



Planning and Development Department  
Land Use Planning

# U S E P E R M I T

---

CITY OF BERKELEY ZONING ORDINANCE  
Berkeley Municipal Code Title 23

## USE PERMIT # 11-20000128

Property Address: **139 ALVARADO ROAD**

Permittee Name: **ROBERT PENNELL  
Jarvis Architects**

**Use and/or Construction Permitted:**

to construct a 400 sq. ft. accessory building containing habitable space and to install a self contained, unenclosed hot tub on a terrace within the rear yard.

- Administrative Use Permit to install an unenclosed hot tub, under BMC Section 23D.08.060.C; and
- Administrative Use Permit to construct an accessory building containing habitable space, under BMC Section 23D.08.A

**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 19, 2013.

# ATTACHMENT 1

---

## FINDINGS AND CONDITIONS

APPROVED BY ZAB ON MARCH 14, 2013

### 139 Alvarado Road

#### Administrative Use Permit #11-20000128

**To construct a 400 sq. ft. accessory building containing habitable space and to install a self contained, unenclosed hot tub on a terrace within the rear yard.**

#### CEQA FINDINGS

---

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15303 of the CEQA Guidelines ("Accessory Structures"). 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

---

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:

#### **Construction of the Accessory Building**

- The construction of the proposed accessory building is allowed by right under Section 23D.08.020 (Height Limits for Accessory Buildings or Structures), Section 23D.08.030 (Setback Requirements for Accessory Buildings or Structures), and Section 23D.08.050 (Maximum Building Length) because the proposed accessory building:
  - 1) Has an average height of 10' where 12' is allowed;
  - 2) Does not encroach upon the front half of the lot or is within 75' of the front lot line or is sited closer than 4' to the side lot line; and
  - 3) Is 16' in length running parallel with the side lot line where 24' is allowed;

### **Habitable Space/Studio/Study Area**

- Per Section 23D.08.A an Administrative Use Permit is required to allow the accessory structure to contain habitable space as a studio/study area. The creation of a studio and study space within the new accessory building is expected to create little or no privacy impacts to the immediate neighbors, and is therefore found to be non-detrimental given that:
  - 1) The proposed studio is located up hill at the rear of the lot, approximately 29'3" from the rear property line which borders Eucalyptus path, a public way, and is screened by an existing 6' tall fence and existing vegetation, including a large California Live Oak tree;
  - 2) The proposed building will be used as a study and for storage, both relatively quiet activities;
  - 3) The proposed studio is approximately 59' from the neighboring property to the north at 135 Alvarado and approximately 18' from the neighboring property to the south at 145 Alvarado. A lattice with climbing fig and climbing rose is proposed at the south façade. Additionally, landscaping includes a row of twenty English Laurels bordering the south property line, providing additional screening, and is therefore found to be adequate;
  - 4) There are no window or door openings proposed at the south elevation; and
  - 5) The project is subject to condition of approval #12 that requires that a "Notice of Limitation of Use" be placed on the deed of the property. Such deed restriction will prohibit the accessory building from being used as a dwelling and restrict the extent of interior renovations (see conditions of approval below).

### **Views**

- The proposed studio is not expected to significantly block the views from Eucalyptus Path or the adjacent neighbors' views of any significant features because of the topography, the existence of an existing fence and vegetation, and the fact that the studio will not exceed the full height limit for accessory buildings.

### **Sunlight and Air**

- Due to the height (10' where 12' is allowed), location (uphill and rear), and distance to neighboring properties (59' and 18') the proposed studio is not expected to create significant shadows to nearby abutting residential structures to the north and south and is therefore permissible; and
- Because the proposal meets or exceeds the standards for minimum setbacks and height, it is expected to provide adequate spatial separations between developments on abutting properties, thereby allowing for adequate air circulation.

### **Hot tub**

- 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 terrace consisting of stone pavers and will have a separation of approximately 59' from the neighboring property to the north at 135 Alvarado and approximately 44' to the neighboring property to the south at 145 Alvarado; and
  - 2) There is an existing fence between the subject property and the properties to the north and south and vegetation (rooftop planter box, a tree, and additional evergreen hedges) is proposed to provide additional screening;
- 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 a synthetic wood enclosure and will not generate noise at a level sufficient to disturb neighbors because:
    - 1) The hot tub equipment includes sound insulated pump and foam insulation that surrounds the entire motor cavity; and
    - 2) The hot tub will have adequate separation between neighboring properties as discussed above.
  - The enclosure will minimize the potential for significant noise impacts; however, the operation of the hot tub 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 #27-#33).
  - 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.
  - An arborist report prepared by Dennis Yniquez, Registered Consulting Arborist, dated October 15, 2011 states that the construction of the accessory structure will have no significant detrimental effects on the health or stability of the coastal live oaks in the vicinity of the studio. Dan Gallagher, ISA Certified Arborist/Municipal Specialist, the City's Senior Forestry Supervisor, reviewed the submitted arborist report and visited the site and made recommended tree protection measures which have been included in the conditions of approval.

## **STANDARD CONDITIONS**

---

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

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

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

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

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

### **3. Uses Approved Deemed to Exclude Other Uses (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 record with the Alameda County Clerk-Recorder a "Notice of Limitation on Use of Property" (available from Land Use Planning Division) and provide a recorded copy thereof to the project planner. This Notice of Limitation shall stipulate that no part of this accessory building shall be used or converted to use a dwelling unit unless and until permission is requested of the City of Berkeley and authorized a Use Permit, Administrative Use Permit, or Zoning Certificate, whichever is applicable. This limitation shall include the explicit acknowledgment that no shower, tub, or kitchen facilities may be installed in this habitable accessory building. This limitation may not be revised or removed from this property without the prior written permission of the Zoning Officer of the City of Berkeley.
13. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.

**During Construction:**

14. 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.
15. 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.
16. 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.

17. 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.
18. 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.
19. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.
20. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.
21. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.
22. 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.
23. 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.
24. The conditions recommended by Dennis Yniquez, Registered Consultant Arborist of Tree Decisions in the October 15, 2011 evaluation of the coastal live oak trees in the vicinity of the accessory structure and the recommendations of the City's Arborist, Dan Gallagher, ISA Certified Arborist/Municipal Specialist in the recommendations called out in the December 9, 2011 report (see attached reports), shall be implemented.

**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 **NOVEMBER 5, 2012**.

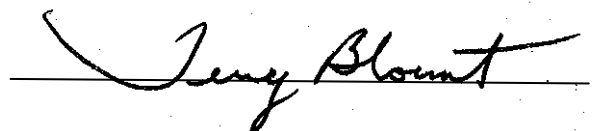
**At All Times (Operation):**

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.
- 30. The hot tub pump shall be mounted, enclosed and maintained to prevent noise from disturbing the occupants of neighboring properties.
- 31. 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.
- 32. The design and use of the hot facility shall be subject to review and modification as necessary to alleviate excessive noise or disturbance to the neighborhood.
- 33. 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 a.m.	45 (dBA)



Terry Blount, Principal Planner for  
Debra Sanderson, Zoning Officer

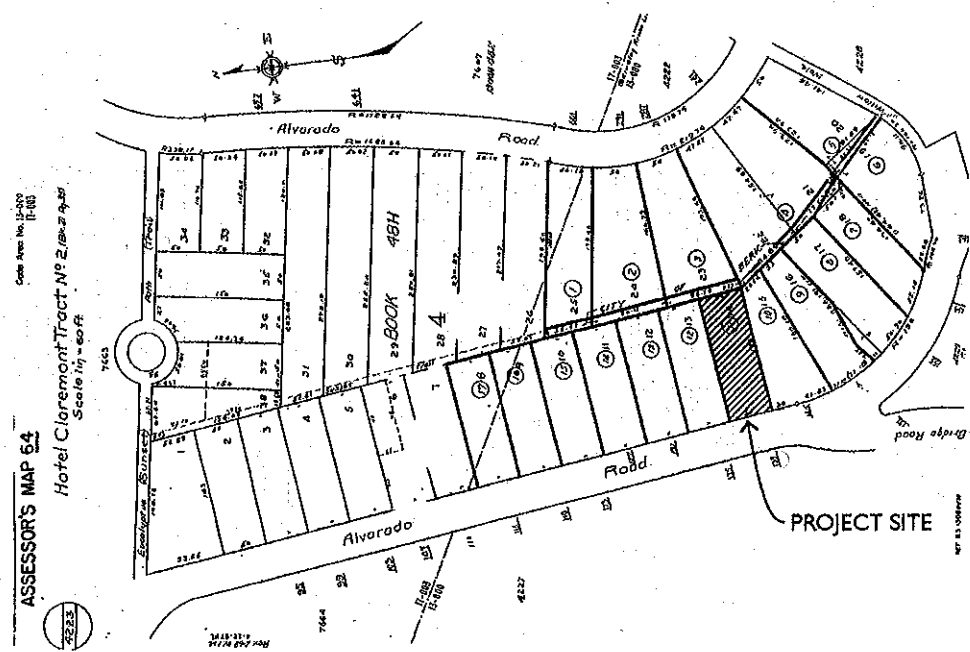
Prepared by: Pamela Johnson

**STRUCTURE 1**  
**SHAUDI AND SEAN**  
**139 ALVARADO**

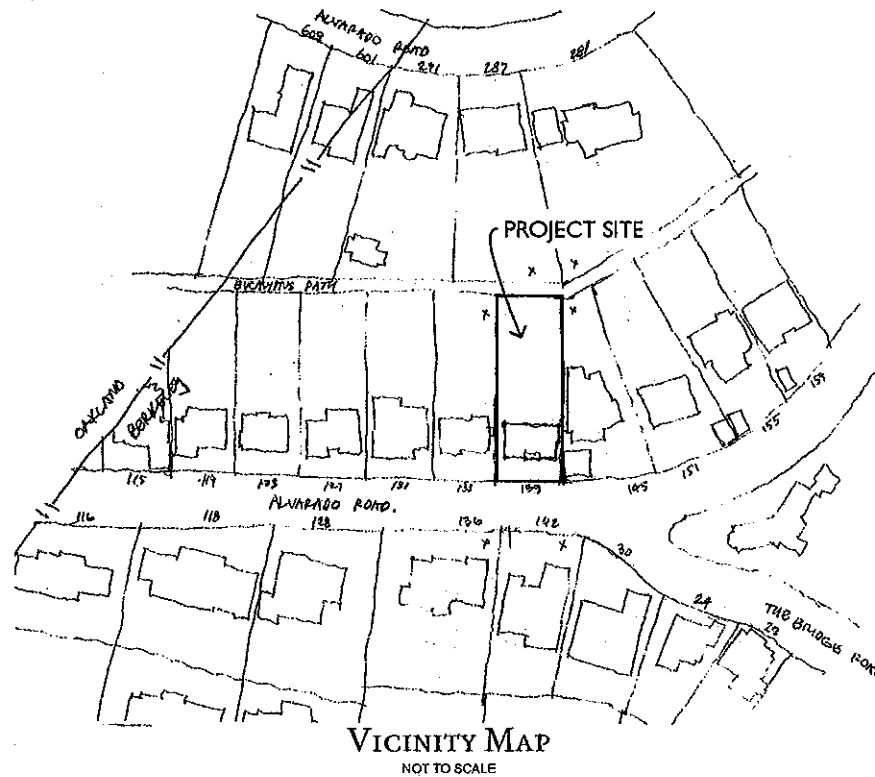
RECEIVED

NOV 05 2012

LAND USE PLANNING



**139 ALVARADO APN#064-4223-011**  
 NOT TO SCALE

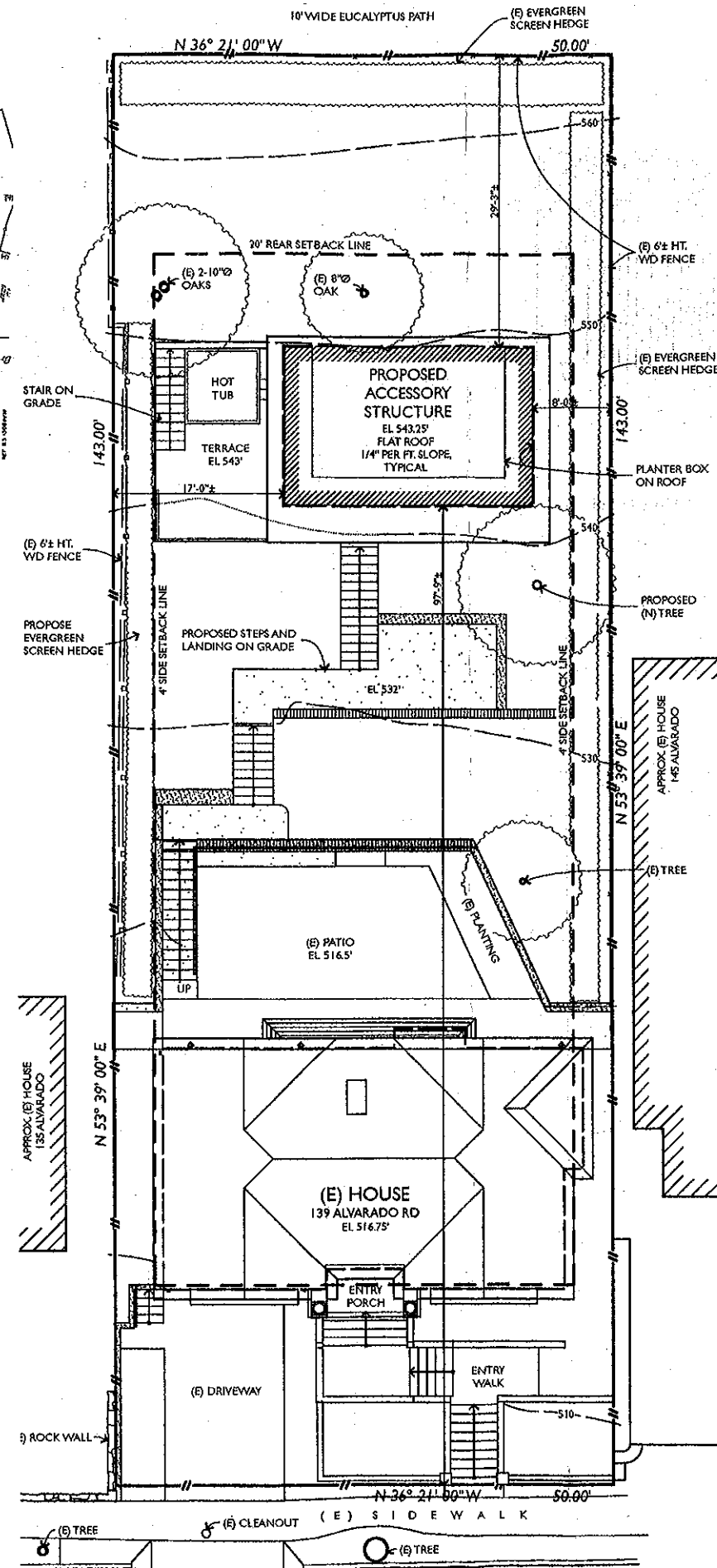


**VICINITY MAP**  
 NOT TO SCALE

**PLANS APPROVED by**  
**ZONING ADJUSTMENTS BOARD**

*Jerry Blount*

March 14, 2013



ALVARADO ROAD

**SITE PLAN**  
 SCALE 1/16" = 1'-0"



**PROJECT & LOT INFORMATION**

ADDRESS: 139 Alvarado Road  
 ASSESSOR'S PARCEL NO.: 064-4223-11  
 ZONE: R-1H

UNITS & PARKING	EXISTING	PROPOSED	PERMITTED /REQUIRED
NUMBER OF DWELLING UNITS	1	1	1
PARKING SPACES	1 Car	No Change	1 Car

YARDS AND HEIGHT	EXISTING	PROPOSED STRUCTURE	PERMITTED /REQUIRED
FRONT YARD SETBACK		97'-9"	20'-0"
SIDEYARD SETBACKS			
LEFT YARD SETBACK		17'-0"	4'-0"
RIGHT YARD SETBACK		8'-0"	4'-0"
REAR YARD SETBACK		29'-3"	20'-0"
BUILDING HEIGHT			
AVERAGE HEIGHT		10'-0"	3 Stories
MAXIMUM HEIGHT		14'-3"	28'

AREAS	EXISTING	PROPOSED	PERMITTED /REQUIRED
LOT AREA	7,150 SF		7,150
FLOOR AREA - RESIDENTIAL			
HOUSE UPPER FLOOR	975 SF	975 SF	
HOUSE MAIN FLOOR	986 SF	986 SF	
HOUSE BASEMENT	171 SF	171 SF	
PROPOSED STUDIO	0.0 SF	400.0 SF	
TOTAL FLOOR AREA	2132 SF	2532 SF	
BUILDING FOOTPRINT	1142.0 SF	1602.0 SF	2860.0 SF
LOT COVERAGE (FOOTPRINT/LOT)	16.0%	22.4%	40.0%

**PROJECT INFORMATION:**

**BUILDING CODES:**  
 2010 California Residential Code  
 2010 California Electrical Code  
 2010 California Plumbing Code  
 2010 California Mechanical Code  
 2010 California Fire Code  
 All codes are as further modified by the City.

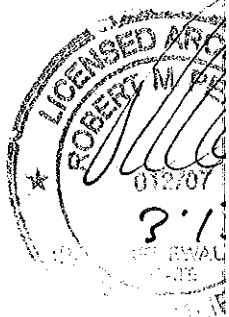
**BUILDING INFORMATION:**  
 OCCUPANCY: R-3  
 BUILDING TYPE: VB (non fire-rated construction)  
 SPRINKLERED: NO

**SCOPE OF WORK:**

The scope of work includes a new accessory structure of approximately 400sf, with a toilet and lavatory, in the rear yard with outdoor terrace and hot tub at the north side. This design is revised per neighbor's comments.

**PARTIES INVOLVED:**

- OWNER:** Shaudi & Sean Fulp  
 139 Alvarado Road  
 Berkeley, CA 94705  
 (415) 625-3857
- ARCHITECT:** JARVIS ARCHITECTS  
 5278 College Avenue  
 Oakland, CA 94618  
 Contact: Ed or Robin  
 ebuchanan@jarvisarchitects.com  
 rpennell@jarvisarchitects.com  
 (510) 654-6755  
 (510) 654-3424 fax
- STRUCTURAL ENGINEER:** MAX FALAMAKI STRUCTURAL ENGINEERS  
 836 S. Bundy Drive  
 Los Angeles, CA 90049  
 Contact: Max  
 Max@Falamaki.com  
 (310) 820-8206  
 (424) 204-6014 fax
- SOILS ENGINEER:** EARTH SCIENCE CONSULTANTS  
 Jay Nelson  
 P.O. Box 3410  
 San Rafael, CA 94912  
 Contact: Jay  
 dirtsoil@sbcglobal.net  
 (415) 383-1906  
 (415) 388-6111 fax
- SURVEYOR:** MORAN ENGINEERING, INC.  
 1930 Shattuck Avenue, Suite A  
 Berkeley, CA 94704  
 Contact: Robert J. Brunel  
 Rbrunel@moraneng.com  
 (510) 848-1930  
 (510) 848-9725 fax
- ENERGY CONSULTANT:** GABEL ASSOCIATES  
 1818 Harmon Street  
 Berkeley, CA 94703  
 Contact: Marina Chavez  
 Marina@gabelenergy.com  
 (510) 428-0803
- CONTRACTOR:** Hegseth Development  
 7803 Madison Avenue  
 Citrus Heights, CA 95610  
 Contact: Mike Hegseth  
 mahegseth@gmail.com  
 (916) 416-2529 cell  
 (916) 966-7325 off
- ARBORIST:** Dennis Ynguez  
 1428 Spruce Street  
 Berkeley, CA 94709  
 (510) 649-9291  
 (916) 428-4587 cell

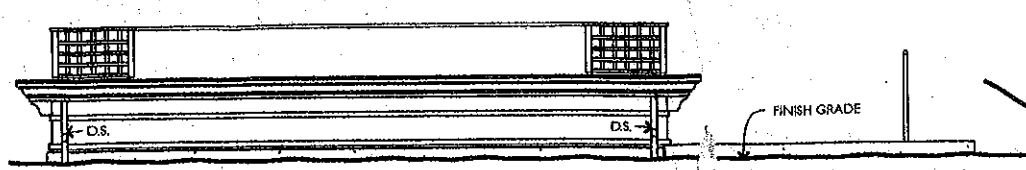


ISSUED FOR: ADMINISTRATIVE USE

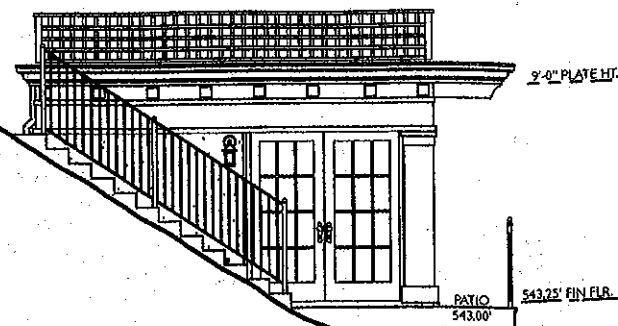
SHAUDI & SEAN FULP  
 139 ALVARADO ROAD  
 BERKELEY, CA 94705

**JARVIS ARCHITECTS**  
 5278 College Avenue  
 Oakland, California  
 94618-1115

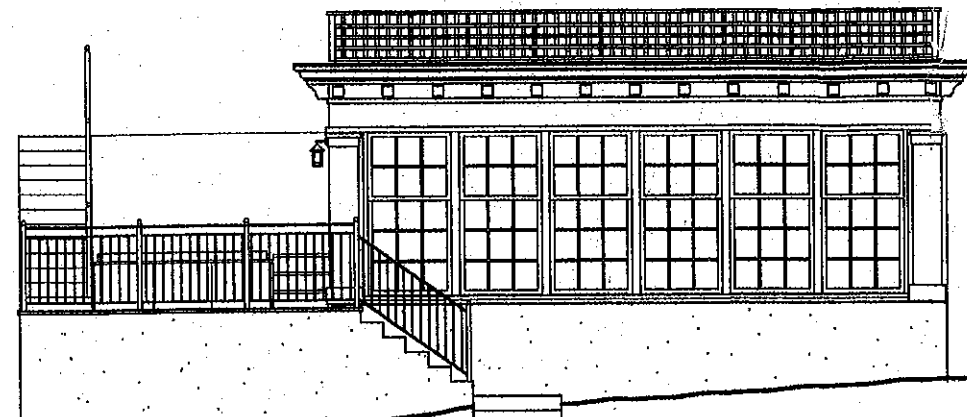
COVER SHEET & SITE PLAN



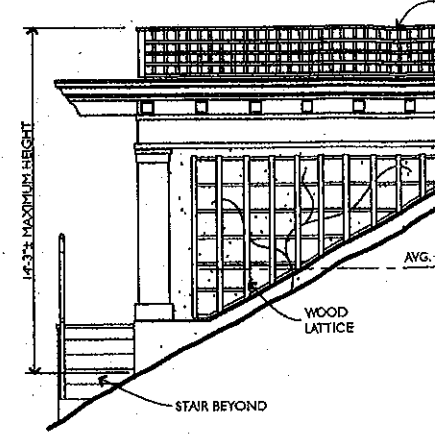
**EAST ELEVATION**  
 SCALE 1/8" = 1'-0"



**NORTH ELEVATION**  
 SCALE 1/8" = 1'-0"



**WEST (FRONT) ELEVATION**  
 SCALE 1/8" = 1'-0"



**SOUTH ELEVATION**  
 SCALE 1/8" = 1'-0"

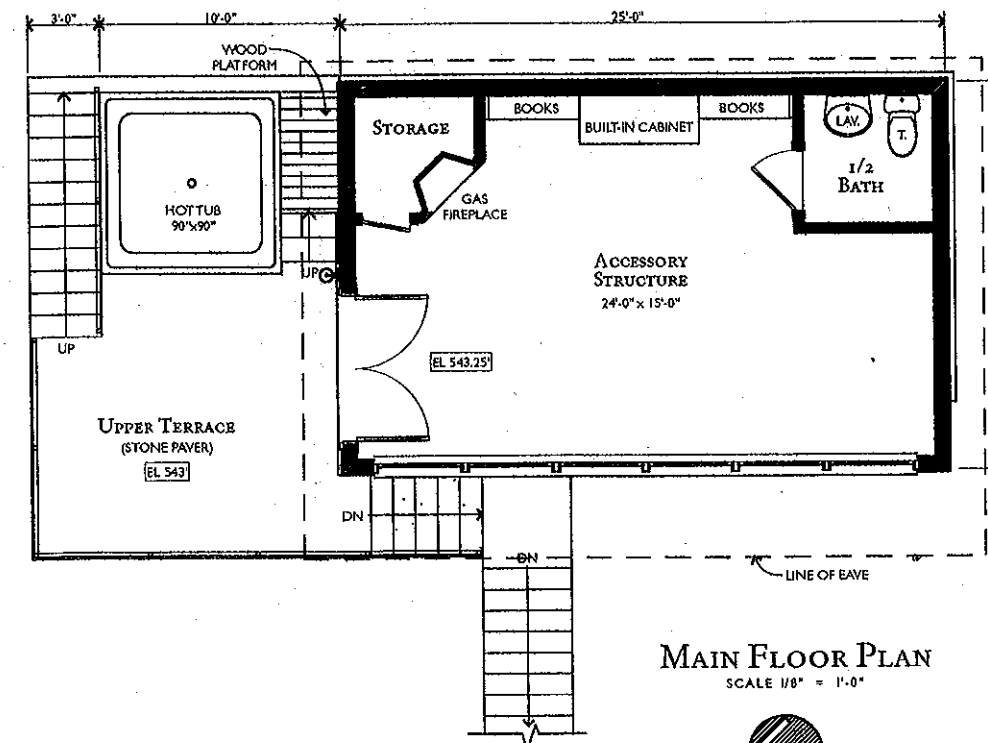
**TYPICAL EXTERIOR MATERIALS**

- CLASS 'A' BUILT-UP ROOF
- COPPER GUTTERS AND DOWNSPOUTS
- 3 COAT, 7/8" CEMENT PLASTER
- DOUBLE GLAZED, CLAD WOOD WINDOWS AND DOORS W/ SIMULATED DIVIDED LITES
- PAINTED WOOD EAVES, CORBELS, COLUMNS AND TRIMS

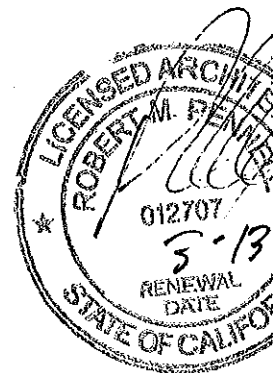
**PLANS APPROVED by**  
**ZONING ADJUSTMENTS BOARD**

*Jerry Blount*

March 14, 2013



**MAIN FLOOR PLAN**  
 SCALE 1/8" = 1'-0"



ISSUED FOR: ADMINISTRATIVE USE

SHAUDI & SEAN FULP  
 139 ALVARADO ROAD  
 BERKELEY, CA 94705

**JARVIS ARCHITECTS**  
 3278 College Avenue  
 Oakland, California  
 94612-1413

drawing title  
**FLOOR PLAN & ELEVATIONS**