

Holland & Knight

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May 5, 2020

Via E-Mail

One-Stop Permit Center
City of Sunnyvale
Planning and Building Division
456 W. Olive Ave.
Sunnyvale, CA 94086

Re: Variance Justifications – Application to Construct ADU at 814 Selkirk Place

The following variance justifications are hereby submitted in connection with Ladan and Ralph Dalla Betta’s (“Applicants”) request to construct an attached accessory dwelling unit (“ADU”) at 814 Selkirk Place in Sunnyvale, California (the “Property”). As described below, Applicants request a variance to the City’s rear yard setback requirement codified at Sunnyvale Municipal Code (“SMC”) section 19.48.050, which provides:

“Any single story main or accessory structure in any residential zoning district, subject to conformance with maximum structural coverage regulations, may extend ten feet into the required rear yard providing the area of such extension does not exceed twenty-five percent of the required rear yard area.”

As a preliminary note, on March 24, 2020 Applicants submitted a Miscellaneous Plan Permit (“MPP”) application to construct the proposed ADU, which is currently pending before the City’s Planning Division. Applicants contend that the City is legally mandated to approve the MPP as submitted under state ADU laws (Gov’t Code §§ 65852.2 et seq.). Thus, Applicants do not believe a variance is needed to approve the proposed ADU, but nevertheless are submitting this variance request as an alternative means for the City to approve the proposed ADU as designed. By submitting this variance herein, Applicants hereby reserve any and all rights (whether administrative or legal) to challenge a denial of their MPP by relying on SMC § 19.48.050, and do not waive any legal or administrative right to challenge the City’s anticipated denial of the pending MPP.

Further, local agencies must act on an application to construct an ADU within 60 days of receiving a completed application.¹ Applicants submitted a complete application on March 24,

¹ Gov’t Code § 65852.2(a)(3).

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2020, and all discussions with City staff since that date have focused on the legality of the ADU as designed (not sufficiency of application). As such, the City has until May 23, 2020 to act on Applicant's MPP application. As a good faith gesture, Applicants are willing to agree to a limited extension of this 60-day review deadline in an agreement with the City, only to the extent necessary to conduct a Zoning Administrator hearing on June 10, 2020 concerning this variance, and to receive a decision shortly thereafter, after which time the statutory review deadline will remain in full force and effect. Applicants, through counsel, expect to work with the City Attorney to memorialize such an extension after this variance is submitted.

1. Because of exceptional or extraordinary circumstances or conditions applicable to the property, or use, including size, shape, topography, location or surroundings, the strict application of the ordinance is found to deprive the property owner of privileges enjoyed by other properties in the vicinity and within the same zoning district.

The size and shape of the Property are such that a strict application of SMC § 19.48.050 will unjustly deprive Applicants the ability to construct an ADU that would otherwise be permissible to residents with larger parcels and/or larger rear yards. The Property is a corner lot located at the intersection of Selkirk Place and Killdeer Court. For this corner lot, the City has treated the thin, western side (facing Killdeer Ct.) as the "front" of the parcel, which designates the similarly thin, eastern side of the parcel as the "rear" yard. Due to this unique configuration of the parcel, Applicants are left with an extraordinarily small rear yard. (Attached hereto at **Exhibit A** is an aerial image of the Property, and **Exhibit B** includes the site plans for the proposed ADU.)

Applicants have considered alternative options of constructing a smaller (800 sq. ft.) ADU, as well as alternative designs that would reconfigure the ADU into a portion of the side yard (south side). These alternatives, however, would compromise the aesthetic design and functionality of the living areas within the proposed ADU and primary dwelling.

Building an 800 sq. ft. two-bedroom ADU creates functionality issues in the internal space that would be undesirable for a small family or two adult occupants. Since the intent of this project is to mitigate the local housing shortage for young families and/or young professionals in the community, a two-bedroom 999 sq. ft. ADU would provide a reasonably sized and cost-effective livable space.

Extending the ADU along the length of the southern, side yard to adhere to the City's rear yard setback requirement would result in the ADU becoming very narrow (i.e., internal living room of less than 11 ft. wide). Reconfiguring the proposed ADU into the southern, side yard would force Applicants to construct both bedrooms of the ADU directly abutting both bedrooms of the main dwelling, with only a wall separating the two. This creates undesirable privacy issues both for Applicants (owners and inhabitants of the main dwelling), and future inhabitants of the proposed ADU. Further, side yard alternatives negatively impact fire code standards since such a design would block secondary escape

routes of bedrooms #2 and #3 in the main dwelling. (See **Exhibit C** of alternative designs considered by Applicants and Applicant’s architect denoted in blue and pink.)

Waiving this requirement would allow Applicants to construct an ADU at the same size that would otherwise be permitted (without a variance) on a lot with the same area size but with typical front-yard designations (north side/Selkirk), or larger lots.

2. *The granting of the Variance will not be materially detrimental to the public welfare or injurious to the property, improvements, or uses within the immediate vicinity and within the same zoning district.*

Granting the Variance would not be detrimental to the public welfare, or injurious to the Property, improvements thereon, or uses within the immediate vicinity. Waiving strict adherence to SMC § 19.48.050 and allowing Applicants to construct a 999 sq. ft., would result in rear yard setbacks of 9 ft. 7 inches and 5 ft. 8 inches at various points from the ADU. This creates sufficient separation from the neighbors to the east, and is certainly more than the maximum 4-foot rear yard setback requirement for ADUs which is codified under new state ADU laws.² These setbacks will allow sufficient light and ventilation throughout Applicant’s rear yard. Further, an ADU of this size would not jeopardize the primary dwelling on the Property. As described above, this will result in a more functional, safe, and harmonious living situation for both the primary dwelling and proposed ADU. The 999 sq. ft. ADU will not result in detrimental effects on neighboring uses, nor impact the viewsheds, noise levels or traffic currently experienced in the Property’s vicinity.

On a number of occasions the City has granted variances from the SMC’s yard setback requirements in similar situations involving extraordinary property configurations, and found that strict adherence to such setback requirements would deprive owners of their ability to construct certain improvements.³ Applicants respectfully request that the City acknowledge the unique layout of the Property as well.

The property has 4-5 street parking spaces, two off-street garage parking for the main dwelling, as well as one off-street parking for the ADU. Therefore, there are ample parking spaces off and on street with no impact on the neighboring properties.

² Gov’t Code § 65852.2(a)(1)(D)(vii)

³ See, e.g., Recommended Findings for 1498 Norman Dr., 2018-756 (finding variance justifications met to allow homeowner to construct front porch into the required front yard setback, when “house was originally built with deficient setback in the front.”); Recommended Findings for 474 E. McKinley, 2019-7111 (finding that strict application of front yard setback would deprive owner from making additions to front of home, when options to add to the side and rear yard were limited); Recommended Findings for 1010 Valley Forge Dr., 2019-7530 (finding that, due to house being built at an angle to the side property lines, it would be impossible to build a two-car garage without encroaching into the front setback); Findings for 1366 S. Wolfe Rd., 2013-7992 (granting variance to allow for a 16-foot front yard setback where 20 ft. required, and 10-foot combined side yard setback where 11 ft. required, due to extraordinary conditions of the property.)

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Lastly, granting this Variance would result in a public benefit to the local community. The City – like the rest of California – currently faces a housing shortage which the proposed ADU would mitigate. Allowing Applicants to construct a two bedroom ADU as designed would create a viable, attractive living opportunity for a small family, young couple, or two individuals.

- 3. Upon granting of the Variance, the intent and purpose of the ordinance will still be served and the recipient of the Variance will not be granted special privileges not enjoyed by other surrounding property owners within the same zoning district.***

Granting the Variance requested herein will still respect the intent and spirit of the development standards in the SMC. Waiving rear yard requirements would not implicate other development standards for which the proposed ADU would satisfy, *e.g.*, density, height, front and side yard setbacks, and overall “lot coverage.”⁴ Granting this variance would not create any special privileges not enjoyed by surrounding property owners, but would enhance the design and cohesiveness of the ADU on the Property.

Please do not hesitate to contact me if you have any questions or would like to discuss this matter further.

Respectfully,



Kevin J. Ashe
Holland & Knight, LLP

cc: Trudi Ryan, Director of Community Development
Momoko Ishijima, Senior Planner
Rebecca Moon, Sr. Assistant City Attorney

⁴ The primary dwelling and proposed ADU would comprise of 3445 sq. ft. of the 8553 sq. ft. lot area. That equates to 40.3%, which is far below the maximum of 45% lot coverage standard.

EXHIBIT A

Aerial Image of Property

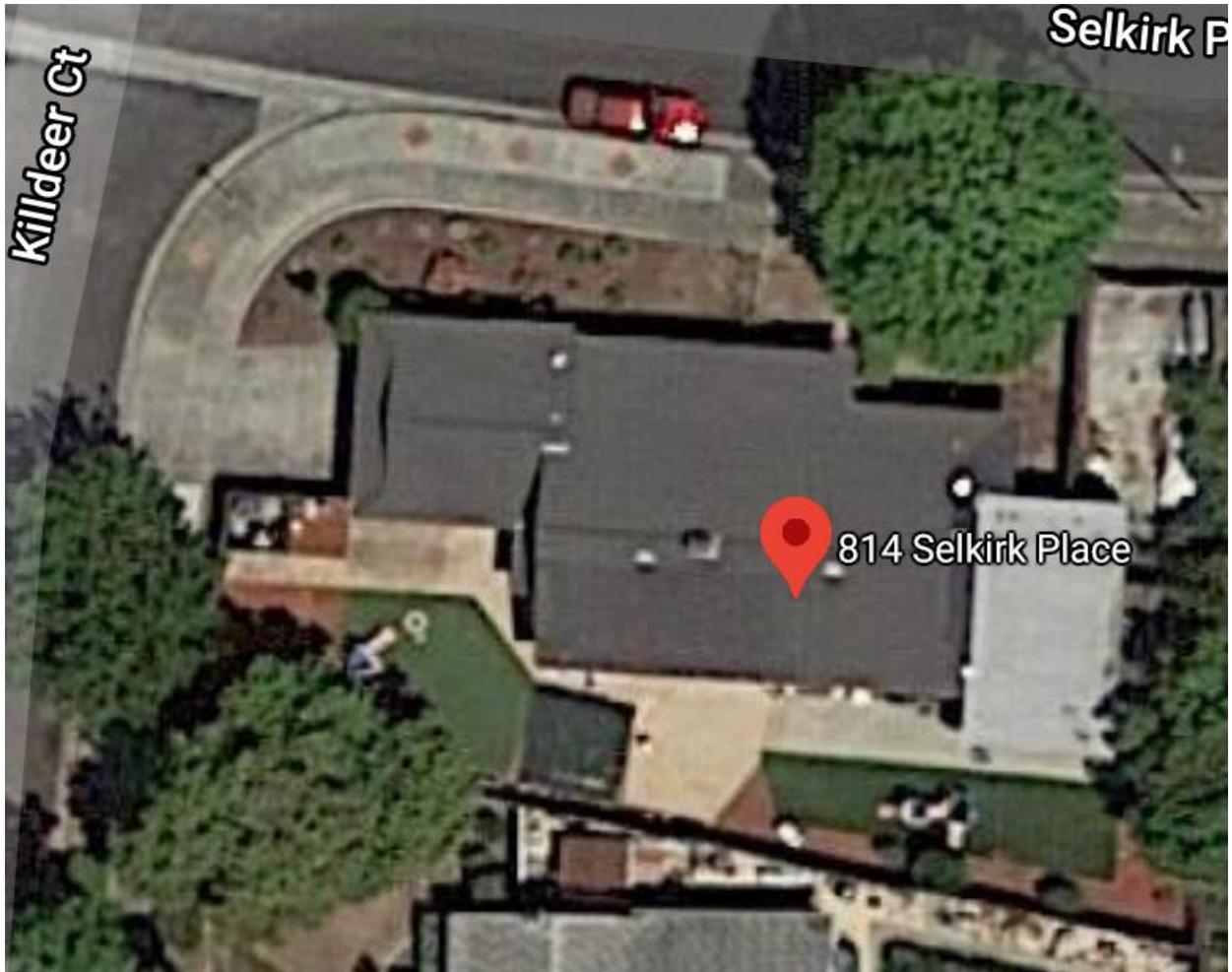


EXHIBIT B

Site Plans of Proposed ADU



These drawings, specifications, & sheet format are the property and copyright of Orchard Home Design, Remodeling Design Professionals, Inc. They shall not be used on any work except with the express written consent of the designer. Written dimensions shall take precedence over scaled dimensions and shall be brought to the attention of the designer immediately, prior to the start of construction. Questions should be addressed to the designer. The designer shall not be responsible for any errors or omissions in these drawings or specifications. The designer shall not be responsible for any errors or omissions in these drawings or specifications. The designer shall not be responsible for any errors or omissions in these drawings or specifications.

JOB NAME	DALLA BETTA
JOB NO.	190204
DATE	02/27/19
DRAWN	DW AW
REVISION DATE	BY

ANOTHER SUCCESSFUL PROJECT BY:

ORCHARD HOME DESIGN

REMODELING DESIGN PROFESSIONALS, INC.
WWW.ORCHARDHD.COM (408) 370-3366
80 GILMAN AVE. #29 CAMPBELL, CALIFORNIA 95008

SITE PLAN
PROJECT DATE
SCOPE OF WORK

REMODEL TO:
THE DALLA BETTA RESIDENCE
814 SELKIRK PLACE
SUNNYVALS, CALIFORNIA 94087
(605) 619-2658

SHEET
1
OF X SHEETS

PRINTS FOR ENGINEERING - 01/22/20 - ADU RE-DESIGN © 2020 - Remodeling Design Professionals, Inc

RESIDENTIAL PROJECT DATA			
GENERAL PLAN CATEGORY	EXISTING CONDITION	PROPOSED PROJECT	PROPOSED
ZONING DISTRICT	R-O	-	NEW ADU
LOT SIZE	8552.74	8552.74	
GROSS FLOOR AREA	2398 SQ.FT	3548 SQ.FT.	3848.73 SQ.FT.
HEATED FLOOR AREA	1958 SQ.FT.	2123 SQ.FT.	ADU:999 SQ.FT.
PORCH	167 SQ.FT.	167+20 SQ.FT.	56 SQ.FT.
GARAGE	440 SQ.FT.	440 SQ.FT.	NONE
HEATED AREA TO BE REMOVED	-	-(357 SQ.FT.)	-(342 SQ.FT.)
HEATED AREA TO BE ADDED	-	522 SQ.FT.	999 SQ.FT.
NET INCREASE		165 SQ.FT.	657 SQ.FT.
FLOOR AREA RATIO	.2830	.3816	.45 MAX
LOT COVERAGE w/ PORCHES	2565 = 29.99%	2370 = 27.71%	3445 OR 40.27%
NEW ATTACHED ADU	N/A	N/A	999 SQ.FT.
BUILDING HEIGHT	17'-8" VS 30" MAX.	SAME	15'-5"
FRONT SETBACK	18'-6"@ GARAGE	20'-9" MAIN / 4'-9" ADU	20'-0" ALLOWED
INTERIOR SIDE SETBACK	20'-5"	4'-9"	4'-0" ALLOWED
EXT (STREET) SIDE SETBACK	14'-4"	14'-4"	9'-2" ALLOWED
REAR SETBACK	10'-3"	23'-3" 5'-8"	10'-0" PROVISIONAL
TOTAL # OF PARKING SPACES	4	4	N/A
IMPERVIOUS SURFACE AREA			

SCOPE OF WORK

ADD 657 SQ.FT. FLOOR AREA AND RE-BUILD 342 SQ. FT. OF PRIOR HEATED FLOOR AREA FOR 999 SQ. FT. ONE STORY - 2 BEDROOM, 2 BATH ATTACHED ADU

REBUILD 15 SQ.FT. AND ADD 507 SQ.FT ADDITION FOR NEW MASTER BEDROOM TO TO 1 STORY SINGLE FAMILY RESIDENCE.

ALL NEW WINDOWS TO BE "MILGARD" DUAL GLAZED UNITS WITH VINYL FRAME OR EQUAL. ALL NEW WEST FACING WINDOWS SHALL BE "LOW E".

ALL NEW SQUARE SKYLIGHTS SHALL BE: FLAT, TEMPERED, DUAL GLAZE BRONZE ANODIZED ALUMINUM FRAME UNITS AS MANUFAC. BY "VELUX" (OR EQUAL). ALL NEW TUBE SKYLIGHTS SHALL BE TLR MODEL "SUN TUNNEL" UNITS AS MANUFAC. BY "VELUX" (OR EQUAL). I.A.M.P.O. #ER-0019.

ALL NEW EXTERIOR TRIM AND FINISH TO MATCH EXISTING.

WALL LEGEND

	EXISTING WALLS TO REMAIN
	EXISTING WALLS TO BE REMOVED
	NEW WALLS / PROPOSED CONSTRUCTION

DEMOLITION NOTES:

DEMOLITION PLAN IS PROVIDED FOR REFERENCE ONLY. CONTRACTORS SHALL COORDINATE DEMOLITION CAREFULLY WITH FLOOR PLAN AND OTHER SHEETS WHICH INDICATE THE EXTENT AND NATURE OF THE NEW CONSTRUCTION. ANY DISCREPANCIES SHALL IMMEDIATELY BE BROUGHT TO THE ATTENTION OF THE DESIGNER. CONTRACTOR SHALL SECURELY SHORE IN PLACE ALL OVERHEAD STRUCTURES PRIOR TO REMOVING ANY SUPPORTING STRUCTURES

SHEET INDEX

SHEET #	DRAWING TITLE
1	SITE PLAN RESIDENTIAL PROJECT DATA
2	EXISTING FLOOR PLAN / DEMOLITION PLAN
3	PROPOSED FLOOR PLAN
4	ROOF PLAN
5	EXISTING EXTERIOR ELEVATIONS
6	PROPOSED EXTERIOR ELEVATIONS
7	CONSTRUCTION SECTIONS

conditions of approval

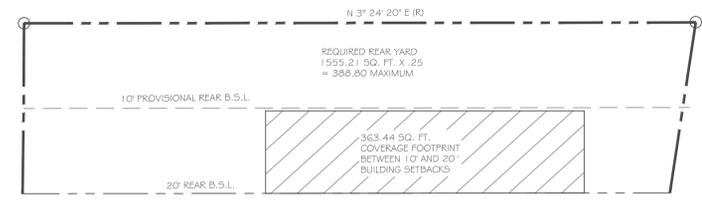
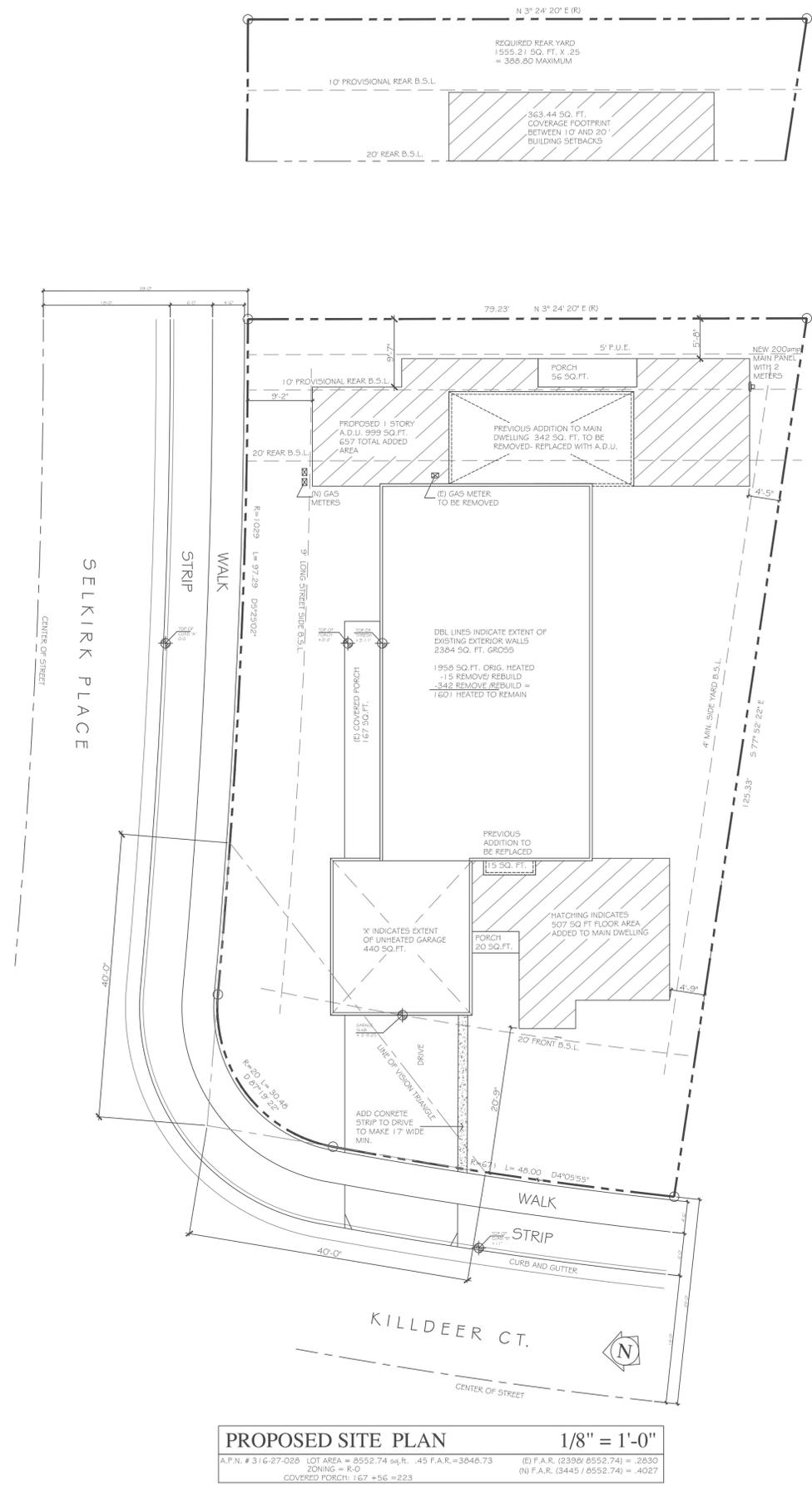


EXHIBIT C

**Alternatives Designs Considered
But Deemed Unworkable**

