



## **STAFF REPORT**

**To:** Members of the Design Review Board

**From:** Community Development Department

**Subject:** 3 San Rafael Avenue; File Nos. DR2016071 and VAR2016022;  
Site Plan and Architectural Review to Legalize As-built Improvements  
for an Existing Single-Family Dwelling, with a Variance for Reduced  
Side Setback

### **PROJECT DATA**

**ADDRESS:** 3 SAN RAFAEL AVENUE  
**ASSESSOR'S PARCEL:** 055-262-09  
**FILE NUMBER:** DR2016071 AND VAR2016022  
**OWNER:** KIM MING LAM  
**APPLICANT:** CASPER CURTO  
**LOT SIZE:** 25,000 SQUARE FEET  
**ZONING:** R-1 (SINGLE FAMILY RESIDENTIAL)  
**GENERAL PLAN:** MH (MEDIUM HIGH DENSITY RESIDENTIAL)  
**FLOOD ZONE:** AE/X  
**DATE COMPLETE:** SEPTEMBER 15, 2016

### **PROJECT DESCRIPTION**

The applicant is requesting design review approval to legalize as-built improvements for an existing single-family dwelling, with a variance for reduced side setback, on property located at 3 San Rafael Avenue. The property is currently developed with a single-family dwelling with an attached garage.

There would be no modifications to the existing single-family dwelling and garage. The as-built improvements include a new 4 foot, 10 inch tall trash enclosure and an 8 foot tall shed on the north side of the existing driveway and garage. A new 6 foot tall wooden fence would replace an existing wooden fence along the north side property line and would connect to an existing fence along the property line.

The two accessory structures would be situated inches from the north side property line. As the minimum side setback in R-1 zone is 8 feet, the applicant has requested a variance for reduced side setback.

## PROJECT SETTING



The subject property is located on San Rafael Avenue with views of the bay, Belvedere, and Sausalito. The property is situated in between the bay, Old Rail Trail, and Tiburon Boulevard. The closest neighbor to the property is 1 San Rafael Avenue, which both properties share a driveway.

## ANALYSIS

### Design Issues

The majority of the as-built improvements would be screened by the wooden fence and by existing vegetation and would not appear to create any visual impacts for the adjacent neighbors on San Rafael Avenue and on Tiburon Boulevard. The sheds are constructed of a wooden material, which could blend in with the wooden fence when viewed from the Old Rail Trail and Tiburon Boulevard.

The trash enclosure and storage shed appear to have been sited to provide easy access from the driveway and the front of the garage. However, staff believes that there are alternative locations for the structures on the site, including an area behind the garage that would still provide appropriate access for these structures and comply with the required setbacks.

The Design Review Board is encouraged to visit the site to assess the existing structures location and alternative locations as well.

### Zoning

Staff has reviewed the proposal and finds that it is in conformance with the development standards for the R-1 zone, with the exception of the previously noted variance for reduced side setback.

## Variance Findings

In order to grant the requested variance for reduced side setback, the Board must make all of the following findings required by Section 16-52.030(E) of the Tiburon Zoning Ordinance.

- 1. Because of special circumstances applicable to the property, including size, shape, topography, location, or surroundings, the strict application of this Ordinance will deprive the applicant of privileges enjoyed by other properties in the vicinity and in the same or substantially the same zone.**

The subject property is 25,000 square feet, but narrow and long. The property is between the Town's Old Rail Trail, Tiburon Boulevard, and the bay. As noted above, staff believes that the improvements could be located in another location on the property and be outside the required setbacks. The existing house was constructed 15 feet from the north side property line. Therefore, there do not appear to be any special circumstances applicable to the property that would deprive the applicant of privileges enjoyed by other properties in the vicinity.

- 2. The variance will not constitute a grant of special privileges, inconsistent with the limitations upon other properties in the vicinity and in the same or substantially the same zone.**

The variance would constitute a grant of special privilege because the Board has not approved variances for sheds within the side setbacks in other properties in the R-1 zones. Most of the requests for side setbacks have been for the construction of a residence and/or larger accessory structures.

- 3. The strict application of this Ordinance would result in practical difficulty or unnecessary physical hardship. Self-created hardships may not be considered amount the factors that might constitute special circumstances. A self-created hardship results from actions taken by present or prior owners of the property that consciously create the very difficulties or hardships claimed as the basis for an application for a variance.**

The residence has a garage and there are other locations on the property with space for these two structures outside the side setback. Therefore, there is no practical difficulty or unnecessary hardship to comply with the setback requirements.

- 4. The granting of the variance will not be detrimental to the public welfare or injurious to other property in the vicinity.**

Granting of the variance would not appear to be detrimental or injurious to the public or other properties, as the proposed structures is located adjacent to a public street and trail, and would also not create a nuisance for the adjacent neighbors.

There would appear to be insufficient evidence to support the findings for the variance requested.

Flood Hazard Zone. According to current flood hazard maps, the subject property is located within flood hazard zone "AE," which is an area subject to inundation by the 1% annual chance

of flood and "X", which is an area not in the flood hazard area. The majority of the residence, garage, and the location for the as-built sheds are in the "X" zone area.

### **PUBLIC COMMENT**

As of the date of this report, no public comments have been received regarding the subject application.

### **PRELIMINARY ENVIRONMENTAL DETERMINATION**

Staff has made a preliminary determination that this proposal would be exempt from the provisions of the California Environmental Quality Act (CEQA), as specified in Sections 15301 and 15303 of the CEQA Guidelines.

### **RECOMMENDATION**

Staff recommends that the Board:

The Board should review this project with respect to Zoning Ordinance Sections 16-52.020 (H) [Guiding Principles], Section 16-52.030 (E) Variance, and determine that the project is exempt from the provisions of the California Environmental Quality Act (CEQA) as specified in Sections 15301 and 15303. If the Board agrees with Staff's conclusion, it is recommended that the applicant submit revised plans showing the sheds outside the required setbacks. If the Board wishes to approve the project and can make the findings necessary to approve the requested variance, it is recommended that the attached conditions of approval be applied.

### **ATTACHMENTS:**

1. Conditions of Approval
2. Application and Supplemental Materials
3. Submitted Plans

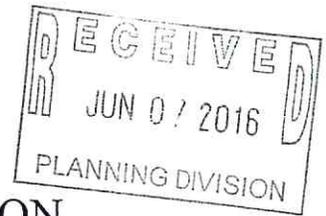
**ATTACHMENT 1**

**DRAFT CONDITIONS OF APPROVAL  
3 SAN RAFAEL AVENUE  
FILE NOS. DR2106071 AND VAR2016022**

1. This approval shall be used within three (3) years of the approval date, and shall become null and void unless a building permit has been issued.
2. Construction shall conform to the application and plans dated by the Town of Tiburon on June 6, 2016, as amended by these conditions of approval. Any modifications to the plans of September 21, 2016 must receive Design Review approval.
3. Project elements shown on construction drawings submitted to the Building Division for plan check shall be essentially identical to those project elements shown on drawings approved by the Design Review Board. The permit holder is responsible for clearly identifying on construction drawings any and all changes to project elements. Such changes must be clearly highlighted (with a "bubble" or "cloud") on the construction drawings. A list describing in detail all such changes shall be submitted and attached to the construction drawings, with a signature block to be signed by the Planning Division Staff member indicating whether these changes have been reviewed and are approved, or will require additional Design Review approval. All such changes that have not been explicitly approved by the Town are not "deemed approved" if not highlighted and listed on construction drawings. Construction of any such un-approved project elements is in violation of permit approvals and shall be subject to Stop Work Orders and removal.
4. If this approval is challenged by a third party, the property owner/applicant will be responsible for defending against this challenge, with defense counsel subject to the Town's approval. The property owner/applicant agrees to defend, indemnify and hold the Town of Tiburon harmless from any costs, claims or liabilities arising from the approval, including, without limitations, any award of attorney's fees that might result from the third party challenge.
5. A copy of the Planning Division's "Notice of Action" including the attached "Conditions of Approval" for this project shall be copied onto a plan sheet at the beginning of the plan set(s) submitted for building permits.
6. The applicant must meet all requirements of other agencies prior to the issuance of a building permit for this project.
7. The project shall comply with the requirements of the California Fire Code to the satisfaction of the Building Official. The Tiburon Fire Protection District (TFPD):
  - a. The storage sheds are located within the existing Fire Apparatus Turnaround. The sheds will be allowed to remain in place if the following conditions are met:
    - i. The trees along the driveway shall be trimmed so that a minimum of 12 feet clearance is provided down the driveway.
    - ii. An inspection is done on the existing required automatic fire sprinkler

system and smoke alarms to confirm both systems have been maintained and are functioning properly.

- iii. The fence along the property line by the multi-use path is no higher than six feet, including any lattice or other decorative features.
8. All requirements of the Sanitary District No. 5 shall be met.
  9. Fencing shall not exceed six feet (6') in height at any point, measured from grade.



TOWN OF TIBURON  
LAND DEVELOPMENT APPLICATION

TYPE OF APPLICATION

- Conditional Use Permit
- Precise Development Plan
- Secondary Dwelling Unit
- Zoning Text Amendment
- Rezoning or Prezoning
- General Plan Amendment
- Temporary Use Permit
- Design Review (DRB)
- Design Review (Staff Level) ATF
- Variance(s) \_\_\_\_\_ #
- Floor Area Exception
- Tidelands Permit
- Sign Permit
- Tree Permit
- Tentative Subdivision Map
- Final Subdivision Map
- Parcel Map
- Lot Line Adjustment
- Condominium Use Permit
- Seasonal Rental Unit Permit
- Other AS-BUILT

APPLICANT REQUIRED INFORMATION

SITE ADDRESS: # 3 SAN RAFAEL AVE PROPERTY SIZE: 25000 ✓  
 ✓ PARCEL NUMBER: 05526209 ZONING: R-1 ✓

PROPERTY OWNER: MR. KIM LAM 3134 Geary Blvd  
SF CA 94118  
 MAILING ADDRESS: # 3 SAN RAFAEL AVE TIBURON  
MAGGIE LAU (MAINLAND SECRETARY)  
 PHONE/FAX NUMBER: 415-696-3579 E-MAIL: MAGGIELAU2010@HOTMAIL.COM

\* APPLICANT (Other than Property Owner): CASPER R. CURTO  
 MAILING ADDRESS: 7612 HILLMONT DR. OAKLAND, CA 94605  
415 613-1265 CASPERCURTO@COMCAST.NET  
 PHONE/FAX NUMBER: 510-636-9270 E-MAIL: \_\_\_\_\_

ARCHITECT/DESIGNER/ENGINEER \_\_\_\_\_  
 MAILING ADDRESS: \_\_\_\_\_  
 PHONE/FAX NUMBER: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

Please indicate with an asterisk (\*) persons to whom Town correspondence should be sent.

BRIEF DESCRIPTION OF PROPOSED PROJECT (attach separate sheet if needed):  
REPLACE FAILED FENCING SEE DRAWING  
REPLACE FAILED & ROTTEN STORAGE SHED & GARBAGE  
CONTAINER - BRINGING ELECTRICAL POWER TO  
AUTOMATE GATE AT DRIVEWAY ENTRY

I, the undersigned owner (or authorized agent) of the property herein described, hereby make application for approval of the plans submitted and made a part of this application in accordance with the provisions of the Town Municipal Code, and I hereby certify that the information given is true and correct to the best of my knowledge and belief.

I understand that the requested approval is for my benefit (or that of my principal). Therefore, if the Town grants the approval, with or without conditions, and that action is challenged by a third party, I will be responsible for defending against this challenge, with the defense counsel subject to the Town's approval. I therefore agree to accept this responsibility for defense at the request of the Town and also agree to defend, indemnify and hold the Town harmless from any costs, claims or liabilities arising from the approval, including, without limitation, any award of attorney's fees that might result from the third party challenge.

Signature:\* Casper R. Curto Date: 6/7/16

The property involving this permit request may be subject to deed restrictions called Covenants, Conditions and Restrictions (CC&Rs), which may restrict the property's use and development. These deed restrictions are private agreements and are NOT enforced by the Town of Tiburon. Consequently, development standards specified in such restrictions are NOT considered by the Town when granting permits.

You are advised to determine if the property is subject to deed restrictions and, if so, contact the appropriate homeowners association and adjacent neighbors about your project prior to proceeding with construction. Following this procedure will minimize the potential for disagreement among neighbors and possible litigation.

Signature:\* Casper R. Curto Date: 6/7/16

*\*If other than owner, must have an authorization letter from the owner or evidence of de facto control of the property or premises for purposes of filing this application*

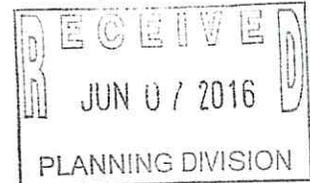
#### NOTICE TO APPLICANTS

Pursuant to California Government Code Section 65945, applicants may request to receive notice from the Town of Tiburon of any general (non-parcel-specific), proposals to adopt or amend the General Plan, Zoning Ordinance, Specific Plans, or an ordinance affecting building or grading permits.

If you wish to receive such notice, then you may make a written request to the Director of Community Development to be included on a mailing list for such purposes, and must specify which types of proposals you wish to receive notice upon. The written request must also specify the length of time you wish to receive such notices (s), and you must provide to the Town a supply of stamped, self-addressed envelopes to facilitate notification. Applicants shall be responsible for maintaining the supply of such envelopes to the Town for the duration of the time period requested for receiving such notices.

The notice will also provide the status of the proposal and the date of any public hearings thereon which have been set. The Town will determine whether a proposal is reasonably related to your pending application, and send the notice on that basis. Such notice shall be updated at least every six weeks unless there is no change to the contents of the notice that would reasonably affect your application. Requests should be mailed to:

Town of Tiburon  
Community Development Department  
Planning Division  
1505 Tiburon Boulevard  
Tiburon, CA 94920  
(415) 435-7390 (Tel) (415) 435-2438(Fax)  
[www.townoftiburon.org](http://www.townoftiburon.org)



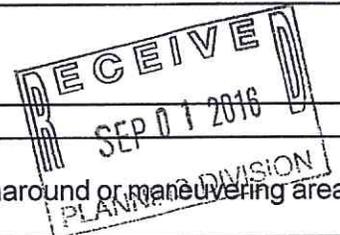
#### DO NOT WRITE BELOW THIS LINE

VAR2016-022 DEPARTMENTAL PROCESSING INFORMATION		
Application No.: DR2016-071	GP Designation:	Fee Deposit: \$510.00 / \$360
Date Received: 6/7/16	Received By: LS	Receipt #: R1332 / R1433
Date Deemed Complete: 9/15/16	Action:	By: JCO
Acting Body:		Date:
Conditions of Approval or Comments:		Resolution or Ordinance #

## MINOR ALTERATION SUPPLEMENT

Please fill in the information requested below:

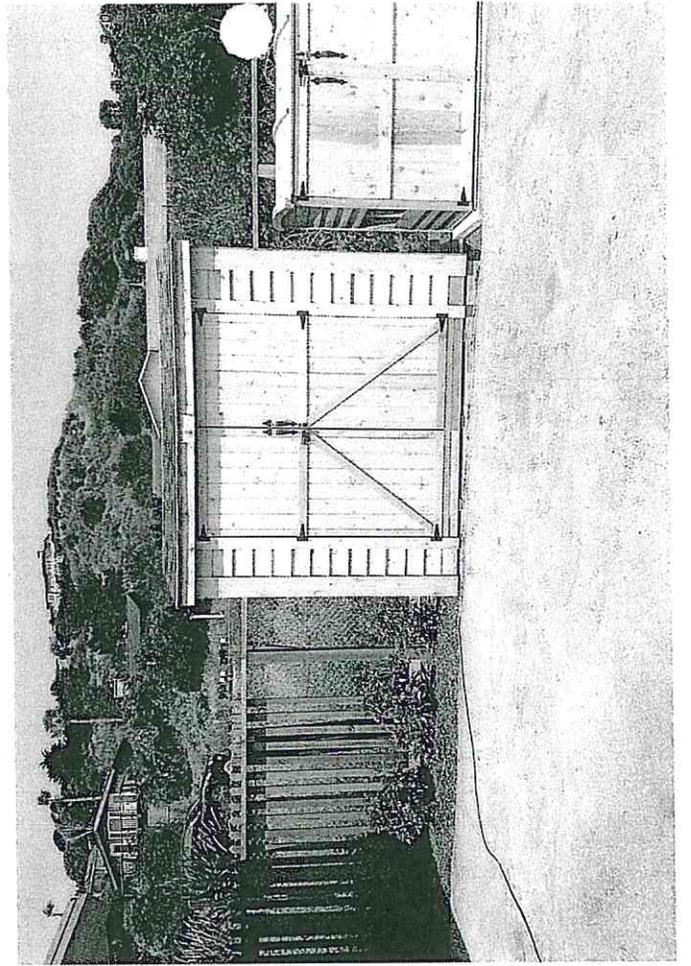
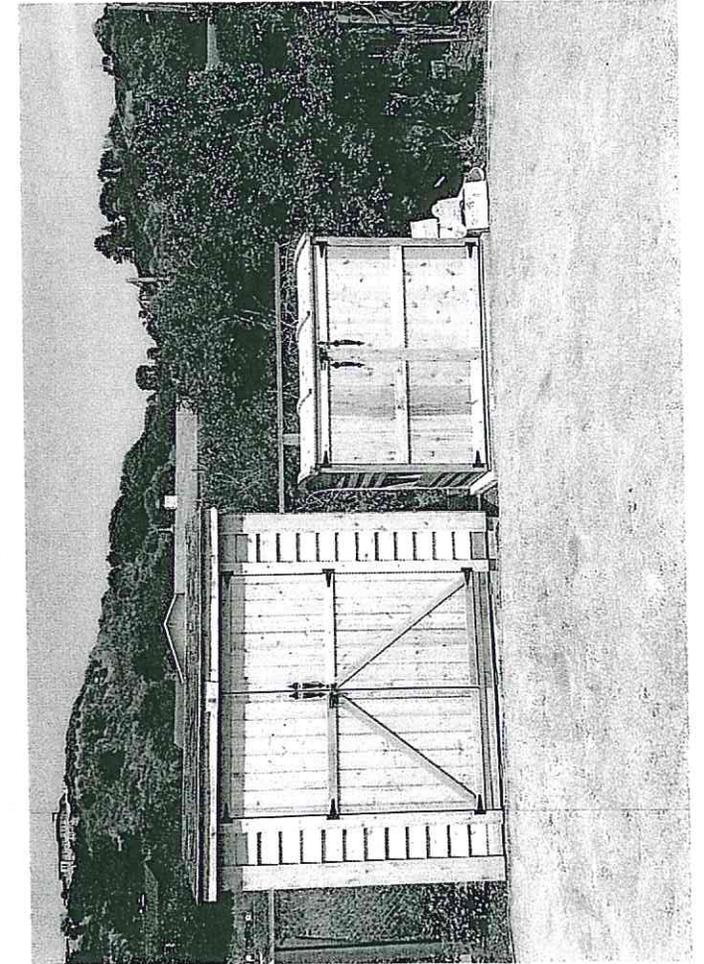
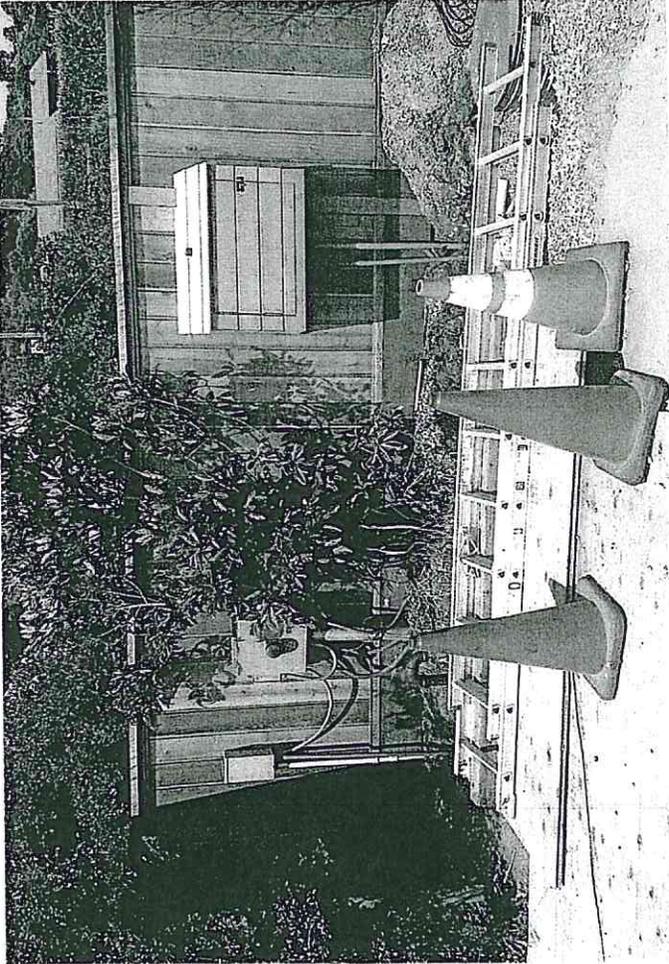
1. Briefly describe the proposed project (attach separate sheet as needed):  
INSTALL PREFAB STORAGE SHED & TRASH SHED - REPLACE SECTION OF FENCE
2. Lot area in square feet (Section 16-100.020(L))\*: \_\_\_\_\_ Zoning: \_\_\_\_\_
3. Square footage of Landscape Area: 5102
4. Impervious Surface Area Calculations (in square feet) & Grading Estimates (in cubic yards):
  - a) Existing Impervious Surface Area: \_\_\_\_\_
  - b) Completed Project Impervious Surface Area: \_\_\_\_\_
  - c) Land Area (in square feet) to be disturbed/cleared during construction: \_\_\_\_\_
  - d) Amount of Grading or Earth Movement involved (total in cubic yards): \_\_\_\_\_
5. Proposed use of site (example: single family residential, commercial, etc.):  
 Existing RESIDENTIAL  
 Proposed \_\_\_\_\_
6. Describe any changes to parking areas including number of parking spaces, turnaround or maneuvering areas.  
NONE



TO BE COMPLETED BY APPLICANT				STAFF USE ONLY	
ITEM	EXISTING	PROPOSED ADDITION AND/OR ALTERATION	PROPOSED	CALCULATED	PER ZONE
<b>Setbacks from property line</b> (Section 16-100.020(Y))*					
<b>Front</b>	ft.	ft.	ft.	ft.	ft.
<b>Rear</b>	ft.	ft.	ft.	ft.	ft.
<b>Right Side</b>	ft.	ft.	ft.	ft.	ft.
<b>Left Side</b>	ft.	ft.	ft.	ft.	ft.
<b>Maximum Height</b> (Section 16-30.050)*	ft.	ft.	ft.	ft.	ft.
<b>Lot Coverage</b> (Section 16-30.120(B))*	<u>2789</u> sq.ft.	<u>50</u> sq.ft.	<u>2939</u> sq.ft.	sq.ft.	sq.ft.
<b>Lot Coverage as Percent of Lot Area</b>	%	%	%	%	%
<b>Gross Floor Area</b> (Section 16-100.020(F))*	sq.ft.	sq.ft.	sq.ft.	sq.ft.	sq.ft.

\*Section numbers refer to specific provisions or definitions in the Tiburon Municipal Code, Title IV, Chapter 16 (Zoning)

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JUN 22 2016  
PLANNING DIVISION



Outdoor Living Today

Model # 99-120

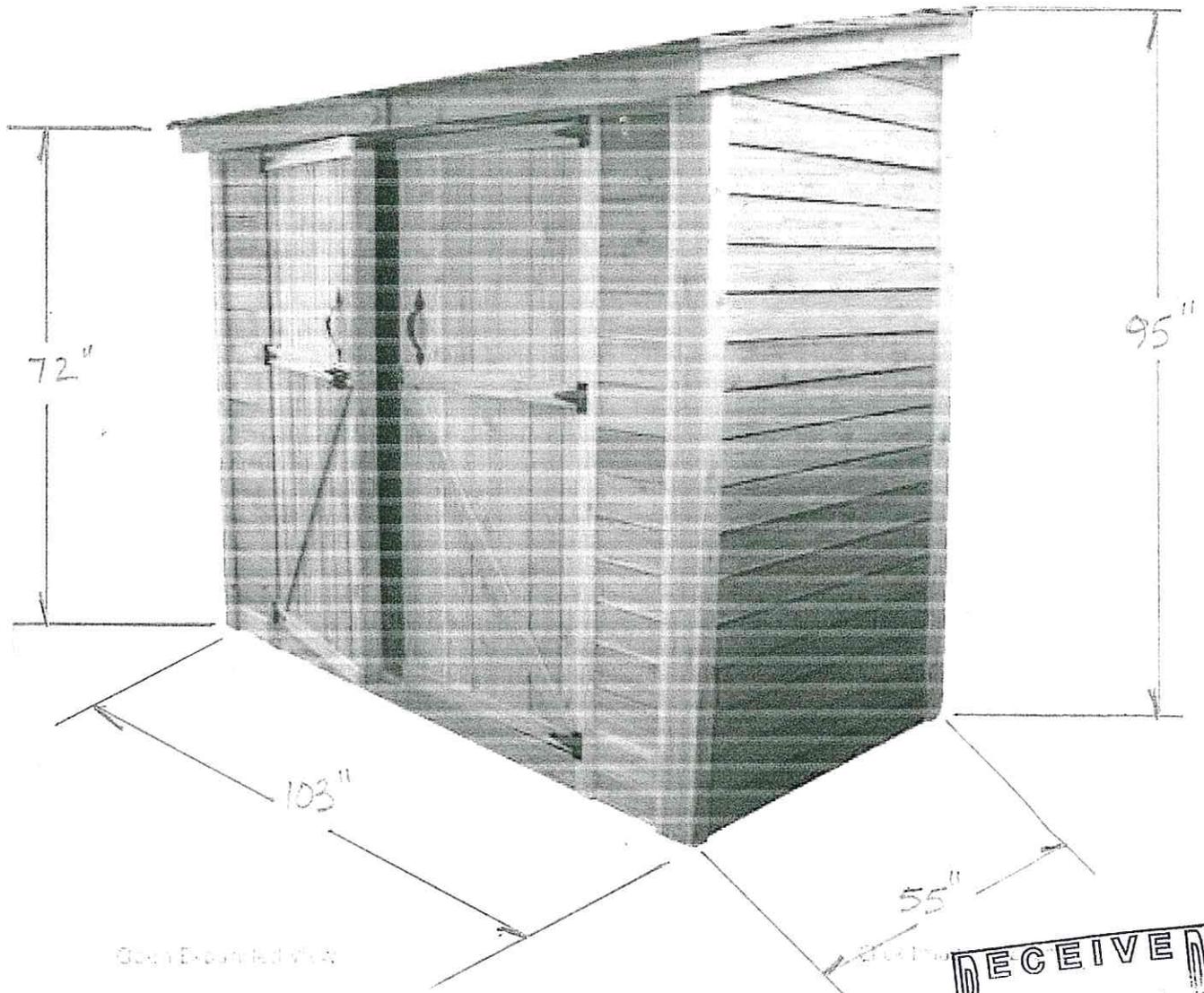
Item # 100154530

# Spacesaver 8 ft. x 4 ft. Western Red Cedar E

★★★★★ 151

[Write a Review](#)

[Questions & Answers \(5\)](#)



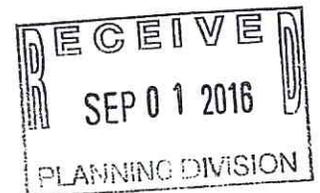
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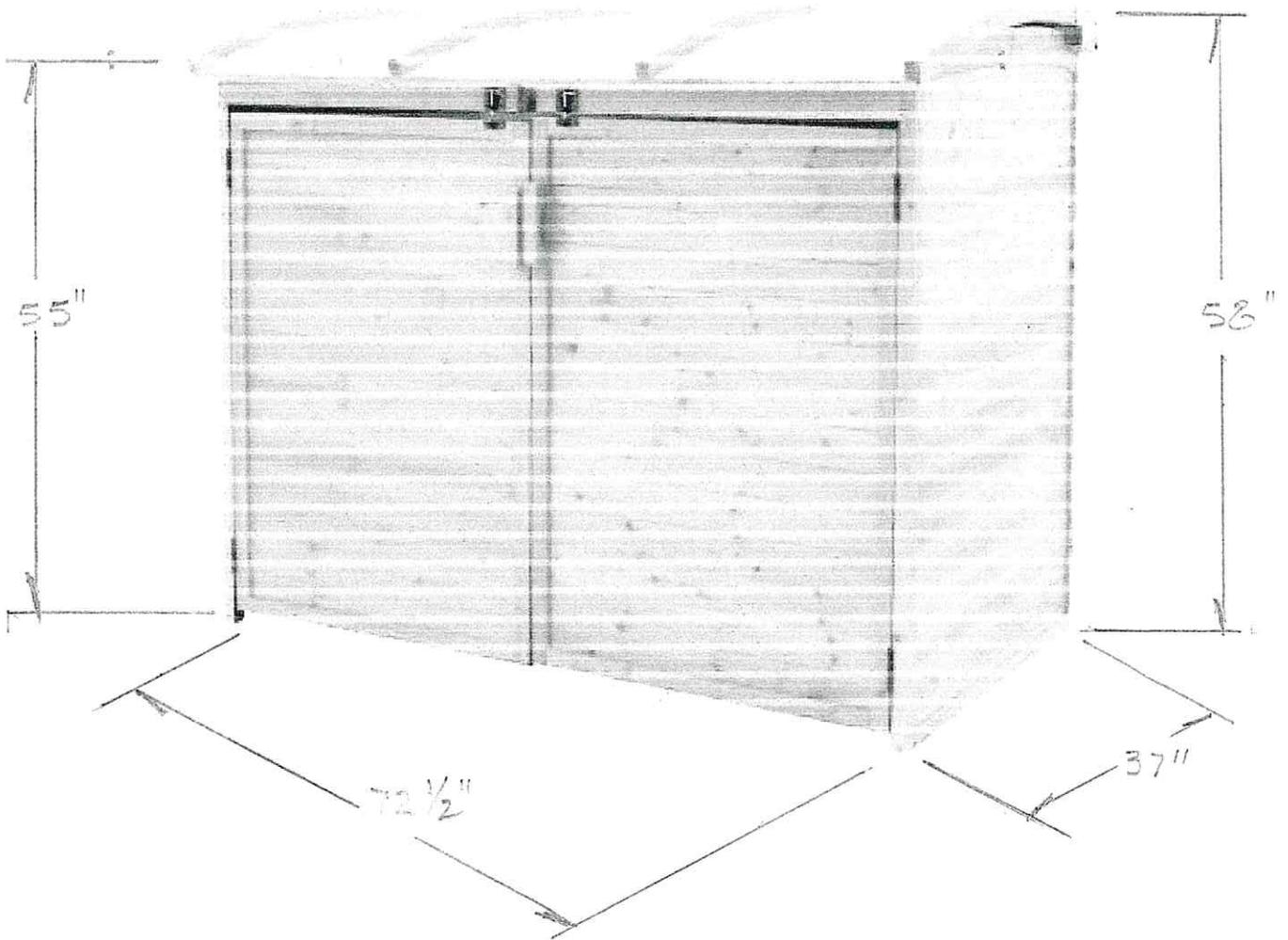
# Product Overview

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No fighting your way to the back of the shed with the Outdoor Living Today Partnership Spacesaver 8 ft. x 4 ft. Western Red Cedar Double Doors Shed. The shed's double-door design gives you easy access to its large interior storage space. The shed has a lean-to design that makes it an ideal choice for placement against a fence or a wall. The panelized wall design features OLT's Cedar Bevel Siding. The manageable roof panel sizes save you the effort of dangerous cutting. The manufacturer will call to offer site preparation information and discuss delivery before shipping.

- Assembled dimension approximately: 103 in. W x 55 in. D x 95 in. H
- Western red cedar construction for natural strength and beauty
- 192 cu. ft. storage capacity accommodates lots of seasonal items
- Precut assembly pieces, no time-consuming or dangerous cutting
- Panelized wall design features OLT's proprietary cedar lap siding
- 2 ft. x 4 ft. cedar joists and floor runners included for the floor frame
- Plywood floor included for your convenience
- 62 in. W x 72 in. H double door opening makes it easy to move large outdoor tools to and from the shed
- Roof panels with pre-attached western red cedar shingles for extra strength and a handsome appearance
- Easy assembly with minimal tools and no time-consuming, dangerous cutting
- Assembly time is approximately 1 to 2 days depending on skill level; technical assistance available at 1.888.658.1658
- Western red cedar is naturally resistant to decay and insects
- Product ships unstained
- Accepts a wide range of finishes to help you create a personalized look
- Made entirely with renewable resources for environmental friendliness
- Minimal tools required and hardware included
- Outdoor Living Today customer service is available to offer information or suggestions regarding site preparation, staining or sealing the western red cedar used on the space saver garden shed, interior decorating and storage tips are also available if requested





WASTE SHED

RECEIVED  
SEP 01 2016  
PLANNING

Outdoor Living Today

Model # OTC4705

Item # 209274817

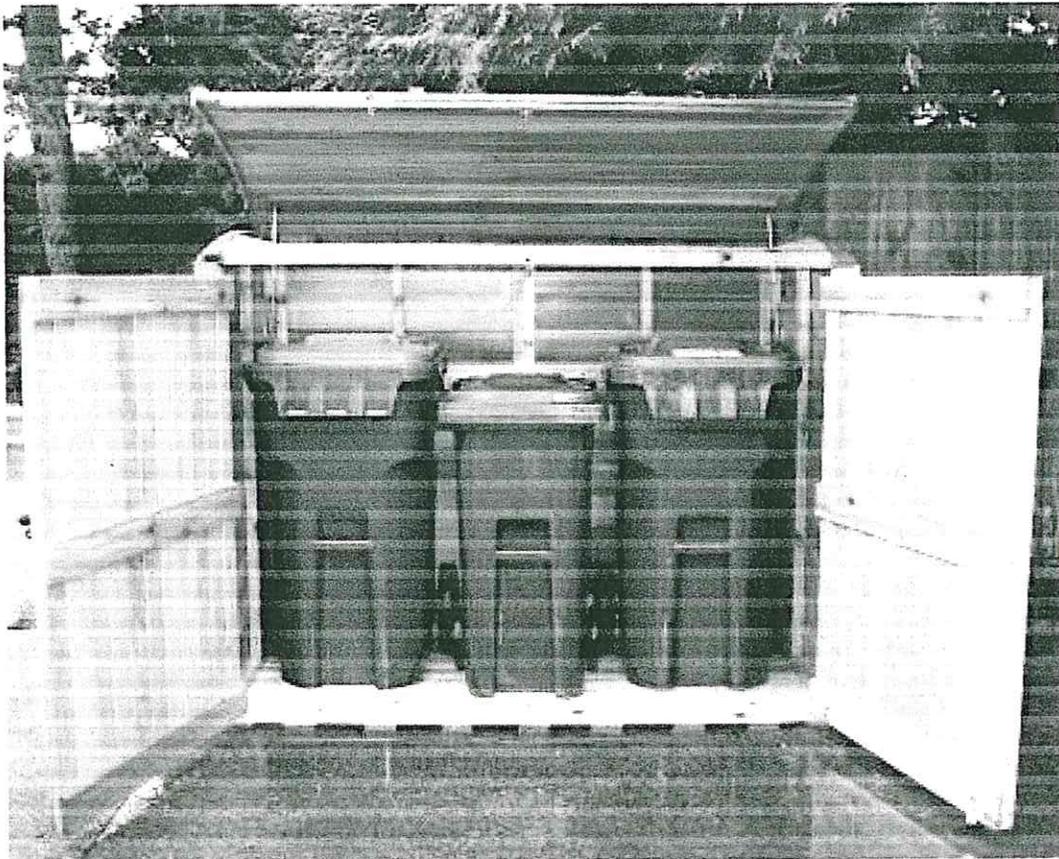
# 6 ft. x 3 ft. Oscar Waste Management Shed

★★★★☆

131

[Write a Review](#)

[Questions & Answers \(2\)](#)



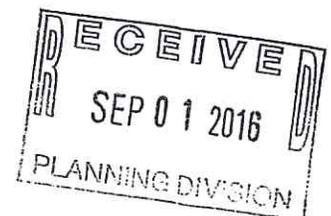
RECEIVED  
SEP 01 2016  
PLANNING DIVISION

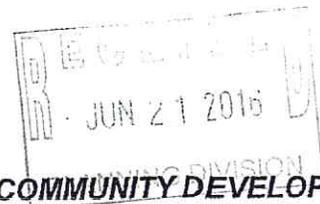
# Product Overview

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Large enough to accommodate two large 58 Gal. containers and featuring beautiful western red cedar construction, the Oscar Waste Management Shed excels in function and form. This 6 ft. x 3 ft. trash-bin shed can be accessed from the top via a lift-up arched lid with stay-put gas shocks and through the front double doors, all of which come together snugly to prevent rodents and critters from entering. The precisely-cut preformed cedar panels are easy to put together and the kit includes all hardware required for assembly. Also use it to protect sporting goods, patio furniture, garden equipment or other outdoor variables from the ravages of precipitation and sun exposure.

- Interior dimensions: 66-3/4 in. W x 32 in. D x 50 in. H in the front and 53 in. H in the back
- Exterior dimensions: 72-1/2 in. W x 37 in. D x 55 in. H in the front and 58 in. H in the back
- Functional front double doors provide easy access to refuse containers or seasonal items
- Holds up to 2 large 58 Gal. garbage containers
- Convenient and easy-to-use curved lid with gas shocks for hassle-free top access
- 30 cu. ft. storage capacity accommodates a number of seasonal items
- Panelized western red cedar components enable quick assembly with hardware included
- Pre-manufactured cedar floor included
- Made entirely with renewable resources
- Accepts a wide range of paint or stain finishes
- Weighs 216 lbs
- 1-year limited warranty





**COMMUNITY DEVELOPMENT DEPARTMENT**  
 Planning Division (415)-435-7390  
[www.ci.tiburon.ca.us](http://www.ci.tiburon.ca.us)

**APPLICATION FOR VARIANCE**

A Variance is a form of regulatory relief available when a strict or literal application of zoning development standards would result in practical difficulties or unnecessary physical hardships for an applicant. These difficulties and/or hardships must be caused by physical conditions on, or in the immediate vicinity of, a site. Please refer to Section 16.52.030 of Chapter 16 (Zoning) of the Tiburon Municipal Code for additional information regarding Variances.

**WHAT VARIANCE(S) ARE YOU REQUESTING?**

<u>Condition</u>	<u>Zoning Requirement</u>	<u>Existing Condition</u>	<u>This Application Proposes</u>	<u>Magnitude Of Variance Requested</u>
Front Yard Setback	_____	_____	_____	_____
Rear Yard Setback	_____	_____	_____	_____
Left Side Yard Setback	_____	_____	_____	_____
✓ Right Side Yard Setback	8'	8'	0	_____
Lot Coverage	_____	_____	_____	_____
Height	_____	_____	_____	_____
Parcel Area Per Dwelling Unit	_____	_____	_____	_____
Usable Open Space	_____	_____	_____	_____
Parking	_____	_____	_____	_____
Expansion of Nonconformity	_____	_____	_____	_____
Other (Please describe):	_____			
	_____			
	_____			

VAR2016-022

## REQUIRED FINDINGS

The Tiburon Municipal Code, Chapter 16 (Zoning, Section 16-52.030(E)) and California State law (Government Code Section 65906) require that specific findings be made prior to granting of a variance. These findings must be supported by evidence presented to the decision-making body prior to granting of the variance.

Please respond to the following statements and describe or attach any evidence supporting your answers. Please prepare your responses on a separate sheet.

1. Describe what special circumstances apply to the property (such as size, shape, topography, location, or surroundings) that cause a strict application of the zoning regulations to deprive you of privileges enjoyed by other properties in the vicinity and same or similar zone. *THE VEGETATION ON CITY PROPERTY WAS NOT MAINTAINED & AS A RESULT GREW ON FENCE & SHEDS WHICH CAUSED DETRIMENT*
2. Explain how granting of the variance would not result in a special privilege that is inconsistent with limitations on other properties in the vicinity and in the same or similar zone. *CLIENT IS NOT ASKING FOR ANY SPECIAL PRIVILEGE*
3. Explain how the strict application of the zoning regulations would result in practical difficulty or unnecessary physical hardship. Self-created hardships shall not be considered. *THE SHED IS TO STORE GARDEN EQUIPMENT. CLIENT DOES NOT LIVE AT LOCATION FULLTIME*
4. Explain how granting of the variance would not be detrimental to the public welfare or injurious to other property in the vicinity. *BOTH STRUCTURES ARE ON THE PROPERTY & WILL BE COMPLETELY FENCED IN.*

## APPLICATION REQUIREMENTS

The following materials shall be required for a complete variance application. Some of these items may be waived if deemed unnecessary by Planning Division staff:

- (A) A completed Land Development Application along with the filing fee (See Fee Schedule).
- (B) Ownership, applicant and property identification:
  - (1) Names and addresses of all persons who own an interest in the subject property and identification of the interest (option, fee title, Trustee, etc.). Also include four sets of pre-printed mailing labels containing the name and current mailing address of the applicant, property owner, and representative (if any).
  - (2) Names and addresses of all representatives of the owners authorized to represent the project to the Town
  - (3) A legal description of the parcel and a statement of the area contained therein.
  - (4) A recent title report verifying the description and vestees.

