

Exhibit E

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Notice of Intent to Adopt a Mitigated Negative Declaration
Permit Number PLN210037
August 23, 2022

County of Monterey
Housing & Community Development
Attn: Craig Spencer
1441 Schilling Pl South 2nd Floor
Salinas, CA 93901

Via Email: CEQAcomments@co.monterey.ca.us

Dear Monterey County Zoning Administrator,

We are all for the demolition and re-construction of the existing single-family dwelling at 2445 Bay View Avenue, Carmel. As the residents immediately north of the property, not only is the existing structure an eye sore, with two feral cats living there, but importantly it appears to represent a potential serious fire hazard.

Additionally, the notice of intent to adopt a mitigated negative declaration has prompted us to raise an issue we probably should have previously raised, but we did not understand enough to do so. The issue of emergency workers, mainly fireman's ability to get through the north side of the structure with equipment was correctly called into question. At the time, it was stated the new home design is the same as current 4-foot setback. However, we do not believe that is the case. Can we please make sure that the property setback is properly set to code which I understand is not less than 5 feet?

Finally, with regard to the parking variance, we request that no allowances be made that allows for additional on-street parking on our crowded weekend Bay View street due to being so close to Carmel Beach and public bathrooms. We don't know, but anticipate that the house may be rented to multiple tenants, one for the main house and the other for the JrADU.

Thank you for your counsel and appreciate that this home is finally being developed.

Very best,


Michael Lynch
michaelolynch@me.com
650-823-4621


Susan Lynch
susanlynch10s@gmail.com
650-766-4576

Friedrich, Michele

From: Michael Lynch <michaelolynch@me.com>
Sent: Wednesday, August 24, 2022 2:49 PM
To: Friedrich, Michele
Cc: Susan Lynch; Angelo, Philip
Subject: Re: Notice of Intent to Adopt a Mitigated Negative Declaration - Permit Number PLN210037

[CAUTION: This email originated from outside of the County. Do not click links or open attachments unless you recognize the sender and know the content is safe.]

Thank you Michele!

And so you have it, this is a picture of the 2445 Bay View backyard which we identified as a potential fire hazard, taken from our deck.

Very best, Michael





Sherri and Randy Pogue
2465 Bay View Ave
Carmel, CA 93923
214-704-0964

August 24, 2022

County of Monterey
Housing & Community Development
Attn: Craig Spencer
1441 Schilling Pl South 2nd Floor
Salinas, CA 93901
Via Email: CEQAcomments@co.monterey.ca.us (hard copy follow-up via US Mail)

Re: Barone Claire F; File Number PLN210037

Dear Monterey County Zoning Administrator,

We own property 2 lots north of the subject property on Bay View. We have the following concerns regarding the proposed development of the subject property at 2445 Bay View Avenue:

North Side Setback – The proposed site plan indicates the north side setback is “consistent with the existing structure” but stipulates that setback to be 4’ for the JADU (located on the north east corner of the proposed structure).

The current structure is less than 3’ from the fence on the north property line - ~33” at the north east corner.



Sherri and Randy Pogue
2465 Bay View Ave
Carmel, CA 93923
214-704-0964

Monterey County Zoning Code Section 20.12.060 requires a side setback of not less than 5' for property zoned MDR(CZ). We have not received notification regarding a setback variance request. We respectfully request verification that the proposed development will conform to current setback requirements. Further, please provide information regarding relevant code section allowing a setback of less than 5' or any variance granted.

The story poles erected do not depict the proposed north side setback - there are no flags indicating the sides of the proposed development leading us to presume the development would be in accordance with current zoning requirements. The property appears to be adequate width to support the proposed structure and meet MDR(CZ) setback requirements by shifting the new structure south.



Parking variance – Bay View Ave is highly congested with beach goers parking on both sides of the street reducing traffic flow down to one lane on busy days, severely limiting the ability of emergency vehicles to access the area. We request that consideration be given to the already congested conditions on Bay View and not grant any variance that would reasonably be expected to result in additional on street parking.

Respectfully,

Sherri Pogue
Manager, 831 Investments LLC
s.pogue@gmail.com
214-704-0964

Randy Pogue
r.pogue@gmail.com
214-883-2559

Sherrí Pogue
2465 Bay View Ave
Carmel, CA 93923

September 6, 2022

County of Monterey
Housing & Community Development
Attn: Monterey County Zoning Administrator
1441 Schilling Pl South 2nd Floor
Salinas, CA 93901
Via Email: CEQAcomments@co.monterey.ca.us

Re: Concerns Regarding Planning Process

Dear Monterey County Zoning Administrator,

We own property located at 2465 Bay View Ave, Carmel. We recently received a Notice of Intent to Adopt A Mitigated Negative Declaration for the property at 2445 Bay View Avenue: Barone Claire F; File Number PLN210037. The notice was specific to a request for a parking variance. This notice called our attention to the filed plans for development of this property. We submitted a letter outlining our concerns regarding this development plan prior to the stated September 1, 2022 deadline.

We are concerned, however, that the development has granted approvals for setbacks outside of current code requirements and done so without notification or transparency. Our expectation is that the planning department will act as a gatekeeper to ensure all submitted projects meet current code requirements and to reject those that do not and/or follow a transparent process regarding any variances and waivers.

This particular project appears to have thus far proceeded with setbacks on the north side and front that are inconsistent with current code for properties zoned MDR(CZ).

North Side Setback – The proposed site plan indicates the north side setback is “consistent with the existing structure” but stipulates that setback to be 4’ for a proposed JADU (located on the north east corner of the proposed structure). It not only appears to rely on a misreading of Ordinance 5343 but also relies on a misstatement of the existing structure setback.

The existing structure is less than 3’ from the fence on the north property line - ~33” at the north east corner – not 4’ (photo submitted with letter specific to this project). The filed plans appear to show the smaller than 4’ setback (page A140) but do not call it out on the drawing – see images below. It further appears the project relies on a setback that is allowed for ADU’s, not JADU’s. Monterey County Ordinance No. 5343, Section 6, stipulates that “side and rear setbacks for ADU’s shall be a minimum of four (4) feet and shall be sufficient for fire and safety”. **The reduced setback is specific to ADU’s and does not include JADU’s.** As part of a newly constructed primary structure, the JADU should meet all

codes required of the primary structure – per Monterey County Zoning Code Section 20.12.060 requires a side setback of not less than 5’ for property zoned MDR(CZ). Allowing this project to proceed with the existing less than 3’ setback creates a hazard for fire safety and sets a bad precedent for future projects.

Front Setback – The proposed site plan shows the front line of the structure to encroach into the required 20’ front setback. Although the plan does not call out the encroachment, it appears to rely on a misreading of Ordinance 5343 which specifically states in Section 2(b)(i) “The ADU or JADU must be located within the space of an existing or proposed single family dwelling, or if within an existing accessory structure, it may include an expansion of the accessory structure of not more than 150 square feet beyond the existing physical dimensions of the existing accessory structure to accommodate ingress and egress”. Note that this section applies to an **existing accessory structure** – not new construction. Further, this section applies only to resource constrained areas designated in Section C.1. While we are less concerned about the front encroachment than the north side encroachment, we are nonetheless concerned about the lack of transparency.

This project includes demolition of the existing structure and rebuild – as such, it should be brought into compliance with all current code requirements. While there may be a desire to use an existing slab to reduce construction costs, this should not be a valid reason to grant a waiver / variance to code.

Please advise if there are code sections that specifically allow for these encroachments or if the process for variances with public notice does not somehow apply.

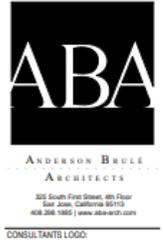
Respectfully,

Sherri Pogue
Manager, 831 Investments LLC
s.pogue@gmail.com
214-704-0964

Excerpt from Planning Submittal Dated October 25, 2021
 2445 Bay View Avenue, Carmel, CA 93923

PROPOSED SITE PLAN SHEET NOTES

- A. SEE LANDSCAPE PLAN, SHEET L11 FOR PROPOSED PLANTING SCHEDULE AND LOCATIONS
- B. MAINFIRE ESCAPE AWAY FROM HOUSE AT ALL ADJACENT WOODS/PAV AND LANDSCAPE TRIP, UNID. - S.C.D.



PLANNING
 SUBMITTAL
 OCTOBER 25, 2021



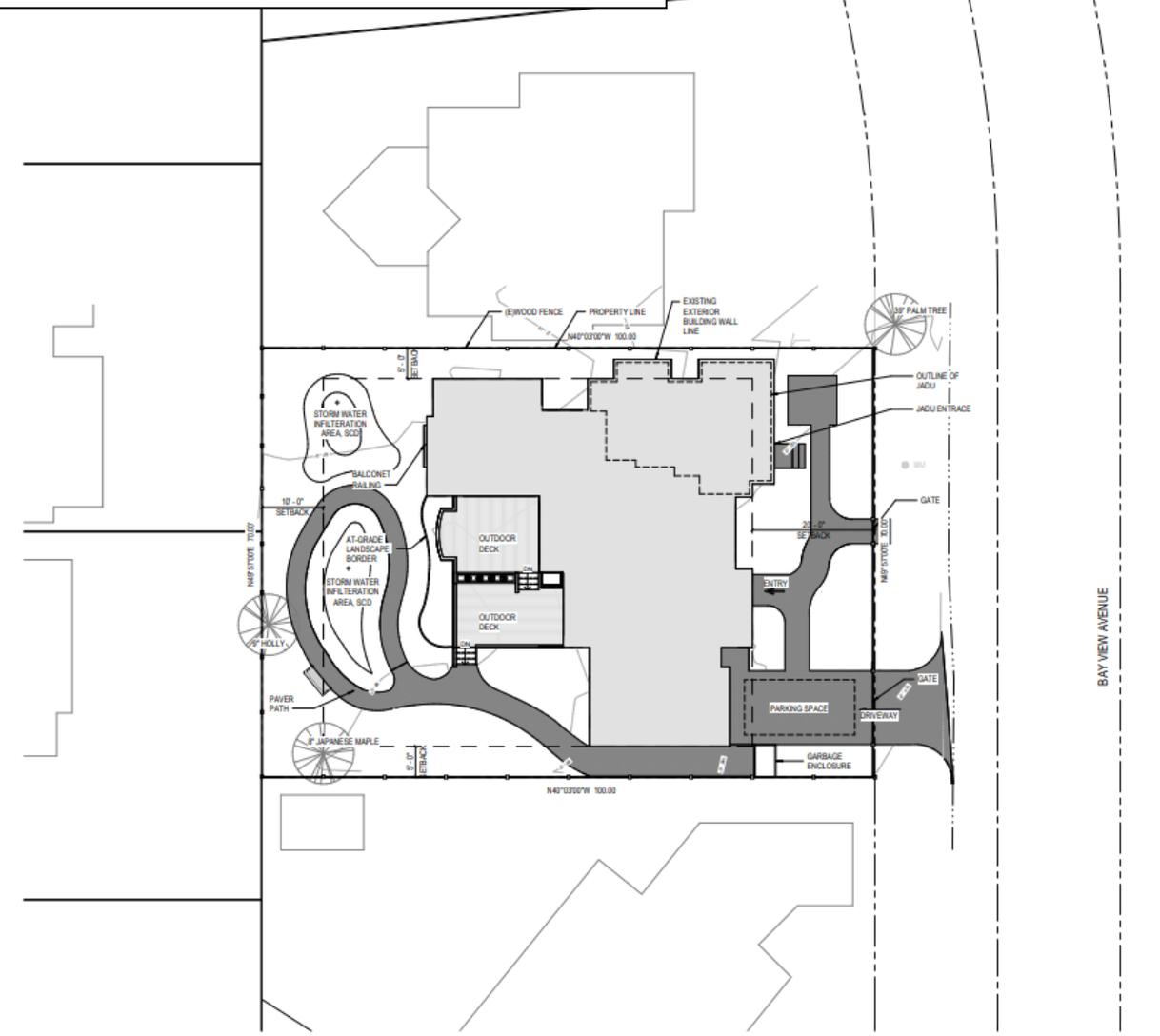
NO.	DATE	REVISIONS

PROJECT TITLE:
**BAY VIEW
 RESIDENCE**
 2445 BAY VIEW AVE
 CARMEL CA 93923

PROJECT NO. 20-0802-0
 DATE 10/25/2021
 SHEET TITLE

PROPOSED SITE
 PLAN

SCALE 1/8" = 1'-0"
 A140

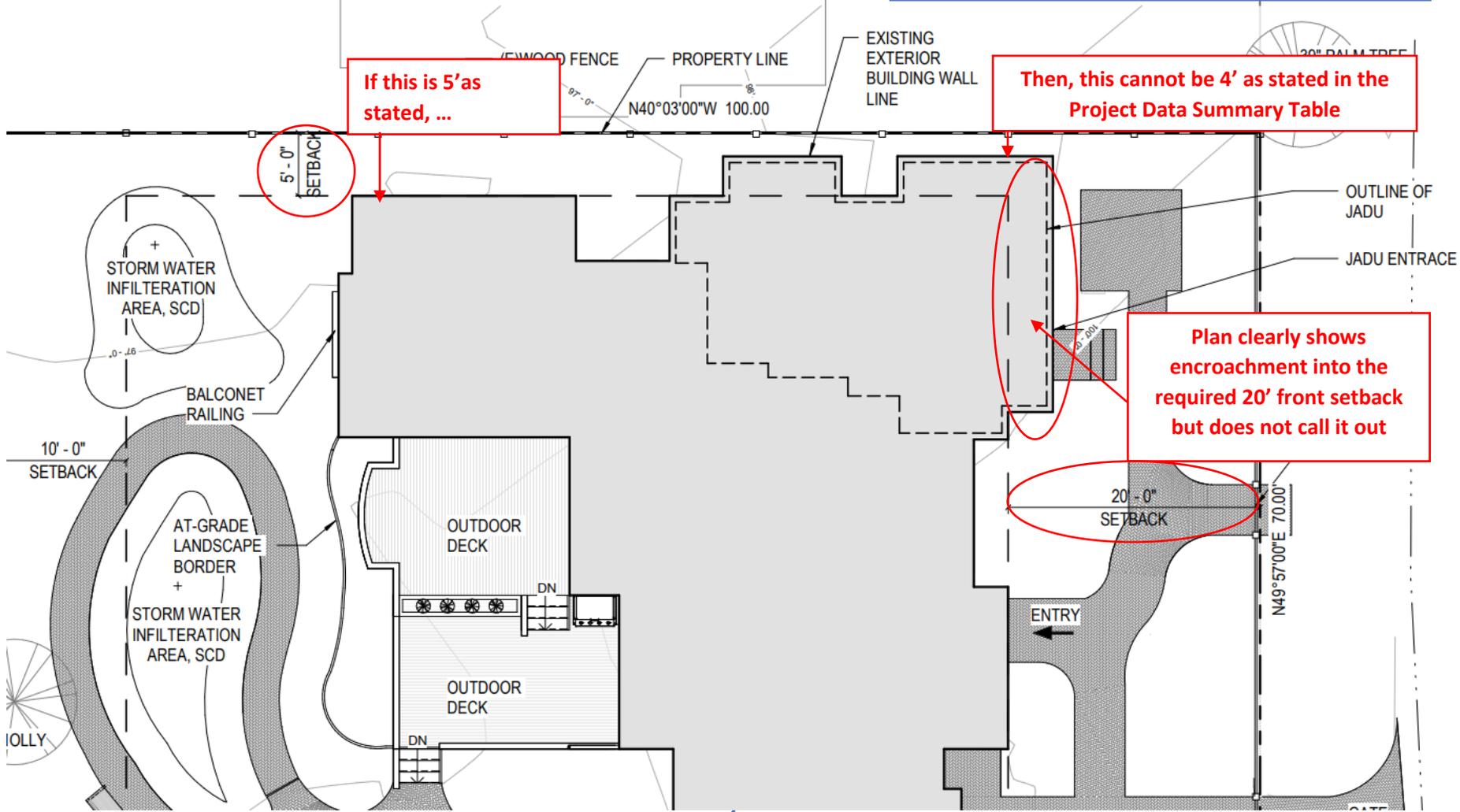


1 PROPOSED SITE PLAN
 1/8" = 1'-0"

Zoomed in Section for Emphasis
Planning Submittal Dated October 25, 2021
2445 Bay View Avenue, Carmel, CA 93923

Excerpt from Project Data Summary Table

MAIN SETBACKS:	
FRONT YARD SETBACK:	20'
REAR YARD SETBACK:	10'
SIDE YARD SETBACK:	5'
JADU SETBACKS:	
SIDE YARD SETBACK:	4'- SAME AS EXISTING





KaKoon Ta Ruk Band of Ohlone-Costanoan
Indians of the Big Sur Rancheria



August 29,2022

County of Monterey
Housing & Community Development
Attn: Craig Spencer
1441 Schilling Place, South 2nd Floor
Salinas, CA. 93901

RE: Project Title: Barone Claire F File # PLN 210037 Location: 2445 Bay View Ave. Carmel by the Sea.

Thank you for your project notification letter dated, August 2, 2022, regarding the draft Mitigated Negative Declaration and Initial Study for the Barone Claire F File # PLN 210037 Location: 2445 Bay View Ave. Carmel by the Sea in Monterey County. We appreciate your effort to contact us and wish to respond.

The Tribe's Cultural Specialist has reviewed the project and concluded that it is within the aboriginal Territories of the KaKoon Ta Ruk Band of Ohlone-Costanoan Indians of the Big Sur Rancheria. Therefore, we have a cultural interest and authority in the proposed project area.

Based on the information provided, the Tribe has concerns that the project could impact both known and Unknown cultural resources. It was also noted that consultation took place with Ohlone/Costanoan Esselen Nation (OCEN) Chairperson Louise Miranda Ramirez. It was stated OCEN was denied request for Archaeological reports which are kept confidential to protect resources. The Tribe is requesting a copy of the Environmental impact report (EIR) or (DEIR) for this project, along with any additional detailed project Information.

Should you have any questions, please contact the following individuals:

Isaac Bojorquez
Chairman
Cell: (530) 723-2380
Email: ohlone_1@yahoo.com

Lydia Bojorquez
Vice-Chairperson
Cell: (530) 650-5943
Email: warrior_woman151@yahoo.com

Please refer to identification number KKTR- 08292022-01 in any correspondence concerning this project.

Thank you for providing us the opportunity to comment.

Shurruru,

Vice-Chairperson
Tribal Cultural Specialist

AVILA CONSTRUCTION COMPANY

September 1, 2022

Mr. Phil Angelo, Associate Planner
Housing and Community Development – Planning
1441 Schilling Place South
2nd Floor
Salinas, CA 93901- 4527
AngeloP@co.monterey.ca.us

Attn: Mr. Phil Angelo

Ref: PLN210037 – BARONE CLAIRE F @ 2445 Bay View Avenue, Carmel CA 93923

Subj: JADU related clarifications

Mr. Angelo,

The design and construction team reviewed comments received from the public regarding the Initial Study/ Mitigated Negative Declaration for the Barone project [PLN210037]. We would like to take the opportunity to provide additional clarification on a few points raised in the public comments.

Setback @ North Side of the Property

The north side of the structure contains the Junior Accessory Dwelling Unit. As a result, the setbacks in this area need to be consistent with State ADU law, Gov. Code section 65852.2 (a) (1) (D) (vii), in lieu of the local zoning code. Gov. Code section 65852.2 (a) (1) (D) (vii) reads (red emphasis added):

“**No setback shall be required for** an existing living area or accessory structure **or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit**, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.”

Additionally, Gov Code Section 65852.2 (e)(D)(2) reads (red emphasis added):

“**A local agency shall not require**, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, **the correction of nonconforming zoning conditions.**”

The proposed JADU/ north side of Project depict setbacks as they currently exist; the Architect has also taken care to ensure the height, roof slope, and overhangs of the new JADU are consistent with the existing structure. This is fully consistent with and allowed by the above code section. Plan Sheet G001 section regarding JADU setbacks could be amended in future iterations to clarify setbacks at JADU areas are to be a minimum of 4' or same as existing structure, whichever is less.

Parking

We fully understand the commenter's concern regarding on- street parking congestion. We would like to provide additional context regarding the JADU which we hope will alleviate some concern.

The Owner of the property intends to reside there. In fact, including a JADU **requires** that she reside on the property – either in the JADU or the main house- consistent with Gov Code Section 65852.22 (a)(2). She intends to use whichever unit she doesn't live in for visiting friends and family, or perhaps a live- in caretaker as she ages. It should also be noted that a JADU is prohibited from being rented as a short term rental (30 days or less).

No parking related variance is needed to accommodate a JADU. The proposed layout is fully consistent with JADU law, which requires no parking for a JADU since it is a part of the proposed or existing primary residence (Gov Code Section 65852.2 (d) (3)).

It is important to note that a jurisdiction “shall ministerially approve an application for a building permit within a residential” zone when “the accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single family dwelling” (Gov Code Section 65852.2 (e) (1) (A) (i)). Therefore, items related to an Accessory Dwelling Unit (ADU) or Junior Accessory Dwelling Unit (JADU) **shall not** be referred for discretionary hearing.

We confirmed the above JADU related conclusions with The Housing and Community Development Department at the State of California. Attached is a brief supporting email correspondence.

Thank you,

Kathryn Avila
Real Estate Entitlement, Investment, and Special Projects
AVILA CONSTRUCTION COMPANY

Kathryn Avila

From: ADU <ADU@hcd.ca.gov>
Sent: Wednesday, August 31, 2022 3:50 PM
To: Kathryn Avila; ADU
Cc: Daniel Ho; Jason Hull; Lisa Calnon; Pamela Anderson-Brule; bay_view_residence@aba-arch.com
Subject: RE: Clarifications needed- JADU scenario

Yes, those are right. For future reference refer to the HCD ADU Handbook [here](#).

From: Kathryn Avila <Kathryn@avilaconst.com>
Sent: Tuesday, August 30, 2022 11:50 AM
To: ADU <ADU@hcd.ca.gov>
Cc: Daniel Ho <Daniel@aba-arch.com>; Jason Hull <Jason@aba-arch.com>; Lisa Calnon <lisa@avilaconst.com>; Pamela Anderson-Brule <Pamela@aba-arch.com>; bay_view_residence@aba-arch.com
Subject: Clarifications needed- JADU scenario

Good afternoon,

We are working on a project which includes a JADU component. The project is a complete renovation of an existing single family home into a single family home+ JADU unit. The newly created JADU will be interior to the footprint of the existing single family home. This project is in the Coastal Zone.

Can you please help confirm that our working assumptions are correct:

- Setbacks are not required if the JADU is constructed in the footprint of the existing house. Our reference – Gov Code Section 65852.2 (a) (1) (D) (vii) :
 - o “No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.
- No additional parking is required for the JADU. Our reference- Gov Code Section 65852.2 (d) (3)

- “Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:
 - (1) The accessory dwelling unit is located within one-half mile walking distance of public transit.
 - (2) The accessory dwelling unit is located within an architecturally and historically significant historic district.
 - (3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.
 - (4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
 - (5) When there is a car share vehicle located within one block of the accessory dwelling unit.

As far as I can tell, the Local Coastal Implementation plan does not provide special setback requirements or parking standards for residential structures.

Thanks for your time,

KATHRYN AVILA

Real Estate Entitlement, Investment, and Special Projects

Email: kathryn@avilaconst.com

Direct Dial: 831-382-3524 | Cell: 831-540-7858 | Main Office: 831-372-5580

Fax: 831-372-5584

12 Thomas Owens Way, Ste 200, Monterey, CA 93940

