



SAN FRANCISCO PLANNING DEPARTMENT

Discretionary Review Abbreviated Analysis

HEARING DATE: AUGUST 30, 2018

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

File Date: August 20, 2018
Case No.: **2017-007888DRP**
Project Address: **2742 BUCHANAN STREET**
Permit Application: 2017.03.06.0781
Zoning: RH-2 [Residential House, Two-Family]
40-X Height and Bulk District
Block/Lot: 0566/049
Project Sponsor: Sabra Ballon
2458 Chestnut Street
San Francisco, CA 94123
Staff Contact: Laura Ajello – (415) 575-9142
laura.ajello@sfgov.org
Recommendation: **Do not take DR and approve as proposed**

PROJECT DESCRIPTION

The proposal consists of a 68 square foot addition gained by infill of a 3.5 foot wide by 19.5 feet deep notch at the rear of the building along the south side property line, widening the existing second floor roof deck, and adding a spiral stair to a new 245 square foot roof deck on the third floor to a three-story, two-family dwelling. The building footprint, number of stories and building height remain unchanged.

SITE DESCRIPTION AND PRESENT USE

The project site is located on the east side of Buchanan Street between Vallejo Street and Broadway in the Pacific Heights neighborhood. The subject parcel measures approximately 26 wide by 100 feet deep with an area of 2,600 square feet. The lot contains a three-story two-family condominium constructed in 1938.

SURROUNDING PROPERTIES AND NEIGHBORHOOD

The project site is located in the Pacific Heights neighborhood. The surrounding development consists mainly of two-family homes and small apartment buildings with a smattering of large apartment buildings, typically located on corner lots. The scale of development in the area consists primarily of three- to four-story residential structures.

The property immediately adjacent to the north at 2746 Buchanan Street is a three-story building containing one residential unit. The DR requestor's property immediately adjacent to the south at 2734-2736 Buchanan Street is a three-story building containing two residential units.

BUILDING PERMIT NOTIFICATION

TYPE	REQUIRED PERIOD	NOTIFICATION DATES	DR FILE DATE	DR HEARING DATE	FILING TO HEARING TIME
311 Notice	30 days	April 10, 2018 – May 10, 2018	May 10, 2018	August 30, 2018	112 days

HEARING NOTIFICATION

TYPE	REQUIRED PERIOD	REQUIRED NOTICE DATE	ACTUAL NOTICE DATE	ACTUAL PERIOD
Posted Notice	10 days	August 20, 2018	August 16, 2018	14 days
Mailed Notice	10 days	August 20, 2018	August 20, 2018	10 days

PUBLIC COMMENT

	SUPPORT	OPPOSED	NO POSITION
Adjacent neighbor	0	1 (DR)	0
Other neighbors on the block or directly across the street	0	0	0
Neighborhood groups	0	0	0

The Department has not received any public comment pertaining to the requested Discretionary Review of the proposed project (as of the publication date of this packet).

DR REQUESTOR

Steven L. Hammond, Esq. for Michael Harden, owner of 2734 Buchanan Street, adjacent to the south side property line of the subject property.

DR REQUESTOR'S CONCERNS AND PROPOSED ALTERNATIVES

See attached *Discretionary Review Application*, dated May 10, 2018.

PROJECT SPONSOR'S RESPONSE TO DR APPLICATION

See attached *Response to Discretionary Review*, dated June 19, 2018.

ENVIRONMENTAL REVIEW

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

RESIDENTIAL DESIGN TEAM REVIEW

The Residential Design Team reviewed the project and Discretionary Review Application Request on June 13, 2018 and found no exceptional or extraordinary circumstances related to the project or the DR requestor's concerns. The property-line windows located on the DR requestor's home are not protected from being obscured by structures on adjacent properties and the proposed roof deck is setback five feet from the adjacent properties.

The Department supports the project and provides a recommendation to the Commission to not take DR and to approve the project as proposed.

Under the Commission's pending DR Reform Legislation, this project would not be referred to the Commission as this project does not contain or create any exceptional or extraordinary circumstances.

RECOMMENDATION: Do not take DR and approve project as proposed
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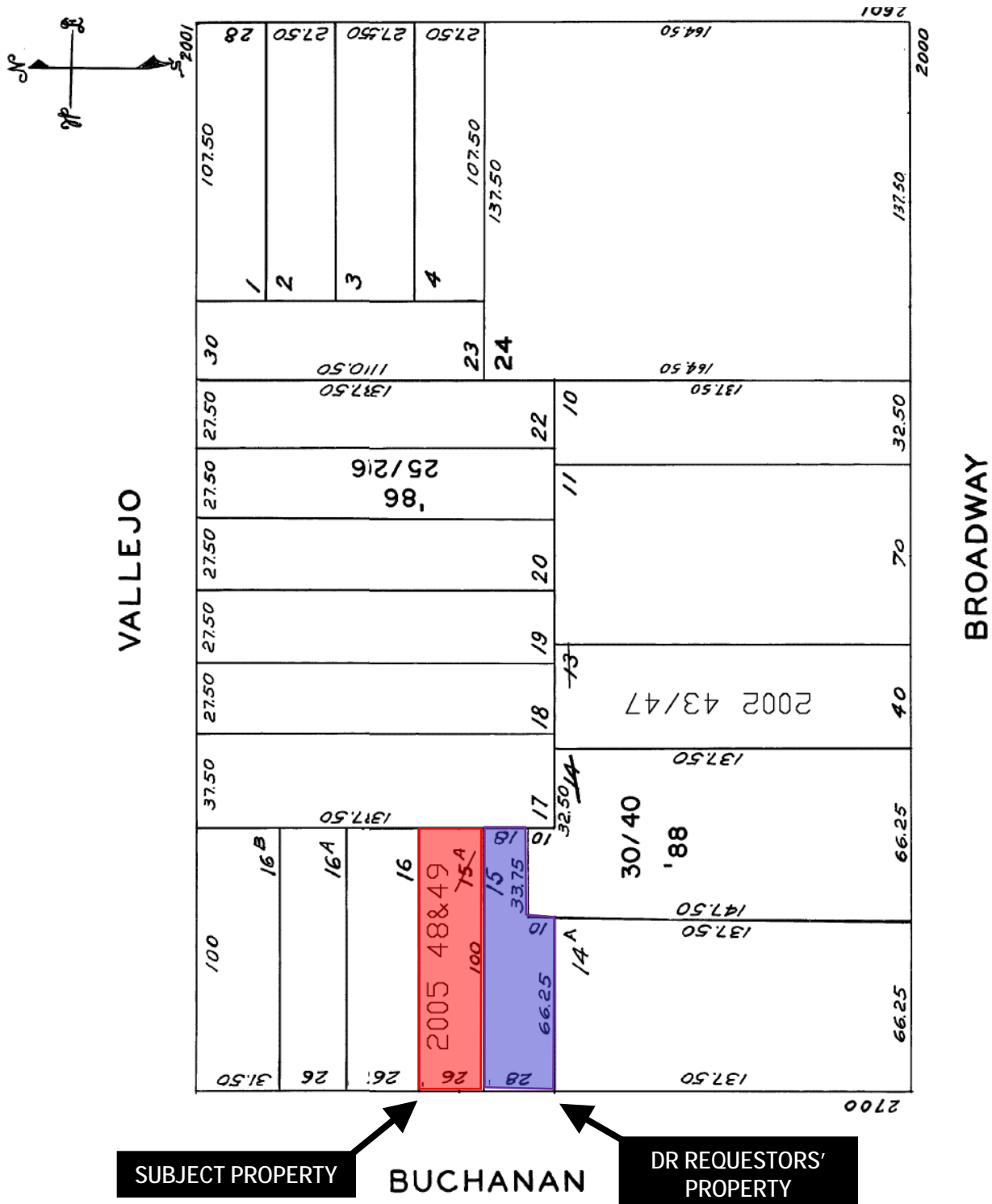
Attachments:

Block Book Map
Sanborn Map
Zoning Map
Aerial Photographs
Context Photograph
Section 311 Notice
DR Application
Response to DR Application dated June 19, 2018
Reduced Plans

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Parcel Map

LAGUNA

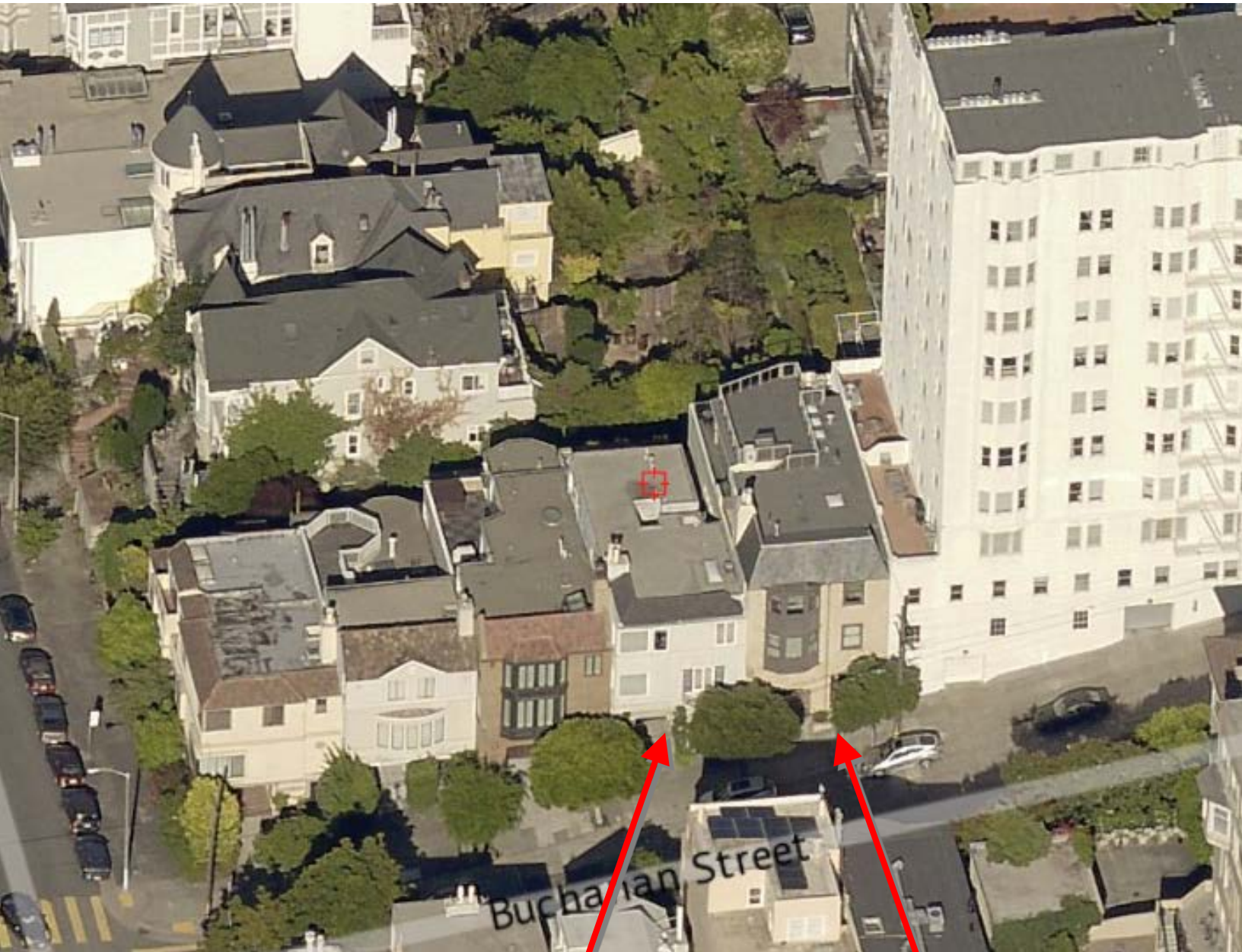


Discretionary Review Hearing
Case Number 2017-007888DRP
 2742 Buchanan Street

**The Sanborn Maps in San Francisco have not been updated since 1998, and this map may not accurately reflect existing conditions.*



Aerial Photo 1



SUBJECT PROPERTY

DR REQUESTORS'
PROPERTY



Discretionary Review Hearing
Case Number 2017-007888DRP
2742 Buchanan Street

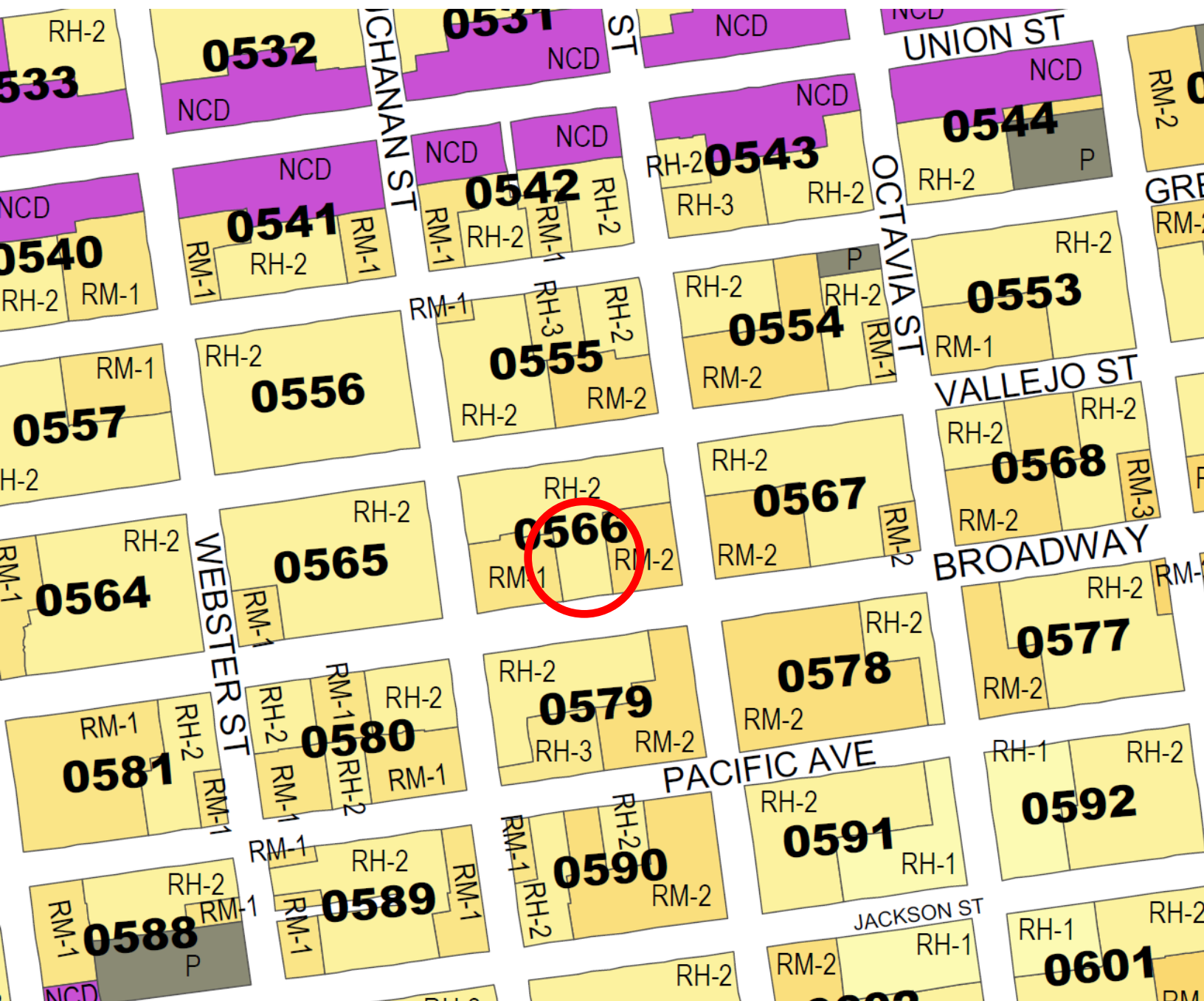
Aerial Photo 2

DR REQUESTORS'
PROPERTY

SUBJECT PROPERTY



Zoning Map



Discretionary Review Hearing
Case Number 2017-007888DRP
2742 Buchanan Street

Site Photo



Discretionary Review Hearing
Case Number 2017-007888DRP
2742 Buchanan Street



SAN FRANCISCO PLANNING DEPARTMENT

1650 Mission Street Suite 400 San Francisco, CA 94103

NOTICE OF BUILDING PERMIT APPLICATION (SECTION 311)

On **May 24, 2017**, the Applicant named below filed Building Permit Application No. **2017.03.06.0781** with the City and County of San Francisco.

PROJECT INFORMATION		APPLICANT INFORMATION	
Project Address:	2740-2742 Buchanan Street	Applicant:	Sabra Ballon
Cross Street(s):	Vallejo Street & Broadway	Address:	2458 Chestnut Street
Block/Lot No.:	0566/048-049	City, State:	San Francisco, CA 94123
Zoning District(s):	RH-2 / 40-X	Telephone:	(415) 795-4100
Record No.:	2017-007888PRJ	Email:	sabraballon@me.com

You are receiving this notice as a property owner or resident within 150 feet of the proposed project. You are not required to take any action. For more information about the proposed project, or to express concerns about the project, please contact the Applicant listed above or the Planner named below as soon as possible. If you believe that there are exceptional or extraordinary circumstances associated with the project, you may request the Planning Commission to use its discretionary powers to review this application at a public hearing. Applications requesting a Discretionary Review hearing must be filed during the 30-day review period, prior to the close of business on the Expiration Date shown below, or the next business day if that date is on a week-end or a legal holiday. If no Requests for Discretionary Review are filed, this project will be approved by the Planning Department after the Expiration Date.

Members of the public are not required to provide personal identifying information when they communicate with the Commission or the Department. All written or oral communications, including submitted personal contact information, may be made available to the public for inspection and copying upon request and may appear on the Department's website or in other public documents.

PROJECT SCOPE		
<input type="checkbox"/> Demolition	<input type="checkbox"/> New Construction	<input checked="" type="checkbox"/> Alteration
<input type="checkbox"/> Change of Use	<input type="checkbox"/> Façade Alteration(s)	<input type="checkbox"/> Front Addition
<input type="checkbox"/> Rear Addition	<input checked="" type="checkbox"/> Side Addition	<input type="checkbox"/> Vertical Addition
PROJECT FEATURES	EXISTING	PROPOSED
Building Use	Residential	No Change
Front Setback	None	No Change
Side Setbacks	None	No Change
Building Depth	67'-11"	No Change
Rear Yard	31 feet, 10 inches	No Change
Building Height	36 feet	No Change
Number of Stories	3	No Change
Number of Dwelling Units	2	No Change
Number of Parking Spaces	2	No Change
PROJECT DESCRIPTION		
The proposal is a 68 square foot addition gained by infill of a 3.5 foot wide by 19.5 feet deep notch at the rear of the building along the south side property line. The project includes widening of the existing second floor roof deck, and adding a spiral stair to a new 356 square foot roof deck on the third floor. See attached plans.		
The issuance of the building permit by the Department of Building Inspection or the Planning Commission project approval at a discretionary review hearing would constitute as the Approval Action for the project for the purposes of CEQA, pursuant to Section 31.04(h) of the San Francisco Administrative Code.		

For more information, please contact Planning Department staff:

Planner: Laura Ajello
Telephone: (415) 575-9142
E-mail: laura.ajello@sfgov.org

Notice Date: 4/10/2018
Expiration Date: 5/10/2018

GENERAL INFORMATION ABOUT PROCEDURES

Reduced copies of the proposed project plans have been included in this mailing for your information. If you have questions about the plans, please contact the project Applicant listed on the front of this notice. You may wish to discuss the plans with your neighbors or neighborhood association, as they may already be aware of the project. If you have general questions about the Planning Department's review process, please contact the Planning Information Center at 1660 Mission Street, 1st Floor (415/ 558-6377) between 8:00am - 5:00pm Monday-Friday. If you have specific questions about the proposed project, you should contact the planner listed on the front of this notice.

If you believe that the impact on you from the proposed project is significant and you wish to seek to change the project, there are several procedures you may use. **We strongly urge that steps 1 and 2 be taken.**

1. Request a meeting with the project Applicant to get more information and to explain the project's impact on you.
2. Contact the nonprofit organization Community Boards at (415) 920-3820, or online at www.communityboards.org for a facilitated discussion in a safe and collaborative environment. Community Boards acts as a neutral third party and has, on many occasions, helped reach mutually agreeable solutions.
3. Where you have attempted, through the use of the above steps or other means, to address potential problems without success, please contact the planner listed on the front of this notice to discuss your concerns.

If, after exhausting the procedures outlined above, you still believe that exceptional and extraordinary circumstances exist, you have the option to request that the Planning Commission exercise its discretionary powers to review the project. These powers are reserved for use in exceptional and extraordinary circumstances for projects which generally conflict with the City's General Plan and the Priority Policies of the Planning Code; therefore the Commission exercises its discretion with utmost restraint. This procedure is called Discretionary Review. If you believe the project warrants Discretionary Review by the Planning Commission, **you must file a Discretionary Review application prior to the Expiration Date shown on the front of this notice.** Discretionary Review applications are available at the Planning Information Center (PIC), 1660 Mission Street, 1st Floor, or online at www.sfplanning.org. You must submit the application in person at the Planning Information Center (PIC) between 8:00am - 5:00pm Monday-Friday, with all required materials and a check payable to the Planning Department. To determine the fee for a Discretionary Review, please refer to the Planning Department Fee Schedule available at www.sfplanning.org. If the project includes multiple building permits, i.e. demolition and new construction, a **separate request for Discretionary Review must be submitted, with all required materials and fee, for each permit that you feel will have an impact on you.**

Incomplete applications will not be accepted.

If no Discretionary Review Applications have been filed within the Notification Period, the Planning Department will approve the application and forward it to the Department of Building Inspection for its review.

BOARD OF APPEALS

An appeal of the Planning Commission's decision on a Discretionary Review case may be made to the **Board of Appeals within 15 calendar days after the building permit is issued** (or denied) by the Department of Building Inspection. Appeals must be submitted in person at the Board's office at 1650 Mission Street, 3rd Floor, Room 304. For further information about appeals to the Board of Appeals, including current fees, contact the Board of Appeals at (415) 575-6880.

ENVIRONMENTAL REVIEW

This project has undergone preliminary review pursuant to California Environmental Quality Act (CEQA). If, as part of this process, the Department's Environmental Review Officer has deemed this project to be exempt from further environmental review, an exemption determination has been prepared and can be obtained through the Exemption Map, on-line, at www.sfplanning.org. An appeal of the decision **to exempt the proposed project from CEQA may be made to the Board of Supervisors within 30 calendar days** after the project approval action identified on the determination. The procedures for filing an appeal of an exemption determination are available from the Clerk of the Board at City Hall, Room 244, or by calling (415) 554-5184.

Under CEQA, in a later court challenge, a litigant may be limited to raising only those issues previously raised at a hearing on the project or in written correspondence delivered to the Board of Supervisors, Planning Commission, Planning Department or other City board, commission or department at, or prior to, such hearing, or as part of the appeal hearing process on the CEQA decision.



San Francisco
Planning

RECEIVED

MAY 10 2018

DISCRETIONARY REVIEW APPLICATION

CITY & COUNTY OF S.F.
PLANNING DEPARTMENT
PIC

PLANNING APPLICATION RECORD NUMBER

2017-007888DRP

Property Owner's Information

Name: Michael Harden (property neighboring project at 2742 Buchanan St.)

Address: 2734 Buchanan Street, San Francisco, CA 94123

Email Address: mike@big-rock.com

Telephone: (415) 984-8554

Applicant Information (if applicable)

Name: Steven L. Hammond, Esq. (authorized agent for Michael Harden)

Same as above ☐

Company/Organization: Clark Hill LLP

Address: One Embarcadero, Suite 400, San Francisco, CA 94111

Email Address: SHammond@ClarkHill.com

Telephone: (415) 984-8554

Please Select Billing Contact:

☐ Owner

☒ Applicant

☐ Other (see below for details)

Name: Steven L. Hammond

Email: SHammond@ClarkHill.com

Phone: (415) 984-8554

Please Select Primary Project Contact:

☐ Owner

☒ Applicant

☐ Billing

Property Information

Project Address: 2742 Buchanan Street, San Francisco, CA 94123

Block/Lot(s): 0566/048

Plan Area:

Project Description:

Please provide a narrative project description that summarizes the project and its purpose. Please state which section(s) of the Planning Code from which you are requesting a variance. Please list any special authorizations or changes to the Planning Code or Zoning Maps if applicable.

See attached.

Project Details:

- ☐ Change of Use ☐ New Construction ☐ Demolition ☐ Facade Alterations ☐ ROW Improvements
☒ Additions ☐ Legislative/Zoning Changes ☐ Lot Line Adjustment-Subdivision ☐ Other _____

Estimated Construction Cost: \$150,000

- Residential:** ☐ Special Needs ☐ Senior Housing ☐ 100% Affordable ☐ Student Housing ☐ Dwelling Unit Legalization
☐ Inclusionary Housing Required ☐ State Density Bonus ☐ Accessory Dwelling Unit

- Non-Residential:** ☐ Formula Retail ☐ Medical Cannabis Dispensary ☐ Tobacco Paraphernalia Establishment
☐ Financial Service ☐ Massage Establishment ☐ Other: _____

Related Building Permits Applications

Building Permit Applications No(s): 2017.03.06.0781

ACTIONS PRIOR TO A DISCRETIONARY REVIEW REQUEST

In reviewing applications for Certificate of Appropriateness the Historic Preservation Commission, Department staff, Board of Appeals and/or Board of Supervisors, and the Planning Commission shall be governed by *The Secretary of the Interior's Standards for the Treatment of Historic Properties* pursuant to Section 1006.6 of the Planning Code. Please respond to each statement completely (Note: Attach continuation sheets, if necessary). Give reasons as to *how* and *why* the project meets the ten Standards rather than merely concluding that it does so. IF A GIVEN REQUIREMENT DOES NOT APPLY TO YOUR PROJECT, EXPLAIN WHY IT DOES NOT.

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

CHANGES MADE TO THE PROJECT AS A RESULT OF MEDIATION

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

See attached.

DISCRETIONARY REVIEW REQUEST

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

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

See attached.

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

See attached.

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

See attached.

APPLICANT'S AFFIDAVIT

Under penalty of perjury the following declarations are made:

- a) The undersigned is the owner or authorized agent of the owner of this property.
- b) The information presented is true and correct to the best of my knowledge.
- c) Other information or applications may be required.


Signature

Agent for DR Requestor Michael
Harden

Relationship to Project
(i.e. Owner, Architect, etc.)

(415) 984-8554

Phone

Steven L. Hammond (Clark Hill LLP)

Name (Printed)

SHammond@ClarkHill.com

Email

APPLICANT'S SITE VISIT CONSENT FORM

I herby authorize City and County of San Francisco Planning staff to conduct a site visit of this property, making all portions of the interior and exterior accessible.


Signature

5/9/2018

Date

Steven L. Hammond (Clark Hill LLP)

Name (Printed)

For Department Use Only

Application received by Planning Department:

By: _____

Date: _____

Questions and Answers to Discretionary Review Application
Project: 2742 Buchanan Street

Q: Please provide a narrative project description that summarizes the project and its purpose. Please state which section(s) of the Planning Code from which you are requesting a variance. Please list any special authorizations or changes to the Planning Code or Zoning Maps if applicable.

A:

The building permit application submitted by project owners has two main components. The first is a side-yard addition to the top floor to expand an existing bathroom. The proposed addition will block the neighbors' four existing windows where DR Requestor, Michael Harden, lives with his wife and three young children (the "Neighbors"). The addition would fill in the empty space at the property line by eliminating the existing three-foot setback from the Neighbors' four windows.

The second component is to add a large rooftop party deck that is immediately in front of the Neighbors' floor-to-ceiling kitchen/living/eating area windows. The rooftop deck would create unobstructed, close-up visual access to the heart of the Neighbors' home. Access to the rooftop deck is by way of a large spiral staircase from the middle of an existing rear-yard deck. The size and placement of the proposed spiral staircase makes the existing deck substantially unusable.

Q: If you have discussed the project with the applicant, planning sta. or gone through mediation, please attach a summary of the result, including any changes that were made to the proposed project.

A:

The Neighbors made extensive efforts to compromise by engaging the project owners directly in communications and by hiring an architect to engage with the project sponsor. The project owners refused all proposals and refused to make any changes to the project. The Neighbors hired well-respected and highly-experienced San Francisco architect, John Lum, to evaluate and design alternative configurations that would meet the project owners' desires while not blocking the Neighbors' windows. Mr. Lum designed three viable alternate configurations and discussed each with the project sponsor. Each configuration provides for a larger, disability accessible, bathroom and provides for a clothes washer and dryer. Alternate Bathroom Sketch #1 takes advantage of the project owners' open roof space to the west of their current bathroom. Alternate Bathroom Sketches #2 and #3 show possibilities for expansion through the construction of an addition on the lot line, but to the east of the Neighbors' four windows.

Q: In the space below and on separate paper, if necessary, please present facts sufficient to answer each question. 1. What are the reasons for requesting Discretionary Review? The project meets the minimum standards of the Planning Code. What are the exceptional and extraordinary circumstances that justify Discretionary Review of the project? How does the project conflict with the City's General Plan or the Planning Code's Priority Policies or Residential Design Guidelines? Please be specific and site specific sections of the Residential Design Guidelines.

Questions and Answers to Discretionary Review Application
Project: 2742 Buchanan Street

A:

1. The Proposed Addition Would Block Four of the Neighbors' Existing Windows

First, the proposed addition would block four of the Neighbors' existing windows. (See enclosed photograph.) A Design Principle of the Residential Design Guidelines (the "Guidelines") advises permit applicants to minimize impacts on light and privacy to adjacent properties by providing adequate setbacks. (Guidelines, pp. 5, 16) Some reduction of light to neighboring buildings can be expected; however, in situations where a proposed project will have a greater impact, then the design should be modified by providing light wells or setbacks on the upper floors of the building. (Guidelines, p. 16.) Here, the Neighbors have proposed three viable alternative configurations that would meet the Guidelines whereas the current application fails to do so.

2. The Proposed Rooftop Threatens Exceptional and Extraordinary Harm to the Neighbors' Privacy in the Heart of Their Home.

Second, the proposed rooftop deck threatens exceptional and extraordinary harm to the Neighbors' privacy because the entire north-facing wall of their kitchen, dining and main living area contains floor-to-ceiling windows immediately adjacent to the project's roof. A deck would create unobstructed, close-up visual access to the heart of the Neighbors' home. The Guidelines specify that a project's design should be modified to minimize privacy for adjacent properties. (Guidelines, pp. 16-17.) In regard to privacy, the Guidelines dictate that a project's design should be compatible with the surrounding context. (Guidelines, p. 16.) In situations where a proposed project will have an unusual impact on privacy to neighboring interior living spaces, modifications are appropriate depending on the circumstances of the particular project. (Guidelines, p. 17.) The photograph enclosed hereto shows the Neighbors' windows and the immediacy of the project's rooftop. The proposed rooftop party deck would extend to the lot line immediately adjacent to the Neighbor's parapet and would cover the entire area viewable in the photograph.

Here, the extreme loss of privacy to the Neighbors is exceptional and extraordinary. The living area at risk is the heart of the family home. It is the room where the Neighbors' three girls, ages 6, 4 and 2, eat and play every day. Because of the size of the Neighbors' windows and their constant use of the affected living area, there is no rooftop deck configuration or mitigating measure that would adequately protect the privacy of the three girls as they grow up. This is a substantial invasion to the privacy rights of family home that outweighs the benefits of the new rooftop deck particularly where, as here, the project owners already have one deck attached to their residence.

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

The project would cause unreasonable impacts in two ways. First, as discussed above, the side-yard addition would fill in the property line setback and block the Neighbors' four windows.

Questions and Answers to Discretionary Review Application
Project: 2742 Buchanan Street

The Neighbors' architect proposed three alternate designs that would allow the project owners to expand their bathroom without blocking the windows.

Further, the proposed bathroom is needlessly large for the project applicant's stated purpose to make the bathroom ADA compliant for public restrooms and to create a laundry area. The proposed addition would expand the bathroom from approximately 180 square feet to 236 square feet, which is excessive given that the unit's total building area is currently 1,197 square feet. Mr. Lum's alternate designs, as discussed above, show that there is no need to block the Neighbors' windows in order to satisfy these considerations.

Moreover, the need for a 60" wheelchair turning radius in the bathroom is dubious. Neither project owner uses a wheelchair. Access to this third-floor unit is by minimum-width stairway from the ground floor. The stairway requires two turns to access the third-floor unit and it is not equipped with a stair lift, nor is there a pending permit application to install such a lift.

Second, the proposed rooftop deck causes an unreasonable impact. As discussed above, the proposed deck threatens exceptional and extraordinary harm to the Neighbors' privacy because it creates unobstructed, close-up visual access directly into main living area where the Neighbors' three girls, ages 6, 4 and 2, eat and play every day.

Further, the project owners already have a deck at the back of their house. The existing deck as proposed is approximately 26 feet wide by eight feet deep. It is large, wind protected and has unobstructed views to the North. A second deck is unwarranted in light of the privacy impact to the Neighbors. This is especially true because the spiral staircase to the proposed rooftop deck makes the existing deck largely unusable as it is nearly six-foot-wide and located in the center of the existing deck.

Next, the proposed rooftop deck reveals the dubious nature regarding the project owners' insistence on a bathroom compliant with ADA standards for public bathrooms. The proposed spiral staircase provides only two feet of clearance to a large section of the existing deck, making it inaccessible by wheelchair. (See enclosed drawing.) Further, a spiral staircase is steeper than regular stairs and cannot be equipped with a stair lift for disabled access. The proposed rooftop deck makes no sense in when viewed in context with the permit application as a whole.

Finally, the only reason to construct a massive rooftop deck is to accommodate large parties or groups of people, which is out of character with the neighborhood. As shown in the enclosed photograph, the noise from such parties would unfairly impact the residents of the large condominium immediately above the proposed deck.

Questions and Answers to Discretionary Review Application
Project: 2742 Buchanan Street

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

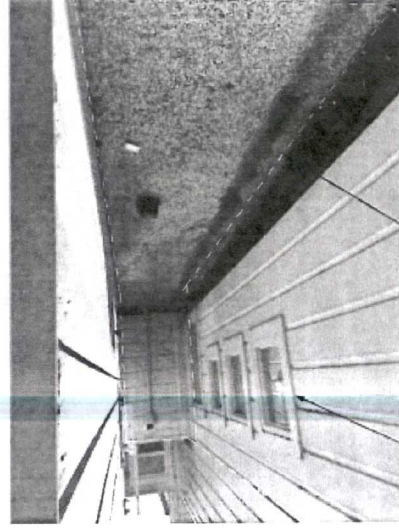
A:

1. Preserve existing setbacks on the third floor of project to preserve the Neighbors' four windows; and
2. Eliminate the proposed rooftop party deck to preserve privacy to the Neighbors' main living and eating area and to avoid unreasonable impact on the neighboring condominium residents.



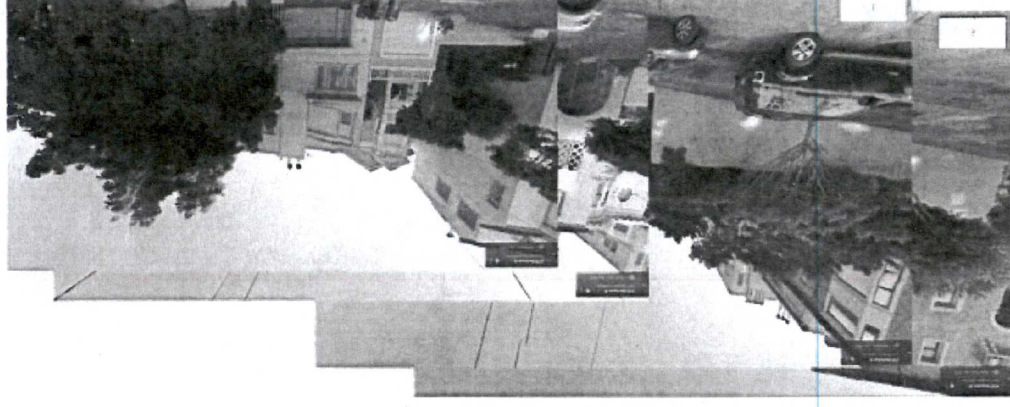
RTV

3 (E) WINDOWS IN AREA OF PROPOSED WORK
NOT TO SCALE



SED ADDITION

ON
LINE AT
PROPERTY
OF BUCHANAN

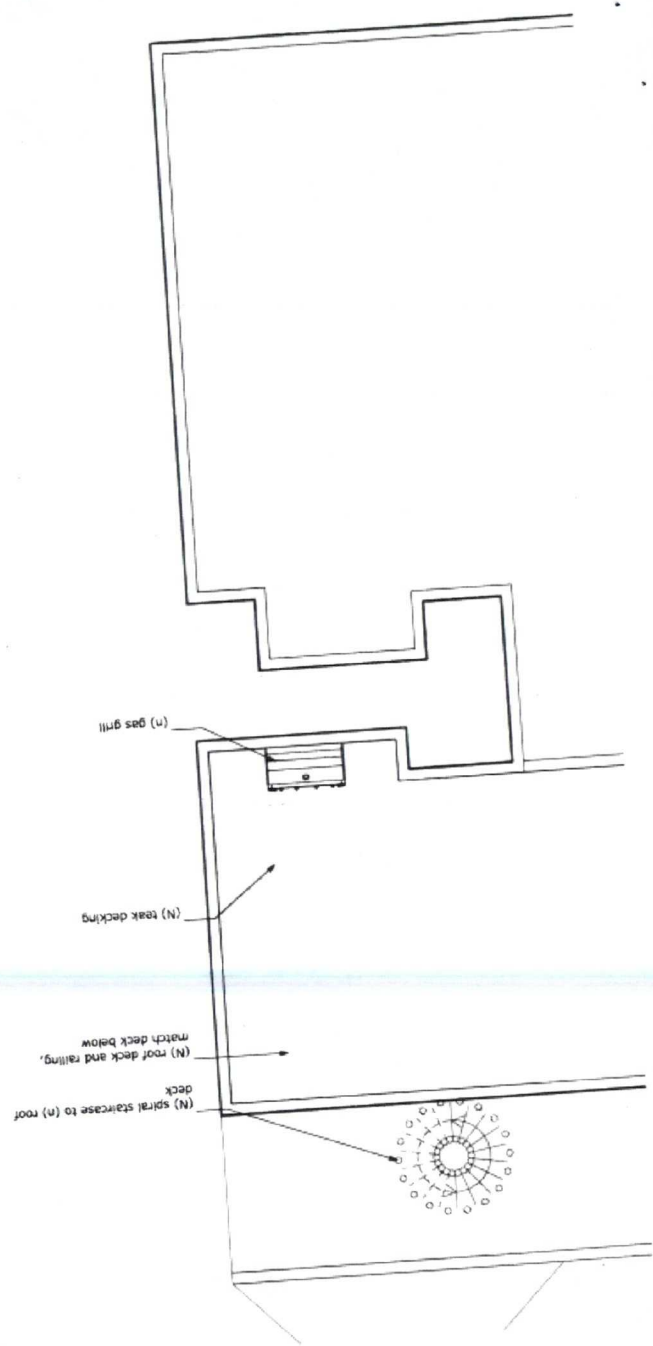
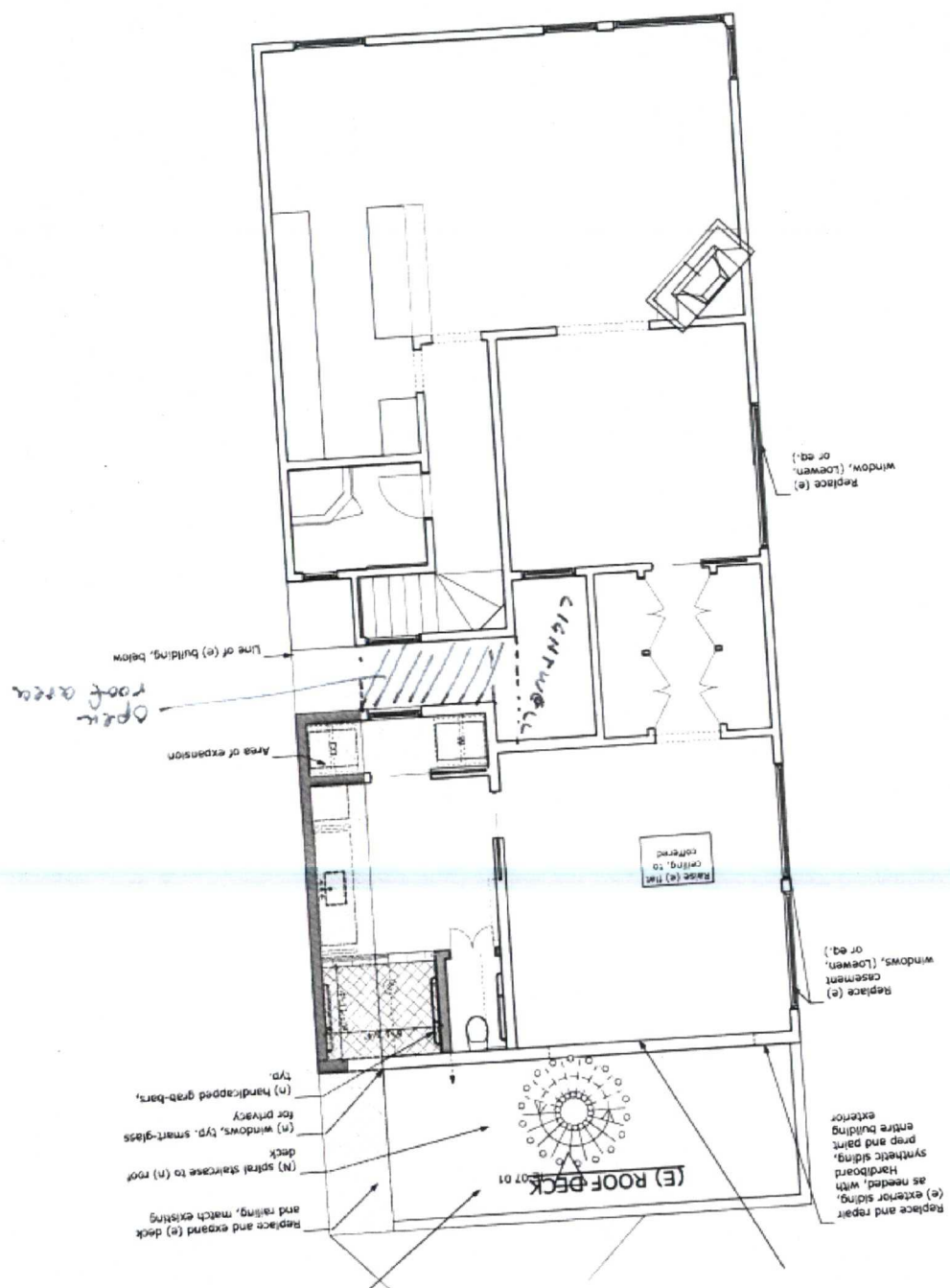


2 VIEW FROM BUCHANAN
NOT TO SCALE



SUBJECT PROPERTY







LETTER OF AUTHORIZATION

I, Michael Harden, own and reside at the property located at 2734 Buchanan Street, San Francisco, California 94123. I hereby authorize the law firm of Clark Hill LLP, and any attorneys, employees, or agents thereof, to file a Discretionary Review Application on my behalf with the San Francisco Planning Department related to building Permit Application No. 2017.03.06.0781 (2742 Buchanan Street). I further authorize the law firm of Clark Hill LLP, and any attorneys, employees, or agents thereof, to communicate with the San Francisco Planning Department, or any other agencies or individuals, and otherwise represent me related to said Discretionary Review Application.

Date: 5/4/2018

Mike Harden
Michael Harden

RESPONSE TO
DISCRETIONARY
REVIEW (DRP)



San Francisco
Planning

SAN FRANCISCO PLANNING DEPARTMENT
1650 MISSION STREET, SUITE 400
SAN FRANCISCO, CA 94103-2479
MAIN: (415) 558-6378 SFPLANNING.ORG

Project Information

Property Address: 2742 Buchanan Street

Zip Code: 94123

Building Permit Application(s): 2017.03.06.0781

Record Number: 2017-007888DEP

Assigned Planner: Laura Aiello

Project Sponsor

Name: Sabra Ballon

Phone: 415-370-1641

Email: SabraBallon@me.com

Required Questions

1. Given the concerns of the DR requester and other concerned parties, why do you feel your proposed project should be approved? (If you are not aware of the issues of concern to the DR requester, please meet the DR requester in addition to reviewing the attached DR application.)

SEE ATTACHED RESPONSE TO QUESTION.

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

SEE ATTACHED RESPONSE TO QUESTION.

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


SEE ATTACHED RESPONSE TO QUESTION.

Project Features

Please provide the following information about the project for both the existing and proposed features. **Please attach an additional sheet with project features that are not included in this table.**

	EXISTING	PROPOSED
Dwelling Units (only one kitchen per unit - additional kitchens count as additional units)	1	No Change
Occupied Stories (all levels with habitable rooms)	1	No Change
Basement Levels (may include garage or windowless storage rooms)	1	No Change
Parking Spaces (Off-Street)	2	No Change
Bedrooms	1	No Change
Height	35' -10"	39' -3"
Building Depth	71'-2"	No Change
Rental Value (monthly)	N/A	N/A
Property Value	\$490,000.	No Change

I attest that the above information is true to the best of my knowledge.

Signature: 	Date: 6/18/18
Printed Name: Sabra Ballon	<input type="checkbox"/> Property Owner <input checked="" type="checkbox"/> Authorized Agent

If you have any additional information that is not covered by this application, please feel free to attach additional sheets to this form.

REQUIRED QUESTIONS

QUESTION 1. GIVEN THE CONCERNS OF THE DR REQUESTER AND OTHER CONCERNED PARTIES, WHY DO YOU FEEL YOUR PROPOSED PROJECT SHOULD BE APPROVED?

The DR requester (hereafter the “Neighbors”, who are Mike and Shauna Harden) own the property at 2734 Buchanan Street, which is located adjacent to and to the South of the Project Site located at 2742 Buchanan Street. The Neighbors have owned their property since 2010. The Neighbors are the only parties who expressed any concerns relative to the proposed Project. The Project Site owners are Dudley and Ricky Wing (hereafter the “Owners”), and have owned their property since 1997, and, prior to that, Mr. Wing was a tenant of the property since 1970.

Buchanan Street is a North - South Street with a steep grade, sloping downward from South to North. As such, the Project Site is at a lower elevation than the Neighbors’ property.

The Project Site has a garage with no living space on the street level, with a First and Second Floor above. The Neighbors have both a garage and living space on the street level, so the Neighbors’ street level is deemed a First Floor, with a Second Floor and a Third Floor above.

The concerns expressed by the Neighbors relate to two components of the proposed Project, which are:

- (a) That the proposed Second Floor addition to the Project Site will block four of the Neighbors’ Second Floor boundary line windows; and,
- (b) That the proposed rooftop deck creates a privacy concern for the Neighbors, because the Neighbors’ Third Floor windows have views across the Project Site’s rooftop.

The Owners’ Right to Expand to the Lot Line Supersedes the Neighbors’ Desire to Maintain Non-operable Boundary Line Windows.

The Neighbors have claimed absolutely no legitimate basis for their objection that the proposed addition would block the Neighbors’ Second Floor *boundary line* windows. In fact, upon the Owners expanding their building to their boundary line, the Neighbors become obligated under the San Francisco Building Code, and a recorded “Use Limitation”, to close off

or otherwise protect their Second Floor boundary line windows in a manner required by the San Francisco Department of Building Inspection (hereafter the “SFDBI”).

The Project Site is located in a zoning district which provides for zero setbacks from the lot lines. Accordingly, the Owners are entitled under the Code to expand their building to the lot lines. The Neighbors’ Second Floor boundary line windows are only permitted in accordance with a terminable permit, which only remains valid until the Owners exercise their right to expand to the lot line.

The Neighbors’ terminable permit was issued in 2004 and is subject to a specific recorded Declaration of Use Limitation appearing in the Neighbors’ chain of title (hereafter the “Use Limitation”). The recorded Use Limitation expressly provides that:

“In the event that the property located as 2740-42 Buchanan, commonly known as block No. 0566, Lot 0154, is improved in such a manner that the openings in the building located at 2734-36 Buchanan no longer comply with the San Francisco Building Code, then said openings shall be closed off or protected as required by the Director of the Department of Building Inspection.” See a copy of the recorded Declaration of Use Limitation attached as **Exhibit 1**.

The authority for, and the limiting conditions upon, the Neighbors’ terminable permit arise from the SFDBI Administrative Bulletin No. AB-009, dated September 18, 2002, updated January 1, 2017, (hereafter “AB-009”), a copy of which bulletin is attached as **Exhibit 2**. Paragraph 7 of AB-009, under “Conditions of Local Equivalencies”, provides as follows:

“The owner of the building with such openings [*the Neighbors’ predecessors in this case*] shall provide a recorded statement that these openings will be closed or protected with approved fire resistive wall construction in the event that the adjoining property [*the Owners’ property in this case*] is improved in such a manner that the openings no longer comply with the provision of the Administrative Bulletin. A copy of the Declaration of Use Limitation (Attachment B) shall be submitted to the plan reviewer prior to completion of Department of Building inspection plan review.”

The Neighbors’ predecessors significantly modified the Neighbors’ structure in 2004, installing the boundary line windows contingent upon and subject to the recorded Use Limitation. Furthermore, the Neighbors’ predecessors added significant living space on their Third Floor and installed the Neighbors’ Third Floor windows which oversee the Owners’ rooftop. In effect, it was the 2004 improvements to the Neighbors’ own property which created the circumstances to which the Neighbors now object.

Like all real estate buyers, the Neighbors had constructive knowledge of the recorded Use Limitation and SFDBI AB-009 when they purchased in 2010 if not actual knowledge of these matters. As such, the Neighbors also had knowledge of their requirement to remediate their own property should the Owners expand to the lot line. This is particularly true with respect to Mr. Harden who represented that he owns numerous properties in San Francisco and is fully aware of the dynamics of the San Francisco real estate market.¹ In addition, with a rooftop deck of their own, the Neighbors would certainly be aware that the Owners might someday also construct a rooftop deck as permitted by the Zoning Code, which deck would be in line with the Hardens' views.

AB-009 and the recorded Use Limitation make crystal clear that the Owners' right to expand to the lot line supersedes the Neighbors' terminable permission to maintain the Second Floor boundary line windows. In effect, the Neighbors may not object to an expansion of the Owners' building to the lot line merely on the basis that the Neighbors' Second Floor boundary line windows will be obstructed. Yet this is the Neighbors' sole stated objection to the proposed expansion. In this regard, the Planning Department has no discretion to disapprove the proposed expansion based solely on the Neighbors' only stated objection.

The Neighbors' lawyer delivered a letter dated December 21, 2017 to Laura Ajello which letter states "the top floor [of the Owners' Property] has an approximately three-foot setback *for the purpose of allowing light to four existing windows on Mr. Harden's Home.*" The letter goes on to cite SFPC Residential Design Guidelines that encourage designs that minimize impacts on light to adjacent buildings. Finally, the letter states "The Project owner's proposed *massive* side and rear-yard addition on the top floor would eliminate the historical setback and destroy the four windows' existing access to light."

The fact that the Owners' top floor is three feet from the boundary line *was not* "for the purpose of allowing light to the [Neighbors'] existing windows" as the letter states. The Owners' building was already configured as it currently exists when the Neighbors' boundary line windows were installed in 2004. Additionally and as previously stated, the permission to install the boundary line windows was subject to a recorded Use Limitation specifically intended to preempt the objections of the Neighbors in the event that the Owners' building was subsequently extended to the boundary line.

It must be acknowledged that in zoning districts which permit construction to boundary lines, if adjacent buildings are constructed to a common boundary line at the same elevation, it is impossible to design one structure that will provide light to boundary line windows on the other structure. In such cases, the guidelines encouraging light for neighboring properties cannot be achieved. The Neighbors cannot possibly believe that their predecessors' installation of boundary line windows in 2004, the permission for which is expressly subject to termination in accordance with a recorded Use Limitation, can justify prohibiting the Owners from expanding their building

¹ See notes of meeting with Neighbors on March 22, 2017 attached as Exhibit 5.

to the boundary line. The Zoning Code does not operate on a “first come, first served” basis with respect to these adjacent properties and their respective rights to expand to the boundary line. Rather the Code applies equally to both properties, and although later in time than their neighbors, the Owners have every right to expand to their boundary line.

It is also noteworthy that the boundary line windows in questions are required to be fixed under the Code and therefore cannot open. Also, the windows are glazed so the panes are not transparent, only translucent. In other words, the Neighbors cannot see through these particular windows. Additionally, one of the windows is entirely obstructed by a book case located in a den within the Neighbors’ residence.

The Owner’s Right to Construct a Rooftop Deck in Accordance with the Code Supersedes the Neighbors’ Personal Privacy Concerns.

As a preliminary comment with respect to the Neighbors’ objections to the rooftop deck, the Owners’ attorney, Warner Bott Berry, emailed a letter dated April 10, 2017 to Steven L. Hammond, the Neighbors’ attorney, proposing that the Owners would forego construction of the rooftop deck if the Neighbors conceded to the Owners’ full expansion of their Second Floor as proposed. A copy of this letter, along with emails exchanged between Mr. Berry and Mr. Hammond confirming Mr. Hammond’s receipt of the proposal, are attached as **Exhibit 3**. This compromise was also proposed by the Owners to Mike Harden at one of the pre-application meetings on March 22, 2017.² Mr. Harden did not accept this proposal. Accordingly, the Owners are proceeding with their plans as originally proposed.

A rooftop deck is permitted at the Project Site by Code. The Neighbors’ Discretionary Review Application refers to the proposed rooftop deck in the following manner:

- “a large rooftop party deck”
- “the only reason to construct a massive rooftop deck is to accommodate large parties or groups of people, which is out of character with the neighborhood”
- “the noise from such parties would unfairly impact the residents of the large condominium immediately above the proposed deck.”
- The rooftop deck would be “immediately in front of the Neighbor’s floor-to-ceiling kitchen/living/eating area windows”, “immediately adjacent to the Neighbor’s parapet”

² See notes of meeting with Mike Harden on March 22, 2017 attached as Exhibit 5.

Apparently, none of the concerns expressed above apply to the Neighbors' own *existing* rooftop deck which is approximately 75% larger (429 sq. ft. versus 245 sq. ft.) than the Owners' *proposed* rooftop deck. See a sketch of the Owners' *proposed*, and the Neighbors' *existing*, rooftop decks, and google earth images of the rooftops, both attached as **Exhibit 4**. If the Neighbors consider the Owners' *proposed* deck to be "massive", then by their own definition, the Neighbor's *existing* deck must be "super massive". Additionally, the Neighbors' claim that the proposed rooftop deck is "out of character with the neighborhood" is hypocritical, in light of their own deck which is almost twice the size of the proposed deck.

Furthermore, the Neighbor's characterization of the proposed deck as a "party deck" is intended to imply that the proposed deck will somehow be a neighborhood nuisance resulting from loud parties. However, rooftop decks are permitted by Code and are therefore presumptively *not* a nuisance. Also, contrary to the Neighbor's statements, the proposed deck is setback at least 5 feet from all boundary lines, and the Neighbors' own windows at this level are also set back on their own property.

The Neighbors claim that the noise from such parties would unfairly impact the residents of the large condominium "immediately above the proposed deck". This claim is both incorrect and disingenuous, since the Neighbors' own deck is almost twice as large, at a higher elevation, and located significantly closer to the condominium which is, in fact, adjacent to the Neighbors' property, not the Owner's property. It is also noteworthy that none of the owners in the condominium expressed any concerns about the proposed rooftop deck.

The December 21, 2017 letter and the Neighbors' Discretionary Review Application repeatedly refer to the Neighbors' "young children", presumably intended to emphasize the Neighbors' personal privacy concerns, particularly when juxtaposed to their characterization of the proposed deck as a "party deck". However, in this zoning context, it is not relevant whether the residents of the adjoining properties are young or old. Neither property is zoned solely for families with young children, or solely for adults without children. Rather, these adjacent properties are zoned to permit "residential" use in which individuals of all ages and family relations may reside. The Owners cannot be expected to shield all neighbors from views of the Owners engaging in permitted uses of their own property, particularly when it relates to an open air rooftop deck. If the Owners were to construct a privacy screen on the South side of their proposed deck, for example, it would obstruct the Neighbors' view over the deck. More importantly, the rooftop deck as proposed would not obstruct the Neighbors' view of San Francisco Bay.

The Owners also own property in Hawaii, and spend significant portions of each year there. This has been the Owners' annual pattern for the entire time the Neighbors' have owned their property, although the Owners are now planning to spend more time in San Francisco closer to medical services. Additionally, the Owners are relatively private people, not prone to frequent parties, and the rooftop deck is likely to see relatively limited use during their expected long term ownership. That said, these facts have no relevance in the same manner as the concerns

expressed by the Neighbors are irrelevant. Zoning decisions regarding the permissibility of the rooftop deck are not governed by the ages of the parties who reside in the adjacent residential structures, or how frequently the respective owners are present on their property. Rather, rooftop decks are permitted by Code, and the Neighbors have not raised any legitimate zoning objections, but rather only personal privacy objections which would actually apply even more so to their own existing “super massive rooftop party deck”, as defined by their own terms.

Here again, the 2004 extensive remodeling of the Neighbors’ property resulted in North facing windows situated on the top floor of the Neighbors’ building, which floor was redesigned to be their primary living space, all of which overlooks the Owners’ rooftop. With a large rooftop deck on their own property, the Neighbors must have known that the Owners might someday construct a rooftop deck on the Owners’ property. The Neighbors’ had a choice in 2010 to either purchase other property, or buy their current property and raise their future family knowing that the Owners might someday construct a rooftop deck. The Neighbors chose to buy in 2010 and when they did, they had constructive, if not actual, knowledge of (a) the recorded Use Limitation, (b) AB-009; (c) the Owners’ right to expand to their boundary as permitted by Code; and, (d) the Owners’ right to construct a rooftop deck as permitted by Code. Accordingly, the planning department should approve both the proposed expansion and rooftop deck as proposed by Owners.

QUESTION 2. WHAT ALTERNATIVES FOR CHANGES TO THE PROPOSED PROJECT ARE YOU WILLING TO MAKE IN ORDER TO ADDRESS THE CONCERNS OF THE DR REQUESTER AND OTHER CONCERNED PARTIES? IF YOU HAVE ALREADY CHANGED THE PROJECT TO MEET NEIGHBORHOOD CONCERNS, PLEASE EXPLAIN THOSE CHANGES INDICATING WHETHER THEY WERE MADE BEFORE OR AFTER FILING FOR APPLICATION WITH THE CITY.

As stated above, the Owners proposed to eliminate the rooftop deck, in return for the Neighbors’ (unneeded) consent to the Owners’ expansion of their Second Floor. This proposal was twice rejected by the Neighbors. Accordingly, the Owners are proceeding with their original proposal.

The Neighbors’ lawyer’s December 21, 2017 letter refers to the Owners’ expansion as a “massive” addition, and points out that the Neighbors’ architect proposed (unsolicited) alternative layouts that the Neighbors and the Neighbors’ architect have sought to discuss with the Owners as compromise plans.

The Owners' total interior expansion is a modest 62 square feet and certainly not "massive".³ The Owners have received the Neighbors' suggestions, and reviewed them with the Owners' designer, and have declined to make any adjustments preferring, instead, to proceed with their own plans.

The Owners have been very active in communicating with their Neighbors and considering compromises. The following is a partial timeline reflecting the Owners' efforts to receive and consider the concerns raised by their Neighbors:

- 1/23/17 Wings initiate meeting with Hardens by going next door for introductions;
- 1/25/17 Wings email Shauna Harden to set up meeting;
- 1/30/17 Wings send follow up request by hand carrying hardcopy email to Hardens;
- 2/1/17 Mike Harden responds and meeting is set for 2/9/17;
- 2/11/17 Mike Harden engages his lawyer;
- 2/24/17 Wings request a 2nd meeting WITHOUT lawyers (Mike Harden responds 2/27 – busy with family matters);
- 2/28/17; 3/1/17; 3/8/17 – Hardens lawyer requests for plans;
- 3/10/17 Wings reiterate request for 2nd meeting WITHOUT lawyers;
- 3/13/17 Mike Harden responds OK to meet but WITH lawyers;
- 3/15/17 Wings request again meeting WITHOUT lawyers;
- 3/17/17 Meeting is set up for 3/22 WITHOUT lawyers;
- 3/22/17 Wings propose eliminating roof deck – this is rejected by Mike Harden;
- 4/7/17 Pre application meeting with Hardens and WITH lawyers;
- 4/10/17 Wings' lawyer sends letter to Hardens' lawyer proposing to eliminate deck;
- 4/13/17 Hardens' lawyer responds – they will consult with architect and will respond;
- 4/27/17 Hardens' lawyer emails – still considering response, Hardens' retained architect;
- 4/27/17 Wings' lawyer responds – asking if Hardens accept Wing's proposal to eliminate deck, 5/1 deadline for Hardens' response set;
- 5/1/17 Hardens' lawyer responds – Hardens retained architect (John Lum) who will follow up with Wings' designer;
- 4/27/17 Mr. Lum contacts Wings' designer Sabra Ballon to discuss the Project Site;
- 6/20/17 Mr. Lum emails alternative sketches to Wings/Ballon;
- 7/7/17 Ms. Ballon sends Wing's response to Lum;
- 7/9/17 Wings' lawyer also sends Wings' response to Hardens' lawyer;

It is clear from the above partial timeline that the Owners have made substantial efforts to communicate with the Neighbors and consider their concerns and suggestions. The December 21, 2017 letter, and the Neighbors' DR Application, are both critical of the Owners for rejecting the Neighbors' (unsolicited) interior re-designs of the Owners' own property. Yet the Neighbors have no trouble asserting that there is no reasonable deck configuration or mitigating measure that would resolve their personal privacy concerns. In other words, in the Neighbors' view, it is

³ See sketch of 62 sq. ft. expansion area depicted on Exhibit 4.

OK for the Neighbors to reject any compromise, but it is not OK for the Owners to reject any compromise. In fact, the Owners proposed to eliminate the rooftop deck, but this compromise was rejected twice by the Neighbors.

QUESTION 3. IF YOU ARE NOT WILLING TO CHANGE THE PROPOSED PROJECT OR PURSUE OTHER ALTERNATIVES, PLEASE STATE WHY YOU FEEL THAT YOUR PROJECT WILL NOT HAVE ANY ADVERSE EFFECT ON THE SURROUNDING PROPERTIES. INCLUDE AN EXPLANATION OF YOUR NEEDS FOR SPACE, OR OTHER PERSONAL REQUIREMENTS THAT PREVENT YOU FROM MAKING THE CHANGES REQUESTED BY THE DR REQUESTER.

As stated above, the Owners proposed to eliminate the rooftop deck, in return for the Neighbors' (unneeded) consent to the Owners' expansion of their Second Floor. This proposal was twice rejected by the Neighbors. Accordingly, the Owners are proceeding with their original proposal. The adverse effects alleged by the Neighbors are overstated and disingenuous, particularly in light of their constructive knowledge of the recorded Use Limitation and AB-009, and in light of their own existing rooftop deck.

There are two primary reasons for the proposed expansion: (1) to enlarge an existing Second Floor bathroom to accommodate 2 sinks, a tub, a shower stall and a private toilet, and sufficient area for wheel chair turnaround; and, (2) to add a laundry facility on the Second Floor which is the Owners' primary living area. Mr. Wing has experienced four knee replacements surgeries in the last 10 years, the last two of which occurred in 2014. Mr. Wing may one day need wheelchair accessibility to remain living at home. The Owners are planning to spend more time in San Francisco closer to medical services. Although not a current component of the Project, the Owners are also contemplating adding an elevator in the future to provide for easier daily access as they age.

COMMENTS RECEIVED AT REQUIRED NEIGHBORHOOD MEETINGS

The zoning process requires the applicants to discuss their plans with their neighbors and attempt to resolve any concerns raised by neighbors. The Owners dutifully and in good faith undertook this obligation. The only parties to raise concerns were the Neighbors (Mike and Shauna Harden). The Owners formally met with one or both of the Neighbors, and/or their legal or real estate representative, on three separate occasions. This was in addition to other informal communications. These formal meetings took place on February 9, 2017 at both the Project Site and at the Neighbors' house; on March 22, 2017 at the Project Site; and on April 7, 2017 at the

Project Site. In order to provide zoning officials with feedback received at these meetings, the Owners prepared notes of the meetings following each meeting in order to document their recollection of matters discussed. Copies of notes prepared following each of the meetings are attached as **Exhibit 5**. The following are examples of some of the comments received and exchanged:

February 9, 2017 – First Meeting

- The Neighbors stated they were planning to move to a larger house.
- The Neighbors indicated that they did not want the windows blocked as, in their opinion, this would negatively impact their home's value.
- Mike Harden indicated he would prefer to see a finished rooftop deck as opposed to a gravel roof from his living room.
- The Neighbors commented that the bookcase blocking the one window in the den in their residence could be relocated and the room altered to serve as a fourth bedroom.⁴
- Shauna Harden indicated that she will engage her real estate lawyer to delay the project as long as they can.

March 22, 2017 – Second Meeting

- Mike Harden stated he owns numerous SF properties and is fully aware of the dynamics of the SF real estate market.
- Mike Harden stated he did not want to give up the ambient light provided by the windows that would be blocked by the project. Owner's designer presented a solution that the Neighbors could install "walkable" skylights to replace the ambient light lost by the boundary line windows being blocked.
- Mike Harden indicated that, according to his attorney, the Hardens had a "view easement" and therefore the proposed deck was not allowed.

⁴It is the Owners' understanding that the Neighbors' den cannot be converted to a bedroom under the Building Code since the boundary line window must be inoperable and offers no emergency ingress or egress.

- Mike Harden suggested the Owners be more creative in solving their laundry problems. He suggested to the Owners a number of laundry services that have home pickup and delivery.
- Mike Harden stated that he and his wife were being asked to give up too much and they would continue to oppose the project.
- The Owners proposed eliminating the rooftop deck as a compromise solution.

April 7, 2017 – Third Meeting

- Despite the Owners' request that meetings be without attorneys, the Neighbors had their attorney present, as well as the Neighbors' real estate representative, so the Owners had their attorney present as well, along with their designer.
- The Owners were asked by the Neighbors' attorney to comment on their property in Hawaii, after which the Owners made clear they had no intention of selling their property in San Francisco and rather planned to spend more time in San Francisco for easier access to medical services.
- Mike Harden repeated his position that blocking the boundary line windows was unacceptable.
- The Neighbors' lawyer acknowledged the Neighbors cannot contest the rooftop deck based on view impairment, but *now* indicated the Neighbors' objections were based on privacy in light of the proximity of the rooftop deck directly in line with the windows for the Neighbors' main living area.
- The Neighbors' real estate representative challenged how a spiral staircase was consistent with "aging in place", to which the Owners responded they intended the deck as a viewing deck and would be used only for occasional events such as "Fleet Week/Fourth of July events, similar to how the Neighbors hold a Blue Angels event every year utilizing their own rooftop deck.
- The Neighbors' real estate representative stated that the Neighbors' den, which contained the bookcase which completely blocked one boundary line window, was now proposed to be converted to a fourth bedroom so each of the Hardens' children would have their own bedroom. The Owners' designer again pointed out that the room in question is not a "legal bedroom" as it has a "non-operable" boundary line window, and an operable window is not permitted on a boundary line wall by the SFDBI.

- Mike Harden summarized his concerns by stating he wanted three things: (1) his ambient light; (2) his 4th bedroom; and (3) his privacy.
- Mike Harden went on to suggest a better solution to the Owner's problem was for them to: (1) hire out their laundry service since vendors would do a better job with their laundry; (2) move to the First Floor of their residence; or (3) stay in Hawaii full time.

CONCLUSION

The Owners' Right to Expand to the Lot Line Supersedes the Neighbors' Desire to Maintain Boundary Line Windows.

The Neighbors have no legitimate basis for their objection that the proposed addition would block the Neighbors' Second Floor *boundary line* windows. In fact, the Neighbors are obligated under SFDBI Administrative Bulletin No. AB-009, and the corresponding recorded Use Limitation, to close off or otherwise protect their Second Floor boundary line windows in a manner required by the Department of Building Inspection. In this regard, the Planning Department has no discretion to disapprove the proposed expansion based solely on the Neighbors' stated objection.

The Owner's Right to Construct a Rooftop Deck in Accordance with the Code Supersedes the Neighbors' Stated Privacy Concerns.

The Neighbors' stated objections to the *proposed* rooftop deck apply even more so to the Neighbors' own *existing* and nearly twice as large rooftop deck, which is located even closer to the condominium owners for whom the Neighbors gratuitously expressed concerns. The Neighbors' objections are disingenuous and/or otherwise personal to them, but without legal merit under the applicable Codes. Rooftop decks are permitted by Code, presumptively not a nuisance, and by their very nature open to view by neighbors. Any screening of the proposed deck from the Neighbors' windows (which the Owners would be happy to do), would necessarily obstruct the Neighbors' view over the proposed deck. The 2004 substantial re-design of the Neighbors' building was at all times thereafter subject to the future permitted modifications of the Owners' property. In this case, the right of the Owners to construct a rooftop deck supersedes the Neighbors' stated personal privacy concerns.

The Neighbor's Objections Appear Solely Intended to Delay the Owners' Project.

At the first pre-application meeting on February 9, 2017, Shauna Harden stated that they did not like the Owners' proposed improvements, and that the improvements would negatively

impact the value of the Neighbors' home. Shauna Harden stated they intended to engage a lawyer to delay the Owners' project as long as they can.

The Neighbors' intent to delay the Owners seems particularly obvious since the Owners proposed to eliminate the rooftop deck, in return for the Neighbors' (unneeded) consent to the Owners' expansion of their Second Floor; and, despite what would seem an overly generous compromise by the Owners, the Neighbors rejected this proposal and appear to be focused solely on delaying the Owners' project until the Neighbors can sell their home as they represented.

During the pre-application process, the Neighbors' architect, John Lum, called the Owners' designer, Sabra Ballon, and indicated that "Mike Harden is committed and enthusiastic about appealing the proposed design every step of the way, including a lawsuit and taking the issue to the Board of Supervisors in SF."

For these reasons, and for the reason that the Owners are entitled by the Code to expand their Second Floor to the lot line and construct a rooftop deck, the Owners respectfully request the planning department approve the Owners' proposed improvements as submitted.

EXHIBIT 1

RECORDING REQUESTED BY:

DECLARATION OF LIMITED USE

WHEN RECORDED MAIL TO:

NAME: MICHAEL FOLK
MAILING 2736 BUCHANAN ST.
ADDRESS: SAN FRANCISCO, CA
CITY, STATE
ZIP CODE: 94123



San Francisco Assessor-Recorder

Mabel S. Teng, Assessor-Recorder

DOC- 2004-H751543-00

Friday, JUN 25, 2004 10:03:25

T&Pd \$10.00

Nbr-0002513430

REEL I667 IMAGE 0337

ced/JW/1-2

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

TITLE(S)

DECLARATION OF LIMITED USE

SEPARATE PAGE PURSUANT TO GOVT CODE 27361.6

ATTACHMENT B
751343

Recording Requested By And When Recorded

Return To: DIRECTOR, DEPARTMENT OF BUILDING INSPECTION
1660 MISSION STREET, SAN FRANCISCO, CA 94103-2414

or

DIVISION

DECLARATION OF USE LIMITATION

I/We, LASZLO, ROSEMARIE & MICHAEL FOLK, owner/s of the herein described property commonly known as 2734-36 BUCHANAN STREET in San Francisco, Assessor's Block No. 0566, Lot No. 015 hereby consent to the within described limitations that:

In the event that the property located at 2740-42 BUCHANAN commonly known as Block No. 0566, Lot No. 015A is improved in such a manner that the openings in the building located at 2734-36 BUCHANAN no longer comply with the San Francisco Building Code, then said openings shall be closed off or protected as required by the Director of the Department of Building Inspection.

The herein limitations shall be binding on me/us until amended by conforming to the San Francisco Building Code Requirements.

Signed: *[Signature]* OWNER/S

Date of Execution: 6.24.04

NOTARY ACKNOWLEDGMENT:

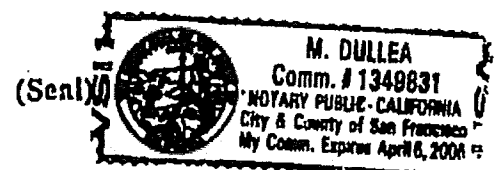
STATE OF CALIFORNIA Title or type of document _____
County of SAN FRANCISCO Number of pages _____ Date of document _____
Signer(s) other than named below _____

On 6/24/04 before me, M. Dulles, Notary Public personally appeared
Laszlo Folk, Rosemarie Folk & Michael Folk

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted executed the instrument.

WITNESS my hand and official seal.

Signature _____
Notary Public in and for said County and State



NOTARY PUBLIC

EXHIBIT 2



ADMINISTRATIVE BULLETIN

NO. AB-009 :

DATE : September 18, 2002 (Updated 01/01/2017 for code references)

SUBJECT : Fire and Life Safety

TITLE : Local Equivalency for Approval of New Openings in New and Existing Building Property Line Walls

PURPOSE : The purpose of this Administrative Bulletin is to provide standards and procedures for the application and case-by-case review of requests for a modification based on local equivalency to allow openings in exterior walls closer to property lines than are permitted by the 2016 San Francisco Building Code (SFBC).

This bulletin permits the continuing application of code provisions of former editions of the SFBC regarding property line openings. In conformance with current State law, requests for approval of openings closer to the property line than permitted under the SFBC will be considered on a case-by-case basis when reasonable equivalency is proposed.

REFERENCES : 2016 San Francisco Building Code
 - Section 104A.2.7, Modification
 - Section 104A.2.8, Alternate materials, alternate design and methods of construction
 - Section 705.8, Openings
 DBI Administrative Bulletin AB-005, Procedures for Approval of Local Equivalencies.
 San Francisco Administrative Code Article 5, Section 23.47, Lot Line Window

DISCUSSION : Project sponsors may request the application of this local equivalency allowing openings in building walls closer to property lines than allowed by SFBC Section 705.8 when it can be demonstrated on a case-by-case basis that there are practical difficulties in meeting the provisions of the code, that the modification is in conformance with the intent and purpose of the code, and that reasonable equivalency is provided in fire protection and structural integrity.

Such proposed modification may conform with the below listed standard provisions. The Department of Building Inspection (DBI) and other City departments may impose additional requirements in the approval of any request for a code modification or alternate based upon individual building and property conditions. Other City agencies that may review such requests include the San Francisco Fire Department, the Planning Department and, for buildings adjoining City-owned property, the Department of Real Estate.

If a project sponsor wishes to propose methods of opening protection different than those listed below, proposals for the use of alternate materials, designs, or methods of construction may be submitted for review in the same manner as for this local equivalency. The Department of Building Inspection may require that additional substantiation be provided supporting any claims made for such proposals.

TECHNICAL SERVICES DIVISION
 1660 Mission Street – San Francisco CA 94103
 Office (415) 558-6205 – FAX (415) 558-6401

Procedure for Application of Local Equivalencies

Project sponsors wishing to apply local equivalencies must fill out and submit the Request for Approval of Local Equivalency form (Attachment A). Fees to be paid and scheduling of review of requests are as noted on that form. Following DBI review, each request will either be approved, approved with conditions, disapproved, or placed on Hold pending submittal of additional information.

Further details of procedures for the review of local equivalencies may be found in AB-005, Procedures for Approval of Local Equivalencies.

Conditions of Local Equivalencies

Openings in new building walls and new openings in existing building walls in Groups B, M, and R occupancies that are closer to property lines than permitted under SFBC Section 705.8 and Table 705.8 may be permitted on a case-by-case basis when the following provisions or approved equivalent provisions are met and the project sponsor provides documentation of the practical difficulties involved in carrying out the provisions of the regular code.

The standard provisions for this Local Equivalency include all of the following:

1. The openings may not be used to provide required light and ventilation, required egress, or for required emergency rescue.
2. The openings shall be fixed (non-operable) unless more than 50 feet above the roof of any adjoining building or more than the distance prescribed for protected openings in Table 705.8 in any direction from an adjoining building.
3. The openings shall be located entirely above any adjoining roof or at least six feet laterally beyond any wall of an adjoining building.
4. The openings shall be protected with fire assemblies, such as fire shutters or rated window assemblies, having a rating of at least 3/4 hour. Openings in walls which have a fire-protection rating of greater than 1-hour shall be protected by a fire assembly having a three-hour fire-protection rating in four-hour fire-resistive walls, a two-hour fire-protection rating in three-hour fire-resistive walls, and one-and one-half hour fire-protection rating in two-hour fire-resistive walls. Fire shutters, if provided, shall be actuated by smoke detectors located inside and by fusible links or other approved devices on the outside of the protected openings.
5. The opening shall be protected by a fire sprinkler system having ordinary temperature, quick-response type heads installed within 18" of the openings and spaced at 6 feet on center or at the manufacturer's recommended minimum spacing, whichever provides the closer spacing.

Exception: Openings in Group R Division 3 occupancies.

6. If the adjoining building contains R occupancy uses, proposed openings shall not be located closer than six feet measured in any direction to any existing opening on the adjoining building unless the adjoining owner gives written consent. A copy of the statement giving such consent shall be attached to the permit application.
7. The owner of a building with such openings shall provide a recorded statement that these openings will be closed or protected with approved fire resistive wall construction in the event that the adjoining property is improved in such a manner that the openings no longer comply with the provisions of this Administrative Bulletin. A copy of a Declaration of Use Limitation (Attachment B) shall be submitted to the plan reviewer prior to completion of Department of Building inspection plan review.
8. Property line openings which open onto property owned by the City and County of San Francisco shall meet the requirements of San Francisco Administrative Code, Article VI, Sections 23.27 through 23.30 (Attachment C). An approved and executed "Lot Line Window Agreement" shall be submitted as part of the documents required under Item 9 (below).
9. A permit application and related submittal documents shall detail all construction which is approved as a result of this request for local equivalency.

AB-009

Originally signed by:

Frank Y. Chiu, Director
October 3, 2002

Gary Massetani, Fire Marshal
October 9, 2002

Approved by the Building Inspection Commission on September 18, 2002

Attachment A: Request for Approval of Local Equivalency (Rev. October 2017)

Attachment B: Assessor/Recorder's Office Document - "Declaration of Use Limitation" (Rev. October 2017)

Attachment C: SF Administrative Code

Proposed Modification or Alternate

Case-by-Case Basis of Request - Describe the practical difficulties presented in meeting the specific conditions of the code and how the proposed modification or alternate meets the intent of the code. A separate form should be filled for each requested modification or alternate. Attach copies of any Administrative Bulletin, Code Ruling, reference, test reports, expert opinions, etc., which support this request. The Department may require that an approved consultant be hired by the applicant to perform tests or analysis and to submit an evaluation report to the Department for consideration.

Requested by: PROJECT SPONSOR ARCHITECT/ENGINEER

Print Name: _____ _____ [PROFESSIONAL
STAMP HERE]

Signature: _____ _____

Telephone: _____ _____

Disapprove

.....

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[illegible]

## Recording Requested By And When Recorded

Return To: **DIRECTOR, DEPARTMENT OF BUILDING INSPECTION**  
**1660 MISSION STREET, SAN FRANCISCO, CA 94103-2414**

or

\_\_\_\_\_  
 \_\_\_\_\_ DIVISION

**DECLARATION OF USE LIMITATION**

I/We, \_\_\_\_\_ owner/s of the herein described property Commonly known as  
 \_\_\_\_\_ in San Francisco, Assessor's Block No. \_\_\_\_\_ Lot No. \_\_\_\_\_  
 hereby consent to the within described limitations that:

In the event that the property located at \_\_\_\_\_  
 commonly known as Block No. \_\_\_\_\_ Lot No. \_\_\_\_\_ is improved in such a manner that the openings in the  
 building located at \_\_\_\_\_ no longer comply with  
 the San Francisco Building Code, then said openings shall be closed off or protected as required by the **Director**  
**of the Department of Building Inspection.**

The herein limitations shall be binding on me/us until amended by conforming to the San Francisco Building Code Requirements.

Signed: \_\_\_\_\_  
**OWNER/S**

Date of Execution: \_\_\_\_\_

**NOTARY ACKNOWLEDGMENT:**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

**STATE OF CALIFORNIA**

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_  
 personally appeared, \_\_\_\_\_  
 who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**Notary Public in and for said Country and State**

**SAN FRANCISCO ADMINISTRATIVE CODE**  
**CHAPTER 23: REAL PROPERTY TRANSACTIONS**  
**ARTICLE V: LOT LINE WINDOW AGREEMENTS**

- Sec. 23.45. Authority of Director of Property.  
 Sec. 23.46. Determination of Value.  
 Sec. 23.47. Requirements for Lot Line Window Agreements.  
 Sec. 23.48. Fees and Fee Payments.

**SEC. 23.45. AUTHORITY OF DIRECTOR OF PROPERTY.**

An owner of Real Property adjoining Real Property of the City may request that the City consent to openings in building walls on the owner's Real Property that are closer to the common property line than the distances prescribed in the San Francisco Building Code by filing with the Director of Property an original and two copies of a written application, together with plans, specifications and other supporting documents, and paying the required application fee. Upon such filing, the Director of Property shall investigate the application and consult with the department that has jurisdiction over the Real Property. Copies of the application and its supporting documents shall be delivered by the Director of Property to the Department of City Planning and the Bureau of Building Inspection for review and comment as that department and that bureau may deem appropriate. If the department having jurisdiction over the Real Property approves and the Director of Property concludes that it is in the best interest of the City to give the requested consent, the Director of Property is authorized to approve and execute a lot line window agreement which complies with all of the provisions of this Article.

(Formerly Sec. 23.27; added by Ord. 559-85, App. 12/27/85; amended and renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001)

**SEC. 23.46. DETERMINATION OF VALUE.**

The Director of Property shall determine a monthly fee for the privilege of installing the openings in building walls that are made possible by the City's consent. The monthly fee shall be based upon an appraisal by the Director of Property of the enhancement in fair market value of the building owner's Real Property that will result from installation of the proposed openings in building walls.

If the original monthly fee based upon the Director of Property's appraisal is more than \$50 the agreement shall provide for payment by the building owner, in advance, of the monthly fee so determined by the Director of Property. The monthly fee may, at the Director of Property's discretion, be payable monthly, quarterly, semiannually or annually. The agreement shall contain a provision for annual adjustment of the monthly fee to reflect increases or decreases in the Consumer Price Index for all Urban Consumers for the San Francisco-Oakland Metropolitan Area and a provision for a redetermination of the monthly fee by the Director of Property, upon the same appraisal basis as the original fee determination, at the end of each five-year period.

If the original monthly fee based upon the Director of Property's appraisal is \$50 or less, a one-time fee of \$1,000 shall be paid by the building owner and no monthly fees shall be payable.

(Formerly Sec. 23.28; added by Ord. 559-85, App. 12/27/85; amended and renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001)

#### **SEC. 23.47. REQUIREMENTS FOR LOT LINE WINDOW AGREEMENTS.**

All lot line window agreements shall comply with the following requirements:

1. The building to which the agreement relates shall comply with the Building Code and all other applicable codes, ordinances and regulations of the City and with all applicable federal and State laws and regulations.
2. The building shall be constructed or remodeled in conformity with the plans and specifications submitted with the application for a lot line window agreement and shall be used for the purposes stated in the application.
3. The agreement shall be terminable at any time, with or without cause and without penalty, by either party. The termination will not be effective, however, unless the terminating party gives at least 90 days prior written notice of termination which is mailed or delivered to the other party. The notice of termination shall contain the legal descriptions of both properties and shall be acknowledged by the terminating party. The notice of termination may be recorded by either party at any time and, after the termination date, the recorded notice shall be conclusive proof of termination of the agreement.
4. The building owner shall agree that, in the event the agreement is revoked, the openings consented to by the agreement shall be protected or closed, as required by the Building Code, and the building otherwise modified as may be necessary to comply with those Building Code requirements that become applicable because of protecting or closing the openings.
5. The building owner shall indemnify the City, its officers, employees and agents, against all liabilities that may result from or be connected with the agreement.
6. During the life of the agreement, the building owner shall maintain comprehensive personal liability insurance with limits satisfactory to the Risk Manager of the City and with the City, its officers, agents and employees named as additional insureds.
7. The agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.
8. The agreement shall be executed by both parties and shall contain the legal descriptions of both properties. The Director of Property shall execute the agreement for and on behalf of the City, provided the agreement has been previously approved by the City Attorney and the head of the department having jurisdiction over the City's Real Property. The agreement shall be acknowledged by both parties and the Director of Property shall cause the agreement to be recorded.

(Formerly Sec. 23.29; added by Ord. 559-85, App. 12/27/85; amended and renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001)

#### **SEC. 23.48. FEES AND FEE PAYMENTS.**

The application fee which is to accompany each application shall be \$2,500 unless changed by appropriate action of the Board of Supervisors. If the Director of Property determines, after his investigation of the application, that the application fee is inadequate to cover the cost of preparing and processing an agreement, the Director of Property shall notify the building owner of the additional amount that is required. The additional amount shall be paid by the building owner as a prerequisite to preparation and processing of an agreement by the Real Estate Department.

The Real Estate Department is authorized to collect the fees due under lot line window agreements and shall deposit such fees to the credit of the department having jurisdiction over the City's Real Property.

The application fees and any additional amounts required to cover the cost of preparing and processing agreements shall be deposited to the credit of the Real Estate Department.

(Formerly Sec. 23.30; added by Ord. 559-85, App. 12/27/85; amended and renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001)

# EXHIBIT 3



**WARNER BOTT BERRY**  
**ATTORNEY AT LAW**  
**One Embarcadero Center, Suite 4100**  
**San Francisco, California 94111**  
**Telephone: (415) 981-1870**

April 10, 2017

SENT VIA E-MAIL TO: shammond@mpplaw.com

Steven L. Hammond, Esq.  
One Embarcadero Center, Suite 400  
San Francisco, California 94111

Re: Wing-Harden Properties, S.F.

Dear Steve;

This is a follow-up to our 4/7 meeting and discussion about our clients' hopes and wishes regarding their respective homes.

I came away with two (2) impressions:

First, it was a pleasure to meet a fellow lawyer with such a laudable supply of tact;

Second, despite Mike Harden's emotional belief in his right to privacy and a particular life style at 2734-36 Buchanan, Mr. and Mrs. Wing have a strong case, both administratively and legally, for the improvements envisioned at their home.

In the spirit of resolving their differences now, my authorized question is: Would your client be willing to concede the full expansion of the property wall (to allow the Aging In Place goal of Mr. and Mrs. Wing) in exchange for deletion of the also envisioned roof deck plan? If so, my clients would be amenable to immediately altering their design plans and resubmitting them to the City as a single change application.

I will await your reply. Many thanks.

Respectfully,

Warner Bott Berry

cc: Mr. and Mrs. Dudley Wing via e-mail: twowingsbythebay@aol.com  
Sabra Ballon via e-mail: sabraballon@me.com  
Joel Moore, Esq. via e-mail: jmoore@ramermore.com

-----Original Message-----

From: Steven L. Hammond <[SHammond@mpplaw.com](mailto:SHammond@mpplaw.com)>

To: Janet Mitchell <[janetmmitchell14@gmail.com](mailto:janetmmitchell14@gmail.com)>

Cc: [twowingsbythebay](mailto:twowingsbythebay@aol.com) <[twowingsbythebay@aol.com](mailto:twowingsbythebay@aol.com)>; [sabraballon](mailto:sabraballon@me.com) <[sabraballon@me.com](mailto:sabraballon@me.com)>

Sent: Thu, Apr 13, 2017 8:35 am

Subject: RE: Wing-Harden Properties, S.F.

Ms. Mitchell and Mr. Berry,

Thank you for the letter of April 10. We plan to consult with an architect in the coming days and respond thereafter. In the interim, please be in touch if you would like to further discuss the matter.

**Steven L. Hammond**

Partner

One Embarcadero Center  
Suite 400  
San Francisco, CA 94111

Direct: 415.984.8554  
Main: 415.984.8500  
Fax: 415.984.8599

[SHammond@mpplaw.com](mailto:SHammond@mpplaw.com)



**Morris Polich & Purdy LLP**

Los Angeles - San Francisco - San Diego - Las Vegas  
[www.mpplaw.com](http://www.mpplaw.com)

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**From:** Janet Mitchell [<mailto:janetmmitchell14@gmail.com>]

**Sent:** Monday, April 10, 2017 5:07 PM

**To:** Steven L. Hammond

**Cc:** [twowingsbythebay@aol.com](mailto:twowingsbythebay@aol.com); [sabraballon@me.com](mailto:sabraballon@me.com)

**Subject:** Wing-Harden Properties, S.F.

Dear Mr. Hammond;

Attached please find letter from Warner Berry regarding the above matter.

Sincerely,

Janet M. Mitchell

Secretary to Warner Bott Berry

4/27/2017

Re: Wing-Harden Properties, S.F.

From: Steven L. Hammond <SHammond@mpplaw.com>

To: Janet Mitchell <janetmmitchell14@gmail.com>

Cc: twowingsbythebay <twowingsbythebay@aol.com>; sabraballon <sabraballon@me.com>; Elizabeth A. England <EEEngland@mpplaw.com>; Shermielynn S. Irasga <Sirasga@mpplaw.com>

Subject: Re: Wing-Harden Properties, S.F.

Date: Thu, Apr 27, 2017 7:55 am

---

Mr. Berry,

We are still considering a response to your clients' letter. We have retained an architect who has been in contact with your clients' designer. We now require additional time to consider his input and formulate a response. We will endeavor to respond as soon as practicable.

Thank you.

Steven L. Hammond  
Partner

One Embarcadero Center  
Suite 400  
San Francisco, CA 94111

Direct: 415.984.8554  
Main: 415.984.8500  
Fax: 415.984.8599

[SHammond@mpplaw.com](mailto:SHammond@mpplaw.com)

Morris Polich & Purdy LLP  
Los Angeles - San Francisco - San Diego - Las Vegas

[www.mpplaw.com](http://www.mpplaw.com)

On Apr 10, 2017, at 5:06 PM, Janet Mitchell <[janetmmitchell14@gmail.com](mailto:janetmmitchell14@gmail.com)> wrote:

Dear Mr. Hammond;

Attached please find letter from Warner Berry regarding the above matter.

Sincerely,  
Janet M. Mitchell  
Secretary to Warner Bott Berry  
<L-Hammond [1].doc>



5/1/2017

Re: Wing-Harden Properties, S.F.

**From:** Janet Mitchell <janetmmitchell14@gmail.com>  
**To:** Steven L. Hammond <SHammond@mpplaw.com>  
**Cc:** twowingsbythebay <twowingsbythebay@aol.com>; sabraballon <sabraballon@me.com>  
**Subject:** Re: Wing-Harden Properties, S.F.  
**Date:** Mon, May 1, 2017 12:55 pm

---

Dear Steve; Your e-mail received. Thank you. We will await your further updates but, like your side, we are also moving ahead.

Respectfully,  
Warner Berry



Virus-free. [www.avg.com](http://www.avg.com)

On Mon, May 1, 2017 at 2:53 PM, Steven L. Hammond <SHammond@mpplaw.com> wrote:

Warner,

We are not in a position to respond today. Since receiving your offer, we have retained an architect. That architect did a site inspection and spoke with Sabra Ballon. We are now scheduling a time to meet with our client and the architect this week.

Kindly consider that we are moving forward with reasonable diligence. We will be in touch with our thoughts as soon as practicable. Although we understand your imposition of a hard deadline as a point of negotiation, I do not believe that it serves the best interests of the parties at this time.

**From:** Janet Mitchell [mailto:[janetmmitchell14@gmail.com](mailto:janetmmitchell14@gmail.com)]  
**Sent:** Thursday, April 27, 2017 3:57 PM  
**To:** Steven L. Hammond  
**Cc:** [twowingsbythebay@aol.com](mailto:twowingsbythebay@aol.com); [sabraballon@me.com](mailto:sabraballon@me.com)  
**Subject:** Wing-Harden Properties, S.F.

Dear Steve;

Your 4/27 e-mail received. Our stated deadline had to do with whether or not your clients would agree to accept the Wing's bathroom extension over your clients' windows in exchange for the Wings abandoning their desired roof deck.

That offer is not an architectural issue, and we need your yes or no by May 1. Thanks.

# EXHIBIT 4



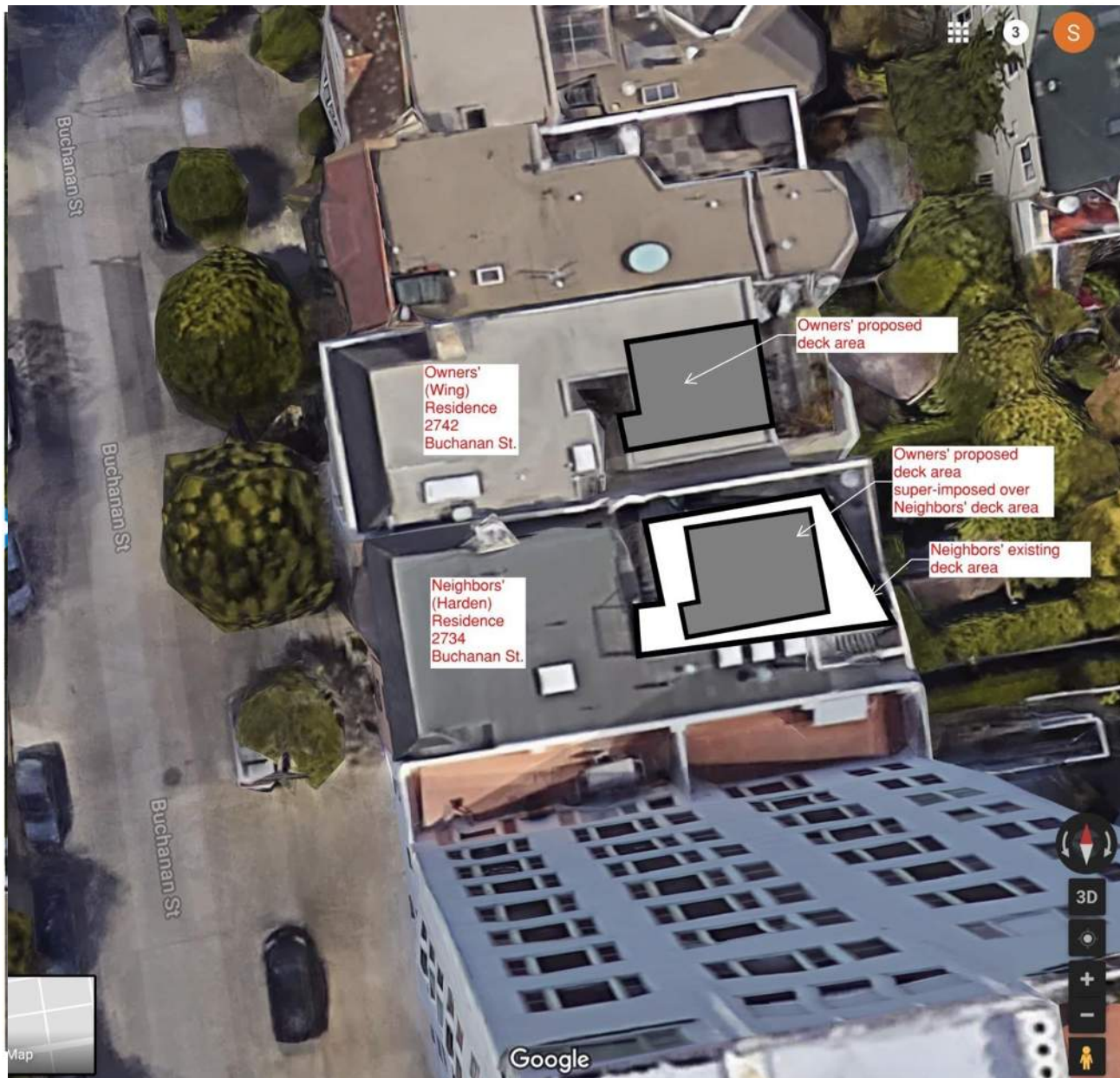
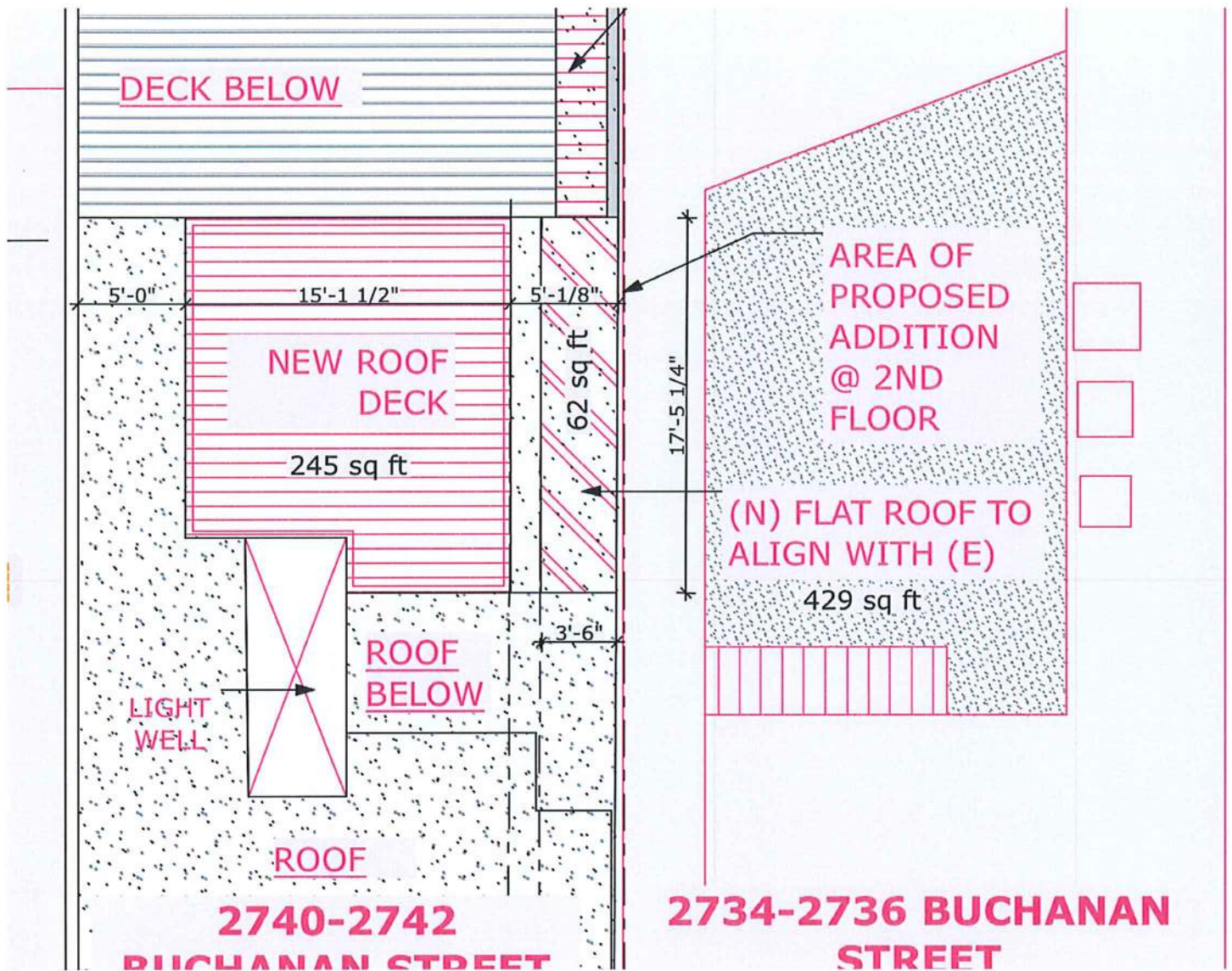


EXHIBIT 4



From the desk of ... Sabra Ballon

# EXHIBIT 5

## MEETING NOTES

PROJECT: Wing Residence  
2742 Buchanan  
San Francisco, CA 94123  
DATE: 2/9/17  
LOCATION: Wing Residence  
2742 Buchanan  
San Francisco, CA 94123

## ATTENDEES:

Ricky Wing [RW], Dudley Wing [DW] – Property Owners of 2742 Buchanan  
Sabra Ballon [SB] – Designer for the Wings  
Shauna Harden [SH], Mike Harden [MH] – Property Owners of 2736 Buchanan

**The following is our (Wings and Sabra Ballon) understanding of the discussions held during this meeting.**

## ITEM: DISCUSSION:

02.09.01 The meeting began with a discussion regarding the Hardens' plans to move to a bigger house for their expanding family. They said they are actively looking at homes for sale in the neighborhood. They mentioned that they will need to sell their existing residence before they purchase their next home.

02.09.02 DW, RW and SB said that they are in the process of designing a remodel for their home. They mentioned that they would like to include the Hardens in their design process because the area of the addition is on the adjoining property line between the two residences.

02.09.03 The discussion continued to SB presenting their design scheme of enlarging the Wing's Master Bathroom to accommodate a new laundry. The design scheme also includes a new roof deck with a new spiral stair from the existing deck. SH stated that she didn't want her four windows blocked as this would negatively impact her home's resale value. However, MH said that the deck might be an improvement over the graveled roof.

02.09.04 All present went outside to see windows on the property line that would get covered in the design proposal (3 small windows in the bathroom and 1 larger window in the den). SH told SB the proposed project will negatively impact their property value for future resale, and again, that as a result they oppose the covering of their windows.

02.09.05 All present went to the Harden residence for a tour of their home including their Master Bathroom and the top floor to see the impact of the proposed project from their residence. SH pointed to their den where they blocked the window with bookshelves and stipulated that they could remove the bookcase and this room could be positioned as a 4th bedroom in the sale of their home. MH again said that he would prefer to see a finished roof deck as opposed to a roof with gravel from his living room. However, after MH left the meeting to take a call, SH stated that the view was an important element in their decision to purchase the home, and that the deck will negatively impact their view.

02.09.06 SH said that the proposed project will negatively impact their property value for future resale. SH stated that they understood that the property line windows are not protected. But they still oppose the proposed scheme as is. She said she will engage her real estate lawyer to delay the project as long as they can.

MEETING NOTES  
PROJECT: Wing Residence  
2742 Buchanan  
San Francisco, CA 94123

DATE: 3/22/17

LOCATION: Wing Residence  
2742 Buchanan  
San Francisco, CA 94123

ATTENDEES:  
Ricky Wing [RW], Dudley Wing [DW] – Property Owners of 2742 Buchanan  
Sabra Ballon [SB] – Designer for the Wings  
Mike Harden [MH] – Property Owner of 2736 Buchanan

**The following is our (Wings and Sabra Ballon) understanding of the discussions held during this meeting.**

ITEM: DISCUSSION:

**03.22.01** The meeting began with a discussion /review the intent of the proposed project. RW and DW are proposing an addition to their home to create a handicap accessible bathroom and a space for a washing machine and dryer. And a review of the Harden's concerns regarding the impact of the proposed project on the resale value of their property. DW suggested it would be easier to sell MH's home if the Wing's project was completed, rather than having to discuss that the remodel was pending and MH was contesting it. MH responded by saying that he would make full disclosure, and there would be no problem selling. Moreover, he also said he owns numerous SF properties and he is fully aware of the dynamics of the SF Real Estate market.

**03.22.02** MH Stated that he did not want to give up the ambient light in his bathroom. However, he made no mention of the fourth window in their den which is currently covered with book shelves they have installed throughout that room. (Note: In our 2/9 meeting MH's wife, Shauna, wanted light in their den so that they could sell it as a 4<sup>th</sup> bedroom even though it is a non-operable window). As to the roof deck, in our 2/9 meeting MH thought that it would be alright to install the deck as it would look better than a graveled roof. While his wife objected to the roof deck due to view infringement. Now, at this meeting, MH said that the Wings were not allowed to install a roof deck. He said his lawyer suggested that he had a "view easement" and therefore the proposed deck was not allowed. SB stated that the SF Planning for the Wing's property allows for the deck.

**03.22.03** The discussion continued with DW proposing the compromise of eliminating the roof deck, and offering the solution of providing ambient light into his master bathroom by installing walkable skylights in MH's deck above said bathroom. SB presented pictures of these samples from her laptop and discussed the logistics of installation.

**03.22.04** After reviewing all of these, MH stated that he was not interested in having construction done on his property because he has 3 kids nor was he willing to give up the ambient light in his bathroom. He stated that while living in Amsterdam for 8 years, the right to natural light was a given. (And, I guess we were to assume this also applied to SF building codes). He went on to state that we "should be more creative" in solving our laundry issues in our flat. He suggested there are a number of laundry services that have home pick up and delivery and recited a few vendors.

**03.22.05** In summary, it was stated that the building application had been submitted to the SF Planning Department. SB informed MH that he would receive a notice of our Pre-Application Neighborhood meeting scheduled on Friday, April 7<sup>th</sup> at 6:00pm. MH stated that we were asking him to give up too much, and he will continue to oppose the project.



MEETING NOTES  
PROJECT: Wing Residence  
2742 Buchanan  
San Francisco, CA 94123

DATE: 04/07/17

LOCATION: Wing Residence  
2742 Buchanan  
San Francisco, CA 94123

ATTENDEES:

Ricky Wing [RW], Dudley Wing [DW] – Property Owners of 2742 Buchanan  
Sabra Ballon [SB] – Designer for the Wings  
Warner Berry (WB) – Wing's Attorney  
Mike Harden [MH] – Property Owner of 2736 Buchanan  
Steve Hammond (SH) – Harden's Attorney  
Suzanne Kissinger (SK) – Harden Family Office – Real Estate Team

**The following is our (Wings, Sabra Ballon & Warner Berry) understanding of the discussions held during this meeting.**

ITEM: DISCUSSION:

**04.07.01** The meeting began with the introduction of the new participants – WB, SH & SK. WB indicated that while this was a simple Pre-Application meeting, we were here to listen to anything the Harden group wished to present/discuss. SH inquired about the Wing's property in Hawaii – regarding future plans to sell. DW said that the Wings planned to spend more time in San Francisco for better medical access.

**04.07.02** SB showed SH and SK the master bedroom, master bath and outside space. Explained why and how this room would be extended and a roof deck would be added. SB then went over in detail the architectural plans of the remodel project.

**04.07.03** SH was the most active participant in this more technical presentation by SB. He repeatedly stated that blocking the windows was "unacceptable", and continually questioned whether we had explored other options to blocking the bathroom windows.

**04.07.04** Regarding the roof deck, SH acknowledged that they had no right to contest this based on a view impairment. However, their objections were now based on personal, privacy intrusion. As the proposed deck was so close to their Great Room.

SK also accused DW of sunbathing in the "buff", and this was totally unacceptable since the Harden's had 3 young daughters. On this point, both RW and DW emphatically stated that DW did not and never has sunbathed in the "buff". All he does is take his shirt off, and sits in his shorts while reading the newspaper.

SK went on to challenge, how this deck – with the spiral staircase - could conform to "ageing in place". Again, DW & RW pointed out that this was simply a viewing deck, and would be used only for occasional events such as "Fleet Week/Fourth of July parties, similar to how the Hardens hold a Blue Angels party every year, utilizing their own roof deck.

**04.07.05** Regarding the fourth window in the Harden's den/4<sup>th</sup> bedroom, SK now said the Harden's needed this room so that each daughter could have their own bedroom. SB pointed out that technically, this was not a "legal bedroom" as it has a "non-operable" window. SK countered by saying that the Harden's would install an operable window. SB pointed out that the SF Building codes did not allow for operable windows on the property line. Moreover, even if they did, an operable bedroom window must face either the street or the back yard. It cannot face a light well as this window does. (Note: At the first meeting (2/9), the Hardens were concerned about the resale value of their home if they could not sell this as a "4<sup>th</sup> bedroom". At the second meeting (3/22) with MH only, no mention was made about the den/4<sup>th</sup> bedroom window. His only concern was the bathroom windows. And, in this meeting, they now need this room as a bedroom for one of their daughters).

**04.07.06** SK continued to contest the Wing's remodel project. She stated that it added value to the Wing's property, but took value away from the Harden's.

**04.07.07** After this rather lengthy discussion, SH asked SB whether she believed that she could get the building plans approved. SB said that based on her discussions with the City's Planning Department, the Building Inspector and her knowledge of the building codes, that she was confident that these plans would be approved because they were all done to code.

**04.07.08** At this final juncture, while MH had made periodic comments over the course of the meeting, he again emphatically stated he wanted 3 things: 1) his light (ambient light from bathroom windows); 2) his 4<sup>th</sup> bedroom; 3) his privacy. He went on to say that the better solution to the Wing's problem were for 1) Wing's to send out their laundry since the vendor would do a better job with their laundry; 2) Move to the 2<sup>nd</sup> level of their building; 3) Stay in Hawaii full time.

**04.07.09** WB concluded the meeting by thanking everyone for attending and providing input. And indicated that he would be back to SH

# EXHIBIT 6



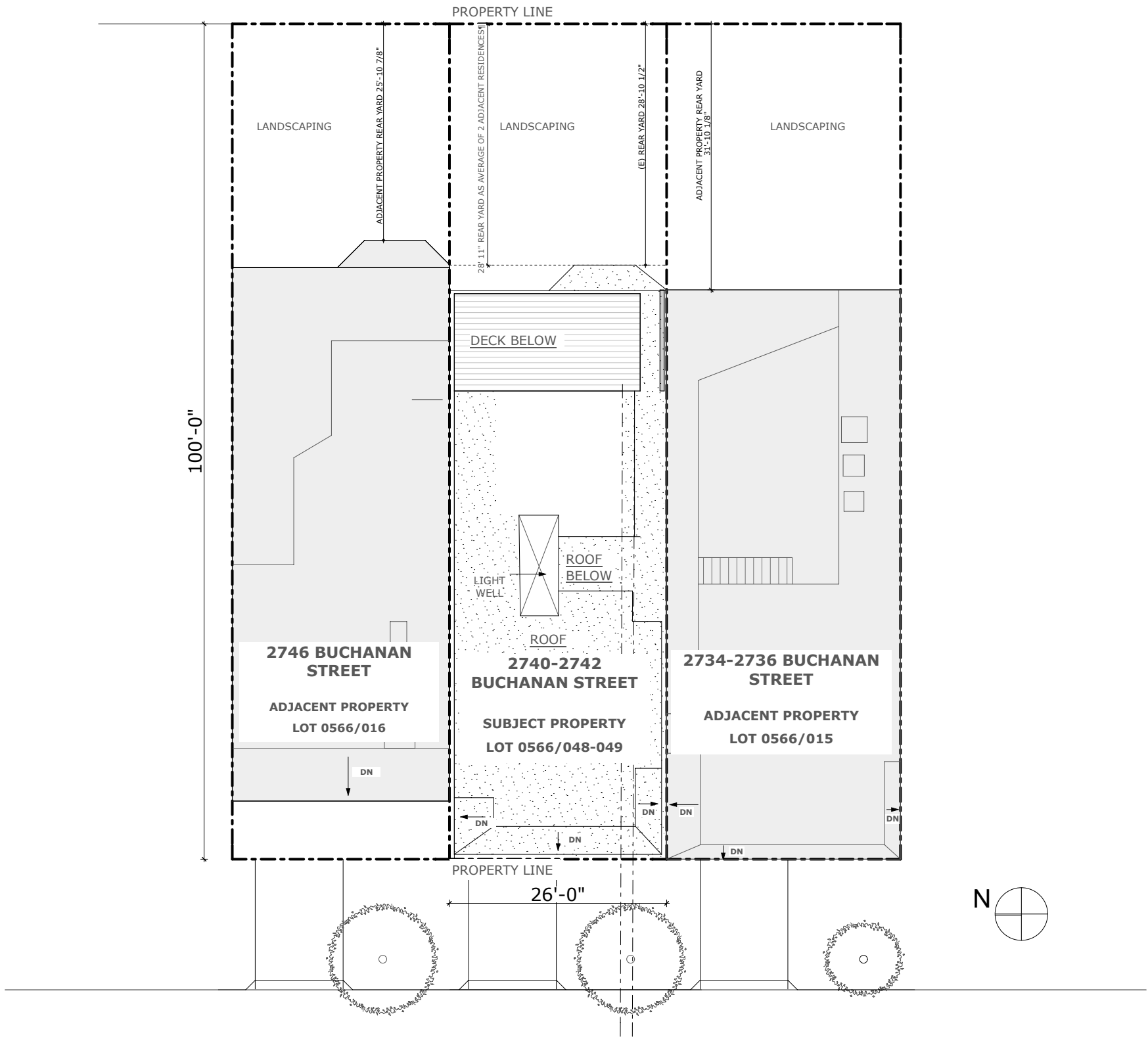
Neighbors'  
(Harden)  
Residence  
2734  
Buchanan St.

Owners'  
(Wing)  
Residence  
2742  
Buchanan St.

1

EXISTING SITE PLAN

SCALE: 1/16" = 1'-0"

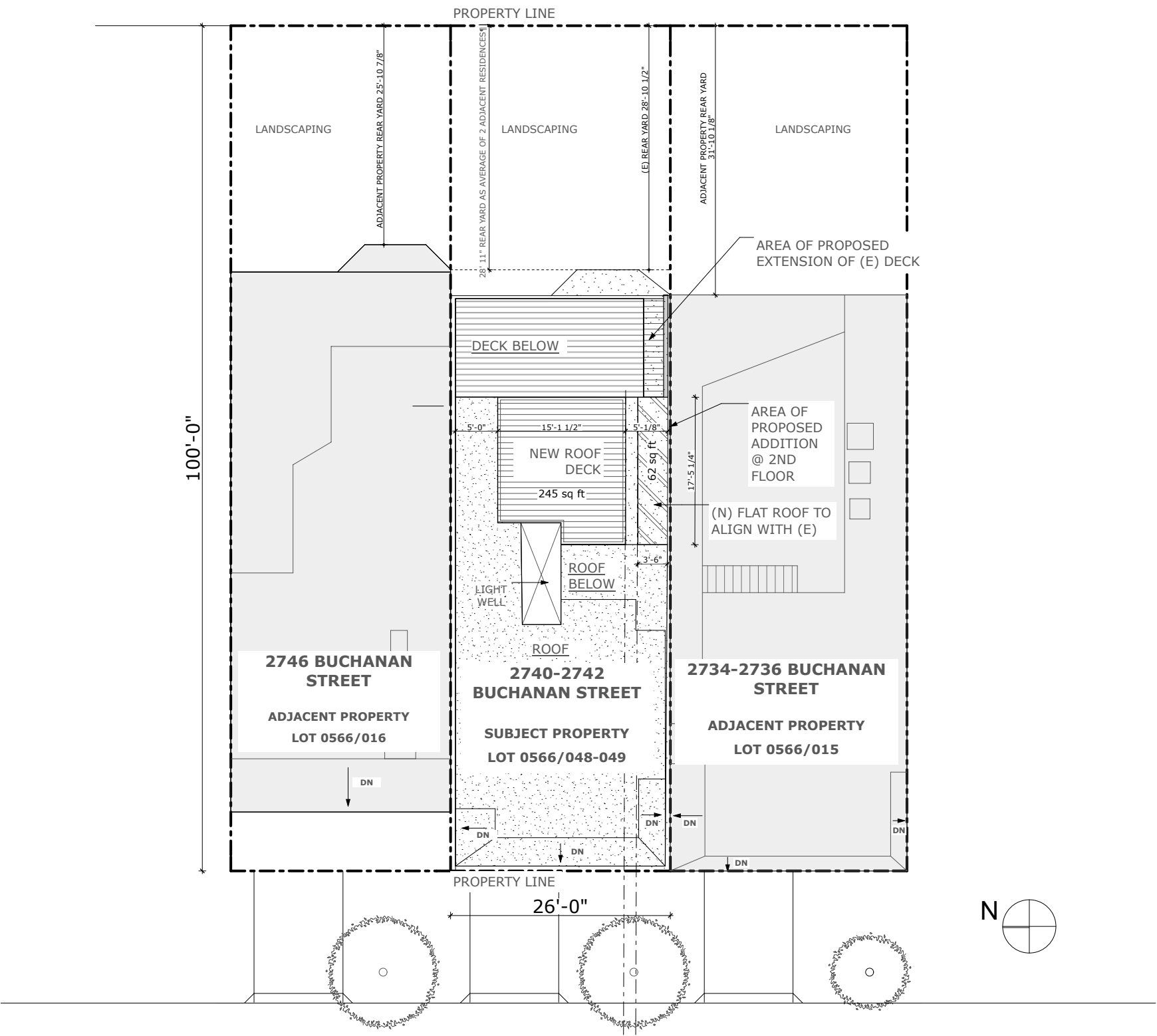


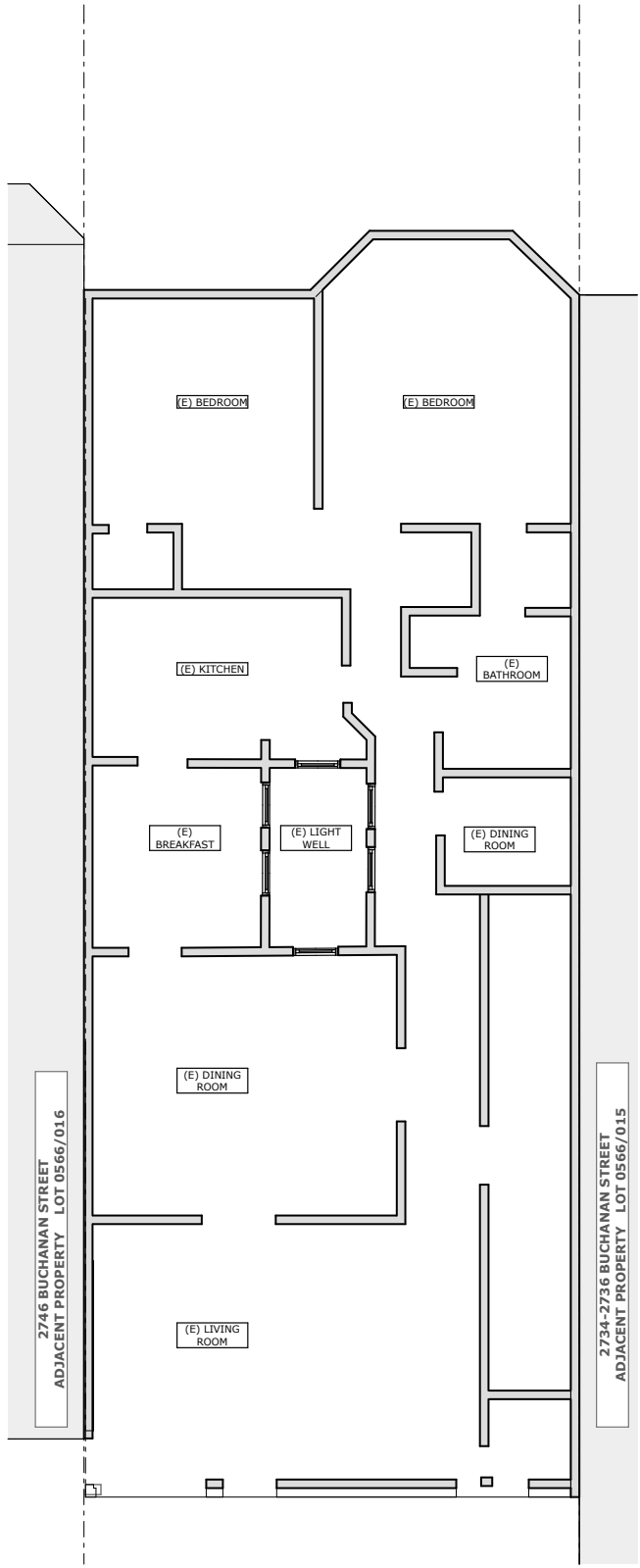


1

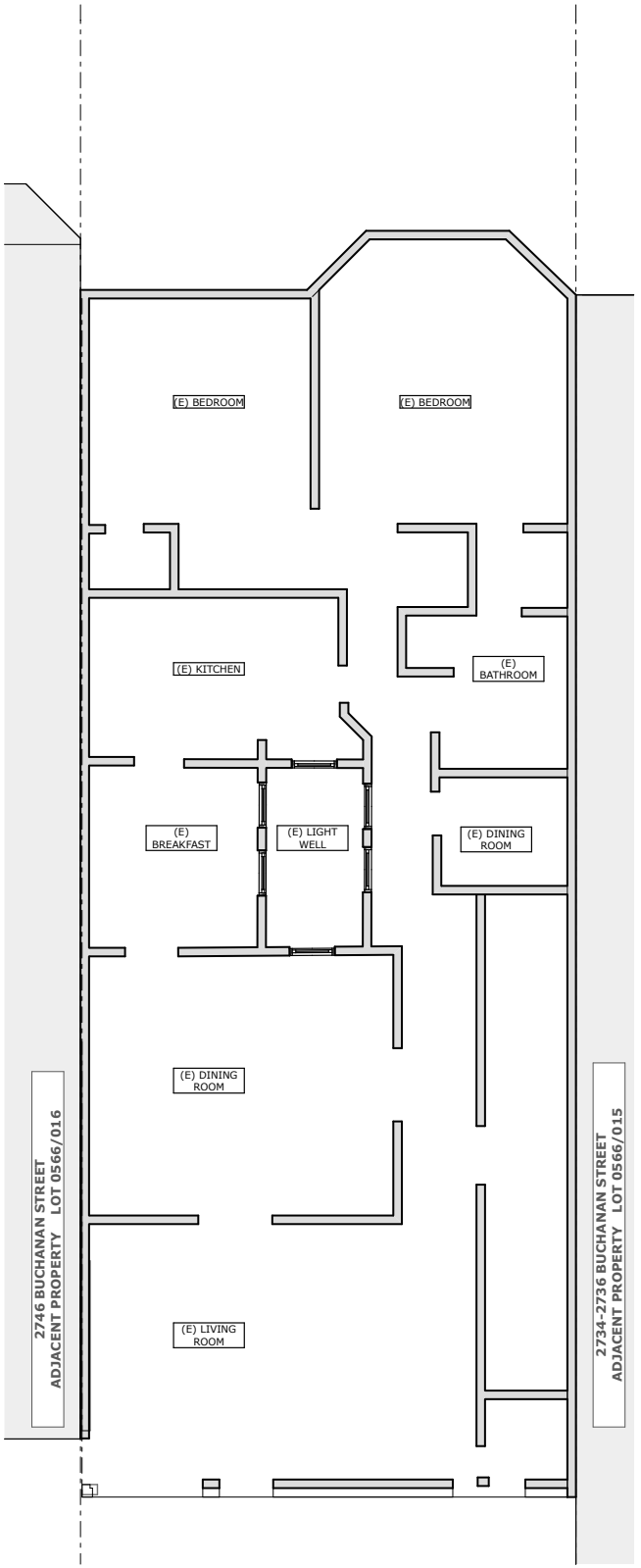
PROPOSED SITE PLAN

SCALE: 1/16" = 1'-0"

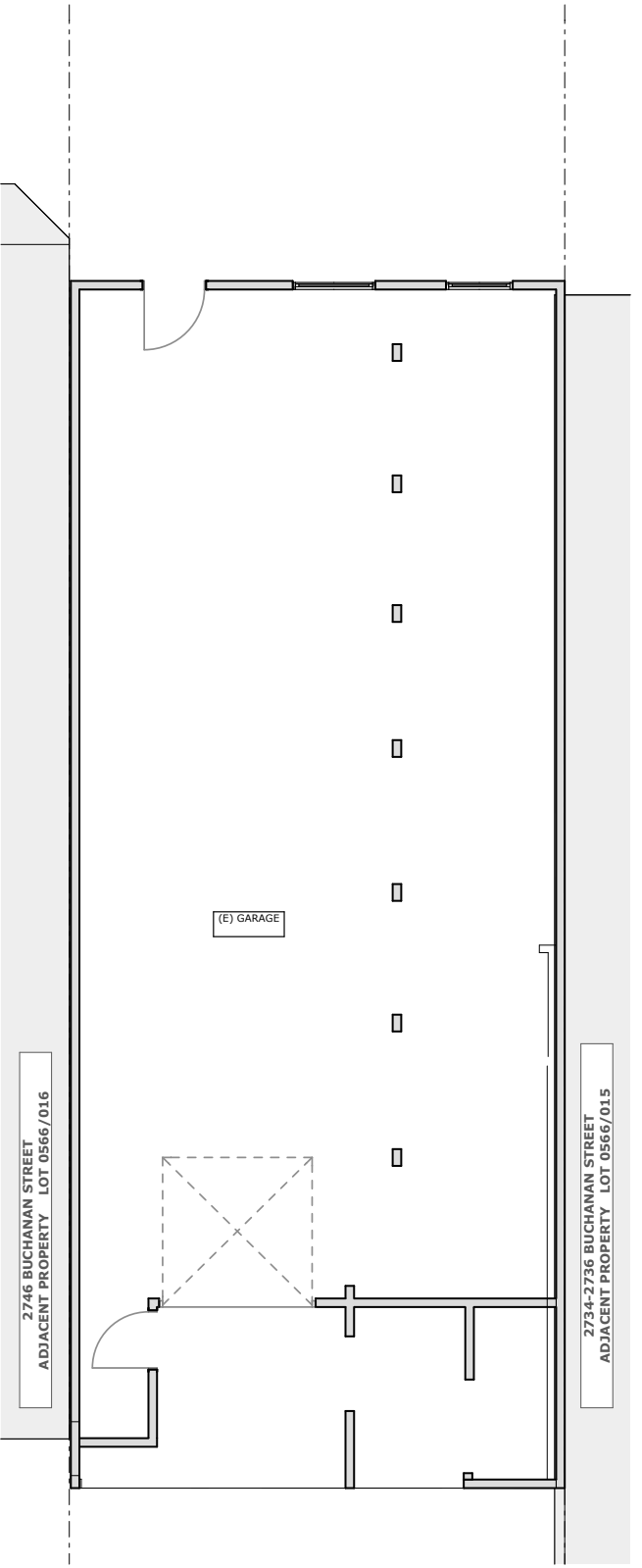




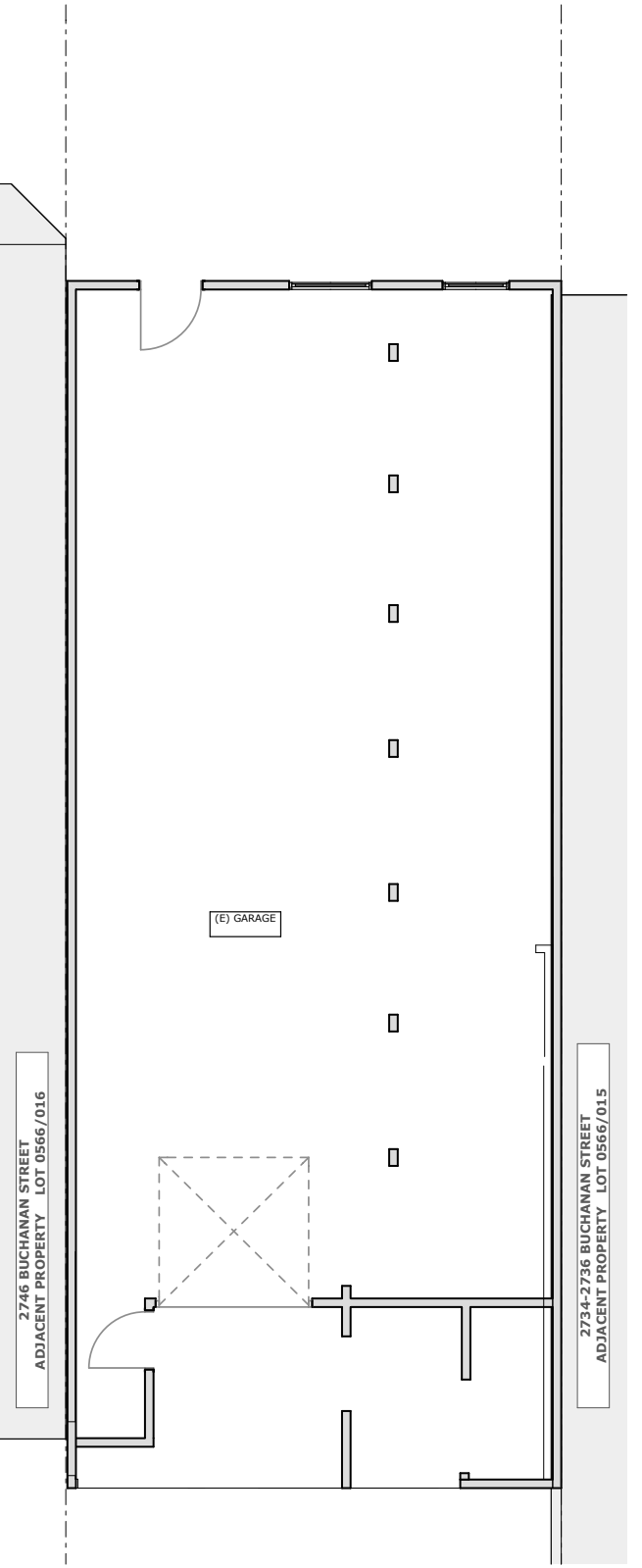
4 1ST FLR PROPOSED  
SCALE: 3/32" = 1'-0" (No Work)



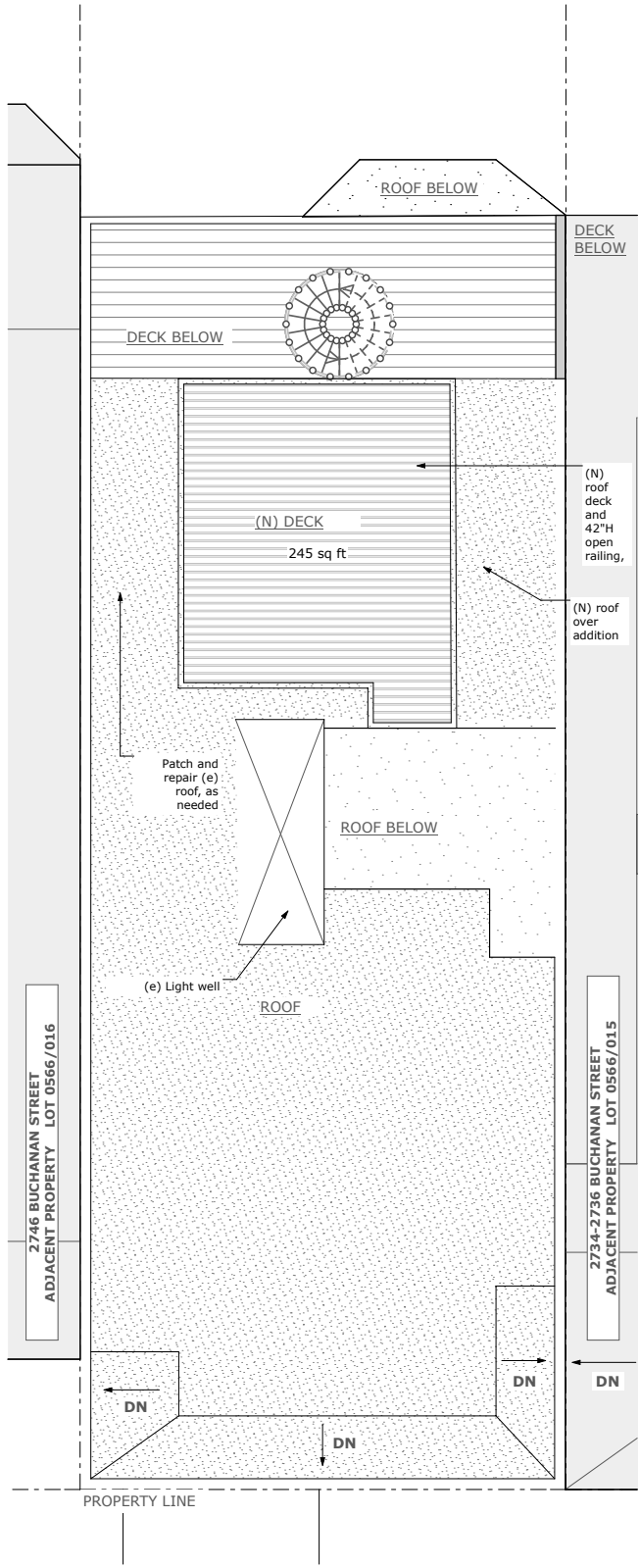
3 1ST FLR DEMO PLAN  
SCALE: 3/32" = 1'-0" (No Work)



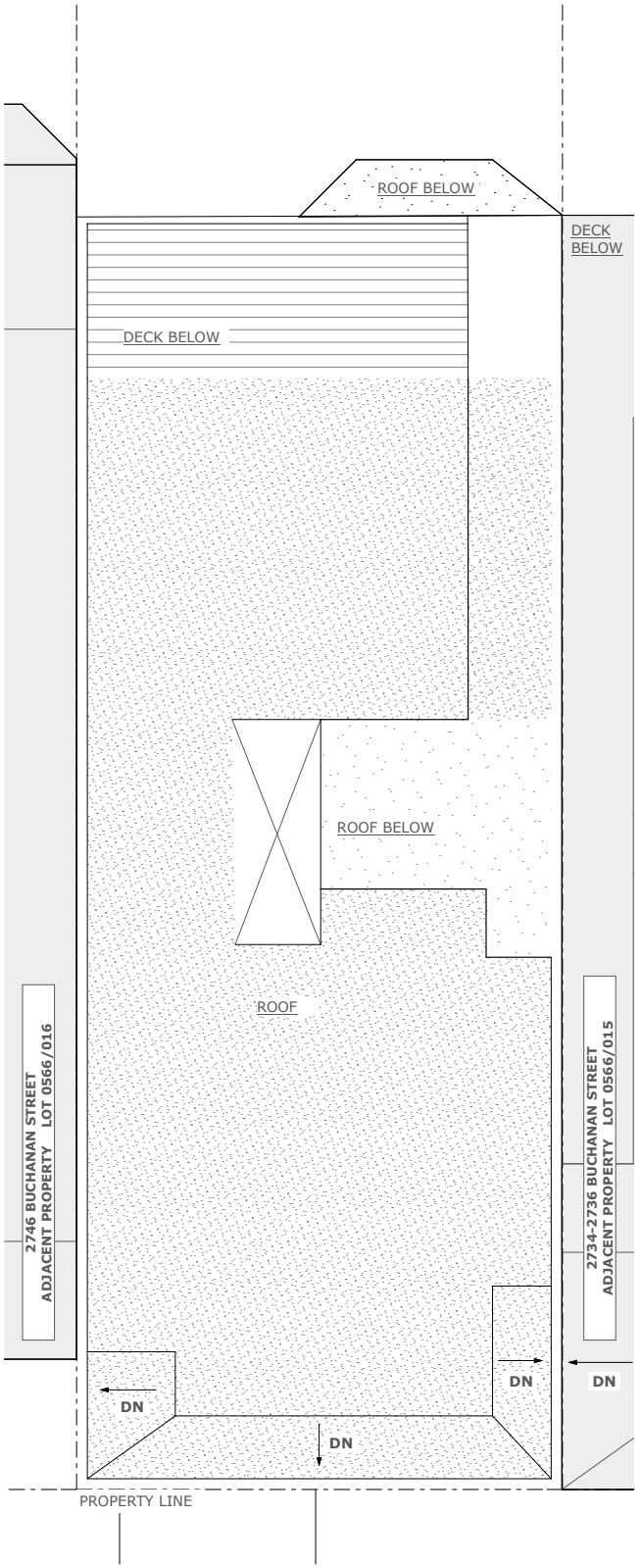
2 GARAGE PROPOSED  
SCALE: 3/32" = 1'-0" (No Work)



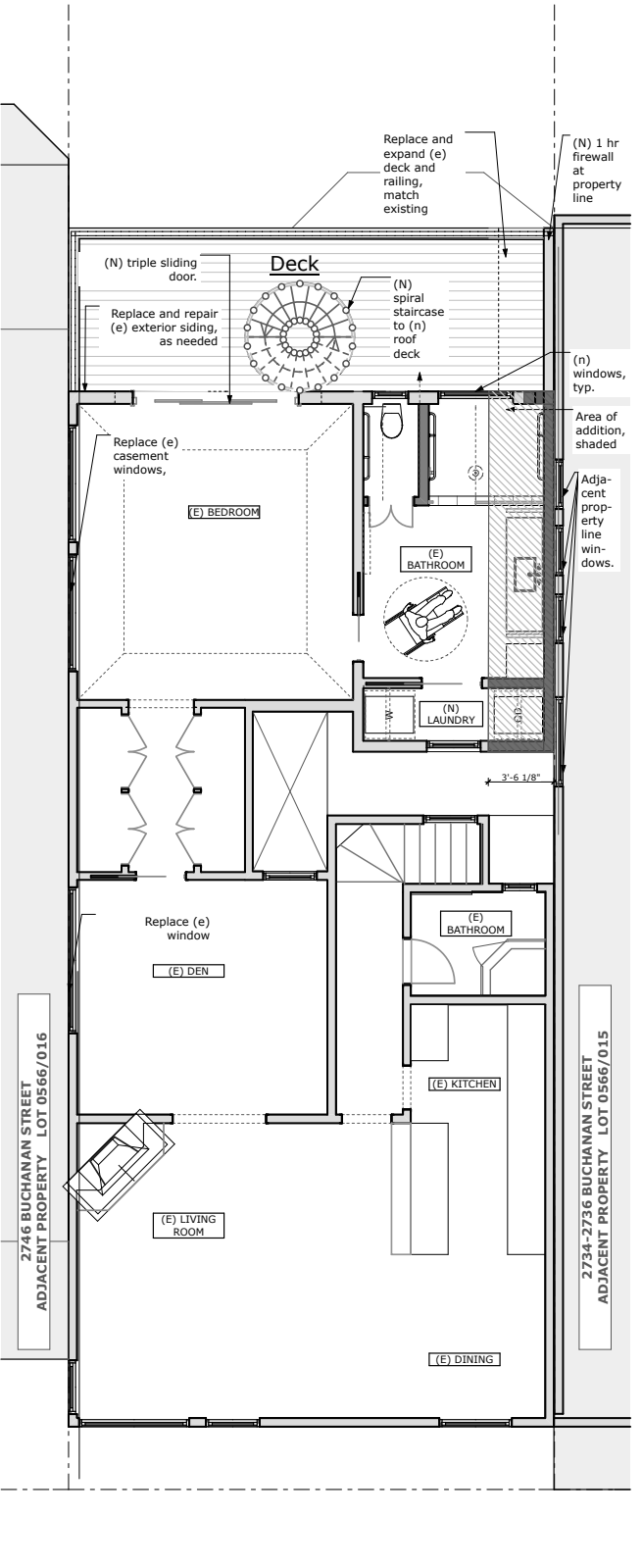
1 GARAGE DEMO PLAN  
SCALE: 3/32" = 1'-0" (No Work)



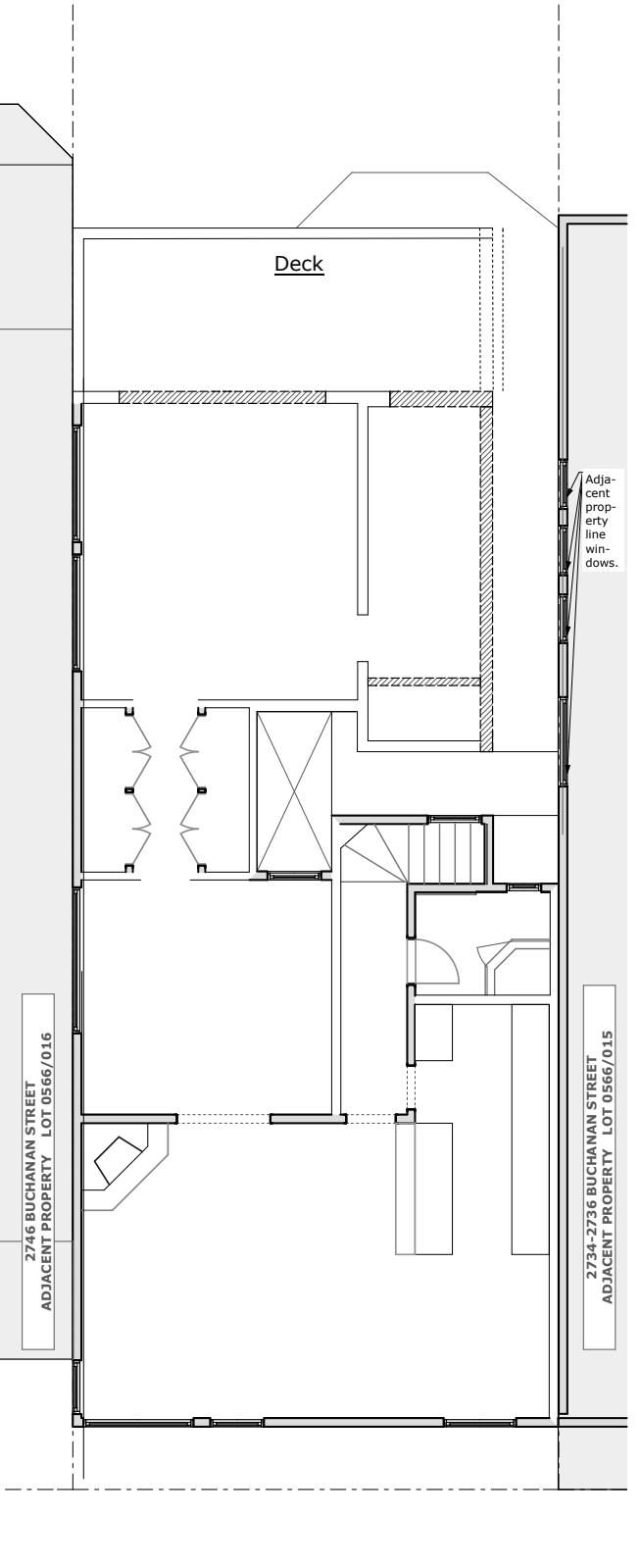
**4** ROOF PROPOSED  
SCALE: 3/32" = 1'-0"



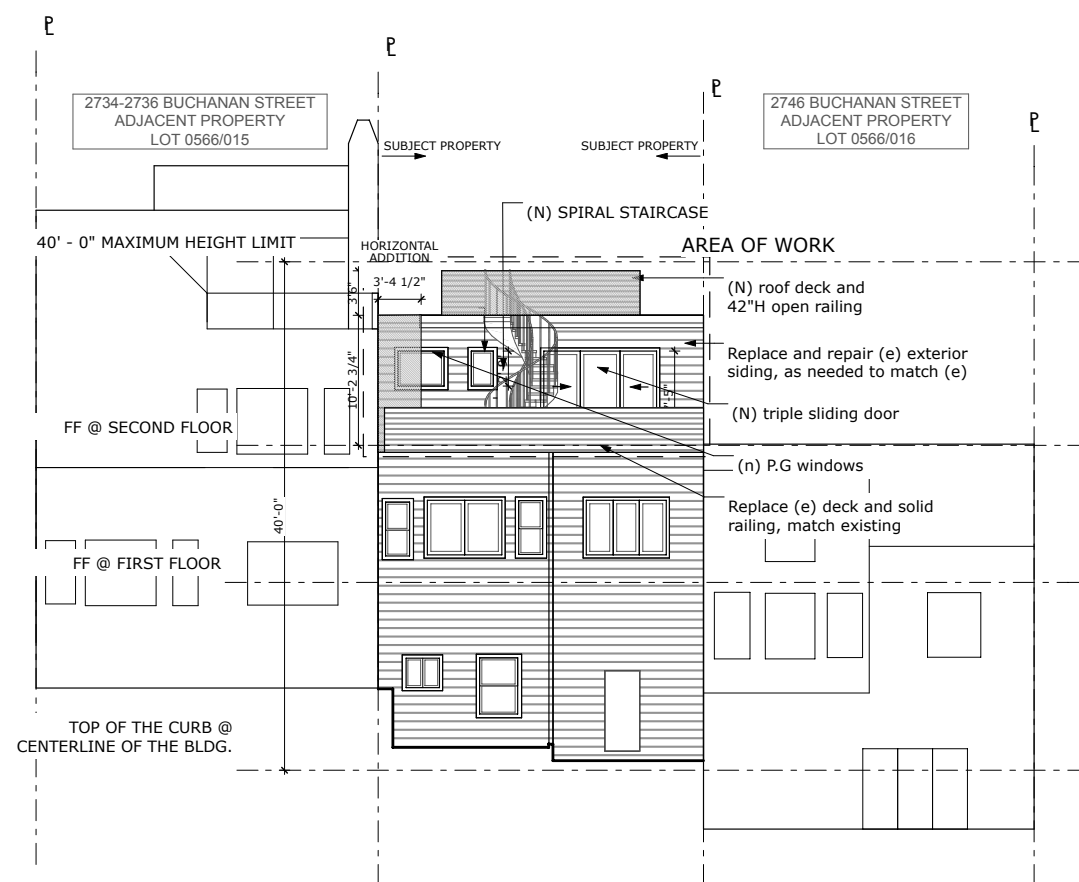
**3** ROOF DEMO PLAN  
SCALE: 3/32" = 1'-0"



**2** 2ND FLR PROPOSED  
SCALE: 3/32" = 1'-0"



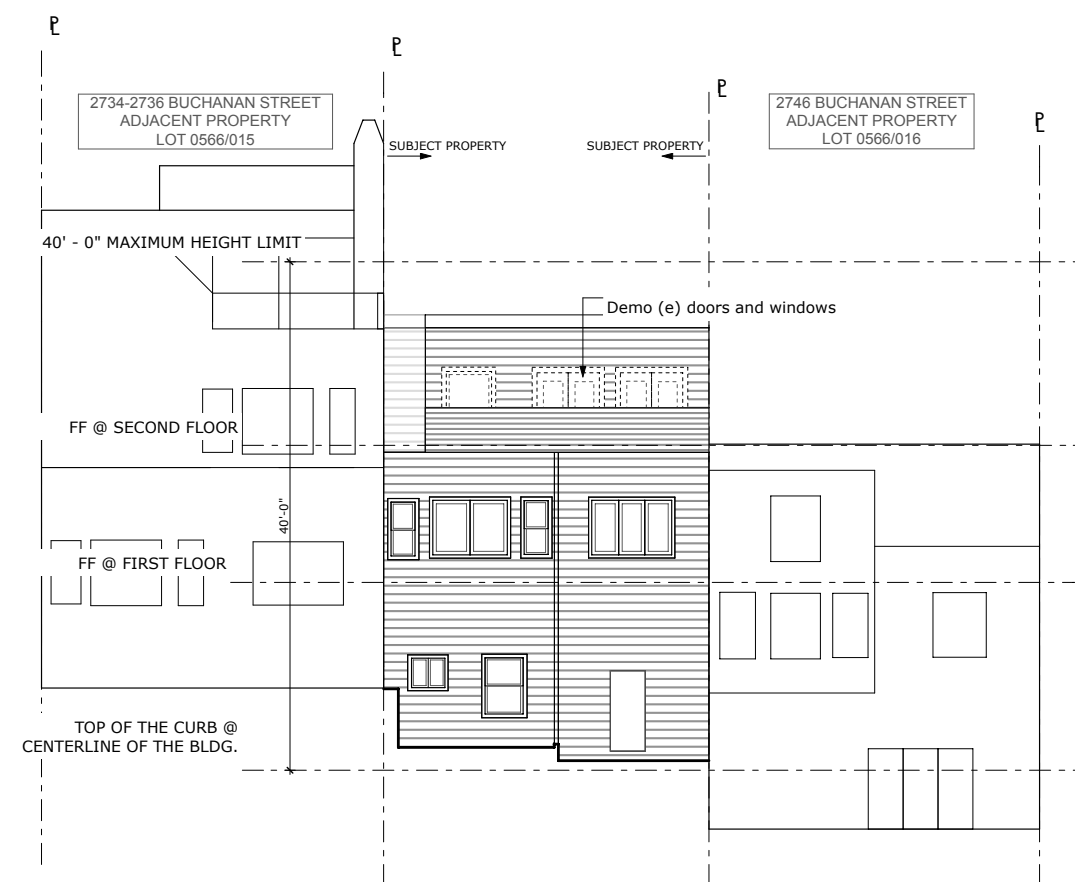
**1** 2ND FLR DEMO PLAN  
SCALE: 3/32" = 1'-0"



2

## PROPOSED EAST ELEVATION

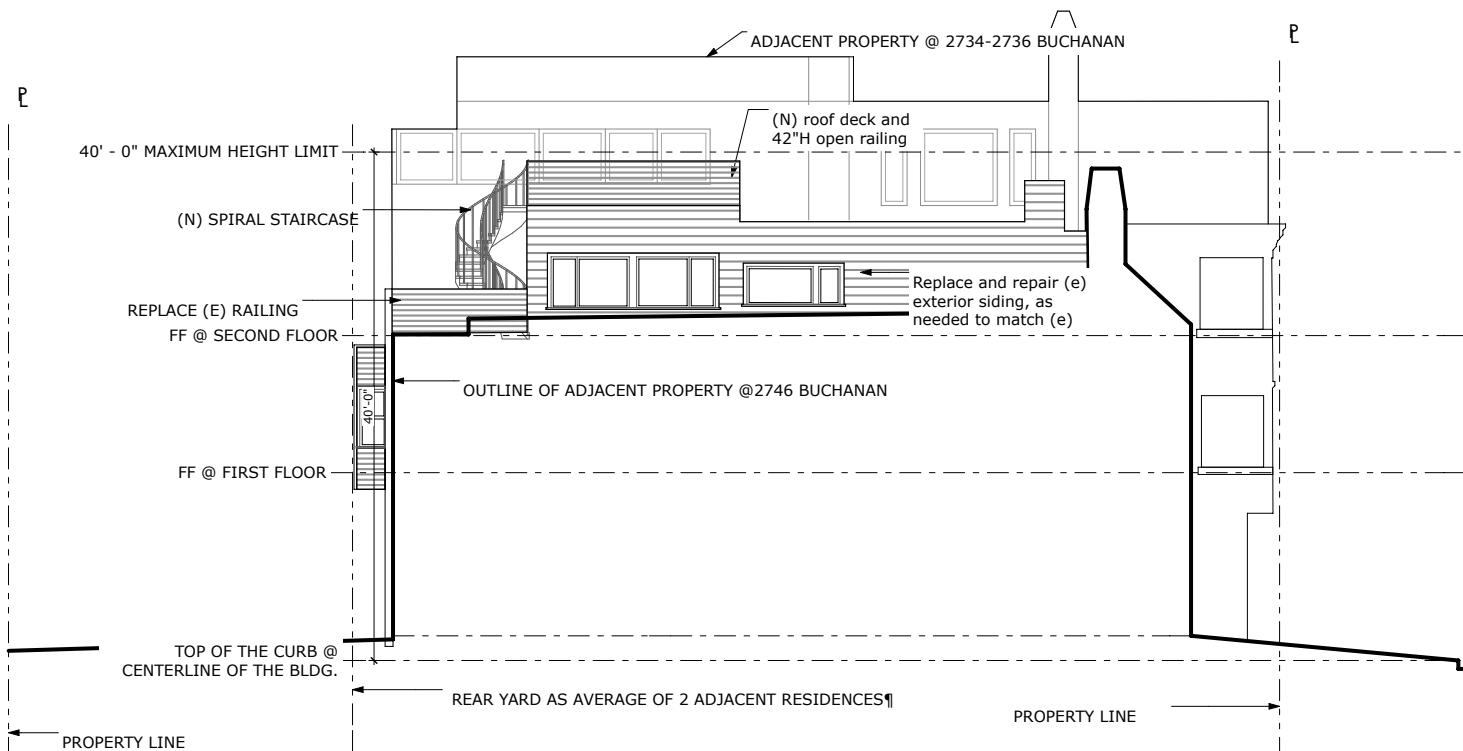
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1

## EXISTING EAST ELEVATION

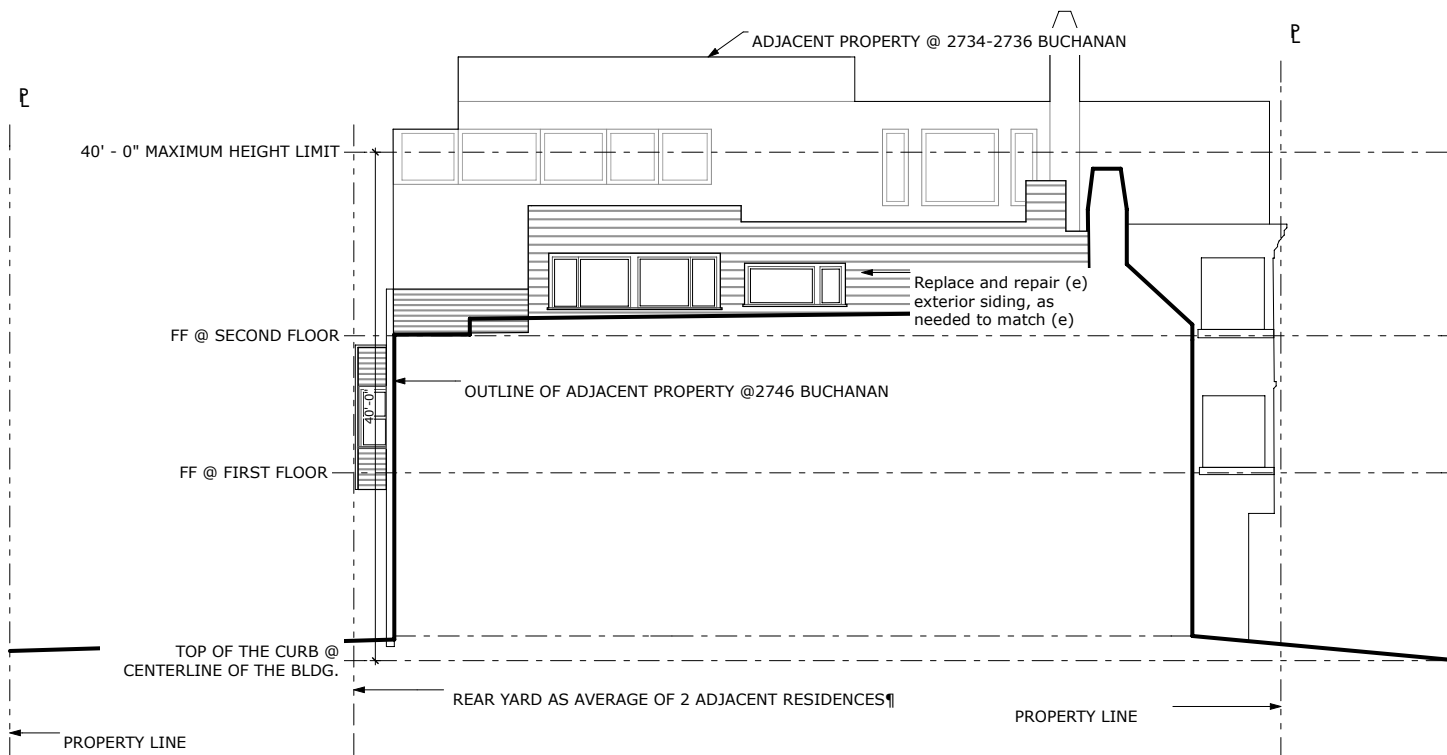
SCALE: 1/16" = 1'-0"



2

## PROPOSED NORTH ELEVATION

SCALE: 1/16" = 1'-0"

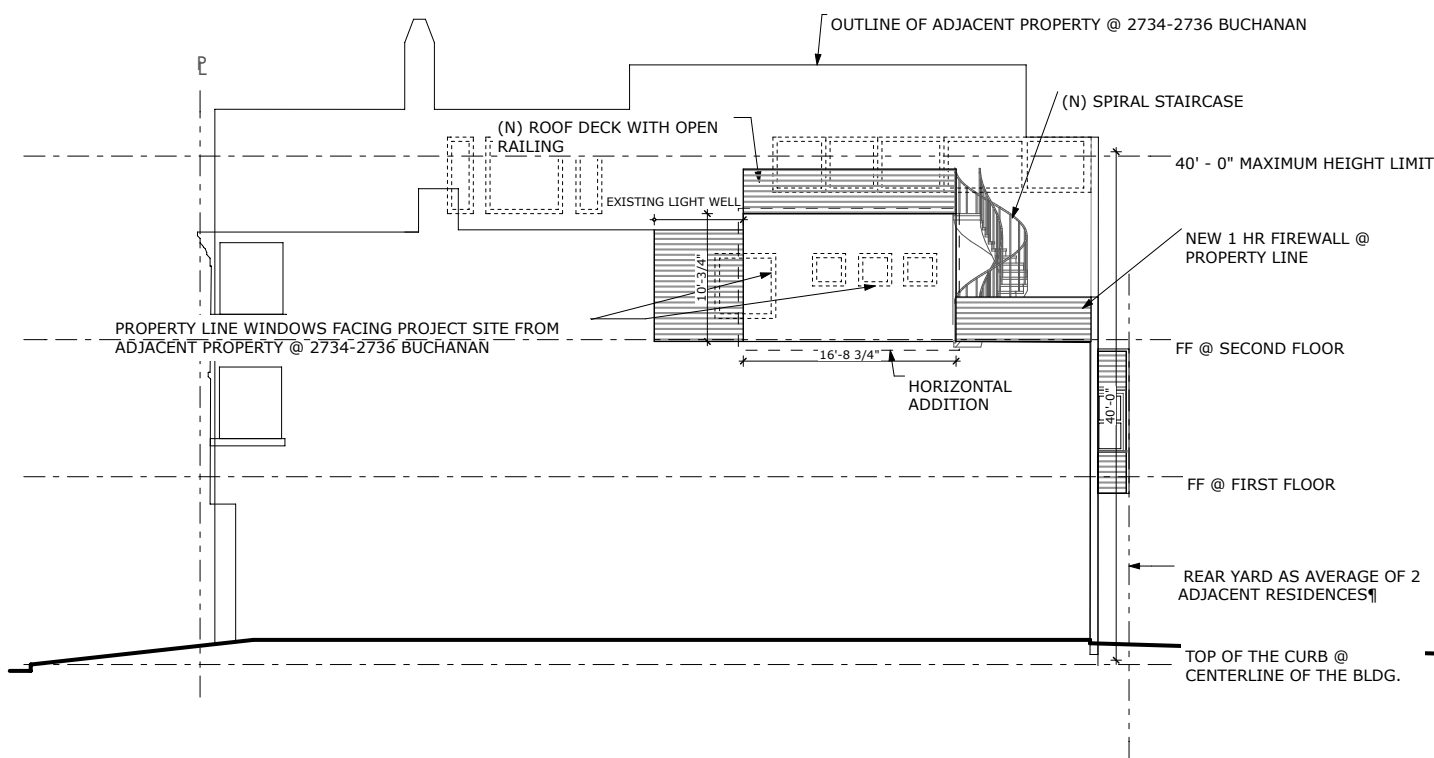


1

## EXISTING NORTH ELEVATION

SCALE: 1/16" = 1'-0"

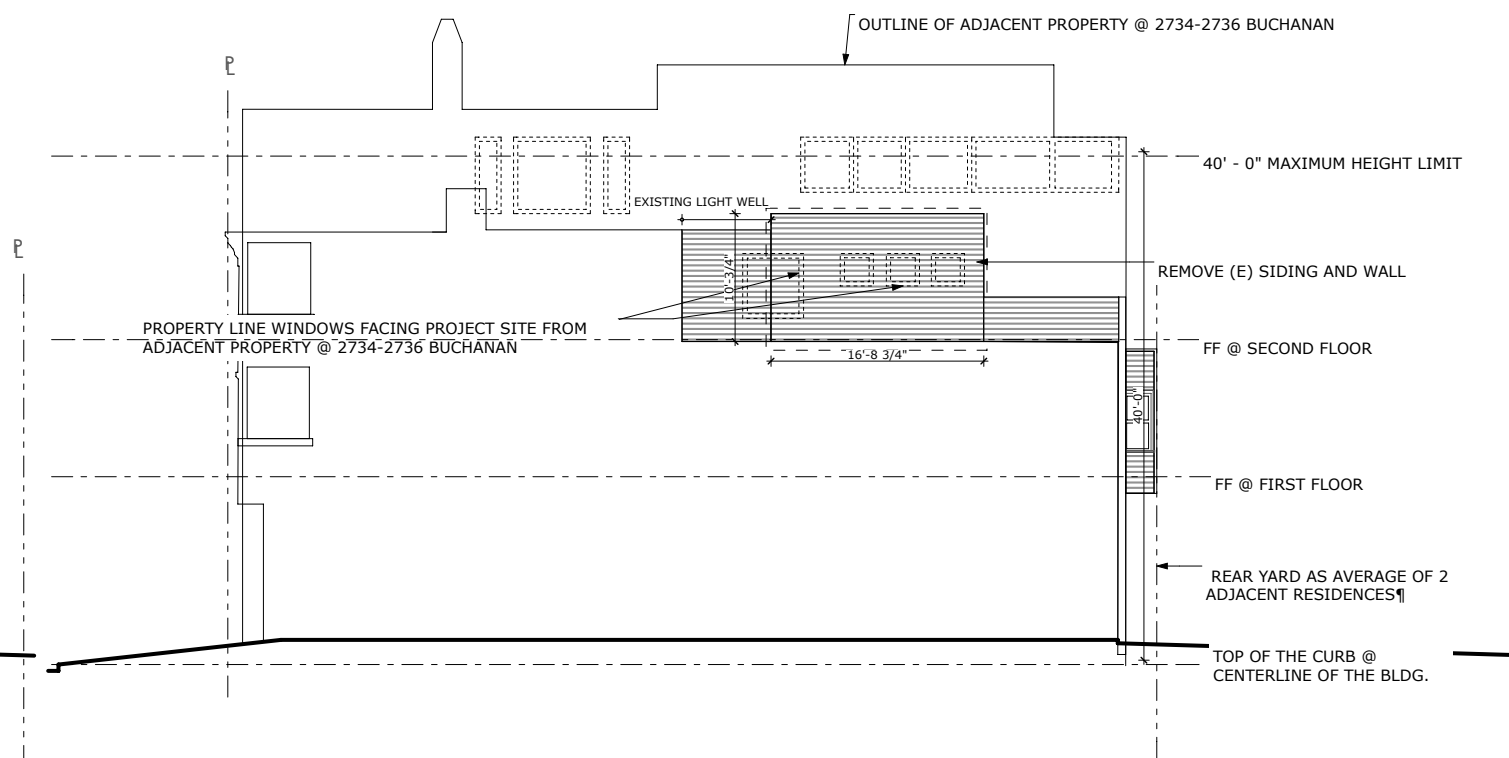




2

PROPOSED SOUTH ELEVATION

SCALE: 1/16" = 1'-0"



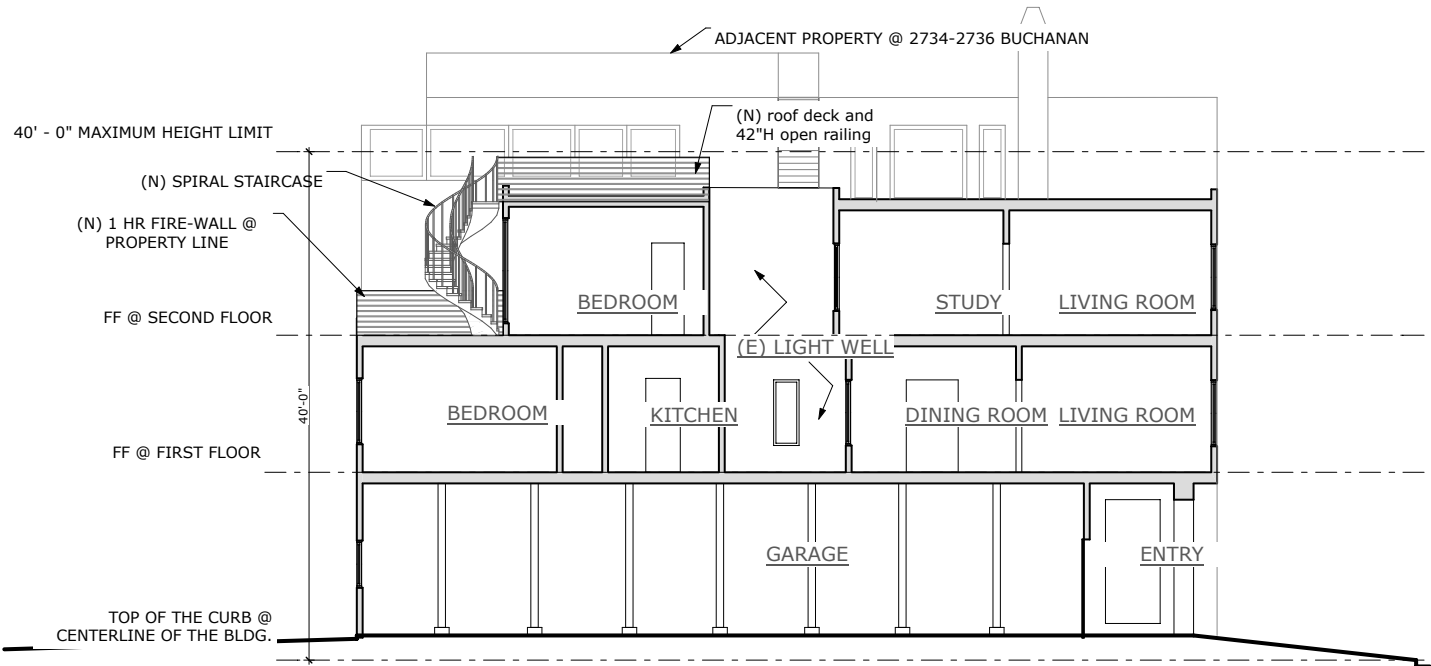
1

EXISTING SOUTH ELEVATION

SCALE: 1/16" = 1'-0"

EXISTING & PROPOSED ELEVATIONS

2742 BUCHANAN ST , CA 94123



1

PROPOSED LONGITUDINAL SECTION

SCALE: 1/16" = 1'-0"