



DISCUSSION ITEMS

Agenda Item # 14

AGENDA REPORT SUMMARY

Meeting Date: April 23, 2019

Subject: Resolution No. 2019-14: Appeal of a Variance Denial for an Accessory Dwelling Unit at 49 Lyell Street

Prepared by: Eliana Hassan, Assistant Planner

Reviewed by: Jon Biggs, Community Development Director

Approved by: Chris Jordan, City Manager

Attachment(s):

1. Resolution No. 2019-14
2. Project Plans
3. Property Owner Appeal Letter
4. Design Review Commission Agenda Report, February 6, 2019
5. Design Review Commission Meeting Minutes, February 6, 2019

Initiated by:

Property Owner

Previous Council Consideration:

None

Fiscal Impact:

None

Environmental Review:

This appeal is exempt from environmental review.

Policy Question(s) for Council Consideration:

- Does the Council concur with the findings made by the Design Review Commission to deny a variance request at 49 Lyell Street?

Summary:

- On February 6, 2019, the Design Review Commission held a public hearing and voted to deny a variance request to allow a proposed accessory dwelling unit to exceed 50 percent of the size of the main house at 49 Lyell Street
- On February 21, 2019, the property owner filed an appeal of the Design Review Commission's action with the City

Reviewed By:

City Manager

CJ

City Attorney

CD

Finance Director

SE



Subject: Resolution No. 2019-14: Appeal of a Variance Denial for an Accessory Dwelling Unit at 49 Lyell Street

Staff Recommendation:

Adopt Resolution No. 2019-14 upholding the Design Review Commission's denial of a variance request at 49 Lyell Street



Subject: Resolution No. 2019-14: Appeal of a Variance Denial for an Accessory Dwelling Unit at 49 Lyell Street

Purpose

This is an appeal of a denial decision made by the Design Review Commission for a variance application at 49 Lyell Street.

Background

The subject parcel is designated as a Single-Family, Small Lot land use in the General Plan, zoned R1-10 (Single-Family) and is approximately 7,500 square feet in size. It is located on the north side of Lyell Street at the intersection with Tyndall Street and is adjacent to a multi-family neighborhood (R3-1.8 District) to the south. The parcel is considered a narrow lot in the R1-10 District since it has a width of 50 feet, so the required side yard setbacks are reduced from 10 feet to 10 percent of the width (five feet) on each side.

On February 6, 2019, the Design Review Commission held a public hearing to consider a variance to allow a new detached accessory dwelling unit (ADU) at 49 Lyell Street to be 624 square feet in size where a maximum size of 504 square feet, or 50 percent of the size of the main house, is allowed by the Zoning Code (LAMC Section 14.14.060(G)). Following a presentation by the applicant and comments from a neighbor, the Commission deliberated on the request and subsequently voted unanimously to deny the variance. The denial was based on findings that the variance was not consistent with the objectives of the City Zoning Code and that there was not a special circumstance that deprived the property of privileges enjoyed by other properties in the vicinity and under identical zoning classifications. A copy of the Design Review Commission agenda report and meeting minutes are included for reference (Attachments 3 and 4).

On February 21, 2019, the property owner filed an appeal of the Design Review Commission's denial with the City. Reasons from the applicant for filing the appeal include, but are not limited to, the failure of the Design Review Commission to understand laws associated with Accessory Dwelling Units, the Commission's discussion of issues unrelated to the evaluation of the variance, and the unique circumstances of the subject property that create a circumstance that supports the granting of a variance. The appeal letter, which is included as Attachment 2, provides a detailed description of the property owner's reasons for seeking the variance and why he feels that the findings to approval the variance can be made.

Discussion/Analysis

The variance to allow a proposed accessory dwelling unit to exceed 50 percent of the size of the main house was denied by the Design Review Commission due to the lack of sufficient evidence to support the three required variance findings. As outlined in the Zoning Code Section 14.76.070, in order to approve a variance, the Design Review Commission must make three findings as follows:



Subject: Resolution No. 2019-14: Appeal of a Variance Denial for an Accessory Dwelling Unit at 49 Lyell Street

-
1. The granting of the variance will be consistent with the objectives of the zoning plan set forth in Article 1 of Chapter 14.02 of the Los Altos Municipal Code.
 2. The granting of the variance will not be detrimental to the health, safety, or welfare of persons living or working in the vicinity or injurious to property or improvements in the vicinity; and
 3. The variance shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location, or surroundings, the strict application of the provisions of the Zoning Ordinance deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zoning classifications.

The Design Review Commission was sympathetic to the fact that the property owner wanted to maintain the small existing house on the lot at 49 Lyell Street and that the proposed 624 square-foot ADU was reasonably sized. However, the Commission also found that the property owner was not being deprived of the right to construct an ADU on the property and that having a small main house did not constitute a special circumstance. The decision to seek an ADU that was larger than 50 percent of the size of the main house was a personal choice, and the strict and even-handed application of the City's Accessory Dwelling Unit Ordinance was not depriving the property owner of privileges enjoyed by other properties in the vicinity and under identical zoning classifications. The Commission also found that the requested variance did not appear to be consistent with the objectives of the Zoning Code set forth in Chapter 14.02 because the proposed project would not result in a harmonious relationship among land uses. Based on the lack of sufficient evidence to support two of the three findings, the Commission voted unanimously to deny the variance request.

Options

- 1) Uphold the Design Review Commission's denial of Variance Application 19-V-01

Advantages: The property owner will need to abide by the size limit specified in the City's Accessory Dwelling Unit Ordinance and revise the design of his ADU to not exceed 504 square feet in size, thus applying the same rule to all similarly situated properties in an even-handed way

Disadvantages: The property owner will not be able to construct a 624 square-foot ADU on his property at 49 Lyell Street

- 2) Make positive findings and approve Variance Application 19-V-01

Advantages: The property owner will be able to construct a 624 square-foot accessory dwelling unit on his property at 49 Lyell Street



Subject: Resolution No. 2019-14: Appeal of a Variance Denial for an Accessory Dwelling Unit at 49 Lyell Street

Disadvantages: An ADU that exceeds the size limit specified in the City's Accessory Dwelling Unit Ordinance will be allowed on the property at 49 Lyell Street. It will be difficult to make a positive finding as to unique circumstances that are supported by evidence. Future application of the 50 percent size restriction in State law and city ordinance will be prone to similar variance requests

Recommendation

The Design Review Commission recommends Option 1.

RESOLUTION NO. 2019-14

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS
TO DENY AN APPEAL OF VARAINCE 19-V-01 TO ALLOW A NEW
ACCESSORY DWELLING UNIT AT 49 LYELL STREET TO EXCEED THE
MAXIMUM ALLOWABLE SIZE LIMIT**

WHEREAS, Chapter 14.76 of the Zoning Code on February 6, 2019, the Design Review Commission held a public hearing to consider a variance to allow a new detached accessory dwelling unit (ADU) at 49 Lyell Street to be 624 square feet in size where a maximum size of 504 square feet, or 50 percent of the size of the main house, is allowed per Code Section 14.14.060(G); and

WHEREAS, the Design Review Commission found that insufficient evidence had been presented to make positive variance findings per the Zoning Code Section 14.76.060; and

WHEREAS, the variance was found to not be consistent with the objectives of the Zoning Code as set forth in Chapter 14.02 because granting of the variance would result in a project that does not have a harmonious relationship among land uses; and

WHEREAS, there was no evidence presented to support the finding that there was a special circumstance applicable to the property, such as size, shape, topography, location, or surroundings, that justified the variance for increased size of the proposed accessory structure, or that strict application of the provisions of the Zoning Code would deprive the property of privileges enjoyed by other properties in the vicinity and under identical zoning classifications; and

WHEREAS, at a duly noticed public meeting, the City Council thoroughly and extensively evaluated and considered all information and evidence presented by the applicant, as documented in the record, including, without limitation, in the staff report presented to City Council, and based upon such review, found the applicant had failed to present sufficient evidence to support the require findings necessary to approve a variance to allow for an ADU that exceeds the size limit specified by the Zoning Ordinance; and

WHEREAS, this action is exempt from CEQA pursuant to CEQA Guidelines Article 18, Section 15270, in that CEQA does not apply to projects a public agency disapproves.

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of Los Altos hereby denies the application's appeal of the Design Review Commission's denial of Variance Application 19-V-01 based on the following findings:

1. The granting of the variance is NOT consistent with the objectives of the Zoning Code set forth in Chapter 14.02 because the project does not have a harmonious relationship among land uses; and

2. There are NOT special circumstances applicable to the property, such as size, shape, topography, location, or surroundings, that justify the variance for increased size of the proposed accessory structure; and strict application of the provisions of the Zoning Code does NOT deprive the property of privileges enjoyed by other property in the vicinity and under identical zoning classifications.

I HEREBY CERTIFY that the foregoing is a true and correct copy of a Resolution passed and adopted by the City Council of the City of Los Altos at a meeting thereof on the 23rd day of April 2019 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Lynette Lee Eng, MAYOR

Attest:

Jon Maginot, CMC, CITY CLERK

BREWER NEW REDUCED ADU

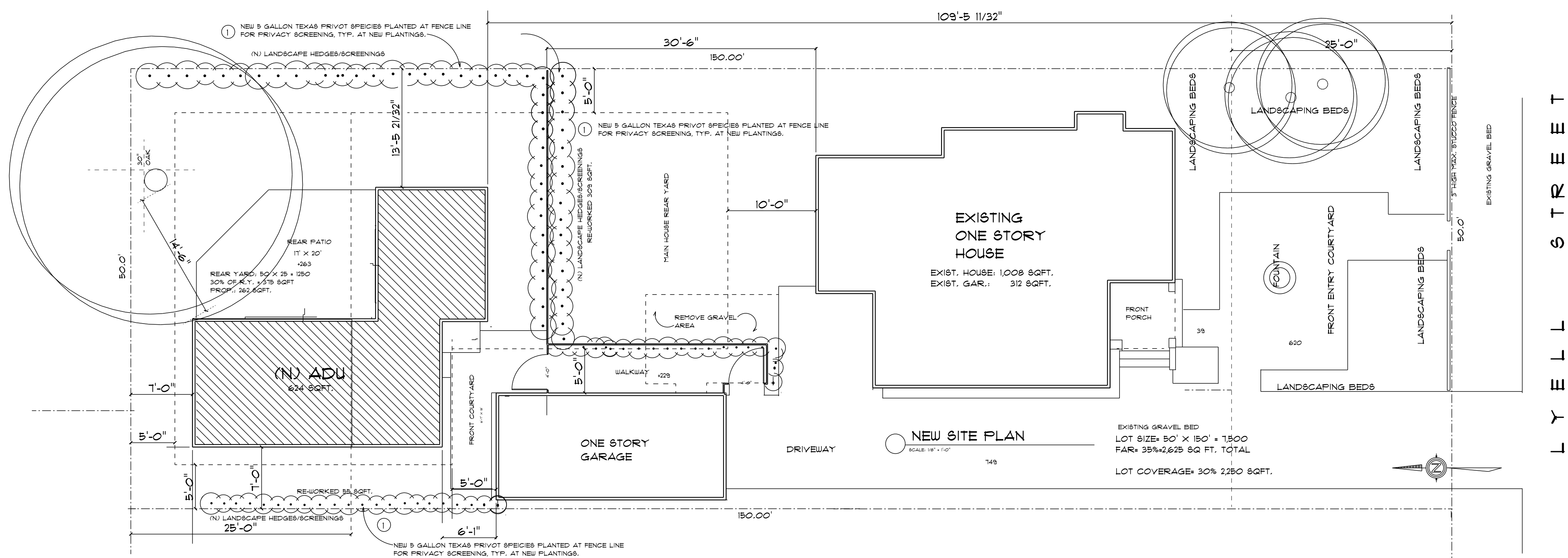
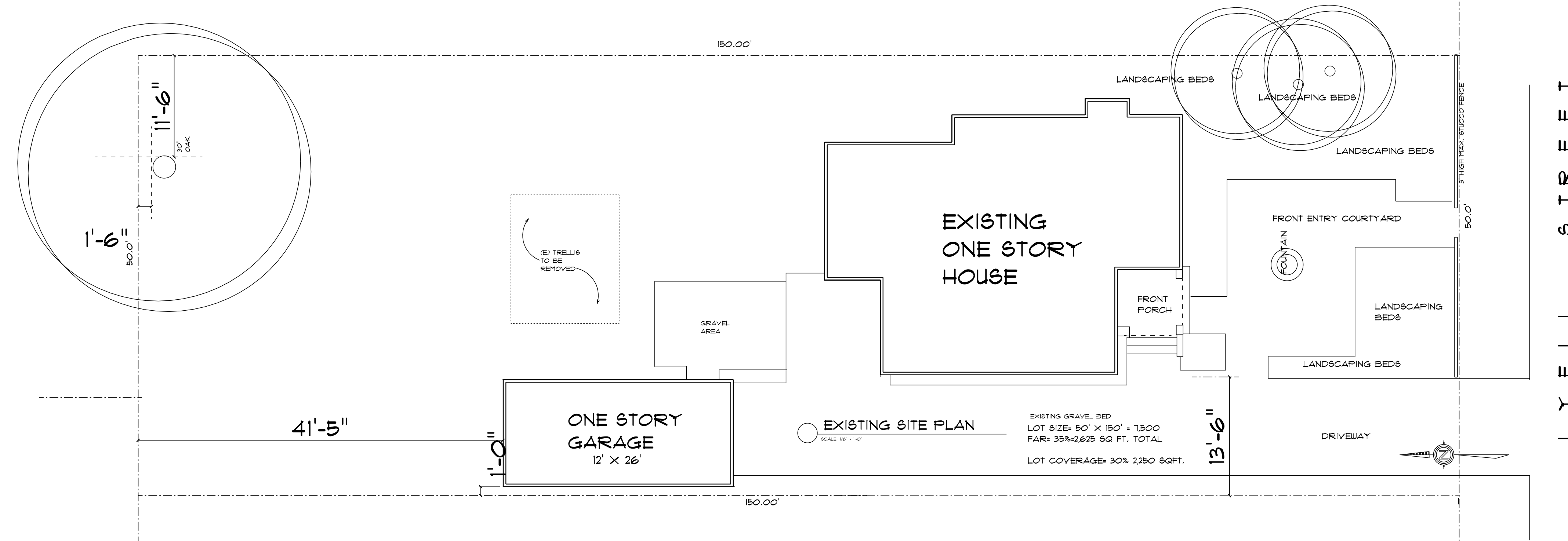
49 LYELL STREET LOS ALTOS, CA. 94022

OWNERS: LAURA & PETER BREWER 49 LYELL STREET LOS ALTOS CA.

SCOPE OF WORK: ADD NEW 624 SQFT. ADU UNIT IN REAR OF EXISTING ONE STORY SINGLE FAMILY RESIDENCE

PROJECT SUMMARY TABLE

	EXISTING	CHANGE IN	TOTAL PROPOSED
NET LOT AREA: 7,500 SQ. FT.			
% OF FRONT YARD PAVING	620	0	620 SQ. FT. (43%)
LANDSCAPE BREAKDOWN:			
TOTAL HARDSCAPE AREA:	EXISTING = 2,782 SQFT.	PROPOSED = 3,898 SQFT.	
EXISTING SOFTSCAPE AREA:	4,718 SQFT.	PROPOSED = 3,602 SQFT.	
HABITABLE LIVING AREA	1008 SQ. FT.	+624 SQ. FT.	1632 SQ. FT.
NON HABITABLE LIV. AREA	312 SQ. FT.	0 SQ. FT.	312 SQ. FT.
	EXISTING	PROPOSED	ALLOWED/REQUIRED
LOT COVERAGE:	1374 SQFT (18.3%)	1,998 SQ. FT. (26.6%)	2,250 SQ. FT. (30%)
FLOOR AREA:			
FIRST FLOOR:	1008 SQ. FT.	1,632 SQ. FT.	
GARAGE:	312 SQ. FT.	312 SQ. FT.	
TOTAL:	1320 (17.6%)	1,944 SQ. FT. (25.9%)	2,625 SQ. FT. (35%)
SETBACKS FROM ADU			
FRONT	0 FEET	109 FEET	25 FEET
REAR	0 FEET	7 FEET	5 FEET
RIGHT SIDE	0 FEET/	13'-6" FEET	5 FEET
LEFT SIDE	0 FEET	7 FEET	5 FEET/
HEIGHT	0 FEET	11'-10" FEET	12 FEET



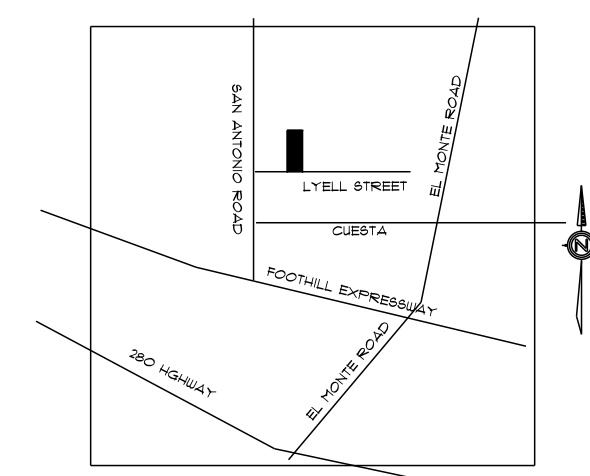
PROPERTY INFORMATION

COVERED PARKING: 1 SPACES
 APN:
 OCCUPANCY GROUP: R3/U
 CONSTRUCTION TYPE: V-B
 ZONING:
 LOT SIZE: 7,500 SQFT
 MAX COV. 30%: 2250 SQFT.
 EXISTING HOUSE: 1,008 SQFT.
 EXISTING GARAGE: 312 SQFT.
 EXISTING TOTAL: 1,320 SQFT.
 EXIST. COV. PORCH: 54 SQFT.
 EXIST. LOT COVERAGE: 1,374 SQFT.
 PROP. ADU ADDITION: 624 SQFT
 PROP. LOT COV.: 1,998 SQFT (26.6%)

SHEET INDEX:

- A1: EXISTING & NEW FLOOR PLANS
- A2: FLOOR AREA CALCULATION LANDSCAPING/TREE PROTECTION PLAN
- A3: NEW FLOOR PLAN NEW ROOF PLAN
- A4: NEW EXTERIOR ELEVATIONS
- A5: NEW SECTIONS A-A, B-B, SECTION PLAN KEY

VICINITY MAP



BREWER ACCESSORY DWELLING UNIT
 49 LYELL STREET LOS ALTOS, CA. 94022

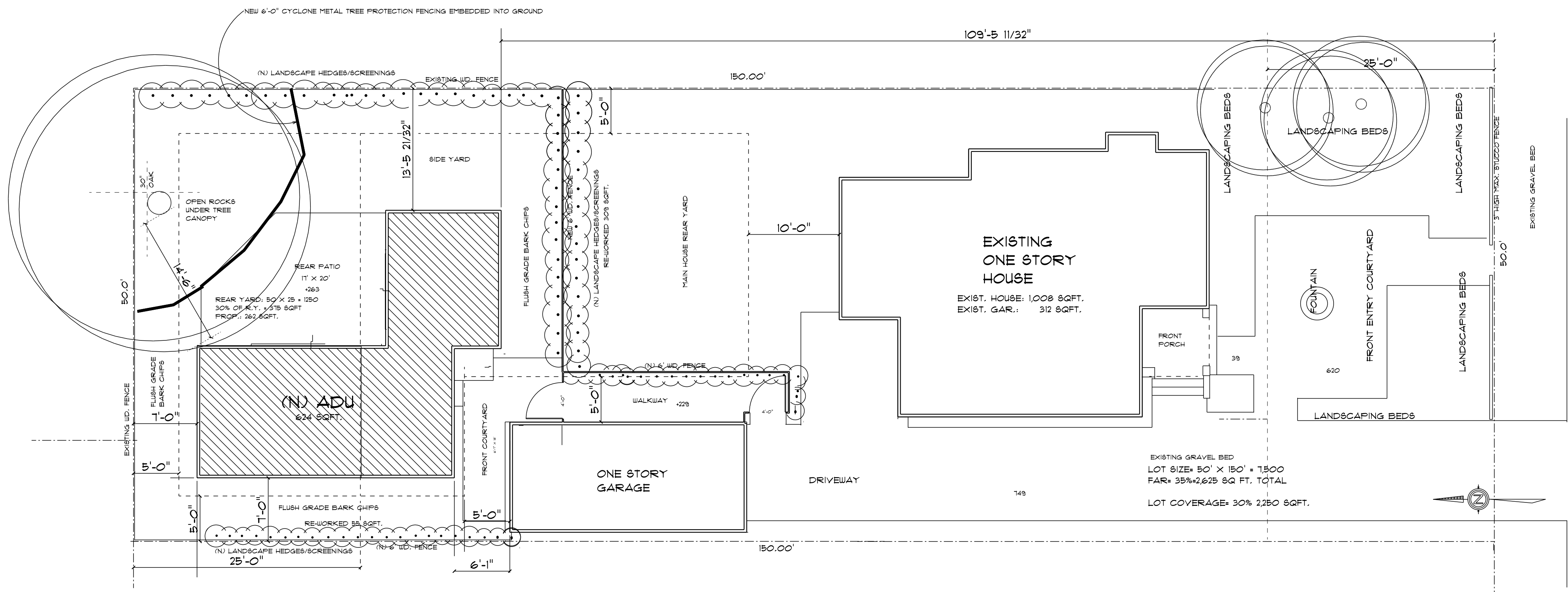
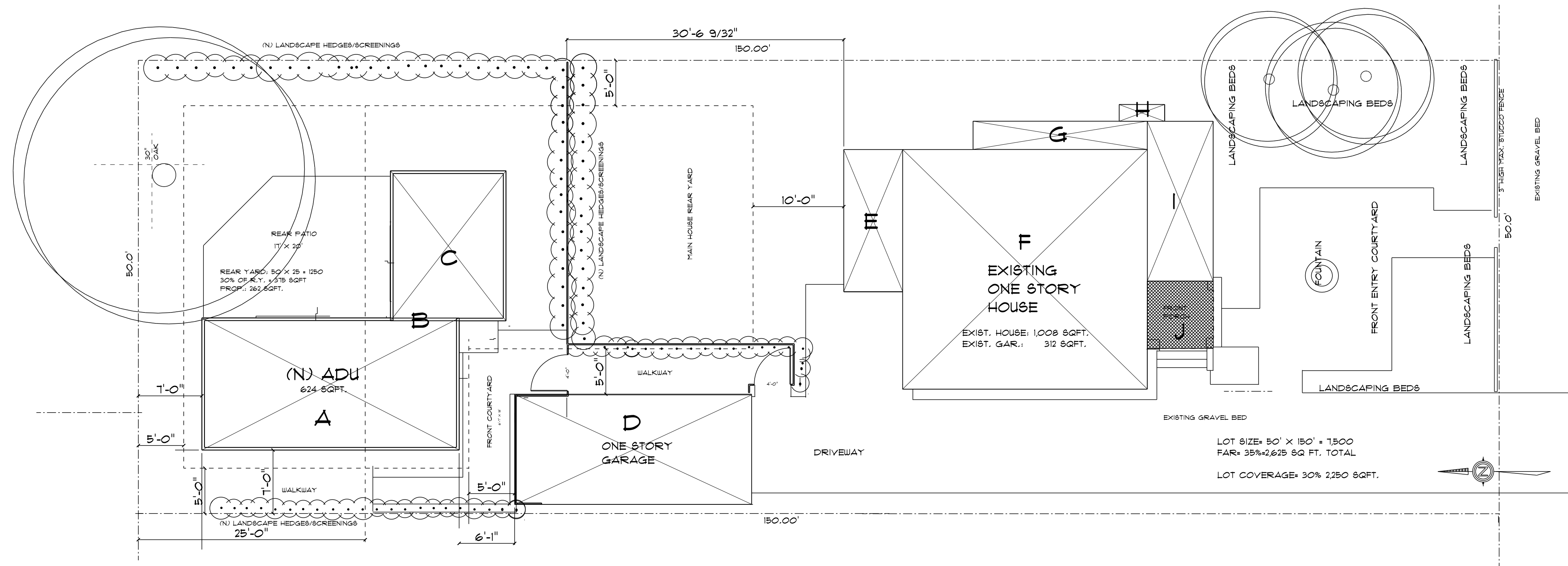
11

AERO 11 DESIGN

JOE SABEL
 855 JEFFERSON #475
 REDWOOD CITY,
 CA 94064
 650 255 8011
 650 258 8894

JOB NO. 18.22
 DATE: 12.20.18
 REVISION: 01,12,19

A1



NEW LANDSCAPING/TREE PROTECTION PLAN
SCALE: 1/8" = 1'-0"

NEW 6'-0" CYCLONE METAL TREE PROTECTION FENCING EMBEDDED INTO GROUND

NOTE: ONLY PROPOSED LANDSCAPING TO BE LANDSCAPE SCREENING AT REAR ADU, THE REST TO REMAIN THE SAME, TYP.
NOTE: NO PROPOSED TREE REMOVAL- ALL TREES TO REMAIN

LYELL STREET

LYELL STREET

BREWER ACCESSORY DWELLING UNIT
49 LYELL STREET LOS ALTOS, CA. 94022

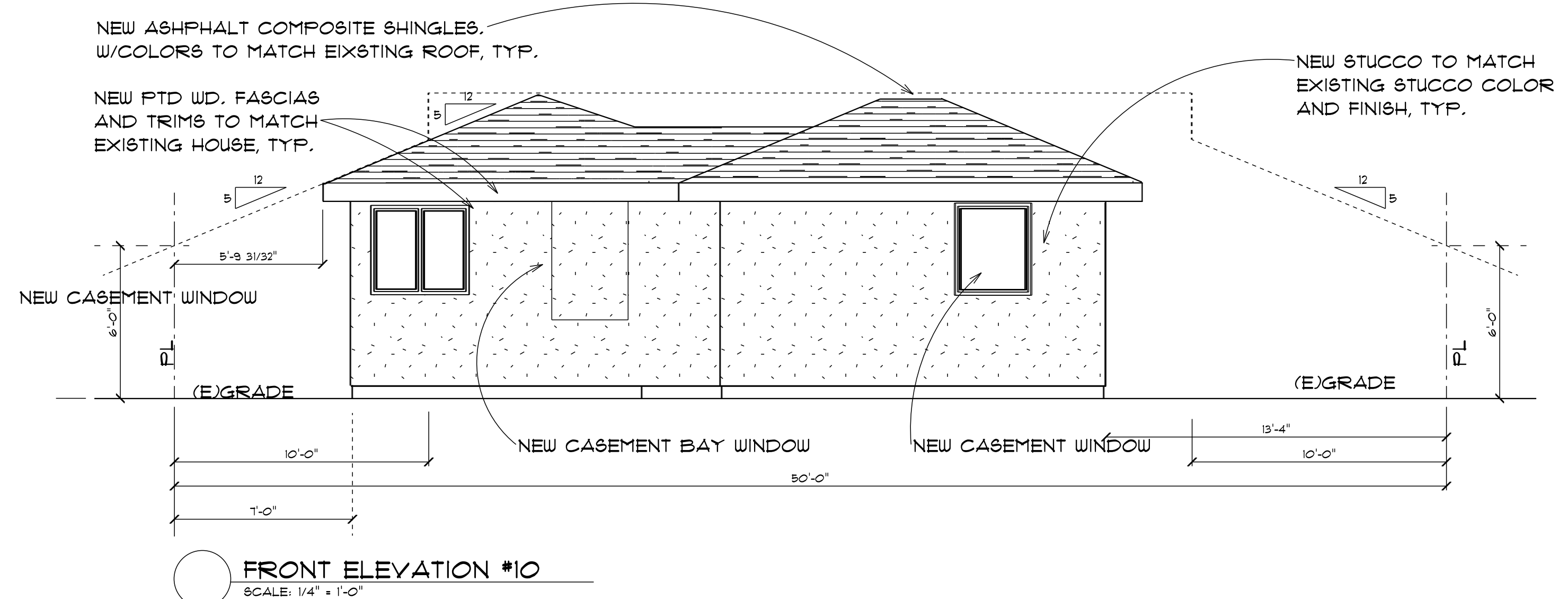
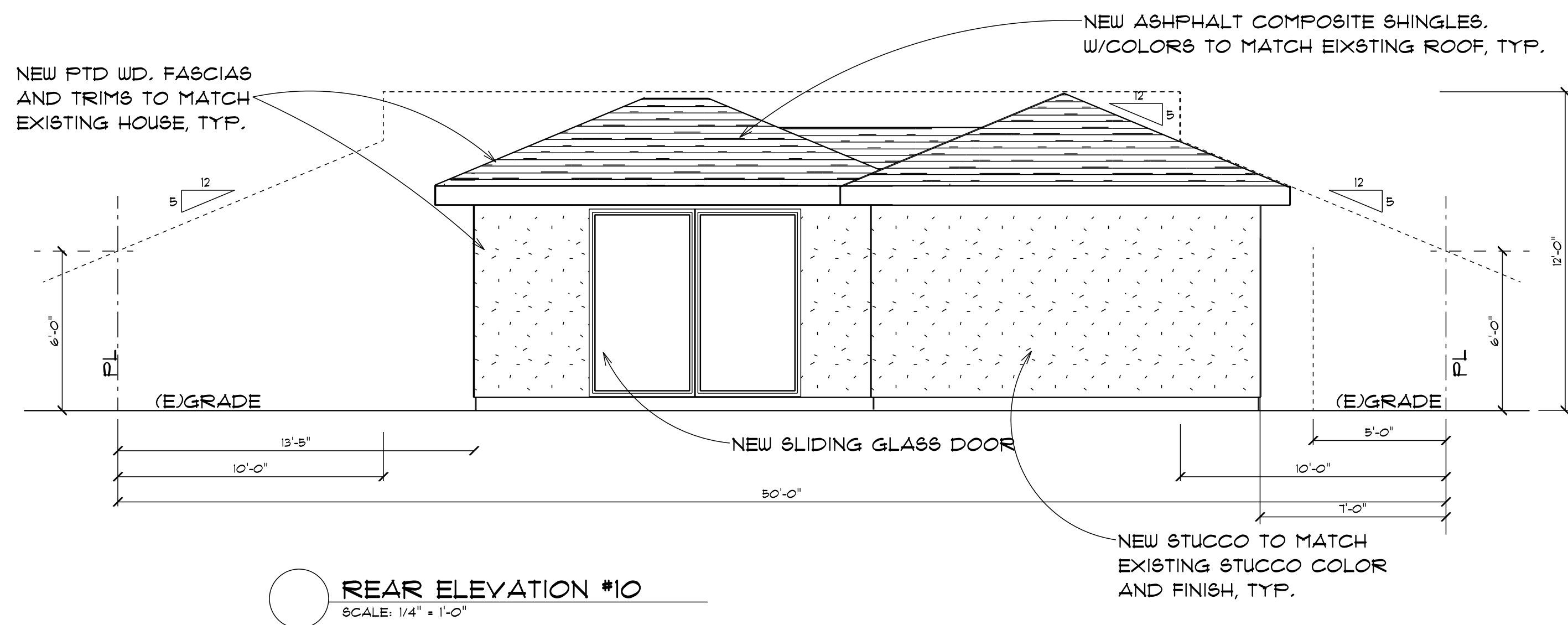
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AERO 11 DESIGN

JOE SABEL
855 JEFFERSON #415
REDWOOD CITY,
CA 94064
650 255 8011
650 258 8894

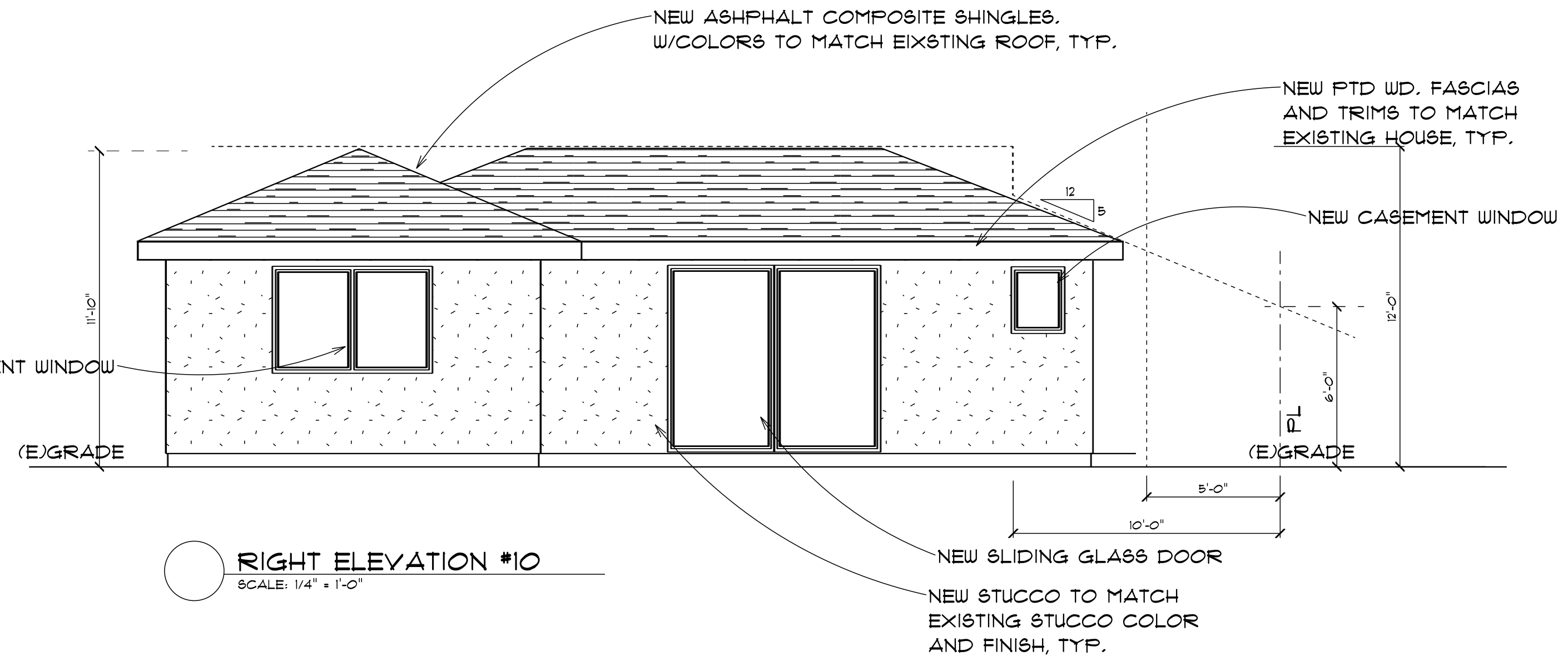
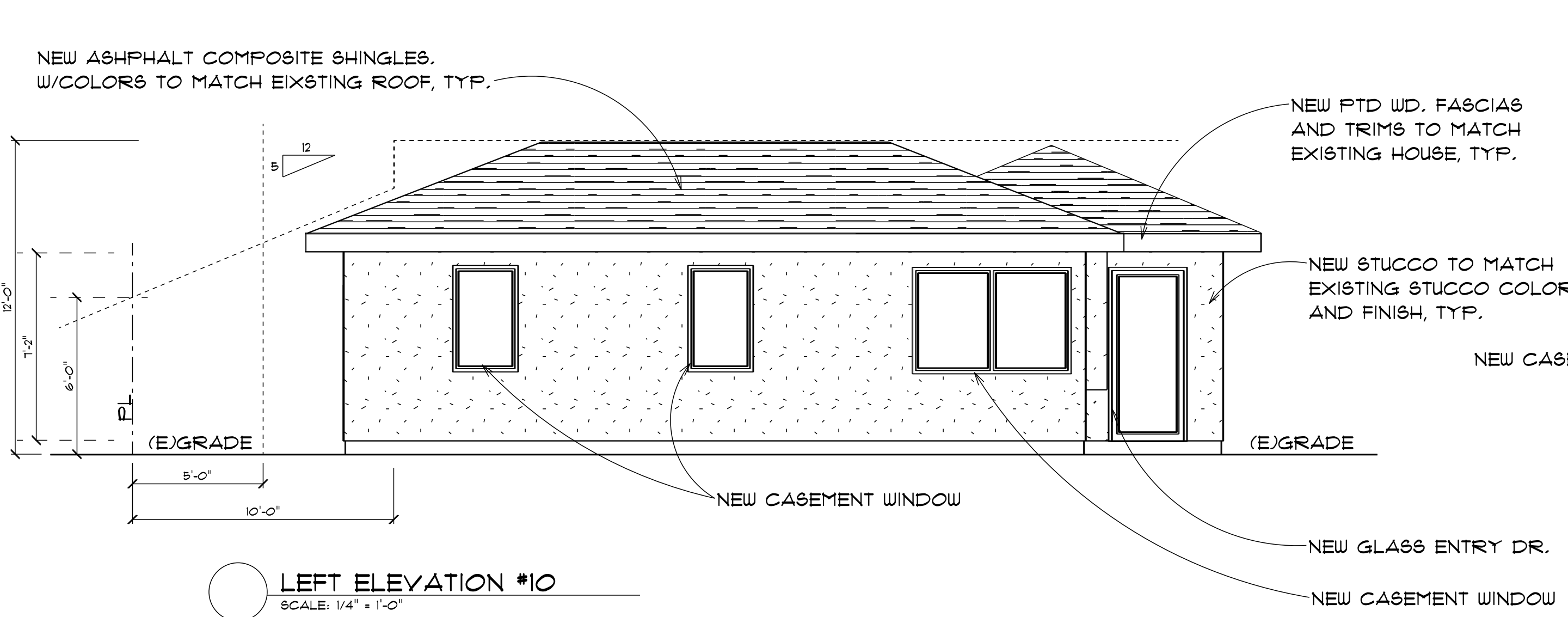
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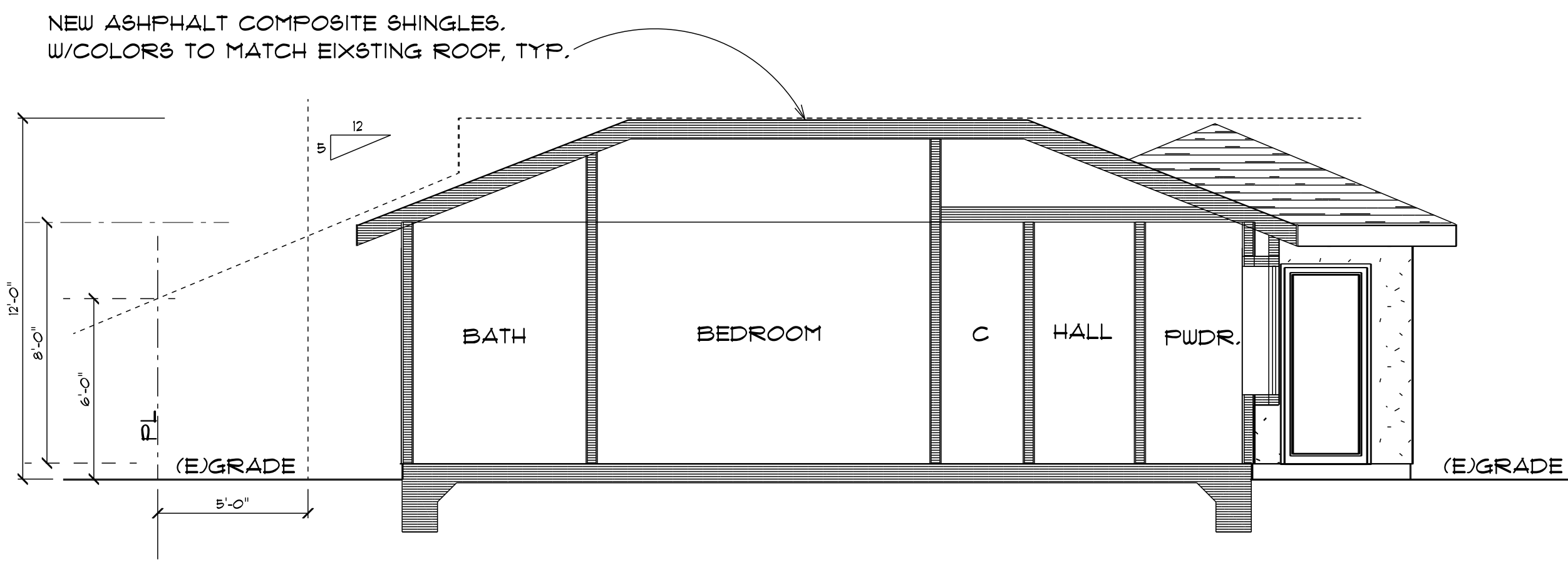
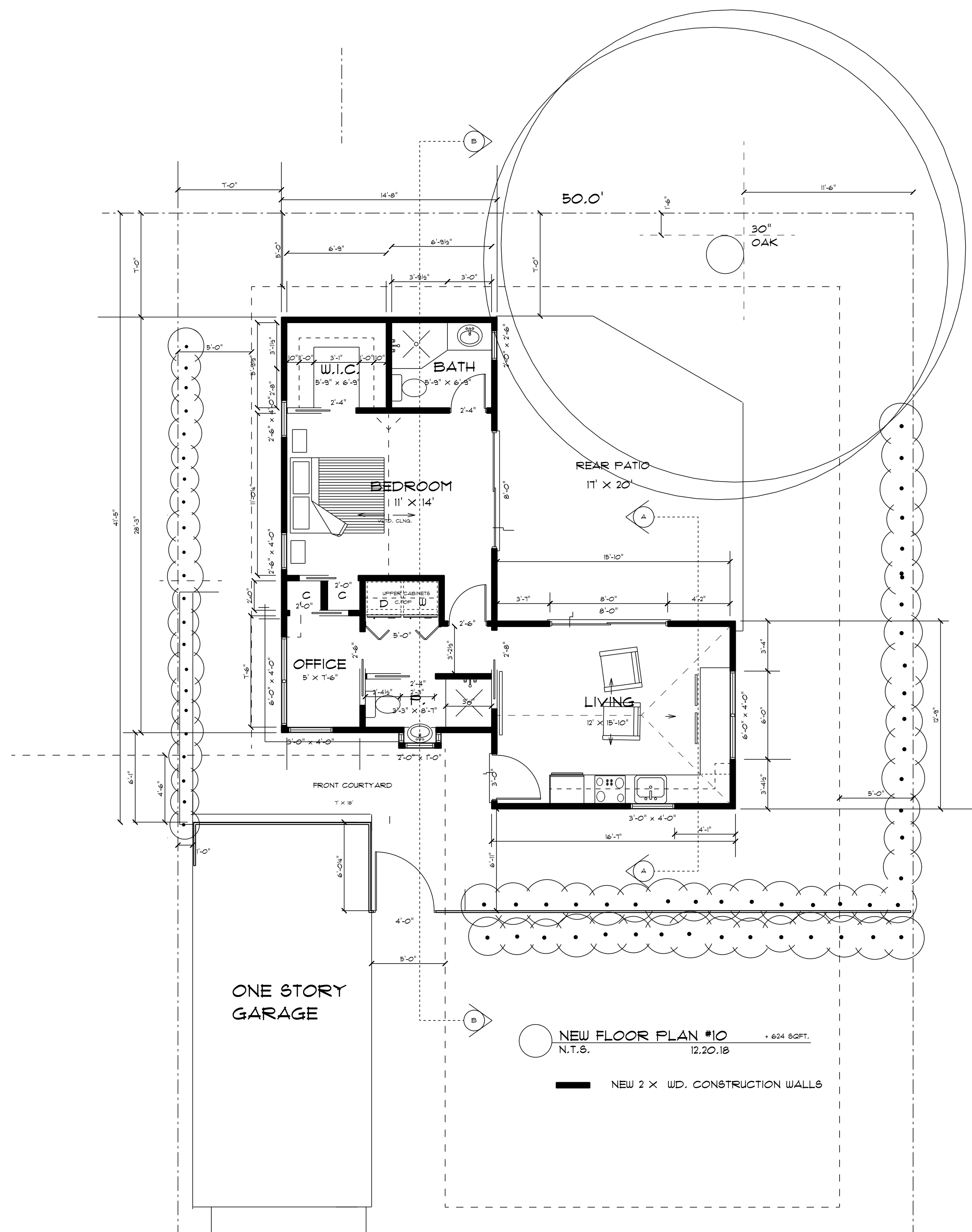
A2



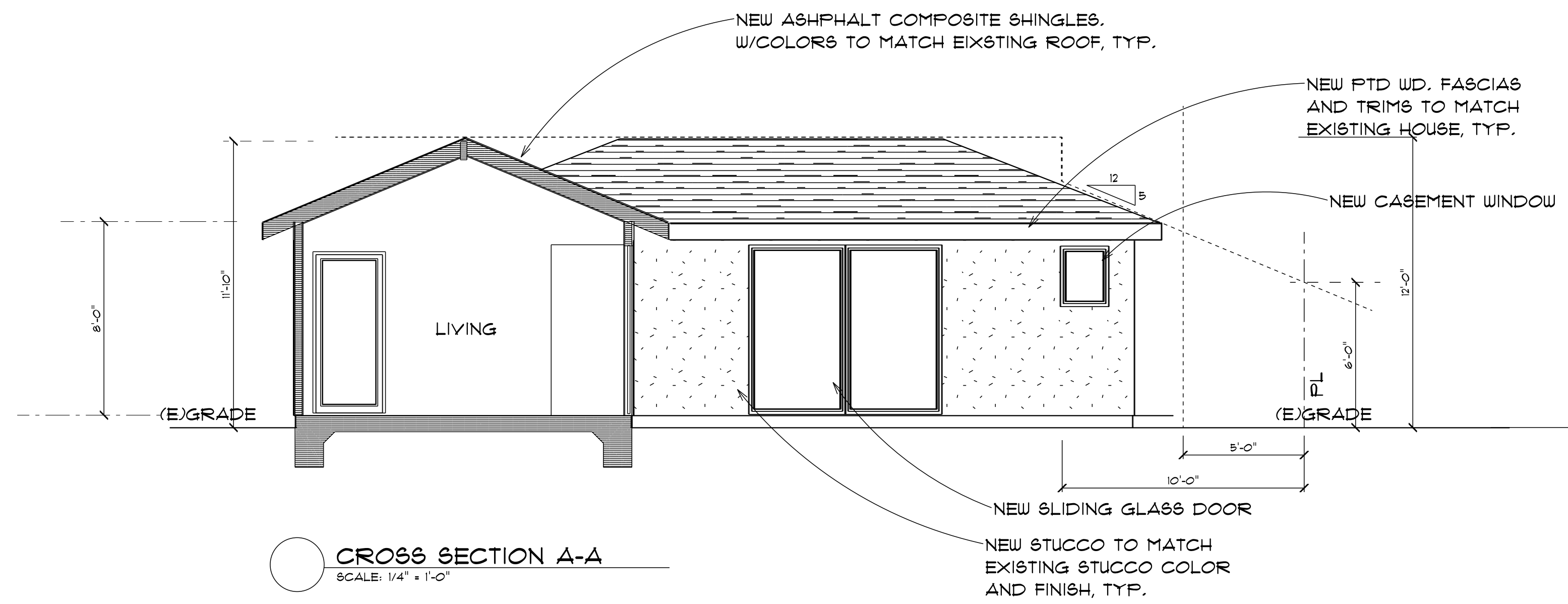
NOTE: CONTRACTOR TO VERIFY THAT ROOF PITCH SHALL BE WITHIN DAYLIGHT PLANE FOR NEW ADU ROOF PRIOR TO ROOF FRAMING, TYP.

NOTE: NEW COLORS, MATERIALS AND FINISHES TO MATCH EXISTING MAIN HOUSE COLORS, MATERIALS AND FINISHES AS MUCH AS POSSIBLE, TYP.





SECTION B-B
 SCALE: 1/4" = 1'-0"



CROSS SECTION A-A
 SCALE: 1/4" = 1'-0"

BREWER ACCESSORY DWELLING UNIT
 49 LYELL STREET LOS ALTOS, CA. 94022

11

AERO 11 DESIGN

JOE SABEL
 855 JEFFERSON #415
 REDWOOD CITY,
 CA 94064
 650 255 8011
 650 258 8894

JOB NO. 18.22
 DATE: 12.20.18
 REVISION:

A5

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Phone: (650) 327-2900
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www.BrewerFirm.com

February 27, 2019

Honorable Councilmembers
City Council of Los Altos
1 N San Antonio Rd.
Los Altos, CA 94022

Re: Appeal from Design Review Commission Denial of Variance

Dear Honorable Councilmembers:

This is an appeal from the February 6, 2019, decision by the Design Review Commission on item N^o 3, 19-V-01, application for a variance. The appeal from the denial of the requested variance is based on the failure of the Commission to understand or follow the law, and the indulgence by the Commission in a rambling and extraordinarily undisciplined discussion of aspects and issues that have no bearing on the evaluation required of them in the consideration of the application.

By way of background, Applicants Peter & Laura Brewer are the owners since 1981, and former occupants, of 49 Lyell Street, Los Altos. Situated on the 7,500 sq. ft. lot is a cottage of 2br. & 1ba., consisting of approximately 1008 sq. ft. of living area, and a 312 sq. ft. detached garage set deep on the lot at the end of an 80 ft. driveway. The Applicants also own the adjacent property at 33 Lyell Street, situated between the subject property and Spangler's Mortuary at the corner with So. San Antonio Rd.

The Applicants initially applied for a guest cottage accessory structure of 798 sq. ft., but in preliminary discussions with the planning department this was deemed incompatible in scale with the diminutive main house. Applicants went back to the drawing board and revised the plans to seek a variance to build a 624 sq. ft. Accessory Dwelling Unit ("ADU").

ADUs are encouraged by State mandate to help alleviate California's housing crisis. In 2017 California passed Government Code § 65852.2, effective January 1, 2018, as "backstop" legislation. That statute provides that if cities do not pass their own ADU ordinances consistent with the State statute, then the State statute will apply and will

define the criteria under which ADUs can be built. Government Code § 65852.2 also imposes limitations on the regulations and restrictions that cities can impose on ADU construction.

Here is an excerpt from an article explaining the purposes and consequences of Government Code § 65852.2, (a.k.a. SB 1069):

“Designed to provide relief from California’s housing shortage, Senate Bill 1069 and Assembly Bill 2299 (collectively ‘SB 1069,’ effective January 1, 2018) limit city authority to regulate accessory dwelling units. It also **replaces** city building, **parking and use standards** on this topic and imposes standards on cities that have not yet adopted their own regulations. There is language in SB 1069 that a **city’s entire accessory dwelling ordinance (if the city has one) will be null and void if it conflicts with these new standards**, so the City should immediately review its existing code to determine if revisions are necessary.

Discussion:

SB 1069, applicable to both general law and charter cities, **generally limits local authority to regulate the construction and use of accessory dwelling units**. It adds findings to the Government Code to provide that ‘accessory dwelling units’ provide security to homeowners, offer lower cost housing to the public, and are an essential component of California’s housing supply.[1] While SB 1069 does give cities the right to require rental terms be longer than 30 days,[2] the majority of its provisions reduce city authority over accessory dwelling units.”

[Emphasis added]

In response to the State statute, on July 10, 2018, the City of Los Altos amended

its ordinances to comply with the State statute. The City states the purpose of the amendment is as follows:

The purpose of amending the City's ADU regulations is to achieve compliance with State Law and to implement Housing Element Program No. 4.2.1 and Program No. 4.2.2 that are intended to **facilitate** the development of ADUs and provide affordable housing in Los Altos. [Emphasis added]

Among other changes the amendments:

- Increased the allowable size of ADUs from 800 sq. ft. to 1,200 sq. ft.
- Eliminated minimum lot sizes for ADUs (previously 15,000 sq. ft.).
- Eliminated the requirement that an owner reside on the property.
- Relaxed parking standards for ADUs.

Government Code § 65852.2 (herein referred to as "the State statute") provides at § 65852.2 (a)(1)(D):

(iv) The total area of floorspace of an **attached** accessory dwelling unit shall not exceed 50 percent of the proposed or existing primary dwelling living area or 1,200 square feet.

(v) The total area of floorspace for a **detached** accessory dwelling unit shall not exceed 1,200 square feet. [Emphasis added]

NOTE that while an attached ADU is restricted to 50% of the size of the main dwelling, there is no such limitation imposed on a detached ADU such as the one applied for by Applicant.

By contrast, the Los Altos ordinance failed to carry over this distinction and simply says:

1. The total floor area for an attached accessory dwelling unit shall not exceed one thousand two hundred (1,200) square feet, exclusive of basement areas, and shall not be more than fifty (50) percent of the floor area of the existing or proposed principal residence.

2. The total floor area for a detached accessory dwelling unit shall not exceed one thousand two hundred (1,200) square feet, inclusive of basement areas, and shall not be more than fifty (50) percent of the floor area of the existing or proposed principal residence.

This fragment of Los Altos’s ordinance is at the core of this variance application. The main dwelling on the property is a diminutive bungalow, or “doll house” in Realtor® speak. To limit an ADU on this underdeveloped lot to 50% of the size of the main dwelling would be to restrict the ADU to 504 sq. ft., which would seriously impair its utility.

The State statute also says:

(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit. **No additional standards shall be utilized or imposed**, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days. [Emphasis added]

It also says:

(c) A local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units. **No minimum or maximum size for an accessory dwelling unit, or size based upon a percentage of the proposed or existing primary dwelling, shall be established by ordinance for either attached or detached dwellings** that does not permit at least an efficiency unit to be constructed in compliance with local development standards. [Emphasis added]

An application for a conforming ADU is not discretionary and must be “ministerially” approved.¹ Thus the issue before the Design Review Commission, and the **only** issue

¹“(3) When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application shall be considered ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or

to be decided by them, was whether to grant a variance to allow an efficiency unit of 604 sq. ft. rather than adhering to Los Altos's questionable limitation of a detached ADU to 50% of the main dwelling.

Variance requests are to be evaluated subject to statutory criteria. Government Code § 65906 provides, in part:

65906. Variances from the terms of the zoning ordinances shall be granted only when, because of **special circumstances applicable to the property, including size**, shape, topography, location or surroundings, **the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity** and under identical zoning classification. [Emphasis added]

Los Altos's ordinance recites the same criteria. The Los Altos Municipal Code allows for a variance under the following conditions.

14.76.070 - Variance findings.

B. The design review commission may grant a variance as applied for if, on the basis of the application and the evidence submitted, the commission makes the following positive findings:

1. That the granting of the variance will be consistent with the objectives of the zoning plan set forth in Article 1 of Chapter 14.02;
2. That the granting of the variance will not be detrimental to the health, safety, or welfare of persons living or working in the vicinity or injurious to property or improvements in the vicinity; and
3. That variances from the provisions of this chapter shall be granted only when, because of **special circumstances applicable to the property, including size**, shape, topography, location, or surroundings, **the strict application of the provisions of this chapter deprives such property of privileges enjoyed by other property in the vicinity** and under identical zoning classifications.

[Emphasis added]

any local ordinance regulating the issuance of variances or special use permits, within 120 days after receiving the application.” Government Code § 65852.2 (a)(3)

VARIANCE CRITERIA:

- **Criteria 1. Consistent with the objectives of the zoning plan:** This criteria is superseded by the State statute which provides:
“(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and **shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot.**”
[Emphasis added]

Notwithstanding that the State statute takes zoning out of consideration for this ADU variance application, it should be noted that the Staff found the project to be consistent with the objectives of the zoning plan, as stated at the hearing:

“The granting to the variance is also consistent with the objectives of the zoning plan because the accessory dwelling unit remains subservient to the primary residence. The ADU is smaller in scale, with a lower wall height, a pitched roof, with a ridge at 12 feet above grade maximum, and a footprint that is designed around the large oak tree in the rear yard. The structure is proposed to be built with compatible materials to the primary residence, maintains the intent of the city's accessory dwelling unit ordinance, enhances the usability of the property without requiring an expansion or demolition or rebuilding of the main house.”

- **Criteria 2. Not detrimental to the health, safety, or welfare of persons or injurious to property in the vicinity:** Again, the Staff's findings accurately described that the proposed ADU is appropriate in size and scale and is deemed non-intrusive to the neighboring properties. Indeed, the proposed ADU meets or exceeds all requirements for setbacks and daylight planes. Where the setback from the next-door neighbor at 55 Lyell Street is a required five feet (5') the project will be set back eleven-and-a-half feet (11½'). Moreover, the project will be screened from the view of that property by its careful siting behind an immense mature oak tree with a dense canopy. The project will not be visible at all from the street, being completely

obscured by the main dwelling and the detached garage. And the project calls for appropriate plantings and further vegetative screening from the neighbors.

- **Criteria 3. Special circumstances applicable to the property, including size, would cause strict application to deprive such property of privileges enjoyed by other properties in the vicinity:** This is the crux of this application. And here is where the Commission went astray and applied the wrong standard. The Commissioners twisted this criterion around from being equal to the privileges enjoyed by others, to instead being whether it imposed an insurmountable hardship on the Applicant. The Commissioners, in an act taken from the theater of the absurd, concluded that the Applicant had the option of expanding the size of the main dwelling in order to make the ADU fit within the 50% limitation, and thus the Applicant had a remedy available that mitigated the “hardship” (No where in either the State statute or the Los Altos ordinance is “hardship” a factor). This is, of course, not even in the same universe as the legal standard by which the variance was to be evaluated.

The statute specifically speaks of, “**special circumstances applicable to the property, including size**” that would cause the strict application of the questionably lawful ordinance to “**deprive such property of privileges enjoyed by other property in the vicinity.**”

That, and that alone, was what the Commission was called upon to consider and should have considered and evaluated with a disciplined analysis.

The subject property is unquestionably unique. Applicant has no reliable statistics but would speculate that there are fewer than twenty houses in the entire City of Los Altos that are a thousand square feet or less. It is exactly the size of the house that constitutes a “special circumstance applicable to the property” that results in the Applicant being prohibited from building a viable ADU that conforms to Los Altos’s unique requirement of a detached ADU being no larger than 50% of the main dwelling. There is not another property on this street, or indeed within the immediate area, that would be similarly burdened by the 50% limitation.

The circumstance of a diminutive main dwelling was not considered by the Planning Commission and Council in discussions leading up to Los Altos's ordinance. As was asked of Planning Services Manager Zach Dahl:

ACTING CHAIR KIRIK: Right. And was there any concern in those discussions about smaller homes like this, you know, the size of the ADU not being sufficiently big enough, given the 50 percent rule?

MR. DAHL: Given the relative few number of homes of this size in the city, that really wasn't a consideration. And, in general, when crafting zoning, you usually try to avoid zoning to the extremes and focusing on what serves the vast majority of lots, . . .".

The unusually small dwelling on this property creates a spacious backyard that more than comfortably accommodates the proposed 624 sq. ft. ADU and still leaves open space. The existing main dwelling combined with the proposed ADU together only amount to approximately 61½% of the allowable floor area ratio (FAR) for the lot.

Does the uniquely diminutive size of the main dwelling on this lot deprive the Applicant of the privileges enjoyed by other properties in the vicinity? Undoubtedly yes! It is beyond dispute that there is not another property anywhere in the neighborhood that would be denied a 624 sq. ft. ADU. **That** is the controlling criterion. **That** is what the Commission was called upon to decide. **That** was the Commission's legal mandate.

Instead, at least one Commissioner admitted that he had never read the controlling statute: "COMMISSIONER BISHOP: Got it. Saw that. But I never went and read the state code. . . .".

The Commission turned on its ear the determination of whether the Applicant faced prejudice as compared to his neighbors, and instead tortured the construction of that criterion into whether the Applicant faced insurmountable hardship, and then concluded that the Applicant was free to enlarge the main dwelling so as to allow a

greater ADU, and therefore no hardship exists. [Transcript, pg:line. 6:15-22, 15:2-17, 21:8-16]

As was stated by Commissioner Glew: "I don't think there's a hardship. There could easily be a larger house if they wanted a more subordinate property." [22:1-3]

Or as stated by Acting Chair Kirik in his summary and concluding remarks, "So for us - - for me personally to override the 50 percent number when there is a solution on this specific property to, one, build an addition to the main house, which would not in any way affect the architecture or the usability of the main house; . . .".

Moreover, rather than a disciplined analysis of the circumstance of the impact of the unusually small ("special circumstances . . . including size") size of the main dwelling, the Commissioners went all over the hills and dales on subjects that have no place in this evaluation, such as parking, as illustrated by the following ten excerpts from the transcript:

- Secondly, the parking suggested for this is the additional parking will be either in the garage or in the driveway
- So we're going to have a situation where there's three cars, basically, parked in that driveway.
- I don't think there's going to be three cars parked in that driveway. So there would be no parking mitigation.
- parked in that driveway. So there would be no parking mitigation. It will just be another car on the street.
- another car on the street. And we already have a parking issue on the street. There's always a lot
- Foothill, is all apartments and townhomes. So parking is actually a problem. I pass by that
- a little bit of difficulty finding street parking. I had to park a couple houses away. And
- difficulty finding street parking. I had to park a couple houses away. And you mention that
- going to generate more occupants and generate parking issue, as the neighbor has also mentioned.
- We did chime in on our concerns about parking and other issues. So we were heard, at

The issue of parking is supplanted by the State statute which prescribes, "(a) (1) (D) (x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway."

Los Altos's ordinance, Chapter 14.14 of the Municipal Code provides the same thing: "D. Parking. 1. Except as provided in subparagraph (2): (a) An accessory dwelling unit shall provide one parking space per unit or per bedroom, whichever is less."

The subject property's 80' long driveway and detached garage more than meet the requirements of the statute, and this discussion has no place in the consideration of whether the Applicant is deprived of the privileges enjoyed by others in the community.

Similarly the Commission got sidetracked on the issue of the ADU being a potential rental, and occupancy by other than family, as illustrated by the following seven excerpts from the transcript:

- from the state or the city, you know, for renting both units out? Or did you put any deed
- of an ADU. And so, yeah, both units could be rented out, if so chosen, by the property owner.
- still potentially in the future that you rent them both out. So contextual-wise, I think
- did consider whether or not to require owner occupancy. It has been required in the past.
- the city council decided to not require owner occupancy when -- with the construction of an ADU.
- that you -- you want to -- you may want to occupy yourself, you mentioned. However, there's
- for discussion, that's going to generate more occupants and generate parking issue, as the

This issue is also supplanted by both the State statute and Los Altos's own ordinance. The State statute says, "(i) The unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence." And Los Altos's ordinance says,

"B. Occupancy.


1. The accessory dwelling unit may be rented.
2. The accessory dwelling unit shall be rented for terms longer than thirty (30) days."

So, this discussion too was off-topic and not relevant to the determination of whether this Applicant, on account of the unusually small main dwelling, is deprived of the privileges enjoyed by others in the community.

Applicant respectfully suggests that the Design Review Commission was demonstrably unfamiliar with the controlling statute and ordinance and made a decision that did not observe their mandate. Instead they occupied the hearing by grandstanding with opinions and remarks that were not pertinent to a well-reasoned and disciplined analysis of the issue before them. On that basis, the denial of the Applicant's variance application should be overturned and the variance approved.

Thank you for your thoughtful attention to this regrettably long explanation of the basis for the appeal.

Very truly yours,



Peter N. Brewer

Together with Laura Brewer, Applicant.

1 Design Review Commission Hearing

2 Wednesday, February 6, 2019

3
4 Item No. 19-V-01

5
6
7 ACTING CHAIR KIRIK: We're going to move on to
8 item number 3, another variance, number 19-V-01, the
9 project at -- the ADU at 49 Lyell Street.

10 Can we hear the staff report, please.

11 MS. HASSAN: So the project at 49 Lyell is a
12 variance to allow a new detached accessory dwelling
13 unit, or ADU, to be 624 square feet in size where a
14 maximum size of 504 square feet, or 50 percent of the
15 size of the main house, is allowed by code.

16 This property is located on the north side of
17 Lyell Street at the intersection with Tyndall street.
18 The area around Tyndall Street is a multifamily
19 neighborhood in the R3-1.8 district. This parcel in
20 particular is designated as a single-family small lot in
21 the general plan and is zoned for R1-10, single family.
22 The one-story house on the lot was originally built in
23 the 1950s and was classified by the applicant as a
24 bungalow-style home.

25 The applicant initially applied for a design

1 review permit in October 2018 for a guest cottage
2 accessory structure with a floor area of 798 square feet
3 in the rear yard. The proposed detached structure was
4 deemed incompatible in scale to the main house, which is
5 1,008 square feet in size. The applicant later revised
6 the plans to apply for a variance permit for a
7 624-square-foot ADU rather than the accessory structure.

8 The lot in question is supposed- -- is
9 approximately 7,500 square feet in size. The subject
10 parcel a considered a long, narrow lot relative to other
11 properties with the same zoning designation elsewhere in
12 the city. The lot, as measured by the assessor parcel,
13 is about 50 feet wide and 150 feet in depth.

14 The existing house is a 1008-square-foot
15 bungalow with a detached 312-square-foot garage which is
16 behind an 80-foot long existing driveway.

17 There are currently no proposed or future --
18 There are no proposed future alterations expected for
19 the primary residence at this time.

20 According to the city's recently adopted
21 accessory dwelling unit ordinance, the total floor area
22 for a detached ADU can be up to 1200 square feet in
23 size, but also shall not be more than 50 percent of the
24 floor area of the existing principal residence, which in
25 this case is 1,008 square feet. Thus, the maximum floor

1 area for the ADU on this property is normally limited to
2 504 square feet. However, the applicant is seeking a
3 larger ADU than this proposed size, which requires a
4 variance, for their anticipated needs and uses.

5 The minimum setback for ADUs in the rear yard
6 is five feet. The proposed ADU has left and side --
7 left side and rear yard set backs of seven feet, with an
8 11-and-a-half-foot setback on the right side.

9 A location in the rear yard, along with
10 proposed (indiscernible) privet plantings for screening
11 limit visibility from the street and from adjacent
12 properties. Therefore, the granting of the variance
13 will not be detrimental to persons living or working in
14 the vicinity or injurious to any properties in the
15 vicinity because the ADU is built to an appropriate
16 scale and size as deemed -- and is deemed un- --
17 nonintrusive to neighboring properties.

18 The granting to the variance is also
19 consistent with the objectives of the zoning plan
20 because the accessory dwelling unit remains subservient
21 to the primary residence. The ADU is smaller in scale,
22 with a lower wall height, a pitched roof, with a ridge
23 at 12 feet above grade maximum, and a footprint that is
24 designed around the large oak tree in the rear yard.
25 The structure is proposed to be built with compatible

1 materials to the primary residence, maintains the intent
2 of the city's accessory dwelling unit ordinance,
3 enhances the usability of the property without requiring
4 an expansion or demolition or rebuilding of the main
5 house.

6 The long and narrow shape of the lot, in
7 combination with an unusually small primary residence,
8 results in a smaller and less-usable backyard space than
9 other prop- -- for ADUs that are in the R1-10 district.
10 A strict application of the code would deprive this
11 property of privileges enjoyed by other -- by others
12 under identical zoning classification where ADUs up to
13 1200 square feet in size are generally allowed.
14 Therefore, there is special circumstance that justifies
15 a variance to allow a new detached ADU to be 624 square
16 feet in size and exceed the 50 percent of the main house
17 size limitation.

18 Based on this assessment, staff supports the
19 approval of this variance. And this concludes staff
20 presentation unless there are questions.

21 ACTING CHAIR KIRIK: Thank you.

22 Do we have any questions for staff?

23 UNIDENTIFIED SPEAKER: No.

24 COMMISSIONER GLEW: One, yes.

25 I have a question on your third finding of

1 special circumstances applicable, the word "applicable"
2 being operative here.

3 The long and narrow shape of the lot, how is
4 that applicable to being a special circumstance? It
5 would seem that it's a fact. But I'm not sure why
6 that -- you know, how -- what the bearing on this is.

7 MS. HASSAN: Usually with the result of a
8 narrow lot, it restrains the size of the side yard
9 setbacks that are limited on the property. So from that
10 placement perspective, it limits the area that the ADU
11 could be built on the site.

12 COMMISSIONER GLEW: Okay. The AD- -- but
13 the -- Okay. The limitation on the ADU is related also
14 to the size of the main structure. What's the operative
15 limitation?

16 MS. HASSAN: Sorry. Could you clarify the
17 question.

18 COMMISSIONER GLEW: Okay.

19 The findings start off with, "Regarding the
20 variance to allow an ADU to exceed 50 percent of the"
21 main size -- "the size of the main house." So I
22 understand that that's the variance we're trying to find
23 or examining here, is that it's going to be bigger than
24 50 percent of the size of the house.

25 MS. HASSAN: Mm-hmm.

1 COMMISSIONER GLEW: I just don't understand
2 how that relates to the long, narrow shape. Why you
3 find that applicable. That's all. How is it
4 applicable? Justify your argument.

5 MS. HASSAN: Well, I guess, in general, it
6 would also limit the size of the main house that could
7 be built, because there's not mu- -- because of the way
8 that different parts of the house are shaped because of
9 the narrow lot, it limits if they did expand the house
10 in order to accommodate clearance for a larger -- for a
11 larger ADU. So let's say they expand the house to 1200
12 square feet in order to build a 600-square-foot ADU.
13 There would be limited area because of the size of the
14 lot.

15 COMMISSIONER GLEW: But there's nothing to
16 stop them from expanding to 1200 square feet to build a
17 600 ADU; right?

18 MS. HASSAN: In theory, there aren't any rules
19 regulating that. It was a choice of the applicant to
20 expand -- to pursue an ADU rather than expansion of the
21 main property.

22 COMMISSIONER GLEW: Okay. Thank you.

23 ACTING CHAIR KIRIK: I have --
24 Michael?

25 COMMISSIONER MA: I don't have any question.

1 VICE CHAIR KIRIK: I had one question.

2 So this conversation on this is not the --
3 ADUs are allowed. There's no question about that. But
4 it's the size of the ADU that we're questioning.

5 what -- And there's some commentary in the
6 applicant's letter about state law not allowing, you
7 know, these limitations.

8 was the 50 percent limit specifically
9 discussed at Planning Commission and council? And can
10 you just expand on that, what the rationale behind the
11 50 percent was.

12 MR. DAHL: The 50 percent was discussed, I
13 would say, fairly thoroughly both at Planning Commission
14 and council. And in reviewing that, they're -- the city
15 attorney did not identify any limitations with rolling
16 that -- that 50 percent to both attached and detached
17 structures. And the goal is primarily that the ADU
18 is -- is subordinate to and subservient to the main
19 residence. That's the primary objective of the
20 50-percent limit.

21 ACTING CHAIR KIRIK: Right. And was there any
22 concern in those discussions about smaller homes like
23 this, you know, the size of the ADU not being
24 sufficiently big enough, given the 50-percent rule?

25 MR. DAHL: Given the relative few number of

1 homes of this size in the city, that really wasn't a
2 consideration. And, in general, when crafting zoning,
3 you usually try to avoid zoning to the extremes and
4 focusing on what serves the vast majority of lots, which
5 in this case is a -- around a 10,000-square-foot lot
6 with about an 80-foot width. In this case, it's a
7 smaller -- it's substandard both in terms of size and
8 width. So those are both limitations relative to what
9 we were looking at when considering this type of 50
10 percent.

11 ACTING CHAIR KIRIK: Okay. And then just
12 lastly, so the 50-percent rule is in compliance with
13 state law, then?

14 UNIDENTIFIED SPEAKER: Yes, it is in
15 compliance with state law. We had our city attorney
16 participate with staff in the development of the law and
17 had to go through the planning commission. The city
18 attorney was advising us all along through that process.

19 ACTING CHAIR KIRIK: Okay. Thank you.

20 COMMISSIONER BISHOP: Can I ask a follow-up
21 question on that?

22 So was the 50 percent relative to an attached
23 or detached structure, though? Isn't that the question,
24 the state code versus Los Altos's code?

25 MR. DAHL: In our review, the 50 percent

1 applied to either, because in either case, the goal is
2 that the ADU is subordinate to and subservient to the
3 main house.

4 COMMISSIONER BISHOP: Got it. Saw that. But
5 I never went and read the state code. But the state
6 code actually has it split between attached and
7 detached; correct? The 50 percent ruling?

8 MR. DAHL: I think the state law is specific
9 with regard to attached and doesn't necessarily speak
10 one way or the other --

11 COMMISSIONER BISHOP: Silence.

12 MR. DAHL: -- to detached.

13 COMMISSIONER BISHOP: Okay.

14 MR. DAHL: And based on work with the city
15 attorney, there was -- there did not appear to be
16 anything in state law that prohibited the city from
17 including that to both attached and detached.

18 COMMISSIONER BISHOP: I see. Thank you.

19 UNIDENTIFIED SPEAKER: Thank you.

20 COMMISSIONER MA: I have another -- I have a
21 question. Following with the state and city's
22 ordinance, is there any limit from the state or the
23 city, you know, for renting both units out? Or did you
24 put any deed restriction on that?

25 MR. DAHL: The -- when the city -- The city

1 did consider whether or not to require owner occupancy.
2 It has been required in the past. And ultimately, the
3 city council decided to not require owner occupancy when
4 -- with the construction of an ADU. And so, yeah, both
5 units could be rented out, if so chosen, by the property
6 owner.

7 COMMISSIONER MA: I see. All right. Thank
8 you.

9 ACTING CHAIR KIRIK: Okay. I think that does
10 it for questions to staff. I'm going to --

11 UNIDENTIFIED SPEAKER: (Indiscernible) card.

12 ACTING CHAIR KIRIK: We're not at the
13 applicant yet.

14 So I'm going to close our questions to staff
15 and open it up for the applicant to come forward, please
16 state their name.

17 And you have ten minutes to present your
18 project.

19 MR. BREWER: Good evening. My name is Peter
20 Brewer. I'm the owner at 49 Lyell. I'm here with my
21 wife, who's the co-owner, and my designer, Joe Sabel.

22 We're here to discuss only whether or not I
23 should be allowed to have a variance. I'm aware that --
24 that ADUs are an emotional thing for many people, and
25 I'm also aware that it's often said that the only person

1 who likes change is a wet baby. And that may apply in
2 this situation as well.

3 As was acknowledged earlier, a conforming ADU
4 is not discretionary. It just gets passed. The only
5 thing that I'm applying for that's nonconforming is the
6 additional 120 square feet. So I won't take up time to
7 discuss the state's mandate promoting ADUs, and I'll
8 instead just limit my discussion to the eligibility for
9 a variance.

10 You are correct that the city did not consider
11 bungalows or, in realtor-speak, doll houses, when they
12 passed this ordinance. This house of mine that's 1,000
13 square feet, there probably are fewer than ten or 15 of
14 those anywhere in the City of Los Altos. I happen to
15 like it. I admire the house. I've loved it ever since
16 I bought it in 1981.

17 There is a discrepancy between the city's
18 ordinance and the state statute. The state statute is
19 Government Code 65852.2, and it specifically says that
20 an ADU shall not be greater than 1200 feet -- an
21 attached ADU not greater than 1200 feet or 50 percent of
22 the main dwelling. And in the very next section, a
23 detached ADU, not greater than 1200 feet. No mention of
24 50 percent of the main structure.

25 So it's simply that nobody in this process has

1 considered a house that's the size of the one that I
2 have. It's a unique structure in that regard. But you
3 saw a picture of it. It's cute as a bug's ear, you
4 know. I wouldn't dream of tearing it down or doing
5 anything to change it.

6 So with regard to the variance, there are
7 three criteria.

8 Is it consistent with the zoning?

9 well, that was addressed by staff. But also,
10 the state statute more or less wipes out the criteria of
11 zoning. It says that if it's a single-family lot with a
12 single-family structure on it, you're allowed to have an
13 ADU. There's no zoning implication there.

14 Is it detrimental to health, safety, or
15 welfare?

16 I can't imagine anybody arguing that me having
17 an ADU in the backyard -- which you would not even be
18 able to see, because the ADU is going to be through this
19 gate and back there. It can't possibly be considered to
20 be detrimental to anybody's health, safety, or welfare.

21 The final one, and the biggie, is, are there
22 special circumstances of the property, and the
23 statute -- the ordinance, the Los Altos ordinance,
24 specifically says, "including size," that deprives the
25 property of the privileges enjoyed by others in the

1 community.

2 And so there's not another 1,000-foot house on
3 Lyell Street, and immediately across the street from us
4 is multifamily dwelling. So there's no question that if
5 you restricted me to a 500-foot ADU, you would be
6 denying me the privilege that would be enjoyed by
7 anybody else on my side of the street who applied for an
8 ADU.

9 And the state statute also says that you --
10 The state statute actually prohibits hinging the size of
11 the ADU on the size of the main structure. But I'm not
12 here to argue about Los Altos's ordinance. I think it
13 was -- I'm sure that a lot of thoughtful consideration
14 went into it. But the state statute does say that --
15 that I should be allowed an efficiency unit.

16 And my plea to you is that 500 feet or less is
17 hardly even an efficiency unit. So I'd just like to
18 make it 620 square feet. That's -- or 624 maybe it was.
19 I don't think the -- It's a difference without a
20 distinction, really. You know, there's -- there's going
21 to be two or three feet more building than there would
22 otherwise be, but it will make it considerably more
23 functional and useful to me. And, by the way, it will
24 be owner-occupied. This is to be our pied-a-terre, our
25 unit to visit, because I've got, well, 50 years of

1 friends and a thriving business and other real estate
2 here in the area, and I need to be here. And it's
3 terribly inconvenient when I have to pay Abby's prices
4 for a room in her hotel and take -- and make
5 arrangements for my animals and pack a suitcase and do
6 all that sort of thing when otherwise I could just come
7 down here and spend a few days at a time and have all my
8 stuff here. That's what I'm seeking.

9 So there's not going to be any negative impact
10 to the neighborhood, I mean, unless they don't like me,
11 'cause that's the only thing that's going to be there.
12 But that's it.

13 So I -- I pray for your thoughtful
14 consideration.

15 Any comments here?

16

17 MR. SABEL: Not right now.

18 MR. BREWER: Thank you.

19 ACTING CHAIR KIRIK: Well, we might have a
20 question or two for you, so don't --

21 MR. BREWER: Oh, I'm sorry. Please do.

22 ACTING CHAIR KIRIK: Come back up.

23 So, my fellow commissioners, does anybody have
24 a question for the applicant?

25 COMMISSIONER MA: No question.

1 ACTING CHAIR KIRIK: Alex?

2 COMMISSIONER GLEW: Have you considered
3 enlarging your house so that you could enlarge the ADU
4 and meet code?

5 MR. BREWER: Well, have I considered it? I
6 would say, yes, I've considered and almost immediately
7 rejected it, because I am not a fan of huge houses.
8 These people that are building, 8,000 square feet for
9 their for their own personal residence, I just don't --
10 I can't even fathom that. And so, no, I wouldn't --
11 First of all, the bungalow is still architecturally what
12 it was when it was built. And I personally love it.
13 And I admire it. And I don't feel like changing it.
14 But, no, it wouldn't -- it would not be sensible for me
15 to enlarge the main residence only so that I can build a
16 bigger ADU because I don't need a larger residence. So
17 that would be a horribly unnecessary expense.

18 MS. BREWER: May I add a comment?

19 ACTING CHAIR KIRIK: You can come forward,
20 please.

21 MS. BREWER: Peter introduced me informally,
22 but I'm Laura Brewer, co-owner of the property.

23 And the comment that I wanted to make that
24 occurred to me during the course of this presentation is
25 that the garage is detached, but the garage also has I

1 don't know how many square feet. And I don't -- you
2 know, in a lot of new construction, the garage is
3 considered in the square footage considerations for the
4 total property. So -- I see that Zach is shaking his
5 head.

6 MR. DAHL: Only habitable.

7 MS. BREWER: Only habitable. Okay. So you
8 can forget what I was going to say, but I was just going
9 to say we've also got the garage if you want to find
10 some way to make the main structure a larger amount.

11 MR. BREWER: It -- perhaps it should be noted
12 that the house together with the ADU is still only about
13 61 and a half percent of the allowable square footage on
14 that lot. So we're not overbuilding the lot.

15 And there was a slide that was up there that
16 showed the canopy of the oak tree. And --

17 Yeah, here.

18 So this is a really large and old oak tree.
19 And we have very carefully worked around not only the
20 root structure -- and I had a surveyor -- a geologist
21 come out and do root mapping so that we will not be
22 injuring this tree. But we also won't even be
23 disturbing the canopy. And that tree also is a good
24 screening. But there will be additional screening from
25 the next-door neighbor.

1 So we've -- we've put a lot of thought into it
2 and we've gone through a lot of iterations on the
3 design. And I think that -- that we have been very
4 loyal to the city's criteria and wants and needs.

5 ACTING CHAIR KIRIK: Any more questions?
6 Michael.

7 COMMISSIONER MA: No.

8 ACTING CHAIR KIRIK: Thank you very much.

9 MR. BREWER: And you.

10 ACTING CHAIR KIRIK: Okay. I'm going to close
11 the applicant's presentation.

12 And I do have one card from the public to
13 speak on this item from a Tom Barreira, Barreira.

14 MR. BARREIRA: You had it right the first
15 time.

16 ACTING CHAIR KIRIK: All right. Sorry about
17 that.

18 You have three minutes, please.

19 MR. BARREIRA: Does that include the
20 introduction of my name?

21 ACTING CHAIR KIRIK: Just -- just start.

22 MR. BARREIRA: Okay.

23 I'll just -- I did submit an email to the
24 city, and, hopefully, maybe you've had a chance to see
25 that. I just want to point out a few highlights.

1 I am Tom Barreira. I live at 55 Lyell Street,
2 so I'm the neighbor on the other side.

3 You know, I know the ADU legislation has been
4 passed, but just the one thing I'd like to say is, as it
5 relates to these smaller 7500-square-foot lots, I don't
6 think there's really a lot of thought put into the
7 impact. These are relatively small lots. These lots in
8 particular are 50 feet wide, 150 feet deep. They're
9 very narrow. And they really don't lend themselves to
10 additional structures on them.

11 To the extent there's additional structures, I
12 really think they should be in the form of a single
13 family. I'm not happy to have a two-family home next to
14 me. I have plenty of those on the other side of Lyell.
15 This is zoned single family, and I really would like to
16 see it remain single family. But I don't want to waste
17 all my time on that.

18 Secondly, the parking suggested for this is
19 the additional parking will be either in the garage or
20 in the driveway. So we're going to have a situation
21 where there's three cars, basically, parked in that
22 driveway.

23 Peter has suggested that they could fit by
24 each other. But you saw the picture. I don't think
25 there's going to be three cars parked in that driveway.

1 So there would be no parking mitigation. It will just
2 be another car on the street. And we already have a
3 parking issue on the street. There's always a lot of
4 cars on the street.

5 Thirdly, you know, the intended goal of ADUs
6 was to create more affordable housing. Well, you can
7 see, in this case, we're not really creating a new unit
8 for someone to live in. It's just an additional live-in
9 next door.

10 But back to all that, I realize we're not
11 going to change the law. But I did hear a comment about
12 following the rules. And the rules are that it should
13 be 50 percent of the existing house on the lot. So I
14 ask, why are we not following the rules? If we're going
15 to live with it, why don't we stick with the rules?

16 So that's all I have to say.

17 ACTING CHAIR KIRIK: Thank you.

18 MR. BARREIRA: Thanks.

19 ACTING CHAIR KIRIK: I do not have any more
20 cards from the public, so I'm going to close the public
21 commentary sess- -- or section of the presentation and
22 I'm going to open it up to commission discussion.

23 Let's start with Frank on this one.

24 COMMISSIONER BISHOP: Okay. So it's an
25 interesting set of circumstances for sure. I think the

1 design of the ADU actually is quite nice. I think it
2 matches the main house size-wise and so forth. I think,
3 actually, it's laid out very well on the lot as well.

4 As I look at it, this lot, in the layout, I
5 believe the ADU is pushed more away from the neighbor --
6 is that correct, as we look at this? -- than -- It's on
7 the San Antonio side -- yes? -- of the lot? Is that
8 correct?

9 MULTIPLE VOICES: Yes.

10 COMMISSIONER BISHOP: Yeah.

11 So, again, I think it's a thoughtful design.
12 I think the -- maintaining the tree and so forth, again,
13 just well thought out. It's kind of a -- I hear the
14 sticking point.

15 I think one difference about when I said
16 following the rules, since someone brought that up,
17 what's different here is, the equipment house was
18 already built and then came in front of us. This is a
19 different situation where someone is asking for a
20 variance before they actually do the work. And I think
21 we need to have an open mind about doing this.

22 I'm a big fan of doing ADUs also. I think we
23 need more affordable housing here in this part of the
24 world, and certainly in Los Altos. Rather than have the
25 state of California force us to provide affordable

1 housing, this is the correct way forward. So, you know,
2 from my perspective, again, I think it's positive in
3 many ways. I think we just need to discuss the variance
4 and what that extra 100 feet means or doesn't mean to
5 the project.

6 ACTING CHAIR KIRIK: Okay. Thank you.

7 Alex.

8 COMMISSIONER GLEW: The lot is 7500 square
9 feet. Thirty percent of that is 2250. There could
10 certainly be a larger house on the property. There
11 isn't. If we remove the 50-percent limitation, then the
12 ADU could be 1200 square feet or actually bigger than
13 the house that's on there. And that would not be
14 subordinate. It would dwarf the bungalow. So there is
15 a point to 50 percent, which is that it not look like
16 it's a second house on the unit -- or on the property.

17 whether or not it's legal or not is not up to
18 us. The city has given their laws and rules, and we're
19 here to enforce them and to apply them, not to tell the
20 city that they're wrong and that they're in violation of
21 state law. That's really not our place. We would be
22 way out of line doing that. It doesn't mean that the
23 applicant couldn't do that. But we just don't have any
24 basis for doing that. We're not empowered to do that.

25 So, to me, it's pretty clear that it's not 50

1 percent. I don't think there's a hardship. There could
2 easily be a larger house if they wanted a more
3 subordinate property.

4 The design isn't a bad design. 120 square
5 feet is not trivial. It's a 10-by-12 room. It's like
6 another bedroom.

7 As for consistent with objectives, the first
8 finding the city made, I don't agree with that, either.
9 You know, the finding -- or the zoning goal here is that
10 it be subordinate, that it look like a smaller unit next
11 to it.

12 And those are my comments.

13 ACTING CHAIR KIRIK: Michael.

14 COMMISSIONER MA: Okay. Yeah, I agree with
15 the other two commissioners, the ADU itself is well
16 designed. And, you know, I'm kind of stuck in between
17 following the rule and then also, you know, you have
18 the -- if you were to expand your house, you could
19 have -- easily have a 624-square-foot ADU.

20 On the other hand, I pass by this street
21 almost on a daily basis, so I -- I drove by Lyell
22 Street, and I know that neighborhood. It's undersize
23 parcel and smaller houses, while on the other adjacent
24 area, closer to the Foothill, is all apartments and
25 townhomes. So parking is actually a problem. I pass by

1 that -- those street day and nights. And I went there
2 during the daytime to visit. I actually -- you know, a
3 little bit of difficulty finding street parking. I had
4 to park a couple houses away. And you mention that in
5 the evening and nights.

6 So on the contextual view, I think the --
7 enlarging the size, of course, I asked the question, is
8 it possible. I know that you -- you want to -- you may
9 want to occupy yourself, you mentioned. However,
10 there's still potentially in the future that you rent
11 them both out. So contextual-wise, I think that's --
12 for discussion, that's going to generate more occupants
13 and generate parking issue, as the neighbor has also
14 mentioned.

15 So I think it's difficult on my side, 'cause
16 on one hand, you have your difficulty as a small -- you
17 want to maintain a smaller house. But on the other
18 hand, the contextual issue, there's another
19 consideration that we all have to think about, you know,
20 all those from different views.

21 That's all I have.

22 ACTING CHAIR KIRIK: Thank you.

23 First of all, I want to state, I did visit the
24 property on Lyell Street. I live on Pepper, which is
25 outside of the sphere of influence on this project. But

1 I walk Lyell Street pretty much every week. So, anyhow,
2 I'm very familiar with the house, very familiar with the
3 property, walked it.

4 I just want to let the public know that the
5 Design Review Commission was asked for input on the
6 update to the ADU ordinance. We did chime in on our
7 concerns about parking and other issues. So we were
8 heard, at least our commentary was forwarded to the
9 Planning Commission and the council.

10 Saying that, we're not here to talk about the
11 merits of an ADU. ADUs are allowed by law, and the only
12 issue in front of us tonight is the size of the ADU.

13 I think there's -- I'm having a very tough
14 issue -- challenge with finding number 3 that there is
15 something, including the size, shape, topography,
16 location, so on and so forth, of the property. I think
17 the distinction that we need to make here is that
18 there's nothing prohibiting -- there's -- the size of
19 the house is different from the size of the property.
20 The issue is, the size of the house is smaller, meaning,
21 therefore, they can't build as big of an ADU as they
22 want.

23 So the remedy -- and, clearly, the council had
24 a 50-percent number in their mind when they -- the
25 Planning Commission and the council shaped this

1 ordinance. So for us -- for me personally to override
2 the 50-percent number when there is a solution on this
3 specific property to, one, build an addition to the main
4 house, which would not in any way affect the
5 architecture or the usability of the main house; or,
6 quite honestly, once again -- I'm an architect. So I
7 design a lot of 500-square-foot efficiency units. So
8 there is the possibility to reduce the size of the ADU
9 to come into compliance. So in terms of -- in my view,
10 there is really no hardship here.

11 And, you know, I would basically, for lack of
12 a better word, run it up the ladder to the council to
13 make a decision whether they want to change their rule
14 that they established just recently.

15 So I, as designed, cannot approve this
16 increase in the size of the ADU.

17 Any other commentary?

18 would anybody like to make a motion?

19 COMMISSIONER GLEW: I'll make a motion. Be it
20 resolved that we deny the variance request for 19-V-01
21 at 49 Lyell Street. We do not find that there is
22 hardship or special circumstances in this matter that
23 would support a variance and that it would not be
24 consistent with the objectives of the city zoning plan.

25 ACTING CHAIR KIRIK: Do I hear a second?

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COMMISSIONER MA: Second.

ACTING CHAIR KIRIK: would we like to discuss
the motion?

No?

Okay. Seeing no discussion, I will call for a
vote.

All those in favor of denying the variance,
please say "aye."

MULTIPLE VOICES: Aye.

ACTING CHAIR KIRIK: Aye.

Those opposed, say "nay."

Motion passes to deny 4-0.



DATE: February 6, 2019

AGENDA ITEM # 3

TO: Design Review Commission
FROM: Eliana Hassan, Assistant Planner
SUBJECT: 19-V-01 49 Lyell Street

RECOMMENDATION:

Approve variance application 19-V-01 subject to the listed findings and conditions

PROJECT DESCRIPTION

This is a variance to allow a new detached accessory dwelling unit (ADU) to be 624 square feet in size where a maximum size of 504 square feet, or 50 percent of the size of the main house, is allowed by Code.

BACKGROUND

Parcel History

The subject parcel is designated Single-Family, Small Lot in the General Plan, zoned R1-10 (Single-Family) and is approximately 7,500 square feet in size. It is located on the north side of Lyell Street at the intersection with Tyndall Street adjacent to a multi-family neighborhood (R3-1.8 District). The one-story bungalow house on the lot was originally built in the early 1950's. While the structure is over 50 years old, it does not have the attributes or significance to be a historic structure and is not listed on the City's Historic Resources Inventory (HRI).

The existing house has a 30-foot setback from the front yard property line and an approximately 77.5-foot setback from the rear property line. The owners have no current plans to add square footage or demolish the existing house. The applicant initially applied for a design review permit in October 2018 for a guest cottage with a proposed floor area of 798 square feet in the rear yard. The proposed detached structure was deemed incompatible in scale to the main house, which is 1,008 square feet in size. The applicant later revised the plans to apply for a variance permit for a 624 square foot accessory dwelling unit (ADU) in a similar location to the proposed 798 square-foot accessory structure.

Zoning Conformance

The parcel is considered a narrow lot in the R1-10 District since it has a width of 50 feet, so the required side yard setback is reduced from 10 feet to 10 percent of the width (five feet). According to the City's recently adopted Accessory Dwelling Unit Ordinance, the total floor area for a detached ADU can be up to 1,200 square feet in size but shall not be more than 50 percent of the floor area of the existing principal residence, which is 1,008 square feet in size. Thus, the maximum floor area for the ADU is limited to 504 square feet.

DISCUSSION

Floor Area

The applicant is seeking a variance to allow for a new ADU to exceed the maximum allowable floor area permitted by the Zoning Code. The Code requires that an accessory dwelling unit shall not exceed 50 percent of the principal residence's floor area or 1,200 square feet, whichever is lower. However, since the applicant is seeking a larger ADU, 624 square feet in size, a variance is required in order to meet their needs and anticipated uses. A variance justification letter from the applicant that provides additional information to support the request is included in Attachment A.

Based on the information in the applicant's letter and site visits, the smaller than usual size of the primary residence limits their ability to construct a reasonably sized ADU. As cited by the applicants, it would be difficult to achieve a similar floor plan while maintaining a square footage under the allowable 504 square feet. From the field visit, the rear yard is a relatively long but narrow space, which creates constrained building conditions. There is also a large mature oak tree that further constrains the placement of an accessory structure.

Variance Findings

In order to approve a variance, the Commission must make three positive findings pursuant to Section 14.76.070 of the Zoning Code:

1. The granting of the variance will be consistent with the objectives of the City's zoning plan;
2. That the granting of the variance will not be detrimental to the health, safety, or welfare of persons living or working in the vicinity or injurious to property or improvements in the vicinity; and
3. Variances from the provisions of this chapter shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location, or surroundings, the strict application of the provisions of this chapter deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classifications.

The granting of the variances is consistent with the objectives of the zoning plan because the accessory dwelling unit remains subservient to the primary residence. The ADU is smaller in scale with lower wall heights, a shallow pitched roof with a ridge at 12 feet above grade, and a footprint that is designed around the large oak tree in the rear yard. The structure is proposed to be built with compatible materials to the primary residence, maintains the intent of the City's Accessory Dwelling Unit Ordinance, and enhances the usability of the property without requiring an expansion or demolition and rebuilding of the main house.

The granting of the variances will not be detrimental to persons living or working in the vicinity or injurious to any properties in the vicinity because the ADU is built to an appropriate scale and size that is nonintrusive to neighboring properties. The proposed setbacks follow requirements for Accessory Structures and the ADU is 12 feet tall at its highest point. Proposed landscape screening and a location in the rear yard limits visibility from the street and from adjacent properties.

The long and narrow shape of the lot, in combination with an unusually small primary residence, results in a smaller and less usable backyard space than other properties that are in the R1-10 District. A strict application of the Code would deprive this property of privileges enjoyed by other properties

under the identical zoning classification, where ADUs up to 1,200 square feet in size are allowed. Therefore, there is a special circumstance that justifies a variance to allow a new detached ADU to be 624 square feet in size and exceed the 50 percent of the main house size limitation.

Environmental Review

This project is categorically exempt from environmental review under Section 15303 of the California Environmental Quality Act because it involves the construction of a detached Accessory Dwelling Unit on a single-family zoned property.

Public Notification

A public hearing notice was published in *Los Altos Town Crier*, posted on the property and mailed to all property owners within 500 feet of the subject property. The mailed notification included 133 nearby property owners. The Notification Map is included in Attachment B.

Public Correspondence An email was received from a neighbor at 55 Lyell Street, which expressed opposition for the variance request for the ADU. This correspondence is included in Attachment C.

Cc: Joe Sabel, Aero11 Design, Applicant and Designer
Peter Brewer, Property Owner

Attachments:

- A. Application and Justification Letter
- B. Area, Vicinity and Public Notification Maps
- C. Public Correspondence
- D. Project Plans

FINDINGS

19-V-01 – 49 Lyell Street

Regarding the variance to allow an ADU to exceed 50 percent of the size of main house, the Design Review Commission finds the following in accordance with Section 14.76.070 of the Municipal Code:

1. The granting of the variance will be consistent with the objectives of the City's zoning plan because; the ADU is within the City's 1,200 square-foot size limit, minimally visible from the street or adjacent properties and would not negatively affect the safety, peace, comfort, convenience, prosperity, or general welfare of the property owner or adjacent properties.
2. The granting of the variance will not be detrimental to the health, safety, or welfare of persons living or working in the vicinity or injurious to property or improvements in the vicinity because the ADU has been designed to maintain privacy between the surrounding properties through a reasonably sized footprint and several new screening trees and landscaping that will be planted along the side property lines.
3. There is a special circumstance applicable to the property due to the long and narrow shape of the lot, as well as the small primary residence, and the strict application of the provisions of this chapter would deprive such property of privileges enjoyed by other properties in the vicinity and under identical zoning classifications. The smaller than average primary residence and lot size limits the area available to build an ADU by Zoning Code, giving the property a less sizable ADU than other properties in the vicinity that are in the R1-10 District.

CONDITIONS

19-V-01 – 49 Lyell Street

GENERAL

1. Approved Plans

This approval is based on the plans received on January 3, 2019, and the written application materials provided by the applicant, except as may be modified by these conditions.

2. Indemnity and Hold Harmless

The applicant/owner agrees to indemnify, defend, protect, and hold the City harmless from all costs and expenses, including attorney's fees, incurred by the City or held to be the liability of the City in connection with the City's defense of its actions in any proceedings brought in any State or Federal Court, challenging any of the City's action with respect to the applicant's project.

**MINUTES OF THE REGULAR MEETING OF THE DESIGN REVIEW
COMMISSION OF THE CITY OF LOS ALTOS, HELD ON WEDNESDAY,
FEBRUARY 6, 2019 BEGINNING AT 7:00 P.M. AT LOS ALTOS CITY HALL,
ONE NORTH SAN ANTONIO ROAD, LOS ALTOS, CALIFORNIA**

ESTABLISH QUORUM

PRESENT: Vice-Chair Kirik, Commissioners Bishop, Glew, and Ma
ABSENT: Chair Harding
STAFF: Planning Services Manager Dahl, Associate Planner Gallegos and Assistant Planner Hassan

PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

None.

ITEMS FOR CONSIDERATION/ACTION

CONSENT CALENDAR

1. Design Review Commission Minutes

Approve minutes of the regular meeting of December 19, 2018.

Action: Upon a motion by Commissioner Glew, seconded by Commissioner Ma, the Commission approved the minutes from the December 19, 2018 regular meeting.

The motion was approved (4-0) by the following vote:

AYES: Vice-Chair Kirik, Commissioners Bishop, Glew and Ma

NOES: None

ABSENT: Chair Harding

PUBLIC HEARING

2. 18-V-09 – Charles Eckel – 581 Van Buren Street

Variance to allow an existing pool equipment enclosure that exceeds six feet in height to be maintained in an exterior side yard setback area. The structure, which is 70 square feet in size, has a height of up to 7.5 feet where a maximum of six feet is allowed by Code. *Project Planner: Hassan*

Assistant Planner Hassan presented the staff report, recommending approval of variance application 18-V-09 subject to the listed findings and conditions.

Project applicant Charles Eckel presented the variance, noting that the taller height was necessary for to provide clearance for the pool equipment and the existing trees and pool in the rear yard limited placement of the equipment in a conforming location.

Public Comment

None.

Action: Upon a motion by Commissioner Bishop, seconded by Commissioner Glew, the Commission denied variance application 18-V-09 per negative findings 1, 2 and 3.

The motion was approved (4-0) by the following vote:

AYES: Vice-Chair Kirik, Commissioners Bishop, Glew and Ma

NOES: None

ABSENT: Chair Harding

3. 19-V-01 – Joe Sabel – 49 Lyell Street

Variance to allow a new detached accessory dwelling unit (ADU) to be 624 square feet in size where a maximum size of 504 square feet, 50% of the size of the main house, is allowed by Code. *Project Planner: Hassan*

Assistant Planner Hassan presented the staff report, recommending approval of the variance subject to the listed findings and conditions.

Property owner Peter Brewer presented the variance, noting that the small size of the main house limited his ability to build a reasonably sized ADU, the extra 120 square feet would still keep the ADU as subordinating to the main house and the placement in the rear ensured that it would not be visible from the street. Property owner Laura Brewer also spoke in support of the variance.

Public Comment

Resident and neighbor Tom Barreira, expressed concern about the variance, noting that ADUs on small lots have more impact, the driveway is too small to accommodate three cars; and the project should follow the rules and keep the ADU to 50 percent the size of the main house.

Action: Upon a motion by Commissioner Glew, seconded by Commissioner Ma, the Commission denied variance application 19-V-01 per negative findings 1 and 3.

The motion was approved (4-0) by the following vote:

AYES: Vice-Chair Kirik, Commissioners Bishop, Glew and Ma

NOES: None

ABSENT: Chair Harding

DISCUSSION

4. 18-SC-33 – Eugene Sakai, AIA – 137 Sylvian Way

Appeal of an administrative design review denial for a new one-story house. The project includes a new house with 3,954 square feet on the first story. *Project Planner: Gallegos*

Associate Planner Gallegos presented the staff report, recommending the Commission uphold the denial of design review application 18-SC-33 subject to the listed findings.

Property owner Shua Zhong and project architect Eugene Sakai presented the project that the adjacent neighbors support the design, the neighborhood context is diverse and large trees screen the house.

Public Comment

Resident Linda Gas spoke in support of the proposed project.

Action: Upon a motion by Commissioner Glew, seconded by Commissioner Ma, the Commission granted the appeal and approved design review application 18-SC-33 subject to positive findings, with standard conditions and the following additional condition:

- Reduce the height of the wall plates to nine feet with the family room at 11 feet.

The motion was approved (4-0) by the following vote:
AYES: Vice-Chair Kirik, Commissioners Bishop, Glew and Ma
NOES: None
ABSENT: Chair Harding

COMMISSIONERS' REPORTS AND COMMENTS

Vice-Chair Kirik and Commissioners Bishop and Ma noted that they would be unable to attend the regularly scheduled Design Review Commission meeting on February 20, 2019.

POTENTIAL FUTURE AGENDA ITEMS

Planning Services Manager Dahl noted that staff and the City Attorney will hold a training session for the Commission at the next available meeting.

ADJOURNMENT

Vice-Chair Kirik adjourned the meeting at 8:40 PM.

Zachary Dahl, AICP
Planning Services Manager