

**CITY OF AUSTIN  
Board of Adjustment  
Decision Sheet  
Item 8**

**DATE: Monday October 10, 2022**

**CASE NUMBER: C15-2022-0071**

☐ - ☐ Thomas Ates OUT  
☐ Y ☐ Brooke Bailey  
☐ Y ☐ Jessica Cohen  
☐ Y ☐ Melissa Hawthorne  
☐ Y ☐ Barbara McArthur  
☐ Y ☐ Darryl Pruett  
☐ - ☐ Agustina Rodriguez OUT  
☐ - ☐ Richard Smith OUT  
☐ Y ☐ Michael Von Ohlen  
☐ - ☐ Nicholl Wade OUT  
☐ Y ☐ Kelly Blume (Alternate)  
☐ Y ☐ Carrie Waller (Alternate)  
☐ Y ☐ Marcel Gutierrez-Garza (Alternate)

**APPLICANT: Micah King**

**OWNER: Daniel Mitchell**

**ADDRESS: 2311 LAFAYETTE AVE**

**VARIANCE REQUESTED:** The applicant is requesting variance(s) from the Land Development Code, Section 25-2-774 (*Two-Family Residential Use*) for a Two-Family Residential

- a) (C) (5) (a) to increase the total square footage of a Secondary Dwelling unit from the lesser of 1,100 square feet or 0.15 FAR (maximum allowed) to 1,452 square feet; and
- b) (C) (5) (b) to increase the second floor square footage of 550 square feet (maximum allowed) to 756 square feet (requested) in order to erect a Secondary Dwelling Unit in an "SF-3-NP", Single-Family Residence-Neighborhood Plan zoning district. (Upper Boggy Creek Neighborhood Plan)

**Note:** Per LDC 25-2-774 - TWO-FAMILY RESIDENTIAL USE.

(A) For a two-family residential use, the base zoning district regulations are superseded by the requirements of this section.

(B) For a two-family residential use the minimum lot area is equivalent to a standard lot.

(C) The second dwelling unit:

(1) must be contained in a structure other than the principal structure;

(2) must be located:

(a) at least 10 feet to the rear or side of the principal structure; or

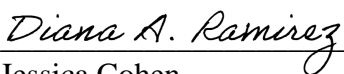
- (b) above a detached garage;*
- (3) may be connected to the principal structure by a covered walkway;*
- (4) may not exceed a height of 30 feet, and is limited to two stories;*
- (5) may not exceed:*
  - (a) 1,100 total square feet or a floor-to-area ratio of 0.15, whichever is smaller; and*
  - (b) 550 square feet on the second story, if any; and*
- (6) may not be used as a short term rental for more than 30 days in a calendar year if the second dwelling unit was constructed after October 1, 2015.*

**BOARD'S DECISION: The public hearing was closed by Madam Chair Jessica Cohen, Board member Michael Von Ohlen motions to postpone to November 14, 2022; Board member Melissa Hawthorne second on 9-0 vote; POSTPONED TO NOVEMBER 14, 2022.**

**FINDING:**

1. The Zoning regulations applicable to the property do not allow for a reasonable use because:
2. (a) The hardship for which the variance is requested is unique to the property in that:
  - (b) The hardship is not general to the area in which the property is located because:
3. The variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property, and will not impair the purpose of the regulations of the zoning district in which the property is located because:

  
Elaine Ramirez  
Executive Liaison

 for  
Jessica Cohen  
Madam Chair

# BOA GENERAL REVIEW COVERSHEET

## RE-NOTIFICATION

**CASE:** C15-2022-0071**BOA DATE:** November 14<sup>th</sup>, 2022**ADDRESS:** 2311 Lafayette Ave**COUNCIL DISTRICT:** 9**OWNER:** Daniel Mitchell**AGENT:** Micah King (Husch Blackwell LLP)**ZONING:** SF-3-NP (Upper Boggy Creek)**LEGAL DESCRIPTION:** LOT 8 BLK 1 OLT 27-28&31 DIV C NOWLIN HEIGHTS

**VARIANCE REQUEST:** a) (C) (2) (a) for a Two-Family Residential use location at least 10 feet to the rear or side of the principal structure ~~to~~ a Two-Family use location at to the front of the principal structure **and** b) (C) (5) (a) to increase the total square footage of a Secondary Dwelling unit from the lesser of 1,100 square feet or 0.15 FAR, 901.5 square feet ~~to~~ 948 square feet.

**SUMMARY:** erect Single-Family Primary residence in the rear and change use of existing Single-Family Primary residence to a Two-Family Residential use.

**ISSUES:** narrow width of lot, 24 inch Heritage tree and critical root zones

	ZONING	LAND USES
<i>Site</i>	SF-3-NP	Single-Family
<i>North</i>	SF-3-NP	Single-Family
<i>South</i>	SF-3-NP	Single-Family
<i>East</i>	SF-3-NP	Single-Family
<i>West</i>	SF-3-NP	Single-Family

**NEIGHBORHOOD ORGANIZATIONS:**

Austin Independent School District  
 Austin Lost and Found Pets  
 Austin Neighborhoods Council  
 Cherrywood Neighborhood Assn.  
 Concordia Neighborhood Association  
 Del Valle Community Coalition  
 Friends of Austin Neighborhoods  
 Homeless Neighborhood Association  
 Neighborhood Empowerment Foundation  
 Neighbors United for Progress  
 Preservation Austin  
 SELTexas  
 Sierra Club, Austin Regional Group  
 Upper Boggy Creek Neighborhood Planning Team

**Micah J. King**

111 Congress Avenue, Suite 1400  
Austin, Texas 78701  
Direct: 512.370.3468

October 20, 2022

Board of Adjustment  
City of Austin  
c/o Elaine Ramirez  
Planner Senior and Board of Adjustment Liaison  
City of Austin Development Services Department  
6310 Wilhelmina Delco Drive  
Austin, Texas 78752

RE: Updated Variance Request for Property Located at 2311 Lafayette Avenue  
(the "Property"); Case C15-2022-0071

Dear Ms. Ramirez:

Please accept the attached updated variance request, the approval of which would (i) facilitate the replacement of an existing, non-complying secondary unit with a new rear dwelling unit (which would become the primary structure); (ii) eliminate the existing rear unit's setback encroachments; and (iii) facilitate the preservation of the front dwelling unit (which currently serves as the principal structure), which was constructed in 1948 and contributes to the neighborhood's unique character. The proposed replacement rear unit would comply with all maximum setback and impervious cover limits. As such, we are requesting variances from the following code sections:

§ 25-2-774(C)(2)(a), to change the requirement that the second dwelling unit must be located at least 10 feet to the rear or side of the principal structure (required) to must be located at least 10 feet to the front of the principal structure (requested); and

§ 25-2-774(C)(5)(a), to increase the maximum size of the secondary unit (proposed to be the front house) from the lesser of 1,100 sq. ft. or 0.15 FAR (which equates to 901.5 sq. ft.) (required) to 948 sq. ft. (requested).

The variance is needed because the existing units are insufficient to meet the needs for safe, sound, and adequate living and home office space as the rear unit is a non-complying structure and has long been beyond what makes sense to repair, and the front house (which has only 948 sq. ft. of conditioned space) should be maintained to help preserve the area's character (which is an area in which original homes are being replaced with large, out-of-character homes). In addition, the front house cannot be simply expanded in a meaningful way (i) to the front due to the front setback requirement, (ii) to the rear due to a Heritage Tree, ¼ and ½ Critical Root Zones ("CRZs"), and



Elaine Ramirez  
October 20, 2022  
Page 2

10' separation requirements, or (iii) to the side due to the driveway, which provides the only possible accessible route to the rear unit.

The existing rear unit is a noncomplying structure because it is 1,168 sq. ft. (and it also encroaches on the setbacks) and so there is decades-long, on-site precedent for a larger secondary unit than is allowed under current Code. In addition to the preservation of the front house, a benefit of approval is it would facilitate the replacement of the rear unit with one that complies with the minimum side and rear setback requirements, which it currently violates.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Micah King" with a stylized flourish at the end.

Micah King

Exhibits:

- A. Variance Application
- B. Property Location Map
- C. Survey
- D. Site Calculations
- E. Architectural Plans
- F. Site Photos

**Exhibit A:**

**Variance Application**



## Board of Adjustment General/Parking Variance Application

**WARNING:** Filing of this appeal stops all affected construction activity.

This application is a fillable PDF that can be completed electronically. To ensure your information is saved, [click here to Save](#) the form to your computer, then open your copy and continue.

The Tab key may be used to navigate to each field; Shift + Tab moves to the previous field. The Enter key activates links, emails, and buttons. Use the Up & Down Arrow keys to scroll through drop-down lists and check boxes, and hit Enter to make a selection.

The application must be complete and accurate prior to submittal. ***If more space is required, please complete Section 6 as needed.*** All information is required (if applicable).

### For Office Use Only

Case # C15-2022-0071 ROW # 13012898 Tax # 0213100205

### Section 1: Applicant Statement

Street Address: 2311 Lafayette Avenue, Austin, TX 78722

Subdivision Legal Description:

Nowlin Heights, Lot 8, Block 1

Lot(s): 8 Block(s): 1

Outlot: 27, 28, and 31 Division: C

Zoning District: SF-3-NP (Upper Boggy Creek) Council District: 9

I/We Micah King (Husch Blackwell LLP) on behalf of myself/ourselves as authorized agent for Daniel Mitchell affirm that on Month August, Day 31, Year 2022, hereby apply for a hearing before the Board of Adjustment for consideration to (select appropriate option below):

☒ Erect ☐ Attach ☐ Complete ☐ Remodel ☐ Maintain ☐ Other: \_\_\_\_\_

Type of Structure: Replacement of non-complying rear unit and flip primary/secondary

Portion of the City of Austin Land Development Code applicant is seeking a variance from:

§ 25-2-774(C)(2)(a), to change the requirement that the second dwelling unit must be located at least 10 feet to the rear or side of the principal structure (required) to must be located at least 10 feet to the front of the principal structure (requested); and

§ 25-2-774(C)(5)(a), to increase the max. size of the secondary unit (proposed to be the front house) from the lesser of 1,100 sq. ft. or 0.15 FAR (901.5 sq. ft.) (required) to 948 sq. ft. (requested).

## **Section 2: Variance Findings**

The Board must determine the existence of, sufficiency of, and weight of evidence supporting the findings described below. Therefore, you must complete each of the applicable Findings Statements as part of your application. Failure to do so may result in your application being rejected as incomplete. Please attach any additional supporting documents.

**NOTE: The Board cannot grant a variance that would provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated.**

I contend that my entitlement to the requested variance is based on the following findings:

### **Reasonable Use**

The zoning regulations applicable to the property do not allow for a reasonable use because:

The regulations unreasonably constrain the ability of the owner to have adequate, safe housing to meet their needs without demolishing and replacing the existing front house, which was constructed in 1948. Both existing houses are small and in a declining state, the rear unit has long been in such a poor state that rehabilitation makes no sense, and there is no way to have an updated house with adequate space for the owner and a home office without demolishing the front house, which would be contrary to the City Council's policy objective of leveraging ADU regulations to incentivize the preservation of primary single-family dwellings.

### **Hardship**

a) The hardship for which the variance is requested is unique to the property in that:

The hardship is unique to the property because it has two very old structures that are both legally noncomplying, a 3-story multifamily building is immediately to the rear of the property, and options for where to provide safe, adequate, new housing that will help the owner remain in place are constrained by the narrow width of the lot combined with the locations of the houses in relation to the required setbacks, driveway, 24" Heritage Tree, and Critical Root Zones.

b) The hardship is not general to the area in which the property is located because:

The hardship is not general to the area because many nearby front houses have expanded in size or have room to expand without the buildable space being squeezed between a 25' front setback and a 24" Heritage Tree, or the original houses have been demolished. As such, for many nearby properties, there is no hardship or, if there was a hardship, it is no longer general to the area because the owner scraped the lot and built a new house larger than is requested.

**Area Character**

The variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property, and will not impair the purpose of the regulations of the zoning district in which the property is located because:

The variance will not alter the area's character as the rear unit is already non-complying due to its size and the property backs up to a 3-story apartment building, which looms over the unit. Approval would only enhance character by helping meet housing needs while helping to preserve the front house, which is a prime example of original architecture in the neighborhood, and will result in a new rear unit that advances the purpose of the zoning regulations by eliminating encroachments and benefiting adjacent neighbors with new open space.

**Parking** (additional criteria for parking variances only)

Request for a parking variance requires the Board to make additional findings. The Board may grant a variance to a regulation prescribed in the City of Austin Land Development Code Chapter 25-6, Appendix A with respect to the number of off-street parking spaces or loading facilities required if it makes findings of fact that the following additional circumstances also apply:

1. Neither present nor anticipated future traffic volumes generated by the use of the site or the uses of sites in the vicinity reasonably require strict or literal interpretation and enforcement of the specific regulation because:

N/A

2. The granting of this variance will not result in the parking or loading of vehicles on public streets in such a manner as to interfere with the free flow of traffic of the streets because:

N/A

3. The granting of this variance will not create a safety hazard or any other condition inconsistent with the objectives of this Ordinance because:

N/A

4. The variance will run with the use or uses to which it pertains and shall not run with the site because:

N/A

**Section 3: Applicant Certificate**

I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Applicant Signature: Micah King Date: 08/31/2022

Applicant Name (typed or printed): Micah King (Husch Blackwell LLP)

Applicant Mailing Address: 111 Congress Ave., Ste. 1400

City: Austin State: TX Zip: 78701

Phone (will be public information): (512) 370-3468

Email (optional – will be public information): [REDACTED]

**Section 4: Owner Certificate**

I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Owner Signature: [Signature] Date: 9/6/2022

Owner Name (typed or printed): Daniel Mitchell

Owner Mailing Address: 2311 Lafayette Avenue

City: Austin State: TX Zip: 78722

Phone (will be public information): (512) 779-5225

Email (optional – will be public information):

**Section 5: Agent Information**

Agent Name: Micah King (Husch Blackwell LLP)

Agent Mailing Address: 111 Congress Ave., Ste. 1400

City: Austin State: TX Zip: 78701

Phone (will be public information): (512) 370-3468

Email (optional – will be public information): [REDACTED]

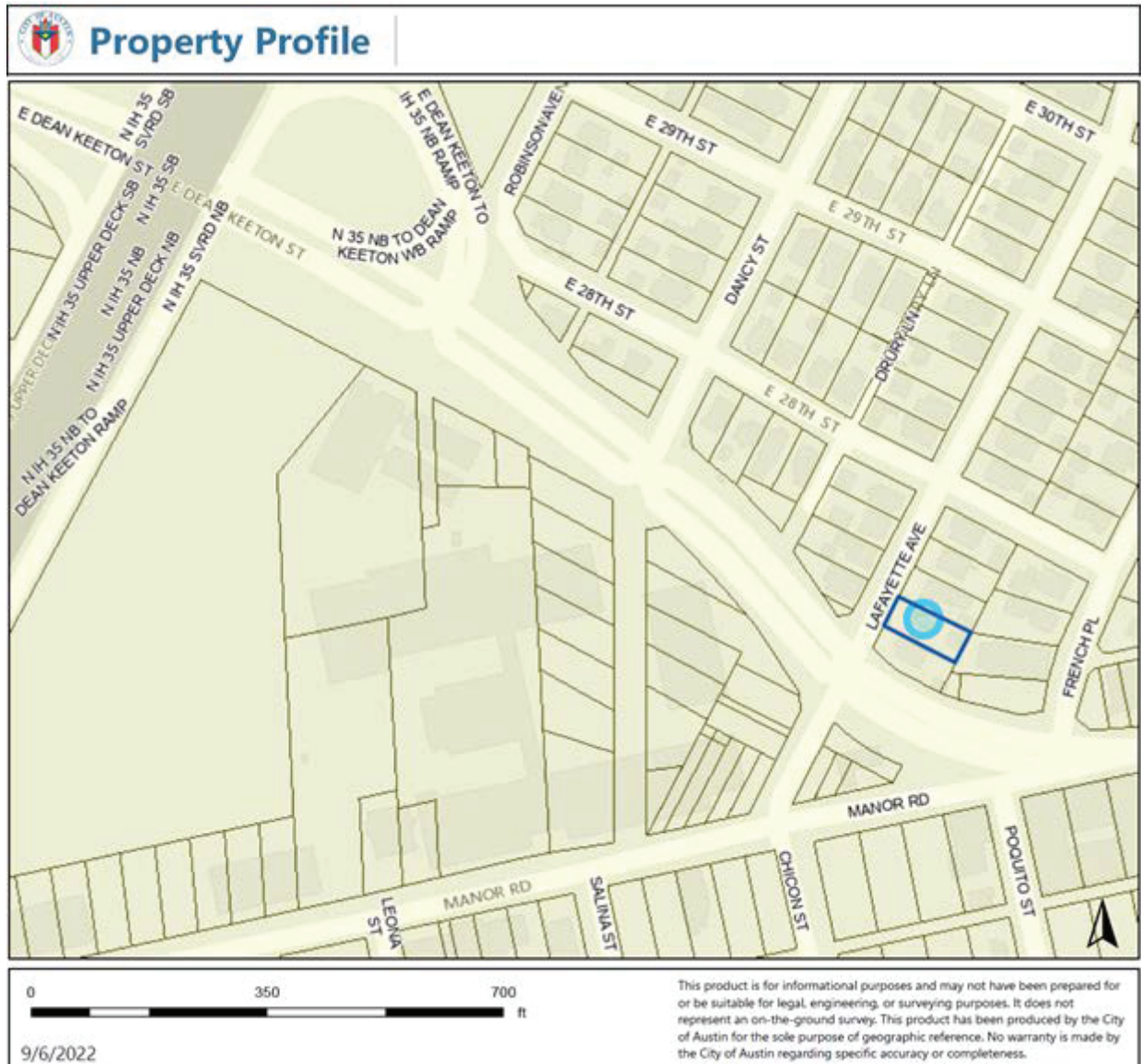
**Section 6: Additional Space (if applicable)**

Please use the space below to provide additional information as needed. To ensure the information is referenced to the proper item, include the Section and Field names as well (continued on next page).



Exhibit B:

## Property Location Map

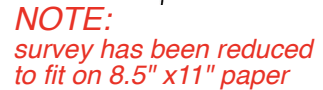


**Exhibit C:**

**Survey**



City Of Austin  
6059/1752



*Lafayette Avenue*

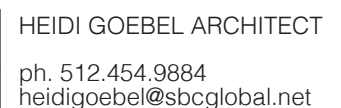
Thomas P. Dixon R.P.L.S. 4324

**Exhibit D:**

**Architectural Plans**



10.18.2022



**Exhibit E:**

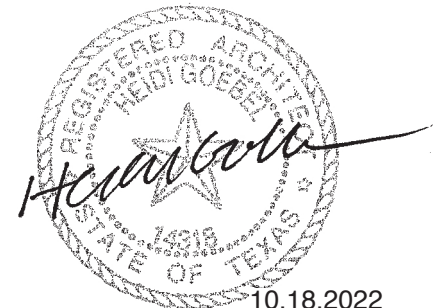
**Site Calculations**

## 2311 Lafayette Avenue

zoning: SF-3 - NP [Cherrywood]  
 legal description: Lot 8, Block 1, Outlot 27 - 28 & 31, Division C, Nowlin Heights [vol. 32, page 237]  
 tax ID: 205223  
 geographic ID: 0213100205  
 lot size: 6,010  
 parking requirement: 2 spaces [site is in area of reduced parking]  
 allowable SF for ADU: 6,010 x .015 = 901 sf

## site calculations

	existing	to be removed	proposed	
<b>EXISTING HOUSE</b>				
<b>to be reclassified as ADU</b>				
1-story house:	948		948	[counted toward FAR calculation]
covered front porch:	64		64	[exempted from FAR calculation]
front porch steps:	20		20	
uncovered rear stoop & steps:	30		30	
AC pad:	9		9	
driveway strips:	100	(100)		
<b>EXISTING ADU</b>				
<b>to be demolished</b>				
ground floor:	612	(612)		
2nd floor:	556	(556)		
uncovered wood stair:	60	(60)		
uncovered concrete:	640	(640)		
<b>PROPOSED 2-STORY PRIMARY RESIDENCE</b>				
ground floor:			696	[counted toward FAR calculation]
covered porch / second floor overhang:			60	[exempted from FAR calculation]
2nd floor:			756	[counted toward FAR calculation]
attached 1-car carport:			200	[exempted from FAR calculation]
AC pad:			9	
driveway strips:			552	
<b>building coverage</b>	<b>1624</b> (27.02%)		<b>1968</b> (32.75%)	
allowable building coverage: 2,404 sf				
<b>impervious coverage</b>	<b>2483</b> (41.31%)		<b>2588</b> (43.06%)	
allowable impervious cover: 2,704 sf				
<b>gross floor area</b>	<b>2116</b> (35.21%)		<b>2400</b> (39.93%)	
allowable gross floor area: 2,404sf				



10.18.2022

**Exhibit F:**

**Site Photos**



Photo of the Front House  
(To Be Preserved)

ITEM8/19





Photo of the Front House and Driveway  
(Which Provides Access to the Rear Unit)

ITEM8/20





Photo of the Rear Unit to Be Replaced  
(Which Currently Violates the Side and Rear Setbacks)

ITEM8/21





Photo of the Rear Unit  
With the 3-Story Apartment Building Immediately to the Rear

ITEM8/22





Photo of the Rear Unit  
With the 3-Story Apartment Building Immediately to the Rear

ITEM8/23





Photo of the Rear Unit  
With the 3-Story Apartment Building Immediately to the Rear

ITEM8/24





Photo of the Front House to the Left  
And the Rear Unit to the Right

ITEM8/25

Showing the Limited Space for Horizontal Expansion Due to the Heritage  
Tree, Critical Root Zone, Separation Requirements, and Lot Width



**Exhibit G:****Aerial View of Adjacent Lots**



**Exhibit H:**  
**Letters of Support**

Christopher Bottaro  
2313 Lafayette Avenue  
Austin, Texas 78701

The Board of Adjustment  
c/o Elaine Ramirez  
Planner Senior and Board of Adjustment Liaison  
The City of Austin

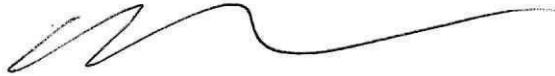
Re: Letter of Support for Variance Request for Immediately Adjacent Property at 2311  
Lafayette Avenue (Case C15-2022-0071)

Dear Board Members:

I own and reside at the residential property immediately to the north of Dan Mitchell's property. I am requesting that you approve the variance to increase the maximum size of his ADU. The existing ADU is in a poor state and we support it being replaced. I also support the variance request since it would result in a new ADU that complies with the side setback requirements (the existing ADU encroaches on the side setback, which directly impacts my property). The proposed ADU would also be in character for the area, and we would like to see the front house preserved, which approval would help facilitate.

Thank you for your support.

Sincerely,

A handwritten signature in black ink, appearing to be 'Christopher Bottaro', with a long, sweeping horizontal line extending to the right.

Christopher Bottaro



Spencer Thompson  
2309 Lafayette Avenue  
Austin, Texas 78701

The Board of Adjustment  
c/o Elaine Ramirez  
Planner Senior and Board of Adjustment Liaison  
The City of Austin

Re: Support for Variance for Immediately Adjacent Property at 2311 Lafayette Avenue  
(Case C15-2022-0071)

Dear Board Members:

I own and reside at the adjacent residential property immediately south of Dan Mitchell's property and support his variance request to replace his ADU with a new, more attractive and safer modern one that is slightly larger by around 284 sq. ft. Simply put, the existing ADU needs to be replaced, and we have no problem with the variance, especially since it would provide Dan with much needed new space while allowing for the preservation of the front house, which contributes to our neighborhood's character. Thank you for your support.

Sincerely,

A handwritten signature in black ink, appearing to be 'Spencer Thompson', written over a horizontal line.

Spencer Thompson