



## **CITY OF NEWPORT BEACH PLANNING COMMISSION STAFF REPORT**

June 9, 2022  
Agenda Item No. 3

**SUBJECT:** Herring Residence Variance (PA2022-008)  
▪ Variance No. VA2022-001

**SITE LOCATION:** 201 Crystal Avenue

**APPLICANT:** Lisa Herring

**OWNER:** Michael and Lisa Herring

**PLANNER:** Chelsea Crager, Associate Planner  
949-644-3227, ccrager@newportbeachca.gov

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### **PROJECT SUMMARY**

Applicant proposes the addition of a roof structure over an existing outdoor kitchen area on the third-floor deck of a single-family residence. The Applicant requests a variance from the additional step back required for third floor covered deck area as described in Newport Beach Municipal Code (NBMC) Section 20.48.180 (Residential Development Standards and Design Criteria). Due to the substandard lot size, the project provides a step back of one foot and six inches from the front setback line, where NBMC Section 20.48.180 requires covered deck area located on the third floor to be stepped back a minimum of fifteen (15) feet from the front setback line.

### **RECOMMENDATION**

- 1) Conduct a public hearing;
- 2) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, because it has no potential to have a significant effect on the environment; and
- 3) Adopt Resolution No. \_\_ approving Variance No. VA2022-001 (Attachment No. PC 1).

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LOCATION	GENERAL PLAN	ZONING	CURRENT USE
ON-SITE	Two Unit Residential (RT)	Two-Unit Residential, Balboa Island (R-BI)	Single-Unit Residence
NORTH	RT	R-BI	Single-Unit Residence
SOUTH	RT	R-BI	Single-Unit Residence
EAST	RT	R-BI	Single-Unit Residence
WEST	RT	R-BI	Single-Unit Residence

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## **INTRODUCTION**

### **Project Setting and Background**

The project site is located on the northwest corner of the intersection of Park Avenue and Crystal Avenue on Little Balboa Island. The lot is 1,500 square feet in area, with a width of 25 feet and a depth of 60 feet. The site is currently developed with a 1,760square-foot single-family residence constructed in 2008 with the benefit of Variance No. 2007-004 allowing the dwelling to exceed the maximum floor area limitation and Modification Permit No. 2007-078 allowing the dwelling to encroach into the required setbacks as follows: 15 feet into the required 20-foot front yard setback adjacent to Park Avenue; one-foot into the required three-foot side yard setback for the corner of the garage on the northeast side along Crystal Avenue; and seven feet into the required 10-foot rear yard setback. Vehicular access to the residence is from Crystal Avenue.

The Little Balboa Island area is primarily developed with two- and three-story single- and two-unit residences. Standard lots sizes in the area are 2,550 square feet in area, with a width of 30 feet and a depth of 85 feet.

### **Project Description**

The applicant requests a variance to allow the construction of a 84square-foot roof cover over an existing outdoor kitchen on a third floor deck. There is no proposed addition of enclosed floor area.

As part of the project, the applicant requests a variance to allow a reduced third floor step back for third floor covered deck area as required by NBMC Section 20.48.180. The project proposes a step back of one foot and 6 inches from the 20-foot front setback line, where NBMC Section 20.48.180 requires covered deck area located on the third floor to be stepped back a minimum of 15 feet from the front setback line. To comply with the intent of the third floor step back requirement, the proposed covered area is stepped back 16 feet 6 inches from the actual five-foot front building setback authorized by Modification Permit No. 2007-078, shown in Figure 1, on the following page. The project would comply with all other required development standards, including a maximum height and maximum third floor covered area.

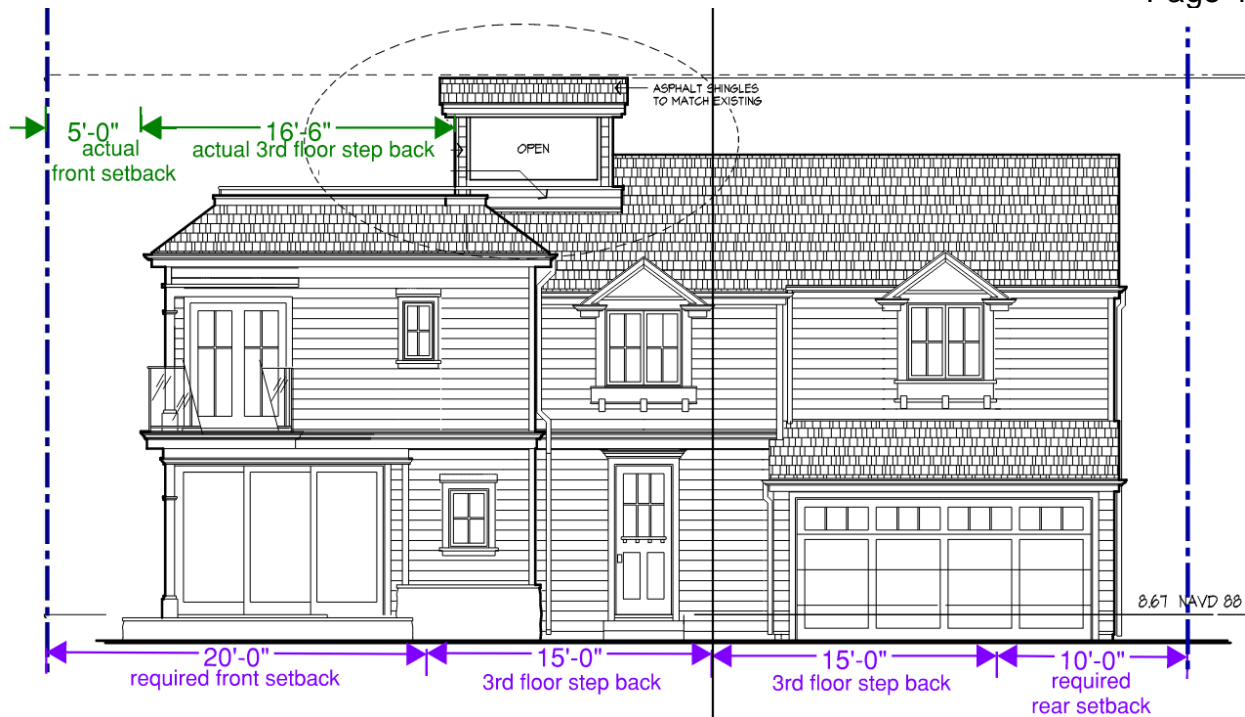


Figure 1: 201 Crystal Avenue East Side Elevation

## **DISCUSSION**

### **Analysis**

#### *General Plan, Zoning Code, and Local Coastal Plan*

The site is designated as Two-Unit Residential (RT) by the General Plan Land Use Element and Two-Unit Residential – 30.0-39.9 DU/AC (RT-E) by the Coastal Land Use Plan (CLUP). It is located within the Two-Unit Residential, Balboa Island (R-BI) Zoning District and Coastal Zoning District. The existing single-unit residence is a permitted use under these land use designations.

The project is located within the Categorical Exclusion Area of the coastal zone. There is no requirement for additional step backs for third floor covered area within NBMC Title 21 (Local Coastal Program Implementation Plan); therefore, the proposed project is consistent with the LCP and there is no coastal development permit required.

### **Variance Findings**

A variance is a request to waive or modify certain standards when, because of special circumstances applicable to the property (including location, shape, size, surroundings, topography, or other physical features), the strict application of the development standards otherwise applicable to the property denies the property owner privileges enjoyed by other property owners in the vicinity and in the same zoning district.



NBMC section 20.48.180 requires that covered area on the third floor be stepped back an additional 15 feet from the front and rear setback lines. The applicant is requesting a reduced step back of 1 foot 6 inches from the 20-foot front setback line due to limited lot size and depth. The intent of the residential design standards, and specifically the third-floor step backs, is to pull third floor mass away from the front and rear facades of the building. In this case, the existing single-family residence was originally developed in 2008 with the benefit of a modification permit to encroach into required building setback areas due to the limited size and unique orientation of the property. The building was approved with a setback of five feet from the front property line along Park Avenue. The project as proposed complies with an additional 15-foot step back from the 5-foot front setback authorized by Modification No. 2007-078, and is therefore consistent with the intent of the residential design guidelines.

Pursuant to NBMC Section 20.52.090(F) (Variances – Findings and Decision), the Planning Commission must make certain findings in order to approve a variance. Staff believes sufficient facts exist to support the variance request and they are set forth in the draft resolution for project approval (Attachment No. PC 1). Below is a summary of facts in support of the required findings.

1. *There are special or unique circumstances or conditions applicable to the subject property (e.g., location shape, size, surroundings, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification.*

The property consists of one legal lot that is 25 feet wide by 60 feet deep with a lot area of 1,500 square feet. The lot is considered substandard when compared to the code-required minimum lot dimensions for newly created lots and when compared to standard lot sizes on Balboa Island. Pursuant to Table 2-3 (Development Standards for Two-Unit and Multi-Unit Residential Zoning Districts), Section 20.18.030 (Residential Zoning Districts General Development Standards) of the NBMC, the minimum lot area for newly subdivided corner lots in the R-BI Zoning District is 2,375 square feet with a minimum width of 60 feet. The typical lot size of actual lots in the area is 2,550 square feet in area, with a width of 30 feet and a depth of 85 feet. The limited lot depth of the subject property is the special or unique circumstance, condition or property constraint that limits the location of third floor covered area. The application of the building setbacks plus the additional step backs for covered third floor deck areas results in no possibility for covered deck area on the third floor for this 60-foot-deep lot.

2. *Strict compliance with the Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zoning classification.*

Strict compliance with the Zoning Code deprives the Property the privilege of any enclosed floor area or covered deck area on the third floor of the residence. Most standard lots under identical zoning classification on Little Balboa Island are 85 feet in depth with

front setbacks ranging from zero to ten feet. Further, the majority of lots under identical zoning classification on Balboa Island have rear property lines abutting alleys with a five-foot required rear setback. Therefore, the majority of lots on Balboa Island under identical zoning classification have sufficient depth to accommodate the additional 15-foot front and rear third-floor step backs required by Section 20.48.180.

*3. Granting of the variance is necessary for the preservation and enjoyment of substantial property rights of the applicant.*

Without granting the variance, the Applicant could not construct any enclosed or covered area on the third-floor deck of the existing residence. Pursuant to Table 2-3 of Section 20.18.030 of the NBMC, the Applicant may construct a residence up to a maximum height of 29 feet with a sloped roof (minimum 3:12 pitch). The proposed project meets the height limitation of the Zoning Code; however, due to the unusually shallow dimensions of the lot, the development does not meet the additional step back required for third-floor covered deck areas.

The required additional 15-foot step back for third floor covered areas constitutes an infringement on the Applicant's right to develop the Property to three stories with features that other properties enjoy. Covering a rooftop deck is a substantial property right that the applicant would not enjoy without the approval of the requested variance application. Due to the unusually shallow depth of the lot, the summation of the front setback, rear setback, and additional setbacks from front and rear setback lines required for third floor covered areas accounts for the entire 60-foot depth of the lot and leaves no buildable area available for covered third floor area.

*4. Granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district.*

Approval of the variance request allows the Applicant to develop an 84-square-foot covered area over an existing outdoor kitchen area on the third-floor deck of an existing single-family residence. The resulting development is comparable in bulk and height to what is allowed for other identically zoned properties on Little Balboa Island, where three-story single-family residences are common.

*5. Granting of the variance will not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood.*

The reduced setback of the third-floor covered area from the front setback line will not appear out of character with the neighborhood. The property was originally developed in 2008 with the benefit of a modification permit to encroach into required building setback areas due to the limited size and unique orientation of the property. The building was approved with a setback of five feet from the front property line along Park Avenue. The project as proposed provides a 15-foot step back from the five-foot front setback



authorized by Modification No. 2007-078. The intent of the residential design standards, and specifically the third-floor step backs, is to pull third floor mass away from the front and rear facades of the building. The project as proposed is consistent with this intent.

6. *Granting of the variance will not be in conflict with the intent and purpose of this section, this Zoning Code, the General Plan, or any applicable specific plan.*

Granting the variance request would not increase the density beyond what is planned for the area, and will not result in additional traffic, parking, or demand for other services. The proposed project provides an 84-square-foot covered area over an existing third-floor deck that is consistent with neighboring developments located within the same zoning designation. There is no deviation requested for height to accommodate the covered area on the third-floor deck.

#### Environmental Review

This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.

#### Public Notice

Notice of this hearing was published in the Daily Pilot, mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant and posted on the subject property at least 10 days before the scheduled meeting, consistent with the provisions of the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by:

  
Chelsea Crager  
Associate Planner

Submitted by:

  
Jim Campbell  
Deputy Community Development Director

#### ATTACHMENTS

PC 1 Draft Resolution with Findings and Conditions  
PC 2 Project Plans

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# **Attachment No. PC 1**

Draft Resolution with Findings and Conditions

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## **RESOLUTION NO. PC2022-####**

### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA APPROVING VARIANCE NO. VA2022-001 TO ALLOW THE ADDITION OF A 84-SQUARE-FOOT COVERED AREA ON THE THIRD FLOOR DECK OF AN EXISTING SINGLE-FAMILY RESIDENCE LOCATED AT 201 CRYSTAL AVENUE (PA2022-008)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### **SECTION 1. STATEMENT OF FACTS.**

1. An application was filed by Lisa Herring ("Applicant"), with respect to property located at 201 Crystal Avenue, and legally described as the easterly 25 feet of Lots 27 and 28, Block 6, Section 5 of Balboa Island ("Property"), requesting approval of a variance.
2. The Applicant requests the addition of a roof structure over an existing outdoor kitchen area on the third-floor deck of a single-family residence ("Project"). The Applicant requests a variance from the additional step back required for third floor covered deck area as described in Newport Beach Municipal Code ("NBMC") Section 20.48.180 (Residential Development Standards and Design Criteria). The Project consists of a step back of one foot and 6 inches from the front setback line, where NBMC Section 20.48.180 (Residential Development Standards and Design Criteria), requires covered deck area located on the third floor to be stepped back a minimum of fifteen feet from the front setback line.
3. The Property is designated Two-Unit Residential (RT) by the General Plan Land Use Element and is located within the Two-Unit Residential, Balboa Island (R-BI) Zoning District.
4. The Property is located within the coastal zone. The Coastal Land Use Plan category is Two-Unit Residential (RT-E (30.0-39.9 DU/AC)) and it is located within the Two-Unit Residential, Balboa Island (R-BI) Coastal Zone District. The Project is located within the Categorical Exclusion Area and there is no requirement for additional step backs for third floor covered area within Title 21 (Local Coastal Program Implementation Plan) of the NBMC; therefore, a coastal development permit is not required for the Project.
5. A public hearing was held on June 9, 2022, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the hearing was given in accordance with California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and Chapters 20.62 and 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this hearing.

#### **SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.**

1. This Project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. Class 1 exempts additions to existing structures provided that the addition will not result in an increase of more than 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less. In this case, the Project includes the addition of a roof area approximately 84 square feet in size on the third-floor deck of an existing single-family residence.

### SECTION 3. REQUIRED FINDINGS.

In accordance with NBMC Subsection 20.52.090(F) (Variances – Findings and Decision), the following findings and facts in support of such findings are set forth:

#### Finding:

- A. *There are special or unique circumstances or conditions applicable to the subject property (e.g., location, shape, size, surroundings, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification.*

#### Facts in Support of Finding:

1. The Property consists of one legal lot that is 25 feet wide by 60 feet deep with a lot area of 1,500 square feet, which is considered substandard when compared to the code-required minimum lot dimensions for newly created lots and when compared to standard lot sizes on Balboa Island. Pursuant to Table 2-3 (Development Standards for Two-Unit and Multi-Unit Residential Zoning Districts), Section 20.18.030 (Residential Zoning Districts General Development Standards) of the NBMC, the minimum lot area for newly subdivided corner lots in the R-BI Zoning District is 2,375 square feet with a minimum width of 60 feet.
2. Standard lots under identical zoning classification on Balboa Island are 85 feet in depth with front setbacks ranging from five (5) to ten (10) feet. Further, the majority of lots under identical zoning classification on Balboa Island have rear property lines abutting alleys with a five-foot required rear setback. Therefore, the majority of lots on Balboa Island under identical zoning classification have sufficient depth to accommodate the additional 15-foot setbacks from front and rear setback lines required by Section 20.48.180 (Residential Development Standards and Design Criteria).
3. Due to the substandard lot area, the Property is limited in lot depth at 60 feet. Pursuant to Table 2-3 (Development Standards for Two-Unit and Multi-Unit Residential Zoning Districts), Section 20.18.030 (Residential Zoning Districts General Development Standards) of the NBMC, the required front setback along Park Avenue is 20 feet and rear setback is 10 feet. Further, pursuant to Section 20.48.180 (Residential

Development Standards and Design Criteria), covered deck area located on the third floor shall be stepped back an additional fifteen (15) feet from the front and rear setback lines. The application of the building setbacks plus the additional step backs for covered third floor deck areas results in no possibility for covered deck area on the third floor for this 60-foot-deep lot.

4. The Property was originally developed in 2008 with the benefit of a variance to exceed the maximum allowed floor area limit and a modification to encroach into required building setback areas due to the limited size and unique orientation of the Property. At the time the residence was permitted, there was no additional step back required for covered third floor deck area and no covered deck area was requested.

Finding:

- B. *Strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification.*

Fact in Support of Finding:

Strict compliance with Titles 20 and 21 deprives the Property the privilege of any enclosed floor area or covered deck area on the third floor of the residence. Most standard lots under identical zoning classification on Little Balboa Island are 85 feet in depth with front setbacks ranging from zero to ten feet. Further, the majority of lots under identical zoning classification on Balboa Island have rear property lines abutting alleys with a five-foot required rear setback. Therefore, the majority of lots on Balboa Island under identical zoning classification have sufficient depth to accommodate the additional 15-foot front and rear third floor step backs required by Section 20.48.180 (Residential Development Standards and Design Criteria) of the NBMC.

Finding:

- C. *Granting of the variance is necessary for the preservation and enjoyment of substantial property rights of the applicant.*

Facts in Support of Finding:

1. Without granting the variance to decrease the additional setback for covered area on the third floor, the Applicant could not construct any enclosed or covered area on the third-floor deck of the existing residence. Pursuant to Table 2-3 (Development Standards for Two-Unit and Multi-Unit Residential Zoning Districts), Section 20.18.030 (Residential Zoning Districts General Development Standards) of the NBMC, the Applicant may construct a residence up to a maximum height of 29 feet with a sloped roof (minimum 3:12 pitch). The Project meets the height limitation in Title 20; however, due to the unusually shallow dimensions of the lot, the development does not meet the additional step back required for third floor covered deck areas.



2. The design and location of the Project achieves reasonable development of the Property within the restraints and limits of the substandard lot size and depth. Granting of the variance preserves the Applicant's right to construct a small covered area on the third-floor deck, which is compatible with the neighborhood where three-story single- and two-unit residences with covered roof decks are common.
3. The required additional 15-foot step back for third floor covered areas constitutes an infringement on the Applicant's right to develop the Property to three stories. Due to the unusually shallow depth of the lot, the summation of the front setback, rear setback, and additional setbacks from front and rear setback lines required for third floor covered areas accounts for the entire 60-foot depth of the lot and leaves no buildable area available for covered third floor area.

Finding:

- D. Granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district.*

Facts in Support of Finding:

1. Approval of the variance request allows the Applicant to develop an 84-square-foot covered area over an existing outdoor kitchen area on the third floor of an existing single-family residence. The resulting development is comparable in bulk and height to what is allowed for other identically zoned properties on Little Balboa Island, where three-story single-family residences are common.
2. The requested deviation from the additional third-floor setback is necessary to permit a residence that is comparable to neighboring lots on Little Balboa Island and therefore would not constitute the granting of special privileges.

Finding:

- E. Granting of the variance will not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood.*

Facts in Support of Finding:

1. The reduced setback of the third-floor covered area from the front setback line will not appear out of character with the neighborhood. The existing single-family residence was developed in 2008 with the benefit of a variance and modification for deviations from floor area limitations and setbacks due to the unusual lot area and dimensions of the Property. At the time of the original development, there was no requirement for additional third floor step backs for covered deck areas, which was codified in 2022.
2. The Applicant is proposing an 84-foot covered area over an outdoor kitchen on the third-

floor deck of an existing single-family structure. The new covered area will be stepped back approximately 21 feet and 6 inches from the front property line along Park Avenue, 10 feet from the side property line along Crystal Avenue, five feet from the interior side property line, and 29 feet from the rear property line. The 84-foot covered area on the third floor will not be out of scale with developments in the surrounding neighborhood, where three-story single- and two-unit residences are common.

3. The Property was originally developed in 2008 with the benefit of a modification to encroach into required building setback areas due to the limited size and unique orientation of the Property. The building was approved with a setback of five feet from the front property line along Park Avenue. The Project complies with an additional 15-foot step back from the five-foot front setback authorized by Modification No. 2007-078. The intent of the residential design standards, and specifically the third-floor step backs, is to pull third floor mass away from the front and rear facades of the building. The Project is consistent with this intent.
4. The Project complies with the height limitations of the R-BI Zoning District. The Project includes the addition of an 84-square-foot covered outdoor area on the third floor only and does not include the addition of any enclosed floor area.

Finding:

- F. Granting of the variance will not be in conflict with the intent and purpose of this section, this Zoning Code, the General Plan, or any applicable specific plan.*

Facts in Support of Finding:

1. Granting the variance request would not increase the density beyond what is planned for the area, and will not result in additional traffic, parking, or demand for other services.
2. The variance request provides for covered roof deck area on the third floor, consistent with the existing development pattern on Little Balboa Island.
3. The Project provides an 84-square-foot covered area over an existing third floor deck that is consistent with neighboring developments located within the same zoning designation. There is no deviation requested for height to accommodate the covered area on the third-floor deck.
4. The Property is not located within a specific plan area.

**SECTION 4. DECISION.**

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Planning Commission of the City of Newport Beach hereby finds this Project is categorically exempt from the California Environmental Quality Act pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of

Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.

2. The Planning Commission of the City of Newport Beach hereby approves VA2022-001, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 (Planning and Zoning), of the Newport Beach Municipal Code.

**PASSED, APPROVED, AND ADOPTED THIS 9TH DAY OF JUNE, 2022.**

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: \_\_\_\_\_  
Lee Lowrey, Chairman

BY: \_\_\_\_\_  
Curtis Ellmore, Secretary

**EXHIBIT “A”****CONDITIONS OF APPROVAL**

*(Project-specific conditions are in italics)*

**Planning Division**

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this variance.
4. *Variance No. VA2022-001 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.91.050 of the Newport Beach Municipal Code, unless an extension is otherwise granted.*
5. This Variance may be modified or revoked by the Planning Commission should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the Property is operated or maintained so as to constitute a public nuisance.
6. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Variance or the processing of a new Variance.
7. Demolition beyond the approved scope of work requires planning division approval prior to commencement of work. Approval of revisions to project plans are not guaranteed. Any changes in the current scope of work may require the entire structure to be demolished and redeveloped in conformance with the current Zoning Code Development Standards.
8. A copy of the Resolution, including conditions of approval Exhibit “A” shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
9. Prior to the issuance of a building permit, the applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the Variance file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and

shall be reduced in size to 11 inches by 17 inches. The plans shall accurately depict the elements approved by this Variance and shall highlight the approved elements such that they are readily discernible from other elements of the plans.

10. The applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of native birds pursuant to MBTA:
  - A. The construction area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no longer observed. When the nest is no longer active, construction activity can continue in the nest area.
  - B. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is found, one or two short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.
11. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the Director of Community Development, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
12. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
13. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

	Between the hours of 7:00AM and 10:00PM		Between the hours of 10:00PM and 7:00AM	
Location	Interior	Exterior	Interior	Exterior
Residential Property	45dBA	55dBA	40dBA	50dBA
Residential Property located within 100 feet of a commercial property	45dBA	60dBA	45dBA	50dBA

Mixed Use Property	45dBA	60dBA	45dBA	50dBA
Commercial Property	N/A	65dBA	N/A	60dBA

14. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
15. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday. Noise-generating construction activities are not allowed on Saturdays, Sundays or Holidays.
16. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 Planning and Zoning of the Newport Beach Municipal Code.
17. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of Herring Residence Variance including, but not limited to, VA2022-001 (PA2022-008). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

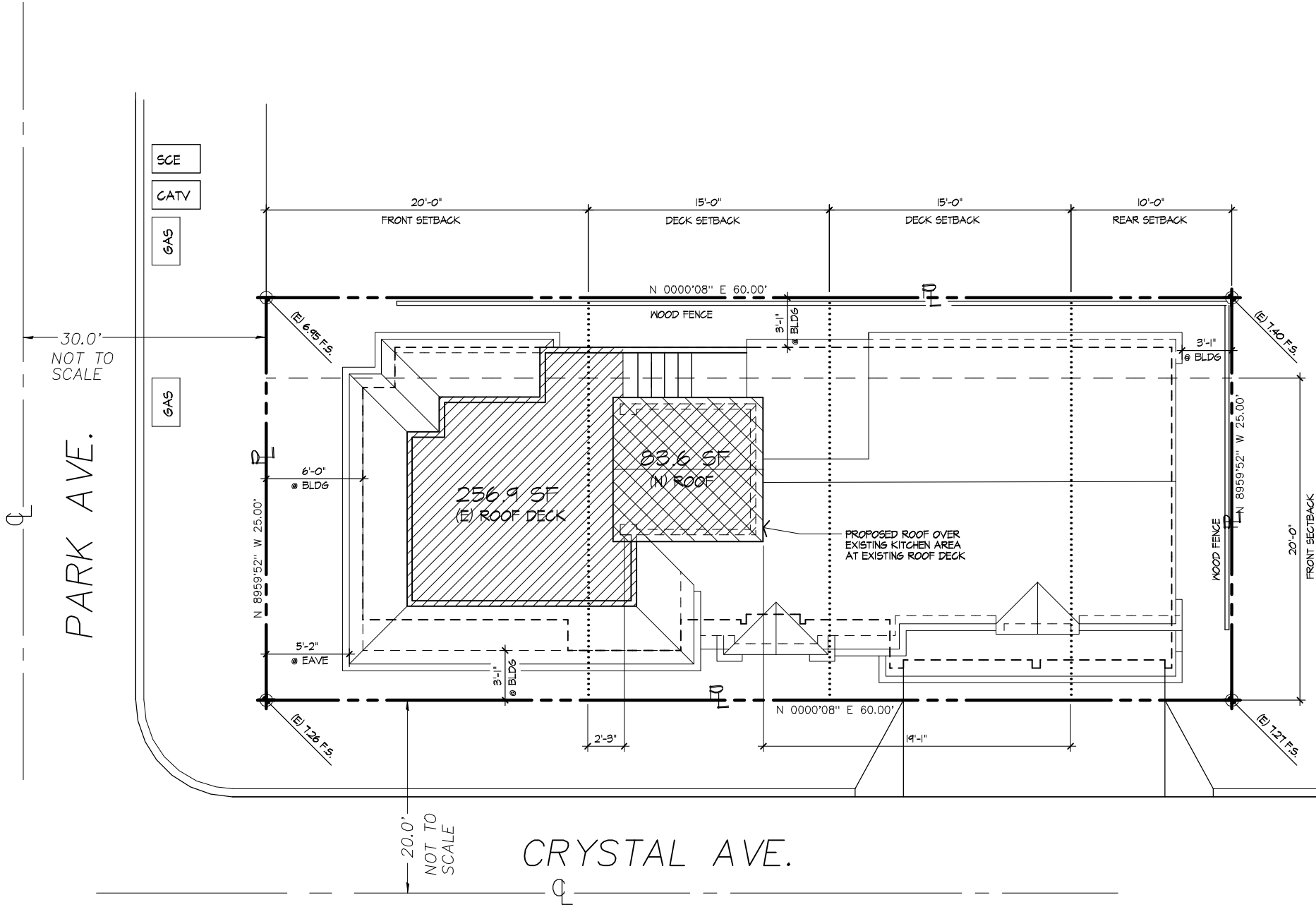
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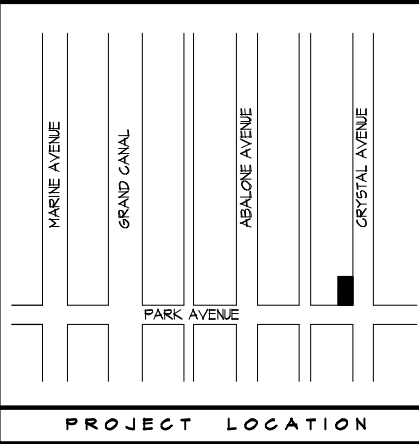
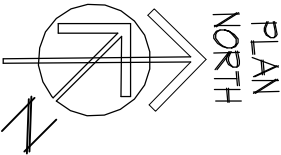
# **Attachment No. PC 2**

Project Plans

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PROPOSED SITE AND ROOF PLAN  
SCALE: 1/4" = 1'-0"



SHEET DIRECTORY

1	SITE PLAN
2	EXISTING FLOOR PLANS
3	PROPOSED ROOF DECK KITCHEN PLAN
4	PROPOSED ELEVATIONS
SGN	STRUCTURAL NOTES
SGD	STRUCTURAL NOTES AND DETAILS
SI	STRUCTURAL PLANS
SDI	STRUCTURAL DETAILS

PROJECT OWNER

LISA HERRING  
201 CRYSTAL AVENUE  
BALBOA ISLAND, CALIFORNIA 92662

PROJECT ARCHITECT

BARRY WALKER  
P.O. BOX 11658  
NEWPORT BEACH, CALIFORNIA 92658  
949.246.4085

PROJECT ENGINEER

ALI REZAEI  
18021 SKYPART CIRCLE, E2  
IRVINE, CA  
949.500.0652

PROJECT DESCRIPTION

ADD ROOF OVER EXISTING DECK KITCHEN

ASSESSOR'S PARCEL NUMBER

CLASSIFICATION

OCCUPANCY: RS/U  
CONSTRUCTION: TYPE V - B  
CONSTRUCTION SHALL BE PER THE 2019 EDITIONS OF THE  
CRC, CRC, CMC, CEC, CCG, 2019 ENERGY AND LOCAL CODES

SQUARE FOOTAGES

	EXISTING	PROPOSED	ADD
FIRST FLOOR	545 SF	545 SF	0 SF
SECOND FLOOR	835 SF	835 SF	0 SF
GARAGE	362 SF	362 SF	0 SF
TOTAL AREA	2368 SF	2368 SF	0 SF
LOT SIZE	251 X 601 = 1500 SF		
ALLOWABLE	1,760 SF BY PA2001-214		

EXISTING ROOF DECK	256.90 SF
ALLOWABLE ROOF COVERAGE	128.45 SF
PROPOSED ROOF COVERAGE	260.5 SF

HEIGHT

MAXIMUM ALLOWABLE	24' ABOVE NAVD 88, + 5' AT RIDGE
EXISTING (REF NAVD88)	23' AT GUARDRAIL, 23' AT RIDGE
PROPOSED (REF NAVD88)	23' AT GUARDRAIL, 28'-10" AT (N) RIDGE

PROJECT INFORMATION

REV. DATE REVISION

Roof over Deck Kitchen  
201 Crystal Avenue  
Balboa Island, California

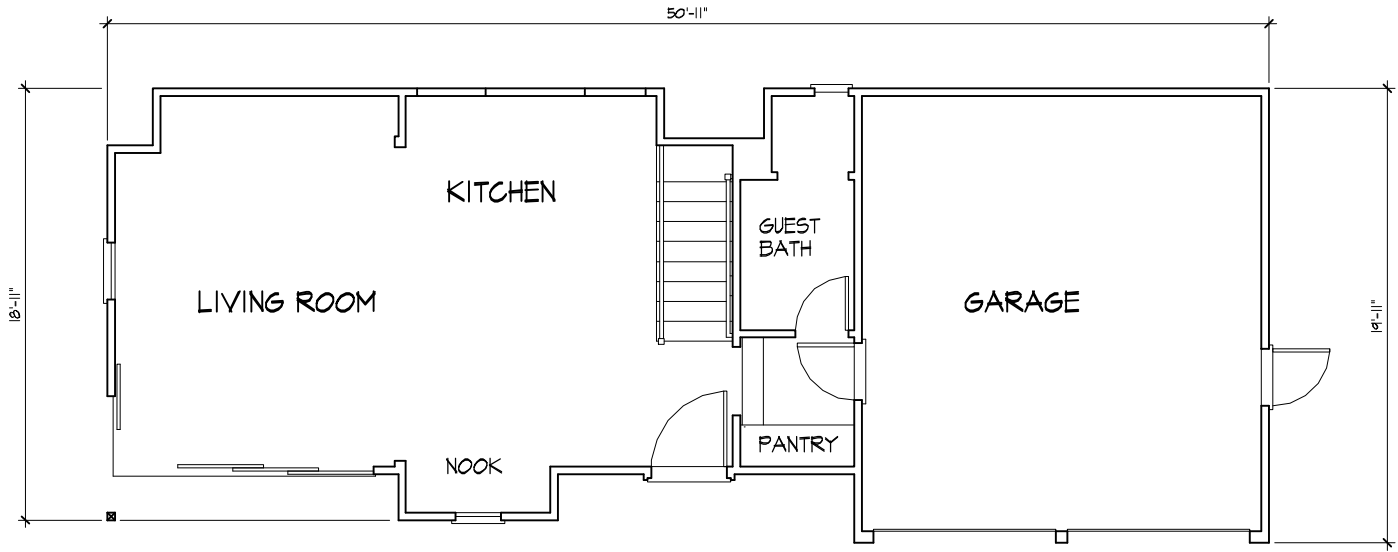
Site and Roof Plans

Barry Walker, Architect  
P.O. Box 11658  
Newport Beach, California 92658  
(c) 949.246.4085 bwarck.biz@gmail.com

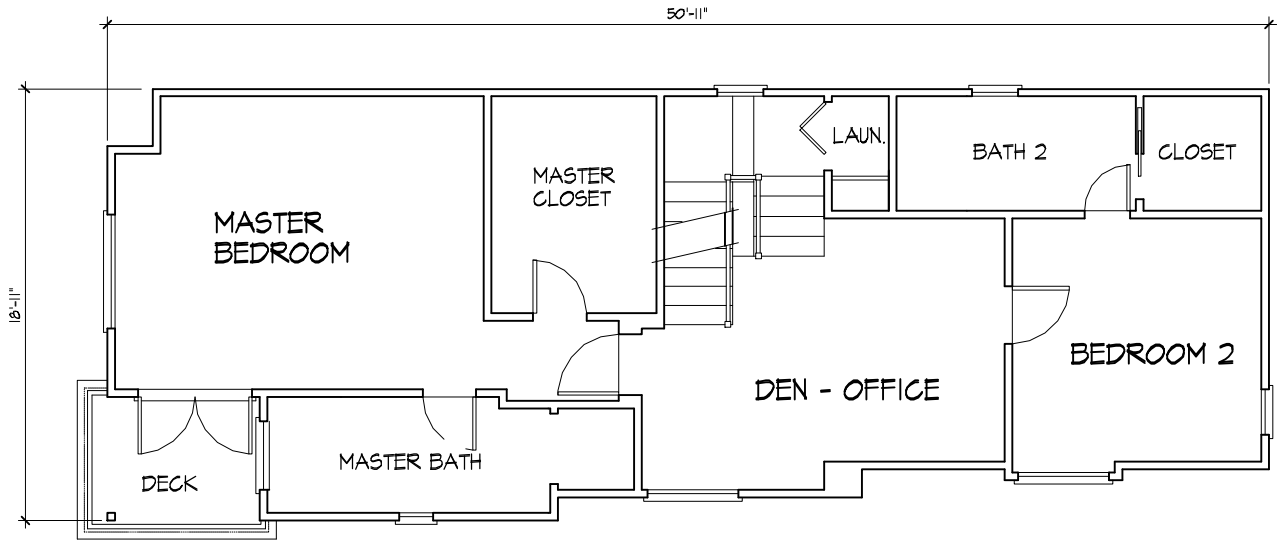


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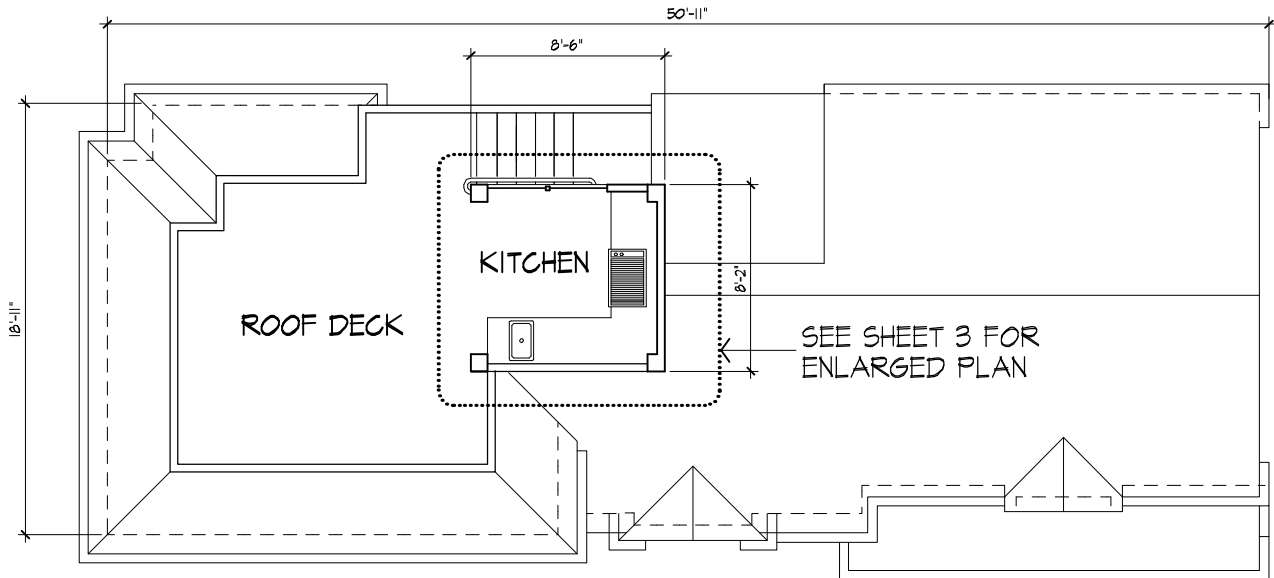
25 1



EXISTING FIRST FLOOR PLAN (NO CHANGES)  
SCALE: 1/4" = 1'-0"



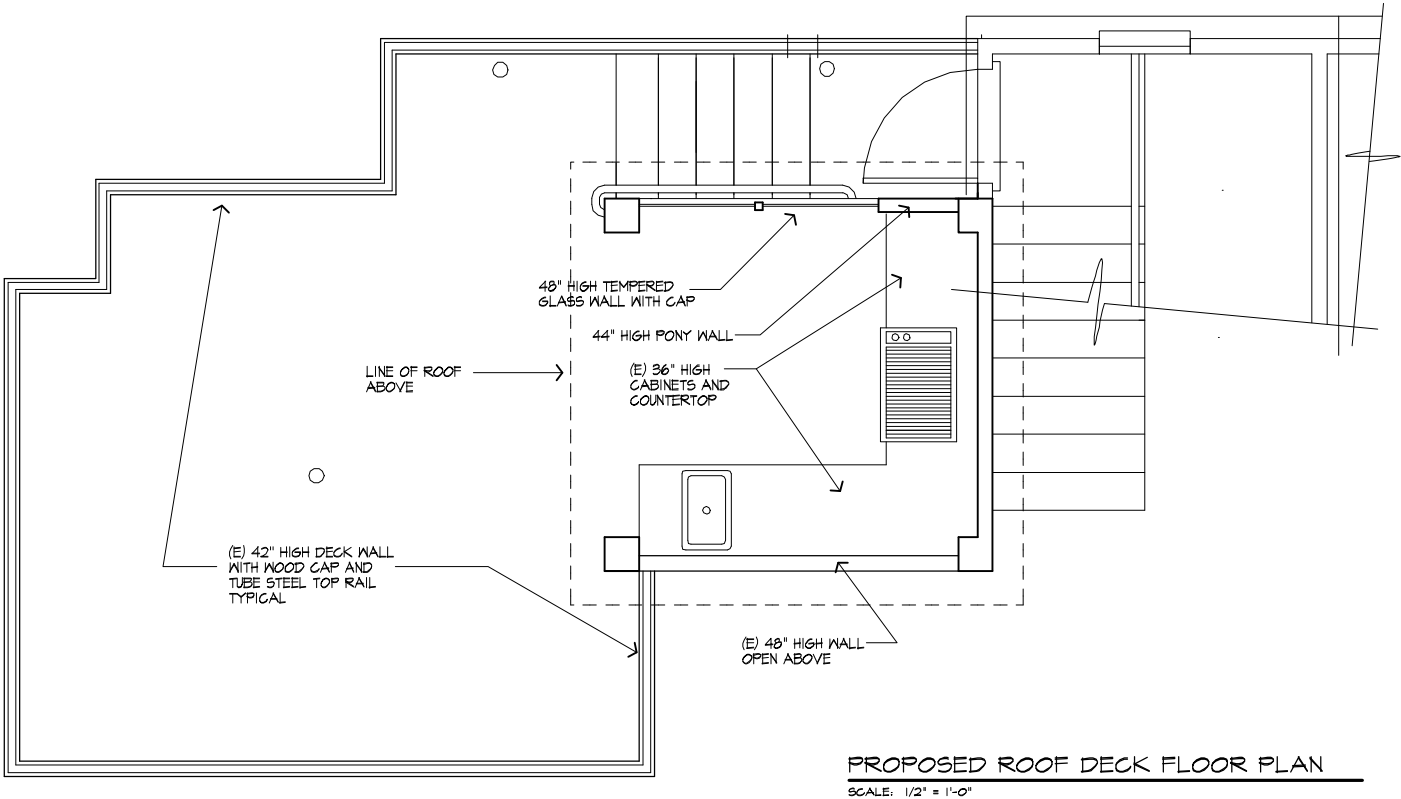
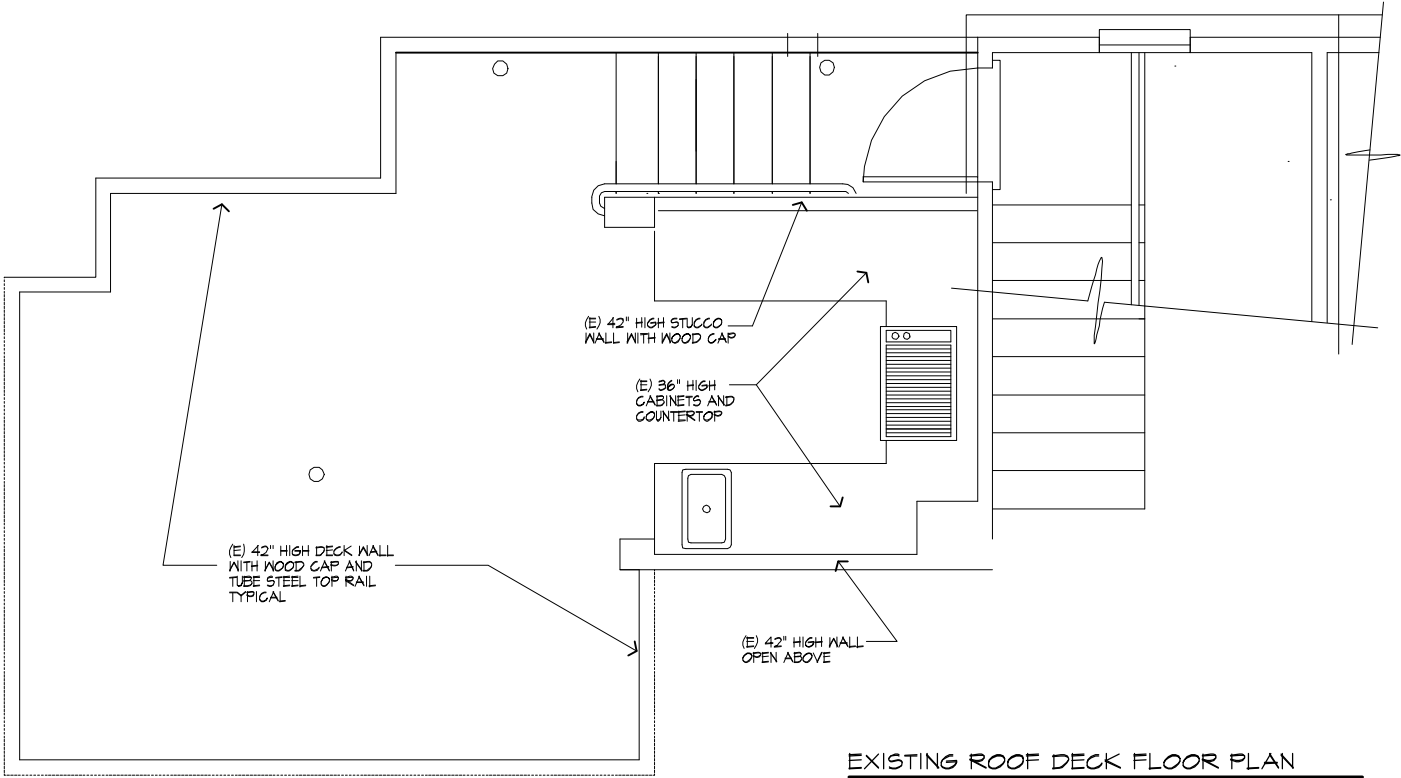
EXISTING SECOND FLOOR PLAN (NO CHANGES)  
SCALE: 1/4" = 1'-0"

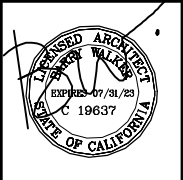


PROPOSED ROOF DECK KITCHEN PLAN  
SCALE: 1/4" = 1'-0"

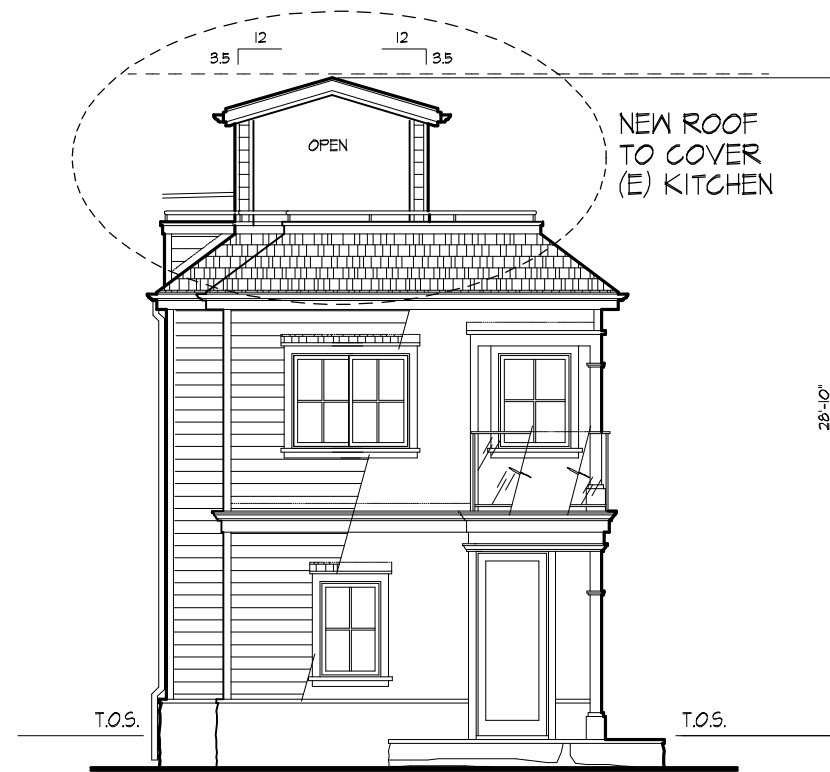
OWNER	Roof over Deck Kitchen 201 Crystal Avenue Balboa Island, Cakifornia	REV.	DATE	REVISION
SHEET TITLE	Floor Plans			
ARCHITECT	Barry Walker, Architect P.O. Box 11658 Newport Beach, California 92658 (c) 949.246.4085    bwarch.biz@gmail.com			
12.31.21				
SHEET				
26 2				

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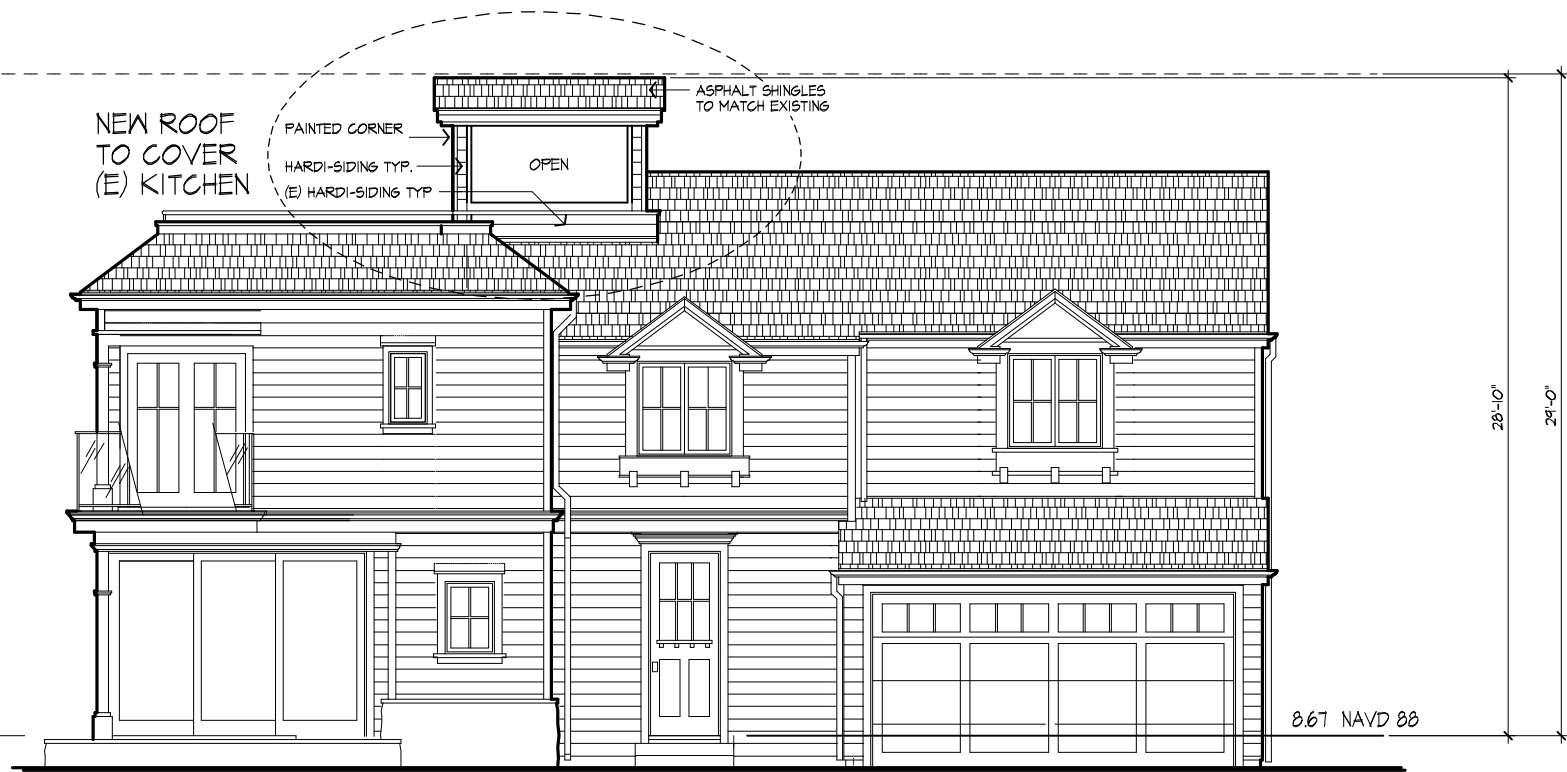


OWNER	Roof over Deck Kitchen 201 Crystal Avenue Balboa Island, California	REV.	DATE	REVISION
SHEET TITLE	Existing and Proposed Roof Deck Kitchen			
ARCHITECT	Barry Walker, Architect P.O. Box 11658 Newport Beach, California 92658 (C) 949.246.4085 bwarch.biz@gmail.com			
				
12.31.21				
SHEET 27 3				

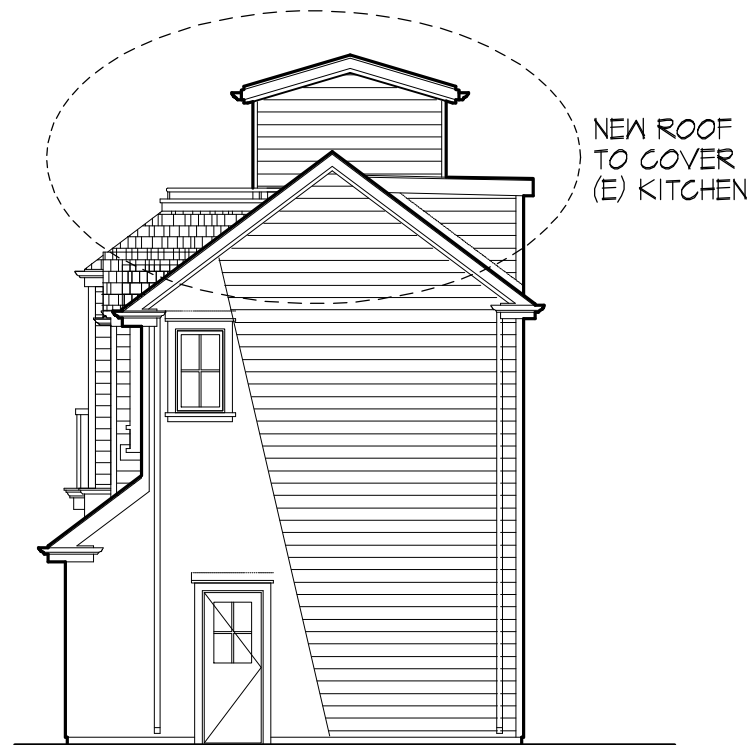
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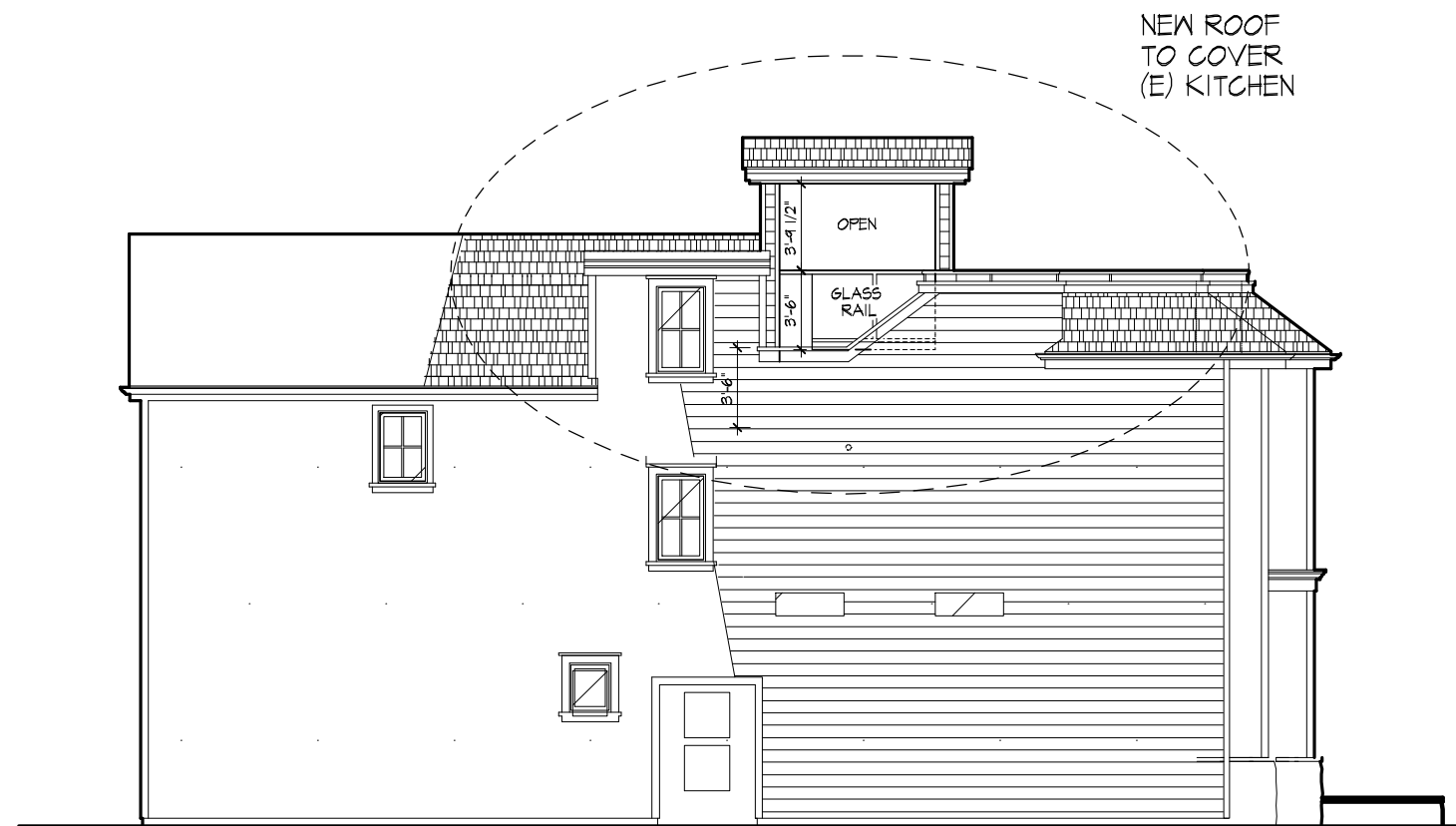
201 CRYSTAL PARK AVENUE ELEVATION (SOUTH)  
SCALE: 1/4" = 1'-0"



201 CRYSTAL AVENUE FRONT ELEVATION (EAST)  
SCALE: 1/4" = 1'-0"



201 CRYSTAL AVENUE SIDE ELEVATION (NORTH)



201 CRYSTAL AVENUE REAR ELEVATION (WEST)



# **Herring Residence Variance**

## **Planning Commission Public Hearing**

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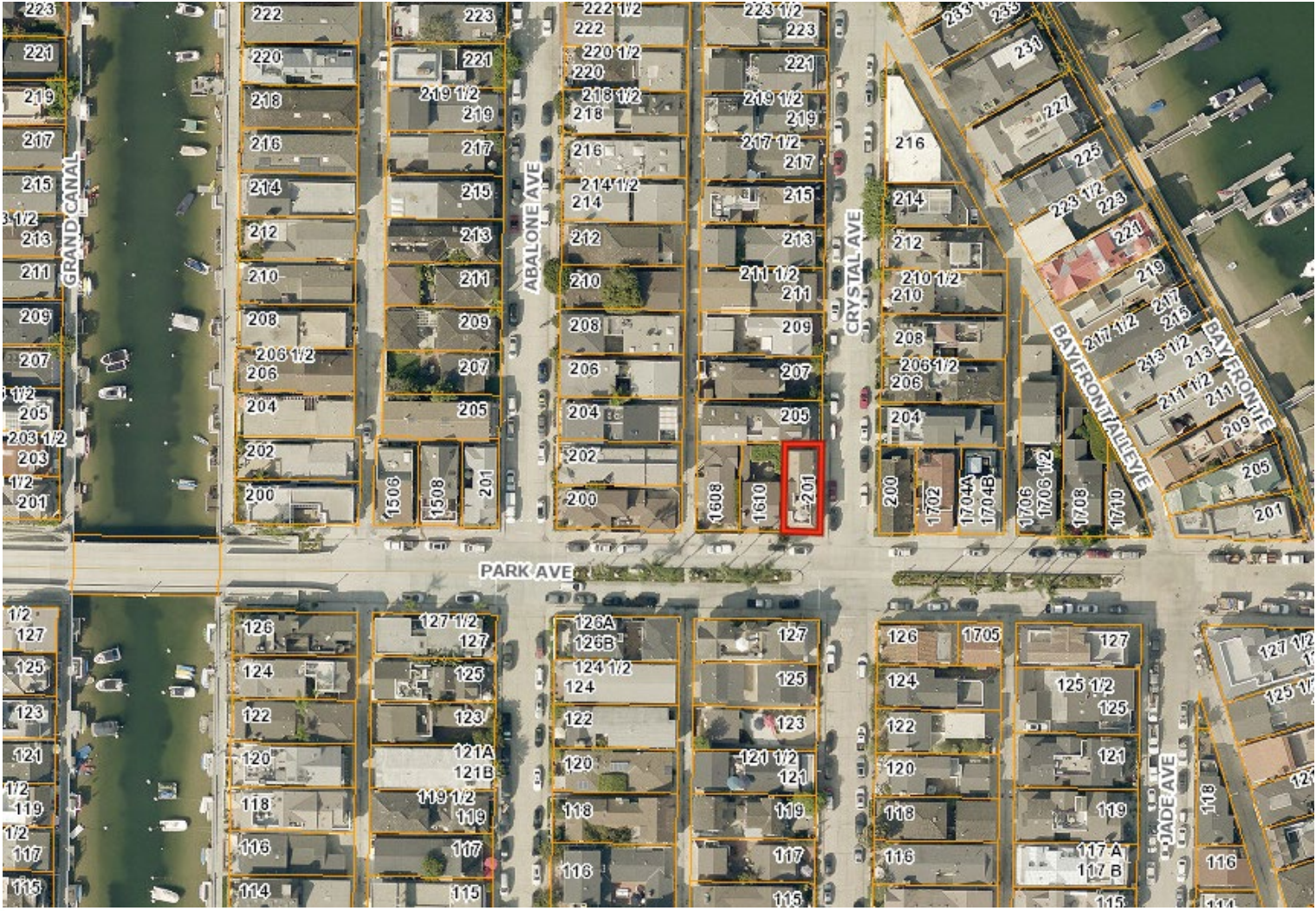
**June 9, 2022**

**Chelsea Crager, Associate Planner**





# Vicinity Map



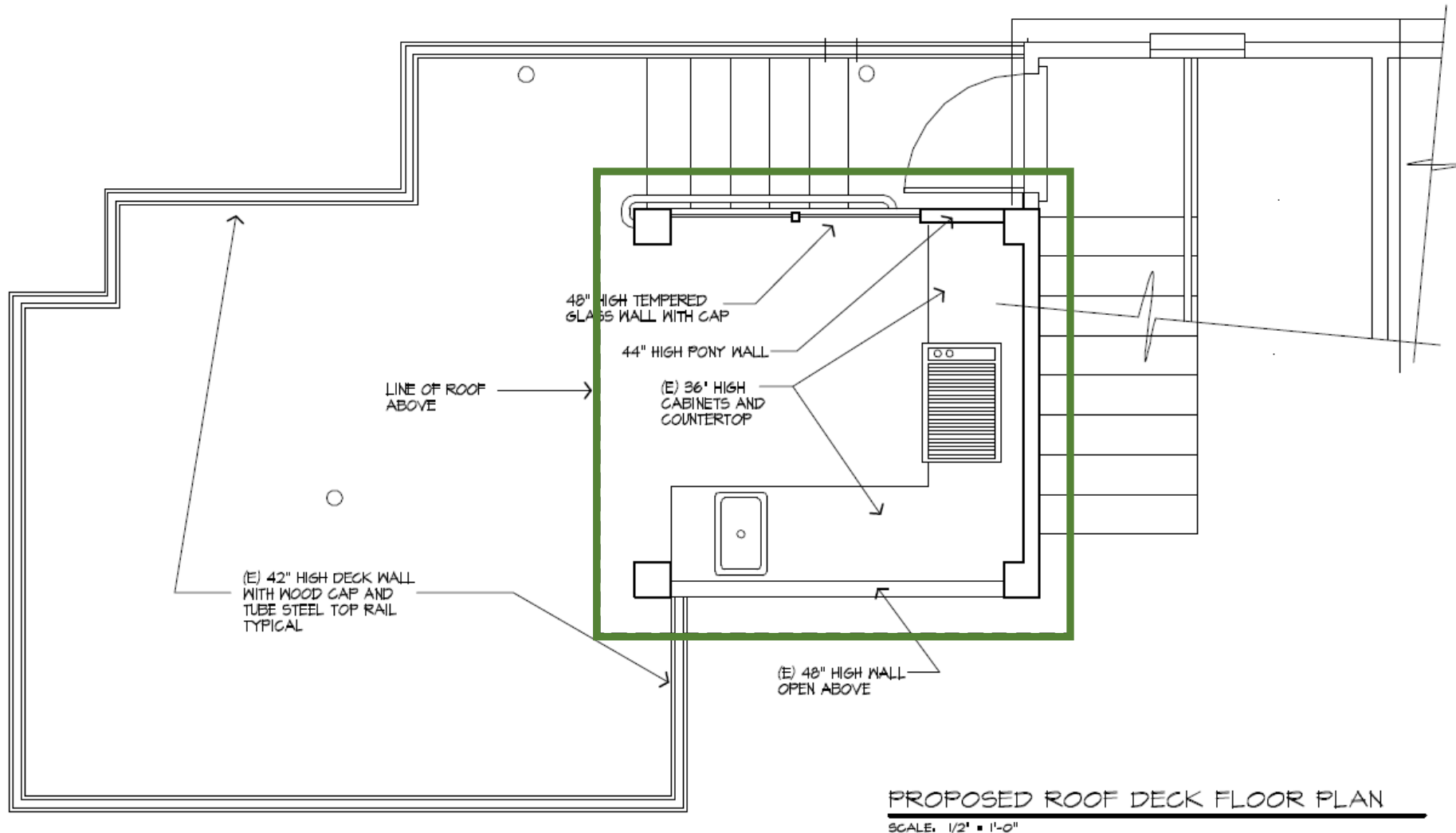


# Request

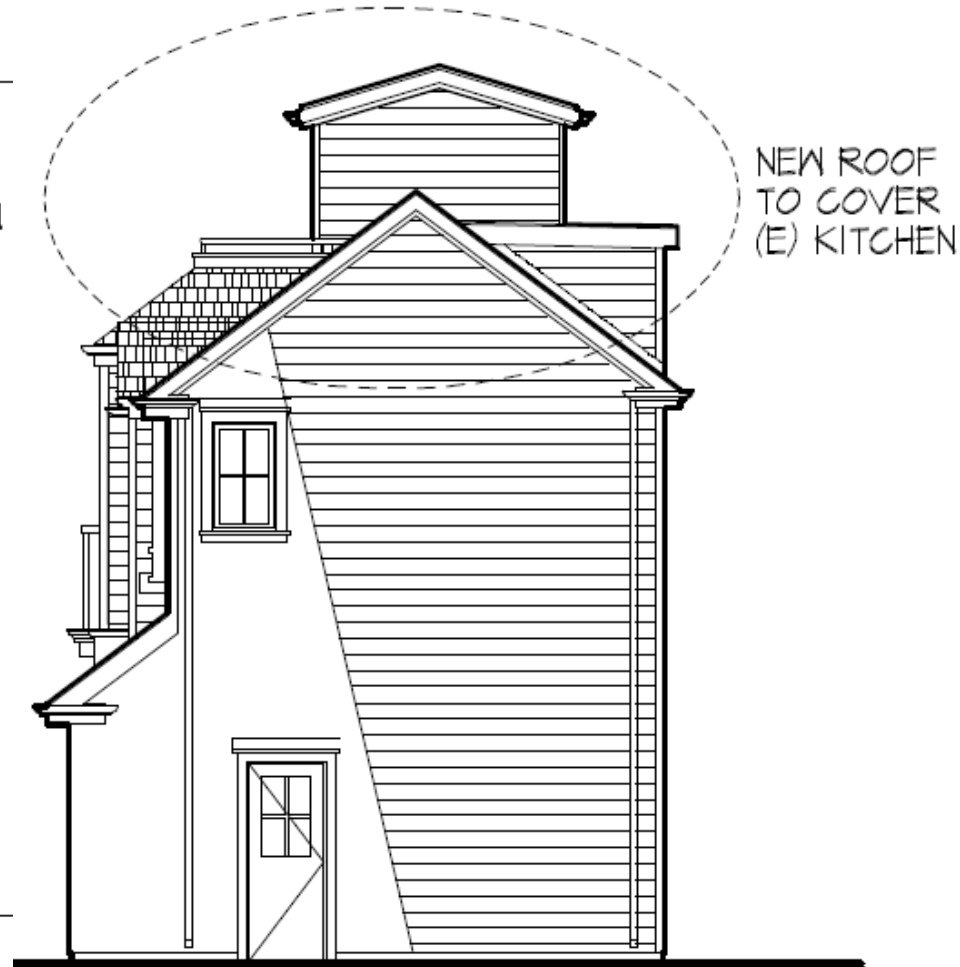
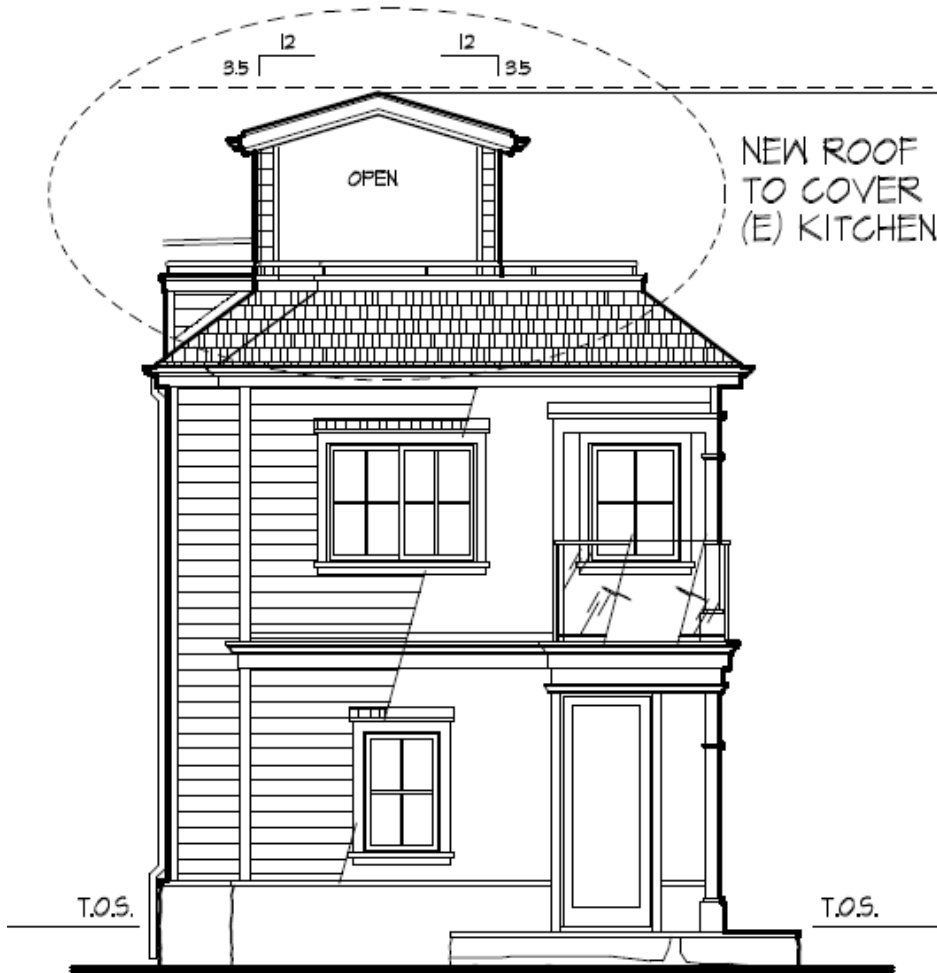
- **Construct an 84-square-foot cover over roof deck outdoor kitchen**
- **Variance from additional step back for third floor covered deck area**
- **No addition of floor area**



# Roof Deck Floor Plan

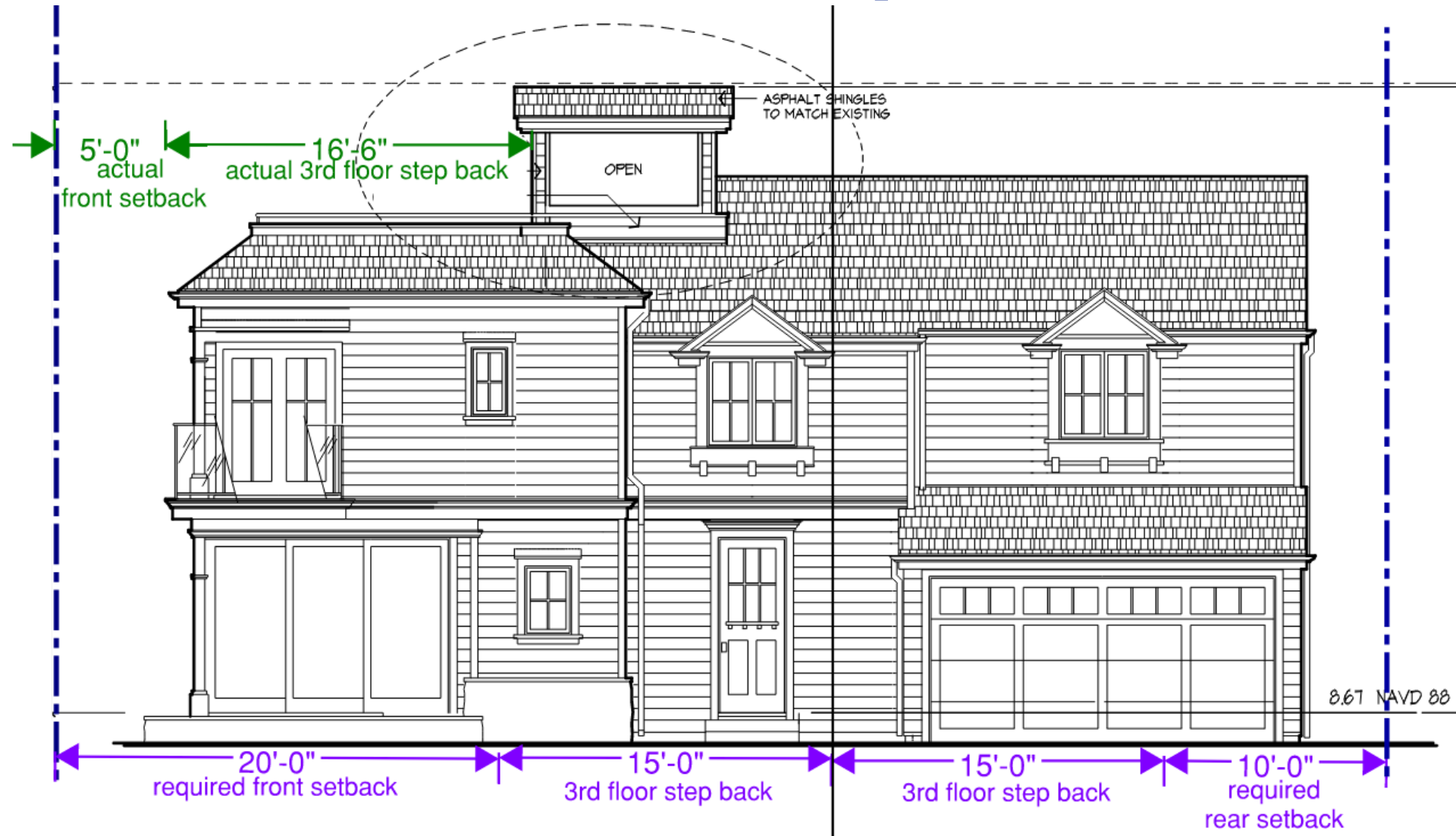


# Roof Over Outdoor Kitchen





# Third Floor Step Back



# **CEQA Review**

**Exempt from CEQA pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines ,because it has no potential to have a significant effect on the environment**



# Recommended Action

- **Conduct a public hearing;**
- **Find the project exempt from CEQA pursuant to Section 15301 under Class 1 (Existing Facilities);**
- **Adopt resolution approving Variance No. VA2022-001**





# Questions and Discussion

## Planning Commission Public Hearing

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June 9, 2022

Chelsea Crager, Associate Planner  
[ccrager@newportbeachca.gov](mailto:ccrager@newportbeachca.gov), 949-644-3227

