

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.

ATTACHMENT A



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CITY OF LOS ALTOS

**GENERAL APPLICATION** 

Type of Review Requested: (Check all boxes that apply)		Permit # 1108479
One-Story Design Review	Commercial/Multi-Family	Environmental Review
Two-Story Design Review	Sign Permit	Rezoning
X Variance	Use Permit	R1-S Overlay
Lot Line Adjustment	Tenant Improvement	General Plan/Code Amendment
Tentative Map/Division of Land	Sidewalk Display Permit	Appeal + r . A
Historical Review	Preliminary Project Review	X Other Accesson V Strektor
Project Address/Location: 40	YELL STREET	ADU /
Project Proposal/Use:	Current Use of Prope	rty: <u>Residentia</u>
Assessor Parcel Number(s):	40-016	rea: 7,500
New Sq. Ft.: <u>624</u> Altered/F	Rebuilt Sq. Ft.: Existi	
Total Existing Sq. Ft.:	Total Proposed Sq. Ft. (inclu	ding basement): <u>624</u>
Is the site fully accessible for City Staff i	nspection? YES	
Telephone No.: 650 255 801	ABEL <u>F</u> ENAILAddress: <u>A)/29</u> <u>FFENAIN AVE </u> <u>CA</u> <u>94044</u>	475 CADL. COM
Property Owner's Name: POTOR	: LAUPA BREW	BK. Peturebtewartitm
Telephone No.:	Email Address:	
Mailing Address: 40 LYEL	STUBBY	
City/State/Zip Code: しかう みし	109, 64.	
Architect/Designer's Name:	SABEL	
Telephone No.: _ 650 255 80 7	F Email Address: A) 25]-	11P12 P ASL. COM
Mailing Address: <b>455</b>  EF	FERSON AVE # 4=	7
City/State/Zip Code:	LA 040FA	
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\* If your project includes complete or partial demolition of an existing residence or commercial building, a demolition permit must be issued and finaled prior to obtaining your building permit. Please contact the Building Division for a demolition package. \*

(continued on back)

## Real Estate Law – From the Ground Up®

Peter N. Brewer, Esa. Simon Offord, Esq. Adam L. Pedersen, Esg. Charlie Bronitsky, Esg. (Of Counsel) Ashlee D. Gonzales, Esg. Lorena Roel, Esg.

January 1, 2019

REWE

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CITY OF LOS ALTOS

PLANNING

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Honorable City Council Members Los Altos City Council Los Altos City Hall 1 N San Antonio Rd. Los Altos, CA 94022

Re: Application for a Variance for ADU at 49 Lyell Street, Los Altos

Dear Honorable City Council Members:

This letter is in support of my application for a variance to build an Accessory Dwelling Unit at my property at 49 Lyell Street, Los Altos. I am seeking a slight variance from the requirement that an ADU not be larger than 50% of the main dwelling, because the main dwelling is excessively small and no useful ADU could be built if that limitation were strictly observed.

It is axiomatic that the State of California is, and has been, urging cities to adopt ordinances favorable to the construction of ADUs to help reduce the State's housing crisis. In furtherance of that mandate, the State passed Government Code § 65852.2 as backstop legislation should any city fail to adopt standards promoting ADU approval.

In July 2018, Los Altos amended its Zoning Code § 14.14.060 to revise the standards for ADUs. At that time our project was already underway. We had drawn plans and gone through several revisions with our designer. The Code, as amended, included a limitation that is not found in the State statute; that a detached ADU cannot exceed 50% of the habitable space of the main dwelling. This threw a wrench into our spokes.

In a subsequent meeting with our designer the planning department suggested that the proposed accessory structure, then approximately 800 sq. ft., was out-of-scale with the diminutive main structure. To comply with that concern we shaved off approximately 20% of the planned structure, so it is now about 620 sq. ft. These changes were favorably received by the Planning staff which expressed support for the project as

modified. The main house on the lot is an early 1950's vintage "bungalow" of around 1,000 sq. ft. that I have owned since 1981.

It would be an exercise in futility to try to design a functional ADU of 500 sq. ft. or less, and the Los Altos ordinance does not conform to the California Government Code § 65852.2 in imposing the 50% requirement on detached ADUs.

That State law makes a distinction between **at**tached ADUs and **de**tached ADUs. The State law provides at § 65852.2 (a) (1) (D) (iv and v) that:

(iv) The floorspace of an attached ADU shall not exceed 50 percent of the primary dwelling living area or 1,200 square feet.(v) The floorspace for a detached ADU shall not exceed 1,200

square feet.

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Thus, the State Law makes a distinction between attached ADUs, which shall not exceed 50% of the living area of the primary dwelling, versus detached ADUs which have no such limitation. That distinction did not make it into Los Altos's ordinance, which provides only that:

G. Unit Size.

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.

I am informed that the circumstance of a diminutive main residence was not considered nor discussed during the process leading up to the July amendments to Zoning Code § 14.14.060. This is understandable since probably fewer than 2% of the houses in Los Altos are 1,000 ft. bungalows or smaller. But the failure to consider the impact on lots improved with only a bungalow has resulted in an unintended consequence to us. If our ADU is approved, the ADU together with the main structure will still amount to only about 63.5% of the allowed floor area ratio on this lot.

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.

This project qualifies under each and every condition.

- 1. It is consistent with not only the objectives of the zoning plan, but also with the State's mandate to cities to help ease the housing crisis in California.
- 2. The variance will certainly not be detrimental to anyone's health, safety, or welfare.
- 3. The variance will consider the special circumstance of the size of the bungalow that is the "main structure" on the property and will avoid depriving the applicant of the privileges enjoyed by other properties in the vicinity. Indeed, the main structure at this property is the smallest structure anywhere on the street or even in the greater area of the property. Many of the neighboring structures are two-story and of a size that would dwarf the combination of both the main structure and the ADU applied for.

Thank you for your gracious consideration of this request.

Respectfully submitted,

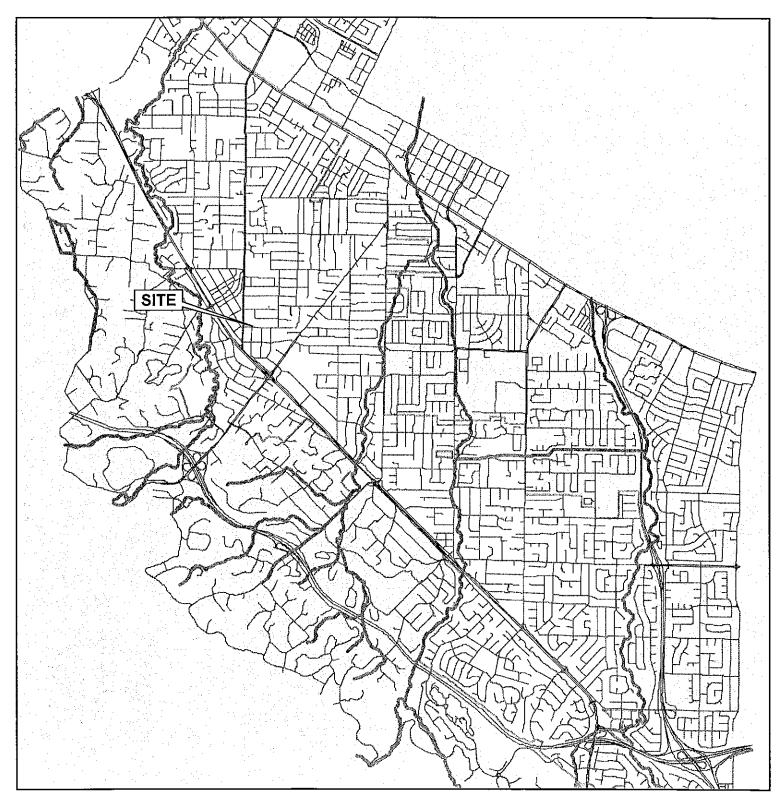
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Peter N. Brewer Property Owner

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## AREA MAP

ATTACHMENT B

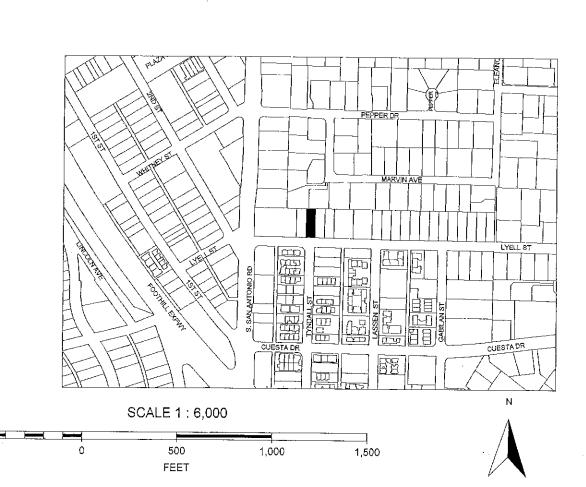


## CITY OF LOS ALTOS

APPLICATION:19-V-01APPLICANT:Joe Sabel/ Peter and Laura BrewerSITE ADDRESS:49 Lyell Street







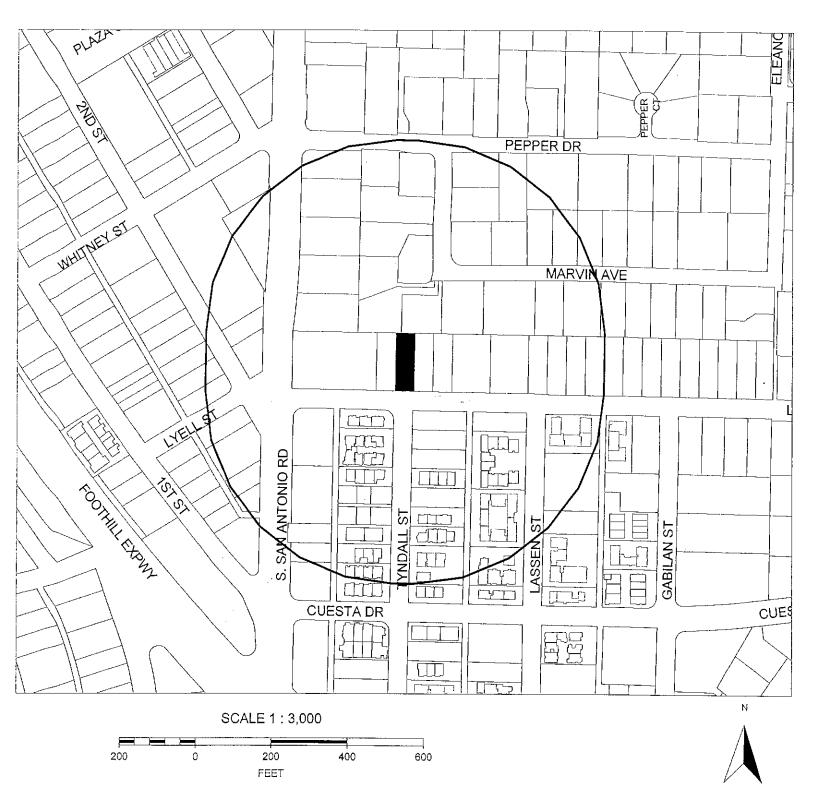
#### **CITY OF LOS ALTOS**

APPLICATION:19-V-01APPLICANT:Joe Sabel/ Peter and Laura BrewerSITE ADDRESS:49 Lyell Street

500

# 49 Lyell Street 500-foot Notification Map





#### Eliana Hassan

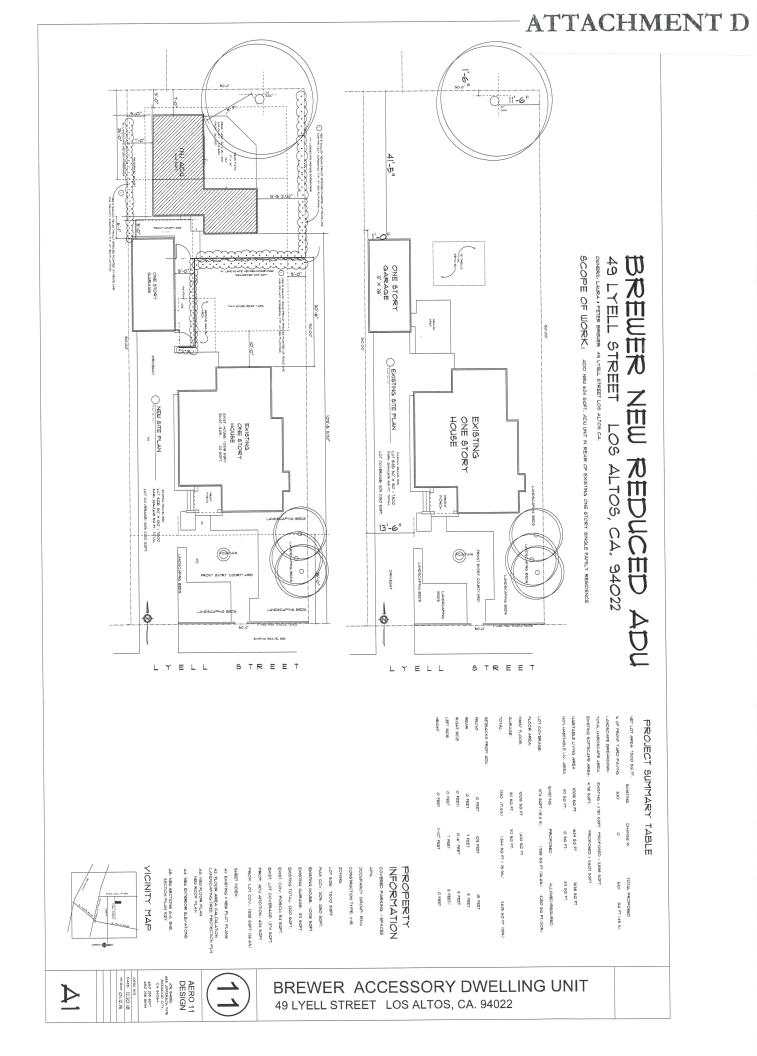
From: Sent: To: Subject: tmbarreira@comcast.net Thursday, January 31, 2019 9:59 AM Eliana Hassan 49 Lyell Street - ADU Design Review

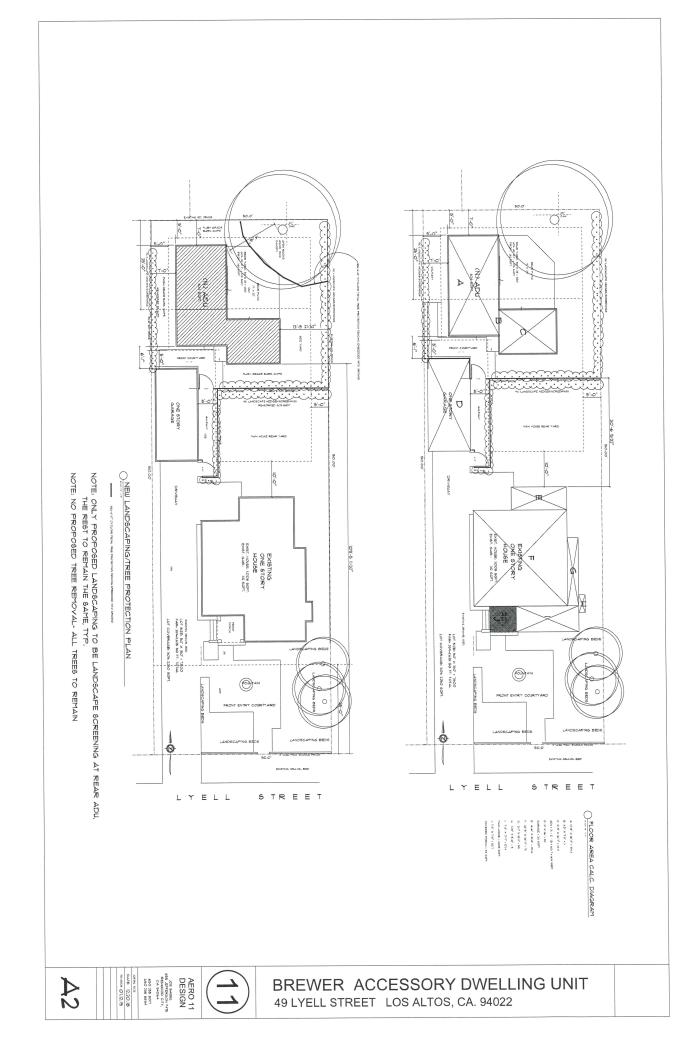
Ellie:

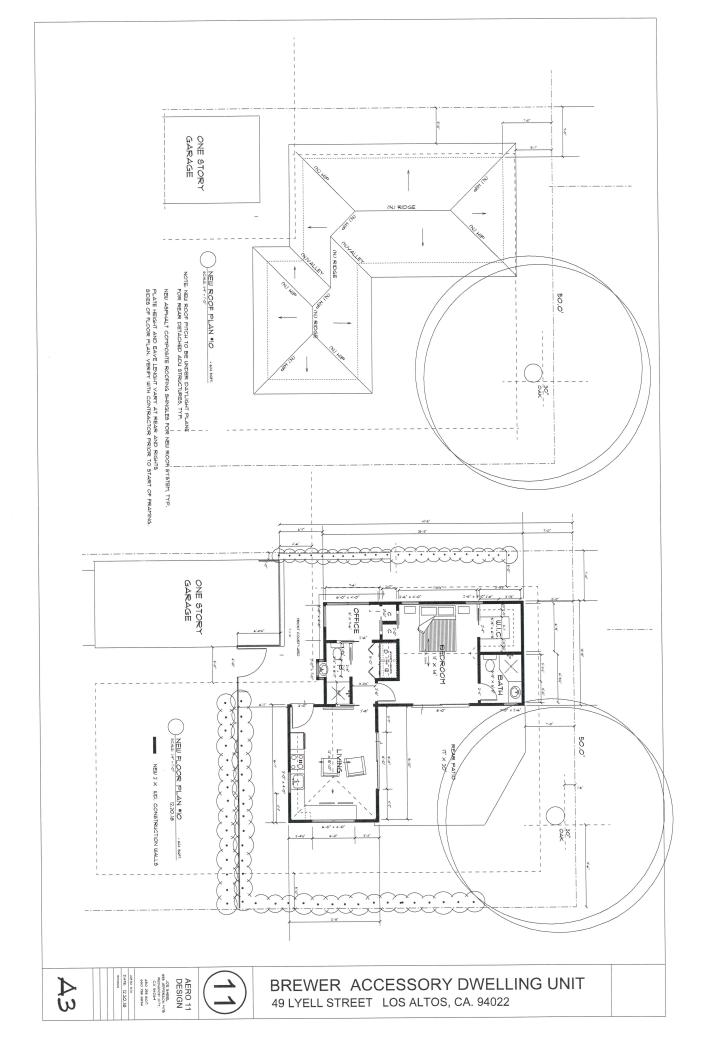
As a follow up to our conversation on January 30, 2019, I offer the following comments with regard to the proposed ADU unit at 49 Lyell Street.

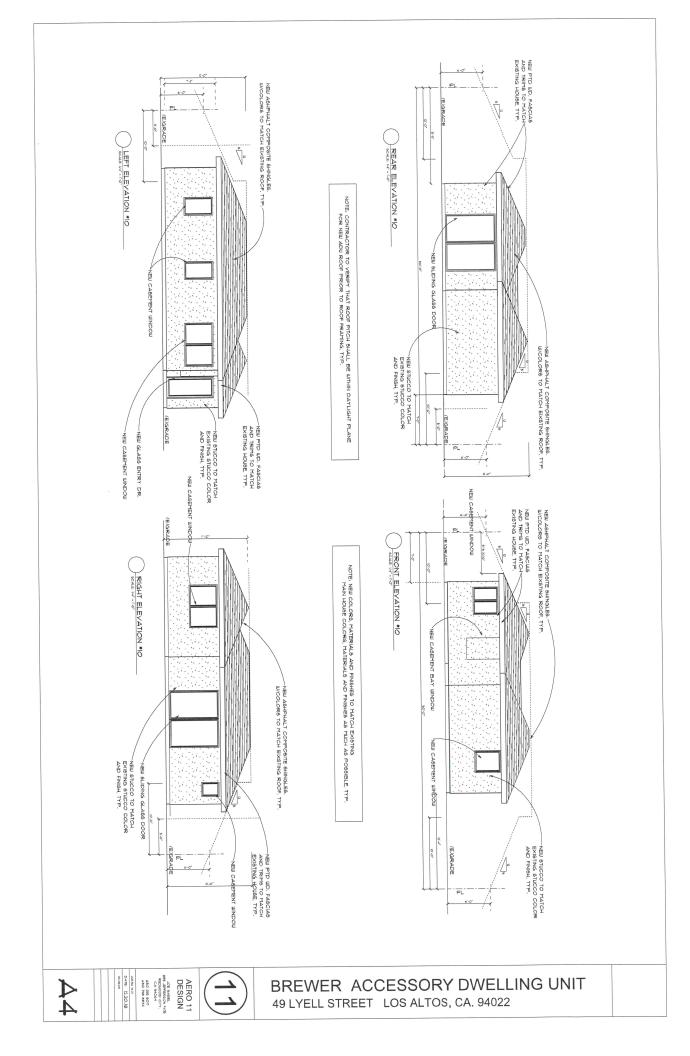
- (1) I own the adjacent home at 55 Lyell Street. My wife and I and our children have lived there for 24 years in a 2400 sf two-story single family home. I know Peter and Laura Brewer and they have been friends for this period and these comments do not reflect my feelings towards them personally.
- (2) The ADU concept on a 7500 sf lot is not well thought out. These lots are very small and already dense. I would have to believe that the ADU code was established with the intent that these units would be built on larger 10,000 to 15,000 sf lots. This side of Lyell Street is zoned single family and has seen a transition to new moderately sized single family homes. The opposite side of Lyell is multi-family zoned and it has been transitioning also as well as Tyndall Street which is all multi-family. Therefore there is already a high density in the adjacent area and this proposed project would increase this density in the single family area of Lyell Street.
- (3) Allowing the ADU on this site would render it with two income units which would effectively prohibit it from ever returning to its intended use as single family. The income produced from two units would effectively prohibit it from being purchased as a tear down and rebuilt as single family its intended zoning.
- (4) Parking in this area is already congested. The plans suggest that the third space for the new unit is in the existing driveway therefore having three cars parked in a back to back line configuration. With two different residents and three cars this will never work (it currently doesn't work now with only one unit on the site).
- (5) The current single family zoning would allow for a new home that could house a family of 4 to 5 people to live at this location. With the new ADU unit proposed, there would be two to three people most likely living at this address in the two units. Is that really accomplishing the purpose of the ADU's ?
- (6) If you go ahead with the proposal at least stick to the existing code. If the code allows 504 sf on this tiny lot, why would you ever grant a 24% increase in size to 624 sf ?
- (7) Ours homes on these lots have small backyards as it is. This proposal will eliminate the backyard for the existing home and will diminish the enjoyment of my backyard as I have to look at the new adjacent structure.
- (8) Please allow this portion of Lyell Street to retain its single family zoning and character. There are plenty of multi-family opportunities on the southwest side of Lyell Street and the streets to the southwest.

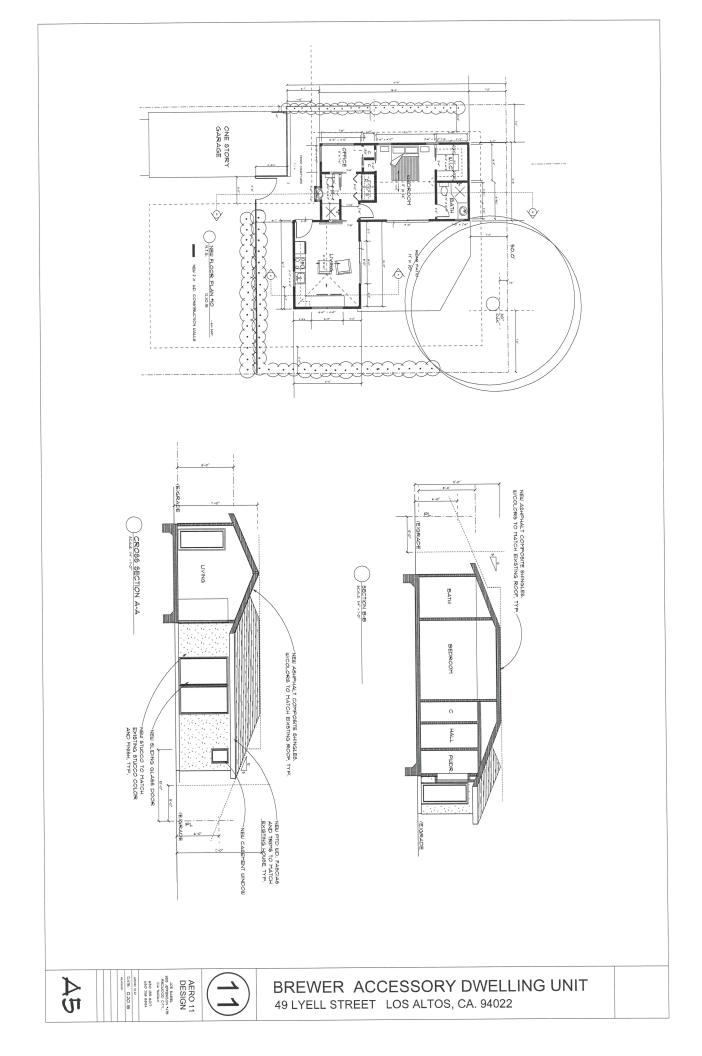
**Tom Barreira** 55 Lyell Street Los Altos, CA 94022 (650) 400-2322

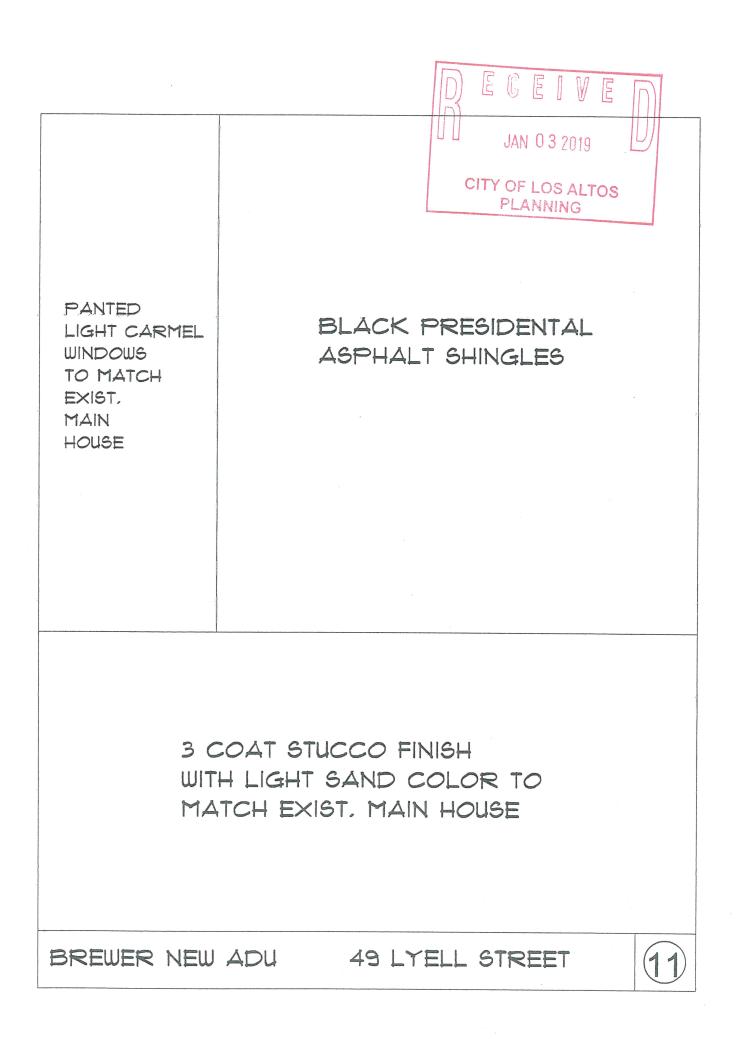




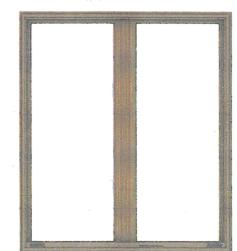












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