

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 #13-20000065

Property Address: **35 OAKVALE AVENUE**

Permittee Name: **SWAN POOLS**

Use and/or Construction Permitted: to install an unenclosed hot tub pursuant to:

- Section 23D.08.060.C to install an unenclosed hot tub outside of the required setbacks.

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 June 27, 2013.

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

June 27, 2013
Effective Date

ATTACHMENT 1

FINDINGS AND CONDITIONS

JUNE 6, 2013

35 Oakvale Avenue

Administrative Use Permit #13-20000065

To install an unenclosed hot tub within an existing swimming pool area.

CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15303 of the CEQA Guidelines ("New Construction or Conversion of Small Structures"). 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:
 - The proposed hot tub will be located within an existing swimming pool approximately and will be approximately 14 feet from the nearest property lines (north, southeast, and south) and is not located within any required setbacks. The proposed location of the hot tub is approximately 20 feet from the nearest dwelling located at 40 Hazel Road and approximately 38 feet from the dwelling located at 33 Oakvale Avenue (that is also separated by an existing accessory structure that will also help to buffer noise and assist with privacy).
 - 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 Condition of Approval #29).
 - 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.

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'. The second sheet may also be used if the first 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.

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 Issuance of Occupancy Permit or Final Inspection:

- 9. Prior to issuance of occupancy permit or final inspection, all construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
- 10. All landscape, site and architectural improvements shall be completed per the attached approved drawings stamped "**RECEIVED MAY 3, 2013.**"

At All Times (Operation):

- 11. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
- 12. The hot tub pump shall be mounted, enclosed and maintained to prevent noise from disturbing the occupants of neighboring properties.
- 13. 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.

14. 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.
15. 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)



Claudine Asbagh, Assistant Planner for
Debra Sanderson, Zoning Officer

1. ALL WORK SHALL BE IN ACCORDANCE WITH THE CITY OF SAN JOSE, CALIFORNIA, OFFICIAL CODES OF ORDINANCES, AND THE CALIFORNIA CIVIL CODE, AND THE CALIFORNIA CONSTITUTION.

2. THE CITY ENGINEER'S REVIEW IS LIMITED TO THE TECHNICAL ASPECTS OF THE PLAN AND DOES NOT CONSTITUTE AN ENDORSEMENT OF THE PROJECT OR A GUARANTEE OF THE ACCURACY OF THE INFORMATION PROVIDED HEREON.

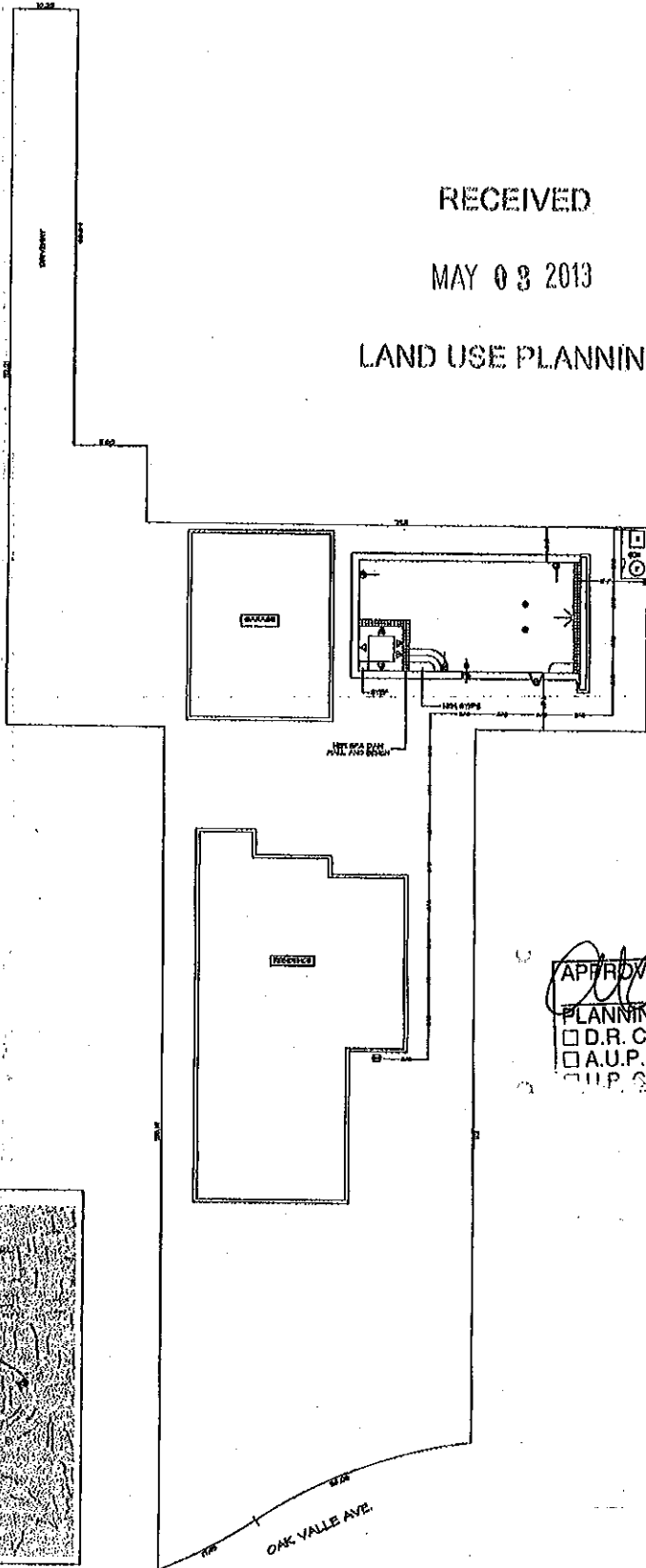
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RECEIVED

MAY 08 2013

LAND USE PLANNING



APPROVED PLAN
 PLANNING DATE
 D.R. Conditions Attached
 A.U.P. Conditions Attached
 U.P. Conditions Attached

6.6.13



SCALE 1"=40'

P1

SWAN POOLS
 1740 BOULEVARD WAY, SUITE 0
 WALNUT CREEK, CA 94695
 (925) 934-7828 (415) 457-7629
 FAX: (925) 934-6648
 CSLB NO. 771639 056327

OWNER(S) NAME: JOHN AND BARBARA STEWART
 SITE ADDRESS: 35 OAK VALLE AVENUE
 CITY: BERKELEY
 HOME PHONE: 510-443-4282
 DESIGNER: J. FRITZ
 APN: 054-4236-019-01

01
 02
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SITE PLAN