



Planning and Development Department  
Land Use Planning

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

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CITY OF BERKELEY ZONING ORDINANCE  
Berkeley Municipal Code Title 23

## ADMISTRATIVE USE PERMIT # 12-20000116

Property Address: **1431 CURTIS STREET**

Permittee Name: **ANDREA SESSA  
SESSA & WADLUND DESIGN STUDIO**

Use and/or Construction Permitted:  
to install an unenclosed hot tub in the rear yard.

- Administrative Use Permit to install an unenclosed hot tub, under BMC Section 23D.08.060.C

FINDINGS, CONDITIONS AND APPROVED PLANS ATTACHED

The Use Permit herein described has been duly granted by the Zoning Adjustments Board and is in effect on April 3, 2013.

# ATTACHMENT 1

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## FINDINGS AND CONDITIONS

APPROVED BY ZAB ON MARCH 14, 2013

### 1431 Curtis Street

#### Administrative Use Permit #12-20000116

To install an unenclosed hot tub in the rear yard.

#### 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 15301 of the CEQA Guidelines ("Existing Facilities"). 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 will not affect any historical resource.

#### 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 installation of an unenclosed hot tub within the rear yard will not be detrimental to abutting neighbor's privacy because:
    - 1) The hot tub will be located on a concrete pad and will have a separation of approximately 17' from the closest abutting residential structure at 1433 Curtis and approximately 44' to the property to the rear at 1434 Neilson Street;
    - 2) There is an existing 6' tall fence between the subject property and the properties to the east (rear) and south (side); and
    - 3) Large trees are present on the rear of the subject lot and the abutting lots to the east and south. In addition the owner has indicated that he plans on planting additional vegetation, including bamboo and a red banana tree which will add additional privacy.

- As required by Section 23D.08.060.C, the installation of the hot tub is permissible because this location is found to be non-detrimental. The hot tub will be constructed of an acrylic shell with synthetic wood enclosure and will not generate noise at a level sufficient to disturb neighbors because:
  - 1) The hot tub will be installed on a reinforced concrete pad which is an effective method for reducing potential sound when the jets are utilized;
  - 2) Recycled rubber is proposed to be installed between the hot tub and the concrete pad which is intended to further reduce sound;
  - 3) The space between the exterior casing and the hot tub interior shell, including around the motor, is packed with high-density foam insulation for both sound dampening and energy efficiency; and
  - 4) The hot tub will have a separation of approximately 17' and 44' from abutting neighbor's main buildings and is screened by a fence.
  
- The enclosure will minimize the potential for significant noise impacts. Nonetheless, operation of the hot tub pump is subject to the controls imposed under the Berkeley Municipal Code (Section 13) as it relates to maximum noise levels. (Restrictions included in conditions of approval #31).
  
- The installation of the hot tub will be subject to the conditions of this permit, which will ensure that neighbors are not adversely affected by noise, lighting, or drainage from the use of the hot tub.
  
- As required under Section 23D.32.070 (Development Standards), this project is permissible because the subject property satisfies the development standards for lot coverage, required setbacks, maximum residential density, and maximum main building height.

## **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. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.

**During Construction:**

13. Construction activity shall be limited to between the hours of 8:00 a.m. and 6:00 p.m. on Monday through Friday, and between 9:00 a.m. and noon on Saturday. No construction-related activity shall occur on Sunday or on any Federal Holiday.
14. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.
15. Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.
16. All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter in thickness and secured to the ground.
17. All active construction areas shall be watered at least twice daily, and all piles of debris, soil, sand or other loose materials shall be watered or covered.
18. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.
19. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.

20. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.
21. 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.
22. Any construction during the wet season shall require submittal of a soils report with appropriate measures to minimize erosion and landslides, and the developer shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.

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

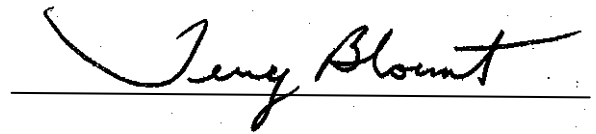
23. All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
24. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated **SEPTEMBER 13, 2012**.

**At All Times (Operation):**

25. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
26. 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.
27. Noise and exterior lighting shall be controlled so as to prevent verified complaints from the surrounding neighborhood.
28. The hot tub pump shall be mounted, enclosed and maintained to prevent noise from disturbing the occupants of neighboring properties.
29. The hot tub shall be drained into the sanitary sewer connection of the subject property, and not into any storm drain or within the yard. The hot tub shall be equipped with safety features in accordance with Chapter 31B, Division II of the California Building Code.
30. The design and use of the hot tub facility shall be subject to review and modification as necessary to alleviate excessive noise or disturbance to the neighborhood.

31. The mechanical operation and use of the hot tub must adhere to the exterior noise standard of the Berkeley Municipal Code Section 13.40.050, limiting noise levels from the property line for any 30 minute period to:

R-1 District	7:00 a.m. – 10:00 p.m.	55 (dBA)
	10:00 p.m. – 7:00 a.m.	45 (dBA)



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Terry Blount, Principal Planner for  
Debra Sanderson, Zoning Officer

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Prepared by: Pamela Johnson



APPROVED PLAN  
*Jerry Blount*  
 DATE 11/19/2012  
 D.R. Conditions Attached  
 S.U.P. Conditions Attached  
 U.P. Conditions Attached

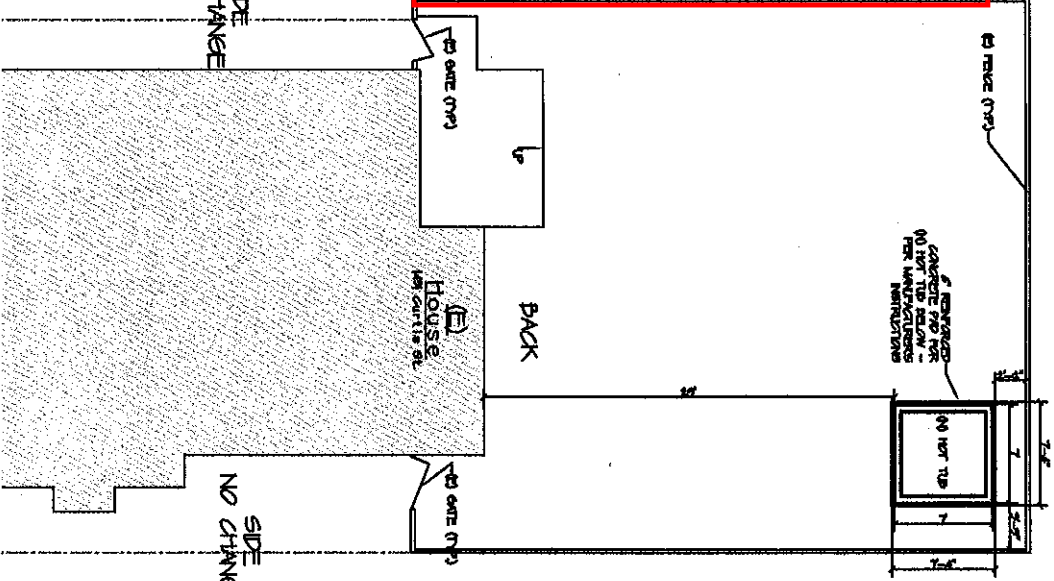
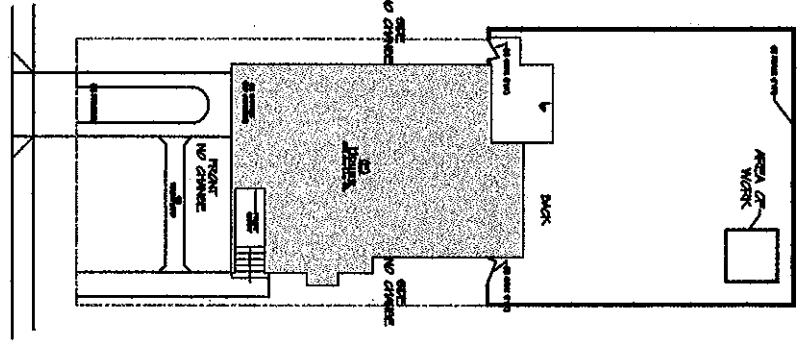
**PLANS APPROVED by  
 ZONING ADJUSTMENTS BOARD**

*Jerry Blount*  
 March 14, 2013

1 SITE PLAN  
 SHEET 1 OF 1



2 NO PLAN  
 SHEET 1 OF 1



**SESSA +  
 WADLUND**  
 DESIGN STUDIO

4374 WOODBERRY AVE.  
 OAKLAND, CA 94612  
 916.258.5551

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**PHILLIPS-LANG  
 RESIDENCE**  
 1401 OAK ST.  
 BERKELEY, CA 94702  
 415.742.6200  
 info@p-lang.com

9.13.12 Permit Submission

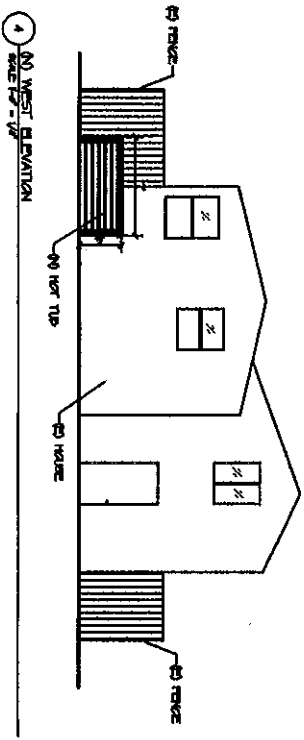
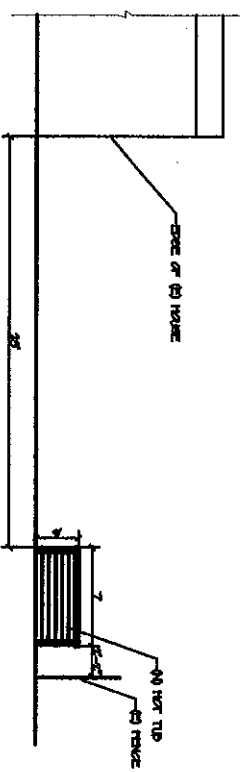
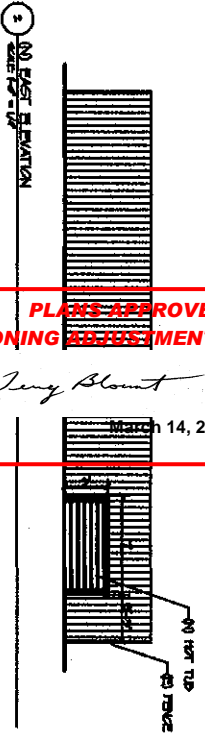
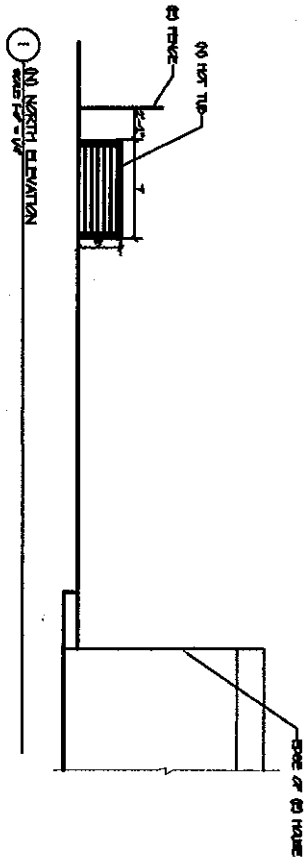
MARK	DATE	DESCRIPTION

PROJECT NO.:  
 TITLE:  
 DRAWN BY:  
 CHECKED BY:  
 COPYRIGHT:  
 SHEET TITLE:  
 (E) SITE PLAN +  
 (N) PLAN

L-01

APPROVED PLAN  
 PLANNING  
 D.F. Conditions Attached  
 A.U.P. Conditions Attached  
 U.P. Conditions Attached

DATE 11/21/2012



**PLANS APPROVED by  
 ZONING ADJUSTMENTS BOARD**

*Jerry Blount*  
 March 14, 2013

4114 WOODRUFF AVE. OAKLAND, CA 94612 510.258.0251	
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<b>PHILLIPS-LANG          RESIDENCE</b> 1431 Cuba Street Berkeley, CA 94702 415.425.5233 phillips@wlad.com	
9.13.12	Permit Submission
MARK	DATE
DESCRIPTION	
PROJECT NO.	
CONTRACT NO.	
CONTRACT DATE	
CONTRACT DESCRIPTION	
CONTRACT VALUE	
CONTRACT STATUS	
CONTRACT TYPE	
CONTRACT TITLE	
<b>(N) ELEVATIONS</b>	
<b>L-02</b>	