

Jacob, Melinda

Subject: FW: 1151 Grizzly Peak
Attachments: Finding of fact and law in opposition to unpermitted accessory buildings at 1151 Grizzley Peak.pdf;
Personal statement by Joan Wager photographs in support.pdf; Impact of Removable Overhang.pdf

Importance: High

From: Rena Rickles <rena@rickleslaw.com>
Sent: Tuesday, September 6, 2022 4:46 PM
To: Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>
Cc: Updegrave, Samantha <SUpdegrave@cityofberkeley.info>; joanwager2004@comcast.net; noels1Joe DeCredico
(jdecredico@gmail.com) <jdecredico@gmail.com>
Subject: 1151 Grizzly Peak
Importance: High

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Dear Chair Kahn and ZAB Members,

This item first came to you on September 9, 2021. It was an application to legalize two accessory building structures, that had been placed, without any consultation with Joan Wager, in locations that would decimate the limited amount of solar access, air and view to the West. Tonight, almost one year later, one of those structures will no longer be before you as it is now submitted to Building as an ADU. This, was found to be an unreasonable detriment
Tonight Joan Wager asks that the ZAB approve the 2nd building, the one before you, by requesting that:

1. The roof overhang which was added after the building was delivered, be removed; and,
2. That Applicant's request to move the entire structure 2' be amended to be six (6) more feet from Joan Wagers' property line. The advantages to Joan Wager and limited impact to applicant are as follows:
 - By far, the biggest expense to Applicants is to bring the crane to the property to make the two moves they are requesting; extending that move an additional 6' is, by comparison, a small incidental expense;
 - The roof overhang was an addition to the existing building (it came separately); the detriment it causes is unreasonable (see attachment)
 - Applicants' large lot can accommodate the building in this proposed location;
 - The proposed extended distance, was chosen so that it would line up with the garage at 1157 Grizzly Peak and not be visible from her home, specifically her kitchen. (it is my understanding that the owner of 1157 Grizzly Peak stated in the past that she'd have no opposition to relocation so long as that relocation would not be visible from her kitchen)
 - This would open up and significantly mitigate Joan's loss of air, light and view, something that would be gone under the Applicants' proposal.
3. Architect, Joe DeCredico will describe specifics of this proposal/request at the hearing: there was insufficient time to prepare new drawings.
4. Even though this hearing is one year later, and there are changes to the Application itself, the arguments regarding unreasonable detriment under the circumstances of this Application and decision are fundamentally unchanged. On that basis we are submitting the findings of fact, Joan Wager's statement, and photographic impact from September 9, 2021.

Thank you for your consideration of this matter.

Rena Rickles

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September 9, 2021

Charles Kahn, Chairperson
Zoning Adjustments Board ("ZAB")
Attn: ZAB Secretary, 1947 Center Street, Second Floor, Berkeley CA 94704.
1947 Center Street
Berkeley, CA 94704
Via email: ZAB@CityofBerkeley.info

Re: 1151 Grizzley Peak; Deny as designed or Approve with design modification to significantly reduce detriment to air light and view to 25 Stoddard; Findings in Support

Dear Chair Kahn and ZAB Members:

Last March at around 10:00 AM, Joan Wager, a 77-year-old retiree, looked out in horror from her living room window as a crane lowered what would be the first of two large accessory buildings into her neighbor's yard, less than three feet from their common property line. That first building and the one that came next, block what had been Joan's main source of air, light, and view from her foyer, living room, dining room and kitchen. (See C, Photographs, in packet)

Joan rushed out screaming, "This is awful!" From the other side of the fence, a male voice responded, "We have permission." (See A, Joan Wager statement)

Before you tonight is the application to legalize those two buildings which, considering the size of Applicants' lot, could be re-located and/or reduced in size in a way to eliminate or significantly reduce their detriment.¹ Here, Applicants not only did not have the requisite City permits ("permission") but also, they did not consult Joan Wager about their plans. Had they done so, this entire matter could have been resolved without the need for the ZAB's intervention. But it is needed, and, because of the unreasonable detriment caused by these buildings' current configuration and location, we ask that you deny the application.²

¹ It was Applicants' conscious decision not to consult Joan Wager before installing these structures next to the property line and in front of her main windows. The difficulty of moving them is a problem they could have avoided.

² We also allege that the Staff Report's stated height and setback measurements (evidence) do not support the findings of fact that the buildings meet Zoning Developments Requirements but will not detail that point at this time as the arguments for detriment are sufficient to deny the application. However, we wish to preserve this argument in the event of an appeal.

WHERE, AS HERE, THE REQUESTED ACCESSORY BUILDINGS BLOCK THE MAIN SOURCE OF AIR, LIGHT AND VIEW FROM THE FOYER, LIVING ROOM, DINING ROOM AND KITCHEN OF 25 STODDARD, AND WHERE THEIR RELOCATION IS FEASIBLE AND WOULD ELIMINATE THE DETRIMENT, THE FINDING OF NON-DETRIMENT FOR THIS APPLICATION CANNOT BE MADE.

This Board can approve this application only if it can make the finding that under the circumstances of this case, a project will not be detrimental to property of the adjacent properties. (23B.32.040). This standard is intentionally a subjective one, it requires a balancing of the scales. In some cases, the additional two accessory buildings that allegedly meet Zoning code, may indeed satisfy the non-detriment standard. That is not the case here. The buildings before you, assuming they meet the Zoning Code requirements, can only be seen as unreasonably detrimental to the adjacent property at 25 Stoddard, Joan Wager's home. Joan's home before the intrusion of the accessory buildings had light and views from all the main rooms. Now she has nearly none.

The photographs, along with the floor plan provided in this submittal, tell the entire story; Staff's determination that these structures "should not be detrimental" flies in the of the physical facts of this particular case and must be rejected.

The evidence in the Staff packet shows only Applicants' view of their buildings and of Joan's home. There are no photos taken from 25 Stoddard. This is true even though Staff visited 25 Stoddard, and on entering Joan's home, looked out the windows and stated, "this is awful." Whether one relies on photographs, Staff's or Joan's personal observations, there is no way that the impact on Joan's home is not just detrimental, but it is significantly and unreasonably detrimental.

The evidence in this packet (B and C) floor plans and photographs) shows the location of the impacted windows in Joan's main living areas and the fact that the Accessory Buildings, notwithstanding Applicants' statement to the contrary, do indeed block the majority of Joan's main access to air light and view. Staff's conclusion is at odds with the language of the statute, and facts of this case, thus cannot be upheld.

- Taken together, both structures deprive Joan Wager of most of her southwest views which include the southern sun, horizon, and sunset to the west. (See C, photos taken from foyer, living room, kitchen, and dinette)³
- Instead of an open and airy feeling; the view from her windows now approximates that of a view from inside a closet. (See C, Photos in packet)

³ Joan Wager had no reason to think that her then existing south and southwestern views would change, thus we cannot provide photographic evidence of the views and light pre-accessory buildings. However, the letters in the packet describe eye-witness verification of the views prior to the accessory building blockage. And the photo from the less impacted 2nd bedroom some evidence of the prior views and light.

There are no objective or subjective facts that mitigate to balance the scale in favor of justifiable detriment:

- The site plan and lot size of 1551 Grizzley Peak show several alternate locations which would accommodate these structures, locations which would not be detrimental to 25 Stoddard.(See Staff Report)
- The intended use of these structures is not of a social value to justify the significant harm they cause.(See D in packet, Letter Terri Gerritz)

Because of Applicants' attitude and treatment of Joan Wager before determining the size and location of their personal amenity accessory structures, during their installation, after knowing of her opposition, or in response to her offer to compromise (also in packet), Joan Wager is dependent upon the ZAB to act to reverse the detriment caused by these buildings.

Applicants did not consult with their neighbor in making their decisions regarding the size and locations of the buildings. When their neighbor screamed about how awful they were, the response, "We have permission." In the last two weeks they ignored her letter containing her offer of compromise, refused a request to give her their phone number, and when she tried to hand deliver the letters, came out of their house screaming at her and threw the letters at her feet.

Even if the ZAB finds the location of these buildings insufficient detriment to deny the application, we ask that the ZAB condition/reduce their size down to that at least that set out in her offer of compromise. (E, in packet)

In a valiant and generous (too generous to this writer) offer to resolve this matter, Joan Wager made an offer of compromise. There, she states she will accept flattening the 5' height extension roof peak on Building 2; and removal of added overhang, deck patio to Building 1. These modifications will restore some of the views and light that are now almost entirely blocked by these buildings.

CONCLUSION. Where there is a loss of most of the air, light, and view from the main rooms in a home, that is a major detriment. When there are modest and feasible modifications that can mitigate those losses yet allows Applicants to retain these buildings, then that impact, constitutes "unreasonable detriment". As such, under the requirements for Findings for Issuance of Use Permits combined with the circumstances/facts of this case, this Use Permit must be DENIED.

Very truly yours,


RENA RICKLES

A. Personal Statement of Joan Wager

Chair Charles Kahn and Zoning Adjustments Board Members

Via email: ZAB@cityofberkeley.info

I'm Joan Wager and have lived in Berkeley, my city of choice, for 40 of the last 50 years that I've been in California. I'm 77 years old and moved into 25 Stoddard Way 3 years ago from a house that was up 43 stairs to the front door which became onerous after 31 years there and several orthopedic surgeries. My current house is flat and near Tilden Park and open space which I love, having grown up in New York City.

I'm a big supporter of Berkeley civic life and was head of my former neighborhood's area association. I like attending local neighborhood meetings and functions and want to know my neighbors and nourish the community in which I live.

I also volunteer at the City of Berkeley's Animal Shelter several days a week for the past 10 years and have advocated for them at City Council meetings.

Background to this Application

Before this, I had limited but lovely light, air, and sunset views from my main rooms—a feeling of openness which I cherished.

In mid-March, a scrap of paper was put into my mailbox stating that on March 19, 2021, a crane would deliver 2 accessory buildings on Friday at 8am to the backyard of 1151 Grizzly Peak for a workout studio and an art studio approved by the city of Berkeley, signed Matt and Gina.

I didn't think much about this assuming they were some kind of sheds, and I also didn't and still don't know Matt and Gina. I've only met them walking the neighborhood a few times and said hello.

The arrival and appearance of the two structures at issue; Applicant response to my reaction

To my surprise and shock, the buildings were large and dark and were both put within just a few feet of one another along the same fence line.

When the first structure, the workout studio was dropped in I screamed "this is awful". A male voice from beyond the fence replied, "approved by the City of Berkeley".

It got worse. Description of the impact on my already limited access to light and view. Later that evening a crew added a thick roof with a large overhang obscuring what little southwestern view that had remained, visible from the eat in kitchen and outdoor patio. Later siding and electrical cords were added to this structure bringing it even closer to the fence line.

The peaked roof of the dark colored art studio immediately blocked out light, space, and air and a distance view of sky, horizon, and sunset to the West from all major rooms in my house, the living room, dining room/office and entry room. It visually occupies the entire 4 windows.

Description of the impact on me. I have been living with these imposing structures for the last 6 months. Unfortunately, during this time I've been disabled with a severe hamstring tear and lying on my living room couch icing and elevating and staring at the dark looming art studio rather than the healing horizon which. Is very depressing.

This all would have been avoidable had only Matt and Gina spoken with me and visited my back yard and home to get a 360degree view of the situation. Instead, they thought for me and made decisions about me and my property from their 180degree view, which was only half the story. They did not take the time to ask what their structures looked like to me and what obstacles they presented from my side. I reached out to these Applicants three years ago before I made changes on my property which I thought might affect them. When I first moved in 3 years ago, I wanted to trim my trees and knocked on Matt and Gina's door to let them know and find out their needs if any, They were out of town and their Air B&B occupants phoned them and they said they didn't care.

CONCLUSION

Matt and Gina (Applicants) have cut off all direct communication with me. I asked a friend to obtain their phone number so I could discuss a compromise; Matt and Gina refused. I emailed my offer of compromise; they then changed and/or blocked emails.

Therefore, I need this ZAB's support and vote to prevent this utterly unreasonable, and avoidable detriment imposed upon me to continue.

Please vote to deny this application, or require the location and design to be modified as set out in my offer of settlement which I sent to applicants and ZAB (under separate cover)

I hope this troubling situation can still be resolved and that Matt and Gina can have their buildings altered to restore most of my light, air and view returned.

Thank you
Joan Wager

Sent from my iPad



1.

View upon entering the house, late afternoon



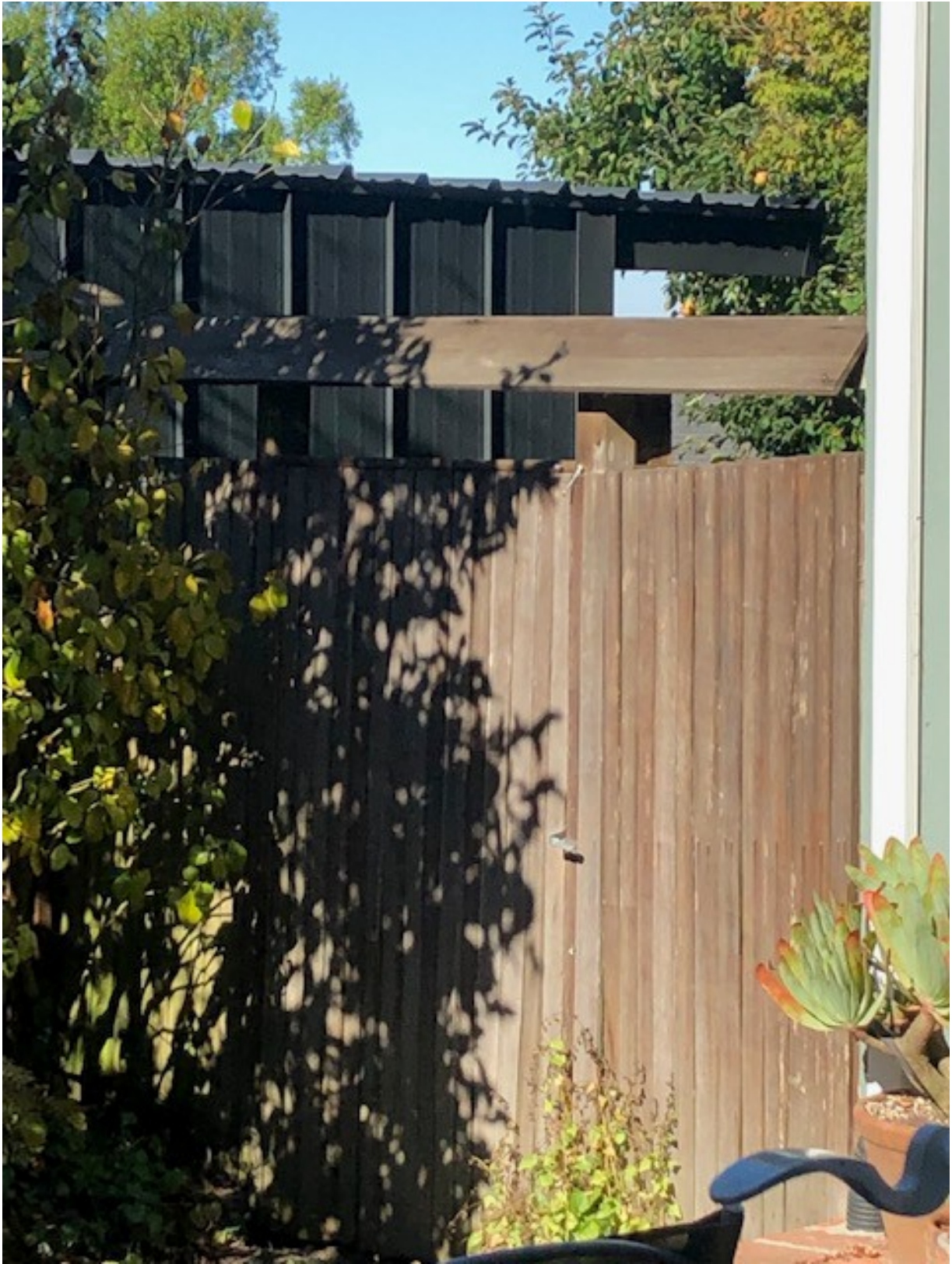
"Art Studio" from 25 Stoddard Living Room 2:00 PM, standing



“Art Studio” as viewed from 25 Stoddard Living Room, 4:00 PM, shows glare, standing



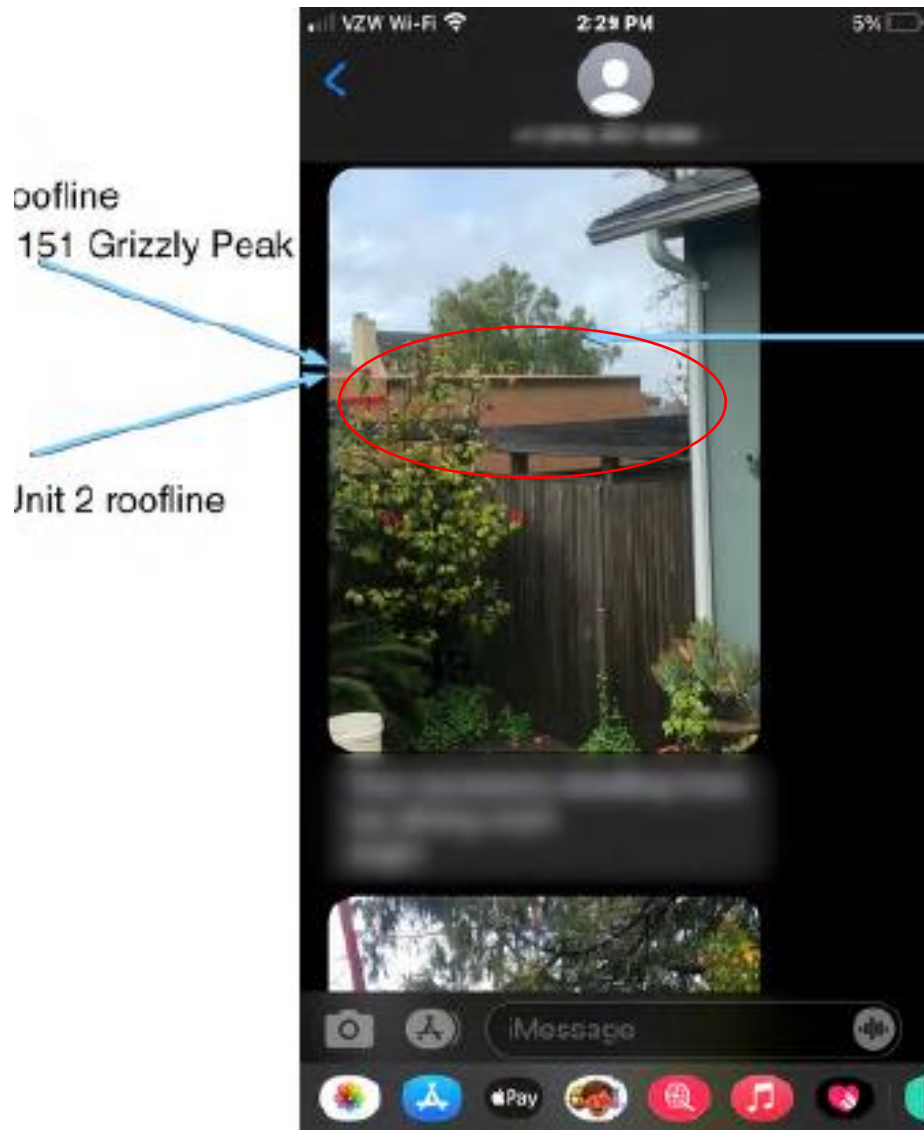
View from Dining Room of Art Studio, early evening



“Workout room” from 25 Stoddard kitchen, dinette, standing



View of Workout studio from Second Bedroom, afternoon.



PRIOR TO ATTACHMENT



AFTER ATTACHMENT

Jacob, Melinda

Subject: FW: 1151 Grizzly Peak Invitation for Site inspection at 25 Stoddard (sent delivery receipt)
Attachments: Invitation to ZAB members to 25 Stoddard.pdf
Importance: High

From: Rena Rickles <rena@rickleslaw.com>
Sent: Friday, September 2, 2022 5:13 PM
To: Updegrave, Samantha <SUpdegrave@cityofberkeley.info>; Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>
Cc: joanwager2004@comcast.net; noels1Joe DeCredico (jdecredico@gmail.com) <jdecredico@gmail.com>
Subject: 1151 Grizzly Peak Invitation for Site inspection at 25 Stoddard (sent delivery receipt)
Importance: High

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Hi Samantha,

Can you please assure that the attached invitation is transmitted to the ZAB members. Because we [still] do not have the ADU Plans and only obtained the specifics of the Application changes last night, we could not prepare requests for mitigation of the impacts of the remaining Building Structure before the ZAB in time to go out with the packet. We anticipate having that material before the Tuesday package goes out.

It would have been quite helpful had the Applicants provided Ms. Wager with their changes at the time they submitted them to Planning. Ms. Wager has and would have continued to copy Applicants with her materials, had they not blocked all email communication with her.

Thank you so much and enjoy your weekend.

Best,
Rena

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September 2, 2022

Charles Kahn, Chairperson
Zoning Adjustments Board ("ZAB")
Attn: ZAB Secretary, 1947 Center Street, Second Floor, Berkeley CA 94704.
1947 Center Street
Berkeley, CA 94704
Via email: ZAB@CityofBerkeley.info

Re: **1151 Grizzly Peak; Hearing September 8, 2022, INVITATION FOR SITE VISIT 25 Stoddard**

Dear Chair Kahn and ZAB Members:

On behalf of Joan Wager, I am inviting each of you to visit 25 Stoddard, Joan Wager's home, and/or contact her architect, Joe DeCredico, in order to see how a modest modification to the unpermitted accessory building before you, can help mitigate the major loss to her remaining air, light and view.

Because of recent changes to the application, ones we could not obtain access to until the Staff Report was released last night, September 1, 2022¹, we are inviting you come again. The application changed to "convert"² one of the unpermitted accessory buildings to an ADU. We support the social policy of encouraging new housing. We are asking for modifications to the ADU before you in order allow Joan to retain what would now be left of her pre-existing air, light and view.

This development has forced us to do a last minute conceptual design on ways to salvage what remains of her view. We have done that by suggesting a modest change to the costly move Applicants are proposing to undertake, and, to mitigate the glare, something to which Applicants have previously agreed. It is our intention to have those drawings sent to you in Tuesday's ZAB package. It is our hope that you can schedule a time to visit Wednesday or Thursday after reviewing our submittal.

To schedule a time that works for you, please contact Joan either by email joanwager2004@comcast.net or by phone/text @510-457-6360. Joe can be reached at 510-755-4710 or by email at jdecredico@gmail.com.

¹ In fact, due to technical issues, our architect has not yet been able to access the ADU plans even though he personally went to the Building Permit Center to requesting an opportunity to see them.

² "Convert" is in quotes because the building permit application labels it a conversion from an accessory building to an ADU. However, since the building has never been permitted, the word conversion is inappropriate.

Covid—Safety protocols:

- Joan has had her vaccinations, including booster and will wear a N-95 or equivalent mask. There will not be anyone else in the house.
- Joan requests that each of you wear a N-95 or equivalent mask.

Very truly yours,

Rena Bickle