

Title:	Gouthier Accessory Dwelling Unit (ADU) Variance
Project:	Variance V-24-0001
Location:	1125 Bay Street
APN:	002-151-010
Applicant:	Ashley Gouthier
Property Owner:	Ashley Gouthier
Purpose/Use:	Allow reduced setbacks from rear and side property lines for an unpermitted ADU, enabling the ADU to move forward through the Coastal Development Permit and Building Permit processes to achieve legal status
Complete Application:	September 11, 2024
Deadline for Action:	December 10, 2024
General Plan:	LDR – Low Density Residential
Zoning:	RS-6,000 – One-Family Residential
CEQA:	Exempt under §15303(e), Class 3, New Construction or Conversion of Small Structures; and §15305, Class 5, Minor Alterations in Land Use Limitations
Staff Contact:	Penelope Kirsch, Assistant Planner
Recommendation:	Hold a public hearing; and Adopt a resolution finding the project is exempt from CEQA, and approving with conditions.
Motion:	“I move the Planning Commission adopt a resolution finding the project exempt from CEQA and conditionally approving the Gouthier Accessory Dwelling Unit Variance at 1125 Bay Street”

Figure 1: Location Map

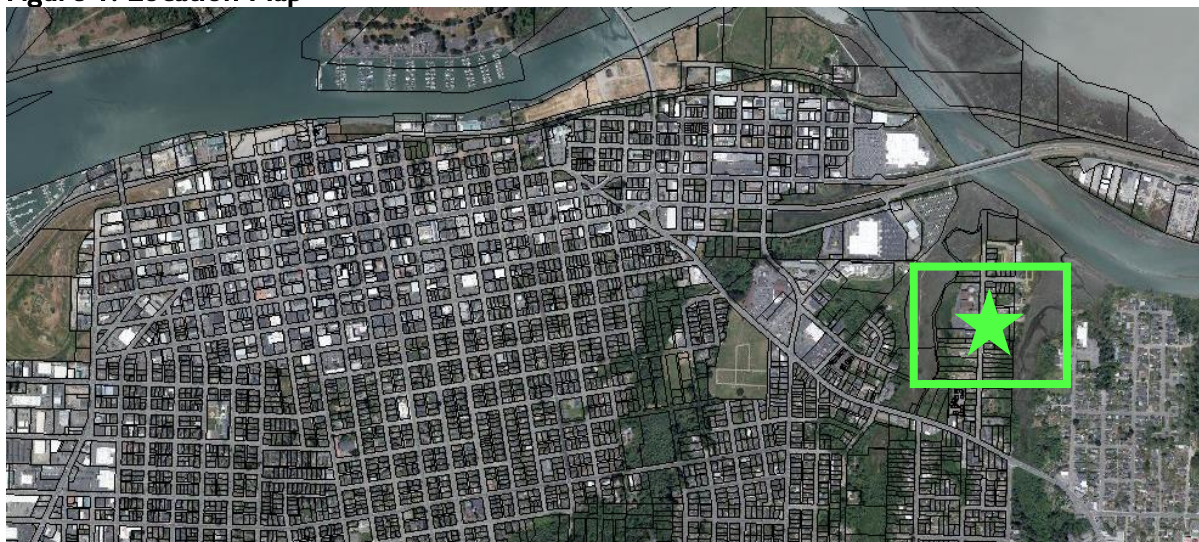
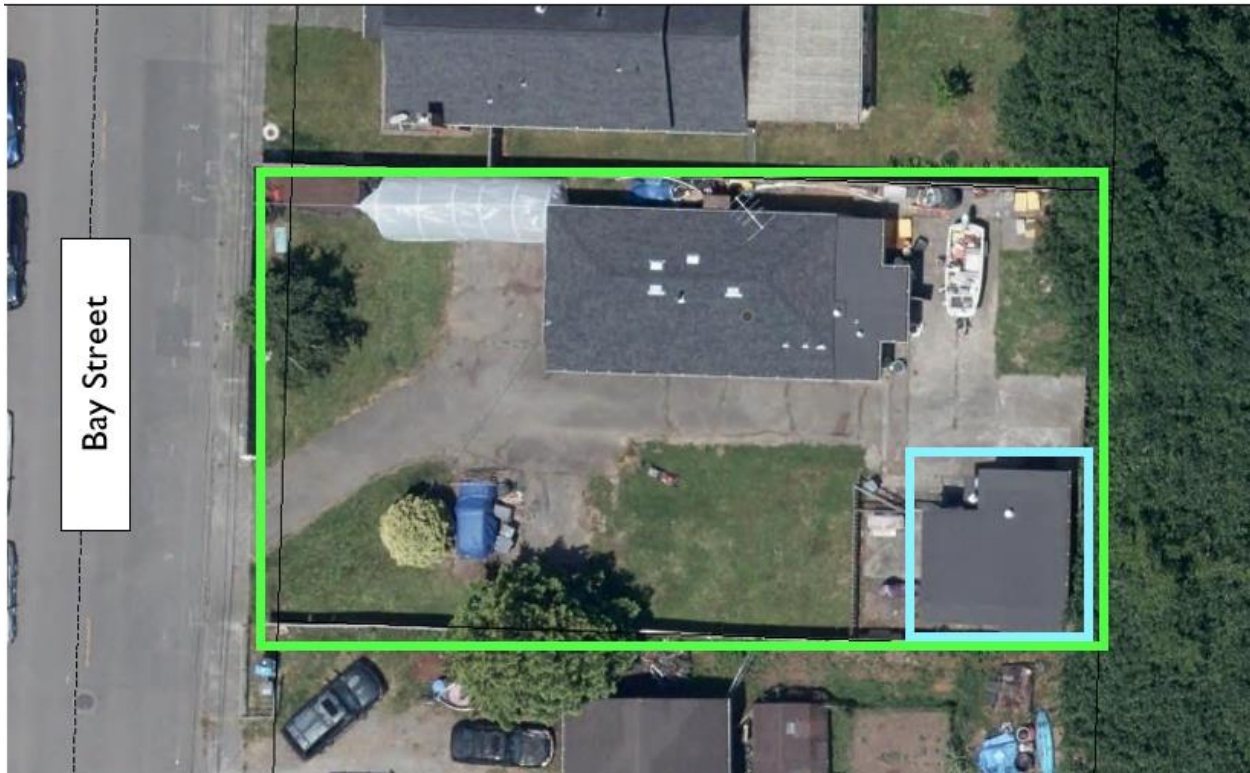


Figure 2: Site Map (existing unpermitted ADU outlined in blue)



PROJECT DESCRIPTION

The Applicant and property owner, Ashley Gouthier, is requesting approval of a Variance to allow deviation from minimum rear and side property line setback standards for an accessory dwelling unit (ADU) that was constructed without permits. This is the first step in after-the-fact permitting of the construction of the ADU; if the Variance is approved, the Applicant will apply for a Coastal Development Permit and then a Building Permit in order to legalize the structure.

Background

The approximately 8,276-sf property is located on the east side of Bay Street within the Coastal Zone's One-Family Residential (RS-6,000) Zoning District. It includes an existing 1,200-sf single-story residential dwelling unit, built around 1957, and an unpermitted 360-sf ADU (Figure 2). It appears the structure housing the ADU was constructed in the early 2000s according to Google Earth imagery.

Bay Street is a residential street north of Myrtle Avenue between Second and Third Sloughs. The subject property is an interior lot located on the east side of the street, with developed residential parcels directly to the north and south, and a church parking lot (Faith Center Foursquare Church) across the street to the west. There are also two developed residential parcels to the east of the property (flag lots accessed via a private easement to the north known as Gallagher Lane), between the property and Third Slough. The property directly abuts the undeveloped yard of the adjacent residence to the east, which is lower in elevation than the subject property by multiple feet and covered in riparian vegetation.

On February 9, 2024, the City's Code Enforcement office received a complaint from a tenant of the property (CE-24-126) that the plumbing was backing up into their residence. Code Enforcement inspected the property on February 13, 2024, and found that the residence was an unpermitted ADU (Figure 3). Code Enforcement advised the property owner to contact the Building Department to begin correcting the violations. On February 18, 2024, the owner applied for a Building Permit (B-24-131) to correct the violations found during Code Enforcement's inspection.

Figure 3: Current Photo of Unpermitted ADU (Looking towards the southeast)



During the Building Permit review process, it was found that the unpermitted ADU was constructed approximately two feet (ft), nine inches from the side (southern) and rear (eastern) property lines (Figure 4)¹. Pursuant to Government Code §66314(d)(7), a setback of no more than four ft from the side and rear lot lines is required for the ADU. Since the unpermitted ADU is located within the four-ft setback, and was constructed after October 16, 1966 without the benefit of permits [and therefore cannot be considered a legal non-conforming structure per Eureka Municipal Code (EMC) Article 22, §10-5.2202(b)], approval of a Variance is required to allow the unpermitted ADU to remain in its current location.²

According to the Applicant, relocation of the ADU outside of the minimum setback area is not financially feasible given the structure's slab foundation construction. As a result, the Applicant is instead requesting a Variance.

¹ Pursuant to Eureka Municipal Code (EMC) §10-5.201 (Basic Requirements for all Districts), the RS-6,000 has a five-ft side setback, and a 25-ft rear setback.

² Pursuant to Government Code §66314(d)(7), a legally existing structure can be converted to an ADU or redeveloped/replaced with an ADU without any required setbacks. For a structure to be legally existing, it must be permitted, or predate permitting requirements. The subject structure is not legally existing and therefore does not benefit from this setback exemption.

zones included in this chapter, and that the Variance implements the purposes of the zones adopted in implementation of the Local Coastal Program.

1. **Prevents Practical Difficulty or Unnecessary Physical Hardship**
2. **Exceptional or Extraordinary Circumstances or Conditions Exist**

In this case, the existing unpermitted ADU is already constructed and has been rented to tenants since 2014. A strict or literal enforcement of the four-ft ADU setback requirement would require either the demolition or relocation of the unit, causing undue hardship by displacing the current tenant. Furthermore, this property presents an exceptional circumstance: the ADU was established prior to the current owner's acquisition of the property in 2013 and is currently rented to the tenant at a designated affordable "lower income" rate³. Denial of the Variance would displace the tenant, counteracting the City's Housing Element Goal H-5, which aims to prevent or minimize resident displacement and to support the preservation of affordable rental housing. A condition has been added specifying the Variance is specifically for an ADU (not for any use of the structure).

3. **Prevents Depriving of Common Privileges**
4. **Not a Grant of Special Privilege**

A strict and literal enforcement of the four-ft setback standards would deprive the Applicant of privileges commonly enjoyed by other property owners along Bay Street and within the same RS-6,000 Zoning District. The City of Eureka first adopted a minimum rear and side yard setback standard (of five feet) in 1949. According to Eureka: An Architectural View, a number of existing residences on Bay Street were constructed in the 1880s and 1890s (eurekahistory.com), and based on 1920 and 1949 Sanborn Maps and 1948 Imagery

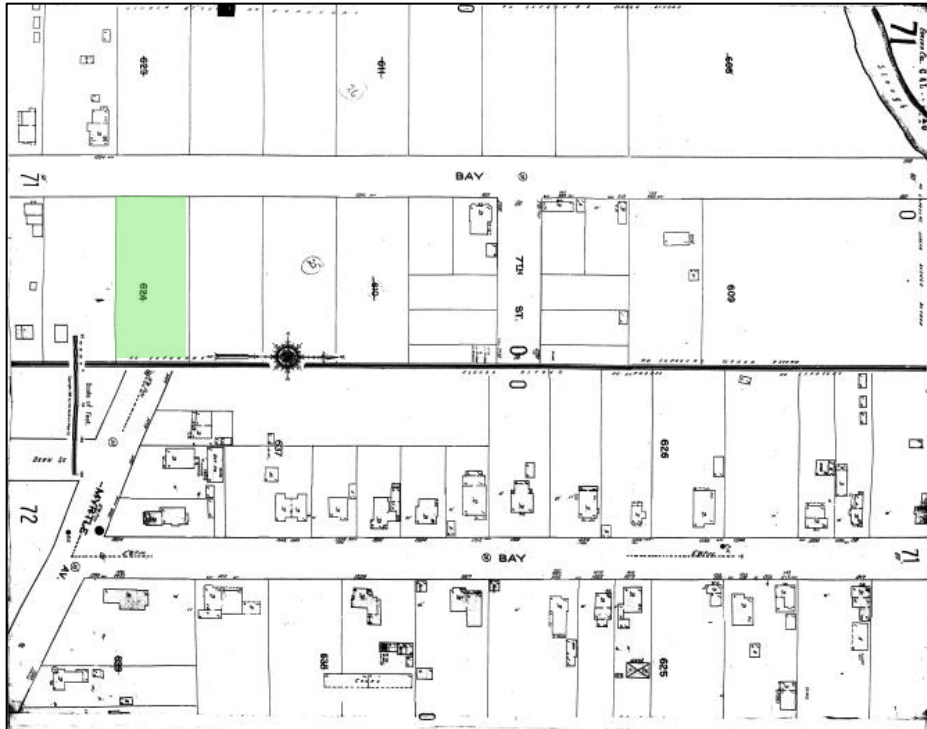
Figure 5: 1948 Aerial Imagery of Bay Street (from City of Arcata 1854-2023 Historical Imagery/Survey Map Viewer)



(Figures 5 and 6), a number of additional residences were constructed prior to the adoption of setback standards in 1949. As a result, many homes and accessory structures on Bay Street, as well as throughout the surrounding RS-6,000 Zoning District, are situated within what are now designated setback areas. Therefore, allowing the unpermitted ADU to remain within the four-ft setback would not result in a special privilege. Granting this Variance aligns with the historic development pattern of the area and allows for consistent treatment of properties in the district.

³ The unpermitted ADU has been designated as affordable "lower income" based on the rental price provided by the property owner and verified using the California Department of Housing and Community Development (HCD) Affordability Calculator. This designation relies on county income levels outlined in the Official State Income Limits, published annually by HCD.

Figure 6: 1949 Sandborn Map (1125 Bay Street is highlighted in green. The top map is the northern portion of Bay Street, and the bottom map is the southern portion of Bay Street)



5. Protective of Health, Safety, and Welfare

Granting the Variance to allow the unpermitted ADU to remain in place within the required four-foot setbacks will not be detrimental to public health, safety, or welfare, nor will it be materially injurious to nearby properties. If the Variance is approved, the Applicant will apply for a Coastal Development Permit (CDP) and Building Permit to legalize the structure, ensuring the structure meets safety standards for tenants. A recent site inspection conducted by Development Services – Planning with the Chief Building Official confirmed the unpermitted ADU can be brought up to Building Code with a number of feasible modifications, as further described in written comments sent in response to a September 16, 2024 project referral. Among other modifications, the south side of the building and its roof eave require updating to a one-hour fire rating, and the eave must be trimmed to maintain a minimum two-ft distance from the property line for fire safety. Granting the Variance will prompt the Applicant to apply for the required CDP and Building Permit and correct these Building Code violations, ultimately enhancing the safety of the ADU for its existing tenant. The housing supply shortage and resulting high rents are also a health, safety, and welfare issue in the City and region, and granting the Variance will also avoid an alternative where the housing unit is demolished and the existing tenant is displaced.

6. Consistent with Local Coastal Program (LCP)

No Adverse Effect on Coastal Resources

Coastal resources afforded protections by the City’s Local Coastal Program (LCP) include public access, priority uses (agricultural, coastal-dependent, coastal-related, visitor-serving and recreational uses), biological resources, and archaeological resources:

- **Public access:** Public access will not be affected by granting the Variance, as this property is not located along the coastline and does not have existing public access. The nearest exiting public access to Second Slough is located at the end of Bay Street.
- **Priority uses:** The purpose of the Low Density Residential (LDR) Land Use Designation is to allow for residential development, which is not a priority use under the LCP. Adequate sites exist elsewhere in the City zoned for priority uses. As a result, priority uses, such as coastal-dependent industries, will not be impacted by the granting of the Variance.
- **Biological resources:** Granting the Variance will not impact biological resources. In response to the referral, Public Works – Engineering indicated that if any demolition or construction is planned, the Applicant shall provide an Erosion and Sediment Control Plan (ESCP) to demonstrate how non-stormwater discharges will be mitigated, with appropriate Best Management Practices in place. The plan should also address how the riparian habitat [Environmentally Sensitive Habitat Area (ESHA)] adjacent to the site will be protected. Granting the Variance will allow the unpermitted ADU to remain in its current location, avoiding the need for relocation or demolition and reconstruction, which would otherwise result in new ground disturbance, increased noise, and potential construction runoff into the adjacent ESHA associated with Third Slough. Additionally, there is one existing outdoor light on the western side of the building, directed away from the ESHA, and a fence along the rear property line separates the unpermitted ADU from the ESHA, providing further protection.
- **Archaeological resources:** The Project was referred to the Tribal Historic Preservation Officers (TPHOS) of the Wiyot Tribe, the Bear River Band, and the Blue Lake Rancheria on Monday, September 16, 2024. The Wiyot Tribe responded to the referral on September 19, 2024 requesting the project adhere to the City’s standard Inadvertent Archeological Discovery Protocol should any ground disturbance be required to remove existing building violations if the ADU obtains the required permitting approvals. A condition has been included adhering to the Tribe’s request.

Implements the Purposes of the Zoning District

Granting the Variance to allow the unpermitted ADU to remain in its current location within the four-foot setbacks does not conflict with any of the specific purposes of the RS-6,000 Zoning District in EMC §10-5.2980 and supports purpose (a), “to reserve appropriately located areas for family living at reasonable population densities consistent with sound standards of public health and safety.” Allowing the ADU contributes to a reasonable population density, advancing one of the City’s Housing Element strategies to promote ADUs on properties with single-family homes.

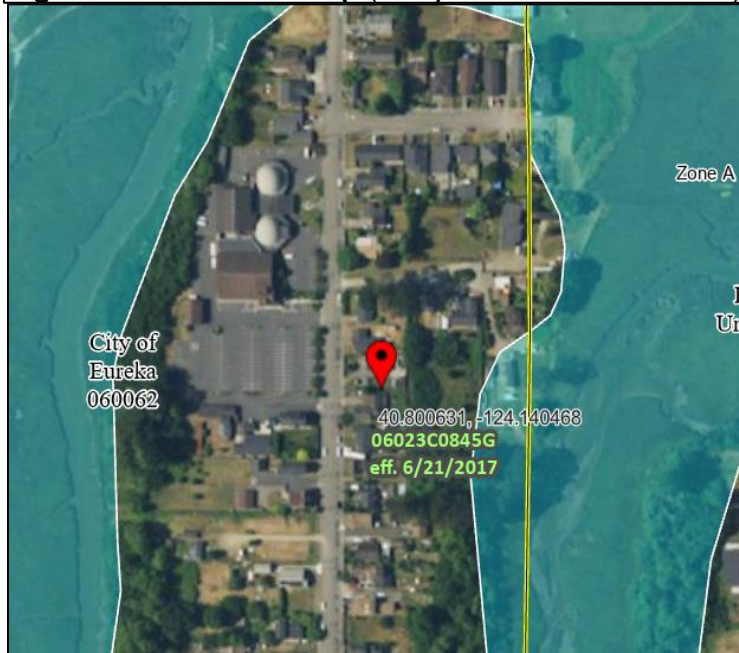
Consistent with and Implements the Local Coastal Program

In addition to goals and policies that afford protections to coastal resources, the LCP also includes goals and policies that ensure adequacy of services and minimization of coastal hazard risk.

- **Adequacy of services:** Granting the Variance will not impact the adequacy of services, as the City has already evaluated service capacity and determined there is adequate service capacity in the 2040 General Plan Environmental Impact Report (EIR), adopted in 2018. The EIR analyzed buildout of the City over a 20-year period (through year 2040), including up to 1,886 new residential dwelling units (~94 per year for 20 years), while the City has

averaged just 44 new homes a year for the past five years. Furthermore, the City has upgraded the sewer main and laterals along Bay Street (ED-21-0006) and other locations to enhance services to residential areas.

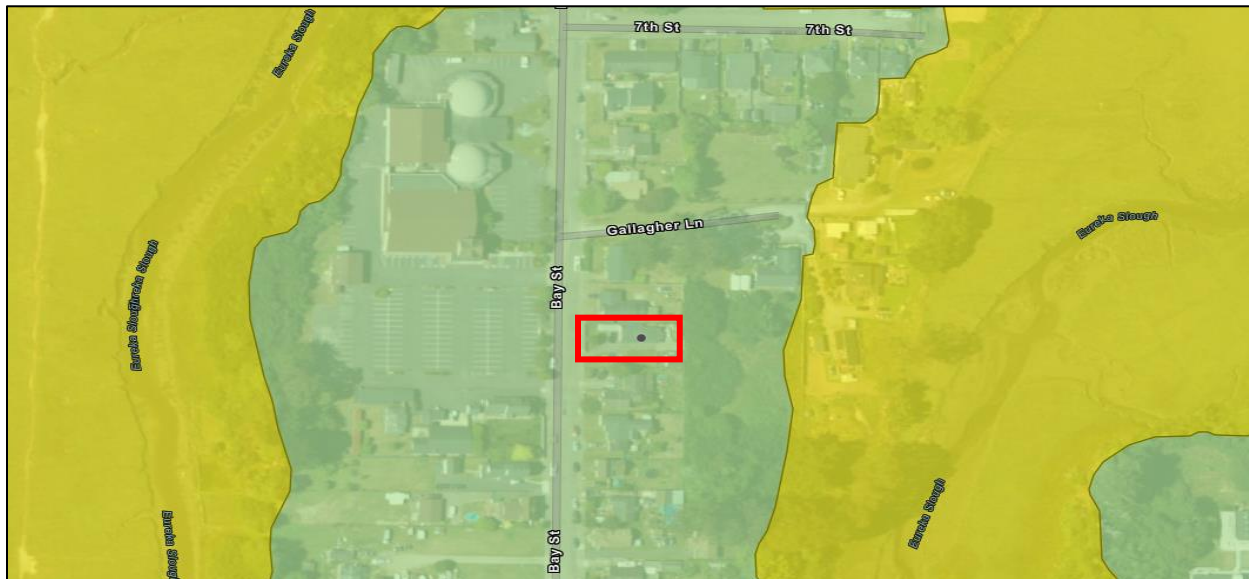
Figure 7: FEMA Flood Map (100-year flood zone in blue)



- **Hazards:** The property is not located within a Special Flood Hazard Area according to the FEMA Flood Maps, and is outside of the tsunami hazard zone (Figures 7 and 8). Per the City's GIS LIDAR mapping tool, the unpermitted ADU sits between the 19-ft and 21-ft elevation contour interval, which is considered safe through at least 2100 according to sea level rise projections published in the Ocean Protection Council's (OPC) 2024 State of California Sea-Level Rise Guidance. Under worst-case scenario projections, the mean annual maximum water level at Humboldt Bay's North Spit tide gauge (currently at 8.8 ft in elevation) could rise to an elevation of 16.1 feet, which is below the elevation of the ADU.

Based on the discussion above, the Variance can be found consistent with the certified LCP. Allowing the unpermitted ADU to remain upholds the intent of the LCP by ensuring balanced development that considers environmental sensitivity and housing needs.

Figure 8: Tsunami Hazard Area Map (Inundation level in yellow)



CONCLUSION

Based on the analysis above, the required findings can be made to support the proposed Variance allowing deviation from the four-ft rear and side property line setback standard for the unpermitted ADU. This is the first step in after-the-fact permitting of the ADU's construction; if the Variance is approved by the Planning Commission, the Applicant will next apply for a CDP, and if the CDP is approved, they will apply for a Building Permit. Because the findings of approval for the Variance rely on the structure being used as an ADU, a condition of approval has been added specifying the Variance is specifically for an ADU (not for any use of the structure), and is no longer valid if the Applicant does not receive a CDP and Building Permit to legalize the structure as an ADU.

ENVIRONMENTAL ASSESSMENT

The City of Eureka, as Lead Agency, has determined the proposed project is exempt from CEQA pursuant to CEQA Guidelines §15303(e), Class 3 (New Construction or Conversion of Small Structures), which exempts the construction and location of limited numbers of new small structures including an ADU in a residential zone. The project is also exempt pursuant to §15305, Class 5 (Minor Alterations in Land Use Limitations), which consist of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density, including minor setback Variances not resulting in the creation of any new parcel. The property is flat and the proposed Variance is to allow for a reduced minimum setback, not for any change in land use or density. Therefore, the project is exempt under the Class 3 and 5 exemptions.

PUBLIC HEARING NOTICE

Public notification consisted of notification by mail of property owners within a 300-ft radius of the site on or before November 1, 2024. In addition, the notice was posted on the City's website and bulletin boards, and a public hearing notice sign was posted on the site on or before November 1, 2024.

DOCUMENTS ATTACHED

Attachment 1: Planning Commission Resolution
Attachment 2: Applicant Submitted Material
Attachment 3: Referral Responses