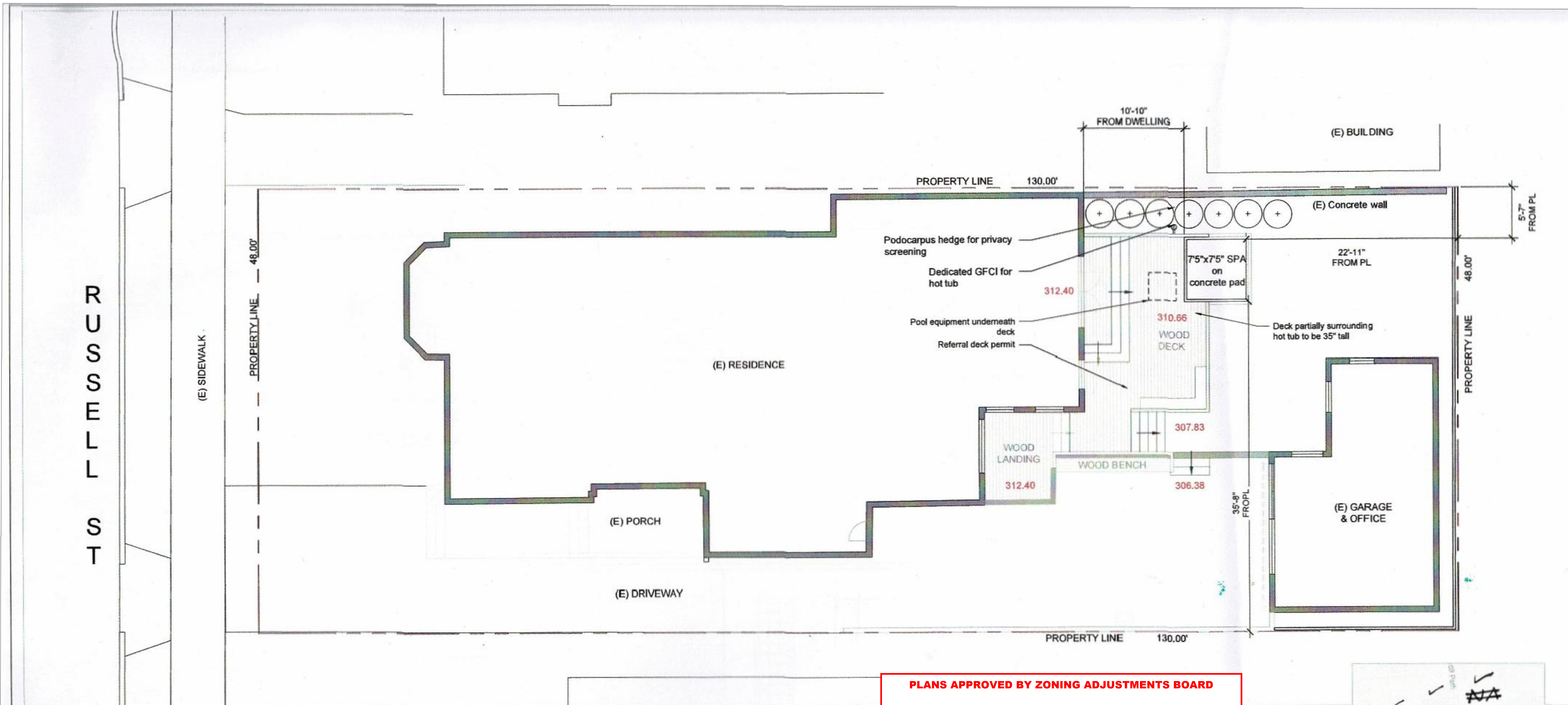
NOTE: Please see scanned L2.0 (dated 03.29.23) with neighbor signatures from 04.03.23 and 04.04.23. This set has been revised to add additional noise mitigation measures in response to neighbor concerns. No separate equipment under deck will be required; hot tub to include enclosed equipment and be quieter than industry standards.

Name (printed)	Signature	Address	Renter or Owner	Date	Have no objections	Have objections (please state briefly)	Have no comment
		2920 Russell St.					
		2920 Russell St.					
		2928 Russell St.					
		2928 Russell St.					
		2929 Russell St.					
		2929 Russell St.					
		2933 Russell St.					
		2933 Russell St.					
		2937 Russell St.					
		2937 Russell St.					
		2923 Ashby Ave.					
		2923 Ashby Ave.					
		2925 Ashby Ave.					
		2925 Ashby Ave.					
		2929 Ashby Ave.					
		2929 Ashby Ave.					



SCALE: 3/16"=1'-0"
DATE: MAY 15, 2023

DRAWING NO:
L2.0



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ISSUES:
00.00.0000 XX

Kazerooni Residence
2924 Russell St.
Berkeley, CA

TITLE:
Proposed site plan

PLANS APPROVED BY ZONING ADJUSTMENTS BOARD

[Signature]
SIGNATURE

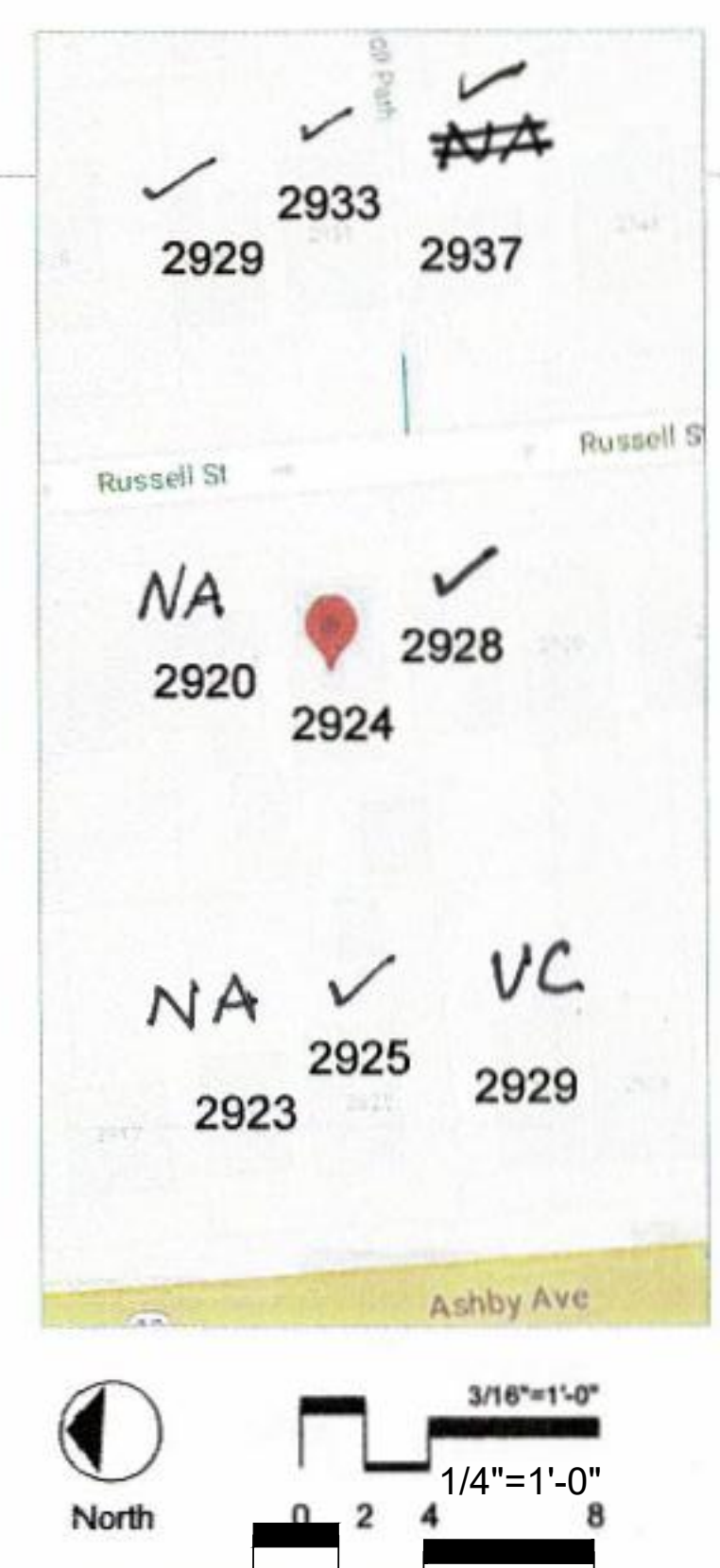
October 12, 2023
DATE

* Findings and Conditions Attached

Community Outreach

I have reviewed the plans for a 7.5' x 7.5' hot tub at 2924 Russell Street.

Name (printed)	Signature	Address	Renter or Owner	Date	Have no objections	Have go comment
Beverly Doane	<i>[Signature]</i>	2920 Russell St.	Owner	4/3/23		✓
RICHARD SPORN	<i>[Signature]</i>	2928 Russell St.	OWNER	4/4/23	Concerns about operational noise of tub + usage	
Ronald Lee	<i>[Signature]</i>	2933 Russell St.	Owner	4/3/23	X	X
T. R. PIRSH	<i>[Signature]</i>	2937 Russell St.	OWNER	4/4/23	X	
		2923 Ashby Ave.				
		2923 Ashby Ave.				
Fahia Bahar	<i>[Signature]</i>	2925 Ashby Ave.	Owner	4-3-23	✓	
		2925 Ashby Ave.				
		2929 Ashby Ave.				
		2929 Ashby Ave.				



SCALE: 3/16"=1'-0"
DATE: MARCH 29, 2023
1/4"=1'-0"
DRAWING NO:
L2.0

VC = under construction? - 4 plans mailed
NA = no answer - plans mailed

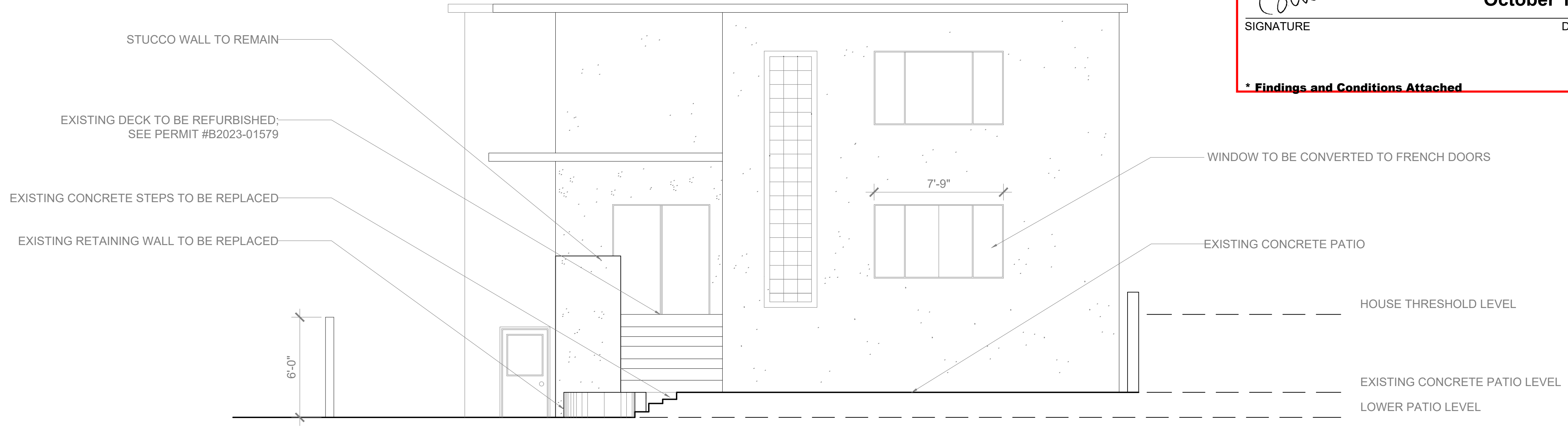
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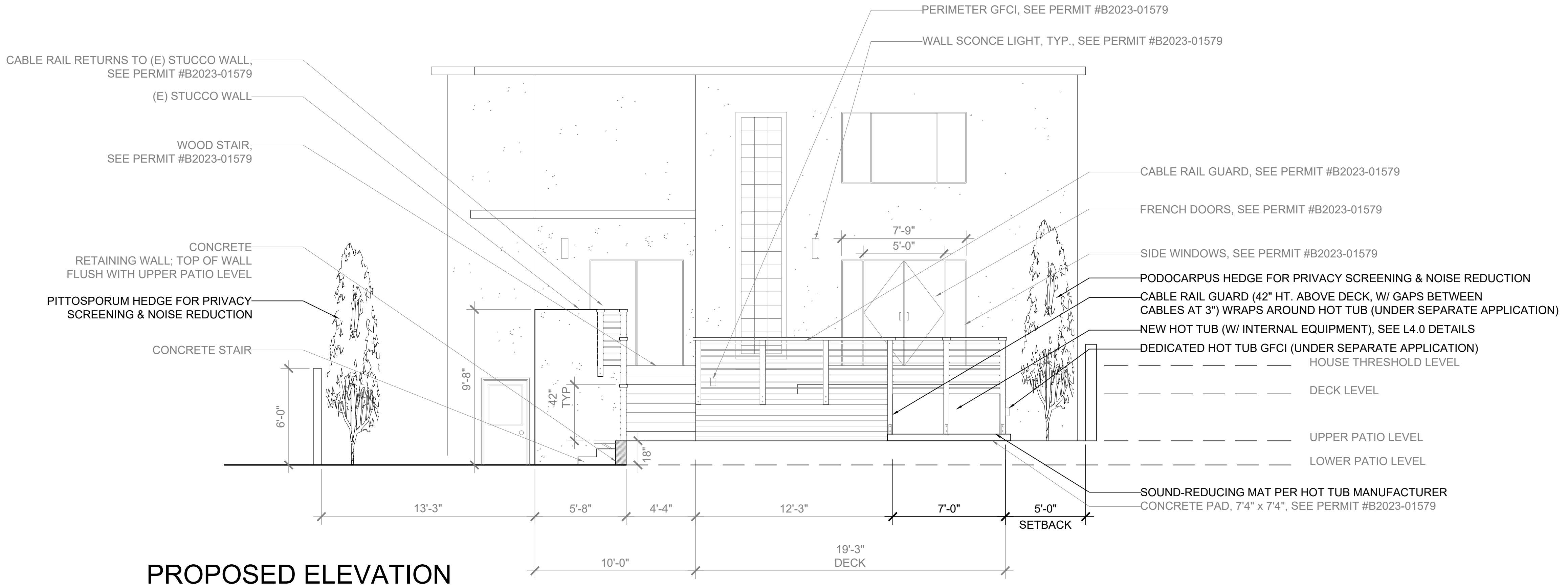
PLANS APPROVED BY ZONING ADJUSTMENTS BOARD

Signature **October 12, 2023**
SIGNATURE DATE

*** Findings and Conditions Attached**



EXISTING ELEVATION



PROPOSED ELEVATION

NOTE: THE GREATEST RISER HEIGHT AND TREAD DEPTH WITHIN ANY FLIGHT OF STAIRS SHALL NOT EXCEED THE SMALLEST BY MORE THAN 3/8 INCH.

NOTE: Revisions to L3.0 since Community Outreach (04.03.23 - 04.04.23) reflect changes required for issuance of Permit #B2023-01579 and the addition of further sound reduction measures (in consideration of neighbor feedback) only.

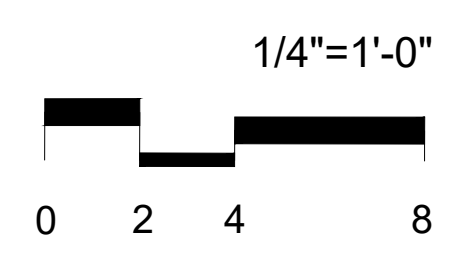
- ISSUES:
- 04.04.2023 AUP COMMUNITY OUTREACH
 - 05.12.2023 AUP APPLICATION REVISION IN RESPONSE TO NEIGHBOR COMMENT

Kazerooni Residence
2924 Russell St.
Berkeley, CA


TITLE:
Elevations

SCALE: 1/4"=1'-0"
DATE: MAY 15, 2023

DRAWING NO:
L3.0

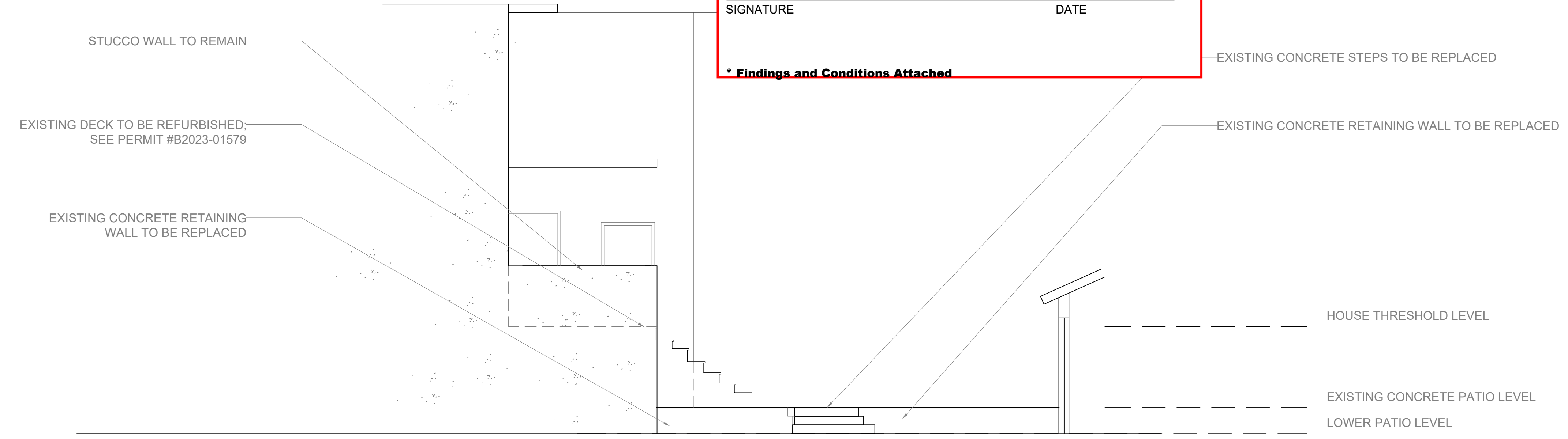


PLANS APPROVED BY ZONING ADJUSTMENTS BOARD

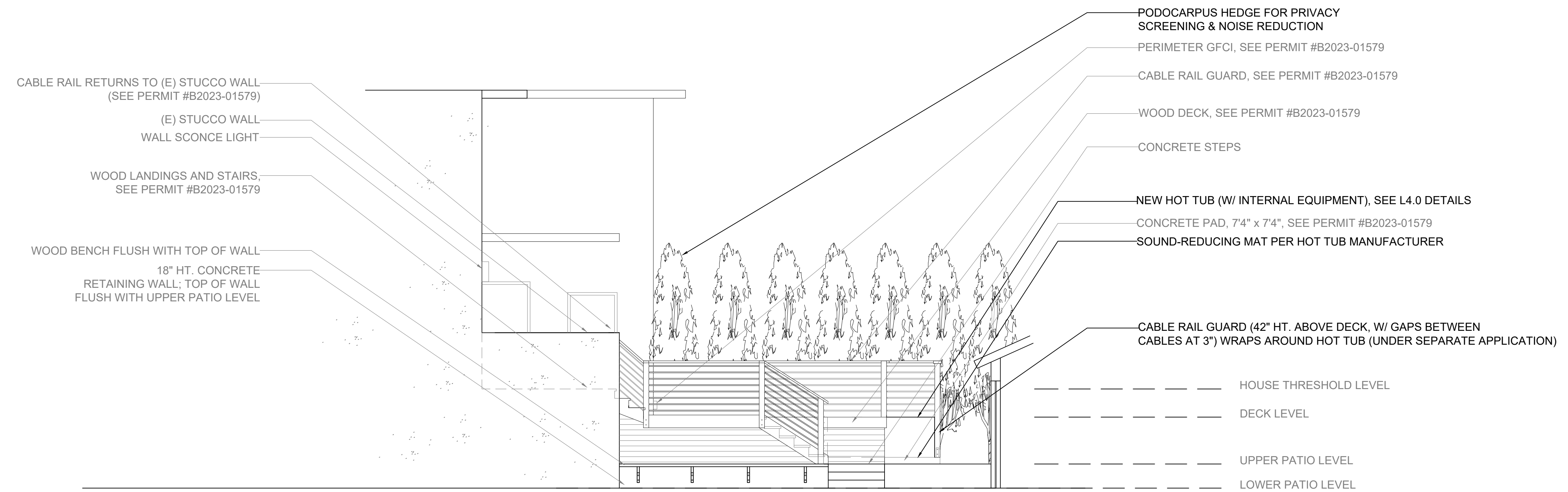

SIGNATURE

October 12, 2023
DATE

*** Findings and Conditions Attached**



EXISTING ELEVATION



PROPOSED ELEVATION

NOTE: THE GREATEST RISER HEIGHT AND TREAD DEPTH WITHIN ANY FLIGHT OF STAIRS SHALL NOT EXCEED THE SMALLEST BY MORE THAN 3/8 INCH.

NOTE: The addition of L3.1 since Community Outreach (04.03.23 - 04.04.23) reflects changes required for issuance of Permit #B2023-01579 and the addition of further sound reduction measures (in consideration of neighbor feedback) only.

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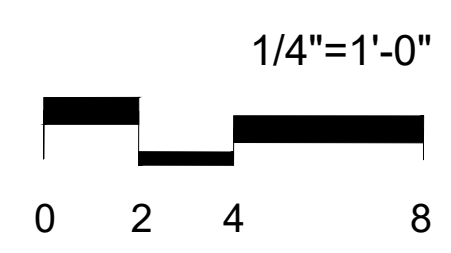
ISSUES:

04.04.2023	AUP COMMUNITY OUTREACH
05.12.2023	AUP APPLICATION REVISION IN RESPONSE TO NEIGHBOR COMMENT

Kazerooni Residence
2924 Russell St.
Berkeley, CA

TITLE:
Elevations

SCALE: 1/4"=1'-0"
DATE: MAY 15, 2023



DRAWING NO:
L3.1



SUNDANCE CAMEO - 880 SERIES



Specs

Volume: 370 gal / 1400.60 liters

Dry Weight: 962 lbs / 436.35

Jets: 54

Primary Pump: North America (60 Hz): 1-Speed/2.5 HP Continuous, 11.3A Max., 56 Frame

Secondary Pump: North America (60 Hz): 1-Speed/2.5 HP Continuous, 11.3A Max., 56 Frame

Circulation Pump (Y/N): Yes

Diverter Valves #: 2

Filtration System: ClearRay

Filters: 1

Seat Jets: Lounge

Water Management System: ClearRay Active Oxygen™

View Less ☹


Dimensions

Height (in): 37.5

Length (in): 89.0

Width (in): 89.0

Volume (gals): 370.0

PLANS APPROVED BY ZONING ADJUSTMENTS BOARD

SIGNATURE _____ DATE **October 12, 2023**

*** Findings and Conditions Attached**

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ISSUES:
04.04.2023 AUP COMMUNITY OUTREACH
05.12.2023 AUP APPLICATION REVISION IN RESPONSE TO NEIGHBOR COMMENT

Kazerooni Residence
2924 Russell St.
Berkeley, CA

TITLE:
Details

SCALE: **NOT TO SCALE**
DATE: MAY 15, 2023

DRAWING NO:
L4.0

NOTE: Per neighbor request, hot tub selection criteria include low noise relative to industry standards. Hot tub to have internal equipment only. Hot tub installation to include a sound-reducing mat that complies with manufacturer specifications.

PLANS APPROVED BY ZONING ADJUSTMENTS BOARD

[Signature]
October 12, 2023

SIGNATURE _____ DATE _____

* Findings and Conditions Attached

LEGEND

AIR	AIR CONDITIONING UNIT
BS	BASE OF STEPS
BW	BASE OF WALL
CHIM	CHIMNEY
CO	CLEANOUT
CONC	CONCRETE
DI	DRAIN INLET
DW	DRIVEWAY
EM	ELECTRIC METER
FF	FINISHED FLOOR
GV	GAS VALVE
FL	FLOWLINE
MH	MAINTENANCE HOLE
MT	METAL THRESHOLD
OH	OVERHANG
OHW	OVERHEAD WIRES
SS	SANITARY SEWER
SW	SIDEWALK
TC	TOP OF CURB
TS	TOP OF STEPS
WW	WATER METER
WT	WOOD THRESHOLD
[Symbol]	BUILDING FOOTPRINT
[Symbol]	CONCRETE
[Symbol]	CONCRETE WALL
[Symbol]	FLAGSTONE
[Symbol]	WOOD
[Symbol]	WOOD WALL
[Symbol]	CHAIN LINK FENCE
[Symbol]	WOOD FENCE
[Symbol]	FOUND MONUMENT IN WELL, AS NOTED
[Symbol]	FOUND REBAR AND CAP, LS 5311
[Symbol]	CITY OF BERKELEY MONUMENT ID

GENERAL NOTES:
DIMENSIONS ARE IN FEET AND DECIMAL FEET.

DIMENSIONS SHOWN FROM BUILDINGS TO PROPERTY LINES ARE MEASURED AT BUILDING CORNERS FROM THE EXTERIOR BUILDING FACE PERPENDICULAR TO THE PROPERTY LINE.

NO TITLE REPORT PROVIDED, EASEMENTS MAY EXIST.

ASSESSOR'S PARCEL NUMBER: 052-1565-006

PROPERTY AREA = 6,240± SQUARE FEET

DATE OF FIELD SURVEY: NOVEMBER 17, 2022

BASIS OF BEARINGS:
THE MONUMENT LINE IN RUSSELL STREET WAS TAKEN AS SOUTH 84°45'00" WEST AS SHOWN ON CORNER RECORD 6073 (58 CR 23).

BENCHMARK:
ELEVATIONS ARE BASED ON CITY OF BERKELEY DATUM.
THE WESTERN MOST MONUMENT REFERENCE CROSS, FOR CITY OF BERKELEY MONUMENT B1846, LOCATED IN THE SIDEWALK AT THE SOUTH WEST CORNER OF THE INTERSECTION OF AVALON AVENUE AND CLAREMONT BOULEVARD, WAS TAKEN AS ELEVATION = 355.99 FEET PER CORNER RECORD 9875 (103 CR 68).

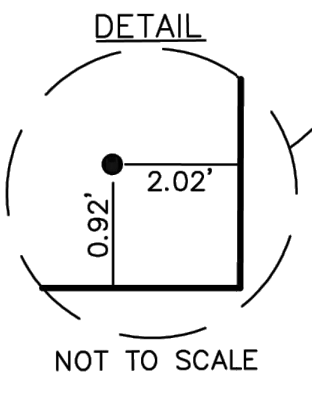
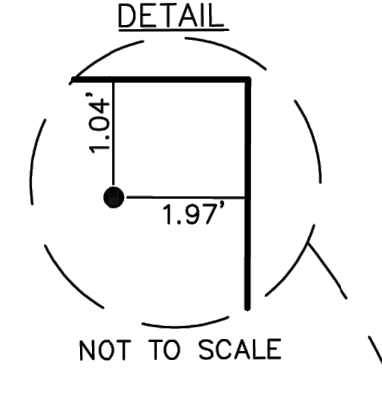
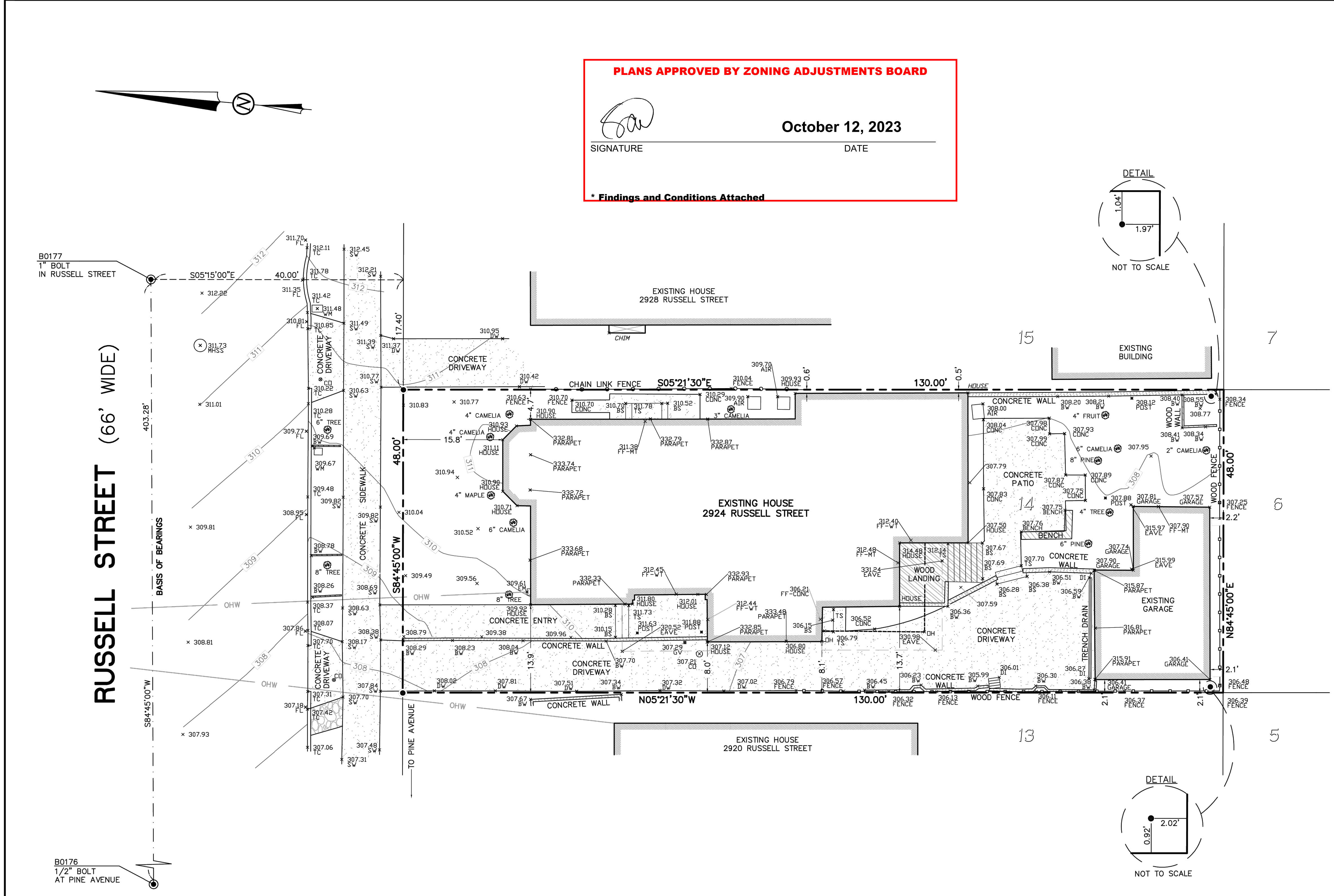
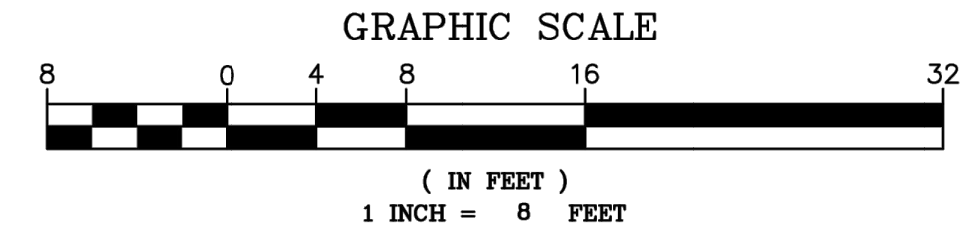
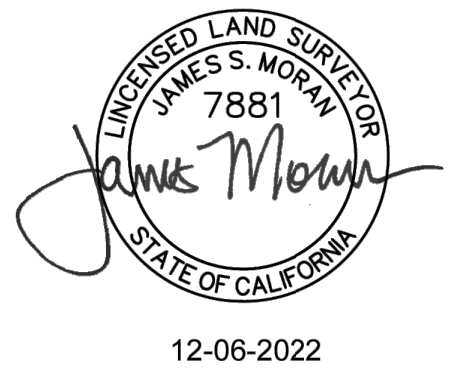
BOUNDARY AND TOPOGRAPHIC SURVEY

LOT 14, BARNES ADDITION OF ELMWOOD PARK (26 M 41)
LOCATED AT 2924 RUSSELL STREET
CITY OF BERKELEY, COUNTY OF ALAMEDA, CALIFORNIA

DECEMBER 6, 2022 SCALE: 1" = 8'

MORAN ENGINEERING, INC.
CIVIL ENGINEERS \ LAND SURVEYORS
1930 SHATTUCK AVENUE, SUITE A
BERKELEY, CALIFORNIA 94704
(510) 848-1930

F.B. NO. 1922 RUSSELL-TOP0.DWG JOB NO. 22-11022



RUSSELL STREET (66' WIDE)

BASIS OF BEARINGS

B0177
1" BOLT
IN RUSSELL STREET

B0176
1/2" BOLT
AT PINE AVENUE



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
OCTOBER 12, 2023

2924 Russell Street

Appeal of Zoning Officer's Decision to approve Administrative Use Permit ZP#2023-0081 to install unenclosed hot tub in rear yard.

I. Background

A. Land Use Designations:

- General Plan: Low Density Residential
- Zoning: Single-Family Residential District (R-1)

B. Zoning Permits Required:

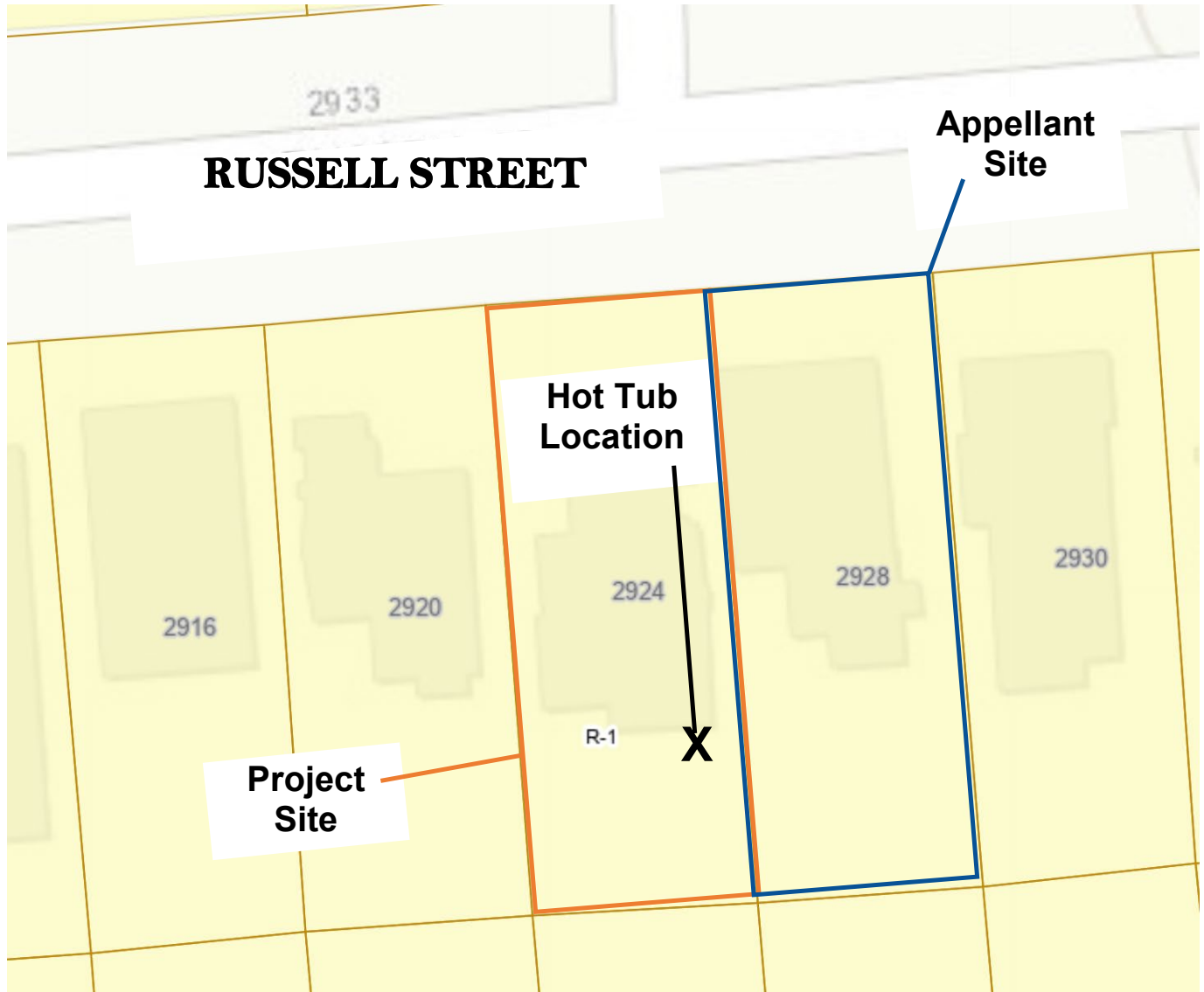
Administrative Use Permit to install an unenclosed hot tub, under Berkeley Municipal Code (BMC) Section 23.304.070(D)

C. CEQA Recommendation: It is staff's recommendation that the project is categorically exempt pursuant to Section 15301 of the CEQA Guidelines ("Existing Facilities").

D. Parties Involved:

- Applicant Pennell Phillips, Oakland
- Property Owner Homayoon Kazerooni,
2924 Russell Street, Berkeley
- Appellants Richard Spohn,
2928 Russell Street, Berkeley

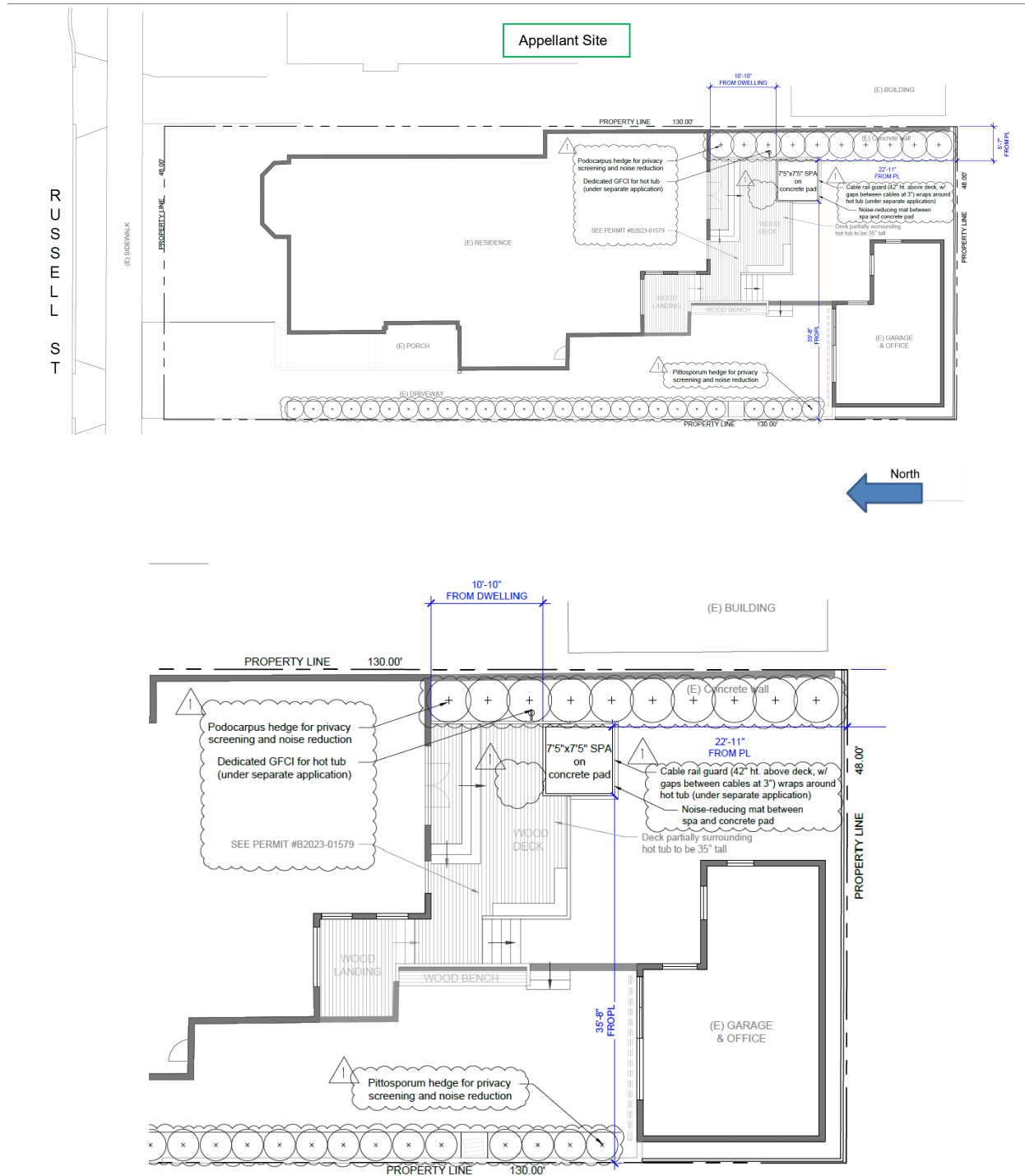
**Figure 1: Vicinity Map –
2924 Russell Street (Project Site) & 2924 Russell Street (Appellant Site)**



ZONING ADJUSTMENTS BOARD
OCTOBER 12, 2023

2924 RUSSELL STREET
Page 3 of 9

Figure 2: Site Plan – Hot Tub Installation



ZONING ADJUSTMENTS BOARD
OCTOBER 12, 2023

2924 RUSSELL STREET
Page 4 of 9

Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Single-family Dwelling	R-1	LDR (Low Density Residential)
Surrounding Properties	North	Two, detached single-family dwellings		
	South	Single-family dwelling		
	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	This fee applies to projects with net new 7,500 square feet of non-residential floor area. The project is an accessory structure for a residential use, and thus this requirement does not apply
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)		
Affordable / Inclusionary Housing Requirements (BMC 23.328)	No	The project is not a housing development project, as defined in BMC 23.328.020 ¹ because it does not include the construction of any residential units, and the inclusionary housing provisions do not apply.
Alcohol Sales/Service	No	This project is a residential project.
Creeks	No	This project is not located within the creek buffer.
Density Bonus	No	This project is not a density bonus project.
Natural Gas Prohibition (Per BMC 12.80.020)	No	This project is would not construct a new building, and is not subject to the natural gas prohibition.
Historic Resources	No	The project site is not designated as a Landmark by the City, nor is the application proposing to demolish the existing structure.
Housing Accountability Act (HAA) (Gov't Code Section 65589.5(j))	No	A "housing development project" is defined as a project that is: residential units only, a mixed-use project with at least two-thirds of the square-footage, or for transitional or supportive housing. The project is a hot tub accessory to a residential use and does not create new dwelling units, therefore HAA and the Housing Crisis Act are not applicable.
Housing Crisis Act of 2019 (SB330)		
Oak Trees	No	There are no coast live oak trees on or abutting the project site.
Rent Controlled Units	No	There are no rent controlled units on the subject site.

ZONING ADJUSTMENTS BOARD
OCTOBER 12, 2023

2924 RUSSELL STREET
Page 5 of 9

Residential Preferred Parking (RPP)	No	The neighborhood surrounding the subject site is not located in an RPP zone.
Seismic Hazards (SHMA)	No	This property is not located within an area susceptible to earthquakes and landslides as shown on the State Seismic Hazard Zones Map, however the project is exempt because the structure is not habitable.
Soil/Groundwater Contamination	No	The project site is not located within the City's Environmental Management Area and is not on the Cortese List. Standard Conditions of Approval related to hazardous materials would apply.
Transit	Yes	The property is located within 5 minutes of the AC Transit #79 and 604 Bus Routes.

Table 3: Project Chronology

Date	Action
June 2, 2023	Application submitted
July 3, 2023	Application deemed complete
July 20, 2023	Notice of Administrative Decision issued
August 9, 2023	Appeal letter received
September 28, 2023	Public hearing notices mailed/posted
October 12, 2023	ZAB appeal hearing

II. Project Setting

- A. Neighborhood/Area Description:** The subject site is located in South Berkeley, outside of the Elmwood District between Ashby Avenue and Avalon Avenue. The surrounding area is composed of one- to three-story single-family dwellings and has many mature street trees and vegetation. The property is within a five-minute walk from several commercial properties including the Claremont Club & Spa and John Muir Elementary School. |
- B. Site Conditions:** The project site is a rectangular, interior lot, located on the south side of Russell Street. The street slopes gently uphill heading east towards Claremont Ave from the street. It is developed with a two-story single-family dwelling and a two-car detached garage in the rear southeast corner. The site also has some mature trees and vegetation.

III. Project Description

The project approved by the Zoning Officer would allow a 7.5-foot-by-7.5-foot hot tub to be installed at the rear deck of the dwelling unit. The placement of the hot tub would sit on top of a concrete pad, have enclosed equipment and installation of a sound-reducing mat to ensure compliance with the noise ordinance and additional screening hedges to provide sound mitigation and privacy. There is a 6-foot 5-inch concrete wall along the east side lot line that runs from the back of the existing dwelling to the rear lot line.

IV. Community Discussion

- A. Neighbor/Community Concerns:** Prior to submitting the application to the City, the applicant conducted the required neighborhood outreach by obtaining signatures from owners of five of the abutting or confronting and sending notice via certified mail to the three others between April 3—5, 2023. They also installed the yellow application poster in April 2023.
- B. Zoning Officer's Decision to Approve:** The Zoning Officer determined that the proposed project would not result in detrimental air, views, light, or privacy impacts, would be subject to City's noise ordinance and conditions of approval, and would be consistent with the underlying development standards in the R-1 zoning district (BMC Section 23.202.050).
- C. Appeal:** The appeal of the Administrative Use Permit approval was filed on August 9, 2023 by Richard Spohn, the owner of 2928 Russell Street, the parcel to the east.
- D. Public Notice:** On September 28, 2023, the City mailed public hearing notices to all adjacent property owners and occupants within 300 feet of the subject property, and to interested neighborhood organizations. Staff also posted the Notice of Public Hearing at three locations within the immediate vicinity of the subject site. At the time of this writing, Staff has not received any communications, outside of the appeal letter, regarding this project.

V. Appeal Issues and Analysis

A. Appeal Issues:

Multiple issues were raised in the appeal letter, however, there are three main appeal points that may be subject to the Zoning Adjustments Board's purview and are summarized below. Please see attached letter for complete text.

1. The pre-application neighborhood contact was not done properly.
2. The hot tub would be installed too close to the appellant's property compromising their privacy.
3. The potential noise associated with the use of hot tubs.

ZONING ADJUSTMENTS BOARD
OCTOBER 12, 2023

2924 RUSSELL STREET
Page 7 of 9

B. Staff Analysis

1. Pre-Application Neighborhood Contact is one of the required submittal items for any discretionary permit (Attachment 6 pages 1 and 4). While the pre-application neighborhood contact is a procedural issue and not explicitly required by code, an applicant must provide all the applicable submittal requirements per BMC 23.404.020(B)(3). The Instructions Regarding Community Outreach (Attachment 7) states that “the City strongly encourages owners to meet with their neighbors,” “projects in a Residential (R) Districts require contact between the property owner and the abutting and confronting property owners and tenants,” and requires that “once an applicant is ready to submit the application, he/she should request their neighbors’ signatures on the site plan drawing....” Property owners may designate an applicant to act on their behalf during all stages of permitting. While it is preferred that contact occur directly between neighbors, the owner can designate someone else to make contact and gather signatures prior to submitting a zoning permit.

The applicant collected signatures from the owners at 2928, 2929, and 2932 Russell Street between April 3-4, 2023 (Attachment #2). Notice was sent via certified mail to 2920 Russell Street and 2923 and 2929 Ashby Avenue on April 5, 2023 (Attachment #7). The application was submitted to the City on June 2 with the signatures on the site plan and the certified mail receipts, as noted above.

The appellant states that the pre-application neighborhood contact was not properly conducted, their concerns not disclosed, and that the AUP should be denied as a result. All abutting and confronting owners were contacted, including the appellant, prior to the application submittal. The appellant did sign a copy of the proposed site plan on April 4, 2023 (Attachment #2, Project Plans, sheet L2.0) and noted “concerns about operational noise of tub and usage.” The yellow pre-application poster was also posted in the front yard of the site prior to the application submittal. Noise is discussed in further detail in item B(3) of this section below.

The applicant satisfied this requirement by notifying neighbors and obtaining signatures, including that of the appellant, on the site plan drawing submitted at the time of application, or by sending certified mail. The appellant’s concerns are recorded on the signed site plan, and addressed in the submittal. The application contained the required information to confirm that the pre-application neighbor notice had occurred.

Hot Tub Distance from Accessory Building

2. The proposed hot tub would be installed behind the house, adjacent to a new deck approved under a separate building permit, approximately 11 feet from the back of the dwelling. There is a 6-foot, 5-inch concrete wall along the eastern lot line and additional privacy hedges are proposed in this area. The hot tub would be setback approximately 23 feet from the rear lot line (south), 36 feet from the west side lot line, and 5 feet, 7 inches from the eastern side lot line that is shared with the appellant’s property at 2928 Russell Street. There is an accessory building in the southwest corner of 2928 Russell Street – a garage converted to a workshop and study with a water closet in 2014. Per the approved plans, it is approximately 2-feet from the shared lot line with the subject site.

The proposed hot tub was correctly shown on the application plans submitted and approved plans. There are typos in the original findings that describe the hot tub location incorrectly stating that the “common living areas of the adjacent residents of 2928 Russell Street are located 10-feet, 10 inches above ground and 2928 Russell Street is approximately 50 feet away from the proposed location.” This staff error incorrectly refers to above ground living area, 2928 Russell Street twice, and omits other dimensions. The hot tub is located 10 feet, 10 inches from the rear of the subject residence and around 50 feet from the residence at 2920 Russell Street, and 7 feet, 7 inches from the accessory building at 2928 Russell Street. The findings and conditions have been revised to correct this error, and provided with track changes to show the corrections clearly.

The appellant states that the hot tub is too close to the accessory building, which is used as a home office and guest cottage, and that is 25 feet from their glass-enclosed living space that contains their kitchen and family room, and near a bedroom window. The presence of an accessory structure or building does not preclude the applicant from having a hot tub on their lot. The rear walls of the residence at 2928 Russell is offset from the rear wall of the dwelling on the subject site, and the hot tub is located almost 11 feet behind it. Twenty-five feet of separation between the proposed hot tub and the common living area and a bedroom of the neighboring residence is adequate separation for potential impacts. In addition to the separation between the neighboring residences and the existing wall and fences, new plantings are proposed along the side lot line. The location of the hot tub would not be detrimental to privacy.

Hot Tub Noises

3. All hot tubs, regardless of their location, are required to have mounted and enclosed pumps so that sound is not audible on adjacent lots, and zoning permits for hot tubs include standard conditions of approval to ensure compliance. The use of hot tubs is not regulated by the Zoning Ordinance, however, the City’s Noise Ordinance, BMC Chapter 13.40 Community Noise, applies to all outdoor activities.

As noted above, the appellant added concerns about the operational noise of tub and usage when they signed the plans on April 4, 2023. The Applicant Statement acknowledged these concerns and noted that recommendations on models with enclosed equipment and quieter operations than industry standards were being considered (Attachment 9). The statement also indicates that the tub would be located on a soundproof mat and additional screening vegetation would be planted at the side lot lines.

The approved plans include a note (Attachment 2, Sheet L0.0) that “per neighbor request, hot tub selection criteria include low noise relative to industry standards. Hot tub to include a sound-reducing mat that complies with manufacture specifications. Planting of dense vegetation along eastern and western fences to further buffer hot tub sound and provide privacy for residents and neighbors.”

The City-adopted standards are in place citywide and adequate to address potential noise for both the operation and the use of the hot tub. The proposed projects would provide additional measures such a sound-proofing mat and plantings. These features are required to be installed because they are shown on the site plan, but staff have added them into the

ZONING ADJUSTMENTS BOARD
OCTOBER 12, 20232924 RUSSELL STREET
Page 9 of 9

revised conditions of approval to ensure their installation and maintenance (COA #29-30). The project would also be subject to the standard hot tub conditions of approval for operational noise (COA #31-34). Noise generated from the resident's use of the hot tub is regulated under BMC Chapter 13.40, Community Noise, and not underneath the Zoning Adjustments Board purview.

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 ZP2023-0081** pursuant to Section 23.406.040 and subject to the attached revised Findings and Conditions (Attachment #6), and **DISMISS** the Appeal.

Attachments:

1. Findings and Conditions, October 12, 2023
2. Project Plans, received June 2, 2023
3. Notice of Administrative Decision (AUP), dated July 20, 2023
4. Appeal Letter, received August 9, 2023
5. Notice of Public Hearing
6. Zoning Project Application Submittal Requirements
7. Instructions Regarding Community Outreach
8. Certified Mail, April 5, 2023 (pages 15-18 extracted from June 2, 2023 Application Packet)
9. Applicant Statement, dated May 15, 2023

Staff Planner: Samella Stover, SStover@berkeleyca.gov, (510) 981-7425

ATTACHMENT 1

FINDINGS AND CONDITIONS

OCTOBER 12, 2023

2924 Russell Street

Administrative Use Permit #ZP2023-0081

To install an unenclosed hot tub in the rear yard.

PERMITS REQUIRED

- Administrative Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.304.070(D) to install an unenclosed hot tub.

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 CEQA Guidelines Section 15301 (Existing Facilities).
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.

FINDINGS FOR APPROVAL

3. As required by BMC Section 23.406.030(F), 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 hot tub will be located approximately 11 feet from the back of the dwelling, and setback approximately 23 feet from the rear lot line (south), 36 feet from the west side lot line, and 5 feet, 7 inches from the eastern side lot line. The proposed location is screened by a retaining wall, fencing and vegetation. ~~The common living areas of the adjacent residents of 2928 Russell Street are located 10 feet, 10 inches and 2928 Russell Street is approximately 50 feet away from the proposed location.~~ The hot tub is 7.5 feet x 7.5 feet and the applicant has proposed additional vegetation around the location of the hot tub to increase privacy to neighboring dwelling and is installing a pad between the tub and concrete pad to further reduce noise. In addition, because the hot

tub is at grade there will be no reduction to privacy, light, views, or air for abutting residence and is therefore not detrimental.

4. Pursuant to BMC Section 23.304.070(D)(2), the Zoning Officer finds that:

- A. Any pump associated with an unenclosed outdoor hot tub, jacuzzi, or spa shall be mounted and enclosed so that its sound is not audible on an adjacent lot. The hot tub will be subject to the conditions of this permit, which will ensure that neighbors are not adversely affected by noise impacts that may result from the use of the hot tub. In particular, the operation of the hot tub equipment is subject to the controls imposed under BMC Chapter 13.40 as it relates to maximum noise levels and Conditions of Approval #29-32.
-

STANDARD CONDITIONS

The following conditions, as well as all other applicable provisions of the Berkeley Municipal Code, 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. Compliance Required (BMC Section 23.102.050)

All land uses and structures in Berkeley must comply with the Zoning Ordinance and all applicable City ordinances and regulations. Compliance with the Zoning Ordinance does not relieve an applicant from requirements to comply with other federal, state, and City regulations that also apply to the property.

3. Approval Limited to Proposed Project and Replacement of Existing Uses (BMC Sections 23.404.060.B.1 and 2)

- A. This Permit authorizes only the proposed project described in the application. In no way does an approval authorize other uses, structures or activities not included in the project description.
- B. When the City approves a new use that replaces an existing use, any prior approval of the existing use becomes null and void when permits for the new use are exercised (e.g., building permit or business license issued). To reestablish the previously existing use, an applicant must obtain all permits required by the Zoning Ordinance for the use.

4. Conformance to Approved Plans (BMC Section 23.404.060.B.4)

All work performed under an approved permit shall be in compliance with the approved plans and any conditions of approval.

5. Exercise and Expiration of Permits (BMC Section 23.404.060.C)

- A. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.
- B. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.
- C. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except if the applicant has applied for a building permit or has made a substantial good faith effort to obtain a building permit and begin construction. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant. A determination that a permit has lapsed may be appealed to the ZAB in accordance with Chapter 23.410 (Appeals and Certification).
- D. A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant must apply for and receive City approval of a new permit.

6. Permit Remains Effective for Vacant Property (BMC Section 23.404.060.D)

Once a Permit for a use is exercised and the use is established, the permit authorizing the use remains effective even if the property becomes vacant. The same use as allowed by the original permit may be re-established without obtaining a new permit, except as set forth in Standard Condition #5 above.

7. Permit Modifications (BMC Section 23.404.070)

No change in the use or structure for which this Permit is issued is permitted unless approved by the review authority which originally approved the permit. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.

8. Permit Revocation (BMC Section 23.404.080)

The City may revoke or modify a discretionary permit for completed projects due to: 1) violations of permit requirements; 2) Changes to the approved project; and/or 3) Vacancy for one year or more. However, no lawful residential use can lapse, regardless of the length of time of the vacancy. Proceedings to revoke or modify a permit may be initiated by the Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.

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 THE ZONING OFFICER

Pursuant to BMC Section 23.404.050(H), the Zoning Officer 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 #

Standard Construction-related Conditions Applicable to all Projects:

11. 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.

12. 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.

13. 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.

14. 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.
15. 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.
16. 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.
17. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.
18. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.
19. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.
20. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
21. 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.
22. 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.
23. 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.

24. 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.

25. 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:

26. All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
27. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated June 2, 2023.

At All Times (Operation):

28. 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.

Hot Tub Conditions

29. The hot tub shall be installed on a sound-proofing mat.
30. Vegetation shown on the site plans shall be maintained at all times.
31. The pump shall be mounted, enclosed and maintained to prevent noise from disturbing the occupants of neighboring properties.
32. The hot tub shall be equipped with safety features in accordance with the California Building Code.
33. This permit shall be subject to review and modification as necessary to alleviate excessive noise or disturbance to the neighborhood.
34. Mechanical operation and use must adhere to the exterior noise standards of BMC Section 13.40.050.

Samella Stover

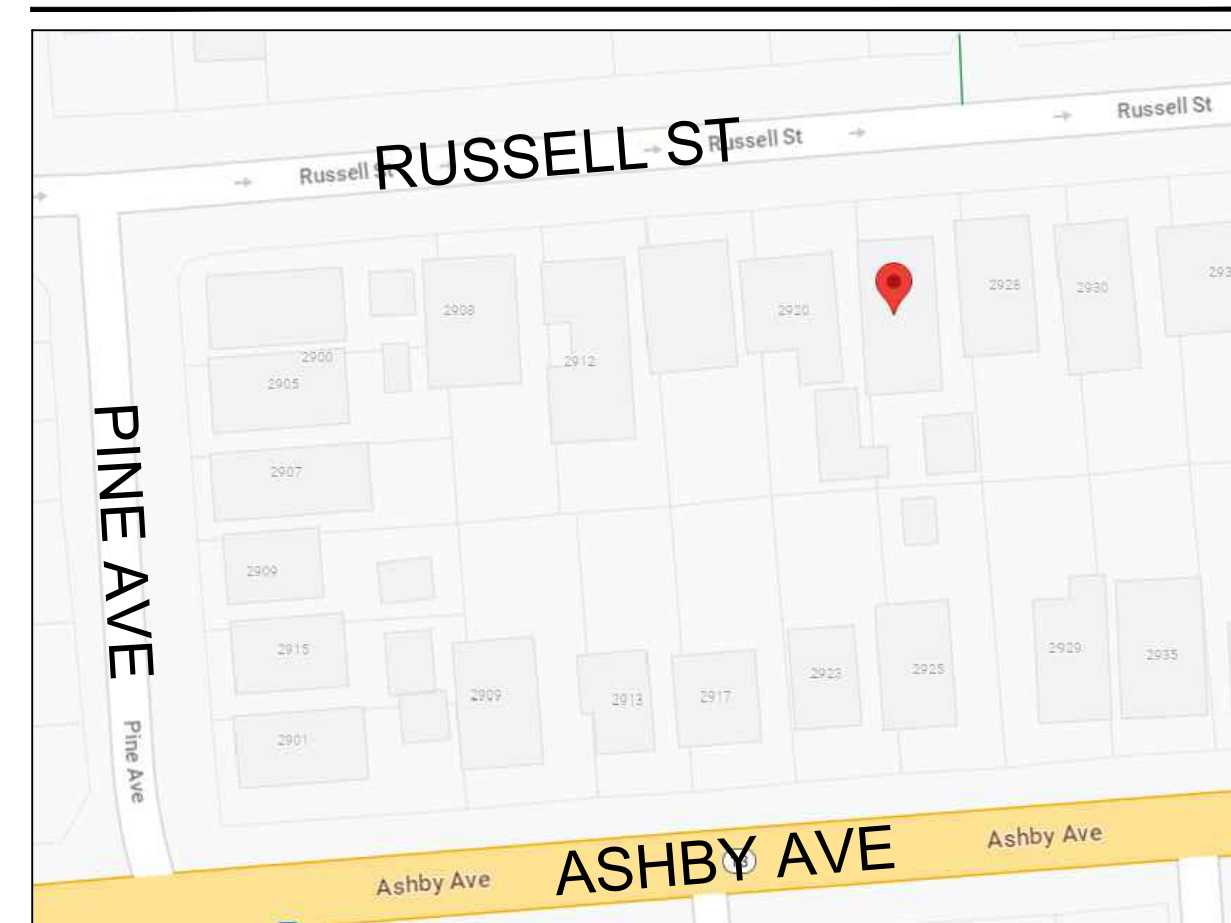
Prepared by: Samella Stover, Planning Technician
For Samantha Updegrave, Zoning Officer

2924 Russell Street — Administrative Use Permit

General Notes

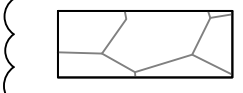
- The contractor shall inspect the site and be familiar with all existing site conditions prior to submitting bid. Contractor shall not willfully proceed with construction as shown when it is obvious that obstructions, landscape area and/or grade differences exist that may not have been known during design. Such conditions shall immediately be brought to the attention of the landscape architect. The contractor shall assume sole responsibility for all necessary revisions due to failure to give such notification. Contractor shall be responsible for making herself/himself familiar with all underground utilities, pipes, structures and obstructions. Contractor shall assume sole responsibility for all costs incurred due to damage and/or replacement of these items. Contractor shall be responsible for coordination among trades and subcontractors as required to accomplish the work. The contractor shall be responsible for any damage to existing features caused by contractor's work. All repairs shall be made at no additional cost to the owner. Planting shall be installed in conformance with all applicable local codes and ordinances by experienced workmen and a licensed landscape contractor who shall obtain all necessary permits and pay all required fees. The garden is a pesticide and herbicide free zone. Contractor shall use organic material to fertilize and to maintain all plant material. No chemical fertilizer will be allowed. Contractor shall verify all grades, existing conditions and dimensions in the field prior to commencing work. All discrepancies or questions shall be brought to the attention of the landscape architect for resolution. Redirect work to avoid delay. All curves and all transitions between curves and straight edges shall be smooth. Take all dimensions perpendicular to any reference line, work line, face of building, face of wall or centerline.
- Demolition**
Contractor shall remove and carry all demolition materials off site. Protect (E) trees as indicated during construction. Contractor shall perform selective trimming of existing trees within the area of work per the direction of the owner.
- Drainage/Grading (Permit #B2023-01579)**
Contractor shall verify if existing drains are in good condition. All drainage systems shall be per City of Berkeley codes. Grade per indicated swales. Sleeving to be Schedule 40 PVC. Cover PVC pipe so that it not visible. All grading to be smooth to achieve a natural aspect. No finish grades shall exceed 2.5:1 slopes.
- Stone paving & stone work**
See Permit #B2023-01579
- Concrete work (Permit #B2023-01579)**
Proposed 18" concrete retaining wall shall be less than three feet in total height including footing. See S2.0, Detail 12 for typical retaining wall and drainage. See L3.0 of Permit set #B2023-01579 for location of subsurface drainage line to (E) sump pump.
- Electrical**
For rear deck perimeter GFCI, please refer to Permit #B2023-01579. Dedicated hot tub GFCI to be processed under separate application, pending AUP approval.
- Wood work (Permit #B2023-01579)**
All new wood decking. Structural engineer to determine partial salvage of structural components of existing wood landing. SSD for final wood sizing, anchors and concrete footing.
- Clean up**
At the end of each work day, at the inspection for substantial completion and before acceptance of project, clean paved areas that are dirtied or stained by construction operations, by sweeping or washing, and remove defacements and stains. Remove construction equipment, excess materials and tools. Haul from owners property the debris resulting from construction, and dispose of legally. Remove remaining temporary protection at time of acceptance by owner unless otherwise agreed.

Location



Legend

- (PA) Planting Area
- (TS) Top of stair
- (BS) Bottom of stair
- (TW) Top of wall
- (BW) Bottom of wall
- R Radius
- ⊕ POB Layout Starting Point
- SIM Similar
- (TYP.) Typical
- SAD See Architectural Drawings
- EQ Equal
- O.C. On Center
- (E) Existing
- > Align
- ↶ 90 Degrees angle
- (824.76) Existing spot elevation
- + 824.76 Proposed spot elevation
- ▭ Existing contour line
- ▭ Proposed contour line
- ▭ Property line
- ▨ Existing retaining wall to be demolished



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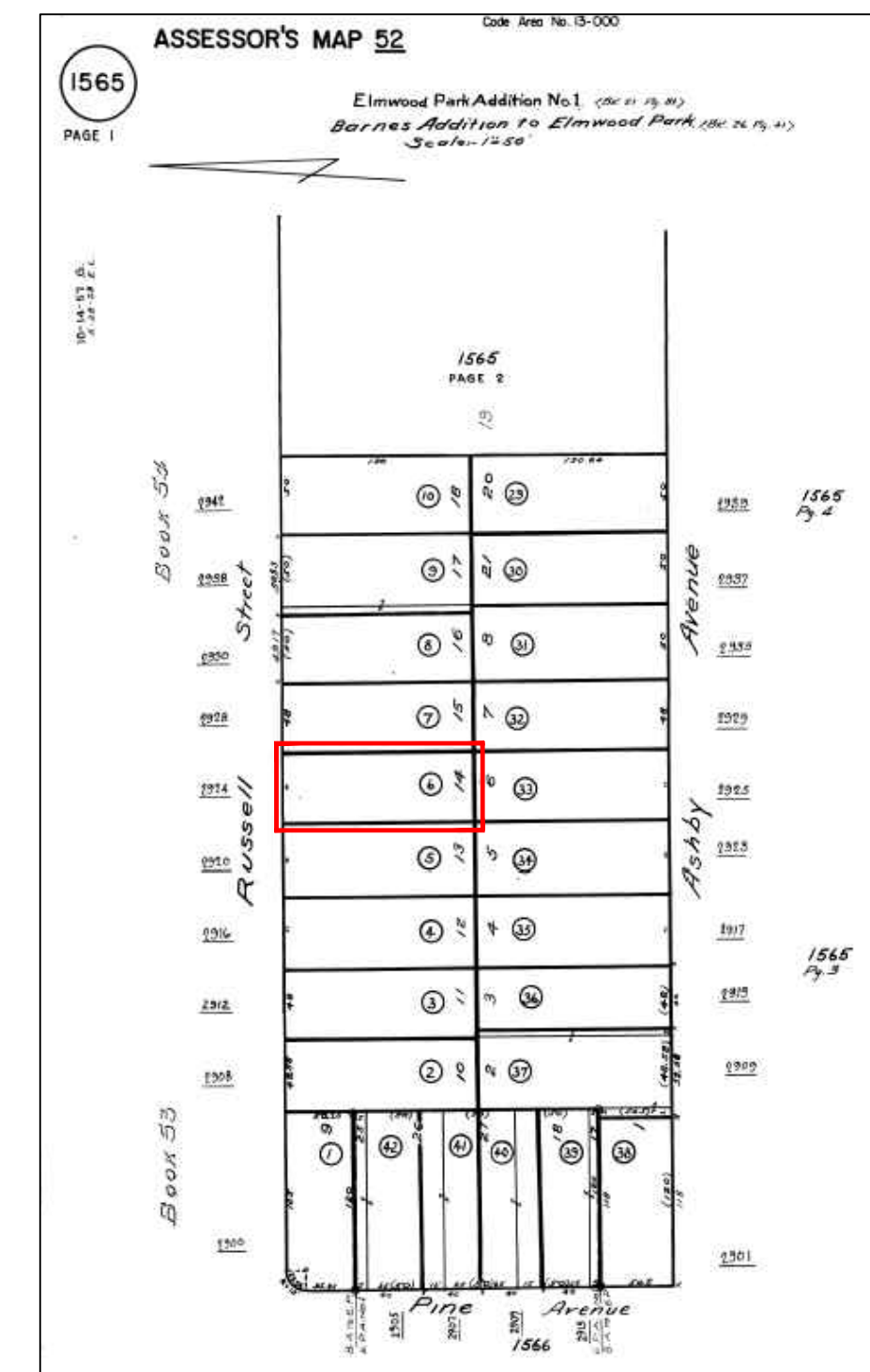
Cable railing

Sheet Index

- L0.0 Cover Sheet
- L1.0 Existing Site Plan
- L2.0 Proposed Site Plan
- L3.0 Elevations
- L3.1 Elevations
- L4.0 Details
- SV Survey

Assessor's Map

APN: 52-1565-6



Scope of Work

Installation of new hot tub.

Per neighbor request, hot tub selection criteria include low noise relative to industry standards. Hot tub installation to include a sound-reducing mat that complies with manufacturer specifications. Planting of dense screening vegetation along eastern and western fences to further buffer hot tub sound and provide privacy for residents and neighbors.

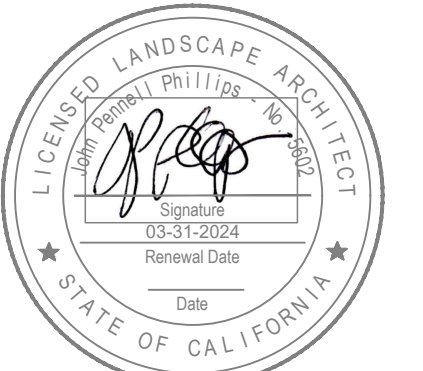
NOTE: For rear deck and associated perimeter GFCI, please refer to Permit #B2023-01579.

NOTE: Dedicated hot tub GFCI and revisions to Permit #B2023-01579 to accommodate hot tub to be processed under separate application, pending AUP approval.

Project Team

Client Hami Kazerooni 2924 Russell St. Berkeley, CA 94705	Landscape Architect InsideOut Design, Inc. 6000 Harwood Ave Oakland CA 94618 (510) 655-7674 Penn Phillips	Contractor TBD	Structural Engineer Daniel A. Bastião P.O. Box 1891 Union City, CA 94587 510-676-8457
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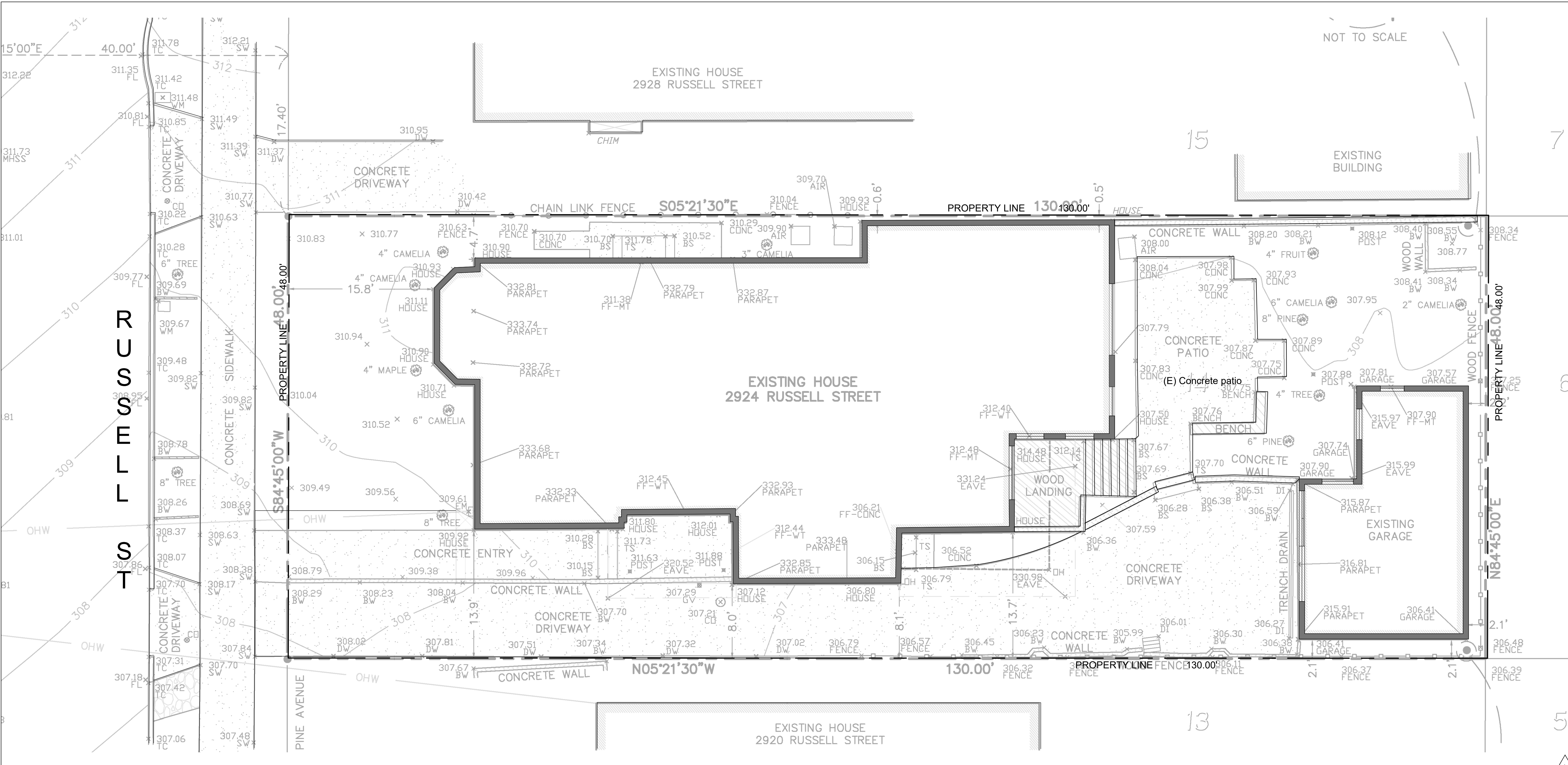
- 04.04.2023 AUP COMMUNITY OUTREACH
- 05.12.2023 AUP APPLICATION REVISION IN RESPONSE TO NEIGHBOR COMMENT

Kazerooni Residence
2924 Russell St.
Berkeley, CA

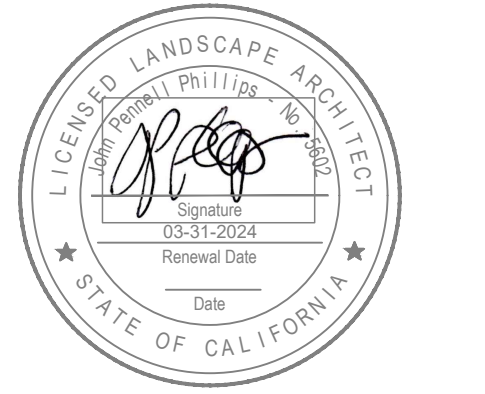
TITLE:
Cover Sheet,
Notes & Legend

SCALE: N/A
DATE: MAY 15, 2023

DRAWING NO:
L0.0



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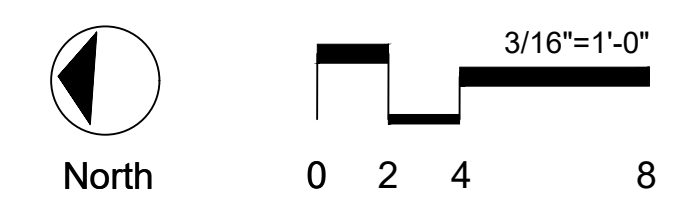
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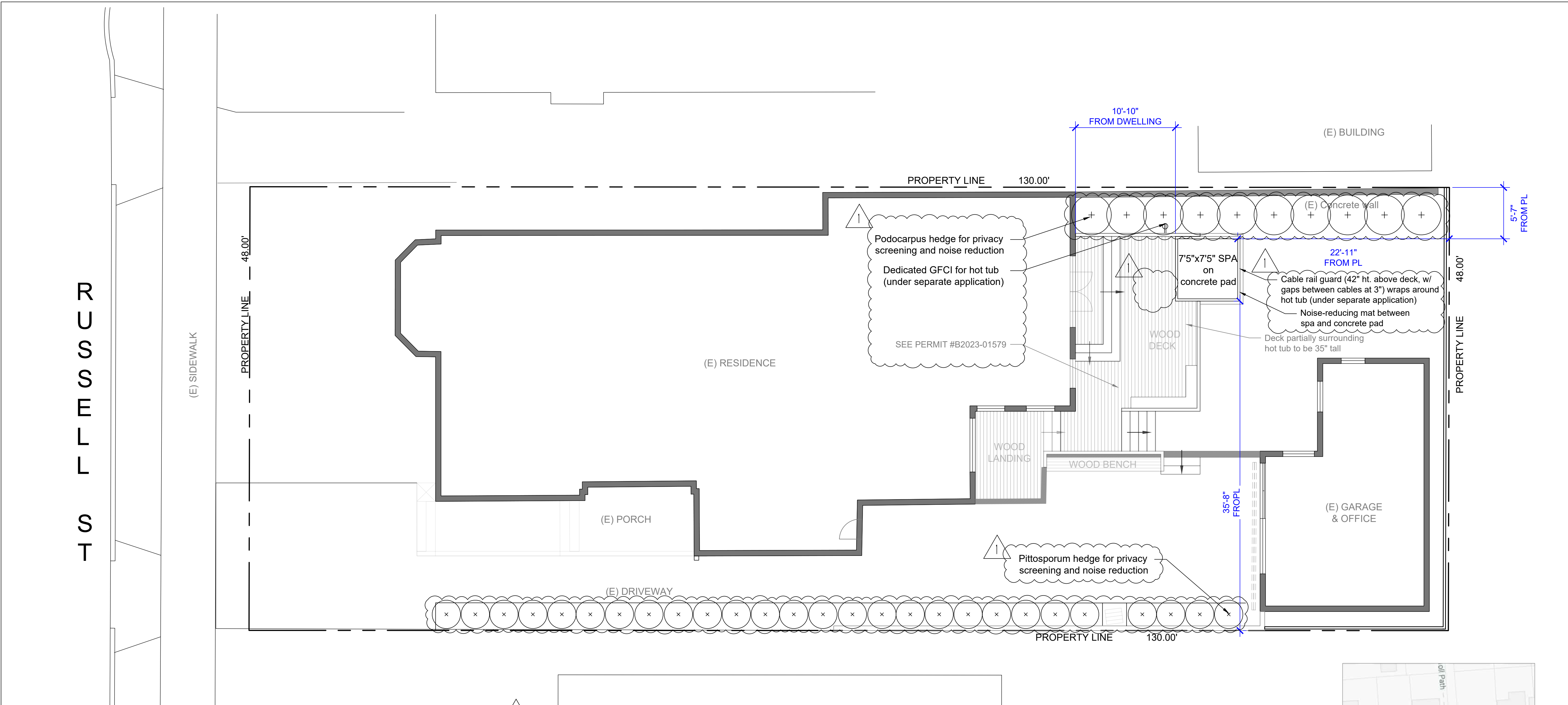


Existing Conditions

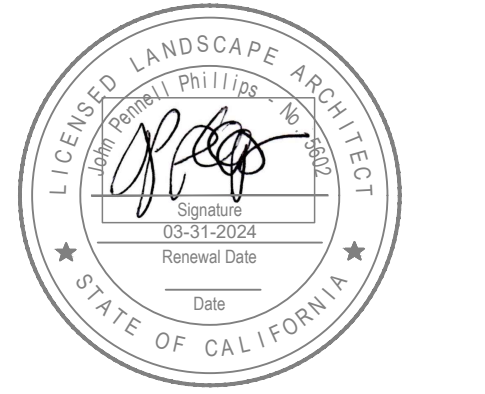
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DRAWING NO:
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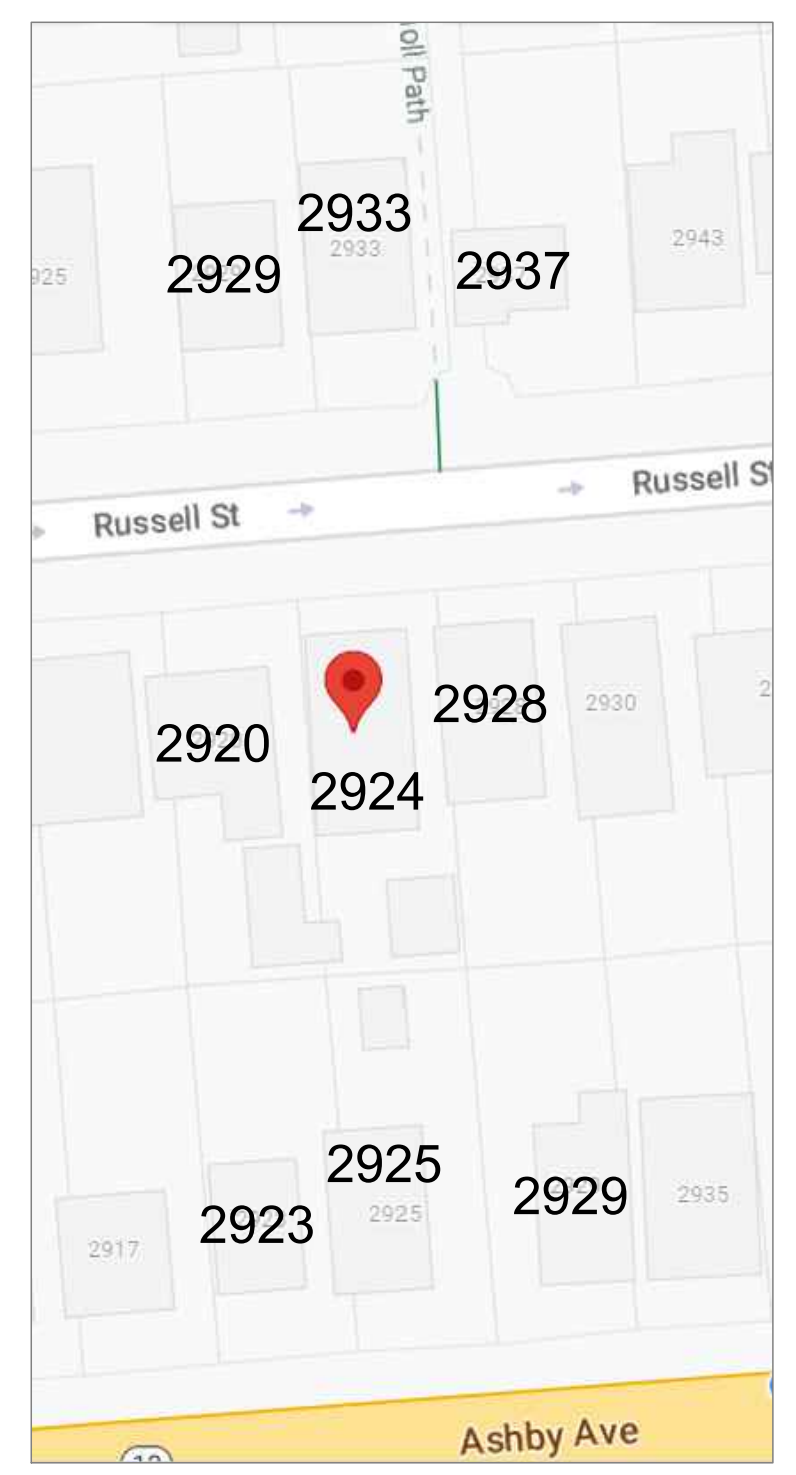
TITLE:
Proposed Site Plan

Community Outreach

I have reviewed the plans for a 7.5' x 7.5' hot tub at 2924 Russell Street.

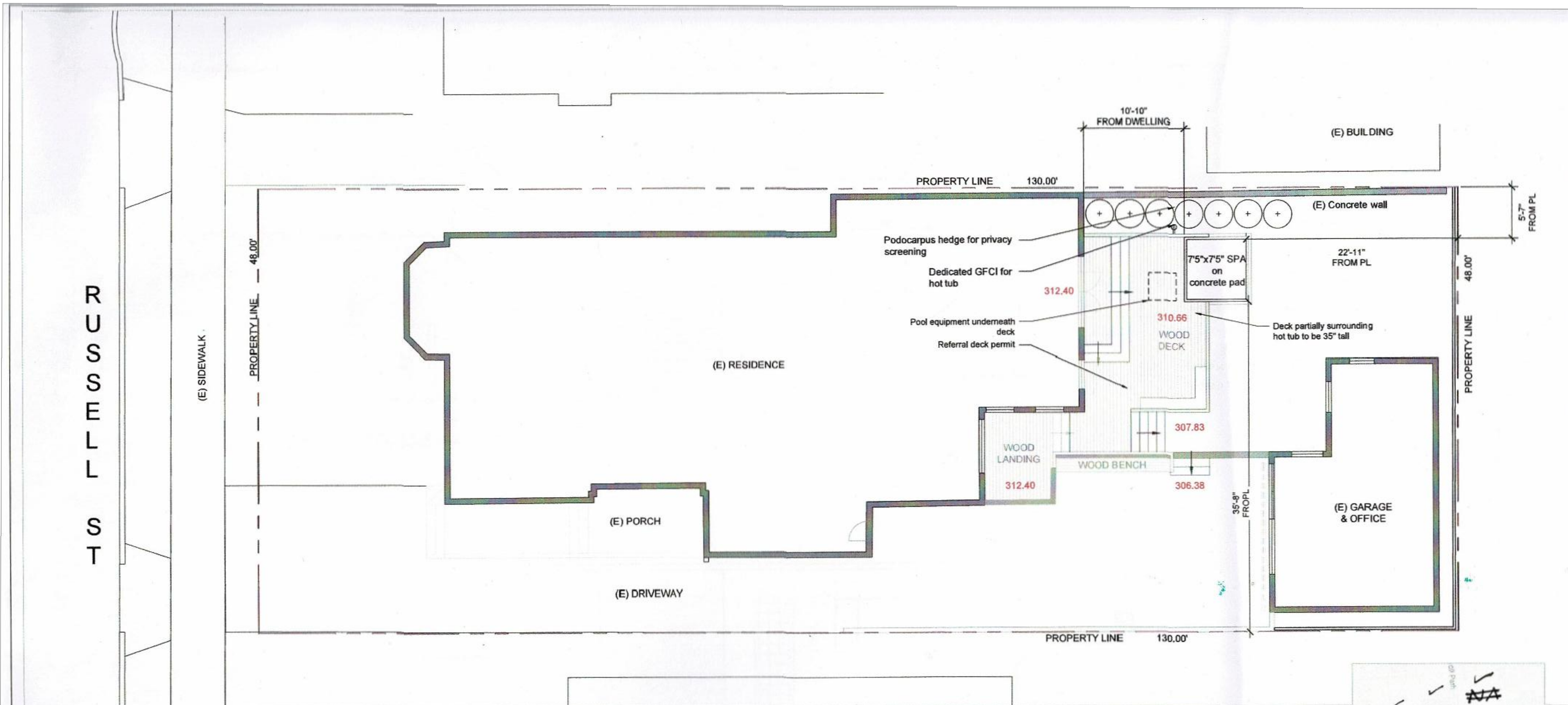
NOTE: Please see scanned L2.0 (dated 03.29.23) with neighbor signatures from 04.03.23 and 04.04.23. This set has been revised to add additional noise mitigation measures in response to neighbor concerns. No separate equipment under deck will be required; hot tub to include enclosed equipment and be quieter than industry standards.

Name (printed)	Signature	Address	Renter or Owner	Date	Have no objections	Have objections (please state briefly)	Have no comment
		2920 Russell St.					
		2920 Russell St.					
		2928 Russell St.					
		2928 Russell St.					
		2929 Russell St.					
		2929 Russell St.					
		2933 Russell St.					
		2933 Russell St.					
		2937 Russell St.					
		2937 Russell St.					
		2923 Ashby Ave.					
		2923 Ashby Ave.					
		2925 Ashby Ave.					
		2925 Ashby Ave.					
		2929 Ashby Ave.					
		2929 Ashby Ave.					



SCALE: 3/16"=1'-0"
DATE: MAY 15, 2023

DRAWING NO:
L2.0



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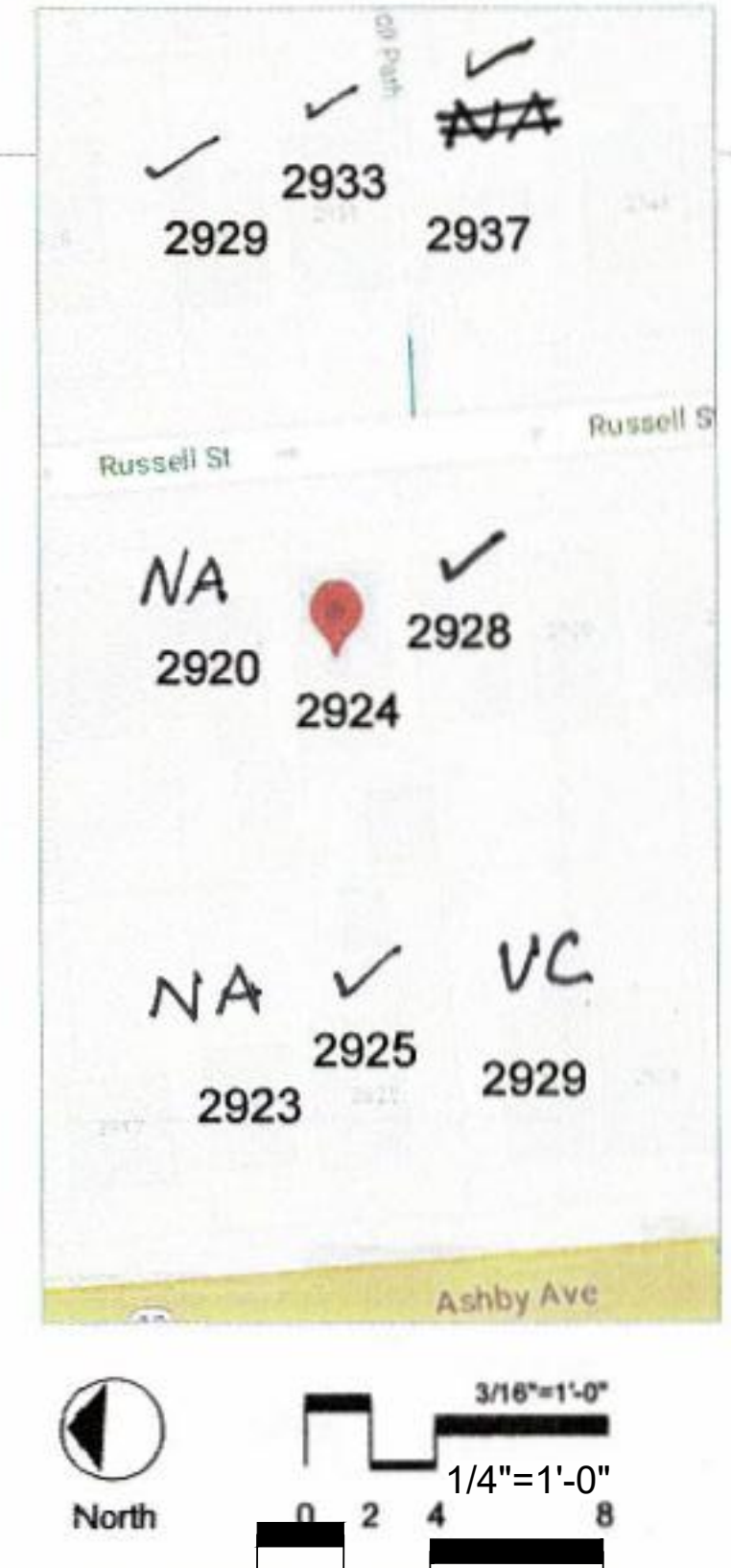
Kazerooni Residence
2924 Russell St.
Berkeley, CA

TITLE:
Proposed site plan

Community Outreach

I have reviewed the plans for a 7.5' x 7.5' hot tub at 2924 Russell Street.

Name (printed)	Signature	Address	Renter or Owner	Date	Have no objections	Have objections (please state briefly)	Have go comment
Beverly Doane	<i>Beverly Doane</i>	2920 Russell St.	Owner	4/3/23			✓
RICHARD SPORN	<i>Richard Sporn</i>	2928 Russell St.	OWNER	4/4/23		Concerns about operational noise of tub + usage	
Ronald Lee	<i>Ronald Lee</i>	2933 Russell St.	Owner	4/3/23	X		X
T. R. DIRSH	<i>T.R. Dirsh</i>	2937 Russell St.	OWNER	4/4/23	✓		
Amir Bahan	<i>Amir Bahan</i>	2925 Ashby Ave.	Owner	4-3-23	✓		



SCALE: 3/16"=1'-0"
DATE: MARCH 29, 2023
1/4"=1'-0"
DRAWING NO:
L2.0

VC = under construction? - 4 plans mailed
NA = no answer - plans mailed

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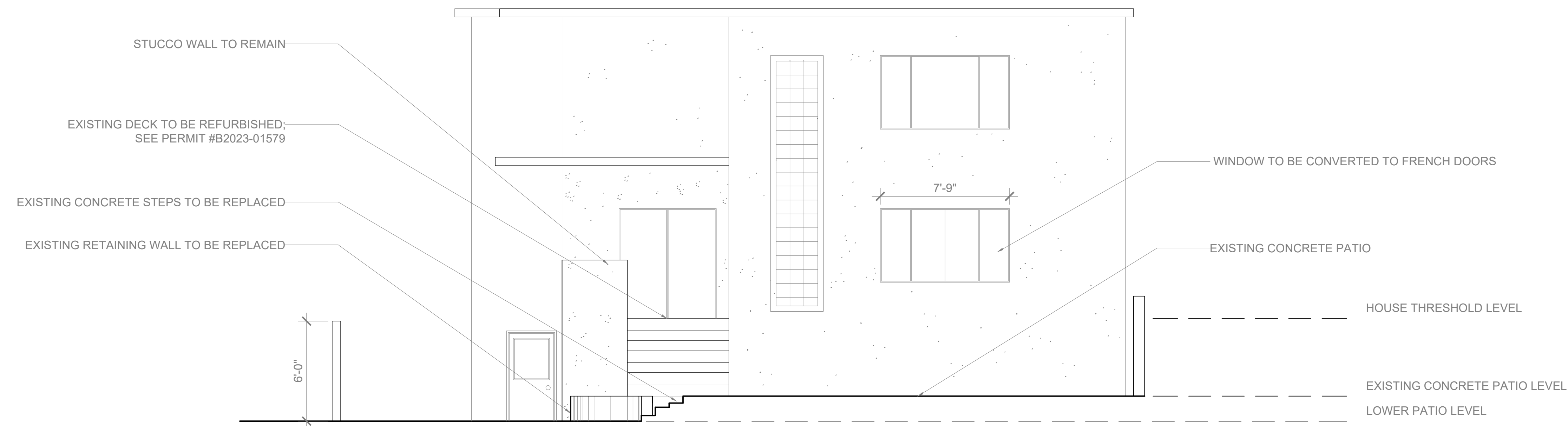
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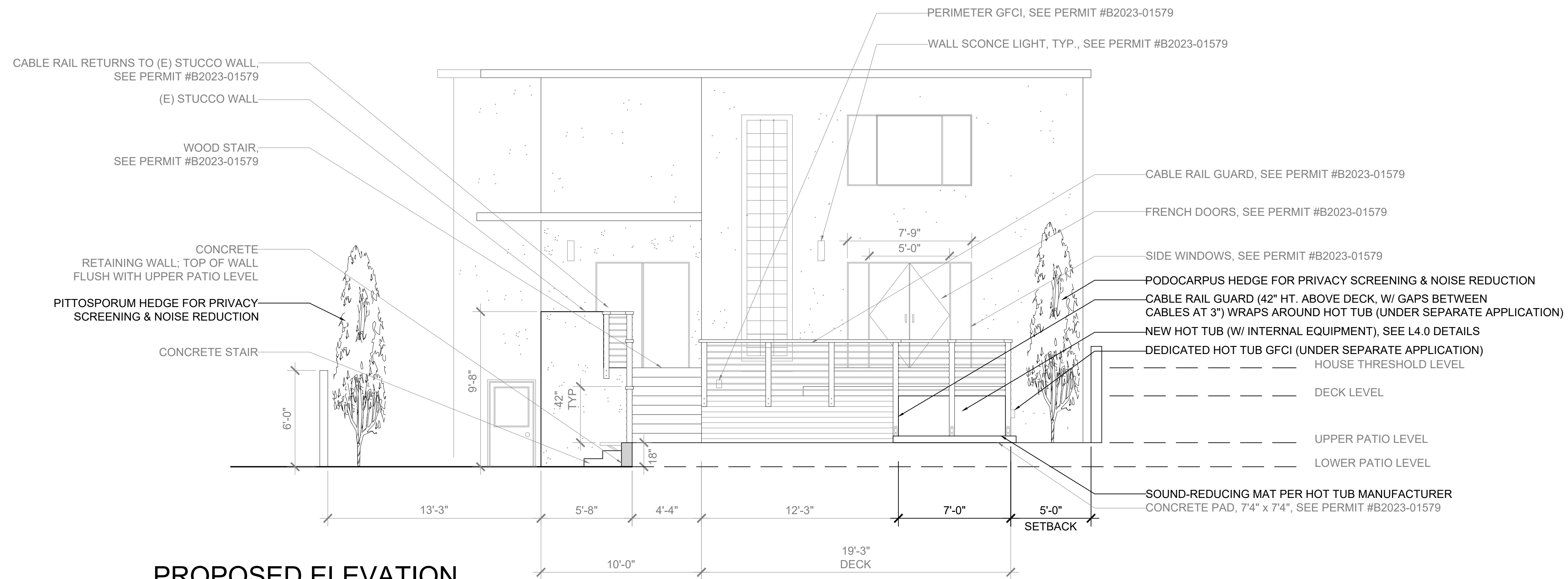
TITLE:
Elevations

SCALE: 1/4"=1'-0"
DATE: MAY 15, 2023

DRAWING NO:
L3.0



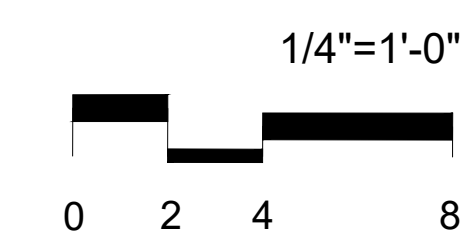
EXISTING ELEVATION



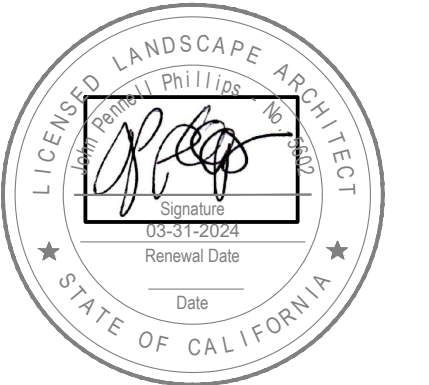
PROPOSED ELEVATION

NOTE: THE GREATEST RISER HEIGHT AND TREAD DEPTH WITHIN ANY FLIGHT OF STAIRS SHALL NOT EXCEED THE SMALLEST BY MORE THAN 3/8 INCH.

NOTE: Revisions to L3.0 since Community Outreach (04.03.23 - 04.04.23) reflect changes required for issuance of Permit #B2023-01579 and the addition of further sound reduction measures (in consideration of neighbor feedback) only.

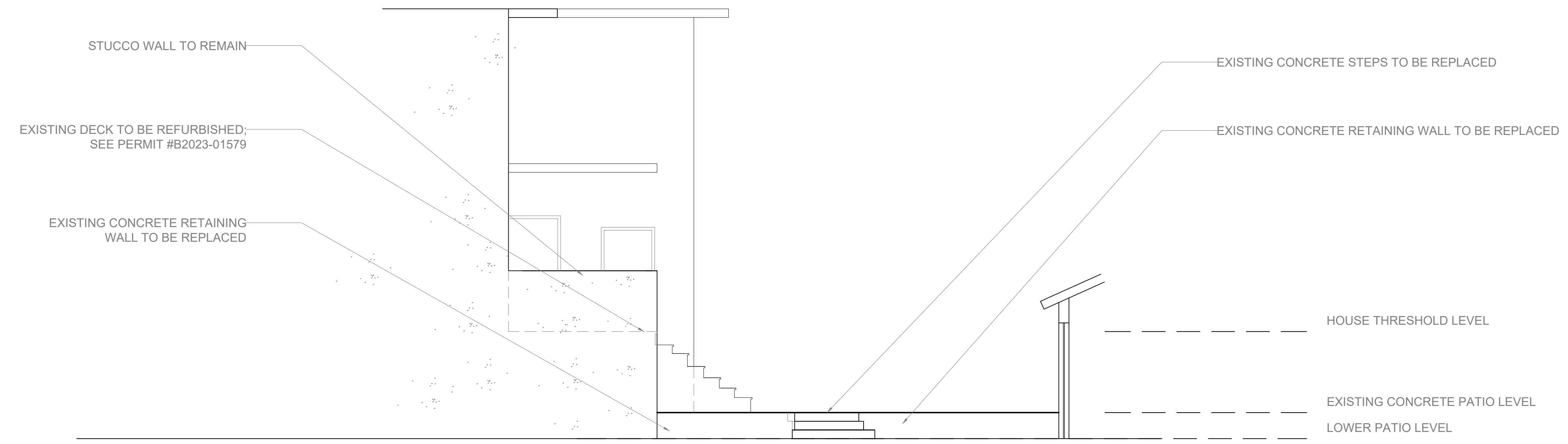


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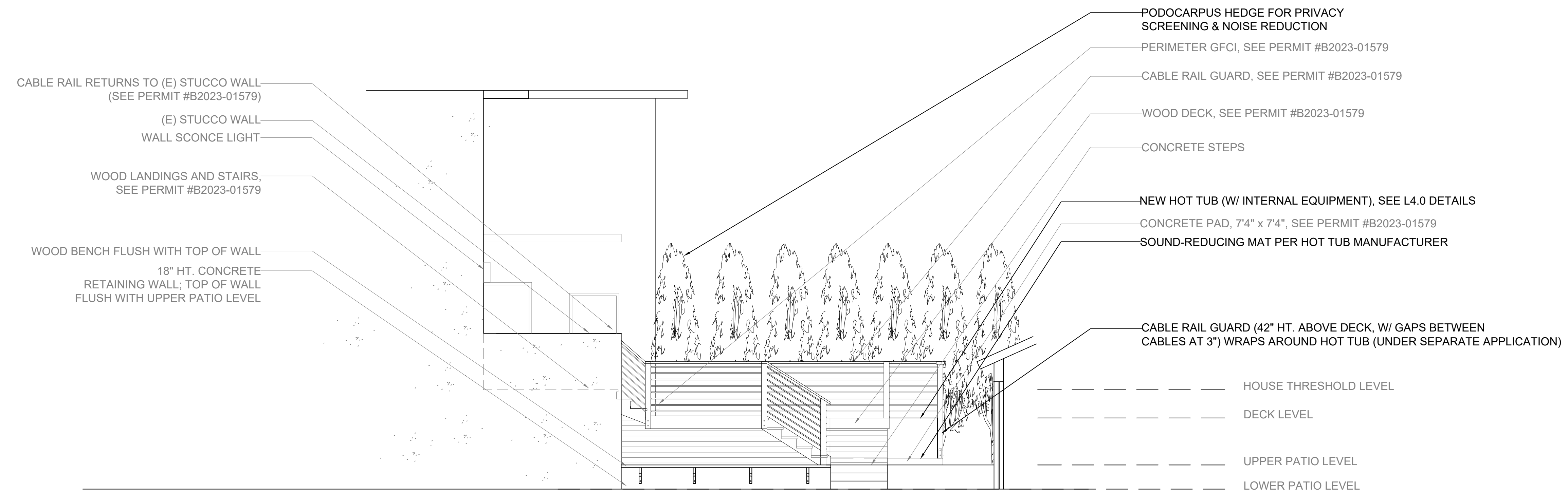


ISSUES:
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05.12.2023 AUP APPLICATION REVISION IN RESPONSE TO NEIGHBOR COMMENT

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EXISTING ELEVATION



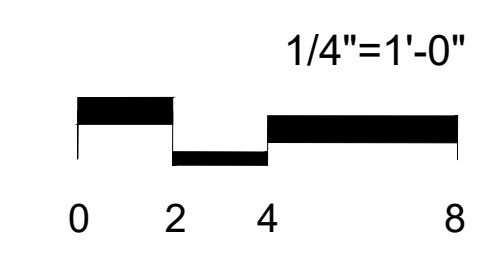
PROPOSED ELEVATION

NOTE: THE GREATEST RISER HEIGHT AND TREAD DEPTH WITHIN ANY FLIGHT OF STAIRS SHALL NOT EXCEED THE SMALLEST BY MORE THAN 3/8 INCH.

NOTE: The addition of L3.1 since Community Outreach (04.03.23 - 04.04.23) reflects changes required for issuance of Permit #B2023-01579 and the addition of further sound reduction measures (in consideration of neighbor feedback) only.

TITLE:
Elevations

SCALE: 1/4"=1'-0"
DATE: MAY 15, 2023



DRAWING NO:
L3.1



SUNDANCE CAMEO - 880 SERIES

Specs

Volume: 370 gal / 1400.60 liters

Dry Weight: 962 lbs / 436.35

Jets: 54

Primary Pump: North America (60 Hz): 1-Speed/2.5 HP Continuous, 11.3A Max., 56 Frame

Secondary Pump: North America (60 Hz): 1-Speed/2.5 HP Continuous, 11.3A Max., 56 Frame

Circulation Pump (Y/N): Yes

Diverter Valves #: 2

Filtration System: ClearRay

Filters: 1

Seat Jets: Lounge

Water Management System: ClearRay Active Oxygen™

View Less ☹

Dimensions

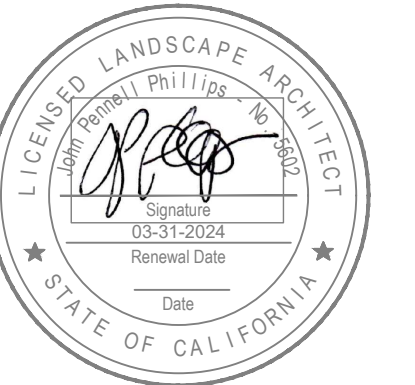
Height (in): 37.5

Length (in): 89.0

Width (in): 89.0

Volume (gals): 370.0

INSIDEOUT
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6000 HARDWOOD AVE
OAKLAND, CA 94618
510 655 7674
aboutinsideout.com



ISSUES:
04.04.2023 AUP COMMUNITY OUTREACH
05.12.2023 AUP APPLICATION REVISION IN RESPONSE TO NEIGHBOR COMMENT

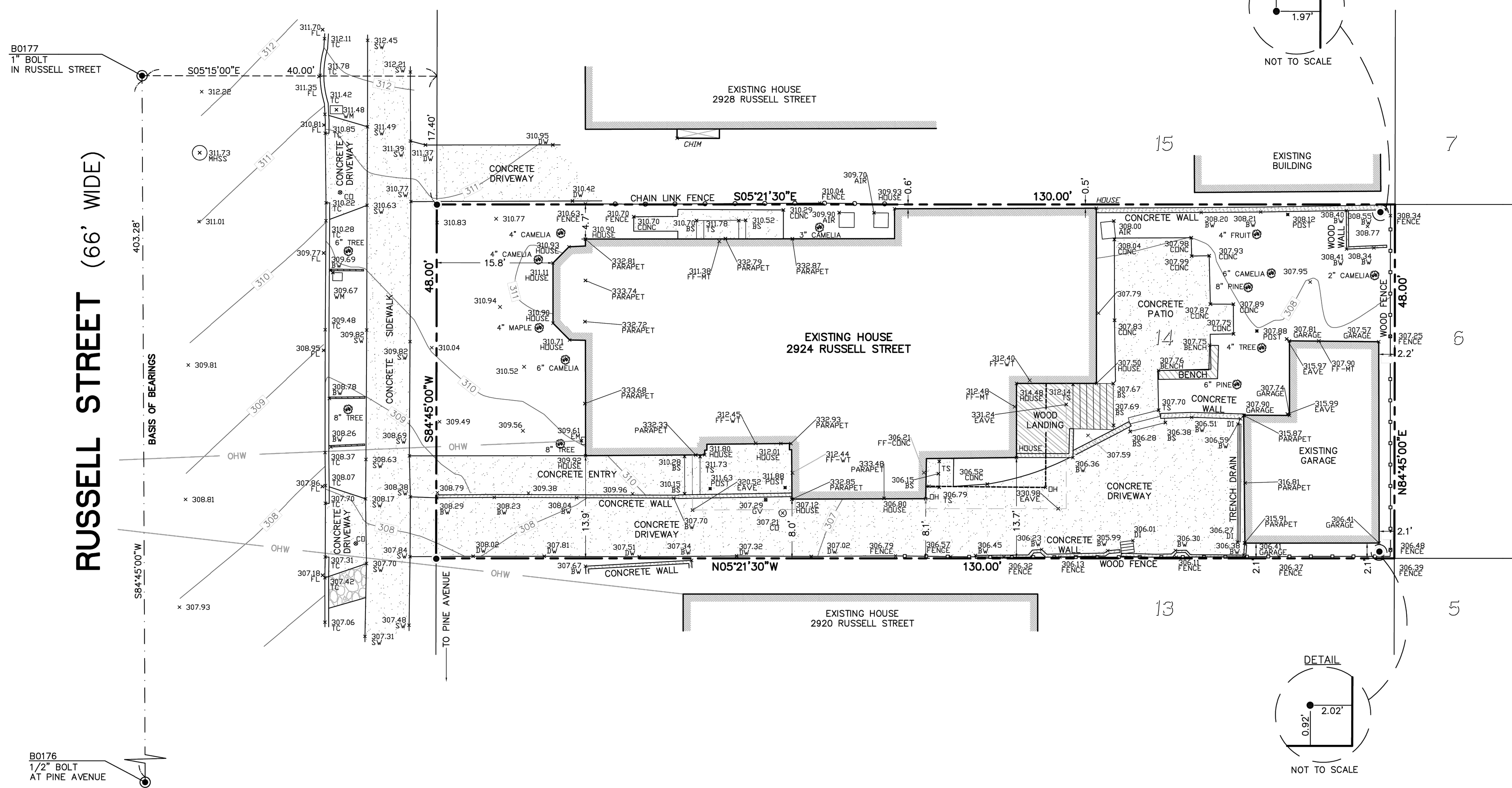
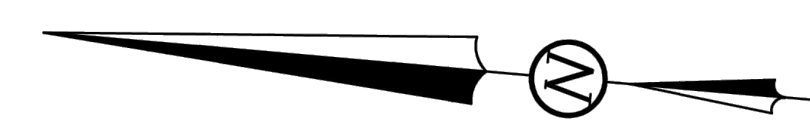
Kazerooni Residence
2924 Russell St.
Berkeley, CA

TITLE:
Details

SCALE: NOT TO SCALE
DATE: MAY 15, 2023

DRAWING NO:
L4.0

NOTE: Per neighbor request, hot tub selection criteria include low noise relative to industry standards. Hot tub to have internal equipment only. Hot tub installation to include a sound-reducing mat that complies with manufacturer specifications.



LEGEND

- AIR AIR CONDITIONING UNIT
- BS BASE OF STEPS
- BW BASE OF WALL
- CHIM CHIMNEY
- CO CLEANOUT
- CONC CONCRETE
- DI DRAIN INLET
- DW DRIVEWAY
- EM ELECTRIC METER
- FF FINISHED FLOOR
- GV GAS VALVE
- FL FLOWLINE
- MH MAINTENANCE HOLE
- MT METAL THRESHOLD
- OH OVERHANG
- OHW OVERHEAD WIRES
- SS SANITARY SEWER
- SW SIDEWALK
- TC TOP OF CURB
- TS TOP OF STEPS
- WW WATER METER
- WT WOOD THRESHOLD

- BUILDING FOOTPRINT
- CONCRETE
- CONCRETE WALL
- FLAGSTONE
- WOOD
- WOOD WALL
- CHAIN LINK FENCE
- WOOD FENCE
- FOUND MONUMENT IN WELL, AS NOTED
- FOUND REBAR AND CAP, LS 5311
- CITY OF BERKELEY MONUMENT ID

GENERAL NOTES:
DIMENSIONS ARE IN FEET AND DECIMAL FEET.

DIMENSIONS SHOWN FROM BUILDINGS TO PROPERTY LINES ARE MEASURED AT BUILDING CORNERS FROM THE EXTERIOR BUILDING FACE PERPENDICULAR TO THE PROPERTY LINE.

NO TITLE REPORT PROVIDED, EASEMENTS MAY EXIST.

ASSESSOR'S PARCEL NUMBER: 052-1565-006

PROPERTY AREA = 6,240± SQUARE FEET

DATE OF FIELD SURVEY: NOVEMBER 17, 2022

BASIS OF BEARINGS:
THE MONUMENT LINE IN RUSSELL STREET WAS TAKEN AS SOUTH 84°45'00" WEST AS SHOWN ON CORNER RECORD 6073 (58 CR 23).

BENCHMARK:
ELEVATIONS ARE BASED ON CITY OF BERKELEY DATUM.
THE WESTERN MOST MONUMENT REFERENCE CROSS, FOR CITY OF BERKELEY MONUMENT B1846, LOCATED IN THE SIDEWALK AT THE SOUTH WEST CORNER OF THE INTERSECTION OF AVALON AVENUE AND CLAREMONT BOULEVARD, WAS TAKEN AS ELEVATION = 355.99 FEET PER CORNER RECORD 9875 (103 CR 68).

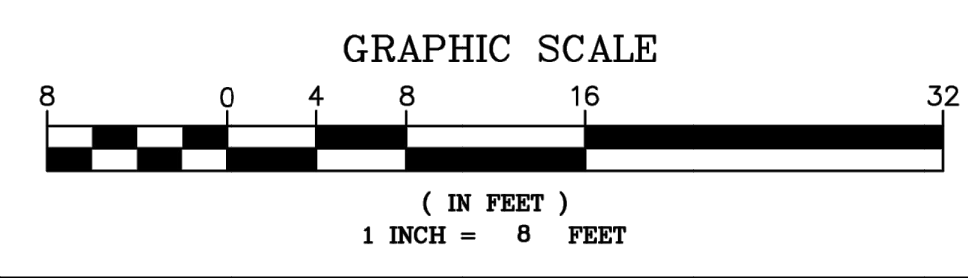
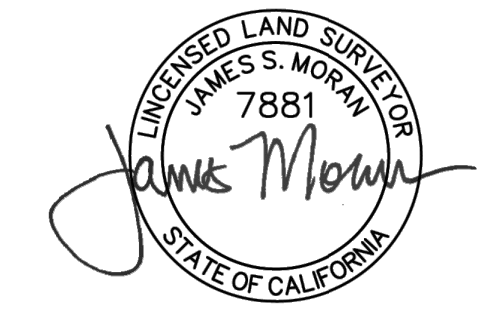
BOUNDARY AND TOPOGRAPHIC SURVEY

LOT 14, BARNES ADDITION OF ELMWOOD PARK (26 M 41)
LOCATED AT 2924 RUSSELL STREET
CITY OF BERKELEY, COUNTY OF ALAMEDA, CALIFORNIA

DECEMBER 6, 2022 SCALE: 1" = 8'

MORAN ENGINEERING, INC.
CIVIL ENGINEERS \ LAND SURVEYORS
1930 SHATTUCK AVENUE, SUITE A
BERKELEY, CALIFORNIA 94704
(510) 848-1930

F.B. NO. 1922 RUSSELL-TOP0.DWG JOB NO. 22-11022





N O T I C E O F A D M I N I S T R A T I V E D E C I S I O N

2924 Russell Street

Administrative Use Permit # ZP2023-0081

To install an unenclosed hot tub in the rear yard.

ZONING OFFICER DECISION: The Zoning Officer of the City of Berkeley has APPROVED the following permits pursuant to Berkeley Municipal Code (BMC) Section 23.406.030(F), and based on the attached findings and conditions (attachment 1) and plans (attachment 2):

- Administrative Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.304.070(D) to install and unenclosed hot tub.

DATE NOTICE IS ISSUED: July 20, 2023

APPEAL PERIOD: July 21, 2023 to August 9, 2023

ATTACHMENTS:

1. Findings and Conditions
2. Project Plans, dated received June 2, 2023

FOR FURTHER INFORMATION:

All application materials for this project are available online at:

<https://aca.cityofberkeley.info/CitizenAccess/Welcome.aspx>. Questions about the project should be directed to the project planner, Samella Stover at (510) 981-7425 or SStover@berkeleca.gov.

PUBLIC NOTICE, PURSUANT TO BMC SECTION [23.404.040\(A\)](#):

This Notice of Administrative Decision was:

1. Forwarded to the Zoning Adjustments Board and sent to the Main Library;
2. Posted at three visible locations in the vicinity of the subject property and at a bulletin board at the Zoning counter.
3. Mailed to neighborhood and community organizations for which the project falls within their expressed area of interest, as set forth in BMC Section [23.404.040\(E\)](#);
4. Mailed to owners and residents of properties abutting and confronting the subject property.

The validity of the proceedings, however, shall not be affected by the failure of any such property owner, occupant or neighborhood or community organization to receive such mailed notice.

TO APPEAL THIS DECISION, PURSUANT TO BMC CHAPTER [23.410](#):

To appeal this decision, you must:

1. Submit a letter clearly and concisely setting forth the grounds for the appeal, along with the required fee (see below) to the Zoning Officer, at the Permit Service Center, 1947 Center Street, 3rd Floor, Berkeley.

1947 Center Street, 2nd Floor, Berkeley, CA 94704 Tel: 510.981.7410 TDD: 510.981.6903 Fax: 510.981.7420

E-mail: planning@berkeleyca.gov

2924 RUSSELL STREET
Page 2 of 2

NOTICE OF ADMINISTRATIVE DECISION
Administrative Use Permit #ZP2023-0081

2. The appeal and required fee (see below) must be received **prior to 2:00 p.m. on the last day of the appeal period shown above (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).**
3. Submit the required fee to the Permit Service Center (see above; checks and money orders must be payable to 'City of Berkeley'):
 - A. The basic fee for appeals of a Zoning Officer decision to the Zoning Adjustments Board is \$500. This fee may be reduced to \$200 if the appeal is signed by persons who lease or own at least 35 percent of the parcels or dwelling units within 300 feet of the project site, or at least 20 such persons (not including dependent children), whichever is less.
 - B. The fee for appeals of affordable housing projects (defined as projects which provide 50 percent or more affordable units for households earning 80 percent or less of Area Median Income) is \$500, which may not be reduced.
 - C. The fee for all appeals by Applicants is \$3,680.

If an appeal is filed, the Zoning Officer shall set the matter for consideration by the Zoning Adjustments Board. An appeal stays the issuance and exercise of the AUP until a decision is rendered or the appeal is withdrawn. If no appeal is received, the permit will be issued on the first business day following expiration of the appeal period, and the project may proceed at that time.

NOTICE CONCERNING YOUR LEGAL RIGHTS:

If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision in court, you may be limited to raising only those issues you or someone else raised in an appeal of the decision.
2. You must appeal to the Zoning Adjustments Board within twenty (20) days after the Notice of Decision of the action of the Zoning Officer is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must include the following information:
 - A. That this belief is a basis of your appeal.
 - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
 - C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City and in court.

ATTACHMENT 1

FINDINGS AND CONDITIONS

JULY 20, 2023

2924 Russell Street

Administrative Use Permit #ZP2023-0081

To install an unenclosed hot tub in the rear yard.

PERMITS REQUIRED

- Administrative Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.304.070(D) to install an unenclosed hot tub.

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 CEQA Guidelines Section 15301 (Existing Facilities).
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.

FINDINGS FOR APPROVAL

3. As required by BMC Section 23.406.030(F), 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 proposed location is screened by a retaining wall, fencing and vegetation. The common living areas of the adjacent residents of 2928 Russell Street are located 10 feet, 10 inches above ground and 2928 Russell Street is approximately 50 feet away from the proposed location. The hot tub is 7.5 feet x 7.5 feet and the applicant has proposed additional vegetation around the location of the hot tub to increase privacy to neighboring dwelling and is installing a pad between the tub and concrete pad to further reduce noise. In addition, because the hot tub is at grade there will be no reduction to privacy, light, views, or air for abutting residence and is therefore not detrimental.

4. Pursuant to BMC Section 23.304.070(D)(2), the Zoning Officer finds that:
- A. Any pump associated with an unenclosed outdoor hot tub, jacuzzi, or spa shall be mounted and enclosed so that its sound is not audible on an adjacent lot. The hot tub will be subject to the conditions of this permit, which will ensure that neighbors are not adversely affected by noise impacts that may result from the use of the hot tub. In particular, the operation of the hot tub equipment is subject to the controls imposed under BMC Chapter 13.40 as it relates to maximum noise levels and Conditions of Approval #29-32.

STANDARD CONDITIONS

The following conditions, as well as all other applicable provisions of the Berkeley Municipal Code, 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. Compliance Required (BMC Section 23.102.050)

All land uses and structures in Berkeley must comply with the Zoning Ordinance and all applicable City ordinances and regulations. Compliance with the Zoning Ordinance does not relieve an applicant from requirements to comply with other federal, state, and City regulations that also apply to the property.

3. Approval Limited to Proposed Project and Replacement of Existing Uses (BMC Sections 23.404.060.B.1 and 2)

- A. This Permit authorizes only the proposed project described in the application. In no way does an approval authorize other uses, structures or activities not included in the project description.
- B. When the City approves a new use that replaces an existing use, any prior approval of the existing use becomes null and void when permits for the new use are exercised (e.g., building permit or business license issued). To reestablish the previously existing use, an applicant must obtain all permits required by the Zoning Ordinance for the use.

4. Conformance to Approved Plans (BMC Section 23.404.060.B.4)

All work performed under an approved permit shall be in compliance with the approved plans and any conditions of approval.

5. Exercise and Expiration of Permits (BMC Section 23.404.060.C)

- A. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.
- B. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.
- C. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except if the applicant has applied for a building permit or has made a substantial good faith effort to obtain a building permit and begin construction. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant. A determination that a permit has lapsed may be appealed to the ZAB in accordance with Chapter 23.410 (Appeals and Certification).
- D. A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant must apply for and receive City approval of a new permit.

6. Permit Remains Effective for Vacant Property (BMC Section 23.404.060.D)

Once a Permit for a use is exercised and the use is established, the permit authorizing the use remains effective even if the property becomes vacant. The same use as allowed by the original permit may be re-established without obtaining a new permit, except as set forth in Standard Condition #5 above.

7. Permit Modifications (BMC Section 23.404.070)

No change in the use or structure for which this Permit is issued is permitted unless approved by the review authority which originally approved the permit. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.

8. Permit Revocation (BMC Section 23.404.080)

The City may revoke or modify a discretionary permit for completed projects due to: 1) violations of permit requirements; 2) Changes to the approved project; and/or 3) Vacancy for one year or more. However, no lawful residential use can lapse, regardless of the length of time of the vacancy. Proceedings to revoke or modify a permit may be initiated by the Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.

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 THE ZONING OFFICER

Pursuant to BMC Section 23.404.050(H), the Zoning Officer 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 #

Standard Construction-related Conditions Applicable to all Projects:

11. 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.

12. 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.
13. 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.
14. 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.
15. 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.
16. 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.
17. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.
18. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.
19. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.
20. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
21. 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.
22. 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.

- 23. 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.
- 24. 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.
- 25. 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

2924 RUSSELL STREET
Page 7 of 7NOTICE OF ADMINISTRATIVE DECISION - Findings and Conditions
Administrative Use Permit #ZP2023-0081

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:

26. All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
27. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated June 2, 2023.
28. The pump shall be mounted, enclosed and maintained to prevent noise from disturbing the occupants of neighboring properties.
29. The hot tub shall be equipped with safety features in accordance with the California Building Code.
30. This permit shall be subject to review and modification as necessary to alleviate excessive noise or disturbance to the neighborhood.
31. Mechanical operation and use must adhere to the exterior noise standards of BMC Section 13.40.050.



Prepared by: Samella Stover, Planning Technician
For Samantha Updegrave, Zoning Officer

2924 Russell Street — Administrative Use Permit

General Notes

- The contractor shall inspect the site and be familiar with all existing site conditions prior to submitting bid. Contractor shall not willfully proceed with construction as shown when it is obvious that obstructions, landscape area and/or grade differences exist that may not have been known during design. Such conditions shall immediately be brought to the attention of the landscape architect. The contractor shall assume sole responsibility for all necessary revisions due to failure to give such notification. Contractor shall be responsible for making herself/himself familiar with all underground utilities, pipes, structures and obstructions. Contractor shall assume sole responsibility for all costs incurred due to damage and/or replacement of these items. Contractor shall be responsible for coordination among trades and subcontractors as required to accomplish the work. The contractor shall be responsible for any damage to existing features caused by contractor's work. All repairs shall be made at no additional cost to the owner. Planting shall be installed in conformance with all applicable local codes and ordinances by experienced workmen and a licensed landscape contractor who shall obtain all necessary permits and pay all required fees. **The garden is a pesticide and herbicide free zone.** Contractor shall use organic material to fertilize and to maintain all plant material. No chemical fertilizer will be allowed. Contractor shall verify all grades, existing conditions and dimensions in the field prior to commencing work. All discrepancies or questions shall be brought to the attention of the landscape architect for resolution. Redirect work to avoid delay. All curves and all transitions between curves and straight edges shall be smooth. Take all dimensions perpendicular to any reference line, work line, face of building, face of wall or centerline.
- Demolition**
Contractor shall remove and carry all demolition materials off site. Protect (E) trees as indicated during construction. Contractor shall perform selective trimming of existing trees within the area of work per the direction of the owner.
- Drainage/Grading (Permit #B2023-01579)**
Contractor shall verify if existing drains are in good condition. All drainage systems shall be per City of Berkeley codes. Grade per indicated swales. Sleeving to be Schedule 40 PVC. Cover PVC pipe so that it not visible. All grading to be smooth to achieve a natural aspect. No finish grades shall exceed 2.5:1 slopes.
- Stone paving & stone work**
See Permit #B2023-01579
- Concrete work (Permit #B2023-01579)**
Proposed 18" concrete retaining wall shall be less than three feet in total height including footing. See S2.0, Detail 12 for typical retaining wall and drainage. See L3.0 of Permit set #B2023-01579 for location of subsurface drainage line to (E) sump pump.
- Electrical**
For rear deck perimeter GFCI, please refer to Permit #B2023-01579. Dedicated hot tub GFCI to be processed under separate application, pending AUP approval.
- Wood work (Permit #B2023-01579)**
All new wood decking. Structural engineer to determine partial salvage of structural components of existing wood landing. SSD for final wood sizing, anchors and concrete footing.
- Clean up**
At the end of each work day, at the inspection for substantial completion and before acceptance of project, clean paved areas that are dirtied or stained by construction operations, by sweeping or washing, and remove defacements and stains. Remove construction equipment, excess materials and tools. Haul from owners property the debris resulting from construction, and dispose of legally. Remove remaining temporary protection at time of acceptance by owner unless otherwise agreed.

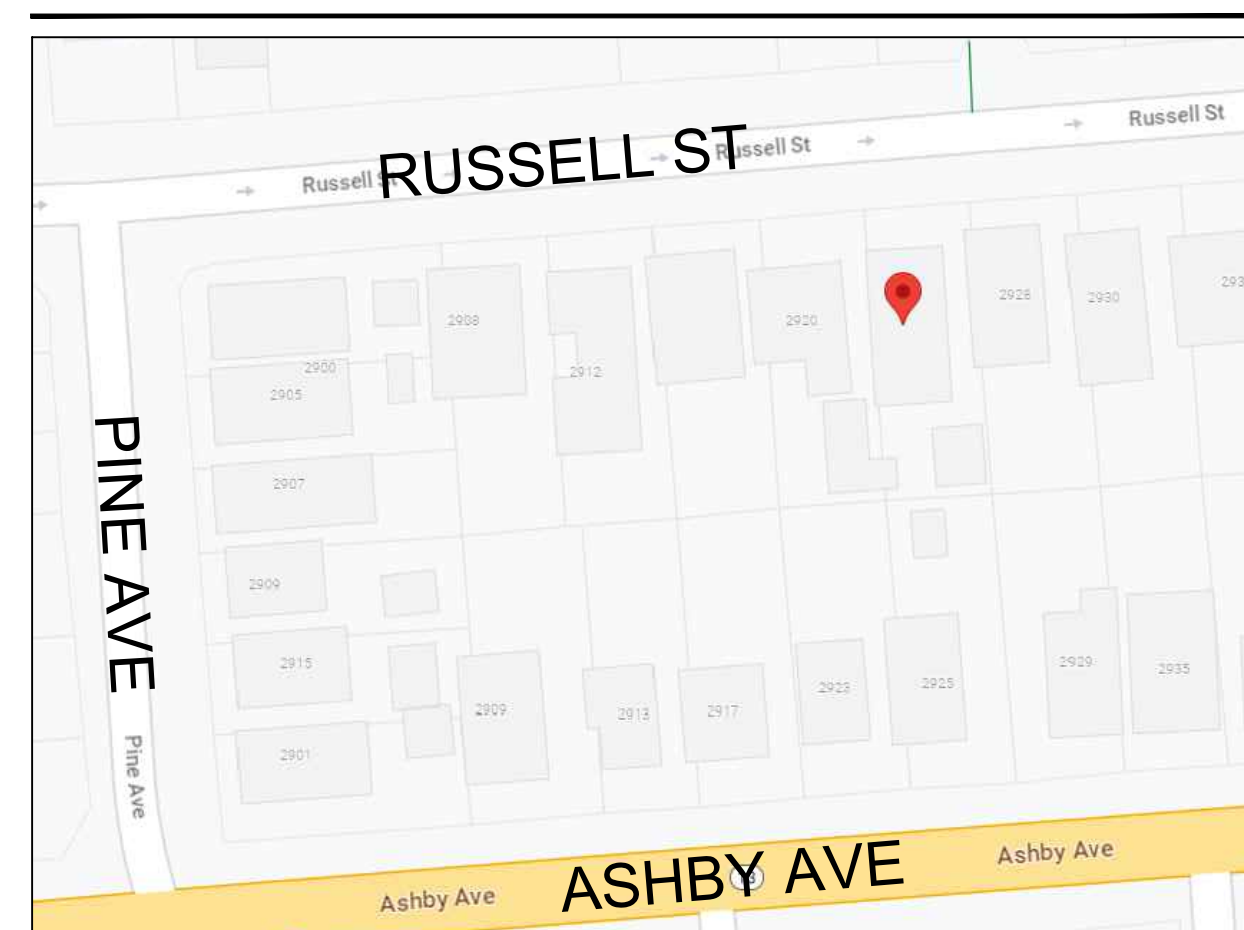
PLANS APPROVED by

Samella Stone **June 2, 2023**

SIGNATURE DATE

***AUP Findings and Conditions Attached**

Location



Legend

- (PA) Planting Area
- (TS) Top of stair
- (BS) Bottom of stair
- (TW) Top of wall
- (BW) Bottom of wall
- R Radius
- POB Layout Starting Point
- SIM Similar
- (TYP.) Typical
- SAD See Architectural Drawings
- EQ Equal
- O.C. On Center
- (E) Existing
- > Align
- 90 Degrees angle
- (824.76) Existing spot elevation
- + 824.76 Proposed spot elevation
- Existing contour line
- Proposed contour line
- Property line
- Existing retaining wall to be demolished

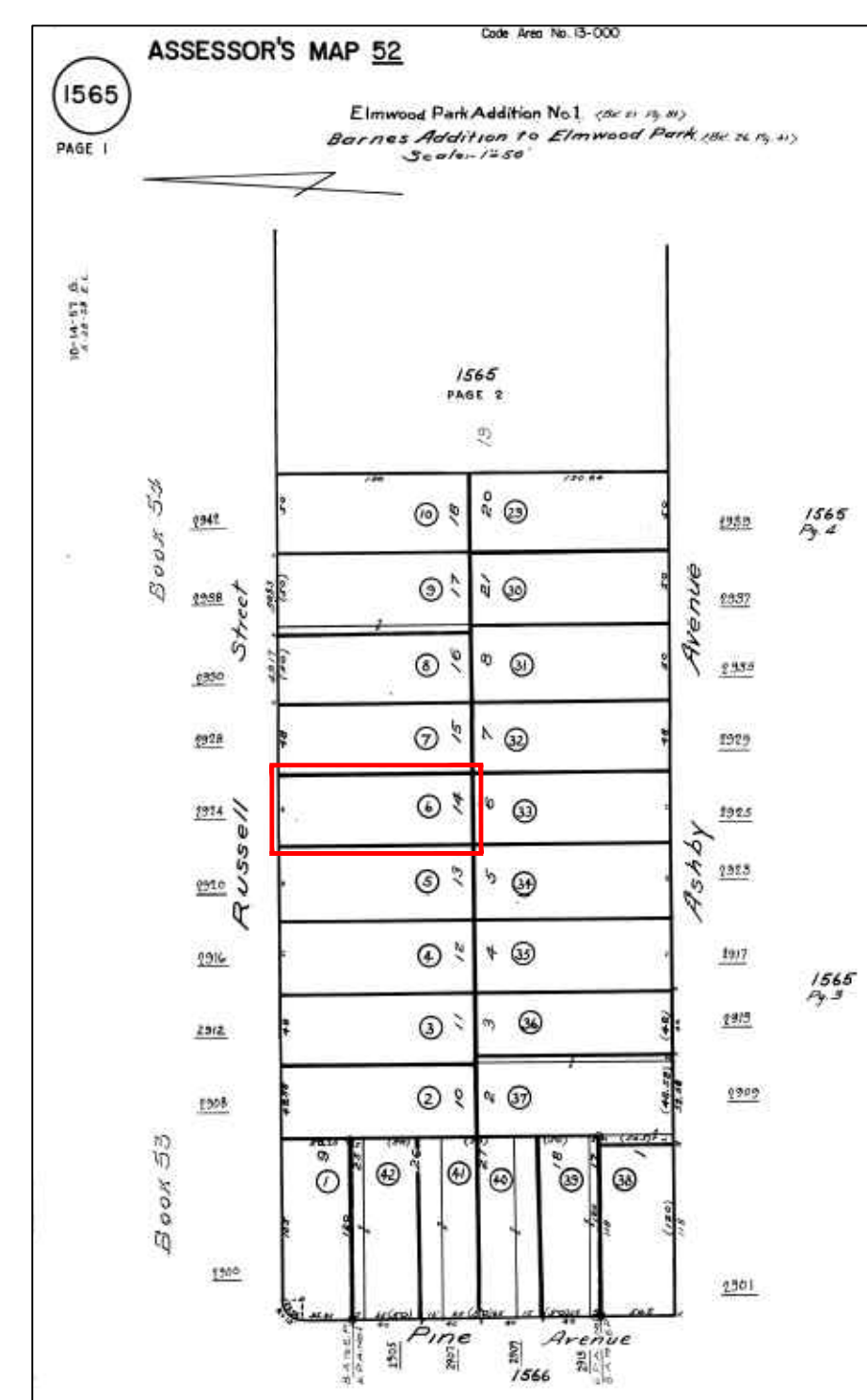
- Flagstone paving**
Random Full Range Connecticut Bluestone
Available at Bay Area Bluestone
(415) 453-2262
- Cable railing**

Sheet Index

- L0.0 Cover Sheet
- L1.0 Existing Site Plan
- L2.0 Proposed Site Plan
- L3.0 Elevations
- L3.1 Elevations
- L4.0 Details
- SV Survey

Assessor's Map

APN: 52-1565-6



Scope of Work

Installation of new hot tub.

Per neighbor request, hot tub selection criteria include low noise relative to industry standards. Hot tub installation to include a sound-reducing mat that complies with manufacturer specifications. Planting of dense screening vegetation along eastern and western fences to further buffer hot tub sound and provide privacy for residents and neighbors.

NOTE: For rear deck and associated perimeter GFCI, please refer to Permit #B2023-01579.

NOTE: Dedicated hot tub GFCI and revisions to Permit #B2023-01579 to accommodate hot tub to be processed under separate application, pending AUP approval.

Project Team

Client Hami Kazerooni 2924 Russell St. Berkeley, CA 94705	Landscape Architect InsideOut Design, Inc. 6000 Harwood Ave Oakland CA 94618 (510) 655-7674 Penn Phillips	Contractor TBD	Structural Engineer Daniel A. Bastião P.O. Box 1891 Union City, CA 94587 510-676-8457
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architecture | interiors | landscape
6000 HARDWOOD AVE
OAKLAND CA 94618
510 655 7674
aboutinsideout.com



ISSUES:

04.04.2023	AUP COMMUNITY OUTREACH
05.12.2023	AUP APPLICATION REVISION IN RESPONSE TO NEIGHBOR COMMENT

Kazerooni Residence
2924 Russell St.
Berkeley, CA

TITLE:
Cover Sheet,
Notes & Legend

SCALE: N/A
DATE: MAY 15, 2023

DRAWING NO:
L0.0

PLANS APPROVED by

Samella Stone **June 2, 2023**

SIGNATURE DATE

***AUP Findings and Conditions Attached**

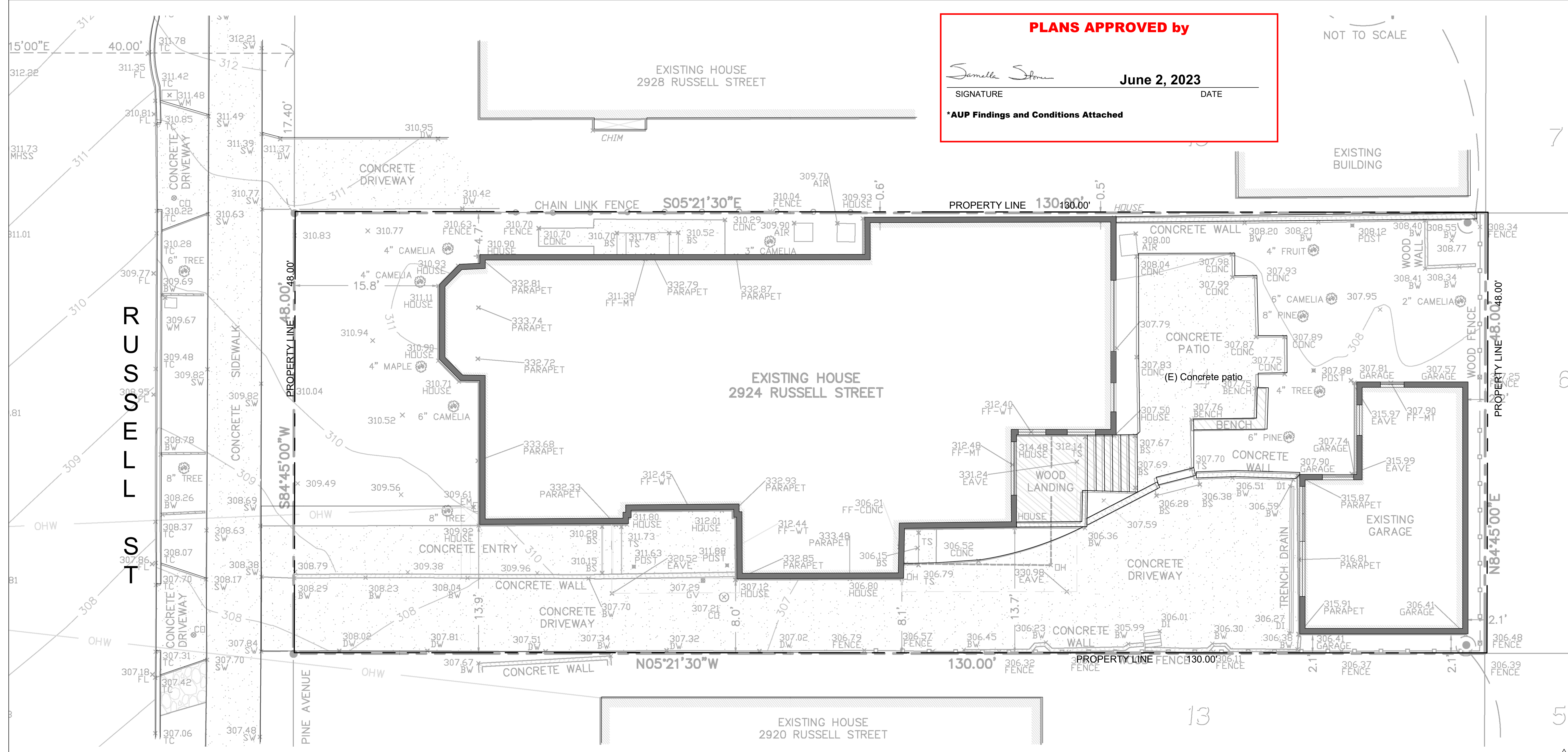
NOT TO SCALE

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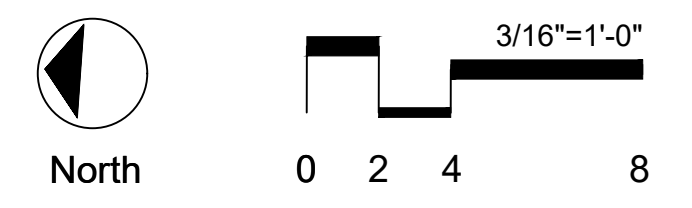
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Existing Site Plan



Existing Conditions

SCALE: 3/16"=1'-0"
DATE: MAY 15, 2023

DRAWING NO:
L1.0



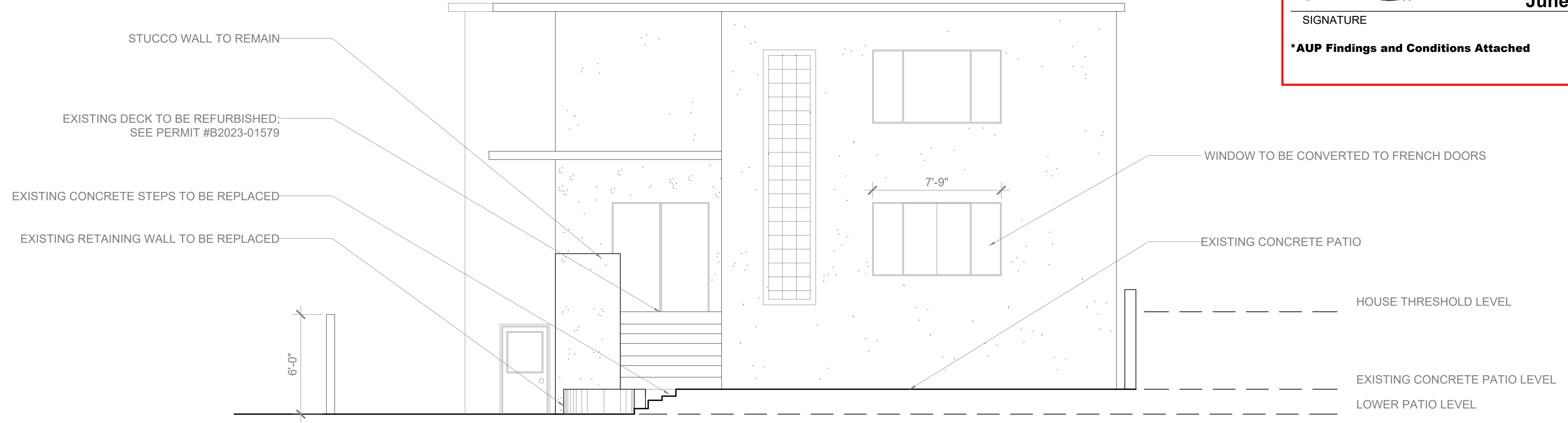
PLANS APPROVED by

Samella Stone **June 2, 2023**

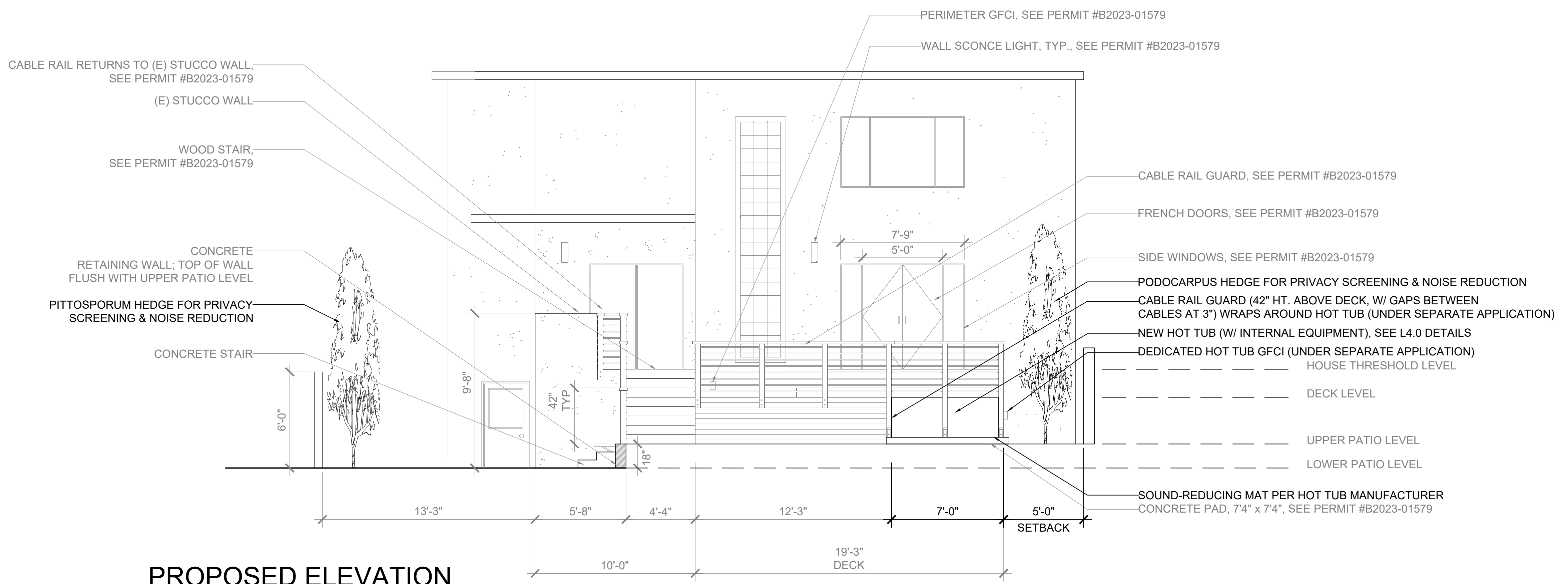
SIGNATURE _____ DATE _____

***AUP Findings and Conditions Attached**

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EXISTING ELEVATION



PROPOSED ELEVATION

NOTE: THE GREATEST RISER HEIGHT AND TREAD DEPTH WITHIN ANY FLIGHT OF STAIRS SHALL NOT EXCEED THE SMALLEST BY MORE THAN 3/8 INCH.

NOTE: Revisions to L3.0 since Community Outreach (04.03.23 - 04.04.23) reflect changes required for issuance of Permit #B2023-01579 and the addition of further sound reduction measures (in consideration of neighbor feedback) only.

ISSUES:

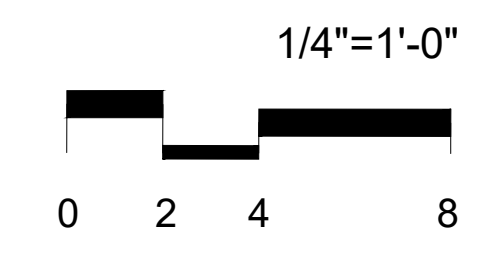
04.04.2023	AUP COMMUNITY OUTREACH
05.12.2023	AUP APPLICATION REVISION IN RESPONSE TO NEIGHBOR COMMENT

Kazerooni Residence
2924 Russell St.
Berkeley, CA

TITLE:
Elevations

SCALE: 1/4"=1'-0"
DATE: MAY 15, 2023

DRAWING NO:
L3.0



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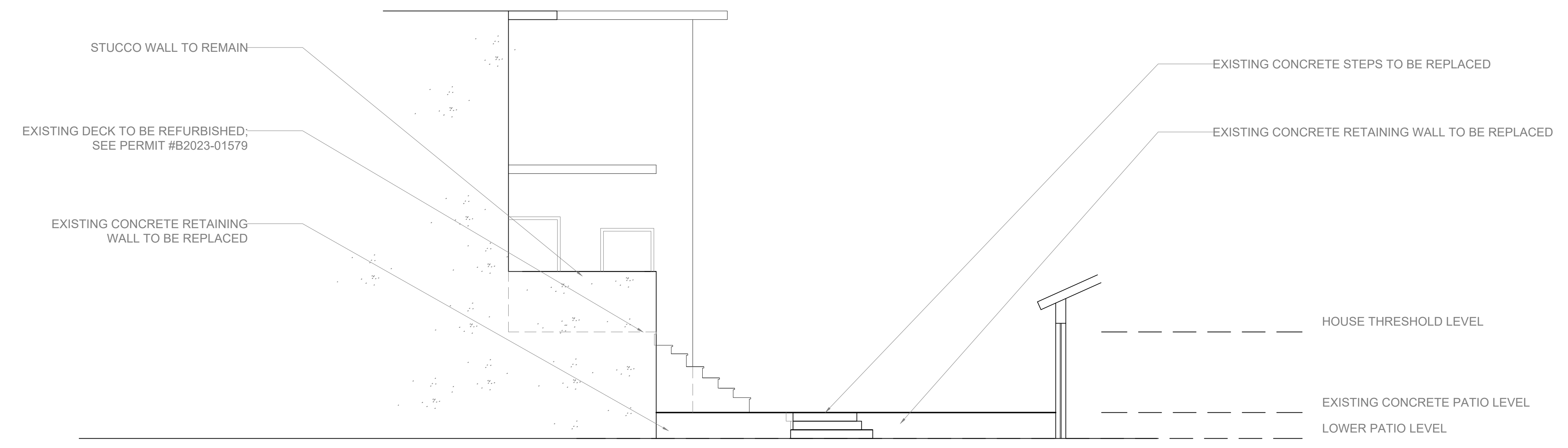
ISSUES:
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05.12.2023 AUP APPLICATION REVISION IN RESPONSE TO NEIGHBOR COMMENT

Kazerooni Residence
2924 Russell St.
Berkeley, CA

TITLE:
Elevations

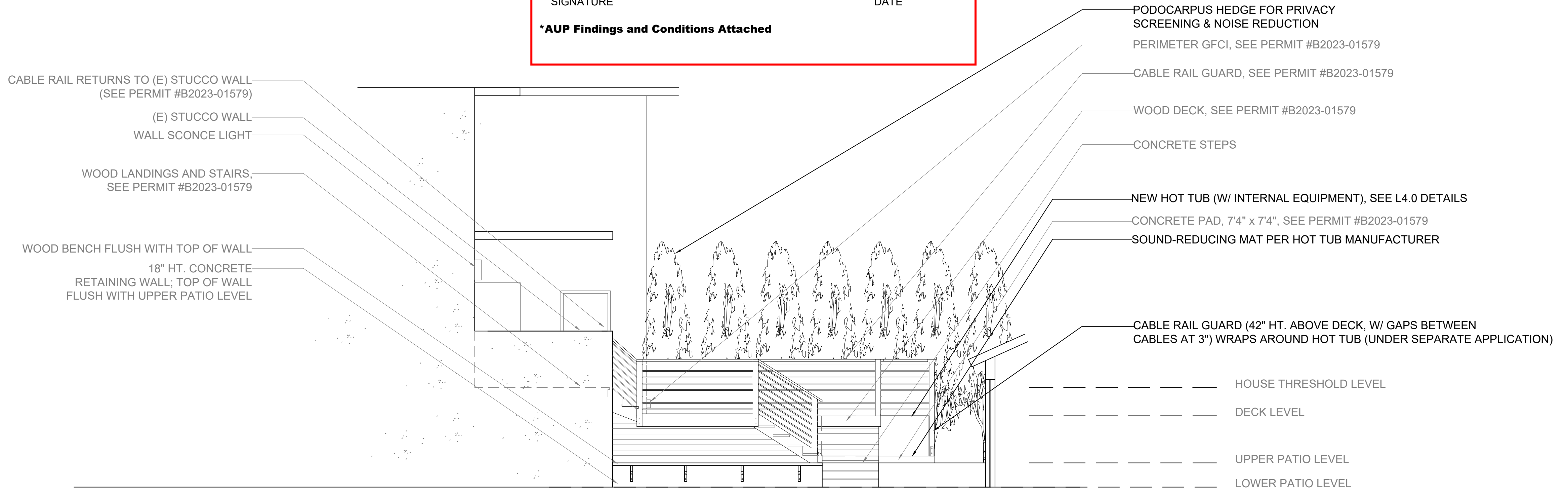
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DATE: MAY 15, 2023

DRAWING NO:
L3.1



EXISTING ELEVATION

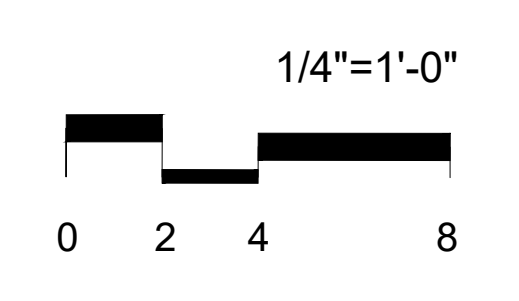
PLANS APPROVED by
Samella Stone **June 2, 2023**
SIGNATURE DATE
***AUP Findings and Conditions Attached**



PROPOSED ELEVATION

NOTE: THE GREATEST RISER HEIGHT AND TREAD DEPTH WITHIN ANY FLIGHT OF STAIRS SHALL NOT EXCEED THE SMALLEST BY MORE THAN 3/8 INCH.

NOTE: The addition of L3.1 since Community Outreach (04.03.23 - 04.04.23) reflects changes required for issuance of Permit #B2023-01579 and the addition of further sound reduction measures (in consideration of neighbor feedback) only.



PLANS APPROVED by

Samella Stone **June 2, 2023**

SIGNATURE DATE

*AUP Findings and Conditions Attached

LEGEND

AIR	AIR CONDITIONING UNIT
BS	BASE OF STEPS
BW	BASE OF WALL
CHIM	CHIMNEY
CO	CLEANOUT
CONC	CONCRETE
DI	DRAIN INLET
DW	DRIVEWAY
EM	ELECTRIC METER
FF	FINISHED FLOOR
GV	GAS VALVE
FL	FLOWLINE
MH	MAINTENANCE HOLE
MT	METAL THRESHOLD
OH	OVERHANG
OHW	OVERHEAD WIRES
SS	SANITARY SEWER
SW	SIDEWALK
TC	TOP OF CURB
TS	TOP OF STEPS
WW	WATER METER
WT	WOOD THRESHOLD
[Symbol]	BUILDING FOOTPRINT
[Symbol]	CONCRETE
[Symbol]	CONCRETE WALL
[Symbol]	FLAGSTONE
[Symbol]	WOOD
[Symbol]	WOOD WALL
[Symbol]	CHAIN LINK FENCE
[Symbol]	WOOD FENCE
[Symbol]	FOUND MONUMENT IN WELL, AS NOTED
[Symbol]	FOUND REBAR AND CAP, LS 5311
[Symbol]	CITY OF BERKELEY MONUMENT ID

GENERAL NOTES:
DIMENSIONS ARE IN FEET AND DECIMAL FEET.

DIMENSIONS SHOWN FROM BUILDINGS TO PROPERTY LINES ARE MEASURED AT BUILDING CORNERS FROM THE EXTERIOR BUILDING FACE PERPENDICULAR TO THE PROPERTY LINE.

NO TITLE REPORT PROVIDED, EASEMENTS MAY EXIST.

ASSESSOR'S PARCEL NUMBER: 052-1565-006

PROPERTY AREA = 6,240± SQUARE FEET

DATE OF FIELD SURVEY: NOVEMBER 17, 2022

BASIS OF BEARINGS:
THE MONUMENT LINE IN RUSSELL STREET WAS TAKEN AS SOUTH 84°45'00" WEST AS SHOWN ON CORNER RECORD 6073 (58 CR 23).

BENCHMARK:
ELEVATIONS ARE BASED ON CITY OF BERKELEY DATUM.
THE WESTERN MOST MONUMENT REFERENCE CROSS, FOR CITY OF BERKELEY MONUMENT B1846, LOCATED AT THE SOUTH WEST CORNER OF THE INTERSECTION OF AVALON AVENUE AND CLAREMONT BOULEVARD, WAS TAKEN AS ELEVATION = 355.99 FEET PER CORNER RECORD 9875 (103 CR 68).

BOUNDARY AND TOPOGRAPHIC SURVEY

LOT 14, BARNES ADDITION OF ELMWOOD PARK (26 M 41)
LOCATED AT 2924 RUSSELL STREET
CITY OF BERKELEY, COUNTY OF ALAMEDA, CALIFORNIA

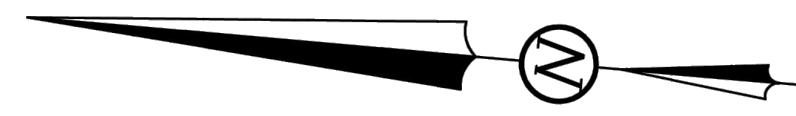
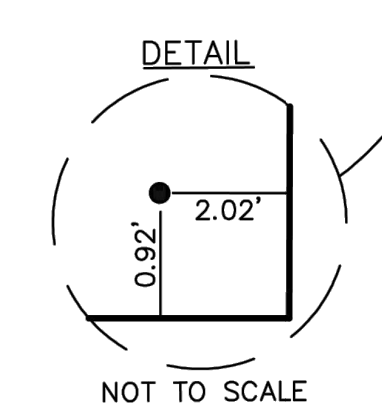
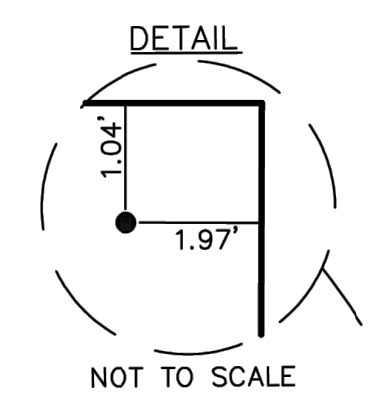
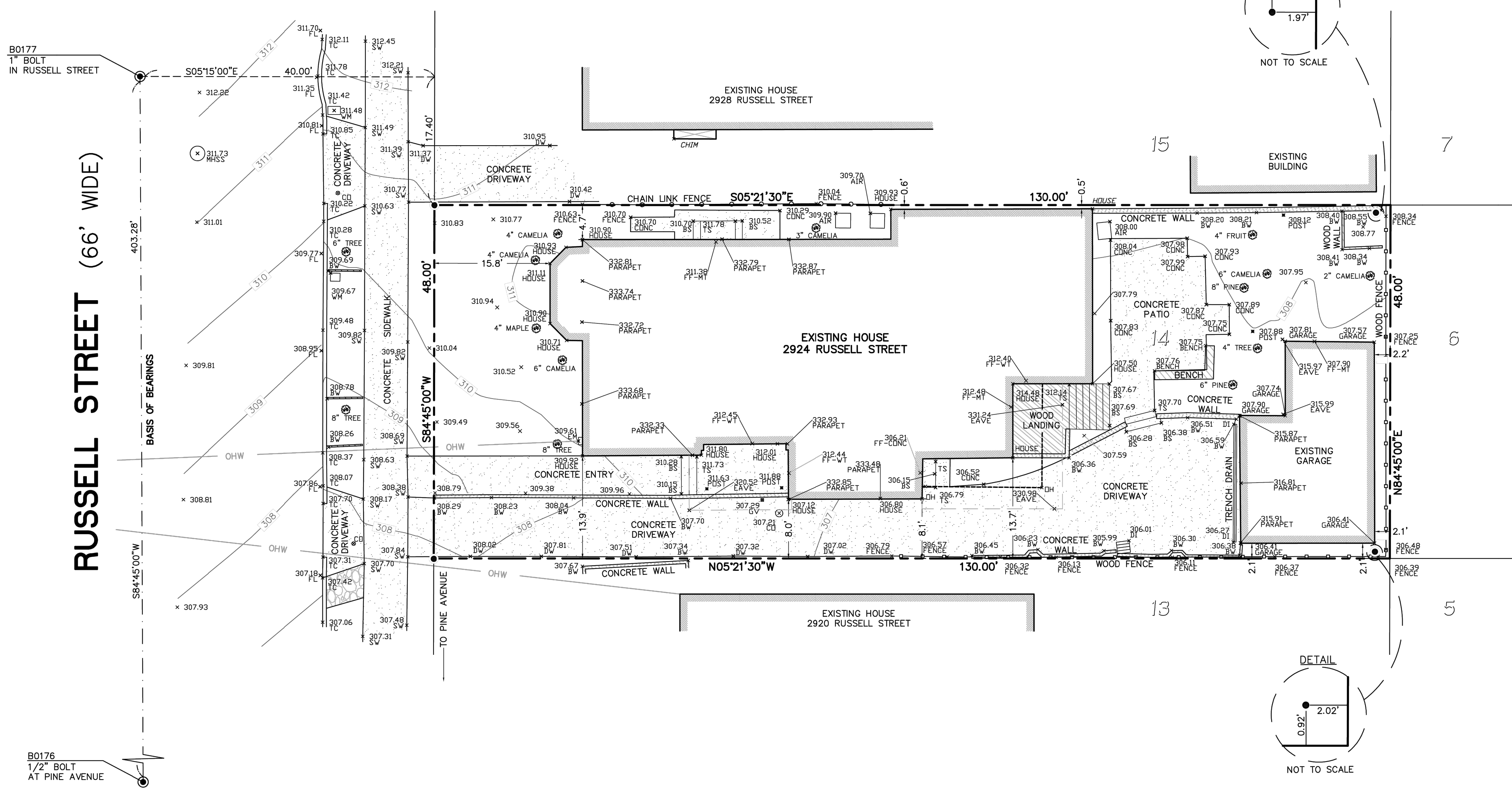
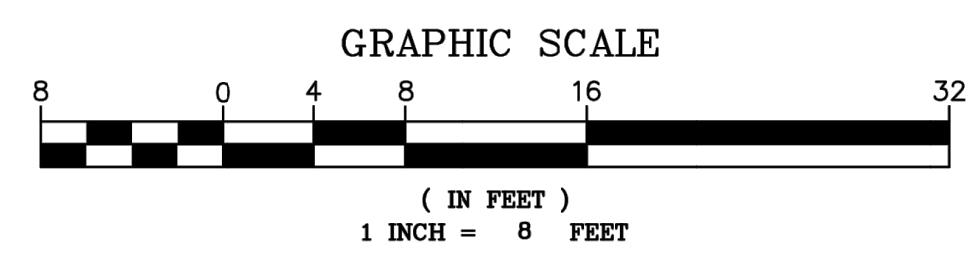
DECEMBER 6, 2022 SCALE: 1" = 8'

MORAN ENGINEERING, INC.
CIVIL ENGINEERS \ LAND SURVEYORS
1930 SHATTUCK AVENUE, SUITE A
BERKELEY, CALIFORNIA 94704
(510) 848-1930

F.B. NO. 1922 RUSSELL-TOPO.DWG JOB NO. 22-11022



12-06-2022



RUSSELL STREET (66' WIDE)

BASIS OF BEARINGS

B0177
1" BOLT
IN RUSSELL STREET

B0176
1/2" BOLT
AT PINE AVENUE

August 9, 2023

2928 Russell Street
Berkeley, CA 94705
rspohn20@gmail.com

The Honorable Zoning Officer of the City of Berkeley
1947 Center Street, 2nd Floor
Berkeley, California. 94704

Re: Appeal of Approval of Administrative Use Permit # ZP2023-0081

Honorable Zoning Officer:

Please find attached an Appeal of the referenced AUP Approval. The grounds for the Appeal are summarized in the final section of the text. They are elaborated in the preceding sections, with a summary narrative at the outset.

The Proponent and their architectural Firm affirmatively sought to mislead and deceive the City of Berkeley by withholding essential information provided by Appellant regarding impact features of the Project.

Proponent and Firm ignored and failed to honor the mandate of the Land Use Planning Division that Applicants for an AUP for a project in a Residential District must contact specified affected neighbors and present plans and try to identify and resolve issues of concern. That they did not do so has led to this Appeal.

Applicants who ignore the City’s mandates, as well as the legitimate interests of their neighbors and, scorning the good faith efforts of their neighbors to be proactively and productively collaborative, deliberately mislead and deceive the City, to the detriment of those neighbors – should not be rewarded with the ill-gotten government approval of their projects.

Thank you for your consideration of this Appeal.

Sincerely yours,

Richard B. Spohn, Appellant

Received
AUG 09 2023
Land Use Planning

SUMMARY

This is an appeal of Administrative Use Permit # ZP2023-0081 by the Zoning Officer of the City of Berkeley, to install an “unenclosed” hot tub in the rear yard of 2924 Russell Street (the “AUP”). Appellant is the owner of the adjacent home at 2928 Russell Street.

The Proponent of this installation (herein, the “Project”) has scorned the directive of the City of Berkeley and the dictates of common neighborliness to inform Appellant of their intentions to install a hot tub (the “Tub”). Proponent shirked the tasks of informing neighbors and of personally soliciting concerns about the Project, instead deploying a young employee (the “Canvasser”) of their landscape architect’s firm (the “Firm”) to inquire of their neighbors. The Canvasser and Firm had a clear structural conflict of interest in their work, which is reflected in the language and omissions of the AUP.

Proponent disregarded Appellant’s detailed input to the Canvasser and to the Proponent personally. (See Attachment “A” hereto). For one pertinent example, that the Tub would be installed ten (10) feet from Appellant’s noise-sensitive wife’s professional desk. They withheld that crucial fact from the City of Berkeley.

There are several material factual errors reflected in the AUP that could only have come from Proponent or from the Firm. There are other assertions about the operation of the Tub that are gratuitous and suspect.

Appellant is apprehensive about both operational and usage noise that will inevitably emanate from the Tub. The AUP’s proposed protections from noise are indeterminate and imprecise.

Proponent has also introduced into a quiet neighborhood the commotion and splash of three expensive cars and three motorcycles but has let their front yard and driveway deteriorate into a weeded (3-4 feet high) blight. Proponent has alienated neighbors on both sides of their property and has avoided all other community interaction, on a known chummy street. Thus Appellant has serious misgivings about the good faith and neighborliness with which Proponent would operate and use their Tub.

A. Proponent failed to communicate with neighbors, contrary to City Policy

The Project Proponent did not inform their neighbors in advance of their intention to install a hot tub in their back yard, nor engaged in any conversation about the Project thereafter. The first anyone learned of it was when the Notice sign was staked amongst the weeds that cover their front yard. That sign soon toppled and lay in the weeds for many weeks, until the City's AUP was issued and up it went. Proponent's disregard of their neighbors violated the language and spirit of the City of Berkeley's "Instructions Regarding Community Outreach," promulgated by its Land Use Planning Division (the "Instructions"), which state in part:

" [1] For all projects: Early in the design process, the City strongly encourages owners to meet with their neighbors, whenever possible, to present plans and try to identify and resolve issues of concern. Applicants can meet with neighbors one-on-one or at a gathering; whichever seems more appropriate to them.

[2]. Projects in a Residential (R) District require contact between the subject property owner and the abutting and confronting property owners and tenants...

[3] Projects of Community or Neighborhood Interest require a meeting with owners, residents, and community groups within 300 feet of the project."

(Emphases added) (<https://berkeleyca.gov/sites/default/files/2022-02/Instructions-Regarding-Community-Outreach.pdf>)

Please note that there are three (3) levels of requirements for meetings between owners and neighbors. Proponents of all projects are "strongly encourage[d]" to meet with neighbors, Residential projects "**require contact**" between owners and neighbors, community interest projects "require a meeting."

Proponent ignored the Instruction of this sound, unambiguous public policy mandate of the City and ignored their neighbors. There was no "require[d] contact" between Proponent and their neighbors. This is not a large development affecting many people, it is a Residential project, of one property situated between two neighboring properties, of a deck and a hot tub. The "require[d] contact" should have been exceedingly easy. In the matter under consideration, all principals are mature, accomplished professionals who once actually communicated with each other.

However, rather than reaching out to their neighbors as required by the City's policy and Instruction – to say nothing of fundamental canons of neighborliness and civility -- Proponent instead had their architect send a young Canvasser around to perform that critically important, distinctly neighbor's "contact" function. The purpose of the Instruction is for the proponent of a Residential project to hear early and directly from potentially affected neighbors, to understand and be able to consider their concerns. Appellant has performed this obligation at different times in the many years they have lived in their house. These mandated consultations are an exercise of respect, comity and consideration between people living in close urban proximity to each other. Yet Proponent sunk substantial money into the Project without ever discussing it with their neighbors.

Appellant's exposure to the Canvasser was primarily through a small window in the front door, since Canvasser had shown up unscheduled on a Saturday morning just as Appellant had concluded an academic seminar on Zoom and was still clad in bathrobe and pajamas. Canvasser seemed inexperienced and was balancing a nest of papers, at one point awkwardly flashing a sketch of the layout of the Project, pointing to where the Tub would be. They seemed to be in a hurry and asked Appellant to indicate on a form that they had been told about the Project, assuring Appellant that so indicating would not constitute approval of the Project. Tightening robe and opening the door for the first time, Appellant so indicated, noting in 7 words concerns about noise that would emanate from the Tub. Appellant has had two different hot tubs at a country residence for over 26 years and experience with hot tubs in various settings and conditions for over 50 years.

Appellant was never presented with plans or architectural drawings by the Canvasser. It was only days later that the owners of the other adjacent residence, 2920 Russell Street, shared with Appellant the full-blown architectural drawings they had received in the U.S. mail from Canvasser, who had not met with them in Canvasser's gratuitously unannounced walk-around of the area. It is seemingly inexplicable that Canvasser did not work to secure a meeting with the residents on the other side of the Project. So much for honoring the "require[d] contact" between Proponent and neighbors mandated in the City's Instructions.

But it is explicable. Canvasser and Firm had clear conflicts of interest in their role as Proponent's surrogate in the "require[d] contact": to be able to go forward

with the Project it was clearly in Canvasser's and Firm's economic interest to uncover as little objection to the Project as possible. Canvasser rushed Appellant on the one side and did not diligently secure contact with the residents of the other adjacent house. Ironically, those other-side residents thus received, in the drawings mailed to them, vastly more detailed information about the Project than did Appellant, who had received Canvasser's sketchy narrative through a very small window in a front door, hardly what the Instructions envision.

Both Appellant and the neighbors on the other side of Proponent's property have subsequently attempted to engage Proponent in conversation about the Project but have received no responses to their respective overtures. Thus there has been no "require[d] contact" as mandated in the City's Instructions.

B. Proponent largely ignored Appellant's extensive comments and input and misrepresented other essential input

Appellant, in good faith and despite feeling hustled by Canvasser and disdainfully "ghosted" by Proponent, sent two extensive e-mails to Canvasser and had one brief telephone conversation with them, articulating in specific detail "grave" concerns about the Project (see Attachment "A"). By this time, Appellant had the benefit of the detailed architectural drawings shared by the other-side residents and so had a far clearer picture than had been given in the one awkward encounter with Canvasser. Canvasser said Firm would work on the noise issue, e-mailed some technical materials from a vendor, and the nascent dialogue then petered out. Appellant sent to Proponent the emails sent to Canvasser, with a cover letter highlighting their concerns and asking that the Project not be pursued. It was never acknowledged.

The AUP states that Appellant's property is "approximately 50 feet away from the proposed location [of the Tub]." (Findings and Conditions, Section 3.0) Whoever fed this to the City was not telling the truth, as Proponent, Firm and Canvasser would have known from Appellant's proactive communications to them. As Appellant stated to Canvasser on April 14th,

"The proposed tub here would be about 10 feet from my wife's office desk in our "casita," immediately on the other side of the property boundary. The casita also serves as a guest cottage, where people sleep. The tub would be about 25 feet

from our glassed-in (not sound-proofed) large family room and kitchen, where we spend a lot of time, cooking, dining, reading, recreating, hanging out amongst ourselves, entertaining, watching tv, etc. When the weather is favorable we use the deck that extends out from the family room (and closer to the proposed tub) for the same uses as indoors. The tub would be just below and just around the building corner from the bedroom of one of our daughters, who is a graduate student and in a demanding "practicum" work program. Her bedroom is her office and her study space..... **The tub would be right below my own glassed-in office, where as a disabled 80-year-old I spend much of my waking time that I'm not in the glassed-in family room.** The potential whirring and grinding of the hot tub motor would be a constant cyclical nuisance to all these spaces -- 24/7/365." (emphases added; see Attachment "A")

These are absolutely essential details, shared in good faith with Proponent and Canvasser yet purposefully not only left out of their communications with the City but superseded by contrary falsehoods. That they would knowingly withhold such information (e.g., Tub ten feet from a 72-year-old, noise-sensitive woman's professional office and desk, and closely proximate to Appellant's heavily-used Family Room) is shocking and shameful, a personal affront of the first order.

Proponent's attempt thus to mislead the City should itself be grounds for rescission of the AUP. The Instructions call for collaboration between the parties, not for manipulation and deception. Appellant acted in good faith in the spirit of the City's Instructions; Proponent acted in bad faith, knowing that they were deceiving, to disregard and burden for years to come a lovely and gracious neighbor. Had they honored the mandate of the Instructions, this could have been avoided. They knew what they were doing, they had been informed of the 10-foot Tub-desk axis by Appellant on April 14th.

C. Hot Tubs Make Noise, Users Make Noise; City has Set Indeterminate Standards for Tub Noise

Dropping a Tub immediately into this fraught space is seriously problematic, especially given the invariable attendant noise. Motors make noise, the internal recycling and purification of water has an audible grinding and whoosh to it. These are in frequent daily cycles that have no regard for the auditory sensitivities

of whomever happens to be within earshot. The whirr of jets as the hot tub is used creates gurgling and splashing sounds. The relentless inevitability of the hot tub's cyclical sounds and noise is wearing. They can wake one up, and then keep one awake waiting for the next cycle to hit. Appellant testifies to this reality out of many years of hot tub usage and ownership.

Of course the usage of a hot tub is typically the source of considerable noise. The hilarity of happy hot-tubbers is legendary and yet often inconsiderate of those who might be catching the sounds of a good time and nothing else. As Appellant noted to Canvasser and Firm in April,

"We are not so much worried about "socializing" noise emanating from tub usage by the current residents, whose seem quiet and refined. But houses get sold and hot tubs remain. There is a large house, which would commend itself to a large family (I'm the eldest of six...) or perhaps as a frat base or extension, or to just a pick-up gaggle of CAL students. If party people got into that house with a hot tub, our lives would be made miserable." (see Attachment "A"). People who are having big social fun in warm water, particularly if intoxicated or stoned (or both), typically don't give a rat's patootie about the hapless auditors of their hilarity and camaraderie. Inhibitions and usual self-discipline generally become limited. And some people are just plain loud and boisterous.

The City has set a noise standard in the AUP for the Tub that goes beyond what Proponent's vendor has represented can be done about the noise. In Findings and Conditions Section 4 of the AUP the Zoning Officer finds that pursuant to a cited provision of the BMC the sound of the pump of the Tub shall be "not audible on an adjacent lot." Indeed, it promises that the Conditions of the AUP "will ensure that neighbors are not adversely affected by the noise impacts that may result from the use of the hot tub." A perusal of these Conditions does not render much clarity as to how these assurances will be achieved.

Moreover, there are imprecise controlling flexibilities on acceptable noise levels, at least one in the AUP and one in Drawing LO.0. In the latter, "Scope of Work" states in part that "...hot tub selection [shall] include low noise relative to industry standards." There is no certainty here of protection, only that the Tub's noise would be a little better than the standard set by the purveyors of tubs. That is hardly a reassuring tether. In the former, under "Prior to Final Inspection," Number 30 states that "This permit shall be subject to review and modification as

necessary to alleviate excessive noise or disturbance in the neighborhood.” Clearly whatever would pass as non-excessive noise would be acceptable. Where is that pegged? What are the limitations? How do these loose references get to “not audible”?

Given these two loose, utterly indeterminate regulatory limits on noise created by the Tub, it is impossible to have confidence in the two requirements of Section 4 of the AUP articulated above: (1) that the sound of the pump shall be “not audible on an adjacent lot” and (2) that the Conditions of the AUP “will ensure that neighbors are not adversely affected by the noise impacts that may result from the use of the hot tub.”

D. Collateral Concerns

Appellant has substantial concerns that portend problems with Proponent’s operation and use of the Tub.

1. Proponent has already, in the course of 18 months, introduced an exceptional level of mechanical commotion on its property and on the street. There are a Porsche, a Tesla and a nice Honda for the high school daughter, plus no fewer than 3 motorcycles. The latter are housed in a semi-garage in the back, near where the Tub would go. They are frequently revved up, spewing noise and exhaust into the ambient air, in which Appellant also participates.
2. Appellant’s front yard is a jungle of weeds 3-4 feet high, the driveway has weeds in every crack and cranny. When they purchased the property the sellers had installed a new, rich, turf-roll lawn, which Proponents have never tended, as too with the decorative trees around the side of the front of their house, which had been lovingly nurtured for decades by the previous owner, an avid gardener. Their front yard is frankly a blight on the street. If they bring this same level of care and attention to the Tub, the situation will become a disaster.
3. Proponent and spouse have managed in a short period of time to alienate themselves from neighbors on both sides of their property, communication has broken down. They do not socialize or participate in neighborhood gatherings or events and are rarely seen. Their previous residence was two blocks away on Ashby Boulevard, so they are hardly outsiders. The

Proponent male is a high academic and successful entrepreneur, the spouse reportedly a non-profit organization executive.

E. Petition of This Appeal

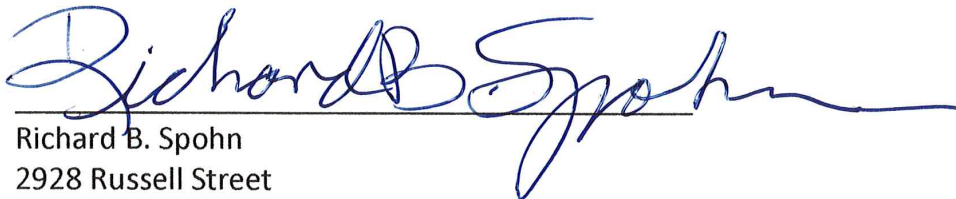
Appellant requests that Administrative Use Permit Number ZP2023-0081, relating to the installation of an unenclosed hot tub in the rear yard of 2924 Russell Street, be rescinded, for the reasons amply discussed hereinabove and non-inclusively itemized below. The Tub will profoundly compromise the peaceful enjoyment of Appellant's home and property.

Appellant has lived in the adjacent residence at 2928 Russell Street for 40 years come this Labor Day and is currently a member of the Board of Directors of the Claremont-Elmwood Neighborhood Association (CENA), so is an active, concerned citizen dedicated to enhancing the civility and quality of governance and life of our shared Berkeley community.

- A. Proponent and Firm ignored the mandate of the City's Instructions that Owner-Applicants to the Land Use Planning Division contact specified neighbors and meet with them "to present plans and try to resolve issues of concern." Rather, in a clear conflict of interest, Proponent had its architect send around a young Canvasser to contact neighbors. Their process did not go well. Had they adhered to the City's Instructions, this Appeal would likely have been unnecessary.
- B. Proponent and Firm withheld essential information from the City provided to them in good faith by Appellant. They instead gave the City false and misleading information. This is nowhere more harmful to Appellant than in withholding the feedback that the positioning of the proposed Tub would place it 10 feet from Appellant's noise-sensitive 72-year-old spouse's professional desk. Also 25 feet from our much-used Family Room and right below Appellant's glassed-in office, where as a disabled 80-year-old he spends much of his waking time when not in the glassed-in Family Room. Proponent and Firm withheld all of this information from the City. **Proponent's successful attempt thus to mislead the City should of itself be grounds for rescission of the AUP.**

- C. The industry vendor-based standards for prevention of noise from the Tub referenced in the AUP are indeterminate and imprecise. Usage noise remains uncontrolled, which is threatening to Appellant.
- D. Proponent has introduced 3 vehicles and 3 motorcycles, has neglected their weed-choked front yard for 18 months, been absent as a neighbor and has alienated themselves from adjacent neighbors – giving Appellant misgivings about Proponent’s willingness to considerately manage its proposed Tub and deck and to engage in neighborly relationships.
- E. Applicants who ignore the City’s mandates, as well as the legitimate interests of their neighbors, and, scorning the good faith efforts of their neighbors to be proactively and productively collaborative, deliberately mislead and deceive the City, to the detriment of those neighbors – should not be rewarded with ill-gotten government approval of their projects.

Thank you for your consideration of this Appeal.



Richard B. Spohn
2928 Russell Street
Berkeley, California 94705

August 9, 2023

ATTACHMENT "A"

April 21, 2023

Mr. Homayoon Karzerooni
2924 Russell Street
Berkeley, California 94705

Re: Hot Tub

Dear Hami:

I was disappointed and sorry that you chose not to speak with your new neighbors about your plan to install a hot tub in your backyard, immediately adjacent to the side of our property. I was also disappointed that you chose not to comply with the Berkeley ordinance requiring you to do so. You rather had your architect send someone around to perform that critically important neighbor's function. The purpose of the ordinance is for the proponent of a project to hear directly from potentially affected neighbors, to understand and be able to consider their concerns. My wife and I have both performed this obligation at different times in the many years we have lived in our house. These mandated consultations are an exercise of respect, comity and consideration between people living in close urban proximity to each other. You have sunk money into the project without ever discussing it with your neighbors.

Your projected hot tub is threatening and seriously problematic to the peaceful enjoyment of our home. I have conveyed our grave concerns to your architect's representative, Ms. Diana Daisey, but want to share them directly with you, to afford you the unfiltered specificity the ordinance envisions a proponent receiving. (For example, that your hot tub would be approximately ten (10) feet from my noise-sensitive wife's office desk.) Thus you will find attached copies of my emails to Ms. Daisey. Please read them carefully. Our concerns, which are elaborated in detail in those communications, center on three products of the tub:

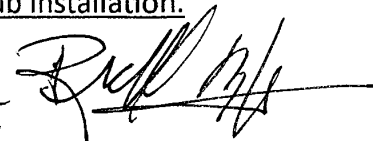
1. Operational noise
2. Usage noise
3. Diminution of property value

These concerns are based on our own experience with two different hot tubs at our house in Inverness over a period of 26 years, and with others over 50+ years.

Please desist from proceeding with this seriously intrusive hot tub installation.

~~THANK~~ YOU,

RICHARD SPORN
2928 RUSSELL ST.





Richard Spohn <rspohn20@gmail.com>

Re: FW: Soundproofing for Caldera Spas "Geneva" or similar

1 message

Richard Spohn <rspohn20@gmail.com>

Fri, Apr 14, 2023 at 2:52 AM

To: Diana Daisey <diana@aboutinsideout.com>

Cc: Katherine Ramage <ramagekm@gmail.com>

Bcc: Mary Montali <mimimary@comcast.net>, Dennis Montali <cramdown@gmail.com>, Monica Spohn <monica.spohn@alumni.dominican.edu>, Katerin Spohn <Katerin.Spohn@hotmail.com>

Thanks for this package, Diana. I very much still would like to speak with you, about some elements of it as well as some issues raised by the use permit conditions and by the formal design plans, which were shared with us by a neighbor, not by your office or by the tub proponents. If 11 tomorrow is no longer good for you, please suggest another time thereafter. I'll be available until 5, when another commitment kicks in. Please confirm if 11 still holds.

Point of reiteration: Again, to be clear, my signature on your list of neighbors contacted was, per your assurances, merely for the purpose of acknowledging your having acquainted me with the plan for installation of a hot tub next door, and not to register any sort of sign-off by myself or our household. You were to have entered on the form our serious reservations about noise associated with the tub, especially when it is going through its daily cycles of operational whirring and grinding attendant upon its water-purifying and other processes.

As I indicated, we have a hot tub at our retreat home in Inverness so, have years of lived experience with such noise.

Our tub in Inverness is in a back corner of our large lot and garden, which is covered with sound-softening trees and foliage, and is in a distinctly rural, wooded environment. And yet the noise from the hot tub can wake us up at night, in a bedroom some considerable distance and elevation from the tub. It can be annoying, since usually one has to wait till it shuts off to get back to sleep.

I have had 39.6 years of peaceful enjoyment of this home without the mechanical noise of a hot tub right behind our camellias. We are not so much worried about "socializing" noise emanating from tub usage by the current residents, who are quiet and refined.

But houses get sold and hot tubs remain. Theirs is a large house, which would commend itself to a large family (I'm the eldest of six...) or perhaps as a frat base or extension, or to just a pick-up gaggle of students. If party people got into that house with a hot tub, our lives would be made miserable.

The proposed tub here would be about 10 feet from my wife's office desk in our "*casita*," immediately on the other side of the property boundary. The *casita* also serves as a guest cottage, where people sleep. The tub would be about 25 feet from our glassed-in (not sound-proofed) large family room and kitchen, where we spend a lot of time,

cooking, dining, reading, recreating, hanging out amongst ourselves, entertaining, watching tv, etc. When the weather is favorable we use the deck that extends out from the family room (and closer to the proposed tub) for the same uses as indoors.

The tub would be just below and just around their building corner from the bedroom of one of our daughters, who is a graduate student and in a demanding "practicum" work program. Her bedroom is her office and her study space. Across the hall our other daughter has her bedroom, which 2-3 days a week is her office as an international fraud examiner for a bank. The tub would be right below my glassed-in office, where as a disabled 80-year-old I spend much of my waking time that I'm not in the glassed-in family room. The potential whirring and grinding of the hot tub motor would be a constant cyclical nuisance to all these spaces -- 24/7/365.

To add to the imposition, the property boundary between the two houses has always cheated us of some 5 feet or so in width because of a variance the builders (?) secured at some early point to extend the footprint of their building over into the buffer zone space that otherwise would have separated our structures as are all the other residences on the block. Next time you're out here you can check it out. It's starkly obvious. The variance begins where the side of their house comes smack up against our driveway, from before our back gate, and that line extends all the way back to the rear of our lot. (The camellias were planted years ago in an attempt to soften the ugly impact of their towering exterior wall in the space pared off from our plot by the variance.) I haven't been able to physically measure it, but I'd estimate the variance intrusion is 50-60 feet long, which means some 250-300 square feet of buffer land/space is denied us by the variance.

If that variance had not established their dominion over the otherwise-buffering land, the tub would not be so close to our property. When the plans say it is to be 5 feet from the boundary, that's from the intruding variance line -- not from the developer-intended boundary which would be in place but for the variance, with the presence of the buffer space. So the plans for the hot tub take advantage of and perpetuate the loss and damage caused by the variance -- and bring its noise all that much closer and into our family's predominantly used living spaces: the all-purpose family room and deck, bedrooms and offices.

So dropping a hot tub immediately into this fraught space is problematic, especially given the invariable attendant noise.

What is being done to mitigate that noise? I have no desire of having my unknown remaining time clocked off by the cyclical mechanical noise from a hot tub.

Thanks, Richard Spohn, 2928 Russell Street

On Wed, Apr 12, 2023 at 5:03 PM Diana Daisey <diana@aboutinsideout.com> wrote:

Hi Richard,

Thanks for your call yesterday. Please see below for preliminary research. Did you still want to schedule a brief call for Friday around 11:00?

Best,

Diana

From: Berkeley Heat Tubmakers <berkeleyheatsales@gmail.com>
Sent: Thursday, April 6, 2023 12:43 PM
To: Diana Daisey <diana@aboutinsideout.com>
Subject: Re: Soundproofing for Caldera Spas "Geneva" or similar

Hi Diana,

There always needs to be a space to be able to access the main front panel. If you build a vault or bunker you can build it in a way that it retains sound. There has to be a way to access the spa if need be. Obviously this space will be waterproofed and have a drain. I attached the decibel information for the Caldera spas.

Best,

Nic Leone

Berkeley Heat Tubmakers

915 ASHBY AVE

Berkeley, CA

94710

510 843-2000

Monday-Friday 10 am to 6 pm

Saturday 10 am to 5 pm

Sunday 11 am to 4 pm

www.berkeley-heat.com

for product updates & specials

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On Wed, Apr 5, 2023 at 12:45 PM Diana Daisey <diana@aboutinsideout.com> wrote:

Dear Berkeley Heat,

We have a client in Berkeley who lives between two noise-sensitive neighbors, and is hoping to install a Caldera Spas "Geneva" or other 7.5' x 7.5' spa. Would it be possible to set up this model or similar (Sundance "Cameo", etc.) with some or all of the sound reduction techniques in this article?

<https://www.soundproofcow.com/how-to-soundproof-hot-tub-motors/>

So far our drawings are showing the tub on a concrete pad at ground level, partially surrounded by a wood deck, and with dense privacy plantings between tub and boundary fence, but if we can add additional soundproofing below and all around the tub, and especially if we can add a (large, properly ventilated) box around the pump under the deck, I'm sure the neighbors and client would appreciate it.

Thanks in advance for any advice or installation specs you may be able to provide. If this is easier to discuss by phone please feel free to call me at 301-651-7503.

Kind regards,

Diana

Diana Daisey | Designer

MLA 2022



6000 Harwood Avenue | Oakland CA 94618

T 510.655.7674 | F 510.655.7673

check us out at:

www.aboutinsideout.com

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--
Richard B. Spohn, Esq.
(415) 308-4025



Richard Spohn <rspohn20@gmail.com>

Fwd: FW: Soundproofing for Caldera Spas "Geneva" or similar

1 message

Richard Spohn <rspohn20@gmail.com>

Fri, Apr 14, 2023 at 6:58 PM

To: Diana Daisey <diana@aboutinsideout.com>

Cc: Katherine Ramage <ramagekm@gmail.com>

Bcc: Mary Montali <mimimary@comcast.net>, Dennis Montali <cramdown@gmail.com>, Monica Spohn <monica.spohn@alumni.dominican.edu>, Katerin Spohn <Katerin.Spohn@hotmail.com>

Diana, by way of an amending supplement to my email of last night, I'd add that the presence of a hot tub situated as planned, right up against the otherwise-standard property boundary, clearly would materially compromise the value of our property. Not only would it significantly impact our peaceful use of our home, as I sketched earlier, but, if our house were put up for sale, prospective buyers would take notice of the hot tub so immediately adjacent to the spaces that would mean the most to them -- multi-use family "great room," bedrooms, offices, deck -- and either walk away or use such tub as a cudgel in price negotiations that would end up being distinctly adverse to our economic interest.

I am 80, my wife is 72, our daughters are in their late 20's, so the likelihood of it going on the market is not remote. Indeed, we could end up becoming the victims of a double and compounding negative whammy: driven from our home by the noise and disruption from the hot tub and then ending up realizing a significantly lower sale price because of the hot tub. Absent adequate soundproofing by the current occupants that could be the outcome. And if that property were sold to a less-considerate buyer, under whom usage of the tub occasioned additional noise and disruption, that would create an exponentially greater problem. People who are having big social fun in warm water, particularly if intoxicated or stoned (or both), typically don't give a rat's patootie about the hapless auditors of their hilarity and camaraderie. Inhibitions and usual self-discipline generally become limited. And some people are just plain loud and/or boisterous. Such is what immediately goes through the mind of a prospective buyer upon espying a hot tub right over the backyard fence.

I believe I'll seek out the estimate of some real estate professionals regarding the potential percentage diminution of value under the hot tub scenario. Given the market prices recent sales on Russell Street have fetched, I'd wager that delta would be six figures.

Thus the hot tub project entails externalities that have not been taken into account: the value of the compromised usage of our home and property and the loss of economic value when the house comes to be sold. These externalities would be borne by us, not by the owners and users of the tub. Hardly fair...

Thanks for reviewing this additional note. Please attach it to my email from last night.

Regards, Richard Spohn, 2928 Russell Street

----- Forwarded message -----

From: **Richard Spohn** <rspohn20@gmail.com>

Date: Fri, Apr 14, 2023 at 2:52 AM

Subject: Re: FW: Soundproofing for Caldera Spas "Geneva" or similar

To: Diana Daisey <diana@aboutinsideout.com>

Cc: Katherine Ramage <ramagekm@gmail.com>

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

NOTICE OF PUBLIC HEARING

2924 Russell Street

Appeal of Zoning Officer's Decision to approve Administrative Use Permit ZP#2023-0081 to install unenclosed hot tub in rear yard.

The Zoning Adjustments Board of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance, Section [23.404.050 \(Public Hearings and Decisions\)](#)

When: Thursday, October 12, 7:00 pm

Where: Berkeley Unified School District meeting room, 1231 Addison Street, (wheelchair accessible) with remote/hybrid option (via Zoom).

Please visit: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board> and click on the hearing date to access the most up-to-date meeting information, or call the Land Use Planning division (510) 981-7410.

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED IN A HYBRID MODEL WITH BOTH IN-PERSON ATTENDANCE AND VIRTUAL PARTICIPATION AVAILABLE FOR MEMBERS OF THE PUBLIC.

For in-person attendees, face coverings or masks that cover both the nose and mouth are encouraged. If you're feeling sick, please do not attend the meeting in-person as a public health precaution.

Currently, there are no physical distancing requirements in place by the State of California or the Local Health Officer for an indoor event similar to a Commission meeting. However, all attendees are requested to be respectful of the personal space of other attendees. An area of the public seating area will be designated as "distanced seating" to accommodate persons that need to distance for personal health reasons.

A. Land Use Designations:

- General Plan: Low-Density Residential
- Zoning: Single-Family Residential (R-1) District

B. Zoning Permits Required:

- Administrative Use Permit to install an unenclosed hot tub, under BMC Section 23.304.070(D)

2924 RUSSELL STREET
Page 2 of 4

NOTICE OF PUBLIC HEARING
Posted SEPTEMBER 28, 2023

C. CEQA Recommendation: Categorically exempt pursuant to Section 15301 of the CEQA Guidelines (“Existing Facilities”).

D. Parties Involved:

- Applicant Pennell Phillips, Oakland
- Property Owner Homayoon Kazerooni, 2924 Russell St, Berkeley
- Appellant Richard Spohn, 2928 Russell St, Berkeley

2924 RUSSELL STREET
Page 3 of 4

NOTICE OF PUBLIC HEARING
Posted SEPTEMBER 28, 2023

Further Information:

All application materials are available online at:
<https://aca.cityofberkeley.info/CitizenAccess/Welcome.aspx>.

The Zoning Adjustments Board final agenda and staff reports will be available online 6 days prior to this meeting at: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board>.

Questions about the project should be directed to the project planner, Samella Stover, at (510) 981-7425 or SStover@berkeleyca.gov.

Written comments or a request for a Notice of Decision should be directed to the Zoning Adjustments Board Secretary at zab@berkeleyca.gov.

Communication Disclaimer:

Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information.

Written Comments, Communications, and Reports:

Written comments must be directed to the ZAB Secretary at the Land Use Planning Division (Attn: ZAB Secretary), or via e-mail to: zab@berkeleyca.gov. All materials will be made available via the Zoning Adjustments Board Agenda page online at this address: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board>

All persons are welcome to attend the hearing and will be given an opportunity to address the Board. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Board may limit the time granted to each speaker.

Correspondence received by 5:00 PM, eight days before this public hearing, will be provided with the agenda materials provided to the Board. Note that if you submit a hard copy document of more than 10 pages, or in color, or with photos, you must provide 15 copies. Correspondence received after this deadline will be conveyed to the Board in the following manner:

- **Correspondence received by 5:00 PM two days before** this public hearing, will be conveyed to the Board in a Supplemental Communications and Reports, which is released around noon one day before the public hearing; or
- **Correspondence received after 5:00 PM two days before** this public hearing will be saved in the project administrative record.

2924 RUSSELL STREET
Page 4 of 4

NOTICE OF PUBLIC HEARING
Posted SEPTEMBER 28, 2023

**Accessibility Information / ADA Disclaimer:**

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date.

SB 343 Disclaimer:

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available to the public. Please contact the Land Use Planning Division (zab@berkeleyca.gov) to request hard-copies or electronic copies.

Notice Concerning Your Legal Rights:

If you object to a decision by the Zoning Adjustments Board regarding a land use permit project, the following requirements and restrictions apply:

1. If you challenge the decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice.
 2. You must appeal to the City Council within 14 days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
 3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than 90 days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that 90-day period will be barred.
 4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
 5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, the following requirements apply:
 - a. That this belief is a basis of your appeal.
 - b. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
 - c. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above. If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.
-



ZONING PROJECT APPLICATION SUBMITTAL REQUIREMENTS

The Zoning Project Submittal Requirements packet describes all of the materials required to submit a complete Zoning Project Application to the Planning and Development Department, Land Use Division. Section 1 is a checklist of materials required for all projects. Sections 2-7 is a checklist of materials that may be required based on the project type or location.

Each submittal requirement on the checklist is described further in this packet, starting on page 3. Each description identifies whether an item is required, and indicates how to prepare each document, drawing, material, and/or report. Hyperlinked forms and instructions are also online under Land Use at <https://berkeleyca.gov/construction-development/permits-design-parameters/permit-types/permit-forms>.

Pages 1—2 of this packet must be completed and submitted with the Zoning Project Application. Staff will verify that the minimum submittal requirements have been included with your package during the application screening and submittal. Applications that are missing the materials will not be accepted for review.

All documents, reports and plans must be provided in digital format, unless requested in hard copy. See the [Guide to Submitting a Zoning Project Application](#) for digital plans and document standards.

SECTION 1 - REQUIRED FOR ALL PROJECTS

- | | |
|---|---|
| <p>A. <input type="checkbox"/> Completed Application</p> <p>1. <input type="checkbox"/> Zoning Project Application Form</p> <p>2. <input type="checkbox"/> Completed Copy of This Zoning Project Submittal Requirements Checklist (Pages 1-2)</p> <p>B. <input type="checkbox"/> Applicant Statement/Waiver Request</p> | <p>C. <input type="checkbox"/> Payment of Application Fees</p> <p>D. <input type="checkbox"/> Hazardous Waste and Substance Statement</p> <p>E. <input type="checkbox"/> Tabulation Form</p> <p>F. <input type="checkbox"/> Pre-Application Yellow Poster</p> <p>G. <input type="checkbox"/> Pre-Application Neighborhood Contact</p> |
|---|---|

SECTION 2 - REQUIRED FOR ALL DEVELOPMENT PROJECTS INVOLVING NEW STRUCTURES, ADDITIONS, DEMOLITIONS, OR EXTERIOR ALTERATIONS

- | | |
|--|---|
| <p>A. <input type="checkbox"/> Site Plan</p> <p>B. <input type="checkbox"/> Landscape and Usable Open Space Plan</p> <p>C. <input type="checkbox"/> Lot Coverage Diagram</p> <p>D. <input type="checkbox"/> Floor Plans</p> <p>E. <input type="checkbox"/> Building Elevations</p> | <p>F. <input type="checkbox"/> Street Strip Elevation</p> <p>G. <input type="checkbox"/> Section Drawings</p> <p>H. <input type="checkbox"/> Boundary and/or Topographic Survey</p> <p>I. <input type="checkbox"/> Grading Plan</p> |
|--|---|

SECTION 3 - SUPPORTING DOCUMENTS, STUDIES, GRAPHICS, AND DEPICTIONS

- | | | |
|--|---|--|
| <p>A. <input type="checkbox"/> Site Photographs</p> <p>B. <input type="checkbox"/> Shadow Study</p> <p>C. <input type="checkbox"/> Story Pole Plan</p> | <p>D. <input type="checkbox"/> Arborist Report</p> <p>E. <input type="checkbox"/> Structural Evaluation</p> <p>F. <input type="checkbox"/> Parking Survey</p> | <p>G. <input type="checkbox"/> Transportation Demand Management</p> <p>H. <input type="checkbox"/> Photo Simulations</p> <p>I. <input type="checkbox"/> Public Art Declaration</p> |
|--|---|--|



ZONING PROJECT APPLICATION SUBMITTAL REQUIREMENTS

SECTION 4 - ENVIRONMENTAL REVIEW

- | | |
|---|---|
| A. <input type="checkbox"/> Creek Protection Documentation | E. <input type="checkbox"/> Transportation Impact Study |
| B. <input type="checkbox"/> Historic Resource Evaluation | F. <input type="checkbox"/> State General Construction Permit |
| C. <input type="checkbox"/> Geotechnical and Seismic Hazard Investigation | G. <input type="checkbox"/> Stormwater Requirements Checklist |
| D. <input type="checkbox"/> Phase I or Phase II Site Assessment | |

SECTION 5 - REQUIRED FOR PROJECTS SUBJECT TO AFFORDABLE HOUSING REQUIREMENTS

- | | |
|--|---|
| A. <input type="checkbox"/> Housing Affordability Statement | C. <input type="checkbox"/> Density Bonus Eligibility Statement |
| B. <input type="checkbox"/> Anti-Discrimination Housing Policies | D. <input type="checkbox"/> Area of Potential Effects (APE) Statement |

SECTION 6 - LANDSCAPE AND GREEN BUILDING REQUIREMENTS

- | | |
|---|---|
| A. <input type="checkbox"/> WELO Landscape Requirements | C. <input type="checkbox"/> Green Building Requirements |
| B. <input type="checkbox"/> Natural Gas Prohibition, Berkeley Energy Code and Berkeley Green Co | |

SECTION 7 - RELATED LAND USE PLANNING DIVISION APPLICATIONS

- | | |
|--|--|
| A. <input type="checkbox"/> Design Review | C. <input type="checkbox"/> Zoning Use Questionnaire |
| B. <input type="checkbox"/> Structural Alteration Permit | D. <input type="checkbox"/> Home Occupation Questionnaire - Class II and III |



ZONING PROJECT APPLICATION SUBMITTAL REQUIREMENTS

SECTION 1 - REQUIRED FOR ALL PROJECTS	
<input type="checkbox"/>	<p>A. Zoning Project Application Packet</p> <p>1. Zoning Project Application Form</p> <p>2. Zoning Project Submittal Requirements (Pages 1 and 2 of this document)</p>
<input type="checkbox"/>	<p>B. Applicant Statement/Request to Waive a Submittal Requirement</p> <p>Submit a written statement (in a separate document) that briefly describes the proposed project and how it satisfies the findings required by the Zoning Ordinance, as well as any request to waive a submittal requirement.</p> <p>For applications to modify a prior permit, submit the following information</p> <ol style="list-style-type: none"> Describe the proposed changes from the approved project Clearly list and describe all changes from the approved project and the basis for the change
<input type="checkbox"/>	<p>C. Payment of Land Use Planning Application Fees</p> <p>Submit required fees to the cashier in the Permit Service Center or pay through the Online Permit Portal. Review of your application will not begin until the fees are paid in full.</p> <p>If supplemental technical studies are required, a Peer Review deposit will be required (e.g., Traffic Impact Analysis, Geotechnical Report, Arborist Report).</p>
<input type="checkbox"/>	<p>D. Hazardous Waste and Substances Statement</p> <p>Required for all projects, pursuant to Government Code Section 65928.</p>
<input type="checkbox"/>	<p>E. Tabulation Form</p> <p>Required for all projects.</p> <p>Submit the form as a separate document, completely filling out each column, using the applicable development standards of the Zoning Ordinance as a guide.</p>
<input type="checkbox"/>	<p>F. Pre-Application Yellow Poster</p> <p>Required for all Projects</p> <p>Install the poster prior to submittal, and submit color photos that clearly show the poster installed at the front of the site and that clearly show the sign content.</p> <p>Yellow Poster Instructions</p> <p>Small Project Sample Poster and fillable PDF template</p> <p>Large Project Sample Poster and fillable PDF template (Large poster required for projects that include three or more stories, State Density Bonus, Floor Area Ratio greater than 2.0, or more than 10,000 square feet gross floor area.)</p>



ZONING PROJECT APPLICATION SUBMITTAL REQUIREMENTS

SECTION 1 - REQUIRED FOR ALL PROJECTS



G. **Pre-Application Neighborhood Contact and Outreach Instructions**

Required for the following projects:

- All projects located in a Residential District, and all non-residential projects that abut a Residential District are required to contact all abutting and confronting residential occupants and residential property owners to advise them of the proposed development prior to submitting a zoning project application.
- All projects of community or neighborhood interest, which consist of the following:
 - i. Any project in a Residential District that would create 6 or more bedrooms on a parcel within ½ mile of the UC Campus (or the area confined by Grant Avenue on the west, Derby Street on the south, and Rose Street on the north), or
 - ii. Any project in a Non-Residential District that includes three or more stories, State Density Bonus, Floor Area Ratio greater than 2.0, or more than 10,000 square feet gross floor area.
 - iii. Are required to contact all property owners, residents, and neighborhood organizations within 300 feet of the project site to advise them of the proposed development.
- All residential projects that propose to alter an existing dwelling unit or eliminate a dwelling unit that is subject to the Rent Ordinance (BMC Chapter 13.76) through demolition, including elimination of a dwelling unit through conversion, are required to provide all sitting tenants notice of the application no later than the date the application is submitted to the City.



ZONING PROJECT APPLICATION SUBMITTAL REQUIREMENTS

SECTION 2 - REQUIRED FOR ALL DEVELOPMENT PROJECTS INVOLVING NEW STRUCTURES, ADDITIONS, DEMOLITIONS, OR EXTERIOR ALTERATIONS



Plans – General Requirements

1. All plans must be fully dimensioned, and include:

- Name of person preparing plans (licensed architect required for certain projects, see Item 3 below)
- Dates of preparation and revision
- Project address
- Graphic scale (see Item 2 below for minimum scales)
- North arrow
- Legend describing all symbols and notations
- Building Code construction and occupancy types.

For applications to modify a prior permit, the plans must clearly show the approved and modified project, and you must “cloud” all changes from the approved project.

2. Electronic Plans Requirements:

See the [Zoning Project Application Guide to Submitting](#) for digital plans and document standards.

Note that these plans are often released to the public on paper no larger than 8½” x 11”, and that you must format your plans so that all images and text are legible at this size.

Hard copy plan sets may be required by the project planner, if necessary to facilitate project review.

Design Review Committee, Landmarks Preservation Commission, and Use Permit applications only. 12 copies of 11” x 17” or 12” x 18” plan sets must be submitted at least two weeks prior to the public meeting or hearing.

3. Architect or Engineer Required for Certain Projects

Plans that require preparation by a licensed California architect or engineer under the California Architects Practice Act (Business and Professions Code Sections [5537](#) and [6737](#)) shall bear the architect or engineer’s stamp and signature on each sheet. **This requirement may be waived for projects involving only minor alterations or repairs; consult with a planner. For further information, visit www.cab.ca.gov**

4. Change of Use

Applications that **only** propose to **change the type of activity or use** occurring within the building must submit the following site-related information:

- Site Plan** showing the following:
 - a. Property lines and lot dimensions
 - b. Existing and proposed building footprint(s), dimensions, setbacks (required, existing and proposed), and projections such as eaves, balconies and bays. Show all buildings, including garages, sheds, etc.
 - c. Driveways and parking spaces with dimensions, location of handicapped parking spaces, bicycle racks, and security gates.
- Floor Plans** showing the following:
 - d. All floors, including mezzanines, basements, and attics
 - e. Use of all rooms (existing and proposed), per the California Building Code
 - f. For buildings with multiple commercial tenant spaces, label the use of each tenant space within the subject building.

Note: For changes to existing buildings, provide separate plans for existing and proposed conditions, or if changes are limited, used dashed lines for demolished features and solid lines for new features.



ZONING PROJECT APPLICATION SUBMITTAL REQUIREMENTS

SECTION 2 - REQUIRED FOR ALL DEVELOPMENT PROJECTS INVOLVING NEW STRUCTURES, ADDITIONS, DEMOLITIONS, OR EXTERIOR ALTERATIONS	
<input type="checkbox"/>	<p>A. Site Plan Required for all projects The Site Plan must show the following:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Property lines and lot dimensions <input type="checkbox"/> Existing and proposed building footprint(s) (dimensioned), setbacks (required, existing and proposed), and projections such as eaves, balconies, and bays. Show all accessory structures, such as garages, sheds, etc. <input type="checkbox"/> Delineation of proposed additions, if any, with shading, hatching or another appropriate method <input type="checkbox"/> Any portions of neighboring buildings within 20 feet of property lines, including the building-to-building separation (measured in feet) <input type="checkbox"/> Pathway(s) from the residential structure to the public right of way <input type="checkbox"/> Driveways and parking spaces with dimensions, location of ADA spaces, and security gates <input type="checkbox"/> Trash/solid waste storage area <input type="checkbox"/> Bicycle racks (short-term bicycle parking) subject to the Berkeley Bicycle Plan – Appendix F – Facility Design Toolbox <input type="checkbox"/> Utility meters / boxes / equipment for all wet and dry utilities – including above-ground and under-ground, in conformance with utility company standards, including on the site and in the public right of way (subject to approval by the Public Works Department). <input type="checkbox"/> Decks, patios, hot tubs, and all unenclosed accessory structures <p>Note: The City of Berkeley Community GIS Portal is an online resource indicating site features and characteristics listed above, which are required to be shown on the Site Plan</p>
<input type="checkbox"/>	<p>B. Landscape and Usable Open Space Plan Required for all projects The Landscape Plan must show the following:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Fully dimension all areas that qualify as existing and proposed Usable Open Space, in compliance with the applicable zoning district development standard and BMC Section 23.304.090; and <input type="checkbox"/> Any existing landscaping to remain and to be removed <input type="checkbox"/> All proposed landscaping, including all existing and proposed trees, including street trees (indicate species, trunk diameter, drip line), hedge rows, and ground cover <input type="checkbox"/> All paved areas and surface treatments <input type="checkbox"/> Fences and retaining walls (materials and height) <input type="checkbox"/> Significant natural features such as creeks (indicate banks or culvert outline), and prominent landforms.
<input type="checkbox"/>	<p>C. Lot Coverage Diagram and Calculations Required for all residential projects (or the residential portion of a mixed-use project).</p> <ul style="list-style-type: none"> <input type="checkbox"/> Submit the Lot Coverage Diagram and calculations, using the Site Plan as a base map, which must show the fully dimensioned diagrams to depict existing and proposed lot coverage in compliance with the applicable zoning district development standard and BMC Section 23.106.020.
<input type="checkbox"/>	<p>D. Floor Plans Required for all projects. The Floor Plan (s) must show the following:</p> <ul style="list-style-type: none"> <input type="checkbox"/> All floors, including mezzanines, basements, and attics <input type="checkbox"/> Trash room pursuant to Public Works Department requirements <input type="checkbox"/> Long-Term Bicycle parking, showing location of lockers or racks suitable for secure locks and subject to the Berkeley Bicycle Plan – Appendix F – Facility Design Toolbox <input type="checkbox"/> Use of all rooms (existing and proposed), per the California Building Code <input type="checkbox"/> For changes to existing buildings, provide separate plans for existing and proposed conditions, or if changes are limited, use dashed lines for demolished features and solid lines for new features.



ZONING PROJECT APPLICATION SUBMITTAL REQUIREMENTS

SECTION 2 - REQUIRED FOR ALL DEVELOPMENT PROJECTS INVOLVING NEW STRUCTURES, ADDITIONS, DEMOLITIONS, OR EXTERIOR ALTERATIONS	
<input type="checkbox"/>	<p>E. Building Elevations Required for all projects.</p> <p>The Elevations must show the following:</p> <ul style="list-style-type: none"> <input type="checkbox"/> All exterior features and openings, including finishes and materials <input type="checkbox"/> Existing and proposed building height (as defined in BMC Sections 23.106.090), see Instructions linked below), finished floor elevations, and existing and finished grades (within five feet of the building). <input type="checkbox"/> Adjacent features such as fences, landscaping, and other buildings and property lines. <input type="checkbox"/> For changes to existing buildings, provide separate elevations for existing and proposed conditions, or if changes are limited, used dashed lines for demolished features and solid lines for new features. <p>Height Instructions –Average Building Height* (Residential districts, except R-S and R-SMU)</p> <p>Height Instructions –Maximum Building Height* (Hillside Overlay, R-S, R-SMU, Commercial, and Manufacturing districts)</p> <p>*In the Hillside Overlay (“H”), both average and maximum building height apply.</p>
<input type="checkbox"/>	<p>F. Street Strip Elevation Required for any new main buildings.</p> <p>Submit a street elevation exhibit showing existing conditions on the parcel and the proposed project in elevation view; include at least two (2) parcels on either side of the subject parcel on a single sheet. Minimum scale is 1/8” = 1’.</p>
<input type="checkbox"/>	<p>G. Section Drawings</p> <p>Required for the following projects:</p> <ul style="list-style-type: none"> <input type="checkbox"/> New main buildings in the “H” District. <input type="checkbox"/> Additions exceeding 14 feet in average height in the “H” District. <p>Submit drawings that show adjacent uphill or downhill buildings where views may be affected. Minimum scale is 1/8” = 1’. Show existing and proposed finished grades.</p>
<input type="checkbox"/>	<p>H. Boundary and/or Topography Survey</p> <p>Required for the following projects:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Any new main building. <input type="checkbox"/> Expansions of a building footprint or the creation of accessory building/structures less than two feet from, or within, a required setback. <p>Submit a survey meeting the following requirements:</p> <ol style="list-style-type: none"> 1. Wet-stamped, signed by a licensed CA surveyor or appropriately licensed civil engineer 2. Minimum scale of 1/10” = 1’ 3. All property lines, curb and sidewalk, spot elevations, existing structures, building dimensions, and setbacks to all property lines 4. For projects in the “H” District, survey must be no more than five years old and must show contour lines with minimum 5-foot intervals.
<input type="checkbox"/>	<p>I. Conceptual Grading Plan</p> <p>Required for projects with more than 50 cubic yards of cut and/or fill.</p> <p>Submit a grading plan meeting the following requirements:</p> <ol style="list-style-type: none"> 1. Prepared by a licensed surveyor, architect or engineer 2. Estimated quantities and locations of cut and fill 3. Existing and final elevations



ZONING PROJECT APPLICATION SUBMITTAL REQUIREMENTS

SECTION 3 - SUPPORTING DOCUMENTS, STUDIES, GRAPHICS, AND DEPICTIONS	
<input type="checkbox"/>	<p>A. Site Photographs Required for all projects</p> <p>Submit one set of exterior photos, that meet the following requirements:</p> <ol style="list-style-type: none"> 1. Use captions or a key indicating the location (perspective) of each photo. 2. Provide an adequate number of photos to show entire project site and all adjacent buildings for context. Where possible, take wide-angle shots showing project site and adjacent buildings together.
<input type="checkbox"/>	<p>B. Shadow Study Required for the following projects:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Buildings exceeding 14 feet in average height, located in or adjacent to a residential (R) district (excluding ADUs) <input type="checkbox"/> Additions exceeding 14 feet in average height on sites adjacent to a residential use <input type="checkbox"/> Projects in either the C-T or C-DMU District, requiring a Use Permit to increase the maximum building height/number of stories <p>Shadow Study Instructions</p>
<input type="checkbox"/>	<p>C. Story Pole Plan Required for the following projects:</p> <ul style="list-style-type: none"> <input type="checkbox"/> New main buildings exceeding 14 feet in average height in the “H” District (excluding ADUs) <input type="checkbox"/> Additions exceeding 14 feet in average height in the “H” District <p>Story Pole Instructions</p>
<input type="checkbox"/>	<p>D. Arborist Report Required for projects involving any construction activity (including excavation, trenching, demolition, paving, storage of materials, and parking of vehicles) within the drip line of a Coast Live Oak (quercus agrifolia) tree with a circumference of at least 18 inches at 4 feet above the ground (or at least 26 inches aggregate circumference for a multi-stemmed tree).</p> <p>Submit</p> <ol style="list-style-type: none"> 1. A report by a certified arborist assessing the project’s impacts on the affected tree(s) (tree may be located either on- or off-site) and recommending preservation measures both during and after construction, as applicable. 2. Deposit of \$460 for the first two hours of peer review of report (additional funds may be required for more complicated projects or site visits) <p>Tree Protection Instructions Coast Live Oak Tree Ordinance</p>
<input type="checkbox"/>	<p>E. Structural Evaluation Required for any project that is not a demolition, but is removing between 25 and 49 percent of a main building’s exterior wall and between 25 and 49 percent of a main building’s roof framing (including in-kind replacement of existing framing), in order to confirm the feasibility of retaining the remaining portions of any wall and roof.</p> <p><u>A Structural Evaluation is not required</u> for projects requesting a Use Permit for demolition.</p> <p>Submit a demolition diagram that indicates the percentage of each wall and roof that is proposed to be replaced or removed, as well as a report by an independent, fully credentialed structural engineer that evaluates whether, in the operator’s opinion, retention of structural elements <u>not</u> proposed for removal is actually feasible.</p>
<input type="checkbox"/>	<p>F. Parking Survey Required for projects requesting a waiver of any required off-street vehicular parking spaces pursuant to the Zoning Ordinance, located in a Commercial or Manufacturing District (C, M, MM, or MU) .</p> <p>Parking Survey Instructions</p>



ZONING PROJECT APPLICATION SUBMITTAL REQUIREMENTS

SECTION 3 - SUPPORTING DOCUMENTS, STUDIES, GRAPHICS, AND DEPICTIONS	
<input type="checkbox"/>	<p>G. Transportation Demand Management (TDM) and Bicycle Parking Supplemental Application Required projects creating five or more new dwelling units or Group Living Accommodation rooms</p> <p>TDM required for projects creating 10 or more dwelling units outside of the C-DMU. (Not required for projects where 50 percent of total units are affordable, ADUs, projects located in ES-R, or projects on properties in the Hillside overlay on narrow streets 26-feet wide or less.)</p> <p>Bicycle parking required for projects creating five or more new dwelling units and/or Group Living Accommodation rooms.</p> <p>TDM and Bicycle Parking Process Overview TDM Program and Bicycle Parking Supplemental Application</p>
<input type="checkbox"/>	<p>H. Photo Simulations Required for a project creating any of the following:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Wireless telecommunications projects <input type="checkbox"/> A "Large Scale Development Project," which consists of project located in a non-residential district that proposes any of the following: <ul style="list-style-type: none"> – Density Bonus under Section 65919 of California State Law, – Three or more stories in height, – Floor Area Ratio more than 2.00, or – 10,000 square feet or more of gross floor area. <p>Photo Simulation Instructions</p>
<input type="checkbox"/>	<p>I. Public Art Declaration Required for any of the following projects:</p> <ul style="list-style-type: none"> <input type="checkbox"/> A new commercial or industrial building <input type="checkbox"/> A project that creates five or more dwelling units <input type="checkbox"/> An addition of more than 10,000 square feet to any commercial or industrial building <p>Public Art Allocation Declaration form</p>



ZONING PROJECT APPLICATION SUBMITTAL REQUIREMENTS

SECTION 4 - ENVIRONMENTAL REVIEW	
<input type="checkbox"/>	<p>A. Creek Protection Documentation Required for any project within 40 feet of the centerline of an open creek, and/or within 25 feet of a culverted creek, that is protected by the Creeks Ordinance</p> <p>Creek Protection Instructions</p> <p><i>Note: Applies even if a protected creek or culvert has not yet been identified by the City.</i></p>
<input type="checkbox"/>	<p>B. Historic Resource Evaluation Required for:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Demolition of a non-residential building 40 or more years old, subject to referral to the Landmarks Preservation Commission in accordance with BMC Section 23.326 <input type="checkbox"/> Demolition/Substantial Change of any building 40 or more years old subject to environmental review pursuant to CEQA <p>Submit: State of California Department of Parks and Recreation (DPR) 523 forms. Evaluation(s) to include references to development history documentation (including but not limited to photographs, building permits, Sanborn maps, and directory listings); completed by a qualified historian, architectural historian or historic architect. Provide supplemental information in accordance with the Landmarks Preservation Ordinance criteria (BMC Section 3.24.110).</p> <p>The Environmental Review Officer may waive this requirement for residential addition and alteration proposals after determining that the project complies with preservation standards and environmental practices OR that qualified sources other than an HRE can provide the relevant information.</p> <p>California guidelines (Instructions for Recording Historical Features)</p>
<input type="checkbox"/>	<p>C. Geotechnical and Seismic Hazard Investigation Required for all development projects intended for human occupancy located in a State-designated Seismic Hazard Zone, as defined by the California Seismic Hazards Mapping Act and Alquist-Priolo Earthquake Fault Zoning Act, as shown on the State's Environmental Constraints Map.</p> <p>Exemptions:</p> <p>For projects located in any State-designated Seismic Hazard Zone (PRC 2693, i.e. liquefaction, landslide, and earthquake shaking):</p> <ul style="list-style-type: none"> <input type="checkbox"/> Single-family wood-frame or steel-frame dwellings to be built on parcels of land for which geologic reports have been approved pursuant to an approved subdivision map; <input type="checkbox"/> A single-family wood-frame or steel-frame dwelling not exceeding two stories when that dwelling is not part of a development of four or more dwellings; or <input type="checkbox"/> Alterations or additions to any structure within a seismic hazard zone which do not exceed either 50 percent of the value of the structure or 50 percent of the existing floor area of the structure. <p>If located in the Alquist-Priolo Fault Zone (PRC 2621.6 and 2621.7):</p> <ul style="list-style-type: none"> <input type="checkbox"/> Single-family wood-frame or steel-frame dwellings to be built on parcels of land for which geologic reports have been approved pursuant to an approved subdivision map; <input type="checkbox"/> A single-family wood-frame or steel-frame dwelling not exceeding two stories when that dwelling is not part of a development of four or more dwellings; and <input type="checkbox"/> Alterations or additions to any structure if the value of the alteration or addition does not exceed 50 percent of the value of the structure; or <input type="checkbox"/> Conversion of an existing apartment complex into a condominium. <p>Submit the following:</p> <ol style="list-style-type: none"> 1. Geotechnical report satisfying the California Building Code and requirements of Special Publication 117A (for landslide and liquefaction zones) and/or California Geological Survey Note 49 (for fault zones); and 2. Deposit of \$1,500 for peer review of report (additional funds may be required for more complicated projects).



ZONING PROJECT APPLICATION SUBMITTAL REQUIREMENTS

SECTION 4 - ENVIRONMENTAL REVIEW	
<input type="checkbox"/>	<p>D. Phase I or II Site Assessment</p> <p>Required for any project that includes the following:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Substantial excavation in non-residential zoning districts <input type="checkbox"/> A site with a history of soil and/or groundwater contamination (see the Hazardous Waste and Substances Statement) <input type="checkbox"/> A site within an Environmental Management Area (see Community GIS Portal) <p>Contact the Toxics Management Division (510) 981-7460 for more information.</p>
<input type="checkbox"/>	<p>E. Transportation Impact Study</p> <p>Required for projects that do not meet at least one of the City’s screening criteria for determining if detailed VMT or vehicular parking analysis is necessary.</p> <p>Consult with the Transportation Division for a copy of the screening criteria and thresholds at (510) 981-7010</p>
<input type="checkbox"/>	<p>F. State General Construction Permit</p> <p>Required for projects disturbing one acre or more of soil (or less than one acre if part of a larger development plan that disturbs one acre or more).</p> <p>Submit a copy of the Notice of Intent (NOI) submitted for the State General Construction Permit, and Storm Water Pollution Prevention Plan (SWPPP) prior to building permit issuance.</p> <p>Construction Stormwater General Permits</p>
<input type="checkbox"/>	<p>G. Stormwater Requirements Checklist</p> <p>Required for projects creating or replacing 2,500 square feet or more of impervious surface, including single-family dwellings. Includes new buildings, additions, and alterations to existing roofs that affect drainage; does not include maintenance/re-surfacing of existing impervious surfaces.</p>



ZONING PROJECT APPLICATION SUBMITTAL REQUIREMENTS

SECTION 5 - REQUIRED FOR PROJECTS SUBJECT TO AFFORDABLE HOUSING REQUIREMENTS	
<input type="checkbox"/>	<p>A. Housing Affordability Statement</p> <p>Required for a project creating any of the following:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Five or more new dwelling units and/or five or more live/work units <input type="checkbox"/> New dwelling units and/or live/work units on lots whose size and zoning designation is such to allow construction of five or more dwelling units (R-2, R-2A, and MU-R Districts) <input type="checkbox"/> One to four new dwelling units and/or five or more live/work units, which are added to an existing one to four-unit property developed after August 14, 1986, and the resulting number of units totals five or more <input type="checkbox"/> Additional condominium units, resulting in five or more condominium units converted and/or created after August 14, 1986 on the site <p>Submit a written statement describing the following:</p> <ol style="list-style-type: none"> 1. How the project complies with the Inclusionary Housing Ordinance 2. Level of affordability that will be provided and/or amount of in lieu fee that will be paid 3. Number and location of any affordable units provided 4. Size and amenities (bedrooms, bathrooms, parking facilities) of any affordable units
<input type="checkbox"/>	<p>B. Anti-Discrimination Housing Policies</p> <p>Required for a project creating any of the following:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Five or more new dwelling units and/or five or more live/work units <input type="checkbox"/> New dwelling units and/or live/work units on lots whose size and zoning designation is such to allow construction of five or more dwelling units <input type="checkbox"/> One to four (new dwelling units and/or five or more live/work units, which are added to an existing one to four-unit property developed after August 14, 1986, and the resulting number of units totals five or more <input type="checkbox"/> Additional condominium units, resulting in five or more condominium units converted and/or created after August 14, 1986 on the site <p>Submit a written statement answering the following questions and provide the requested documentation, if applicable:</p> <ul style="list-style-type: none"> - Does the applicant or sponsor, including the applicant or sponsor’s parent company, subsidiary, or any other business or entity with an ownership share of at least 30 percent of the applicant’s company, engage in the business of developing real estate, owning properties, or leasing or selling individual dwelling units in states or jurisdictions outside of California? - If the answer to (1) is yes, which? - If the answer to (1) is yes, does the applicant or sponsor, as defined in (1), have policies in individual states that prohibit discrimination based on sexual orientation, gender identity, and/or gender expression in the sale, lease, or financing of any dwelling units enforced on every property in the state or states where the applicant or sponsor has an ownership or financial interest? - If the answer to (1) is yes, does the applicant or sponsor, as defined in (1), have a national policy that prohibits discrimination based on sexual orientation and gender identity in the sale, lease, or financing of any dwelling units enforced on every property in the United States where the applicant or sponsor has an ownership or financial interest in property? - If the answer to (3) or (4) is yes, please provide a copy of that policy or policies as part of this application. <p>The Land Use Division will not accept an application as complete unless the applicant provides a response to this section. The processing of and recommendations or determinations made by the Land Use Division regarding an application will be unaffected by the applicant’s response to this section.</p>



ZONING PROJECT APPLICATION SUBMITTAL REQUIREMENTS

SECTION 5 - REQUIRED FOR PROJECTS SUBJECT TO AFFORDABLE HOUSING REQUIREMENTS



C. Density Bonus Eligibility Statement

Required for projects requesting a density bonus pursuant to [Government Code Section 65915](#).

Submit the following information

1. A written statement that includes the following information:
 - a. Number of “base project” units
 - b. Number and percent of affordable units and level of affordability
 - c. Percent density bonus requested and allowed pursuant to [Government Code Section 65915](#)
 - d. Waivers or modifications of development standards necessary to physically accommodate “density bonus” units (e.g., increased height or FAR, reduced setbacks or parking, etc.)
 - e. Explanation of why each waiver or modification is needed to accommodate “density bonus” units
 - f. If the project is requesting an incentive or concession, describe each incentive or concession being requested in addition to (or instead of) waivers or modifications necessary to accommodate density bonus
2. **Plans showing a “base project” that complies with all applicable Zoning Ordinance requirements.** For staff to effectively review your density bonus project, a combination of diagrams, compliance tables and calculation tables must be included in the project plan set:
 - a. Base Project and Proposed Project diagrams, per floor
 - b. Base Project and Proposed Project development standards compliance tables
 - c. Residential floor area calculations and diagrams (per floor; can be combined with Base Project and Proposed Project diagrams)
 - d. Maximum allowable residential density calculation table
 - e. Usable open space and lot coverage diagrams and calculations
 - f. Base Project, Density Bonus, and Proposed Project residential floor area table

Your project planner can provide examples of preferred diagram and table formats.

State Density Bonus - Procedures

State Density Bonus - Objective Standards/Housing Accountability Memo - Dated 08/2021



D. Area of Potential Effects (APE) Statement

Required for projects seeking federal funds (either directly or through the [City of Berkeley Housing Trust Fund](#)).

Submit a statement identifying the project’s “Area of Potential Effects” as defined in federal regulations ([36 CFR Part 800](#)).

Contact the Housing Department at (510) 981-5400 for more information and requirements.



ZONING PROJECT APPLICATION SUBMITTAL REQUIREMENTS

SECTION 6 - LANDSCAPE AND GREEN BUILDING REQUIREMENTS	
<input type="checkbox"/>	<p>A. WELO Landscape Requirements Required for projects with either:</p> <ul style="list-style-type: none"> <input type="checkbox"/> 500 square feet or more of new, or <input type="checkbox"/> 2,500 square feet or more of renovated irrigated area. <p>These projects must comply with water efficient landscaping as specified in the Model Water Efficient Landscape Ordinance (MWEL) and East Bay Municipal Utility District (EBMUD) Water Efficiency Review: Section 31 Regulations and MWEL Compliance, and all applicable measures in the Bay Friendly Basics checklist.</p> <p>Submit WELO-compliant landscape documentation including a planting, grading, and irrigation plan. Water budget calculations are also required for landscapes of 2,500 square feet or more. The reference evapotranspiration rate (ET_o) for Berkeley is 41.8.</p> <p>See Green Building requirements.</p>
<input type="checkbox"/>	<p>B. Natural Gas Prohibition, Berkeley Energy Code, and Berkeley Green Code Required for newly constructed buildings (buildings that have never before been used or occupied for any purpose). Submit the following:</p> <ol style="list-style-type: none"> 1. A statement that the building will not include any natural gas infrastructure in compliance with BMC Chapter 12.80, or documentation to support an application for an exception or public interest exemption to the Natural Gas Prohibition if the conditions of BMC Section 12.80.040A.1 or 12.80.050 are met. The Land Use drawing set submittal and the building permit plan set submittal shall both include a cover sheet declaration: ‘Natural Gas-free Design as required by BMC Chapter 12.80. 2. A statement, and corresponding features on plans, that the proposed project is designed to comply with the Berkeley Energy Code (BMC Chapter 19.36) and Berkeley Green Code (BMC Chapter 19.37) including solar PV system, battery energy storage, electric vehicle charging, and low-carbon concrete requirements. Note that for building permit submittal, quantitative values for appliance fuel efficiency must be included in relevant building permit architectural sheets, and window and door schedules, and on architectural, plumbing, and mechanical sheets, matching those values stipulated in prescriptive or performance energy compliance documents. <p>Note: Carefully consider the Building Code prior to submitting a Use Permit application. Per the standard Conditions of Approval for all development projects, only the Zoning Adjustments Board may approve a modification to the use or structure for which the Permit is issued, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.</p> <p>The California Energy Design Assistance (CEDA) Program provides free energy design assistance, financial incentives, and operational energy savings to new commercial, public, multifamily (4 stories or more), industrial, and agricultural buildings. CEDA application must occur while a project is in early design phases.</p> <p>See Green Building requirements.</p>
<input type="checkbox"/>	<p>C. Green Building Requirements Required for newly constructed buildings and additions of more than 20,000 square feet for projects located in the Commercial-Downtown Mixed-Use District (C-DMU).</p> <p>Submit a completed LEED Checklist / Scorecard (typically for commercial projects), showing that the proposed project is on track for LEED Gold certification or above, or a completed GreenPoint Rated (GPR) Checklist (for residential and most mixed-use projects), showing that the proposed project is on track for GPR Silver certification or above.</p> <p>See Green Building requirements.</p>



ZONING PROJECT APPLICATION SUBMITTAL REQUIREMENTS

SECTION 7 - RELATED LAND USE PLANNING DIVISION APPLICATIONS	
<input type="checkbox"/>	<p>A. Design Review</p> <p>Required for:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Projects with exterior changes in non-residential districts <input type="checkbox"/> Non-residential projects in R-3, R-4, R-S and R-SMU Districts <input type="checkbox"/> Other projects as required by the Zoning Officer <p>Submit separate Design Review application form per the Design Review Submittal Requirements.</p>
<input type="checkbox"/>	<p>B. Structural Alterations Submittal</p> <p>Required for exterior alterations to designated City Landmarks, Structures of Merit, and structures within a Historic District (and interior alterations to such structures if publicly owned).</p> <p>Submit separate Structural Alteration Permit application, per the Structural Alteration Permit & Design Review Submittal Requirements.</p>
<input type="checkbox"/>	<p>C. Zoning Use Questionnaire</p> <p>Required for projects that establish a new business or create a new commercial space with the tenant/operator already selected.</p>
<input type="checkbox"/>	<p>D. Home Occupation Questionnaire – Class II and III</p> <p>Required for Class II or Class III Home Occupations that establish a new home-based business.</p> <p>Submit a Zoning Permit Application (Section 1.A, above), and fill out the Class II and III Home Occupation Questionnaire.</p>



PLANNING & DEVELOPMENT

Land Use Planning, 1947 Center Street, Berkeley, CA 94704
Tel: 510.981.7410 TDD: 510.981.6903 Email: Planning@cityofberkeley.info

INSTRUCTIONS REGARDING COMMUNITY OUTREACH

Last Updated January 2020

For all projects:

Early in the design process, the City strongly encourages owners to meet with their neighbors, whenever possible, to present plans and try to identify and resolve issues of concern. Applicants can meet with neighbors one-on-one or at a gathering; whichever seems more appropriate to them. Projects in a Residential (R) District require contact between the subject property owner and the abutting and confronting property owners and tenants (See Figure 2). Projects of Community or Neighborhood Interest¹ require a meeting with owners, residents, and community groups within 300 feet of the project (See page 2).

For a project that proposes to eliminate a dwelling unit subject to the Rent Ordinance ([BMC Chapter 13.76](#)) through demolition, including elimination of a dwelling unit by conversion:

The applicant must provide all sitting tenants notice of the application to demolish the building and the proposed scope of work no later than the date the application is submitted to the Land Use Planning Division, including notice of the tenant(s)' rights pursuant to BMC Chapter 13.76 (see attached [Notice: https://tinyurl.com/ssnm5aq](https://tinyurl.com/ssnm5aq)). Submit a statement confirming such notice has occurred with the Use Permit application.

For any project in a Residential (R) District:

Once an applicant is ready to submit the application, he/she should request their neighbors' signatures **ON THE SITE PLAN DRAWING**, following the instructions below (See Figure 1). These signatures tell the City that the applicant has informed their neighbors of the proposed project – it in no way implies that a neighbor “approves” of a project. The signatures do not ensure approval or denial of a project, rather they confirm the applicant has fulfilled the Zoning Project submittal requirement to contact their neighbors before submitting an application.

Signatures must be gathered from owners **AND** occupants of a property. If after more than one attempt to contact them in person, the owner is not able to contact a neighbor

¹ Projects of Community or Neighborhood Interest: 1) Any project in a Residential District that would create 6 or more bedrooms on a parcel within ½ mile of the UC Campus (or the area confined by Grant Avenue on the west, Derby Street on the south, and Rose Street on the north); and 2) Any project in a non-residential district that involves three or more stories, a Density Bonus under Section 65919 of California State Law, a Floor Area Ratio ≥ 2.00 , or more than 10,000 square feet gross floor area.

(either owner or tenant), or the neighbor refuses to sign the plans for whatever reason, please provide evidence that you attempted to contact the individual in-person on more than one occasion, and have provided them with a copy of the plans via certified mail.

If a neighbor voices concerns about the proposed project, the City advises that mediation take place early in the process. SEEDS Community Resolution Center (formerly East Bay Community Mediation) is one option available to help applicants and neighbors resolve problems (www.seedscrc.org).

In unique circumstances, work with a Planner for guidance in the type of notification that would be appropriate for the particular project, or other substitute arrangements.

For projects of Community Interest – Community Meeting Required

For any project of Community or Neighborhood interest, the applicant is required to contact all property owners, residents, and neighborhood organizations within 300 feet of the project site to advise them of the proposed development. The steps to complete this requirement are the following:

1. Obtain from the Land Use Planning Division a list of all property owners, occupants/residents, and neighborhood organizations within 300 feet of the project site,
2. Invite those on the list to at least one neighborhood meeting to review the project plans and discuss any questions or concerns, and
3. Hold the meeting and keep a record of attendance and topics discussed.

Following the meeting, the applicant shall submit evidence of mailed invitations (in list form, not copies of each individual mailed letter), an attendance list with name, address, and contact information (email and/or phone number), signatures, and legible meeting notes describing the topics discussed, any potential concerns or issues and proposed solutions.

Note: *This requirement does not apply to any project that is subject to the 'Neighbor Pre-Application Contact for any residential project in any residential district', listed above. Other major non-residential projects are strongly encouraged, but not required, to follow this procedure.*

Figure 1. Sample Table and Statement for Neighborhood Signatures for Residential Projects:

Step 1: Print a blank signature block, like the example below, with the explanatory statement, **ON THE SITE PLAN ITSELF**. (No cutting and taping of the signature block onto the plans, etc.)

Step 2: Provide abutting and confronting neighbors (includes owners and occupants) an opportunity (1) to review the full set of plans and (2) to indicate that they have seen these plans.

Step 3: Submit the signed sheets of the plans to the City as part of the Application. Signatures must be included on this plan sheet on every set of plans submitted.

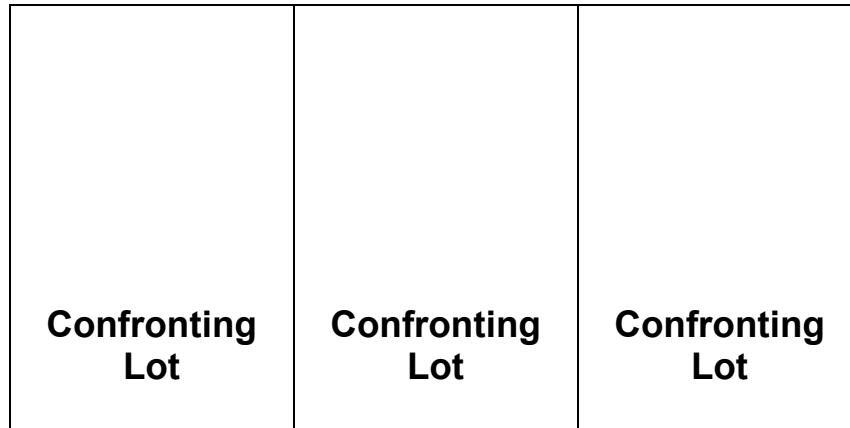
I have reviewed the plans for a *([Insert short description of your project. Example – a 750 square foot, 24' high residential addition*])* at *(Location of the project. Example -- 5 Albert Street*)*.

Name (printed)	Signature	Address	Renter or Owner	Date	Have no objections	Have objections (Please state briefly)	Have no comment
EXAMPLE							

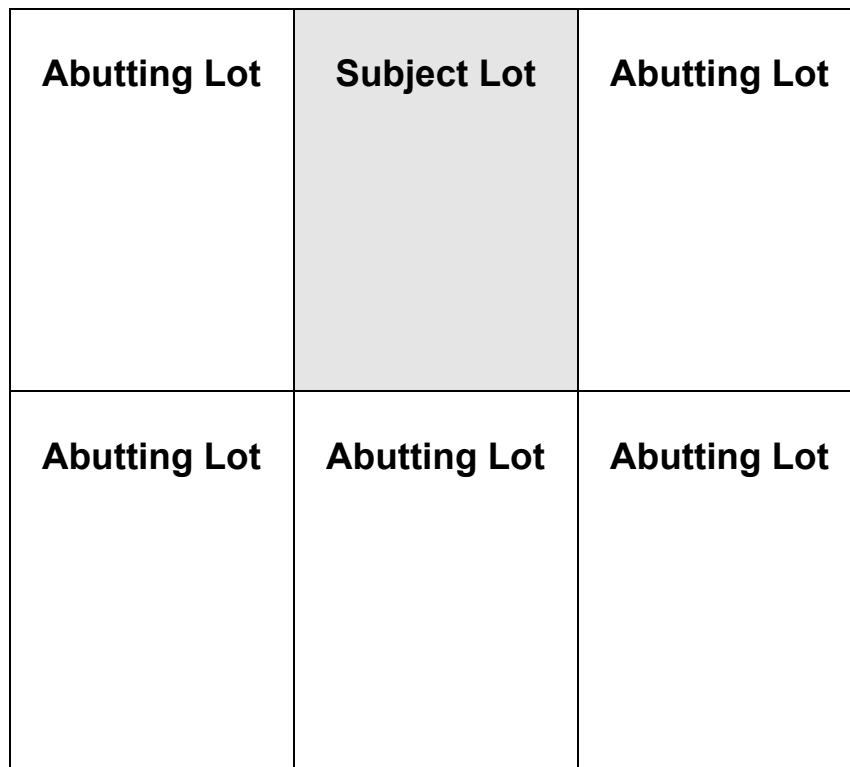
* Example description and address

(See back)

Figure 2. Example of Abutting and Confronting Lots



Street



INSIDEOUT architecture | interiors | landscape

04/05/23

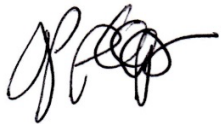
Dear Russell Street or Ashby Avenue resident,

We are helping your neighbor Hami Kazerooni at 2924 Russell Street apply for an Administrative Use Permit for a new hot tub. The City of Berkeley Land Use Planning requires that applicants for hot tubs speak with their neighbors and share plans with them before applying. Per City instructions we attempted to speak with you in person on April 3 and April 4, and since we were not able to reach you, we are instructed to provide print plans by mail.

Please find enclosed plan set for your review and contact us if additional information is needed or if you would like to share objections or other comments. Thank you for your time and input.

Kind regards,

INSIDEOUT DESIGN, INC.



Pennell Phillips, Principal
Landscape Architect 5602
Certified Arborist WE-6608A

INSIDEOUT architecture | interiors | landscape


04/05/23

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INSIDEOUT DESIGN, INC.



Pernell Phillips, Principal
Landscape Architect 5502
Certified Arborist WE-6605A

Inside Out Design, Inc. 8020 Harvard Avenue Oakland, CA 94618 | 510.655.7674 F | 510.655.7673 F | insideoutdesign.com

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
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Inside Out Design, Inc. 8020 Harvard Avenue Oakland, CA 94618 | 510.655.7674 F | 510.655.7673 F | insideoutdesign.com

INSIDEOUT architecture | interiors | landscape


04/05/23

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Berkeley, CA 94705

OFFICIAL USE

Certified Mail Fee \$4.15

Extra Services & Fees (check box, add fee as appropriate)

Return Receipt (hardcopy) \$0.00

Return Receipt (electronic) \$0.00

Certified Mail Restricted Delivery \$0.00

Adult Signature Required \$0.00

Adult Signature Restricted Delivery \$0.00

Postage \$1.74

Total Postage and Fees \$5.89

Sent To **2920 Russell Street**
Street and Apt. No., or PO Box No.

City, State, ZIP+4® **Berkeley, CA 94705**

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7021 2720 0003 2739 4595

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Adult Signature Required \$0.00

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Total Postage and Fees \$5.89

Sent To **2923 Ashby Avenue**
Street and Apt. No., or PO Box No.

City, State, ZIP+4® **CA 94705**

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7021 2720 0003 2739 4601

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Certified Mail Restricted Delivery \$0.00

Adult Signature Required \$0.00

Adult Signature Restricted Delivery \$0.00

Postage \$1.74

Total Postage and Fees \$5.89

Sent To **2929 Ashby Avenue**
Street and Apt. No., or PO Box No.

City, State, ZIP+4® **Berkeley, CA 94705**

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions



ELMWOOD
2705 WEBSTER ST
BERKELEY, CA 94705-9991
(800)275-8777

04/05/2023 01:58 PM

Product	Qty	Unit Price	Price
First-Class Mail® Large Envelope	1	\$1.74	\$1.74
Certified Mail®		\$4.15	\$4.15
Tracking #:	70212720000327394274		
Total			\$5.89

First-Class Mail® Large Envelope	1	\$1.74	\$1.74
Certified Mail®		\$4.15	\$4.15
Tracking #:	70212720000327394601		
Total			\$5.89

First-Class Mail® Large Envelope	1	\$1.74	\$1.74
Certified Mail®		\$4.15	\$4.15
Tracking #:	70212720000327394595		
Total			\$5.89

Grand Total: \$17.67

Credit Card Remit \$17.67

Card Name: VISA
 Account #: XXXXXXXXXXXX2798
 Approval #: 04485G
 Transaction #: 921
 AID: A0000000031010 Chip
 AL: VISA CREDIT
 PIN: Not Required CHASE VISA



or call 1-800-410-7420.

UFN: 050644-0055
 Receipt #: 840-59450117-3-6889551-2
 Clerk: 37

AUP Applicant Statement

05/15/23

CITY OF BERKELEY LAND USE PLANNING

CITY OF BERKELEY
2180 Milvia St
Berkeley, CA 94704

Dear City of Berkeley Land Use Planner,

We are seeking an Administrative Use Permit for a new hot tub located at the rear deck (under separate building permit application, approved with conditions as of 05.12.23; please refer to Permit #B2023-01579) of 2924 Russell Street, Berkeley, CA 94705, on behalf of owner Homayoon Kazerooni.

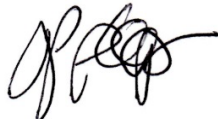
The proposed hot tub measures 7.5' x 7.5' or smaller and will be sourced from Sundance Spas (Cameo model) or similar. It would require a dedicated GFCI outlet located at the rear deck. Proposed hot tub, concrete pad, and GFCI locations and relevant dimensions relative to the deck and residence are shown in the included plans. As instructed by Building and Safety, the dedicated hot tub GFCI and revisions to Permit #B2023-01579 to accommodate the proposed hot tub will be processed under a separate application, pending your approval of this AUP application.

We conducted community outreach per AUP guidelines in early April. After discussing concerns about potential noise with the neighbors, we have recommended several hot tub models to the owner that have enclosed equipment and are quieter than industry standards, and have specified that the spa will be installed with a sound-reducing mat. We are also specifying screening hedges at the eastern and western boundaries to provide additional sound mitigation and privacy.

Please find enclosed AUP application materials per City of Berkeley Land Use Planning instructions and contact us if additional information is needed. Thank you for your time and input.

Kind regards,

INSIDEOUT DESIGN, INC.



Pennell Phillips, Principal
Landscape Architect 5602
Certified Arborist WE-6608A



Administrative Record

This attachment is on file and available for review at the City Clerk Department, or can be accessed from the City Council Website. Copies of the attachment are available upon request.

City Clerk Department
2180 Milvia Street
Berkeley, CA 94704
(510) 981-6900

or from:

The City of Berkeley's Website
<http://www.berkeleyca.gov>

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL
2924 RUSSELL STREET**

The public may participate in this hearing by remote video or in-person.

Notice is hereby given by the City Council of the City of Berkeley that on **Tuesday, February 27, 2024 at 6:00 p.m.**, a public hearing will be conducted to consider an appeal of the decision by the Zoning Adjustments Board to **APROVE Administrative Use Permit #ZP2023-0081 to install a hot tub in the rear yard.**

The hearing will be held on, February 27, 2024 at 6:00 p.m. in the School District Board Room, located at 1231 Addison Street, Berkeley CA 94702.

For further information, please contact Samantha Updegrave, Zoning Officer, (510) 981-7414 or at supdegrave@berkeleyca.gov.

A copy of the agenda material for this hearing will be available on the City's website at <https://berkeleyca.gov/> as of February 15, 2024. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology, as well as any health and safety requirements for in-person attendance.**

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or e-mailed to council@berkeleyca.gov in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at (510) 981-6900 or clerk@berkeleyca.gov for further information.

Mark Numainville, City Clerk

Mailed by: February 13, 2024

Noticed Pursuant: Berkeley Municipal Code Section 23.404.040(B), Public Hearing Notice

NOTICE CONCERNING YOUR LEGAL RIGHTS: *If you object to a decision by the City Council to approve or deny (Code Civ. Proc. 1094.6(b)) or approve (Gov. Code 65009(c)(5)) an appeal, the following requirements and restrictions apply: 1) Pursuant to Code of Civil Procedure Section 1094.6, no lawsuit challenging a City decision to deny or approve a Zoning Adjustments Board decision may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is*

Attachment 7

mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a Zoning Adjustments Board decision, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.

If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available at the City Clerk Department and posted on the City of Berkeley webpage at least 10 days prior to the public hearing.