



# SAN FRANCISCO PLANNING DEPARTMENT

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## Memo to the Planning Commission

HEARING DATE: DECEMBER 6, 2018

CONTINUED FROM: NOVEMBER 15, 2018

*Date:* November 26, 2018  
*Case No.:* **2015-018150CUA**  
*Project Address:* **137 CLAYTON STREET**  
*Zoning:* RH-3 (Residential, House – Two-Family)  
40-X Height and Bulk District  
*Block/Lot:* 1194 / 006  
*Project Sponsor:* Jeremy Schaub, Schaub Ly Architects  
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### BACKGROUND

On June 1, 2016, the Project Sponsor filed an application with the Planning Department for a Conditional Use Authorization under Planning Code Sections 303 and 317 proposing to demolish a two-story, single-family dwelling and construct a new four-story, 3-unit replacement building within the RH-3 (Residential, House – Three-Family) Zoning District and 40-X Height and Bulk District.

On November 3, 2016, the Planning Commission conducted a duly noticed public hearing and, after taking and closing public comment – including opposition from an tenant of the subject building - adopted a motion of intent to disapprove the project on the basis that the proposed demolition of the existing building and construction of a 4-story, three-unit replacement building does not respect the existing neighborhood character, and therefore does not meet the objectives of the General Plan.

The City Attorney advised the Commission that the California Housing Accountability Act (the “Act”) requires local governments to adopt findings relating to public health and safety when denying a housing project, imposing conditions that reduce its density, or rendering the project infeasible. The Commission would have to find that such a housing project would have a “specific adverse effect” on the public health or safety and that there is no feasible method to satisfactorily mitigate or avoid the adverse impact other than disapproval. As such, the Commission continued the item to the December 1, 2016, public hearing at which the Commission further continued the item to the February 9, 2017, hearing to allow Planning staff an opportunity to prepare a draft motion of disapproval, including the aforementioned findings in accordance with the California Housing Accountability Act. At the February 9, 2017, hearing, the project sponsor requested an indefinite continuance, which was granted by the Commission.

On November 2, 2017, the tenant occupying the subject building gave notice to the property owner that she would be vacating the premises voluntarily within 30 days. As such, the subject property is now vacant.

On January 1, 2018, several amendments to the Act went into effect further restricting the ability of a local agency to deny approvals for housing projects that comply with local zoning requirements. The amendments to the Act now require stronger evidence of a health or safety impact of a housing project than the Act required prior to the amendments. In addition, the amendments have strengthened appeals courts' ability to enforce compliance with the Act by enabling them to *direct* local agencies to approve housing projects, rather than reconsider them, if the court determines that the local agency has acted in bad faith. The amendments also now *require*, rather than allow, an appeals court to impose fines on a local agency that does not carry out the court's order within 60 days.

On September 13, 2018, the Planning Commission conducted a duly noticed public hearing and, after taking and closing public comment, continued the item in order to allow the project sponsor an opportunity to redesign the project to retain the existing front façade of the building and eliminate the proposed off-street parking garage.

## **CURRENT PROPOSAL**

No changes have been made to the proposal. Given the above-noted amendments to the California Housing Accountability Act and in response to the Commission's direction at the September 13, 2018, hearing, Planning staff has prepared a Draft Motion of Approval for a modified project, which would require the retention of the existing front façade, would allow for rear horizontal and/or vertical additions in order to accommodate three family-sized units, and would require the provision of bicycle parking in lieu of off-street vehicular parking spaces.

## **REQUIRED COMMISSION ACTION**

In order to approve the project, as modified, the Commission must adopt the attached Draft Motion of Approval.

### **Attachments:**

Draft Motion of Approval

Exhibit A – Conditions of Approval

Exhibit B – Project Sponsor Submittal



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## Planning Commission Draft Motion

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**ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO PLANNING CODE SECTIONS 303 AND 317 TO CONSTRUCT ADDITIONS TO AN EXISTING TWO-STORY, SINGLE-FAMILY DWELLING RESULTING IN A NEW 3-UNIT BUILDING WITHIN THE RH-3 (RESIDENTIAL, HOUSE – THREE-FAMILY) DISTRICT AND A 40-X HEIGHT AND BULK DISTRICT, AND ADOPTING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.**

### PREAMBLE

On June 1, 2016, Jeremy Schaub (hereinafter “Project Sponsor”) filed an application with the Planning Department (hereinafter “Department”) for a Conditional Use Authorization under Planning Code Sections 303 and 317 to demolish an existing two-story, single-family dwelling and construct a new four-story, 3-unit building (hereinafter “Project”) within the RH-3 (Residential, House – Three-Family) Zoning District and 40-X Height and Bulk District.

On June 26, 2016, the Project was determined to be exempt from the California Environmental Quality Act (“CEQA”) as a Class 1 and Class 3 Categorical Exemption under CEQA, as described in the determination contained in the Planning Department files for this Project. During the CEQA review, it was determined that the subject building is not a historic resource.

On November 3, 2016, the San Francisco Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2015-018150CUA. The Commission moved an intent to disapprove the project on the basis that the proposed demolition of the existing building and construction of a 4-story, three-unit replacement building did not meet the objectives of the General Plan. After hearing and closing public comment, the Commission

indicated its intent to disapprove the project and continued the item to December 1, 2016, to allow Planning staff an opportunity to prepare a draft motion of disapproval.

On December 1, 2016, the Commission further continued Conditional Use Application No. 2015-018150CUA, to a hearing on February 9, 2017.

On February 9, 2017, the project sponsor requested an indefinite continuance of Conditional Use Application No. 2015-018150CUA.

On September 13, 2018, the Commission reconsidered the original proposal and continued the item to November 15, 2018, and again to December 6, 2018, directing the project sponsor to return with a modified project that would retain the existing façade of the building.

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.

**MOVED**, that the Commission hereby authorizes the Conditional Use requested in Application No. 2015-018150CUA, subject to the conditions contained in "EXHIBIT A" of this motion, based on the following findings:

## **FINDINGS**

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** The project is located on the west side of Clayton Street, between Grove Street and Hayes Street, Lot 006 in Assessor's Block 1194. The property is located within the RH-3 (Residential, House – Three-Family) District and a 40-X Height and Bulk District. The subject property has approximately 25 feet of frontage on Clayton Street and is approximately 112.5 feet deep. The property is mostly flat and is currently occupied by a two-story, single-family dwelling constructed circa 1908, which covers approximately 42% of the lot.
3. **Surrounding Properties and Neighborhood.** The project site is located midblock between Grove Street and Hayes Street in the Haight Ashbury neighborhood, north of the Panhandle and south of the University of San Francisco campus. The subject site is located in an RH-3 District and is surrounded primarily by two- and three-family dwellings ranging in height from three to four stories. Immediately adjacent to the subject property to the north is a three-and-a-half story, three-family dwelling and immediately to the south, at the northwest corner of Clayton Street and Hayes Street, is a three-story, 4-unit residential building. Also directly south of the subject property is the Asian American Recovery Services outpatient facility located in adjacent one- and two-story buildings fronting onto Hayes Street. Directly across the street are a three-story, single-family dwelling and a four-story, six-unit residential building. Immediately behind and to the west of the subject property is the New Traditions Elementary School. While the portion of Grove Street near the subject property is within the RM-1 (Residential – Mixed, Low-Density) District, the majority

of the surrounding neighborhood is within the RH-3 (Residential, House – Three-Family) District. The subject property is also within .25-miles of stops for the 7X – Noriega Express, 21 – Hayes, and 43 – Masonic MUNI transit lines.

4. **Project Description.** The project proposed by the project sponsor included the demolition of the existing two-story, single-family dwelling and the construction of a four-story, 40-foot tall, three-family residential building. Located on separate floors, the three units would range in size from approximately 1,220 square feet to 1,411 square feet and would each have three bedrooms and two bathrooms. Three independently accessible off-street parking spaces and three Class 1 bicycle parking spaces, one for each unit, are proposed in the garage on the ground floor.

The modified project approved by the Commission would require the retention of the front façade of the existing building and would permit the partial demolition and reconstruction of the rear portion of the building, as well as a vertical addition, in order to allow for a total of three dwelling units. Bicycle parking spaces would be provided in lieu of off-street vehicular parking spaces.

The project is not seeking any exceptions or variances from the Planning Code. The proposal requires neighborhood notification, pursuant to Section 311 of the Planning Code, which was conducted in conjunction with the Conditional Use Authorization process.

5. **Public Comment.** The Department received neighborhood opposition to the project, in the form of emails leading up to and during public comment at the November 3, 2016. The opposition has been based primarily on the demolition of a seemingly sound building with a significant degree of architectural integrity. A tenant of the subject building also spoke in opposition to the project at the November 3, 2016, hearing, on the basis that she did not receive adequate notice from her landlord and property owner that the building was proposed to be demolished. That tenant has since vacated the premises voluntarily, and the building is now vacant.

In advance of the November 15, 2018, hearing, the Department had received several emails in opposition to the proposed demolition of the existing building, on the basis that it appears to be a structurally sound building with a significant degree of architectural integrity.

6. **Planning Code Compliance:** The Commission finds that the Project, as modified, is consistent with the relevant provisions of the Planning Code in the following manner:
  - A. **Residential Demolition – Section 317.** Pursuant to Planning Code Section 317, Conditional Use Authorization is required for applications proposing to demolish a residential unit in an RH-3 Zoning District. This Code Section establishes criteria that Planning Commission shall consider in the review of applications for Residential Demolition.

*The project, as modified, would be considered tantamount to demolition pursuant to Planning Code Section 317 and therefore requires Conditional Use Authorization. The additional criteria specified under Section 317 have been incorporated as findings in Subsection 8 below.*

- B. **Front Setback Requirement.** Planning Code Section 132 states that the minimum front setback depth shall be based on the average of adjacent properties or a Legislated Setback.

*The subject property abuts along its south side lot line a lot that fronts another street, which for the purposes of calculating the required front setback, is disregarded. The required setback for the subject lot is therefore equal to the front setback of the adjacent building on the north side, which is approximately 1.5 feet. The existing front façade, which is to be retained in the project, as modified, is set back approximately 1.5 from the front lot line. The existing front bay windows project approximately 1.5 feet into the required front setback. These bay windows meet the requirements of Planning Code Section 136(c), which regulates permitted obstructions into yards and over streets.*

- C. **Rear Yard Requirement.** Planning Code Section 134 requires a rear yard equal to 45 percent of the total depth, at grade and above, for properties containing dwelling units in RH-3 Zoning Districts. Planning Code Section 134(c)(1) allows for the reduction in the rear yard requirement to the average between the depths of the rear building walls of the two adjacent buildings. In the case of any lot that abuts along one of its side lot lines upon a lot with a building that fronts on another street or alley, the lot on which it so abuts shall be disregarded, and the forward edge of the required rear yard shall be reduced to a line on the subject lot which is at the depth of the rear building wall of the one adjacent building fronting on the same street or alley.

*The subject property is approximately 112.5 feet in depth and therefore the 45 percent requirement is 50.6 feet. The subject property abuts along its south lot line a building that fronts another street (Hayes Street), therefore, that lot is disregarded in the consideration of a reduction in the rear yard requirement. The subject property abuts along its north lot line a building with a rear yard setback of approximately 38.6 feet. Accordingly, the project, as modified, will provide a matching rear yard of approximately 38.6 feet which complies with the rear yard requirement of the Planning Code. Pursuant to Planning Code Section 136(c)(35), the project, as modified, may include a one-story structure projecting up to 12 feet into the required rear yard, or a two-story structure projecting up to 12 feet into the required rear yard, provided that it is no closer than five feet to any interior side lot line.*

- D. **Useable Open Space.** Planning Code Section 135 requires 100 square feet of useable open space for each dwelling unit if all private, or a total of 400 square feet of common usable open space.

*The Project, as modified, contains three dwelling units. Each unit will have access to common open space in the rear yard in an amount which exceeds the minimum required by Section 135 of the Planning Code.*

- E. **Dwelling Unit Exposure.** Planning Code Section 140 requires that at least one room of all dwelling units face onto a public street or public alley at least 30 feet in width, a side yard at least 25 feet in width, a rear yard meeting the requirements of the Code or other open area that meets minimum requirements for area and horizontal dimensions.

*The three dwelling units in the project, as modified, will have direct exposure onto the public street or Code-complying rear yard.*

- F. **Street Frontages.** Section 144 of the Planning Code requires that no more than one-third of the width of the ground story along the front lot line, or along a street side lot line, or along a building wall that is setback from any such lot line, shall be devoted to entrances to off-street

parking, except that in no event shall a lot be limited by this requirement to a single such entrance of less than ten feet in width.

*The Project, as modified, would not provide off-street vehicular parking.*

- G. **Off-Street Parking.** Planning Code Section 151 requires one parking space for each dwelling unit and a maximum of 150 percent of the required number of spaces where three or more spaces are required.

*The Project, as modified, would not provide off-street vehicular parking. Pursuant to Planning Code Section 150(e), the required off-street vehicular parking would be replaced by the provision of bicycle parking spaces.*

- H. **Bicycle Parking.** Planning Code Section 155.2 requires at least one Class 1 bicycle parking space for each dwelling unit and one Class 2 bicycle parking space for every 20 dwelling units.

*The project requires three Class 1 bicycle parking spaces and no Class 2 bicycle parking spaces. The project, as modified, will provide three Class 1 bicycle parking spaces.*

- I. **Height.** Planning Code Section 260 requires that all structures be no taller than the height prescribed in the subject height and bulk district. For properties in RH-3 Zoning Districts, height is measured at the center of the building starting from curb to a point 40 feet high at the required front setback.

*The existing building has a height of approximately 26.5 feet, as measured from curb to the midpoint of its pitched roof. The project, as modified, will measure a maximum of 40 feet in height.*

- J. **Child Care Requirements for Residential Projects.** Planning Code Section 414A requires that any residential development project that results in at least one net new residential unit shall comply with the imposition of the Residential Child Care Impact Fee requirement.

*The Project, as modified, will create two additional dwelling units on the site. Therefore, the Project is subject to the Residential Child Care Impact Fee and must comply with the requirements outlined in Planning Code Section 414A.*

7. **Planning Code Section 303** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the project, as modified, does comply with said criteria in that:

- A. The proposed new uses and building, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

*Despite the fact that the project, as modified, would be considered tantamount to a demolition of the existing building, it is considered to be necessary and desirable given the increase in the number of dwelling units. The project, as modified, would retain the well-preserved Edwardian façade and would*

*result in a modified building containing a total of three dwelling units. The siting of the building, as modified, will be in conformity with the requirements of the Planning Code and consistent with the objectives of the Residential Design Guidelines.*

- B. The proposed project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:

- i. Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

*The existing massing at the street front is appropriate given the context of the immediate neighborhood and any additions to the modified building will be entirely within the buildable area as prescribed by the Planning Code and Residential Design Guidelines.*

- ii. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;

*The project, as modified, will provide three required Class 1 bicycle parking spaces in lieu of the required off-street vehicular parking spaces.*

- iii. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

*As the project is residential in nature, unlike commercial or industrial uses, the residential uses are not expected to produce noxious or offensive emissions.*

- iv. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;

*The landscaping, usable open spaces, parking area and lighting of the building, as modified, would be compatible with the surrounding neighborhood.*

- C. That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

*The Project, as modified, complies with all relevant requirements and standards of the Planning Code and is consistent with objectives and policies of the General Plan as detailed below.*

- D. That the use as proposed would provide development that is in conformity with the purpose of the applicable Residential District.

*The proposed project, as modified, is consistent with the stated purpose of RH-3 Districts which are devoted to one-family, two-family and three-family houses that are finely scaled and usually do not*

*exceed 25 feet in width or 40 feet in height. Additionally, the project, as modified, is in conformance with the Planning Code requirements for dwellings in RH-3 Zoning District.*

8. **Dwelling Unit Removal.** Section 317 of the Planning Code establishes criteria for the Planning Commission to consider when reviewing applications to demolish or convert Residential Buildings. On balance, the Project does comply with said criteria in that:

- i. Whether the property is free of a history of serious, continuing code violations;

*A review of the Department of Building Inspection and the Planning Department databases showed no enforcement cases or notices of violation for the subject property.*

- ii. Whether the housing has been maintained in a decent, safe, and sanitary condition;

*The existing dwelling appears to be in decent, safe, and sanitary condition with no recent Code violations. Until recently, the subject property has been occupied and no evidence has been provided to suggest that the building is not structurally unsound.*

- iii. Whether the property is an “historical resource” under CEQA;

*Although the existing building is more than 50 years old, a review of supplemental information resulted in a determination that the property is not an historical resource.*

- iv. Whether the removal of the resource will have a substantial adverse impact under CEQA;

*The structure is not an historical resource and although the project, as modified, would be considered tantamount to demolition, will not have a substantial adverse impact.*

- v. Whether the Project converts rental housing to other forms of tenure or occupancy;

*The existing single-family dwelling was being rented until December, 2017 and is currently vacant. The project, as proposed by the project sponsor, included one owner-occupied unit and two new rental dwelling units.*

- vi. Whether the Project removes rental units subject to the Rent Stabilization and Arbitration Ordinance;

*The existing single family dwelling was being rented until December, 2017 and is currently vacant. Although the single-family dwelling is technically subject to the Rent Stabilization and Arbitration Ordinance, the Planning Department cannot definitively determine which aspects of the Ordinance are applicable. The Rent Stabilization and Arbitration Ordinance includes provisions for eviction controls, price controls, and other controls, and it is the purview of the Rent Board to determine which specific controls apply to a building or property.*

- vii. Whether the Project conserves existing housing to preserve cultural and economic neighborhood diversity;

*Although the project, as modified, proposes what would be considered tantamount to the demolition of an existing dwelling, the alteration project will result in three family-sized dwellings, containing more habitable square feet and bedrooms.*

- viii. Whether the Project conserves neighborhood character to preserve neighborhood cultural and economic diversity;

*The project, as modified, conserves neighborhood character with appropriate scale, design, and materials, and improves cultural and economic diversity by constructing three family-sized dwellings that are consistent with the RH-3 Zoning District.*

- ix. Whether the Project protects the relative affordability of existing housing;

*The project, as modified, removes an older dwelling unit, which is generally considered more affordable than more recently constructed units. However, the project, as modified, also results in two additional units, greater habitable floor area, and more bedrooms that contribute positively to the City's housing stock.*

- x. Whether the Project increases the number of permanently affordable units as governed by Section 415;

*The project, as modified, is not subject to the provisions of Planning Code Section 415, as the project proposes fewer than ten units.*

- xi. Whether the Project locates in-fill housing on appropriate sites in established neighborhoods;

*The project, as modified, will be designed to be in keeping with the scale and development pattern of the established neighborhood character.*

- xii. Whether the project increases the number of family-sized units on-site;

*The project, as modified, will provide enhanced opportunities for family-sized housing on-site by constructing three family-sized dwelling units whereas the property currently contains only one family-sized dwelling.*

- xiii. Whether the Project creates new supportive housing;

*The project, as modified, does not create supportive housing.*

- xiv. Whether the Project is of superb architectural and urban design, meeting all relevant design guidelines, to enhance existing neighborhood character;

*The overall scale, design, and materials of the proposed building are consistent with the block-face and compliment the neighborhood character with a traditional design.*

- xv. Whether the Project increases the number of on-site dwelling units;

*The project, as modified, would add two additional dwelling units to the site.*

- xvi. Whether the Project increases the number of on-site bedrooms.

*The existing dwelling contains four bedrooms. The project, as modified, will result in a net increase in the number of bedrooms.*

- xvii. Whether or not the replacement project would maximize density on the subject lot; and,

*The project, as modified, will maximize the allowed density on-site by providing three dwelling units.*

- xviii. If replacing a building not subject to the Residential Rent Stabilization and Arbitration Ordinance, whether the new project replaces all the existing units with new dwelling units of a similar size and with the same number of bedrooms.

*The existing single-family dwelling will be replaced by three slightly smaller dwelling units that may fewer bedrooms in each, but cumulatively would add additional bedrooms to the subject property. The single-family dwelling is subject to the Rent Stabilization and Arbitration Ordinance. The Rent Stabilization and Arbitration Ordinance includes provisions for eviction controls, price controls, and other controls, and the Rent Board is authorized to determine which specific controls apply to a building or property.*

9. **General Plan Compliance.** The Project is, on balance, consistent with the following Objectives and Policies of the General Plan:

## **HOUSING ELEMENT**

### **OBJECTIVE 2:**

**RETAIN EXISTING HOUSING UNITS, AND PROMOTE SAFETY AND MAINTENANCE STANDARDS, WITHOUT JEOPARDIZING AFFORDABILITY.**

#### **Policy 2.1:**

Discourage the demolition of sound existing housing, unless the demolition results in a net increase in affordable housing.

### **OBJECTIVE 3:**

**PROTECT THE AFFORDABILITY OF THE EXISTING HOUSING STOCK, ESPECIALLY RENTAL UNITS.**

#### **Policy 3.1:**

Preserve rental units, especially rent controlled units, to meet the City's affordable housing needs.

#### **Policy 3.3:**

Maintain balance in affordability of existing housing stock by supporting affordable moderate ownership opportunities.

**Policy 3.4:**

Preserve “naturally affordable” housing types, such as smaller and older ownership units.

**OBJECTIVE 11:**

**SUPPORT AND RESPECT THE DIVERSE AND DISTINCT CHARACTER OF SAN FRANCISCO’S NEIGHBORHOODS.**

**Policy 11.1:**

Promote the construction and rehabilitation of well-designed housing that emphasizes beauty, flexibility, and innovative design, and respects existing neighborhood character.

**Policy 11.2:**

Ensure implementation of accepted design standards in project approvals.

**Policy 11.3:**

Ensure growth is accommodated without substantially and adversely impacting existing residential neighborhood character.

**Policy 11.5:**

Ensure densities in established residential areas promote compatibility with prevailing neighborhood character.

**URBAN DESIGN**

**OBJECTIVE 1:**

**EMPHASIS OF THE CHARACTERISTIC PATTERN WHICH GIVES TO THE CITY AND ITS NEIGHBORHOODS AN IMAGE, A SENSE OF PURPOSE, AND A MEANS OF ORIENTATION.**

**Policy 1.2:**

Recognize, protect and reinforce the existing street pattern, especially as it is related topography.

**Policy 1.3:**

Recognize that buildings, when seen together, produce a total effect that characterizes the city and its districts.

*The project, as originally proposed, would have demolished a seemingly sound residential structure containing a four-bedroom single-family dwelling. The project, as modified, will retain the existing front façade of the building and will result in a net increase of family-sized dwelling units.*

*The existing single-family dwelling is currently vacant and is subject to the Rent Stabilization and Arbitration Ordinance. The Rent Stabilization and Arbitration Ordinance includes provisions for eviction controls, price controls, and other controls, and the Rent Board is authorized to determine which specific controls apply to a building or property.*

*The project, as modified, will conform to the Residential Design Guidelines in terms of material, scale, proportions and massing for the surrounding neighborhood, while maintaining general compliance with the requirements of the Planning Code. The project, as modified, will reinforce the existing street pattern as the building's front façade would be retained.*

10. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project does comply with said policies in that:

- A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

*Existing neighborhood-serving retail uses would not be displaced or otherwise adversely affected by the proposal, as the existing building does not contain commercial uses.*

- B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

*The project, as modified, is compatible with the existing housing and neighborhood character of the immediate vicinity. The project proposes a height and scale compatible with the adjacent neighbors and is consistent with the Planning Code, while providing three family-sized dwellings.*

- C. That the City's supply of affordable housing be preserved and enhanced,

*The proposed three-family dwelling adds appropriately scaled and family-sized units to the city's housing stock.*

- D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

*The project, as modified, meets the density, off-street parking and bicycle parking requirements of the Planning Code and is therefore not anticipated to impede transit service or overburden our streets with neighborhood parking.*

- E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

*The project, as modified, will not displace any service or industry establishment. The future ownership of industrial or service sector businesses will not be affected by this project.*

- F. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

*The project, as modified, will be designed and constructed to conform to the structural and seismic safety requirements of the City Building Code. This proposal will not impact the property's ability to withstand an earthquake.*

- G. That landmarks and historic buildings be preserved.

*A landmark or historic building does not occupy the project site.*

- H. That our parks and open space and their access to sunlight and vistas be protected from development.

*The project, as modified, will have no negative impact on existing parks and open spaces.*

11. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.
12. The replacement of a single-family dwelling with a three-unit building is consistent with the Mayor's Executive Directive aimed at delivering at least 5,000 units of new or rehabilitated housing every year for the foreseeable future.
13. The Commission hereby finds that approval of the Conditional Use authorization would promote the health, safety and welfare of the City.

## DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2015-018150CUA** subject to the following conditions attached hereto as "EXHIBIT A".

**APPEAL AND EFFECTIVE DATE OF MOTION:** Any aggrieved person may appeal this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. XXXXX. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

**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 ADOPTED the foregoing Motion on December 6, 2018.

Jonas P. Ionin  
Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: December 6, 2018

## **EXHIBIT A**

### **AUTHORIZATION**

This authorization is for a conditional use to partially demolish all but the front façade of the two-story single-family dwelling located at 137 Clayton Street, Lot 006 in Assessor's Block 1194, within the RH-3 District and a 40-X Height and Bulk District, and construct rear horizontal and vertical additions to add two new dwelling units to the building, pursuant to Planning Code Sections 303 and 317(d) for Case No. 2015-018150CUA and subject to conditions of approval reviewed and approved by the Commission on December 6, 2018 under Motion No XXXXX. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

### **RECORDATION OF CONDITIONS OF APPROVAL**

Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on December 6, 2018 under Motion No XXXXX.

### **PRINTING OF CONDITIONS OF APPROVAL ON PLANS**

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. XXXXX shall be reproduced on the Index Sheet of construction plans submitted with the Site or Building permit application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

### **SEVERABILITY**

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a building permit. "Project Sponsor" shall include any subsequent responsible party.

### **CHANGES AND MODIFICATIONS**

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.

## Conditions of Approval, Compliance, Monitoring, and Reporting

### PERFORMANCE

1. **Validity.** The authorization and right vested by virtue of this action is valid for three (3) years from the effective date of the Motion. The Department of Building Inspection shall have issued a Building Permit or Site Permit to construct the project and/or commence the approved use within this three-year period.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

2. **Expiration and Renewal.** Should a Building or Site Permit be sought after the three (3) year period has lapsed, the project sponsor must seek a renewal of this Authorization by filing an application for an amendment to the original Authorization or a new application for Authorization. Should the project sponsor decline to so file, and decline to withdraw the permit application, the Commission shall conduct a public hearing in order to consider the revocation of the Authorization. Should the Commission not revoke the Authorization following the closure of the public hearing, the Commission shall determine the extension of time for the continued validity of the Authorization.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

3. **Diligent pursuit.** Once a site or Building Permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. Failure to do so shall be grounds for the Commission to consider revoking the approval if more than three (3) years have passed since this Authorization was approved.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

4. **Extension.** All time limits in the preceding three paragraphs may be extended at the discretion of the Zoning Administrator where 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.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

5. **Conformity with Current Law.** No application for Building Permit, Site Permit, or other entitlement shall be approved unless it complies with all applicable provisions of City Codes in effect at the time of such approval.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

### DESIGN

6. **Massing and Design.** The Project Sponsor shall submit to the Planning Department for approval a revised project design meeting the following requirements:

- a. The front façade of the existing building shall be retained in its entirety and shall not be relocated vertically or horizontally and shall not be modified by the inclusion of a garage door;
- b. Horizontal rear additions and/or a vertical addition to the existing building, may be incorporated, consistent with the Residential Design Guidelines;
- c. The revised project shall include a total of three (3) separate residential units, each with at least two (2) bedrooms.

*For information about compliance, contact the Case Planner, Planning Department at 415-575-9087, [www.sf-planning.org](http://www.sf-planning.org)*

7. **Final Materials.** The Project Sponsor shall continue to work with Planning Department on the building design. Final materials, glazing, color, texture, landscaping, and detailing shall be subject to Department staff review and approval. The architectural addenda shall be reviewed and approved by the Planning Department prior to issuance.

*For information about compliance, contact the Case Planner, Planning Department at 415-575-9087, [www.sf-planning.org](http://www.sf-planning.org)*

8. **Garbage, composting and recycling storage.** Space for the collection and storage of garbage, composting, and recycling shall be provided within enclosed areas on the property and clearly labeled and illustrated on the building permit plans. Space for the collection and storage of recyclable and compostable materials that meets the size, location, accessibility and other standards specified by the San Francisco Recycling Program shall be provided at the ground level of the buildings.

*For information about compliance, contact the Case Planner, Planning Department at 415-575-9087, [www.sf-planning.org](http://www.sf-planning.org)*

## PARKING AND TRAFFIC

9. **Bicycle Parking.** The Project shall provide no fewer than three (3) Class 1 bicycle parking spaces as required by Planning Code Sections 155.1 and 155.5.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

10. **Off-Street Parking.** Pursuant to Planning Code Section 150(e), the Project shall provide three (3) Class 1 bicycle parking spaces in lieu of off-street parking spaces.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

## PROVISIONS

11. **Child Care Fee - Residential.** The Project is subject to the Residential Child Care Fee, as applicable, pursuant to Planning Code Section 414A.

*For information about compliance, contact the Case Planner, Planning Department at 415-575-9087, [www.sf-planning.org](http://www.sf-planning.org)*

## MONITORING - AFTER ENTITLEMENT

12. **Enforcement.** Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

13. **Revocation due to Violation of Conditions.** Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and found to be in violation of the Planning Code and/or the specific conditions of approval for the Project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter to consider revocation of this authorization.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

## OPERATION

14. **Garbage, Recycling, and Composting Receptacles.** Garbage, recycling, and compost containers shall be kept within the premises and hidden from public view, and placed outside only when being serviced by the disposal company. Trash shall be contained and disposed of pursuant to garbage and recycling receptacles guidelines set forth by the Department of Public Works.

*For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-.5810, <http://sfdpw.org>*

15. **Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Streets and Sidewalk Maintenance Standards.

*For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, <http://sfdpw.org>*

# Exhibit B:

## Project Sponsor Submittal

Conditional UseHearing  
Case Number 2015-018150CUA  
137 Clayton Street  
Block 1194 Lot 006

# ZACKS, FREEDMAN & PATTERSON

A PROFESSIONAL CORPORATION

235 Montgomery Street, Suite 400  
San Francisco, California 94104  
Telephone (415) 956-8100  
Facsimile (415) 288-9755  
[www.zfplaw.com](http://www.zfplaw.com)

November 26, 2018

## VIA U.S. MAIL AND EMAIL

President Rich Hillis  
San Francisco Planning Commission  
1650 Mission Street, Suite 400  
San Francisco, CA 94103

Re: 137 Clayton Street (Case No. 2015-018150CUA)  
Housing Accountability Act

Dear President Hillis and Planning Commissioners:

Our office represents the owner of 137 Clayton Street, who has applied to replace a single family dwelling with a three-unit apartment building (the "Project"). We write regarding the Planning Commission's draft motion to approve the Project with conditions. Although the draft motion purports to approve the Project, its onerous conditions would constitute a de facto disapproval.

The Project Sponsor's team attempted to redesign the Project to comply with the draft conditions, but we found that **the Commission's conditions would increase the construction cost above the value of the Project – rendering it economically infeasible.** (See attached reports from Mansbach Associates, Inc. and Kearny & O'Banion, Inc. (Lic. # 657757).) In other words, the Project would cost more than it is worth.

California's Housing Accountability Act ("HAA"), Government Code § 65589.5, compels the Commission to approve the Project without conditions that render the Project infeasible. It would be unlawful for the Commission to treat the HAA as an optional guideline or to effectively deny the Project for reasons not specified in the HAA.

At the Project hearings on November 3, 2016, December 1, 2016, February 9, 2016, and September 13, 2018, various Commission members raised objections to the Project. On November 3, the Commission "adopted a motion of intent to disapprove the project on the basis that the proposed demolition of the existing building and construction of a 4-story, three-unit replacement building does not respect the existing neighborhood character, and therefore does not meet the objectives of the General Plan." Disapproving or conditioning the Project based on subjective criteria such as "neighborhood character" would expose the City to significant litigation risk.

While we understand the sentiment behind them, as a matter of law they cannot be used to deny a housing development project under the HAA. After apparently being advised that "neighborhood character" is not a legitimate basis for denial, Planning Staff was directed to

prepare a new motion of intent to disapprove the Project based on dire “health and safety” impacts. These impacts were an obvious subterfuge, and so Planning Staff was directed to prepare the draft motion to approve with conditions – conditions that render the Project infeasible.

It is clearly the Commission’s intent to effectively deny the Project, as it has repeatedly stated such intent and sought – without success – a lawful basis for denial, in blatant violation of the HAA. This new motion is a naked attempt to effectively deny the Project under the guise of an approval with conditions. If it is necessary to litigate, we will seek a judicial determination that the Commission’s action constitutes “bad faith” under Government Code § 65589.5, exposing the City to additional remedies and a multiplication of fines “by a factor of five.”

The Project Sponsor has confirmed that he cannot and will not build the Project if the proposed conditions are imposed because they eliminate the Project’s economic value (especially the garage) while significantly increasing the cost of construction (especially by requiring the preservation of the existing façade).

### **Housing Accountability Act**

The HAA applies to market-rate housing development projects and requires that code-compliant projects be approved. Pursuant to new amendments which took effect on January 1, 2018,<sup>1</sup> the HAA imposes significant limitations on a city’s discretion to deny permits for housing. The HAA requires, inter alia:

When a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project’s application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:

- (1) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct,

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<sup>1</sup> See SB-167 and AB-1515.

and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(Gov't Code § 65589.5(j))

In order to deny the Project, the Commission has the burden of proving that the “proposed project in some manner fail[ed] to comply with ‘applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project’s application [was] determined to be complete. . . ,’” or making the findings required by the HAA. (*Honchariw v. County of Stanislaus* (2011) 200 Cal.App.4th 1066, 1081.) Moreover, a housing development project must be deemed:

. . . consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project . . . is consistent, compliant, or in conformity.

### **The Project is Compliant**

The Project meets all applicable code requirements. It creates three housing units and thus fulfills Objective 1 of San Francisco’s Housing Element, which aims to increase the City’s housing stock by identifying and making available for development “adequate sites to meet the City’s housing needs.” The Project site is an appropriate location for denser development, as proposed by the Project.

The existing house is not a “historical resource” under CEQA, and demolition will have no adverse impact under CEQA (§ 317(g)(5)(C)-(D)). Even if any of the § 317(g)(5) criteria were not met, this cannot be used to deny or condition the Project. These criteria do not function as an “objective standard” for the purposes of the HAA. Rather, the conditional use “criteria” for residential demolition are inherently subjective. To wit, none of the criteria is dispositive; an application may not satisfy any of the criteria, but the Commission may still approve the demolition. This type of requirement is entirely discretionary; it is not an “objective” standard under the HAA. (Gov. Code, § 65589.5(j)(1)). For example, “whether the project conserves neighborhood character to preserve neighborhood cultural and economic diversity” (SFPC §

317(g)(5)(H)) is precisely the type of consideration the HAA exists to override. Put simply, a provision directing the Planning Commission to “consider” certain criteria does not elevate those criteria to the status of “standards” that can be used under the HAA to deny or condition a project.

In short, there is no basis for the Commission to deny or condition the Project. Should the Commission disapprove the Project without making the findings required by the HAA, our client would be entitled to a court order or judgment compelling compliance with the HAA within 60 days. Moreover, San Francisco would be liable for our client’s attorney’s fees and costs. (Gov’t Code § 65589.5(k)(1)(A).) If the City failed to comply with any court order or judgment, the court would additionally impose fines of at least \$10,000 per housing unit. (Gov’t Code § 5589.5(k)(1)(B).)

### **The Project Cannot be Denied for Subjective Reasons**

Throughout the Project hearings, Commission members raised various objections that are not authorized under the HAA. Neighborhood character and subjective design choices are not lawful reasons to deny or condition the Project under the HAA.

In particular, there has been no “specific, adverse impact upon the public health or safety” identified in connection with the Project. Under the HAA, a “‘specific, adverse impact’ means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.” (Gov. Code, § 65589.5(j)(1)(A)) A subjective aesthetic or cultural impact has no bearing on any written public health or safety standard.

The Commission has improperly relied on subjective criteria such as design elements and neighborhood character in its consideration of the Project. The Commission cannot invoke these reasons to deny or condition the Project.

The record clearly establishes the Commission’s unlawful reasons for denying the Project, and the Commission cannot advance retrospective justifications for its decision. Administrative findings are “not supposed to be a post hoc rationalization for a decision already made. To the contrary, findings are supposed to ‘conduce the administrative body to draw legally relevant sub-conclusions supportive of [the Commission’s] ultimate decision . . .’” (Bam, Inc. v. Board of Police Com’rs (1992) 7 Cal.App.4th 1343, 1346, citing Topanga Assn. for a Scenic Community v. County of Los Angeles (1974) 11 Cal.3d 506, 516).

The Commission’s apparent reluctance to follow the HAA does not change the fact that it is bound by the HAA. The HAA and SB-167 were enacted to curtail local agencies’ ability to deny housing development projects. The HAA compels approval of a housing development project if

President Rich Hillis  
November 26, 2018  
Page 5

it “complies with objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the . . . application is determined to be complete.” (Gov’t Code § 65589.5(j).)

### **Conclusion**

We request that the Planning Commission approve the Project, which is compelled by the Housing Accountability Act.

We hope that calling your attention to the Housing Accountability Act and related legislation will help resolve the Project application. Please contact me if you would like to discuss this matter further.

Very truly yours,

ZACKS, FREEDMAN & PATTERSON, PC



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Ryan J. Patterson

CC: John Rahaim, Director  
San Francisco Planning Department  
1650 Mission Street, Suite 400  
San Francisco, CA 94103

Kate Stacy, Deputy City Attorney  
Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Pl.  
San Francisco, CA 94102

Encl.

# **EXHIBIT A**

K E A R N E Y  
& O' B A N I O N  
I N C O R P O R A T E D

November 23<sup>rd</sup>, 2018

Mr. Ryan J. Patterson  
Zacks, Freedman and Patterson, PC.  
235 Montgomery Street  
Suite 400, San Francisco, Ca. 94104

Dear Mr. Patterson,

I have been a general contractor since 1973, first in Baltimore Maryland where I renovated and restored the exterior facades of 18<sup>th</sup> and 19<sup>th</sup> century homes. Upon moving to California in 1975 and receiving a master's degree from the University of California at Davis in 1977, I was hired as an estimator for an architectural firm in San Francisco.

In 1980 I opened Kearney and O'Banion and began a 38 year career restoring, renovating and building period homes primarily San Francisco and the surrounding Bay Area. At one point my firm had one hundred plus employees and self-performed many building trades.

Additionally, during those years I have always been the primary estimator and owner of the firm.

Since 1990 I have been a construction expert giving my opinion on every phase of construction from personal liability to estimating the costs of construction in insurance losses as well as for construction defect cases and for planning reviews.

I have been declared an expert on all phases of construction, current cost analysis and code compliance with housing laws in 48 arbitrations and Superior court trials and acted an expert on hundreds of other cases.

In every case where I am tasked with estimating the current cost of construction I follow my own methodology which I utilized to bid competitively over my entire career as a builder. I have personally estimated over six hundred million dollars' worth of construction and was awarded contracts totally two hundred twenty million in construction contracts over 38 years.

My methodology is simple and very accurate. I develop a scope of work and/or am given a set of plans and a scope of work and then ask local non-union contractors to bid competitively on that scope of work. I usually estimate the demolition, carpentry, punch list, general conditions and overhead and profit myself. I rely on reputable sub-contractors with a known track record to estimate the other trades. I am however well versed enough in current construction costs that by doing a comparative analysis of other projects I am able to quickly come up with a reasonable projected construction cost in a compressed period of time.

That is exactly the methodology I utilized in estimating forward construction costs for 137 Clayton Street in San Francisco. I was able to analyze recent similarly sized projects where I had firm construction costs such as 2722 Folsom Street and 2699 24<sup>th</sup> Street, 874 28<sup>th</sup> Avenue in San Francisco, 1940 Redwood Hill Court in Santa Rosa, California, and 289 South Washington Street in Sonora, California, and projected the forward looking costs of the 137 Clayton Street project 18 months into the future since that is the anticipated start of construction, all the while keeping in mind that my cost estimate includes current market pricing caused by the October 2017 firestorms. The loss of over nine thousand structures last year has caused construction and insurance costs to have risen forty percent or more.

I have not factored in the potential loss of another ten thousand structures in both northern and southern California in the past month since those losses haven't affected the market yet, but certainly could in the near future.

Our estimate is for the means and methods commonly used to construct buildings of similar type in San Francisco.

Please find my current resume attached along with my cost estimate.

Sincerely,

A handwritten signature in black ink, appearing to read "KM Kearney". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Kevin M. Kearney  
President of Kearney & O'Banion Inc.  
405 East D Street  
Suite G  
Petaluma, California 94952

**Kevin M. Kearney**

**2121 3<sup>rd</sup> Street Suite 501, San Francisco, CA 94107**

Tel: 415.819.1157 [Kevin@kearneyobanion.com](mailto:Kevin@kearneyobanion.com)

## **SUMMARY OF EXPERIENCE**

Mr. Kearney has over 40 years of construction and construction consulting experience. As the Founder/President of Kearney & O'Banion, Inc., Mr. Kearney has developed his business by specializing in the design-build, renovation and restoration of premier homes and commercial properties primarily in the San Francisco region and surrounding Bay Area. Under his direction, the business has grown exponentially and has generated revenues in excess of \$200 million. A very well-rounded businessman, he also is directly involved with all facets of the business by overseeing other duties such as marketing and sales efforts, developing and presenting proposals with cost estimates, contract negotiations, pre-construction consulting, and design and project management services.

Mr. Kearney's experience also extends to work off the construction site and in the courtroom, and has served as an Independent Expert Witness for over twenty years. He has provided expert testimony for both the plaintiff and the defense, and is knowledgeable in all facets of building construction, both commercial and residential. Specifically, his testimony has dealt with many complex topics including safety standards, specification deviation analysis, general construction defects, damage calculations and design remediation for cases pertaining to projects in the San Francisco Bay Area.

## **SIGNIFICANT VERDICTS**

- 2017 Acted as an expert and testified in San Francisco Superior Court in CASE #CGC15-545655 Duncan / Mendoza vs. Anne Kihagi / Swain. Judge Chen (plaintiff)
- 2017 Acted as an expert and testified for the law firm of Robbins / Wood LLP in the case of ENA North Beach Inc. vs. 524 Union Street. San Francisco Superior Court case CGC-15-547922, Judge Ulmer. (defense)
- 2016 Acted as an expert witness and testified for law firm of Grunsky Law Group, Watsonville, California in the case of CSAA Insurance Company vs. Premier Restoration. San Francisco Superior Court, Judge Lynn O'Malley Taylor (plaintiff)
- 2016 Acted as legal expert and testified for the Hooshmand Law Group, San Francisco, California in the case of Bristol Hotel, 56 Mason Street. David Jaranillo vs. Balwantsinh Thakor San Francisco Superior Court, Judge Angela Broadstreet. (plaintiff)

- 2009 – 2010 Acted as an expert witness in a construction defect and cost analysis in the case of Sangiacomo vs. Cunningham: for the law firm of Archer Norris. [Judge Wiley: SF Superior Court]. (plaintiff)
- 1998 – 2000 Expert witness in Lombard Income Partners vs. Tenants Association in San Francisco. San Francisco Residential Rent Stabilization & Arbitration Board concerning the largest pass through of capital improvements for the law firm of Aune & Associates. (defense)

## **PROFESSIONAL EXPERIENCE**

### **1980 – Present, Kearney & O’Banion, Inc.**

President/RMO. Oversee the day to day operations of the general contracting firm. Coordinate and resolve issues which come up from time to time. Assist with the design and/or building of homes. Responsible for marketing, advertising, sales as well as estimating projects and project coordinator.

### **1990 – Present, Independent Expert Witness**

Defense/Plaintiff Witness. Provides expert testimony in relation to all facets of building construction, both commercial and residential. General Class B construction defects, damage calculations and design remediation for cases pertaining to projects in the San Francisco Bay Area.

### **2001 – Present, Promia, Inc.**

Member, Board of Directors. Serve on the Board of Directors for PROMIA, an established development firm and software provider for cyber security. Company specializes in providing solutions designed to support highly secure, reliable, scalable and interoperable business applications for large corporations. Current customers are the U.S. Navy, National Security Agency as well as a number of Fortune 500 companies.

### **2008 – 2009, Public Media Works, Inc. (PMW)**

Member, Board of Directors. Serves on the Board of Directors for PMW. PMW is unique in the world of publicly traded companies operating in the diversified entertainment segment. Managed by a team of working filmmakers, entertainment industry professionals and seasoned technologists, the company brings together the golden age of film and the new age of the web by identifying untapped resources of talent and content and massaging those elements into professional entertainment products.

2012 – 2013, **Sugarmade, Inc. (SGMD)**

Member, Board of Directors a publicly traded treeless paper company distributed through major retailers throughout the United States.

2012 – 2017, **LEDCO**

CEO, Board of Directors a publicly traded company that distributed LED products.

## **EDUCATION**

**University of California, Davis, MFA, Magna Cum Laude, May 1977**

**Maryland Institute College of Art, Cum Laude, 1974**

### **CA State Contractor's License Board:**

B General Contractor's License #391928 (1980)

B General Contractor's License #657757 (1992)

## **CONSTRUCTION MANAGEMENT:**

- 2013 Acted as construction manager for 701 Congo Street, San Francisco, CA for the 701 Congo LLC
- 2012 Acted as construction manager for General Hydroponics, Santa Rosa, CA
- 2012 Acted as construction manager at 729 Congo Street, San Francisco, CA for the 729 Congo LLC
- 2011 – 2015 Acting as construction manager for Redwood Hill Farm and Creamery, Sebastopol CA in the case of RWHF&C Inc. vs. One Sun, Inc. and Advanced Roofing: Sonoma County Superior Court.
- 2011 – 2016 Acting as the construction manager for TCC Union Square for the sidewalk restoration at 450 Post Street (a Gothic inspired 1924 era 15 story building clad in Terra Cotta) at 450 Post Street in downtown San Francisco
- 2011 – 2012 Acted as construction manager for Seascape Village in Novato, CA; a large condominium complex where we are replacing the original shingle siding with Hardi-Shingles.
- 2011 – 2016 Acted as construction manager for the Mandarin Tower HOA; a 16 story commercial/condominium complex in San Francisco's Chinatown

- 2011 – 2012 Acted as construction manager for the HOA at 1150 Lombard Street, San Francisco, CA
- 2010 Acted as construction manager for Saarman Construction; Leavenworth Street, San Francisco, CA
- 2009 - 2013 Acted as construction manager for the HOA at the 210-unit condominium complex at 101 Lombard Street, San Francisco, CA

**TRIAL, ARBITRATION AND MEDIATION TESTIMONY:**

- 2018 Acted as an expert and testified for Hooshmand Law Group in Pennypacker vs. Dennis Yuen Case; CGC – 16 – 555507 San Francisco, Superior Court Judge Anne Christine Massullo (plaintiff)
- 2018 Acted as an expert and testified for Arilaw LLP and testified in Yamen Eltawil vs. Thakor, et all. Case; CGC – 16 – 552571 San Francisco Superior Court Judge Gail Dekreon (plaintiff)
- 2018 Acted as an expert and testified for the Hooshmand Law Group in Troung vs. Wu case: CGC – 17 – 552571 San Francisco Superior Court Judge Ronald E. Quidachay (plaintiff)
- 2017 Acted as an expert and testified in San Francisco Superior Court in CASE #CGC15-545655 Dunchan / Mendoza vs. Anne Kihagi / Swain. Judge Chen (plaintiff)
- 2017 Acted as an expert and testified for the law firm of Robbins / Wood LLP in the case of ENA North Beach Inc. vs. 524 Union Street. San Francisco Superior Court case CGC-15-547922, Judge Ulmer. (defense)
- 2017 Testified in San Francisco Superior Court for Hooshmand Law Group in Reynolds vs. Lau with Judge James Robertson II (defense)
- 2016 Acted as an expert witness and testified for law firm of Grunsky Law Group, Watsonville, California in the case of CSAA Insurance Company vs. Premier Restoration. San Francisco Superior Court, Judge Lynn O’Malley Taylor. (plaintiff)
- 2016 Acted as legal expert and testified for the Hooshmand Law Group, San Francisco, California in the case of Bristol Hotel, 56 Mason Street. David Jaranillo vs. Balwantsinh Thakor San Francisco Superior Court, Judge Angela Broadstreet. (plaintiff)
- 2016 Acted as an expert witness and testified in Alameda County Court for Trinh Law Firm, San Jose, California in the case of D. B. Lin Construction vs. Wang et al, Judge McGuiness, HG15768198 (defense)

- 2016 Acted as an expert and testified at mediation for law firm of Goldstein, Gellman, Doyle vs. Fong: San Francisco Superior Court. (plaintiff)
- 2016 Acted as a legal expert and testified in court for law firm of Goldstein, Gellman, Doyle. Henderson vs. Karpfinger: San Francisco Superior Court, Judge Ulmer Case No CGC-15-546542. (plaintiff)
- 2016 Acted as a legal expert and testified at arbitration at Ashbury General Construction and Engineering and Kever Born vs. Chris Culp and Grove Street Investments; San Francisco Superior Court, Arbitrator Honorable Richard Silver (retired) case #1110018550 (defense)
- 2015 Acted as an expert and testified in San Francisco Superior Court, Judge Richard Ulmer Jr. for Anderson vs. Aquilina for Hooshmand Law Group. (plaintiff)
- 2015 Acted as an expert and testified in San Francisco Superior Court for the Hooshmand Law Group in Deaton [CGC-13-533822: Judge Peter Busch]. (plaintiff)
- 2015 Acted as an expert and testified in San Francisco Superior Court for the Hooshmand Law Group in Phillips Hotel [CGC-14-536744: Judge Richard Ulmer]. (plaintiff)
- 2015 Acted as an expert and testified in San Francisco Superior Court for the Hooshmand Law Group in Qualye Cases [CGC-14-542913, CGC-14-542997 and CGC-14-543055: Judge Lynn O'Malley Taylor]. (plaintiff)
- 2014 Cathedral Hill Appeal: acted as a legal expert and testified in San Francisco Superior Court for the law firm of Aune & Associates (defense)/(plaintiff)
- 2014 Acted as expert witness and testified for Hooshmand Law Group in lawsuit forcing California landlords to uphold the laws on affordable housing 2450 Octavia Street, Deaton Fire Case [San Francisco Superior Court: Judge Bush]. (plaintiff)
- 2013 – 2014 Acted as a legal expert and testified in San Francisco Superior Court at arbitration for Hooshmand Law Group in the case of Tenants v Balwantsenh 56 Mason, San Francisco Superior Court. (plaintiff)
- 2013 – 2014 Acted as a legal expert and testified at arbitration for the law firm of Goldstein, Gellman, Melbostad & McSparran LLP in the case of Galasco vs. McIlvanna 215 Kenwood Way, San Francisco Superior Court. (defense)
- 2013 Acted as the legal expert and testified at arbitration for the law firm of Abbey, Weitzenberg, Warren and Emery on the investigation of Fitch Mountain Elementary School vs Wright Construction: Sonoma Superior Court. (plaintiff)
- 2013 Acted as legal expert and testified in court in Monterey Superior Court in AMCO Insurance Company vs. Fancher Monterey, Inc dba Quizno's for the Cole Law Firm and Spiering, Swartz and Kennedy in the Alvarado Street Fire. Monterey, CA M8899. (plaintiff)

- 2013 – 2014 Acted as a legal expert and testified in San Francisco Superior Court for Hooshmand Law Group in the case of Tenants v Auburn Hotel, San Francisco Superior Court. (plaintiff)
- 2012 Acted as the legal expert and testified at arbitration for the law firm of Goldstein, Gellman, Melbostad, Harris and McSparran LLP in the case of Grady vs. Lanyadoo: San Francisco Superior Court. (defense)
- 2012 – 2013 Acted as the legal expert and testified at arbitration for the law firm of Sedgwick LLP in the case of Moody vs. Vincent Construction, San Francisco Superior Court. (defense)
- 2011 – 2012 Acted as a legal expert and testified at arbitration for the law firm of Freeman and Freeman in the case of Cheney vs. Pacific Mountain Partners: Sonoma County Superior Court. (plaintiff)
- 2011 – 2012 Acted as a legal expert and testified at mediation for the law firm of Freeman & Freeman in the construction defect case Miller v. Angel et al. CV-407944: Lake County Superior Court. (plaintiff)
- 2011 – 2012 Acted as a legal expert and testified at mediation for the law firm of Archer-Norris in the case of Olympus-Calistoga LLC v Taise Construction Corp #26-40553: Napa County Superior Court. (defense)
- 2011 – 2013 Acted as a legal expert and testified at arbitration for the law firm of Donald L. Lipmanson: Redwood Hill Farm and Creamery, Inc. vs. One Sun, Inc and Advanced Roofing, Sonoma County Superior Court. (plaintiff)
- 2011 – 2012 Acted as legal expert and testified at mediation for the law firm of Abbey, Weitzenberg, Warren and Emery in the Curtis Holding Co. vs. Carter Construction Company: Lake County Superior Court. (plaintiff)
- 2010 – 2011 Acted as legal expert and testified at mediation for the law firm of Abbey, Weitzenberg, Warren and Emery in the McCarty vs. Kingsborough Atlas Tree Surgery, Inc et al. Sonoma County Superior Court case no. SCV247187. (plaintiff)
- 2010 – 2011 Acting as an expert witness in a construction defect and cost analysis in the case of Cederwell/Barrager Matter for the law firm of Allen Matkins. [Judge Mason: SF Superior Court]. (plaintiff)
- 2009 – 2010 Acted as an expert witness and testified in court for a construction defect and cost analysis in the case of Sangiacomo vs Cunningham: for the law firm of Archer Norris. [Judge Wiley: San Francisco Superior Court]. (plaintiff)
- 2008 Acted as an expert witness and testified at mediation in construction defect and cost analysis in the case of Weinman vs. Handlen for the law firm of Robert Aune and Associates. [Mediator; Gary Raghiani]. (plaintiff)

- 2008 Acted as an expert witness and testified in court for code enforcements in the case of Cathedral Hill Condominium Associates vs. Lisa Garber for the law firm of Aune & Associates [Judge John Stewart: San Francisco Superior Court]. (plaintiff)
- 2007 Acted as an expert witness and testified in court to develop a cost analysis in the case and trial of Sawicki vs. Degnan (Marin County Superior Court) for Joel Haverson Esq. (defense)
- 2006 Acted as an expert witness and testified at arbitration in construction defect and cost analysis for the law firm of Sedgwick, Detert, Moran & Arnold, LLP in the case of Saarman vs. Smiriga. (defense)
- 2004 Acted as an expert witness and testified in court for a construction defect and cost analysis case for the law firm of Maciel & Segovia in the law suit of Segovia vs. Bach CGC 04428834 [Judge Goldsmith: San Francisco Superior Court]. (plaintiff)
- 2000 – 2002 Acted as an expert witness and testified at arbitration in the case of Saal vs. Nonella Construction for the law firm of Aune & Associates. (plaintiff)
- 1998 – 2000 Acted as expert witness and testified at the San Francisco Rent Board in Lombard Income Partners vs. Tenants Association in San Francisco Rent Board hearing concerning pass through of capital improvements for the law firm of Aune & Associates. (defense)
- 1993 Investigated construction defects in a renovation of a home in Palo Alto, CA. Completed remedial work and acted as an expert witness and testified in court in the trial of Goldworth vs. Seito in San Mateo, CA [San Mateo Superior Court]. (plaintiff)
- 1992 Acted as expert witness and testified (San Francisco Superior Court) in the trial of Ali Ghanbarian vs. Doctor Winkie for the law firm of Robert DeVries, San Francisco, CA (defense).

**LEGAL EXPERT CASES:**

- 2018 Acted as an expert for the Hooshmand Law Group in the case of Xiao Zhen Wu vs. Karol Naverrette and Louis Hernandez case: CUD – 17 – 657946 San Francisco Superior Court Judge Ronald E. Quidachay
- 2016 Acted as an expert for the Hooshmand Law Group for the case of Reynolds vs. Lau
- 2016 Acted as an expert for the Hooshmand Law Group for the case of Torres vs. Xiang, 128 Bartlett, San Francisco, California
- 2016 Acted as a legal expert for Hooshmand Law Group for the case of Scott vs. Phillips, 1618 King Street, Santa Cruz, California

- 2015 Acted as expert for the law firm of Law Offices of Gene J. Goldsman, Santa Ana Boone v Hastings Sacramento
- 2015 Confidential Defense for the law firm of Rothschild, Wishek and Sands LLP
- 2014 – 2015 Acting as a legal expert for the law firm of Abbey, Weitzenberg, Warren and Emery, Hays v Total Concepts Construction
- 2014 Acting as a legal expert in a person injury case for the law firm of Joseph W. Campbell, Carpizo v KB Homes
- 2014 Acted as a legal expert for the law firm Clement, Fitzpatrick & Kenworthy in the Kosta matter
- 2014 Acted as a legal expert for the law firm Penney & Associates in the case of Wiseman personal injury, Marin County Superior Court
- 2013 I have acted as an expert on numerous tenant lawsuits for the Hooshmand Law Group:
- 2015 1219 El Camino Real, Burlingame, CA
  - 258 38<sup>th</sup> Avenue, San Francisco, CA
  - 56 Mason Street, San Francisco, CA (2<sup>nd</sup> case)
  - 3875 Castro Valley Blvd
  - 2014 Civic Center Hotel, 20 12<sup>th</sup> Street, San Francisco, CA
  - 445 O'Farrell Street, San Francisco, CA
  - 710 Ellis Street, San Francisco, CA
  - 3440 Redwood Court, Castro Valley, CA
  - 3154 26<sup>th</sup> Street, San Francisco, CA
  - 2440 Bryant Street, San Francisco, CA
  - 500 Holloway Street, San Francisco, CA
  - 1139 Market Street, San Francisco, CA
  - 756 Valencia Street, San Francisco, CA
  - 5825 Keith Avenue, San Francisco, CA
  - 4240 Irving Street, San Francisco, CA
  - 1443 Underwood Avenue, San Francisco, CA
  - 3855 San Bruno Avenue, San Francisco, CA
  - Phillips Hotel, 22 Battery Street, San Francisco, CA
  - 201-205 9<sup>th</sup> Street, San Francisco, CA
  - 2311 32<sup>nd</sup> Avenue, San Francisco, CA
  - 3562-3550 San Bruno Avenue, San Francisco, CA
  - 1223 El Camino Real, Burlingame, CA
  - 80 Pacheco Street, San Francisco, CA

- 2013 – 2014 Acted as a legal expert for the law firm Morris, Polich and Purdy and Wild, Carrey and Fife in the case of Pomo Indians vs Acco, San Francisco Superior Court
- 2013 Acted as a legal expert by the law firm of Ethan A. Gaubiger in the case of Phillips vs. Kenny: Sonoma County Superior Court. Also:  
2014 – present Zibinsky matter
- 2011 – 2012 Acted as a legal expert for the law firm of Aune and Associates on the investigation of construction defects at 1150 Lombard Street, San Francisco, CA
- 2011 – 2012 Acted as a legal expert for the law firm of Abbey, Weitzenberg, Warren and Emery on the investigation of construction defects for the Green Valley Vista HOA, Sebastopol, CA
- 2011 – 2012 Acted as a legal expert for the law firm of Nardell Chitsaz & Associates on the construction defect case of Kuebler/Babler, Cloverdale, CA:  
Sonoma County Superior Court
- 2011 – 2012 Acted as a legal expert for the law firm of Aune and Associated on the investigation of construction defects at 3326 California Street HOA, San Francisco, CA
- 2010 Acted as an expert for cost analysis for the Denmark Subdivision, Sonoma, CA for attorneys Matthew A. Crosby and Edward C. McDonald (defense)
- 2010 Acted as a legal expert on the TCC Union Square vs. Elks Building Association for the law firm of Aune & Associates that involved the restoration of the 3<sup>rd</sup> floor balcony (a Gothic inspired 1924 era 15 story building clad in Terra Cotta Francisco) at 450 Post Street in down San Francisco, CA
- 2010 – 2011 Acted as a legal expert in Smith vs. Metcalf for Danmeier Architects.
- 2010 Acted as an expert witness in the Keon vs Carlson matter
- 2009 – 2011 Acted as an expert witness in a construction defect and cost analysis in the case of Cederwell/Barrager (defense) Matter for the law firm of Reed Smith
- 2009 – 2011 Acted as an expert witness in a construction defect and cost analysis in the case of Baus matter for the law firm of Aune & Associates
- 2009 Acted as an expert witness in a construction defect and cost analysis in the case of Isabelle King for the law firm of John Sharp.
- 2009 – 2011 Acted as an expert witness in a construction defect and cost analysis in the case of Susan Baldini vs. 101 Lombard Street Condominium Association for the law firm of Aune & Associates. (defense)
- 2009 Acted as an expert witness in a construction defect and cost analysis in the case of Song vs. Bettencourt for the law firm of Clint Johnson and Associates.

- 2009 – 2010 Acted as an expert witness in a construction defect and cost analysis in the case of Botello vs. Progressive Builders for the architectural firm of Danmeier Architects
- 2008 Acted as an expert witness in construction defect in the case of Tilton vs. Coulter for the law firm of Gordon and Reese LLP (defense)
- 2007 Acted as an expert witness in cost analysis in the case of Peak Attraction vs. Bubba Gump Restaurants for the law firm of Daniel Crowley & Associates (defense)
- 2007 Acted as an expert witness in construction defect in the case of Mr. Jim Neidel vs. Mario Trejo for the law firm of Sheppard-Rosen Law Firm, LLP
- 2007 Acted as an expert witness in the construction defect case for the law firm of Sheppard/Rosen in the case of Awe vs. Spark Art, Inc.
- 2006 Acted as expert witness in construction defect case for the law offices of Joel D. Breier (defense)
- 2003 Acted as expert witness for the law firm of Davidovitz & Bennett in mediation of Teffeth vs. Flanagan
- 2003 Acted as expert witness in the case of Saal vs. Nonella Construction for Burnham & Brown, attorneys for the Saal's Insurance Company.
- 2001 Acted as expert witness for the law firm of Conner/Bak in the Remuda Partners mediation
- 1995 Acted as an expert witness at the Schooler arbitration for the law firm of Daron Tong in San Francisco, CA (defense)



November 23<sup>rd</sup>, 2018  
Mr. Ryan J. Patterson  
Zacks, Freedman and Patterson, PC.  
235 Montgomery Street  
Suite 400, San Francisco, Ca. 94104

Re: 137 Clayton Street San Francisco, Ca. - Construction estimate based on walk through on 11/19/18 by KMK and drawings by per architectural plans provided by SLA Architects dated 10/29/18 pages A-2.0, A-2.1, A-2.2, A-2.3 and A-2.4 to comply with the Planning Commission's draft motion dated November 5<sup>th</sup>, 2018.

1. Obtain proper building permits from the SFDBI to complete the following scope of work.
2. Develop engineering and architectural drawings and permits.
3. Strip interior walls of the front façade down to the studs including the underside of front entrance. Attach ¾" plywood to three story interior of façade. Excavate and pour new footings for a three story Moment Frame out of structural steel. Attach the front façade and entry to the three story moment frame so that it can be salvaged in original condition. This work must be designed by a structural engineer and permitted. Allowance subject to final approved architectural and engineering plans.
4. Abate the lead paint and asbestos throughout rest of building prior to and during demolition.
5. Demolish and haul away the entire rest of the structure.
6. Excavate and pour a new foundation and stem walls including a seismic retrofit of foundation for front façade.
7. Frame the new building including adding seismic hardware and tying front existing façade into new building.
8. Roofing [flat roof], waterproofing decks and eyebrows and gutters and downspouts and sheet metal.
9. Sprinkler plans and installation throughout.
10. Plumbing for three kitchens and 6 baths and gas throughout units
11. Electrical: Provide 3 phase 400 amps service and 3 125 amp subpanels and one house panel. Wire building and provide lighting.
12. Structural steel allowance
13. Exterior Doors and Windows [Sierra Pacific]
14. Interior trim, interior doors, window and door casing, base board
15. Insulation
16. Cabinets and countertops 3 kitchen and 6 bathrooms
17. Appliances [GE and above average appliances]
18. HVAC three separate forced air systems and sheet metal for hoods and bath fans

19. Drywall Level 5
20. Exterior siding to match front façade.
21. Interior Tile
22. Interior painting
23. Exterior painting
24. Interior staircase
25. Rear stairs and decks
26. Interior Hardwood: Quarter sawn oak and carpeting in bedrooms
27. Pick-up carpentry and miscellaneous labor

Allowances subject to final approved plans

1. Permit and plan check allowance.	\$65,000.00
2. Engineering and architectural fees allowance	\$375,000.00
3. Shoring and salvaging front façade allowance	\$125,000.00
4. Lead paint and asbestos abatement & demolition including protocols	\$24,000.00
5. Demolition and removal of balance of building.	\$85,000.00
6. Excavation and new foundation for entire existing and new structure	\$375,000.00
7. Framing and seismic hardware installation	\$385,000.00
8. Roofing, waterproofing, sheet metal, gutter and downspouts allowance	\$35,000.00
9. Sprinkler plans and installation. Assumes 80 heads and 20K water meter	\$85,000.00
10. Plumbing including a fixture allowance of 45,000.00 and gas	\$225,000.00
11. Electrical including fixtures	\$235,000.00
12. Structural Steel	\$95,000.00
13. Exterior Doors and windows	\$110,000.00
14. Interior trim including doors	\$175,000.00
15. Insulation: spray foam and batts as required	\$36,000.00
16. Cabinets and countertops	\$138,000.00
17. Appliances	\$65,000.00
18. HVAC	\$115,000.00
19. Drywall	84,500.00
20. Exterior Hardi siding and trim to match existing	\$295,000.00
21. Interior tile [six bathrooms]	\$58,000.00
22. Interior Painting	\$75,000.00
23. Exterior painting	\$53,000.00
24. Interior staircase	\$120,000.00
25. Rear stairs and three story decks	\$90,000.00
26. Interior hardwood and carpets	\$95,000.00
27. Pick-up carpentry and miscellaneous labor	\$60,000.00
28. Subtotal	<b>\$3,678,500.00</b>

29. General Conditions

Project management 2560 hours @ \$175 per hour: \$448,000

Dumpsters: 40 @ \$750: \$30,000

General labor: traffic control, unload trucks etc. 1970 hours @ \$67.50 per hour:  
\$132,975.00

General materials and tool rentals: \$25,000

Street space permits allowance: \$10,000	
Port-o-potty and office rental and internet 18 months @ 1500: \$27,000	
Subtotal	<b>540,132.00</b>
<b>10% over head</b>	<b>\$421,863.20</b>
<b>8% profit</b>	<b>\$371,239.62</b>
<b>2% Liability Insurance</b>	<b>\$100,234.70</b>
<b>Total</b>	<b>\$5,111,969.52</b>

**Note: Construction of this type of building in San Francisco currently costs between \$1,000 and \$1,500 per square foot depending upon many factors and design criteria. This estimate anticipates a cost of \$5,111,969.52 which is \$1,278.00 per square foot including soft costs, which is based on maximizing the square footage allowed and is within the expected range.**



**Kevin M. Kearney**  
**President Kearney and O'Banion Inc**



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Draft Motion

HEARING DATE: NOVEMBER 15, 2018

CONTINUED FROM: SEPTEMBER 13, 2018

*Date:* November 5, 2018  
*Case No.:* **2015-018150CUA**  
*Project Address:* **137 CLAYTON STREET**  
*Zoning:* RH-3 (Residential, House - Three-Family)  
40-X Height and Bulk District  
*Block/Lot:* 1194 / 006  
*Project Sponsor:* Jeremy Schaub, Schaub Ly Architects  
1360 9<sup>th</sup> Avenue  
San Francisco, CA 94122  
*Staff Contact:* Christopher May – (415) 575-9087  
[christopher.may@sfgov.org](mailto:christopher.may@sfgov.org)

1650 Mission St.  
Suite 400  
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**415.558.6377**

**ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO PLANNING CODE SECTIONS 303 AND 317 TO CONSTRUCT ADDITIONS TO AN EXISTING TWO-STORY, SINGLE-FAMILY DWELLING RESULTING IN A NEW 3-UNIT BUILDING WITHIN THE RH-3 (RESIDENTIAL, HOUSE – THREE-FAMILY) DISTRICT AND A 40-X HEIGHT AND BULK DISTRICT, AND ADOPTING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.**

### PREAMBLE

On June 1, 2016, Jeremy Schaub (hereinafter “Project Sponsor”) filed an application with the Planning Department (hereinafter “Department”) for a Conditional Use Authorization under Planning Code Sections 303 and 317 to demolish an existing two-story, single-family dwelling and construct a new four-story, 3-unit building (hereinafter “Project”) within the RH-3 (Residential, House – Three-Family) Zoning District and 40-X Height and Bulk District.

On June 26, 2016, the Project was determined to be exempt from the California Environmental Quality Act (“CEQA”) as a Class 1 and Class 3 Categorical Exemption under CEQA, as described in the determination contained in the Planning Department files for this Project. During the CEQA review, it was determined that the subject building is not a historic resource.

On November 3, 2016, the San Francisco Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2015-018150CUA. The Commission moved an intent to disapprove the project on the basis that the proposed demolition of the existing building and construction of a 4-story, three-unit replacement building did not meet the objectives of the General Plan. After hearing and closing public comment, the Commission indicated its intent to disapprove the project and continued the item to December 1, 2016, to allow Planning staff an opportunity to prepare a draft motion of disapproval.

On December 1, 2016, the Commission further continued Conditional Use Application No. 2015-018150CUA, to a hearing on February 9, 2017.

On February 9, 2017, the project sponsor requested an indefinite continuance of Conditional Use Application No. 2015-018150CUA.

On September 13, 2018, the Commission reconsidered the original proposal and continued the item to November 15, 2018, directing the project sponsor to return with a modified project that would retain the existing façade of the building.

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.

**MOVED**, that the Commission hereby authorizes the Conditional Use requested in Application No. 2015-018150CUA, subject to the conditions contained in “EXHIBIT A” of this motion, based on the following findings:

## **FINDINGS**

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** The project is located on the west side of Clayton Street, between Grove Street and Hayes Street, Lot 006 in Assessor’s Block 1194. The property is located within the RH-3 (Residential, House – Three-Family) District and a 40-X Height and Bulk District. The subject property has approximately 25 feet of frontage on Clayton Street and is approximately 112.5 feet deep. The property is mostly flat and is currently occupied by a two-story, single-family dwelling constructed circa 1908, which covers approximately 42% of the lot.
3. **Surrounding Properties and Neighborhood.** The project site is located midblock between Grove Street and Hayes Street in the Haight Ashbury neighborhood, north of the Panhandle and south of the University of San Francisco campus. The subject site is located in an RH-3 District and is surrounded primarily by two- and three-family dwellings ranging in height from three to four stories. Immediately adjacent to the subject property to the north is a three-and-a-half story, three-family dwelling and immediately to the south, at the northwest corner of Clayton Street and Hayes Street, is a three-story, 4-unit residential building. Also directly south of the subject property is the Asian American Recovery Services outpatient facility located in adjacent one- and two-story buildings fronting onto Hayes Street. Directly across the street are a three-story, single-family dwelling and a four-story, six-unit residential building. Immediately behind and to the west of the subject property is the New Traditions Elementary School. While the portion of Grove Street near the subject property is within the RM-1 (Residential – Mixed, Low-Density) District, the majority of the surrounding neighborhood is within the RH-3 (Residential, House – Three-

Family) District. The subject property is also within .25-miles of stops for the 7X – Noriega Express, 21 – Hayes, and 43 – Masonic MUNI transit lines.

4. **Project Description.** The project proposed by the project sponsor included the demolition of the existing two-story, single-family dwelling and the construction of a four-story, 40-foot tall, three-family residential building. Located on separate floors, the three units would range in size from approximately 1,220 square feet to 1,411 square feet and would each have three bedrooms and two bathrooms. Three independently accessible off-street parking spaces and three Class 1 bicycle parking spaces, one for each unit, are proposed in the garage on the ground floor.

The modified project approved by the Commission would require the retention of the front façade of the existing building and would permit the partial demolition and reconstruction of the rear portion of the building, as well as a vertical addition, in order to allow for a total of three dwelling units. Bicycle parking spaces would be provided in lieu of off-street vehicular parking spaces.

The project is not seeking any exceptions or variances from the Planning Code. The proposal requires neighborhood notification, pursuant to Section 311 of the Planning Code, which was conducted in conjunction with the Conditional Use Authorization process.

5. **Public Comment.** The Department received neighborhood opposition to the project, in the form of emails leading up to and during public comment at the November 3, 2016. The opposition has been based primarily on the demolition of a seemingly sound building with a significant degree of architectural integrity. A tenant of the subject building also spoke in opposition to the project at the November 3, 2016, hearing, on the basis that she did not receive adequate notice from her landlord and property owner that the building was proposed to be demolished. That tenant has since vacated the premises voluntarily, and the building is now vacant.

In advance of the November 15, 2018, hearing, the Department had received several emails in opposition to the proposed demolition of the existing building, on the basis that it appears to be a structurally sound building with a significant degree of architectural integrity.

6. **Planning Code Compliance:** The Commission finds that the Project, as modified, is consistent with the relevant provisions of the Planning Code in the following manner:
  - A. **Residential Demolition – Section 317.** Pursuant to Planning Code Section 317, Conditional Use Authorization is required for applications proposing to demolish a residential unit in an RH-3 Zoning District. This Code Section establishes criteria that Planning Commission shall consider in the review of applications for Residential Demolition.

*The project, as modified, would be considered tantamount to demolition pursuant to Planning Code Section 317 and therefore requires Conditional Use Authorization. The additional criteria specified under Section 317 have been incorporated as findings in Subsection 8 below.*

- B. **Front Setback Requirement.** Planning Code Section 132 states that the minimum front setback depth shall be based on the average of adjacent properties or a Legislated Setback.

*The subject property abuts along its south side lot line a lot that fronts another street, which for the purposes of calculating the required front setback, is disregarded. The required setback for the subject lot is therefore equal to the front setback of the adjacent building on the north side, which is approximately 1.5 feet. The existing front façade, which is to be retained in the project, as modified, is set back approximately 1.5 from the front lot line. The existing front bay windows project approximately 1.5 feet into the required front setback. These bay windows meet the requirements of Planning Code Section 136(c), which regulates permitted obstructions into yards and over streets.*

- C. **Rear Yard Requirement.** Planning Code Section 134 requires a rear yard equal to 45 percent of the total depth, at grade and above, for properties containing dwelling units in RH-3 Zoning Districts. Planning Code Section 134(c)(1) allows for the reduction in the rear yard requirement to the average between the depths of the rear building walls of the two adjacent buildings. In the case of any lot that abuts along one of its side lot lines upon a lot with a building that fronts on another street or alley, the lot on which it so abuts shall be disregarded, and the forward edge of the required rear yard shall be reduced to a line on the subject lot which is at the depth of the rear building wall of the one adjacent building fronting on the same street or alley.

*The subject property is approximately 112.5 feet in depth and therefore the 45 percent requirement is 50.6 feet. The subject property abuts along its south lot line a building that fronts another street (Hayes Street), therefore, that lot is disregarded in the consideration of a reduction in the rear yard requirement. The subject property abuts along its north lot line a building with a rear yard setback of approximately 38.6 feet. Accordingly, the project, as modified, will provide a matching rear yard of approximately 38.6 feet which complies with the rear yard requirement of the Planning Code. Pursuant to Planning Code Section 136(c)(35), the project, as modified, may include a one-story structure projecting up to 12 feet into the required rear yard, or a two-story structure projecting up to 12 feet into the required rear yard, provided that it is no closer than five feet to any interior side lot line.*

- D. **Useable Open Space.** Planning Code Section 135 requires 100 square feet of useable open space for each dwelling unit if all private, or a total of 400 square feet of common usable open space.

*The Project, as modified, contains three dwelling units. Each unit will have access to common open space in the rear yard in an amount which exceeds the minimum required by Section 135 of the Planning Code.*

- E. **Dwelling Unit Exposure.** Planning Code Section 140 requires that at least one room of all dwelling units face onto a public street or public alley at least 30 feet in width, a side yard at least 25 feet in width, a rear yard meeting the requirements of the Code or other open area that meets minimum requirements for area and horizontal dimensions.

*The three dwelling units in the project, as modified, will have direct exposure onto the public street or Code-complying rear yard.*

- F. **Street Frontages.** Section 144 of the Planning Code requires that no more than one-third of the width of the ground story along the front lot line, or along a street side lot line, or along a building wall that is setback from any such lot line, shall be devoted to entrances to off-street parking, except that in no event shall a lot be limited by this requirement to a single such entrance of less than ten feet in width.

*The Project, as modified, would not provide off-street vehicular parking.*

- G. **Off-Street Parking.** Planning Code Section 151 requires one parking space for each dwelling unit and a maximum of 150 percent of the required number of spaces where three or more spaces are required.

*The Project, as modified, would not provide off-street vehicular parking. Pursuant to Planning Code Section 150(e), the required off-street vehicular parking would be replaced by the provision of bicycle parking spaces.*

- H. **Bicycle Parking.** Planning Code Section 155.2 requires at least one Class 1 bicycle parking space for each dwelling unit and one Class 2 bicycle parking space for every 20 dwelling units.

*The project requires three Class 1 bicycle parking spaces and no Class 2 bicycle parking spaces. The project, as modified, will provide three Class 1 bicycle parking spaces.*

- I. **Height.** Planning Code Section 260 requires that all structures be no taller than the height prescribed in the subject height and bulk district. For properties in RH-3 Zoning Districts, height is measured at the center of the building starting from curb to a point 40 feet high at the required front setback.

*The existing building has a height of approximately 26.5 feet, as measured from curb to the midpoint of its pitched roof. The project, as modified, will measure a maximum of 40 feet in height.*

- J. **Child Care Requirements for Residential Projects.** Planning Code Section 414A requires that any residential development project that results in at least one net new residential unit shall comply with the imposition of the Residential Child Care Impact Fee requirement.

*The Project, as modified, will create two additional dwelling units on the site. Therefore, the Project is subject to the Residential Child Care Impact Fee and must comply with the requirements outlined in Planning Code Section 414A.*

7. **Planning Code Section 303** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the project, as modified, does comply with said criteria in that:

- A. The proposed new uses and building, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

*Despite the fact that the project, as modified, would be considered tantamount to a demolition of the existing building, it is considered to be necessary and desirable given the increase in the number of dwelling units. The project, as modified, would retain the well-preserved Edwardian façade and would result in a modified building containing a total of three dwelling units. The siting of the building, as modified, will be in conformity with the requirements of the Planning Code and consistent with the objectives of the Residential Design Guidelines.*

- B. The proposed project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:

- i. Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

*The existing massing at the street front is appropriate given the context of the immediate neighborhood and any additions to the modified building will be entirely within the buildable area as prescribed by the Planning Code and Residential Design Guidelines.*

- ii. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;

*The project, as modified, will provide three required Class 1 bicycle parking spaces in lieu of the required off-street vehicular parking spaces.*

- iii. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

*As the project is residential in nature, unlike commercial or industrial uses, the residential uses are not expected to produce noxious or offensive emissions.*

- iv. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;

*The landscaping, usable open spaces, parking area and lighting of the building, as modified, would be compatible with the surrounding neighborhood.*

- C. That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

*The Project, as modified, complies with all relevant requirements and standards of the Planning Code and is consistent with objectives and policies of the General Plan as detailed below.*

- D. That the use as proposed would provide development that is in conformity with the purpose of the applicable Residential District.

*The proposed project, as modified, is consistent with the stated purpose of RH-3 Districts which are devoted to one-family, two-family and three-family houses that are finely scaled and usually do not exceed 25 feet in width or 40 feet in height. Additionally, the project, as modified, is in conformance with the Planning Code requirements for dwellings in RH-3 Zoning District.*

8. **Dwelling Unit Removal.** Section 317 of the Planning Code establishes criteria for the Planning Commission to consider when reviewing applications to demolish or convert Residential Buildings. On balance, the Project does comply with said criteria in that:

- i. Whether the property is free of a history of serious, continuing code violations;

*A review of the Department of Building Inspection and the Planning Department databases showed no enforcement cases or notices of violation for the subject property.*

- ii. Whether the housing has been maintained in a decent, safe, and sanitary condition;

*The existing dwelling appears to be in decent, safe, and sanitary condition with no recent Code violations. Until recently, the subject property has been occupied and no evidence has been provided to suggest that the building is not structurally unsound.*

- iii. Whether the property is an “historical resource” under CEQA;

*Although the existing building is more than 50 years old, a review of supplemental information resulted in a determination that the property is not an historical resource.*

- iv. Whether the removal of the resource will have a substantial adverse impact under CEQA;

*The structure is not an historical resource and although the project, as modified, would be considered tantamount to demolition, will not have a substantial adverse impact.*

- v. Whether the Project converts rental housing to other forms of tenure or occupancy;

*The existing single-family dwelling was being rented until December, 2017 and is currently vacant. The project, as proposed by the project sponsor, included one owner-occupied unit and two new rental dwelling units.*

- vi. Whether the Project removes rental units subject to the Rent Stabilization and Arbitration Ordinance;

*The existing single family dwelling was being rented until December, 2017 and is currently vacant. Although the single-family dwelling is technically subject to the Rent Stabilization and Arbitration Ordinance, the Planning Department cannot definitively determine which aspects of the Ordinance are applicable. The Rent Stabilization and Arbitration Ordinance includes provisions for eviction controls, price controls, and other controls, and it is the purview of the Rent Board to determine which specific controls apply to a building or property.*

- vii. Whether the Project conserves existing housing to preserve cultural and economic neighborhood diversity;

*Although the project, as modified, proposes what would be considered tantamount to the demolition of an existing dwelling, the alteration project will result in three family-sized dwellings, containing more habitable square feet and bedrooms.*

- viii. Whether the Project conserves neighborhood character to preserve neighborhood cultural and economic diversity;

*The project, as modified, conserves neighborhood character with appropriate scale, design, and materials, and improves cultural and economic diversity by constructing three family-sized dwellings that are consistent with the RH-3 Zoning District.*

- ix. Whether the Project protects the relative affordability of existing housing;

*The project, as modified, removes an older dwelling unit, which is generally considered more affordable than more recently constructed units. However, the project, as modified, also results in two additional units, greater habitable floor area, and more bedrooms that contribute positively to the City's housing stock.*

- x. Whether the Project increases the number of permanently affordable units as governed by Section 415;

*The project, as modified, is not subject to the provisions of Planning Code Section 415, as the project proposes fewer than ten units.*

- xi. Whether the Project locates in-fill housing on appropriate sites in established neighborhoods;

*The project, as modified, will be designed to be in keeping with the scale and development pattern of the established neighborhood character.*

- xii. Whether the project increases the number of family-sized units on-site;

*The project, as modified, will provide enhanced opportunities for family-sized housing on-site by constructing three family-sized dwelling units whereas the property currently contains only one family-sized dwelling.*

- xiii. Whether the Project creates new supportive housing;

*The project, as modified, does not create supportive housing.*

- xiv. Whether the Project is of superb architectural and urban design, meeting all relevant design guidelines, to enhance existing neighborhood character;

*The overall scale, design, and materials of the proposed building are consistent with the block-face and compliment the neighborhood character with a traditional design.*

- xv. Whether the Project increases the number of on-site dwelling units;

*The project, as modified, would add two additional dwelling units to the site.*

- xvi. Whether the Project increases the number of on-site bedrooms.

*The existing dwelling contains four bedrooms. The project, as modified, will result in a net increase in the number of bedrooms.*

- xvii. Whether or not the replacement project would maximize density on the subject lot; and,

*The project, as modified, will maximize the allowed density on-site by providing three dwelling units.*

- xviii. If replacing a building not subject to the Residential Rent Stabilization and Arbitration Ordinance, whether the new project replaces all the existing units with new dwelling units of a similar size and with the same number of bedrooms.

*The existing single-family dwelling will be replaced by three slightly smaller dwelling units that may fewer bedrooms in each, but cumulatively would add additional bedrooms to the subject property. The single-family dwelling is subject to the Rent Stabilization and Arbitration Ordinance. The Rent Stabilization and Arbitration Ordinance includes provisions for eviction controls, price controls, and other controls, and the Rent Board is authorized to determine which specific controls apply to a building or property.*

9. **General Plan Compliance.** The Project is, on balance, consistent with the following Objectives and Policies of the General Plan:

## HOUSING ELEMENT

### OBJECTIVE 2:

**RETAIN EXISTING HOUSING UNITS, AND PROMOTE SAFETY AND MAINTENANCE STANDARDS, WITHOUT JEOPARDIZING AFFORDABILITY.**

#### Policy 2.1:

Discourage the demolition of sound existing housing, unless the demolition results in a net increase in affordable housing.

### OBJECTIVE 3:

**PROTECT THE AFFORDABILITY OF THE EXISTING HOUSING STOCK, ESPECIALLY RENTAL UNITS.**

#### Policy 3.1:

Preserve rental units, especially rent controlled units, to meet the City's affordable housing needs.

**Policy 3.3:**

Maintain balance in affordability of existing housing stock by supporting affordable moderate ownership opportunities.

**Policy 3.4:**

Preserve “naturally affordable” housing types, such as smaller and older ownership units.

**OBJECTIVE 11:**

**SUPPORT AND RESPECT THE DIVERSE AND DISTINCT CHARACTER OF SAN FRANCISCO’S NEIGHBORHOODS.**

**Policy 11.1:**

Promote the construction and rehabilitation of well-designed housing that emphasizes beauty, flexibility, and innovative design, and respects existing neighborhood character.

**Policy 11.2:**

Ensure implementation of accepted design standards in project approvals.

**Policy 11.3:**

Ensure growth is accommodated without substantially and adversely impacting existing residential neighborhood character.

**Policy 11.5:**

Ensure densities in established residential areas promote compatibility with prevailing neighborhood character.

**URBAN DESIGN**

**OBJECTIVE 1:**

**EMPHASIS OF THE CHARACTERISTIC PATTERN WHICH GIVES TO THE CITY AND ITS NEIGHBORHOODS AN IMAGE, A SENSE OF PURPOSE, AND A MEANS OF ORIENTATION.**

**Policy 1.2:**

Recognize, protect and reinforce the existing street pattern, especially as it is related topography.

**Policy 1.3:**

Recognize that buildings, when seen together, produce a total effect that characterizes the city and its districts.

*The project, as originally proposed, would have demolished a seemingly sound residential structure containing a four-bedroom single-family dwelling. The project, as modified, will retain the existing front façade of the building and will result in a net increase of family-sized dwelling units.*

*The existing single-family dwelling is currently vacant, and is subject to the Rent Stabilization and Arbitration Ordinance. The Rent Stabilization and Arbitration Ordinance includes provisions for eviction*

*controls, price controls, and other controls, and the Rent Board is authorized to determine which specific controls apply to a building or property.*

*The project, as modified, will conform to the Residential Design Guidelines in terms of material, scale, proportions and massing for the surrounding neighborhood, while maintaining general compliance with the requirements of the Planning Code. The project, as modified, will reinforce the existing street pattern as the building's front façade would be retained.*

10. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project does comply with said policies in that:

A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

*Existing neighborhood-serving retail uses would not be displaced or otherwise adversely affected by the proposal, as the existing building does not contain commercial uses.*

B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

*The project, as modified, is compatible with the existing housing and neighborhood character of the immediate vicinity. The project proposes a height and scale compatible with the adjacent neighbors and is consistent with the Planning Code, while providing three family-sized dwellings.*

C. That the City's supply of affordable housing be preserved and enhanced,

*The proposed three-family dwelling adds appropriately scaled and family-sized units to the city's housing stock.*

D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

*The project, as modified, meets the density, off-street parking and bicycle parking requirements of the Planning Code and is therefore not anticipated to impede transit service or overburden our streets with neighborhood parking.*

E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

*The project, as modified, will not displace any service or industry establishment. The future ownership of industrial or service sector businesses will not be affected by this project.*

F. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

*The project, as modified, will be designed and constructed to conform to the structural and seismic safety requirements of the City Building Code. This proposal will not impact the property's ability to withstand an earthquake.*

- G. That landmarks and historic buildings be preserved.

*A landmark or historic building does not occupy the project site.*

- H. That our parks and open space and their access to sunlight and vistas be protected from development.

*The project, as modified, will have no negative impact on existing parks and open spaces.*

11. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.
12. The replacement of a single-family dwelling with a three-unit building is consistent with the Mayor's Executive Directive aimed at delivering at least 5,000 units of new or rehabilitated housing every year for the foreseeable future.
13. The Commission hereby finds that approval of the Conditional Use authorization would promote the health, safety and welfare of the City.

## DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2015-018150CUA** subject to the following conditions attached hereto as "EXHIBIT A".

**APPEAL AND EFFECTIVE DATE OF MOTION:** Any aggrieved person may appeal this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. XXXXX. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

**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 **ADOPTED** the foregoing Motion on November 15, 2018.

Jonas P. Ionin  
Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: November 15, 2018

## **EXHIBIT A**

### **AUTHORIZATION**

This authorization is for a conditional use to partially demolish all but the front façade of the two-story single-family dwelling located at 137 Clayton Street, Lot 006 in Assessor's Block 1194, within the RH-3 District and a 40-X Height and Bulk District, and construct rear horizontal and vertical additions to add two new dwelling units to the building, pursuant to Planning Code Sections 303 and 317(d) for Case No. 2015-018150CUA and subject to conditions of approval reviewed and approved by the Commission on November 15, 2018 under Motion No **XXXXX**. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

### **RECORDATION OF CONDITIONS OF APPROVAL**

Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on November 15, 2018 under Motion No **XXXXX**.

### **PRINTING OF CONDITIONS OF APPROVAL ON PLANS**

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. **XXXXX** shall be reproduced on the Index Sheet of construction plans submitted with the Site or Building permit application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

### **SEVERABILITY**

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a building permit. "Project Sponsor" shall include any subsequent responsible party.

### **CHANGES AND MODIFICATIONS**

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.

## Conditions of Approval, Compliance, Monitoring, and Reporting

### PERFORMANCE

1. **Validity.** The authorization and right vested by virtue of this action is valid for three (3) years from the effective date of the Motion. The Department of Building Inspection shall have issued a Building Permit or Site Permit to construct the project and/or commence the approved use within this three-year period.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

2. **Expiration and Renewal.** Should a Building or Site Permit be sought after the three (3) year period has lapsed, the project sponsor must seek a renewal of this Authorization by filing an application for an amendment to the original Authorization or a new application for Authorization. Should the project sponsor decline to so file, and decline to withdraw the permit application, the Commission shall conduct a public hearing in order to consider the revocation of the Authorization. Should the Commission not revoke the Authorization following the closure of the public hearing, the Commission shall determine the extension of time for the continued validity of the Authorization.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

3. **Diligent pursuit.** Once a site or Building Permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. Failure to do so shall be grounds for the Commission to consider revoking the approval if more than three (3) years have passed since this Authorization was approved.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

4. **Extension.** All time limits in the preceding three paragraphs may be extended at the discretion of the Zoning Administrator where 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.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

5. **Conformity with Current Law.** No application for Building Permit, Site Permit, or other entitlement shall be approved unless it complies with all applicable provisions of City Codes in effect at the time of such approval.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

### DESIGN

6. **Massing and Design.** The Project Sponsor shall submit to the Planning Department for approval a revised project design meeting the following requirements:

- a. The front façade of the existing building shall be retained in its entirety and shall not be relocated vertically or horizontally and shall not be modified by the inclusion of a garage door;
- b. Horizontal rear additions and/or a vertical addition to the existing building, may be incorporated, consistent with the Residential Design Guidelines;
- c. The revised project shall include a total of three (3) separate residential units, each with at least two (2) bedrooms.

*For information about compliance, contact the Case Planner, Planning Department at 415-575-9087, [www.sf-planning.org](http://www.sf-planning.org)*

7. **Final Materials.** The Project Sponsor shall continue to work with Planning Department on the building design. Final materials, glazing, color, texture, landscaping, and detailing shall be subject to Department staff review and approval. The architectural addenda shall be reviewed and approved by the Planning Department prior to issuance.

*For information about compliance, contact the Case Planner, Planning Department at 415-575-9087, [www.sf-planning.org](http://www.sf-planning.org)*

8. **Garbage, composting and recycling storage.** Space for the collection and storage of garbage, composting, and recycling shall be provided within enclosed areas on the property and clearly labeled and illustrated on the building permit plans. Space for the collection and storage of recyclable and compostable materials that meets the size, location, accessibility and other standards specified by the San Francisco Recycling Program shall be provided at the ground level of the buildings.

*For information about compliance, contact the Case Planner, Planning Department at 415-575-9087, [www.sf-planning.org](http://www.sf-planning.org)*

## PARKING AND TRAFFIC

9. **Bicycle Parking.** The Project shall provide no fewer than three (3) Class 1 bicycle parking spaces as required by Planning Code Sections 155.1 and 155.5.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

10. **Off-Street Parking.** Pursuant to Planning Code Section 150(e), the Project shall provide three (3) Class 1 bicycle parking spaces in lieu of off-street parking spaces.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

## PROVISIONS

11. **Child Care Fee - Residential.** The Project is subject to the Residential Child Care Fee, as applicable, pursuant to Planning Code Section 414A.

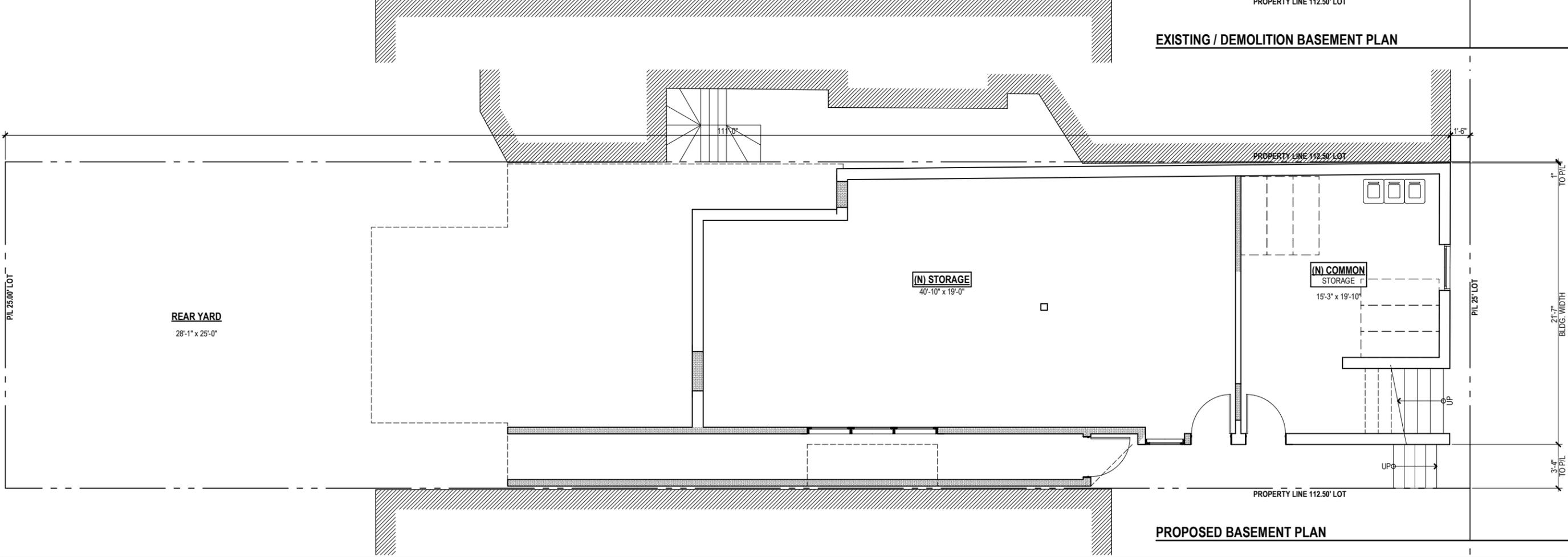
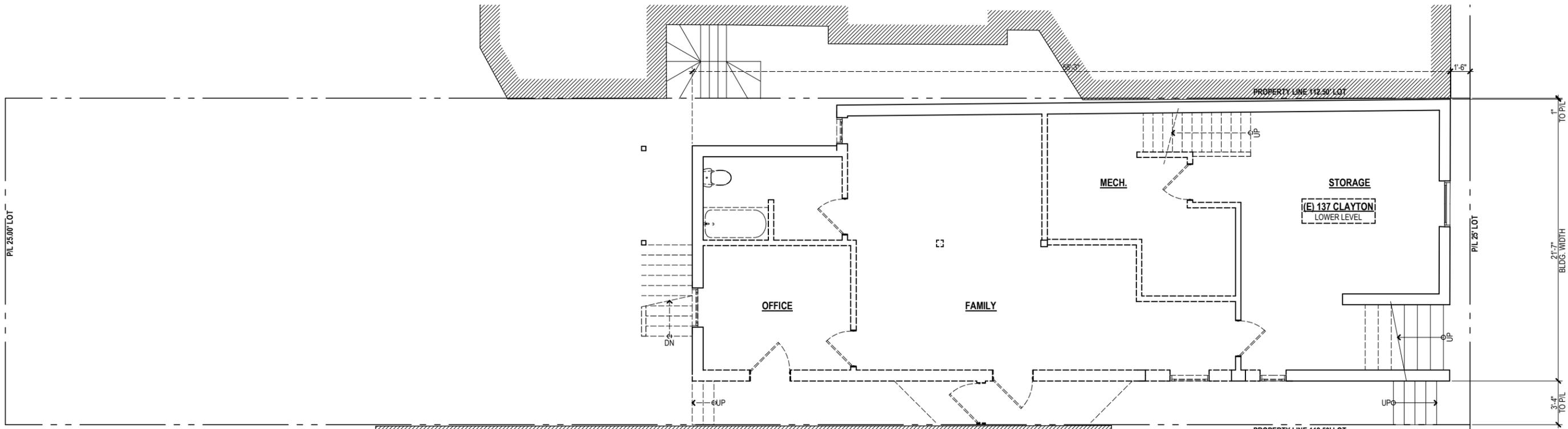
*For information about compliance, contact the Case Planner, Planning Department at 415-575-9087, [www.sf-planning.org](http://www.sf-planning.org)*

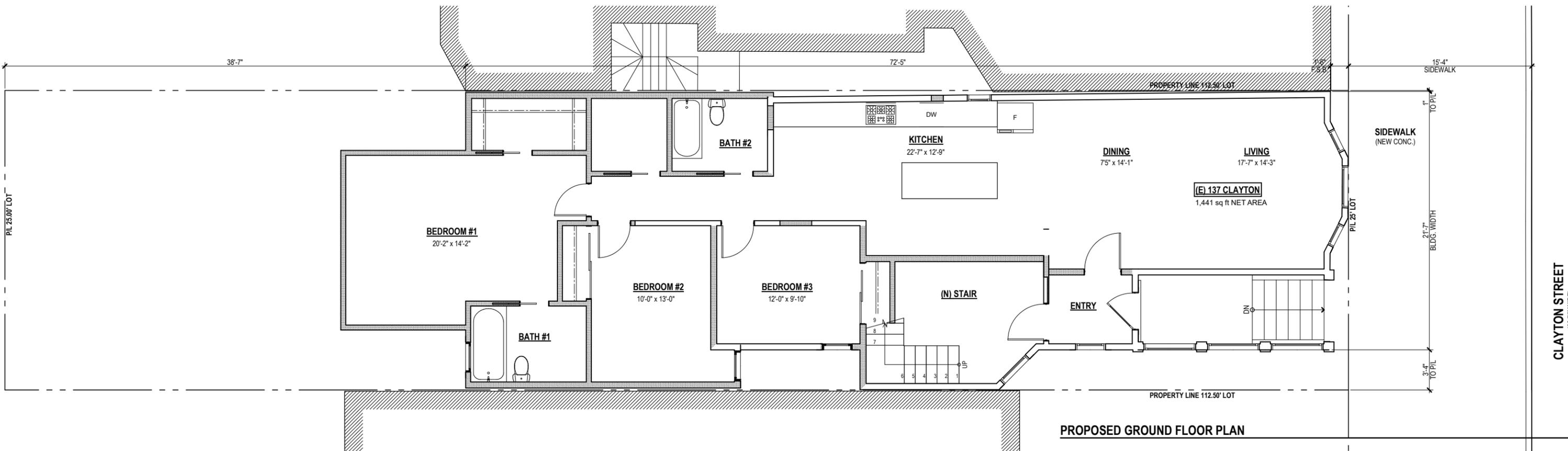
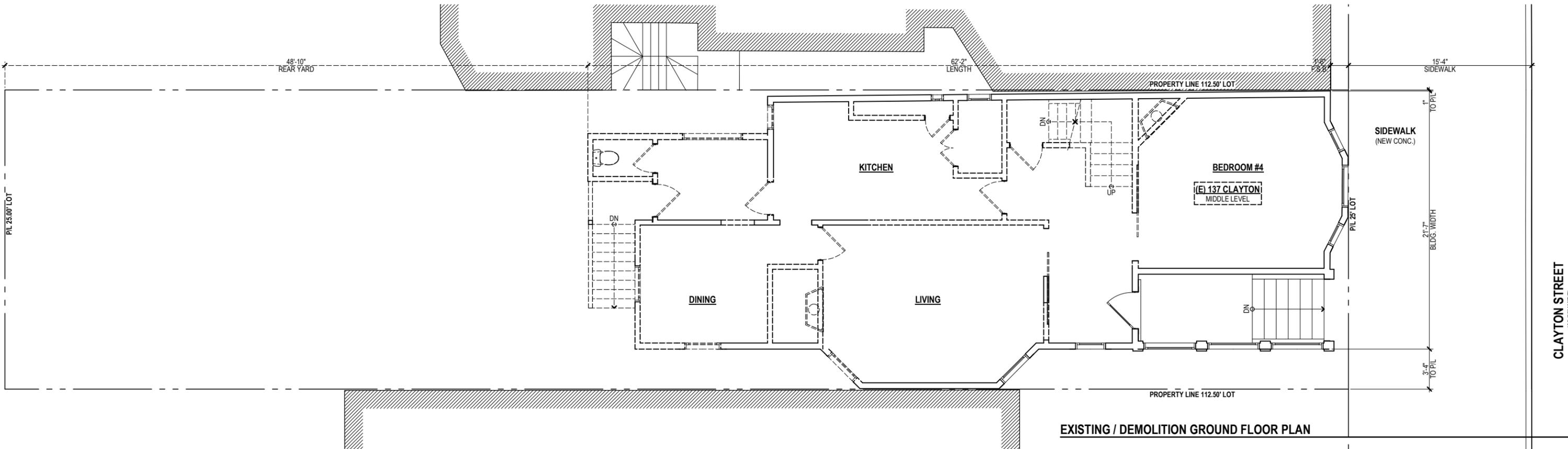
## MONITORING - AFTER ENTITLEMENT

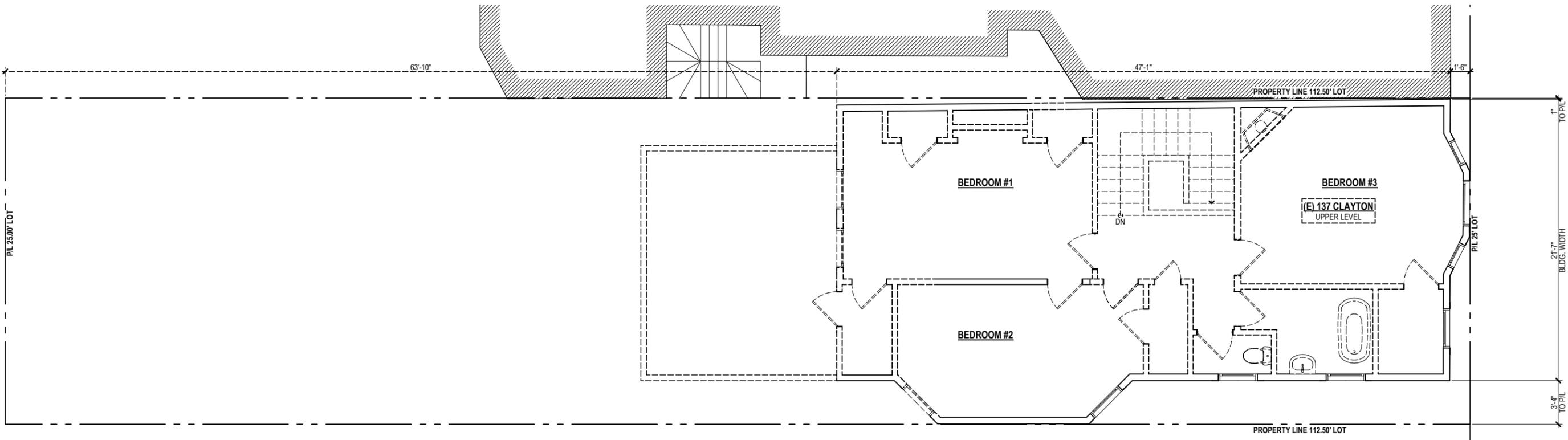
12. **Enforcement.** Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.  
*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*
13. **Revocation due to Violation of Conditions.** Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and found to be in violation of the Planning Code and/or the specific conditions of approval for the Project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter to consider revocation of this authorization.  
*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

## OPERATION

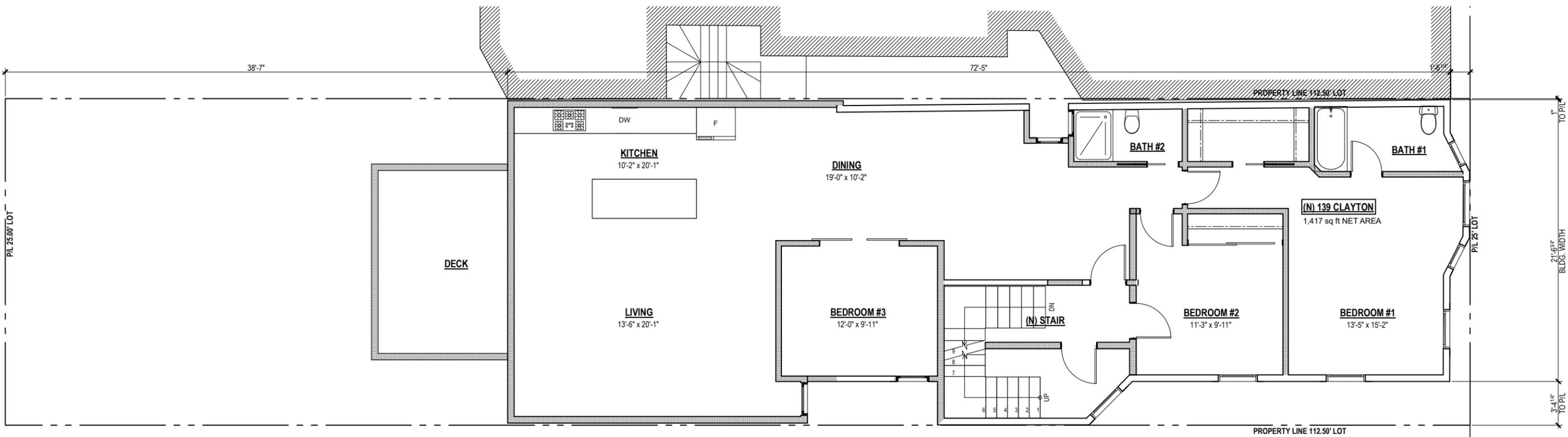
14. **Garbage, Recycling, and Composting Receptacles.** Garbage, recycling, and compost containers shall be kept within the premises and hidden from public view, and placed outside only when being serviced by the disposal company. Trash shall be contained and disposed of pursuant to garbage and recycling receptacles guidelines set forth by the Department of Public Works.  
*For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-.5810, <http://sfdpw.org>*
15. **Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Streets and Sidewalk Maintenance Standards.  
*For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, <http://sfdpw.org>*



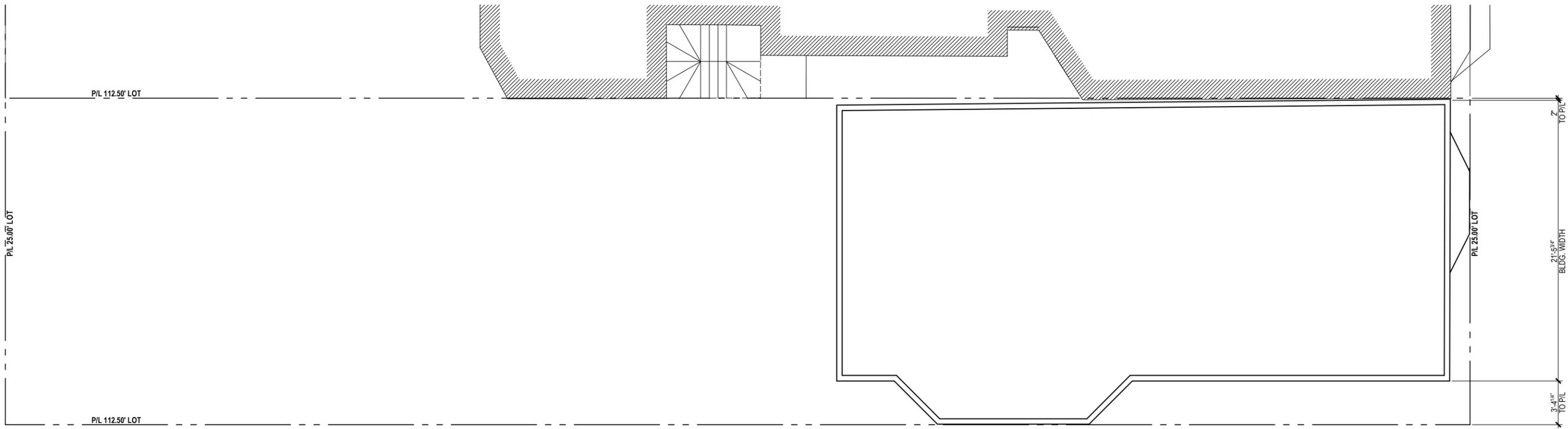




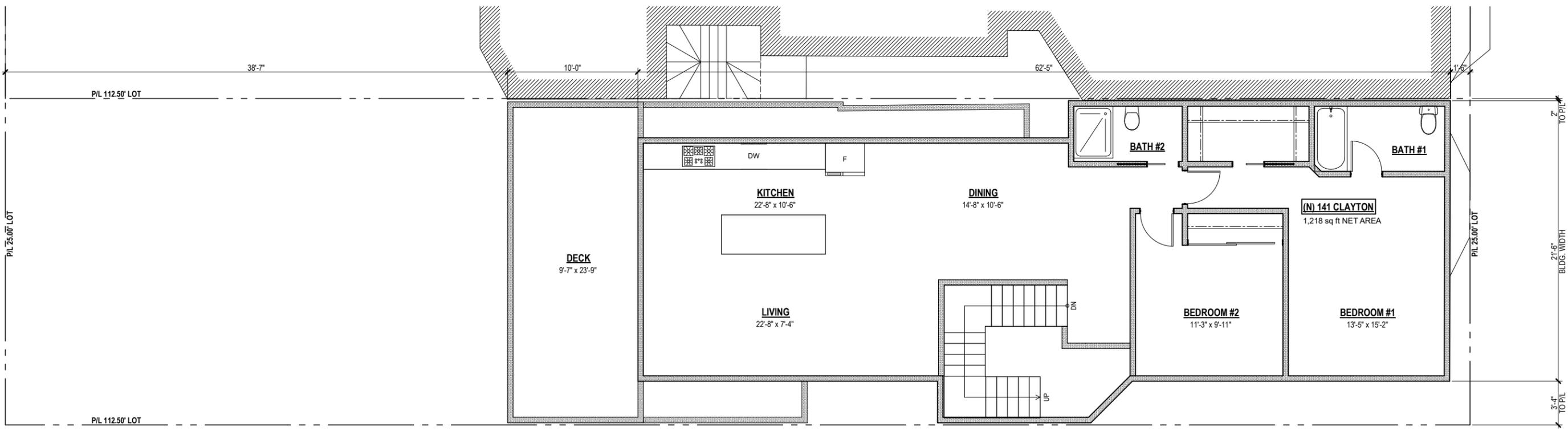
**EXISTING / DEMOLITION SECOND FLOOR PLAN**



**PROPOSED SECOND FLOOR PLAN**



(E) ROOF PLAN



PROPOSED THIRD FLOOR PLAN

# **EXHIBIT B**

M A N S B A C H   A S S O C I A T E S ,   I N C .

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Real Estate Consultation  
Arbitration  
Valuation

582 Market Street  
Suite 217

San Francisco  
California 94104

Phone 415/288-4101  
Fax 415/288-4116

November 26, 2018

Ryan J. Patterson, Esq.  
Zacks, Freedman & Patterson, PC  
235 Montgomery Street, Suite 400  
San Francisco, CA 94104

RE: Appraisal of Proposed Project at 137 Clayton Street, San Francisco, CA

Dear Mr. Patterson:

At your request, this letter presents our findings concerning the value of the proposed construction project at 137 Clayton Street, San Francisco, if built according to the attached plans prepared by Schaub Ly Architects, Inc. to comply with the Planning Commission's draft motion dated November 5, 2018.

While our full report is forthcoming, our research, in accordance with generally accepted practice and methodology for residential appraisal in San Francisco, has determined that the value of said project will be less than \$4,000,000.

Sincerely,

MANSBACH ASSOCIATES, INC.



Lawrence L. Mansbach, MAI

Attachments:

Qualifications of Lawrence L. Mansbach  
Building plans prepared by Schaub Ly Architects, Inc.  
Planning Commission's draft motion dated November 5, 2018

## **QUALIFICATIONS OF LAWRENCE L. MANSBACH, MAI**

Lawrence L. Mansbach is an independent real estate appraiser and consultant and president of the firm of Mansbach Associates, Inc. Following is a brief resume of his background and experience:

### **EXPERIENCE**

**MANSBACH ASSOCIATES, INC.**  
**President**

San Francisco, CA

Mr. Mansbach is president of Mansbach Associates, Inc., a San Francisco-based real estate consultation, market research and valuation firm.

Mr. Mansbach has over 30 years of experience in the real estate consulting and appraisal field. His current focus is on arbitration and litigation support including expert witness testimony. He also provides a wide range of valuation services for purchase and sale activities, lending decisions, tax matters, and public sector functions.

Property types appraised include office, retail, apartment, industrial/R&D, hotel, condominium, vacant land and high end single family residences.

### **EDUCATION**

1980-1982	University of California – Haas School of Business Master of Business Administration. Concentration in real estate and finance.	Berkeley, CA
1974-1976	University of Washington Master of Arts	Seattle, WA
1970-1974	University of California Bachelor of Arts – Highest Honors	Berkeley, CA

### **PROFESSIONAL**

Member of the Appraisal Institute (MAI)  
State of California- Certified General Real Estate Appraiser  
California Real Estate Broker  
California State Board of Equalization – Appraiser For Property Tax Purposes

### **EXPERT TESTIMONY**

Qualified as an Expert in Superior Court – San Francisco, Santa Clara, Alameda, Contra Costa, Marin, and Napa.

United States Tax Court.

American Arbitration Association, JAMS, ADR Services.

## **CAREER HIGHLIGHTS**

Recent accomplishments include:

- Arbitrated 400,000 square foot office lease transaction
- Arbitrated telecommunications lease in Contra Costa County
- Arbitrated ground lease for highest volume store of national supermarket chain
- Served as a consultant on largest private school tax-exempt Bond issues in San Francisco.
- Served as the consultant to the estate of Dean Martin for estate tax purposes.
- Represented client on property tax appeal of Bank of America World Headquarters.
- Served as appraiser on tax-exempt bond issue for Mission Bay development in San Francisco.
- Served as appraiser and consultant for expansion of the San Francisco State University campus
- Appraised General Dynamics campus in Mountain View
- Appraised Hunters Point Shipyard
- Appraised portions of Golden Gate National Recreation Area

Mr. Mansbach began his career as an analyst with the planning consulting firm of John M. Sanger and Associates in San Francisco. From 1977 to 1980, he was an economic development planner with the San Francisco Department of City Planning. He was the principal author of the Central Waterfront Plan which was an early precursor to the Mission Bay development. During the 1980's, Mr. Mansbach worked at the real estate appraisal and consulting firm of Mills-Carneghi, Inc., eventually becoming a partner.

Mr. Mansbach established his own firm, Mansbach Associates, Inc. in downtown San Francisco in 1990. He has worked with a variety of clients on valuation and consulting matters concerning property types ranging from vacant land to high rise office buildings. Mr. Mansbach also was associated with GMAC Commercial Mortgage Corp. in the late 1990's where he worked on the design of a technology/data base driven commercial appraisal product.

Mr. Mansbach has been a guest lecturer at classes at the University of California, Berkeley and Golden Gate University in San Francisco. He has been quoted on real estate matters in the San Francisco Chronicle and Examiner, and has published in the Northern California Real Estate Journal. He was also interviewed on KCBS radio. Speaking engagements include the Annual Conference of the Northern California Chapter of the Appraisal Institute, the Society of Municipal Analysts, and the Tax Section of the California State Bar. Mr. Mansbach has addressed various municipal government bodies in the Bay Area as well as the Moody's and Standard and Poor's rating agencies. He also served as the chair of the Experience Review Committee for the local chapter of the Appraisal Institute.

Mr. Mansbach is active in local community matters, particularly in school financing mechanisms. He devised a parcel tax strategy which generated a nearly \$3,000,000 windfall for a Bay Area school district.



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Draft Motion

HEARING DATE: NOVEMBER 15, 2018

CONTINUED FROM: SEPTEMBER 13, 2018

*Date:* November 5, 2018  
*Case No.:* **2015-018150CUA**  
*Project Address:* **137 CLAYTON STREET**  
*Zoning:* RH-3 (Residential, House - Three-Family)  
40-X Height and Bulk District  
*Block/Lot:* 1194 / 006  
*Project Sponsor:* Jeremy Schaub, Schaub Ly Architects  
1360 9<sup>th</sup> Avenue  
San Francisco, CA 94122  
*Staff Contact:* Christopher May – (415) 575-9087  
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**ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO PLANNING CODE SECTIONS 303 AND 317 TO CONSTRUCT ADDITIONS TO AN EXISTING TWO-STORY, SINGLE-FAMILY DWELLING RESULTING IN A NEW 3-UNIT BUILDING WITHIN THE RH-3 (RESIDENTIAL, HOUSE – THREE-FAMILY) DISTRICT AND A 40-X HEIGHT AND BULK DISTRICT, AND ADOPTING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.**

### PREAMBLE

On June 1, 2016, Jeremy Schaub (hereinafter “Project Sponsor”) filed an application with the Planning Department (hereinafter “Department”) for a Conditional Use Authorization under Planning Code Sections 303 and 317 to demolish an existing two-story, single-family dwelling and construct a new four-story, 3-unit building (hereinafter “Project”) within the RH-3 (Residential, House – Three-Family) Zoning District and 40-X Height and Bulk District.

On June 26, 2016, the Project was determined to be exempt from the California Environmental Quality Act (“CEQA”) as a Class 1 and Class 3 Categorical Exemption under CEQA, as described in the determination contained in the Planning Department files for this Project. During the CEQA review, it was determined that the subject building is not a historic resource.

On November 3, 2016, the San Francisco Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2015-018150CUA. The Commission moved an intent to disapprove the project on the basis that the proposed demolition of the existing building and construction of a 4-story, three-unit replacement building did not meet the objectives of the General Plan. After hearing and closing public comment, the Commission indicated its intent to disapprove the project and continued the item to December 1, 2016, to allow Planning staff an opportunity to prepare a draft motion of disapproval.

On December 1, 2016, the Commission further continued Conditional Use Application No. 2015-018150CUA, to a hearing on February 9, 2017.

On February 9, 2017, the project sponsor requested an indefinite continuance of Conditional Use Application No. 2015-018150CUA.

On September 13, 2018, the Commission reconsidered the original proposal and continued the item to November 15, 2018, directing the project sponsor to return with a modified project that would retain the existing façade of the building.

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.

**MOVED**, that the Commission hereby authorizes the Conditional Use requested in Application No. 2015-018150CUA, subject to the conditions contained in “EXHIBIT A” of this motion, based on the following findings:

## **FINDINGS**

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** The project is located on the west side of Clayton Street, between Grove Street and Hayes Street, Lot 006 in Assessor’s Block 1194. The property is located within the RH-3 (Residential, House – Three-Family) District and a 40-X Height and Bulk District. The subject property has approximately 25 feet of frontage on Clayton Street and is approximately 112.5 feet deep. The property is mostly flat and is currently occupied by a two-story, single-family dwelling constructed circa 1908, which covers approximately 42% of the lot.
3. **Surrounding Properties and Neighborhood.** The project site is located midblock between Grove Street and Hayes Street in the Haight Ashbury neighborhood, north of the Panhandle and south of the University of San Francisco campus. The subject site is located in an RH-3 District and is surrounded primarily by two- and three-family dwellings ranging in height from three to four stories. Immediately adjacent to the subject property to the north is a three-and-a-half story, three-family dwelling and immediately to the south, at the northwest corner of Clayton Street and Hayes Street, is a three-story, 4-unit residential building. Also directly south of the subject property is the Asian American Recovery Services outpatient facility located in adjacent one- and two-story buildings fronting onto Hayes Street. Directly across the street are a three-story, single-family dwelling and a four-story, six-unit residential building. Immediately behind and to the west of the subject property is the New Traditions Elementary School. While the portion of Grove Street near the subject property is within the RM-1 (Residential – Mixed, Low-Density) District, the majority of the surrounding neighborhood is within the RH-3 (Residential, House – Three-

Family) District. The subject property is also within .25-miles of stops for the 7X – Noriega Express, 21 – Hayes, and 43 – Masonic MUNI transit lines.

4. **Project Description.** The project proposed by the project sponsor included the demolition of the existing two-story, single-family dwelling and the construction of a four-story, 40-foot tall, three-family residential building. Located on separate floors, the three units would range in size from approximately 1,220 square feet to 1,411 square feet and would each have three bedrooms and two bathrooms. Three independently accessible off-street parking spaces and three Class 1 bicycle parking spaces, one for each unit, are proposed in the garage on the ground floor.

The modified project approved by the Commission would require the retention of the front façade of the existing building and would permit the partial demolition and reconstruction of the rear portion of the building, as well as a vertical addition, in order to allow for a total of three dwelling units. Bicycle parking spaces would be provided in lieu of off-street vehicular parking spaces.

The project is not seeking any exceptions or variances from the Planning Code. The proposal requires neighborhood notification, pursuant to Section 311 of the Planning Code, which was conducted in conjunction with the Conditional Use Authorization process.

5. **Public Comment.** The Department received neighborhood opposition to the project, in the form of emails leading up to and during public comment at the November 3, 2016. The opposition has been based primarily on the demolition of a seemingly sound building with a significant degree of architectural integrity. A tenant of the subject building also spoke in opposition to the project at the November 3, 2016, hearing, on the basis that she did not receive adequate notice from her landlord and property owner that the building was proposed to be demolished. That tenant has since vacated the premises voluntarily, and the building is now vacant.

In advance of the November 15, 2018, hearing, the Department had received several emails in opposition to the proposed demolition of the existing building, on the basis that it appears to be a structurally sound building with a significant degree of architectural integrity.

6. **Planning Code Compliance:** The Commission finds that the Project, as modified, is consistent with the relevant provisions of the Planning Code in the following manner:
  - A. **Residential Demolition – Section 317.** Pursuant to Planning Code Section 317, Conditional Use Authorization is required for applications proposing to demolish a residential unit in an RH-3 Zoning District. This Code Section establishes criteria that Planning Commission shall consider in the review of applications for Residential Demolition.

*The project, as modified, would be considered tantamount to demolition pursuant to Planning Code Section 317 and therefore requires Conditional Use Authorization. The additional criteria specified under Section 317 have been incorporated as findings in Subsection 8 below.*

- B. **Front Setback Requirement.** Planning Code Section 132 states that the minimum front setback depth shall be based on the average of adjacent properties or a Legislated Setback.

*The subject property abuts along its south side lot line a lot that fronts another street, which for the purposes of calculating the required front setback, is disregarded. The required setback for the subject lot is therefore equal to the front setback of the adjacent building on the north side, which is approximately 1.5 feet. The existing front façade, which is to be retained in the project, as modified, is set back approximately 1.5 from the front lot line. The existing front bay windows project approximately 1.5 feet into the required front setback. These bay windows meet the requirements of Planning Code Section 136(c), which regulates permitted obstructions into yards and over streets.*

- C. **Rear Yard Requirement.** Planning Code Section 134 requires a rear yard equal to 45 percent of the total depth, at grade and above, for properties containing dwelling units in RH-3 Zoning Districts. Planning Code Section 134(c)(1) allows for the reduction in the rear yard requirement to the average between the depths of the rear building walls of the two adjacent buildings. In the case of any lot that abuts along one of its side lot lines upon a lot with a building that fronts on another street or alley, the lot on which it so abuts shall be disregarded, and the forward edge of the required rear yard shall be reduced to a line on the subject lot which is at the depth of the rear building wall of the one adjacent building fronting on the same street or alley.

*The subject property is approximately 112.5 feet in depth and therefore the 45 percent requirement is 50.6 feet. The subject property abuts along its south lot line a building that fronts another street (Hayes Street), therefore, that lot is disregarded in the consideration of a reduction in the rear yard requirement. The subject property abuts along its north lot line a building with a rear yard setback of approximately 38.6 feet. Accordingly, the project, as modified, will provide a matching rear yard of approximately 38.6 feet which complies with the rear yard requirement of the Planning Code. Pursuant to Planning Code Section 136(c)(35), the project, as modified, may include a one-story structure projecting up to 12 feet into the required rear yard, or a two-story structure projecting up to 12 feet into the required rear yard, provided that it is no closer than five feet to any interior side lot line.*

- D. **Useable Open Space.** Planning Code Section 135 requires 100 square feet of useable open space for each dwelling unit if all private, or a total of 400 square feet of common usable open space.

*The Project, as modified, contains three dwelling units. Each unit will have access to common open space in the rear yard in an amount which exceeds the minimum required by Section 135 of the Planning Code.*

- E. **Dwelling Unit Exposure.** Planning Code Section 140 requires that at least one room of all dwelling units face onto a public street or public alley at least 30 feet in width, a side yard at least 25 feet in width, a rear yard meeting the requirements of the Code or other open area that meets minimum requirements for area and horizontal dimensions.

*The three dwelling units in the project, as modified, will have direct exposure onto the public street or Code-complying rear yard.*

- F. **Street Frontages.** Section 144 of the Planning Code requires that no more than one-third of the width of the ground story along the front lot line, or along a street side lot line, or along a building wall that is setback from any such lot line, shall be devoted to entrances to off-street parking, except that in no event shall a lot be limited by this requirement to a single such entrance of less than ten feet in width.

*The Project, as modified, would not provide off-street vehicular parking.*

- G. **Off-Street Parking.** Planning Code Section 151 requires one parking space for each dwelling unit and a maximum of 150 percent of the required number of spaces where three or more spaces are required.

*The Project, as modified, would not provide off-street vehicular parking. Pursuant to Planning Code Section 150(e), the required off-street vehicular parking would be replaced by the provision of bicycle parking spaces.*

- H. **Bicycle Parking.** Planning Code Section 155.2 requires at least one Class 1 bicycle parking space for each dwelling unit and one Class 2 bicycle parking space for every 20 dwelling units.

*The project requires three Class 1 bicycle parking spaces and no Class 2 bicycle parking spaces. The project, as modified, will provide three Class 1 bicycle parking spaces.*

- I. **Height.** Planning Code Section 260 requires that all structures be no taller than the height prescribed in the subject height and bulk district. For properties in RH-3 Zoning Districts, height is measured at the center of the building starting from curb to a point 40 feet high at the required front setback.

*The existing building has a height of approximately 26.5 feet, as measured from curb to the midpoint of its pitched roof. The project, as modified, will measure a maximum of 40 feet in height.*

- J. **Child Care Requirements for Residential Projects.** Planning Code Section 414A requires that any residential development project that results in at least one net new residential unit shall comply with the imposition of the Residential Child Care Impact Fee requirement.

*The Project, as modified, will create two additional dwelling units on the site. Therefore, the Project is subject to the Residential Child Care Impact Fee and must comply with the requirements outlined in Planning Code Section 414A.*

7. **Planning Code Section 303** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the project, as modified, does comply with said criteria in that:

- A. The proposed new uses and building, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

*Despite the fact that the project, as modified, would be considered tantamount to a demolition of the existing building, it is considered to be necessary and desirable given the increase in the number of dwelling units. The project, as modified, would retain the well-preserved Edwardian façade and would result in a modified building containing a total of three dwelling units. The siting of the building, as modified, will be in conformity with the requirements of the Planning Code and consistent with the objectives of the Residential Design Guidelines.*

- B. The proposed project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:

- i. Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

*The existing massing at the street front is appropriate given the context of the immediate neighborhood and any additions to the modified building will be entirely within the buildable area as prescribed by the Planning Code and Residential Design Guidelines.*

- ii. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;

*The project, as modified, will provide three required Class 1 bicycle parking spaces in lieu of the required off-street vehicular parking spaces.*

- iii. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

*As the project is residential in nature, unlike commercial or industrial uses, the residential uses are not expected to produce noxious or offensive emissions.*

- iv. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;

*The landscaping, usable open spaces, parking area and lighting of the building, as modified, would be compatible with the surrounding neighborhood.*

- C. That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

*The Project, as modified, complies with all relevant requirements and standards of the Planning Code and is consistent with objectives and policies of the General Plan as detailed below.*

- D. That the use as proposed would provide development that is in conformity with the purpose of the applicable Residential District.

*The proposed project, as modified, is consistent with the stated purpose of RH-3 Districts which are devoted to one-family, two-family and three-family houses that are finely scaled and usually do not exceed 25 feet in width or 40 feet in height. Additionally, the project, as modified, is in conformance with the Planning Code requirements for dwellings in RH-3 Zoning District.*

8. **Dwelling Unit Removal.** Section 317 of the Planning Code establishes criteria for the Planning Commission to consider when reviewing applications to demolish or convert Residential Buildings. On balance, the Project does comply with said criteria in that:

- i. Whether the property is free of a history of serious, continuing code violations;

*A review of the Department of Building Inspection and the Planning Department databases showed no enforcement cases or notices of violation for the subject property.*

- ii. Whether the housing has been maintained in a decent, safe, and sanitary condition;

*The existing dwelling appears to be in decent, safe, and sanitary condition with no recent Code violations. Until recently, the subject property has been occupied and no evidence has been provided to suggest that the building is not structurally unsound.*

- iii. Whether the property is an “historical resource” under CEQA;

*Although the existing building is more than 50 years old, a review of supplemental information resulted in a determination that the property is not an historical resource.*

- iv. Whether the removal of the resource will have a substantial adverse impact under CEQA;

*The structure is not an historical resource and although the project, as modified, would be considered tantamount to demolition, will not have a substantial adverse impact.*

- v. Whether the Project converts rental housing to other forms of tenure or occupancy;

*The existing single-family dwelling was being rented until December, 2017 and is currently vacant. The project, as proposed by the project sponsor, included one owner-occupied unit and two new rental dwelling units.*

- vi. Whether the Project removes rental units subject to the Rent Stabilization and Arbitration Ordinance;

*The existing single family dwelling was being rented until December, 2017 and is currently vacant. Although the single-family dwelling is technically subject to the Rent Stabilization and Arbitration Ordinance, the Planning Department cannot definitively determine which aspects of the Ordinance are applicable. The Rent Stabilization and Arbitration Ordinance includes provisions for eviction controls, price controls, and other controls, and it is the purview of the Rent Board to determine which specific controls apply to a building or property.*

- vii. Whether the Project conserves existing housing to preserve cultural and economic neighborhood diversity;

*Although the project, as modified, proposes what would be considered tantamount to the demolition of an existing dwelling, the alteration project will result in three family-sized dwellings, containing more habitable square feet and bedrooms.*

- viii. Whether the Project conserves neighborhood character to preserve neighborhood cultural and economic diversity;

*The project, as modified, conserves neighborhood character with appropriate scale, design, and materials, and improves cultural and economic diversity by constructing three family-sized dwellings that are consistent with the RH-3 Zoning District.*

- ix. Whether the Project protects the relative affordability of existing housing;

*The project, as modified, removes an older dwelling unit, which is generally considered more affordable than more recently constructed units. However, the project, as modified, also results in two additional units, greater habitable floor area, and more bedrooms that contribute positively to the City's housing stock.*

- x. Whether the Project increases the number of permanently affordable units as governed by Section 415;

*The project, as modified, is not subject to the provisions of Planning Code Section 415, as the project proposes fewer than ten units.*

- xi. Whether the Project locates in-fill housing on appropriate sites in established neighborhoods;

*The project, as modified, will be designed to be in keeping with the scale and development pattern of the established neighborhood character.*

- xii. Whether the project increases the number of family-sized units on-site;

*The project, as modified, will provide enhanced opportunities for family-sized housing on-site by constructing three family-sized dwelling units whereas the property currently contains only one family-sized dwelling.*

- xiii. Whether the Project creates new supportive housing;

*The project, as modified, does not create supportive housing.*

- xiv. Whether the Project is of superb architectural and urban design, meeting all relevant design guidelines, to enhance existing neighborhood character;

*The overall scale, design, and materials of the proposed building are consistent with the block-face and compliment the neighborhood character with a traditional design.*

- xv. Whether the Project increases the number of on-site dwelling units;

*The project, as modified, would add two additional dwelling units to the site.*

- xvi. Whether the Project increases the number of on-site bedrooms.

*The existing dwelling contains four bedrooms. The project, as modified, will result in a net increase in the number of bedrooms.*

- xvii. Whether or not the replacement project would maximize density on the subject lot; and,

*The project, as modified, will maximize the allowed density on-site by providing three dwelling units.*

- xviii. If replacing a building not subject to the Residential Rent Stabilization and Arbitration Ordinance, whether the new project replaces all the existing units with new dwelling units of a similar size and with the same number of bedrooms.

*The existing single-family dwelling will be replaced by three slightly smaller dwelling units that may fewer bedrooms in each, but cumulatively would add additional bedrooms to the subject property. The single-family dwelling is subject to the Rent Stabilization and Arbitration Ordinance. The Rent Stabilization and Arbitration Ordinance includes provisions for eviction controls, price controls, and other controls, and the Rent Board is authorized to determine which specific controls apply to a building or property.*

9. **General Plan Compliance.** The Project is, on balance, consistent with the following Objectives and Policies of the General Plan:

## HOUSING ELEMENT

### OBJECTIVE 2:

**RETAIN EXISTING HOUSING UNITS, AND PROMOTE SAFETY AND MAINTENANCE STANDARDS, WITHOUT JEOPARDIZING AFFORDABILITY.**

#### Policy 2.1:

Discourage the demolition of sound existing housing, unless the demolition results in a net increase in affordable housing.

### OBJECTIVE 3:

**PROTECT THE AFFORDABILITY OF THE EXISTING HOUSING STOCK, ESPECIALLY RENTAL UNITS.**

#### Policy 3.1:

Preserve rental units, especially rent controlled units, to meet the City's affordable housing needs.

**Policy 3.3:**

Maintain balance in affordability of existing housing stock by supporting affordable moderate ownership opportunities.

**Policy 3.4:**

Preserve “naturally affordable” housing types, such as smaller and older ownership units.

**OBJECTIVE 11:**

**SUPPORT AND RESPECT THE DIVERSE AND DISTINCT CHARACTER OF SAN FRANCISCO’S NEIGHBORHOODS.**

**Policy 11.1:**

Promote the construction and rehabilitation of well-designed housing that emphasizes beauty, flexibility, and innovative design, and respects existing neighborhood character.

**Policy 11.2:**

Ensure implementation of accepted design standards in project approvals.

**Policy 11.3:**

Ensure growth is accommodated without substantially and adversely impacting existing residential neighborhood character.

**Policy 11.5:**

Ensure densities in established residential areas promote compatibility with prevailing neighborhood character.

**URBAN DESIGN**

**OBJECTIVE 1:**

**EMPHASIS OF THE CHARACTERISTIC PATTERN WHICH GIVES TO THE CITY AND ITS NEIGHBORHOODS AN IMAGE, A SENSE OF PURPOSE, AND A MEANS OF ORIENTATION.**

**Policy 1.2:**

Recognize, protect and reinforce the existing street pattern, especially as it is related topography.

**Policy 1.3:**

Recognize that buildings, when seen together, produce a total effect that characterizes the city and its districts.

*The project, as originally proposed, would have demolished a seemingly sound residential structure containing a four-bedroom single-family dwelling. The project, as modified, will retain the existing front façade of the building and will result in a net increase of family-sized dwelling units.*

*The existing single-family dwelling is currently vacant, and is subject to the Rent Stabilization and Arbitration Ordinance. The Rent Stabilization and Arbitration Ordinance includes provisions for eviction*

*controls, price controls, and other controls, and the Rent Board is authorized to determine which specific controls apply to a building or property.*

*The project, as modified, will conform to the Residential Design Guidelines in terms of material, scale, proportions and massing for the surrounding neighborhood, while maintaining general compliance with the requirements of the Planning Code. The project, as modified, will reinforce the existing street pattern as the building's front façade would be retained.*

10. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project does comply with said policies in that:

A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

*Existing neighborhood-serving retail uses would not be displaced or otherwise adversely affected by the proposal, as the existing building does not contain commercial uses.*

B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

*The project, as modified, is compatible with the existing housing and neighborhood character of the immediate vicinity. The project proposes a height and scale compatible with the adjacent neighbors and is consistent with the Planning Code, while providing three family-sized dwellings.*

C. That the City's supply of affordable housing be preserved and enhanced,

*The proposed three-family dwelling adds appropriately scaled and family-sized units to the city's housing stock.*

D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

*The project, as modified, meets the density, off-street parking and bicycle parking requirements of the Planning Code and is therefore not anticipated to impede transit service or overburden our streets with neighborhood parking.*

E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

*The project, as modified, will not displace any service or industry establishment. The future ownership of industrial or service sector businesses will not be affected by this project.*

F. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

*The project, as modified, will be designed and constructed to conform to the structural and seismic safety requirements of the City Building Code. This proposal will not impact the property's ability to withstand an earthquake.*

- G. That landmarks and historic buildings be preserved.

*A landmark or historic building does not occupy the project site.*

- H. That our parks and open space and their access to sunlight and vistas be protected from development.

*The project, as modified, will have no negative impact on existing parks and open spaces.*

11. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.
12. The replacement of a single-family dwelling with a three-unit building is consistent with the Mayor's Executive Directive aimed at delivering at least 5,000 units of new or rehabilitated housing every year for the foreseeable future.
13. The Commission hereby finds that approval of the Conditional Use authorization would promote the health, safety and welfare of the City.

## DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2015-018150CUA** subject to the following conditions attached hereto as "EXHIBIT A".

**APPEAL AND EFFECTIVE DATE OF MOTION:** Any aggrieved person may appeal this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. XXXXX. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

**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 **ADOPTED** the foregoing Motion on November 15, 2018.

Jonas P. Ionin  
Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: November 15, 2018

## **EXHIBIT A**

### **AUTHORIZATION**

This authorization is for a conditional use to partially demolish all but the front façade of the two-story single-family dwelling located at 137 Clayton Street, Lot 006 in Assessor's Block 1194, within the RH-3 District and a 40-X Height and Bulk District, and construct rear horizontal and vertical additions to add two new dwelling units to the building, pursuant to Planning Code Sections 303 and 317(d) for Case No. 2015-018150CUA and subject to conditions of approval reviewed and approved by the Commission on November 15, 2018 under Motion No **XXXXX**. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

### **RECORDATION OF CONDITIONS OF APPROVAL**

Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on November 15, 2018 under Motion No **XXXXX**.

### **PRINTING OF CONDITIONS OF APPROVAL ON PLANS**

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. **XXXXX** shall be reproduced on the Index Sheet of construction plans submitted with the Site or Building permit application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

### **SEVERABILITY**

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a building permit. "Project Sponsor" shall include any subsequent responsible party.

### **CHANGES AND MODIFICATIONS**

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.

## Conditions of Approval, Compliance, Monitoring, and Reporting

### PERFORMANCE

1. **Validity.** The authorization and right vested by virtue of this action is valid for three (3) years from the effective date of the Motion. The Department of Building Inspection shall have issued a Building Permit or Site Permit to construct the project and/or commence the approved use within this three-year period.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

2. **Expiration and Renewal.** Should a Building or Site Permit be sought after the three (3) year period has lapsed, the project sponsor must seek a renewal of this Authorization by filing an application for an amendment to the original Authorization or a new application for Authorization. Should the project sponsor decline to so file, and decline to withdraw the permit application, the Commission shall conduct a public hearing in order to consider the revocation of the Authorization. Should the Commission not revoke the Authorization following the closure of the public hearing, the Commission shall determine the extension of time for the continued validity of the Authorization.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

3. **Diligent pursuit.** Once a site or Building Permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. Failure to do so shall be grounds for the Commission to consider revoking the approval if more than three (3) years have passed since this Authorization was approved.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

4. **Extension.** All time limits in the preceding three paragraphs may be extended at the discretion of the Zoning Administrator where 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.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

5. **Conformity with Current Law.** No application for Building Permit, Site Permit, or other entitlement shall be approved unless it complies with all applicable provisions of City Codes in effect at the time of such approval.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

### DESIGN

6. **Massing and Design.** The Project Sponsor shall submit to the Planning Department for approval a revised project design meeting the following requirements:

- a. The front façade of the existing building shall be retained in its entirety and shall not be relocated vertically or horizontally and shall not be modified by the inclusion of a garage door;
- b. Horizontal rear additions and/or a vertical addition to the existing building, may be incorporated, consistent with the Residential Design Guidelines;
- c. The revised project shall include a total of three (3) separate residential units, each with at least two (2) bedrooms.

*For information about compliance, contact the Case Planner, Planning Department at 415-575-9087, [www.sf-planning.org](http://www.sf-planning.org)*

7. **Final Materials.** The Project Sponsor shall continue to work with Planning Department on the building design. Final materials, glazing, color, texture, landscaping, and detailing shall be subject to Department staff review and approval. The architectural addenda shall be reviewed and approved by the Planning Department prior to issuance.

*For information about compliance, contact the Case Planner, Planning Department at 415-575-9087, [www.sf-planning.org](http://www.sf-planning.org)*

8. **Garbage, composting and recycling storage.** Space for the collection and storage of garbage, composting, and recycling shall be provided within enclosed areas on the property and clearly labeled and illustrated on the building permit plans. Space for the collection and storage of recyclable and compostable materials that meets the size, location, accessibility and other standards specified by the San Francisco Recycling Program shall be provided at the ground level of the buildings.

*For information about compliance, contact the Case Planner, Planning Department at 415-575-9087, [www.sf-planning.org](http://www.sf-planning.org)*

## PARKING AND TRAFFIC

9. **Bicycle Parking.** The Project shall provide no fewer than three (3) Class 1 bicycle parking spaces as required by Planning Code Sections 155.1 and 155.5.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

10. **Off-Street Parking.** Pursuant to Planning Code Section 150(e), the Project shall provide three (3) Class 1 bicycle parking spaces in lieu of off-street parking spaces.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

## PROVISIONS

11. **Child Care Fee - Residential.** The Project is subject to the Residential Child Care Fee, as applicable, pursuant to Planning Code Section 414A.

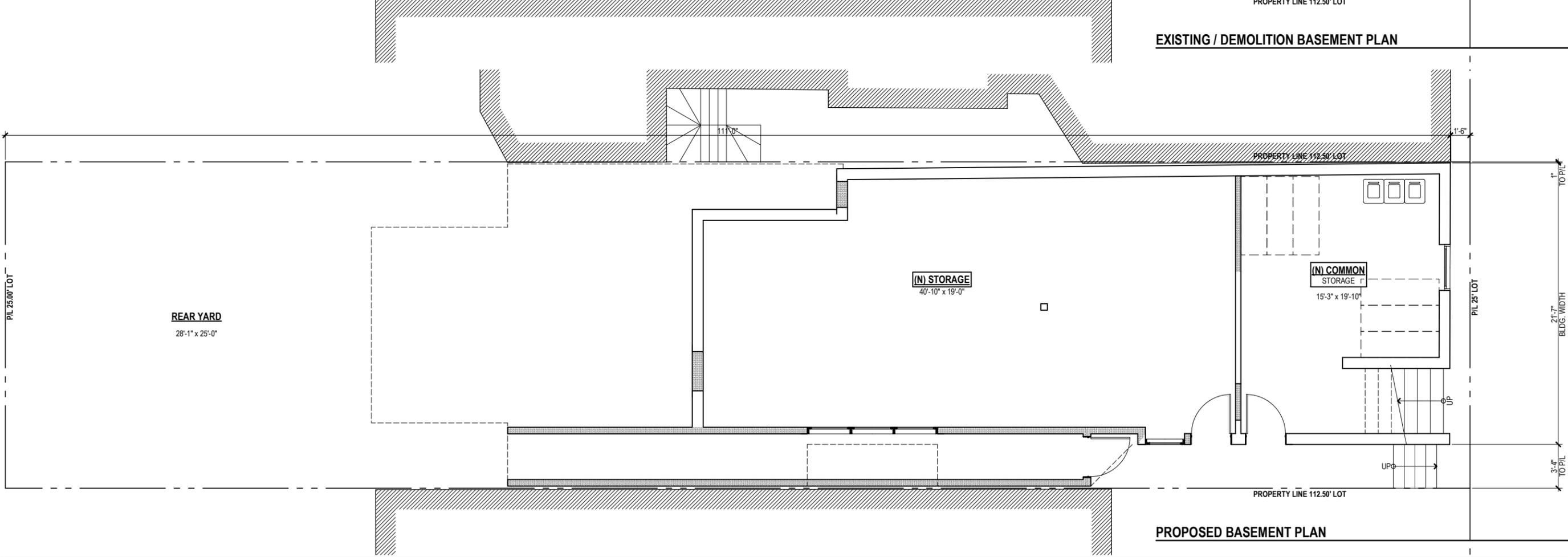
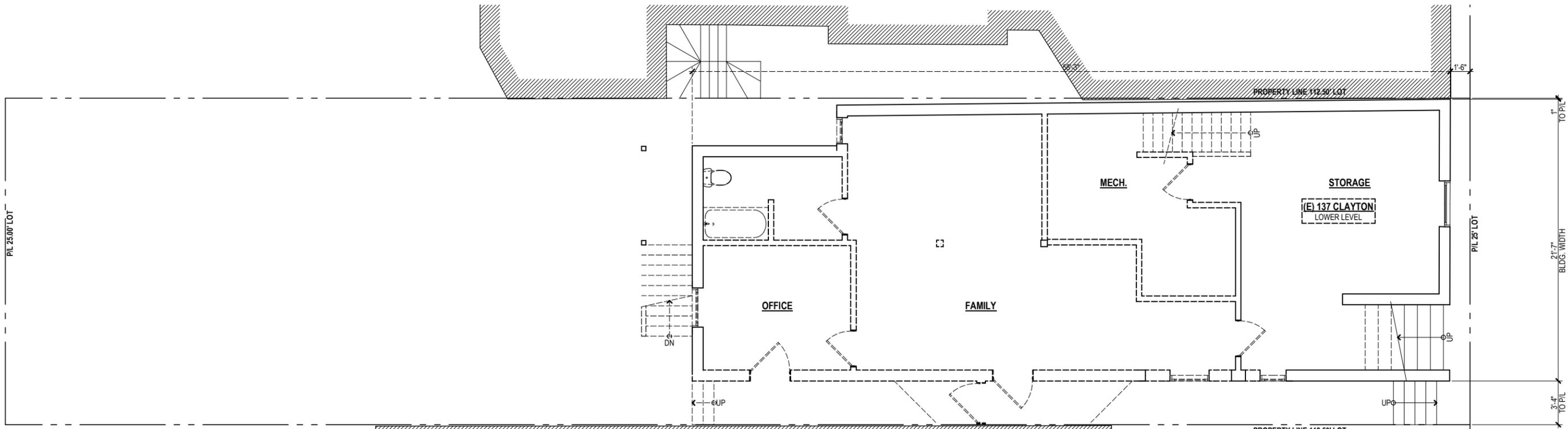
*For information about compliance, contact the Case Planner, Planning Department at 415-575-9087, [www.sf-planning.org](http://www.sf-planning.org)*

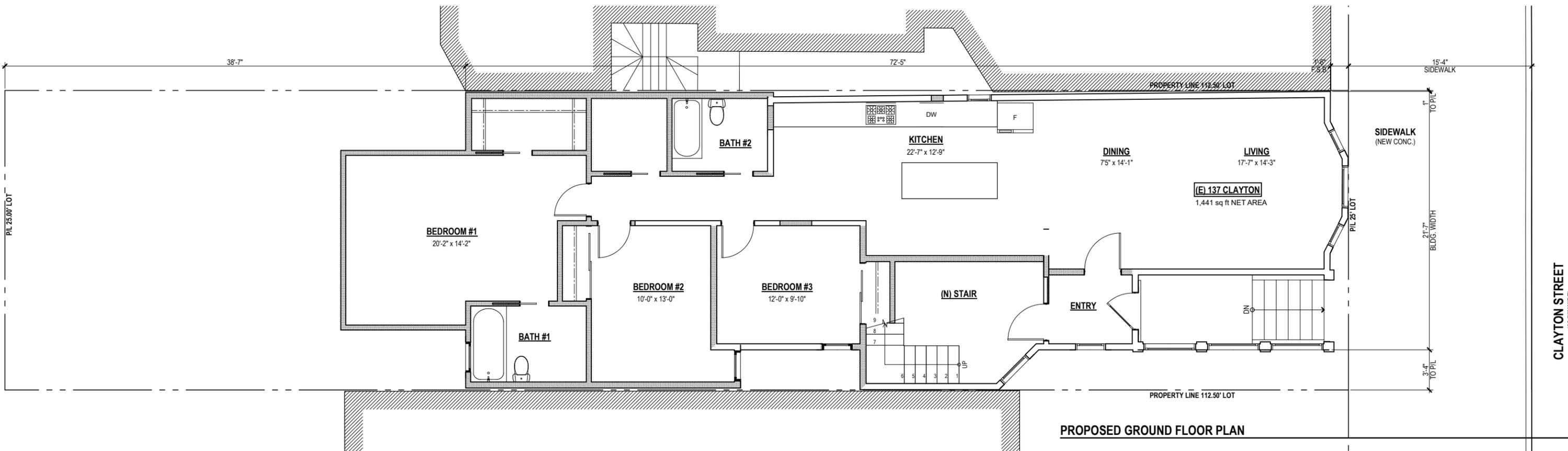
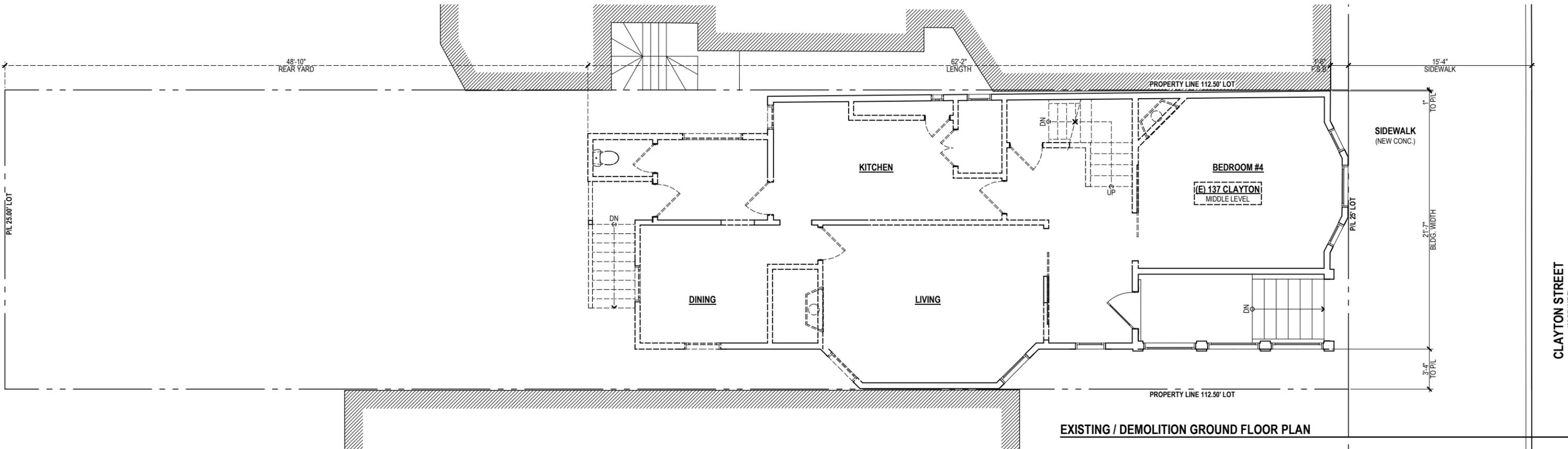
## MONITORING - AFTER ENTITLEMENT

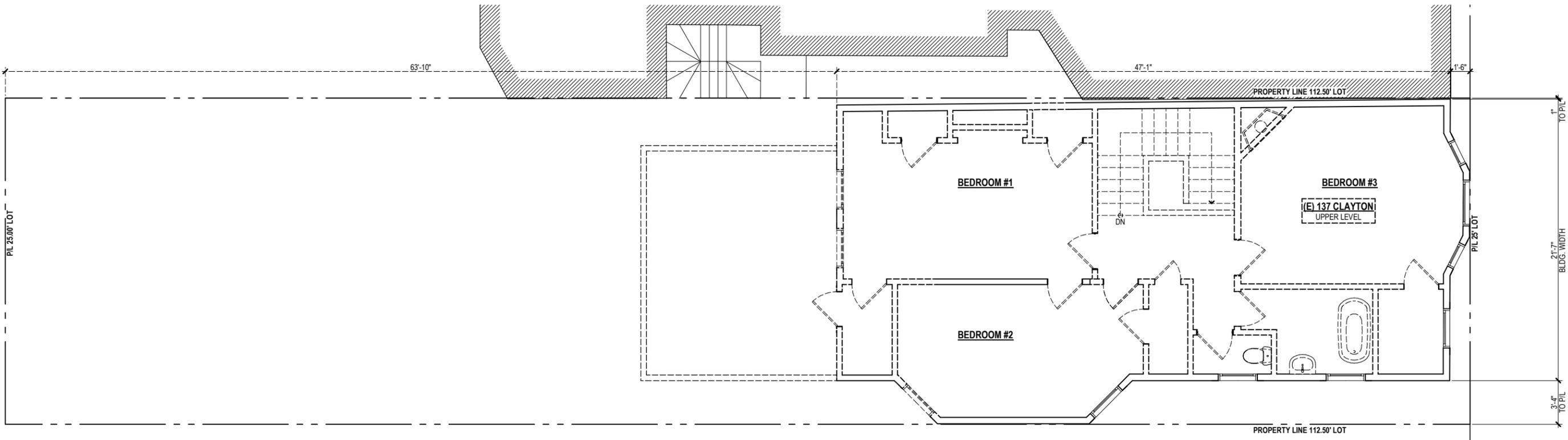
12. **Enforcement.** Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.  
*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*
13. **Revocation due to Violation of Conditions.** Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and found to be in violation of the Planning Code and/or the specific conditions of approval for the Project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter to consider revocation of this authorization.  
*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

## OPERATION

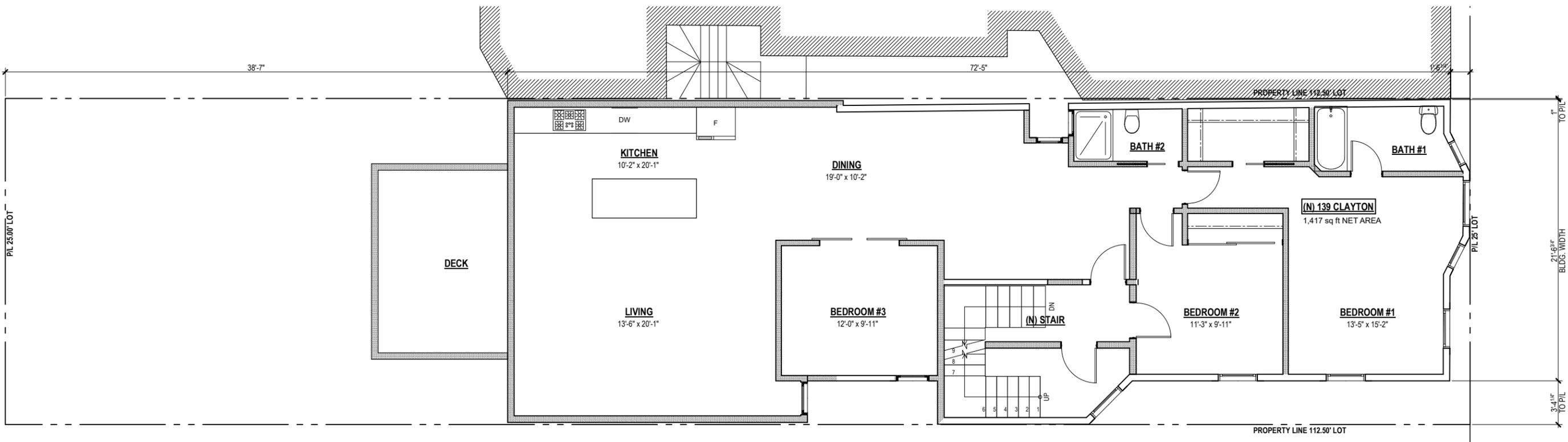
14. **Garbage, Recycling, and Composting Receptacles.** Garbage, recycling, and compost containers shall be kept within the premises and hidden from public view, and placed outside only when being serviced by the disposal company. Trash shall be contained and disposed of pursuant to garbage and recycling receptacles guidelines set forth by the Department of Public Works.  
*For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-.5810, <http://sfdpw.org>*
15. **Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Streets and Sidewalk Maintenance Standards.  
*For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, <http://sfdpw.org>*



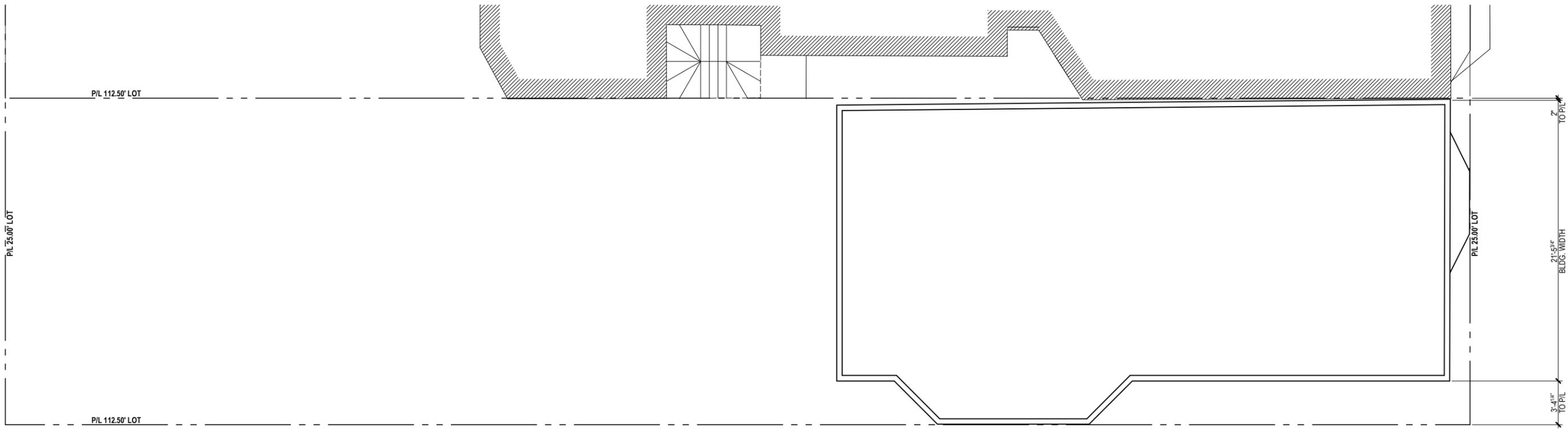




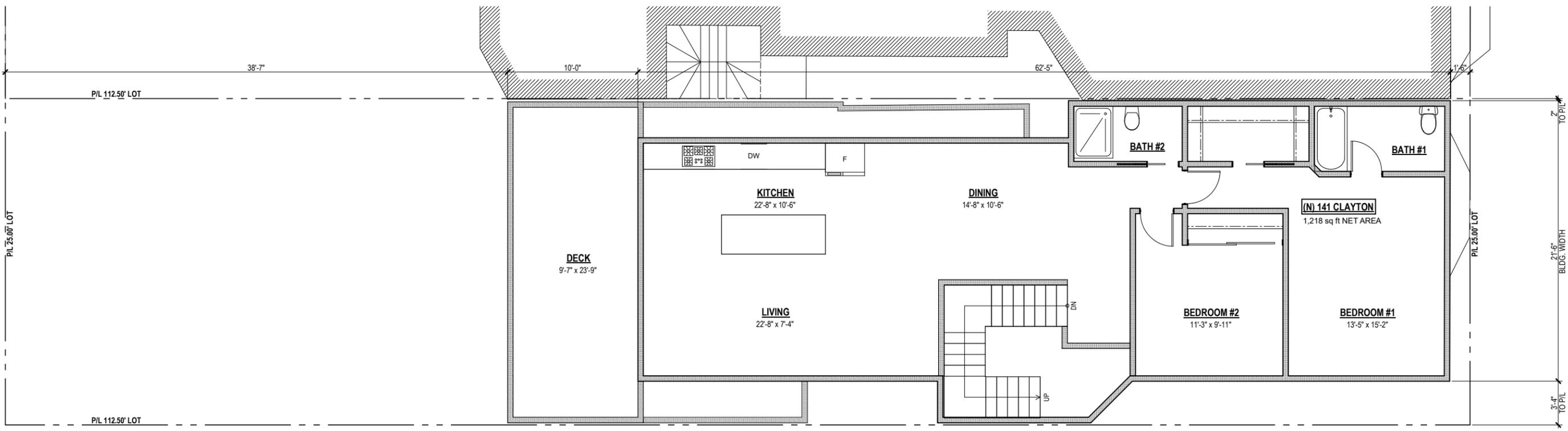
**EXISTING / DEMOLITION SECOND FLOOR PLAN**



**PROPOSED SECOND FLOOR PLAN**



(E) ROOF PLAN



PROPOSED THIRD FLOOR PLAN