

November 23, 2015

Rodney Fong, President and
Planning Commissioners
San Francisco Planning Commission
165 Mission Street
San Francisco, CA

Steve Atkinson
Counsel
415.805.7971 DIRECT
415.757.5501 FAX
steve.atkinson@arentfox.com

Re: 1430 36th Avenue--- Request for Discretionary Review

Dear President Fong and Planning Commissioners:

We represent Ann and Chris Grimaldi, owners of the single family home at 1434 36th Avenue, the DR requestors. The Grimaldi property is immediately adjacent and south of the proposed renovation and addition at 1430 36th Avenue (the "Project"). As explained in more detail below, the Grimaldi's are seeking DR because it is evident that the property owner/Project Sponsor intends to illegally convert the Project to a 2-unit dwelling, and that the proposed design will facilitate an illegal conversion to create a 2-unit building in an RH-1 district, as well as significantly expand the building footprint. This, as well as the apparent violation of the Planning Department's guidelines for addition of lower level rooms, represents the exceptional and extraordinary circumstance that warrants the Commission to take DR in this case. The DR applicants are not opposed to increasing residential density but believe any such increase should be done in accordance with rules.

In addition to the objections to the Project itself, the DR requestors would also like to direct the Commission's attention to several errors in the notice for this hearing. (See Exhibit 9.) The mailed notice misidentified the cross-street as "Clipper", and the proposed horizontal addition was mis-described as including two bedrooms, when the addition in fact includes three bedrooms (and the Project overall will result in an increase of three or four bedrooms, (since the proposed "study" can easily be used as a bedroom.) Those errors have confused some residents about the subject of this hearing.

Background

The Project site at 1430 36th Avenue is zoned RH-1, as is the DR Requestor's home, and the vast majority of this block. A small part of the block, near Judah Street, beginning several parcels north of the Project site; is zoned RH-3. The Project site, like the DR Requestor's property, is currently developed with a single family home. The Grimaldi's have resided here since 1994. As renovated several years ago within the pre-existing footprint, the Grimaldi's house has three

AFDOCS/12699496.1

bedrooms and three baths, and is occupied by Ann and Chris Grimaldi and their two teenage children.

The current Project Sponsors purchased the Property in mid-2014. As stated in the listing summary (see Exhibit 1), the Property was a single family home with two bedrooms and one bath, as well as a small family room and two car garage on the lower level, with a total of 1250 square feet.

In September 2014, the Project Sponsors (Property owner, Christina Vuong, Project Sponsor Jason Chan (the architect) and Hayden Ly) sent out a Notice of Pre-Application Meeting. The notice states that the development proposed was:

In 1st floor, add a family room, two bedrooms, two baths, a study room, and a kitchen. In 2nd floor: add a bath, relocate bedrooms, convert existing bedroom to a study and a ply [play] room, remodel kitchen. (Emphasis added.)

(See Exhibit 2.)

In October, 2014, pursuant to Planning Department requirements, a pre-application meeting was held. At that meeting, the Project Sponsor presented plans to the attendees. The plans that were presented are similar to the application later submitted, except that those initial plans listed "kitchen" as part of the scope of work on the first floor, and showed a kitchen (sink and cabinets) in the proposed large "family room" on the ground level (See Exhibit 3).

Those pre-application meeting plans also included laundry facilities (marked W/D for washer/dryer) on both the first and second level, as further indication of the intent to develop the Property with two independent units.

At the same pre-application meeting, the Project Sponsor-architect stated that a second kitchen would be constructed downstairs. When the neighbors attending stated that a second kitchen would not be legal, the architect stated that the City would allow a second unit and kitchen at the Property.

Subsequently, a gentleman who identified himself as the owner stated that he intended to construct a second unit in the lower level and rent it out. He specifically stated "I would never have bought this property if I could not rent out a downstairs unit." Project Sponsor's intent to develop a second unit is verified by signed, sworn statements from neighbors in attendance. (See Exhibit 4). Project Sponsor's stated intent to develop two units should inform the Commission's review of this DR request.

Following the pre-application meeting, the Project Sponsor submitted a building permit application. The plans were very similar to those presented at the pre-app meeting, except that the reference to the kitchen in the lower level family room, as well as a separate washer/dryer on the lower level, were deleted. Planning Department procedure requires, along with the application itself, that an applicant submit a copy of the pre-application notice, as well as the plans presented at the pre-application meeting. Exhibit 5 is a copy of the pre-application notice in the Planning Department files. Notably, the pre-application notice still includes a reference to a "kitchen" on the first floor. However, the plans submitted with the application do not include the kitchen fixtures (sink/counter) in the family room, or the separate washer/dryer on the lower level.

As proposed, the Project included extensive renovations to the existing home, within the existing structure, as well as a large two-level rear addition. As proposed, the ground level renovation included a greatly expanded family room, a full and half bath, and a bedroom. The proposed rear addition, which extended approximately 27 feet from the existing house, included two bedrooms at the ground level, as well as a bedroom and study on the second level. Overall with the proposed renovation and additions, the Project's lower level would include three bedrooms, one and a half baths, and a large family room.

During the Planning Department review, the Project Sponsor was directed to reduce the depth of the addition by 10 feet, and the plans were so revised. The upper level addition was reduced in depth by 10 feet, however the lower level addition was enlarged by several feet. As revised the rear addition still included one bedroom and a bath on the upper level, and two bedrooms on the lower level, and overall the lower level still included the addition of three bedrooms and one and a half baths, and an approximately 340 square foot family room. The proposed upper level included two full baths, two bedrooms and a study (with a closet) that had been a bedroom in the existing house. These were the plans that were ultimately approved by the Planning staff and which are the subjects of this DR request.

On June 30, 2015, the DR request was submitted (See Exhibit 6). The DR request raised several issues about the proposed plans. At this time, we will focus on the chief issue, which is that the plans as approved will greatly facilitate the Project Sponsor's planned goal to illegally create two separate units.

Discussion

For many years, the Planning Department has followed policies intended to limit construction that would facilitate the creation of illegal units. (*Bulletin No 1, Developing Ground Floor Accessory Rooms in Residential Buildings*) ("Policy") (See Exhibit 7). The approved Project is contrary to the letter and spirit of that Policy.

Under that Policy, the type of rooms allowed on a ground level is based on several factors, including

- whether building is new construction or an addition
- whether the ground level rooms have direct or indirect access to the street and
- the degree of visual and spatial connection between the levels

The Project includes a ground level with both a full bath and half bath. Under the Policy, a full bath and half bath should be allowed only if there is only an “indirect” connection of the lower rooms to the street, and at least a limited visual and spatial connection between the floors.

Contrary to the Planning staff’s apparent conclusion, we believe the Project is more properly characterized as having a direct connection to the street, and essentially no visual or spatial connection between the two levels.

Street Access: There is a door at the ground level, adjacent to the garage door. A person entering that door from the street would cross a short open area and then go through another door to a hallway that directly accesses the lower residential rooms. (See Exhibit 8, showing direct access path into the lower residential rooms) While the short area crossed between the exterior door and the door into the lower living area is connected to the garage, it would take only the most minimal construction the seal this corridor off from the rest of the garage, providing a completely independent entry to the lower level rooms. As compared to the situation illustrated in the Policy, this should be considered as direct access from the street to the new residential rooms.

Visual Spatial Connection; As shown on the plans the only connection between the ground and second levels is a narrow stairway, which appears to have doors and doorways at its upper and lower end. (See Exhibit 8). Closing either door provides a complete visual/spatial separation between the two levels.

Under the Policy, a walled stairway with doors (or opening that would easily accommodate a door at each end) is considered an example of “limited visual and spatial connection between floors.” However, it is clear that once doors at either the upper or lower end of the stairs are closed and locked, there is no visual or spatial connection between the floor levels of the Project, and the existence of such an easily closed stairway in no way limits the ability to create a second, illegal unit on the lower level.

The Policy states that the standards in the matrix will be applicable in most cases but “there may be some unusual circumstances which warrant additional or alternate standards.” (See Exhibit 7, AFDOCS/12699496.1

p. 5.) This Project presents such unusual circumstances. This is not a case where the lower level has one or two habitable rooms. Instead, as proposed the lower level (with the proposed addition) will include three bedrooms, a bath and half bath and a large family room where a kitchen could be accommodated. Moreover, in this case, the Project Sponsors have made clear their intent to have two units. Thus, for this case the appropriate standard to judge the Project by is that applicable to "No Visual Connection" between the levels.

If the direct street access and (lack of) connection between the floors is properly characterized, then the matrix in the Policy states that a full bath on the lower level would be prohibited, and the Project could only elect between a half bath and wet bar. Therefore, properly applied, the Department's Policy would at least require the elimination of the full bath on the lower level.

Even if the Commission is unwilling to second-guess staff's application of the Policy regarding access to the street and connection between houses, the Commission has sufficient basis to take DR and require the Project to be modified. The exceptional circumstances in this case include elements of the proposal that so readily permit this to be converted to an illegal separate unit, the size of the intended lower unit, and the Project Sponsor's announced intention to create such an illegal second unit.

As approved, the lower level would include three bedrooms, one full and one half bath, and a very large "family room". It has direct access to 36th Avenue, as well as access to the rear yard. The lower level could be separated from the upper level by simply closing and locking doors at the top and bottom of the narrow stairs. The only thing the lower level theoretically lacks to be a full dwelling unit is a kitchen. However, the family room (where the original plans (see Exhibit 3) showed a kitchen), can certainly accommodate a kitchen. Functional cooking facilities could be added with a microwave and refrigerator, and a full kitchen could be added with minimal (illegal) construction that would be difficult to detect and take enforcement against. (Among other things, plumbing will be located immediately adjacent to the family room.) In addition, a washer/dryer laundry unit could be added where it was shown in the pre-application plans. Even if only limited kitchen facilities are provided, short of a full legal kitchen, in the current housing market such a unit with a partial kitchen could easily be rented. Moreover the upper unit, with 2-3 bedrooms and two full baths, could also easily be rented as a full unit.

Therefore, even if the construction would satisfy the Policy, it is evident that what the Project would produce is a plan that practically begs to be converted into two separate units, in violation of the RH-1 zoning. Moreover, from the beginning the Sponsor made clear his intent to create two separate rental units, not a single large home for his family. Therefore, the Commission has the basis to take DR and to require at least the following changes to prevent the creation of an illegal unit:

- require the deletion of the full bath on the lower level
- require the plans be revised to open up the connection between the two floors so it cannot be readily closed off
- substantially reduce the size of the family room to reduce the ability to add (illegal) kitchen facilities here (space taken from the family room can be added back to the garage, perhaps as storage accessible only from the garage)

What makes the Project so objectionable is not only the clear intent and ability to add an illegal unit, but also the significant overall expansion of the building and the intensity of use. An alternative modification would be to reduce the Project by removing all or most of the new addition. If the Commission exercises DR, and directs that the lower rear addition be removed, then even if the lower level eventually became an illegal unit, then at least the degree of violation will be mitigated.

-even if the above physical changes are required, require the Project Sponsor to record a notice of special restriction that would explicitly limit addition of any kitchen facilities on the lower level, as well as explicitly limit any separate rental of the lower level, and permit periodic inspections to assure these conditions are being adhered to. The appropriateness of such an NSR is specifically recognized in the Planning Department's Policy.

With these changes, the sponsor will still have a home with five bedrooms, two and a half baths and a study and family room, able to accommodate a very large family. Such a home will be much larger than the Grimaldi's and most homes on this block. At the same time, these reasonable changes will significantly reduce the ability to create an illegal unit at 1430 36th Avenue. Thus the changes will strike an appropriate balance between allowing expanded housing for families while discouraging violations of the Planning Code.

Conclusion

Most people in this room probably recognize that San Francisco has an acute need for additional housing. Numerous options to create more housing are being considered, including increased density in transit corridors, as well as ability to add "accessory dwelling units" ("ADU") under specified circumstances.

At this time, the Property is not in an area where such an ADU is permitted. Even where such an ADU can be constructed, such units are typically required to be developed within an existing building envelope, and be rented at an affordable rent – neither which would be true in this case.

As the City seeks to expand residential opportunities, it needs to assure concerned residents that any additional residential units that may be added comply with the applicable rules, in order to maintain the confidence of the residents. A two-unit building at the Project site is flatly illegal. Even if the Planning Code allowed an ADU at this location, this Project would be inconsistent with the evolving ADU rules, because the Project is significantly expanding the building envelope to accommodate the (likely) new unit, and the intended new lower unit would not be subject to any affordability requirements.

Allowing the Project to proceed in its present form might create additional housing, but in a way that does not comport with either the existing rules, or evolving housing policy. As the City considers new rules to create new residential opportunities, it also needs to assure residents that any rules are enforced.

Therefore we respectfully request the Planning Commission to take discretionary review and to require the Project to be modified as proposed above.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Atkinson", written in a cursive style.

Steve Atkinson

cc: David Silverman, for Project Sponsor

Exhibits

EXHIBIT 1

Property History

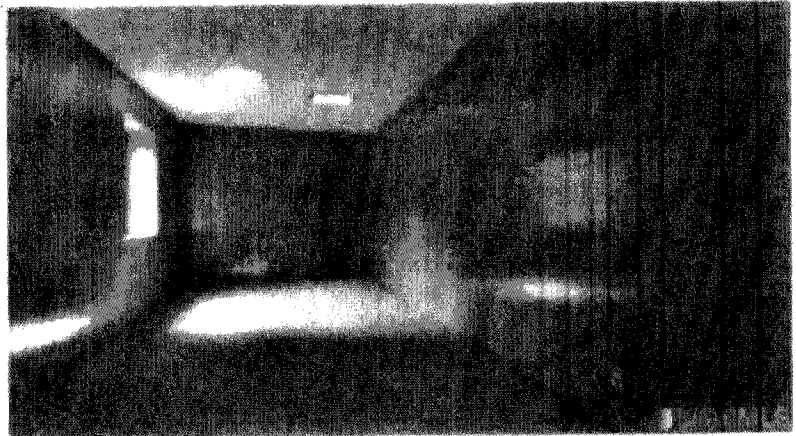
Listing Summary

[Interactive Map](#) [Report Violation](#)

Listing #420896 **1430 36th Ave, San Francisco, CA 94122*** Sold (07/31/14) DOM: 47
 \$849,000 (LP) **Bed: 2** Baths: 1 Sq Ft: 1250* Lot Sz: 2748*
 \$850,000 (SP)
 Price/SqFt: 680.00 **District : 2 - Central Sunset** Yr: 1945*
 SP % LP: 100.12

Remarks

Charming 2BD/1BA in the heart of Sunset District. Features a center patio and a cozy breakfast nook. New interior paint. New carpet and new linoleum floor. One room downstairs. Large garage can fit 2 cars. High ceiling at basement level with separate entrance. Spacious backyard. Walking distance to the Golden Gate Park, restaurants, shops, schools and N car line. Property is currently vacant. A must see!



Pictures (15)



Agent	Jenny Ying He (ID: 805815) Primary:415-860-8320 Secondary:650-301-0553 Lic: 01255995
Office	Century 21 Realty Alliance Fine Homes and Estates (ID:CAFH) Phone: 415-213-1800. FAX: 415-213-9088 Office Lic.:
Property Type	Single-Family Homes Property Subtype(s) Single-Family Homes
Status	Sold (07/31/14)
DOM	47
Type Listing	Excl Right to Sell
Known Short Sale	No
REO	No
District	2 - E
Commission	Selling Office Dual/Var. Rate
	2.5 No
County	San Francisco Bik/Lt/APN 1818033
Scope of Service	Full Service
Beds	2 Baths 1
Den/Bonus Room	0
Approx Square Feet	1250* Sq Ft Source Per Tax Records Price / SqFt 680.00
Lot Sq Ft (approx)	2748* Lot Acres (approx) 0.0631 Lot Size Source (Per Tax Records)
Year Built	1945*
Map Book	SFAR Map Map Coordinates SFAR, CJ45
Cross Street	Judah
Listing Date	05/21/14 Entry Date 05/21/14
On Market Date	05/21/14
Original Price	849,000
Occupant Type	Vacant
Occupant Name	
Directions to Property	Cross street is Judah.
Agent Remarks	Subject to cancellation of previous contract. Go directly. On Supra Lockbox. Call LA for all questions at 415-860-8320. A must see!

Selling Information

Selling Price 850,000 **Selling Date** 07/31/14

10/5/2014

San Francisco

Listing Price 849,000
SP % LP 100.12
Financing Fixed Conventional
Comments
Selling Agent Veronica V Tran (802057)
Selling Co-Agent

Pending Date 07/07/14
Original Price 849,000

Selling Office Tran Real Estate (TRRE)
Selling Co-Office

Zoning

Total # of Rooms 5
of Parking Spaces 2
Parking Access Tandem
Green Point Rating 0
HERS Index 0
HOA Dues \$ 0.00
Probate Sale No
Unconfirmed Coop Fee 0.00

Features

Showing Instructions Go Directly, Supra iBox, Leave Card
Possession Close of Escrow
Parking Garage, Auto Door
Style Contemporary, Traditional
Exterior Stucco
Main Level 2 Bedrooms, 1 Bath, Living Room, Dining Room, Kitchen
Lower Level 1 Bedroom
Kitchen Gas Range, Freestanding Range, Refrigerator, Dishwasher, Formica Counter, Breakfast Room, Skylight(s)
Dining Room Formal
Living Room View
Foundation Concrete Perimeter
Construction Wood Frame
Roof Bitumen
Heating/Cooling Sys Central Heating, Gas
Laundry Appliances 220 Volt Wiring, Hookups Only, In Basement
Floors Wall to Wall Carpet, Linoleum
Fireplace 1
Bath Type/Includes Tile, Shower and Tub
Lot Description Level
Driveway/Sidewalks Paved Driveway, Paved Sidewalks
Documents/Disclosure Disclosure Pkg Avail
Water/Sewer Water-Public
Transportation 1 Block
Shopping 2 Blocks

* Denotes information autofilled from tax records.

All data NOT VERIFIED. Subject to ERRORS, OMISSIONS, or REVISIONS. Prospective Buyers URGED TO INVESTIGATE. - Copyright: 2014 by
 San Francisco Assoc of REALTORS.
 Copyright ©2014 Rapattoni Corporation. All rights reserved.
 U.S. Patent 6,910,045
 Generated: 10/04/14 11:10pm



EXHIBIT 2

Notice of Pre-Application Meeting

09/17/2014

Date

Dear Neighbor:

You are invited to a neighborhood Pre-Application meeting to review and discuss the development proposal at 1430 36th Ave. cross street(s) Judah St. (Block/Lot#: 1818/033; Zoning: RH-1), in accordance with the San Francisco Planning Department's Pre-Application procedures. The Pre-Application meeting is intended as a way for the Project Sponsor(s) to discuss the project and review the proposed plans with adjacent neighbors and neighborhood organizations before the submittal of an application to the City. This provides neighbors an opportunity to raise questions and discuss any concerns about the impacts of the project before it is submitted for the Planning Department's review. Once a Building Permit has been submitted to the City, you may track its status at www.sfgov.org/dbi.

The Pre-Application process is only required for projects subject to Planning Code Section 311 or 312 Notification. It serves as the first step in the process prior to building permit application or entitlement submittal. Those contacted as a result of the Pre-Application process will also receive a formal entitlement notice or 311 or 312 notification when the project is submitted and reviewed by Planning Department staff.

A Pre-Application meeting is required because this project includes (check all that apply):

- New Construction;
- Any vertical addition of 7 feet or more;
- Any horizontal addition of 10 feet or more;
- Decks over 10 feet above grade or within the required rear yard;
- All Formula Retail uses subject to a Conditional Use Authorization.

The development proposal is to: add a bath, relocate bedrooms, convert existing bedroom to a study and apply room, remodel kitchen
~~In 1st floor: add a family room, two bedrooms, two baths, a study room, and a kitchen. In 2nd floor: add a bath, relocate bedrooms, convert existing bedroom to a study and apply room, remodel kitchen.~~

Existing # of dwelling units: <u>One</u>	Proposed: <u>One</u>	Permitted: <u>Two</u>
Existing bldg square footage: <u>2440 s.f.</u>	Proposed: <u>3241 s.f.</u>	Permitted: <u>5000 s.f.</u>
Existing # of stories: <u>Two</u>	Proposed: <u>Two</u>	Permitted: <u>Four</u>
Existing bldg height: <u>20 feet</u>	Proposed: <u>20 feet</u>	Permitted: <u>40 feet</u>
Existing bldg depth: <u>50'-10"</u>	Proposed: <u>27'-8"</u>	Permitted: <u>90'-0"</u>

MEETING INFORMATION:

Property Owner(s) name(s): Christina Vuong
 Project Sponsor(s): Jason Chan, Hayden Ly
 Contact information (email/phone): haydenly@gmail.com, 925-437-9069
 Meeting Address*: 1430 36th ave, san francisco, ca 94122
 Date of meeting: October 4th, 2014
 Time of meeting**: 5:00 pm

*The meeting should be conducted at the project site or within a one-mile radius, unless the Project Sponsor has requested a Department Facilitated Pre-Application Meeting, in which case the meeting will be held at the Planning Department offices, at 1650 Mission Street, Suite 400.

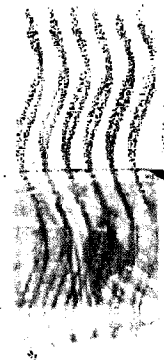
**Weeknight meetings shall occur between 6:00 p.m. - 9:00 p.m. Weekend meetings shall be between 10:00 a.m. - 9:00 p.m. unless the Project Sponsor has selected a Department Facilitated Pre-Application Meeting.

If you have any questions about the San Francisco Planning Code, Residential Design Guidelines, or general development process in the City, please call the Public Information Center at 415-558-6378, or contact the Planning Department via email at pic@sfgov.org. You may also find information about the San Francisco Planning Department and on-going planning efforts at www.sfplanning.org.

CHRISTOPHER BROWN
2005 MAIN ST
ANTIOCH, CA 94509

Handwritten: Thank you for your
help in getting
this done for me.

2005 MAIN ST
ANTIOCH, CA 94509



CHRISTOPHER BROWN
2005 MAIN ST
ANTIOCH, CA 94509

94122311734

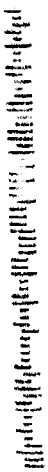


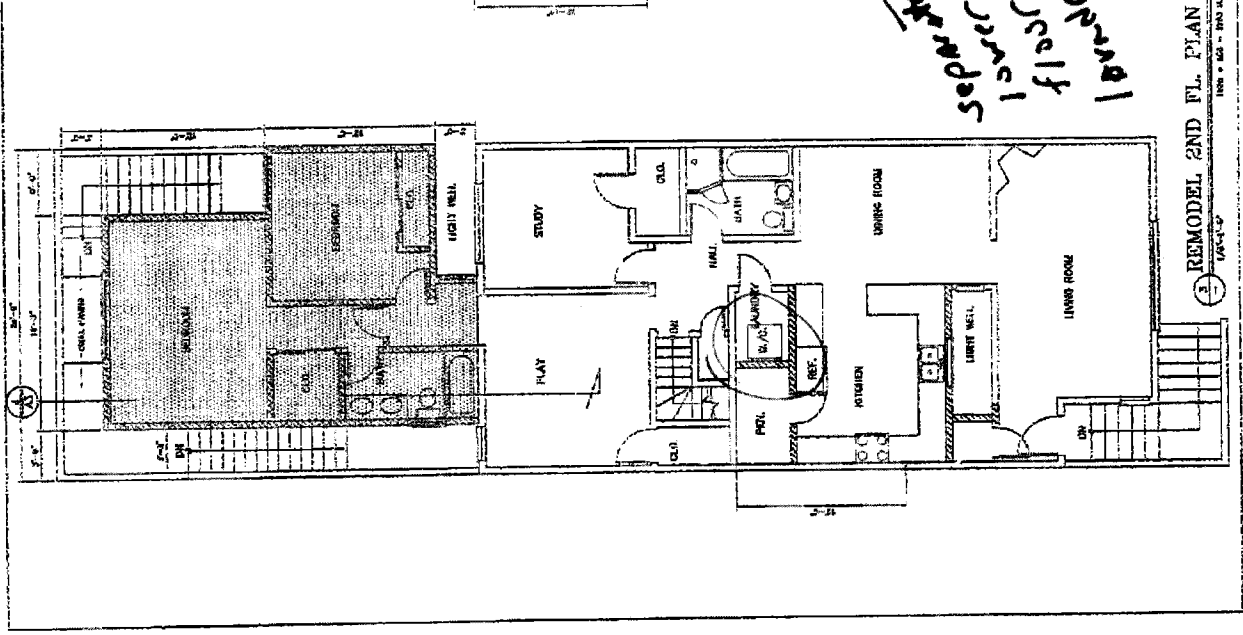
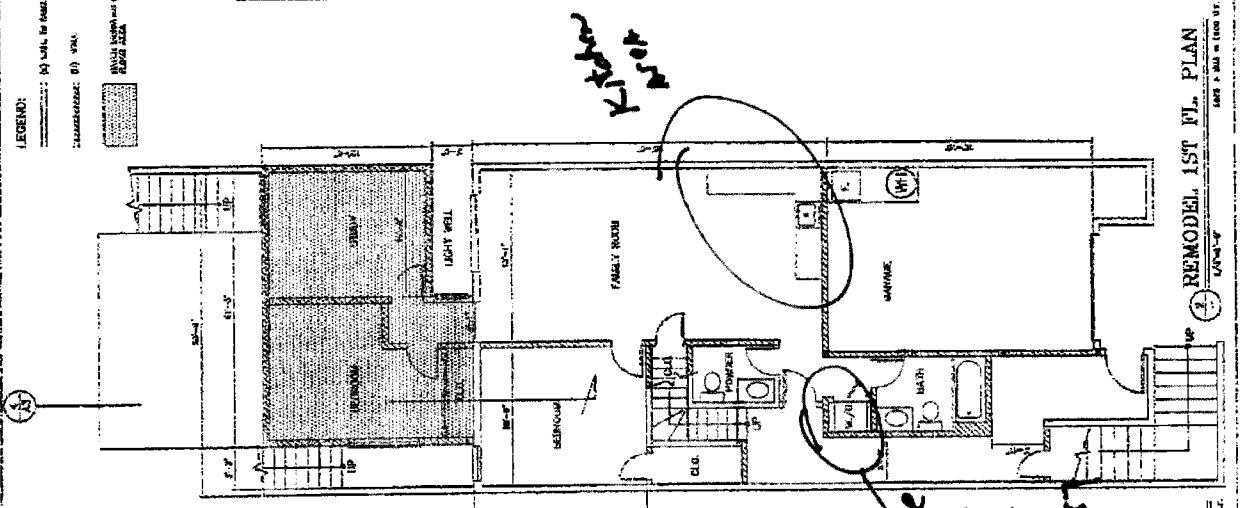
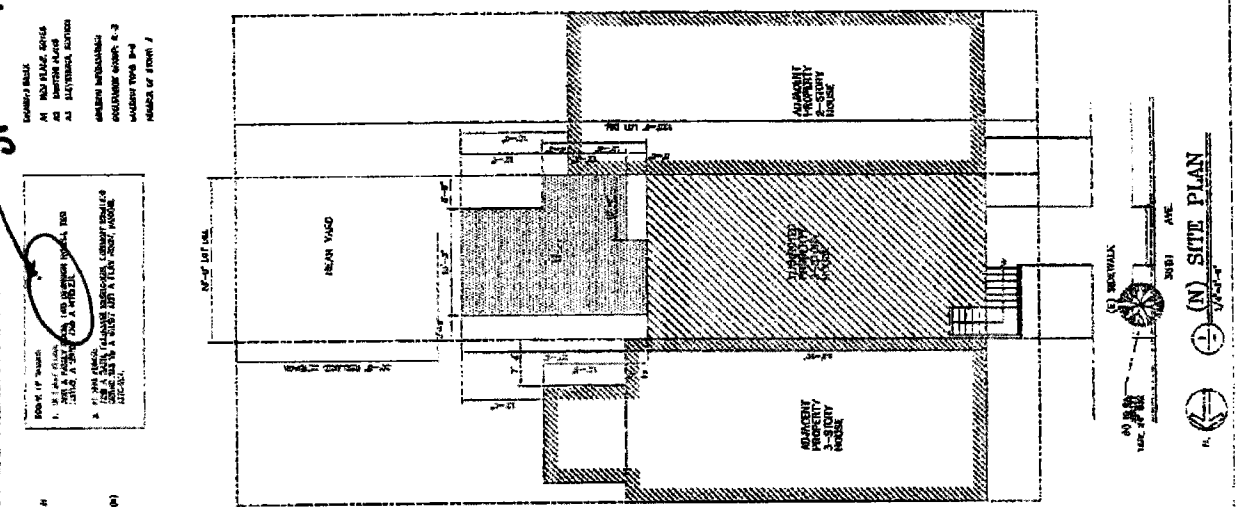
EXHIBIT 3

*kindergarten
 for 15-20 kids*

LEGEND:
 1. NEW WALLS
 2. EXISTING WALLS
 3. EXISTING DOORS
 4. EXISTING WINDOWS
 5. EXISTING STAIRS
 6. EXISTING LIGHT FIXTURES
 7. EXISTING ELECTRICAL PANELS
 8. EXISTING MECHANICAL EQUIPMENT
 9. EXISTING PLUMBING
 10. EXISTING ROOFING
 11. EXISTING FLOORING
 12. EXISTING CEILING
 13. EXISTING PAINT

LEGEND:
 1. NEW WALLS
 2. EXISTING WALLS
 3. EXISTING DOORS
 4. EXISTING WINDOWS
 5. EXISTING STAIRS
 6. EXISTING LIGHT FIXTURES
 7. EXISTING ELECTRICAL PANELS
 8. EXISTING MECHANICAL EQUIPMENT
 9. EXISTING PLUMBING
 10. EXISTING ROOFING
 11. EXISTING FLOORING
 12. EXISTING CEILING
 13. EXISTING PAINT

LEGEND:
 1. NEW WALLS
 2. EXISTING WALLS
 3. EXISTING DOORS
 4. EXISTING WINDOWS
 5. EXISTING STAIRS
 6. EXISTING LIGHT FIXTURES
 7. EXISTING ELECTRICAL PANELS
 8. EXISTING MECHANICAL EQUIPMENT
 9. EXISTING PLUMBING
 10. EXISTING ROOFING
 11. EXISTING FLOORING
 12. EXISTING CEILING
 13. EXISTING PAINT



REAR ADDITION
 1430 36TH AVE.
 SAN FRANCISCO, CA 94122
 BLOCK 1818, LOT 033

REMODEL 1ST FL. PLAN
 11/11/11

REMODEL 2ND FL. PLAN
 11/11/11