

**Council Meeting: January 27, 2009**

SUBJECT: **2008-0946:** Appeal by the applicant of a decision of the Planning Commission denying an application for a Special Development Permit to allow a 136-square foot shed at a single-family residence resulting in more than 40% lot coverage. The property is located at **506 Davenport Ct.** (near Yukon Dr.) in an R-2/PD (Low-Medium Density Residential/Planned Development) Zoning District.

Motion **Special Development Permit** to allow a 136-square foot shed at a single-family residence resulting in more than 40% lot coverage.

REPORT IN BRIEF

Existing Site Conditions Single-story single-family home and storage shed in a Bahl Patio home Planned Development neighborhood

Surrounding Land Uses

North	Single-story single-family home (Bahl Patio home)
South	Single-story single-family home (Bahl Patio home)
East	Single-story single-family home (Bahl Patio home)
West	Single-story single-family home (Bahl Patio home)

Issues Lot coverage and neighborhood compatibility

Environmental Status A Class 3 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines.

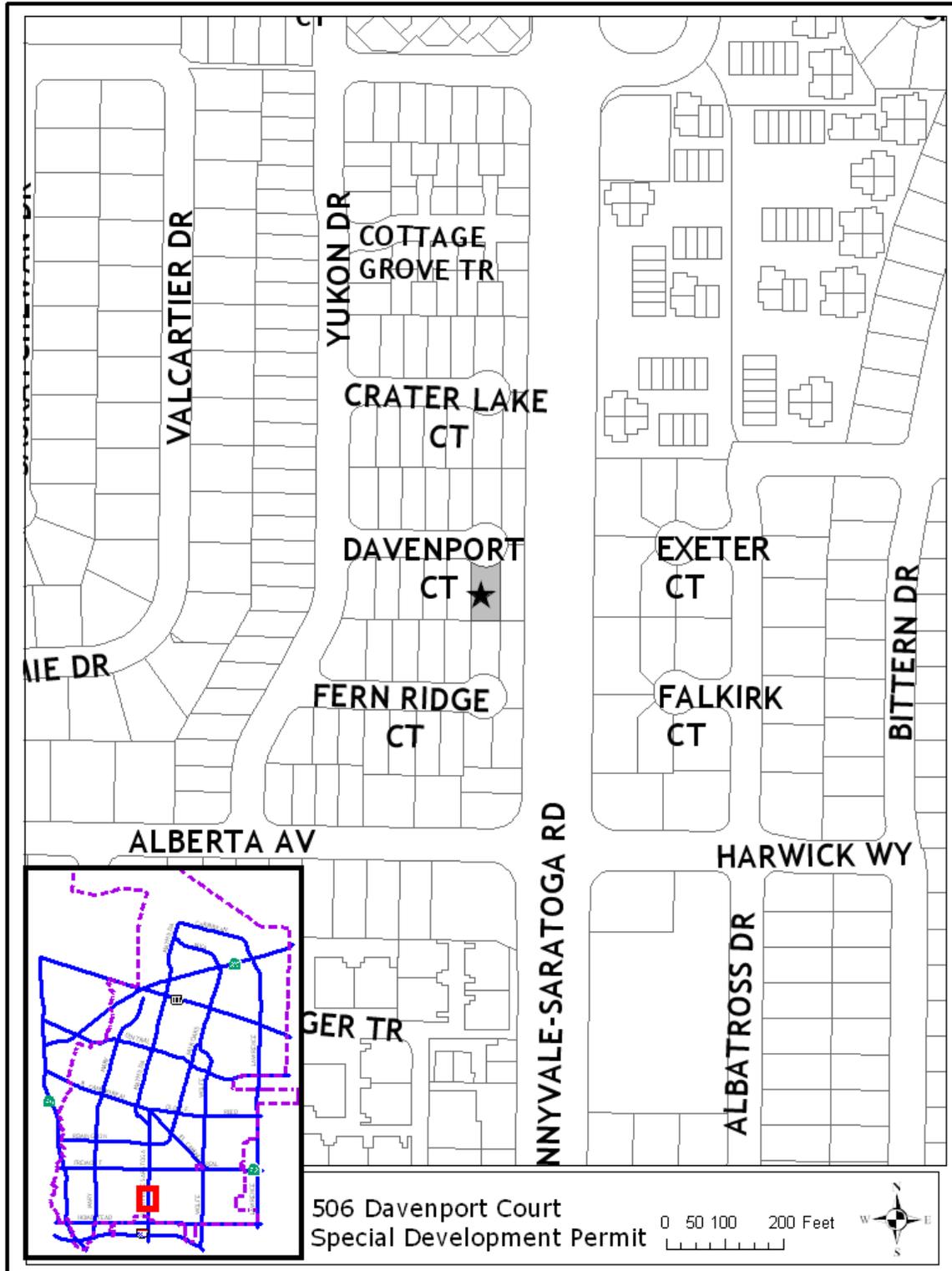
Planning Commission Action Denied the Special Development Permit.

Staff Recommendation Grant the appeal and approve the Special Development Permit with conditions.

2008-0946: Appeal of Special Development Permit
Application for 506 Davenport Court

January 27, 2009

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PROJECT DATA TABLE

	EXISTING	PROPOSED	REQUIRED/ PERMITTED
General Plan	Residential Low-Medium Density	Same	Residential Low-Medium Density
Zoning District	R-2/PD	Same	R-2/PD
Lot Size (s.f.)	4,449	Same	4,449
Total Gross Floor Area (s.f.)	2,015	Same	2,015 per SDP 2007-1259
Gross Floor Area of Shed (s.f.)		120*	--
Total Lot Coverage/ Floor Area Ratio (FAR)	45.3%	48.0 % total	40% max. per original SDP / 45.3% per SDP 2007-1259
Building (house) Height (ft.)	19	Same	30 max.
Shed (ft.)	N/A	6 ft.-6 in.*	15
No. of Stories	1	1	max.
Setbacks (Facing Property)			
Front	8 ft.	8 ft.	5 ft.-6 in. per SDP
★ Left Side	0 ft.	0 ft. (1ft.-4 ½ in. to shed)	4 ft. for R-2 / 0 ft. per SDP (12' total)
★ Right Side	12 ft.	12 ft. (31 ft.-6 ½ in. to shed)	4 ft. (12 ft. total)
★ Rear	10 ft.	10 ft. (1 ft.-1 in. to shed)	10 ft. per SDP**
Parking			
Total Spaces	4	Same	4
Covered Spaces	2	Same	2

★ Starred items indicate deviations from Sunnyvale Municipal Code requirements, but which could be permitted by a SDP.

* Applicant has modified the request from 136 square feet to 120 square feet and from 8 feet 11 inches to 6 feet 6 inches in height.

** Original SDP requires that rear yards shall not be less than 10 feet provided that not more than 25% of any rear yard, as defined by the Zoning Code, may be covered by a structure.

ANALYSIS

Description of Proposed Project

This SDP application (2008-0946) is a proposal to exceed allowable lot coverage for an accessory utility building (shed). The property was limited to 40% lot coverage when developed in 1968. A SDP approved in 2008 increased allowable coverage to 45.3%. This proposal to legalize an existing 8-foot 11-inch tall, 136-square foot shed was denied by the Planning Commission on October 27, 2008. The applicant appealed this decision and has revised the proposed plans to limit the proposed shed to 120 square feet in size and 6 feet 6 inches in height (see Attachment G).

The existing shed, as constructed, would result in 48.3% lot coverage (see Attachment C for the original site and architectural plans). The revised proposal would result in 48% lot coverage (see Attachment G). Because the site is located within a planned development, modifications to the originally approved structure require a planning permit (Miscellaneous Plan Permit or SDP).

Background

Previous Actions on the Site: The following table summarizes previous planning applications related to the subject site.

File Number	Brief Description	Hearing/Decision	Date
2007-1259	SDP to allow a 176 square foot addition and a 136 square foot shed resulting in 45.3% FAR and 48.3% lot coverage.	Planning Commission/ Approved (Addition was approved subject to the condition that the shed be removed)	2/11/2008
1968-0023 (Old File #1730)	Rezone a collection of sites (including project site) from R-1 to R-2/PD	City Council/ Approved	8/27/1968
1968-0022 (Old File #1732)	Tentative Map for an 88-lot subdivision	City Council / Approved	8/27/1968
1968-0021 (Old File #1741)	Special Development Permit to develop Bahl Patio Homes	Planning Commission/ Approved	8/27/1968

A Special Development Permit (SDP) application for a home addition and shed was reviewed by the Planning Commission on February 11, 2008 (SDP 2007-

1259). The Planning Commission approved SDP 2007-1259 to allow the addition and 45.3% lot coverage, but included a condition of approval that required the removal of the shed (which was constructed without permits) within six months of the date of the decision. The shed was not removed within six months of the decision as required by the Planning Commission.

The Neighborhood Preservation Division staff has been working with the applicant to comply with the conditions of approval of SDP 2007-1259. As the applicant never appealed the February 2008 decision, he filed a new SDP application for the shed. The Planning Commission considered the subject SDP application (2008-0946) on October 27, 2008 and denied it. The applicant appealed the decision of the Planning Commission on November 11, 2008.

Environmental Review

A Class 3 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines. Class 3 Categorical Exemptions include new construction of small accessory structures such as patios, fences or sheds.

Special Development Permit

Use: The applicant justifies that the shed is necessary to meet their storage needs. The applicant's letter of justifications can be found in Attachment D.

Site Layout/Architecture: The site is part of a subdivision of single-family homes constructed in the late 1960s that are commonly referred to as Bahl Patio Homes. These homes were approved under a Special Development Permit allowing for deviations from development standards including lot size, setbacks, and fence/wall heights. The intent of these deviations was to provide detached single-family home living in a low-medium density development. Bahl Patio Homes are characterized by a zero side yard setback on one side, a tall roof form on the other side and a surrounding 8- to 9-foot tall stucco or masonry wall.

The bulk of the subject home is situated to the east (left) side of the lot. The home has a zero side yard setback from the east property line which was approved under the original Special Development Permit. The home is comprised of flat roof forms over the living spaces adjacent to the surrounding stucco wall, except for the newly constructed addition which has a gabled roof similar in pitch to roof over the living spaces at the western half (right side) of the home.

The proposed shed is located in the rear yard of the property. The original Special Development Permit allows a 10-foot rear yard setback provided that

not more than 25% of the required rear yard is covered, as defined by the zoning code. The existing home currently covers 24.5% of the required rear yard. With the *newly* proposed shed, coverage of the rear yard would increase to 36.7%.

The proposed (existing) shed reviewed by the Planning Commission in October 2008 is only 3 feet 2 inches away from the main home, which does not meet a 5-foot separation required by the Building Code for sheds of that size and its proximity to a window on the house. The shed is 1 foot 4½ inches from the east property line and 1 foot 1 inch from the rear property line. The shed is also 8 feet 11 inches tall, which projects above the walls separating the neighboring properties.

On all other residential properties not within a Planned Development combining district, accessory utility buildings that are **120 square feet or less** and **no more than 6 feet 6 inches tall** can be placed anywhere on the lot without building or planning permits as long as the following criteria are met:

- If a detached structure, the shed must be 2 feet from any other building as measured from the closest point.
- If located on a corner lot, the shed shall be screened to the highest point if it is adjacent to the longest street frontage.
- If used to house pool or spa equipment, the setback requirements for the zoning district must be met.
- Shall not exceed 45% total lot coverage for single-story homes unless allowed through a Miscellaneous Plan Permit.
- Shall not exceed 25% coverage of the required rear yard area, unless allowed through a Miscellaneous Plan Permit.

The applicant has revised the proposed plans to propose a 120-square foot shed which measures 16 feet 1 inch in length and 7 feet 5½ inches in width. The proposed shed is now 6 feet 6 inches tall at its maximum height.

The following Guidelines were considered in the analysis of the project architecture.

Single-Family Home Design Techniques	Comments
<p>2.2.2 <i>Respect the scale, bulk and character of homes in the adjacent neighborhood.</i></p> <p>3.10 <i>Relate the design of accessory structures to those of the main structure.</i></p>	<p>The proposed shed has been reduced in size from the original proposal and would not be visible from the adjacent properties. The shed would be painted and be made architecturally compatible with the existing home. The construction of the shed would exceed the allowable lot coverage of 45% on residential properties. However, this deviation could be allowed through a Special Development Permit for residential properties within a planned development, and through a staff-level Miscellaneous Plan Permit for residential properties not within a planned development.</p>

Landscaping: The site meets landscaping and useable open space standards for the R-2 Zoning District. However, the addition of the shed could further limit the usable open space on an already relatively small lot.

Parking/Circulation: The site meets parking standards for single-family homes with two covered garage spaces and two uncovered driveway spaces.

Compliance with Development Standards/Guidelines: With the exception of deviations from setback and lot coverage standards, the proposed project complies with the required development standards and guidelines.

Expected Impact on the Surroundings: The proposed shed would not be visible from the public street or from the adjacent properties. Approval of the proposed shed would set precedence for future similar applications for properties with Bahl Patio homes.

Fiscal Impact

No fiscal impacts other than normal fees and taxes are expected.

Public Contact

Staff has not received any comments regarding this project from the public.

Planning Commission Public Hearing: On October 27, 2008, the Planning Commission considered the original proposal, which was for a 136-square foot shed that was 8 feet 11 inches tall. The Planning Commission denied the Special Development Permit due to the fact that the shed was constructed without permits, and therefore did not meet City codes, including building codes. One of the Commissioners was also concerned about setting precedence with the approval of the shed in a Bahl Patio home community. Minutes of the Planning Commission public hearing are located in Attachment H.

Notice of Public Hearing	Staff Report	Agenda
<ul style="list-style-type: none">• Published in the <i>Sun</i> newspaper• Posted on the site• 8 notices mailed to property owners and residents adjacent to the project site	<ul style="list-style-type: none">• Posted on the City of Sunnyvale's Website• Provided at the Reference Section of the City of Sunnyvale's Public Library	<ul style="list-style-type: none">• Posted on the City's official notice bulletin board• City of Sunnyvale's Website

Conclusion

Discussion: As constructed and originally applied for, staff could not make the findings to support the legalization of the shed. The shed appeared to be too large for the lot and does not meet the separation requirement of 5 feet from the main building, as required by the Building Code. It was also unknown whether the shed complies with other Building Code requirements for things such as electrical connections since building permits were not obtained for the shed.

However, since the applicant has revised the proposed plans, the proposed shed would now be reduced in size and height and would not have to meet the separation requirement of 5 feet from the main building. A building permit would not be required for the actual construction of the shed, although other permits may still be required, such as electrical permits.

Approval of the proposed shed would result in 48% lot coverage. The largest lot coverage on record approved for a Bahl home is 49.8%, which was for 536 Cashmere Court. The lot area of 536 Cashmere Court is smaller than that of the subject property, but the approved additions met the required setbacks. The only other shed on record approved for a Bahl home property on record (similar to the proposed project) is located at 1451 Yukon Drive. The approval was for an approximately 70-square foot shed less than 7 feet tall located at the very rear of the property. The lot area of 1451 Yukon Drive is also smaller than that of the subject property, and the approved shed was smaller than the

proposed project. The approved plans for the shed at 1451 Yukon Drive are located in Attachment E.

Findings and General Plan Goals: Staff was able to make the required Findings based on the justifications for the Special Development Permit. Findings and General Plan Goals are located in Attachment A.

Conditions of Approval: Recommended Conditions of Approval are located in Attachment B.

Alternatives

1. Grant the appeal and approve the Special Development Permit for a 120-square foot shed with the attached conditions.
2. Grant the appeal and approve the Special Development Permit for a 120-square foot shed with modified conditions.
3. Deny the appeal and uphold the decision of the Planning Commission denying the Special Development Permit.

Recommendation

Alternative 1, grant the appeal and approve the Special Development Permit for a 120-square foot shed with the attached conditions.

Reviewed by:

Hanson Hom,
Director of Community Development Department

Reviewed by: Trudi Ryan, Planning Officer
Prepared by: Rosemarie Zulueta, Assistant Planner

Reviewed by:

Gary Luebbbers
City Manager

Attachments:

- A. Recommended Findings
- B. Recommended Conditions of Approval
- C. Original Site and Architectural Plans
- D. Special Development Permit Justifications Letter from the Applicant
- E. Approved Plans for Shed at 1451 Yukon Drive
- F. Letter of Appeal from the Applicant/Apellant
- G. Revised Site and Architectural Plans
- H. Minutes of Planning Commission Hearing on October 27, 2008

Recommended Findings - Special Development Permit

Goals and Policies that relate to this project are:

Land Use and Transportation Element

Policy N1.4 – *Preserve and enhance the high quality character of residential neighborhoods.*

1. The proposed use attains the objectives and purposes of the General Plan of the City of Sunnyvale. (*Finding met.*)

Staff finds that the revised proposal for a shed is architecturally compatible with the home and meets the development standards, as could be approved by a Special Development Permit. Although the construction of the shed may further limit the amount of usable open space on the property, staff considers the shed to be a reasonable expansion. The proposal could also be allowed through a staff-level permit for a residential property not within a planned development.

2. The proposed use ensures that the general appearance of proposed structures, or the uses to be made of the property to which the application refers, will not impair either the orderly development of, or the existing uses being made of, adjacent properties. (*Finding met.*)

The single-family homes in the Bahl Patio home neighborhood were required by the original SDP to have at least a 10-foot rear yard setback in an effort to limit the privacy and visual impacts of neighboring structures. The Bahl Patio home lots are small and usable open space is limited. However, the proposed shed has been reduced in size and would not be visible to adjacent properties or the public street.

Recommended Conditions of Approval - Special Development Permit

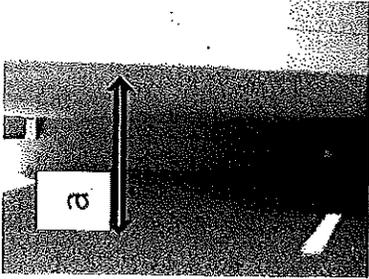
In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following conditions of approval of this Permit:

Unless otherwise noted, all conditions shall be subject to the review of approval of the Director of Community Development.

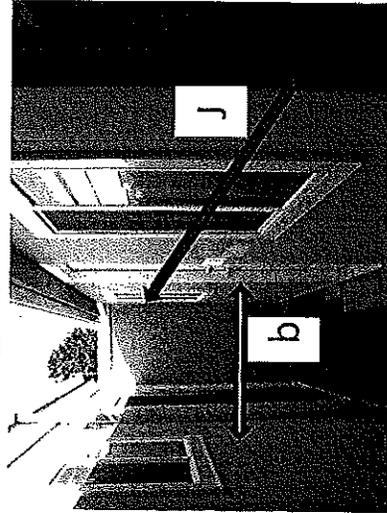
1. GENERAL CONDITIONS

- A. Project shall be in conformance with the plans approved at the public hearing(s). Minor changes may be approved by the Director of Community Development. Major changes would require approval at a Planning Commission public hearing.
- B. The existing accessory utility building (shed) shall be removed or modified by March 1, 2009, unless otherwise approved by the Director of Community Development.
- C. Obtain a demolition permit for the existing shed and any other applicable permits (i.e. electrical permits, etc.) as required by the Building Safety Division.
- D. The shed shall be limited to 120 square feet or less in size and 6 feet-6 inches or less in height.
- E. The shed shall be for storage or utility purposes only, and shall not be converted into habitable space or used as an accessory living unit.
- F. Lot coverage shall not exceed 48% with the addition of the shed.
- G. The shed shall not drain onto adjacent properties.
- H. Comply with all conditions and requirements of previously approved Special Development Permit 1741, dated September 9, 1968, and Special Development Permit 2007-1259, dated February 11, 2008, except as they may be herein modified.
- I. Any fences/walls damaged during construction shall be repaired.

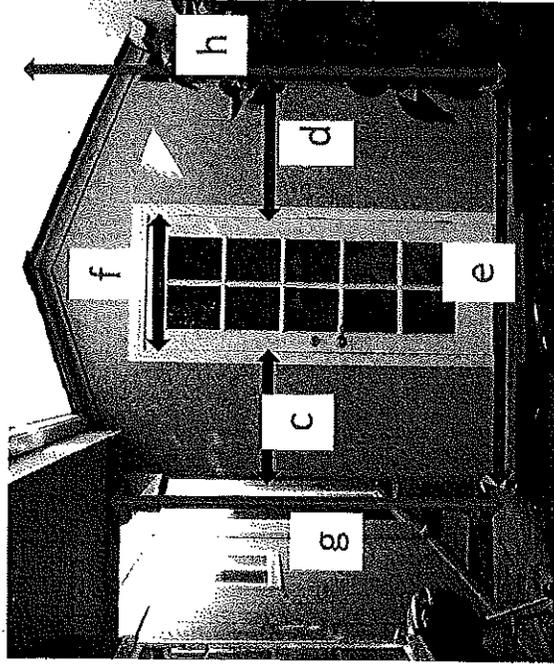
Shed at 506 Davenport Court



Back-side clearance
(East property line)



Left-side clearance
(north elevation)



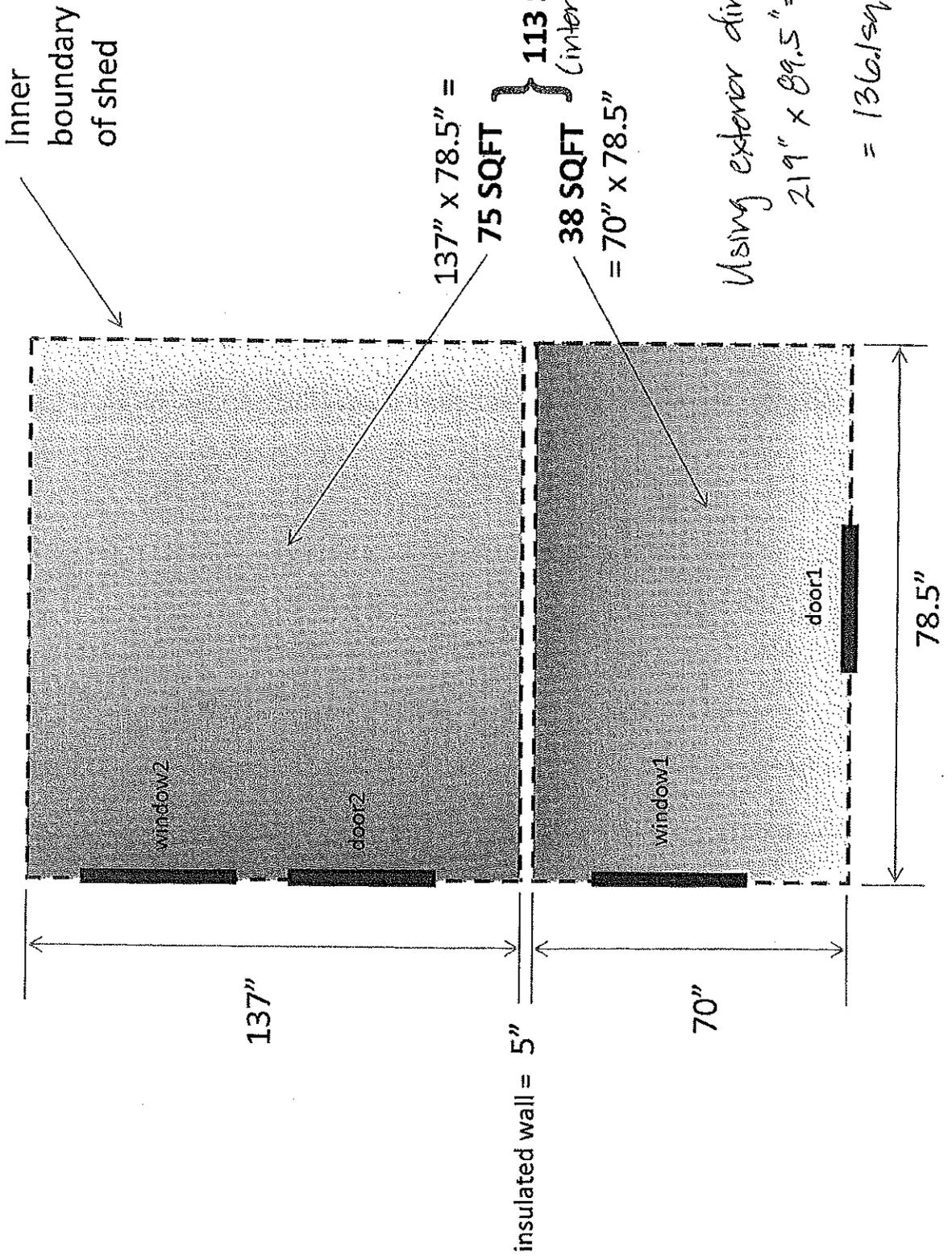
Front View
(west elevation)

Legend	Description	Distance (")
a	Back-side clearance	16.5 = 1 ft. - 4 1/2 in.
b	Left-side clearance	38 = 3 ft. - 2 in.
c	Width Dimension 1	28
d	Width Dimension 2	31.5
e	Shed Width	89.5 = 7 ft. - 5 1/2 in.
f	Door1 Width	30
g	Shed Height Dimension	88
h	Shed Height	107 = 8 ft. - 11 in.
i	Right Side Clearance	13 = 1 ft. - 1 in.
j	Shed Length	219 = 18 ft. - 3 in.



Right-side clearance
(South property line)

Shed at 506 Davenport Court



Material List for the Shed at 506 Davenport Court

Materials used to build storage are as follow:

Rebar
Concrete
Hardware
2x6
4x4
2x4
plywood
Sheetrock
Insulation
Doors
Windows
Hardwood
Wood Siding
Shingle
Gutter
Downspout
Lighting Fixtures
Paint



USE PERMIT/SPECIAL DEVELOPMENT PERMIT JUSTIFICATIONS

ATTACHMENT: D
Page 1 of 2

One of the two following findings must be made in order to approve a Use Permit or Special Development Permit application.

The Sunnyvale Municipal code states that at least one of the following two justifications must be met before granting the Use Permit or Special Development Permit. Please provide us information on how your project meets at least one of the following criteria.

1. The proposed use attains the objectives and purposes of the General Plan of the City of Sunnyvale as the project ...

OR

2. The proposed use ensures that the general appearance of proposed structures, or the uses to be made of the property to which the application refers, will not impair either the orderly development of, or the existing uses being made of, adjacent properties as ...

Please See attached

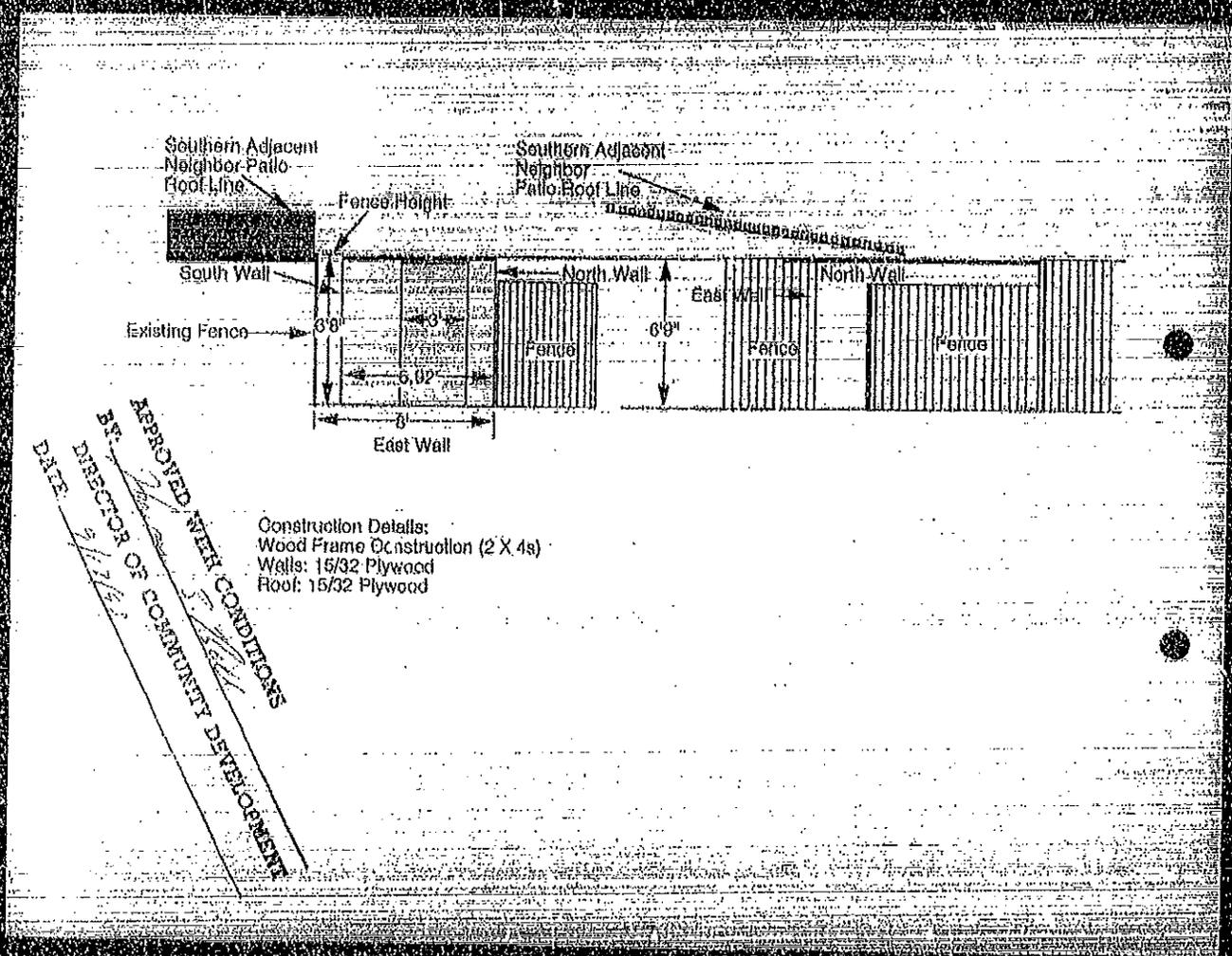
If you need assistance in answering either of these justifications, contact the Planning Division staff at the One-Stop Permit Center.

Use Permit/Special Development Permit Justifications

Criteria-2 of the City-of-Sunnyvale's SDP Justification form regarding the preservation of the "Shed" at 506 Davenport Court, Sunnyvale, CA 94087:

The proposed use ensures that the general appearance of proposed structures, or the uses to be made of the property to which the application refers, will not impair either the orderly development of, or the existing uses being made of, adjacent properties as... per the following justifications:

1. The shed is totally hidden from the neighborhood viewing as it is situated in the south-side of the lot, between the owners' house, and three other neighbors' lots. The apex of the shed, which is only 11" above the zero-lot-line wall of 8-ft high, is ~ 5 feet away from the wall. So, in normal viewing, NONE of the three neighbors can even see the shed. Regardless, for MANY years (19 years in this neighborhood), we have lived in harmony with all our neighbors w/o even a minute incidence of conflict and/or tension.
2. When the house was purchased in 1989, the owner lived there by himself and could easily manage his storage needs at the time. There is now a family of four (parents and children almost 7 and 10 years old) living in the house and these storage needs have significantly increased. The parents are both professionals in technical fields in possessions of thousands of books, and tools that have filled the garage. Thus, the shed is being used to fulfill the owners' other essential storage needs for items such as gardening tools, outdoors furniture, family memorabilia, and family bicycles.
3. The removal of the shed was planned to be the last step of the recent construction. We were unable to execute due to our contractor's busy summer schedule and our lack of funds. To abide by the rules of the City of Sunnyvale in adding the family room which was recently completed, the owners suffered in excess of \$45,000. in dismantling what had been built w/o a permit, architect and permit fees, and the re-construction fees. The amount of damage and suffering has already been quite high. We spent the winter with no central heating. The kids' bedroom constantly flooded when it rained due to the previous construction on hold. **Please** do not make us remove the shed which wonderfully serves our storage needs for which, we have spent in excess of \$15,000. Loss of the shed will truly be devastating!!! The initial estimate for the removal of the shed is \$5000. The emotional cost is the loss of living space for our children due to the relocation of the items from the shed back into our house.



Construction Details:
Wood Frame Construction (2 X 4s)
Walls: 15/32 Plywood
Roof: 15/32 Plywood

APPROVED WITH CONDITIONS
B.F. [Signature]
DIRECTOR OF COMMUNITY DEVELOPMENT
DATE 5/13/12

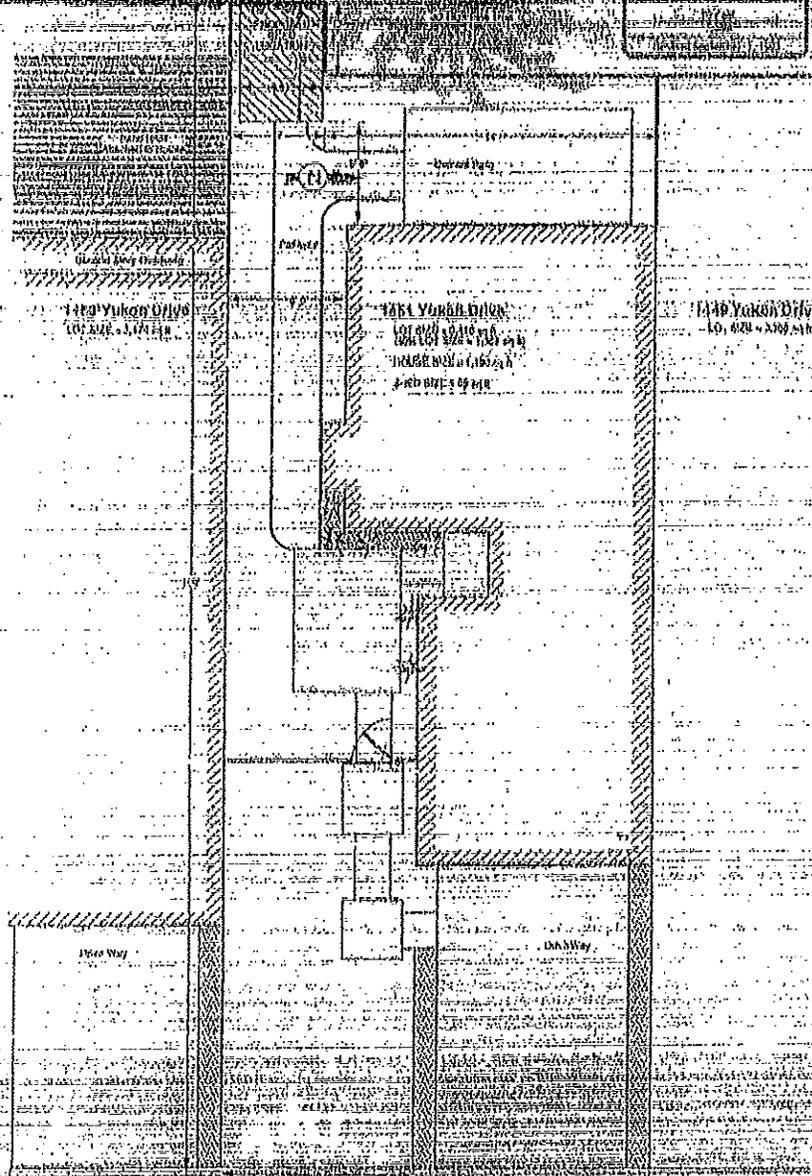
1402 Vancouver

1454 Vancouver

ATTACHMENT E

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1461 Yukon Drive
STORAGE SHED
SITE PLAN



1402 YUKON DRIVE
LOT 100 x 110 ft

1461 YUKON DRIVE
LOT 100 x 110 ft
DRAINWAY 10 ft x 10 ft
PAVED WAY 10 ft x 10 ft

1454 YUKON DRIVE
LOT 100 x 110 ft

Paved Way

DRAINWAY

YUKON DRIVE

Letter of Appeal

11/11/08

Subject: **Shed** at 506 Davenport Ct., Sunnyvale, CA 94087

Dear Sir/Madam:

I, Jian Miremadi, attended a PC hearing on Oct. 27th, 2008 to defend a case in favor of keeping a shed at the above address. The planning commissioners denied the request. The details of this case have been under pertinent reviews & considerations by Ms. Rosemarie Zulueta of the planning Dept. at the City of Sunnyvale.

We're proposing to make significant changes to the design and layout of the shed, per guidance from Ms. Zulueta, to hopefully make it acceptable, by:

1. *reducing the existing footprint of 136-ft² to the allowable limit of 120-ft²,*
2. *reducing the current peak height of 8-ft & 11-in to the allowable limit of 6.5-ft, and*
3. *increasing the current distance-to-our-house of 3-ft, 2-in to a little over 4-ft.*

Attached to this letter, you'll note 4 pages of photos & plans as follows:

- P1: Current West-to-East Picture of the Shed
- P2: Current Dimensional Details of the Shed
- P3: Current & Proposed Top View of the Shed
- P4: Current & Proposed West-to-East View of the Shed

These pages will better assist in communication of the proposed changes.

We very much appreciate your review of this case in support of the aforementioned changes. Also included with this filing, as requested by Ms. Zulueta, are the following items:

- a. completed Public Hearing Application,
- b. check for the requested amount of \$117, and
- c. 2 copies of: Site-plan, Floor-plans, and Elevations (as per the MPP Application Checklist)

Any questions and/or concerns, please contact me on my cell# 408-219-6397.

Thanks and regards,

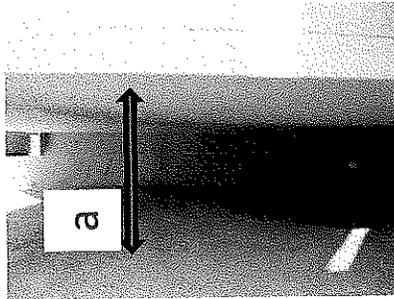


Jian Miremadi

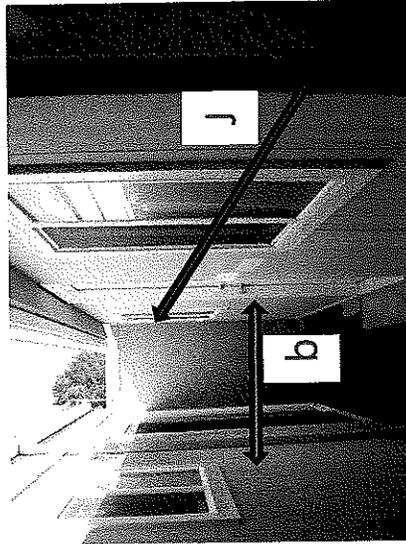
Current West-to-East Picture of the Shed
at: 506 Davenport Ct. in Sunnyvale



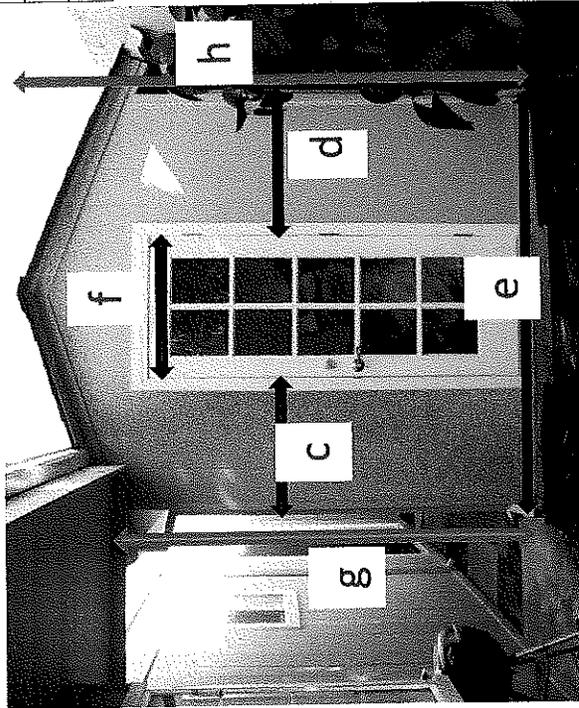
Current Dimensional Details of the shed



Back-side clearance



Left-side clearance



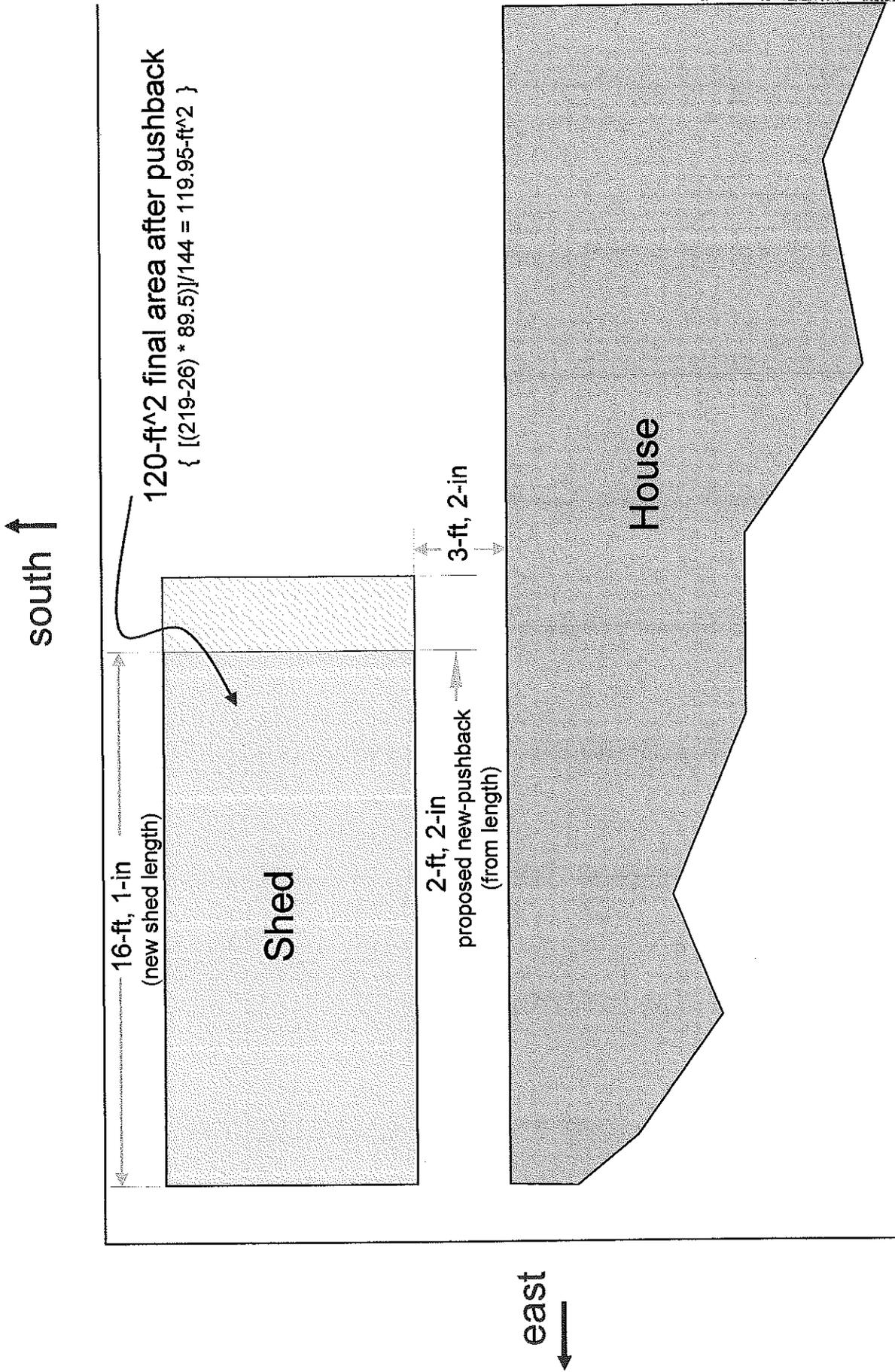
Front View



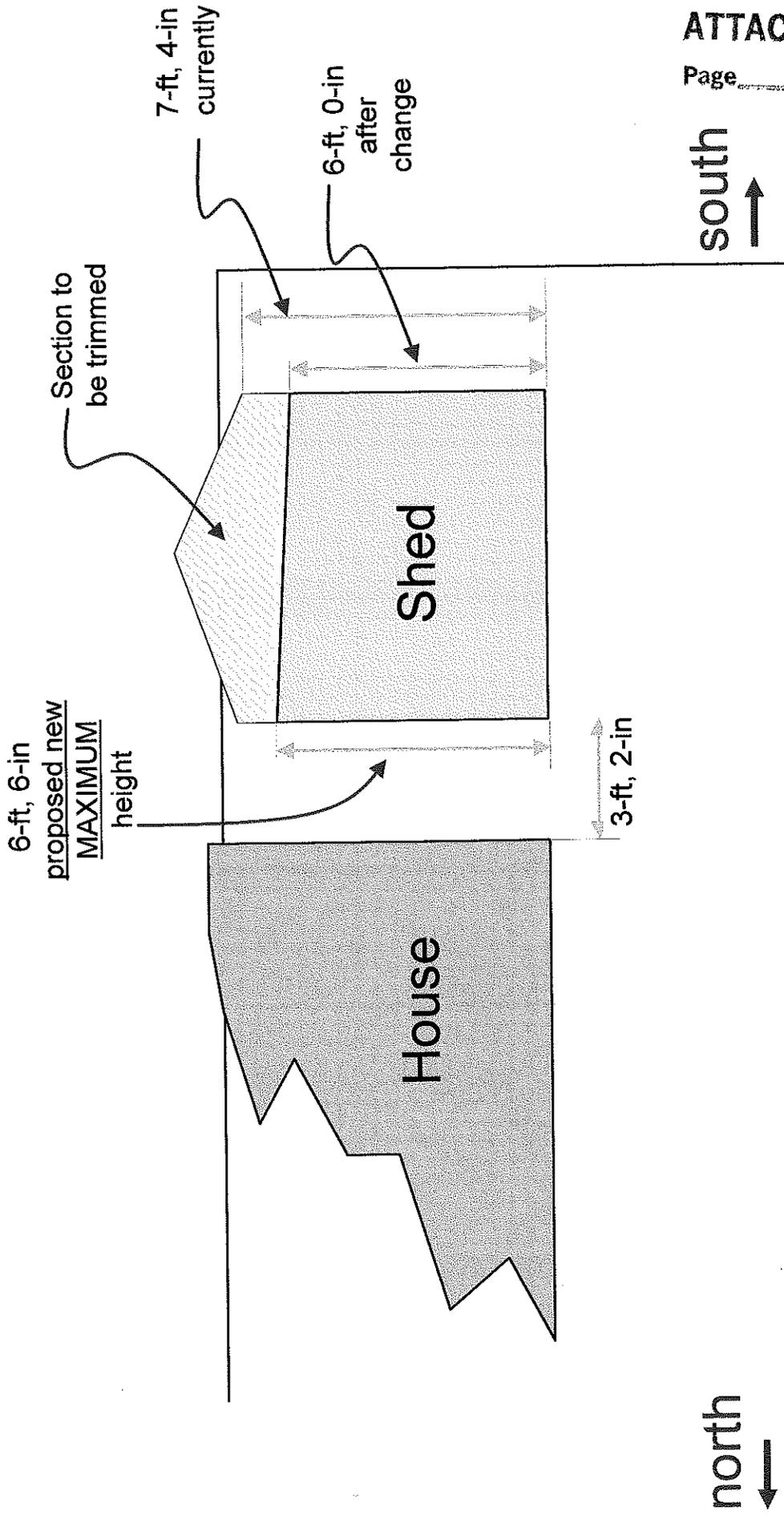
Right-side clearance

Legend	Description	Distance (")	Distance
a	Back-side clearance	16.5	1-ft, 4.5-in
b	Left-side clearance	38	3-ft, 2-in
c	Width Dimension 1	28	2-ft, 4-in
d	Width Dimension 2	31.5	2-ft, 7.5-in
e	Shed Width	89.5	7-ft, 5.5-in
f	Door1 Width	30	2-ft, 6-in
g	Shed Height Dimension	88	7-ft, 4-in
h	Shed Height	107	8-ft, 11-in
i	Right Side Clearance	13	1-ft, 1-in
j	Shed Length	219	18-ft, 3-in

Current & Proposed (most recent version of 11/24/08) Top View of Shed



Current & Proposed (most recent version of 11/24/08) West-to-East View of Shed



PLANNING COMMISSION MINUTES OF OCTOBER 27, 2008

2008-0946: Application for a Special Development Permit to allow a 136 square foot shed at a single-family residence resulting in a lot coverage exceeding 40% which requires Planning Commission Review. The property is located at **506 Davenport Ct.** (near Yukon Dr.) in an R-2/PD (Low-Medium Density Residential/Planned Development) Zoning District. (APN: 323-31-025) RZ

Gerri Caruso, Principal Planner, presented the staff report. She said staff is recommending the Commission deny the Special Development Permit.

Chair Rowe opened the public hearing.

Jian Miremadi, applicant, distributed a handout to the Commissioners. He said he is hoping to convey to the Commission how the shed has provided extra space and accommodates his family's needs. He said he would also like to alleviate the Commission's concerns about the visibility of the shed in the neighborhood. He referred to the handout and explained how the shed is barely visible to the neighbors. He said visually it causes minimal intrusion and the east neighbor who is the most affected, has blessed the keeping of the shed. He said the shed does not drip water onto neighbors' properties as suggested in the report. He said that they have serious storage needs which the shed helps alleviate. He noted that they would not have done the construction they did 1½ years ago had they known the current economic situation was going to occur. He said he is possibly on the brink of losing his job, has major debt as a result of the addition they built, and their home has lost value. He said any further losses will intensify their pain and suffering. He said more than \$15,000 was spent on building the shed and he is requesting that rather than require it be demolished that the City could offer suggestions for modification which they would gladly undertake. He said the total square footage of the shed is 136 square feet, which is only 16 square feet larger than allowed by code. He said it would be painful and costly to destroy the shed only to build a new one that is only 16 square feet smaller. He said no neighbor has complained about the shed, and the only neighbor that has minimal visibility of the shed, has blessed the shed. He discussed the pitch roof and explained how the current dimensions make the shed more functional versus staff's recommendation. He said staff's main reason for recommending removal of the shed is for better neighborhood preservation. He said he feels the positive impact of renovations they have made to their home in the past 1½ years far outweighs any losses due to keeping the shed and asked the Commission to allow them to keep the shed. He said destroying the shed would bring pain, chaos and confusion, along with financial hardship to demolish and rebuild another shed just slightly smaller.

Comm. McKenna referred to page 4 of the report and confirmed with the applicant that the application for the previous project was the result of staff being notified that an addition was being constructed without permits. Ms. McKenna further confirmed with the applicant that part of the approval of the previous project was that the shed would be removed when the addition was completed. Mr. Miremadi confirmed that the Commission had given them six months from the date of the decision to remove the shed. He explained the removal was delayed for various reasons and in the end they could not afford to remove it. Mr. Miremadi said that he misunderstood at the time and did not realize he could appeal the condition. He said when they met with the planner for this project that they realized they could have appealed the decision.

Comm. Sulser asked staff when regulating sheds, what is the City trying to regulate other than aesthetics. Ms. Caruso explained that a shed is subject to the same items that would apply to any other addition including the aesthetics, lot coverage, setbacks, and FAR (Floor Area Ratio).

Comm. Klein said that the shed was built without meeting the California Building Code and asked staff to explain which code that is. Ms. Caruso explained that the City adopts the California Building Code as our own. Comm. Klein and staff discussed the existing shed with staff explaining that because permits were not taken out, staff does not know if the structure was built appropriately. Comm. Klein confirmed with the applicant that the shed had full electricity with the applicant explaining that the electricity was totally disconnected during the construction of their family room. Mr. Miremadi said they would be glad to have City inspectors come in and inspect the shed and commented that he wants to put a solar panel on the top of the shed to light the interior with battery operated fluorescent lighting. Comm. Klein said that the concept of building a shed with electricity without obtaining permits is a large issue. Mr. Miremadi said he is not denying it, but said what had been built was very safe and the City is welcome to come and inspect the shed.

Chair Rowe asked staff to comment about Mr. Miremadi's statement about him not understanding that he had the ability to appeal the condition and asked if the opportunity to appeal was mentioned at the public hearing. Ms. Ryan said typically it is mentioned at the public hearing, but it could have been forgotten. Chair Rowe confirmed with staff and the applicant that this shed is 8 feet 9 inches tall, has sheetrock, is insulated, has hardwood floors, and had electricity that has since been shut off, commenting that it could be turned on again.

Satish Kumar, a Sunnyvale resident, said he lives immediately east of the applicant's property. He said the peak of the shed is visible from his property, yet has no negative impact on their view or on the aesthetics of the site. He said the

Miremadi's are good neighbors and spoke in support of the allowing the shed to remain.

Chair Rowe closed the public hearing.

Comm. Sulser moved for Alternative 1, to deny the Special Development Permit. Comm. Klein seconded the motion.

Comm. Sulser said the shed does not meet the code requirements and he does not see any reason why the City should waive the requirements. He said there are standards designed for sheds that should be met and this shed does not meet the standards.

Comm. Klein said he understands the applicant's issues as far as the money spent to build the shed and that good quality of the materials were used. He said by not going through the permit process that the shed does not meet city code. He said though the neighbor is not opposed to the shed from his yard that there may be a different neighbor someday that does not approve of the shed. Comm. Klein said he understands the financial hardship of removing the shed and noted that he was the Commissioner that added to the motion previously to allow the applicant the extra six months to remove the shed. Comm. Klein said in retrospect, if the Commission had not given the applicant the extra time to remove the shed, it might already be removed. Comm. Klein said he cannot support the shed to be built outside of City rules, and will be supporting the motion to deny the application.

Comm. Hungerford said that the COAs are very important and when the Commission adds or adopts COAs that they are part of the authorization of a project and need to be fulfilled by the applicants. He said the COAs were not fulfilled so he is supporting the motion.

Vice Chair Chang said that the applicant has been given six months to remove the shed. He said the Commission was not able to make the findings for the shed previously and are not able to make the findings now. He said he would be supporting the motion.

Chair Rowe said she is concerned that this shed could someday be turned into an accessory living unit as the only thing it is missing is running water as the electricity could be restored. She said that the applicant has suggested making the roof a little lower which is a nice gesture, but there is still a problem with the setbacks. Chair Rowe said the Commission has to be concerned with setting precedence. She said this is a Bahl home and many of the Bahl homeowners are

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very protective of their architecture of their community which this shed does not match. She said this shed does not meet the City standards.

ACTION: Comm. Sulser made a motion on 2008-0946 to deny the Special Development Permit. Comm. Klein seconded. Motion carried unanimously, 7-0.

APPEAL OPTIONS: This action is final unless appealed to the City Council no later than November 11, 2008.