



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

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## 2909 Pine Avenue

### Administrative Use Permit #ZP2016-0083

**Project Description:** To convert an existing approximately 13.3-foot tall accessory building into an accessory dwelling unit (ADU) located less than 4 feet from the rear (east) and right side (south) property lines.

- Section 23D.10.040.B. to permit an accessory dwelling unit that does not conform with the development standards of an accessory dwelling unit.

### 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 August 23, 2016.

Attest: Carol Johnson  
Carol Johnson, Land Use Planning Manger

August 23, 2016  
Effective Date

# ATTACHMENT 1

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## FINDINGS AND CONDITIONS JULY 29, 2016

### 2909 Pine Avenue

#### Administrative Use Permit #ZP2016-0083

**To convert an existing approximately 13.3-foot tall accessory building into an accessory dwelling unit (ADU) located less than 4 feet from the rear (east) and right side (south) property lines.**

#### PERMITS REQUIRED

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- Administrative Use Permit under Section 23D.10.050 to permit an accessory dwelling unit that does not conform with the development standards of an accessory dwelling unit in BMC 23D.10.040.B.

#### 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 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 would 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, 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:
  - The newly converted ADU will have a maximum height of 13.3 feet and an average height of 12 feet and be located less than 4 feet from the east and south property lines. The parcel, with the proposed ADU, meets the open space, lot coverage, parking, and gross floor area requirements. The project proposes no exterior changes, only interior changes, and is screened by an existing wooden fence along the adjacent properties. Thus, the proposed project will not change the nature of the neighborhood nor impede the sunlight, views or privacy of adjacent properties, nor have an adverse or detrimental effect on the health or safety of persons residing in the neighborhood.

- The project is consistent with the purpose of BMC Section 23D.010 of the Zoning Ordinance, which regulates the development of ADUs, in that the project will increase the supply and range of housing options in the City by providing an additional housing unit near public transportation while not creating significant impacts on adjacent properties, the surrounding area or the neighborhood.
  - The ADU is subject to condition of approval # 12, which requires a limitation of use be placed on the property's deed that prohibits the proposed ADU from being used as a dwelling unit.
3. Pursuant to BMC Section 23D.10.040.B.5.a, the proposed project does not require an additional off-street parking space because the subject property is one-quarter of a mile from two transit lines (51B and 49) with a twenty-minute frequency.

## 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 attorney's 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. Project Liaison.** The applicant shall provide the project planner with the name and telephone number of the individual empowered to manage 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.

**Project Liaison** \_\_\_\_\_  
Name Phone #

11. 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 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 relevant
- 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, 3rd floor, 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 2120 Milvia 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.

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

12. All owners of record of the subject property shall sign and record a Declaration of Restrictions with the Alameda County Recorder, in a form satisfactory to the Zoning Officer, and provide a recorded copy thereof to the project planner. The Declaration of Restrictions shall stipulate that any transfer of the property specifically subject to the restrictions contained in 23D.10.040, and requires that either the primary Dwelling Unit or the Accessory Dwelling Unit be occupied by the owner of the subject property, that non-occupancy 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 any address change or 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. Prior to issuance of occupancy permit or final inspection, the addresses of both units shall be displayed at the front of the property so as to be clearly visible from the public right-of-way.
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 15, 2016**.

**At All Times (Operation):**

28. The owner shall not subdivide the land or air rights to enable sale or transfer of the accessory dwelling unit.

**29.** All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.

A handwritten signature in blue ink, appearing to read "Gaby Pantoja". The signature is fluid and cursive, with the first name "Gaby" and the last name "Pantoja" clearly distinguishable.

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Prepared by: Gaby Pantoja  
For City of Berkeley Zoning Officer

Reviewed by: Leslie Mendez, Senior Planner

**PLANS APPROVED by**

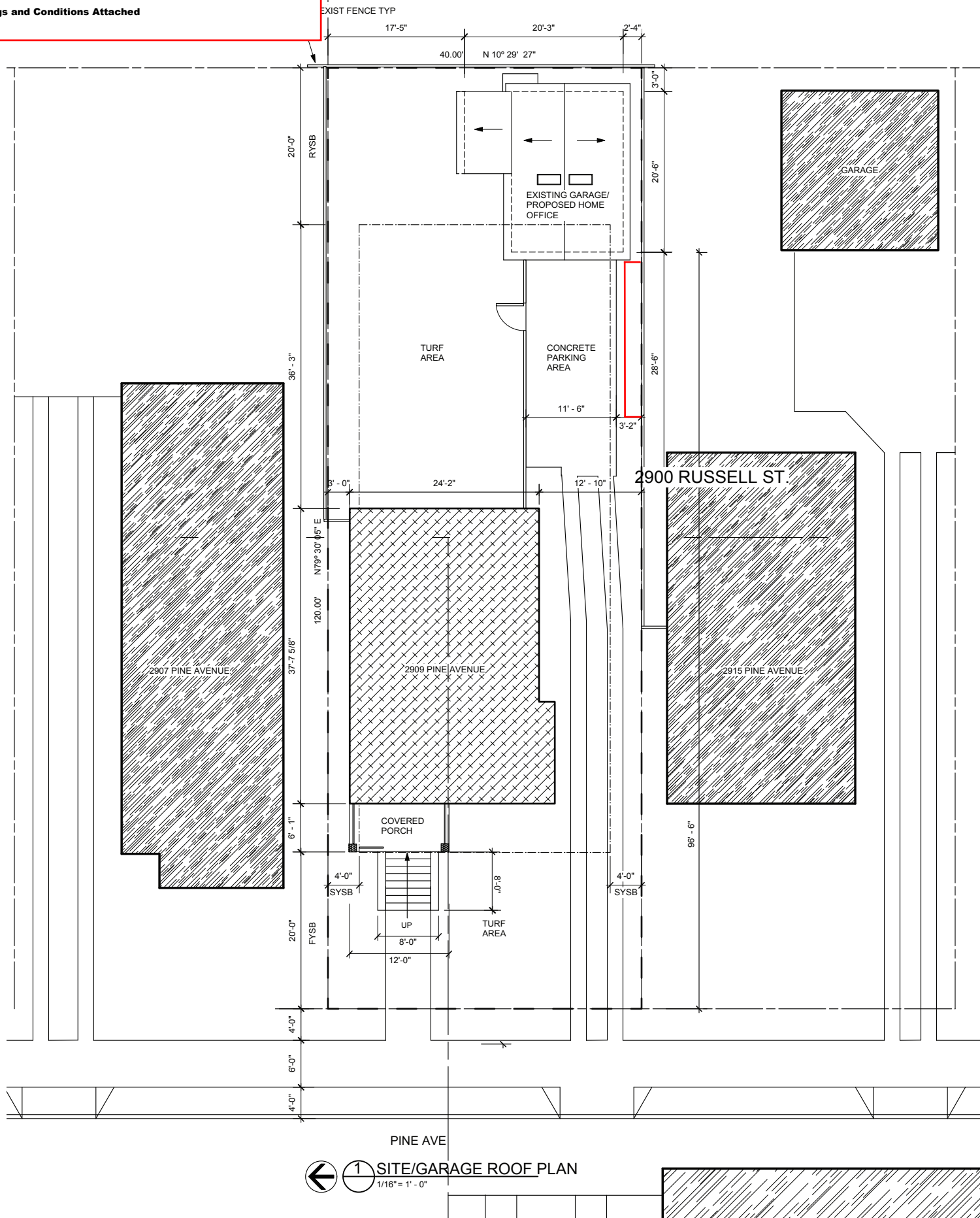
*Gaby Garcia*

**July 29, 2016**

SIGNATURE

DATE

\*AUP Findings and Conditions Attached



Owner: Mehdi Nikzad  
2909 Pine Avenue  
Berkeley, CA, 94705  
510.604.1416

APN: 052 156504000  
Zoning: R1  
Fire Zone: None  
Earthquake Fault/Landslide Zone: No  
Liquefaction Zone: No  
Creek Buffer: No  
Climate Zone: 3  
California Building Code: Group R-3 Type V

Plan Preparer:

Alex Schofield  
510.409.2945

Date of Preparation:  
3/15/2016

Lot Area: 4800sf  
Existing Lot Coverage: House (1177sf) + Garage (359sf)  
1536sf/4800sf = 32%  
Existing Garage: 359sf  
New Permitted ADU: 359sf  
New Lot Coverage: House (1177sf) + ADU (359sf)  
1536sf/4800sf = 32%  
Existing/New Rear Turf Area: 1375sf  
1375sf/4800sf = 29%  
Existing/New Off Street Parking Area: 11.5ft x 28.5ft = 328sf

 2-foot Landscape Strip



**PLANS APPROVED by**

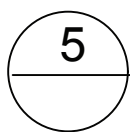
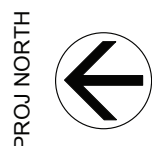
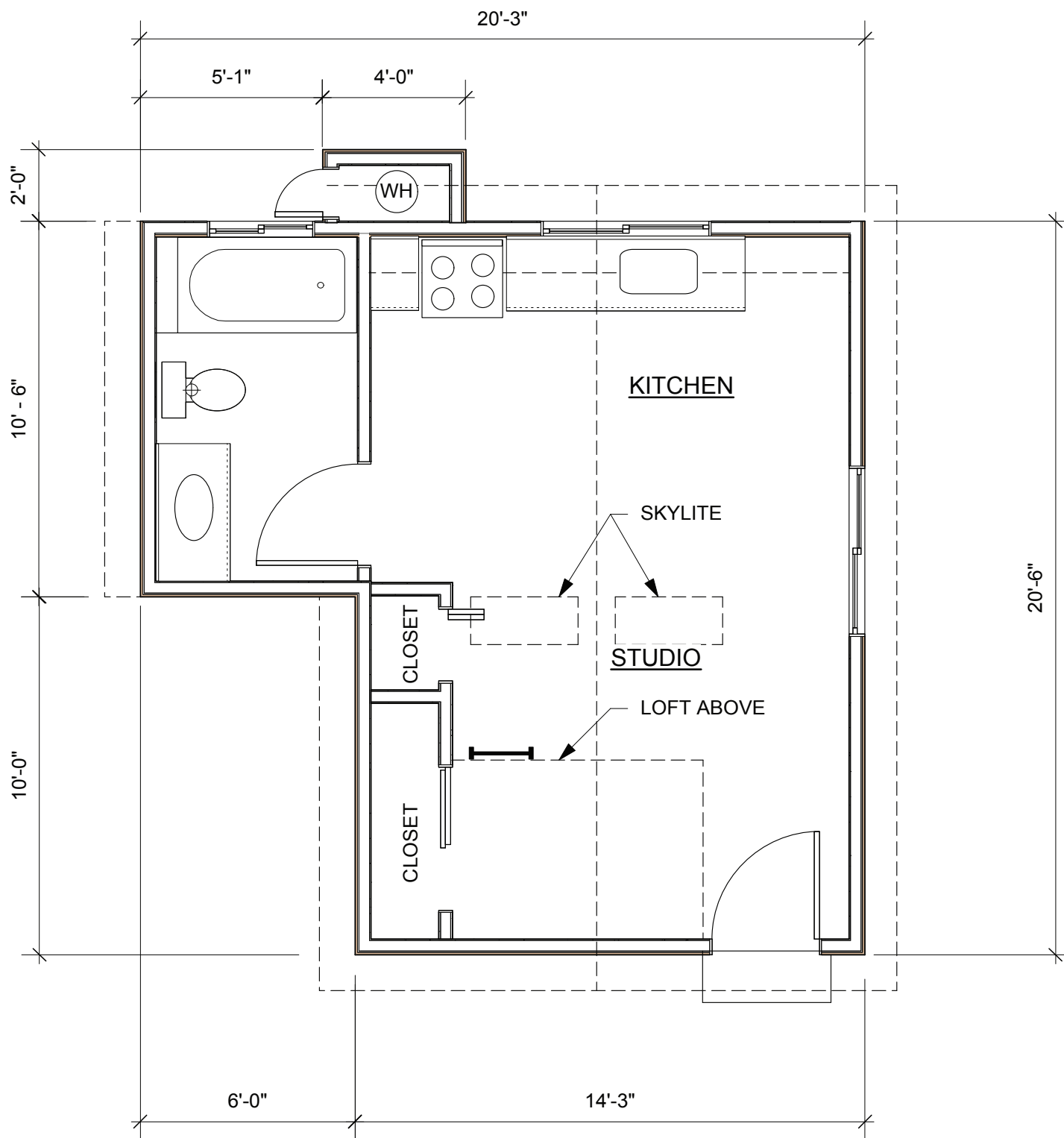


SIGNATURE

**July 29, 2016**

DATE

**\*AUP Findings and Conditions Attached**



**EXISTING GARAGE PLAN**

1/4" = 1' - 0"

Owner: Mehdi Nikzad  
2909 Pine Avenue  
Berkeley, CA, 94705  
510.604.1416

APN: 052 156504000  
Zoning: R1  
Fire Zone: None  
Earthquake Fault/Landslide Zone: No  
Liquefaction Zone: No  
Creek Buffer: No  
Climate Zone: 3  
California Building Code: Group R-3 Type V

Plan Preparer:

Alex Schofield  
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**PLANS APPROVED by**

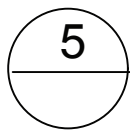
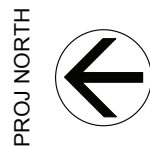
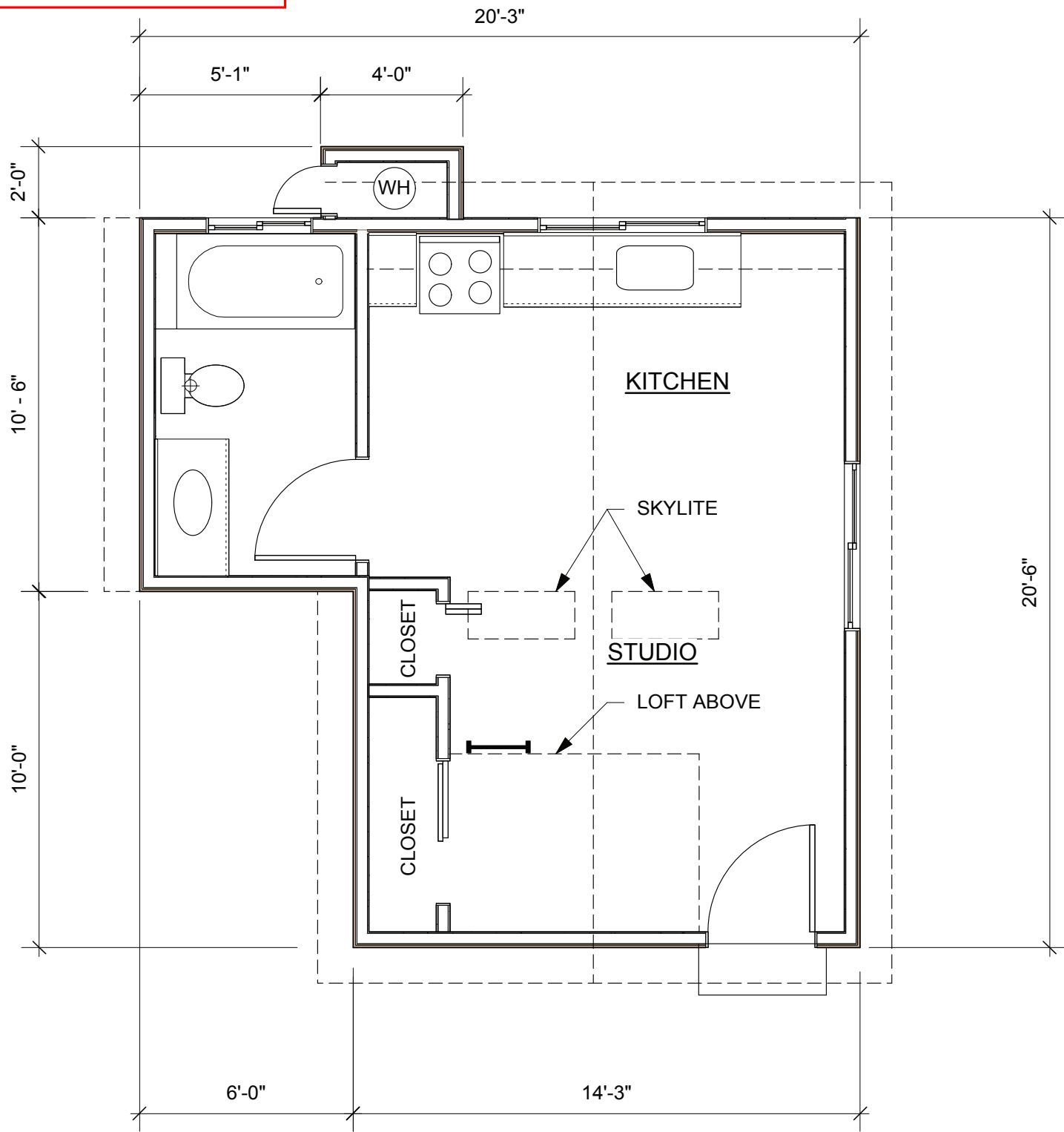


SIGNATURE

**July 29, 2016**

DATE

\*AUP Findings and Conditions Attached



**PROPOSED GARAGE PLAN**

1/4" = 1' - 0"

Owner: Mehdi Nikzad  
 2909 Pine Avenue  
 Berkeley, CA, 94705  
 510.604.1416

APN: 052 156504000  
 Zoning: R1  
 Fire Zone: None  
 Earthquake Fault/Landslide Zone: No  
 Liquefaction Zone: No  
 Creek Buffer: No  
 Climate Zone: 3  
 California Building Code: Group R-3 Type V

Lot Area: 4800sf

Existing Lot Coverage: House (1177sf) + Garage (359sf)  
 1536sf/4800sf = 32%

Existing Garage: 359sf

New Permitted ADU: 359sf

New Lot Coverage: House (1177sf) + ADU (359sf)  
 1536sf/4800sf = 32%

Existing/New Rear Turf Area: 1375sf  
 1375sf/4800sf = 29%

Existing/New Off Street Parking Area: 11.5ft x 28.5ft = 328sf

Plan Preparer:

Alex Schofield  
 510.409.2945

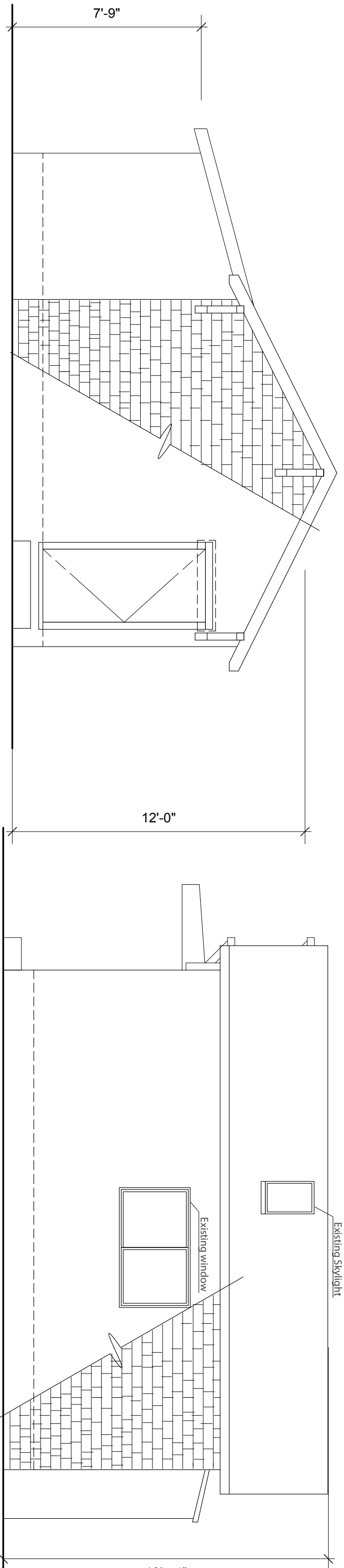
Date of Preparation:  
 3/15/2016

**PLANS APPROVED by**

*Gaby Farajo*  
SIGNATURE

**July 29, 2016**  
DATE

**\*AUP Findings and Conditions Attached**



1 WEST ELEVATION

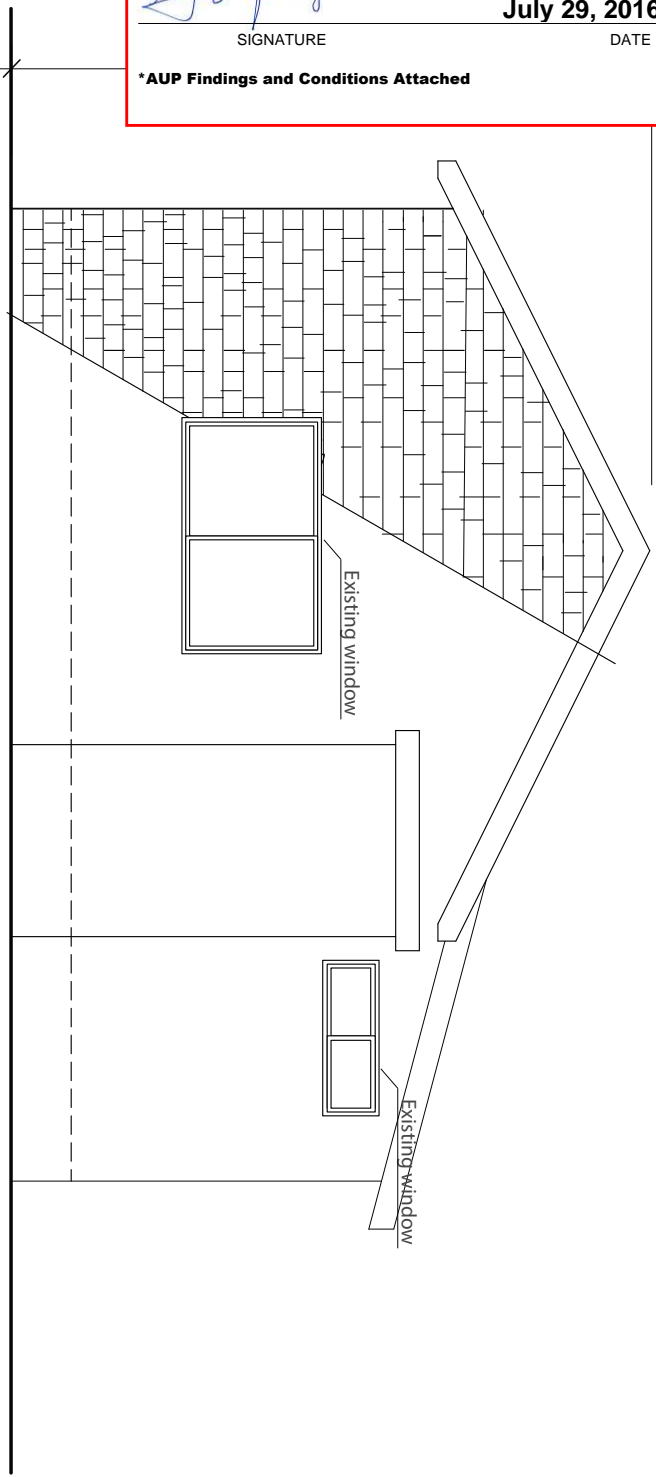
1/4" = 1' - 0"

2 NORTH ELEVATION

1/4" = 1' - 0"

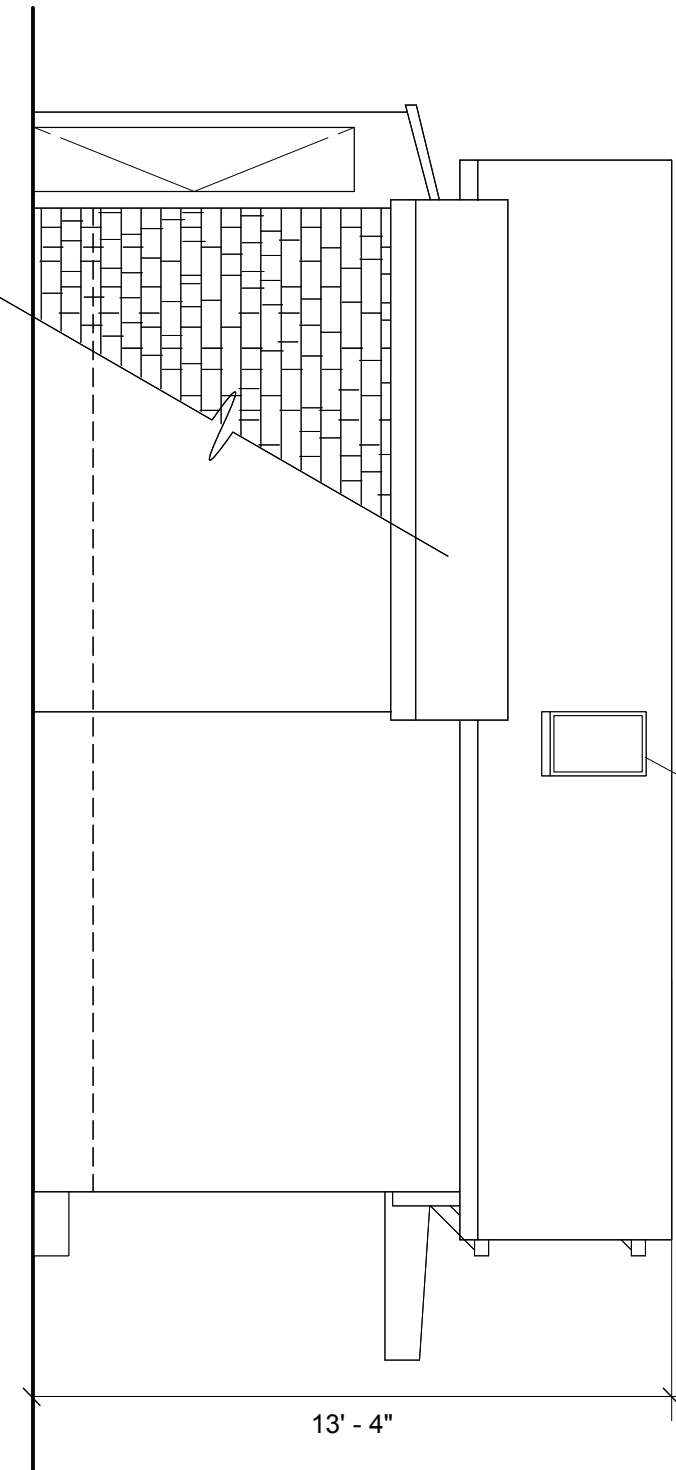
Owner:  
Mehdi Nikzad  
2909 Pine Avenue  
Berkeley, CA, 94705  
510.604.1416  
Plan Preparer:  
Alex Schofield  
510.409.2945

Date of Preparation:  
3/15/2016



3 EAST ELEVATION

1/4" = 1' - 0"



4 SOUTH ELEVATION

1/4" = 1' - 0"