

Planning and Development Department  
Land Use Planning Division

# A D M I N I S T R A T I V E U S E P E R M I T

CITY OF BERKELEY ZONING ORDINANCE  
Berkeley Municipal Code, Title 23

**AUP #12-20000126**

Property Address: **1537 M L KING JR. WAY**

Permittee Name: **TOWNSEND BROWN**

Use and/or Construction Permitted: to construct a 609 square-foot, single-story, Accessory Dwelling Unit located four feet from the rear property line without providing the required off-street parking space pursuant to:

- Section 23D.32.030 to construct an accessory dwelling unit within a required rear yard; and
- Section 23D.32.030 to waive the required off-street parking associated with an ADU.

**FINDINGS, CONDITIONS AND APPROVED PLANS ATTACHED**

Following the expiration of the mandatory appeal period set forth in Section 23B.28.040 of the Berkeley Municipal Code, with no timely appeal being filed, the Administrative Use Permit described herein has been duly granted by the Zoning Officer on February 20, 2013.

Attest: Terry Blount  
Terry Blount, AICP, Principal Planner  
For Debbie Sanderson, Zoning Officer

February 20, 2013  
Effective Date

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## FINDINGS AND CONDITIONS

JANUARY 30, 2013

### **1537 Martin Luther King Jr. Way**

#### **Administrative Use Permit #12-20000126**

**To construct a 609 square-foot, single-story, Accessory Dwelling Unit located four feet from the rear property line without providing the required off-street parking space.**

#### **CEQA FINDINGS**

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1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15303(e) of the CEQA Guidelines (“New Construction or Conversions of Small Structures”). The project does not qualify as an exception to this Section for the following reasons:
  - There would be no cumulative impact of successive projects of the same type, in the same place over time that could create a significant environmental impact because the project is located in a fully developed residential area where new development is limited.
  - There are no unusual circumstances that could lead to a significant impact because the project involves the construction of a new accessory dwelling unit and does not involve other changes to the property.
  - The project is not located near a scenic highway, does not affect a historic structure or is not on a property listed as a hazardous waste site.

#### **FINDINGS FOR APPROVAL**

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2. As required by Section 23B.28.050.A of the Zoning Ordinance, the project, under the circumstances of this particular case existing at the time at which the application is granted, will 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:
  - The creation of the Accessory Dwelling Unit would meet the specifications outlined in 23D.32.040. The location of the Accessory Dwelling Unit within the rear yard setback, four feet from the property line where 20 feet is typically required, would not be detrimental to the surrounding neighbors because the new building would not unreasonably obstruct sunlight, air, or views, nor would it cast new shadows on the windows or a substantial area of open space of adjacent residences as it is a single story structure with an average height of 11.5’.

- All neighbors have signed the plans indicating that there are no objections to the proposed building.
3. As required under Section 23D.20.090.C, the Zoning Officer finds that the additional or new on-site parking would be detrimental, and that the existing parking supply in the immediate neighborhood is adequate as further explained below:
- The subject property has a narrow width relative to the other parcels on the same block and is narrow in comparison to most parcels within the city. The single family dwelling located on the site spans the width and prevents vehicular access to the rear of the lot. Alternative locations such as the front of the property would remove open space on the site.
  - The granting of this permit will not be detrimental to the neighboring properties and tenants/owners or the City as a whole because based on the applicant's parking survey and staff site visits, there is sufficient on-street parking in the immediate area to justify the granting of a parking waiver and the unit conforms to all other applicable accessory dwelling unit regulations.

## **STANDARD CONDITIONS**

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

### **1. Conditions Shall be Printed on Plans**

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

### **2. Applicant Responsible for Compliance with Conditions**

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

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

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

### **4. Modification of Permits (Section 23B.56.020)**

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Zoning Officer, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.

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

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

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

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

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

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

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

- A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
- B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
- C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

**9. Indemnification Agreement**

The applicant shall hold the City of Berkeley and its officers harmless in the event of any legal action related to the granting of this Permit, shall cooperate with the City in defense of such action, and shall indemnify the City for any award of damages or attorneys fees that may result.

**ADDITIONAL CONDITIONS IMPOSED BY THE ZONING OFFICER**

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

**Prior to Submittal of Any Building Permit:**

10. The applicant shall provide the project planner with the name and telephone number of the individual empowered to manage construction noise from the project. The individual's name, telephone number, and responsibility for noise management shall be posted at the project site for the duration of construction in a location easily visible to the public. The individual shall record all noise complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis. **Individual Responsible for Noise Management:**

□ Name: \_\_\_\_\_ Phone: \_\_\_\_\_

11. The applicant and all persons associated with the project are hereby notified that a Transportation Management Permit (TMP) would be required under any of the following circumstances:

- Alterations, closures, or blockages to sidewalks or pedestrian paths
- Alterations, closures, or blockages to vehicle travel lanes (including bicycle lanes)
- Storage of building materials, dumpsters, debris anywhere in the public ROW
- Provision of exclusive contractor parking on-street
- Significant truck activity.

Contact the Permit Service Center (PSC) at 2120 Milvia Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Public Works Traffic Engineering (981-6400) reviews all submitted TMP requests.

The TMP may include designation of a specific truck haul route. Meter heads (if in the construction area) shall be removed only by City staff. Contact the site inspector 72 hours in advance of required removal so arrangements can be made.

**Prior to Issuance of Any Building Permit:**

12. All owners of record of the subject property shall sign and file a Declaration of Restrictions with the County Recorder, in a form satisfactory to the Zoning Officer, which makes any transfer of the property specifically subject to the restrictions contained in 23D.16.040, and requires that either the primary Dwelling Unit or the Accessory Dwelling Unit be occupied by the owner of the subject property and that non-occupancy of an owner for a period of more than three years is prohibited.
13. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.

14. The applicant shall file an "Address Assignment Request Application" with the Permit Service Center (2120 Milvia Street) for the new address associated with this Use Permit. The new address(es) shall be assigned prior to issuance of a building permit.

**During Construction:**

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

**Prior to Issuance of Occupancy Permit or Final Inspection:**

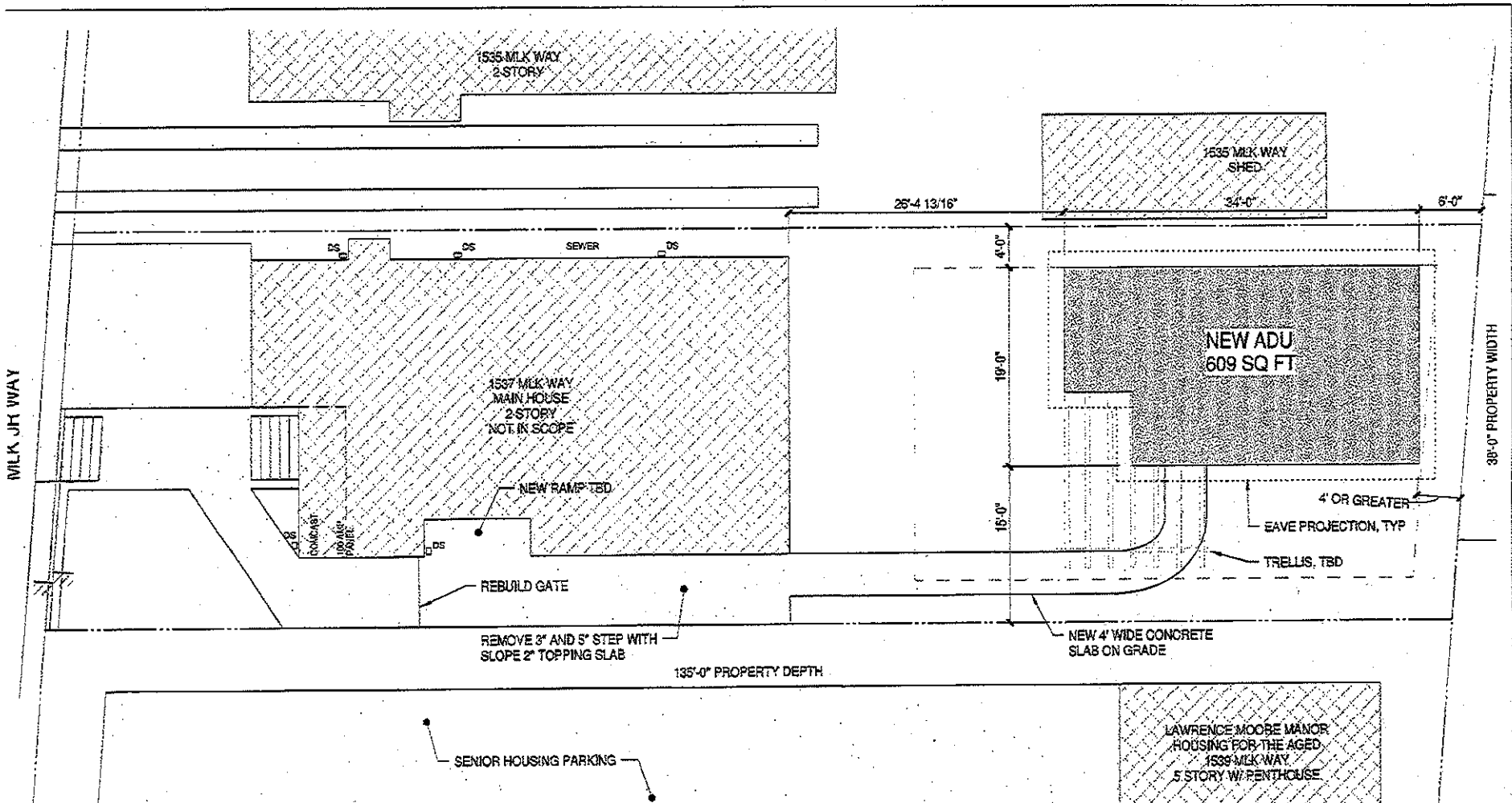
25. All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
26. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated **SEPTEMBER 24, 2012**.

**At All Times (Operation):**

27. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
28. This permit is subject to review, imposition of additional conditions, or revocation if factual complaint is received by the Zoning Officer that the maintenance or operation of this establishment is violating any of these or other required conditions or is detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood or is detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.
29. Noise and exterior lighting shall be controlled so as to prevent verified complaints from the surrounding neighborhood. .



Claudine Asbagh, Assistant Planner for  
Debra Sanderson, Zoning Officer



**SITE LEGEND**

	EDGE OF SITE CONCRETE		NEW FLATWORK CONCRETE
	SETBACK/EASEMENT		EXISTING FLATWORK TO BE DEMOLISHED
	PROPERTY LINE		EXISTING FLATWORK NOT IN SCOPE OF WORK
	NEW BUILDING WITHIN SCOPE OF WORK		DS DOWNSPOUT FROM GUTTER
	EXISTING BUILDING NOT IN SCOPE OF WORK		

APPROVED PLAN  
*M. Ashby* 1/30/13  
 PLANNING DATE  
 D.P. Conditions Attached  
 A.U.P. Conditions Attached  
 U.P. Conditions Attached

1 Site Plan  
 A3

1" = 10'-0"  
 TRUE NORTH PROJECT NORTH



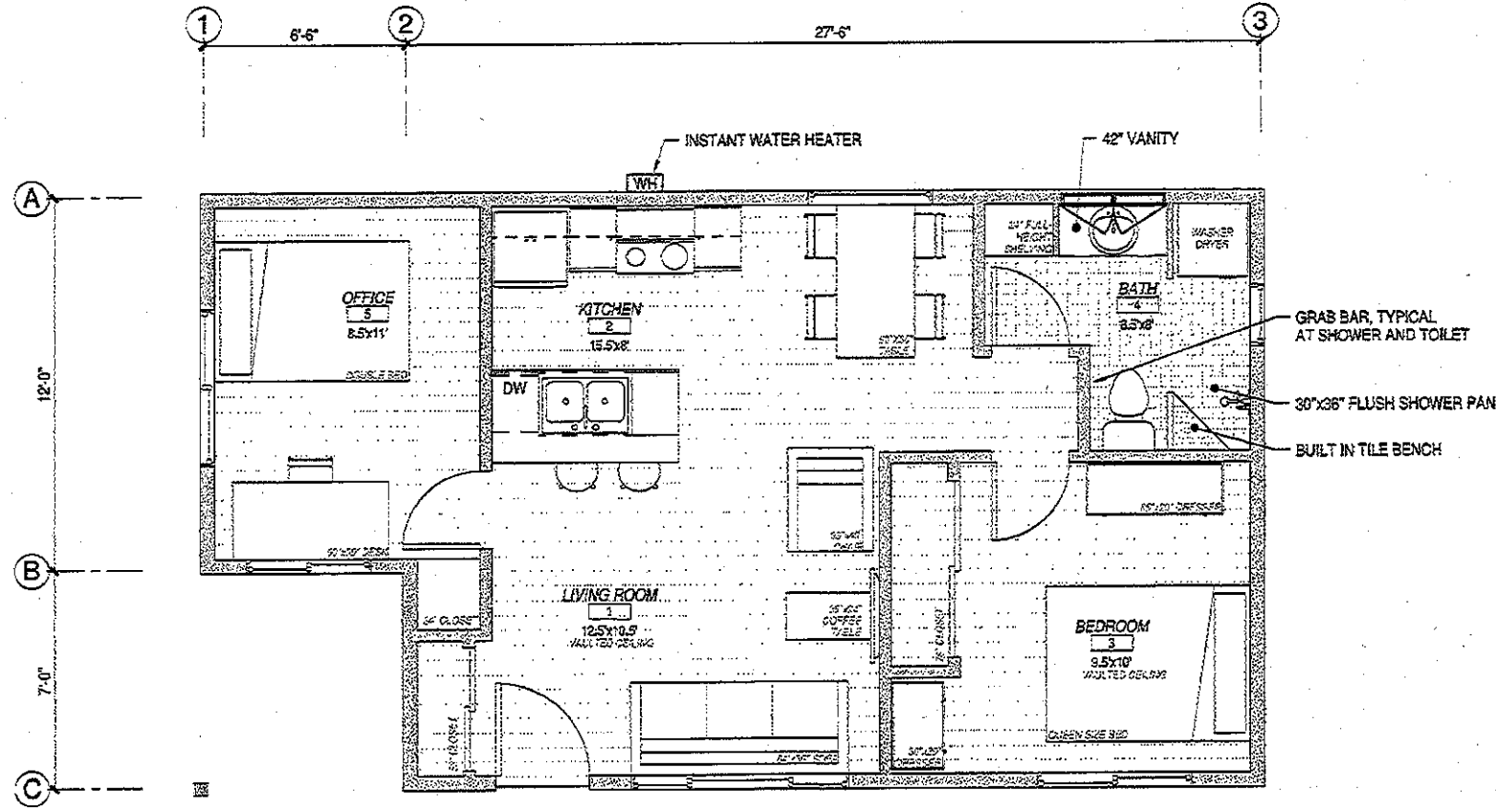
**CAIN COTTAGE**

PROJECT # 12009  
 DRAWN BY: TD  
 DATE: 09.24.12  
 A.M.N. 450-774-0000

SITE PLAN

A3





- GRAB BAR, TYPICAL AT SHOWER AND TOILET
- 30"x36" FLUSH SHOWER PAN
- BUILT IN TILE BENCH

APPROVED PLAN  
*Alaska* 1/2013  
 PLANNING  
 D.P. Conditions Attached  
 A.U.P. Conditions Attached  
 U.P. Conditions Attached

1 First Floor  
 A4 1/4" = 1'-0"

CAIN COTTAGE

PROJECT # 12009  
 DRAWN BY: TB  
 DATE: 09.24.12  
 ARCH: ABB  
 NEW AVERAGE ARCH.

PLAN

A4

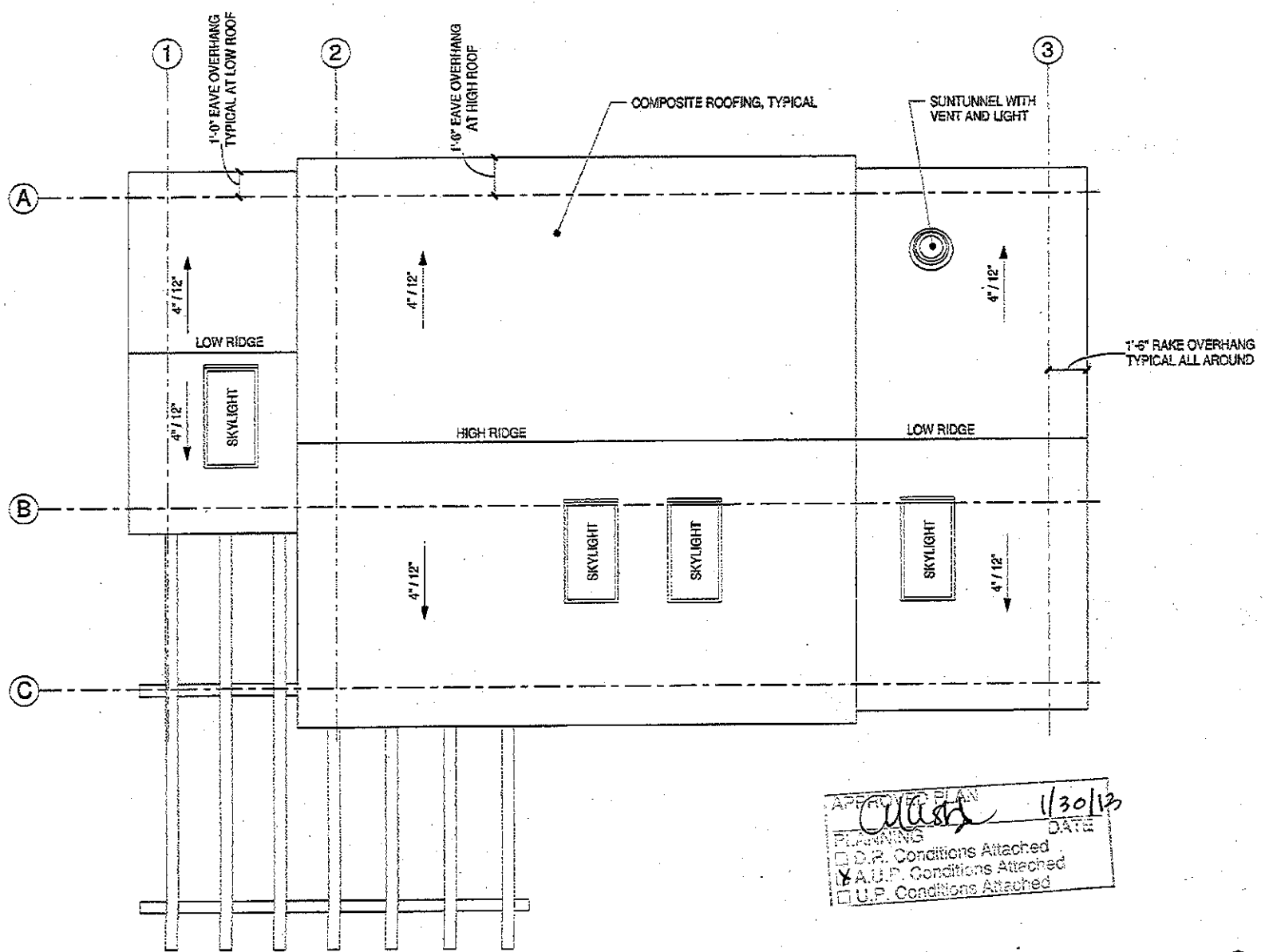


# CAIN COTTAGE

PROJECT # 12009  
 DRAWN BY: TB  
 DATE: 09.24.12  
 ADX.

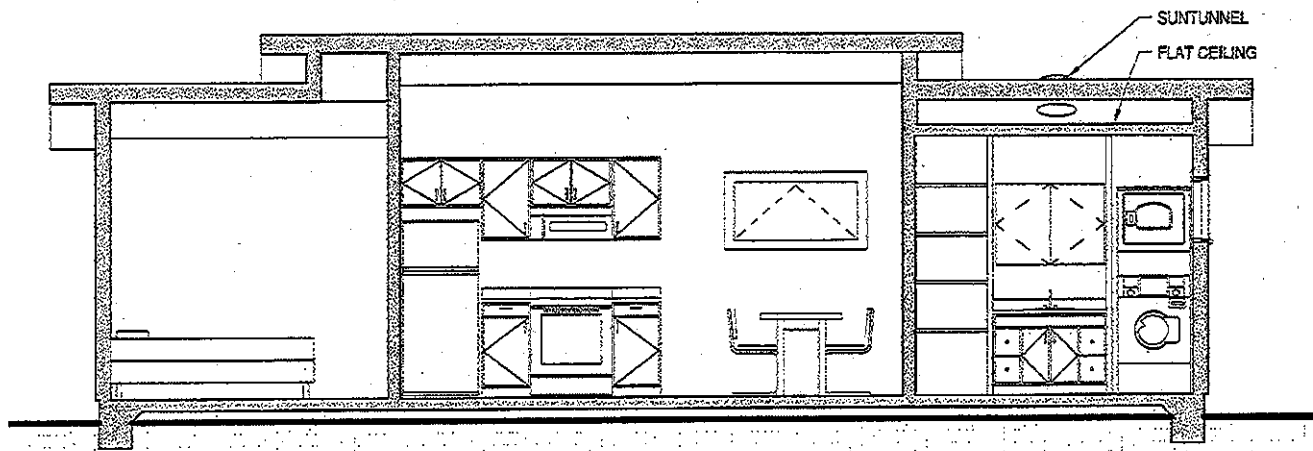
ROOF PLAN

A5



APPROVED PLAN  
*Collins* 1/30/13  
 PLANNING DATE  
 O.P. Conditions Attached  
 A.U.P. Conditions Attached  
 U.P. Conditions Attached

1 Roof Plan  
 A5 1/4" = 1'-0"

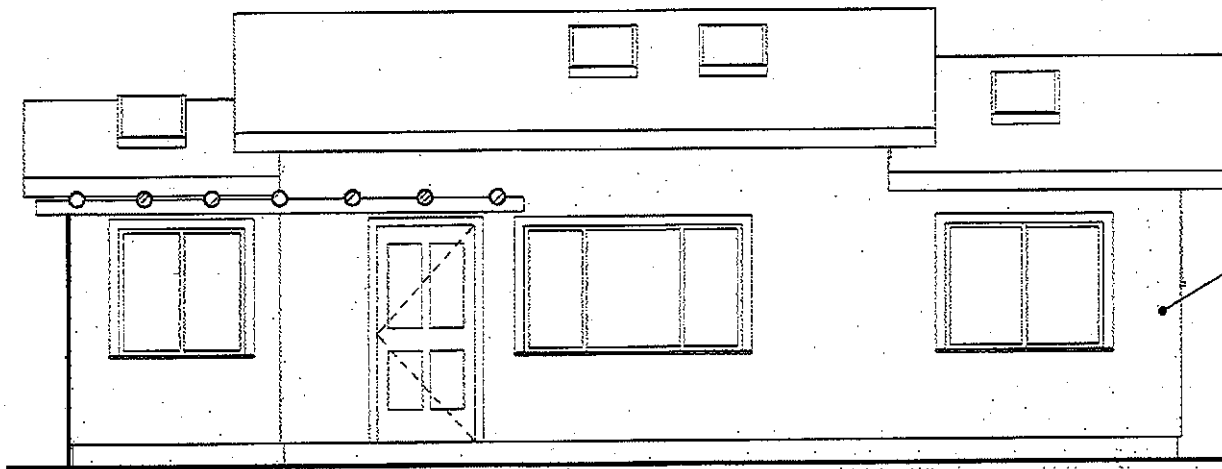


2  
A6

Building Section Along Grid A.5

1/4" = 1'-0"

REVISED PLAN  
 PLANNING DATE  
 D.P. Conditions Attached  
 A.U.P. Conditions Attached  
 U.P. Conditions Attached  
 4/30/13



1  
A6

South Elevation

1/4" = 1'-0"



CAIN COTTAGE

PROJECT # 12009  
 DRAWN BY: TB  
 DATE: 09.24.12  
 A.S.W.

PROJECT # 12009  
 DRAWN BY: TB  
 DATE: 09.24.12  
 A.S.W.

SOUTH ELEVATION AND SECTION

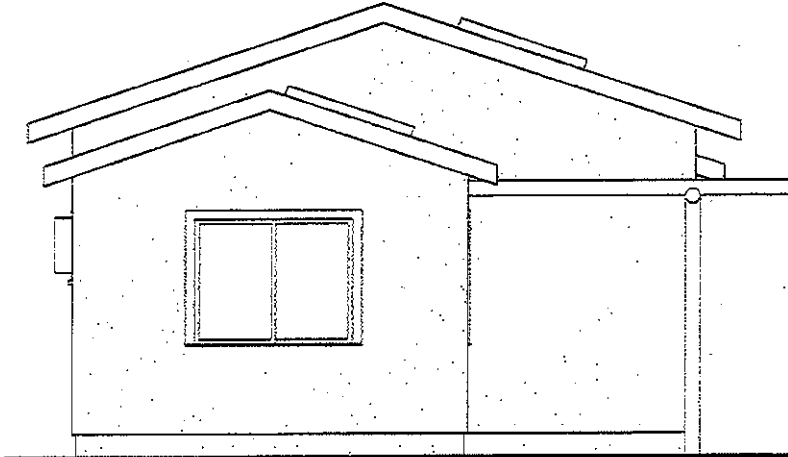
A6

CAIN COTTAGE

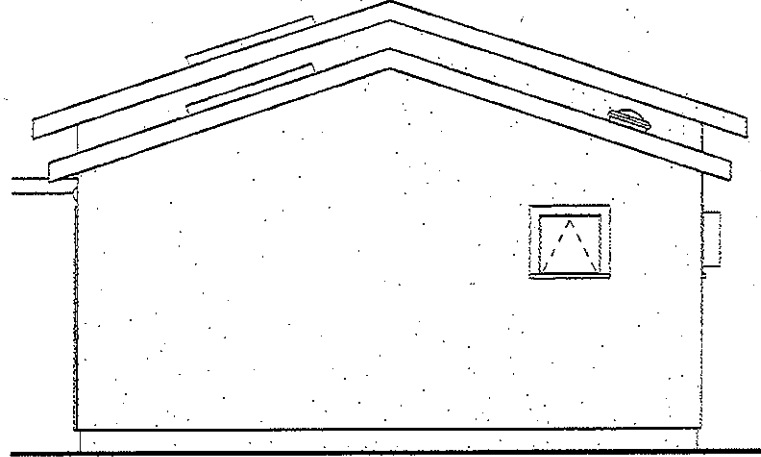
12009 YB  
PROJECT #  
DRAWN BY:  
DATE: 09.24.12  
ATTN: RES - MICROPLANS

ELEVATION:

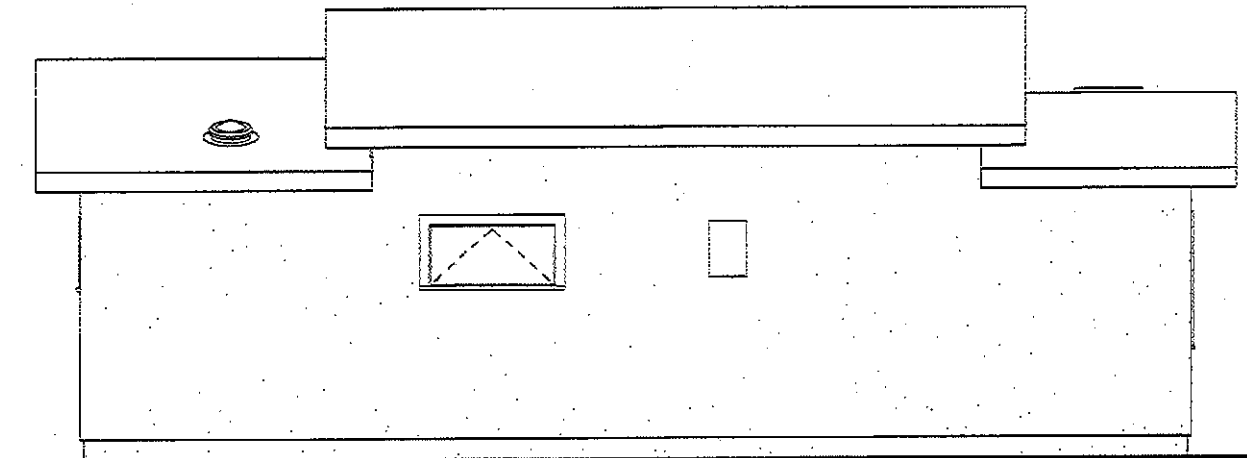
A7



3 West Elevation  
A7 1/4" = 1'-0"



2 East Elevation  
A7 1/4" = 1'-0"



1 North Elevation  
A7 1/4" = 1'-0"

*Alison* 1/20/12  
DATE  
 O.R. Conditions Attached  
 A.U.P. Conditions Attached  
 U.P. Conditions Attached