

BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal of
MISHA PALECEK, _____)
Appellant(s))
vs.)
ZONING ADMINISTRATOR, _____)
Respondent

Appeal No. **23-049**

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT on October 6, 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 September 26, 2023, of a Variance Decision (Denial of a Rear Yard Variance) (The proposal is to legalize the 3rd floor solarium conversion within the buildable area of the lot as an expansion of the master bedroom suite, legalize the use of a 3rd floor unoccupied roof area as a deck with 5-foot side setbacks, and relocate and extend the spiral stairs located in the rear yard to access the proposed 3rd floor deck; the Planning Code requires the subject property to maintain a rear yard depth of approximately 45 feet; the existing noncomplying building has a rear yard that measures only 31 feet 8 inches; the proposed rear spiral stairs will encroach approximately 6 additional feet into the required rear yard; the Zoning Administrator determined that the project does not meet any of the five findings required by Planning Code Section 305(c) and denied the Rear Yard Variance) at 566 Kansas Street.

CASE NO. 2021-005284VAR

FOR HEARING ON December 13, 2023

Address of Appellant(s):

Address of Other Parties:

Misha Palecek, Appellant(s) c/o Tom Tunny, Attorney for Appellant(s) Reuben Junius & Rose LLP One Bush Street, Suite 600 San Francisco, CA 94104	N/A
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Date Filed: October 6, 2023

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

PRELIMINARY STATEMENT FOR APPEAL NO. 23-049

I / We, **Misha Palecek**, hereby appeal the following departmental action: **ISSUANCE of Variance Decision No. 2021-005284VAR** by the **Zoning Administrator** which was issued or became effective on: **September 26, 2023**, for the property located at: **566 Kansas Street**.

BRIEFING SCHEDULE:

Appellant's Brief is due on or before: 4:30 p.m. on **October 26, 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, and tina.tam@sfgov.org.

The Respondent Department's brief is due on or before: 4:30 p.m. on **Wednesday November 8, 2023 (note this is one day earlier than the Board's regular briefing schedule given the holiday on November 10, 2023)**. 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 and ttunny@reubenlaw.com.

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

Hearing Date: **Wednesday, November 15, 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 Wednesday 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: Tom Tunny, attorney for appellant



VARIANCE DECISION

Date: September 26, 2023
Case No.: **2021-005284VAR**
Project Address: **566 Kansas St**
Block/Lots: 4010 / 001H
Zoning: RH-3 (RESIDENTIAL- HOUSE, THREE FAMILY)
Height/Bulk: 40-X Height and Bulk District
Applicant: Ahmad Mohazab
TECTA Associates
2747 19th Street
San Francisco, CA 94110
Owner: Michael Palecek
566 Kansas Street
San Francisco, CA 94107
Staff Contact: Laura Ajello – 628-652-7353
Laura.Ajello@sfgov.org

Description of Variance – Rear Yard Variance Sought:

The proposal is to legalize the 3rd floor solarium conversion within the buildable area of the lot as an expansion of the master bedroom suite, legalize the use of a 3rd floor unoccupied roof area as a deck with 5-foot side setbacks, and relocate and extend spiral stairs located in the rear yard to access the proposed 3rd floor deck.

Planning Code Section 134 requires the subject property to maintain a rear yard depth of approximately 45 feet. The existing noncomplying building has a rear yard that measures only 31 feet 8 inches. The proposed rear spiral stairs will encroach approximately 6 additional feet into the required rear yard. Therefore, a variance is required.

Procedural Background:

1. Prior decisions of the Board of Appeals prohibited the use of the rear roof area as a deck (Appeal No. 87-180 for Building Permit No. 8704654 and Appeal No. 93-200 for Building Permit No. 9308067). The decision for Appeal Number 87-180 also restricted ceiling height to no greater than 8 feet.
2. The Project is exempt from the California Environmental Quality Act (“CEQA”) as a Class 1 categorical exemption.
3. The Zoning Administrator held a public hearing on **Variance Application No. 2021-005284VAR** on **July 26, 2023**.
4. Planning Code Section 311 notification was mailed on July 10, 2023 and expired on August 9, 2023. No requests for Discretionary Review were filed during the notification period.

Decision:

DENIED, in general conformity with the plans on file with this application, shown as EXHIBIT A, to convert the 3rd floor unoccupied roof area to a deck and construct rear spiral stairs that will encroach approximately 6 additional feet into the required rear yard of the three-story, one-family dwelling (the proposed solarium conversion falls within the permitted buildable area and does not require a variance).

Findings:

Section 305(c) of the Planning Code states that in order to grant a variance, the Zoning Administrator must determine that the facts of the case are sufficient to establish the following five findings:

FINDING 1.

That there are exceptional or extraordinary circumstances applying to the property involved or to the intended use of the property that do not apply generally to other properties or uses in the same class of district.

Requirement Not Met.

- A. There are no exceptional or extraordinary circumstances applying to the property that do not apply to other properties in the same class of district. The subject lot is typical in size, shape, and topography. The existing building already extends 13 feet 6 inches into the required rear yard at the 2nd Floor level. Additionally, the existing building contains only a single dwelling unit within a RH-3 Zoning District.
- B. Building Permit No. 8704654 was proposed for the subject lot to add a 3rd story. The permit was appealed to the Board of Appeals (Case No. 87-180), which voted on December 2, 1987 to grant the appeal and approve the permit with the following conditions: 1) Delete deck, 2) Delete parapet at the rear, and 3) the ceilings of the proposed structure shall not exceed 8 feet.
- C. Building Permit No. 9308067 was proposed for the subject lot to add safety railing to the rear roof area for safe access to a fire escape ladder at the rear of the building. That permit was appealed to the Board of Appeals (Case No. 93-200), which voted on December 15, 1993, to grant the appeal and approve the permit with the following conditions: 1) that the roof area not be used as a deck, and 2) that a Notice of Special Restrictions be recorded on the property to document the condition of approval.

FINDING 2.

That owing to such exceptional and extraordinary circumstances the literal enforcement of specified provisions of this Code would result in a practical difficulty or unnecessary hardship not created by or attributed to the applicant or the owner of the property.

Requirement Not Met.

- A. As detailed above, there are no exceptional or extraordinary circumstances for the subject property that create any practical difficulty or unnecessary hardship. The subject lot is occupied by a single-family building of typical size that already extends into the required rear yard. The lot includes a useable rear yard for open space, and the proposed roof deck is not needed to meet the minimum useable open space requirements of the Planning Code. The Board of Appeals has twice prohibited the use of the rear roof area as a deck in the past.

FINDING 3.

That such variance is necessary for preservation and enjoyment of a substantial property right of the subject property, possessed by other property in the same class of district.

Requirement Not Met.

- A. The variance is not necessary for preservation and enjoyment of a substantial property right of the subject property, possessed by other property in the same class of district. The subject lot is occupied by a single-family building of typical size that already extends into the required rear yard. The lot includes a useable rear yard for open space, and the proposed roof deck is not needed to meet the minimum useable open space requirements of the Planning Code. The Board of Appeals has twice prohibited the use of the rear roof area as a deck in the past.

FINDING 4.

That the granting of such variance will not be materially detrimental to the public welfare or materially injurious to the property or improvements in the vicinity.

Requirement Not Met.

- A. The Planning Department determined the project to be consistent with the Residential Design Guidelines and no request for Discretionary Review was filed for the associated building permit. However, the Department did receive opposition to the proposed project, and granting the variance would violate two prior decisions of the Board of Appeals to prohibit the use of the rear roof area as a deck. It would additionally add a spiral stair that would extend further into the required rear yard and an additional floor of height than the existing stair when the subject building is already much deeper than the neighboring buildings to the north.

FINDING 5.

The granting of such variance will be in harmony with the general purpose and intent of this Code and will not adversely affect the General Plan.

Requirement Not Met.

- A. This development is consistent with the generally stated intent and purpose of the Planning Code to promote orderly and beneficial development. Planning Code Section 101.1 establishes eight priority-planning policies and requires review of variance applications for consistency with said policies. The project meets all relevant policies, including conserving neighborhood character, and maintaining housing stock.
 - 1. Existing neighborhood retail uses will not be adversely affected by the proposed project.
 - 2. The proposed project will not be in keeping with the existing housing and neighborhood character. The proposed rear stair would extend even deeper into the required rear yard, and the use of the rear roof area as a deck is counter to two separate, prior decisions of the Board of Appeals to prohibit such a deck use.

3. The proposed project will have no effect on the City's supply of affordable housing.
4. The proposed project does not adversely affect neighborhood parking or public transit.
5. The project will have no effect on the City's industrial and service sectors.
6. The proposed project will have no effect on the City's preparedness to protect against injury and loss of life in an earthquake.
7. The project will have no effect on the City's landmarks or historic buildings.
8. The project would not affect any existing or planned public parks or open spaces.

The effective date of this decision shall be either the date of this decision letter if not appealed, or the date of the Notice of Decision and Order if appealed to the Board of Appeals.

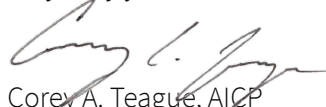
Once any portion of the granted variance is used, all specifications and conditions of the variance authorization become immediately operative.

Protest of Fee or Exaction: You may protest any fee or exaction subject to Government Code Section 66000 that is imposed as a condition of approval by following the procedures set forth in Government Code Section 66020. The protest must satisfy the requirements of Government Code Section 66020(a) and must be filed within 90 days of the date of the first approval or conditional approval of the development referencing the challenged fee or exaction. For purposes of Government Code Section 66020, the date of imposition of the fee shall be the date of the earliest discretionary approval by the City of the subject development.

If the City has not previously given Notice of an earlier discretionary approval of the project, the Planning Commission's adoption of this Motion, Resolution, Discretionary Review Action or the Zoning Administrator's Variance Decision Letter constitutes the approval or conditional approval of the development and the City hereby gives **NOTICE** that the 90-day protest period under Government Code Section 66020 has begun. If the City has already given Notice that the 90-day approval period has begun for the subject development, then this document does not re-commence the 90-day approval period.

APPEAL: Any aggrieved person may appeal this variance decision to the Board of Appeals within ten (10) days after the date of the issuance of this Variance Decision. For further information, please contact the Board of Appeals in person at 49 South Van Ness Ave, Suite 1475 (14th Floor), call 628-652-1150, or visit www.sfgov.org/bdappeal.

Very truly yours,



Corey A. Teague, AICP
Zoning Administrator

This is not a permit to commence any work or change occupancy. Permits from appropriate departments must be secured before work is started or occupancy is changed.

BRIEF SUBMITTED BY THE APPELLANT(S)

REUBEN, JUNIUS & ROSE, LLP

Thomas P. Tunny
ttunny@reubenlaw.com

November 22, 2023

President Rick Swig
and Members of the San Francisco Board of Appeals
49 South Van Ness
Suite 1475 (14th Floor)
San Francisco, CA 94103

Re: Appeal No. 23-049
Appeal Title: Palecek v. Zoning Administrator
Subject Property: 566 Kansas Street
Determination: Variance Denial (Case No. 2021-005284VAR)
Appellant's Brief

Dear President Swig and Board Members:

This firm is working with Amanda and Misha Palecek, who are owners of, and with their three children reside at, 566 Kansas Street (the "Property"). This appeal is of the Zoning Administrator's denial of their application for a rear yard Variance at the Property. The Variance sought to legalize a rear yard roof deck above a two-story pop-out. The deck is shown in Exhibit A. We have great regard for the Zoning Administrator and his decisions, and the reasoning behind those decisions. But this particular case involves unique circumstances and we respectfully request the Board overturn the Zoning Administrator's decision for the following reasons.

- First, this case is about views and the City's change in policy concerning views. In his denial (Exhibit B), the Zoning Administrator points to a 1987 decision by this Board prohibiting the same deck that is at issue in this appeal. However, that 1987 decision was based solely on the deck's impacts on neighbor's views. At that time, private views were a consideration in the City's planning and zoning decisions.

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Since then the City has changed its policies on private views 180 degrees and they are no longer protected. Cases like this one in 1987 are a good example why the City has changed its rules concerning views. This deck does not impact views. It is visible to neighbors, but it does not block their views. And to the extent it is visible, any impact of that visibility is outweighed by the important utility the deck provides as usable open space.

- Second, as shown below, the necessary findings for a Variance can be made and are supported by substantial evidence.
- Third, the opposition to the Variance raised by the neighbor at 2112 18th Street lacks merit. That neighbor has their own rear deck and rear yard Variances, like many other neighbors on this unique block. The properties on this block need flexibility in the zoning controls to work with the unique geography of the block. For that reason the Paleceks did not oppose the neighbor's Variance applications. But the neighbor has not responded in kind; for some reason rear yard Variances are acceptable for their property but not the Paleceks.

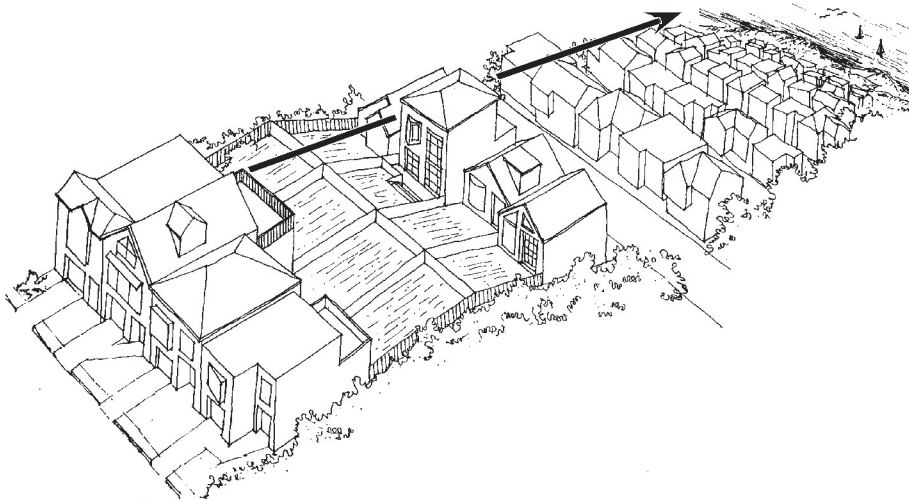
I. THE BOARD'S 1987 DECISION HAS BEEN SUPERSEDED BY LAW

In 1987, a previous owner of the Property applied for a building permit to construct the now-existing third floor and the deck at issue. The neighbors, also prior owners of those properties, appealed on the basis that the third floor would block their views. The Board wrestled with the appeal, noting that the view blockage wasn't as significant as the neighbors claimed, but also noting that views were to be protected. As a compromise they voted to allow the new third floor as proposed, but to deny the deck. (Exhibit C.) The neighbors filed a lawsuit challenging the

Board's decision. The Court denied the neighbors' challenge and upheld the Board's decision. That decision was not appealed.

In 1993, the third-floor addition had been constructed and the Property owner applied for a permit to construct a railing around the edge of the roof where the deck was previously proposed. The railing was necessary for fire and life safety reasons as the deck serves as a second means of emergency egress. The neighbors appealed that permit. The Board denied the appeal, but in doing so required the recording of a Notice of Special Restrictions ("NSR") to ensure no deck was constructed.

Today, as a matter of code and policy, the City no longer protects private views. As explained in the City's Residential Design Guidelines: "The General Plan, Planning Code and these Guidelines do not provide for protecting views from private property." The image and text below is taken from the Guidelines.



Views from this private building and deck are not protected.

(Residential Design Guidelines at p. 18.)

Because of this clear change in policy and code, the Board's decisions in 1987 and 1993 have been superseded. And the existence of the NSR is not an impediment to granting the Variance. The Planning Department often rescinds NSRs, for example, where subsequently passed state law conflicts with the NSR's conditions.

II. THE REQUIRED VARIANCE FINDINGS CAN BE MADE

Pursuant to Planning Code Section 305(c), the Zoning Administrator must find that the facts presented are such to establish certain findings to grant a Variance. As shown below, we respectfully submit that the Section 305(c) findings can be made, and as such compel this Board to grant the Variance.

1. That there are exceptional or extraordinary circumstances applying to the property involved or to the intended use of the property that do not apply generally to other properties or uses in the same class of district.

- 566 Kansas Street is located between 18th and Mariposa Streets, on Potrero Hill, in an RH-3 zoning district. In this district the required rear yard is 45%. The attached site plan (Exhibit D) shows the subject lot in relation to nearby lots. This block slopes steeply down in two directions: from south to north and west to east. This means that the properties along 18th Street are higher in elevation than the subject property.
- The Variance is requested to legalize an existing rear roof deck, with some modifications, located in the required rear yard. The attached floor plan (Exhibit E) shows the location of the deck, and the existing and proposed conditions. The deck remains largely the same as existing except that the railing on both sides would have a 5-foot setback. The attached photo (Exhibit A) shows the deck today; but again, the

side railing shown on the south side gets pulled in 5 feet. The other homes shown in this photo are on 18th Street, including the neighbor at 2112 18th Street (the blue house).

- The first extraordinary and exceptional circumstance here is the location of the subject lot at the end of the block. Because of this, the building to the north is the only building available for the Planning Code's allowed rear yard reduction through averaging, and that building is unusually shallow on its lot. This circumstance restricts the property owner's ability to reduce the 45% rear yard requirement through averaging (it can't be reduced at all), unlike other typical properties.
- Another exceptional circumstance is that the existing pop-out below the deck is already constructed. It was built many years ago by a prior owner. Planning Code Section 136 of the Planning Code allows for an obstruction in the rear yard that is two stories tall, such as this one, and 12 feet deep, and has five-foot setbacks on both sides. The Code also allows a rear deck on top of such a structure, recognizing that a dwelling should be able to get the benefit of the rear yard open space with a roof deck. Our proposal is even less impactful than the Code contemplates because the pop-out is already
- This existing structure doesn't quite meet the Code's rear yard pop-out requirements, but the deck, when set back 5 feet on both sides, does. We would submit that this is an exceptional and extraordinary circumstance, and a hardship, if the property owner is not able to utilize this deck as rear yard open space where it complies with the

Code requirements and provides the same open space that the Code allows for other similarly situated properties.

2. *That owing to such exceptional or extraordinary circumstances the literal enforcement of specified provisions of this City Planning Code would result in practical difficulty or unnecessary hardship not created by or attributable to the applicant or the owner of the property.*

- The rear yard pop-out provisions of Section 136 are designed to give property owners usable rear yard open space above a pop-out because the pop-out occupies rear yard space that could otherwise be usable. Because this deck complies with the Section 136 controls, not being able to utilize the deck as open space is a hardship not created by the property owner.
- In addition, this block is steeply-sloping down from south to north and from west to east. Because of these exceptional conditions, the subject property's grade-level yard feels enclosed and is not as usable as a typical rear yard. For this reason the Paleceks rarely use the rear yard and can think of only two gatherings there in the last 10 years. In this immediate area of the block, elevated decks are a ubiquitous means of providing usable open space. Not being able to use the proposed deck under these conditions is a hardship not created by the property owner.

3. *That the variance is necessary for the preservation and enjoyment of a substantial property right of the subject property, possessed by other properties in the same class of district.*

- As stated, many of the properties at this end of the subject block utilize decks for open space. Nine (9) nearby properties have roof decks either built or approved for construction, and in some cases more than one. (Exhibit F (block map and photos).) The neighbor at 2112 18th Street, opponent of this Variance, even obtained approval of a rear yard variances to facilitate the use of a roof deck. The subject Variance would allow the property owner the right to use the deck as open space, just as the neighbors have done.

4. *That the granting of such variance will not be materially detrimental to the public welfare or materially injurious to the property or improvements in the vicinity.*

- Because of the ubiquity of decks in the immediate area, the addition of the proposed deck is no different than other properties and thus will not be materially detrimental to the public welfare. The views from this deck are away from the nearest properties, so users of the deck would not look into neighbor properties. In addition, this is a small deck located off the master bedroom. It is intended for the private use of the occupants, not for guests or socializing. The addition of the spiral stair provides access to the rear yard, but will not increase the use of or foot traffic on the deck.

5. *That the granting of such variance will be in harmony with the general purpose and intent of this City Planning Code and will not adversely affect the Master Plan.*

- The granting of the requested Variance is in harmony with the Planning Code and does not adversely affect the General Plan. The Project will allow the purposeful use of the rear yard pop-out in a manner that respects the context and intensity of surrounding development. The proposed deck is similar to a number of other properties on the block, and justified by the unique circumstances of the lot's slope, rear yard, and other historic development patterns. In fact, not allowing the deck puts the Property out of harmony with the neighborhood, given the proliferation of decks.
- Moreover, recently proposed legislation (Board File No. 230446), of which the Planning Commission recommended approval, would reduce the size of required rear yards throughout the City, including in this zoning district. Under the legislation, the proposed deck would be allowed and no variance would be required. Although there is no guarantee the legislation will be approved, its existence, and the Planning Commission's approval in particular, reflect a general recognition in City planning and zoning policy that the rear yard requirements in this district are too large.

III. THE NEIGHBOR'S CONCERNS ARE UNFOUNDED

The neighbor at 2112 18th Street submitted a letter and email to the Zoning Administrator dated July 26, 2023, expressing opposition to the proposed Variance. The neighbor expresses concerns about impacts to their privacy, increased foot traffic due to the new spiral stair, and impacts to the mid-block open space.

As to the neighbors' privacy, it is the neighbors' rear deck and new roof deck that allow the neighbors to look into the subject property and impact the applicants' privacy. Given the topography of the block, the neighbors' property is higher in elevation than the subject property, meaning they look down into the subject property. In addition, this is an urban area with many elevated decks on this end of the block, so the neighbor is identifying only a common condition that everyone shares – not some special and negative impact.

Moreover, the applicants' deck faces 90 degrees away from the 2112 18th Street property, and the views are to the north, 180 degrees away from the neighbor. The applicants will not be looking into the neighbors' property, nor do they have any interest in doing so. Privacy is a two-way street. In addition, this deck is located off the master bedroom, so does not get a lot of foot traffic. Lastly, as shown on the photo in Exhibit A, plantings can and have been used as screening and can continue to be used to create privacy. This is a common mitigation employed by the Planning Department and this Board.

Making the neighbors' concerns even more invalid is the fact that they have obtained approval of two rear yard variances of their own. One variance, approved this spring (Project No. 2022-003907VAR), allows the neighbor to rebuild their existing elevated main level deck, add a spiral stair providing access to the rear yard, and add a new roof deck. All very similar to what the Paleceks are proposing.

The second variance, approved in 2019 (Project No. 2019-005934VAR), allowed an in-fill under an existing non-conforming second-story projection in the rear yard. Yet again just like the rear yard projection at the subject property.

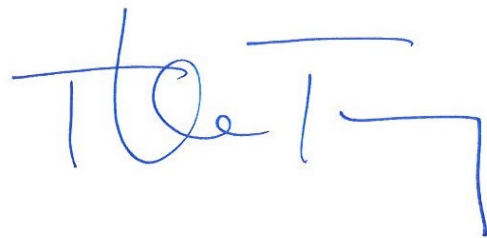
Apparently, it is acceptable for the neighbor to obtain variance approvals for projects that cause impacts on the neighbors' privacy, increase foot traffic to the rear yard, and impact the mid-block open space, but not for the Paleceks.

IV. CONCLUSION

The proposed deck would provide valuable usable open space to the Palaceks in a geographically challenged setting where such decks are the norm and no impacts on neighbors exist. The deck meets the spirit if not the letter of the Planning Code such that no Variance would be required. Finally, this Board's previous ruling denying this deck should not be binding because that decision was based on view impacts, which impacts are no longer recognized as a matter of law in San Francisco. Accordingly, we respectfully request that the Board overturn the Variance denial and allow the proposed deck.

Very truly yours,

REUBEN, JUNIUS & ROSE, LLP



Thomas Tunny

Enclosures

EXHIBIT A



DECK VIEW TO 18TH ST. NEIGHBORS

EXHIBIT B



VARIANCE DECISION

Date: September 26, 2023
Case No.: **2021-005284VAR**
Project Address: **566 Kansas St**
Block/Lots: 4010 / 001H
Zoning: RH-3 (RESIDENTIAL- HOUSE, THREE FAMILY)
Height/Bulk: 40-X Height and Bulk District
Applicant: Ahmad Mohazab
TECTA Associates
2747 19th Street
San Francisco, CA 94110
Owner: Michael Palecek
566 Kansas Street
San Francisco, CA 94107
Staff Contact: Laura Ajello – 628-652-7353
Laura.Ajello@sfgov.org

Description of Variance – Rear Yard Variance Sought:

The proposal is to legalize the 3rd floor solarium conversion within the buildable area of the lot as an expansion of the master bedroom suite, legalize the use of a 3rd floor unoccupied roof area as a deck with 5-foot side setbacks, and relocate and extend spiral stairs located in the rear yard to access the proposed 3rd floor deck.

Planning Code Section 134 requires the subject property to maintain a rear yard depth of approximately 45 feet. The existing noncomplying building has a rear yard that measures only 31 feet 8 inches. The proposed rear spiral stairs will encroach approximately 6 additional feet into the required rear yard. Therefore, a variance is required.

Procedural Background:

1. Prior decisions of the Board of Appeals prohibited the use of the rear roof area as a deck (Appeal No. 87-180 for Building Permit No. 8704654 and Appeal No. 93-200 for Building Permit No. 9308067). The decision for Appeal Number 87-180 also restricted ceiling height to no greater than 8 feet.
2. The Project is exempt from the California Environmental Quality Act (“CEQA”) as a Class 1 categorical exemption.
3. The Zoning Administrator held a public hearing on **Variance Application No. 2021-005284VAR** on **July 26, 2023**.
4. Planning Code Section 311 notification was mailed on July 10, 2023 and expired on August 9, 2023. No requests for Discretionary Review were filed during the notification period.

Decision:

DENIED, in general conformity with the plans on file with this application, shown as EXHIBIT A, to convert the 3rd floor unoccupied roof area to a deck and construct rear spiral stairs that will encroach approximately 6 additional feet into the required rear yard of the three-story, one-family dwelling (the proposed solarium conversion falls within the permitted buildable area and does not require a variance).

Findings:

Section 305(c) of the Planning Code states that in order to grant a variance, the Zoning Administrator must determine that the facts of the case are sufficient to establish the following five findings:

FINDING 1.

That there are exceptional or extraordinary circumstances applying to the property involved or to the intended use of the property that do not apply generally to other properties or uses in the same class of district.

Requirement Not Met.

- A. There are no exceptional or extraordinary circumstances applying to the property that do not apply to other properties in the same class of district. The subject lot is typical in size, shape, and topography. The existing building already extends 13 feet 6 inches into the required rear yard at the 2nd Floor level. Additionally, the existing building contains only a single dwelling unit within a RH-3 Zoning District.
- B. Building Permit No. 8704654 was proposed for the subject lot to add a 3rd story. The permit was appealed to the Board of Appeals (Case No. 87-180), which voted on December 2, 1987 to grant the appeal and approve the permit with the following conditions: 1) Delete deck, 2) Delete parapet at the rear, and 3) the ceilings of the proposed structure shall not exceed 8 feet.
- C. Building Permit No. 9308067 was proposed for the subject lot to add safety railing to the rear roof area for safe access to a fire escape ladder at the rear of the building. That permit was appealed to the Board of Appeals (Case No. 93-200), which voted on December 15, 1993, to grant the appeal and approve the permit with the following conditions: 1) that the roof area not be used as a deck, and 2) that a Notice of Special Restrictions be recorded on the property to document the condition of approval.

FINDING 2.

That owing to such exceptional and extraordinary circumstances the literal enforcement of specified provisions of this Code would result in a practical difficulty or unnecessary hardship not created by or attributed to the applicant or the owner of the property.

Requirement Not Met.

- A. As detailed above, there are no exceptional or extraordinary circumstances for the subject property that create any practical difficulty or unnecessary hardship. The subject lot is occupied by a single-family building of typical size that already extends into the required rear yard. The lot includes a useable rear yard for open space, and the proposed roof deck is not needed to meet the minimum useable open space requirements of the Planning Code. The Board of Appeals has twice prohibited the use of the rear roof area as a deck in the past.

FINDING 3.

That such variance is necessary for preservation and enjoyment of a substantial property right of the subject property, possessed by other property in the same class of district.

Requirement Not Met.

- A. The variance is not necessary for preservation and enjoyment of a substantial property right of the subject property, possessed by other property in the same class of district. The subject lot is occupied by a single-family building of typical size that already extends into the required rear yard. The lot includes a useable rear yard for open space, and the proposed roof deck is not needed to meet the minimum useable open space requirements of the Planning Code. The Board of Appeals has twice prohibited the use of the rear roof area as a deck in the past.

FINDING 4.

That the granting of such variance will not be materially detrimental to the public welfare or materially injurious to the property or improvements in the vicinity.

Requirement Not Met.

- A. The Planning Department determined the project to be consistent with the Residential Design Guidelines and no request for Discretionary Review was filed for the associated building permit. However, the Department did receive opposition to the proposed project, and granting the variance would violate two prior decisions of the Board of Appeals to prohibit the use of the rear roof area as a deck. It would additionally add a spiral stair that would extend further into the required rear yard and an additional floor of height than the existing stair when the subject building is already much deeper than the neighboring buildings to the north.

FINDING 5.

The granting of such variance will be in harmony with the general purpose and intent of this Code and will not adversely affect the General Plan.

Requirement Not Met.

- A. This development is consistent with the generally stated intent and purpose of the Planning Code to promote orderly and beneficial development. Planning Code Section 101.1 establishes eight priority-planning policies and requires review of variance applications for consistency with said policies. The project meets all relevant policies, including conserving neighborhood character, and maintaining housing stock.
 - 1. Existing neighborhood retail uses will not be adversely affected by the proposed project.
 - 2. The proposed project will not be in keeping with the existing housing and neighborhood character. The proposed rear stair would extend even deeper into the required rear yard, and the use of the rear roof area as a deck is counter to two separate, prior decisions of the Board of Appeals to prohibit such a deck use.

3. The proposed project will have no effect on the City's supply of affordable housing.
4. The proposed project does not adversely affect neighborhood parking or public transit.
5. The project will have no effect on the City's industrial and service sectors.
6. The proposed project will have no effect on the City's preparedness to protect against injury and loss of life in an earthquake.
7. The project will have no effect on the City's landmarks or historic buildings.
8. The project would not affect any existing or planned public parks or open spaces.

The effective date of this decision shall be either the date of this decision letter if not appealed, or the date of the Notice of Decision and Order if appealed to the Board of Appeals.

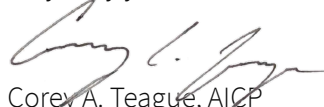
Once any portion of the granted variance is used, all specifications and conditions of the variance authorization become immediately operative.

Protest of Fee or Exaction: You may protest any fee or exaction subject to Government Code Section 66000 that is imposed as a condition of approval by following the procedures set forth in Government Code Section 66020. The protest must satisfy the requirements of Government Code Section 66020(a) and must be filed within 90 days of the date of the first approval or conditional approval of the development referencing the challenged fee or exaction. For purposes of Government Code Section 66020, the date of imposition of the fee shall be the date of the earliest discretionary approval by the City of the subject development.

If the City has not previously given Notice of an earlier discretionary approval of the project, the Planning Commission's adoption of this Motion, Resolution, Discretionary Review Action or the Zoning Administrator's Variance Decision Letter constitutes the approval or conditional approval of the development and the City hereby gives **NOTICE** that the 90-day protest period under Government Code Section 66020 has begun. If the City has already given Notice that the 90-day approval period has begun for the subject development, then this document does not re-commence the 90-day approval period.

APPEAL: Any aggrieved person may appeal this variance decision to the Board of Appeals within ten (10) days after the date of the issuance of this Variance Decision. For further information, please contact the Board of Appeals in person at 49 South Van Ness Ave, Suite 1475 (14th Floor), call 628-652-1150, or visit www.sfgov.org/bdappeal.

Very truly yours,



Corey A. Teague, AICP
Zoning Administrator

This is not a permit to commence any work or change occupancy. Permits from appropriate departments must be secured before work is started or occupancy is changed.

EXHIBIT C



January 25, 1988

John L. Taylor
Clerk of the Board of Supervisors
Room 235, City Hall
San Francisco, CA 94102

RE: APPEAL NO. 87-180
566 KANSAS STREET

Dear Mr. Taylor:

This letter is in response to your letter dated January 15, 1988 (received by this office January 21, 1988) requesting the basis of the Board of Permit Appeals' decision in Appeal No. 87-180.

This appeal, filed by Richard and Regina Plut of 2112 18th Street, concerned a building alteration permit issued to Dr. Willard Johnson of 566 Kansas Street, around the corner and downslope to the north from the appellants. Dr. Johnson proposes to make an addition to his one-family house, creating a new third level of occupancy for a master bedroom and bath for himself. The existing two bedrooms in the house are to be occupied by his son and daughter, both of whom are in graduate school and living at home.

The appellants, Mrs. Rose Bianco of 2106-18th Street, and Mr. Jack Emmetts of 2116-18th Street vigorously opposed the proposal because it will result in blockage of their views towards the financial district. They recommended that the Board order a compromise and require that the addition be shifted forward on the roof so that the neighbors' sight-lines to the north over the rear of Dr. Johnson's house would be unobstructed.

At its hearing September 2, 1987, the Board upheld the permit on condition that the addition be shifted forward toward Kansas Street five or six feet.

On September 23, 1987, the Board granted a rehearing on the basis of Dr. Johnson's letter and his architect's analysis of the onerous effects of the Board's September 2 decision.

At the rehearing on December 2, 1987, the Board heard again from the Plut's, Ms. Brady for her mother Ms. Bianco, Mr. Emmetts and from Mr. Sabbadini, a former owner of Dr. Johnson's property. The Board changed its decision of September 2 and voted 5-0 to uphold the permit as originally issued with three conditions meant to mitigate the effects of the addition for the neighbors:

1. The roof area to the rear of the proposed addition is not be be used as a deck.
2. The parapet along the edges of the rear roof shall be deleted from the plans.
3. The ceilings of the proposed addition shall not exceed eight feet in height.

John L. Taylor
Page 2
January 25, 1988

The reasons for the Board's action:

The view blockage problem was off-set by the fact that shifting the addition forward would result in destruction of (1) the only bathroom in the house, one that Dr. Johnson described as of especially beautiful tile-work, and (2) the domed ceiling of the dining room, also of especial merit, in his view. Photos of these features were in evidence before the Board.

The Board members discussed the fact that they closely scrutinize these kind of appeals and they distinguish between view blockage cases where an entire view is lost and those with only a partial view loss, as in this case.

Commissioner Fung stated that he had made an informal site visit by driving by the site. I had met with the permit holder and his architect to go over the plans and their architectural problems with shifting the addition forward, and I reported their concerns to the Board at the December 2 hearing. The plans were before the Board at each hearing.

The hearings were thorough and the Board had articulate testimony and the clear statements of the parties. The file is available for review in our office.

Please call me at 554-6720 if I can be of any further assistance.

Yours truly,


Robert H. Feldman
Executive Director

RHF/jr

cc: Supervisor Richard Hongisto
Commissioners of the Board of Permit Appeals

EXHIBIT D



ARCHITECTURAL PROJECT NO. 2010

PALECEK/SAMMANN RESIDENCE
566 KANSAS STREET
SAN FRANCISCO, CA 94107

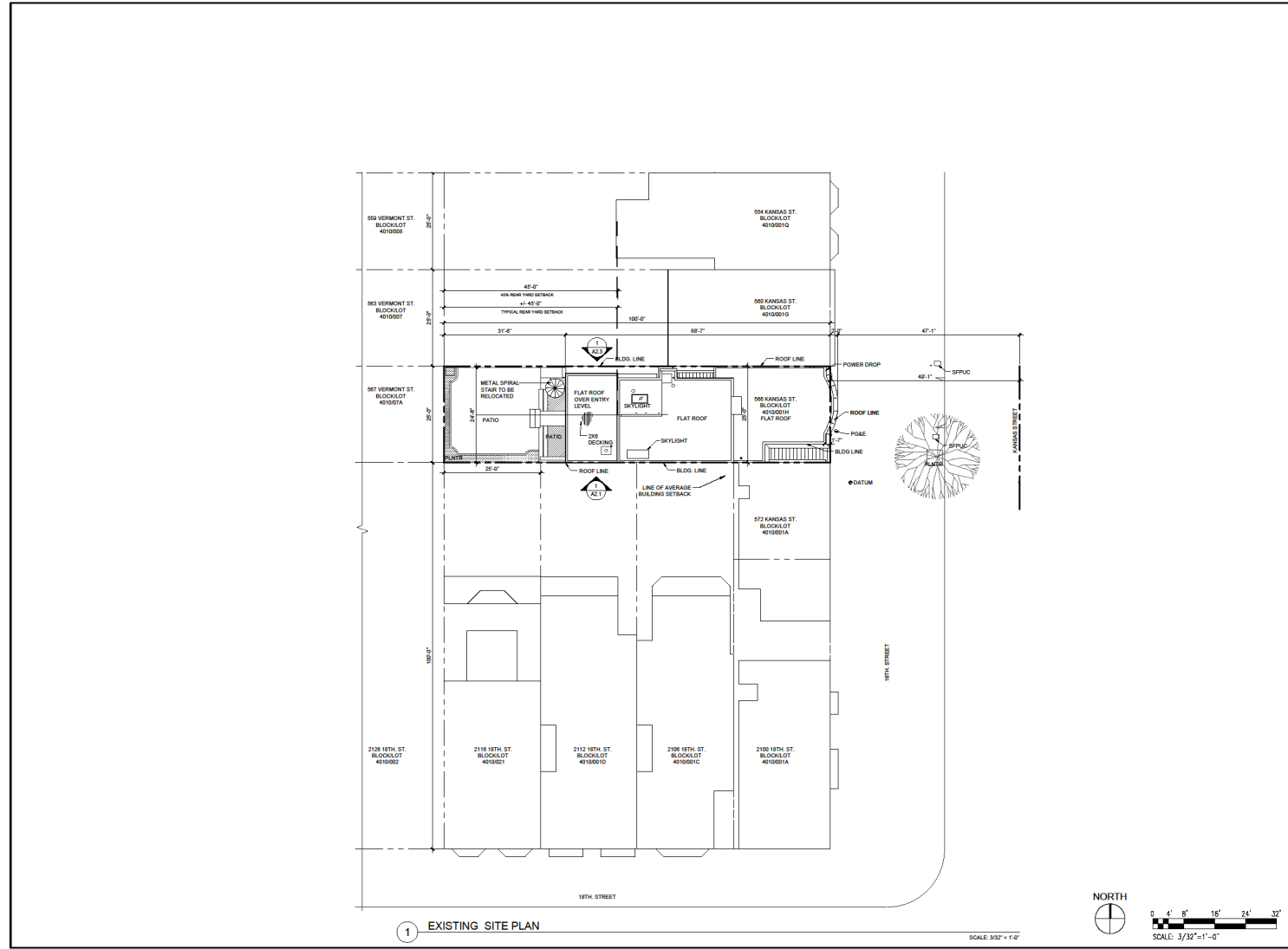
REVISIONS

NO.	REVISIONS	DATE

ISSUE DATE 3R NOTICE 06/06/2003
FILE DATE 06/25/2003

DRAWING TITLE
EXISTING SITE PLAN

DRAWING NUMBER
A1.01



1 EXISTING SITE PLAN

SCALE: 3/32" = 1'-0"

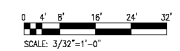
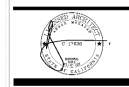
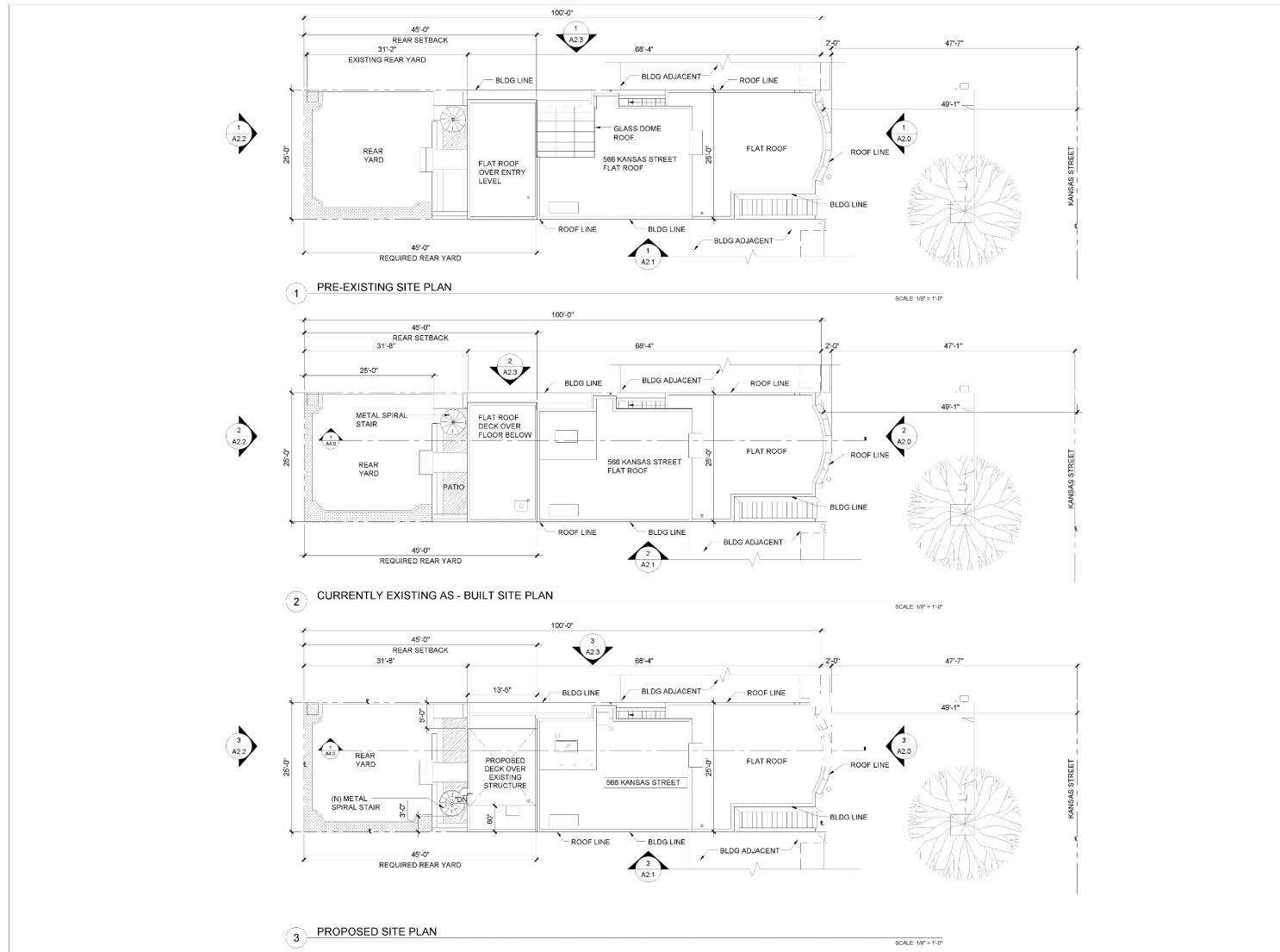


EXHIBIT E



ARCHITECTURAL PROJECT NO. 2020

PALECEK/SAMMANN RESIDENCE
 566 KANSAS STREET
 SAN FRANCISCO, CA 94107

REVISIONS

NO.	REVISIONS	DATE

ISSUE DATE 3/11/2023
 FILE DATE 06/27/2023

DRAWING TITLE
SITE PLANS

DRAWING NUMBER
A1.1

EXHIBIT F



TECIA
 ASSOCIATES
 8777 MARIPOSA BLVD.
 SAN FRANCISCO, CA 94133
 P: 415.362.5244
 F: 415.362.5247
 WWW.TECIA.COM



ARCHITECTURAL PROJECT NO.: 20000

PALECEK/SAMMANN RESIDENCE
 566 KANSAS STREET
 SAN FRANCISCO, CA 94107

NO.	REVISIONS	DATE

ISSUE DATE BY NOTICE 10/10/2023
 FILE DATE: 06/21/2023

DRAWING TITLE
EXISTING BLOCK PLAN

DRAWING NUMBER
A1.0

1 EXISTING BLOCK PLAN

SCALE: N.T.S.



DECK VIEW TO 18TH ST. NEIGHBORS



DECK VIEW TO VERMONT ST. NEIGHBORS



DECK VIEW TO VERMONT ST. MID BLOCK NEIGHBORS

BRIEF(S) SUBMITTED BY RESPONDENT DEPARTMENT(S)



BOARD OF APPEALS BRIEF

HEARING DATE: December 13, 2023

December 7, 2023

Appeal No.: 23-049
Project Address: 566 Kansas Street
Subject: Variance Appeal
Staff Contact: Corey Teague, Zoning Administrator – (628) 652-7328
corey.teague@sfgov.org

Introduction

This appeal is for a proposed rear yard variance that was denied by the Zoning Administrator on September 26, 2023. This brief provides a concise outline of that decision.

Property Information

The subject property is within the RH-3 Zoning District and 40-X Height and Bulk District. The existing building was constructed in 1929 and contains a single dwelling unit.

Background

As noted in the decision letter and the Appellant's brief, this property has been before the Board of Appeals two times prior related to a variance in 1987 and a building permit in 1993. The Board adopted specific conditions of approval in the past such that the roof area in question cannot be used as a deck, and that restriction was recorded on the property as a Notice of Special Restrictions. The current owners purchased the property in 2013. In 2021, enforcement cases were opened by DBI and Planning related to unpermitted work,

including the use of the rear roof area as an unpermitted deck, in violation of past Board of Appeals decisions. This led to a Notice of Violation No. 202177691 being issued by DBI in July of 2021. A variance application was subsequently filed in March of 2023 to legalize the work.

Key Points

The following points are the primary factors for the Zoning Administrator’s decision to deny the proposed variance:

1. Regardless of the Zoning Administrator’s position on the proposed variance, it was required to be denied due to the prior conditions put in place by the Board of Appeals. This in turn would give the property owner the opportunity to appeal such denial to the Board and request the variance be granted and the prior conditions removed, which is what is before you in this appeal.
2. Aside from the point above, the Zoning Administrator also determined that there were no exceptional or extraordinary circumstances related to the property that resulted in any unnecessary hardships or practical difficulties for the existing lot or single-family building. The decision letter provides more specific information related to this determination. It’s also important to note that, while the use of the roof area as a deck related directly to the Board’s prior conditions, the only component of the proposed project that does not meet the rear yard requirements of the Planning Code is the spiral deck to provide access from the deck to the rear yard. Without the Board’s prior conditions, the rear roof area could be

converted to a deck with open railings without triggering a variance.

Conclusion

To conclude, there are two separate reasons why the subject variance was denied, which are laid out in this brief and in the decision letter. For the reasons stated above and in the decision letter, the Department respectfully requests that the Board of Appeals uphold the denial of the proposed variance.

cc: Thomas Tunny (Appellant)
Laura Ajello (Planning Department)

PUBLIC COMMENT

Ryan Pfeffer & Melanie Atmadja
2112 18th St.
San Francisco, CA 94107
rdpfeffer@gmail.com; matmadja@gmail.com
507-469-4053; 714-398-6192

November 2, 2023

San Francisco Planning Department
Board of Appeals
49 S Van Ness Ave, Suite 1400
San Francisco, CA 94103

Subject: Opposition of
Appeal No.: 23-049
Appeal Title: Palecek vs. ZA
Subject Property: 566 Kansas Street
Determination Type: Variance
Case No.: 2021-005284VAR

Dear Board of Appeals,

We are writing this letter as a concerned neighbor and property owner in the vicinity of 566 Kansas Street to express our strong opposition to the proposed construction of a deck and relocation and extension of the spiral staircase on the aforementioned property. We kindly request that you consider the following points in light of our privacy, the existing property restrictions, and the impact on the overall community.

Privacy Invasion:

The proposed deck and spiral staircase at 566 Kansas Street poses a significant invasion of our privacy, as it looks directly into our main living area, master bedroom,

upstairs bedroom, and bathroom. Our right to privacy is a fundamental aspect of maintaining a peaceful and comfortable living environment. Constructing a deck which looks directly into our private spaces would compromise our sense of peace, impacting our quality of life significantly.

Increased Foot Traffic and Spiral Staircase:

The relocation and extension of the spiral staircase to access the rear deck will undoubtedly increase foot traffic to the area. The increased foot traffic will only exacerbate the invasion of our privacy. We are concerned that the increased movement of people near our property will lead to disturbances and a loss of tranquility in our home.

Notice of Special Restrictions:

Appeal number 93-200, see attached, on the property highlights the existence of a Notice of Special Restrictions, explicitly stating that the roof area should not be used as a deck. We urge you to uphold and respect these restrictions, as they were established for the well-being and harmony of the neighborhood. Ignoring these restrictions would set an unfavorable precedent and undermine the efforts made to maintain the character and integrity of our community.

Noncompliance and Rear Yard Space:

Moreover, the existing noncompliance of the building, which already extends 13 feet 4 inches into the required rear yard, is concerning. The proposed rear stairs would further

encroach into the required rear yard by an additional 6 feet, amounting to almost 50% of the required rear yard. This will significantly reduce the green rear yard space on our block, impacting the aesthetic appeal and ecological balance of the area.

In conclusion, I strongly urge the San Francisco Board of Appeals to reconsider approving the construction of the deck as well as the relocation and extension of the spiral staircase at 566 Kansas Street. The potential infringement on our privacy, the violation of existing property restrictions, and the encroachment into the required rear yard space are compelling reasons to deny this proposal. We value our community's harmony and wish to preserve the residential integrity that defines our neighborhood.

I trust that you will thoroughly examine the situation and take our concerns into account when making your decision. Please keep us informed about any developments or hearings regarding this matter. Thank you for your attention to this important issue.

Sincerely,

Ryan Pfeffer & Melanie Atmadja
2112 18th St.
San Francisco, CA 94107

BOARD OF PERMIT APPEALS
CITY AND COUNTY OF SAN FRANCISCO

WILLARD P. JOHNSON,)
Appellant)
vs.)
SAN FRANCISCO DEPARTMENT OF PUBLIC WORKS,)
CITY PLANNING DISAPPROVAL Respondent)

APPEAL NO. 93-200

NOTICE OF DECISION AND ORDER

Willard P. Johnson c/o Mark B. Kertz, Esq.
To: 235 Montgomery St., #1035, San Francisco, CA 94104 appellant(s), and the
San Francisco Department of Public Works

NOTICE IS HEREBY GIVEN that the appeal of Willard P. Johnson,

the appellant above named, from the order of the San Francisco Department of
Public Works denial on September 15, 1993, of permit to alter a building at
566 Kansas Street (APPLICATION NO. 9308067)

came on regularly for hearing before the Board of Permit Appeals of the City
and County of San Francisco on December 15, 1993,

and the said order was overruled by the said Board of Permit Appeals.


PURSUANT TO Section 3.651 of the Charter of the City and County
of San Francisco and Part III, Article 1, Section 14 of the Municipal Code
of the said City and County, and the action above stated, the Board of Permit
Appeals hereby orders that the said permit be granted and the San Francisco
Department of Public Works

is (are) hereby ordered and directed to grant said permit and allow the railing
with the CONDITIONS that the roof area not be used as a deck and that a Notice
of Special Restrictions be recorded by the permit holder with these conditions
in it.

Request for rehearing:
None
Rehearing:
None
Notice released to departments:
December 28, 1993

Date: December 15, 1993
BOARD OF PERMIT APPEALS
CITY AND COUNTY OF SAN FRANCISCO


Angela M. Bradstreet, President


Robert H. Feldman, Executive Director

BOARD OF PERMIT APPEALS

Appeal No. 93-200

566 Kansas Street

FINDINGS AND CONDITIONS

1. The Department of City Planning disapproved the permit application for the roof railing for the reason that the railing appeared to be a violation of the Board's decision in Appeal No. 87-180, decided December 2, 1987 by a vote of 5-0, which upheld the appellant's permit with conditions including one requiring that the second level deck behind the new master bedroom be deleted from the plans.
2. The Board finds that the subject railing has been required by the Bureau of Building Inspection for the safety of those crossing the roof in emergencies to reach the fire escape.
3. The Board finds that the plans were revised to meet the earlier decision and there is no solid parapet as on the original plans, thus providing light and view across the rear roof, albeit somewhat obscured by the required metal railing.
4. The Board finds that there was testimony at the public hearing that other houses in the immediate area of the subject building do have decks at the rear and the appellant has been prohibited from using his rear roof area as a deck.
5. The Board finds that the sliding doors onto the roof and the railing around the roof are necessary for the safety of the occupants of the house.
6. And finally, the Board finds that the conditions imposed by the Board in 1987 are still necessary to protect the neighbors from any significant view blockage.

For these reasons the Board **OVERRULES** the decision of the department and **GRANTS** the permit on **CONDITION** that the roof area shall not be used as a deck and that these conditions shall be recorded on the land records on a Notice of Special Restrictions, with copies of the recorded document submitted to the Department of City Planning and to the office of the Board of Permit Appeals.