

Exhibit D

This page intentionally left blank.

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/PAVING AND LANDSCAPE TRIP, UNID. - S.C.D.



ANDERSON BULL
 ARCHITECTS
 305 South First Street, 4th Floor
 San Jose, California 95113
 408.268.1885 | www.aba-arch.com

CONSULTANTS LOGO

PLANNING
 SUBMITTAL
 OCTOBER 25, 2021



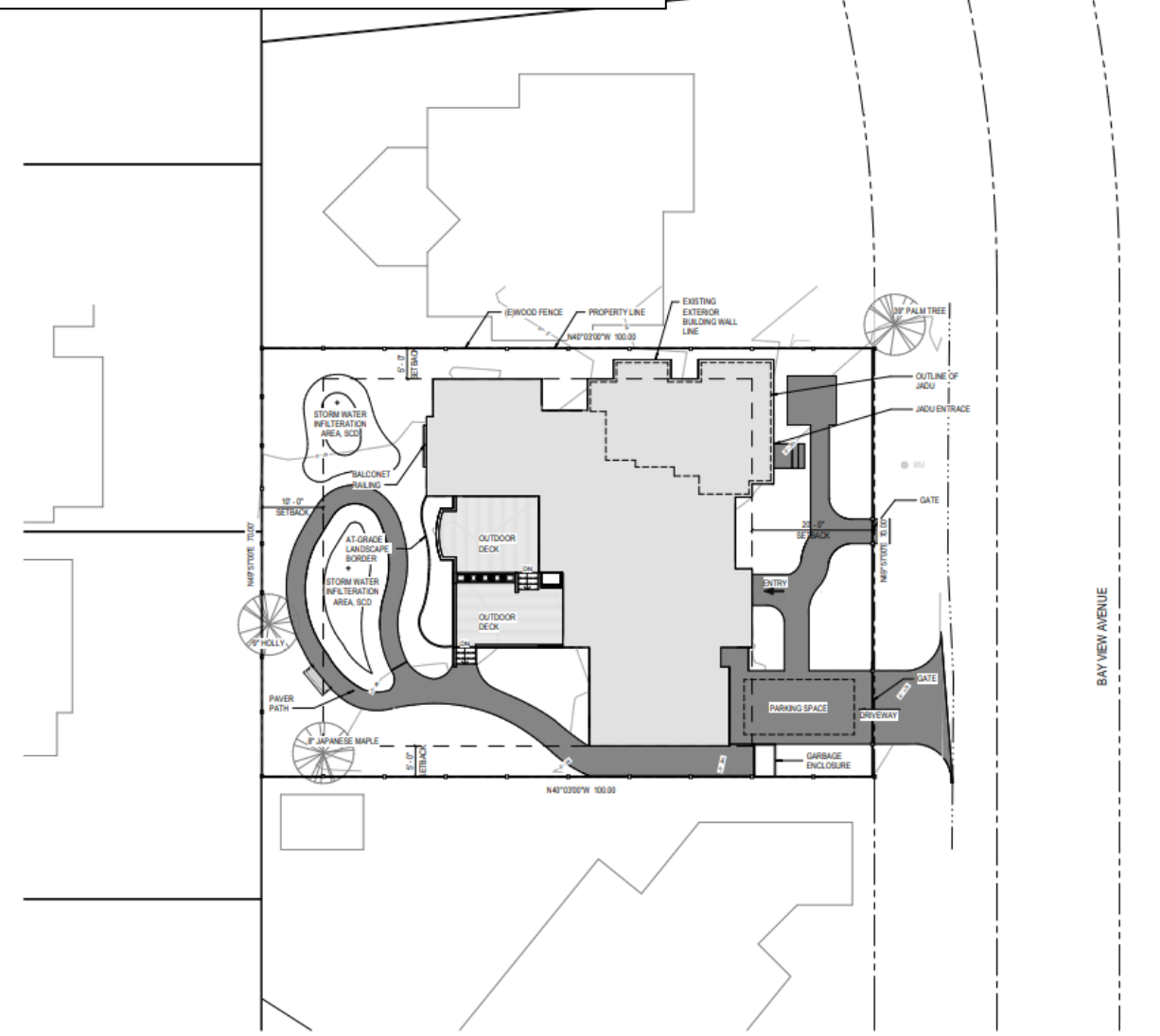
NO.	DATE	REVISIONS

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

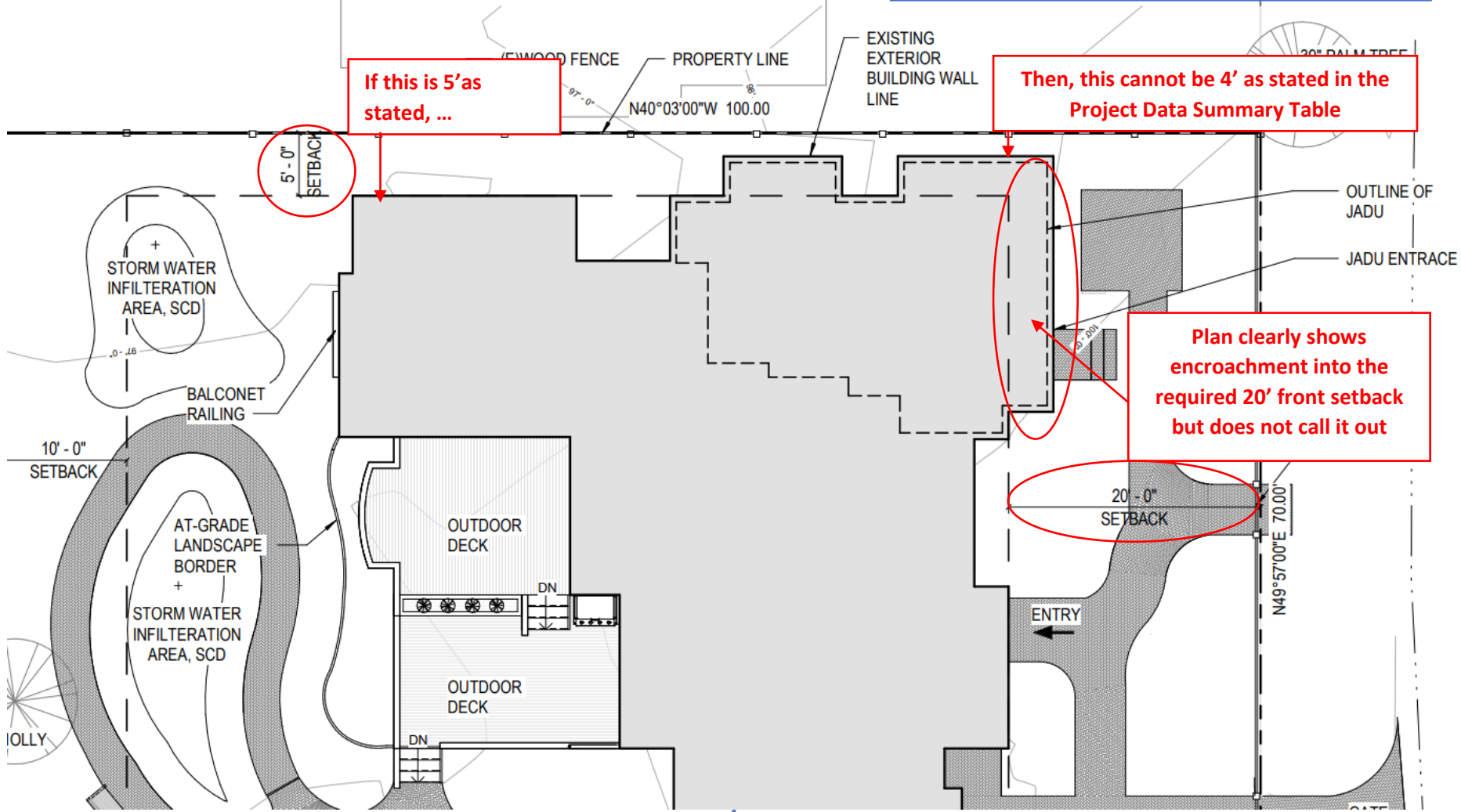


1 PROPOSED SITE PLAN
 1/8" = 1'-0"

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



Sherrí Pogue
2465 Bay View Ave
Carmel, CA 93923

September 21, 2022

County of Monterey
Housing & Community Development
Attn: Phillip Angelo, Associate Planner
1441 Schilling Pl South 2nd Floor
Salinas, CA 93901
Via Email: pchearingcomments@co.monterey.ca.us

Re: BARONE CLAIRE F; PLN210037; 2445 BAY VIEW AVE, CARMEL; APN 009-411-005-000

Dear Mr. Angelo,

We own the property located at 2465 Bay View Ave, Carmel. We recently received a Notice of Public Hearing relating to development of the property at 2445 Bay View Avenue: Barone Claire F; File Number PLN210037.

Based on new information provided in the notice cited above and in email correspondence recently received from the property developer, Avila Construction, we object to the proposed development plan, specifically the north side setback, on the following basis:

1. Any prior approvals / reviews of the setback were based on misrepresentation of the facts. The existing structure is setback a mere 33" at the north east corner – not 4' (photo submitted with previous objection letter). The filed plans specified a setback of 4'. Any fire or other safety review conducted on the basis of a 4' side setback should be considered null and void.
2. In email received on September 14, 2022 (copy attached) Lisa Calnon, Project Manager, Avila Construction cited reliance on State of California Code Section 65852.2(a)(1)(D)(vii) as the basis for requesting approval of the junior accessory dwelling unit with the existing structure setback. 65852.2(a)(1)(D)(vii) states (**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.”

The subsection specifically calls out “accessory dwelling unit” but does NOT call out “junior accessory dwelling unit”. Numerous paragraphs within the referenced State of CA 65852.2 specifically call out “junior accessory dwelling unit” including several that specify applicability to both “accessory dwelling unit” and “junior accessory dwelling unit” whereas

others, including the one being relied upon, do not. It is illogical to believe the state simply neglected to include the words “junior accessory dwelling unit” in this subsection when they clearly included it in others. This subsection should be read and interpreted as written to apply solely to “accessory dwelling unit(s)”. The reliance on this subsection appears inappropriate without in-depth legal review and opinion.

3. Lisa Calnon of Avila Construction additionally cited reliance on State of California Code Section 65852.2(e)(D)(2) as the basis for requiring approval of the JADU as proposed. 65852.2(e)(D)(2) states:

“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 intent of this subsection appears to be to prevent local jurisdictions from extracting corrections to unrelated zoning non conformances as a condition to approval of an application under CA 65852.2/65852.22 or related ordinances. The applicant is asking the County to believe this code subsection completely eviscerates any and all zoning requirements (including those set forth in Monterey County Zoning Code Section 20 and Monterey County Ordinance No. 5343) for any project incorporating an accessory dwelling unit or junior accessory dwelling unit. If allowed to proceed on this basis, the County is setting a very dangerous precedent which will surely be exploited by simply carving out a “junior accessory dwelling unit” within any proposed single-family dwelling.

4. A junior accessory dwelling unit is, by definition, part of a single-family dwelling. As such, fire safety regulations, including side and rear setbacks, specific to single-family residences not otherwise specifically excepted by junior accessory dwelling unit statutes apply. State of California Code Section 65852.22(d) addresses this issue and reads as follows (**emphasis added**):

“for purposes of any fire or life protection ordinance or regulation, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit. This section shall not be construed to prohibit a city, county, city and county, or other local public entity from adopting an ordinance or regulation relating to fire and life protection requirements within a single-family residence that contains a junior accessory dwelling unit **so long as the ordinance or regulation applies uniformly to all single-family residences, within the zone regardless of whether the single-family residence includes a junior accessory dwelling or not.**”

The existing north side setback of 33” is not only inconsistent with Monterey County Ordinance 20.12.060 requiring side setbacks for single-family dwellings of not less than 5’ for properties in zone MDR(CZ), it is inadequate for fire personnel access, insufficient to provide a defensible space between properties, and unsafe for emergency egress from the proposed door located on the north side of the junior accessory dwelling unit.

5. Should the County proceed with approval of the proposed junior accessory dwelling unit on any basis, such approval must be conditioned on meeting the requirements of California Code Section 65852.22(a) which reads (**emphasis added**):

“(a) Notwithstanding Section 65852.2, a local agency may, by ordinance, provide for the creation of junior accessory dwelling units in single-family residential zones. The ordinance may require a permit to be obtained **for the creation of a junior accessory dwelling unit**, and shall do **all of the following**:

(1) Limit the number of junior accessory dwelling units to one per residential lot zoned for single-family residences with a single-family residence already built on the lot.

(2) **Require owner-occupancy in the single-family residence in which the junior accessory dwelling unit will be permitted.** The owner may reside in either the remaining portion of the structure or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.

(3) **Require the recordation of a deed restriction, which shall run with the land, shall be filed with the permitting agency, and shall include both of the following:**

(A) A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.

(B) A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this section.

(4) Require a permitted junior accessory dwelling unit to be constructed within the existing walls of the structure, and require the inclusion of an existing bedroom.

(5) Require a permitted junior accessory dwelling to include a separate entrance from the main entrance to the structure, with an interior entry to the main living area. A permitted junior accessory dwelling may include a second interior doorway for sound attenuation.

(6) Require the permitted junior accessory dwelling unit to **include an efficiency kitchen, which shall include all of the following:**

(A) **A sink with a maximum waste line diameter of 1.5 inches.**

(B) **A cooking facility with appliances** that do not require electrical service greater than 120 volts, or natural or propane gas.

(C) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

Thank you for your attention to these matters.

Respectfully,

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



Sherri Pogue <s.pogue@gmail.com>

2445 Bay View Avenue, Carmel - Barone PLN210037

1 message

Lisa Calnon <lisa@avilaconst.com>
To: "S.Pogue@Gmail.com" <S.Pogue@gmail.com>

Wed, Sep 14, 2022 at 2:01 PM

Good afternoon Sherri,

Thank you for taking my call yesterday. Please see the current code section 65852.2 I referred to attached and project specific discussion regarding Junior Accessory Dwelling Unit set backs, below for your reference.

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:

“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:

“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.

Please give me call if you have any questions.

LISA CALNON

Project Manager

**Email:** Lisa@AvilaConst.com**Cell:** 831-324-3177[12 Thomas Owens Way, Suite 200, Monterey, CA 93940](https://www.avilaconst.com)

From: [Susan Lynch](#)
To: [Angelo, Philip](#)
Cc: [Michael Lynch](#)
Subject: RE: BARONE CLAIRE F; PLN210037; 2445 BAY VIEW AVE, CARMEL; APN 009-411-005-000
Date: Monday, September 26, 2022 7:36:47 PM

[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.]

September 26, 2022

Susan and Michael Lynch at 2457 Bay View Avenue, Carmel, CA 93923

County of Monterey^[SEP] Housing & Community Development^[SEP] Attn: Phillip Angelo, Associate Planner^[SEP] 1441 Schilling Pl South 2nd Floor^[SEP] Salinas, CA 93901^[SEP] Via Email: pchearingcomments@co.monterey.ca.us

Re: BARONE CLAIRE F; PLN210037; 2445 BAY VIEW AVE, CARMEL; APN 009-411-005-000

Dear Mr. Angelo,

We are the owners of the home located at 2457 Bay View Avenue, Carmel and received a Notice of Public Hearing relating to development of the property at 2445 Bay View Avenue: Barone Claire F; File Number PLN210037.

We object to the proposed development plan, specifically the north side setback which is adjacent to our home at 2457 Bay View Avenue. Our concerns are with safety and whether fire safety professionals have adequate access in the case of a fire emergency...the current proposed setback is not 4” feet as required but rather 33”.

We have reviewed the letter submitted by our neighbors at 2465 Bay View Avenue on September 21 and concur with the analysis and objection to the proposed development and with their permission respectfully submit our objection on the following basis as researched and noted in their letter:

<!--[if !supportLists]-->1.<!--[endif]-->Any prior approvals / reviews of the setback were based on misrepresentation of the facts. The existing structure is setback a mere 33” at the north east corner – not 4’ (photo submitted with previous objection letter). The filed plans specified a setback of 4’. Any fire or other safety review conducted on the basis of a 4’ side setback should be considered null and void.^[SEP]

<!--[if !supportLists]-->2.<!--[endif]-->In email received on September 14, 2022 (copy attached) Lisa Calnon, Project Manager, Avila Construction cited reliance on State of California Code Section 65852.2(a)(1)(D)(vii) as the basis for requesting approval of the junior accessory dwelling unit with the existing structure setback. 65852.2(a)(1)(D)(vii) states (**emphasis added**):^[L]_[SEP]“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.”^[L]_[SEP]The subsection specifically calls out “accessory dwelling unit” but does NOT call out “junior accessory dwelling unit”. Numerous paragraphs within the referenced State of CA 65852.2 specifically call out “junior accessory dwelling unit” including several that specify applicability to both “accessory dwelling unit” and “junior accessory dwelling unit” whereas^[L]_[SEP]others, including the one being relied upon, do not. It is illogical to believe the state simply neglected to include the words “junior accessory dwelling unit” in this subsection when they clearly included it in others. This subsection should be read and interpreted as written to apply solely to “accessory dwelling unit(s)”. The reliance on this subsection appears inappropriate without in-depth legal review and opinion.

<!--[if !supportLists]-->3.<!--[endif]-->Lisa Calnon of Avila Construction additionally cited reliance on State of California Code Section Section 65852.2(e)(D)(2) as the basis for requiring approval of the JADU as proposed. 65852.2(e)(D)(2) states:^[L]_[SEP]“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.”^[L]_[SEP]The intent of this subsection appears to be to prevent local jurisdictions from extracting corrections to unrelated zoning non conformances as a condition to approval of an application under CA 65852.2/65852.22 or related ordinances. The applicant is asking the County to believe this code subsection completely eviscerates any and all zoning requirements (including those set forth in Monterey County Zoning Code Section 20 and Monterey County Ordinance No. 5343) for any project incorporating

an accessory dwelling unit or junior accessory dwelling unit. If allowed to proceed on this basis, the County is setting a very dangerous precedent which will surely be exploited by simply carving out a “junior accessory dwelling unit” within any proposed single-family dwelling. [L] [SEP]

4. A junior accessory dwelling unit is, by definition, part of a single-family dwelling. As such, fire safety regulations, including side and rear setbacks, specific to single-family residences not otherwise specifically excepted by junior accessory dwelling unit statutes apply. State of California Code Section 65852.22(d) addresses this issue and reads as follows (**emphasis added**): [L] [SEP] “for purposes of any fire or life protection ordinance or regulation, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit. This section shall not be construed to prohibit a city, county, city and county, or other local public entity from adopting an ordinance or regulation relating to fire and life protection requirements within a single-family residence that contains a junior accessory dwelling unit **so long as the ordinance or regulation applies uniformly to all single-family residences, within the zone regardless of whether the single-family residence includes a junior accessory dwelling or not.**” [L] [SEP] The existing north side setback of 33” is not only inconsistent with Monterey County Ordinance 20.12.060 requiring side setbacks for single-family dwellings of not less than 5’ for properties in zone MDR(CZ), it is inadequate for fire personnel access, insufficient to provide a defensible space between properties, and unsafe for emergency egress from the proposed door located on the north side of the junior accessory dwelling unit. [L] [SEP]

5. Should the County proceed with approval of the proposed junior accessory dwelling unit on any basis, such approval must be conditioned on meeting the requirements of California Code Section 65852.22(a) which reads (**emphasis added**):

“(a) Notwithstanding Section 65852.2, a local agency may, by ordinance, provide for the creation of junior accessory dwelling units in single-family residential zones. The ordinance may require a permit to be obtained **for the creation of a junior accessory dwelling unit**, and shall do **all of the following**:

(1) Limit the number of junior accessory dwelling units to one per residential

lot zoned for single-family residences with a single-family residence already built on the lot.^[1]^[SEP]**(2) Require owner-occupancy in the single-family residence in which the junior accessory dwelling unit will be permitted.** The owner may reside in either the remaining portion of the structure or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.

(3) Require the recordation of a deed restriction, which shall run with the land, shall be filed with the permitting agency, and shall include both of the following:^[1]^[SEP]**(A)** A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.

(B) A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this section.^[1]^[SEP]**(4)** Require a permitted junior accessory dwelling unit to be constructed within the existing walls of the structure, and require the inclusion of an existing bedroom.^[1]^[SEP]**(5)** Require a permitted junior accessory dwelling to include a separate entrance from the main entrance to the structure, with an interior entry to the main living area. A permitted junior accessory dwelling may include a second interior doorway for sound attenuation.^[1]^[SEP]**(6)** Require the permitted junior accessory dwelling unit to **include an efficiency kitchen, which shall include all of the following:**

<!--[if !supportLists]-->. <!--[endif]-->**(A) A sink with a maximum waste line diameter of 1.5 inches.** ^[1]^[SEP]

<!--[if !supportLists]-->. <!--[endif]-->**(B) A cooking facility with appliances** that do not require electrical service greater than 120 ^[1]^[SEP]volts, or natural or propane gas.^[1]^[SEP]**(C)** A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

Thank you for your consideration.

Susan and Michael Lynch

650-766-4576 susanlynch10s@gmail.com

650-823-4621 michaelolynch@me.com

Sherrí Pogue
2465 Bay View Ave
Carmel, CA 93923

October 11, 2022

County of Monterey
Housing & Community Development
Attn: Phillip Angelo, Associate Planner
1441 Schilling Pl South 2nd Floor
Salinas, CA 93901
Via Email: pchearingcomments@co.monterey.ca.us

Re: BARONE CLAIRE F; PLN210037; 2445 BAY VIEW AVE, CARMEL; APN 009-411-005-000

Dear County Planning Commissioners and Mr. Angelo,

We own the property located at 2465 Bay View Ave, Carmel. We listened to the public hearing on September 28th and are writing to provide additional comments regarding the proposed development of the property at 2445 Bay View Avenue: Barone Claire F; File Number PLN210037. We are not opposed to development of this property. We do, however, want to see it developed responsibly and in conformity with all applicable codes and standards. We continue to be concerned that this project, as proposed as of September 28th, does not meet all applicable codes and standards and sets a dangerous precedent for future projects. Further, we feel mitigations are required to ensure against changes made in the field that could circumvent requirements.

NO STATUTORY BASIS TO APPROVE A NON-CONFORMING SETBACK FOR A JADU

This project should not be approved as a JADU with a non-conforming setback. The County's own legal counsel in attendance at the September 28th meeting concurred.

1. Applicant cited reliance on State of California Code Section 65852.2(a)(1)(D)(vii) as the basis for requesting approval of the junior accessory dwelling unit with the existing dwelling setback. 65852.2(a)(1)(D)(vii) states (**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.”

The subsection specifically calls out “accessory dwelling unit” but does NOT call out “junior accessory dwelling unit”. Numerous paragraphs within the referenced State of CA 65852.2 specifically call out “junior accessory dwelling unit” including several that specify applicability to both “accessory dwelling unit” and “junior accessory dwelling unit” whereas others, including the one being relied upon, do not. It is illogical to believe the state simply neglected to include

the words “junior accessory dwelling unit” in this subsection when they clearly included it in others. This subsection should be read and interpreted as written to apply solely to “accessory dwelling unit(s)”.

2. Should the County ignore the statute and proceed with approval of the proposed junior accessory dwelling unit on any basis, such approval must be conditioned on meeting the requirements of California Code Section 65852.22(a) which requires, among other things:
 - a. **“owner-occupancy in the single-family residence in which the junior accessory dwelling unit will be permitted.** The owner may reside in either the remaining portion of the structure or the newly created junior accessory dwelling unit.”
 - b. **“the recordation of a deed restriction, which shall run with the land, shall be filed with the permitting agency, and shall include both of the following:** (A) A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers. (B) A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this section.”

There is ample room on this 7000sf lot to build a structure of the proposed size, with or without a JADU, that conforms with legal setback requirements. As currently proposed the rear setback is 26’ – the structure can easily be redesigned to extend further to the rear of the property.

Further, allowing the structure with non-conforming setbacks on the premise of limiting digging to preserve cultural resources is not valid as the site has already had significant excavation at the rear; significant impervious cover in the front of the property must be excavated to meet environmental requirements; no reusable foundation exists on multiple sections of the dwelling requiring foundation work; master bedroom/bath and garage additions require new foundations; and the 80+ year old foundation will likely require work to meet current building standards.

ADU MUST MEET STANDARDS FOR COMPLETE INDEPENDENT LIVING

If the ADU design remains as proposed in the meeting on September 28th, there are several issues that require modification to meet the standards of an ADU. The project must not be approved with non-conforming setbacks unless ADU standards are met.

As defined by the California Building Code, an Accessory Dwelling Unit is (**emphasis added**) “An attached or detached residential dwelling unit that provides **complete independent** living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. Accessory dwelling units shall include **permanent** provisions for **living, sleeping, eating, cooking and sanitation** as the same parcel as the single-family or multifamily dwelling is or will be situated”.

Monterey County has not provided additional details on how to meet these criteria. This cannot be considered to mean there are no standards – it becomes a subjective decision of the Planning Department and Planning Commission. Because any decisions made with this project will be considered precedent on any future ADU’s, appropriate deliberation must be given to specify requirements that meet the ADU definition and consider ADU tenant needs, rights and safety.

1. The ADU bedroom in the proposed design included a shared bathroom with the primary dwelling. Does a shared bath qualify as “independent”?
2. The ADU design included open access between the primary dwelling and the ADU. Does free flowing access meet the requirement of “independent”?
3. To ensure independence and safety of the ADU, should any doorways between the primary dwelling and the ADU be lockable from both sides?
4. Per CA building code, there must be a fire wall and sound attenuation provided between the main dwelling and the ADU.
5. The Applicant’s ADU included a small “efficiency kitchen” in a space of ~4’. Other ADU codes stipulate a “full kitchen” is required for ADU’s whereas an “efficiency kitchen” is allowed for JADU’s. State handbooks describe the requirement the same way.
 - a. **Permanent** cooking facilities must be provided for an ADU. Other jurisdictions describe this as “built-in” cooking appliances. Some stipulate a minimum 4-burner built-in stove and range whereas an efficiency kitchen is allowed to offer only 120v plug in appliances (toasters, hot plate, etc.). Other jurisdictions also require built-in ventilation;
 - b. For **independent** living, an ADU kitchen must require a minimum amount of refrigeration space. Other jurisdictions stipulate a minimum “apartment size refrigerator” or set minimum cubic foot requirements for refrigeration;
 - c. A **permanent** kitchen sink is required. Other jurisdictions state this cannot be a “bar sink”;
 - d. **Sufficient food preparation area (counter top) and storage must be provided;**
 - e. Other jurisdictions stipulate a minimum square footage for an ADU kitchen (including walkways) of 50sf.
6. CA code section 65882.2 stipulates multiple requirements including 65882.2(e)(1)(A)(iii) that reads “**The side and rear setbacks are sufficient for fire and safety**”. We learned only within hours of the September 28th meeting that the proposed setback is a mere 20.25” – nothing close to the 4’ stated on the Applicant’s plans. We are surprised to learn that Planning, not the Fire Marshall, is the one approving this setback as “sufficient for fire and safety” (conversation with Cypress Creek FD and follow-up conversation with Planning). Given that this setback includes several emergency egress points (windows) for the ADU, we find it difficult to comprehend how this is acceptable for fire and safety. Statements that the Fire Marshall has approved the setback should be viewed dubiously.

In contrast, other jurisdictions have stipulated “most ADUs require two exits for fire safety. The exit path must be 36 inches wide”.

IF AN ADU WITH NON-CONFORMING SETBACKS IS APPROVED, ADDITIONAL MITIGATIONS MUST BE INCORPORATED

The Planning process is disjointed from the Building and Inspection processes. Numerous changes can occur in the field during construction that circumvent the intent of Planning in approving an attached ADU, particularly with special circumstances of less than normal setbacks. Mitigations must be put in place to attempt to avoid this outcome.

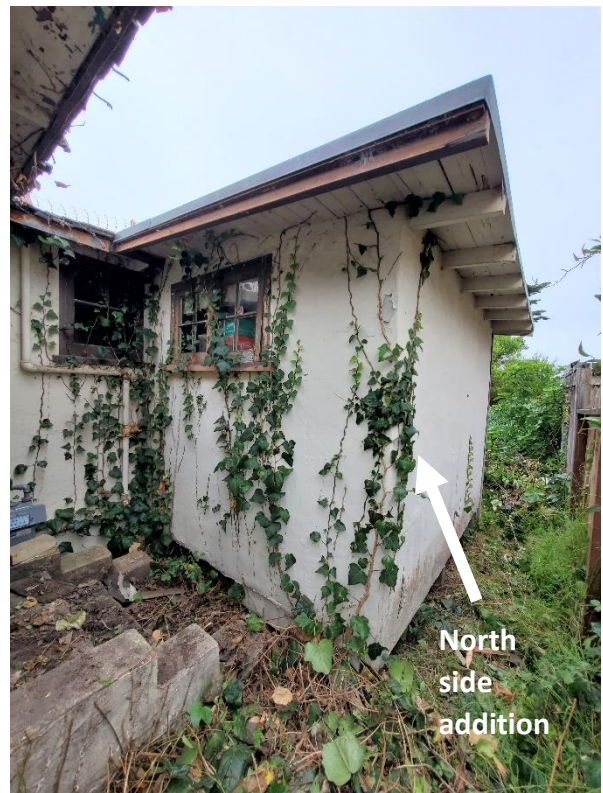
1. The existing dwelling is on record with the County of Monterey as having 2 bathrooms. The planned development includes 3 full bathrooms, kitchen, laundry, plus an ADU kitchen. Per discussion with the MPWMD, it is highly unlikely that an existing 2 bath house can be converted to include the number of fixtures proposed. MPWMD stated that the maximum credit for converting to efficient fixtures would be 3 whereas an additional full bath requires 3.8 credits and an ADU kitchen sink would require 2 more credits. Due to the disjointed nature of the MPWMD audit and the Planning processes, there is the risk of field changes to accommodate a lack of water credits. Normally this is not a concern of Planning. However, it is critical that ADU requirements, which are critical to Planning approval of a non-standard setback, are not circumvented in the field. Planning approval should be revoked if there is not sufficient water credits to build the dwelling and ADU as proposed.
2. Separations between the main dwelling and the ADU can easily disappear during and after the construction process – walls and doors can easily disappear. Normally this is of no concern to Planning. However, it is critical that the integrity of the ADU be carried out through the entire building and final inspection process and mitigations should be implemented to ensure this.
3. The CA loophole allowing for an ADU to be built in the same location and to the same size and shape as an existing legal structure, even with non-conforming setbacks, requires field monitoring to ensure field changes are not made to adjust exterior walls, eaves, or roof lines.
4. Other jurisdictions have implemented mitigations to ensure that an ADU built with non-conforming setbacks is not converted into the main dwelling – Monterey Planning must consider adopting a similar approach. The City of Santa Cruz code stipulates (**emphasis added**): “Side and Rear Setbacks shall be no smaller than 4', and any **New Construction Attached ADU that exceeds the setbacks required for the primary structure is required to record a Land Use Agreement acknowledging that any future effort to remove the ADU will require the structure to return to conforming setbacks for the primary structure.**” (<https://www.cityofsantacruz.com/government/city-departments/planning-and-community-development/accessory-dwelling-units-adus>)

ONLY LEGALLY PERMITTED PORTIONS OF THE EXISTING DWELLING ARE ELIGIBLE FOR THE ADU NON-CONFORMING SETBACK EXEMPTION

1. The loophole in State of California Code Section 65852.2(a)(1)(D)(vii) allowing an ADU to be built in the same location and dimensions as an “existing structure” converted to ADU applies only to that portion of the dwelling that can be demonstrated to be an **existing legal structure**. 65852.2(a)(1)(D)(vii) states (**emphasis added**):
 - a. “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.”

- b. California building code (Section 202) defines **“existing structure”** as **“A structure erected prior to the date of adoption of the appropriate code, or one for which a legal building permit has been issued”**.
 - c. Therefore, this loophole can be applied only to that portion of the dwelling that meets the definition of an **“existing structure”**
2. A ~98” x 112” section on the north side of the dwelling was added some time after the original home construction. This section of the dwelling does NOT have a reusable foundation – it appears to be supported on 4x4 posts and abuts the original dwelling foundation. The shed roof over the addition is different from and lower than the rest of the dwelling – appearing to be constructed under the original dwelling eave. There are steps from an exit on the original dwelling that dead end into the addition. See images below.





We concede that the existing original structure, including the northeast corner, is eligible for the setback exemption providing ADU standards and requirements are met. However, only if the north side addition is demonstrated to have been legally permitted can it be eligible for the setback

loophole. Otherwise, the allowed setback for an ADU of 4' must be applied to this portion of the proposed ADU.

Again, we are not opposed to development of this property. We are, however, concerned about attempts to exploit loopholes in the code and the possibility of field adjustments that violate the intent of Planning approval and respectfully request mitigations. Decisions made with this project will provide precedent for all future proposed ADU's and must be carefully considered.

Thank you for your attention to these matters.

Respectfully,

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

This page intentionally left blank