

BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal of
TINA HUSTON and LINDSEY HUSTON, _____)
Appellant(s))
vs.)
DEPARTMENT OF BUILDING INSPECTION, _____)
PLANNING DEPARTMENT APPROVAL Respondent

Appeal No. **24-010**

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT on February 8, 2024, 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 January 24, 2024, of a Site Permit (upgrade 3-story, 4-unit apartment consisting of brick foundation, wood frame structure, combination siding, etc.; project work consists of seismic/soft-story foundation upgrade (with nine-foot, rear-yard addition) and includes bringing front bedroom windows to fire exit code size with finish to match existing) at 45, 47 and 49 Bernard Street.

APPLICATION NO. 2020/08/22/2415

FOR HEARING ON April 3, 2024

Address of Appellant(s):

Address of Other Parties:

Tina Huston and Lindsey Huston, Appellant(s) 334 Santana Row, No. 211 San Jose, CA 95128	N/A
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Date Filed: February 8, 2024

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

PRELIMINARY STATEMENT FOR APPEAL NO. 24-010

I / We, **Tina Huston and Lindsey Huston**, hereby appeal the following departmental action: **ISSUANCE** of **Alteration Permit No. 2020/08/22/2415** by the **Department of Building Inspection** which was issued or became effective on: **January 24, 2024**, for the property located at: **45, 47 and 49 Bernard Street**.

BRIEFING SCHEDULE:

Appellants' Brief is due on or before: 4:30 p.m. on **March 14, 2024, (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, and matthew.greene@sfgov.org.

Respondent's and Other Parties' Briefs are due on or before: 4:30 p.m. on **March 28, 2024, (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 and tinahuston07@gmail.com.

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

Hearing Date: **Wednesday, April 3, 2024, 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:

See attachment to the Preliminary Statement of Appeal.

Appellant or Agent:

Signature: Via Email

Print Name: Tina Huston, appellant

Request for Appeal

Background

This document serves as a formal Request to Appeal the San Francisco Planning Commission's Discretionary Review (DR) action pursuant to <https://www.sf.gov/file-appeal-permit-or-decision> against the proposed project at 45-49 Bernard Street in the Russian Hill/Nob Hill district.

Executive Summary

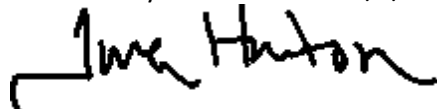
Our family respectfully appeals the Planning Commission's modifications to our project, believing we did not receive a fair and unbiased hearing. We contend that three commissioners disregarded the Planning Commission's requirement of "exceptional or extraordinary circumstances". We argue that the Planning Commission over-reached and modified our project NOT based on either Planning Code or "Exceptional or Extraordinary Circumstances" as defined by their mandate; rather, we assert that the Commission's decision chose to modify the project based on the influences below. The Planning Commission therefore put constraints on the project that were not even requested by the DR nor required by Planning Code.

1. **Unethical behavior:** Certain Commissioners that motioned and voted to modify the project engaged in undisclosed, ex-parte communication (private meetings at their homes, emails, and phone calls) with project opponents that influenced their decision-making process.
2. **Conflict of interest:** Furthermore, a representative of one Commissioner's employer sent a letter of support for the project opponents, opposing our project, representing a conflict of interest that should have been disclosed but was not. This raises concerns about potential conflicts of interest.
3. **Motivated by Other Interests:** Commissions were obviously biased against the project and our family due to the OMI on our property. Their decisions, discussions, and actions in the hearing and after the fact communications support.
4. **Disparate treatment:** The Commission applied different standards to our project compared to neighboring properties, based on "cultural" demographics.

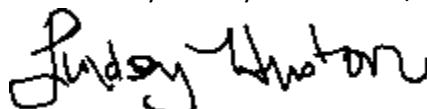
Relief Sought

Reverse the decision of the Planning Commission and allow the project to have a Roof Deck consistent with San Francisco Planning Guidelines, as per the above. See Appendices for further details (if req'd).

Submitted By Tina Huston on 2/8/2024



Submitted By Lindsey Huston on 2/8/2024:



Permit Details Report

Report Date: 2/8/2024 2:26:27 PM

Application Number: 202008222415

Form Number: 3

Address(es): 0157 /030 /1 45 BERNARD ST
 0157 /030 /1 47 BERNARD ST
 0157 /030 /1 49 BERNARD ST

Description: Upgrade 3-story, 4-unit apartment consisting of brick foundation, wood frame structure, combination siding, etc. Project work consists of seismic/soft-story foundation upgrade (w/9 ft rear-yard addition) and includes bringing front bedroom windows to fire exit code size with finish to match existing

Cost: \$389,642.00

Occupancy Code: R-2

Building Use: 24 - APARTMENTS

Disposition / Stage:

Action Date	Stage	Comments
8/22/2020	TRIAGE	
8/22/2020	FILING	
8/22/2020	FILED	
12/4/2023	APPROVED	
1/24/2024	ISSUED	

Contact Details:

Contractor Details:

License Number: 720437
 Name: JAMES HUSTON
 Company Name: HUSTON GENERAL CONTRACTING INC.
 Address: 1615 SECOND STREET * LIVERMORE CA 94550-0000
 Phone:

Addenda Details:

Description:

Station	Rev#	Arrive	Start	In Hold	Out Hold	Finish	Checked By	Review Result	Hold Description
CPB		8/22/20	9/14/20	9/14/20	9/22/20	9/22/20	TORRES SHIRLEY		#368-912-764 ELECTRONICALLY SUBMITTED. invoice sent. 09/22/20: PMT RCVD, OK TO PROCESS. ST
PRE-PLN		9/24/20	9/25/20			9/25/20	RUSSELL ERICA		
PRE-FIRE		9/24/20	9/24/20			9/24/20	HIGGINS PAT		pre-screen accepted
CP-ZOC		9/29/20	11/2/23			11/2/23	ASBAGH CLAUDINE	Approved	Approved
CP-NP		1/6/22	1/6/22			1/10/22	GUY KEVIN		1/6/22: Emailed the 311 cover letter. (JL) 1/10/22: Mailed the 311 notice on 1/24/22; expires on 2/23/22. (JL)
CP-DR		2/22/22	11/7/23			11/7/23	ASBAGH CLAUDINE	Approved	DR was heard at planning commission in 2021. This line is complete.
BLDG		2/27/23	5/9/23	5/26/23		9/22/23	OSPITAL JOSEPH	Administrative	REASSIGNED 9/22/2023 comments issued during google meeting on 5/26 at 9 am w/AOR and assoc. Waiting for PDF to be emailed to Jeffrey.barnes@sfgov.org prior to upload in BB session email to Property owner & AOR

									TINAHUSTON07@GMAIL.COM & ANDREWS@HGCI.COM, project on hold until response. seismic upgrade & new adu to be reviewed together.
BLDG		2/27/23	9/22/23			9/28/23	OSPITAL JOSEPH	Issued Comments	
BLDG	1	10/26/23	10/26/23			10/26/23	OSPITAL JOSEPH	Approved	
SFFD		3/6/23	4/6/23	4/6/23	5/30/23	5/30/23	TOLENTINO NEIL		4/6/2023 Not approved and on hold. Comments on bluebeam (994-436-227). - NT
SFFD		5/30/23	7/18/23	7/18/23		9/19/23	TOLENTINO NEIL	Issued Comments	7/18/2023 Not approved and on hold. Comments on bluebeam (994-436-227). - NT
SFFD	1	9/19/23	9/19/23			9/19/23	TOLENTINO NEIL	Approved-Stipulated	9/19/2023 Approved, comments addressed. As-built needed to include signed pre-application meeting minutes on plans. Inspection Fees. -NT
DPW-BSM		3/1/23	3/1/23			3/1/23	DENNIS RASSENDYLL		3.1.23 Approve. EPR- No alteration or construction of City Right-of-Way under this permit . -RD
SFPUC		2/27/23	8/16/23			8/16/23	IMSON GRACE	Approved	08/16/2023. Approved.
SFFD	1	10/31/23	11/3/23			11/3/23	TOLENTINO NEIL	Approved	11/3/2023 Approved. Re-check. Inspection Fees. -NT
DPW-BSM	1	10/31/23	11/27/23			11/27/23	DENNIS RASSENDYLL	Approved	Restamped EPR- No alteration or construction of City Right-of-Way under this permit . -RD
SFPUC	1	10/31/23	11/2/23			11/2/23	IMSON GRACE	Approved	11/02/2023 - APPROVED
PPC		9/22/20	9/24/20			11/30/23	PHAM ANH HAI	Administrative	11/30/23 02:47 PM Invite sent to CPB to close out permit; HP 11/28/23: Email sent to BSM to stamp REV2 permit application form. Email sent to applicant to update sheet index on REV3 drawing; HP 10/31/2023: Invite sent to plan checkers to review and stamp REV3 drawing;nl 2/27/2023: Concurrent review approved by Planning plan checker Clauding Asbagh on email dated 2/27. Invite sent to BLDG, SFFD, BSM, PUC to start electronic plan review (back dated, email was sent on 2/27 to all departments);nl 2/13/2023: Invite sent to Planning Plan checker to review and stamp REV1 drawing;nl 9/29/20: Pre-screening complete, invite planning to BB session; cm 9/24/20: Bluebeam session created; Invite Pre-Fire, Pre-Planning, and applicant; cm
CPB		11/30/23	12/4/23			1/24/24	GUTIERREZ NANCY	Administrative	1/24/2024: Issued to agent in BB.ng 12/18/2023: Cancellation/Extension Notification Letter Sent. Cancel Date:02/22/2024. 1st extension fee \$1,028.21. When pay fee, new cancel date: 02/16/2025.ay : WAITING FOR CONTRACTOR STATEMENT

BRIEF SUBMITTED BY THE APPELLANT(S)

Subject: Appeal of Constraints Placed on Permit by Planning Department & Commission in Discretionary Review Action Memo (DRA-793) for 45-49 Bernard Street

Dear President Lopez and Fellow Commissioners,

For 5 years, our family has lived in our 3-unit over basement property on the Nob Hill/Russian Hill border. As it is 120+ years old & was not historically maintained by the prior landlord, the building is in significant disrepair, and desperately needs structural, mechanical, plumbing, and electrical upgrades. Our longtime tenant (40+ years) & our prior tenants, fully support these renovations (Appendix A). We filed for permits to make improvements 4 years ago, & since then, our wealthy, mega-SFR neighbors have waged a vitriolic, concerted campaign to delay, block or significantly alter our project. Their tactics include attempting to bully other neighbors into opposing us (Appendix B). Over the last 4 years, we aimed to just accommodate our neighbors' appeals & continue to move forward, but their relentless and continued campaign has forced us to defend ourselves & appeal for our right to make improvements & critically necessary updates to our home.

Appeal Request – (A/B) Primary Request & Secondary Request

A - Primary Request: We ask that you direct the Department to issue our permit, but direct them first to remove the constraints applied to our permit but Planning Commission's (PC) Discretionary Review (DR) Action Memo. We appeal these modifications/constraints **on the basis that we did not receive a fair and unbiased DR hearing due to the following:**

1. **Disregard for "Exceptional or Extraordinary Circumstances":** The PC's modifications exceeded their authority, failing to demonstrate "exceptional or extraordinary circumstances" prior to making modifications. It is still not clear what was exceptional

about our project given the opposing neighbors have all the same features on their properties (deeper setbacks, roof decks, horizontal expansions, vertical expansions, etc.).

2. **Bias and Circumvention of Due Process:** Three commissioners, taking advantage of a temporary lack of a full commission (5 Commissioners vs. 7 Commissioners), were influenced by:

- 2.1. Undisclosed communications, meetings & private records exchanged w/ project opponents
- 2.2. Undisclosed conflicts of interest
- 2.3. Personal beliefs about owner-move-in evictions (OMI)
- 2.4. Disparate treatment of planning code based on our “cultural” background

Therefore, we request the overturning of the following constraints place on our permit by the PC

(See Appendix D & I):

- “Removal of the roof deck”
- “Removal of the spiral staircase”
- “Requirement for a third floor identical to the second”

We acknowledge there is tenant protection language in the DRA memo and are okay if it remains, but its inclusion reinforces our argument of inappropriate influence on project modifications.

B - Secondary Request: We argue that modifications required by the Planning Department & Zoning Administrator, made after our 311 Notice as a condition for support by the Planning Department for the PC hearing, were erroneous, as the depth of the neighbors property were already legal as the existence of stairs had in fact been approved by the Planning Department, which was further confirmed via a recent variance approval. We ask that the Board confirm the depth approved in our 311 notice is the legally permissible depth into the rear yard at 15’9” (vs. the currently approved depth 17’9”)(See Appendix C)

Background: Our permitting process has been a frustrating journey. Three years ago, a simple request to our neighbors, Hanmin and Jennifer, to trim their tree blocking the midblock open space escalated dramatically. Hanmin intimated that he would use his political connections to stall our permits, saying that he “knew people” at the City and could “make getting permits difficult for us” – a comment that has unfortunately materialized. We've faced a relentless barrage of hearings: a DR hearing (See Appendix D), a CEQA appeal (Appendix E), and now this BoA hearing. While we can't control our neighbors' actions, our appeal argues that they leveraged political influence with our local supervisor to bypass due process and gain support against our project before we received a fair and unbiased Planning Commission hearing, and that Planning Commissioners participated in this circumvention in bad faith with our neighbors/Project Opponents (see Appendix F). Specifically, Planning Commissioners:

1. Partook in Undisclosed, Private Communications/Meetings and Exchanged Private Records with Our Neighbors

Commissioner A (Seconded Motion & Voted to Modify Project): Commissioner A had several private calls with the project opponents prior to the hearing and did not disclose these meetings prior to our hearing. After these phone calls, the Commissioner explicitly requested that the project opponents send her records directly regarding our OMI. Furthermore, the Commissioner held private meetings with our neighbor’s architect and, during our hearing, Commissioner A referenced that information gained from meetings with the neighbors architect (which was not in any public records submitted to the Commission) and used such references as reasons to act against our project. Despite records requests, Commissioner A still has not provided the records and emails sent to her by Project Opponent and their prior architect.

Commissioner B (Voted to Modify Project): After project opponents reached out to her directly with concerns and complaints about the project and their DR request (See Appendix H), prior to our hearing,

Commissioner B accepted an offer from the Project Opponents to have lunch at their home (next door to 45-49 Bernard) specifically to discuss the project and their Discretionary Review. The Commissioner did not disclose she had met with the project opponent privately and been to their home to discuss the project. During the hearing, Commissioner B (when supporting removing the roof deck and modifying the project) acted as if she did not know about the design of the neighboring properties—acting in bad faith considering she had been next door for lunch. The meetings and communications were never disclosed to us prior to or at our hearing.

***Impact:** These actions create the appearance of bias and raise concerns about potential influence on the Commission's decision. This behavior is in violation of San Francisco's Good Government Guide issued by the City Attorney which states: "First, commissioners should avoid engaging in "ex parte communications"—private communications with one interested party concerning the subject matter of the proceeding, whether a private party or a City department—when the other party or parties are not present. To address this concern, some boards and commissions have adopted rules that expressly prohibit ex parte communications. Even if the board or commission has not adopted a rule regarding ex parte communications, members who elect to engage in ex parte communications prior to a quasi-judicial hearing should disclose the substance of those communications on the record at the start of the public hearing."*

2. Did Not Disclose Potential Conflicts of Interest

Commissioner C: (Motioned to Modify Project & Voted to Modify): Months prior to our DR hearing, Hanmin emailed his political contact (our local supervisor) and said, based on the local supervisors suggestion, Hanmin had started forming relationships with the Director of the employer of Commissioner C. Project opponents then made a donation to the non-profit employer of Commissioner C. Based on this donation, leadership of that non-profit organization sent an email saying that Hanmin “funded” them and

that the organization must “support” the project opponent at the DR hearing. Accordingly, the non-profit organization sent a letter of opposition against our project to the Planning Commission. Despite a representative and colleague of Commissioner C’s employer taking a stance on the project by sending a letter of opposition, Commissioner C did not disclose this conflict of interest, nor recuse themselves, and acted against our project.

3. Made Changes Motivated by Anti-OMI Interests, Not Exceptional or Extraordinary Reasons

The Planning Commission hearing deviated from the expected focus on zoning codes and exceptional and extraordinary circumstances within the scope of the Commission’s authority. Commissioners raised concerns and made modifications based on their dislike of owner-move-in evictions (OMIs) that fell outside their legal purview. These concerns seemed based on personal beliefs rather than exceptional or extraordinary circumstances. For example, in addition to their final modifications, the 3 commissioners tried to propose conditions like “guaranteeing the tenant's current rent in perpetuity”, “applying rent control” to the future ADU, and even tried to dictate landscaping choices in the yard (See Appendix G). It became so egregious, the City Attorney ultimately had to step in during the hearing and clarify that these conditions were not within the Planning Commissions purview, but rather the purview of the Rent Board.

4. Applied Disparate Treatment because We Were Not the Same “Culture” As the Neighbors

The actions taken by the Planning Commission suggest disparate application of planning guidelines. Though located in Nob Hill/Russian Hill with no designated cultural districts or special land use controls in the area, project opponents argued against expanding the building further into our private backyard, claiming it significantly impacted the Chinese community on the block due to the "cultural significance" of "mid-block open space." **However, in direct opposition to this logic, the project opponents—our neighbors – have undertaken vertical and horizontal expansions into their own "mid-block" spaces, and have built roof decks (See Appendix I). Their buildings go deeper into the mid-block**

space than ours will be at completion - no matter if we build to 15'9" or 17'9" (See Appendix I).

Furthermore, there was no support via historical records to support their claims (See Appendix J).

Regardless, this hypocritical argument was overlooked, as Commissioner B explicitly referenced "culturally contexting" the building before proposing modifications, despite the lack of designated cultural districts or special land use controls in the area. Again, the selective application of "cultural preservation" and overlooking similar features on neighboring properties suggests potential disparate treatment. *Direct Quotes by Commissioner B (Beginning Hour 4:34 of August 25, 2022 DR Hearing):*

- "In terms of the context of the neighborhood, the DR requestor is referring to the cultural preservation of this neighborhood. **Yes, it's a code-complaint project. Yes, it might be the shortest in the neighborhood,** [but] for me that's something that still sticks out is the roof deck."
- "There is no special land use controls for this area, this is a regular 25% rear yard, which this building is complaint for, however, what the DR requestor is asking for is for us to look into the **cultural aspect of this neighborhood**, of the people living in this 2-block radius, the importance of that.
- "The planning department, we have not looked at that, outside of Chinatown, where neighborhoods, where there is **a predominant Chinese community and they [project opponent] keep emphasizing the importance of the mid-block open space.** So, I am trying to.. Yes, this is a code complaint project, however, perhaps there is something we can do to **culturally context it.** Especially since **the DR requestor keeps emphasizing that.** And what still **bothers me is the OMI...** and the families are no longer there. **I cannot take this as no DR."**

Thank you for your consideration in these matters, and kindly ask you take a second look at these decisions. We only ask for an unbiased, fair hearing.

Warmly, Lindsey Huston & Tina Huston

Appendices

Appendix A: Tenants Letters of Support

Appendix B: Project Opponents Attempts to Force Neighbor at 51 Bernard into Supporting Them

Appendix C: Original 311 3rd Floor Plan vs. Current

Appendix D: DRA Memo & Discretionary Review Request & Response

Appendix E: CEQA Appeal, Response and Withdrawal Letter

Appendix F: Emails & Other Communications with Planning Commissioners Prior to DR Hearing

Appendix G: Transcript Showing Rent Control Language Attempted to Be Imposed

Appendix H: Pre-DR Memo Direct to Planning Commissioners

Appendix I: Visuals of Mid-Block Open Space & Roof Decks on Neighboring Properties

Appendix J: Census Records – thru 1920s-50s

Appendix A: Tenants Letters of Support Provided to Planning Commission

President Rachel Tanner and Commissioners
SF Planning Commission
49 South Van Ness Avenue
San Francisco, CA 94103

SF Planning Commission & Other Relevant Parties:

As the prior tenants of 47 Bernard Street, we can attest to the poor condition of the building. While we lived there, the prior landlord did not maintain the property for us as a responsible landlord should. Through this process, we moved into new housing in San Francisco that is in much better condition, and we support Lindsey's efforts to renovate the property for herself, her sister, and the tenant in Unit 45.

Sincerely,

Zerong He (for the He Family)

For Privacy Considerations, Contact Information Available Upon Request for Verification by
Planning Commission/Planning Department
President Rachel Tanner and Commissioners
SF Planning Commission
49 South Van Ness Avenue
San Francisco, CA 94103

Dear SF Planning Commission & Other Relevant Parties:

This letter is a qualified letter of support for the project at 45-49 Bernard street. The rear-yard extension is supportable as many buildings in the neighborhood are of similar depth. The project would be a great benefit to the neighborhood, as the building is in need of significant repair. I cannot stress enough how dire it is for this building to be renovated, including the rear-yard. The living conditions of this building prior to Ms. Lindsey Huston's acquisition was almost uninhabitable due to the following reasons

1. Rear-yard rat infestation due to the lack of maintenance for greater than 30 years - it is **VERY IMPORTANT** to note that this rear-yard was **NEVER** used by anyone except for the previous landlord to discard construction spoils and when my brothers and I would go play there as young children. Also note that the rear-yard extension will help the renovation of my mother's unit which will finally give the master bedroom a window (it is currently windowless), and will also help get the kitchen and sun-room area up to code.
2. Approximately 15 years ago, the ceiling collapsed in the bathroom and tons of termites and other unidentified insects landed on me in the tub. I was fortunate to not have the drywall collapse on me.
3. There has not been any insulation in the walls or between each floor so it often gets very cold, damp and noisy. This has been the case for as long as I can recall.
4. Water damage in my bedroom which leaked from the ceiling - I believe the previous landlord redid the roof after ~15 years of leakage and this has stopped.
5. Mosquitoes infestation due to inoperable windows that couldn't close. I had to buy my own wood planks to hold up the double-hung windows just to keep warm and also keep insects out.
6. Major water damage in the rear-yard entrance, kitchen and sun-room due to clogged gutters - this had gone on for approximately 15-20 years. Note that each time it rained, my elderly mother would have to lay down at least 10 articles of clothing to soak up the rain water. Ms. Huston has resolved this issue.
7. Gas and electric systems that are inefficient and are 50+ years old needing significant maintenance. Despite the little gas my mother (who lives alone) uses, the PG&E bill shows very high gas usage on a monthly basis. Note that my mother's gas usage for this ~700 square foot unit is nearly triple the amount I use in a 1,300 square foot single-family home.
8. Electrical issues - lights flicker due to deteriorated electrical lines (note that they will easily flicker if someone upstairs is walking).

In summary, almost every aspect of the building is not up to code. Please note that approximately 30 years ago, I had let in a building/safety inspector which led to my previous landlord getting fined. Following the incident, my family was reprimanded by the landlord.

Since Ms. Huston acquired the building, many improvements have been made. However, the key improvements that need to be made will not be completed unless the SF Planning Commission approves the upgrades Ms. Huston has requested for this project. Ms. Huston has been very active in keeping us up-to-date on the project and discussing any concerns we may have.

Furthermore, I can vow that Ms. Huston has been very kind to my mother as her tenant. Since the building was acquired by Ms. Huston in 2019: rent has not increased, the rear-yard is actually decent looking now and can be enjoyed, water seepage during rainy days no longer occurs, and best of all, Ms. Huston helps my elderly mother take out the trash on a weekly basis.

Sincerely,

Stella Lew

Former tenant at 45 Bernard (resided from 1983-2011)

Representative of mother, Qi Pin Lei - current tenant at 45 Bernard (since 1983-present) E-mail:

lew.stella@gmail.com

Appendix B: Project Opponents Attempts to Force Neighbor at 51 Bernard into Supporting Them

This is an email thread where these same 4 neighbors are attempting to coerce another neighbor to contest the project and ask him to “spy” on our project and not help us in any way.... In this particular exchange they are attempting to threaten the variance at 51 Bernard in order to sway the Owner to contest our project / support their cause to block us at every step. **This exchange occurred AFTER the DR and CEQA hearing and BEFORE any new plans were submitted, showing their intention all along was to continue to appeal the project.**

From: [Enda Keane](#)
To: [Teague, Corey \(CPC\)](#); [Tam, Tina \(CPC\)](#)
Cc: [Tara Sullivan](#); [Tony Pantaleoni](#)
Subject: 51 Bernard
Date: Monday, April 10, 2023 7:50:20 AM
Attachments: [51 Bernard Street.pdf](#)

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

Hello Corey & Tina ,

As suggested at the March 22nd hearing I met with UCNA Wednesday (April 5th) to discuss my variance application for 51 Bernard. Like all of the previous meetings with UCNA our conversation was cordial and respectful, the meeting was focused primarily around their concerns about 45 Bernard with little time spent on any aspect of the variance for 51 Bernard. I asked for their support and their response was they hadn't decided what position they were going to take.

Prior to the March 22nd hearing UCNA stated they would support my variance if I signed an agreement which I felt wasn't constructive and had little relevance to this particular situation, I decided not sign.

If there is any other information you need do not hesitate to reach out.

Kind Regards

Enda Keane

From: Enda Keane <endapkeane@gmail.com>
Date: March 22, 2023 at 8:56:15 AM PDT
To: UCNA <upperchinatownassociation@gmail.com>
Subject: Re: Summary of our Agreement

Jennifer, Hanmin, Sandy & Johnny,
After careful review I decided not sign the agreement you emailed last night, March 21st 2023. Apart from being one sided the 'agreement' lacks the spirit in which I could ever be comfortable in being part off.
Each of the obligations have either technical issues, are unenforceable and at worst could have legal consequences which is a road I'm sure neither of us want to go

down.

From a practical perspective access may need to be provided for health and safety issues should the situation arise during construction and also if the integrity of 51 or any other property is in any way compromised during their work it might be prudent to allow their contractor to be given access to mitigate whatever issues had occurred.

While I have no problem providing insight and making observations on the construction work at 45 this would be based probably on not having construction drawings and not having access to the interior of their property, but best efforts would be made to track the progress.

On Friday March 3rd at Peet's Coffee on Polk we discussed, reached an agreement and shook hands on this which was witnessed by Jennifer, Sandy and Johnny, I still intend to honor that handshake.

Kind Regards

Enda Keane

Confidential Agreement

This agreement is between Enda Keane Revocable Trust (the “Owner”), and Jennifer Mei, Hanmin Liu, Sandy Leung, and Johnny Leung, (collectively, the “Neighbors”).

A. Owner owns the real property commonly known as 51 Bernard Street, San Francisco, CA 94133, Block 0157, Lot 029 (the “Owner’s Property”).

B. Jennifer Mei and Hanmin Liu own the real property commonly known as 1144 Pacific Street, San Francisco, CA 94133, Block 0157, Lot 013. Sandy Leung and Johnny Leung own the real property commonly known as 39-41 Bernard Street, San Francisco, CA 94133, Block 0157, Lot 064.

C. Neighbors have raised concerns related to Owner’s proposed variance, including that it will set a precedent to allow future extensions into rear yard open space at the real property commonly known as 45-49 Bernard Street, San Francisco, CA 94133, Block 0157, Lot 030 (the “Huston Property”).

1. Owner’s Obligations

- a) Owner will presently execute the attached letter of opposition to any further expansion of the Huston Property.
- b) Owner shall not grant access to Owner’s Property to the owners of the Huston Property, or any of their personnel, to install shoring (including underpinning and/or tiebacks), complete foundation work on the Huston Property, install scaffolding, store construction equipment, or any other activity related to construction on the Huston Property.
- c) Owner will assist the Neighbors in monitoring construction on the Huston Property for compliance with code and construction requirements by documenting and reporting any suspected violations.

2. Neighbors’ Obligations

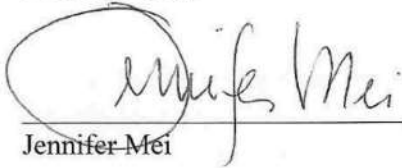
- a) Neighbors and their agents will not oppose the approval of Owner’s variance application No. 2022-005109VAR (the “Project”).

This Agreement is executed by the Parties as of March 21, 2023.

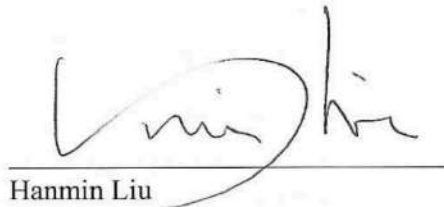
OWNER

Enda Keane, as trustee of Enda Keane Revocable Trust

NEIGHBORS



Jennifer Mei



Hanmin Liu



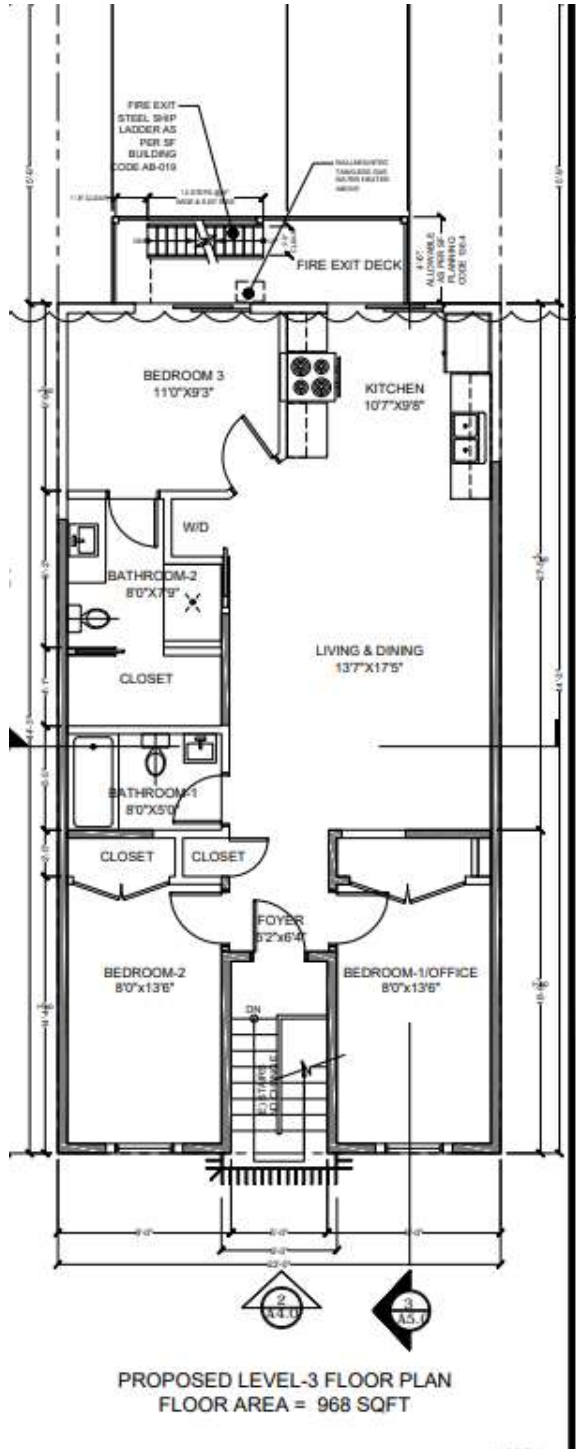
Johnny Leung



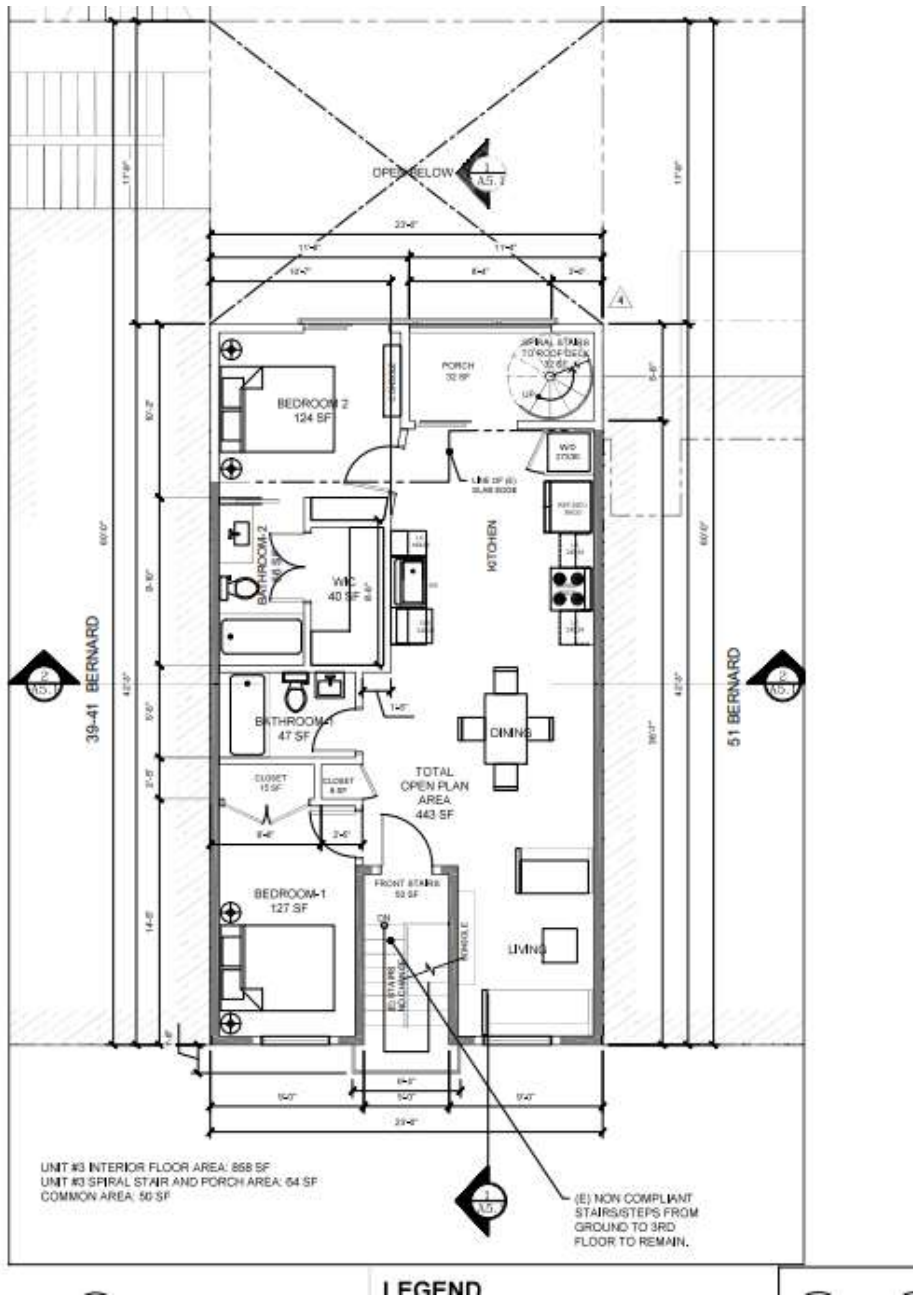
Sandy Leung

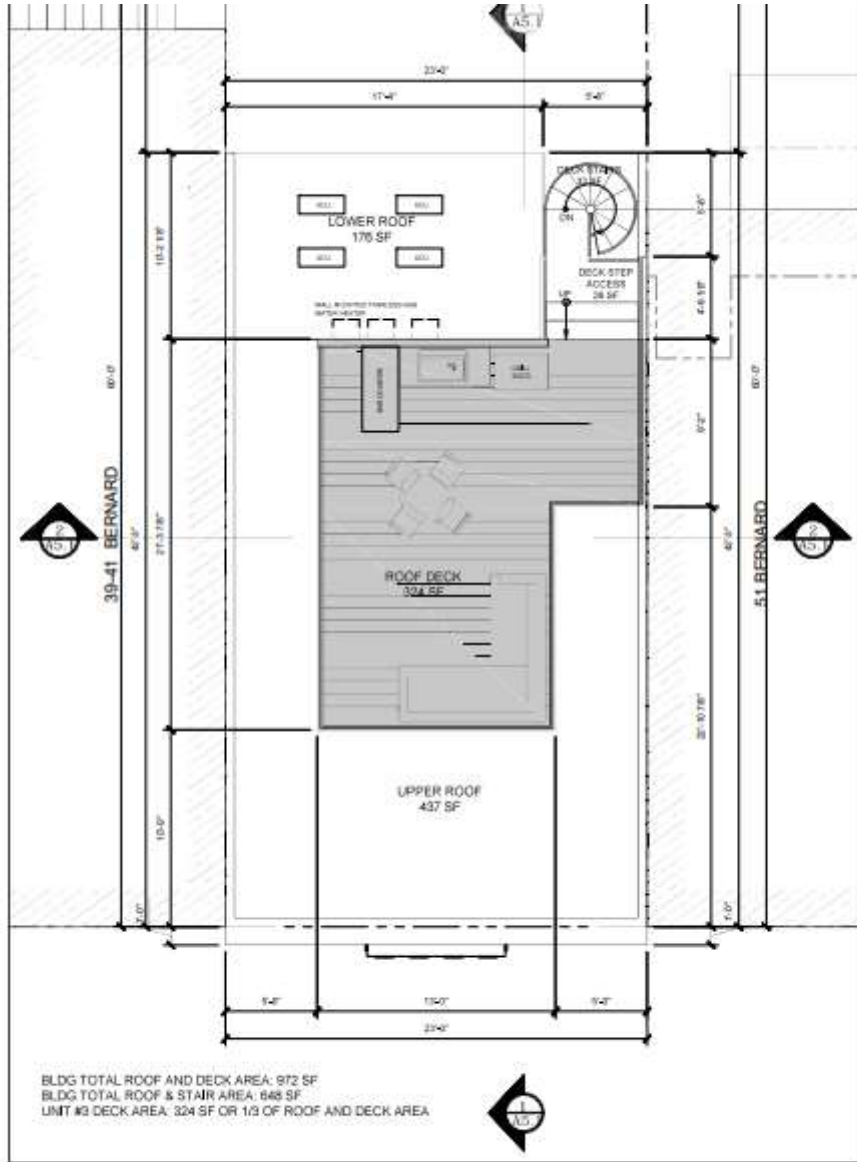
Appendix C: Original 311 Notice Depth Vs. Planning Commission Depth

Original 311 3rd Floor Dimensions (Setback of 15'9")



Modified PC Depth & Roof Deck





1 ROOF DECK FLOOR PLAN
 SCALE: 1/8" = 1'-0"

Appendix D: DRA Memo, Project Opponent Appeal, Our Response

Please refer to Supplemental Attachments given File Size

1. DRA Memo
2. Project Opponents Appeal
3. Our Response



DISCRETIONARY REVIEW ANALYSIS

HEARING DATE: August 25, 2022

Continued from July 21, 2022

Continued from May 26, 2022

Record No.: 2020-005176DRP
Project Address: 45 Bernard Street
Permit Application: 2020.0822.2415
Zoning: RH-3 [Residential House, Three Family]
40-X Height and Bulk District
Block/Lot: 0157 / 030
Project Sponsor: Taylor Huston
59 Grove Hill South
San Anselmo, CA 94960
Staff Contact: David Winslow – (628) 652-7335
david.winslow@sfgov.org

Recommendation: Do Not Take DR and Approve as Modified

Project Description

The project proposes to construct a rear addition and legalize an existing unauthorized dwelling unit to an existing 3-story, 4-family residence.

Site Description and Present Use

The site is an approximately 23' wide x 60'-0" deep lateral and down sloping lot that contains an existing 3-story, four-family building. The existing building is a Category 'C' – No historic resource present - built in 1900.

Surrounding Properties and Neighborhood

Bernard is a 35' wide east- west street. The buildings on this block of Bernard consist of 3-story, multi-unit residential buildings with flat roofs. This building is shorter than the adjacent buildings on the block. The existing neighboring buildings fronting Bernard and Pacific Avenue vary in depth but extend deep into the lots to leave a constrained mid-block open space.

Building Permit Notification

Type	Required Period	Notification Dates	DR File Date	DR Hearing Date	Filing to Hearing Date
311 Notice	30 days	January 24, 2022– February 23, 2022	February 23, 2022	July 28, 2022	156 days

Hearing Notification

Type	Required Period	Required Notice Date	Actual Notice Date	Actual Period
Posted Notice	20 days	May 6, 2022	May 6, 2022	20 days
Mailed Notice	20 days	May 6, 2022	May 6, 2022	20 days
Online Notice	20 days	May 6, 2022	May 6, 2022	20 days

Public Comment

	Support	Opposed	No Position
Adjacent neighbor(s)	0	0	0
Other neighbors on the block or directly across the street	2	2 (1006 petition)	0
Neighborhood groups	0	4	0

Environmental Review

The Department has determined that the proposed project is exempt/excluded from environmental review, pursuant to CEQA Guideline Section 15301 (Class One - Minor Alteration of Existing Facility, (e) Additions to existing structures provided that the addition will not result in an increase of more than 10,000 square feet).

DR Requestor

DR requestor: Jennifer Mei of the Upper Chinatown Neighborhood Association.

DR Requestors’ Concerns and Proposed Alternatives

DR requestor is concerned that the proposed project will undermine the cultural fabric of this community...; violates the Residential Design Guideline related to impacting mid-block open space; **General Plan Housing Element Objective 11** to ‘*Maintain and Preserve the Unique and Diverse Character of San Francisco’s Neighborhoods*’; and **Housing Element Policy 11.9**: *Foster Development that Strengthens Local Culture, Sense of Place, and History*’

Proposed alternatives:

1. Increase rear yard setbacks of the building.
2. Relocate rear stairways inside building.
3. Reduce the size of all glazing at rear of building.

See attached *Discretionary Review Application*, dated February 23, 2022.

Project Sponsor’s Response to DR Application

The proposed project is Code complaint and adheres to residential guidelines. The criteria for exceptional and extraordinary has not been met. The owner move in evictions were done in accordance with the laws and exceeded required relocation expenses with free rent and financial support. Letters of support are included from two of those tenants. The private rear yard is proposed to be reduced but will be consistent with the prevailing neighborhood and provide a common courtyard for the residents of 45 Bernard. In doing so it does not remove a neighborhood common space or courtyard

See attached Response to Discretionary Review, dated April 23, 2022.

Department Review

The Planning Department’s review confirms support of this proposal as it conforms to the Residential Design Guidelines and Planning Code. The proposal maximizes allowable density by legalizing an unauthorized dwelling unit.

Since this is the shortest building on the block, the proposed rear extension fits into the already constrained mid-block open space by using the average the depth of the adjacent buildings to derive a code-complying rear yard to produce a context appropriate building and rear yard. The removal of an existing rear wood stair that extends deep into the existing rear yard helps to alleviate the sense of constrained mid-block open space.

The proposed roof deck is minimal in size, serves one unit and is set back from all building edges by at least 5’.

From the eviction history it appears that the proper legal procedures were invoked for owner move-in evictions.

The project has been modified from the original 311 notification drawing set, The rear wall of adjacent building at 51 Bernard used for the purpose of rear yard averaging did not qualify and resulted in the reduction of the rear extension being reduced by 2’. Several other changes have been incorporated into the revised drawings of the proposed project dated 7.15.22. These include removing the proposed fire escape at the rear, adding exterior decks, and adding a spiral stair to a roof deck – which has been reduced in sized from the 311 proposal.

Therefore, staff deems there are no exceptional and extraordinary circumstances and recommends not taking Discretionary Review and approving as modified.

Recommendation: Do Not Take DR and Approve as Modified

Attachments:

Block Book Map
Sanborn Map
Zoning Map
Aerial Photographs
Context Photographs
Section 311 Notice
CEQA Determination
DR Application
Response to DR Application, dated April 23, 2022.
Letters of support and opposition
Eviction history documentation
311 plans
Revised drawings dated 7.15.22



DISCRETIONARY REVIEW ACTION DRA-793

HEARING DATE: AUGUST 25, 2022

AMENDED DATE: OCTOBER 4, 2022

Record No.: **2020-005176DRP**
Project Address: **45 Bernard Street**
Building Permit: **2020.0822.2415**
Zoning: RH-3 (Residential House- Three Family) Zoning District
40-X Height and Bulk District
Block/Lot: 0157 / 030
Project Sponsor: Taylor Huston
59 Grove Hill South
San Anselmo, CA 94960
DR Requestor: Jennifer Mei
Upper Chinatown Neighborhood Association
1144 Pacific Avenue
San Francisco, CA 94133
Staff Contact: David Winslow – (628) 652-7335
David.Winslow@sfgov.org

ADOPTING FINDINGS RELATED TO TAKING DISCRETIONARY REVIEW OF RECORD NO. 2020-005176DRP AND THE APPROVAL OF BUILDING PERMIT APPLICATION NO. 2020.0822.2415 PROPOSING CONSTRUCTION OF A FOUR-STORY HORIZONTAL REAR ADDITION AT THE EXISTING BASEMENT, FIRST FLOOR, SECOND FLOOR, AND THIRD FLOOR TO A THREE-STORY OVER BASEMENT, FOUR-FAMILY DWELLING WITHIN THE A RH-3 (RESIDENTIAL, HOUSE, THREE-FAMILY) ZONING DISTRICT AND A 40-X HEIGHT AND BULK DISTRICT.

Preamble

On August 22, 2020, Taylor Huston filed for Building Permit Application No. 2020.0822.2415 proposing construction of a four-story horizontal rear addition at the existing basement, first floor, second floor, and third floor to a three-story over basement, four-family dwelling within the RH-3 (Residential, House, Three-Family) District and a 40-X Height and Bulk District.

On February 23, 2022, Jennifer Mei of the Upper Chinatown Neighborhood Association (hereinafter “Discretionary Review (DR) Requestor”) filed an application with the Planning Department (hereinafter “Department”) for Discretionary Review (2020-005176DRP) of Building Permit Application No. 2020.0822.2415.

The Project is exempt from the California Environmental Quality Act (“CEQA”) as a Class 1 categorical exemption.

On August 25, 2022, the San Francisco Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting on Discretionary Review Application 2020-005176DRP.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties.

Action

The Commission hereby takes Discretionary Review requested in Record No. 2020-005176DRP and approves Building Permit Application 2020.0822.2415 with modifications.

The reasons that the Commission took the action described above include:

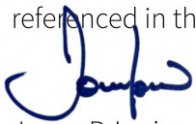
1. There are extraordinary or exceptional circumstances in the case. The proposal complies with the Planning Code and the General Plan, but does not conform with the Residential Design Guidelines with respect to articulating the building to minimize impacts to light and air to the adjacent buildings.
2. The Commission recognizes the Rent Control Ordinance and its direct impact as it relates to tenant rights, owner move-in evictions, the need to be able to locate previous tenants, first right of refusal at their previous rent rates, and that the current tenant may continue their tenancy for as long as they wish. ~~and first right of refusal for evicted tenants.~~
3. The Commission further encourages that the duration of any relocation of the existing tenant will be as short as possible and a green rear yard open space.
4. The Commission determined that modifications to the project were necessary, ~~and encouraged greening the rear yard open space and they~~ instructed staff to approve the Project per plans with the following conditions:
 1. Eliminate the roof deck.
 2. Eliminate the ~~and~~ spiral stair from the third floor to the roof.
 3. Configure the third floor to be identical to the second floor.
 - 2.4. Provide the Commission with an update report within six months of BPA issuance.

APPEAL AND EFFECTIVE DATE OF ACTION: Any aggrieved person may appeal this Building Permit Application to the Board of Appeals only after the Department of Building Inspection (DBI) takes action (issuing or disapproving) the permit. Such appeal must be made within fifteen (15) days of DBI's action on the permit. For further information, please contact the Board of Appeals at (628) 652-1150, 49 South Van Ness Ave, Suite 1475, San Francisco, CA 94103.

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.

I hereby certify that the Planning Commission takes Discretionary Review and approved the building permit as referenced in this action memo on August 25, 2022 and amended on October 4, 2022.



Jonas P Ionin Digitally signed by Jonas P Ionin
Date: 2022.10.04 11:48:02 PST

Jonas P. Ionin
Commission Secretary

AYES: Ruiz, Imperial, Koppel, Moore

NOES: Diamond

ABSENT: Fung, Tanner

ADOPTED: August 25, 2022

AMENDED: October 4, 2022



DISCRETIONARY REVIEW PUBLIC (DRP) APPLICATION

Discretionary Review Requestor's Information

Name: _____

Email Address: _____

Address: _____

Telephone: _____

Please Select Billing Contact: _____

Applicant

Other (see below for details)

Name: _____ Email: _____ Phone: _____

Information on the Owner of the Property Being Developed

Name: _____

Company/Organization: _____

Email Address: _____

Address: _____

Telephone: _____

Property Information and Related Applications

Project Address: _____

Block/Lot(s): _____

Building Permit Application No(s): _____

ACTIONS PRIOR TO A DISCRETIONARY REVIEW REQUEST

PRIOR ACTION	YES	NO
Have you discussed this project with the permit applicant?		
Did you discuss the project with the Planning Department permit review planner?		
Did you participate in outside mediation on this case? (including Community Boards)		

Changes Made to the Project as a Result of Mediation.

If you have discussed the project with the applicant, planning staff or gone through mediation, please summarize the result, including any changes that were made to the proposed project.

DISCRETIONARY REVIEW REQUEST

In the space below and on separate paper, if necessary, please present facts sufficient to answer each question.

1. What are the reasons for requesting Discretionary Review? The project meets the standards of the Planning Code and the Residential Design Guidelines. What are the exceptional and extraordinary circumstances that justify Discretionary Review of the project? How does the project conflict with the City's General Plan or the Planning Code's Priority Policies or Residential Design Guidelines? Please be specific and site specific sections of the Residential Design Guidelines.

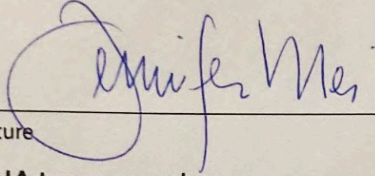
-
2. The Residential Design Guidelines assume some impacts to be reasonable and expected as part of construction. Please explain how this project would cause unreasonable impacts. If you believe your property, the property of others or the neighborhood would be unreasonably affected, please state who would be affected, and how.

-
3. What alternatives or changes to the proposed project, beyond the changes (if any) already made would respond to the exceptional and extraordinary circumstances and reduce the adverse effects noted above in question #1?

DISCRETIONARY REVIEW REQUESTOR'S AFFIDAVIT

Under penalty of perjury the following declarations are made:

a) The undersigned is the DR requestor or their authorized representation.



Signature

Jennifer Mei

Name (Printed)

UCNA team member

415.775.1151

nectar.wildflowers@gmail.com

Relationship to Requestor
(i.e. Attorney, Architect, etc.)

Phone

Email

For Department Use Only

Application received by Planning Department:

By: _____

Date: _____

**ATTACHMENT ONE:
EXCEPTIONAL AND EXTRAORDINARY CIRCUMSTANCES**

Exceptional and Extraordinary Circumstances

In light of the sociocultural impact of the proposed plans at 45 Bernard Street on the Chinese character of the neighborhood and on Chinese immigrants, elders, and residents, and of SF Planning's commitment to racial and social equity, we bring this matter to the attention of the San Francisco Planning Commissioners.

The plans and design of 45 Bernard Street undermine the cultural fabric of this community by eliminating the Chinese courtyard experience, a local asset of the neighborhood. Consider the disruption that has already been done to eleven Chinese immigrants, eight of whom are elders and/or disabled with little to no command of the English language. The new owners evicted members of the Chen and Yu family and members of the He and Cen family.¹ The plans eliminate the spiritual refuge of afforded by a secluded open space. (See figure 1 below of the Chinese courtyard.) The sponsors will not benefit from this courtyard experience nor will anyone else on the block. If approved as submitted, this project will only accelerate the transformation of our neighborhood away from being a community of Chinese American families—the social and economic unit of stability.



Figure 1. The Chinese courtyard outlined in white at 45 Bernard Street.

¹ According to San Francisco Rent Stabilization and Arbitration Board (case numbers M201229 and M201400), the evicted tenants all received a Relocation Assistance Payment. Each of the three elders and/or disabled who lived at 47 Bernard Street received \$9,151.80, and each of the other two received \$4,334.80. Each of the five elders and/or disabled at 49 Bernard Street received \$8,429.33, and Huang Zhang Chen received \$3,612.33. There were no owner buy-outs; constraints are placed on both 47-49 Bernard Street until the fall of 2025.

For over thirty-five years, we observed that the Chinese families who lived at 45-49 Bernard Street relied innately on the open space in their modest courtyard as their unofficial temple. It was a space where family members of all ages would freely come and go as they pleased, but they were more stable and connected when they were undisturbed and together in the courtyard. As Professor Laurence G. Liu, head of Architectural Design and Graduate Programmes at Southeast University, Nanjing, Jiangsu, China, wrote in a landmark reference book: “. . . people actually lived in an unstable, transient world . . . the communistic character of the family system, the inward feeling of withdrawal from the outside world, and the idea of plain living . . . contributed to the formation of the courtyard house. . . . Because the center of all activities was the courtyard, there was no privacy concerning the movement and activities of all family members . . . it was an organization which had the distinction of seclusion. Furthermore, it created a layout and a form which rallied all the members of a family psychologically to live in a spiritual refuge together. . . . Only through the unity of thought and the force of a family were they able to confront and survive the misfortunes of life.”² (See figure 2.)

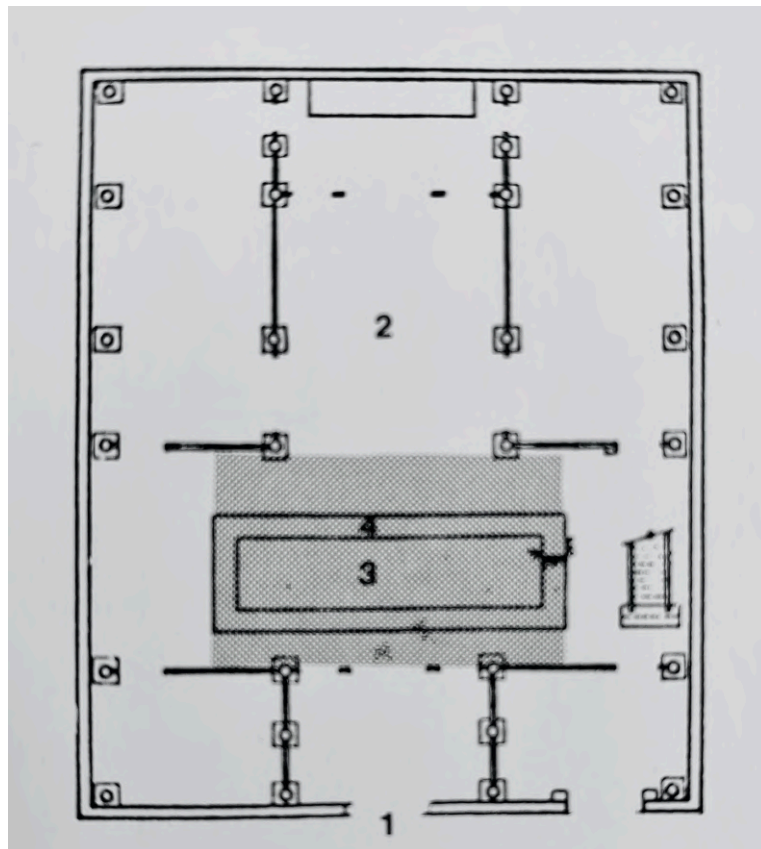


Figure 2. An illustration from *Chinese Architecture* showing a compact courtyard house in Anhui Province, China. 1. Entrance. 2. Hall. 3. Pavement. 4. Courtyard, p. 165.

² Laurence G. Liu, *Chinese Architecture* (London: Academy Editions, 1989), p. 164. The research for this book was supported by a grant from the Graham Foundation for Advanced Studies in the Fine Arts, Chicago, Illinois.

Since 1840 when individuals and families began to emigrate from China to San Francisco, generation after generation, they have inherently adopted this way of maintaining stability and unity and being a force of change in America. The Chinese people have experienced the courtyard as one of the means for strengthening the family structure and maintaining harmony within one's self and among others. An ordinary backyard serves as the sacred space for reflection and introspection. The spiritual dimension of the courtyard is not only what is in the space, but is the space itself, which makes it sacred. Given the high density of block 157, the elimination of the Chinese courtyard at 45 Bernard Street will further reduce the feeling of freedom from hardship and the opportunities for informal and spiritual connectedness with family.

The residents of Bernard Street, Pacific Avenue, Phoenix Terrace, and between Taylor and Jones are predominately Chinese families, small-business owners in Chinatown, and mid-level professionals of different races and ethnicities. Many immigrants and first-generation families live in the neighborhood because it is affordable and because it is near Chinatown where they work, attend American and Chinese schools, shop for food, and receive health care and social services. Two bus lines go in east and west directions on Pacific Avenue and bring elders to and fro. Residents live in the two- and three-story properties where whole families are together. Grandparents, parents, children, grandchildren, and other relatives assume responsibility and develop trusting relationships to help one another with child care, interpreting services, elderly care, and the family business. Family members gather to share meals while telling stories, solving problems, and supporting one another. This family system is the bedrock of the culture and maintains the social sustainability of the neighborhood.

In 2013, 80% of the homeowners were Chinese American. In 2021, their homeownership dropped to 60% and Chinese immigrants and low-income Chinese American individuals and families were displaced. (See figure 3.) What is emerging in our neighborhood is a younger, less diverse, and more affluent population of individual tenants who will likely be more transient.

Lindsey Huston and her mother, Tina Huston, are new owners of the building. Lindsey lives at 49 Bernard Street (owner move-in) and her sister, Taylor Huston, resides at 47 Bernard Street (relative move-in). Lindsey and Taylor's father, James Huston of Huston General Contracting, Inc. (HGCI), located in San Anselmo, California, is the builder. The sponsor's plans do not create more housing. The ADU in the basement is already there but needs to be legalized. And the sponsors are not adding new bedrooms to the building.

These proposed plans would further contribute to the erosion of the social and cultural fabric and do not seem to be in accord with:

(1) *Residential Design Guidelines, Introduction: Design Principles*: "Provide architectural features that enhance the neighborhood's character and ensure that the building respects mid-block open space."³

³ San Francisco Planning, *Residential Design Guidelines, Introduction: Design Principles*, p. 5, December 2013.

(2) *Residential Design Guidelines, Building Scale and Form, Building Scale at the Mid-Block Open Space*: “The height and depth of a building expansion into the rear yard can impact the mid-block open space. Even when permitted by the Planning Code, building expansions into the rear yard may not be appropriate if they are uncharacteristically deep or tall, depending on the context of the other buildings that define the mid-block open space. An out-of-scale rear yard addition can leave surrounding residents feeling “boxed-in” and cut-off from the mid-block open space. The following design modifications may reduce the impacts of rear yard expansions; other modifications may also be appropriate depending on the circumstances of a particular project: Set back upper floors to provide larger rear yard setbacks . . . reduce the footprint of the proposed building or addition.”⁴

(3) *The San Francisco General Plan, 2014 Housing Element, Part II, Objectives and Policies, Issue 6: Maintain the Unique and Diverse Character of San Francisco’s Neighborhoods, Objective 11*: “As each neighborhood progresses over time the distinct characters will form the foundation to all planning and preservation work in the area. . . . the City also values a variety of neighborhood types to support the varying preferences and lifestyles of existing and future households. Changes planned for an area should build on the assets of the specific neighborhood while allowing for change.”⁵

(4) *The San Francisco General Plan, 2014 Housing Element, Part II: Objectives and Policies, Policy 11.9, Foster Development That Strengthens Local Culture Sense of Place and History* states that “neighborhood character is also defined by long-standing heritage, community assets, institutional and social characteristics. Maintaining the linkages that such elements bring, by connecting residents to their past, can contribute to the distinctiveness of community character and unique sense of place; as well as foster community pride and participation.”⁶

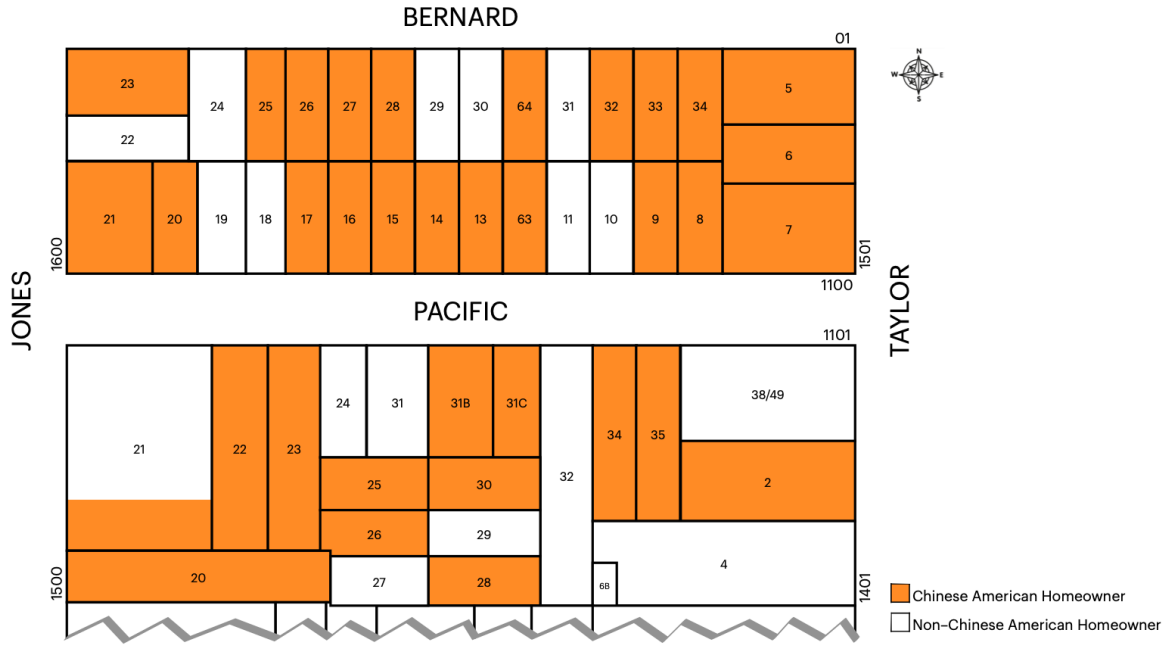
⁴ San Francisco Planning, *Residential Design Guidelines, Building Scale and Form, Building Scale at the Mid-Block Open Space*, pp 25-26, December 2013.

⁵ *The San Francisco General Plan, 2014 Housing Element, Part II: Objectives and Policies, Issue 6: Maintain the Unique and Diverse Character of San Francisco’s Neighborhoods*, p. 36, Updated August 2020.

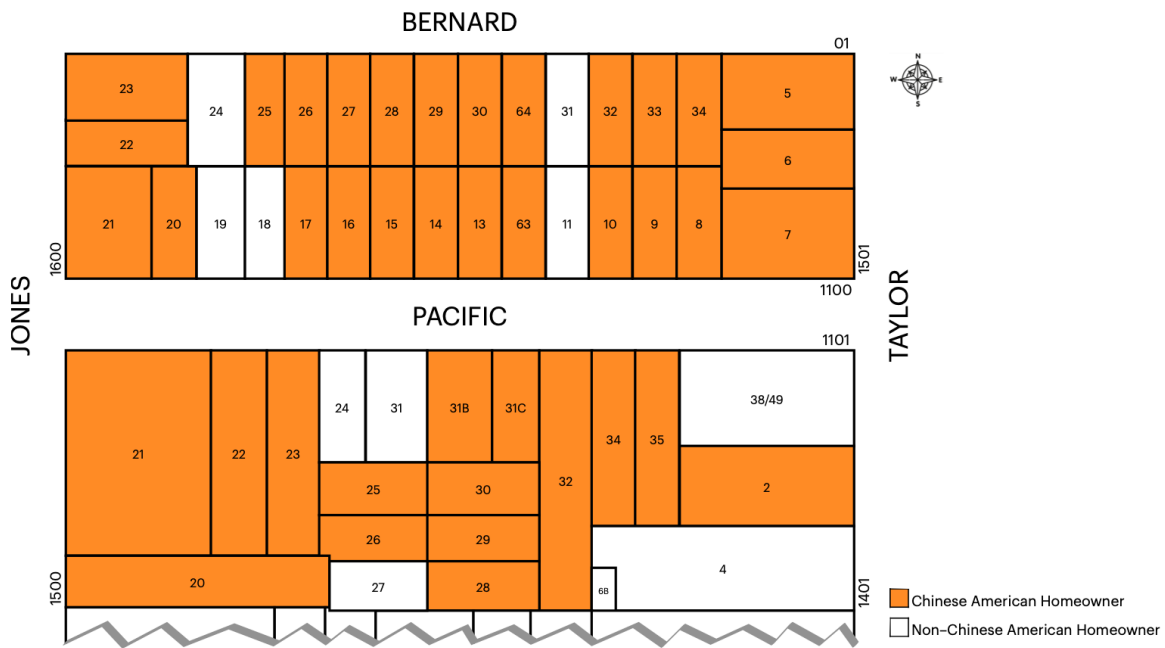
⁶ *The San Francisco General Plan, 2014 Housing Element, Part II: Objectives and Policies, Policy 11.9, Foster Development That Strengthens Local Culture Sense of Place and History*, p. 39, Updated August 2020.

Figure 3. 2013–2021 Changes in Homeownership⁷

2021 Homeownership by Lot



2013 Homeownership by Lot



⁷ Block/lot map source: Assessor-Recorder’s Office, City and County of San Francisco, <http://sfplanninggis.org/blockbooks/AssessorBlock0157.pdf> and <http://sfplanninggis.org/blockbooks/AssessorBlock0182.pdf>.

**ATTACHMENT TWO:
UNREASONABLE IMPACT**

Unreasonable Impact

1. The Proposed Increase in Size and Scale of the Building Eliminate the Chinese Courtyard

By proposing the setback at 45 Bernard to 10 feet when including the exterior stairway, the sponsor is destroying a cultural space for maintaining a personal and collective balance in life. The setback should be 15 feet but the proposed plans actually go back to just under 16 feet. The plans maximize the indoor footprint and minimize outdoor open space.

Bernard Street between Taylor and Jones Streets is highly dense with limited mid-block open spaces. The encroachment will perpetuate and expand a tenement-like situation over roughly half the block's interior open space. (See figure 4.)

While over 70% of the residents on block 157 (Bernard Street and Pacific Avenue between Jones and Taylor Streets) are Chinese American and will be the most negatively impacted, everyone on the block who wants and needs a secluded mid-block open space will also be adversely affected.



Figure 4. The tenement-like situation immediately east of 45-49 Bernard Street.

2. Rear Yard: The Project Further Reduces Light to Adjacent Properties

The proposed plans will limit the amount of light and air to bedrooms and living-area windows of the buildings adjacent to and directly opposite the development. The light to adjacent neighbors on all three sides of 45-49 Bernard Street will be affected. This expansion encroaches on the rear neighbor at 1144-1146 Pacific Avenue. If the plans are implemented, light and air quality in the mid-block open space will be further reduced, and the privacy and the security of adjacent buildings will be lessened. (See figure 5.)



↑
45-49 Bernard Street

Figure 5. Aerial photo of the mid-block open space on Bernard Street and Pacific Avenue between Taylor and Jones. The blue arrow points to 45-49 Bernard Street.

3. Rear Yard: The Project Does Not Provide Adequate Setbacks on the Upper Floors

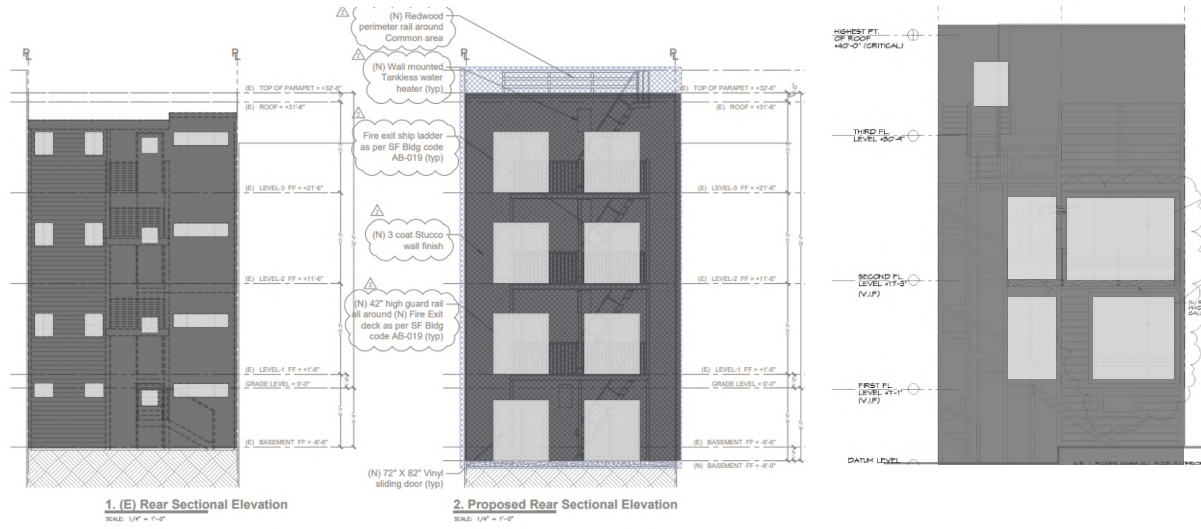
The proposed addition does not step down with grade toward the rear. The San Francisco Planning Department required the developer and owner of 51 Bernard Street (adjacent to 45-49 Bernard Street) to set back the three floors of the building in order to increase mid-block access to light and air for surrounding neighbors. The image on the left in figure 6 shows 51 Bernard Street (four-story gray building) and the existing setback of 45-49 Bernard Street.



Figure 6. Renderings of existing rear elevation and the proposed elevation of 45-49 Bernard Street. The image on the right illustrates how the proposed plans will block eastern sunlight and air flow and reduce mid-block open spaces.

4. Rear Yard: Lack of Privacy to Neighboring Interior Living Spaces

The encroachment to within 10 feet of the property line has a significant impact on the privacy of 1144-1146 Pacific Avenue, 1154-1156 Pacific Avenue, 39-41 Bernard Street, and 51 Bernard Street. The top three floors including the roof deck in the proposed plans are directly in the line of neighbors' sight and will further compromise their privacy. See figure 7 for the existing rear-window sizes at 45-49 Bernard Street; the proposed plans of two double glass doors with decks on each of three stories; and the rear windows of 1144-1446 Pacific Avenue.



Existing 45-49 Bernard St.

Proposed 45-49 Bernard St.

1144-1146 Pacific Ave.

Figure 7. Elevation drawings of 45-49 Bernard Street (existing and proposed) and a rear elevation drawing of 1144-1146 Pacific Avenue, with window sizing and placement.

**ATTACHMENT THREE:
AN ALTERNATIVE**

An Alternative to the Proposed Project: Maintaining the Chinese Courtyard Experience and Providing Greater Privacy

Sponsor to Redesign the Project to Increase the Rear Yard Setbacks So That They Align with the Setbacks of 51 Bernard Street⁸

The setback design of the adjacent building at 51 Bernard Street is a good precedent. UCNA recommends the design of 45-49 Bernard Street to mirror the 51 Bernard Street setbacks.

The backyard setback should be no less than 20 feet 6 inches from the property line. The second and third floors should have a 7-foot setback on each of the two floors. (These setback measurements need to be confirmed on site.)

Figure 7 shows a rendering of 45 Bernard Street with the “Preferred Set-Back Edge” as a dotted white line. The line is aligned with the second floor of 51 Bernard Street.

Sponsor to Install the Rear Stairway Indoors

UCNA also recommends that the rear stairs be located in the interior of the building instead of outdoors.

Sponsor to Reduce the Size of All of the Glazing in the Rear of the Building

UCNA suggests that the new owners reduce the size of all the glazing on the top two floors.

All glazing and the roof deck should be configured to break the line of sight to 39-41 Bernard Street, 51 Bernard Street, 1154-1156 Pacific Avenue, and 1144-1146 Pacific Avenue.

The owners should also use translucent glazing or frosted glass facing openings and abutting structures.

⁸ The *Planning Code Section 101* and the *Residential Design Guidelines Rear Yard, Light, and Privacy* recommend the following: “provide setbacks on the upper floors of the building”; “develop window configurations that break the line of sight between houses”; and “use translucent glazing such as glass block or frosted glass on windows and doors facing openings on abutting structures.” pp. 16-17, December 2013.

City of San Francisco

Supplemental DR Response

45-49 Bernard Street
San Francisco, CA 94133



Last Revised: April 22, 2022

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1. Overview

Owner Occupancy

The 3-unit building was purchased in September 2019 by Tina Huston (mother) and Lindsey Huston (daughter) who are the Permit Requesters (Sponsors) in this request. The property was explicitly purchased to occupy as a family with the intention of Lindsey occupying one unit as an “Owner” and her sister Taylor moving into a second unit as a “Relative”. At that time, both Lindsey Huston and Taylor Huston were living in separate apartments in San Francisco and working for Companies in the City. Unit #49 was planned as an OMI and #47 as an RMI.

Unit #45 was occupied (and continues to be) occupied by a Tenant, Ms. Qi.

Property Condition

This Project will provide critically necessary updates to a property that is severely dilapidated and has had decades (over 30 years) of deferred maintenance. Feedback from prior and current tenants is consistent with the fact that the prior landlord knowingly neglected the property and specific concerns raised by the tenants. This is evident from the condition of the property, which is highlighted in the third-party inspection report which was provided by the Sellers of the building in 2019. The report recommended many critical repairs, and the upgrade plans below address items outlined in that report. See **Appendix A.1**.

Project Overview

The project is in complete compliance with City Planning code and has passed the City Planning process to achieve the following:

1. Complete critical foundation work (soft story).
2. Remove the back porch replacing it with code compliant construction.
3. Extend the depth to the required minimum setback, thereby increasing the square footage of each 3-bedroom unit by 232 sf, from 736 sf to 968sf within the City-approved setback.
 - Provide for a ‘normal’ size kitchen (current kitchen is on the porch and approximately 5’ square)
 - Add second bathroom
4. Replace windows (many of which will not fully close at this point) and doors
5. Exterior / Siding improvements and repainting
6. Interior improvements, flooring, cabinets, and repainting
7. Add shared space on roof
8. Under a separate permit, the Project will also legalize the basement unit that has existed for years, and was unlawfully rented by the prior owner (it is currently not occupied)

Existing Tenant

As for the petitioner’s “concerns” about tenants: once proposed upgrades have been made, our wonderful tenant, Ms. Qi, will have a fully remodeled home, which she will return to at her rent-protected price. In response to concerns prior evictions, the petitioners (our neighbors), claim to care

deeply for the tenants in hopes that, from a political perspective, with the hope that this will sway your opinion. However, in the 8+ years the tenants were residing here, Jennifer/Hanmin never reached out to the prior landlord to help advocate for better habitable conditions.

[Ms. Qi and her daughter have provided a letter of support that is provided under separate cover.](#)

UNCA Care for Tenants

The UCNA never advocated for the Prior tenants when it mattered to improve their overall living conditions. Even now, they do not stop in to check on or support Ms. Qi in any way.

The Commission see this for what it is—two neighbors who don't want construction because of personal reasons. We have great respect for all cultures, and the San Francisco community, we only aim to preserve and support the neighborhood character to flourish.

Prior Evictions

We reviewed the San Francisco Rent Board, OMI, and eviction laws in detail before purchasing the property and believe that have not only abided by the laws but gone above and beyond to provide financial support for the family members displaced, time to relocate, and months of free rent. We hired an Attorney to ensure that the procedures were followed, as they are quite complex.

The Tenants also were represented by an attorney with expertise in San Francisco Tenant Law during the process. Due to COVID, the overall process was at a standstill. Within one and two years respectively, the Tenants in #47 and #49 secured better housing. Once they signed leases and intended to move, they approached us to arrange relocation payments. At that time, COVID restrictions were still in place and so evictions were not being enforced. In theory, the Tenants could have remained in possession, but they elected to pursue the new housing that they had identified. In the end, the process financially benefitted the prior Tenants and their families and they were able to secure better housing.

[Furthermore, the prior Tenant from Unit #47 also provided a letter of support for the project, which is included under separate cover.](#)

2. Conclusion: Burden of DR Not Met

2.1 Criteria for Granting Request

Upon reviewing the discretionary review request, it is apparent that the petitioners have not sufficiently demonstrated why the project should be denied or modified and have failed to describe any *exceptional* or *extraordinary* circumstances.

The burden of demonstrating why a project should be denied or modified rests on the DR applicant.

The City Attorney has made it clear that the standard for exceptional and extraordinary circumstances is high and “the Commission’s discretion is sensitive and must be exercised with utmost constraint.”

2.2 Exceptional or Extraordinary Circumstances

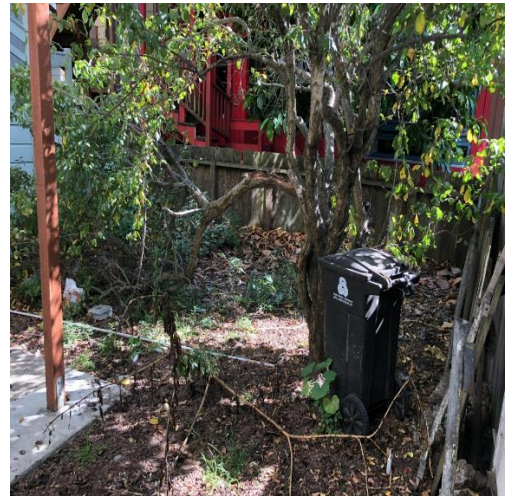
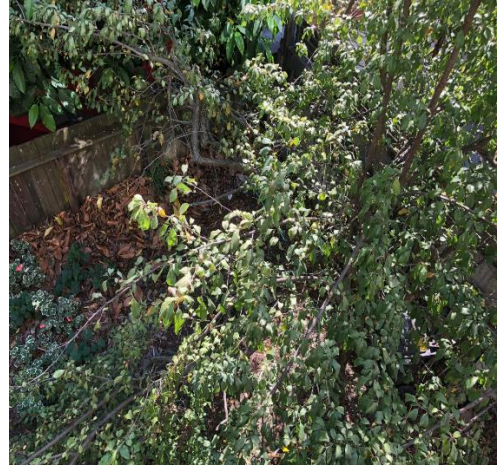
The petitioner has not described any *exceptional* or *extraordinary* circumstances, or provided any specific, detailed analysis that is supported by RPG. It is not even clear what they are deeming to be extraordinary or exceptional, besides that, ***“plans and design of 45 Bernard Street undermine the cultural fabric of this community by eliminating the Chinese courtyard experience, a local asset of the neighborhood.”***

The courtyard is not a public space, but a private rear-yard, and the features they call out as worth protecting are improvements that were made by us to ensure the yard was usable for themselves and tenants. Importantly:

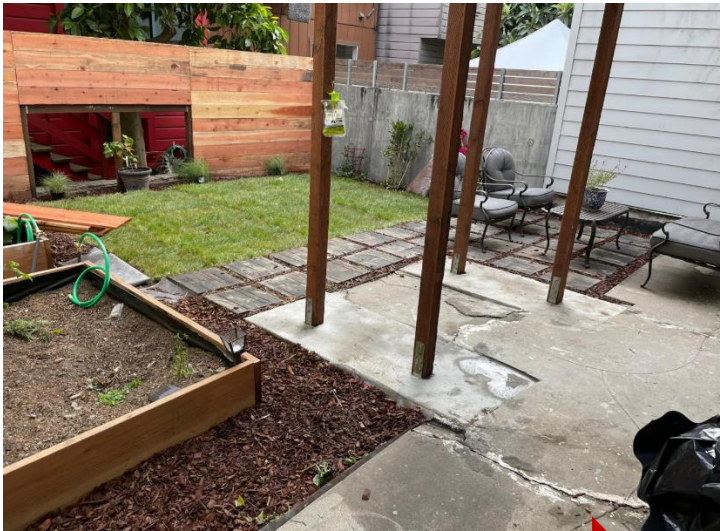
- This Yard is part of the subject property.
- There is no public access to make it any kind of neighborhood courtyard.
- The yard that is depicted in Ms. Liu’s diagram – was just installed last year ***after moving in.***
- Prior to our occupancy, it appears that the back yard not as a shared Courtyard (or even a yard really), but as a place to dump construction debris, trash, etc.
 - This has been reaffirmed by the Ms. Qi’s daughter’s letter of support – who was a resident of Unit #45 from 1983 to 2011.
 - While planting grass in the back yard, we removed ~6 cubic yards of trash buried, including glass, plastic, and other debris.
- The yard is and will remain in a common space for the Owners and Tenants of the building and the existing Tenant has been informed of same.

While we recognize the rear-yard will be reduced slightly, 362 square feet will remain as courtyard space, in addition to shared roof area. This is a modest request for expansion, while maintaining dense/family-oriented housing. There is strong demonstration that the current plans are consistent with the prevailing neighborhood, and, in fact, the properties of the petitioners themselves.

Images of Yard When We Purchased It (Note: No Chinese Courtyard, Public Access, etc)



**Images During Our Work to Improve the Yard
(Installed in 2021)**



Yard Referred to here and layout was installed in 2021 by Sponsors

**Image in the Petitioner's Response – Referring to
Chinese Courtyard used for 35 years**

For over thirty five years, we observed that the Chinese families who lived at 45-49 Bernard Street relied intimately on the open space in their modest courtyard as their unofficial temple. It was a space where family members of all ages would freely come and go as they pleased, but they were more stable and connected when they were undisturbed and together in the courtyard. As Professor Laurence G. Liu, head of Architectural Design and Graduate Programmes at Southeast University, Nanjing, Jiangsu, China, wrote in a landmark reference book: "... people actually lived in an unstable, transient world ... the communistic character of the family system, the inward feeling of withdrawal from the outside world, and the idea of plain living ... contributed to the formation of the courtyard house ... Because the center of all activities was the courtyard, there was no privacy concerning the movement and activities of all family members ... it was an organization which had the distinction of seclusion. Furthermore, it created a layout and a form which rallied all the members of a family psychologically to live in a spiritual refuge together. ... Only through the unity of thought and the force of a family were they able to confront and survive the misfortunes of life." (See figure 2.)

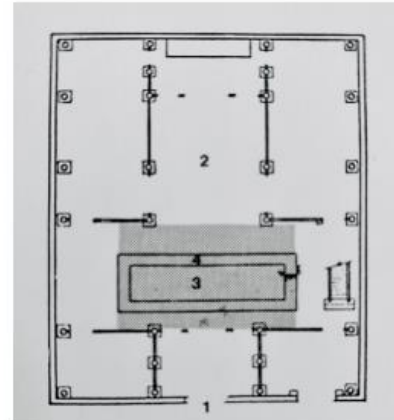


Figure 2. An illustration from *Chinese Architecture* showing a compact courtyard house in Anhui Province, China. 1. Entrance. 2. Hall. 3. Pavement. 4. Courtyard, p. 165.



2.3 Petitioner and Direct Neighbors

Upper Chinatown Neighborhood Association (UCNA). The petitioner who has requested discretionary review under the name UCNA are in actuality the owners of 39A-39-41 Bernard, and 1144-1146 Pacific Avenue, adjacent properties to 45-47-49 Bernard.

- **39A-39-41 Bernard is owned by Sandra and John Leung**, and is a 3-unit multi-family property. It is unclear if the property is used solely as it's intended MFR purpose or is instead used as a SFR.
- **1144-1146 Pacific is owned by Jennier Mei and Hanmin Liu**, and is a four-story, single-family residence with a commercial unit on the first floor that is used by Mrs. Mei and Mr. Liu. It was indicated to us by Mr Liu that they occasionally use their commercial unit to host overnight guests, and that the fact that guests could see into our units was a concern.

51 Bernard St. We have discussed the project extensively with the owner of 51 Bernard. In conversations with the owner at 51 Bernard, the owner stated to us that he does not think the project is unreasonable and that, "because it was a multi-family project, it would have different design considerations" than the project at 51 Bernard. Overall, he is supportive of the project, and recognizes the building needs considerable upgrades which will benefit the neighborhood. Although the petitioners claim to represent the owner at 51 Bernard, they do not, so it is a surprise that the petitioners claim they represent the owner at 51 Bernard in their DR submission. Though Sandra Lueng repeatedly contacted the 51 Bernard Owner and tried to persuade the Owner to contest the project, the owner at 51 Bernard declined to support the discretionary review.

2.4 Housing Act

The Housing Accountability Act compels approval of this project, as the design maintains the number of bedrooms in existing units, and creates a new, legal unit under a separate permit and via the State of California ADU program for legalization.

3. Response to Specific DR Response Questions

3.1 DR Response Question #1: Why Approve?

Given the concerns of the DR requester and other concerned parties, why do you feel your proposed project should be approved?

3.1.1 Approval Rationale No Exceptional Impact and Plans are to Code

- The Project does not have an exceptional or extraordinary impact on the neighboring properties; rather, the design is supported by the character and designs of the neighboring buildings, and the depth is calculated based on the average of adjacent neighbors.
- Project plan is code complaint and adheres to residential planning guidance (RPG)
- Plans were thoughtfully designed to:
 - Preserve the number of bedrooms that currently exist in the units
 - Continue to promote dense, family-oriented housing, while allowing for a more functional/safe kitchen and shared space.
- We have already amended plans based on SF planning feedback and the petitioner's concerns, to reflect a reduction in the rear yard setback and redesign of the rear fire-exit stairs.
- Plans do not require variance.
- Adjacent and rear neighbors have built within the 15' setback (meaning their properties are deeper than the required setback).
- The City Zoning Administrator and City Planner have both agreed to the setback calculation given the adjacent properties.

3.1.2 Petitioners did not meet requirements for Discretionary Review Request

- First and foremost, as outlined in Section 2 above, the Petitioner's request does not demonstrate exceptional or extraordinary impact.
- Communication attempts were made with the UNCA on multiple occasions. Refer to **Appendix C** for the Communication Log.
- In addition to the legitimacy and conceptual soundness of the project itself, we have made continuous efforts to meet and communicate with the petitioners John and Sandra Leung (39A-39-41 Bernard), and Hanmin Liu and Jennifer Mei (1144-1146 Pacific), to hear their concerns, attempt to discuss resolution, and come to mutual agreement. petitioners did not respond to our requests to meet via call/email or in-person, would occasionally respond but never agree to meet, and ignored our offer to meet with a Mediator.

- After the scheduled pre-planning meeting was held, petitioners communicated concern regarding in-person nature to Planner, and that the initial pre-planning meeting notices did not include a call-in code for scheduled pre-planning meeting on December 14th. We apologized, provided a call-in code for December 14th, provided copies of the plans to petitioners (though was not required to), and made themselves available to meet/converse at any point during the pre-planning phase. We then held a second pre-planning meeting on December 31st to try to ensure all neighborhood concerns would be addressed. The petitioners did not attend either of the two neighborhood review meetings that were held.
- Meanwhile, in the almost 2 years we have been awaiting approvals from SF Planning, the petitioners were communicating directly with a City Supervisor to circumvent normal procedure and inflict undue criticism and pressure on the Planning Department. They have also contacted the planning commission, our tenant, the tenant’s daughter, and reached out to other neighbors in the neighborhood in attempts to get them to support a discretionary review. The petitioners have left us out of all of these communications.
- Per discretionary review directions, before submitting a DR request (see below image from DR request submitted), the petitioners are responsible to attempt communication with permit applicants and/or participate in outside mediation, and we have created ample space for them to do so.
- Refer to Appendix C for the numerous attempts to meet and discuss the project.

ACTIONS PRIOR TO A DISCRETIONARY REVIEW REQUEST

PRIOR ACTION	YES	NO
Have you discussed this project with the permit applicant?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Did you discuss the project with the Planning Department permit review planner?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Did you participate in outside mediation on this case? (including Community Boards)	<input type="checkbox"/>	<input checked="" type="checkbox"/>

3.2 DR Response Question #2: Alternatives?

What alternatives or changes to the proposed project are you willing to make to address the concerns of the DR requester /concerned parties? If you have already changed the project to meet neighborhood concerns, please explain those changes and indicate whether they were made before or after filing your application with the City.

3.2.1 Petitioner Request: Preserve the Neighborhood Chinese Courtyard Experience

This item discussed in depth in **Section 2**.

3.2.2 Petitioners Request: Reduce the Size of All of the Glazing in the Rear of the Building

- It is essential to retain the size of the windows in proposed plans, as it is the primary source of light for each of the unit's kitchen and primary bedroom. To reiterate, this is a MFR, and we need to ensure adequate light is provided to each unit as outlined in RPG.
- This character is consistent with all adjacent properties and the block and neighborhood conditions. In fact, even the petitioners Jennifer and Hanmin increased the size of their rear-windows to be large and allow light into their home. They did elect to glaze these large new windows.
- The petitioner's lower floor(s) is a commercial unit; though they have stated that they have company there who stay overnight (which our understanding is that this is not permissible)

Alternative

- We are planning and willing to install curtains and/or shutters to preserve privacy of both properties and request petitioners do the same.

3.2.3 Petitioners Request: Install the Rear Stairway Indoors

- It is not feasible for rear stairs to be moved indoors - this is a fire exit requirement and, as such, a permissible obstruction into the rear yard as noted in Section 136.4 of Planning Code:
Fire Escapes: leaving at least 7½ feet of headroom exclusive of drop ladders to grade, and not projecting more than necessary for safety or in any case more than four feet six inches into the required open area. In the case of yards, the aggregate length of all bay windows, balconies, fire escapes and chimneys that extend into the required open area shall be no more than 2/3 the buildable width of the lot along a rear building wall, 2/3 the buildable length of a street side building wall, or 1/3 the buildable length of an interior side lot line;
- We have attempted to be considerate in design after the petitioners' voiced concerns, and subsequently redesigned the fire exit to be less obtrusive. Photos of the current stairs, initial designs and final plans are shown below. The current/final plan set has a fire escape that is far less intrusive, maintains more open space in the yard, and from an appearance perspective is consistent with the character of the city.

Alternative

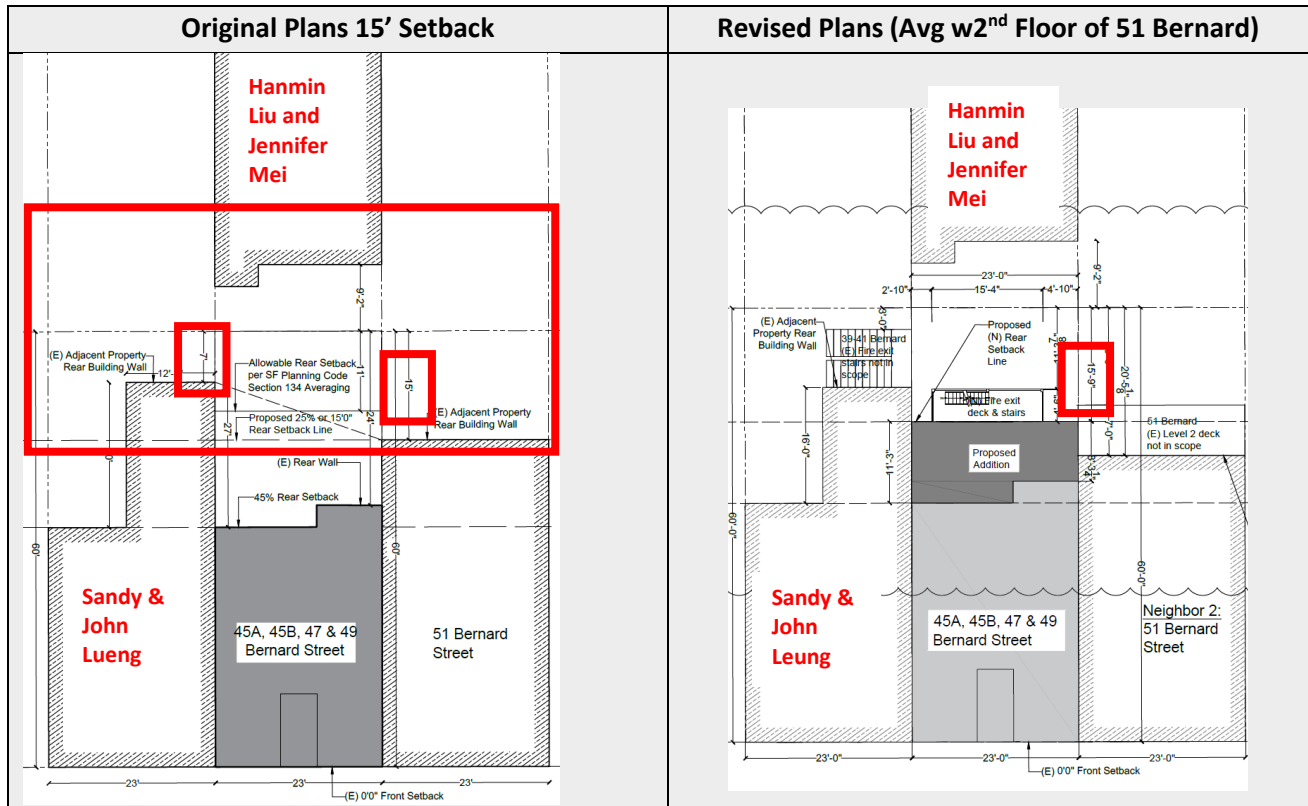
- None proposed

3.2.4 Petitioner Request: Redesign Project to increase Setbacks

Redesign the Project to Increase the Rear Yard Setbacks So That They Align with the Setbacks of 51 Bernard Street.

- The project's proposed rear yard setback is determined by averaging the rear-yard setback of the adjacent buildings at 39A-39-41 Bernard and 51 Bernard; therefore, the context of the surrounding buildings determine the Project's allowable depth.
- The setbacks were already reduced from the 'minimum' of 15', as described above. Setback was increased to 15'-9" by considering only the 2nd floor depth of 51 Bernard.
- The petitioners at 39A-39-41 Bernard and 1144-1146 Bernard quote RPG: "building expansions into the rear yard may not be appropriate if they are uncharacteristically deep or tall, depending on the context of the other buildings that define the mid-block open space." as reasons to deny the Project, though give no actual analysis to support this statement. In fact, RPG supports the approval of the project:
 - The Project's proposal is not out of scale, does not propose an increase to height, and is not uncharacteristically deep when compared to the adjacent neighbors, nor the greater mid-block.
 - As the petitioner notes in their argument, the block is full of deep buildings and is dense.
 - ***In fact, 21 of 23 or 91% of the lots with identical lot configurations (23'X 60') have rear yard setbacks at or deeper than the proposed Project's rear yard setback.***
 - These properties are primarily made up of two-to-five story duplex, triplex and SFR properties.
- Both petitioner's properties extend significantly into the 15' required minimum; hence petitioners are trying to hold us to a Standard that is neither per Code – nor did it apply to them
 - Mei and Lui Property at 1144-1146 Pacific (to the South)
 - 1144-1146 Pacific is owned by Jennifer Mei and Hanmin Liu, and is a four-story, single-family residence with a commercial unit on the first floor.
 - 1144-1146 Pacific constructed a third story and private residential roof deck
 - The Liu's property is within approximately **9'-2" of the rear property line**
 - Stairs are around 3' of the back property line / rear fence
 - There is also a massive tree (approx 40+') located within just a few feet of the property line
 - The Tree itself blocks light, is over 3 stories high, encroaches on the surrounding properties (overhanging the rear fence)
 - Leung Property at 39A-41 Bernard (to the East)
 - 39A-39-41 Bernard is owned by Sandra and John Leung, and is a 3-unit multi-family property.
 - 39A-39-41 Bernard has a three-story multi-family unit, with rear-yard setback of 11 feet (3' when including the fire exit stairs), and no upper setback on the second or third floor.

- They also built a roof deck, without the benefit of a permit, that looks directly into the rear of 49 Bernard and into the private rear yard.
- Adjustments have already been made.** The plans were revised during the initial Planning review. Depth was reduced by 9" (from 15') to 15'-9" to average between the 51 Bernard's Second Story (which is set back) and the 11' depth of the other adjacent neighbor. 15' is the Zoning minimum, but the Code permits averaging as well if adjacent property owners have built deeper.



- Zoning Administrator Review.** We recently received confirmation from the Zoning Administrator via City Planning that the setback is appropriate. This was a secondary review initiated by City Planning as part of this DR Review. In concert with the Zoning Administrator, City planning has determined that the that the plans meet Code, including the setbacks.

51 Bernard Single Family Residence (in Gray) - Staggered Floor Design



~20'6" Qualifying Rear
for Averaging

Existing Building

Proposed Building

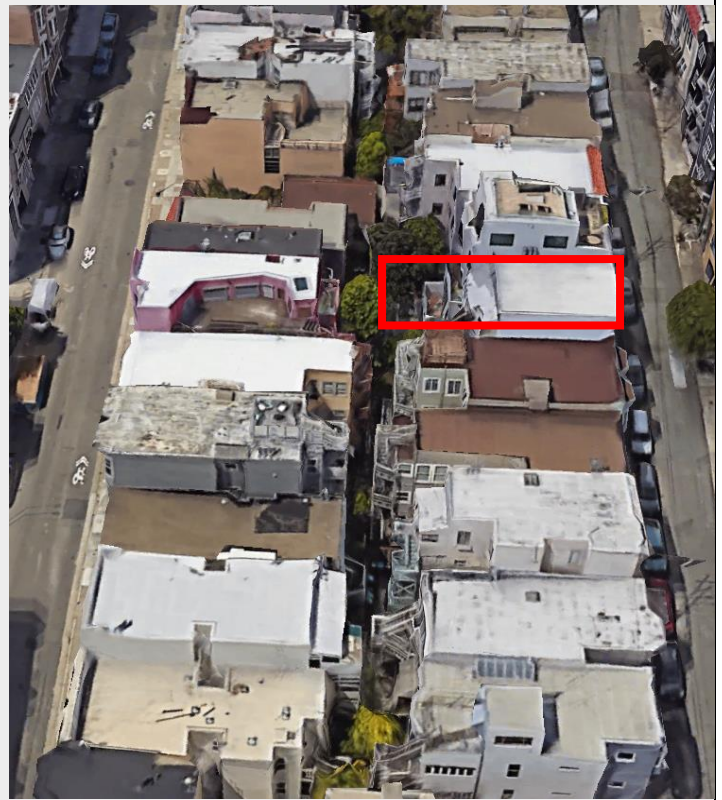
Legend

- Stairways/Balconies Volume
- Building Volume

Prevailing Neighborhood Setbacks
(See Appendix A.3 for Additional Images)



Rear Yard Setbacks between Bernard and Pacific
(See Appendix A.3 for Additional Images)



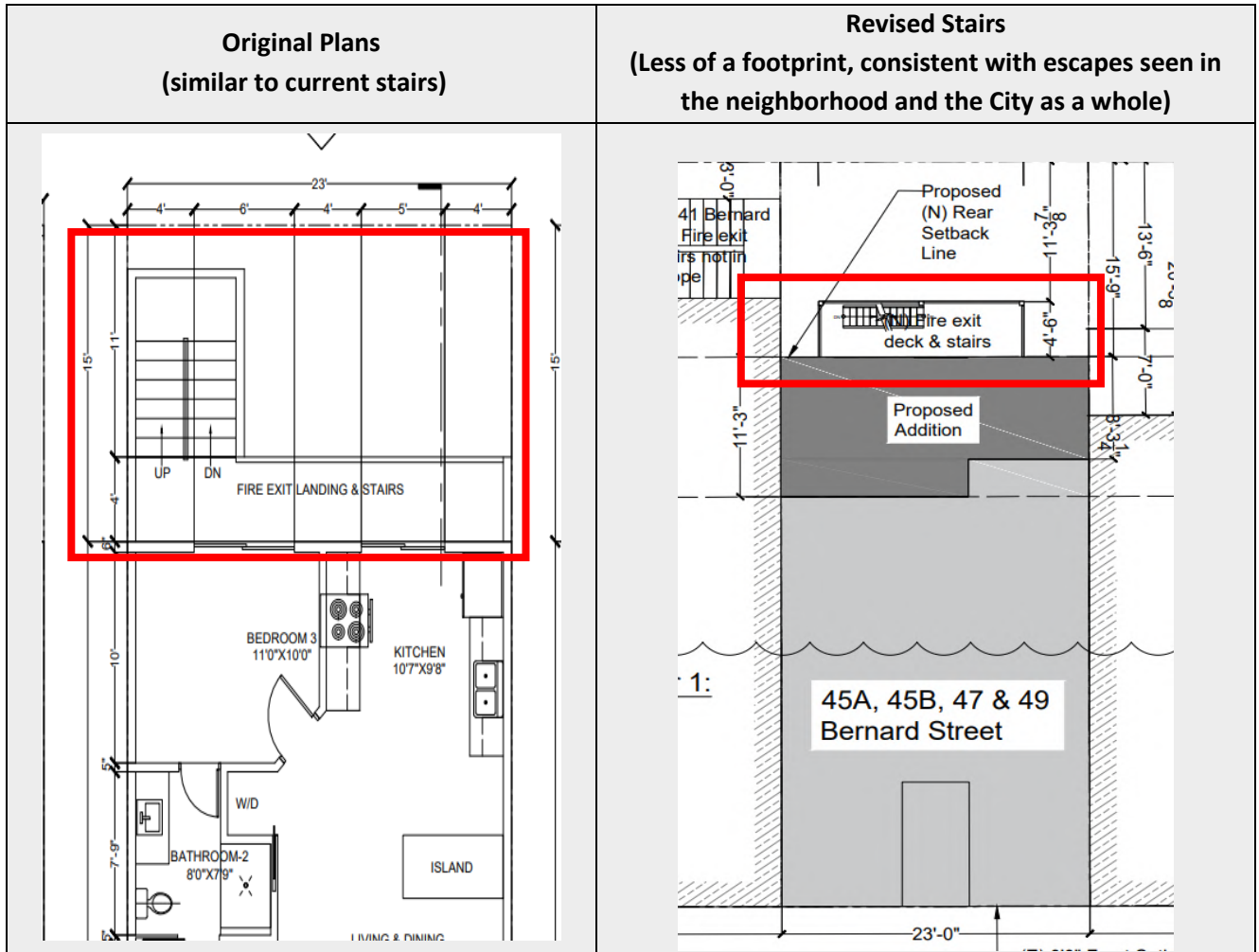
- **Reduces Family-Oriented Housing:** If required to further reduce the building, we would not be able to maintain a primary bedroom in the rear of the building and would be forced to redesign the project in totality. Our current design thoughtfully preserves the character of the building and avoids tantamount-to-demolition by leaving the front facade and two (of three) bedrooms as they currently exist. The front two bedrooms are small, fitting only a full-sized bed that consumes most of the width of the room, and do not functionally serve as a primary bedroom. These spaces were designed for 1906 living conditions. By extending the back of the unit, we are able to create space for a decent sized primary bedroom, maintain the 3-bedroom density, and allow for more functional and usable kitchen and shared living space, which does not currently exist. If further reduction in the rear-yard setback is required, we would need to resign the project to allow for a functional primary bedroom, which only leaves enough space for 2-bedroom units, effectively reducing the density of each unit and ability of 45-47-49 Bernard to house families with multiple children. This would be devastating to our family as we want to start families and raise children here.
- **Density of Proposed ADU Considerations & Legal Considerations:** As described in the project overview, the plans propose a basement ADU (under separate permit) which is currently designed as a two-bedroom unit. These designs are supported by RPG. The same logic above

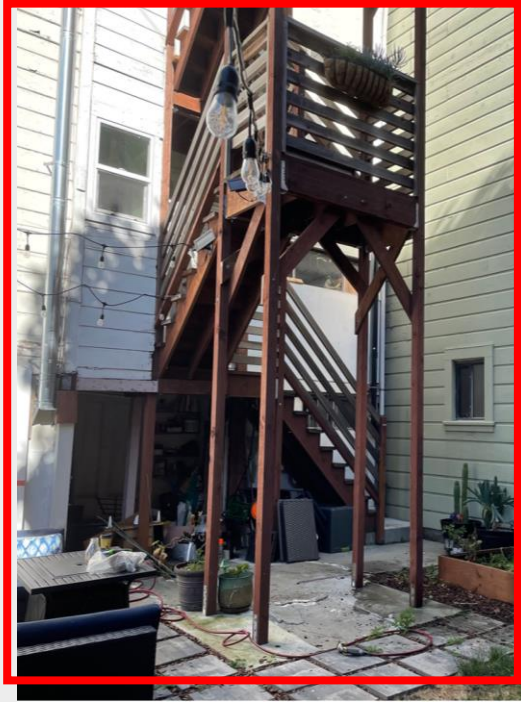
applies to the additional proposed housing unit. If the depth of the building is reduced any further, the neighbors (and Planning Commission) would be in effect reducing the density of the ADU at 45A Bernard, given the depth of 22 feet would only allow for a small 1-bedroom unit. This is in direct opposition to the City’s overall plan to build dense, family-oriented housing. As such, the Commission is compelled to approve the project under the Housing Accountability Act, as we are creating a unit via ADU, qualifying the project as a housing project, and our plans have been determined to meet code and RPG.

- **Design Considerations for a MFR vs. SFR (51 Bernard).** The SFR does not have the same design considerations as our MFR and should not be applied to the 45-49 Bernard project design. The character and context of the neighborhood supports the design of the project. Effectively every other MFR on the block goes deep into the rear yard and an external stairwell.

Alternative

- Per the original feedback provided last summer, plans have already been revised (as referenced below).
- No further changes required.





3.3 DR Response Question #3: Why No Adverse Effect

If you are not willing to change the proposed project or pursue other alternatives, please state why you feel that your project would not have any adverse effect on the surrounding properties. Include an explanation of your needs for space or other personal requirements that prevent you from making the changes requested by the DR requester.

3.3.1 Personal / Homeowner Needs and Rights

As described above, Lindsey and Taylor Huston currently occupy Unit #47 and #49. They wish to have families here, which is why we designed the property to preserve the number of bedrooms that exist. The proposed expansion is modest and balances our family-oriented needs with the maintenance of a sizable, shared yard for our tenants and mid-block space/light.

The current design has minimal impact on neighboring properties, given the context of the adjacent properties (including our petitioner's properties) themselves, while preserving the character of the neighborhood.

Notably, RPG states that in areas with *"dense building pattern, some reduction of light to neighboring buildings can be expected with a building expansion."* Similarly, *"as with light, some loss of privacy to existing neighboring buildings can be expected with a building expansion."*

3.3.3 Limited Impact to Light and Privacy of "Adjacent" Properties

The petitioner has not provided any analysis demonstrating the validity of the claim that personal privacy or light will be **"extraordinarily"** impacted. They simply comment that the project "will limit the amount of light and air to bedrooms and living-area windows of the buildings adjacent to and directly opposite the development." Conversely, we assert that:

- Character of as-built conditions in the surrounding buildings guarantees the proposed designs create little or no impact to light and privacy generally. Refer to **Appendix A.4** for supplemental arial photos showing the full mid block.
- The tree at 1144-1146 Pacific provides total privacy for Jennifer and Hanmin, no matter the condition of our property.

All these features described below indicate that preservation of privacy and light for adjacent properties is not extraordinary or unreasonable.

3.3.3.1 Consideration of 1144-1146 Pacific

- 45-47-49 Bernard is positioned to the North of 1144-1146 Pacific
 - Therefore it is impossible for the rear of the Project at 45-47-49 Bernard to cast shadows on the property. See sun ray calculations below.
- The rear facade of 1144-1146 Pacific is completely covered by their own 4+ story tree:

- The petitioners tree blocks any mid-block light and air to the rear facade of their property, and further ensures there is no direct line of sight into the property from the Project.
- The appellant Hamin Liu’s own admission in an email to Planner Guy regarding project (dated April 6, 2021), he indicates, *“in an earlier email to you [Planner Guy], “you know that we have a 40 year old Michelia Alba tree which does offer the privacy we need.”*
- Conversely, the tree (as mentioned above) casts shade, overhangs the property line of 45-47-49 Bernard
- A more reasonable alternative would be for petitioners at 1144-1146 Pacific to hang curtains or install shutters to provide additional privacy, as we intend to do in the units at 45-47-49 Bernard.
- Finally, it is worth reminding the commission that 1144 Pacific is a commercial unit, not a residential unit, and is therefore not afforded the same light or privacy design considerations as a residential unit.

3.3.3.2 *Consideration for 39A-39-41 Bernard*

- 39A-39-41 Bernard has a deeper rear-yard setback than the proposed Project at 45-47-49 Bernard. The setback at 39A-39-41 Bernard goes 11 feet to the property line, and is 3 feet from the property line when including their fire exit stairs (a permissible obstruction), and is half the width of their property. Given this, it is impossible that the Project would cast any additional meaningful shadows into any open space or bedrooms or have line of sight into 39A-39-41 Bernard property. The photo below shows the rear yard setback, the fire exit stairs, and also captures shadows cast by the petitioner’s tree at 1144-1146 Pacific on neighboring properties and mid-block open space.
- Though privacy is a concern for petitioners, Johnny and Sandra Leung have installed a private roof deck that has a direct line of sight into the top unit at 45-47-49 Bernard (we could not find a permit filed with the City for this)
- The petitioners have installed a security camera on this roof deck, pointed at the back/side of the property – violating privacy.
- The Leung’s property blocks light (casts shade) on the property in the morning as the sun comes from the East. But, there is nothing to be done regarding remediate the direction of the sun.

3.3.3.3 *Considerations for 51 Bernard*

- While the property may cast a morning shadow on the upper levels of 51 Bernard, the impact is not extraordinary or unreasonable.
- As noted above, the depth of the property at 39A-39-41 Bernard already creates a shadow in the morning hours so the impact. Further, 51 Bernard is south facing, the same as 49 Bernard, and will still enjoy direct sunlight from the early afternoon through the evening.
- The property owner at 51 Bernard supports the project and is not represented by the DR petitioner.

**Prevailing Block – Facing East
(Setbacks < 15')**

Note: Exist Stairs within a few feet of
back Property Line



**Rear Neighbor
(Hanim Liu & Jennifer Mei) –
petitioners**

Setback: **~9'2" (Stairs within ~3')**

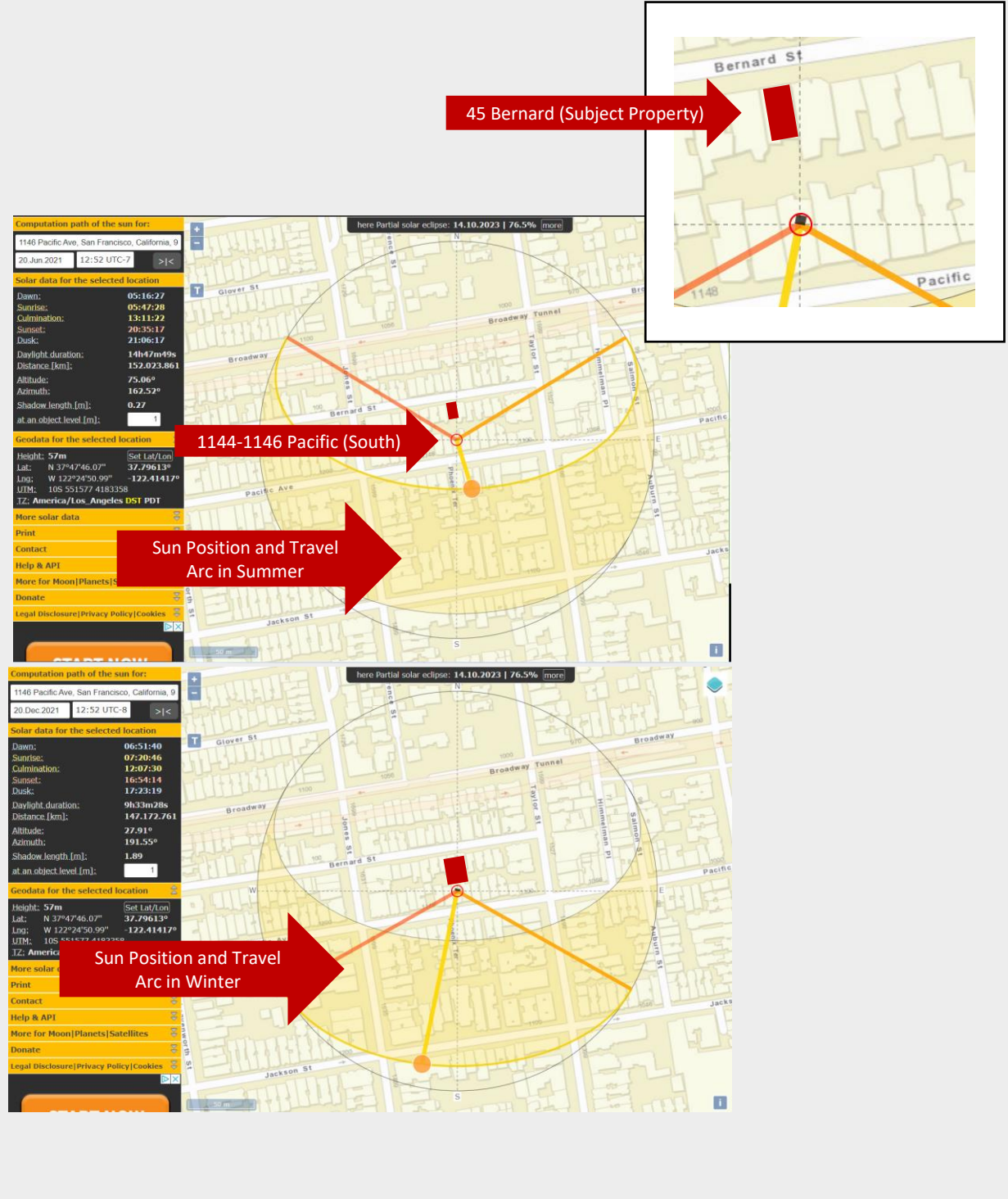


**Side Neighbor
(Sandy & John Leung) – petitioners**

Setback: **~ 11' (Stairs within ~ 7')**



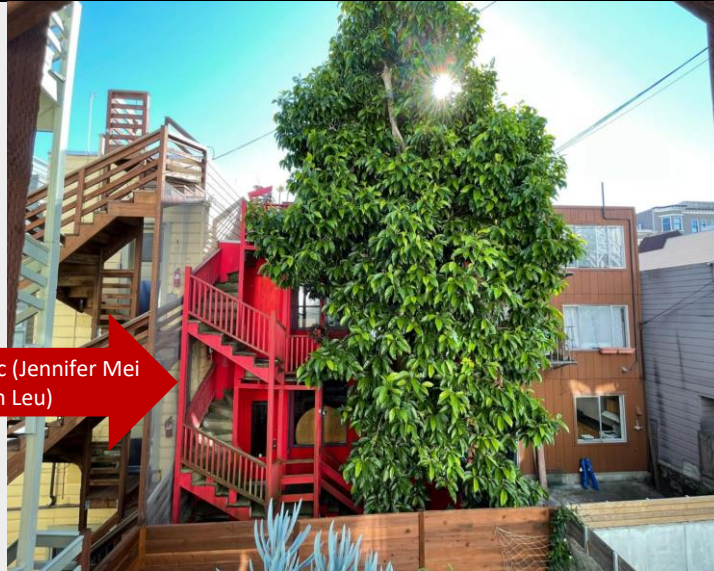
Sunlight Analysis per <https://www.suncalc.org/#/37.7961,-122.4142,18/2021.12.20/12:52/1/3>



**Hanmin Liu & Jennifer Mei Home on Pacific
Shows direction / position of Sun as well as Tree**

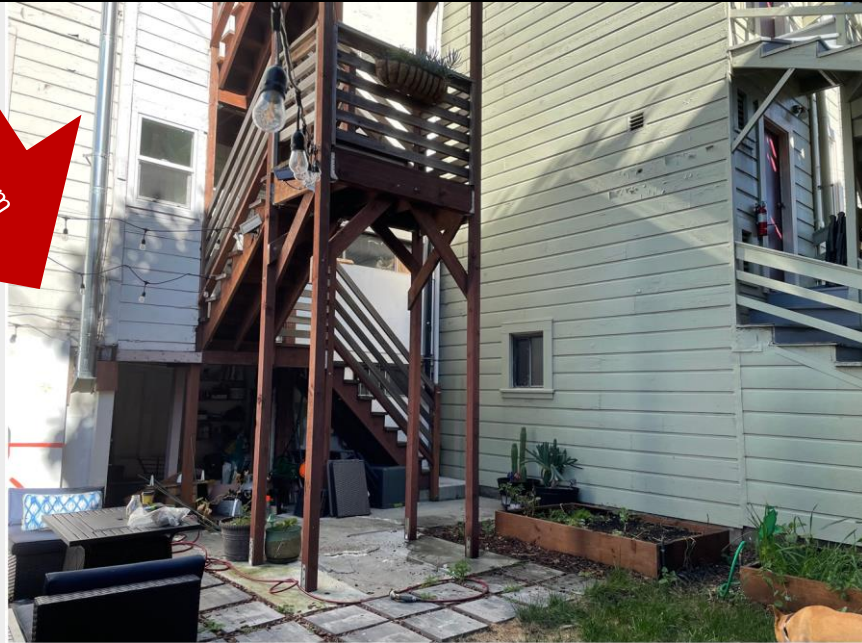
Property is within 9'3" of the property line and a large tree which shades the subject property, overhangs property line, and sheds large leaves into the yard year-round.

1144-1146 Pacific (Jennifer Mei
& Hanim Leu)

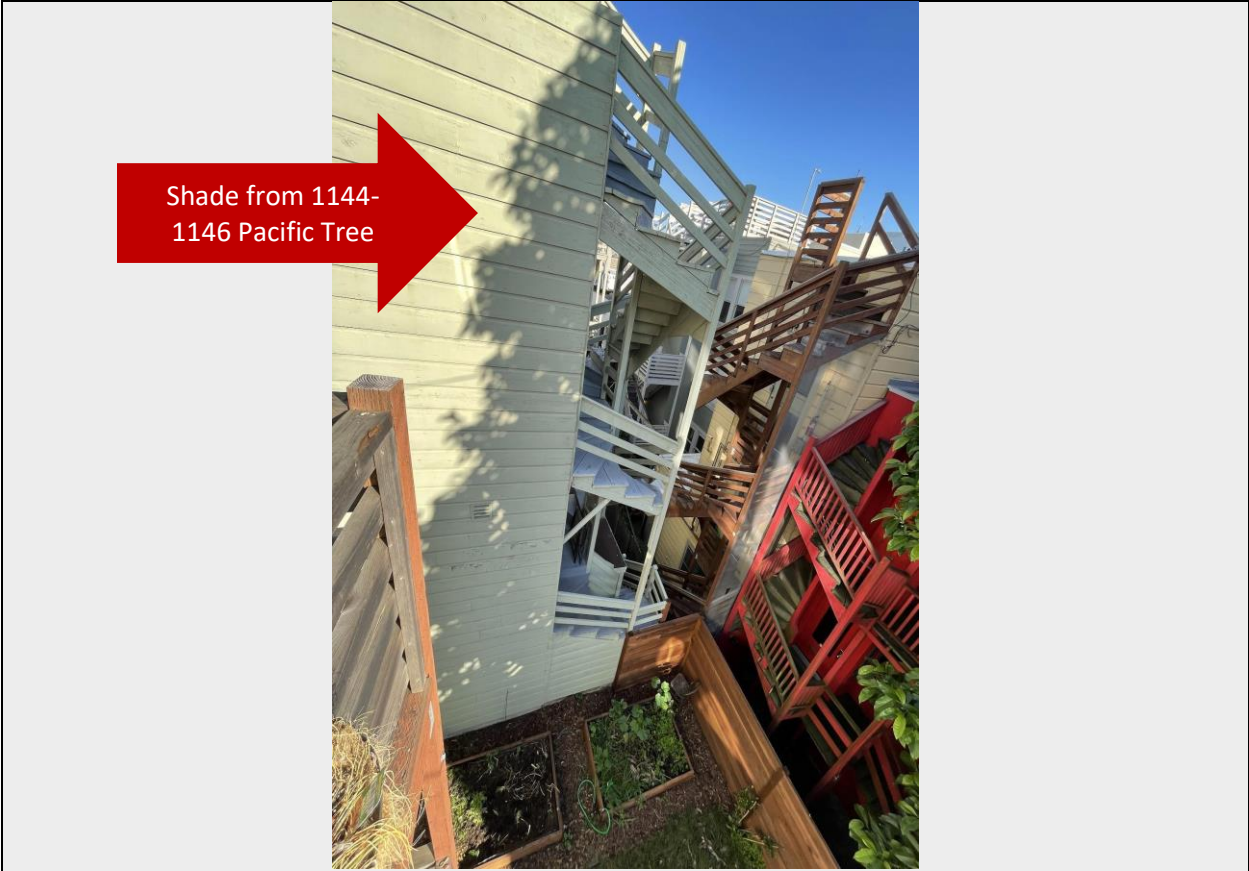


John & Sandy Leung Residence

In Photo, you can also see the Shade Being Cast by the Properties on Pacific, which are to the South



Shows the current back porch and stairs of 44-49 Bernard and the Lueng Residence on the right side.
The Red line reflects approximately where a 15' min setback would be.



The petitioner at 39A-39-41 Bernard’s rear-yard setback from the top floor, and **the unpermitted roof deck** they installed after re-roofing. Sun can also be seen from the South and 39 Bernard is casting Shade on the subject Property.

Appendix A: Supporting Photos and Images

Full Report available for review upon request. Report was prepared by the following Inspector with excerpts below. Photos of makeshift kitchens and bathrooms are provided below as well from the inspection report:

PROPERTY REPORT
45 BERNARD STREET
SAN FRANCISCO, 94133
March 21, 2019
PREVENTION INSPECTION SERVICES, INC.
Contractor's License 551626 – B, C10, C36, SPCB OPR 11737
ICC Certified Residential Combination Inspector 5273803
(650) 992-6630 Office
(415) 370-9961 Cellular

A.1: Property Inspection Report Excerpts

- Part 1: Property Overall
 - 1.07 Porch (Yes): REAR PORCH AREAS OF THE UNITS HAVE BEEN CONVERTED TO AD HOCK KITCHEN SPACES. SAFETY CONCERNS ARE NOTED WITH OBSTRUCTED ACCESS WAYS AND GAS APPLIANCES LOCATED WITH LIMITED CLEARANCES. DAMAGED FRAMING IS PRESENT THE REAR PORCH AREA - SEE THE PEST REPORT FOR ADDITIONAL INFORMATION.
 - 1.08 Grading (Yes): THE PROPERTY IS LOCATED ON A HILLSIDE LOT WITH OLDER SITE GRADING. WATER MAY COLLECT AT THE BASEMENT DURING PERIODS OF HEAVY RAIN. THE FOUNDATION SUBAREA IS EXCAVATED BELOW THE EXTERIOR GRADE.
- Part 2: Exterior
 - 2.01 Damage Noted on Walls (Yes): THERE IS DAMAGED FRAMING AT THE SIDE OF THE EA DOORS OF THE UNITS
 - 2.02 Peeling Paint (Yes): OLDER WOOD EXTERIORS WITH PEELING PAINT ARE NOTED. NEW GUIDELINES FOR LEAD SAFE PAINT REMOVAL PRACTICES SHOULD BE FOLLOWED DURING ANY RENOVATION. CALIFORNIA BUILDING CONSTRUCTION DATING PRIOR TO 1979 IS ASSUMED TO HAVE BEEN PAINTED AT SOME TIME WITH LEAD BEARING MATERIALS.
 - 2.04 Damaged Window Ledge (Yes): THE REAR PORCH AND BATHROOM WINDOWS ARE LEAKING AND THERE IS VISIBLE IN WALL DAMAGE.
- Part 3: Foundation
 - 3.02 Seismic Upgrades (No):NONE ARE NOTED – THIS IS AN OLDER STRUCTURE WITH BRICK FOUNDATIONS. IMPROVEMENT OF SEISMIC BRACING IS ADVISED AS PART OF ONGOING BUILDING IMPROVEMENT.
 - 3.05 Foundation, Visible Settlement (Yes): THE REAR PORCH AREAS ARE SETTLED. SLOPING FLOORS ARE NOTED IN THE STRUCTURE.

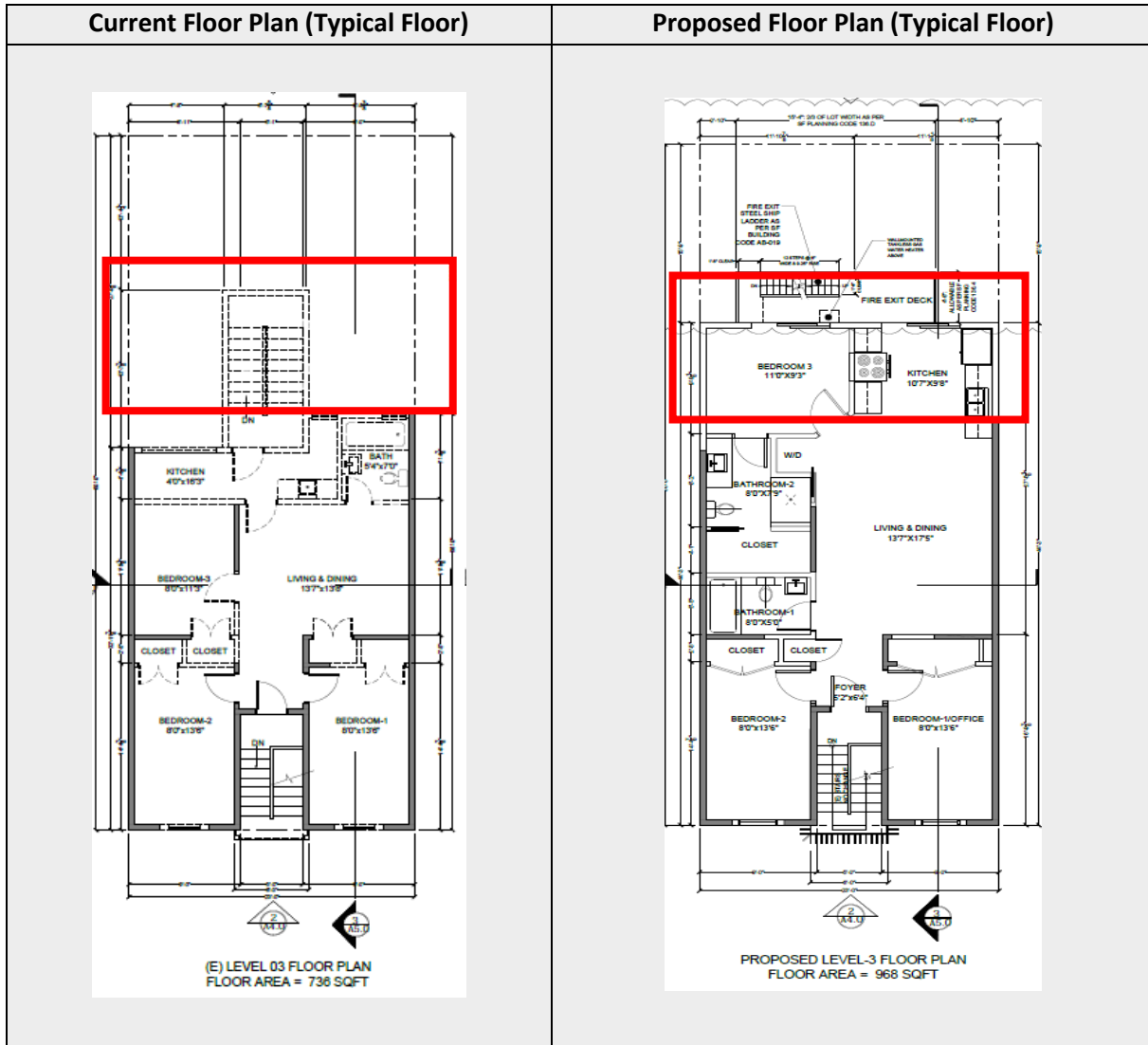
- 3.12 Inadequate Drainage (No): THERE IS A PARTIAL COMPREHENSIVE EXTERIOR DRAINAGE SYSTEM. THE SYSTEM IS LIMITED TO COLLECTING ROOF DRAINAGE AND A SINGLE COLLECTOR AT THE REAR PATIO. THERE IS NO DRAIN AT THE BOTTOM OF THE FRONT ENTRY STAIRWELL. A BOARD IS PLACED IN THE DOOR OPENING AT THE REAR OF THE BASEMENT TO PREVENT WATER INTRUSION.
- Part 4: Structure and Framing
 - 4.05 Wall Framing: THERE IS CONVENTIONAL WOOD FRAME VERTICAL WALL CONSTRUCTION.
 - 4.06 Floor Joist Framing: THERE IS CONVENTIONAL WOOD FRAME FLOOR JOIST CONSTRUCTION.
 - 4.07 Damaged subflooring or subarea framing: DAMAGED FRAMING IS NOTED AT THE REAR OF THE BUILDING ADJACENT TO THE BATHROOMS AND THE REAR EXTERIOR DOORS.
- Part 5: Electrical
 - 5.10 Recommended system upgrade (Yes)
 - 5.11 Panel grounding, busway, or neutral deficiencies (Yes)
- Part 10: Kitchen
 - 10.02 Hood / fan vented to the exterior: THERE IS NO VENTILATION PRESENT.
- Part 11: Bathrooms
 - 11.01 Bath tub: SHOWER OVER (Yes): LEAK DAMAGE IS NOTED BELOW THE DRAIN STACK IN THE BATHROOM. (45 Bernard)
 - 11.06 Stall Shower (Yes): THERE IS AN ABANDONED STALL SHOWER IN THE BASEMENT THAT IS NO LONGER VIABLE. REMOVAL IS REQUIRED. AN ADJACENT TOILET IS A HEALTH CONCERN.
- Property Inspection Report Foundation Recommendations from March 21, 2019 included:
 - 1.08 THE PROPERTY SHOULD HAVE POSITIVE SLOPE AWAY FROM THE STRUCTURE AT A MINIMUM OF 1/4" PER FOOT TO PREVENT EXCESSIVE MOISTURE AT THE FOUNDATION OR IN THE SUBAREA.
 - 2.05 CONTACT APPROPRIATE TRADES TO REMOVE WINDOW BARS OR TO INSTALL SAFETY RELEASE LATCHES FOR FIRE SAFETY. WINDOW BAR RELEASE MECHANISMS WERE NOT TESTED FOR OPERATION.
 - 3.00 BRICK FOUNDATIONS ARE OLDER AND LESS DESIRABLE THAN CAST CONCRETE. THESE FOUNDATIONS ARE BY NATURE NOT REINFORCED AND ARE PRONE TO MOISTURE DAMAGE, MORTAR DECAY AND STRUCTURAL FAILURE. WHILE THE FOUNDATIONS AT THIS TIME APPEAR TO BE FUNCTIONING AS ORIGINALLY INTENDED THE BUYER SHOULD RECOGNIZE FUTURE UPGRADES WILL BE REQUIRED.
 - 3.02 WE RECOMMEND INSTALLATION OF SEISMIC REINFORCEMENT STRAPS AT THE SUBSTRUCTURE POST AND BEAM CONNECTIONS.
 - 3.09, 3.12 REFER TO THE SELLER FOR FULL DISCLOSURE AS TO CONDITIONS DURING HEAVY RAINS.
 - 3.13 CONTACT A DRAINAGE SPECIALTY CONTRACTOR, IF FURTHER INFORMATION IS REQUIRED CONCERNING CONTROL OF SURFACE AND SUBTERRANEAN WATER.

- 5.05, 5.06, 5.09, 5.10 WE ADVISE THE OWNER TO CONTACT A QUALIFIED ELECTRICIAN TO MAKE ALL NECESSARY CORRECTIVE WORK, INCLUDING, GROUNDING ALL RECEPTACLES, TO PROVIDE GROUND FAULT (GFCI) PROTECTIVE DEVICES FOR ALL KITCHEN COUNTERS, SINKS, GARAGES AND ALL EXTERIOR OUTLETS TO PREVENT ELECTRICAL SHOCK AND TO INSTALL ARC FAULT BREAKERS AT THE HABITED ROOM OUTLETS AS AN UPGRADE.
- 9.01 LATHE AND PLASTER WALLS AND CEILINGS ARE PRONE TO CRACKING AND DELAMINATION. WE RECOMMEND THE REPLACEMENT OF THE MATERIAL AS CRACKS BECOME MORE EVIDENT AND THE MATERIAL BECOMES LOOSE. CONTACT A DRYWALL CONTRACTOR FOR MORE INFORMATION.
- 10.00 THE KITCHENS ARE IN NEED OF A GENERAL OVERHAUL. NO APPLIANCES OR MODERN CONVENIENCES ARE PRESENT AND THE CABINETRY OFFERS LIMITED FUNCTIONALITY. CONTACT THE APPROPRIATE TRADES FOR BIDS.
- 11.00 THE BATHROOMS ARE IN NEED OF A COMPLETE REMODEL. CONTACT THE APPROPRIATE TRADES FOR FURTHER INSPECTION AND RECOMMENDATION.

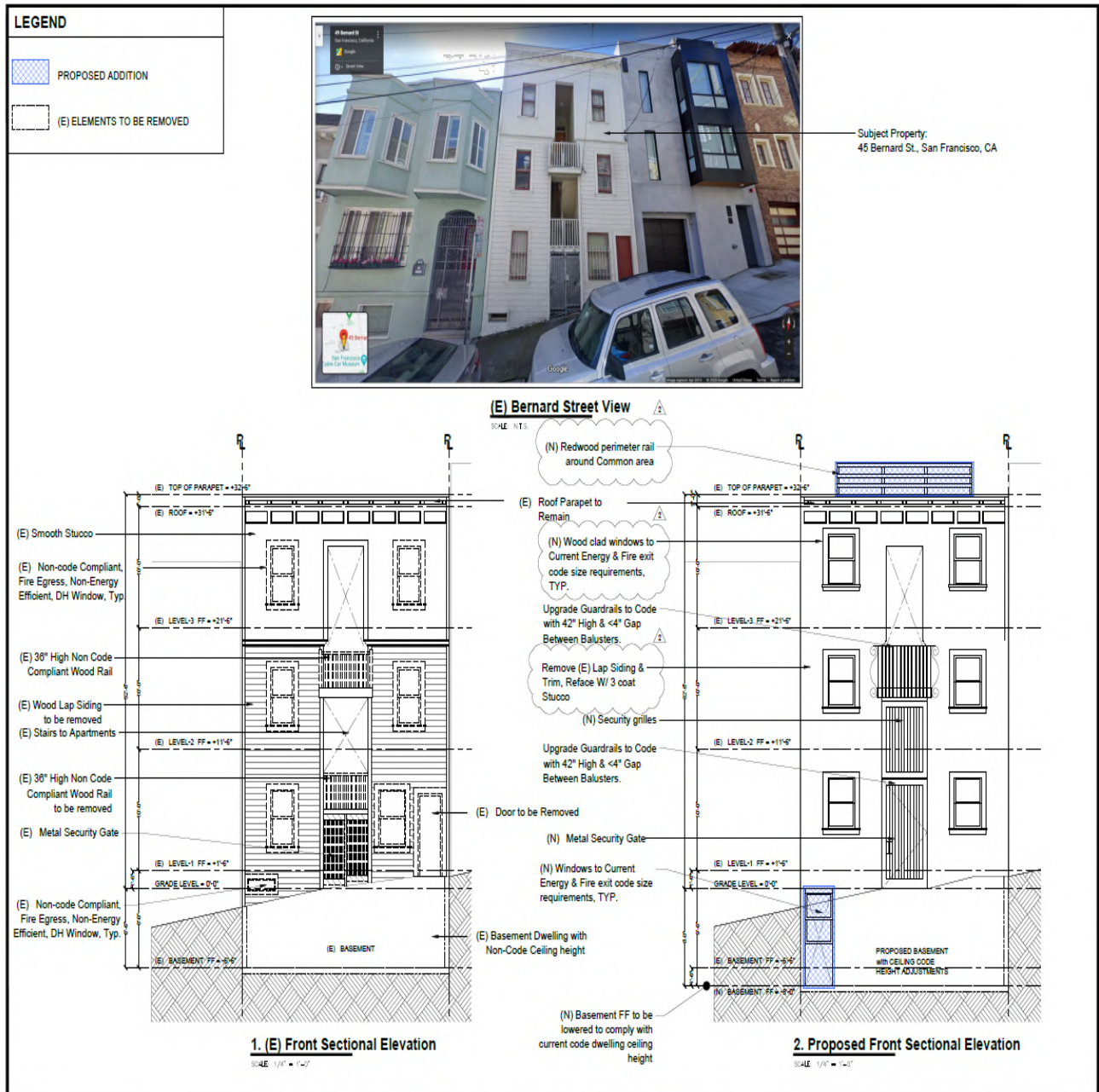
49			
47			
45			 <p data-bbox="1008 1268 1516 1325">LEAK DAMAGE IS NOTED BELOW THE DRAIN STACK IN THE BATHROOM.</p>

49				
47				
45				

A.2: Interior Floor Plans



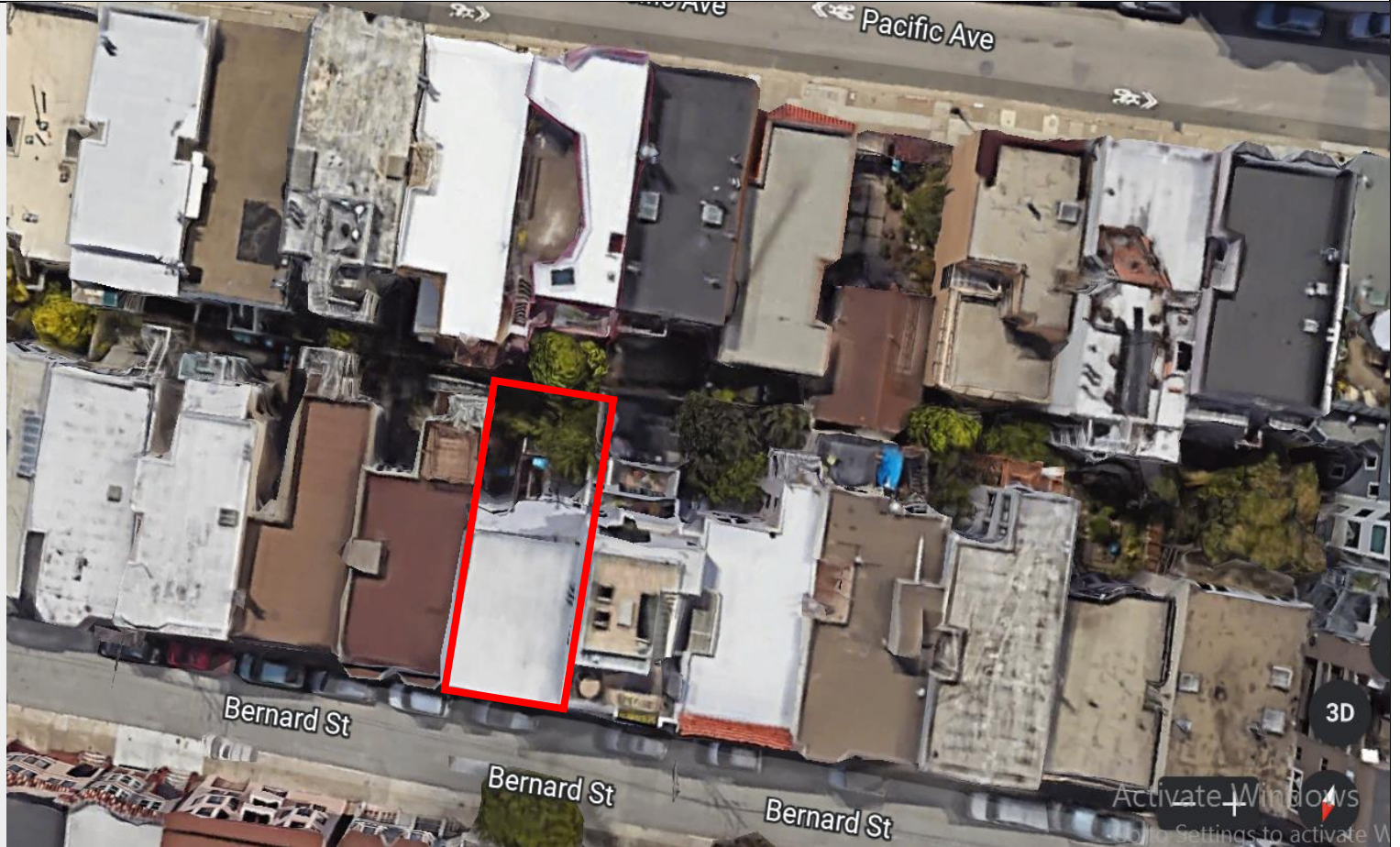
A.3: Exterior Elevation (Front)



A.4: Additional Views

Additional Mid Block Views

Photos: Character of mid-block space between Pacific and Bernard from the West. Demonstrates 23'X60' lot configurations with rear-yard setbacks at or close to the rear property line. Project is not out of character with the neighborhood; in fact, it is more conservative.



Additional Mid Block Views

Photos: Character of mid-block space between Pacific and Bernard from the West. Demonstrates 23'X60' lot configurations with rear-yard setbacks at or close to the rear property line. Project is not out of character with the neighborhood; in fact, it is more conservative.



Additional Mid Block Views

Photos: Character of mid-block space between Pacific and Bernard from the West. Demonstrates 23'X60' lot configurations with rear-yard setbacks at or close to the rear property line. Project is not out of character with the neighborhood; in fact, it is more conservative.



Appendix B: Planning Timetable

Key Planning Date Recap is approaching 2 years in duration:

- Initial Project Application submitted: 5/19/2020
- Initial Project Application accepted: 8/25/2020
- Project 'Under Review' by Planning: 9/04/2020
- Secondary (revised) Plans submitted: 10/14/21
- Pre-Check Completed 11/11/2021 **← 18 Months**
- 2 Neighborhood Review Meetings (12/21)
- 311 Filing 1/2022
- 311 Response 2/23/2022
- Formal Sponsor DR notice: 3/14/2022
- DR Response: 4/22/2022
- DR Hearing scheduled for: 5/26/2022 **← 24 Months**

Appendix C: Communication Log

Date	Communication
05/31/2021	petitioner emails sponsor and writes she (Jennifer) is in touch with the SF Planning department regarding concerns with the plans.
06/01/2021	Sponsor responds offering to meet and discuss concerns. Petitioner does not respond.
06/06/2021	Sponsor emails petitioner again, offering to meet to discuss concerns and indicates she will be in the rear yard at 45 Bernard each day that week at 10 AM in hopes to discuss.
06/07/2021	Sponsor waits in the rear yard at 45 Bernard at 10 AM for 30 minutes. Petitioner does not come.
06/08/2021	Sponsor waits in the rear yard at 45 Bernard at 10 AM for 30 minutes. Petitioner does not come.
06/09/2021	Sponsor waits in the rear yard at 45 Bernard at 10 AM for 30 minutes. Petitioner does not come.
06/10/2021	Sponsor waits in the rear yard at 45 Bernard at 10 AM for 30 minutes. Petitioner does not come.
06/16/2021	Sponsor responds with other dates and times to meet. Petitioner does not respond.
08/19/2021	Meeting with Planner to review initial plan check comments.
10/12/2021	Sponsor resubmits second iterations of plans that include a reduction in depth and a change of stairs to address concerns relayed to planner by petitioner
11/30/2021	petitioner sends initial UCNA memo to SF Planning, citing concerns regarding greenhouse gasses, parking, and other concerns
11/17/2021	Sponsor meets with SF Planning on second iteration of plans. SF Planning confirms plans aligned with RPG
11/17/2021	Given ongoing emails from petitioners, SF Planning directs sponsors to hold a formal pre-planning meeting before beginning the 311 processes.
11/30/2021	Distributed pre-planning notices to neighbors within 150 feet, with an in-person meeting location (at local coffee shop)
12/10/2021	petitioners complain to SF Planning that the sponsor has not provided plans in pre-planning notice and complain there is no call-in code.
12/10/2021	petitioner inquires with SF Planning about how to file a discretionary review
12/10/2021	Sponsor provides call-in code directly to petitioner, and indicates to petitioners she is open to meeting outside 12/14 should those dates and times not work
12/14/2021	Held a pre-planning meeting. Petitioner do not attend, nor respond to Sponsor's offer to meet.
12/14/2021	Planner Guy indicates sponsor should hold a second pre-planning meeting given concerns from petitioner about first notice
12/17/2021	Sponsor sends out a second set of notices, and includes plan and call in code for a second pre-planning meeting. Also offers to make herself available outside of the formal date and time.
12/31/2021	Second pre-planning meeting held. Petitioner do not attend, and do not respond to sponsors.
01/07/2022	petitioner sends second UCNA memo to SF Planning, SF Planning Commission, and SF politicians
01/12/2022	Sponsor offers to meet and discuss concerns with the petitioners. Petitioner does not respond.
01/24/2022	311 Period Begins
02/22/2022	DR Request submitted by Petitioners
02/23/2022	311 Period Ends
03/03/2022	Sponsor reaches out again to petitioners to meet and discuss plans. Petitioner do not respond.
3/28/2022	First / only communication from petitioners to directly speak regarding the project. They asked for copies of checks from the relocation payment, which have nothing to do with the Project plans
4/6/2022	Sponsor email follow-up regarding scheduling meetings with petitioners/Planning. Petitioner/Planning do not respond.
4/9/2022	Sponsor email follow-up with potential times to meet.

Date	Communication
4/12/2022	Petitioner responded to email stating they were unclear if meeting as neighbors. Petitioner responds to 4/9 (2nd) email.
4/12/2022	Sponsor responds that they are “ willing to meet as neighbors ” and provided 2 dates during week. Planning is optional. Petitioner/Planning do not respond.
4/17/2022	<i>Instead of Meeting:</i> Petitioner is observed handing out and soliciting signatures from people walking in the neighborhood (see below). Letter is inflammatory, refers to the neighborhood being eroded by our presence and stating that Sponsors evicted 11 elderly and disabled people. The letter contained facts or misstatements. See Appendix D.
4/17/2022	Sponsor obtains a copy of the letter. Sponsor notifies Planning, but given nature of the letter, requests planning involvement. Planning does not respond.
4/20/2022	UNCA responds to Sponsor’s 4/17/2022 email stating that they Sponsors were “willing to meet as neighbors” and hence did not respond.
4/22/2022	Received confirmation from Kevin Guy that the plans were reviewed by the SF Zoning Administrator and that setbacks are code-compliant.

----- END OF DOCUMENT -----

Appendix E: CEQA Appeal, Our Response and their Withdrawal Letter

From: [Brian O'Neill](#)
To: [BOS Legislation, \(BOS\)](#)
Subject: 45 Bernard CEQA Appeal (Case No. 2020-005176APL)
Date: Tuesday, November 1, 2022 7:08:33 AM
Attachments: [UCNA CEQA Withdrawal Letter.pdf](#)

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

Hello,

Please accept the attached letter from Upper Chinatown Neighborhood Association as a withdrawal of their CEQA Exemption Appeal regarding the 45 Bernard Project (Case No. 2020-005176APL). Can you please distribute this letter to the Supervisors, Project Sponsor, and all other interested parties.

Thank you,
Brian

Brian O'Neill
Zacks, Freedman & Patterson, PC
601 Montgomery Street, Suite 400
San Francisco, CA 94111
Telephone: (415) 956-8100
Facsimile: (415) 288-9755
Email: brian@zfplaw.com
www.zfplaw.com

UPPER CHINATOWN NEIGHBORHOOD ASSOCIATION

President Shamann Walton and Supervisors
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94103

Re: 45-49 Bernard Street
Exemption Determination Appeal (Case No. 2020-005176APL)

Dear President Walton and Supervisors:

The Upper Chinatown Neighborhood Association (UCNA) has been working to protect the heritage and culture of Upper Chinatown since 2013. The recent trend of evictions followed by residential expansions erodes the stability of our fragile community and destroys our vital open space. The project at 45 Bernard Street, where 11 Asian immigrants were evicted to pave the way for a project that reduces affordable housing, is representative of the eviction crisis destroying our community.

We are deeply humbled by the community members who stood up to protect the cultural fabric of Upper Chinatown. Over a thousand individuals signed a petition in support of UCNA's Discretionary Review Request. The Community Improvement Service, Community Youth Center, Community Tenants Association, Lao Lu Mien Culture Association, and Tenderloin Chinese Rights Association all submitted letters of support and rallied their members to fight against evictions and expansions. UCNA is also grateful to the Planning Commissioners who listened to the concerns of the community and applied strong conditions to protect the rights of the current and former tenants of 45 Bernard. After those conditions were finalized in the Discretionary Action Memo adopted on October 6, we are comforted knowing that the tenants will be adequately protected.

There are many unanswered questions regarding the design of the project, and we have grave concerns regarding significant life and safety code-compliance issues. UCNA will continue to monitor the final design of the project to ensure the project complies with all applicable laws. However, we do not wish to overturn the Planning Commission's approval of conditions that protect the tenants. To that end, UCNA has decided to withdraw our appeal of the CEQA exemption determination for the project.

UCNA will continue to fight for the preservation of the unique character of the Upper Chinatown community, as well as the bonds of culture that have been built over many generations. We look forward to working with the City and all of our neighbors to make that goal a reality.

Sincerely,



Upper Chinatown Neighborhood Association
By: Hanmin Liu
Its: Co-Team Leader

LEADERSHIP TEAM

Kelvin Lee
Johnny Leong
Sandy Leung
Hanmin Liu
Jessie Mei
Brad Paul
Stephen White

October 21, 2022

VIA ELECTRONIC SUBMISSION

President Shamann Walton and Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102

Re: Sponsor Response to Appeal of Exemption Determination for 45 Bernard Street **(Case No. 2020-005176ENV)**

Dear President Walton and Supervisors:

We are in possession of the request for an Appeal Determination on the project to renovate our home at 45-49 Bernard Street which was lodged by the Upper Chinatown Neighborhood Association (UCNA) on September 26, 2022. The UCNA Leadership Team are our adjacent neighbors. John and Sandra Leung live at 39A-41 Bernard Street, a 3-unit property which is occupied as a single-family home. It abuts the subject property to the East. Hanmin Liu and Jennifer Mei own 1144-1146 Pacific Avenue. 1144 Pacific Avenue is a Commercial Unit, with a residential unit 1146 Pacific Avenue. It abuts the subject property to the South. The Appeal request was submitted in pursuant to Administrative Code § 31.16(e) alleging:

1. The Project Description is Not Accurate, Stable, or Finite
2. The Project May Have a Significant Effect on Historic Resources

In opposition to this Appeal, we offer the following:

Project Overview

The building at 45-49 Bernard Street is 100+ years old and in a deteriorated condition. Much of our proposed work is fixing critically necessary components of the property, including seismic/structural, electrical, and plumbing. We are also creating a legal unit in the currently uninhabitable basement. Our family lives here, and has lived here for over 2 years, and we intend to continue living here as we work in the city, and our lives, friends, and family are here. When we moved in, the “potentially historic courtyard” (i.e. our private rear yard) was, in fact, an unmaintained trash dump. This is detailed in our tenant’s letter of support for the project. In fact, we have letters of support from 2 tenants, both of which speak to the condition of the property that was maintained by the prior landlord. We respect our current tenant’s rights: she will be compensated for any needed relocation (which will be as short as possible because this is our home, too, so we want to get work done as soon as possible). Ultimately, she will be able to move into a fully refurbished unit at a rent-protected price.

The Project is Stable and Unchanged

1. **Our project has not changed in scope and is not altered from what was analyzed as part of the Exemption.** Rather, SF Planning required us to split the project into 2 permits—one for the 3 units, and 1 for the ADU, because Planning considered the state law ADU would need to be permitted separately. Because the state law ADU is ministerially approvable, it is not subject to CEQA review. Regardless of this split, the 311 notices detailed the entire project under both permits, the plans for the expansion shows the future ADU location, the scope of work has not changed, and the ADU was discussed at length at the Planning Commission hearing. This, in effect, improperly subjected a State ADU to Discretionary Review. In short, there is no danger of misleading the public simply because the Planning Department directed us to submit the ADU as a separate permit.

The Project is Extremely Modest, CEQA Exempt and Not Historic

1. **Our project qualifies for a categorical exemption under CEQA.**

Under the CEQA Guidelines, an addition to an existing structure that will result in an increase of less than 10,000 square feet is categorically exempt from CEQA review, *14 CCR section 15301*. The scope of work here includes the addition of only around 102SF of interior space per existing unit, and around 548SF total, which is very modest, and a small fraction of the threshold that triggers further CEQA review.

The Planning Department correctly determined that this Project is categorically exempt. This means the burden is on the appellants to show that the Project will “cause a substantial adverse change in the significance of a historical resource.” The appellants cannot show this because: (1) neither the property nor the neighborhood is an historic resource (as the Planning Department determined); and (2) even if there were an historic resource, the Project will not cause a substantial adverse change to it.

2. The property is **located in Nob Hill. It has no historic or cultural significance.** It is **not a known historic resource.** It is **not within a historic district.** Thus, there are **no character defining features** to protect. It is absurd for the appellants to suggest that this area is a potentially historic resource, simply on the basis it has not been surveyed. The appellants have provided no factual evidence supporting their argument that this is an historic district, or that the “pattern of mid-block open space” is a character-defining feature. To the contrary:
 - a. If there *was* a “character defining feature” of the block it would be **limited rear yards** and **dense housing**. A simple Google Earth view clearly demonstrates this.
 - b. If it *was* to be designated as a historic district, **our private rear yard is not visible from public-right of way**. Historical Districts

protect features that are visible from the public-right-of way, as they are maintained for the benefit of the public, **not for the private benefit of abutting neighbors who complain**¹.

¹ **ARTICLE 10: PRESERVATION OF HISTORICAL ARCHITECTURAL AND AESTHETIC LANDMARKS, Section 1001:** “The purpose of this legislation is to promote the health, safety and general welfare of the public”

i. Per Census records available **from at least the 1920’s to the 1970s, the midblock was an incredibly diverse area, made up of many different “countries of origin”**. This included Italians, Mexicans, Spaniards, French, Chinese, and Irish, among others. Census records have been attached, which again contradict the neighbor’s “evidence”.

3. UCNA offers **conflicting rationales for the “potential historicity” of the private rear yard**, which is **not visible from-a-public-right of way**. They state both these points regarding the midblock:

- a. It is “tenement-like” and “dense” and “unchanged for 100 years”
- b. Chinese immigrants came to this specific block seeking more open space.

Which is it? Dense and tenement like ... or has significant open space? How can something be dense, tenement-like and unchanged for 100 years, but then have open space as a character-defining feature that drew people here?

4. Though they state the block remains “unchanged” and thus “should be preserved”, Jennifer and Hanmin **conveniently omit their own vertical and horizontal extensions at 1144-46 Pacific Avenue**, which were allowed and determined to be categorically exempt (records attached) with no issue. UCNA’s concerns about expansions into mid-block space (and OMI, for that matter) seem to apply to others and not themselves. The scope of work on their property has included:

- a. **Vertical expansion** to add a 4th floor and roof deck
- b. **Horizontal expansions into the midblock open space**
- c. **Interior remodels**
- d. **Facade remodels, both facing the street, and along the back of the property**

5. As proposed, **45-49 Bernard will conservatively fit within the existing character of the block**. a. Our building is currently **the shortest on the block and will remain one of the shortest once complete**. Current planning codes set a 15’ rear yard minimum setback. Given the age of the buildings on the block, many

properties do not comply with the current 15' setback and go much deeper into the rear yard, including both petitioning neighbor's properties.

b. By removing the large stairwell that currently exists in the private rear yard, the proposed design actually **increases the amount of unobstructed rear yard**

ARTICLE 10, SEC. 1005. CONFORMITY AND PERMITS: "Where so provided in the designating ordinance for a historic district, **any or all exterior changes visible from a public street or other public place shall require approval** in accordance with the provisions of this Article 10, regardless of whether or not a City permit is required for such exterior changes."

A Certificate of Appropriateness (C of A) is the authorization designated City Landmarks and Historic Districts require for the following types of work: 1) Designated City Landmarks -- exterior alterations requiring a permit and demolitions of a site or structure; and 2) Designated City Historic Districts -- **alterations requiring a permit and other types of exterior changes visible from a public street or other public places** (as provided in the historic district ordinance, even when a permit is not required), demolitions and new construction of a site or structure within the district

(pictures attached), as well as increases the **amount of open space overall** by providing private open space on each floor.

c. This means that there will be no adverse impacts, let alone substantial adverse impacts, on the rear yard or neighborhood.

6. **We have concerns about the tactics used to** secure support for the DR and whether or not they were ethical. There were undisclosed conflicts of interest. There were several private, undisclosed meetings held with planning commissioners prior to our hearing and their quasi judicial votes. This resulted in the whittling away at our planning code-compliant project. A summary of this has been attached.

In summary, the appellants are asking the Board of Supervisors to find that *a private rear yard, in a non-historic building, and in a neighborhood not designated as having cultural or historic significance, is of such importance that a Code-compliant building expansion will destroy the cultural fabric of the neighborhood.* On the appellants' reasoning, no building in this neighborhood could ever be expanded horizontally or increase density. The Planning Code and Residential Design Guidelines already protect midblock open space, and this Project complies with them, as the Planning Department and Planning Commission concluded. It would be absurd and completely unprecedented for the City to order a full historic review of a Code compliant horizontal extension into a private rear yard.

Conclusion

We ask the Board of Supervisors to protect the City's finite resources and deny this nuisance CEQA request. Our project description is stable, and our

private rear yard, not visible from the public right-of way, is not a historical resource that would be protected. Further, this continued delay would stop critically necessary improvements to our home—including seismic—and also delay a new, legal unit from being built. CEQA was enacted to protect the environment - not adjudicate neighbor disputes. But as the Court of Appeal recently noted, it has instead devolved into “a formidable tool of obstruction, particularly against proposed projects that will increase housing density.” CEQA can too easily be leveraged as an “instrument for the oppression and delay” that has “become its own reward for project opponents.” *Tiburon Open Space Committee v. County of Marin* (May 12, 2022, A159860) __ Cal.Rptr.3d __.

This is another unfortunate example of how the SF’s permitting process allows neighbors to weaponize the Discretionary Review and CEQA processes against their fellow neighbors. **The DR process has already resulted in modifications that turned 3Br units into 2Br units due to setback interpretations, and now our neighbor seeks to reduce it more.** It has become clear to us that this is a common playbook, as noted in the Proposed Housing Element, “Opponents to residential projects may use local administrative CEQA appeal processes and courts as a threat, negotiating, or delay tactic”.

To be clear: our project should be allowed to a depth that is allowable per the Planning Code. The neighbors are asking you to delay, defer, and ultimately reduce the density of our project, and, as a result, the future ability of others to increase their own density in code-complaint manner. If our neighbors wish to continue spending *tens of thousands, if not hundreds of thousands of dollars* they could be spending in helping their community to fight our small project, they may continue to do so.

We ask the Board of Supervisors to uphold our legal right to enhance our property within the boundaries of existing Planning and Building Codes.

Thank you,

Lindsey and Tina Huston
45-49 Bernard Street

Attachment: Supporting Information

Supporting Information

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Appendix 1: Hanmin and Jennifer's Permit

**CEQA Assessment for Hanmin Liu & Jennifer Mei Remodel
(Categorically Exempt)**

1915 0105/972

APPROVED **4th Floor addition & rear yard**
15 08 1972

[Signature] FEB 24 1972

CATEGORICALLY EXEMPT FROM ENVIRONMENTAL REVIEW

APPROVED: *[Signature]* 1/4/72

APPROVED: **THIS APPLICATION APPROVED FOR SITE PERMIT ONLY. NO WORK MAY BE STARTED UNTIL CONSTRUCTION PLANS HAVE BEEN APPROVED.**
[Signature] 1/7/72

APPROVED: *all permit only*

[Signature] 1/7/72

APPROVED: **AS NOTED on plans**
[Signature] 1-8-72

APPROVED: *[Signature]*

4th floor addition and rear yard notes, with Hamin Liu's signature

4th floor addition and rear yard notes, with Hamin Liu's signature

CONDITIONS AND STIPULATIONS

APPROVED

DATE

REASON

U. F. Dang, PAD
1/14/93 4/8/93

APPROVED

Approved for work stated only

DATE

REASON

CATEGORICALLY EXEMPT FROM ENVIRONMENTAL REVIEW

The way DEC 08, 1992

APPROVED

Reviewed for routing

DATE

REASON

Robert Kallal 12-10-72

OFFER TO LEASE OR WORK EQUIPMENT AT WORKING FOR
REPAIRS IS APPROVED WITHOUT ANY INSPECTION AND
DO NOT CONSTITUTE AN AWARD OF THE BUREAU
WITH KNOWLEDGE OF THE STATE OR FIRST AID AND
REPAIRS SHOULD BE

SPECIAL INSPECTIONS AND TESTS
SPECIAL INSPECTIONS AND TESTS
ARE REQUIRED AS PER BOILER
CODE SECTIONS 306. a b c

DATE

REASON

Any electrical or plumbing
work will require appropriate
separate permits.

U. F. Dang, PAD
4/8/93

DATE

REASON

APPROVED

DATE

REASON

APPROVED

DATE

REASON

APPROVED

DATE

REASON

APPROVED

DATE

REASON

City and County of San Francisco

Department of Public Works
Bureau of Building Inspection



NOTIFICATIONS OF STRUCTURAL ADDITION

MAILED: 10/14/93

PAGE: 1

APPLICATION NUMBER: 9312173
BUILDING LOCATED AT: 1144 -
PERMIT HOLDER: LIU & HANMIN

PERMIT NUMBER: 731984
PACIFIC AV

PERMIT ISSUED: 10/14/93
BLOCK/LOT: 0157 /013
ADDRESS: 1144 PACIFIC AV
SAN FRANCISCO CA 94133

USE CODE:
E&C: HORIZONTAL ADDITION,

ADDRESSEE

MAILING ADDRESS

ADJACENT PARCEL LOCATION

EOLTON, ROBERT F. & DIANE C.

2175 14TH AV
SAN FRANCISCO CA

94116

1154 - 1156 PACIFIC AV
BLOCK/LOT: 0157 /014

LEE SACK KWAN

3485 18TH AV
SAN FRANCISCO CA

94122

31 BERNARD ST
BLOCK/LOT: 0157 /029

CHAK WAI O.

147 BERNARD ST
SAN FRANCISCO CA

94109

43 - 49 BERNARD ST
BLOCK/LOT: 0157 /030

SAN SHUI YAU LEE

1142 PACIFIC AV
SAN FRANCISCO CA

94133

1140 - 1142 PACIFIC AV
BLOCK/LOT: 0157 /063

TANG KENNETH & PUI KING

1826 20TH AV
SAN FRANCISCO CA

94122

19 - 41 BERNARD ST
BLOCK/LOT: 0157 /064

Resident 1144 Pacific

site has a valid Business Tax Registration Certificate on file in the San Francisco Tax Collectors Office which contains the following information:

NAME: Paul Wilson
DBA: United States China Educational Institute
PLACE OF BUSINESS: 1144 Pacific
BTAC #: unknown

I, as owner or lessee or his authorized agent of the proposed job site address:

1144-46 Pacific

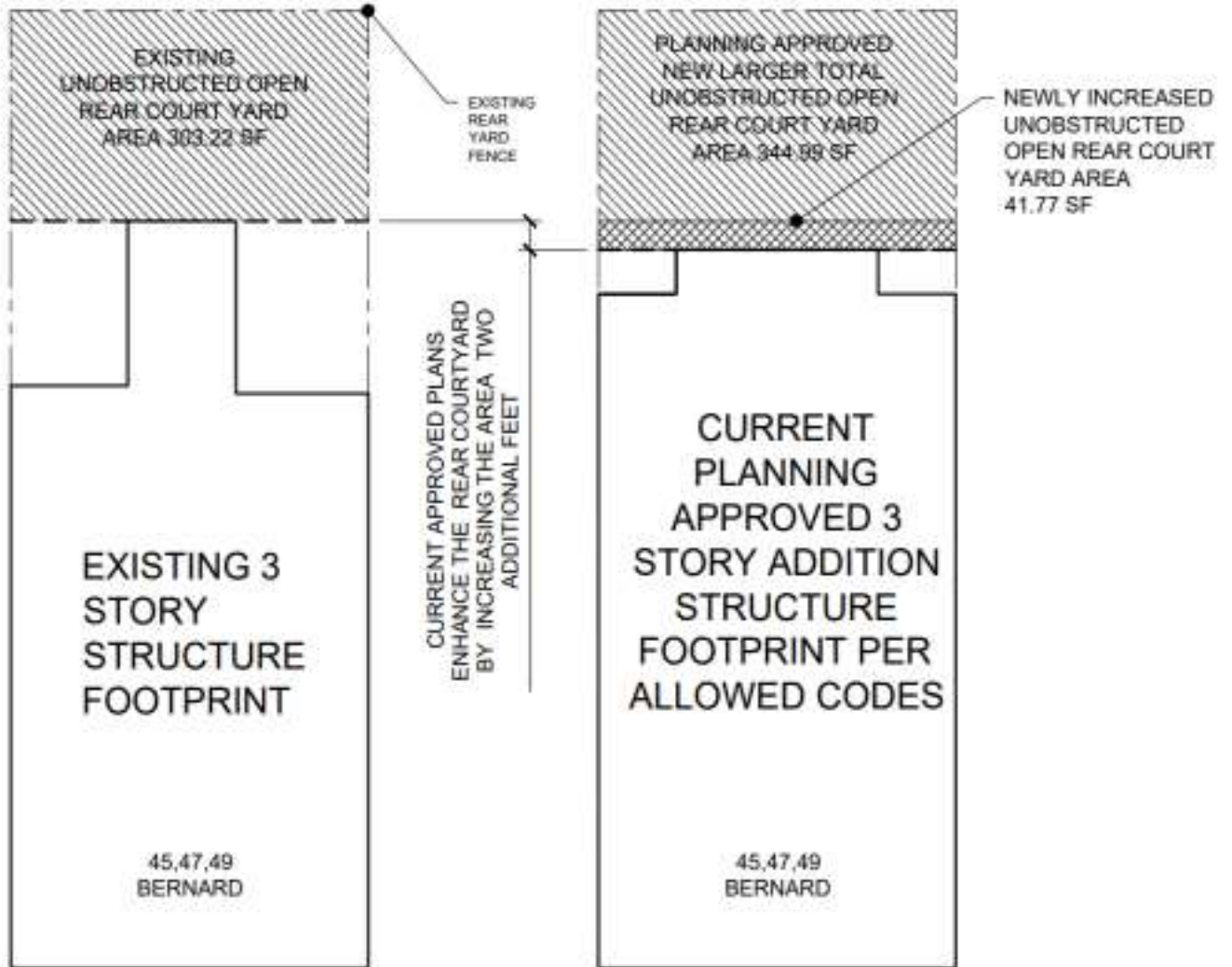
am exempt from the Business Tax Registration Certificate requirement because:

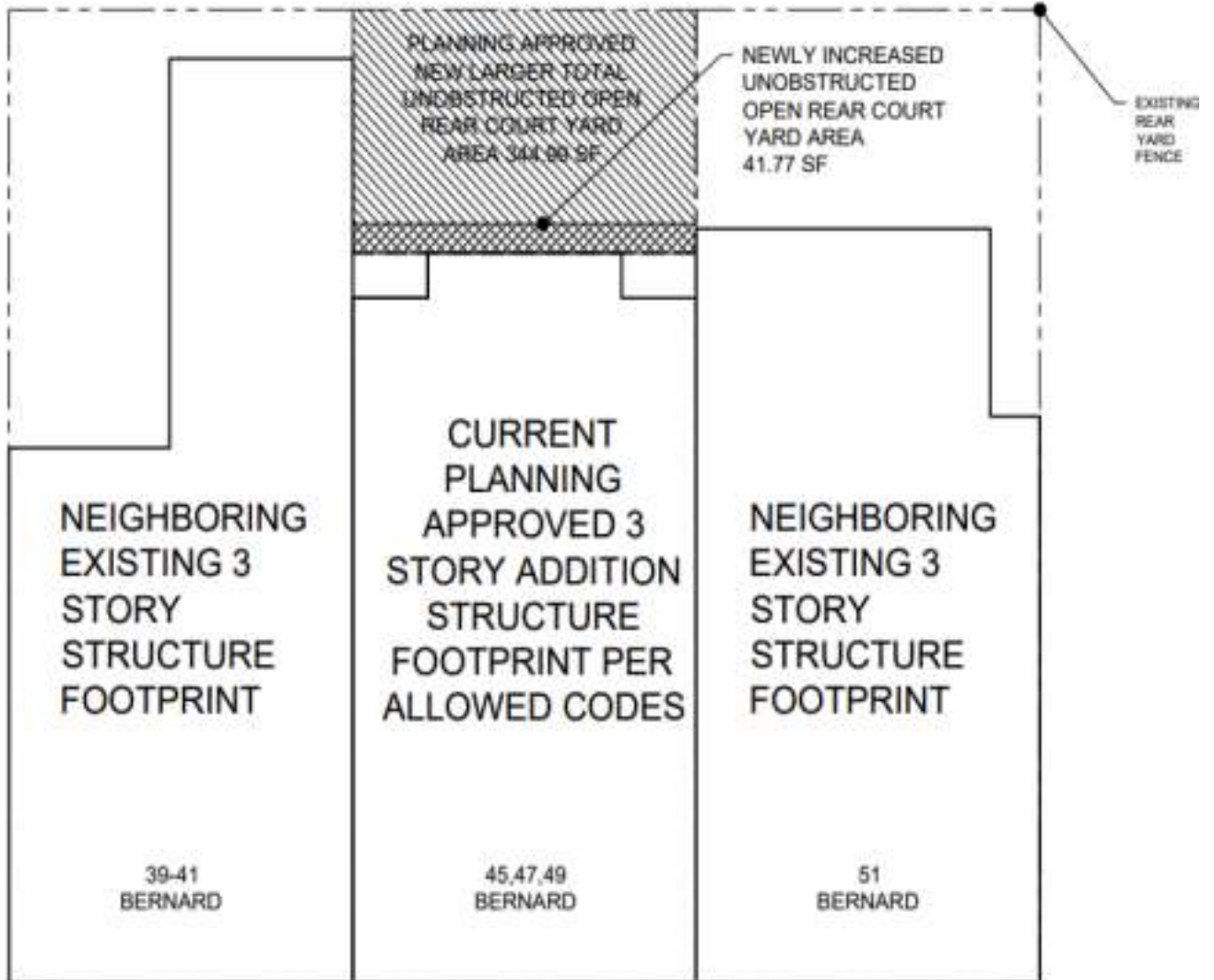
- This is my residence.
- The apartment building consists of less than four units.
- Other: Please explain: NON-profit business and residence

Date: 10-14-93 Signature: Paul Wilson

Appendix 2: Rear Yard Setback Analysis

Showing increase in total depth with existing large fire stairs removed.





ZACKS, FREEDMAN & PATTERSON

A PROFESSIONAL CORPORATION

601 Montgomery Street, Suite 400
San Francisco, California 94111
Telephone (415) 956-8100
Facsimile (415) 288-9755
www.zfplaw.com

September 26, 2022

VIA ELECTRONIC SUBMISSION

President Shamann Walton and Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102

Re: Appeal of Exemption Determination
45 Bernard Street (Case No. 2020-005176ENV)

Dear President Walton and Supervisors:

Our office represents the Upper Chinatown Neighborhood Association, a community group dedicated to protecting the heritage and culture of the Upper Chinatown community since 2013. We submit this letter pursuant to Administrative Code § 31.16(e) to appeal the Exemption Determination for the project at 45 Bernard Street (Case No. 2020-005176ENV). The Exemption Determination violates the California Environmental Quality Act (“CEQA”) because the project description is not accurate, stable, or finite, and the proposed project that was approved by the Planning Commission differs significantly from the project that was described in the Exemption Determination. Additionally, the Planning Department failed to adequately study whether the project will have a significant adverse impact on the cultural and historic resources of Upper Chinatown. Due to these deficiencies, the appellants respectfully request the Board reverse the Exemption Determination; and direct the Planning Department to conduct further review.

The Project Sponsors purchased 45 Bernard in September 2019. Within months the owners started the process to evict eleven Chinese immigrants, eight of whom are elders and/or disabled. Less than a week after the eviction of the families was complete, an application for a residential expansion project was submitted. The project application initially described the project as a renovation of a three-story, four-unit apartment building with a horizontal addition that will significantly encroach into the existing rear yard. After the Exemption Determination was published and the 311 Notice was distributed, the Sponsors submitted revised project plans. The revised plans that were approved by the Planning Commission only show a three-unit building, and the existing basement unit disappeared entirely from the project.

2. The Project Description is Not Accurate, Stable, or Finite

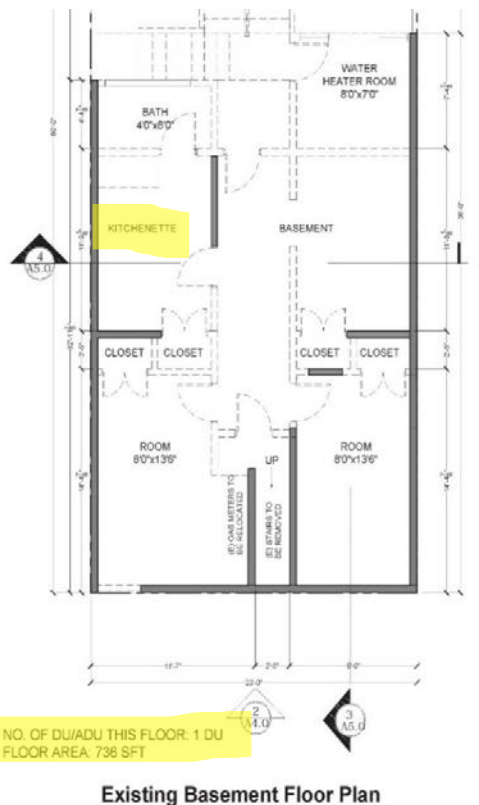
Courts have consistently stated that “an accurate, stable and finite project description” is an essential component of an informative and legally sufficient environmental document. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-193; CEQA Guidelines § 15378.) On the other hand, “a project description that gives conflicting signals to decision makers and the public about the nature and scope of the project is fundamentally inadequate and misleading. (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 84.)

The project description in the Exemption Determination states the project proposes “renovation of a 3-story, **4-unit** apartment building.” The original project plans similarly showed four units, and labeled the building “BERNARD ST. 4-UNITS APARTMENT.” The project plans showed a basement level with a bathroom, kitchenette, two bedrooms, and clearly stated that 1 dwelling unit was located on the basement level. The project plans proposed to legalize the basement unit as a two-bedroom ADU. The 311 Notice also stated the project proposed to legalize an existing residential unit, and described the property as containing four existing units.

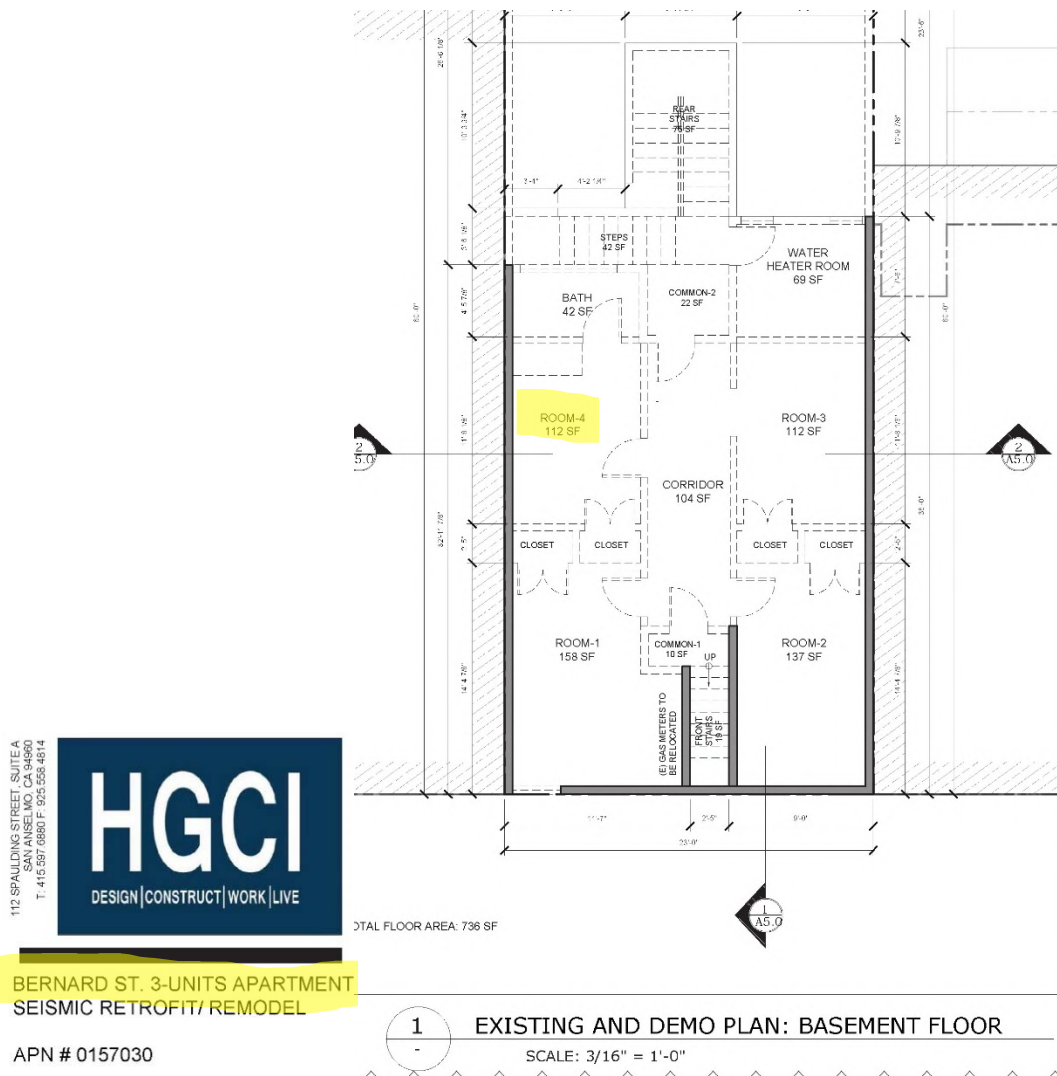
112 SPAULDING STREET, SUITE A
SAN ANSELMO, CA 94960
T: 415.597.6880 F: 925.558.4814



BERNARD ST. 4-UNITS APARTMENT
SEISMIC RETROFIT/ REMODEL
APN # 0157030



However, the Project Sponsor subsequently revised the project, and submitted revised plans three months after the Exemption Determination was issued. The revised plans only show *three* dwelling units, with the building relabeled “BERNARD ST. 3-UNITS APARTMENT.” The basement unit vanished, with the kitchenette now simply labeled a “room” and the floor plan no longer showing a dwelling unit. The proposal to legalize the basement unit into a two-bedroom ADU also disappeared from the project plans. The revised plans show the demolition of the basement walls and the addition of a garbage room, utilities room, and storage room. The rest of the basement is now labeled a “future ADU.”



As noted above, a project description that gives conflicting signals to decision makers and the public is fundamentally inadequate. The project description in the Exemption Determination clearly stated that the project was for the renovation of a four unit building, but the plans that were approved by the Planning Commission only included three units. The project description gave the Planning Commission and the public conflicting signals regarding the nature and scope of the project, which makes the exemption determination fundamentally inadequate.

2. **The Project May Have a Significant Effect on Historic Resources**

CEQA guidelines state that an Exemption “shall not be used for a project which *may* cause a substantial adverse change in the significance of a historical resource.” (*See* CEQA Guidelines § 15300.2(f).) Courts are clear that the failure to adequately discuss potential impacts is a procedural error, and the “omission of required information constitutes a failure to proceed in the manner required by law.” (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502.) Procedural failures must be overturned in order to “scrupulously enforce all legislatively mandated CEQA requirements.” (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.)

The Exemption Determination in this case is not legally adequate because the Planning Department failed to adequately analyze the potential impacts to historic resources, and there is a fair argument that the project may cause a substantial adverse change to a historic resource. The Planning Department’s Historic Resource Evaluation Response determined the project would not have an impact on any potential eligible historic district yet noted that the “subject property is outside the boundary of the Expanded North Beach Survey . . . and *there is no justification to expand the survey area.*” In other words, no historic district survey has ever been completed for the Upper Chinatown area. The Planning Department concluded, without conducting a survey and without evidence, that the project would not impact a potentially eligible historic district. The Planning Department’s omission of any information on the potential impacts to a historic district was a procedural error, and therefore the Exemption Determination must be overturned.

Moreover, the “foremost principle under CEQA is that the Legislature intended the act to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (*Laurel Heights Improvement Assn. v.*

Regents of University of California (1988) 47 Cal.3d 376, 390.) To that end, an exemption shall not be used if there is a “fair argument” that the proposed project may cause a substantial adverse change in the significance of an historical resource. (*See Valley Advocates v. City of Fresno* (2008) 160 Cal.App.4th 1039, 1072.)

Here, there is a fair argument that the project may cause a substantial adverse change in a historic resource. CEQA defines a historic resource as “any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, *or cultural annals of California.*” (CEQA Guidelines § 15064.5.)

Asian Americans have acquired affordable homes in Upper Chinatown since the 1940s, and specifically sought homes with more open space. The rear courtyard was especially valued and the dimensions of rear yard spaces in Upper Chinatown have been relatively unchanged for over a hundred years. The concept of the traditional courtyard space followed Chinese immigrants, and they have inherently adopted this way of maintaining stability and unity and strengthening the family structure. Especially in densely populated neighborhoods like this one, family members gather outdoors to share meals while telling stories and supporting one another. This family system is the bedrock of the culture and maintains the social sustainability of the neighborhood. The pattern of mid-block open space is significant to the history and culture of the Chinese immigrant experience and must be protected. The courtyard at 45 Bernard, like other rear yards, is a character-defining feature that contributes to the uniqueness of the Upper Chinatown area.

Over a thousand individuals signed a petition supporting the protection of the traditional courtyard space, and dozens of Asian Americans testified at the Planning Commission hearing to explain the cultural significance of the rear courtyard to the families who depend on this sacred courtyard space for their spiritual wellbeing. The project at 45 Bernard significantly expands into the rear courtyard, and there is a fair argument that the project will cause a substantial adverse change in this character-defining feature of the Upper Chinatown area. Moreover, none of these potential impacts was identified or analyzed by the Planning Department before it issued the Exemption Determination. As a result, and there is a fair argument that the Exemption Determination must be overturned.

6. Conclusion

The Exemption Determination for this project violates CEQA. The project description is inaccurate and sent conflicting signals to the Planning Commission and the public on the project that was actually being approved. Moreover, the project's potential impacts were not adequately identified or evaluated, which constitutes a failure to proceed in the manner required by law. This project, which is the result of the eviction of 11 Asian immigrants, involves the destruction of a sacred traditional courtyard space that is vital to the character, culture, and history of Upper Chinatown. The Board should therefore reverse the Exemption Determination and direct the Planning Department to conduct further review of potential impacts to historic resources and issue an environmental document that accurately describes the project.

Very truly yours,

ZACKS, FREEDMAN & PATTERSON, PC



Brian O'Neill

cc: Lisa Gibson, Environmental Review Officer



CEQA Exemption Determination

PROPERTY INFORMATION/PROJECT DESCRIPTION

Project Address		Block/Lot(s)
45 BERNARD ST		0157030
Case No.		Permit No.
2020-005176ENV		202008222415
<input checked="" type="checkbox"/> Addition/ Alteration	<input type="checkbox"/> Demolition (requires HRE for Category B Building)	<input type="checkbox"/> New Construction
<p>Project description for Planning Department approval. The project proposes renovation of a 3-story, 4-unit apartment building and includes a seismic/soft-story foundation upgrade with a rear-yard addition. The project includes façade alterations, and the proposed addition would add approximately 996 square feet.</p>		

STEP 1: EXEMPTION TYPE

The project has been determined to be exempt under the California Environmental Quality Act (CEQA).	
<input checked="" type="checkbox"/>	Class 1 - Existing Facilities. Interior and exterior alterations; additions under 10,000 sq. ft.
<input type="checkbox"/>	Class 3 - New Construction. Up to three new single-family residences or six dwelling units in one building; commercial/office structures; utility extensions; change of use under 10,000 sq. ft. if principally permitted or with a CU.
<input type="checkbox"/>	<p>Class 32 - In-Fill Development. New Construction of seven or more units or additions greater than 10,000 sq. ft. and meets the conditions described below:</p> <p>(a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.</p> <p>(b) The proposed development occurs within city limits on a project site of no more than 5 acres substantially surrounded by urban uses.</p> <p>(c) The project site has no value as habitat for endangered rare or threatened species.</p> <p>(d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.</p> <p>(e) The site can be adequately served by all required utilities and public services.</p> <p>FOR ENVIRONMENTAL PLANNING USE ONLY</p>
<input type="checkbox"/>	Other _____

Common Sense Exemption (CEQA Guidelines section 15061(b)(3)). It can be seen with certainty that there is no possibility of a significant effect on the environment . **FOR ENVIRONMENTAL PLANNING USE ONLY**

STEP 2: ENVIRONMENTAL SCREENING ASSESSMENT

TO BE COMPLETED BY PROJECT PLANNER

<input type="checkbox"/>	<p>Air Quality: Would the project add new sensitive receptors (specifically, schools, day care facilities, hospitals, residential dwellings, and senior-care facilities) within an Air Pollution Exposure Zone? Does the project have the potential to emit substantial pollutant concentrations (e.g. use of diesel construction equipment, backup diesel generators, heavy industry, diesel trucks, etc.)? (refer to <i>The Environmental Information tab on the San Francisco Property Information Map</i>)</p>
<input type="checkbox"/>	<p>Hazardous Materials: If the project site is located on the Maher map or is suspected of containing hazardous materials (based on a previous use such as gas station, auto repair, dry cleaners, or heavy manufacturing, or a site with underground storage tanks): Would the project involve 50 cubic yards or more of soil disturbance - or a change of use from industrial to residential?</p> <p>Note that a categorical exemption shall not be issued for a project located on the Cortese List if box is checked, note below whether the applicant has enrolled in or received a waiver from the San Francisco Department of Public Health (DPH) Maher program, or if Environmental Planning staff has determined that hazardous material effects would be less than significant. (refer to <i>The Environmental Information tab on the San Francisco Property Information Map</i>)</p>
<input type="checkbox"/>	<p>Transportation: Does the project involve a child care facility or school with 30 or more students, or a location 1,500 sq. ft. or greater? Does the project have the potential to adversely affect transit, pedestrian and/or bicycle safety (hazards) or the adequacy of nearby transit, pedestrian and/or bicycle facilities?</p>
<input type="checkbox"/>	<p>Archeological Resources: Would the project result in soil disturbance/modification greater than two (2) feet below grade in an archeological sensitive area or eight (8) feet in a non-archeological sensitive area? If yes, archeology review is required.</p>
<input type="checkbox"/>	<p>Subdivision/Lot Line Adjustment: Does the project site involve a subdivision or lot line adjustment on a lot with a slope average of 20% or more? (refer to <i>The Environmental Information tab on the San Francisco Property Information Map</i>) If box is checked, Environmental Planning must issue the exemption.</p>
<input type="checkbox"/>	<p>Average Slope of Parcel = or > 25%, or site is in Edgehill Slope Protection Area or Northwest Mt. Sutro Slope Protection Area: Does the project involve any of the following: (1) New building construction, except one-story storage or utility occupancy, (2) horizontal additions, if the footprint area increases more than 50%, or (3) horizontal and vertical additions increase more than 500 square feet of new projected roof area? (refer to <i>The Environmental Planning tab on the San Francisco Property Information Map</i>) If box is checked, a geotechnical report is likely required and Environmental Planning must issue the exemption.</p>
<input type="checkbox"/>	<p>Seismic Hazard: <input type="checkbox"/> Landslide or <input type="checkbox"/> Liquefaction Hazard Zone: Does the project involve any of the following: (1) New building construction, except one-story storage or utility occupancy, (2) horizontal additions, if the footprint area increases more than 50%, (3) horizontal and vertical additions increase more than 500 square feet of new projected roof area, or (4) grading performed at a site in the landslide hazard zone? (refer to <i>The Environmental tab on the San Francisco Property Information Map</i>) If box is checked, a geotechnical report is required and Environmental Planning must issue the exemption.</p>
<p>Comments and Planner Signature (optional): Don Lewis</p>	

**STEP 3: PROPERTY STATUS - HISTORIC RESOURCE
TO BE COMPLETED BY PROJECT PLANNER**

PROPERTY IS ONE OF THE FOLLOWING: (refer to Property Information Map)	
<input type="checkbox"/>	Category A: Known Historical Resource. GO TO STEP 5.
<input checked="" type="checkbox"/>	Category B: Potential Historical Resource (over 45 years of age). GO TO STEP 4.
<input type="checkbox"/>	Category C: Not a Historical Resource or Not Age Eligible (under 45 years of age). GO TO STEP 6.

**STEP 4: PROPOSED WORK CHECKLIST
TO BE COMPLETED BY PROJECT PLANNER**

Check all that apply to the project.	
<input type="checkbox"/>	1. Change of use and new construction. Tenant improvements not included.
<input type="checkbox"/>	2. Regular maintenance or repair to correct or repair deterioration, decay, or damage to building.
<input type="checkbox"/>	3. Window replacement that meets the Department's <i>Window Replacement Standards</i> . Does not include storefront window alterations.
<input type="checkbox"/>	4. Garage work. A new opening that meets the <i>Guidelines for Adding Garages and Curb Cuts</i> , and/or replacement of a garage door in an existing opening that meets the Residential Design Guidelines.
<input type="checkbox"/>	5. Deck, terrace construction, or fences not visible from any immediately adjacent public right-of-way.
<input type="checkbox"/>	6. Mechanical equipment installation that is not visible from any immediately adjacent public right-of-way.
<input type="checkbox"/>	7. Dormer installation that meets the requirements for exemption from public notification under <i>Zoning Administrator Bulletin No. 3: Dormer Windows</i> .
<input type="checkbox"/>	8. Addition(s) that are not visible from any immediately adjacent public right-of-way for 150 feet in each direction; does not extend vertically beyond the floor level of the top story of the structure or is only a single story in height; does not have a footprint that is more than 50% larger than that of the original building; and does not cause the removal of architectural significant roofing features.
Note: Project Planner must check box below before proceeding.	
<input checked="" type="checkbox"/>	Project is not listed. GO TO STEP 5.
<input type="checkbox"/>	Project does not conform to the scopes of work. GO TO STEP 5.
<input type="checkbox"/>	Project involves four or more work descriptions. GO TO STEP 5.
<input type="checkbox"/>	Project involves less than four work descriptions. GO TO STEP 6.

**STEP 5: ADVANCED HISTORICAL REVIEW
TO BE COMPLETED BY PRESERVATION PLANNER**

Check all that apply to the project.			
<input checked="" type="checkbox"/>	<p>1. Reclassification of property status. (Attach HRER Part I)</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"> <input type="checkbox"/> Reclassify to Category A a. Per HRER 04/13/2021 b. Other (specify): </td> <td style="width: 50%; border: none;"> <input checked="" type="checkbox"/> Reclassify to Category C (No further historic review) </td> </tr> </table>	<input type="checkbox"/> Reclassify to Category A a. Per HRER 04/13/2021 b. Other (specify):	<input checked="" type="checkbox"/> Reclassify to Category C (No further historic review)
<input type="checkbox"/> Reclassify to Category A a. Per HRER 04/13/2021 b. Other (specify):	<input checked="" type="checkbox"/> Reclassify to Category C (No further historic review)		
<input type="checkbox"/>	2. Project involves a known historical resource (CEQA Category A) as determined by Step 3 and conforms entirely to proposed work checklist in Step 4.		
<input type="checkbox"/>	3. Interior alterations to publicly accessible spaces that do not remove, alter, or obscure character defining features.		
<input type="checkbox"/>	4. Window replacement of original/historic windows that are not "in-kind" but are consistent with existing historic character.		
<input type="checkbox"/>	5. Façade/storefront alterations that do not remove, alter, or obscure character-defining features.		

<input type="checkbox"/>	6. Raising the building in a manner that does not remove, alter, or obscure character-defining features.
<input type="checkbox"/>	7. Restoration based upon documented evidence of a building's historic condition, such as historic photographs, plans, physical evidence, or similar buildings.
<input type="checkbox"/>	8. Work consistent with the <i>Secretary of the Interior Standards for the Treatment of Historic Properties (Analysis required)</i> :
<input type="checkbox"/>	9. Work compatible with a historic district (Analysis required):
<input type="checkbox"/>	10. Work that would not materially impair a historic resource (Attach HRER Part II).
Note: If ANY box in STEP 5 above is checked, a Preservation Planner MUST sign below.	
<input type="checkbox"/>	Project can proceed with exemption review. The project has been reviewed by the Preservation Planner and can proceed with exemption review. GO TO STEP 6.
Comments (optional):	
Preservation Planner Signature: Elizabeth Gordon Jonckheer	

STEP 6: EXEMPTION DETERMINATION
TO BE COMPLETED BY PROJECT PLANNER

<input checked="" type="checkbox"/>	No further environmental review is required. The project is exempt under CEQA. There are no unusual circumstances that would result in a reasonable possibility of a significant effect.	
	Project Approval Action: Building Permit	Signature: Elizabeth Gordon Jonckheer
	If Discretionary Review before the Planning Commission is requested, the Discretionary Review hearing is the Approval Action for the project.	04/13/2021
Once signed or stamped and dated, this document constitutes a n exemption pursuant to CEQA Guidelines and Chapter 31of the Administrative Code. In accordance with Chapter 31 of the San Francisco Administrative Code, an appeal of an exemption determination to the Board of Supervisors can only be filed within 30 days of the project receiving the approval action. Please note that other approval actions may be required for the project. Please contact the assigned planner for these approvals.		

STEP 7: MODIFICATION OF A CEQA EXEMPT PROJECT

TO BE COMPLETED BY PROJECT PLANNER

In accordance with Chapter 31 of the San Francisco Administrative Code, when a California Environmental Quality Act (CEQA) exempt project changes after the Approval Action and requires a subsequent approval, the Environmental Review Officer (or his or her designee) must determine whether the proposed change constitutes a substantial modification of that project. This checklist shall be used to determine whether the proposed changes to the approved project would constitute a "substantial modification" and, therefore, be subject to additional environmental review pursuant to CEQA.

MODIFIED PROJECT DESCRIPTION

Modified Project Description:

DETERMINATION IF PROJECT CONSTITUTES SUBSTANTIAL MODIFICATION

Compared to the approved project, would the modified project:

- | | |
|--------------------------|--|
| <input type="checkbox"/> | Result in expansion of the building envelope, as defined in the Planning Code; |
| <input type="checkbox"/> | Result in the change of use that would require public notice under Planning Code Sections 311 or 312; |
| <input type="checkbox"/> | Result in demolition as defined under Planning Code Section 317 or 19005(f)? |
| <input type="checkbox"/> | Is any information being presented that was not known and could not have been known at the time of the original determination, that shows the originally approved project may no longer qualify for the exemption? |

If at least one of the above boxes is checked, further environmental review is required.

DETERMINATION OF NO SUBSTANTIAL MODIFICATION

- | | |
|--------------------------|---|
| <input type="checkbox"/> | The proposed modification would not result in any of the above changes. |
|--------------------------|---|

If this box is checked, the proposed modifications are exempt under CEQA, in accordance with prior project approval and no additional environmental review is required. This determination shall be posted on the Planning Department website and office and mailed to the applicant, City approving entities, and anyone requesting written notice. In accordance with Chapter 31, Sec 31.08j of the San Francisco Administrative Code, an appeal of this determination can be filed to the Environmental Review Officer within 10 days of posting of this determination.

Planner Name:

Date:



PART I HISTORIC RESOURCE EVALUATION RESPONSE

Record No.: 2020-005176PRJ/ENV
Project Address: **45-49 Bernard Street**
Zoning: RH-3 RESIDENTIAL- HOUSE, THREE FAMILY Zoning District
65-A Height and Bulk District
Block/Lot: 0157/030
Staff Contact: Elizabeth Gordon Jonckheer 628-652-7365
elizabeth.gordon-jonckheer@sfgov.org

PART I: Historic Resource Evaluation

PROJECT SPONSOR SUBMITTAL

To assist in the evaluation of the proposed project, the Project Sponsor has submitted a:

- Supplemental Information for Historic Resource Determination Form (HRD)
- Consultant-prepared Historic Resource Evaluation (HRE)

BUILDINGS AND PROPERTY DESCRIPTION

Neighborhood: Nob Hill
Date of Construction: 1906
Construction Type: Wood-Frame
Architect: Unknown
Builder: Unknown

Stories: 3-over-basement
Roof Form: Flat
Cladding: Horizontal Wood Siding & Stucco
Primary Façade: Bernard Street (North)
Visible Facades: North

EXISTING PROPERTY PHOTOS / CURRENT CONDITIONS



Sources: Google Maps, 2021

PRE-EXISTING HISTORIC RATING / SURVEY

- Category A – Known Historic Resource, per: _____
- Category B – Age Eligible/Historic Status Unknown
- Category C – Not Age Eligible / No Historic Resource Present, per: _____

Adjacent or Nearby Historic Resources: No Yes: _____

CEQA HISTORICAL RESOURCE(S) EVALUATION

Step A: Significance

Individual Significance	Historic District / Context Significance
Property is individually eligible for inclusion in a California Register under one or more of the following Criteria: Criterion 1 - Event: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Criterion 2 - Persons: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Criterion 3 - Architecture: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Criterion 4 - Info. Potential: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Period of Significance: _____ _____	Property is eligible for inclusion in a California Register Historic District/Context under one or more of the following Criteria: Criterion 1 - Event: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Criterion 2 - Persons: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Criterion 3 - Architecture: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Criterion 4 - Info. Potential: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Period of Significance: _____ <input type="checkbox"/> Contributor <input type="checkbox"/> Non-Contributor <input checked="" type="checkbox"/> N/A

Analysis:

Per the supplemental information provided by the project sponsor and information assessed in the Planning Department’s files, 45-49 Bernard Street was constructed in 1906 as a three-flat, three story-over-basement, wood frame residence clad in horizontal clapboard siding.

To be eligible under Criterion 1 (Events), the building cannot merely be associated with historic events or trends but must have a specific association to be considered significant. No known historic events occurred at the subject property that would support a finding of individual eligibility under Criterion 1. None of the known occupants or owners appear to be of historic significance to the local, regional or national past to justify a finding of individual eligibility under Criterion 2. Therefore, 45-49 Bernard Street is not eligible under Criterion 2 (Persons).

As noted in the supplemental report, the building’s front façade consists of painted wood horizontal clapboard siding at the first two stories and the third story has been covered with a stucco finish. The front façade also contains six double hung wood windows with wood trim and ogee lugs, as well as a central recessed stairwell providing access to the apartments. The roofline exhibits a corbeled cornice. The rear of the property has four levels and is defined by stucco walls and horizontal painted wood clapboard siding. At this façade, the windows are aluminum sliders with no trim. There is also a wood exit stair which was added at some point to provide emergency exiting for the apartment units. The building permit records indicate that the following alterations have taken place: underpinning of the east wall in 1928, repairs and upgrades (1926), reroofing (2008), and repair in-kind in 2016.

The building is not architecturally distinct such that would qualify it for listing in the California Register under Criterion 3. Based the permit record, 45-49 Bernard Street retains moderate integrity (alterations include but are not limited to window modifications to the rear façade and the stucco alteration at the third story of the front façade). This structure does not appear to be eligible for listing on the California Register as an individual resource under Criterion 3. The buildings that are eligible under the architecture Criterion must represent distinctive characteristics

of its style and period and possess high artistic value. The subject property is a residence reflective of its era on its block but does not rise to the level of artistic expression that would render it eligible for Individual eligibility. Additionally, staff finds that the subject building is not located within a historic district. As noted in the HRER for adjacent neighbor 51 Bernard Street (Case No. 2013.1452E), the surrounding area exhibits a broad range of construction dates from 1900 to 1988 and no clear period of development is evident and many of the surrounding properties have experienced facade alterations that have compromised historic integrity. Additionally, the subject property is outside the boundary of the Expanded North Beach Survey, and while it shares characteristics of the Romeo Alley Flats within North Beach, it does not exemplify them and there is no justification to expand the survey area.

Based upon a review of information in the Departments records, the subject property is not significant under Criterion 4 since this significance criterion typically applies to rare construction types when involving the built environment. The subject property is not an example of a rare construction type.

CEQA HISTORIC RESOURCE DETERMINATION

- Individually-eligible Historical Resource Present
- Contributor to an eligible Historical District / Contextual Resource Present
- Non-contributor to an eligible Historic District / Context / Cultural District
- No Historical Resource Present

NEXT STEPS

- HRER Part II Review Required
- Historic Design Review Comments provided
- No further historic resource review, consult:
 - Current Planner
 - Environmental Planner

PART I: Approval

Signature: Elizabeth Jonckheer

Date: 4/23/2021

Elizabeth Gordon Jonckheer, *Principal Preservation Planner*
Current Planning Division

September 26, 2022

*Re: 45 Bernard Street
Letter of Authorization for Agent*

To Whom It May Concern:

I hereby authorize the attorneys of Zacks, Freedman & Patterson, PC to file a California Environmental Quality Act appeal to the Board of Supervisors for 45 Bernard Street, San Francisco (Case No. 2020-005176ENV) on the behalf of Upper Chinatown Neighborhood Association.

Very truly yours,

Upper Chinatown Neighborhood Association

A handwritten signature in black ink on a light-colored background. The signature is cursive and appears to read "Hanmin Liu".

By: Hanmin Liu
Its: Co-Team Leader

ZACKS, FREEDMAN & PATTERSON

A PROFESSIONAL CORPORATION

September 26, 2022

Office of the Clerk of the Board
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102

Re: Appeal of Exemption Determination
45 Bernard Street (Case No. 2020-005176ENV)

986
SEP 26 PM 3:15
SAN FRANCISCO, CA

Dear Clerk,

Please find enclosed a check in the amount of \$698.00 for the appeal filing fee in the above referenced matter.

Please be advised that the filing will be submitted electronically by emailing the appeal filing with supporting documents to bos.legislation@sfgov.org and this payment is being sent prior to the filing.

Sincerely,



Tiffany Stamper
Legal Administrative Assistant

Encl.

- Check No. 23858 in the amount of \$698.00 made payable to San Francisco Planning Department

ZACKS, FREEDMAN & PATTERSON
A PROFESSIONAL CORPORATION
601 MONTGOMERY STREET, SUITE 400
SAN FRANCISCO, CA 94111

FIRST REPUBLIC BANK
SAN FRANCISCO, CA 94111
11-8166/3210
95

23858

DATE
09/26/2022

AMOUNT
****\$698.00

PAY

*** SIX HUNDRED NINETY-EIGHT & 00/100 DOLLARS

TO THE ORDER OF: San Francisco Planning Department
49 South Van Ness Avenue
Suite 1400
San Francisco CA 94103



AUTHORIZED SIGNATURE

MEMO: Appeal Filing Fee (43547.001)

[Redacted area]

Appendix F: Communication Between Commissioners and Neighbors Prior to DR Hearing

Excerpt of Neighbors and Local Supervisors Office Discussing DR Before Our Project Was Even Approved by Planning:

Kevin - can you help us understand what discretion the Planning Department has to approve or modify the proposed renovation, and the timeline for notice and discretionary review? I'm particularly concerned about the allegation that multiple tenants were displaced in the midst of the pandemic. Can you explain how that impacts staff's review, and/or whether we should involve the Rent Board for follow up or verification?

Thanks,
Lee

Lee Hepner
Legislative Aide
Supervisor Aaron Peskin

Please feel free to reach me on my cell phone: (949) 412-7623.

Excerpt of Hanmin Confirming that He Met Personally With Commissioner B, and Exchanged Records with Commissioner A, Who Never Turned Over these Records or Others Despite Sunshine Request:

To: "Hillis, Rich (CPC)" <rich.hillis@sfgov.org>
Cc: "Imperial, Theresa (CPC)" <theresa.imperial@sfgov.org>, "Moore, Kathrin (CPC)" <kathrin.moore@sfgov.org>, "Peskin, Aaron (BOS)" <aaron.peskin@sfgov.org>, "Angulo, Sunny (BOS)" <sunny.angulo@sfgov.org>
Subject: 45-49 Bernard Street and Residential Design Guidelines

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

Dear Mr. Hillis,

I am writing to invite you to a meeting with the leadership team of the Upper Chinatown Neighborhood Association (UNCA). We are now applying for a Discretionary Review. The purpose of the meeting is to discuss the Residential Design Guidelines as they apply to the proposed plans for 45-49 Bernard Street. We are especially interested in the application of the guidelines to the structures and to open spaces of a predominately Chinese immigrant and Chinese American populations.

In early January 2022, we sent a memorandum to Kevin Guy, at his suggestion, regarding our concerns. I am attaching the memorandum for your review. Copies of the memorandum have also been sent to all the commissioners and to our district supervisor, Aaron Peskin. Commissioner Theresa Imperial met with our team recently and she was very helpful in our understanding of the planning process. Commissioner Kathrin Moore called us in mid-January asking for additional information about the evicted tenants. We have reached out to the SF Rent Board and will be sending her the information shortly.

We are seriously interested in gaining a deeper understanding of the design principles and guidelines as they apply to all ethnic populations. We look forward

Emails between Commissioner B and Project Opponents Where She Confirms She Read their Memo and Will Come Over For Lunch to Discuss the Memo & Their DR:

From: Wild Flowers <nectar.wildflowers@gmail.com>
Date: Monday, January 31, 2022 at 3:25 PM
To: "Imperial, Theresa (CPC)" <theresa.imperial@sfgov.org>
Subject: Re: 45-49 Bernard St. Plans

Great! The whole team is also fully vaccinated. Let's meet at 1144 Pacific Avenue, between Taylor and Jones at 4 pm on 2/8/22.
All the best, Jennifer

Sent from my iPhone

On Jan 31, 2022, at 11:11 AM, Imperial, Theresa (CPC) <theresa.imperial@sfgov.org> wrote:

Feb. 8 at 4pm sounds good. We can meet in-person. I'm also fully vaccinated. Let me know where I can meet your team.
Thanks!

From: Wild Flowers <nectar.wildflowers@gmail.com>
Date: Sunday, January 30, 2022 at 8:59 PM
To: "Imperial, Theresa (CPC)" <theresa.imperial@sfgov.org>
Subject: Re: 45-49 Bernard St. Plans

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

Dear Theresa,

Thank you for your message. Tuesday, February 8, 2022 at 4pm is good for us. We are also available Friday, February 11, 2022 any time after 4:30 pm. What is your preference for our meeting? We are fully vaccinated.

All the best, Jennifer Mei and Hanmin Liu
Upper Chinatown Neighborhood Association

On Jan 30, 2022, at 7:54 PM, Imperial, Theresa (CPC) <theresa.imperial@sfgov.org> wrote:

Hi,

Apologies in delayed response. I received your memo and recently reviewed it. I can be available to meet either on Feb. 8 or 11th after 4pm. I'm generally open on Tuesdays or Fridays in the afternoon. Thanks!

Emails between Leadership Team of Non-Profit and Hanmin/Local Supervisor Discussion His Donation and Letter of Support:

From: [Tan Cho](#)
To: [Allan Lew](#), [Glen Fujioka](#), [Gordon Chan](#), [Phil Cho](#), [Tannoy Hung](#), [Ross Chan](#), [Matthias Mormino](#), [Peckin, Aaron \(BOG\)](#), [Angela Sunny \(BOG\)](#), [Donna Chan](#)
Subject: Evictions: 48 Hills: 48 Hills: any review on the edge of 48 Hills
Date: Monday, August 22, 2022, 8:24:43 AM
Attachments: [maggie.dong](#), [maggie.dong](#), [maggie.dong](#), [maggie.dong](#), [maggie.dong](#), [maggie.dong](#), [maggie.dong](#), [maggie.dong](#)
Hanmin's email with images attached. Leadership team of nonprofit employer

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

fyi- 45 Bernard.
hanmin liu who owns the building behind the proposed backyard extension (DR) is lead organizer along with his network support brad Paul scholars and remaining Greater Chinatown group of og chinese am residents, that greater Chinatown grew in the 1970-2010 as reflected in TRIP advocacy for 10 bus up the pacific hill but by Mrs lee 2015 Jackson street eviction and subsequently we lost greater Chinatown Russian hill, now boundary back to powell with Mason consortia pretty much gentrified. Hanmin funded code below, his house has lots of open space on side!
Reference to Hanmin's donation to organization

CBPRC Chair Allan,
Let me know if you think we should send a support "solidarity" letter supporting the "private" communal courtyard open space is still an important remaining vestige of necessity in urban design form, cultural fabric and pandemic healing health space even tho the larger war of preserving greater Chinatown is lost, maybe they can build a story vertical not horizontal. **These are not public open space tho.**
See today 48 hills article below.

Excerpt of Letter of Support Email from Non-Profit Sent to Planning Commission:

From: Maggie Dong <maggie.dong@chinatowncdc.org>
To: CPC-Commissions Secretary <commissions.secretary@sfgov.org>; Ionin, Jonas (CPC) <jonas.ionin@sfgov.org>; Tanner, Rachael (CPC) <rachael.tanner@sfgov.org>; Winslow, David (CPC) <david.winslow@sfgov.org>
Subject: Community Tenants' Association Letter Supporting Discretionary Review for 45-49 Bernard (2020-005176DRP)

“On behalf of the Community Tenants Association, I am submitting a letter to support the discretionary review request for the 45 Bernard Street project. This project was originally scheduled to be heard on Thursday, July 21, 2022.”

Sincerely,
Maggie Dong (she/her)
Planner
Chinatown Community Development Center 669 Clay Street,
San Francisco, CA 94111 Phone: 415-935-2472| Email:
maggie.dong@chinatowncdc.org”

Email Between Hanmin/Jennifer/Other Neighbors & Local Supervisor Discussing “Building Relationships” with Non-Profit Employer of Commissioner C and Their Meetings:

From: [REDACTED] [Open with Google Docs](#)
To: [Peskin, Aaron \(BOS\)](#)
Subject: Thank You for Connecting Us to Theresa Flandrich
Date: Wednesday, April 20, 2022 5:11:40 PM
Attachments: [Tenant Evictions PacificBernard TaylorJones 2013-2020.pdf](#)
[Bilingual Neighbor Petition V2.DS.FINAL.1.pdf](#)

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

Dear Aaron,

I just got off the phone with Theresa Flandrich. We had a great conversation and we have so much in common. Thanks SO much for putting her in touch with us. We agreed to meet in early May. In the interim, we are sending her the information that the SF Rental Board has on 45-49 Bernard Street. We feel really hopeful that her input will advance our cause even further.

As you know, the upper Chinatown neighbors are experiencing an eviction crisis. The sponsor of 45 Bernard Street evicted 11 Chinese immigrants, eight of whom are elders/disabled. In the past ten years, 37 tenants have been evicted or displaced on our block (between Pacific Avenue, Bernard, Taylor, and Jones Streets). Our research shows that over ninety percent of these tenants were of Asian descent. (See attached spreadsheet below.)

To address this crisis and to preserve mid-block open space as a cultural and spiritual refuge, we are organizing a petition campaign, we are building relationships with Malcolm Yeung and Robyn Tucker, and we have reached out to the RHN and the Russian Hill Community Association. More than a month ago, Rich Hillis and Liz Watty attended a UCNA meeting and we discussed the sponsor's plan and its severe impact on the people and the culture of the neighborhood.

I'll keep you posted on our progress. Thanks again for bringing such a valuable resource, Theresa Flandrich, to our fight.

Yours, hanmin

Appendix G: Appendix G: Transcript Showing Rent Control Language Attempted to Be Imposed

Dear Commissioners,

I thought it might be helpful to send a written transcript of your August 25 discussion of the motion for the 45 Bernard Street DR. Attached is an unofficial transcript prepared by our paralegal.

During public comment last week, we suggested the following additions to the DR Action Memo to conform to your motion:

2. The Commission recognizes the Rent Control Ordinance and its direct impact as it relates to tenant rights, owner move-in evictions, and the obligation of the Project Sponsors to provide a first right of refusal and to exercise due diligence in locating previous evicted tenants and offering them first right of refusal at their previous rents and to provide a lifetime tenancy to the remaining tenant at the same rent, provide for relocation during construction, and to make the relocation as short as possible.

Additionally, please find a link to a short videotaped interview with a former tenant of 45 Bernard Street [here](#). Due to technical difficulties at the hearing, it could not be shown during public comment. https://zacks.egnyte.com/dl/e8aFEY81hZ/Mr_Huang_Interview.mp4

Thank you,

Ryan J. Patterson
Zacks, Freedman & Patterson, PC
601 Montgomery Street, Suite 400
San Francisco, CA 94111
Telephone: (415) 956-8100
Facsimile: (415) 288-9755

Appendix H: Memo Sent Directly to the Planning Commission Prior to Our Plans Being Approved

MEMORANDUM

TO Kevin Guy
FROM Jennifer Mei
DATE January 7, 2022
SUBJECT 45-49 Bernard Street Plans

**LEADERSHIP
TEAM**

Kelvin Lee
Johnny Leung
Sandy Leung
Hanmin Liu
Jennifer Mei
Brad Paul
Stephen White

The Upper Chinatown Neighborhood Association (UCNA) is concerned about the size and scale of 45-49 Bernard Street plans. The plans are not in concert with the context of the surrounding block. The proposed plans take the four-story structure to within the 15 feet of the rear yard line and 10 feet when taking the fire stairs into account. This expansion encroaches on the rear neighbor, 1144 and 1146 Pacific Avenue. The encroachment will roughly replicate the existing tenement-like situation over half the block's interior open space (see Figure One below). The plans will limit the amount of light and air to bedrooms and living area windows of the buildings adjacent to and directly opposite the development.

The UCNA is also concerned about the application for the legalization of the fourth dwelling unit (ADU). In 2020 and 2021, two families were evicted from 47 Bernard and 49 Bernard Street and the new owner and her sister moved into the spaces where the families were living. We have reviewed Planning Code Sec. 207.3(b)(2) and wondered whether or not the proposed new fourth unit can be approved. We are continuing to sort this out and look forward to your thoughts. As we gain a deeper understanding of this matter, we will follow up with more detail in another memo. We look forward to hearing from you regarding your search of records at the Rent Board.

The San Francisco Residential Rent Stabilization and Arbitration Board has on file a “60 Day Notice of Termination of Tenancy” for the five tenants evicted from 47 Bernard Street (case no. M201229). The file noted that “a collective total relocation assistance payment” of \$21,674. In addition, three of the five tenants are elderly and/or disabled and are each entitled to an additional relocation assistance payment of \$4,817. But there doesn’t seem to be a “60 Day Notice of Termination of Tenancy” on file for the six tenants evicted from 49 Bernard Street (case no. M201400) nor any indication of what amount of money they may have been paid to assist them in their relocation. We are worried about these eleven individuals who were displaced by the new owners—they were of two low-income Chinese families and at least three of them are elderly and/or disabled. They lived here for about a decade and they relied on one another and on Chinatown for their stability. Might it be possible, if approved, to offer the new fourth unit back to the displaced families at the same rent they were paying prior to their eviction?

The proposed plans for the fourth unit appears to be designed for upscale individuals. Such units will not be affordable to intergenerational families who need proximity to Chinatown for their employment, shopping, and services.

The plans seem to be contrary to the San Francisco Planning Department’s intention of increasing affordable housing for and bringing back displaced communities. If approved as submitted, this project will only accelerate the transformation of our neighborhood from its historic role as a stable community of intergenerational Asian American families—the social and economic unit of change. What is emerging in our neighborhood is a younger, less diverse, and more affluent population of individual tenants who will likely be more transient. After briefly describing the problems we see with this proposal, we will suggest modifications to it that we feel the City and the owner should incorporate prior to approval. We believe these modifications offer a win-win solution to these problems for the owner, the neighborhood, and the city.



Figure One: Photo of the property immediately east of 45-49 Bernard Street

The leadership team of UCNA has studied carefully the proposed plans in light of the assets that already exist in the neighborhood. We offer the following concerns and recommendations:

1. Reduction of Mid-Block Open Space

The adjacent neighbors to 45-49 Bernard Street are very concerned about the existing lack of open space on our block. See Figure Two below. We invite you to make a site visit to assess the proposed plans and its impact on further reducing light and air quality in the mid-block open space, as well as on lessening the privacy and the security of adjacent buildings.



Figure Two: Photo of Mid-Block Open Space and the “Tenement-like Situation”

Figure Three below is a rendering of the expanded footprint (in red) of 45-49 Bernard Street, which will go back an additional 11'3" and the stairways (in yellow) will further extend into the open space by 4'6". Thus, the stairways will intrude into the 15' limit. We wish to make note that the illustration below does not include all of the existing egresses and walkways of the other buildings on our block. The Google Maps image that we used to develop this illustration did not have sufficient details for us to show accurately all the structures and dimensions.



Figure Four: Renderings of existing rear elevation and the proposed elevation of 45-49 Bernard Street

3. Privacy and Security

The encroachment to within 10 feet of the property line has a significant impact on privacy of 1144-1146 Pacific Avenue, 1152-1156 Pacific Avenue, 39-41 Bernard Street, and 51 Bernard Street. The top three floors of the proposed plans are directly in the line of sight of neighbors and will further compromise their privacy. See Figure Five below for the existing rear window sizes of 45-49 Bernard Street, the proposed plans for two double glass doors with balconies on each of four stories, and the rear windows of 1144-1446 Pacific Avenue (scale is 1/4" = 1'0"). According to HGCI drawings A4.0, the existing back yard windows are 10% of the surface area, but the proposed rear windows is 34%.

The Association suggest the new owners reduce the double doors and balconies on the top two floors and add a light well.

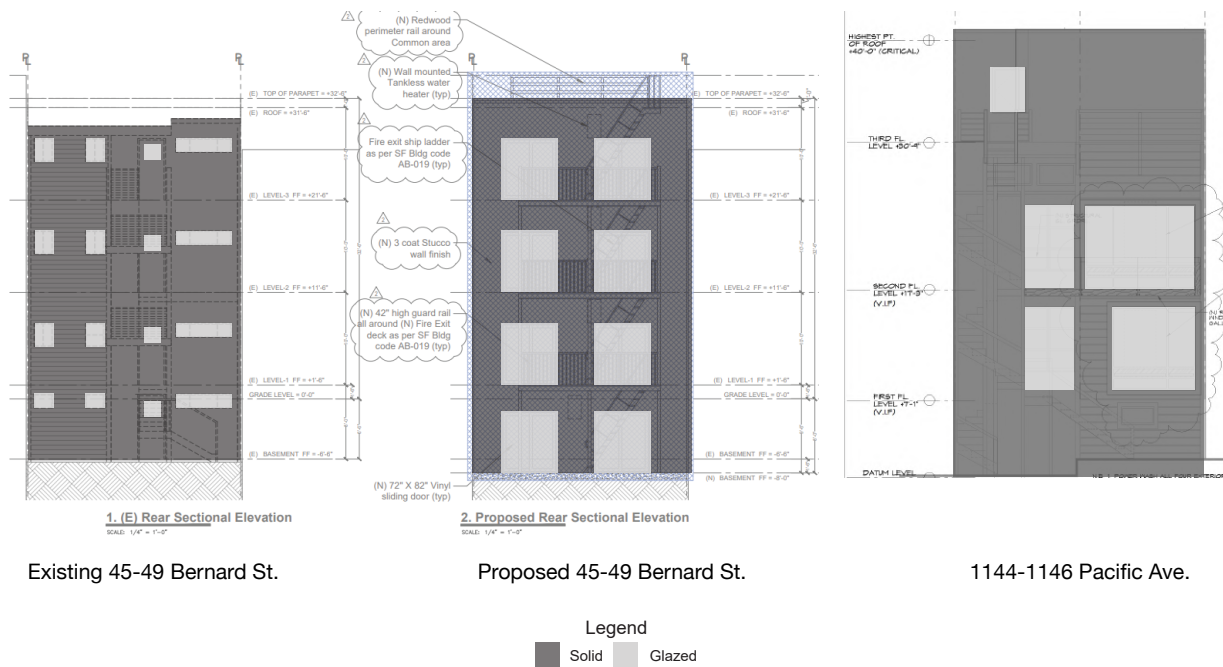


Figure Five: Elevation drawings of 45-49 Bernard Street (existing and proposed) and a rear elevation drawing of 1144-1146 Pacific Avenue, with window sizing and placement

4. Addition of Fourth Market Rate ADU Unit Adds to Traffic Problems and Existing Parking Crisis

Pacific Avenue is an active east-west traffic corridor and Taylor and Jones Streets are a busy north-south corridor. In the late afternoon, cars are frequently backed up to Jones and Bernard Streets. Heavy traffic increases greenhouse gases in the neighborhood. Moreover, parking for local residents is a nightmare. There are 88 building addresses and 61 parking/garage spaces on the block. Assuming the tenants in each address require one or two cars, 132 parking spaces are needed on any particular day. Furthermore, the San Francisco Municipal Transportation Agency conducted an evaluation of residential parking permits beginning in 2013. Our Area C had a permit saturation of 152% and this situation has only gotten worse. Many parking spaces have been removed to make way for motorcycle parking, car share parking, and red curb zones. Adding a fourth unit will add to an already dire parking availability.

One way to reduce the greenhouse gases and the need for more parking spaces would be to officially designate the proposed new fourth unit as affordable unit. As the previous residents demonstrated, lower-income renters, particularly low-income seniors, have much lower rates of car ownership than wealthier tenants.

5. Mitigating Displacement and Gentrification Pressures with Affordable Housing

The proposal to expand the footprint of the four-story building at 45-49 Bernard Street, renovate the three existing units, and add a fourth unit highlights the challenges such projects pose in neighborhoods like Upper Chinatown, particularly regarding the related issues of preserving mid-block light and air, reducing greenhouse gases, and mitigating parking impacts—as well as

reducing growth inducing gentrification pressures. After briefly describing these challenges we will propose modifications to the project we feel could help mitigate these problems in a fair and equitable way.

Gentrification and Displacement

For many years, the smaller two-or-three-story buildings in this neighborhood were owned by Chinese-American families who purchased them many decades ago for \$40,000–\$200,000 and paid off their mortgages. As a result, rents in these buildings tended to remain low enough to allow immigrant families and seniors to remain and grow old in the Upper Chinatown neighborhood. With these buildings now selling for \$1.5 million and up, the only way to cover significantly higher mortgages and still make money is to renovate, add units, and charge higher rents—rents that current residents cannot afford and force them to move out of the neighborhood.

Inclusionary Housing

With new buildings of ten units or more, the city's inclusionary housing policy requires that owners designate a least one unit (10%) as permanently affordable. Typically, the owner charges higher rents on the other nine units to make up for lost revenue from the affordable unit. The purpose of this policy is to slow gentrification and ensure a diversity of incomes in the community. As the size of housing developments increases, the percentage of inclusionary housing units required increases above 10%.

In the case of 45-49 Bernard Street, the city could, as a condition of approving a new fourth unit, require that the new unit be affordable to tenants making 60% of median income or less. Such a requirement could significantly mitigate the gentrifying impacts of the project, while lowering parking demand in the neighborhood. To lessen the financial burden of this requirement on the owner, the city could provide a subsidy that would make up the difference between what a tenant at 40–60% of median income can afford to pay and what the market rate rent would have been.

There are several ways the city could subsidize rents for a single unit (or two) at 45-49 Bernard Street that could serve as a pilot program for District 3 and the rest of San Francisco:

- Allocate 30 project-based HUD section 8 certificates to a nonprofit (such as the San Francisco Community Land Trust or Chinatown Community Development Center) to use individually or in pairs to create more affordable housing in small apartment buildings in Chinatown, North Beach, Russian Hill, and Nob Hill. This could serve as a pilot for a citywide program to preserve racial and economic diversity in smaller buildings.
- Agree to rebate a portion of the property taxes paid by 45-49 Bernard Street to compensate for the reduced rent charged for one of the units. The city could do a direct rebate or explore whether signing a long-term lease for the affordable unit with a housing nonprofit could qualify the building for a partial property tax welfare exemption.

Cities throughout the Bay Area are now making it easier to add accessory dwelling units (ADUs) to single-family homes and two-to-three-unit apartment buildings to address the region's housing crisis. In most cases the ADUs are small studio or one-bedroom apartments that tend to rent for

less than larger apartments or single-family homes nearby. The proposed fourth unit at 45-49 Bernard Street, a two-bedroom flat, will rent for quite a bit in this neighborhood.

The ideal solution for San Francisco is to add units like this while finding ways to subsidize them as affordable for low-income families and seniors so the income to the owner is the same as market rate. Partnering with nonprofits like the Chinatown Community Development Center or Self Help for the Elderly could also provide landlords with a steady source of income-qualified and vetted seniors from the neighborhood and automatically connect them to direct services ranging from culturally appropriate in-home nutrition programs to home healthcare and free paratransit services.

We urge the city to adopt this win-win approach as a condition of approval for the requested fourth unit at 45-49 Bernard Street. The city could create even more housing by allowing the proposed large two-bedroom flat to be converted into two smaller affordable units for low-income families and for seniors with a commensurate increase in the housing subsidy. This would serve the financial needs of the owner, the housing needs of nearby intergenerational families facing displacement, and the ongoing racial and financial diversity goals of the city. It would add housing units that would not add to the existing traffic and parking problems in the neighborhood and instead increase ridership on public transportation.

As of 2021, the homeowners of the block (Pacific, Bernard, Taylor, and Jones) are made up of 71% Chinese Americans and 29% others. It is one of the most affordable locations between Russian Hill and Nob Hill. For many decades, most everyone gets along with one another. It is the bedrock of intergenerational working families who live and work in the neighborhood. This community has inherently developed a safe, inclusive, and “helping hand” culture among a diverse racial and ethnic population.


Thank you for your time and consideration on this sensitive matter. We look forward to hearing from you and working together.

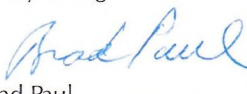

Kelvin Lee

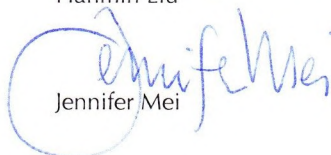

Stephen White


Johnny Leung


Sandy Leung


Hanmin Liu


Brad Paul


Jennifer Mei

CC Aaron Peskin, Supervisor, District 3
Sunny Angulo
Lee Hepner
San Francisco Planning Commissioners

Appendix I: Neighborhood Roof Decks

Figure A.1 Facing West



Figure A.2 Roof Facing North



Legend




	45-49 Bernard (Subject Property)
	Adjacent Neighbors with Roof Decks
	Other Nearby Property with Roof Deck

Figure A.3 Zoomed in View of Direct Neighbors



Figure A.4 Lueng Deck overlooking Subject Property, Unpermitted, with Video Camera pointing at us



Figure B.1 Mid Block "Open Space" does not exist – only dense, deep neighboring properties

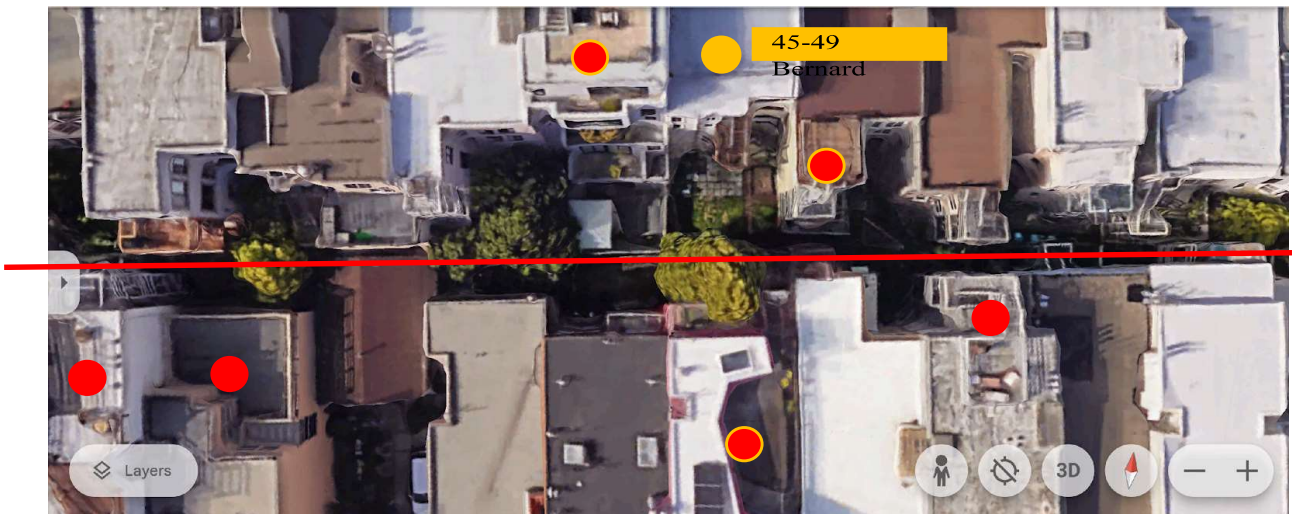


Figure B.2: Hanmin and Lueng Properties and Rear Yard Setback



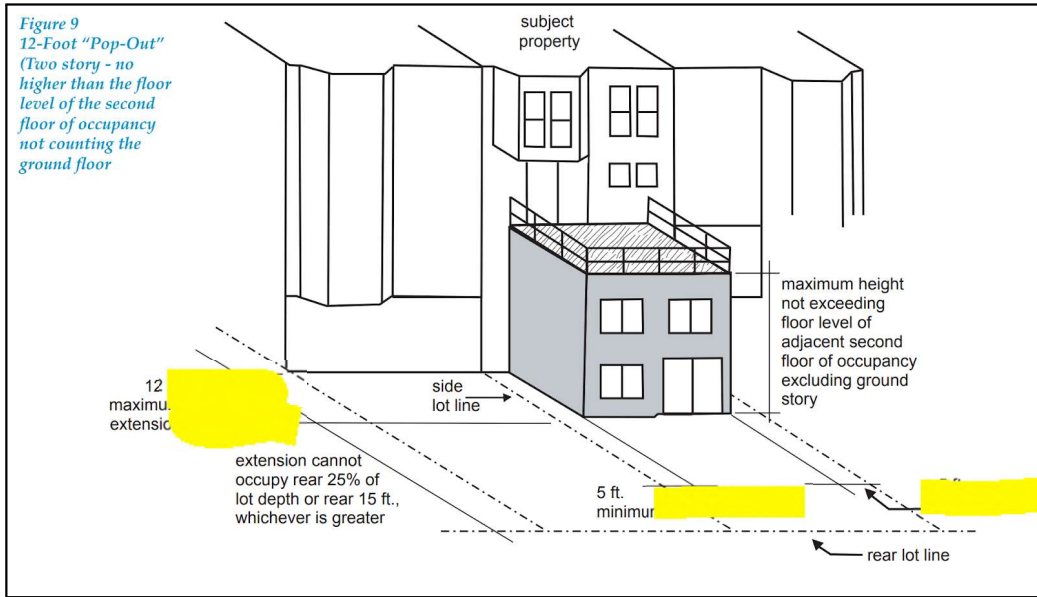
Figure B.3: 51 Bernard Recent Variance Approved

Hanmin Liu objected and raised issue given the s raised was a “precedent” on what it would have on 45-49 Bernard Street, not about the 51 Bernard Street project at all.

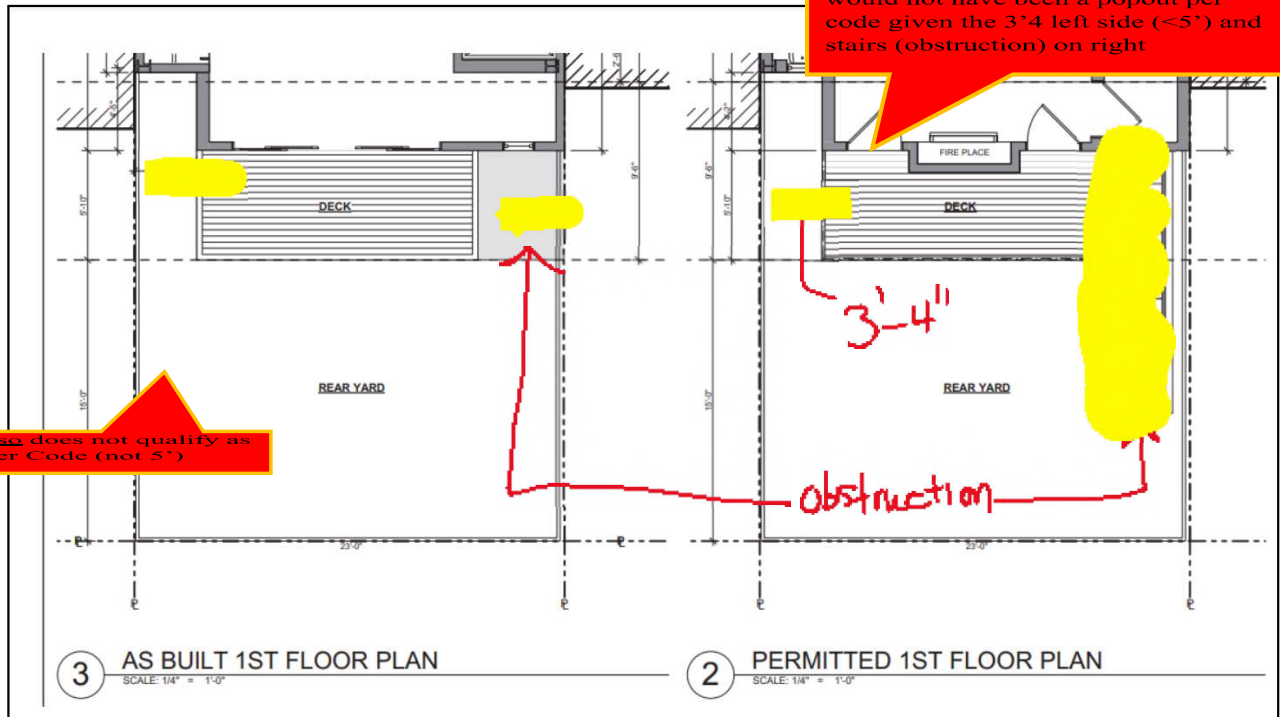
Despite the rear wall not qualifying as a pop-out given the approval of a stair well into the 5' required “unobstructed space”, we were incorrectly prohibited **from using the 51 Bernard Property’s 15’ 9” setback for averaging. As a result, the setback was calculated at 17’9” instead of 15’9” post our 311 notice and the City required us to modify it if we wanted the DR to be recommended “approved” at the DR hearing.** Again, The 51 Bernard Property (neither as-planned or as-built) did not meet the qualifications of a pop-out.

For Reference: “This 12-foot extension can cover the full width of the lot if it is no higher than 10 feet above grade. It may be as high as the floor level of the second floor of occupancy not counting the ground floor if there is a 5 foot distance completely clear of obstructions between the extension

and both side property lines”.



51 Bernard Variance (As Built and As Permitted) Drawings



Even in an "as permitted" state, this would not have been a popout per code given the 3'4 left side (<5') and stairs (obstruction) on right

As built also does not qualify as pop-out per Code (not 5')

M May, Christopher (CPC) <christopher.may@sfgov.org>
 to me, Claudine, Richard, Kevin, Corey, David, Lindsey, Taylor, Jim, Michael

Mon, Mar 13, 2023, 3:08PM

Hi Tina,

Yes, if [REDACTED]

Christopher May, Senior Planner
 District 3, Current Planning Division
 San Francisco Planning Department
 49 South Van Ness Avenue, Suite 1400, San Francisco, CA 94103
 Direct: 628.652.7359 | www.sfgov.org/planning
[San Francisco Property Information Map](#)

T Teague, Corey (CPC) <corey.teague@sfgov.org>
 to me, Christopher, Tina, David

Sun, Mar 26, 2023, 7:55 AM

Tina,

Thanks for reaching out for this clarification. The reason the existing condition could not be used for averaging is because it was both approved in error and also constructed beyond the scope of the issued permit. As such, any component of the building at 51 Bernard St that is noncomplying is not a legally authorized portion of the building, and so it cannot be used for averaging. Only once a final scope of work has been authorized can it then be used for averaging purposes.

Based on this information, the prior permit at 45 Bernard St could not use the noncomplying pop-out feature at 51 Bernard St for averaging. Goal [REDACTED] the presence of the side stairs would not make the pop-out "building" useable for [REDACTED] Code requirements, so averaging is based on [REDACTED] etc.).

Please also note that if 51 Bernard St is legalized in a manner that does not meet Sec. 136(c)(25), and you decide to move forward with a new permit to take advantage of the deeper rear yard permitted at 45 Bernard St, that permit would automatically require a DR hearing before the Planning Commission because they already took DR and added conditions to the previous project/permit.

As you saw, I'm out for a while and the project at 51 Bernard St still has some process and review left before being approved in some way. I hope this helps until that project is fully resolved. Thanks.

Corey A. Teague, AICP, LEED AP
 Zoning Administrator

Current Planning Division
 San Francisco Planning
 49 South Van Ness Avenue, Suite 1400, San Francisco, CA 94103
 Direct: 628-652-7328 | sfgov.org/planning
[San Francisco Property Information Map](#)

Variance Granted on 51 Bernard



San Francisco Planning

40 South Van Ness Avenue, Suite 2020
San Francisco, CA 94103
415.625.7000
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VARIANCE DECISION

Date: May 22, 2023
Case No.: 2022-005109VAR
Project Address: 51 Bernard Street
Block/Lot: 0337 / 039
Zoning: RH-3 (Residential House, Three-Family) Zoning District
Height/Bulk: 65-A Height and Bulk District
Applicant: Anthony Fontaloni
70 Zoe Street
San Francisco, CA 94107
Owner: Enda Keane
458 Plum Tree Court
Sonoma, CA 94976
Staff Contact: Christopher May - (628) 652-7359
christopher.may@sfgov.org

Description of Variance – Rear Yard and Permitted Obstructions Variance Sought:

The project proposes to legalize the as-built rear ground floor extension, the removal of previously-existing rear stairs and the enclosure of that space on the basement floor, the as-built rear bay window on the 3rd floor, and the as-built front bay windows.

Planning Code Section 134 requires the subject property to maintain a rear yard of approximately 24 feet 6 inches. The features proposed to be legalized at the rear extend into the required rear yard to varying depths and are inconsistent with the obstructions permitted by Section 136. Therefore, a variance is required.

Planning Code Section 136(d) permits bay windows over the property line with a maximum width of 9 feet if the sidewalk is 9 feet wide or less, which is the case for the subject property. The front bay was built with a width of 9 feet 1.25 inches wide. Therefore, a variance is required.

Procedural Background:

- The Project is exempt from the California Environmental Quality Act ("CEQA") as a Class 1 categorical exemption.
- The Zoning Administrator held a public hearing on Variance Application No. 2022-005109VAR on March 22, 2023.
- Planning Code Section 31.1 notification was mailed on February 13, 2023 and expired on March 13, 2023. No requests for Discretionary Review were filed during the notification period.

Variance Decision
May 22, 2023

CASE NO. 2022-005109VAR
51 Bernard Street

Decision:

GRANTED, in general conformity with the plans on file with this application, shown as EXHIBIT A, to legalize the as-built rear ground floor extension, the removal of previously-existing rear stairs and the enclosure of that space on the basement floor, the as-built rear bay window on the 3rd floor, and the as-built front bay windows, subject to the following conditions:

- The authorization and rights vested by virtue of this decision letter shall be deemed void and cancelled if (1) a Site or Building Permit has not been issued within three years from the effective date of this decision; or (2) a Tentative Map has not been approved within three years from the effective date of this decision for Subdivision cases; or (3) neither a Site or Building Permit or Tentative Map is involved but another required City action has not been approved within three years from the effective date of this decision. However, this authorization may be extended by the Zoning Administrator when implementation of the project is delayed by a public agency, an appeal or a legal challenge and only by the length of time for which such public agency, appeal or challenge has caused delay.
- Any future physical expansion, even in the buildable area, shall be reviewed by the Zoning Administrator to determine if the expansion is compatible with existing neighborhood character and scale. If the Zoning Administrator determines that there would be a significant or extraordinary impact, the Zoning Administrator shall require either notice to adjacent and/or affected property owners or a new variance application be sought and justified.
- The proposed project must meet these conditions and all applicable City Codes. In case of conflict, the more restrictive controls apply.
- Minor modifications as determined by the Zoning Administrator may be permitted.
- The owner of the subject property shall record on the land records of the City and County of San Francisco the conditions attached to this Variance decision as a Notice of Special Restrictions in a form approved by the Zoning Administrator.
- This Variance Decision and the recorded Notice of Special Restrictions shall be reproduced on the Index Sheet of the construction plans submitted with the Site or Building Permit Application for the Project, if applicable.

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 Met.

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51 Bernard Street

- The subject property, developed circa 1923, has a lot depth of approximately 60 feet and slopes down from the front and down laterally from east to west. Rear yards and the collective mid-block open space are limited on the subject block due to the small, shallow lots. The required rear yard is 24 feet 6 inches and the original two-story building encroached approximately 9 feet 6 inches into the rear yard, and therefore was noncomplying.
- In 2015, Building Permit No. 201410280072 was approved and issued in error proposing vertical and horizontal rear additions that also encroached into the rear yard an additional 2 feet 6 inches without 5-foot setbacks on either side, rear property line stairs, a firewall higher than 10 feet, and a front bay that were all inconsistent with the permitted obstructions of Planning Code Section 136. That work and the permit was completed in 2016. However, the completed construction project was somewhat inconsistent with the issued permit, as it removed the original rear stairs and replaced them with a small mechanical space within the rear addition.

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 Met.

- The circumstances described above result in a situation where meeting the literal requirements for the rear yard and front bay would represent a practical difficulty that is not fully created by or attributed to the property owner due to the errors approved in the original building permit and the physical challenges of correcting those issues. The original permit did not dedicate space for the water and heating systems. The rear stairs were replaced by a mechanical enclosure during construction to house the water, heating, and other systems. Relocating those systems within the existing building would be a substantial challenge.

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 Met.

- Granting this modest variance will allow the subject building to be fully legalized in a state that, despite not fully complying with the Planning Code, still meets the intent and spirit of the Code given the unique circumstances and challenges to correct, which is a substantial property right possessed by other properties in the same class of district.

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 Met.

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- Granting the variance will improve the livability of the subject property and will not be materially detrimental to the public welfare or materially injurious to the neighboring properties, as the project has been completed since 2016. Additionally, the small lot has limited rear yard area (approximately 345 square feet) to devote to open space. Requiring stairs would further reduce the rear yard area and require a slightly taller firewall along the eastern property line. Due to the lateral east-west downslope of the block, the slight additional mass at the rear of 51 Bernard Street will not substantially impact the adjacent lot at 45 Bernard Street. Further, the very small margin of noncompliance of the front bay is not easily perceptible to the eye and therefore has no impact on the street frontage.
- 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.

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 Met.

- 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.
- Existing neighborhood retail uses will not be adversely affected by the proposed project.
- The proposed project will be in keeping with the existing housing and neighborhood character. The proposal will preserve the existing dwelling unit on the property.
- The proposed project will have no effect on the City's supply of affordable housing.
- The proposed project does not adversely affect neighborhood parking or public transit.
- The project will have no effect on the City's industrial and service sectors.
- The proposed project will have no effect on the City's preparedness to protect against injury and loss of life in an earthquake.
- The project will have no effect on the City's landmarks or historic buildings.
- 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.

Variance Decision
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51 Bernard Street

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/boappeals.

Very truly yours,

Corey A. Teague, AICP
Zoning Administrator

2022-005109VAR (CHRISTOPHER MAY) 51 BERNARD STREET, Lot 029 in Assessor's Block 0157 in an RH-3 Zoning District, and a 65-A Height and Bulk District. REAR YARD: The project proposes to legalize the as-built rear ground floor extension, the removal of previously-existing rear stairs and the enclosure of ground floor area below, and the as-built rear bay window on the 3rd floor. **PLANNING CODE SECTION 134** requires the subject property to maintain a rear yard of approximately 24 feet 6 inches. The features proposed to be legalized extend into the required rear yard to varying depths and are inconsistent with the obstructions permitted by Section 136. Therefore, a variance is required.

