



## ZONING ADMINISTRATOR AGENDA REPORT

**Meeting Date:** December 15, 2022

**From:** Jeremiah Robbins, Associate Planner

**Subject:** 120 Tulare Street; Setback Exception Modification 2022-SE-1; R-1 Residential District; to allow a detached 32 square foot accessory structure, measuring approximately 12 feet in height above grade, to be located approximately three feet, five inches from the side lot line; and finding that this project is categorically exempt from environment review under CEQA Guidelines Section 15303, New Construction or Conversion of Small Structures; Justin Ammerlaan, applicant and owner.

**REQUEST:** The applicant requests a setback exception modification to legalize an accessory structure, constructed without a building permit, that encroaches into the required side setback area and exceeds the maximum allowed height permitted under the standard setback exceptions for accessory structures located within a side setback area.

**RECOMMENDATION:** Approve Setback Exception Modification 2022-SE-1 via adoption of Resolution 2022-SE-1 containing the findings and conditions of approval.

**ENVIRONMENTAL DETERMINATION:** The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per Section 15303(e) - this project falls within a class of projects which the State has determined not to have a significant effect on the environment. The exceptions to this categorical exemption referenced in Section 15300.2 of the CEQA Guidelines do not apply.

**APPLICABLE CODE SECTIONS:** Brisbane Municipal Code (BMC) [§17.06.040](#).D.2 establishes side setback areas in the R-1 Residential District, BMC [§17.02.755](#).B defines accessory structures, and BMC [§17.32.070](#).A.2.a allows accessory structures within the side setback area when certain provisions (setback exceptions) are met. If the setback exceptions, which include a maximum height, are proposed to be exceeded, the zoning administrator may approve modification of these setback exceptions, based on certain affirmative findings outlined later in this report.

### ANALYSIS AND FINDINGS:

#### Background

The subject property is a downslope lot of approximately 5,050 square feet developed with a three-story single-family home of approximately 2,700 square feet in floor area (0.53 FAR) and 1,500 square feet (30%) of lot coverage, both within allowable limits in the R-1 Residential District. The rear yard includes a deck accessible from the lower level of the home that overlooks irrigated landscapes per the applicant's site plan. A detached accessory structure, consisting of

a sauna built atop a new elevated platform (sauna deck), was determined to have been constructed without obtaining a (necessary) building permit in the required side setback area.

### **Analysis and Findings**

The setback exceptions detailed in BMC Section 17.32.070.A.2.b allow for an accessory structure to be placed within an interior side setback area provided it is no closer than three feet from the side lot line, the portion of the structure within the setback area does not exceed eight feet in height, and the structure does not exceed 120 square feet.

In order for the accessory structure to be legalized, a modification to the setback exceptions is required, in addition to obtaining building permit (condition of approval 1), since the height of the sauna is more than allowed under the standard exception. The Zoning Administrator may grant modifications to a Setback Exception for a small accessory structure exceeding eight feet in height within the side setback if the following findings can be made:

- i. *The modification will not result in overbuilding the site or result in the removal of significant greenscape.*

The project **would meet** this finding. The footprint of the sauna deck, approximately 67 square feet, represents slightly more than 1% of the total lot area and slightly less than 2% of the 3,550 square foot area of the lot not covered by structures with a solid covering; note, the uncovered portions of the sauna deck do not count towards lot coverage as it is not covered by a solid roof. At 32 square feet, the sauna itself would increase the lot coverage of the site by less than half of one percent. The resulting overall lot coverage remains at 30% and the new FAR would only increase by 0.01 to 0.54. Both FAR and lot coverage remain well below the maximum FAR and lot coverage allowed in the R-1 Residential District of .72 and 40%, respectively. No part of the accessory structure is located within the required rear setback area which, per the applicant's plan, remains entirely as irrigated landscaping; there is no irrigated landscaping within the side setbacks.

The height of the sauna deck is approximately six feet two inches above grade and the portion of the sauna within the required side setback area adds another six feet in height (see Attachment D). While the setback exception limits accessory structures to eight feet tall, a total height of approximately 12 feet from grade is well below the maximum permitted height of 30 feet that applies to the site and adjacent parcels as a whole.

- ii. *The modification will not create any significant adverse impacts upon adjacent properties in terms of loss of privacy, noise, or glare.*

The project **would meet** this finding. The accessory structure would be setback three feet five inches from the nearest side lot line, in excess of the minimum three-foot setback required via the setback exception, and approximately eight to nine feet from the nearest neighboring building. Furthermore, only the back wall of the sauna encroaches into the side setback area.

With no windows on the back wall of the sauna, direct views from sauna deck into the neighboring properties at 136 Tulare Street and 223 Santa Clara Street are not possible from inside the sauna and the sauna itself would obstruct views from the sauna deck. No other significant or adverse glare or noise impacts are anticipated.

As a conditional of approval, the existing rear deck accessible from the lower level of the home will be required to comply with the side setback requirements for the R-1 Residential District; there are no exceptions for supported decks and the standard 4-foot, 10-inch (10% of lot width) side setback shall apply.

- iii. The accessory structure is designed to be compatible with the primary dwelling(s) on the site.

The proposal **would meet** this finding. The accessory structure deck is constructed of natural wood structure that is complementary in scale and appearance to the primary dwelling (see Attachment D).

#### **ATTACHMENTS**

- A. Draft findings and conditions of approval
- B. Aerial vicinity map
- C. Applicant statement of findings
- D. Applicant's plans

**Draft  
Setback Exception Modification 2022-SE-1  
120 Tulare Street**

**Action Taken:** Conditionally approve Setback Exception Modification 2022-SE-1 per the staff memorandum for the Zoning Administrator hearing of December 15, 2022 subject to the following findings and conditions of approval.

**Findings:**

- i. The modification will not result in overbuilding the site or result in the removal of significant greenscape, as both the overall floor area ratio and lot coverage of the site would remain well below the maximums allowed within the R-1 Residential District, the side setback area is not currently landscaped, and the majority of the rear yard remains as an irrigated landscape.
- ii. The modification will not result in significant adverse noise, privacy, or glare impacts to adjacent properties in that no windows or openings overlook neighboring properties and direct views from the accessory structure into neighboring properties would be blocked by the structure itself.
- iii. The design of the accessory structure is compatible with the primary dwelling on the site, being a rectangular, natural wood deck and structure that is complementary in scale and appearance to the primary dwelling.

**Conditions of Approval:**

Prior to issuance of a Building Permit or During Construction:

1. The applicant shall obtain a building permit to legalize the accessory structure. The building permit application shall include any structural, electrical, plumbing, and/or other work performed as part of construction of the accessory structure.
2. Plans submitted for building permit shall substantially conform to plans on file in the City of Brisbane Planning Department dated June 28, 2022, with the following modification:
  - a. The existing rear deck shall be modified so as to comply with the side setback standards in the R-1 Residential District.
  - b. A 1-hour fire rated wall is required for any portion of the accessory structure that is less than five feet from the property line.
3. Drawings depicting all work completed and proposed shall be provided to the satisfaction of the City. Exposure of covered work may also be required to demonstrate compliance with building code requirements.

Other Conditions:

4. Minor modifications may be approved administratively by the Community Development Director in conformance with all requirements of the Municipal Code.

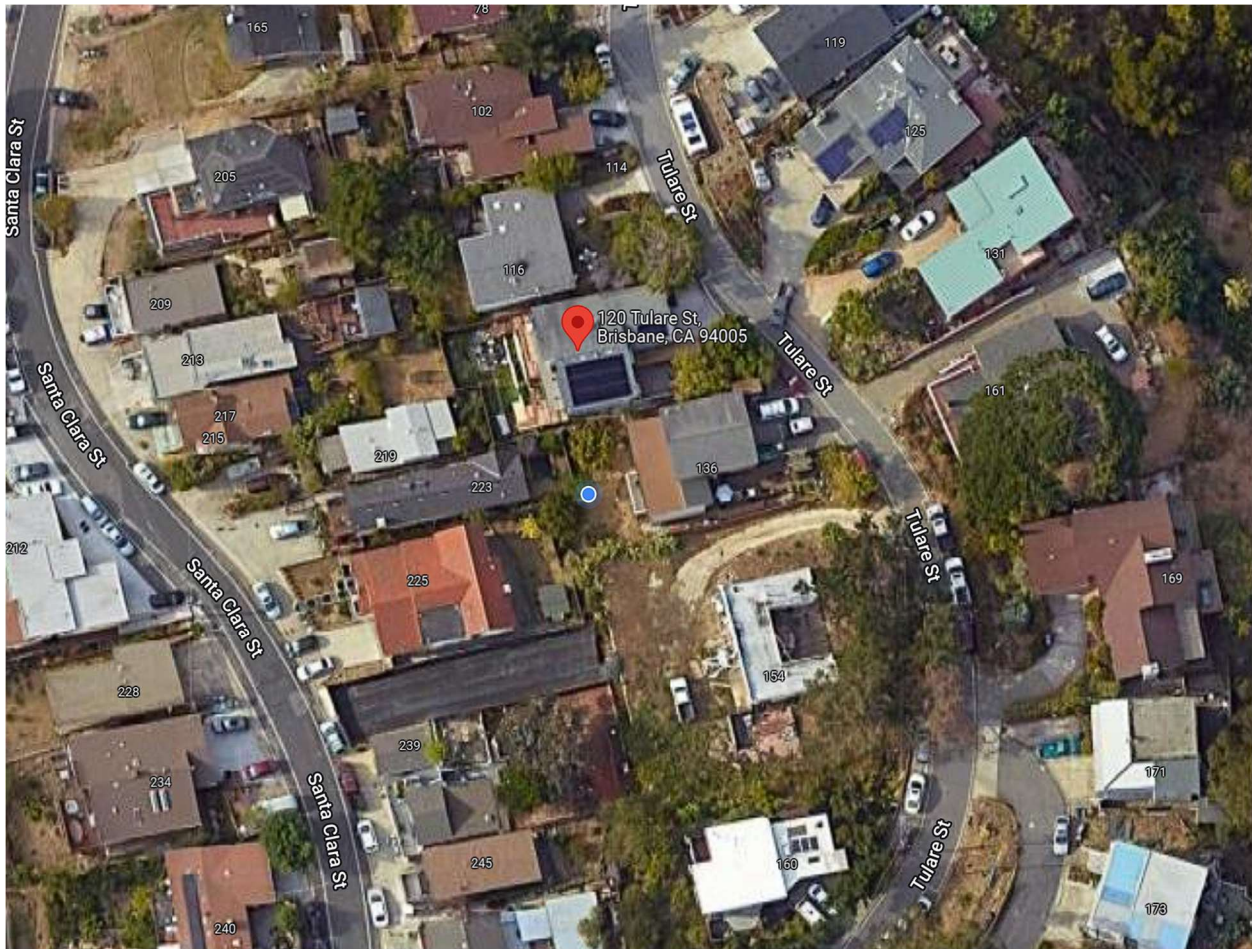
**Setback Exception Modification 2022-SE-1**  
**ATTACHMENT A**

5. This Setback Exception Modification shall expire two years from the effective date (at the end of the appeal period) if a Building Permit has not yet been issued for the approved project or if the Building Permit, once issued, is allowed to expire prior to final inspection.

Aerial Vicinity Map

120 Tulare Street





### Supporting statements

*What unusual or special circumstances relating to your property make it necessary for you to install this projection from a building at this specific location?*

At the location of the sauna the sewage return tank is located. As this property does not have an easement for sewage to be sent downhill, a sewage return tank is required to return the sewage up to Tulare st. As the deck above the sewage return tank is blank space and is quite unsightly and rotten, a replacement deck is necessary. The sauna can not be constructed at ground level, due to the sewage return tank and was chosen to be constructed on top of the sewage return tank deck. The local code does permit accessory structures to be within the setback if they are on ground level at the rear of the property. As the sewage return tank is in the way, this option is not available.

*How will the visual impacts of the proposed projection from a building (in terms of size, height, location, color, materials, landscaping, etc.) be minimized?*

The sauna will utilize a shed roof, which minimizes the impact to the neighbors view. The sauna will utilize neutral wood tones and blend in with the existing decking and house.

*How much of the site (in terms of square footage and percentage of lot area) will the proposed accessory structure occupy? How much of the site is already occupied by structures?*

The sauna will occupy 40 sqft of the site. The current lot coverage is 29.5% and the sauna will increase this to 30%.

*How many trees and shrubs and how much other landscaping will be removed to accommodate the proposed accessory structure?*

There are no required landscaping changes. The structure is built above a sewage return rank.

*How will the accessory structure be designed so as not to adversely impact the surrounding properties in terms of privacy, noise or glare?*

The structure is designed with a shed roof to minimize the impact on neighbors view. The structure Additionally the structure significantly increases the privacy of adjacent properties by reducing the ability of residents at 120 tulare st to see down into their private backyard area. The privacy of this neighbors yard has thus been increased.

*How will the accessory structure be designed to be compatible with the main dwelling(s) on the site (in terms of size, height, location, color, materials, landscaping, etc.)?*





The accessory structure will utilize similar materials (asphalt shingles, red wood decking etc, black trim) to maintain a similar look to the main structure. Additionally, the owner plans to update the main structure to be even further in line with the new structure in a future upgrade of the siding on the main structure.

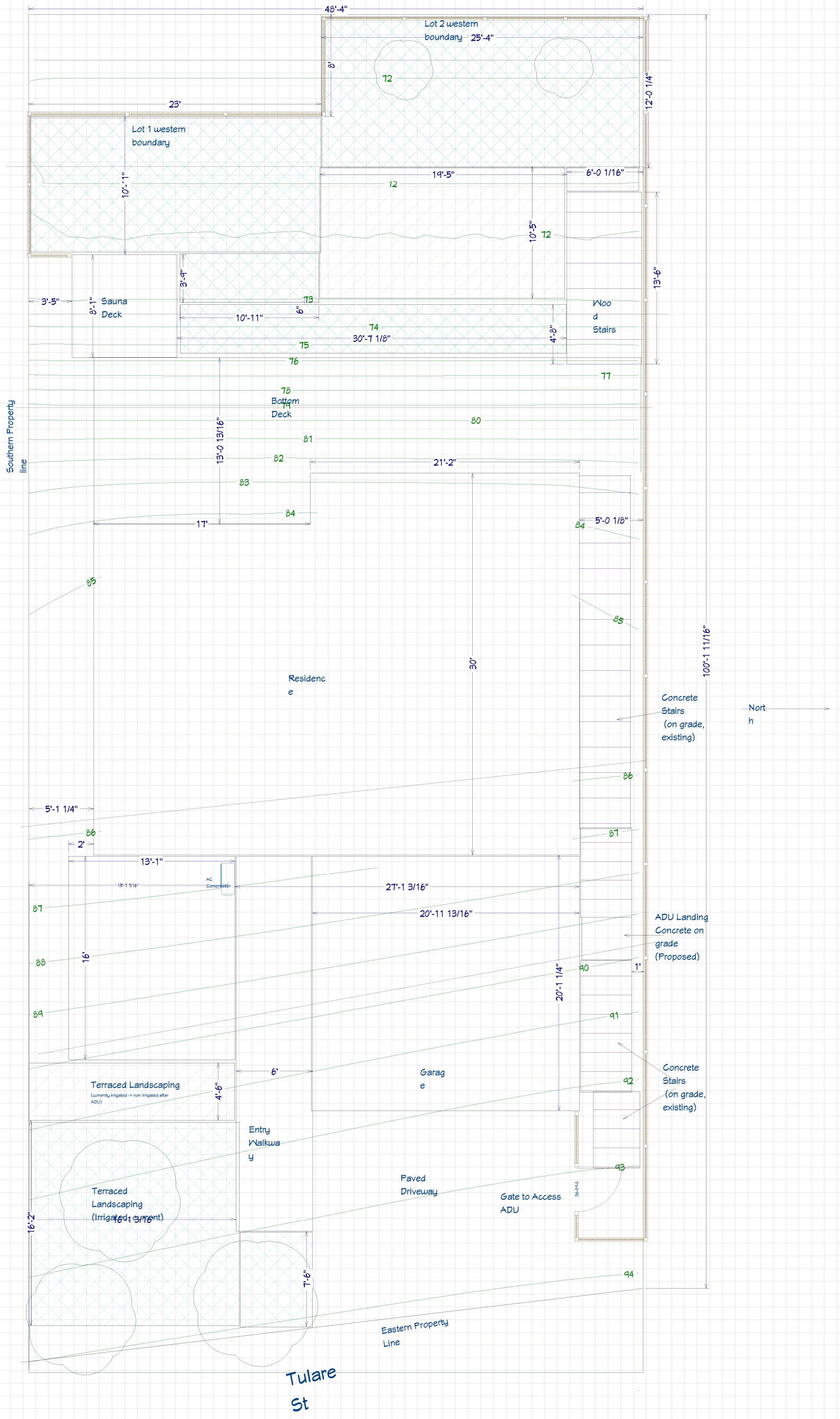


Owner and Plan Preparer: Justin Ammerlaan  
 120 Tulare St, Brisbane, CA 94005  
 Date: 4/18/22  
 1 square = 12"x12"  
 Scale 1/8" = 1'

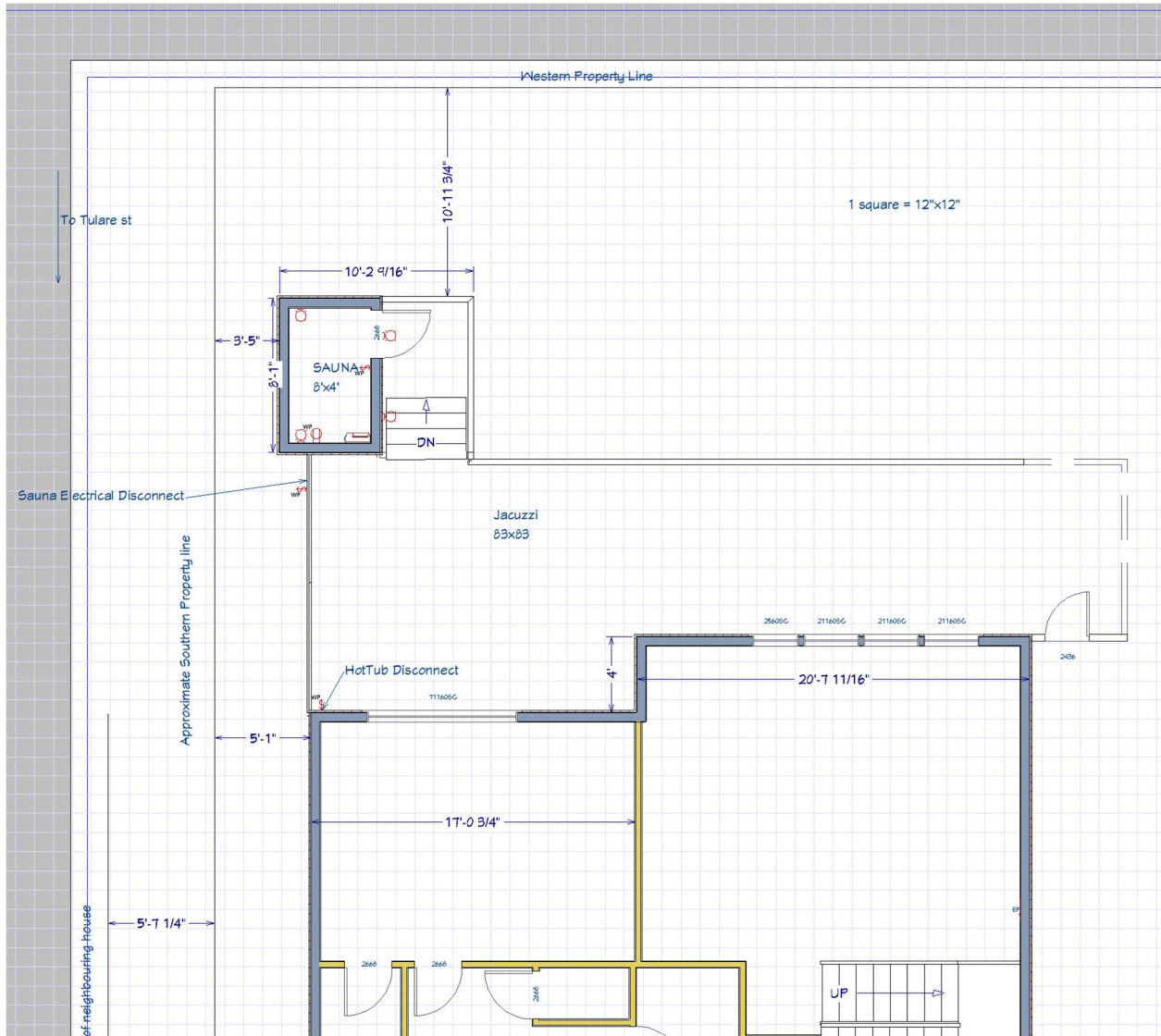
# Site Plan 1 - 120 Tulare St

ATTACHMENT D

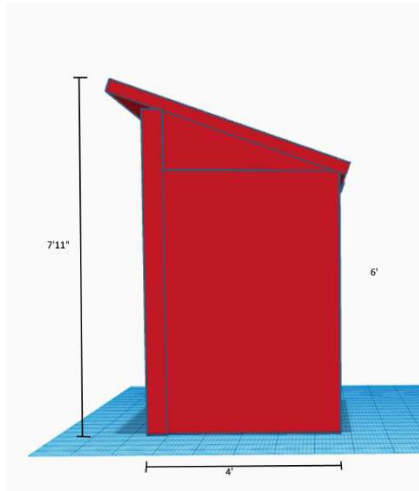
-  Landscaping, irrigated
-  Landscaping, paved or bark
-  Fencing, 6' wood Tre e
-  Tree



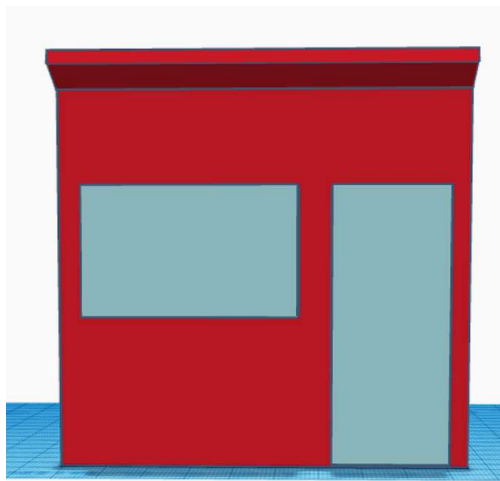
# Sauna detailed plan



Sauna side view



Sauna front view



Elevations

West Elevation

