



BOARD OF APPEALS

Date Filed: October 10, 2023

City & County of San Francisco

REHEARING REQUEST FOR APPEAL NO. 23-030

Bruce MacLeod and Deborah MacLeod, Appellant(s) seek a rehearing of **Appeal No. 23-030** which was decided on **September 27, 2023**. This request for rehearing will be considered by the Board of Appeals on Wednesday, **October 25, 2023**, at 5:00 p.m. **and will be held in Room 416 of San Francisco City Hall. The parties may also attend the hearing via the Zoom video platform.**

The **response** to the written request for rehearing must be submitted by the permit holder **on or before 4:30 p.m. on October 19, 2023** and must not exceed six (6) double-spaced pages in length, with unlimited exhibits. The brief shall be double-spaced with a minimum 12-point font size. An electronic copy should be e-mailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org, tina.tam@sfgov.org, matthew.greene@sfgov.org and brucermacleod@outlook.com.

You or your representative **MUST** be present at the hearing. It is the general practice of the Board that only up to three minutes of testimony from each side will be allowed. Except in extraordinary cases, and to prevent manifest injustice, the Board may grant a Rehearing Request only upon a showing that new or different material facts or circumstances have arisen, where such facts or circumstances, if known at the time, could have affected the outcome of the original hearing.

Based on the evidence and testimony submitted, the Board will make a decision to either grant or deny your request. Four votes are necessary to grant a rehearing. If your request is denied, a rehearing will not be scheduled and the decision of the Board will become final. If your request is granted, a rehearing will be scheduled, the original decision of the Board will be set aside, and after the rehearing, a second decision will be made. Only one request for rehearing and one rehearing are permitted under the Rules of the Board.

Requestor

Signature: Via Email

Print Name: Bruce MacLeod, requestor

REHEARING REQUEST FOR APPEAL NO. 23-030

The Board of Appeals' website describes itself as "a quasi-judicial body." Like all quasi-judicial bodies, the Board of Appeals is required to provide due process. Under Art.1, §7 of the California Constitution, due process includes a liberty interest in "freedom from arbitrary adjudicative procedures." *People v. Ramirez* (1979) 25 Cal.3d 260, 268-69; accord *Saleeby v. State Bar of California*, (1985) 39 Cal.3d 547, 563-64. The most fundamental requirements of procedural due process are: (1) adequate notice; and (2) an opportunity to be heard before a fair and impartial hearing body. *Horn v. County of Ventura* (1979) 24 Cal.3d 605, 612.; *Clark v. City of Hermosa out Beach* (1996) 48 Cal.App.4th 1152. None of those requirements for due process were met in the 9/27 meeting of the Board of Appeals. Lack of communication and/or misfeasance within the Planning Department, and misfeasance by the Executive Director of the Board, resulted in a Board hearing that was fundamentally unfair. The Executive Director, for the second time, rejected and withheld from the Board a document that we timely sent to the Board, but this time her decision has not the slightest color of legitimacy because our one page statement requested by President Swig was not only timely sent, but was timely received by the Executive Director's computer as shown by the Out-of-Office Automatic Reply that we got back while the filing window was still open. And while our one page statement may not seem like a very important document, it contained an important piece of information: that we had reached out to the Planning Department, met with Cory Teague, learned the critical information about Planning Code §136, and transmitted that information to the Bellizzi's, along with our idea for a perpendicular stairway, which they then adopted and perverted by moving the landing to the lot line. We didn't mention that we had met with the Planning Department in our three minute presentation because we "knew" the Board was given our one page report. Once our three minutes were up, we were precluded from speaking because in continued hearings the Board does not follow an accepted norm of our legal systems, which is that the party with the burden of proof has the right to be heard first and last or, less

commonly, both parties have the right to rebut. The failure to provide an opportunity for rebuttal is itself a due process violation in contested hearings such as this because it gives the party who goes second an open microphone to speak without fear of contradiction. Frank Bellizzi took full advantage of that. Our seemingly not having reached out to the Planning Department for assistance was one of critical factors that turned the Board against us. We could feel a chill coming over the room as Commissioner Trasvina questioned Andrew Perry about whether the MacLeods had reached out to Planning and Mr. Parry replied “to my knowledge the MacLeods have not reached out to Planning at all.” That was a lie. Mr. Perry was on the email chain by which we transmitted to the Executive Director our one page statement reporting on our meeting with Mr. Teague. Moreover, Mr. Perry was not the only one in the room who could have spoken out to correct the record. The Bellizzi’s knew and profited from our contact with Mr. Teague, but they remained mum. The Executive Director also knew from the one page letter that we had been in contact with Mr. Teague. But the Executive Director knew much more. She knew (1) that the Board did not know that we had been in contact with Mr. Teague (because she had omitted our one page letter from the Board packet) and (2) we didn’t know that our one page statement had been wrongfully excluded from the Board packet, which we subsequently discovered says “THE STATEMENT SUBMITTED BY THE APPELLANTS WAS REJECTED FOR BEING UNTIMELY. But it wasn’t untimely as shown by Ex.

Another due process failing of the 9/27 hearing was a lack of adequate notice. President Swig’s 8/2 directive about what was to be addressed in our one page statement to be submitted on 9/21 was clear and unambiguous: “Executive Director: Three minutes to address the Board. Did you want them to, one page statement on the what? the fruit hopefully of their discussions? President Swig: Yeah, yeah for sure but limited to three [inaudible]. The answer will be “yes we had conversation, yes we’ve made some changes,” “yes we had a conversation, no we didn’t make any changes.”

President Swig's directive had three components: the time to address the Board (3 minutes), the number of pages to be submitted (1), and the topic to be covered (did we have a conversation, did we make any changes). However, under this Board's current ruling, only the first topic (time to address the Board) was intended. Someone who doesn't regularly practice before the Board is supposed to know that "one page" really means an unlimited number of pages as long as they are labeled "exhibit", and that "did we have a conversation, did we make any changes" really means argue your case as rapidly as you can read a prepared script. This simply is not adequate notice. Saying that practitioners can call the Executive Director for unwritten advice is an exception that would soon swallow the due process rule of adequate notice. If no instruction, however clear, could be relied upon without a confirming communication with a responsible official, local government and the legal system would soon grind to a halt. For example, on 9/19 the Executive Director sent an email to the parties and staff: "as a reminder, the parties can each submit a one-page, double-space statement by 4:30 PM on Thursday 9/21." It does not say "call for extra information." Was the written statement by the Executive Director something we could rely upon? We did, but apparently we should have known better than to rely on a written statement from the Executive Director.

The damage that these due process violations, and the earlier refusal of the Executive Director to accept our original brief arriving late, but timely sent, had on our credibility is enormous. When I moved for leave to file our comprehensive settlement offer or, in the alternative, to have all but the first page of their 17 page "one-page statement" stricken, Frank was quick to revert to the previous incident "graciously" omitting to mention that the previous incident was caused by an Internet failure (Ex): "Just to remind everyone, when we had our original hearing, MacLeods failed to file in the proper manner although the instructions were very clear and as one as you pointed out, we were very gracious adding that into our brief so they could be heard. This has now happened a second time." Frank perfectly understood how missing another filing

deadline would destroy our credibility while reminding the Commissioners of how “graciously” he behaves with neighbors notwithstanding two or more sets of neighbors who have found otherwise.

I do, however, want to thank Commissioner Lemburg for chiding me about being a lawyer who should understand the importance of meeting filing deadlines. He was correct, of course, and was just stating what all of the Commissioners were thinking. But that just serves to prove how deeply the well had been poisoned by the Executive Director’s rejection of our timely sent filings, and why the rehearing must be granted in order that we may have an opportunity to be heard before a fair and impartial hearing body. Indeed, it is apparent to me that the bias engendered against us is evident in the Commission unanimous ruling. At the hearing Frank spoke very rapidly and very glibly about steps they had taken to improve our privacy and further steps that they planned. The Commissioners seem to buy into Frank’s self-assessment and several of you complimented him for the steps he had taken. What steps? Slow down the tape and listen to what he actually said. He identifies only three things that he plans to do: (1) raise the fence to 10’, (2) plant unidentified “all seasons shrub-like trees” 12 feet in height, and (3) switch to the plan that we discovered with Cory Teague of a perpendicular deck, but modified to put people on a sightline that has as a deeper penetration into the interior of our house than the original design.

Frank’s supposed privacy improvements would do nothing to alleviate our privacy concerns. The math is simple: The height of both Frank’s existing and proposed deck is 6’7”. In order to begin to block the sightline of a 6’ tall person standing on a 6’7” deck would require a 12’7” tall fence. Frank has not proposed to build a fence of that height, and for good reason. It would require severe pruning of our maple tree (which Frank has argued “provides privacy for all seasons but the winter season.”) (Ex.). To be clear, we had talked about raising the fence to 10’ as part of our first solution of moving Frank’s previously proposed lot-line stairs 7 treads to the west, where our wood wall would conceal them. The sightline of a 6’ person standing on the remaining 3 stairs could then be blocked by a 10’ fence because they would be standing on

the lowest treads. But Frank would never agree to moving the stairs 7 treads to the west, so raising the fence to 10' would be pointless. Besides, it's our fence, attached to our house 5 inches inside the line of our wall, which the Bellizzi's never contributed to building or maintaining and, as stated in their first brief, it's the MacLeod's fence that the MacLeods can replace "at any time."

As to the unidentified "all seasons shrub-like trees" which would miraculously grow to a height of 12' year round in a yard that is riddled with oak root fungus, Frank has two of those trees on each side of his driveway: One is dead and the other is dying. (Exh.) That is at least the third planting of such trees, and over the last 40 years, and many other kinds of trees have failed in that portion of the block as well.

Significantly, Frank offered no privacy screen even though his deck would be a mere 3 feet from our window wall, no pledge of protection for our maple tree that Frank claimed in his opening brief was our primary source of privacy, and no right for us to inspect, much less maintain from dry rot, the property-line wall of our house. Finally, the night before the 9/27 hearing, we had an in person settlement attempt which ended when Frank said "I'm going to cut your tree."

Because many of these those issues were all discussed in the explanation section of our settlement offer, we attach our settlement offer, explanation, and cover email as exhibits.

From: [BoardofAppeals \(PAB\)](#)
To: [Bruce MacLeod](#)
Cc: [Rosenberg, Julie \(BOA\)](#); [Mejia, Xiomara \(BOA\)](#)
Subject: RE: 144 25th Avenue, Late Filing of MacLeod Permit Appeal (Appeal No. 23-030)
Date: Tuesday, October 10, 2023 4:31:00 PM
Attachments: [image001.png](#)

Thank you for your request. Is the other email to be added as an exhibit to your request?

Alec Longaway
Legal Assistant, San Francisco Board of Appeals
49 South Van Ness, Suite 1475
San Francisco, CA 94103
Work PH: 1-628-652-1152
Cell: 1-415-746-0119

The Board's physical office is open to the public by appointment only. Please email boardofappeals@sfgov.org or call 628-652-1150 if you would like to meet with a staff member.

From: Bruce MacLeod <brucermacleod@outlook.com>
Sent: Tuesday, October 10, 2023 4:29 PM
To: BoardofAppeals (PAB) <boardofappeals@sfgov.org>
Subject: FW: 144 25th Avenue, Late Filing of MacLeod Permit Appeal (Appeal No. 23-030)

Exhibit of communication with Executive Director

From: Bruce MacLeod <brucermacleod@outlook.com>
Sent: Tuesday, October 10, 2023 4:05 PM
To: Bruce MacLeod <brucermacleod@outlook.com>
Subject: Fwd: 144 25th Avenue, Late Filing of MacLeod Permit Appeal (Appeal No. 23-030)

Sent from my iPhone

Begin forwarded message:

From: "Rosenberg, Julie (BOA)" <julie.rosenberg@sfgov.org>
Date: July 18, 2023 at 1:00:37 PM PDT
To: Bruce MacLeod <brucermacleod@outlook.com>
Cc: "Mejia, Xiomara (BOA)" <xiomara.mejia@sfgov.org>, Deborah <macleoddeb@msn.com>, fbellizzi@indaloventures.com, Allison Bellizzi <allison.bellizzi@gmail.com>, "Teague, Corey (CPC)" <corey.teague@sfgov.org>, "Greene, Matthew (DBI)" <matthew.greene@sfgov.org>, "Tam, Tina (CPC)" <tina.tam@sfgov.org>, "Longaway, Alec (BOA)" <alec.longaway@sfgov.org>
Subject: RE: 144 25th Avenue, Late Filing of MacLeod Permit Appeal (Appeal No. 23-030)

Dear Bruce: Thank you for your email. Unfortunately, it does not change my position that we cannot accept your brief.

Regarding the projector, I don't know if it is like an "Elmo," but it is very easy to use. It projects documents and pictures on a large screen. We open up the hearing room at 4:30 p.m., so you are welcome to come in advance of the hearing to test out the laptop or projector. Alec Longaway, the Board's Legal Assistant, can help you show your presentation if you need assistance.

Regards,

Julie

Julie Rosenberg
Executive Director
San Francisco Board of Appeals
49 South Van Ness Avenue, Suite 1475
San Francisco, CA 94103
Phone: 628-652-1151
Email: julie.rosenberg@sfgov.org

From: Bruce MacLeod <brucermacleod@outlook.com>
Sent: Tuesday, July 18, 2023 11:09 AM
To: Rosenberg, Julie (BOA) <julie.rosenberg@sfgov.org>
Cc: Mejia, Xiomara (BOA) <xiomara.mejia@sfgov.org>; Deborah <MacLeodDeb@msn.com>; fbellizzi@indaloventures.com; Allison Bellizzi <allison.bellizzi@gmail.com>; Teague, Corey (CPC) <corey.teague@sfgov.org>; Greene, Matthew (DBI) <matthew.greene@sfgov.org>; Tam, Tina (CPC) <tina.tam@sfgov.org>; Longaway, Alec (BOA) <alec.longaway@sfgov.org>
Subject: RE: 144 25th Avenue, Late Filing of MacLeod Permit Appeal (Appeal No. 23-030)

Julie – Thank you for your response. Deborah and I will definitely appear at the hearing on August 2.

We apologize for missing the instruction that an electronic copy shall be emailed to four staff members besides the Board. I relied upon two Board of Appeals publications: "Appeal Process Overview" (that was twice emailed to me by Alec Longaway on June 23 and June 26), and "Special Instructions for Parties (revised 3-2-22).pdf" (that was emailed to me by Alec on June 26). Both of those publications made the same statement about how and where we were to send our brief and exhibits:

1. "Electronic copies of the brief with exhibits must be sent via email to the Board office by 4:30 p.m. on or before the date it is due to: boardofappeals@sfgov.org. Hard copies of the brief are not required.
2. Additional copies must be delivered to the other parties on the same day via email."

Neither of those publications said anything about sending the brief and exhibits to four staff members in addition to the Board. We apologize for missing that instruction on the "Preliminary Statement for Appeal No 23-030."

We did, however, satisfy the requirement in those two publications that "additional copies must be delivered to the other parties on the same day via email." Indeed, we know that such copies were in fact received by the permit holders because we added Deb as a cc to the email transmitting the copies, and she received that email at 11:05 p.m. on Thursday, one minute after we sent them. Thus, the permit holders were served within the allotted time and cannot show any prejudice.

So the question becomes, did we satisfy the requirement that "Electronic copies of the brief with exhibits must be sent via email to the Board office by 4:30 p.m.?" Notice that the requirement is not that the briefs and exhibits be "received" by the Board office by 4:30 p.m., but only that they be "sent via email to the Board office by 4:30 p.m." Thus, "send" is all that we were required to do under the Board's own two publications.

We indisputably satisfied the "send" requirement as to our brief and first batch of photo exhibits. The text of the "undeliverable" notices that were kicked back to our computer's inbox on Thursday – but which we did not see until Friday after I spoke with Alec – document the fact that we properly "sent" our brief and first batch of photo exhibits to the Board at its correct email address (boardofappeals@sfgov.net) at 4:22 PM and 4:25 PM on Thursday. I sent the text of one of those "undeliverable" notices to you in my previous email because that was more readable than a screenshot. However, later today I will also send you screenshot photos of the "undeliverable" notices to complete our evidentiary support for being granted relief. In light of the screenshot evidence there is simply no basis for withholding our brief and photographic exhibits from the commissioners.

In civil court systems, an uncaught technical malfunction like we experienced is extremely rare because civil courts typically have far more robust electronic filing systems. See for example San Francisco Superior Court Local Rule 2.11 E-Filing & E-Service Rules which provide in Subsection I that, subject to certain exceptions, "all E-Filing's must be filed through a [court-approved] vendor." But even with that protection, Subsection O provides relief for "user error or vendor technical problems.":

If E-Filing or E-Service does not occur due to (1) error in the transmission of the document to Vendor or served party which was unknown to the sending party, (2) Vendor's improper failure to process the electronic document, (3) a party's erroneous exclusion from the service list, or (4) other technical problems experienced by the Vendor, then the User affected may be granted an extension for any response or the period within which any right, duty, or other act must be performed, provided the User demonstrates that he or she attempted to E-File or complete service on a particular day and time.

The above provision in the San Francisco Superior Court Local Rules is simply a matter of elemental due process. Who could ever trust an electronic filing system if it meant that the sender bore the entire risk of a malfunctioning email server or device anywhere on the Internet? We do not claim that the sf.gov email server was necessarily the link responsible for the transmission failure, but one thing is certain: **there is nothing that we or our computer could possibly have done to kickback as "undeliverable" three emails that the kickback reports themselves show were properly addressed to boardofappeals@sfgov.org.**

In summary, we complied with the filing instructions contained in the Board's two publications, it was not our fault that our emails to the Board were rejected somewhere on the Internet, and no one was prejudiced by the delay. We therefore urge you to reverse your decision not to circulate our brief and photographic exhibits to the commissioners before the hearing. The topography, security, privacy, light and air concerns involved in our appeal are somewhat complex, and we do not think having the commissioners approach those facts for the first time at the hearing, without having seen our brief and photographs, would serve anyone's interest. Our brief is only 5 pages in length so it will scarcely burden the commissioners to read it.

Finally, we very much appreciate your offer of access to a laptop and overhead projector at the hearing on August 2. Is the overhead projector of a type that projects images of paper documents and photographs? Back in the day when I was practicing law we used to call that type of projector an "Elmo." Is that the same projector type that you will make available?

Thanks so much -- Bruce

From: Rosenberg, Julie (BOA) <julie.rosenberg@sfgov.org>
Sent: Monday, July 17, 2023 9:01 AM
To: Bruce MacLeod <brucermacleod@outlook.com>
Cc: Mejia, Xiomara (BOA) <xiomara.mejia@sfgov.org>; Deborah <MacLeodDeb@msn.com>; fbellizzi@indaloventures.com; Allison Bellizzi <allison.bellizzi@gmail.com>; Teague, Corey (CPC) <corey.teague@sfgov.org>; Greene, Matthew (DBI) <matthew.greene@sfgov.org>; Tam, Tina (CPC) <tina.tam@sfgov.org>; Longaway, Alec (BOA) <alec.longaway@sfgov.org>
Subject: RE: 144 25th Avenue, Late Filing of MacLeod Permit Appeal (Appeal No. 23-030)

Dear Bruce: At the time the appeal was filed you were sent instructions to send the brief to five email addresses by 4:30 pm on 7/13/23 (see excerpt below and full instructions, attached). The five email addresses included: the Board Office, myself, Corey Teague (the Zoning Administrator), Tina Tam (the Deputy Zoning Administrator) and Matthew Greene (Chief Building Inspector). I have not heard back from Corey Teague yet, as he is out of the office, but the other four email addresses did not receive your brief by the deadline.

You indicated that you sent it to boardofappeals@sfgov.org shortly before 4:30 pm on 7/13, but due to technical issues, the email never went through. There is no indication that the City was having problems with the email server on that date. We received emails and briefs from people outside of the City network on 7/13.

Unfortunately, the fact that you had technical issues is not a basis to accept your brief now. I see that you sent the brief to our office on Saturday, 7/15.

You will be able to share your brief and photos at the hearing (we have a laptop and overhead available in the hearing room or you can share on Zoom). I will let the commissioners know that you did not send your brief by the deadline due to technical issues. We cannot extend the time for the permit holder to submit his brief since it is due by 4:30 pm on 7/27 and the materials are posted online and given to the commissioners on 7/28.

Respectfully,
Julie

PRELIMINARY STATEMENT FOR APPEAL NO. 23-030

I / We, **Bruce MacLeod and Deborah MacLeod**, hereby appeal the following departmental action: **ISSUANCE of Alteration Permit No. 2023/02/02/1229** by the **Department of Building Inspection** which was issued or became effective on: **June 9, 2023**, to: **Frank Bellizi Jr**, for the property located at: **144 25th Avenue**.

BRIEFING SCHEDULE:

Appellant's Brief is due on or before: 4:30 p.m. on July 13, 2023, (no later than three Thursdays prior to the hearing date). The brief may be up to 12 pages in length with unlimited exhibits. It shall be double-spaced with a minimum 12-point font. An electronic copy shall be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org, corey.teague@sfgov.org, tina.tam@sfgov.org, matthew.greene@sfgov.org and fbellizzi@indaloventures.com

Julie Rosenberg
Executive Director
San Francisco Board of Appeals
49 South Van Ness Avenue, Suite 1475
San Francisco, CA 94103

Phone: 628-652-1151
Email: julie.rosenberg@sfgov.org

From: Bruce MacLeod <brucermacleod@outlook.com>
Sent: Saturday, July 15, 2023 5:37 PM
To: Rosenberg, Julie (BOA) <julie.rosenberg@sfgov.org>; Longaway, Alec (BOA) <alec.longaway@sfgov.org>
Cc: Mejia, Xiomara (BOA) <xiomara.mejia@sfgov.org>; Deborah <MacLeodDeb@msn.com>; bellizzi@indaloventures.com; Allison Bellizzi <allison.bellizzi@gmail.com>
Subject: 144 25th Avenue, Late Filing of MacLeod Permit Appeal

Alec and Julie - The screenshot of my Sent Items folder for Thursday (which I sent to Alec on Friday) shows that I sent three emails to the Board on Thursday. The first email was sent at 4:22 PM and had a subject line of "MacLeod Appeal of 144 25th Avenue Permit." It attached as a Microsoft Word document our brief on appeal. I sent the brief first because I was having trouble formatting the photographs and wanted to make sure the brief was filed on time.

The second email that I sent to the Board on Thursday had a subject line of "MacLeod Appeal of 144 25th Avenue - Attachments." That email attached four photographs labeled "Interior", "Plate Glass" (Misspelled Piate Glass), "In Stairwell", and "Calibrated on Deck." That email appears in my Sent Items folder with a "Sent" Time of 4:25 PM.

I had overlooked one photo, so I attached it to a third email that I sent to the Board on Thursday. That email had a subject line of "MacLeod Interior intrusion photo." That email appears in my Sent Items Folder with a "Sent" Time of 4:40 pm. Thus, on Thursday afternoon I sent the Board one brief and five photographs.

I then turned to the evening's activities of dinner preparation, etc. While I was doing those tasks the thought occurred to me that it might be our responsibility to serve our brief and photos on the permit holders, rather than it being your responsibility to forward our electronic filing to them. So I reread the Board's rules and found that it was, indeed, our responsibility to electronically serve the permit holders with our brief and documents "that day" meaning Thursday, the date of filing. I therefore sent an email to the permit holders attaching our brief and the five photographs. That email appears in my Sent Items folder with a "Sent" time of 11:04 p.m. on Thursday. I know the permit holders received that email because I cc'd it to my wife and she received that email at 11:05 p.m..

I then went to bed and did not think about the filing until shortly before your close of business on Friday, when I called Alec before the weekend just to make sure that all of the Board's requirements had been fulfilled. It was in that call that I first learned that the Board had not received our brief nor our photographs. I think Alec could probably tell from my voice how shocked I was to hear that news.

Looking at my email Sent Items folder for Thursday afternoon, I see each of the emails that I sent to the Board with "Sent" times of 4:22 PM, 4:25 PM, and 4:40 PM. There is nothing in those Sent Item entries to suggest that my emails to the board had not gone through. You can verify those entries yourself on the screenshot that I sent to Alec Friday after my call with him.

However, we now know that none of those emails were received by the Board. So what went wrong?

Looking at my Inbox, where you would not expect to find "Sent" items, the same three emails to the Board are repeated. But interspersed with those three entries is an identical entry preceded by a small red dot. Clicking on any of the three dots displays the following message:

Delivery has failed to these recipients or groups:

boardofappeals@sfgov.org.

The format of the email address isn't correct. A correct address looks like this: someone@example.com. Please check the recipient's email address and try to resend the message.

Diagnostic information for administrators:

Generating server: BY5PR10MB4354.namprd10.prod.outlook.com

boardofappeals@sfgov.org

Remote server returned '550 5.1.3 STOREDRV.Submit; invalid recipient address'

Original message headers:

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Received: from BY5PR10MB4354.namprd10.prod.outlook.com
([fe80::c458:7cab:b7db:5b6e]) by BY5PR10MB4354.namprd10.prod.outlook.com
([fe80::c458:7cab:b7db:5b6e4]) with mapi id 15.20.6588.024; Thu, 13 Jul 2023
23:21:59 +0000
Content-Type: application/ms-tnef; name="winmail.dat"
Content-Transfer-Encoding: binary
From: Bruce MacLeod <brucermacleod@outlook.com>
To: "boardofappeals@sfgov.org." <boardofappeals@sfgov.org>
CC: Bruce MacLeod <brucermacleod@outlook.com>
Subject: MacLeod Appeal of 144 25th Avenue Permit
Thread-Topic: MacLeod Appeal of 144 25th Avenue Permit
Thread-Index: Adm14MlWKQnvtl36RWgK4FMTicqYfQ==
Date: Thu, 13 Jul 2023 23:21:59 +0000
Message-ID: <BY5PR10MB43548C3BFF0D88072E6EFADDA037A@BY5PR10MB4354.namprd10.prod.outlook.com>
Accept-Language: en-US
Content-Language: en-US
X-MS-Has-Attach: yes
X-MS-TNEF-Correlator: <BY5PR10MB43548C3BFF0D88072E6EFADDA037A@BY5PR10MB4354.namprd10.prod.outlook.com>
MIME-Version: 1.0
X-TMN: 1q0UJ54sWDUIiDMU8aKCwCzSaJlM1tag3auWJpMGJ58233fQGmouZD/k3fmuu0]
X-MS-PublicTrafficType: Email
X-MS-TrafficTypeDiagnostic: BY5PR10MB4354:EE_
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Contrary to what the error message states, the email address that is identified as having the wrong format (boardofappeals@sfgov.org) is actually in proper format.

More than just being in proper format, the email address to which I sent our brief and exhibits is in fact the correct email address for the Board. Indeed, I input that address by clicking on the link provided by the Board in its "Appeal Process Overview" memo.

I am not an expert, but I do not think there is anything that I or my computer could possibly have done to generate an error message that was itself erroneous. I believe the problem had to have come from either the City's email server, Microsoft's email server (which hosts my email account) or some glitch in the Internet.

Moreover, I see nothing to suggest that the permit holders did not receive my Thursday 11:04 PM email transmitting to them our appeal brief and photographs. I included my wife as a cc on that email, which she received at 11:05 PM. That means the permit holders likewise must have received our brief and photographs at approximately that time. The permit holders therefore cannot show any prejudice from the two-day delay in filing our appeal brief and photographs with the Board. But even if they could somehow show prejudice from the delay, such prejudice would be cured by our offer not to object to the permit holders being allowed an extra two days to file their respondents' brief.

Finally, I appreciate Alec's offer in the email below that "The Board's physical office is open to the public by appointment only. Please email boardofappeals@sfgov.org or call 628-652-1150 if you would like to meet with a staff member."

If the staff has any questions or is inclined not to accept our appeal for hearing, we most definitely would like to meet with a staff member. Please let me know if that would be necessary or helpful to the staff's decision of whether or not to accept our appeal for hearing.

I am copying the permit holders on this email as well.

Thanks very much for your consideration. – Bruce MacLeod

From: Longaway, Alec (BOA) <alec.longaway@sfgov.org>
Sent: Friday, July 14, 2023 5:30 PM
To: Bruce MacLeod <brucermacleod@outlook.com>
Cc: Rosenberg, Julie (BOA) <julie.rosenberg@sfgov.org>; Mejia, Xiomara (BOA) <xiomara.mejia@sfgov.org>
Subject: RE: Screen Shot of 07-13-2023 MacLeod Sent Item Folder.pdf

Thank you for your email. Our records indicate that no brief was submitted to our office. I will be out of town next week, so I have cc'ed the Director of this Board Julie Rosenberg on this email.

Alec Longaway
Legal Assistant, San Francisco Board of Appeals
49 South Van Ness, Suite 1475
San Francisco, CA 94103
Work PH: 1-628-652-1152
Cell: 1-415-746-0119

The Board's physical office is open to the public by appointment only. Please email boardofappeals@sfgov.org or call 628-652-1150 if you would like to meet with a staff member.

From: Bruce MacLeod <brucermacleod@outlook.com>
Sent: Friday, July 14, 2023 5:25 PM
To: Longaway, Alec (BOA) <alec.longaway@sfgov.org>
Subject: Screen Shot of 07-13-2023 MacLeod Sent Item Folder.pdf

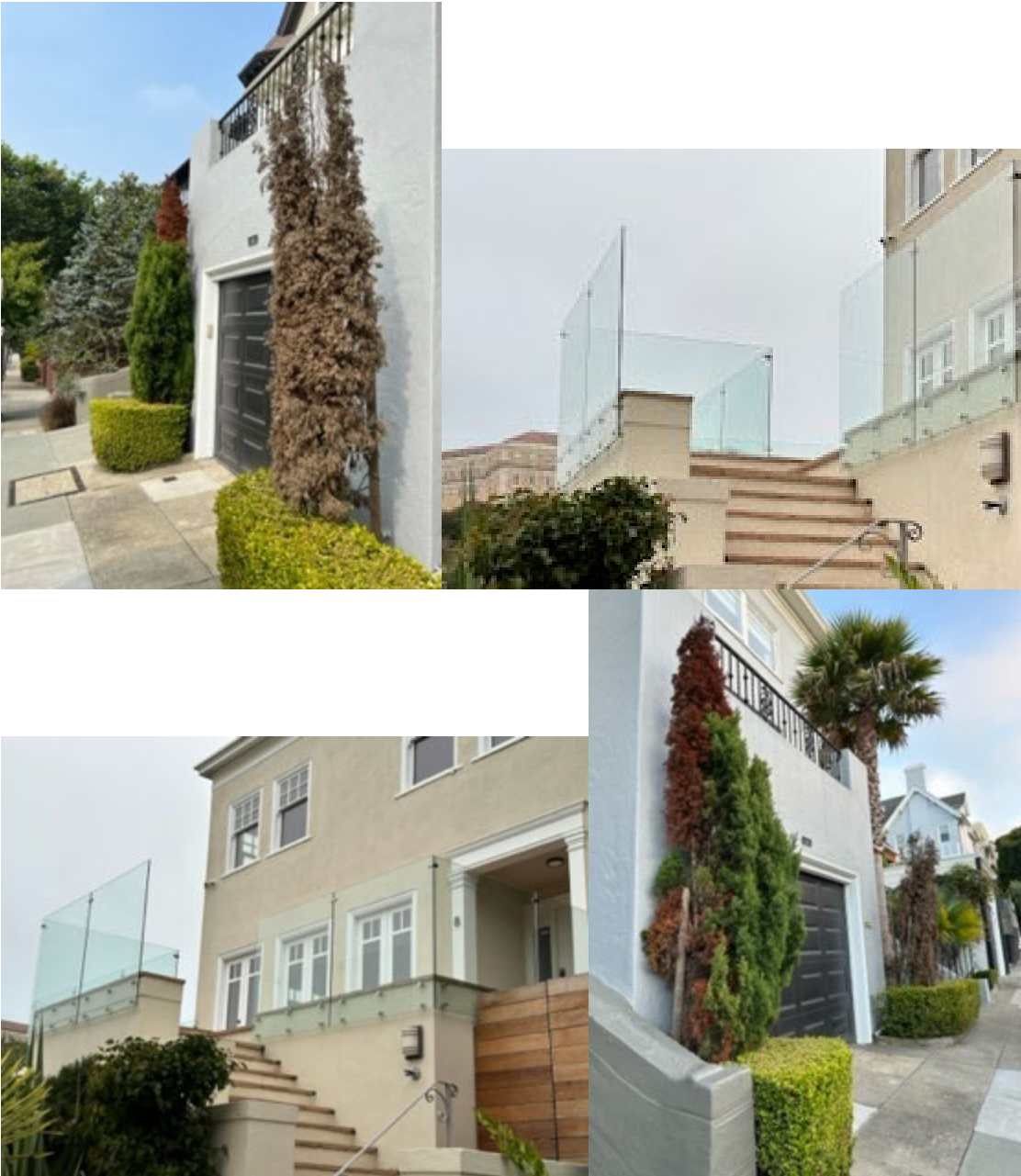
This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Alec – here is a PDF of the screenshot of my Sent Items folder with the four documents I served on the board and the Bellizzi's yesterday showing the times of service.

Longaway, Alec (BOA)

From: Bruce MacLeod <brucermacleod@outlook.com>
Sent: Tuesday, October 10, 2023 4:32 PM
To: BoardofAppeals (PAB)
Subject: Exhibit Proposed Settlement
Attachments: MacLeod Design.pdf; Bellizzi Design #2.pdf

From: Bruce MacLeod
Sent: Thursday, September 21, 2023 10:00 PM
To: 'Rosenberg, Julie (BOA)' <julie.rosenberg@sfgov.org>; 'Frank Bellizzi' <fbellizzi@indaloventures.com>
Cc: 'Teague, Corey (CPC)' <corey.teague@sfgov.org>; 'Tam, Tina (CPC)' <tina.tam@sfgov.org>; 'Perry, Andrew (CPC)' <andrew.perry@sfgov.org>; 'Longaway, Alec (BOA)' <alec.longaway@sfgov.org>; 'Greene, Matthew (DBI)' <matthew.greene@sfgov.org>
Subject: RE: Status of Appeal No. 23-030 @ 144 25th Avenue (hearing date 9-27-23)



From: Bruce MacLeod

Sent: Thursday, September 21, 2023 5:05 PM

To: Rosenberg, Julie (BOA) <julie.rosenberg@sfgov.org>; Frank Bellizzi <fbellizzi@indaloventures.com>

Cc: Teague, Corey (CPC) <corey.teague@sfgov.org>; Tam, Tina (CPC) <tina.tam@sfgov.org>; Perry, Andrew (CPC) <andrew.perry@sfgov.org>; Longaway, Alec (BOA) <alec.longaway@sfgov.org>; Greene, Matthew (DBI) <matthew.greene@sfgov.org>

Subject: RE: Status of Appeal No. 23-030 @ 144 25th Avenue (hearing date 9-27-23)

Julie – We were surprised to find that the permit holders submitted extensive documentation contrary to the “one page only” instruction we were given. Accordingly, attached you will find our comprehensive settlement proposal brief which, by this email, we are now serving on the permit holders. We will submit a few photos in a separate email.

From: Rosenberg, Julie (BOA) <julie.rosenberg@sfgov.org>

Sent: Tuesday, September 19, 2023 5:03 PM

To: Frank Bellizzi <fbellizzi@indaloventures.com>

Cc: Teague, Corey (CPC) <corey.teague@sfgov.org>; Tam, Tina (CPC) <tina.tam@sfgov.org>; Perry, Andrew (CPC) <andrew.perry@sfgov.org>; Longaway, Alec (BOA) <alec.longaway@sfgov.org>; Greene, Matthew (DBI) <matthew.greene@sfgov.org>; brucermacleod@outlook.com

Subject: RE: Status of Appeal No. 23-030 @ 144 25th Avenue (hearing date 9-27-23)

Thanks for letting me know. As a reminder, the parties can each submit a one-page, double-spaced statement by 4:30 p.m. on Thursday 9/21.

Julie Rosenberg
Executive Director
San Francisco Board of Appeals
49 South Van Ness Avenue, Suite 1475
San Francisco, CA 94103
Phone: 628-652-1151
Email: julie.rosenberg@sfgov.org

From: Frank Bellizzi <fbellizzi@indaloventures.com>

Sent: Tuesday, September 19, 2023 4:41 PM

To: Rosenberg, Julie (BOA) <julie.rosenberg@sfgov.org>

Cc: Teague, Corey (CPC) <corey.teague@sfgov.org>; Tam, Tina (CPC) <tina.tam@sfgov.org>; Perry, Andrew (CPC) <andrew.perry@sfgov.org>; Longaway, Alec (BOA) <alec.longaway@sfgov.org>; Greene, Matthew (DBI) <matthew.greene@sfgov.org>; brucermacleod@outlook.com

Subject: RE: Status of Appeal No. 23-030 @ 144 25th Avenue (hearing date 9-27-23)

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hi Julie,

We continue to work in earnest to try to reach a resolution with the MacLeod's to obviate the need for the hearing. However, at this junction, we think it best to keep the scheduled hearing date. Will advise you immediately should we reach a resolution.

Thanks and best regards,

Frank

c. 415.845.3230

From: Rosenberg, Julie (BOA) <julie.rosenberg@sfgov.org>

Sent: Tuesday, September 19, 2023 3:37 PM

To: Frank Bellizzi <fbellizzi@indaloventures.com>; brucermacleod@outlook.com

Cc: Teague, Corey (CPC) <corey.teague@sfgov.org>; Tam, Tina (CPC) <tina.tam@sfgov.org>; Perry, Andrew (CPC) <andrew.perry@sfgov.org>; Longaway, Alec (BOA) <alec.longaway@sfgov.org>; Greene, Matthew (DBI) <matthew.greene@sfgov.org>

Subject: Status of Appeal No. 23-030 @ 144 25th Avenue (hearing date 9-27-23)

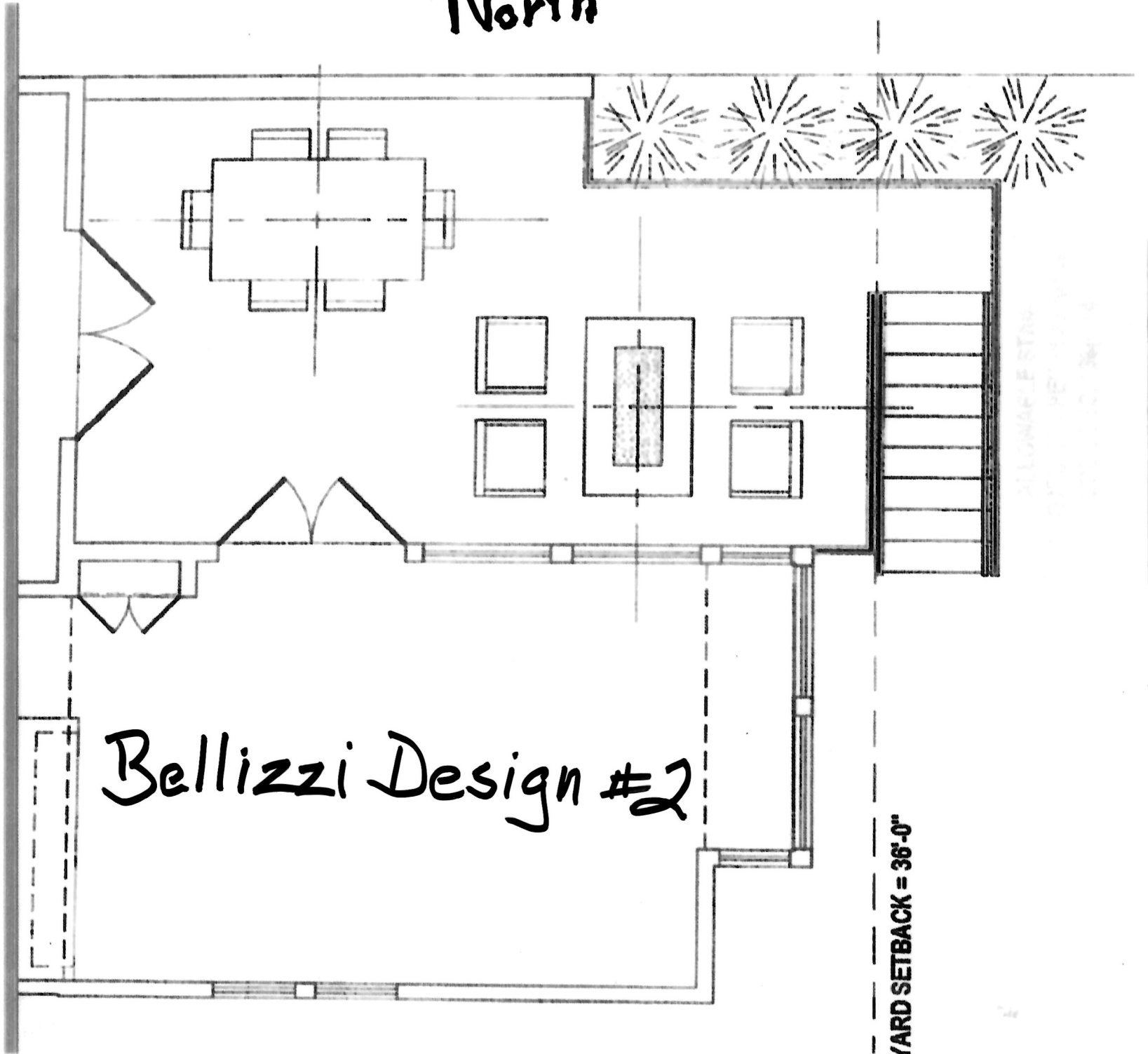
Hello Frank and Bruce: I am just checking in on the status of the case, as we publish our agenda this Friday. Do you intend to move forward with the hearing on 9/27/23?

Regards,

Julie

Julie Rosenberg
Executive Director
San Francisco Board of Appeals
49 South Van Ness Avenue, Suite 1475
San Francisco, CA 94103
Phone: 628-652-1151
Email: julie.rosenberg@sfgov.org

North



Bellizzi Design #2

YARD SETBACK = 36'-0"

E

W

N

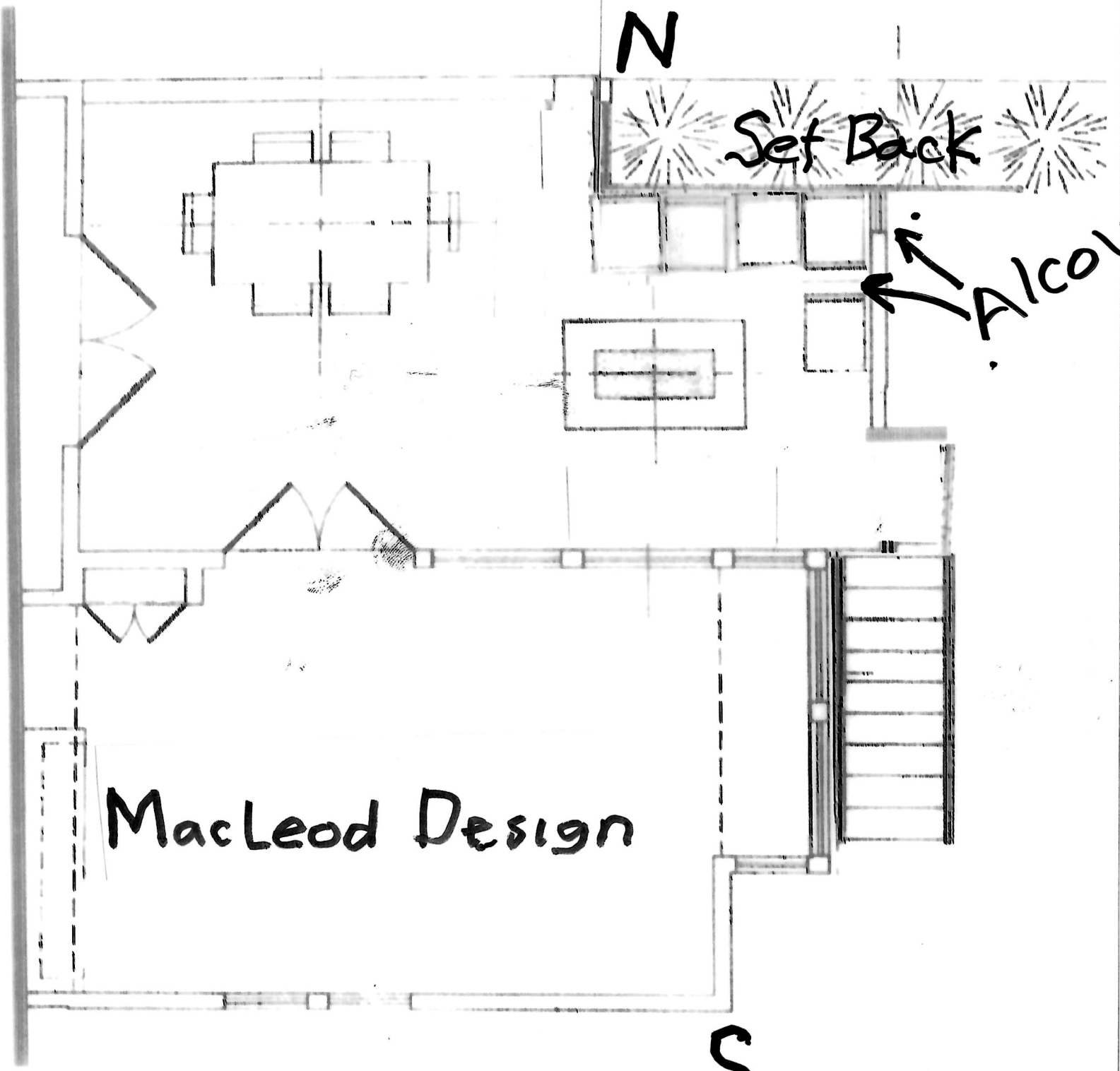
Set Back

Alcove

E

MacLeod Design

S



Email submitted by the appellants on 9/21/23 for the hearing on September 27, 2023

From: [Bruce MacLeod](#)
To: [Rosenberg, Julie \(BOA\)](#); fbellizzi@indaloventures.com
Cc: [Teague, Corey \(CPC\)](#); [Tam, Tina \(CPC\)](#); [Perry, Andrew \(CPC\)](#); [Longaway, Alec \(BOA\)](#); [Greene, Matthew \(DBI\)](#)
Subject: RE: Status of Appeal No. 23-030 @ 144 25th Avenue (hearing date 9-27-23)
Date: Thursday, September 21, 2023 4:29:05 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

APPELLANT BRUCE AND DEBORAH MACLEOD'S ONE PAGE STATUS REPORT file

We have worked diligently towards finding a basis for settlement of this appeal. It quickly became apparent that it could not be settled by horse trading since the Permit Holders placed little or no value on our privacy concerns. Instead, we looked for ways to show the Permit Holders that a different design for their deck access was in their best interest quite apart from our privacy concerns. We saw that running the stairs along the permit holders' cantilevered wall, which was perpendicular to the permit holders' original design, was a far superior solution. We presented that designed to Cory Teague, who informed us that a variance was not required, contrary to what we had thought. We presented the design to the permit holders who ultimately agreed to follow a perpendicular course, but moved our plan north and east so as to capture an additional 3 feet beyond the rear yard setback line. In doing so, however, the new location deposited persons climbing the stairs to almost exactly same site line as we found so invasive. We have not given up hope, however, and are today serving the permit holders with a comprehensive settlement offer and brief.

From: Rosenberg, Julie (BOA) <julie.rosenberg@sfgov.org>
Sent: Tuesday, September 19, 2023 3:37 PM
To: fbellizzi@indaloventures.com; brucermacleod@outlook.com
Cc: Teague, Corey (CPC) <corey.teague@sfgov.org>; Tam, Tina (CPC) <tina.tam@sfgov.org>; Perry, Andrew (CPC) <andrew.perry@sfgov.org>; Longaway, Alec (BOA) <alec.longaway@sfgov.org>; Greene, Matthew (DBI) <matthew.greene@sfgov.org>
Subject: Status of Appeal No. 23-030 @ 144 25th Avenue (hearing date 9-27-23)

Hello Frank and Bruce: I am just checking in on the status of the case, as we publish our agenda this Friday. Do you intend to move forward with the hearing on 9/27/23?

Regards,

Julie

Julie Rosenberg

Executive Director

San Francisco Board of Appeals

49 South Van Ness Avenue, Suite 1475

San Francisco, CA 94103

BRIEF SUBMITTED BY THE PERMIT HOLDER(S)

PERMIT HOLDERS' RESPONSE TO APPELLANTS REHEARING REQUEST FOR APPEAL No. 23-030

The MacLeods' rehearing request brief unequivocally fails to meet the required burden so as to warrant a new hearing.

First, and foremost, the MacLeods do not show any different material facts or circumstances have arisen, where such facts or circumstances, if known at the time, could have affected the outcome of the original hearing. The reason they don't is because they can't – there are no new material facts to present. They were also afforded full due process and given more than ample opportunity to be heard before a fair and impartial body. They had two full hearings (lasting almost 3 hours) to present their case and over three months to achieve a compromised solution, yet they remain unwilling to accept the thoughtful and unanimous verdict from this Commission. Instead, they seek to contort the facts and blame others, rather than take responsibility for their own failures. Throughout this process, the one consistent theme the MacLeods evince is a belief that the rules (both pertaining to this Commission's process and to the underlying planning and building codes) don't somehow apply to them.

The MacLeods start their brief inexplicably continuing to incorrectly claim misfeasance by Julie Rosenberg, the Executive Director, for not accepting their original July brief as it was not timely filed. The MacLeods blame everyone else but still fail to recognize that the cause of the filing error, all along, was solely theirs. Despite being a practicing lawyer for 50 years, Mr. MacLeod failed to follow the written instructions provided (See Exhibit A) which required that the brief be emailed to 6 individuals, choosing to send it to only 1 address and then incorrectly adding a period to that email address which didn't belong. (See Exhibit B). Had they complied with the directions and sent the brief to the other 5 individuals, it would have been transmitted to the others. Compounding the problem, the MacLeods chose to submit their brief minutes before it was due, despite having had 17 days to complete it. They also didn't check their email in a timely fashion for a bounce back or call to confirm that their email was received (which we did in each instance). Nevertheless, their complaints are all besides the point as there can be no manifest injustice to them because WE included the MacLeods' brief as an exhibit to our brief, so that the Board had full access to their submission prior to the original hearing.

Next, the MacLeods take issue that their one paragraph email and exhibit of their “settlement proposal” (which exhibit was submitted after the deadline) was not provided to the Commission in advance of the September 27 hearing. The single paragraph email simply said:

APPELLANT BRUCE AND DEBORAH MACLEOD’S ONE PAGE STATUS REPORT file

We have worked diligently towards finding a basis for settlement of this appeal. It quickly became apparent that it could not be settled by horse trading since the Permit Holders placed little or no value on our privacy concerns. Instead, we looked for ways to show the Permit Holders that a different design for their deck access was in their best interest quite apart from our privacy concerns. We saw that running the stairs along the permit holders’ cantilevered wall, which was perpendicular to the permit holders’ original design, was a far superior solution. We presented that design to Cory Teague, who informed us that a variance was not required, contrary to what we had thought. We presented the design to the permit holders who ultimately agreed to follow a perpendicular course, but moved our plan north and east so as to capture an additional 3 feet beyond the rear yard setback line. In doing so, however, the new location deposited persons climbing the stairs to almost exactly same site line as we found so invasive. We have not given up hope, however, and are today serving the permit holders with a comprehensive settlement offer and brief.

There is nothing material in this email that is new, wasn’t covered in the hearing or which could somehow provide the basis for the MacLeods’ claim that they were deprived of due process or somehow suffered a manifest injustice by its lack of inclusion. They also complain that Julie should have bended the rules for them and allowed them to submit, after the deadline, the settlement proposal referred to in their email as an exhibit. They maintain that they were unaware that exhibits did not count towards the 1-page limit. As Commissioner Lemberg pointed out, Mr. MacLeod was a lawyer, and it is common knowledge that, “exhibits are always not considered toward the page count of submissions.” (See Exhibit C). When the MacLeods went to draft their statement, if they had any doubt – or any interest – in including attachments, they could have simply emailed

or called Julie or Alec Longaway to clarify their understanding.¹ More importantly, Julie explained to the MacLeods that they were free to make their arguments to the Commissioners at the hearing (which they did) (See Exhibit D). The MacLeods were also free to include anything that they thought was important in their oral testimony or put up any slides or exhibits at the hearing itself. It is particularly telling that the MacLeods don't even attach that settlement proposal to their brief here because a review of the proposal makes it patently clear that had the Commission had that information before the hearing, it would not have impacted the Commission's decision in the least and its exclusion cannot begin to rise to the high standard which is required to warrant a new hearing.

Finally, the MacLeods claim that they are entitled to a new hearing because Andrew Wheeler, the Planning Department's substitute representative, "lied," in response to a question posed by Commissioner Trasviña, when he said he was not aware that the MacLeods had met with the Planning Department. They then blame the Executive Director and the permit holders for not correcting the record, alleging preposterously "how deeply the well was poisoned" and claiming that this omission somehow "turned the board against us." To state the obvious, had this point been so critical, the MacLeods could have included it in their oral testimony or corrected the record for themselves when the point came up. Of course, it was not a material point and does not bear at all upon the issues that the Commission had to determine – whether we as the permit holders complied with the Building Code and whether the permitted plans adequately addressed any reasonable privacy interests of neighbors. The fact that the MacLeods attempt to distort Mr. Wheeler's statement into grounds for a new hearing speaks volumes as to the lack of merit in this appeal.

In the last two pages of their brief, the MacLeods try to re-plead their case rather than only bringing forward new or different material facts or circumstances, violating yet again the rules and guidelines, this time for a reappeal request brief.

¹ Given the aspersions cast by the MacLeods it is important to state here that since Day 1, the Appeals Department and Planning and Building Departments' personnel made it clear that they were available to meet, speak and email as helpful – and to our knowledge did so in every instance where we or the MacLeods reached out.

One accusation that does not bear upon the issue of a re-hearing but which we feel we must nonetheless respond to is Mr. MacLeod's false statement concluding his brief that Frank threatened to cut down his tree. During our last settlement meeting before the hearing, what Frank told Bruce was, "Bruce, you understand that regardless of which plan ultimately gets approved, you're going to have to trim your tree back." After a long pause, Bruce replied, "Why in the world would we do that". Frank said, "Look behind you, the tree is hanging 4 feet over our property line and would need to be trimmed whether to accommodate a 10' fence or landscaping on our property".

Throughout this Appeal process, the MacLeods have been afforded more than ample opportunity to make their case before a fair and impartial body. Rather than accepting that their appeal was fairly heard and denied, they continue to take the view that the rules and due process available to residents of San Francisco don't apply to them, that they have the right to design their neighbor's deck and to insist on changes for which they are simply not entitled.

If there is any injustice manifest here, it is the MacLeods' failure to recognize that the substance of their brief doesn't come close to meeting the required burden of proof and to continue to impose on this Commission's time and further delay our properly permitted plans. Having the right to request a rehearing doesn't mean doing so is the right thing to do – for this Board, for City and taxpayer resources, for their neighbors – and even for themselves.

The MacLeods have not fulfilled their burden, either during the appeal, or in this motion for a rehearing. We respectfully ask that their request be denied, so that this matter can be closed, and we can finally move forward with our permitted project.

EXHIBIT A: Page 2 of Board of Appeals Briefing Instructions

Please Note: Red boxes added to focus attention on pertinent area of document



Date Filed: June 26, 2023

CITY & COUNTY OF SAN FRANCISCO BOARD OF APPEALS

PRELIMINARY STATEMENT FOR APPEAL NO. 23-030

I / We, **Bruce MacLeod and Deborah MacLeod**, hereby appeal the following departmental action: **ISSUANCE** of **Alteration Permit No. 2023/02/02/1229** by the **Department of Building Inspection** which was issued or became effective on: **June 9, 2023**, to: **Frank Bellizi Jr**, for the property located at: **144 25th Avenue**.

BRIEFING SCHEDULE:

Appellant's Brief is due on or before: 4:30 p.m. on **July 13, 2023**, (no later than three Thursdays prior to the **hearing date**). The brief may be up to 12 pages in length with unlimited exhibits. It shall be double-spaced with a minimum 12-point font. An electronic copy shall be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org, corey.teague@sfgov.org, tina.tam@sfgov.org, matthew.greene@sfgov.org and bellizzi@indaloventures.com

Respondent's and Other Parties' Briefs are due on or before: 4:30 p.m. on **July 27, 2023**, (no later than one **Thursday prior to hearing date**). The brief may be up to 12 pages in length with unlimited exhibits. It shall be doubled-spaced with a minimum 12-point font. An electronic copy shall be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org, corey.teague@sfgov.org, tina.tam@sfgov.org, matthew.greene@sfgov.org and brucermacleod@outlook.com

Hard copies of the briefs do NOT need to be submitted to the Board Office or to the other parties.

Hearing Date: **Wednesday, August 2, 2023, 5:00 p.m., Room 416 San Francisco City Hall, 1 Dr. Carlton B. Goodlett Place**. The parties may also attend remotely via Zoom. Information for access to the hearing will be provided before the hearing date.

All parties to this appeal must adhere to the briefing schedule above, however if the hearing date is changed, the briefing schedule MAY also be changed. Written notice will be provided of any changes to the briefing schedule.

In order to have their documents sent to the Board members prior to hearing, **members of the public** should email all documents of support/opposition no later than one Thursday prior to hearing date by 4:30 p.m. to boardofappeals@sfgov.org. Please note that names and contact information included in submittals from members of the public will become part of the public record. Submittals from members of the public may be made anonymously.

Please note that in addition to the parties' briefs, any materials that the Board receives relevant to this appeal, including letters of support/opposition from members of the public, are distributed to Board members prior to hearing. All such materials are available for inspection on the Board's website at www.sfgov.org/boa. You may also request a hard copy of the hearing materials that are provided to Board members at a cost of 10 cents per page, per S.F. Admin. Code Ch. 67.28.

The reasons for this appeal are as follows:

Not Submitted

Appellant or Agent:

Signature: Via Email

Print Name: Bruce MacLeod, appellant

EXHIBIT B: MacLeod Failure To Properly File Their Brief (taken from MacLeods Current Reappeal Briefing Exhibit Page 6)

Delivery has failed to these recipients or groups:

boardofappeals@sfgov.org.

The format of the email address isn't correct. A correct address looks like this:

someone@example.com. Please check the recipient's email address and try to resend the message.

Diagnostic information for administrators:

Generating server: BY5PR10MB4354.namprd10.prod.outlook.com

boardofappeals@sfgov.org.

Remote server returned '550 5.1.3 STOREDRV.Submit; invalid recipient address'

Original message headers:

Received: from BY5PR10MB4354.namprd10.prod.outlook.com
([fe80::c458:7cab:b7db:5b6e]) by BY5PR10MB4354.namprd10.prod.outlook.com
([fe80::c458:7cab:b7db:5b6e%4]) with mapi id 15.20.6588.024; Thu, 13 Jul
2023
23:21:59 +0000
Content-Type: application/ms-tnef; name="winmail.dat"
Content-Transfer-Encoding: binary
From: Bruce MacLeod <brucermacleod@outlook.com>
To: "boardofappeals@sfgov.org." <boardofappeals@sfgov.org.> CC:
Bruce MacLeod <brucermacleod@outlook.com>
Subject: MacLeod Appeal of 144 25th Avenue Permit
Thread-Topic: MacLeod Appeal of 144 25th Avenue Permit
Thread-Index: Adm14M1WKQnvt136RWqK4FMTicqYfQ==
Date: Thu, 13 Jul 2023 23:21:59 +0000
Message-ID:
<[BY5PR10MB43548C3BFF0D88072E6EFADDA037A@BY5PR10MB4354.namprd10.prod.outlook.c
om](mailto:BY5PR10MB43548C3BFF0D88072E6EFADDA037A@BY5PR10MB4354.namprd10.prod.outlook.com)>
Accept-Language: en-US
Content-Language: en-US
X-MS-Has-Attach: yes
X-MS-TNEF-Correlator:
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om](mailto:BY5PR10MB43548C3BFF0D88072E6EFADDA037A@BY5PR10MB4354.namprd10.prod.outlook.com)>
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X-MS-PublicTrafficType: Email
X-MS-TrafficTypeDiagnostic: BY5PR10MB4354:EE_

EXHIBIT C: Excerpt From Written Transcript of September 27, 2023 Hearing

Source: SF Board of Appeals Web Site

https://sanfrancisco.granicus.com/TranscriptViewer.php?view_id=6&clip_id=44542

commissioner lundberg. I don't disagree with anything you said. Presidents wig. I just want to add, I believe I recall from the last hearing, MR. Mcleod, that you are an attorney by trade and these. And I I'm an active litigator. I've exhibits are always not considered toward the page count of submissions and ad filing deadlines are always pretty strict in my experience as well. So don't think I, I in my experience we've done, we've applied these rules very consistently with the one exception that presidents twig just mentioned. But I, I, you know, we've dealt with this issue several times before and always come out the same way.

So commissioner trasvina, thank you. Thank you. PRESIDENT. I just want to concur in your observations about what about this matter and we gave the parties the opportunity to try to work things out over the period of time. I didn't I didn't sense that we were going to be mediating a decision or a compromise between the two. We were going to give them the opportunity to do so. And I believe that if we hear this matter tonight, both both sides and neighbors and the department will have a full opportunity to express their views and allow us to make an informed and correct decision. So I agree that we should proceed.

EXHIBIT D: MacLeod Notification by Executive Director

From: Rosenberg, Julie (BOA) <julie.rosenberg@sfgov.org>
Sent: Friday, September 22, 2023 7:17 AM
To: Bruce MacLeod <brucermacleod@outlook.com>; Frank Bellizzi <fbellizzi@indaloventures.com>
Cc: Teague, Corey (CPC) <corey.teague@sfgov.org>; Tam, Tina (CPC) <tina.tam@sfgov.org>; Perry, Andrew (CPC) <andrew.perry@sfgov.org>; Longaway, Alec (BOA) <alec.longaway@sfgov.org>; Greene, Matthew (DBI) <matthew.greene@sfgov.org>
Subject: RE: Status of Appeal No. 23-030 @ 144 25th Avenue (hearing date 9-27-23)

Mr. MacLeod: Mr. Bellizzi submitted a one page statement and exhibits were permitted. Unfortunately, I am going to have to reject your submission since it exceeds one page and was received after 5:00 p.m. You can make your arguments to the commissioners at the hearing.

Respectfully,

Julie Rosenberg
Executive Director
San Francisco Board of Appeals
49 South Van Ness Avenue, Suite 1475
San Francisco, CA 94103
Phone: 628-652-1151
Email: julie.rosenberg@sfgov.org

From: Bruce MacLeod <brucermacleod@outlook.com>
Sent: Thursday, September 21, 2023 5:05 PM
To: Rosenberg, Julie (BOA) <julie.rosenberg@sfgov.org>; Frank Bellizzi <fbellizzi@indaloventures.com>
Cc: Teague, Corey (CPC) <corey.teague@sfgov.org>; Tam, Tina (CPC) <tina.tam@sfgov.org>; Perry, Andrew (CPC) <andrew.perry@sfgov.org>; Longaway, Alec (BOA) <alec.longaway@sfgov.org>; Greene, Matthew (DBI) <matthew.greene@sfgov.org>
Subject: RE: Status of Appeal No. 23-030 @ 144 25th Avenue (hearing date 9-27-23)

Julie – We were surprised to find that the permit holders submitted extensive documentation contrary to the “one page only” instruction we were given. Accordingly, attached you will find our comprehensive settlement proposal brief which, by this email, we are now serving on the permit holders. We will submit a few photos in a separate email.

Phone: 628-652-1151

Email: julie.rosenberg@sfgov.org

Documents received for the hearing on September 27, 2023

STATEMENT SUBMITTED BY THE PERMIT HOLDERS

Despite the appellants' mischaracterizations at the hearing, from the jump, we have been neighborly, communicative, and active to address their concerns. Contrary to their express statements to this Board, we and our contractor met with the MacLeod's and their contractor, showed them our plans and discussed the project prior to their filing an appeal. **See Ex. A** . Two weeks BEFORE the hearing, we also made a formal settlement proposal to raise the shared property line fence up to 10' at our expense. **See Ex. B**. This was unacceptable to the MacLeod's, who insisted on additional demands. **See Ex. C**.

Since the hearing, we have actively engaged to find a compromise, **See Ex D**, suggesting multiple ways to address their concerns with our Permitted Deck Design (*Option A*). **See Ex. E**, which adds a 10-foot privacy fence, finished in a variety of ways to maximize privacy and light, and moves the stairs two stairs to the west. Instead, the appellants' have repeatedly sought to redesign our deck, using their own contractor and asking for our budget saying, "Tell us what you want and we'll design it." **See Ex. F**. While their efforts to appropriate this deck project as their own have been off-putting to say the least, we have politely continued to engage and even adopted their suggestion of moving the stairs off the side-yard property line. In addition, we have added a 10' fence and 12' all season shrub-like trees. **See Ex. G**, Revised Deck (*Option B*). These 3 measures, in addition to the existing trees, add 4 layers of privacy enhancement. We remind the Board that the only window in question is highly reflective and sits directly over a two-story stairwell with functional living area set back over 10', so any privacy impact would be insignificant, even without these additional measures. Our revised plan has been reviewed by Planning and is consistent with the Planning Code and RDG. The MacLeods, unfortunately, remain unsatisfied.

We have spent considerable time and money consulting with experts, proposing both a series of changes to our original permitted plans as well as an alternative redesign that goes well beyond safeguarding any reasonable claims of privacy. We have followed all the relevant codes and agency processes and have engaged in significant good faith efforts with our neighbors, both before and after the hearing.

We respectfully submit that we as homeowners have rights too and we ask you to uphold them and deny the appellant's appeal and approve our revised deck proposal (*Option B*).

EXHIBIT A: CONTRACTOR LETTER DETAILING MEETING WITH MACLEODS' TO ADDRESS & SETTLE THEIR SISSUES



3418 Geary Blvd.
San Francisco, CA 94118
415.702.9360
www.mizenconstruction.com

September 18, 2023

Dear Board of Appeals,

My name is Mark Lucey and I'm a partner at Mizen Construction and have been a contractor for over 20 years. We are the general contractors for Frank & Ali Bellizzi's deck project. While I was unable to attend in person, I watched (with great interest) the August 2nd hearing live over the internet.

I was surprised to hear the MacLeod's say in their opening comments at the hearing that (1) they were never shown the plans until their brief was filed and (2) that the Bellizzi's were opposed to raising the height of the fence. (See attached transcript with relevant quotes highlighted). Based on my personal knowledge, both of these statements are untrue.

I was present at a meeting at the Bellizzi's on June 20 (6 days prior to the MacLeod's filing an appeal, and over a month prior before the Bellizzi's filed their brief) with the MacLeod's and the MacLeod's contractor. The whole purpose of the meeting, which lasted over an hour, was to share the plans and the details of the deck redesign and try to accommodate any concerns the MacLeod's might have. From the outset, we laid out an enlarged set of the full permitted plans on the Bellizzi's outdoor deck table, showed them to the MacLeod's and their contractor, their contractor took pictures of the plans, we went into the Bellizzi's backyard as well as the MacLeod's to view the fence and their other property line fence that they showed as an example. We discussed how the fence could be raised and the Bellizzi's said they would be open to raising the fence height. We left the meeting feeling like we had addressed their concerns.

Following the meeting and consultation with the Bellizzi's architect and us, and two weeks before the hearing, the Bellizzi's made an offer of settlement to increase the fence up to 10 feet at their own expense (a proposal which I would note was very similar to the suggestion made by President Swig at the hearing).

I wanted to be sure you had these important facts as you further consider how to move forward.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Lucey".

Mark Lucey
Mizen Construction

Please Note: Yellow Highlights In All Exhibits Added for Emphasis

Board of Appeals Official Written Transcript from 8/2/23, Page 1

appellates. Welcome, you have 7 minutes.>> thank you.

Thank you for hearing this problematic situation. If this isn't the poster child for the design review process for residential guidelines, I don't know what is. This should be overturned.

Are you going to -- it is not up there. >> we see it. >> you all see it. Okay. This is the invasion of privacy that they would like to submit us to by having this deck and stairs which ride a foot above our 6 foot fence on the property line and extended back 12 feet so that we would need to wear street clothes inside our house all the time. So they can use their deck.

We have proposed several options of putting opaque glass 6 foot on the side of their north side of their deck. They refused. **We suggested increasing the height of the fence so they could push fewer stairs back behind the wall, and they don't want to do that.** They have in the brief they mentioned all these meetings we had, we had 2 and a half meetings and a dinner and the dinner was lobster cakes flown from the east coast with french campaign and two days opened the permit from the city having been granted. It said it is first floor deck extension. It is not. We didn't know it had been applied for. They had talked about sharing plans with us. They talked -- the dinner was to show us the plans, never saw the plans. They talked about termite repair, replacing a deck, and adding upper deck, but saw no plans. **We did not see plans from them until their brief was filed.** We asked frank straight out at the end of this third meeting half way and he said he had them inside but he wouldn't go into get them, they were a matter of public record. The three meetings-2 and a half meetings we had with them, we were trying to convey to them the privacy issue. Go ahead and start putting up these things. This is what it would look like. We have a plate glass wall at the east end of our house. They would like you to think by reading their brief that it is only a stairwell that would be exposed and that the tree, which is huge and leafy would provide us all the privacy we would need. When we have them over to our house on the second meeting to try to convince them about intrusion of privacy,

Indiscernible: This is JULY, we are already losing leaves. The trees

EXHIBIT B: PERMITHOLDERS' OFFER OF SETTLEMENT 7/18 (TWO WEEKS PRIOR TO HEARING)

From: Frank Bellizzi

Sent: Tuesday, July 18, 2023 6:57 AM

To: Bruce MacLeod <brucermacleod@outlook.com>; Deborah <macleoddeb@msn.com>

Cc: allison.bellizzi@gmail.com

Subject: Deck Appeal

For Settlement Purposes Only

Dear Bruce and Deb,

We are writing to again express a sincere desire to settle this matter ahead of the upcoming hearing. We have consulted with a number of professionals with considerable expertise dealing with land use, permitting and the appeals process. They have all come to the unequivocal conclusion that you are not entitled to any of the relief that you seek.

As we are now going to be embarking on preparing our brief, which will cause us to incur additional expense and time that could be more positively directed at providing you with some of the accommodations you seek, if you agree to drop the appeal, we are prepared to offer the following:

1. Rebuild the shared fence at 100% our cost;
2. Rebuild it to a mutually agreed height of between 8 and 10 feet;
3. Utilize your carpenter (assuming his fee is market);
4. Access the rebuild from our property; and
5. Undertake it in conjunction with, or after, our project.

We will also agree to continue to allow your maple tree to overhang our property for as long as we are owners, so long as the overhang is maintained/trimmed to a level of our satisfaction.

Please do not misconstrue our offer as any indication as to the merit of your appeal. Rather it is purely based on economics and time – and on a genuine desire to move forward without further damaging a mutually-described and felt friendship that your appeal has the potential to further fray.

Please know that this offer is valid until midnight Wed. 7/19, after which we will direct our resources to the appeal, and after which time the above offer will no longer be available.

Sincerely,
Frank and Ali

EXHIBIT C: APPELLANTS' 5 DEMANDS FOR SETTLEMENT

From: Frank Bellizzi
Sent: Thursday, June 29, 2023 3:31 PM
To: brucermacleod@outlook.com; macLeoddeb@msn.com
Cc: Allison Bellizzi <allison.bellizzi@gmail.com>
Subject: Meeting Follow Up

Bruce & Deb,

Thanks for having us over to help us better understand the nature and extent of your concerns about our project. Pretty sure we got things down accurately but would like to be sure.

5 requests:

1. Replace property line fence and increase height variably from b/w 2 -4 feet;
2. Move the stairway towards the house (west) such that a 6-foot person's head wouldn't be visible when walking up (based on 42" minimum firewall height);
3. Replace current clear glass 42" rail spec with 72" opaque/frosted glass rail on North and East sides of deck;
4. Increase firewall spec from 1 hour to 4 hour; and
5. Sign a deed allowing in perpetuity for your maple tree to continue to overhang our property, as long you have a licensed arborist trim it 1x/year.

Please confirm above – or modify/provide additional detail – as you believe helpful.

Thanks,
Frank & Ali

From: Bruce MacLeod <brucermacleod@outlook.com>
Sent: Saturday, July 1, 2023 1:50 AM
To: Frank Bellizzi <fbellizzi@indaloventures.com>
Cc: Allison Bellizzi <allison.bellizzi@gmail.com>; Deborah <MacLeodDeb@msn.com>
Subject: Meeting Follow Up

Frank – I sincerely apologize for not getting back to you sooner on your email of Thursday. This week my daughters' 16-year-old car suffered a catastrophic failure of the transmission. She needs a car for commuting to her internship in Concord, and after getting the repair estimate, we realized that we needed to get her a replacement vehicle instead of fixing the old one. Finding the right used car and concluding the purchase took most of our time through Thursday, and Deb and I each had dental appointments in Palo Alto on Friday, as well as handling a couple of minor emergencies by our East Coast daughters. Hence my delay in responding to your email. Again, my apologies.

I think you did a good job of enumerating our requests. One slight mistake was that we only require a 72" opaque/frosted glass rail on North side of your deck, not the East side. Thus, we do not object to you having a lower railing and/or clear glass railing on the East side of your deck.

Below I have interlineated into the text of your email a few additional comments.

1. Replace property line fence and increase height variably from b/w 2 -4 feet;
As we have discussed, Items 1 and 2 are interrelated. The taller we make the fence, the less distance you will need to move your proposed stairway west towards the house, and the more space you will have on your deck. We are also interested in having a more robust fence that is as tall as reasonably possible without damaging our overhanging maple tree. We therefore think it fair that we split the cost of the new fence with you subject to two requests.

First, **we need the fence to be built by our long-time (48 years) master builder, carpenter, and woodworker** – Bill Larson. Bill is extremely efficient and does top-quality work. Bill came to our property on Friday to measure the amount of lumber required so that he can give us a bid on the work. He is prepared to commence work on July 5.

Second, although the new fence will continue to be built on the MacLeod side of the property line, **we need to stage and perform most of the fence construction from your side of the fence**. We have trees and other foliage growing up to and on the existing fence on our side. That foliage would likely be damaged if the new fence construction were done from our side of the fence. Your side of the fence, by contrast, has very little foliage in the vicinity of the existing fence except at the North East corner of your lot. Moreover, as we discovered when we did our 2010 remodel, your backyard will likely soon be transformed into something that looks more like a lumber yard than a garden. Since your yard is going to be disrupted by all of your upcoming construction anyway, now is the perfect time for building a robust and taller fence that will never need to be replaced and which will reduce the distance by which your proposed stairs must be moved to the West.

2. Move the stairway towards the house (west) such that a 6-foot person's head wouldn't be visible when walking up (based on 42" minimum firewall height);

I don't understand the size, shape and placement of the proposed firewall and how it relates to the distance by which your proposed stairway must be moved towards the house. I know your builder described the firewall to me in the meeting when your project was first presented, but a lot of information was coming pretty fast, and I still don't understand the shape and placement of the firewall. Therefore, another meeting with your builder and/or architect is necessary for me to sign off on your description of item number 2. Preliminarily, I believe that the distance you need to move your proposed stairway to the West towards your house is controlled solely by the height of the fence.

3. Replace current clear glass 42" rail spec with 72" opaque/frosted glass rail on North and East sides of deck;

As stated above, we do not object to you having a lower railing and/or clear glass railing on the East side of your deck.

4. Increase firewall spec from 1 hour to 4 hour; and

We were somewhat convinced by your architect that a 1 hour firewall would be sufficient, but since we don't really understand the size and placement of the firewall, we will reserve judgment until we meet again with your builder and/or architect.

5. Sign a deed allowing in perpetuity for your maple tree to continue to overhang our property, as long you have a licensed arborist trim it 1x/year.

I agree with your statement of item number 5.

Thanks very much Frank. Hopefully we can get this resolved soon. We know you must be anxious to get construction started. – Bruce and Deb

EXHIBIT D: PERMIT HOLDERS' LIST OF SETTLEMENT OUTREACH & COMMUNICATIONS

June 2023: Multiple in person meetings with MacLeods + meeting with our other next-door neighbors, Tara and Peter Harris (see their note to Board of Appeals, submitted September 6)

8/7: Emailed MacLeod's to propose scheduling first of several meetings

8/9: Met with Michael Kardos & Lexi Bisbee at their home (see their note to Board of Appeals, submitted August 14)

8/11: Emailed MacLeod's to schedule a meeting

8/22: Emailed MacLeod's to schedule a meeting

8/27: Emailed MacLeod's to schedule a meeting

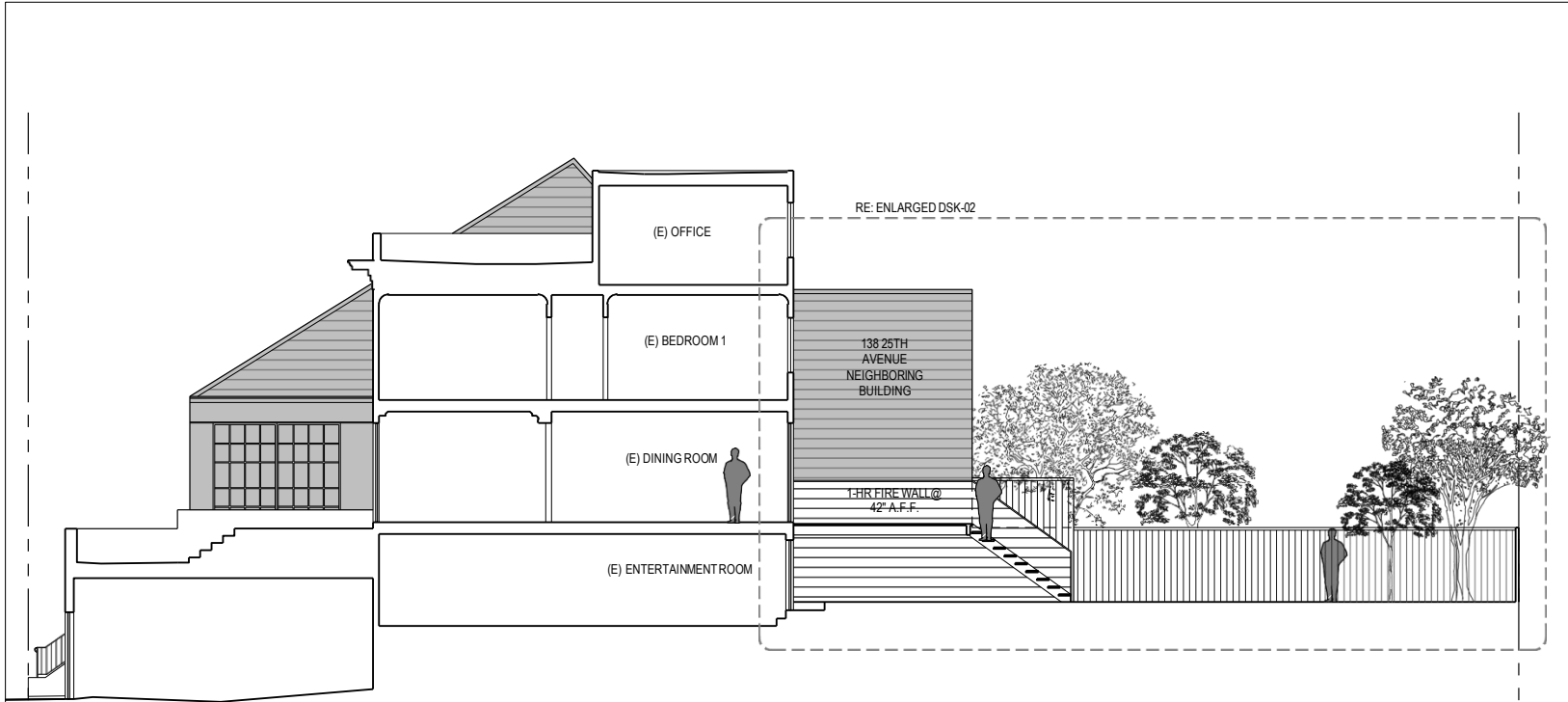
8/31: MacLeod's finally confirmed our first meeting

9/2: 1 hour Zoom Meeting – MacLeod's made their alternative design proposal, we made our proposal of changes to permitted plans (Option A)

9/12: 45-minute 2nd meeting on our deck, we made our new revised design (Option B) proposal

EXHIBIT E PROPOSED MODIFICATIONS TO ORIGINAL PERMITTED PLAN (OPTION A)

ADDITION OF 10' FENCE ADDRESSES PRIVACY CONCERNS

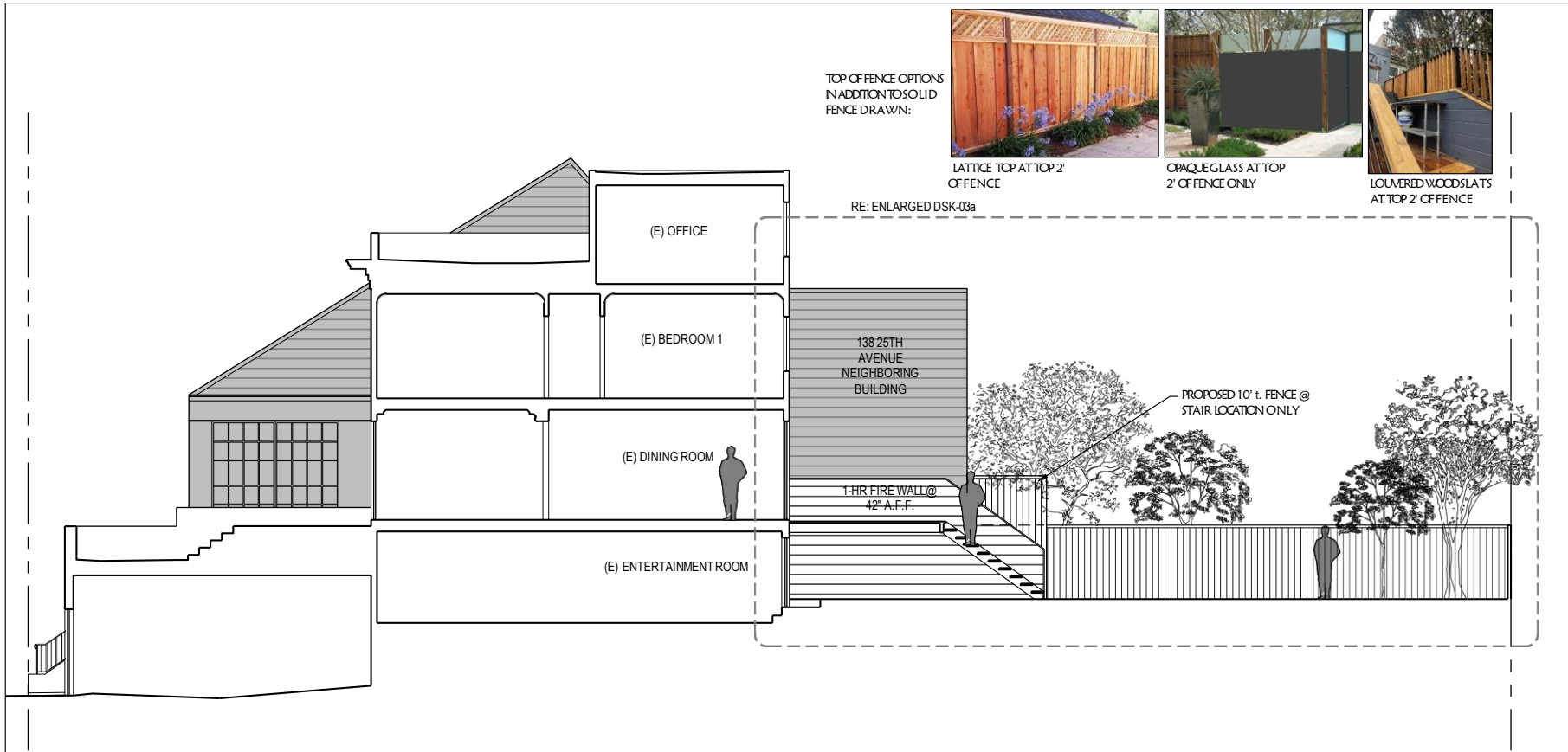


2 SECTION VIEW LOOKING NORTH AT PROPOSED DECK STAIR (PROPOSED 10ft. WOOD FENCE @ STAIR LOCATION ONLY)

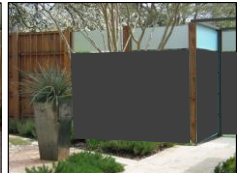
1/8" = 1'-0"

RENATO JOSE architect 604 Oak Street San Francisco CA 94117 415.265.7765 www.rskd.com	Date	Subject		Sheet Number DSK-02
	09 13 23	NORTH SIDE YARD FENCE		
	Scale	Project Name and Number		
	1/8"=1'-0"	2208_144 25TH AVENUE		
By	Drawing Reference	File Name		
RJ	-	2208_FENCE STUDY SHEETS		

10' FENCE WITH VARIETY OF FINISHES + STEPS MOVED 2 STEPS TO WEST



LATTICE TOP AT TOP 2' OF FENCE



OPAQUE GLASS AT TOP 2' OF FENCE ONLY



LOUVERED WOOD SLATS AT TOP 2' OF FENCE

TOP OF FENCE OPTIONS IN ADDITION TO SOLID FENCE DRAWN:

RE: ENLARGED DSK-03a

PROPOSED 10' t. FENCE @ STAIR LOCATION ONLY

1-HR FIRE WALL @ 42\"/>

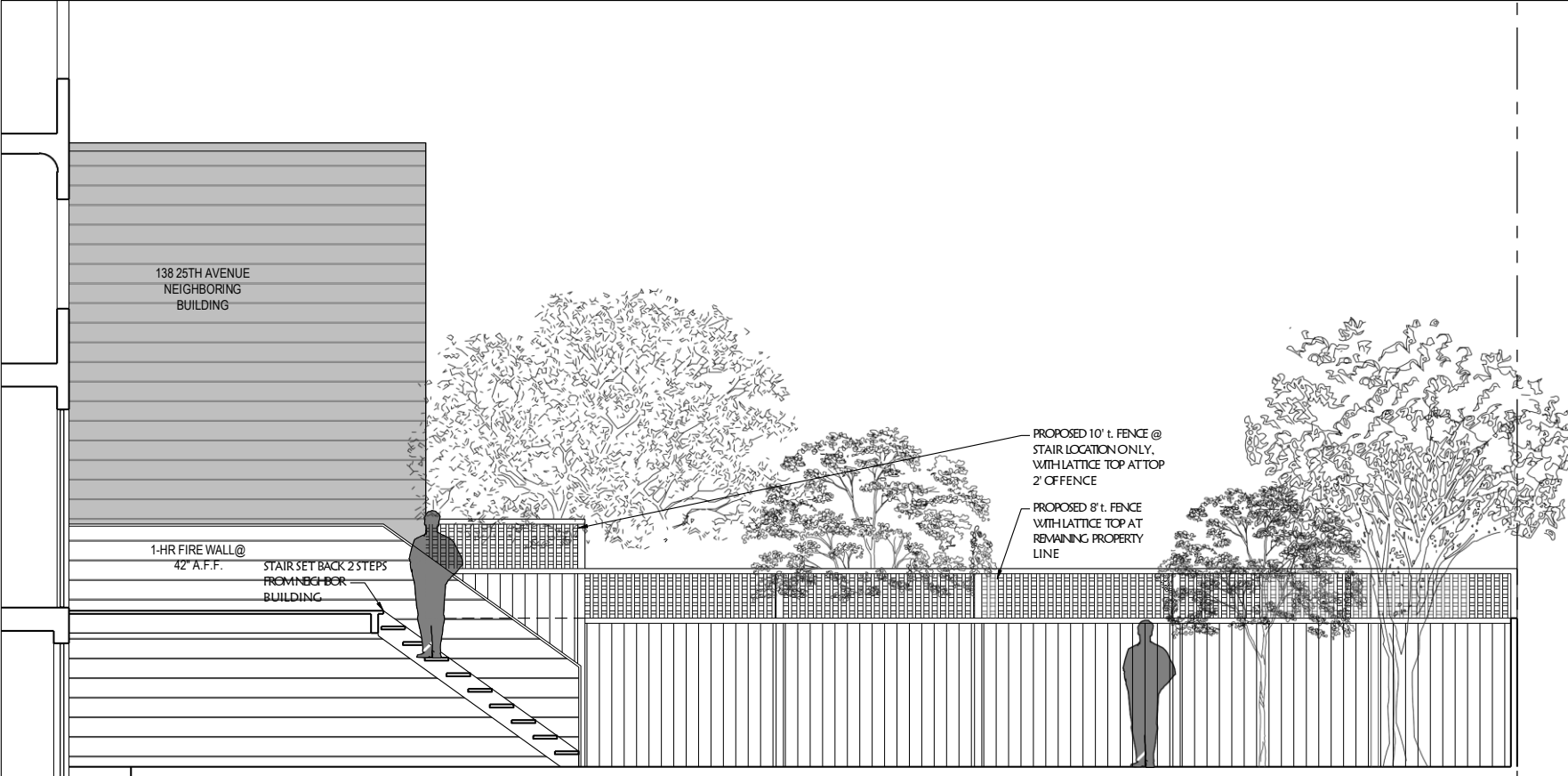
3a

SECTION VIEW LOOKING NORTH AT PROPOSED DECK STAIR (PROPOSED 10' t. WOOD FENCE @ STAIR LOCATION ONLY)

1/8" = 1'-0"

RENATO JOSE architect 604 Oak Street San Francisco CA 94117 415 255 7781 www.rjarch.com	Date	09 13 23	Subject	NORTH SIDE YARD FENCE	Sketch Number DSK-03a		
	Scale	1/8" = 1'-0"	Project Name and Number	2208_144 25TH AVENUE			
	By	RJ	Drawing Reference	-		File Name	2208_FENCE STUDY SHEETS

10' FENCE HARMONIZED TO 8' ACROSS REST OF PROPERTY LINE



5

SECTION VIEW LOOKING NORTH AT PROPOSED DECK STAIR (PROPOSED 10't. WOOD FENCE W/LATTICE TOP @ STAIR / 8't. FENCE AT REMAINING P.L.)
ENLARGED SCALE

1/4" = 1'-0"

RENATO JOSE architect 604 Oak Street San Francisco CA 94117 415 253 7788 www.rjarch.com	Date	Subject	
	09 13 23	NORTH SIDE YARD FENCE	
	Scale	Project Name and Number	
1/4"=1'-0"	2208_144 25TH AVENUE		
By	Drawing Reference	File Name	
RJ	-	2208_FENCE STUDY SHEETS	

Sketch Number
**ENLARGED
DSK-05**

EXHIBIT F SELECT SETTLEMENT COMMUNICATIONS WITH MACLEOD'S

From: Bruce MacLeod <brucermacleod@outlook.com>
Sent: Tuesday, August 29, 2023 8:04 AM
To: Frank Bellizzi <fbellizzi@indaloventures.com>
Subject: Deck Design

Frank - I would like to get my long-time construction contractors of 40+ years involved in looking for a design solution to our dispute. Can I have your permission to take them onto your property to inspect the current deck and take some measurements?

Also, can you loan us a copy of the plan set? Besides the design plans, is there a set of structural plans for the new deck that you can share with us?

Finally, do you have a bid amount from your contractor that you can share with us? I would like to have my contractors look at your deck plans with a fresh eye from design, structural, and cost-effectiveness viewpoints. The goal is for them to come up with a cost-effective design that not only solves our privacy concerns but also improves the overall project. – Bruce.

From: Frank Bellizzi
Sent: Friday, September 1, 2023 6:06 PM
To: Bruce MacLeod <brucermacleod@outlook.com>
Cc: Deborah <macleoddeb@msn.com>; Allison Bellizzi <allison.bellizzi@gmail.com>
Subject: RE: Meeting With Corey Teague and Design Alternative

Bruce & Deb,

While we don't understand why there would be any hesitation on your part to share with us the principal elements of your redesign proposal, especially given the enthusiasm for it you relayed to Ali yesterday, I guess we'll just have to wait until our meeting tomorrow to learn more about it.

Regarding your request that we share our objectives for the lower deck, there are naturally many factors that informed our design choices but in essence, our intended use is the same as that of anyone that has a deck off their kitchen and dining room in San Francisco. That is, to utilize indoor-outdoor living to our benefit as homeowners for dining and sitting and to create open and relaxed sight lines to our backyard. Also rather commonplace is our desire for our deck to integrate into the rest of our backyard, enabling typical uses and aesthetically pleasing landscaping and gardening, similar to but likely not at the level of your more advanced horticultural interest.

The purpose of sharing the above is to promote understanding and dialogue. But our sharing that information with you should not be construed as tacit approval for you to appropriate our deck project as your own – per your email from earlier this week and again yesterday: “Tell us what they [your objectives] are and we will attempt to satisfy them in any proposed design”. Your further request for our budget and for you and your contractor to come onto our property to design an alternative which suits your needs is incredibly intrusive and inappropriate. We have not presumed to send design experts into your home to design window coverings or other mitigants that other neighbors might reasonably employ because we understand that those decisions are personal to your use and enjoyment. Nor have we requested that you provide details of your objectives for your intended use of your home, because, as private homeowners of your property, how you use your home is not for public discourse. The same, respectfully, applies to us.

Please understand that Allison and I, along with our experienced contractor and architect, have engaged in a careful review and evaluation of numerous design alternatives, considering neighbor privacy, both before we obtained our approved permits and ever since you raised your concerns.

As the Board of Appeals decided to continue our hearing, we believe their intent was for us to come up with a solution, based on mutual compromise, to address the subject of privacy. We don't believe at any time during the hearing the Board expressed that we take this on as a joint project with the neighbors or neighborhood. Just as we don't have any right to design or build anything on your property, or any other property for that matter, please note that those same rights should extend to us as homeowners of our property.

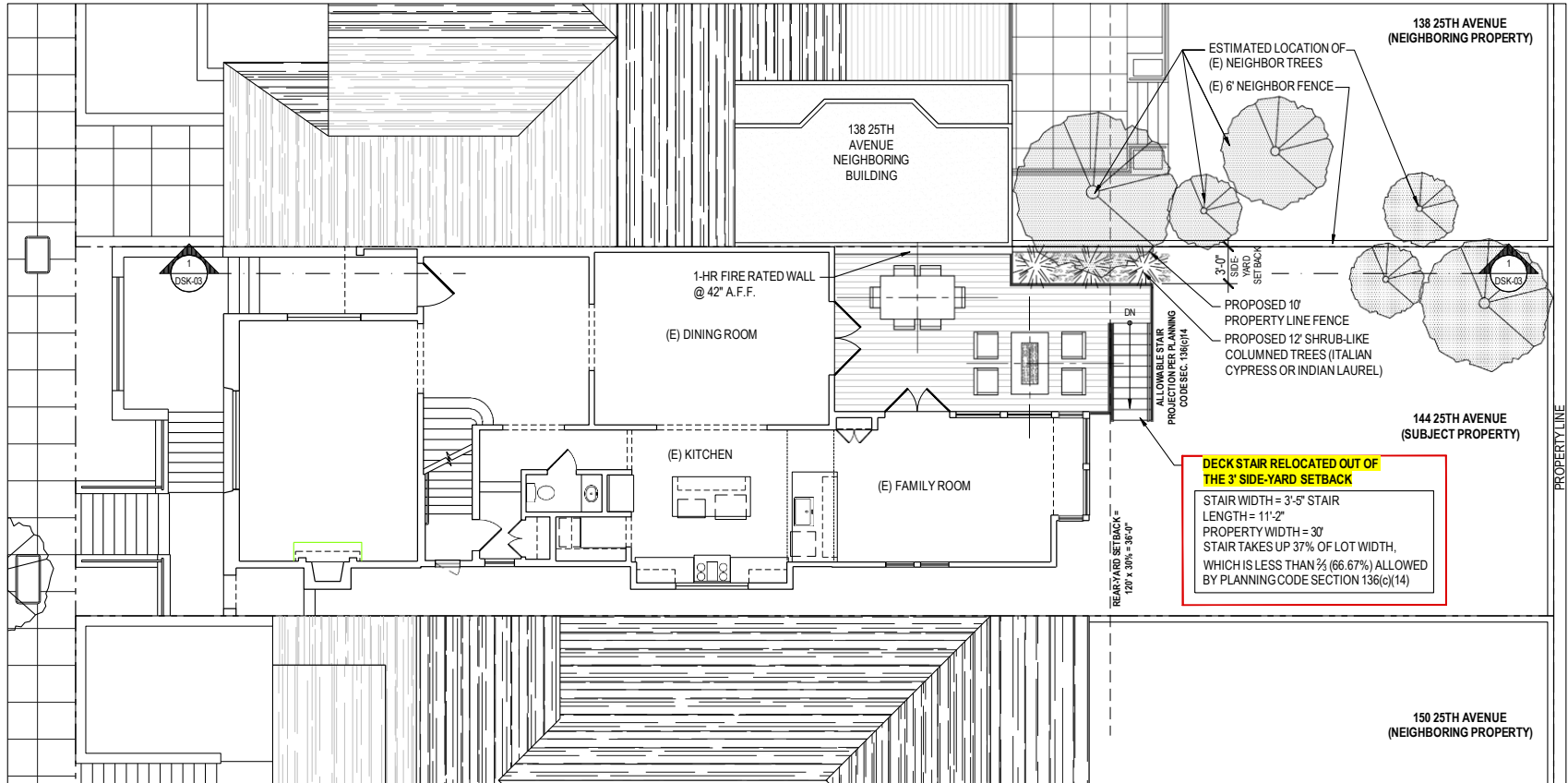
The traditional way that neighbors' concerns about privacy are accommodated, in both principle and in practice, is through property line privacy enhancements. Our prior proposal of raising the height of the fence up to 10 feet, is precisely such an accommodation and ironically, was also suggested by President Swig at the hearing. We have worked closely with our architect and contractor, at considerable expense, to come up with a number of alternative property line privacy enhancements that would be aesthetically pleasing, incur no harm to your maple tree and mitigate any reasonable privacy concerns given the neighborhood in which you and we choose to live.

We look forward to discussing both your new design alternative as well as our property line privacy enhancement options live tomorrow at 2:30pm PT. Unfortunately, I am not back in SF, as I have had to remain back east to deal with a family issue pertaining to my 88-year-old father. Thus, as we will not be able to all meet in person, I will circulate a Zoom invite for the call.

Thanks,
Frank

EXHIBIT G NEW DECK "OPTION B" DRAWINGS

NEW DESIGN DIRECTLY ELIMINATES PRIVACY ISSUE ON PROPERTY LINE AS PROPERTY LINE STAIRS HAVE BEEN MOVED. ADDITIONAL PRIVACY AND SIGHTLINE PROTECTION FROM 10' FENCE AND 12' YEAR-ROUND DENSE TREES/SHRUBS

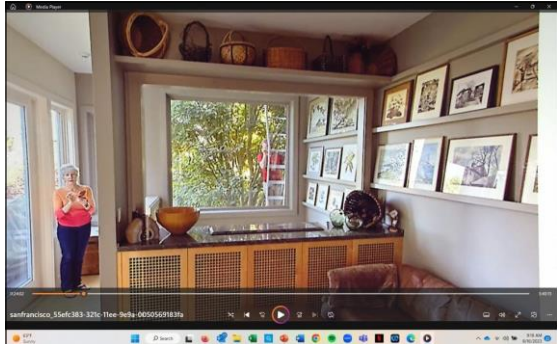


DECK STAIR RELOCATED OUT OF THE 3' SIDE-YARD SETBACK
 STAIR WIDTH = 3'-5" STAIR
 LENGTH = 11'-2"
 PROPERTY WIDTH = 30'
 STAIR TAKES UP 37% OF LOT WIDTH,
 WHICH IS LESS THAN 2/3 (66.67%) ALLOWED
 BY PLANNING CODE SECTION 136(c)(14)

1 FIRST FLOOR PLAN W/NEIGHBOR CONTEXT AT REVISED DECK (OPTION B) - STAIR RELOCATED OUT OF THE SIDE-YARD SETBACK 1/8" = 1'-0"

RENATO JOSE architect 604 Oak Street San Francisco CA 94117 415.255.7781 www.rjose.com	Date	Subject		Sketch Number BRIEF EXHIBIT 'G' DSK-01
	09.27.23	NORTH SIDE YARD FENCE		
	Scale	Project Name and Number		
	1/8"=1'-0"	2208_144 25TH AVENUE		
By	Drawing Reference	File Name		
RJ	-	2208_OPTION B SHEETS		

**COMPLETE PRIVACY AT PROPERTY LINE, NO PRACTICAL SIGHTLINE ISSUES
AS DEPICTED FROM MULTIPLE VIEWS A – D**



**VIEW 'A' - VIEW FROM 138 25TH AVE. FAMILY ROOM
(SINGLE WINDOW BUILT DOES NOT MATCH PLANS AT DBI RECORDS
FOR PA#200807086192)**



**VIEW 'B' - VIEW FROM 138 25TH AVE.
STAIR LANDING**



**VIEW 'C' - VIEW FROM 144 25TH
AVE. TOWARDS 138 25TH AVE.**



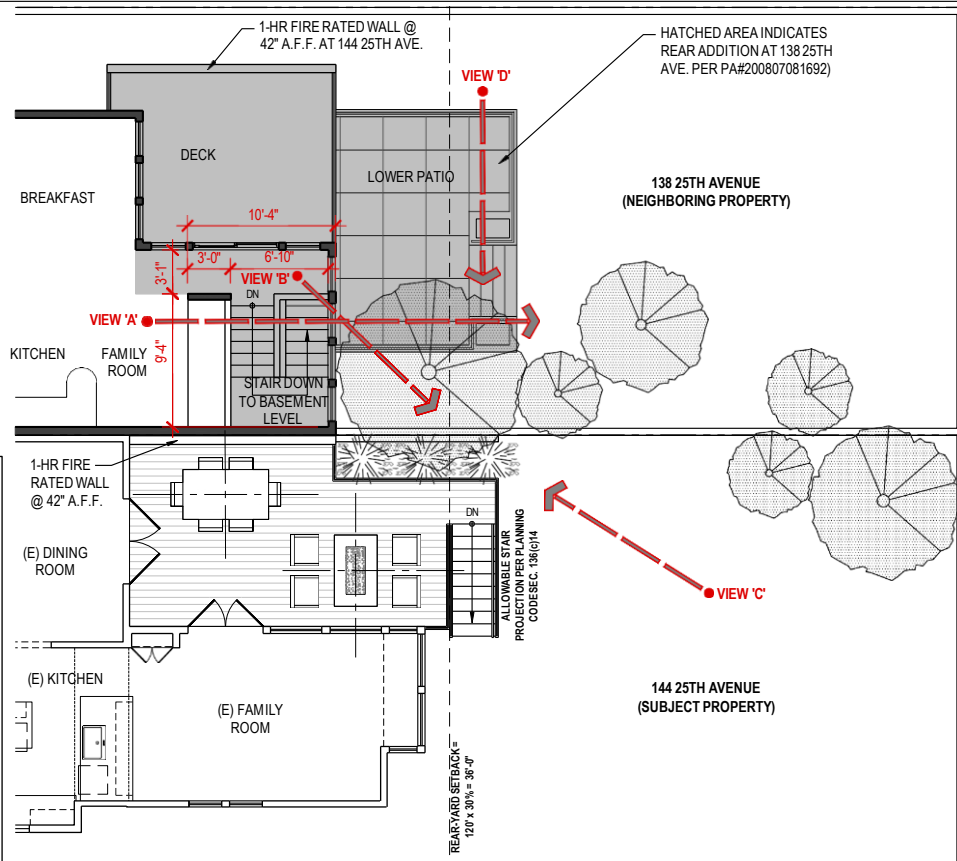
**VIEW 'D' - VIEW FROM 138 25TH
AVE. LOOKING SOUTH**

INTERIOR VIEWS A+B FROM 138 25TH AVE.:

- ADJACENT TO THE REAR WINDOW IN QUESTION IS A STAIRWELL MEASURING 6'-10"x9'-4" (PER PLANS AT DBI RECORDS FOR PA#200807086192)
- THE CLOSEST THAT ONE COULD GATHER TO LOOK OUT THE REAR WINDOW IS AT THE FAMILY ROOM, WHICH IS >10' AWAY (VIEW 'A' IS APPROXIMATELY 12' - 15' AWAY)
- THE LANDING AT VIEW 'B' IS ±10' AWAY FROM THE PROPERTY LINE AND IS NOT A TYPICAL GATHERING AREA

EXTERIOR VIEWS C+D:

- THE VIEWS (VIEW 'C' + VIEW 'D') DEMONSTRATE THE CURRENT VEGETATION DENSITY OF THE (E) MAPLE TREE. PRIVACY SCREENING WILL BE FURTHER ENHANCED BY THE PROPOSED ADDITION OF A 10' FENCE AND PROPOSED SHRUB-LIKE TREE VEGETATION (RE. DSK-01, DSK-03, AND DSK-04)



2

PARTIAL FIRST FLOOR PLAN AT 138 25TH AVE. W/144 25TH AVE. REVISED DECK (OPTION B)

1/8" = 1'-0"

RENATO JOSE architect 604 Oak Street San Francisco CA 94117 415 255 7781 www.rjarch.com	Date	Subject	
	09 27 23	NORTH SIDE YARD FENCE	
	Scale	Project Name and Number	
	1/8"=1'-0"	2208_144 25TH AVENUE	
By	Drawing Reference	File Name	
RJ	-	2208_OPTION B SHEETS	

Sketch Number
BRIEF EXHIBIT 'G'
DSK-02

**ADDITION OF 10' FENCE ALONE PROVIDES PERMANENT PRIVACY
AND SIGHTLINE PROTECTION**

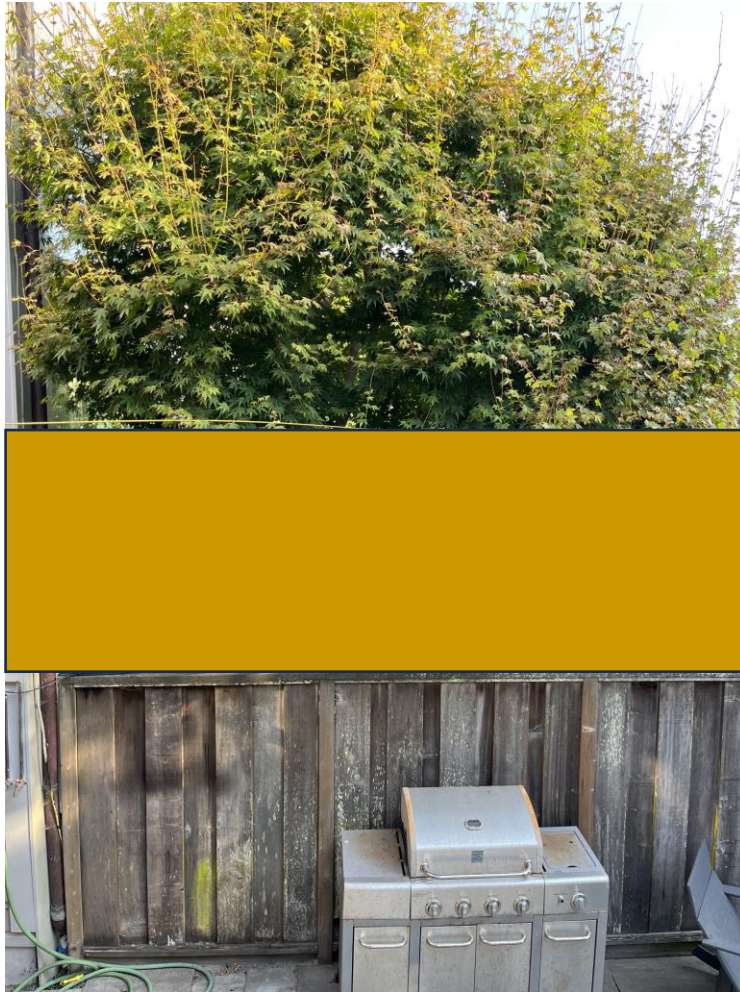
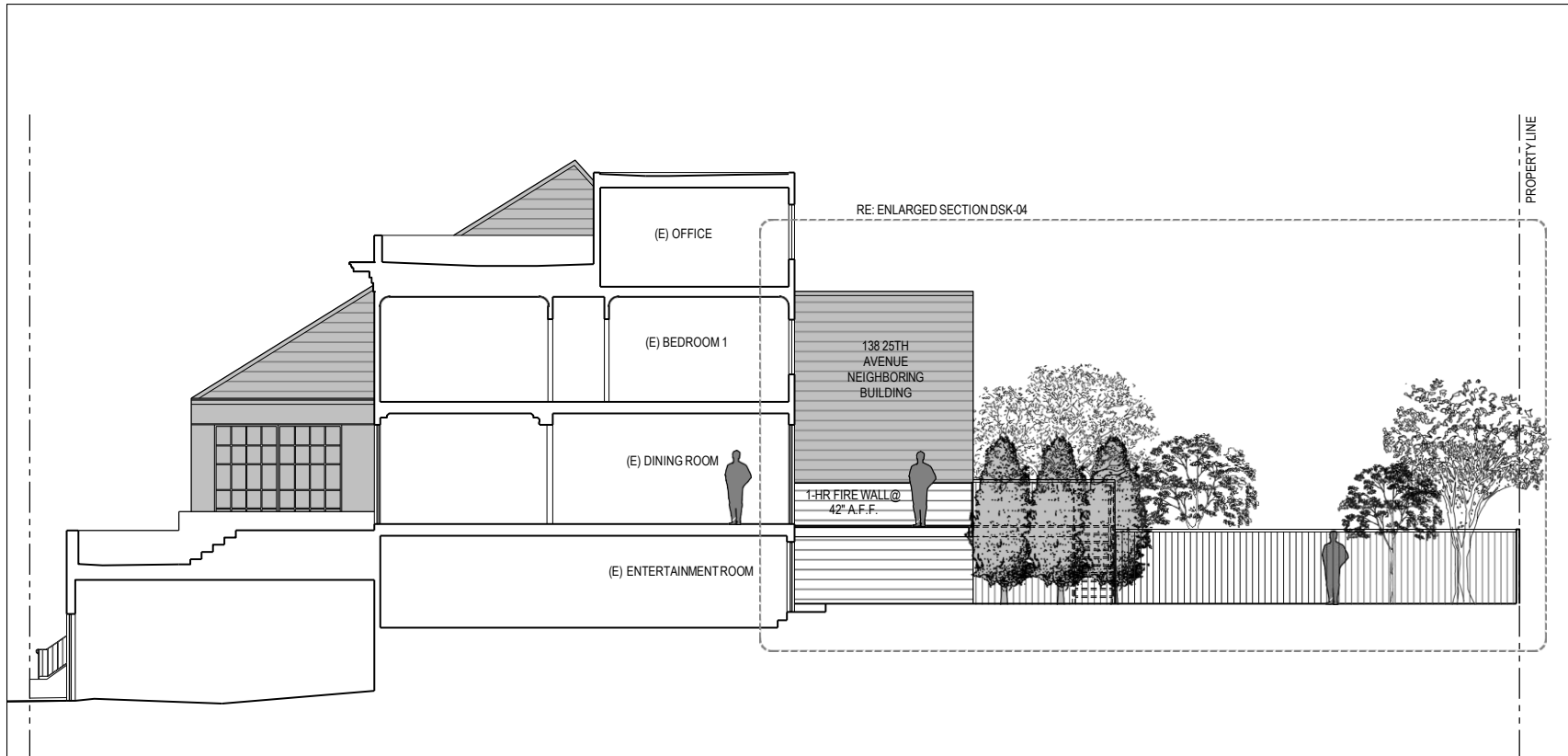


Photo taken from 6' above deck at far South/East Corner of Proposed Deck

ADDITION OF YEAR-ROUND 12' TREES/THICK BUSHES ADDS ADDITIONAL PRIVACY & SIGHTLINE PROTECTION FOR BOTH PARTIES

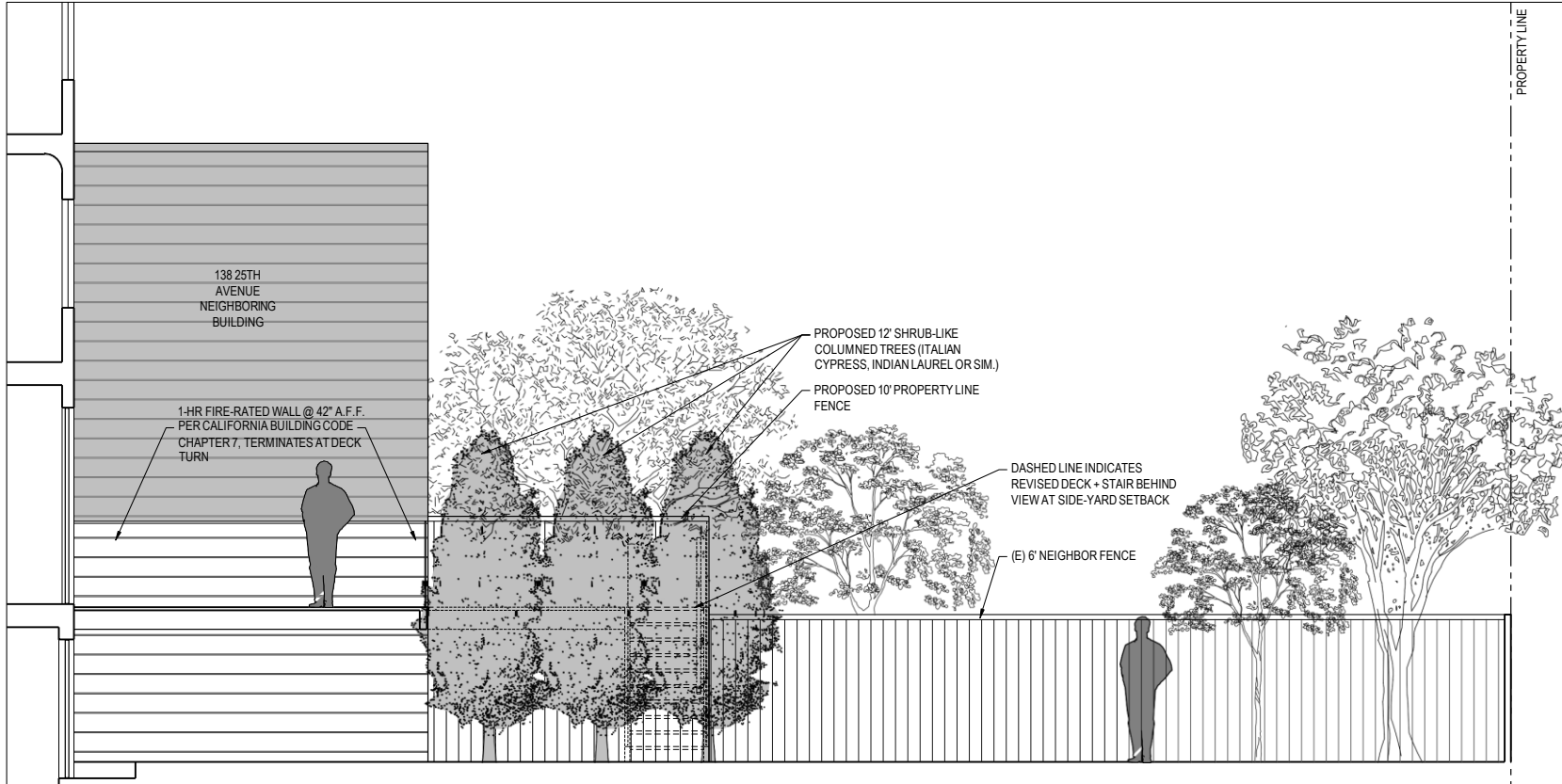


3 SECTION VIEW LOOKING NORTH AT REVISED DECK - STAIR RELOCATED OUT OF THE SIDE-YARD SETBACK

1/8" = 1'-0"

RENATO JOSE architect 604 Oak Street, San Francisco CA 94117 415 255 7783 www.rjcd.com	Date	Subject		Sketch Number BRIEF EXHIBIT 'G' DSK-03
	09 27 23	NORTH SIDE YARD FENCE		
	Scale	Project Name and Number		
	1/8"=1'-0"	2208_144 25TH AVENUE		
By	Drawing Reference	File Name		
RJ	-	2208_OPTION B SHEETS		

ADDITION OF YEAR-ROUND 12' TREES/THICK BUSHES ADDS ADDITIONAL PRIVACY & SIGHTLINE PROTECTION FOR BOTH PARTIES



4 SECTION VIEW LOOKING NORTH AT REVISED DECK - STAIR RELOCATED OUT OF THE SIDE-YARD SETBACK
ENLARGED VIEW

1/4" = 1'-0"

RENATO JOISE | architect
604 Oak Street San Francisco CA 94117
415 253 7793
www.rjcojo.com

Date
09 27 23

Scale
1/4"=1'-0"

By
RJ

Subject
NORTH SIDE YARD FENCE

Project Name and Number
2208_144 25TH AVENUE

Drawing Reference
-

File Name
2208_OPTION B SHEETS

Sketch Number
BRIEF EXHIBIT 'G'
DSK-04

PUBLIC COMMENT

From: [Michael Kardos](#)
To: [BoardofAppeals \(PAB\)](#)
Cc: [Lexi Bisbee](#)
Subject: Re: Alteration Permit No. 2023/02/02/1229 - Appeal No. 23-030 144 25th Ave.
Date: Monday, August 14, 2023 3:24:41 PM
Attachments: [image.png](#)

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board of Appeals,

I'm writing to let you know that our opposition to this permit is now resolved (ref. Alteration Permit No. 2023/02/02/1229 - Appeal No. 23-030 - 144 25th Ave).

Following the public meeting at City Hall on August 2, we connected with Frank and Allison Bellizzi and met with them at our house. We were able to show them the effected view noted in my original email below. In addition, the Bellizzi's were able to communicate their plans in more detail. It is clear that they want to minimize impact on us as friendly neighbors and will take steps to preserve our view as much as possible.

Having reached this new understanding through our direct dialogue with the Bellizzi's, we wanted to inform you that our issues are addressed and should no longer be of concern in this matter.

Please distributed and amend this to the record as you see fit. Thank you for your attention to our needs and your oversight of this process.

Best Regards,

Michael Kardos and Lexi Bisbee
154 25th Ave.
SF, CA 94121

From: Michael Kardos
Sent: Tuesday, August 1, 2023 8:04 PM
To: boardofappeals@sfgov.org <boardofappeals@sfgov.org>
Cc: [Lexi Bisbee](mailto:lexibisbee@gmail.com) <lexibisbee@gmail.com>
Subject: Alteration Permit No. 2023/02/02/1229 - Appeal No. 23-030 144 25th Ave.

Dear Board of Appeals,

Upon our return from travel, we learned of a meeting scheduled for August 2nd at 5PM with respect to:

- Alteration Permit No. 2023/02/02/1229
- Appeal No. 23-030
- 144 25th Ave.

Our understanding is that part of this permit involves the building of a roof deck on the rear part of the home above the second story. I discussed with the neighbor and was told that plans could be found online and was further told that a glass railing will be used and that there would be 'no impact to our view' of the Golden Gate Bridge.

Upon returning to my house that evening at 154 25th Ave., I did a web search but could not find any plans online. I also took a picture from our 2nd story room at the furthest point at the back of our house which you can see below. The roof line of the neighbor's 2nd story can be seen just below the roadway of the GG Bridge. Our expectation is that any safety railing would be a minimum of 36in above the roof line and would therefore obstruct our direct view of most of the bridge (glass railing or otherwise). Furthermore, any furniture or plants on the roof deck would obstruct our view completely.

Having a GG Bridge view is one of the reasons we bought our home and is a key element in the home's value. The obstruction of this view is a major impact on us and the reason we object to this portion of the permit.

In addition to submitting our opposition here, we would like to have access to the meeting on August 2nd so that we might provide comment. We are also hoping to speak to someone in your office about this situation sometime before the meeting. Please let us know if there is a specific representative in your office that we can speak with. Thank you for your consideration.



Regards,

Mike Kardos and Lexi Bisbee
154 25th Ave.
SF, CA 94121
307-690-4350
mikekardos@alum.mit.edu

From: [Tara S. Harris](#)
To: [Rosenberg, Julie \(BOA\)](#); [Longaway, Alec \(BOA\)](#)
Cc: [Allison Bellizzi](#); fbellizzi@indalventures.com; [Peter Harris](#)
Subject: Email for Board of Appeals re: Bellizzi
Date: Wednesday, September 6, 2023 8:12:11 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board of Appeals,

My name is Tara Harris, my husband Peter and our two children live at 150 25th Avenue, immediately south of Frank and Allison Bellizzi.

Since moving to this neighborhood in April of 2023, we have enjoyed getting to know Frank and Allison (and their cats!), who have been incredibly kind to our family, and with whom we have shared some wonderful dinners and brunches - including a lovely neighborhood gathering earlier this year where we were able to spend time with other neighbors on the block. Allison in particular has gone out of her way to find thoughtful moments to connect with our girls, who often ask to visit our "cat neighbors."

Additionally, we have found Frank and Allison to be very reasonable, from some minor construction we did before moving in, to projects on our shared fence line. We have both treated one another with courtesy and they came over to share their construction plans with us in advance of the start and discussed any concerns we might have.

Sincerely,
Tara Harris

Documents submitted for the hearing on August 2, 2023

BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal of
BRUCE MACLEOD and DEBORAH MACLEOD,)
Appellant(s))
vs.)
DEPARTMENT OF BUILDING INSPECTION,)
PLANNING DEPARTMENT APPROVAL Respondent)

Appeal No. **23-030**

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT on June 26, 2023, the above named appellant(s) filed an appeal with the Board of Appeals of the City and County of San Francisco from the decision or order of the above named department(s), commission, or officer.

The substance or effect of the decision or order appealed from is the ISSUANCE on June 9, 2023 to Frank Bellizi, of an Alteration Permit (the project generally consists of replacement of the existing first floor deck and expanding the deck to the rear-yard setback line; addition of a roof deck above the second bedroom office floor, accessed via four new doors from the third floor office) at 144 25th Avenue.

APPLICATION NO. 2023/02/02/1229

FOR HEARING ON August 2, 2023

Address of Appellant(s):

Address of Other Parties:

Bruce MacLeod and Deborah MacLeod, Appellant(s) 138 25th Avenue San Francisco, CA 94121	Frank Bellizi, Permit Holder(s) 144 25th Avenue San Francisco, CA 94121
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Date Filed: June 26, 2023

**CITY & COUNTY OF SAN FRANCISCO
BOARD OF APPEALS**

PRELIMINARY STATEMENT FOR APPEAL NO. 23-030

I / We, **Bruce MacLeod and Deborah MacLeod**, hereby appeal the following departmental action: **ISSUANCE of Alteration Permit No. 2023/02/02/1229** by the **Department of Building Inspection** which was issued or became effective on: **June 9, 2023**, to: **Frank Bellizi Jr**, for the property located at: **144 25th Avenue**.

BRIEFING SCHEDULE:

Appellant's Brief is due on or before: 4:30 p.m. on **July 13, 2023**, (no later than three Thursdays prior to the hearing date). The brief may be up to 12 pages in length with unlimited exhibits. It shall be double-spaced with a minimum 12-point font. An electronic copy shall be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org, corey.teague@sfgov.org, tina.tam@sfgov.org matthew.greene@sfgov.org and fbellizzi@indaloventures.com

Respondent's and Other Parties' Briefs are due on or before: 4:30 p.m. on **July 27, 2023**, (no later than one Thursday prior to hearing date). The brief may be up to 12 pages in length with unlimited exhibits. It shall be doubled-spaced with a minimum 12-point font. An electronic copy shall be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org, corey.teague@sfgov.org, tina.tam@sfgov.org matthew.greene@sfgov.org and brucermacleod@outlook.com

Hard copies of the briefs do NOT need to be submitted to the Board Office or to the other parties.

Hearing Date: **Wednesday, August 2, 2023, 5:00 p.m., Room 416 San Francisco City Hall, 1 Dr. Carlton B. Goodlett Place**. The parties may also attend remotely via Zoom. Information for access to the hearing will be provided before the hearing date.

All parties to this appeal must adhere to the briefing schedule above, however if the hearing date is changed, the briefing schedule MAY also be changed. Written notice will be provided of any changes to the briefing schedule.

In order to have their documents sent to the Board members prior to hearing, **members of the public** should email all documents of support/opposition no later than one Thursday prior to hearing date by 4:30 p.m. to boardofappeals@sfgov.org. Please note that names and contact information included in submittals from members of the public will become part of the public record. Submittals from members of the public may be made anonymously.

Please note that in addition to the parties' briefs, any materials that the Board receives relevant to this appeal, including letters of support/opposition from members of the public, are distributed to Board members prior to hearing. All such materials are available for inspection on the Board's website at www.sfgov.org/boa. You may also request a hard copy of the hearing materials that are provided to Board members at a cost of 10 cents per page, per S.F. Admin. Code Ch. 67.28.

The reasons for this appeal are as follows:

Not Submitted

Appellant or Agent:

Signature: Via Email

Print Name: Bruce MacLeod, appellant

Permit Details Report**Report Date:** 6/23/2023 11:21:36 AM

Application Number: 202302021229

Form Number: 8

Address(es): 1334 / 023 / 0 144 25TH AV

Description: THE PROJECT GENERALLY CONSISTS OF REPLACEMENT OF THE (E) FIRST FLOOR DECK AND EXPANDING THE DECK TO THE REAR - YARD SETBACK LINE; ADDITION OF A ROOF DECK ABOVE THE SECOND BR OFFICE FLOOR, ACCESSED VIA 4 NEW DOOR FROM THE THIRD FL. OFFICE

Cost: \$70,000.00

Occupancy Code: R-3,U

Building Use: 27 - 1 FAMILY DWELLING

Disposition / Stage:

Action Date	Stage	Comments
2/2/2023	TRIAGE	
2/2/2023	FILING	
2/2/2023	FILED	
6/9/2023	APPROVED	
6/9/2023	ISSUED	

Contact Details:**Contractor Details:**

License Number: 979493

Name: MARK LUCEY

Company Name: MIZEN CONSTRUCTION INC

Address: 3418 GEARY BLVD BL * SAN FRANCISCO CA 94118-0000

Phone:

Addenda Details:**Description:**

Step	Station	Arrive	Start	In Hold	Out Hold	Finish	Checked By	Hold Description
1	INTAKE	2/2/23	2/2/23			2/2/23	PANGELINAN MARIANNE	
2	INTAKE	5/8/23	5/8/23			5/8/23	SAPHONIA COLLINS	
3	CP-ZOC	2/2/23	2/2/23			2/2/23	FERGUSON SHANNON	approved otc
4	CP-ZOC	5/8/23	5/8/23			5/8/23	OROPEZA EDGAR	Approved reduction of prior scope of work - removal of top roof deck. Approval of a new roof deck at the rear as shown on plans - located in the buildable areas not being within the last 30 percent of the rear property line. Railings or railing height approved only.
5	BLDG	2/6/23	2/6/23			2/6/23	HU QI (ANNE)	approved
6	BLDG	5/11/23	5/11/23			5/11/23	HU QI (ANNE)	
7	CPB	6/9/23	6/9/23			6/9/23	PANGELINAN MARIANNE	

This permit has been issued. For information pertaining to this permit, please call 628-652-3450.

Appointments:

Appointment Date	Appointment AM/PM	Appointment Code	Appointment Type	Description	Time Slots
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Inspections:

Activity Date	Inspector	Inspection Description	Inspection Status
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Special Inspections:

Addenda No.	Completed Date	Inspected By	Inspection Code	Description	Remarks
0			1	CONCRETE (PLACEMENT & SAMPLING)	
0			2	BOLTS INSTALLED IN CONCRETE	
0			4	REINFORCING STEEL AND PRETRESSING TENDONS	
0			5A1	SINGLE PASS FILLET WELDS < 5/16"	

Department of Building Inspection

WELLS - 5/19					
0			19	SHEAR WALLS AND FLOOR SYSTEMS USED AS SHEAR DIAPHRAGMS	
0			24E	WOOD FRAMING	added on 5/11/23 in a separate sheet
0			23	OTHERS:AS RECOMMENDED BY PROFESSIONAL OF RECORD	geotech engr observations
0			24A	FOUNDATIONS	
0			18A	BOLTS INSTALLED IN EXISTING CONCRETE	added on 5/11/23 in a separate sheet
0			24B	STEEL FRAMING	added on 5/11/23 in a separate sheet
12					

For information, or to schedule an inspection, call 628-652-3400 between 8:30 am and 3:00 pm.

[Station Code Descriptions and Phone Numbers](#)

[Online Permit and Complaint Tracking home page.](#)

Technical Support for Online Services

If you need help or have a question about this service, please visit our FAQ area.

APPELLANTS DID NOT TIMELY SUBMIT A BRIEF

BRIEF SUBMITTED BY THE PERMIT HOLDER(S)



July 27, 2023

Via E-mail only
boardofappeals@sfgov.org

Richard Swig, President
San Francisco Board of Appeals
49 South Van Ness Ave. Suite 1475
San Francisco CA 94103

Re: **New Deck at 144 25th Ave. San Francisco**

Dear President Swig and Board Members,

We represent Frank and Allison Bellizzi, owners of the single-family home at 144 25th Ave. (“Bellizzi Property”). This appeal is made by Bruce and Deborah MacLeod the adjacent neighbors at 138 25th Ave. (“Appellants”). Mr. MacLeod is a retired trial lawyer who practiced law for over 40 years. We understand from the Board staff that the Appellants have failed to file a timely written presentation to you. Nonetheless, we have received from Appellants the brief they misfiled. You can find it at **Exhibit A**. By doing this, we believe we are being fair. In addition, we believe the Committee will benefit from a full review of the Appellants’ brief which will show the lack of merit of their claims. As explained more fully below, my clients seek to build a new deck. Their architect sought the planning department’s guidance in advance of submission and approval of the plan by the city. The Appellants have lodged a series of objections in an effort to obtain relief to which they

are not legally entitled. We would like to draw your attention to the statement (and photos) in the Appellants' Exhibit A

In their brief at **Exhibit A**. **Appellants list their concerns as follows: (1) property value (2) views (3) privacy and (4) security.** A review of the *Residential Design Guidelines* (“*Guidelines*”) makes it clear that the *Guidelines* protect neighbors as to privacy only, and not property value, nor views or security. See attached excerpt from the *Guidelines* at **Exhibit B**. The attached excerpt indicates that even privacy protection is partial. It lists circumstances where it is and is not an important concern in designing an addition to a home, and it lists remedies for privacy concerns such as a higher fence, something which my clients have suggested to Appellants many times, to no avail. As will be discussed later and as the photographs show, Appellants have full privacy in all seasons when the deck would practically be in use, because an extremely dense maple tree lies on Appellants’ property along the joint property line, and most important, none of Appellants’ windows face the joint property line.

Description of Client’s Project

Appellants’ appeal relates to the replacing of an existing first floor deck with a new deck which would extend further to the rear than the existing one. The proposed deck extension is to the allowable rear yard setback of 30%. See Plans at **Exhibit C**. My clients have designed their new deck so that the closest a person can stand to the joint property line is almost 4 feet so that a person using the deck cannot peer into the Appellants’ backyard. Instead, the stairs from the deck to the backyard will be along the property line. Yet Appellants’ concerns are the same as if the deck were to be built up to the property line because they believe that a six-foot person would linger at the top few steps before coming up or down the stairs, and that this six-foot person would be able to look into Appellants’ rear window. Of course, it would be a very angled side view into the window, as

Appellants have no windows that face the deck. In fact, Appellants have urged my clients to modify their design to require a person using the stairs to flip up a retractable floor area (trap floor) on the deck, something which would inhibit use of the stairs (and would create a safety hazard in the event of a fire or seismic event). It certainly does not meet *Code* because the *Building Code* requires an unfettered second means of egress from the home. By the way, guests of my client will be using the deck and entering it from the interior of the house and rarely if ever going into the rear yard, which is not set up for guests. Certainly, there is no activity in the rear yard and scant use of the deck itself in the winter when one might better see through a leaf-free maple tree. Thus, my clients do not expect the traffic on the deck that Appellants assume. Rather, guests and occupants will use that stair almost exclusively for emergency egress into a safe backyard in the event of a fire or seismic event.¹

Appellants Other Demands:

1. Move the stairway towards my client's house (to the west) because Appellants do not want to see a 6-foot-tall person's head when that person walks up or down the stairs;
2. Increase the fire rating of the firewall that will lie between the stairs and the property line, from a 1-hour rating to a 4 hour, for reasons we do not understand; and
3. Grant Appellants an easement in perpetuity allowing the branches of Appellants' maple tree to lie over the property line. Our clients have never minded that the branches lie over the property line fence, but do not want to establish that as a right in perpetuity no matter what condition the branches are in during the future.

¹ **The portion of the proposed deck that extends furthest into the rear yard will be full of furniture and thus a place least likely for my clients and guests to stand and look over the property line.**

Statements Made by Appellants in Writing

Although views are not protected by the Code or Residential Guidelines, Appellants state the following (Exhibit A): **“the view from our eastward facing wall of plate glass windows, especially of the gorgeous Japanese maple tree that we have grown from seed for almost 40 years, have always been the principal design focus of our most-used room in the house: our kitchen/breakfast/television/family room”**. See also: **“[We] have enjoyed both privacy and unobstructed views of nature in an urban environment.”**

Despite the fact that the *Code* and the *Guidelines* do not protect property values or protect security to a neighbor, Appellants state: **“There are so many features of the proposed plans that individually and in combination would destroy our privacy, views, safety, and property value that it seems almost as though that were the purposeful goal of the project”**. Appellants also object to the aesthetics of the proposed deck, even though aesthetics in a rear yard area are not taken into account by the *Code* or the *Guidelines*: **“Imagine further being 6 foot tall, going out to your yard, and looking up at the soles of your neighbor’s feet which are 2’7” above your head”**. Appellants also complain about what they would see through their window by mentioning how large an image of a person would be seen when looking out of Appellants’ rear plate glass window toward the deck.

Planning Department Guidance in the Pre-Design of the New Deck.

Before the project’s architect Renato Jose presented a complete deck design to my clients, he met with planner Jeffrey Spiers and Jeff confirmed where the 30% setback at the rear would occur. Then the client’s architect went to David Winslow who is head of the Department’s Residential Design Team, and one of the authors of the updated *Residential Design Guidelines*. He asked David whether the proposed deck stairs provide the required side yard setback “buffer” for new decks.

David confirmed that it did, see **Exhibit D** where the Jeffrey Spiers and David Winslow's interactions can be read.

Privacy Features That Exist Today and that the Proposed New Deck Will Provide.

Appellants' privacy today is provided today due to two existing features:

- (1) Appellants' rear window has a strong reflective quality. See Appellants' Brief **Exhibit E**, A photograph taken from the MacLeod yard in which the Appellants' window reflects back the large maple tree (and does not give a view of Appellants' interior). Also, see the photograph taken from my clients' side of the fence at **Exhibit F** and you will again notice that the window reflects the maple tree.
- (2) Appellants' very wide and tall maple tree exists along the property line (please see again both **Exhibit E** as well as **Exhibit G**, a photo taken from inside the Appellants home.) My clients believe that in designing a stair next to the joint property line rather than a deck, they are adequately observing Appellants' privacy.

Appellants' Concern About Deprivation of Light.

Although not contained in Appellants' brief, in other correspondence the Appellants raised a concern about access to light. This too has no merit. As the page in **Exhibit B** from the *Guidelines* show, light impairment rises to the level of concern for city planners when direct light into important rooms could be impaired, but important rooms such as bedrooms are not affected here. Moreover, given the fence and the large maple tree, there is little direct light to Appellants' rear window. My clients are not raising the height of the fence, so that whatever light there is will not be impaired. The *Guidelines* point out that neighbors' goals for more light can be inconsistent with neighbors' desire for privacy. Appellants here must decide whether increasing the height of their fence for a

distance of a few feet is worth the loss of a little winter sun, the only time of year when sunlight can penetrate through a leaf-free maple tree in the winter.

Mitigations Appellants Can Implement.

The Appellants admit that the fence lies entirely on their property. As a result, they have the power (without consulting with my clients) to raise the existing 6-foot fence to a higher level next to our client's proposed stairs. That would significantly provide the privacy that they claim to be losing. There is no reason why they cannot do this at any time, and my clients certainly do not and would not object. **Exhibit H** shows a photo of a piece of plywood two feet in height placed by the Appellants above the existing 6-foot fence. If Appellants would increase the height of the fence, their privacy could never be infringed. If Appellants believe that this would disturb the limbs of their maple tree which cross onto my client's property, Appellants can certainly trim them back. Their maple tree (a tree which provides privacy for all seasons but the winter season) will in winter be easier to see through, but the winter is when deck use would be rare due to inclement weather.

Security.

Although avoiding burglaries is not a goal or requirement within the Guidelines, Appellants ask that the proposed stairs be moved west considerably narrowing the deck for their privacy and security. The essence of appellants' security concern requires a burglar to have already obtained illegal access to my clients' backyard. However, Appellants have the power to take their own security measures. Among other things, they can: **(1)** purchase a camera system that points to the joint property line near the proposed deck; **(2)** purchase and install a light that automatically shines when someone tries to go over the fence and **(3)** establish some additional barrier on their side of the fence that they own, such as security wire. My clients will be augmenting their current security system by adding several lights triggered by movement, along with several cameras in the backyard,

as well as light triggered by motion detectors in their alleyway and a lock to their side entrance. All of this should reduce the chances of some burglar jumping over the fence. Appellants should consider implementing the same on their property.

Inaccuracies in Appellants' Attached Statement.

Appellants state that they have not been allowed access to my client's rear yard to determine what privacy problems could exist. In fact, they were provided unfettered access on multiple occasions both before and after their appeal filing. As an example, please see **Exhibit H** which shows Appellant Mr. MacLeod on my clients' lot leaning over this fence, looking at his lot while my client holds the ladder. My clients provided the Appellants with unfettered access to their property both before and after the appeal and met twice on Appellants property for a total of 5 in-person meetings (if a dinner together is counted).

Conclusion.

The view into Appellants' rear window of a 6-foot person lingering on the top step of the new stairs at night and peering into the rear window is a very speculative and unusual concern. Even so, that person would principally have a view of the top half of a two-story open stairway in Appellants' building. See **Exhibits G and I**. It is not a view into a bathroom, bedroom or closet. Nonetheless, Appellants can easily do what most San Franciscans do at night, which is to engage a window covering.

The Appellants in this appeal live in a City and in making that choice, they have made the choice to be subject to ambient noise, views of structure they would prefer not to see, and minor privacy impingement --- although we do not understand the nature of such privacy impingement here. My clients met with and emailed Appellants many times before Appellants filed their appeal but could not reach any agreements. Appellants are not willing to take those privacy and security

measures mentioned above which would alleviate their concerns. Rather, Appellants ask that a *Code* complying deck, whose design was approved by the head of Planning's Residential Design Team, be modified so as to be smaller. That would be an unfortunate precedent favoring all future Appellants seeking unusual privacy mitigations. Moreover, if my client's deck was forced to be smaller, there would be no reason to change their existing deck.

Very truly yours,

A handwritten signature in blue ink that reads "Brett Gladstone". The signature is written in a cursive, flowing style.

M. Brett Gladstone

cc: Mr. and Mrs. MacLeod
Project Architect
Clients
Department of Building Inspection
Zoning Administrator Corey Teague
Acting Zoning Administrator Tina Tam

EXHIBIT "A"

Appellate Brief Bruce and Deborah MacLeod

This appeal is of a building permit covering two proposed exterior decks at 144 25th Ave. We are the neighbors immediately adjacent on the North side of the subject property. As to the proposed roof deck, we have no objection. As to the proposed lower deck, however, we have great objection.

My wife (74 years old) and myself (75 years old) are both retired. As of next month, we will have owned our home at 138 25th Ave. for 40 years during which time we raised three daughters. During our ownership there have been countless remodels on our block, including to the three adjacent properties on our North, South and East sides. We have never before objected to any neighbor's projects, but the instant proposed lower deck project is both callous and hideous.

The permittees are Frank and Allison Bellizzi. Frank is CEO of a biotech company, Concentric Analgesics. Allison is a real estate associate with Sotheby's International Realty. Frank purchased the subject property in November 2019 (i.e., right before the pandemic).

Our house was built in 1907 immediately after the earthquake. We believe it to be the oldest house on the block, perhaps the oldest in the neighborhood. It was constructed flush with the south boundary of our lot. Six years later, in 1913, the subject house was constructed flush with the north side of its boundary, meaning that for most of the depth of our houses, the walls are separated by a mere inch or less. Notwithstanding their proximity, from within each of the houses there is a sense of almost being in a rural environment due to the fact that the houses have had little or no sightline between them.

Page 1 of our exhibits is a Google satellite photo of our houses on which I have outlined in red their current footprint. Exhibit 2 is my tracing of those footprints to remove extraneous information. Because the southeast corner of our house extends 19 to 21 ½ inches further East than the current deck of the subject property, a person standing on that deck has no sightline round the corner and into our house. As a result of this privacy, the view from our eastward facing wall of plate glass windows, especially of the gorgeous Japanese maple tree that we have grown from seed for almost 40 years, have always been the principal design focus of our most-used room in the house: our kitchen/breakfast/television/family room. See Exhibit 3.¹ Thus, East wall is essentially a 1 ½ story window wall separated into two panes in order to accommodate a concealed earthquake moment beam.

Likewise, the current and prior owners of the subject property have always enjoyed privacy and great unobstructed views of their garden. The subject property's dining room opens onto an existing deck that faces their garden to the East and our South wall to the North. But because our South wall has no windows, it appears as though our wall is part of the subject property. For decades we have enhanced that misperception by painting our South wall in the color of the neighbor's house. We just did so a couple of months ago (and in fact had our painters come back and re-sand and repaint a second time because we were not satisfied with how our wall appeared to the Bellizzi's and their guests). Also, every fall we have all of our trees trimmed by ISA Certified Arborists Demetri Tioupine so as to preserve our southern neighbors' views of the Golden Gate Bridge.

¹ During the first Fall after the Bellizzi's brought the subject house, we received a call from Allison Bellizzi thanking us for trimming our trees so as to preserve their views. Will

Thus, for the 40 years we have owned our house, and perhaps far longer, the adjacent neighbors at 138 and 144 25th Ave. have enjoyed both privacy and unobstructed views of nature in an urban environment. All that will come to an end if the over-the-counter permit granted to the Bellizzi's for their lower proposed deck is not revoked. There are so many features of the proposed plans that individually and in combination would destroy our privacy, views, safety, and property value that it seems almost as though that were the purposeful goal of the project.

First, it must be understood that the height of the subject property's dining room is approximately 6'7". If the goal is to have the dining room flow onto the deck without any stairs, then the deck must likewise be at an elevation of 6'7". That in fact is the height of the existing deck which is to be demolished and replaced with a new deck of equal height, but which is "expanding the deck to the rear-yard setback line" as well as flush to our property line.

Having the existing deck at the height of 6'7" has been of no consequence for us because it is around the corner of our house and we basically cannot see it. But combined with the plan to extend the deck outward to the "rear-yard setback line" and laterally to our property line, results in a deck that would tower over our fence and heads. A 6'7" deck surface stood upon by a 6'0" person results in a viewing height of 12'7" that is 2'7" higher than a NBA basketball rim. Imagine further being 6 foot tall, going out to your yard, and looking up at the soles of your neighbors feet which are 2'7" above your head.

But it gets much worse. The existing deck incorporates descending stairs that abut the side of subject house, putting them at approximately the midpoint of the lot's width. The new plans would shove the stairs all the way North to abut our lot line. Bear in mind that such stairs are

going to be 6'7" tall, which is taller than the existing 6 foot fence. It will therefore act as a ladder that any burglar could easily surmount to go from the Bellizzi's yard (which does not have a gate lock) to ours (which does). Even if we were to raise our fence to 8 feet, which is about the maximum possible height due to overhanging limbs of the Japanese maple tree, it would be easy for any burglar to step over what would be a 1'3" height differential between the top stair and the fence in order to lower themselves to the ground on our property.

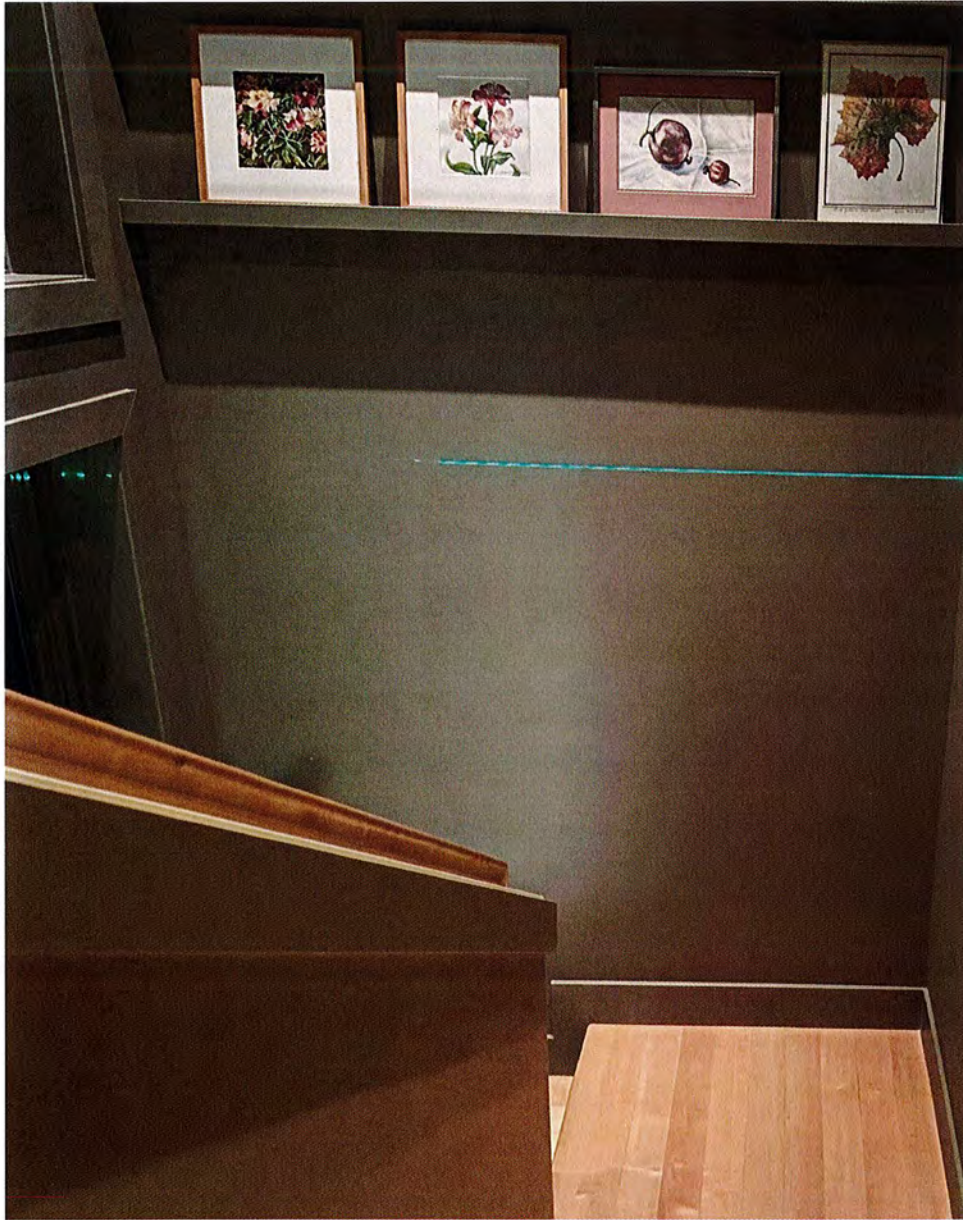
But even that is not the worst aspect of the proposed deck. As previously noted, our East wall is essentially a 1 ½ story plate glass wall. The Bellizzis, any of their guests or workmen, and any intruder could easily surmount the stairs and have a clear view into our house through the window wall. Equally disturbing, my wife could be startled at any time by a person standing unannounced on the opposite side of the plate glass window. How much of our interior would such a person be able to see and how large an image might such a person present in the plate glass window?

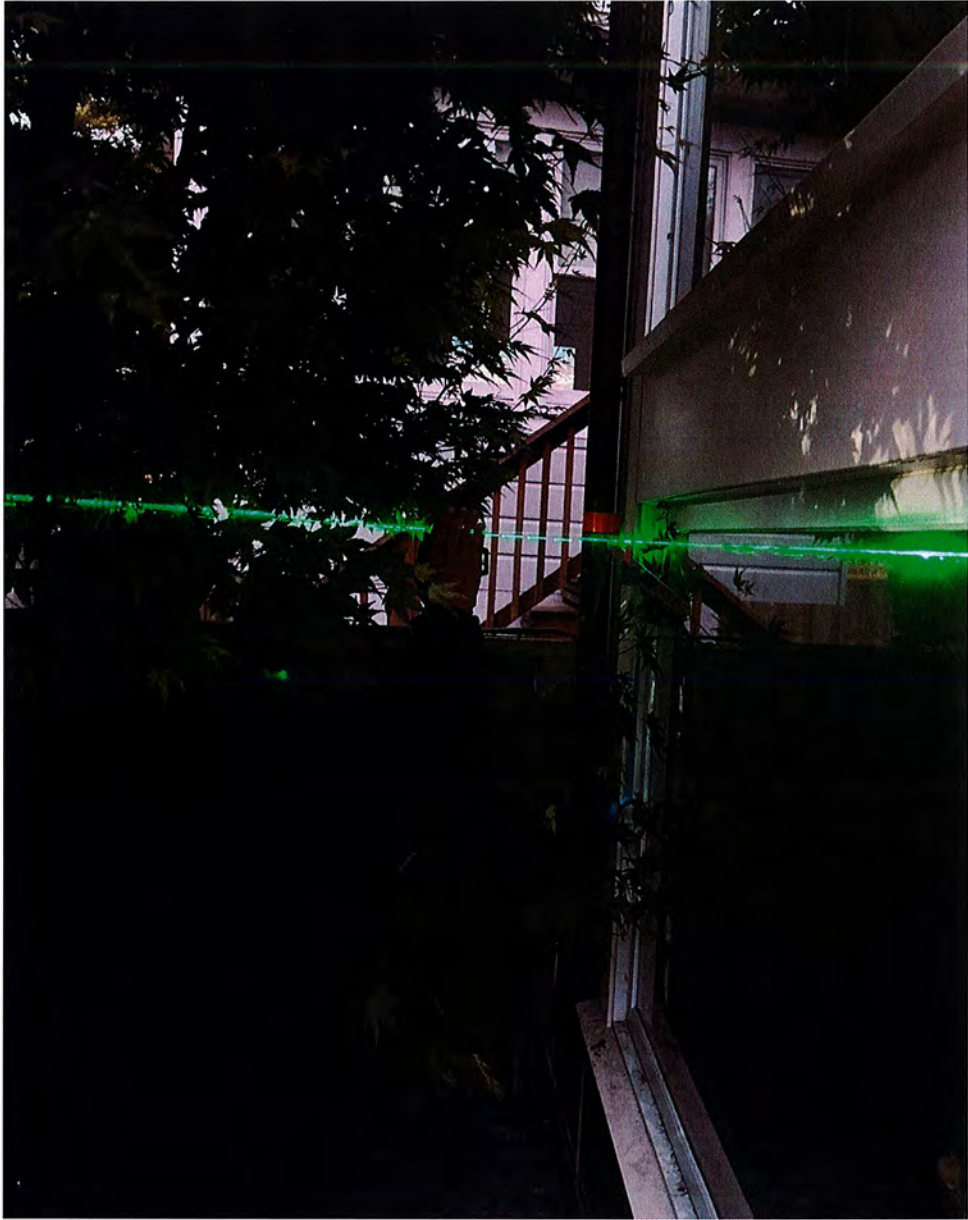
We tried to answer those questions through measurement, but to do so required that Mr. Bellizzi give us access to his existing deck, and he refused. So, we turned to a far more sophisticated method of transferring a baseline: a self-leveling laser level used by carpenters and builders the world over. As the name implies, such a laser self-levels and then paints a pencil-thin laser line that forms a baseline from which other measurements can be taken. Because the existing 6'7" deck is taller than the 6 foot fence, we had a clear shot from our property to set the laser beam at precisely the height of the existing deck. The laser beam then painted a pencil-thin line the precise height of the deck not only on the outside of our house, but also through the plate glass windows onto the inside of our house. We then photographed

the results which are astounding. They show that a 6 foot tall person standing on the proposed stairs would have an expansive view of the inside of our house, and would present an image covering approximately two thirds of the height of the largest of our plate glass windows.









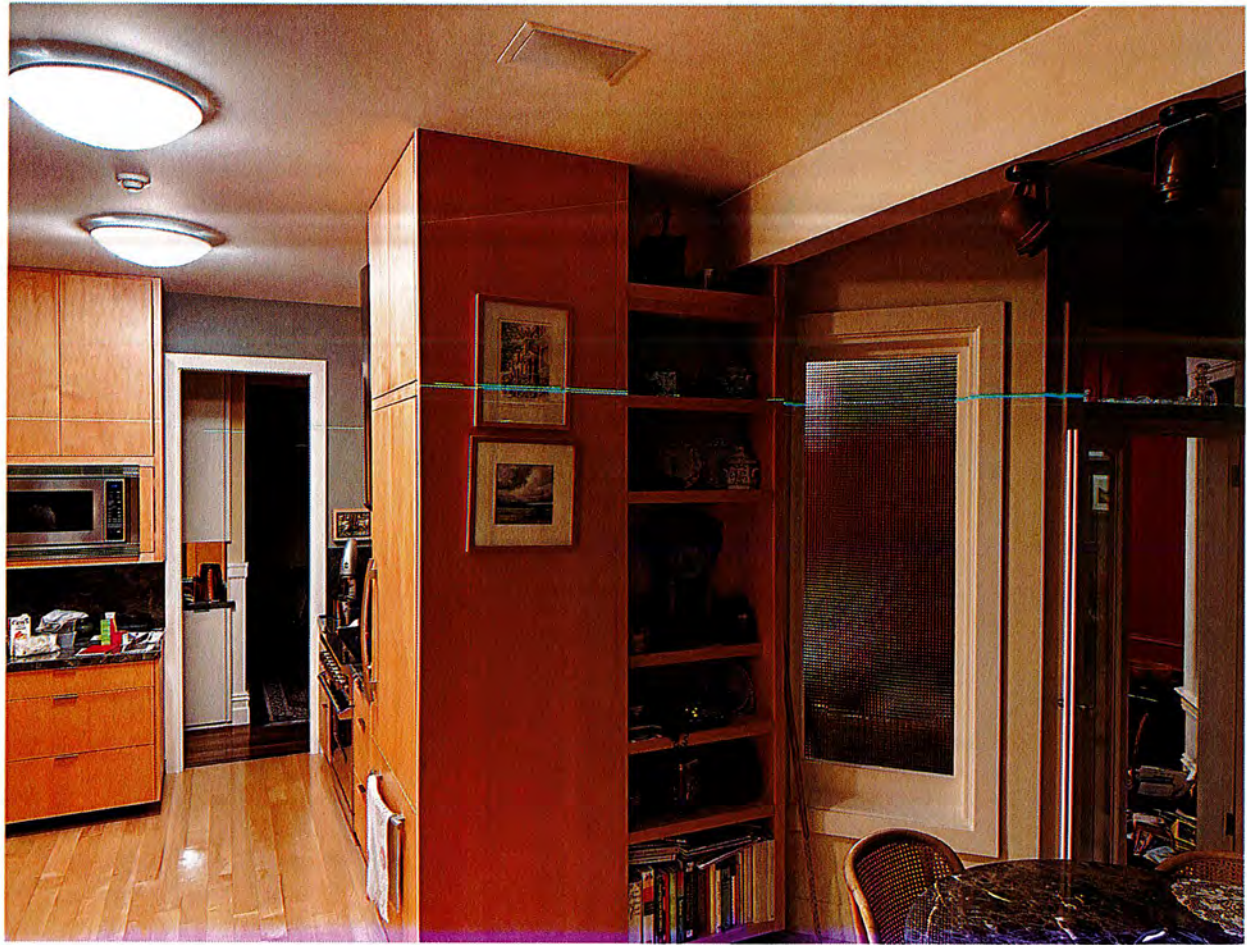
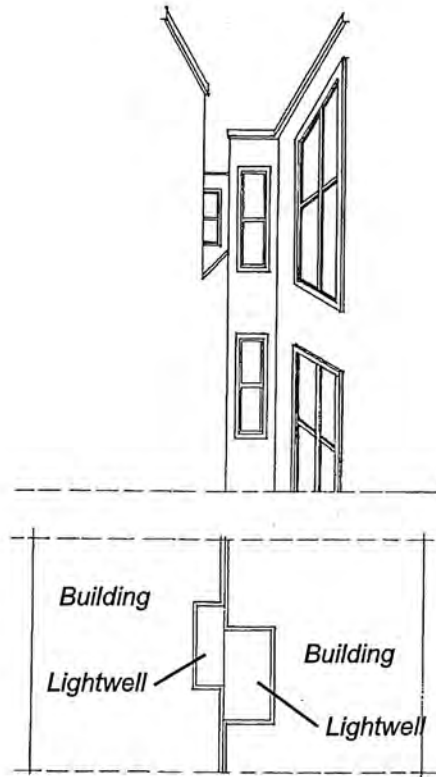


EXHIBIT "B"

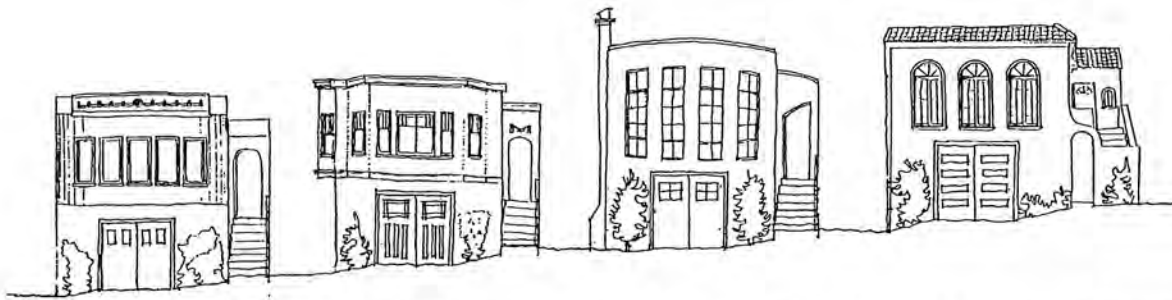


Provide shared light wells to maximize light to both properties.

Privacy

As with light, some loss of privacy to existing neighboring buildings can be expected with a building expansion. However, there may be special situations where a proposed project will have an unusual impact on privacy to neighboring interior living spaces. In these situations, the following design modifications can minimize impacts on privacy; other modifications may also be appropriate depending on the circumstances of a particular project. Some of these measures might conflict with the “light” measures above, so it will be necessary to prioritize relevant issues:

- Incorporate landscaping and privacy screens into the proposal.
- Use solid railings on decks.
- Develop window configurations that break the line of sight between houses.
- Use translucent glazing such as glass block or frosted glass on windows and doors facing openings on abutting structures.



Although features such as bays and chimneys project into the side yards, the overall side yard pattern is consistent, creating a defining characteristic of the block face.

REAR YARD

GUIDELINE: Articulate the building to minimize impacts on light and privacy to adjacent properties.

Rear yards are the open areas of land between the back of the building and the rear property line. When expanding a building into the rear yard, the impact of that expansion on light and privacy for abutting structures must be considered. This can be challenging given San Francisco's dense pattern of development, however, modifications to the building's design can help reduce these impacts and make a building compatible with the surrounding context.

Light

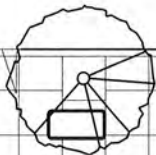
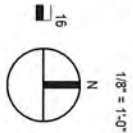
In areas with a dense building pattern, some reduction of light to neighboring buildings can be expected with a building expansion. However, there may be situations where a proposed project will have a greater impact on neighboring buildings. In these situations, the following design modifications can minimize impacts on light; other modifications may also be appropriate depending on the circumstances of a particular project:

- Provide setbacks on the upper floors of the building.
- Include a sloped roof form in the design.
- Provide shared light wells to provide more light to both properties.
- Incorporate open railings on decks and stairs.
- Eliminate the need for parapet walls by using a fire-rated roof.

Planning Code Section 101 states that one of the purposes of the Planning Code is to provide adequate light, air, privacy and convenience of access to property in San Francisco.

EXHIBIT "C"

25TH AVENUE



PROPERTY LINE 30.0'

AVG. ADJ.
FRONT-YARD
SETBACK = (E) 12'-0 1/2"

REAR-YARD
SETBACK = 120'-0"
x 30% = 36'-0"

AREA OF WORK - RE 2/A2.3

AREA OF WORK - RE 2/A2.1

5'-0" FROM
P.L. TO
DECK EDGE

PROPERTY LINE 120.0'

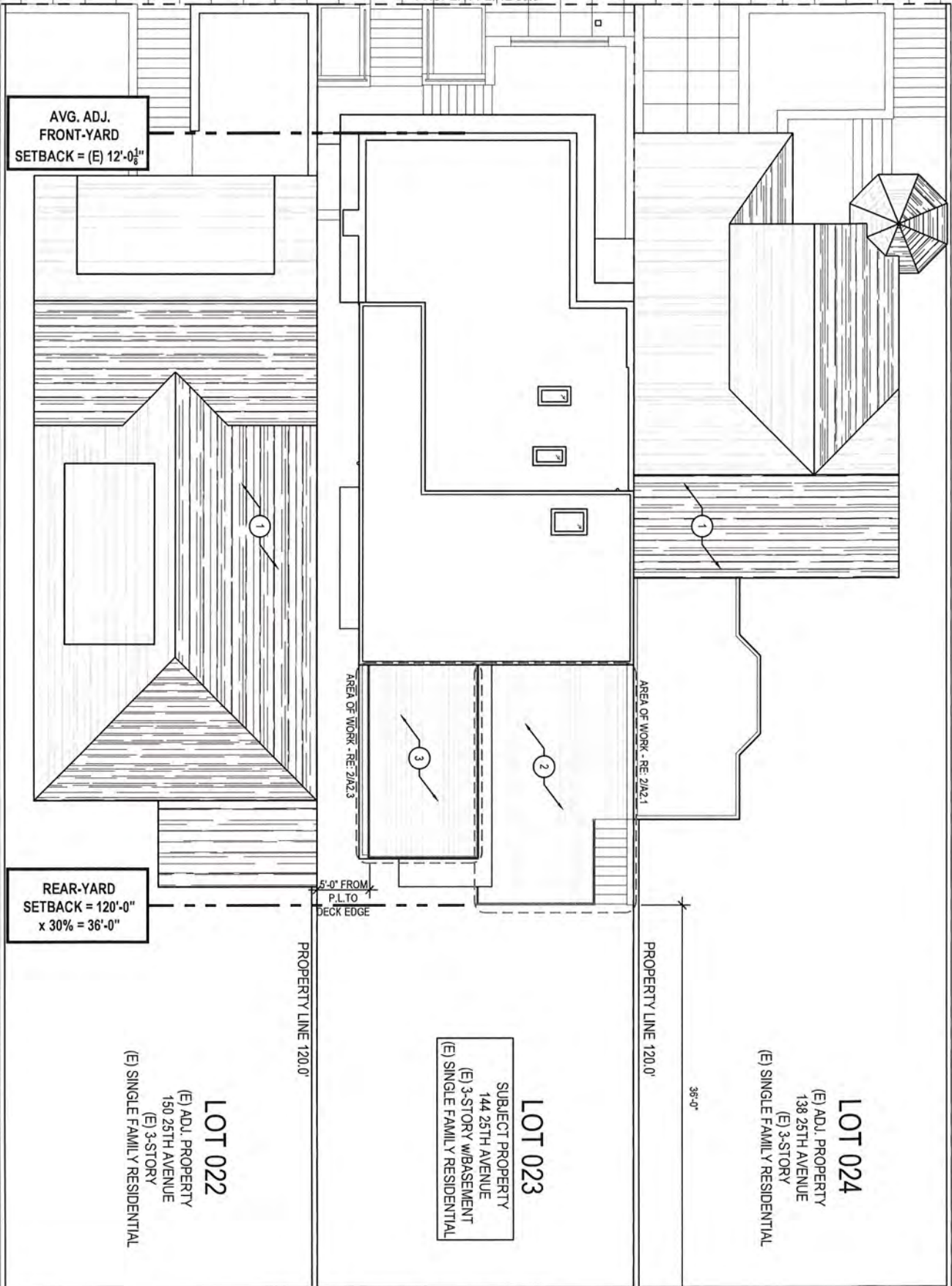
PROPERTY LINE 120.0'

36'-0"

LOT 022
(E) ADJ. PROPERTY
150 25TH AVENUE
(E) 3-STORY
(E) SINGLE FAMILY RESIDENTIAL

LOT 023
SUBJECT PROPERTY
144 25TH AVENUE
(E) 3-STORY W/BASEMENT
(E) SINGLE FAMILY RESIDENTIAL

LOT 024
(E) ADJ. PROPERTY
138 25TH AVENUE
(E) 3-STORY
(E) SINGLE FAMILY RESIDENTIAL

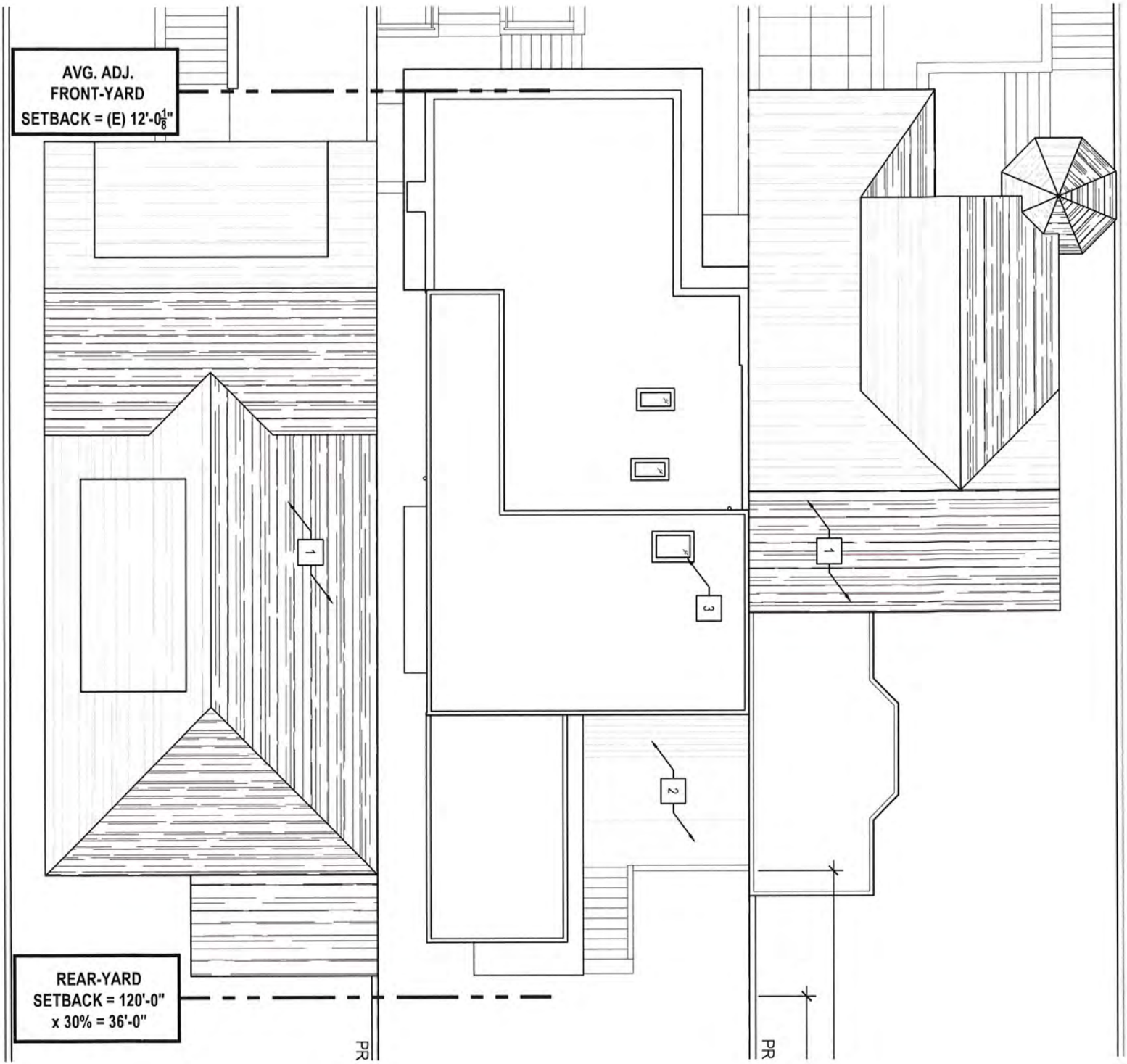


AVG. ADJ.
FRONT-YARD
SETBACK = (E) 12'-0¹/₈"

REAR-YARD
SETBACK = 120'-0"
x 30% = 36'-0"

RR

RR



PROPERTY LINE

PROPERTY LINE



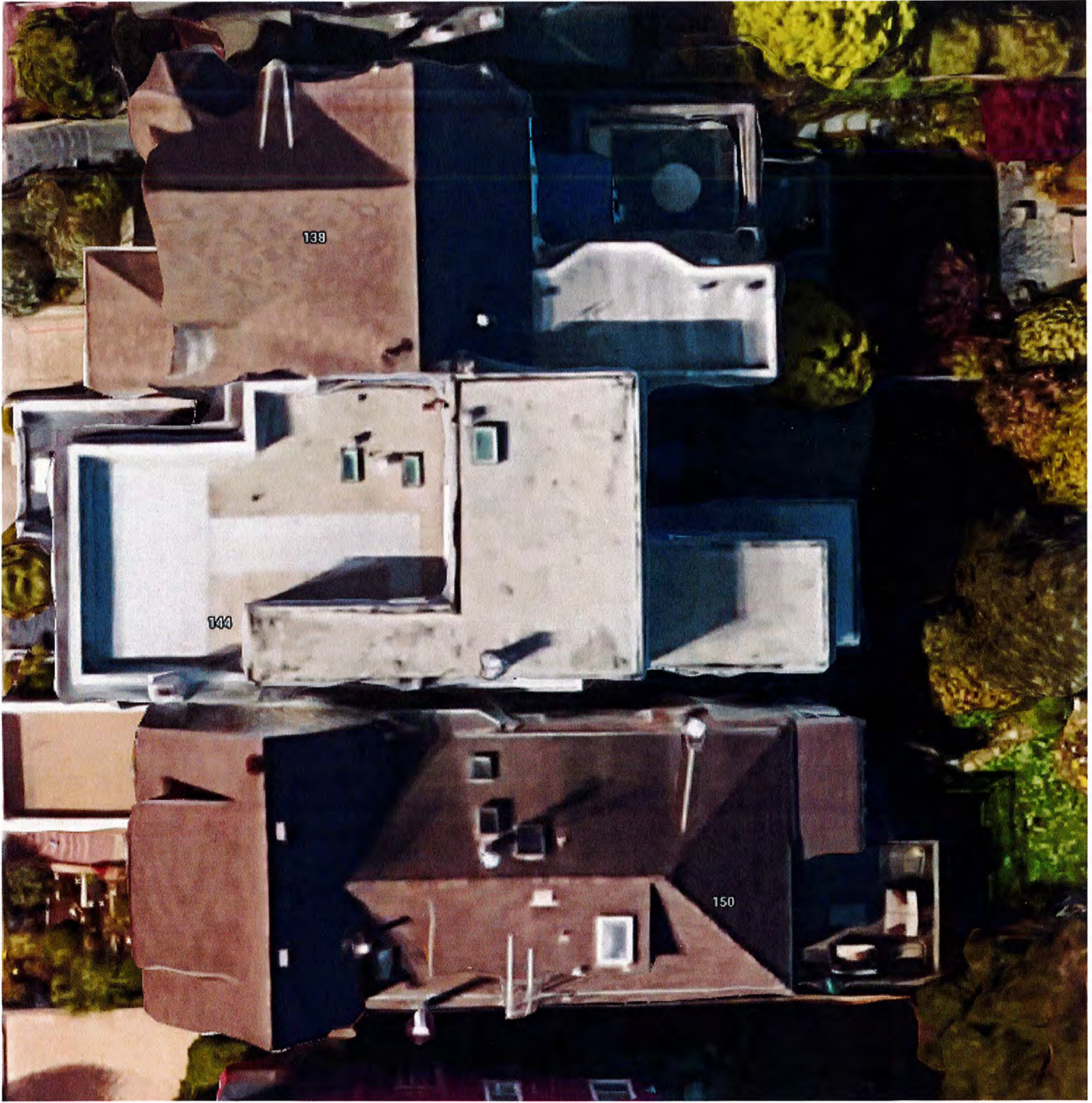
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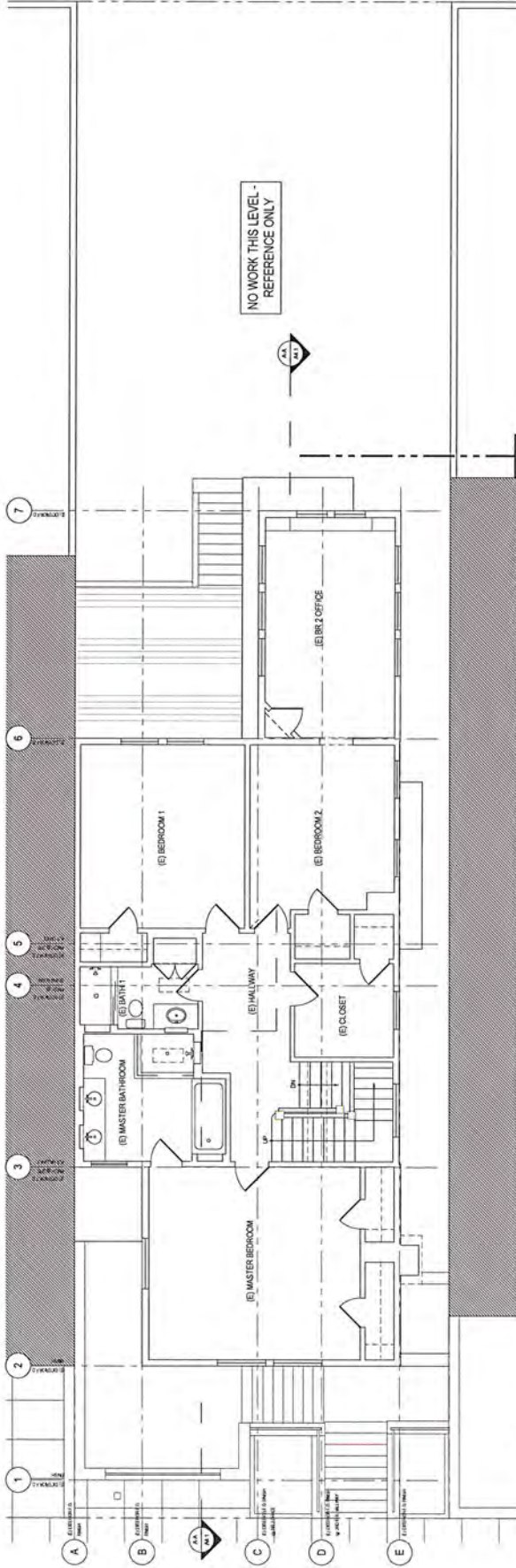
2

139

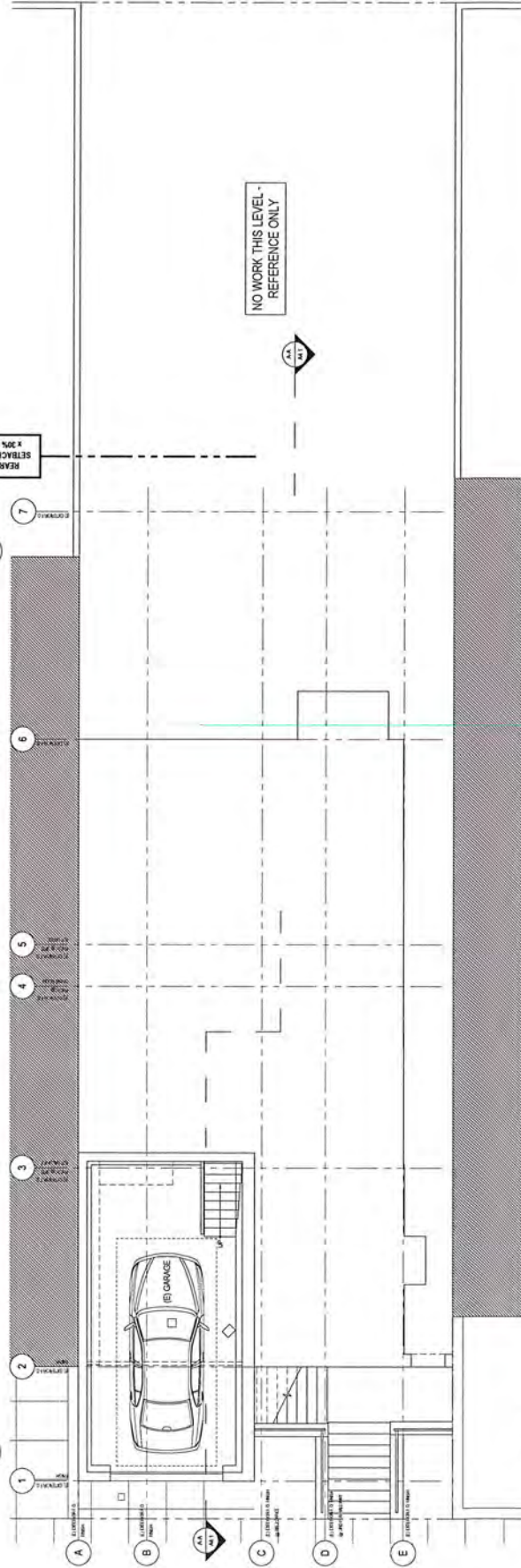
140

150





2 EXISTING SECOND FLOOR PLAN

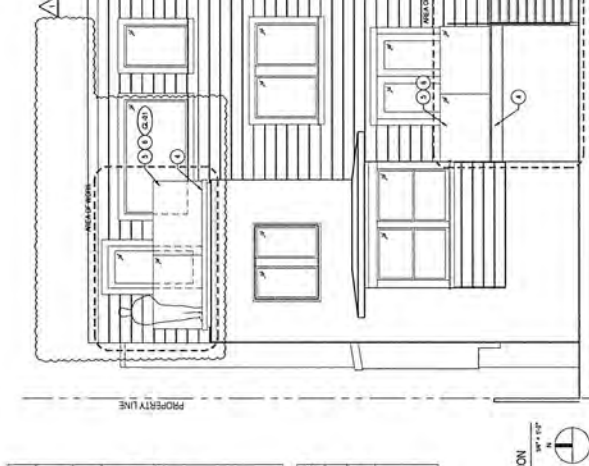
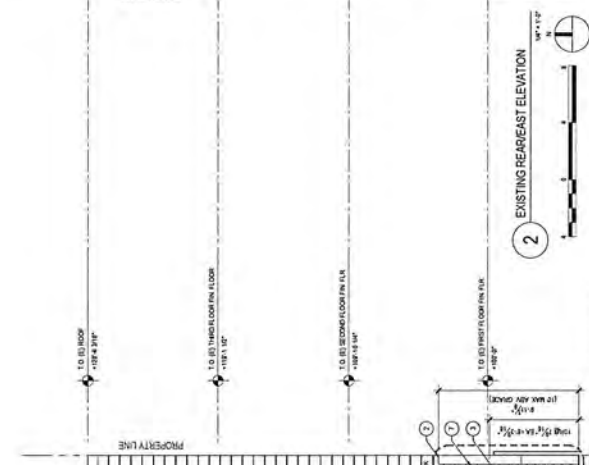
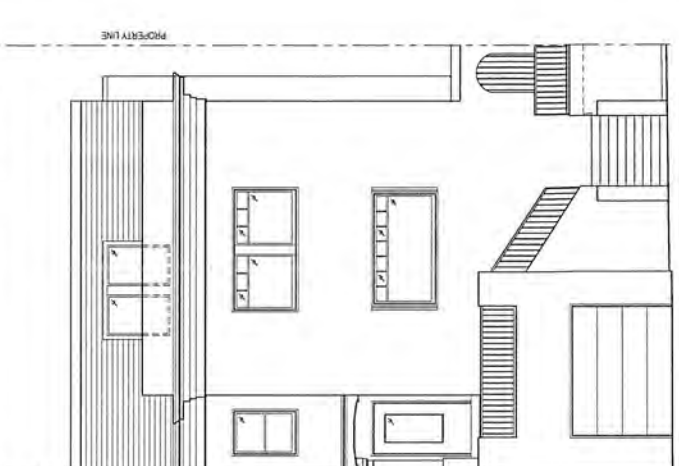
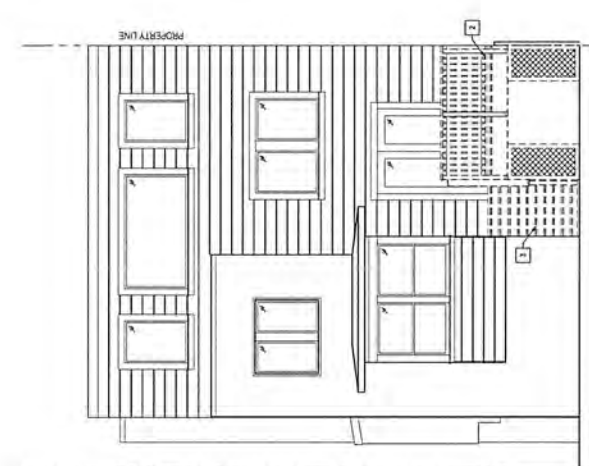


1 EXISTING GARAGE PLAN

NO WORK THIS LEVEL -
 REFERENCE ONLY

NO WORK THIS LEVEL -
 REFERENCE ONLY

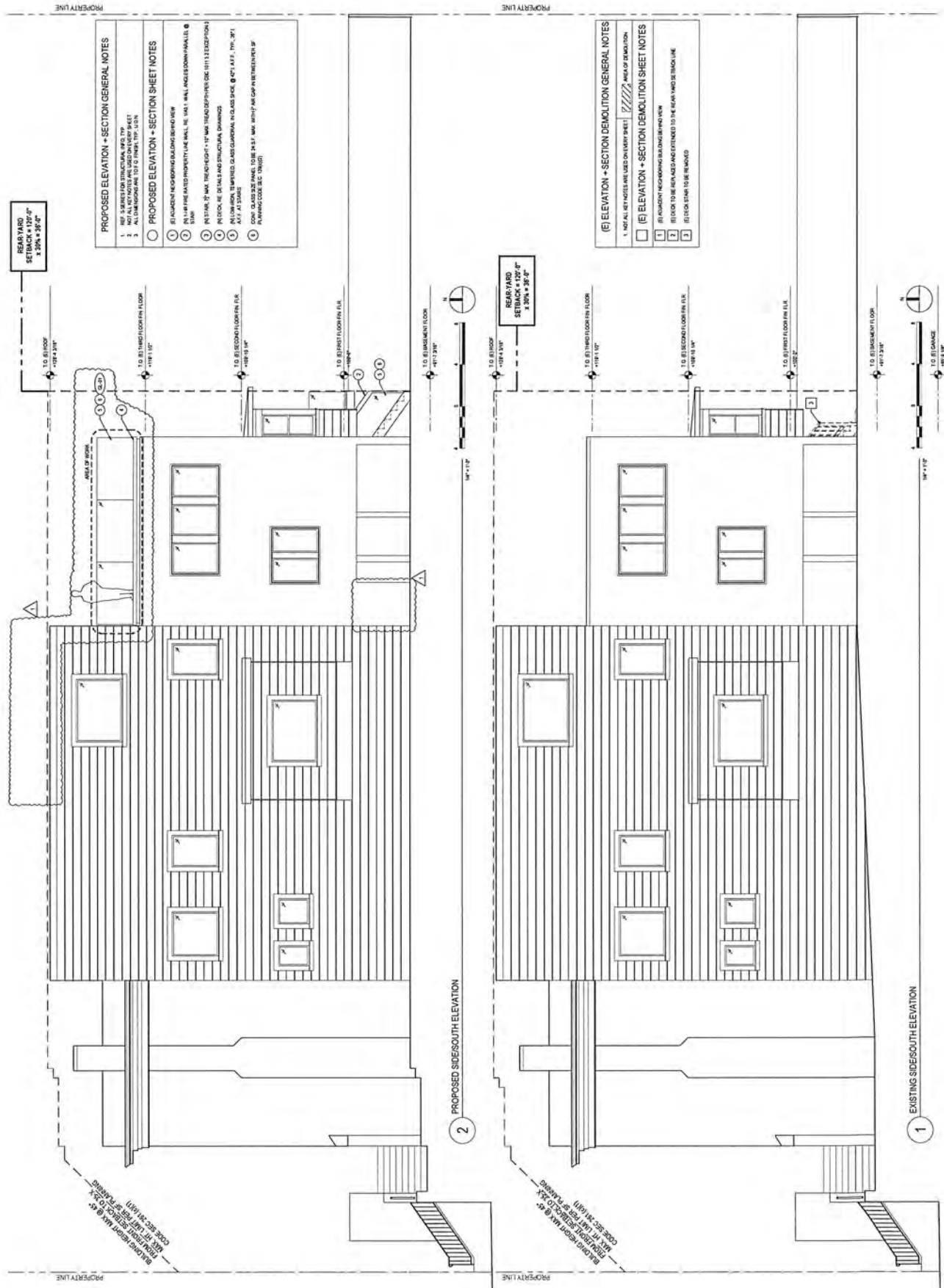
REAR YARD
 SETBACK = 12'-0"



- PROPOSED ELEVATION + SECTION GENERAL NOTES**
- SEE NOTES FOR DIMENSIONS AND TYP.
 - NOT ALL NOTES ARE USED ON EVERY SHEET.
 - ALL DIMENSIONS ARE TO FINISH TYP. UNLESS NOTED OTHERWISE.
- PROPOSED ELEVATION + SECTION SHEET NOTES**
- (1) ADJACENT WORKING BUILDINGS BEHIND VIEW.
 - (2) FINISH WALL TYPE: 1/2" GYPSUM BOARD OVER 1/2" INSULATION OVER 1/2" SHEATHING.
 - (3) FINISH FLOOR TYPE: 1/2" GYPSUM BOARD OVER 1/2" INSULATION OVER 1/2" SHEATHING.
 - (4) FINISH CEILING TYPE: 1/2" GYPSUM BOARD OVER 1/2" INSULATION OVER 1/2" SHEATHING.
 - (5) FINISH ROOF TYPE: 1/2" GYPSUM BOARD OVER 1/2" INSULATION OVER 1/2" SHEATHING.
 - (6) FINISH EXTERIOR WALL TYPE: 1/2" GYPSUM BOARD OVER 1/2" INSULATION OVER 1/2" SHEATHING.
 - (7) FINISH EXTERIOR FLOOR TYPE: 1/2" GYPSUM BOARD OVER 1/2" INSULATION OVER 1/2" SHEATHING.
 - (8) FINISH EXTERIOR CEILING TYPE: 1/2" GYPSUM BOARD OVER 1/2" INSULATION OVER 1/2" SHEATHING.
 - (9) FINISH EXTERIOR ROOF TYPE: 1/2" GYPSUM BOARD OVER 1/2" INSULATION OVER 1/2" SHEATHING.

- (E) ELEVATION + SECTION DEMOLITION GENERAL NOTES**
- NOT ALL NOTES ARE USED ON EVERY SHEET.
 - SEE NOTES FOR DIMENSIONS AND TYP.
 - ALL DIMENSIONS ARE TO FINISH TYP. UNLESS NOTED OTHERWISE.
- (E) ELEVATION + SECTION DEMOLITION SHEET NOTES**
- (1) ADJACENT WORKING BUILDINGS BEHIND VIEW.
 - (2) FINISH WALL TYPE: 1/2" GYPSUM BOARD OVER 1/2" INSULATION OVER 1/2" SHEATHING.
 - (3) FINISH FLOOR TYPE: 1/2" GYPSUM BOARD OVER 1/2" INSULATION OVER 1/2" SHEATHING.
 - (4) FINISH CEILING TYPE: 1/2" GYPSUM BOARD OVER 1/2" INSULATION OVER 1/2" SHEATHING.
 - (5) FINISH ROOF TYPE: 1/2" GYPSUM BOARD OVER 1/2" INSULATION OVER 1/2" SHEATHING.
 - (6) FINISH EXTERIOR WALL TYPE: 1/2" GYPSUM BOARD OVER 1/2" INSULATION OVER 1/2" SHEATHING.
 - (7) FINISH EXTERIOR FLOOR TYPE: 1/2" GYPSUM BOARD OVER 1/2" INSULATION OVER 1/2" SHEATHING.
 - (8) FINISH EXTERIOR CEILING TYPE: 1/2" GYPSUM BOARD OVER 1/2" INSULATION OVER 1/2" SHEATHING.
 - (9) FINISH EXTERIOR ROOF TYPE: 1/2" GYPSUM BOARD OVER 1/2" INSULATION OVER 1/2" SHEATHING.





PROPOSED ELEVATION + SECTION GENERAL NOTES

1. SEE SECTION FOR STRUCTURAL AND TRIM
2. NOT ALL SET NOTES ARE USED ON EVERY SHEET
3. ALL DIMENSIONS ARE TO FINISH UNLESS NOTED OTHERWISE

PROPOSED ELEVATION + SECTION SHEET NOTES

1. EXISTING ARCHITECTURE TO REMAIN
2. EXISTING ARCHITECTURE TO BE DEMOLISHED
3. EXISTING ARCHITECTURE TO BE DEMOLISHED AND REPLACED WITH NEW
4. EXISTING ARCHITECTURE TO BE DEMOLISHED AND REPLACED WITH NEW AND FINISHED TO MATCH EXISTING
5. EXISTING ARCHITECTURE TO BE DEMOLISHED AND REPLACED WITH NEW AND FINISHED TO MATCH EXISTING AND TO BE REAR YARD SETBACK LINE
6. EXISTING ARCHITECTURE TO BE DEMOLISHED AND REPLACED WITH NEW AND FINISHED TO MATCH EXISTING AND TO BE REAR YARD SETBACK LINE

(E) ELEVATION + SECTION DEMOLITION GENERAL NOTES

1. NOT ALL SET NOTES ARE USED ON EVERY SHEET
2. AREA OF DEMOLITION

(E) ELEVATION + SECTION DEMOLITION SHEET NOTES

1. EXISTING ARCHITECTURE TO REMAIN
2. EXISTING ARCHITECTURE TO BE DEMOLISHED
3. EXISTING ARCHITECTURE TO BE DEMOLISHED AND REPLACED WITH NEW
4. EXISTING ARCHITECTURE TO BE DEMOLISHED AND REPLACED WITH NEW AND FINISHED TO MATCH EXISTING
5. EXISTING ARCHITECTURE TO BE DEMOLISHED AND REPLACED WITH NEW AND FINISHED TO MATCH EXISTING AND TO BE REAR YARD SETBACK LINE
6. EXISTING ARCHITECTURE TO BE DEMOLISHED AND REPLACED WITH NEW AND FINISHED TO MATCH EXISTING AND TO BE REAR YARD SETBACK LINE

2 PROPOSED SIDESOUTH ELEVATION

1 EXISTING SIDESOUTH ELEVATION

PROPERTY LINE

PROPERTY LINE

PROPERTY LINE

PROPERTY LINE

EXHIBIT “D”



Renato Jose <rjose@r-arch.com>

144 25th Avenue - RDG rear deck question

Speirs, Jeffrey (CPC) <jeffrey.speirs@sfgov.org> Fri, Dec 9, 2022 at 4:26 PM
To: "Winslow, David (CPC)" <david.winslow@sfgov.org>, Renato Jose <rjose@r-arch.com>

Thank you both!

Best Regards,

Jeffrey Speirs, Senior Planner (he/him)

Development Review Team 7 & 11 | Current Planning Division

San Francisco Planning

49 South Van Ness Avenue, Suite 1400, San Francisco, CA 94103

Direct: 628.652.7357 | www.sfplanning.org

[San Francisco Property Information Map](#)

Note: Planning Department staff are currently working a hybrid schedule and as such, email is the best way to reach me.

From: Winslow, David (CPC) <david.winslow@sfgov.org>
Sent: Friday, December 9, 2022 4:23 PM
To: Renato Jose <rjose@r-arch.com>
Cc: Speirs, Jeffrey (CPC) <jeffrey.speirs@sfgov.org>
Subject: RE: 144 25th Avenue - RDG rear deck question

I reviewed this at the counter and this looks ok with respect to the RDGs

David Winslow

Principal Architect

Design Review | Current Planning
San Francisco Planning Department

49 South Van Ness, Suite 1400 | San Francisco, California, 94103

T: (628) 652-7335

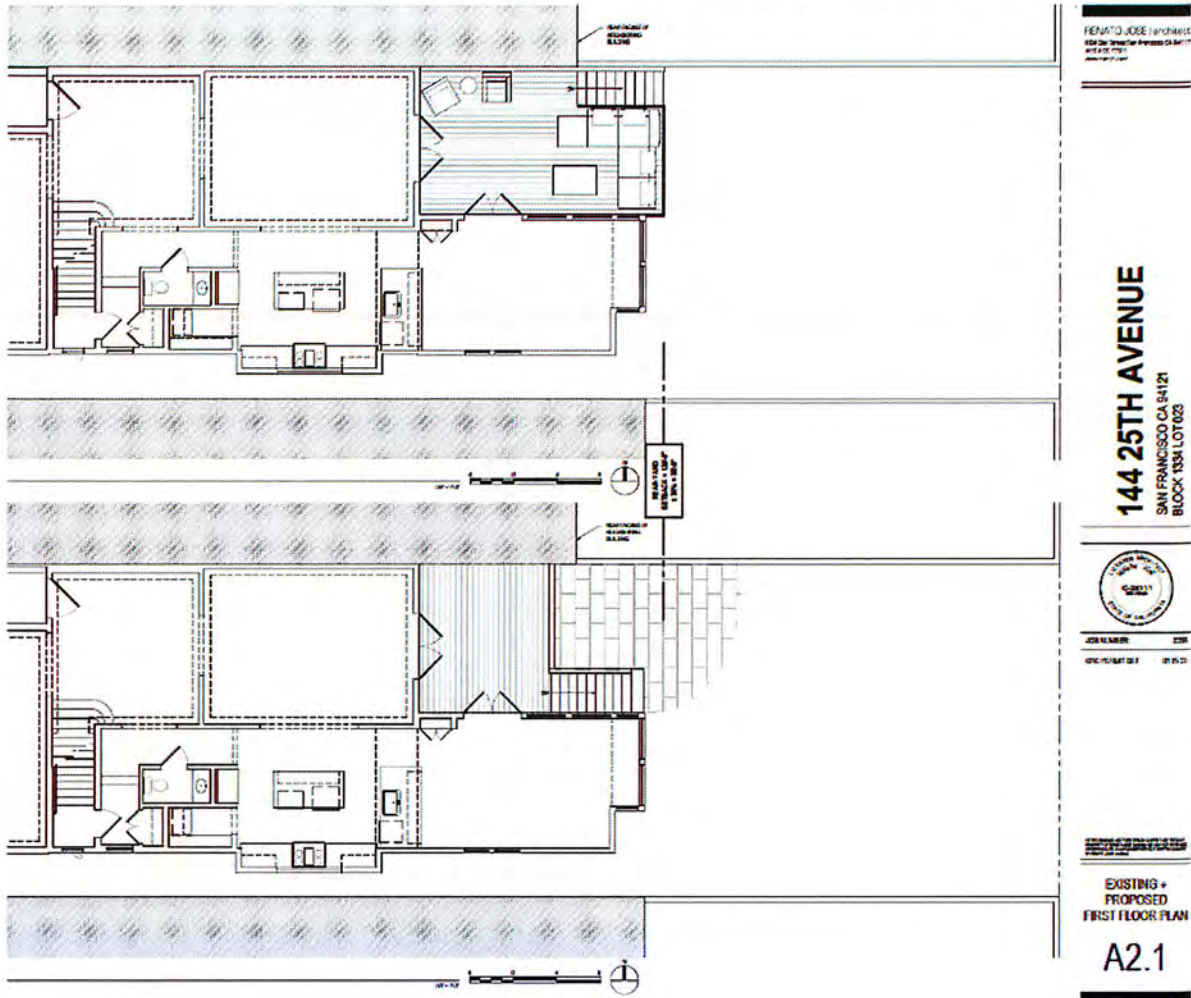
From: Renato Jose <rjose@r-arch.com>
Sent: Friday, December 09, 2022 4:12 PM
To: Winslow, David (CPC) <david.winslow@sfgov.org>
Cc: Speirs, Jeffrey (CPC) <jeffrey.speirs@sfgov.org>
Subject: 144 25th Avenue - RDG rear deck question

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hi David -

Thanks for meeting with me earlier this afternoon regarding our 144 25th Avenue deck project. As you mentioned, I've also copied Jeff Speirs who I spoke with last week at the PIC counter.

Per the attached pdf and image below, we're proposing extending an existing first floor rear deck to the rear-yard setback line as shown. The question I posed was relative to any side-yard setback requirements at the deck, once it gets past the adjacent neighboring facade, per the RDG (Residential Design Guidelines). Since we're proposing a 3' wide stair down to the rear yard, per our discussion, this meets the intent of the 3 foot "buffer zone" at the side-yard. The 42" tall, 1-hr fire-rated wall along the property line at the deck, will slope downward with the stair, parallel to the stair rise and run. Since we will be pursuing an over-the-counter permit, per the image attached and below, can you confirm that this meets the RDG requirements, so that I can present this to the planner on staff during my over-the-counter review?



Thanks again for your assistance, and if you need any clarifications or additional info, please do not hesitate to ask. Have a great weekend!

Best,

Renato

--

RENATO JOSE AIA | architect

604 Oak Street

San Francisco CA 94117

t: 415 255 7781

e: rjose@r-arch.com

www.r-arch.com

EXHIBIT "E"



EXHIBIT "F"



EXHIBIT "G"



EXHIBIT "H"



EXHIBIT "I"



PUBLIC COMMENT

From: [Michael Kardos](#)
To: [BoardofAppeals \(PAB\)](#)
Cc: [Lexi Bisbee](#)
Subject: Alteration Permit No. 2023/02/02/1229 - Appeal No. 23-030 144 25th Ave.
Date: Tuesday, August 1, 2023 8:05:10 PM
Attachments: [image.png](#)

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board of Appeals,

Upon our return from travel, we learned of a meeting scheduled for August 2nd at 5PM with respect to:

- Alteration Permit No. 2023/02/02/1229
- Appeal No. 23-030
- 144 25th Ave.

Our understanding is that part of this permit involves the building of a roof deck on the rear part of the home above the second story. I discussed with the neighbor and was told that plans could be found online and was further told that a glass railing will be used and that there would be 'no impact to our view' of the Golden Gate Bridge.

Upon returning to my house that evening at 154 25th Ave., I did a web search but could not find any plans online. I also took a picture from our 2nd story room at the furthest point at the back of our house which you can see below. The roof line of the neighbor's 2nd story can be seen just below the roadway of the GG Bridge. Our expectation is that any safety railing would be a minimum of 36in above the roof line and would therefore obstruct our direct view of most of the bridge (glass railing or otherwise). Furthermore, any furniture or plants on the roof deck would obstruct our view completely.

Having a GG Bridge view is one of the reasons we bought our home and is a key element in the home's value. The obstruction of this view is a major impact on us and the reason we object to this portion of the permit.

In addition to submitting our opposition here, we would like to have access to the meeting on August 2nd so that we might provide comment. We are also hoping to speak to someone in your office about this situation sometime before the meeting. Please let us know if there is a specific representative in your office that we can speak with. Thank you for your consideration.



Regards,

Mike Kardos and Lexi Bisbee
154 25th Ave.
SF, CA 94121
307-690-4350
mikekardos@alum.mit.edu