



# EXECUTIVE SUMMARY CONDITIONAL USE / VARIANCE

**HEARING DATE:** November 18, 2021

**Continued from:** November 19, 2020

**Record No.:** 2019-013808CUAVAR  
**Project Address:** 4300 17th Street  
**Zoning:** RH-2 (Residential House, Two-Family  
40-X Height and Bulk District  
Corona Height Large Residence Special Use District  
**Block/Lot:** 2626/014A  
**Project Sponsor:** Scott Pluta  
4300 17th Street  
San Francisco, CA 94114  
**Property Owner:** Scott Pluta  
4300 17th Street  
San Francisco, CA 94114  
**Staff Contact:** Jeff Horn – (628) 652-7633  
[jeffrey.horn@sfgov.org](mailto:jeffrey.horn@sfgov.org)

**Recommendation:** Approval with Conditions

## Project Description

The Project proposes to construct a new 3,128 gross-square-foot three-story two-family dwelling on a new 1,458 square foot lot. The building would contain a 1,139 square foot two-bedroom unit at the ground floor and a 1,570 square foot two-bedroom unit within the upper two floors. The new lot would be created through a subdivision of an existing 2,916 square foot (36' x 81') corner lot. An Accessory Dwelling Unit would be added at the ground floor of the existing 4,382 gross-square-foot three-story two-family dwelling (4300 17<sup>th</sup> Street) that is located on the remaining 1,458 square feet of the original lot.

## Required Commission Action

In order for the Project to proceed, the Commission must grant a Conditional Use Authorization, pursuant to Planning Code Sections 303, 249.77(d)(1) and 249.77(d)(4) to allow residential development on a vacant lot that results in a total gross floor area exceeding 3,000 square feet and to allow residential development that results in both lots having a rear yard less than 45% lot depth within the Corona Heights Large Residence Special Use District.

## Background

On November 19, 2020, the Commission held a public hearing on the Project and provided guidance to the Sponsor to work with the Department to revise the Project to a scale and building typology that increases the density on the site but within a building that would be less impactful to the mid-block open space and maintains adjacent properties' access to light and air.

After working with Department Staff on design proposals, the Sponsor submitted a final revised proposal for a reduction in the Project's scope. The attached plans, dated May 21, 2021, propose to construct a 3,128 gross-square-foot three-story two-family dwelling on the new 1,458 square foot lot. The revised Project includes the following modifications from the proposal originally reviewed by the Commission.

- Removal of the 4<sup>th</sup> floor, reducing the height of the building from 40' to 30';
- At the proposed lot's rear yard line, the 2<sup>nd</sup> and 3<sup>rd</sup> floors would provide 12' setbacks;
- At the proposed lot's western side property line, the 1<sup>st</sup> floor would provide a 5' setback and the 2<sup>nd</sup> and 3<sup>rd</sup> floors would provide 3' setbacks;
- The total area of the building is reduced from 5,042 SF to 3,128 SF;
- The proposed one-vehicle garage and unpermissible Accessory Dwelling Unit are removed from the scope of work.

With these changes made to the scale and massing of the proposed building, but not inconsideration of the requested Variances, the Department finds that the revised Project generally responds appropriately to the context of the adjacent properties and in a manner that is overall consistent with development patterns of many residential corner lots built throughout the City. The reduction in the building's overall height and the incorporation of setbacks at the rear and side property lines reduce the intensity of Project's scale, respects the mid-block open space and maintains adjacent properties' access to light and air.

The project required new neighborhood notification for a Planning Commission and Variance hearing for the new revised project. In August 2021, the Project was noticed for the September 2<sup>nd</sup>, 2021 Planning Commission Hearing, but was continued without being heard to the October 18, 2021 Planning Commission hearing. At the stat of the hearing on October 18<sup>th</sup>, the project was continued without being heard to November 18<sup>th</sup>, 2021.

## Issues and Other Considerations

- **Public Comment & Outreach.**

- **Support/Opposition:** Prior to the Project's November 20<sup>th</sup>, 2020 Planning Commission hearing, the Department received 70 comments/emails in support and 24 letters in opposition to the Project, including one from the Corbet Heights Neighbors. Since the neighbor notification for the revised Project commenced, the Department has received an additional 80 comments/emails in opposition to the project and 30 letters in support of the revised proposal.
  - The support for the Project is centered on the addition of housing units and the addition of affordable units.
  - The opposition to the Project is centered on projects non-compliance with the Planning Code and the Corona Heights Large Residence Special Use District
- **Outreach:** The Sponsor presented the project to the Corbet Heights Neighbors on October 26, 2020. As stated in the Sponsor's brief, the Sponsor has meet individually with adjacent neighbors and members of Corbet Heights Neighbors. The Sponsor's brief includes outreach conducted since the November 19, 2020 Planning Commission hearing.

- **Corona Heights Large Residence Special Use District:** The project is located within the boundaries of the Corona Heights Large Residence Special Use District (SUD). The SUD was adopted to protect and enhance existing neighborhood character, encourage new infill housing at compatible densities and scale, and provide for thorough assessment of proposed large-scale residences that could adversely impact the area and affordable housing opportunities, to meet these goals, the SUD requires Conditional Use Authorization for five (5) types of development. The proposed Project exceeds two of these development standards; thereby requiring Conditional Use Authorization pursuant to Planning Code Section 249.77(d)(1), for residential development of vacant property that will result in total gross floor area exceeding 3,000 square-foot and pursuant to Planning Code Section 249.77(d)(4) for residential development that results in less than 45% rear yard depth.
- **Subdivision:** The project seeks to subdivide the existing 2,916 square foot lot into two separate 1,458 square foot lots. The existing two-family dwelling would be located on the newly created corner lot. The second lot would be comprised of the area of land currently existing as the subject property's rear yard, the vacant lot would have 40 feet, 6 inches of frontage on 17th Street and a depth of 36 feet.
- **Variances:** The project requests variances from the Zoning Administrator to address the Planning Code requirements for lot size (Section 121) and rear yard (Section 134).
  - Planning Code Section 121 requires that the minimum lot area for any lot having its street frontage entirely within 125 feet of an intersection shall be 1,750 square feet. The project proposes a subdivision to create two 1,458 square foot lots, therefore both proposed lots would require a variance for lot size.
  - Planning Code Section 134 requires that a lot within an RH-2 District provide a minimum rear yard equal to 45% of the lot's depth. The existing two-family dwelling has a depth of 40 feet, 6 inches and the

proposed two-family dwelling has a depth of 36 feet. Both structures would be developed to a depth equal to their respective rear property lines, resulting in full lot coverage, therefore both lots would require a variance for rear yard.

- **Accessory Dwelling Units:** Per Section 207(c)(4), Accessory Dwelling Units in Multifamily Buildings, the Project Sponsor proposes to add an accessory dwelling unit at the ground floor of the existing two-family dwelling at 4300 17<sup>th</sup> Street.
- **Affordable Unit:** The project sponsor has stated an intent to voluntarily designate the project's proposed accessory dwelling unit an on-site inclusionary housing unit under Planning Code Section 415 et seq. and City and County of San Francisco Inclusionary Affordable Housing Program Monitoring and Procedures Manual ("Procedures Manual").

## Environmental Review

The Project is exempt from the California Environmental Quality Act ("CEQA") as a Common Sense Exemption (CEQA Guidelines section 15061(b)(3)).

## Basis for Recommendation

The Department finds that the Project is, on balance, consistent with the Corona Heights Large Residence SUD or the Objectives and Policies of the General Plan and meets all applicable requirements of the Planning Code or seeks Variances to deficient requirements. The Department's priority is to maximize the development of housing units that can be reasonably accommodated under the site's zoning and applicable density bonus programs while maintaining quality of life and adherence to applicable standards. The Department finds that the Project generally responds appropriately to the context of the adjacent properties and in a manner that is overall consistent with development patterns of many residential corner lots built throughout the City. The Department also finds the Project to be necessary, desirable, and compatible with the surrounding neighborhood, and to not be detrimental to persons or adjacent properties in the vicinity.

## Attachments:

- Draft Motion – Conditional Use Authorization with Conditions of Approval (Exhibit A)
- Exhibit B – Plans and Renderings
- Exhibit C – Environmental Determination
- Exhibit D – Land Use Data
- Exhibit E – Maps and Context Photos
- Exhibit F – Project Sponsor Brief, with updated Community Outreach Summary
- Exhibit G – Corbett Height Neighbors letters



# PLANNING COMMISSION DRAFT MOTION

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ADOPTING FINDINGS RELATING TO THE DISAPPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO PLANNING CODE SECTIONS 249.77(D)(1), 249.77(D)(4) AND 303(C) TO CONSTRUCT NEW 3,128 GROSS-SQUARE-FOOT THREE-STORY TWO-FAMILY DWELLING ON A NEW 1,458 SQUARE FOOT LOT. THE LOT WOULD BE CREATED THROUGH A SUBDIVISION OF AN EXISTING 2,916 SQUARE FOOT (36' X 81') CORNER LOT. AN ACCESSORY DWELLING UNIT WOULD BE ADDED AT THE GROUND FLOOR OF AN EXISTING 4,382 GROSS-SQUARE-FOOT THREE-STORY TWO-FAMILY DWELLING (4300 17<sup>TH</sup> STREET) THAT IS LOCATED ON THE REMAINING 1,458 SQUARE FEET OF THE ORIGINAL LOT LOCATED WITHIN THE CORONA HEIGHTS LARGE RESIDENCE SPECIAL USE DISTRICT, A RH-2 (RESIDENTIAL-HOUSE, TWO FAMILY) ZONING DISTRICT AND A 40-X HEIGHT AND BULK DISTRICT.

## PREAMBLE

On November 4, 2019, Scott Pluta (hereinafter “Project Sponsor”) filed an application with the Planning Department (hereinafter “Department”) for Conditional Use Authorization under Planning Code Sections 249.77(D)(1), 249.77(D)(4) and 303(c) to construct a new 3,128 gross-square-foot three-story two-family dwelling on a new 1,458 square foot lot. The lot would be created through a subdivision of an existing 2,916 square foot (36’ x 81’) corner lot. An Accessory Dwelling Unit would be added at the ground floor of the existing 4,382 gross-square-foot three-story two-family dwelling (4300 17<sup>th</sup> Street) that is located on the remaining 1,458 square feet of the original lot located within the Corona Heights Large Residence Special Use District (SUD), a RH-2 (Residential-House, Two-Family) Zoning District and a 40-X Height and Bulk District.

On September 24, 2021, the Project was determined to be exempt from the California Environmental Quality Act (“CEQA”) as a Common Sense Exemption under CEQA as described in the determination contained in the Planning Department files for this Project;

On November 19, 2020, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Authorization Application No. 2019-013808CUA and after public comment and discussion, continued the item without a specific date.

On November 18, 2021, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Authorization Application No. 2019-013808CUA.

The Planning Department Commission Secretary is the custodian of records; the File for Record No. 2019-013808CUA is located at 49 South Van Ness Avenue, Suite 1400, San Francisco, California.

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

**MOVED**, that the Commission hereby disapproves the Conditional Use requested in Application No. 2019-013808CUA, based on the following findings:

## FINDINGS

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

- 1. The above recitals are accurate and constitute findings of this Commission.**
- 2. Project Description.** The Project proposes to construct a new 3,128 gross-square-foot three-story two-family dwelling on a new 1,458 square foot lot. The building would contain a 1,139 square foot two-bedroom unit at the ground floor and a 1,570 square foot two-bedroom unit within the upper two floors. The new lot would be created through a subdivision of an existing 2,916 square foot (36' x 81') corner lot. An Accessory Dwelling Unit would be added at the ground floor of the existing 4,382 gross-square-foot three-story two-family dwelling (4300 17th Street) that is located on the remaining 1,458 square feet of the original lot.
- 3. Site Description and Present Use.** The subject property is located on the northwest side of the intersection of 17<sup>th</sup> Street and Ord Street, within the Corona Heights neighborhood. The project is a 2,916 square foot corner lot with 36 feet of frontage on Ord Street and 81 feet of frontage on 17<sup>th</sup> Street. The lot is developed with a three-story two-family dwelling, built in 1953 and vertically expanded in 1960. currently occupies the eastern half of the subject lot and has a depth of 40 feet, 6 inches, providing a rear yard equal to 50% of the lot's depth. The residential entrances to the building is located on 17<sup>th</sup> street and a curb cut and one-car garage are located on Ord Street. At the ground floor, there is an office/storage area that has no internal connection to either dwelling unit.
- 4. Surrounding Properties and Neighborhood.** The surrounding neighborhoods Corbett and Corona Heights consist of very steep slopes, both of individual lots and laterally along streets. The neighborhood developed over many decades (pre-1900s to 2000s, generally), in a mixture of architectural styles, and many buildings have undergone substantial alterations since their respective construction dates. West and upslope on 17th Street (adjacent to Applicant's backyard), is a three-story, two-unit condominium (4302-4304 17th St.), a five-story, two-unit condominium (4306-4308 17th St.), and a two-building, three-unit dwelling (4310 17th St.), respectively.
- 5. Public Outreach and Comments.** To date, the Department has received a substantial total of comments/emails in support and in opposition to the Project, including letters of opposition from the Corbet Heights Neighbors. The support for the Project is centered on the addition of housing units and the addition of affordable units. The opposition to the Project is centered on projects non-compliance with the Planning Code and the Corona Heights Large Residence Special Use District. The Sponsor presented the project to the Corbet Heights Neighbors on October 26, 2020. As stated in the Sponsor's brief, the Sponsor has meet individually with adjacent neighbors and members of Corbet Heights Neighbors.
- 6. Planning Code Compliance.** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:
  - A. **Use.** Planning Code Section 209.1 permits up to two dwelling units per lot in an RH-2 District.

*The project proposes to subdivide the existing lot into two lots within an RH-2 District. An existing 2-family dwelling is proposed to remain on one lot and a new 2-family dwelling is proposed to be constructed on the new vacant lot.*

*The project proposes an accessory dwelling within the existing structure at 4300 17<sup>th</sup> Street, an ADU that is allowed per Planning Code Section 207(c)(4) would not be included in a lots density calculation. As proposed, both lots seek to maximize the permitted density within a RH-2 District.*

- B. **Lot Size.** Planning Code Section 121 requires that the minimum lot area for any lot having its street frontage entirely within 125 feet of an intersection shall be 1,750 square feet.

*A Variance is being sought per Planning Code Section 121 to allow a subdivision of the existing lot to create two 1,458 square foot lots.*

- C. **Rear Yard.** Planning Code Section 134 requires a minimum rear yard depth equal to 45% of the total depth of the lot on which the building is situated, except that rear yard requirements can be reduced to a line on the lot, parallel to the rear lot line, which is the average between the depths of the rear building walls of both adjacent properties in an RH-2 District.

*The proposed subdivision will result in two new lots that would be developed in a manner that results in full coverage of the respective lots. A Variance from the rear yard requirement of Planning Code Section 134 is being sought for each lot.*

- D. **Usable Open Space.** Planning Code Section 135 requires at least 125 sq. ft. of usable open space per unit if private, or a ratio of 1.33 per unit if common in an RH-2 District.

*With the loss of the existing rear yard, the existing structure at 4300 17<sup>th</sup> Street proposes to add a 500 square foot roof deck to provide common open space to the existing two units. For the new two-family dwelling, the upper unit includes a 336 square foot roof deck to provide private open space and the lower unit would have access to a common 310 square foot deck at a lower level roof deck located at the rear of the lot.*

- E. **Bicycle Parking.** Planning Code Section 155.2 requires one Class 1 Bicycle Parking space per dwelling unit, when there is an addition of a dwelling unit.

*The Project will provide two Class 1 bicycle parking spaces within the rear yard of the new structure and three Class 1 spaces for the existing building at 4300 17<sup>th</sup> Street.*

7. **Conditional Use Findings.** Planning Code Section 303 establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use authorization. On balance, the project complies with said criteria in that:

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



with, the neighborhood or the community.

*The use and scale of the Project is compatible with the immediate neighborhood and would create much-needed dwelling units. Generally, the project responds appropriately to the context of the adjacent properties and in a manner that is overall consistent with development patterns of many residential corner lots built throughout the City. The project is necessary, desirable, and compatible with the surrounding neighborhood and community.*

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

- (1) Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

*The subject property, similar to many lots within the surrounding neighborhood, is characterized by sloped lots. The proposed building's height and depth, particularly for the 2<sup>nd</sup> and 3<sup>rd</sup> floors have been designed with regard to site-specific constraints and relationship to adjacent properties' yards and the subject block's midblock open space. The project will create quality, family-sized units within a new structure retaining an existing structure on-site. Although the Project will create two lot's with rear yard less than 45% of the total lot depth, and that the structure exceeds 3,000 gross square feet in size, its depth and scale are consistent with other properties in the surrounding neighborhood. Additionally, the Project generally responds appropriately to the context of the adjacent properties and in a manner that is overall consistent with development patterns of many residential corner lots built throughout the City.*

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

*The Planning Code does not require parking or loading for residential units. The proposed use should not generate significant amounts of vehicular trips from the immediate neighborhood or citywide.*

*The subject property is also in close proximity to several transit lines, located only approximately a 10-minute walk away from the Castro Street MUNI Station, and within a ½ mile of the 24, 33, 35, and 37 MUNI bus lines.*

- (3) The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

*The Project will comply with all applicable regulations relating to construction noise and dust. It will not produce, nor include, any permanent uses that generate substantial levels of noxious or offensive emissions, such as noise, dust, glare, or odor.*

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

*The proposal does not include loading or services areas, nor will it include atypical lighting or signage. The Project proposes to be developed with no front setback and will fully develop the existing lot's rear yard, which is adjacent to the public sidewalk due to the orientation of the lot. The project will provide additional street trees to contribute to the quality of the sidewalk area of 17<sup>th</sup> Street.*

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

*The Project is consistent with the Corona Heights Large Residence SUD and the Objectives and Policies of the General Plan and meets all applicable requirements of the Planning Code. The Department's priority is to maximize the development of housing units that can be reasonably accommodated under the site's zoning while maintaining quality of life and adherence to applicable standards. The Department finds that the Project generally responds appropriately to the context of the adjacent properties and in a manner that is overall consistent with development patterns of many residential corner lots built throughout the City.*

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

*The proposed project is consistent with the stated purpose of the RH-2 District. The building is compatible with the height and size of development expected in this District, and both proposes site's provide housing units totals within the permitted density.*

- 8. Corona Heights Large Residence Special Use District (Planning Code Section 249.77).** The project is located within the boundaries of the Corona Heights Large Residence Special Use District (SUD). The SUD was adopted to protect and enhance existing neighborhood character, encourage new infill housing at compatible densities and scale, and provide for thorough assessment of proposed large-scale residences that could adversely impact the area and affordable housing opportunities, to meet these goals, the SUD requires Conditional Use Authorization for five (5) types of development. The proposed Project exceeds two of these development standards; thereby requiring Conditional Use Authorization pursuant to Planning Code Section 249.77(d)(1), for residential development of vacant property that will result in total gross floor area exceeding 3,000 square-feet and pursuant to Planning Code Section 249.77(d)(4) for residential development that results in less than 45% rear yard depth.

In acting on any application for Conditional Use authorization within the SUD, the Commission shall consider the Conditional Use authorization requirements set forth in subsection 303(c) and, in addition, shall consider whether facts are presented to establish, based on the record before the Commission, one or more of the following:

- A. The proposed project promotes housing affordability by increasing housing supply.

*The property is currently developed with a two-family dwelling on the project site, and with the proposed subdivision, a additional two-family dwelling is proposed to be constructed on the newly created lot. The project also proposes to add an accessory dwelling unit within the existing building, resulting in a total of three net new units at the site. Additionally, the project sponsor has stated an intent to voluntarily designate the project's proposed accessory dwelling unit as on-site inclusionary housing unit under Planning Code Section 415 et seq. and City and County of San Francisco Inclusionary Affordable Housing Program Monitoring and Procedures Manual ("Procedures Manual").*

- B. The proposed project maintains affordability of any existing housing unit; or

*The project proposes no expansion or major improvements to the two units currently located within the existing building. Due to the age of the building, both units are rent-controlled units.*

- C. The proposed project is compatible with existing development.

*The Project is compatible with the development pattern of the adjacent buildings and the block and the Project's design is consistent with the height and depth of the building located adjacent to the site and within the District. The Project provides setbacks at the 2<sup>nd</sup> and 3<sup>rd</sup> floors to reduce impacts to neighboring properties and the mid-block open space. The Project will reinforce the existing street pattern on 17<sup>th</sup> Street, as the building's scale and design is appropriate for the subject block's street frontage and will contribute to the neighborhood's mixed architectural character. Furthermore, the proposal maximizes the dwelling unit density for each new lot.*

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

**HOUSING ELEMENT**

Objectives and Policies

**OBJECTIVE 1**

**IDENTIFY AND MAKE AVAILABLE FOR DEVELOPMENT ADEQUATE SITES TO MEET THE CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING.**

Policy 1.1

Plan for the full range of housing needs in the City and County of San Francisco, especially affordable housing.

Policy 1.10

Support new housing projects, especially affordable housing, where households can easily rely on public transportation, walking and bicycling for the majority of daily trips.

#### OBJECTIVE 4

##### FOSTER A HOUSING STOCK THAT MEETS THE NEEDS OF ALL RESIDENTS ACROSS LIFECYCLES.

###### Policy 4.1

Develop new housing, and encourage the remodeling of existing housing, for families with children.

###### Policy 4.4

Encourage sufficient and suitable rental housing opportunities, emphasizing permanently affordable rental units wherever possible.

###### Policy 4.5

Ensure that new permanently affordable housing is located in all of the City's neighbor-hoods, and encourage integrated neighborhoods, with a diversity of unit types provided at a range of income levels.

*The property is currently developed with a two-family dwelling on the project site, and with the proposed subdivision, a 2nd two-family dwelling is proposed on the new lot. The project has potential to add and accessory dwelling unit within the existing building, resulting in a potential of three net new units at the site. Additionally, the project sponsor has stated an intent to voluntarily designate both of the project's proposed accessory dwelling unit as on-site inclusionary housing unit under Planning Code Section 415 et seq. and City and County of San Francisco Inclusionary Affordable Housing Program Monitoring and Procedures Manual ("Procedures Manual").*

#### OBJECTIVE 11

##### SUPPORT AND RESPECT THE DIVERSE AND DISTINCT CHARACTER OF SAN FRANCISCO'S NEIGHBORHOODS.

###### Policy 11.1

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

###### Policy 11.2

Ensure implementation of accepted design standards in project approvals.

###### Policy 11.3

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

###### Policy 11.4

Continue to utilize zoning districts which conform to a generalized residential land use and density plan and the General Plan.

###### Policy 11.6

Foster a sense of community through architectural design, using features that promote community interaction.

*The subject property, like many lots within the surrounding neighborhood, is characterized by a steep slope. The proposed building has been designed with regard to site-specific constraints and will create a quality, two-unit structure fronting on 17<sup>th</sup> Street. The Project is consistent with the height and depth of the building located adjacent to the site and within the District. The Project provides setbacks at the 2nd and 3rd floors to reduce impacts to neighboring properties and the mid-block open space. The Project will reinforce the existing street pattern on 17th Street, as the building scale is appropriate for the subject block's street frontage and will contribute to the neighborhood's mixed character.*

### TRANSPORTATION ELEMENT

#### Objectives and Policies

##### OBJECTIVE 1:

**MEET THE NEEDS OF ALL RESIDENTS AND VISITORS FOR SAFE, CONVENIENT AND INEXPENSIVE TRAVEL WITHIN SAN FRANCISCO AND BETWEEN THE CITY AND OTHER PARTS OF THE REGION WHILE MAINTAINING THE HIGH QUALITY LIVING ENVIRONMENT OF THE BAY AREA.**

##### Policy 1.3:

Give priority to public transit and other alternatives to the private automobile as the means of meeting San Francisco's transportation needs, particularly those of commuters.

*The Project furthers this policy by creating housing in an area well-served by the City's public transit system. The Castro Street MUNI Station is less than a 10-minute walk from the project site, and several MUNI bus lines (24, 33, 35, and 37) all have stops within a quarter-mile of the site.*

### URBAN DESIGN ELEMENT

#### Objectives and Policies

##### OBJECTIVE 4

**IMPROVEMENT OF THE NEIGHBORHOOD ENVIRONMENT TO INCREASE PERSONAL SAFETY, COMFORT, PRIDE AND OPPORTUNITY.**

##### Policy 4.15

Protect the livability and character of residential properties from the intrusion of incompatible new buildings.

*The Project will eliminate all open space at the site by developing upon the subject property's rear yard with a four-story building, which would have significant negative impacts to neighboring properties and*

*the mid-block open space. Therefore, the intensity of non-compliance the proposal seeks would be detrimental to the adjacent properties and subject block.*

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

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

*The project site does not possess any neighborhood-serving retail uses. The Project has potential to provide four new dwelling units, which will enhance the nearby retail uses by providing new residents, who may patron and/or own these businesses.*

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

*The Project furthers this policy by ensuring that the proposed development is compatible with the surrounding properties and neighborhood. The proposed building designed with regard to site-specific constraints and will create a quality, two-unit structure fronting on 17th Street. However, at the rear and site property lines, the project's height as a four-story structure would result in impacts to the access to light and air currently available to adjacent properties and the greater mid-lot open space.*

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

*The property is currently developed with a two-family dwelling on the project site, and with the proposed subdivision, a 2nd two-family dwelling is proposed on the new lot. The project has potential to add an accessory dwelling, resulting in three new units at the site. Additionally, the project sponsor has stated an intent to voluntarily designate both project's proposed accessory dwelling units as on-site inclusionary housing units under Planning Code Section 415 et seq. and City and County of San Francisco Inclusionary Affordable Housing Program Monitoring and Procedures Manual ("Procedures Manual").*

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

*The Project is located in an area well-served by the City's public transit systems. The Castro MUNI Rail Station and several MUNI bus lines are near the subject property; therefore, the Project will not overburden streets or neighborhood parking. MUNI transit service will not be overburdened as no change to the density on site is proposed.*

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

*The Project does not include commercial office development. The Project does provide new housing, which is a top priority for the City.*

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

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

- G. That landmarks and historic buildings be preserved.

*Currently, the Project Site does not contain any City Landmarks or historic buildings.*

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

*Although the Project does cast shadow on the adjacent public park, the adjacent public park (Ord & Corbett Park) is still afforded access to sunlight, which should not dramatically affect the use and enjoyment of this park. Since the Project is not more than 40-ft tall, additional study of the shadow impacts was not required per Planning Code Section 295.*

- 11.** The Project is consistent with and would not promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would not contribute to the character and stability of the neighborhood and would not constitute a beneficial development.
- 12.** The Commission hereby finds that approval of the Conditional Use Authorization would promote the health, safety and welfare of the City.

## DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Authorization Application No. 2019-013808CUA** subject to the following conditions attached hereto as “EXHIBIT A” in general conformance with plans on file, dated May 20, 2021, and stamped “EXHIBIT B”, which is incorporated herein by reference as though fully set forth.

**APPEAL AND EFFECTIVE DATE OF MOTION:** Any aggrieved person may appeal this decision on the Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion. The effective date of this Motion shall be the date of this Motion if not appealed (after the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

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

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

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on November 18, 2021

Jonas P. Ionin  
Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: November 18, 2021



## EXHIBIT A

### Authorization

This authorization is for a conditional use to construct a new 3,128 gross-square-foot three-story two-family dwelling on a new 1,458 square foot lot. The lot would be created through a subdivision of an existing 2,916 square foot (36' x 81') corner lot. An Accessory Dwelling Unit would be added at the ground floor of the existing 4,382 gross-square-foot three-story two-family dwelling (4300 17th Street) that is located on the remaining 1,458 square feet of the original lot located at 4300 17th Street, Block 2626, Lot 014A, pursuant to Planning Code Sections 249.77 and 303, within the Residential-House, Two Dwelling Zoning District and a 40-X Height and Bulk District; in general conformance with plans, dated May 20, 2021, and stamped "EXHIBIT B" included in the docket for Record No. 2019-013808CUA and subject to conditions of approval reviewed and approved by the Commission on November 18, 2021 under Motion No. XXXXXX. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

### Recordation of Conditions of Approval

Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on July 15, 2021 under Motion No. XXXXXX.

### Printing of Conditions of Approval on Plans

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

### Severability

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

### Changes and Modifications

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

## CONDITIONS OF APPROVAL, COMPLIANCE, MONITORING, AND REPORTING

### Performance

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

*For information about compliance, contact Code Enforcement, Planning Department at 628.652.7463, [www.sfplanning.org](http://www.sfplanning.org)*

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

*For information about compliance, contact Code Enforcement, Planning Department at 628.652.7463, [www.sfplanning.org](http://www.sfplanning.org)*

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

*For information about compliance, contact Code Enforcement, Planning Department at 628.652.7463, [www.sfplanning.org](http://www.sfplanning.org)*

4. **Extension.** All time limits in the preceding three paragraphs may be extended at the discretion of the Zoning Administrator where implementation of the project is delayed by a public agency, an appeal or a legal challenge and only by the length of time for which such public agency, appeal or challenge has caused delay.

*For information about compliance, contact Code Enforcement, Planning Department at 628.652.7463, [www.sfplanning.org](http://www.sfplanning.org)*

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

*For information about compliance, contact Code Enforcement, Planning Department at 628.652.7463,*

[www.sfplanning.org](http://www.sfplanning.org)

## Design – Compliance at Plan Stage

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

*For information about compliance, contact the Case Planner, Planning Department at 628.652.7366, [www.sfplanning.org](http://www.sfplanning.org)*

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

*For information about compliance, contact the Case Planner, Planning Department at 628.652.7366, [www.sfplanning.org](http://www.sfplanning.org)*

- 8. Rooftop Mechanical Equipment.** Pursuant to Planning Code 141, the Project Sponsor shall submit a roof plan to the Planning Department prior to Planning approval of the building permit application. Rooftop mechanical equipment, if any is proposed as part of the Project, is required to be screened so as not to be visible from any point at or below the roof level of the subject building.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sfplanning.org](http://www.sfplanning.org)*

- 9. Landscaping.** Pursuant to Planning Code Section 132, the Project Sponsor shall submit a site plan to the Planning Department prior to Planning approval of the building permit application indicating that 50% of the front setback areas shall be surfaced in permeable materials and further, that 20% of the front setback areas shall be landscaped with approved plant species. The size and specie of plant materials and the nature of the permeable surface shall be as approved by the Department of Public Works.

*For information about compliance, contact the Case Planner, Planning Department at 628.652.7366, [www.sfplanning.org](http://www.sfplanning.org)*

## Parking and Traffic

- 10. Bicycle Parking.** The Project shall provide no fewer than **five** Class 1 bicycle parking spaces as required by Planning Code Sections 155.1 and 155.2.

*For information about compliance, contact Code Enforcement, Planning Department at 628.652.7463, [www.sfplanning.org](http://www.sfplanning.org)*

- 11. Managing Traffic During Construction.** The Project Sponsor and construction contractor(s) shall coordinate

with the Traffic Engineering and Transit Divisions of the San Francisco Municipal Transportation Agency (SFMTA), the Police Department, the Fire Department, the Planning Department, and other construction contractor(s) for any concurrent nearby Projects to manage traffic congestion and pedestrian circulation effects during construction of the Project.

*For information about compliance, contact Code Enforcement, Planning Department at 628.652.7463, [www.sfplanning.org](http://www.sfplanning.org)*

## Provisions

**12. Anti-Discriminatory Housing.** The Project shall adhere to the requirements of the Anti-Discriminatory Housing policy, pursuant to Administrative Code Section 1.61.

*For information about compliance, contact the Case Planner, Planning Department at 628.652.7366, [www.sfplanning.org](http://www.sfplanning.org)*

**13. First Source Hiring.** The Project shall adhere to the requirements of the First Source Hiring Construction and End-Use Employment Program approved by the First Source Hiring Administrator, pursuant to Section 83.4(m) of the Administrative Code. The Project Sponsor shall comply with the requirements of this Program regarding construction work and on-going employment required for the Project.

*For information about compliance, contact the First Source Hiring Manager at 415.581.2335, [www.onestopSF.org](http://www.onestopSF.org)*

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

*For information about compliance, contact the Case Planner, Planning Department at 628.652.7366, [www.sfplanning.org](http://www.sfplanning.org)*

**15. Notice of Special Restrictions.** The affordable units shall be designated on a reduced set of plans recorded as a Notice of Special Restrictions on the property prior to the issuance of the first construction permit.

*For information about compliance, contact the Case Planner, Planning Department at (628) 652-7600, [www.sfplanning.org](http://www.sfplanning.org) or the Mayor's Office of Housing and Community Development at (415) 701-5500, [www.sfmohcd.org](http://www.sfmohcd.org).*

**16. Duration.** Under Planning Code Section 415.8, all units constructed pursuant to Section 415.6, must remain affordable to qualifying households for the life of the project.

*For information about compliance, contact the Case Planner, Planning Department at (628) 652-7600, [www.sfplanning.org](http://www.sfplanning.org) or the Mayor's Office of Housing and Community Development at (415) 701-5500, [www.sfmohcd.org](http://www.sfmohcd.org).*

**17. Other Conditions.** The Project intends to voluntarily meet the requirements of the Inclusionary Affordable Housing Program under Section 415 et seq. of the Planning Code and City and County of San Francisco Inclusionary Affordable Housing Program Monitoring and Procedures Manual ("Procedures Manual"). The

Procedures Manual, as amended from time to time, is incorporated herein by reference, as published and adopted by the Planning Commission, and as required by Planning Code Section 415. Terms used in these conditions of approval and not otherwise defined shall have the meanings set forth in the Procedures Manual. A copy of the Procedures Manual can be obtained at the MOHCD at 1 South Van Ness Avenue or on the Planning Department or MOHCD websites, including on the internet at:

<http://sf-planning.org/Modules/ShowDocument.aspx?documentid=4451>.

As provided in the Inclusionary Affordable Housing Program, the applicable Procedures Manual is the manual in effect at the time the subject units are made available for sale.

*For information about compliance, contact the Case Planner, Planning Department at (628) 652-7600, [www.sfplanning.org](http://www.sfplanning.org) or the Mayor's Office of Housing and Community Development at (415) 701-5500, [www.sfmohcd.org](http://www.sfmohcd.org).*

- a. The affordable unit(s) shall be designated on the building plans prior to the issuance of the first construction permit by the Department of Building Inspection ("DBI"). The affordable unit(s) shall (1) be constructed, completed, ready for occupancy and marketed no later than the market rate units, and (2) be evenly distributed throughout the building floor plates; and (3) be of comparable overall quality, construction and exterior appearance as the market rate units in the principal project. The interior features in affordable units should be generally the same as those of the market units in the principal project, but need not be the same make, model or type of such item as long they are of good and new quality and are consistent with then-current standards for new housing. Other specific standards for on-site units are outlined in the Planning Code and Procedures Manual.
- b. The Project Sponsor is responsible for following the marketing, reporting, and monitoring requirements and procedures as set forth in the Procedures Manual. MOHCD shall be responsible for overseeing and monitoring the marketing of affordable units. The Project Sponsor must contact MOHCD at least six months prior to the beginning of marketing for any unit in the building.
- c. Prior to the issuance of the first construction permit by DBI for the Project, the Project Sponsor shall record a Notice of Special Restriction on the property that contains these conditions of approval and a reduced set of plans that identify the affordable units satisfying the requirements of this approval. The Project Sponsor shall promptly provide a copy of the recorded Notice of Special Restriction to the Department and to MOHCD or its successor.

## Monitoring - After Entitlement

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

*For information about compliance, contact Code Enforcement, Planning Department at 628.652.7463, [www.sfplanning.org](http://www.sfplanning.org)*

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

*For information about compliance, contact the Case Planner, Planning Department at 628.652.7366, [www.sfplanning.org](http://www.sfplanning.org)*

## Operation

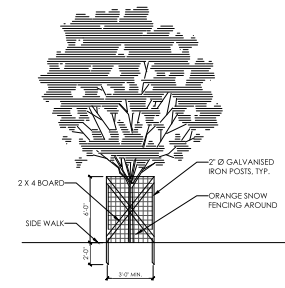
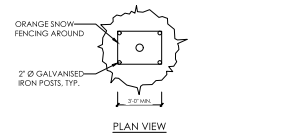
- 17. Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Streets and Sidewalk Maintenance Standards.

*For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 628.271.2000, [www.sfpublishworks.org](http://www.sfpublishworks.org)*

- 18. Community Liaison.** Prior to issuance of a building permit to construct the project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator and all registered neighborhood groups for the area with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator and registered neighborhood groups shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.

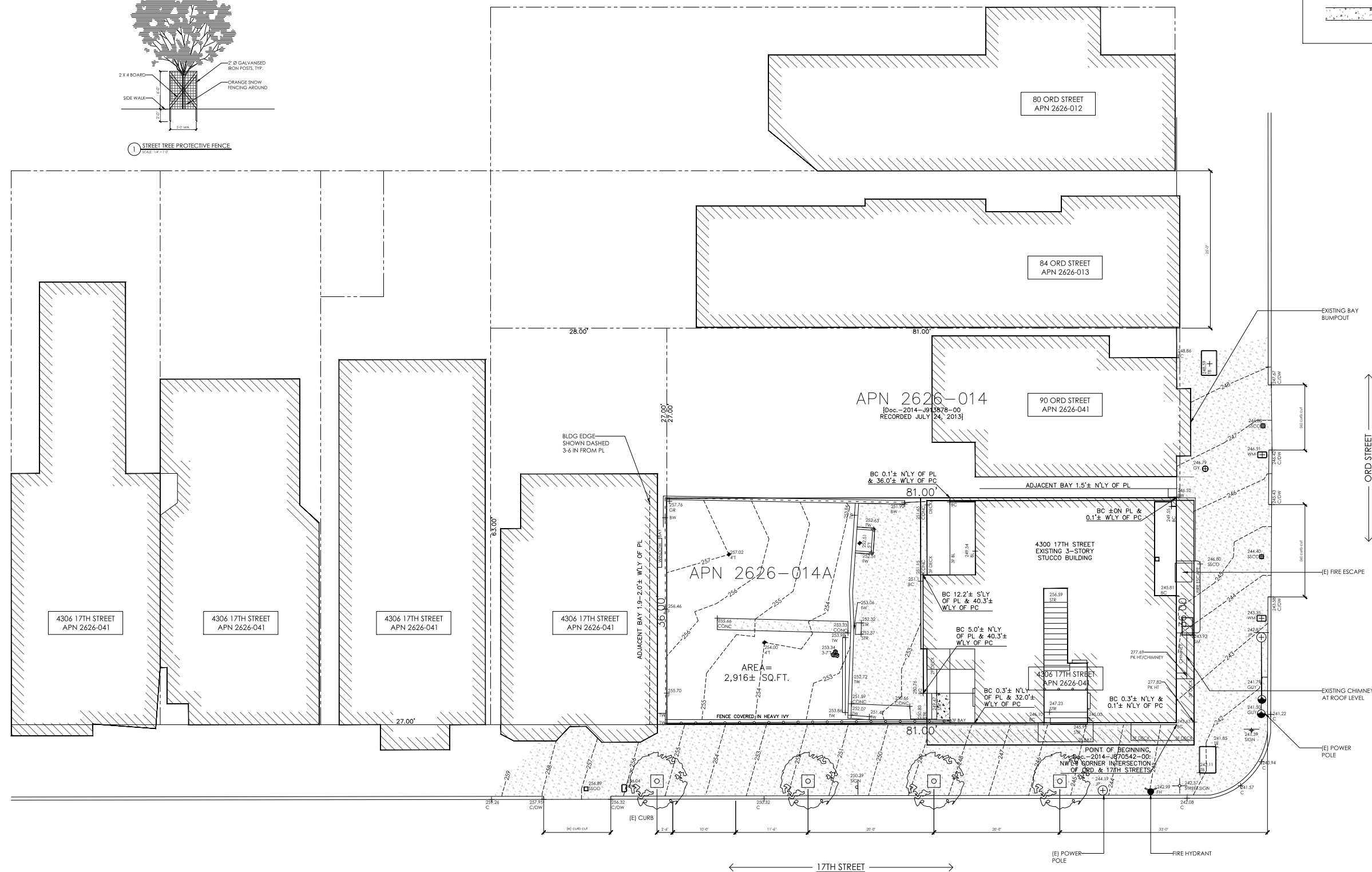
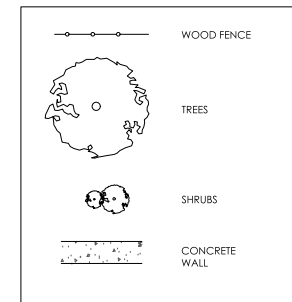
*For information about compliance, contact Code Enforcement, Planning Department at 628.652.7463, [www.sfplanning.org](http://www.sfplanning.org)*



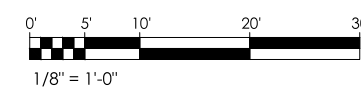


1 STREET TREE PROTECTIVE FENCE  
SCALE: 1/8" = 1'-0"

SITE LEGEND



1 EXISTING SITE PLAN  
SCALE: 1/8" = 1'-0"



REVISION TABLE	
NUMBER	DATE / REVISION BY / DESCRIPTION

CLIENT:  
SCOTT PLUTA  
ADDRESS:  
4300 17TH STREET,  
SAN FRANCISCO CA 94114

TITLE:  
EXISTING SITE PLAN

DRAWINGS PROVIDED BY:  
SANJAY KUMAR VERMA  
SANVERMA DESIGN

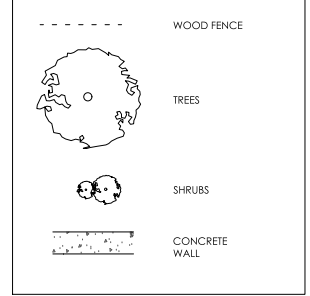
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MAY 20, 21

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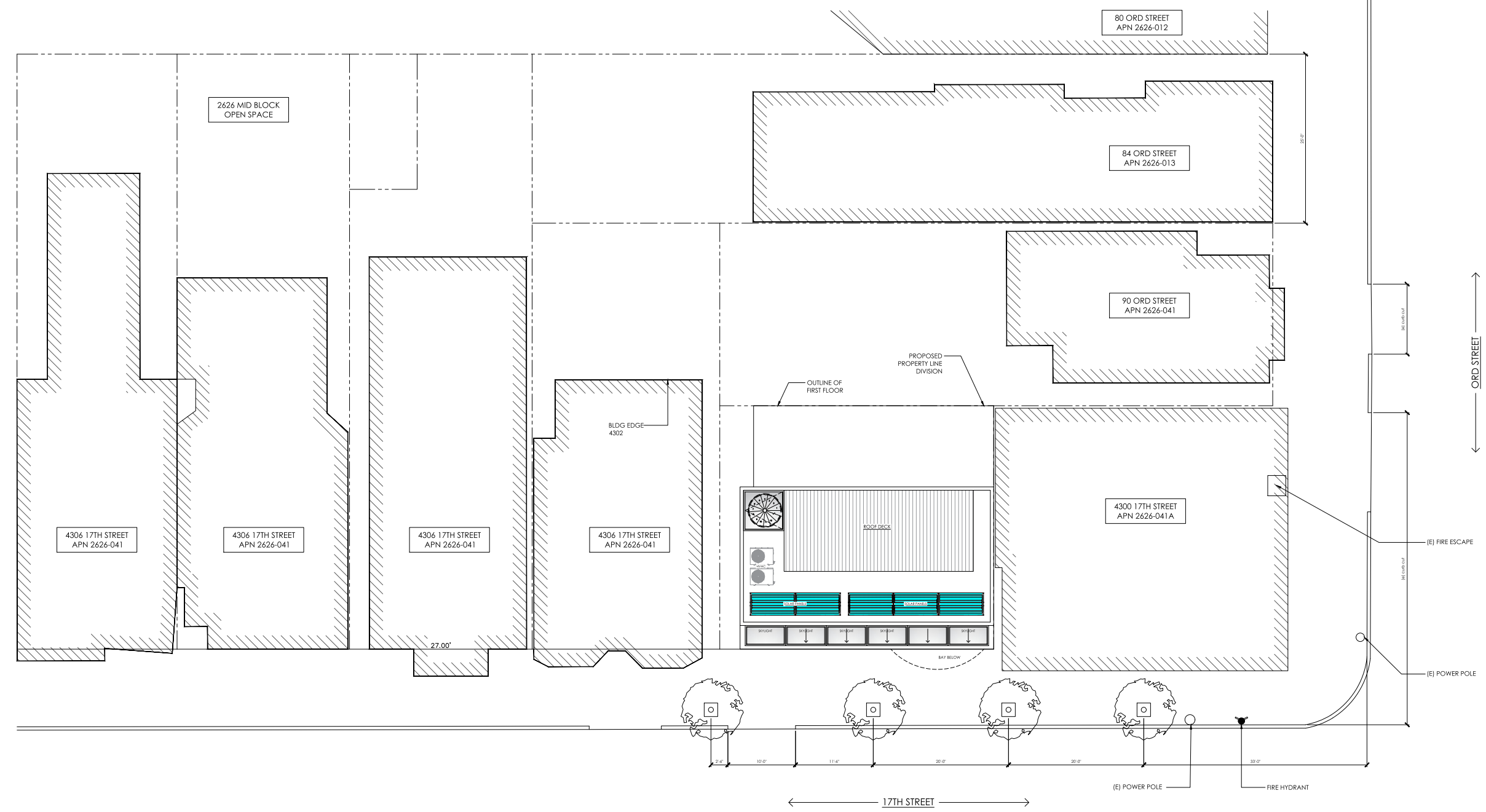
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A1.0



**SITE LEGEND**



REVISION TABLE	
NUMBER	DATE / REVISION BY / DESCRIPTION



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SCOTT PLUTA  
**ADDRESS:**  
4300 17TH STREET,  
SAN FRANCISCO CA 94114

**TITLE:**  
PROPOSED SITE PLAN

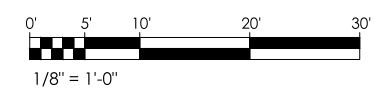
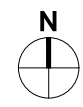
**DRAWINGS PROVIDED BY:**  
SANJAY KUMAR VERMA  
SANVERMA DESIGN

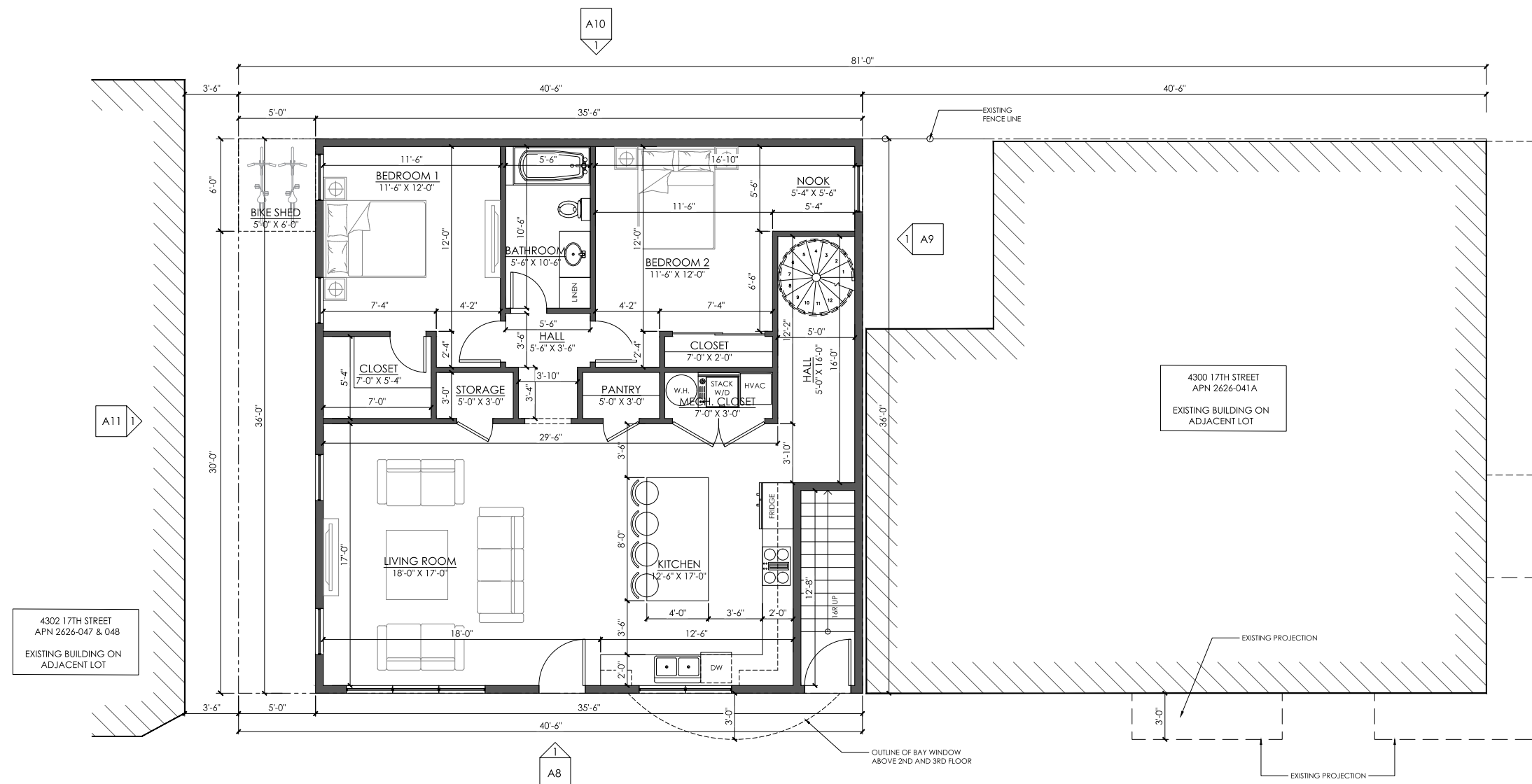
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MAY 20, 21

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**SHEET NO:**  
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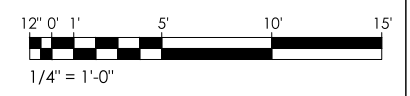
**1 PROPOSED SITE PLAN**  
SCALE: 1/8" = 1'-0"





FIRST FLOOR NET AREA	
ROOM	AREA
BIKE SHED	30 SF
LIVING ROOM	306 SF
KITCHEN	213 SF
HALL	112 SF
MECH. CLOSET	21 SF
PANTRY	15 SF
STORAGE	43 SF
CLOSET	51 SF
BEDROOM 1	138 SF
BEDROOM 2	138 SF
BATHROOM	58 SF
STAIRCASE	44 SF
<b>TOTAL NET AREA</b>	<b>1139 SF</b>
<b>TOTAL GROSS SF 1ST FLOOR = 1278 SF</b>	

**1** FIRST FLOOR PLAN  
SCALE: 1/4" = 1'-0"



REVISION TABLE			
NUMBER	DATE	REVISOR	DESCRIPTION

**CLIENT:**  
SCOTT PLUTA  
ADDRESS:  
4300 17TH STREET,  
SAN FRANCISCO CA 94114

**TITLE:**  
FIRST FLOOR PLAN

**DRAWINGS PROVIDED BY:**  
SANJAY KUMAR VERMA  
SANVERMA DESIGN

**DATE:**

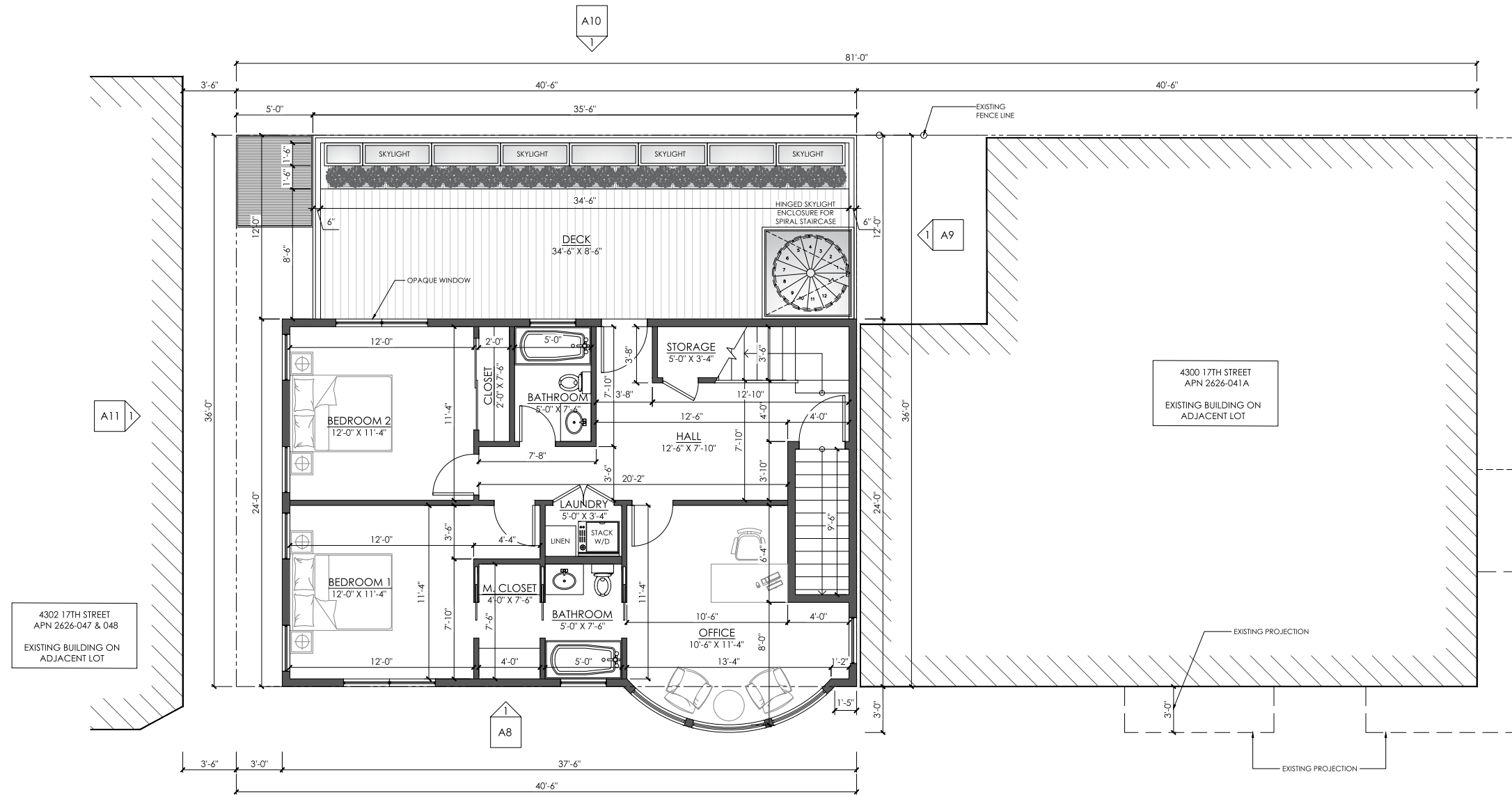
MAY 20, 21

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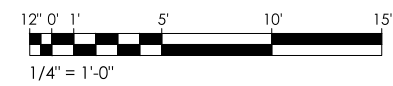
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**A3.0**



SECOND FLOOR NET AREA	
ROOM	AREA
DECK	355 SF
BEDROOM 1	164 SF
BEDROOM 2	144 SF
HALL	143 SF
LAUNDRY	17 SF
M.CLOSET	38 SF
J&J BATH	38 SF
CLOSET	15 SF
BATH	38 SF
OFFICE	118 SF
BAY AREA	29 SF
STORAGE	30 SF
TOTAL NET AREA	764 SF
TOTAL GROSS SF 2ND FLOOR = 920 SF	

1 SECOND FLOOR PLAN  
SCALE: 1/4" = 1'-0"



REVISION TABLE			
NUMBER	DATE	REVISION BY	DESCRIPTION

CLIENT:  
SCOTT PLUTA  
ADDRESS:  
4300 17TH STREET,  
SAN FRANCISCO CA 94114

TITLE:  
PROPOSED SECOND FLOOR PLAN

DRAWINGS PROVIDED BY:  
SANJAY KUMAR VERMA  
SANVERMA DESIGN

DATE:

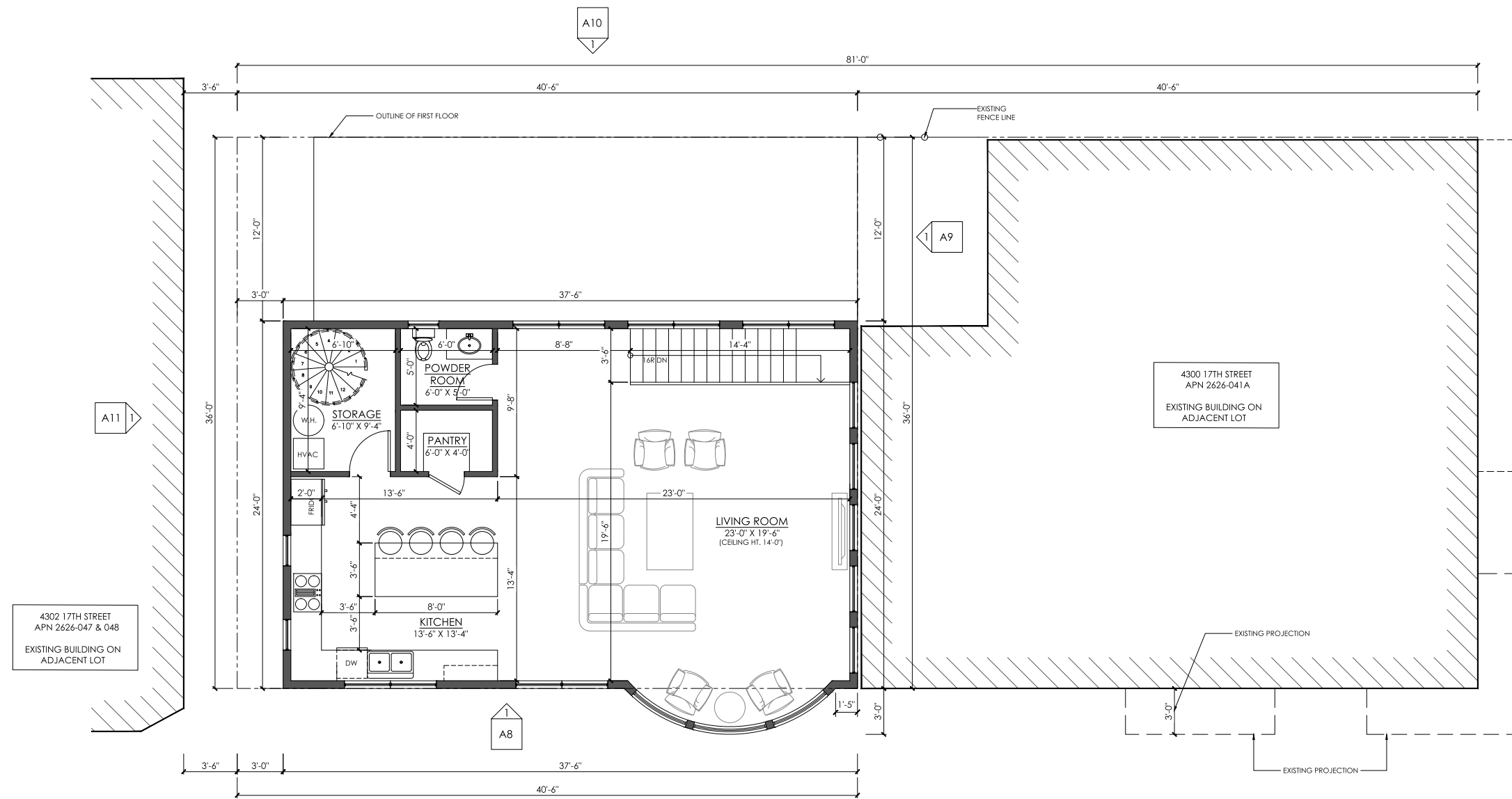
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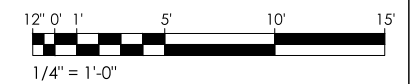
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A4.0



THIRD FLOOR NET AREA	
ROOM	AREA
LIVING AREA	479 SF
KITCHEN	180 SF
BAY AREA	29 SF
PANTRY	24 SF
POWDER ROOM	30 SF
MECH. CLOSET	64 SF
<b>TOTAL NET AREA</b>	<b>806 SF</b>
TOTAL GROSS SF 3RD FLOOR = 930 SF	

1 THIRD FLOOR PLAN  
SCALE: 1/4" = 1'-0"



REVISION TABLE		
NUMBER	DATE	REVISION BY / DESCRIPTION

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SCOTT PLUTA  
ADDRESS:  
4300 17TH STREET,  
SAN FRANCISCO CA 94114

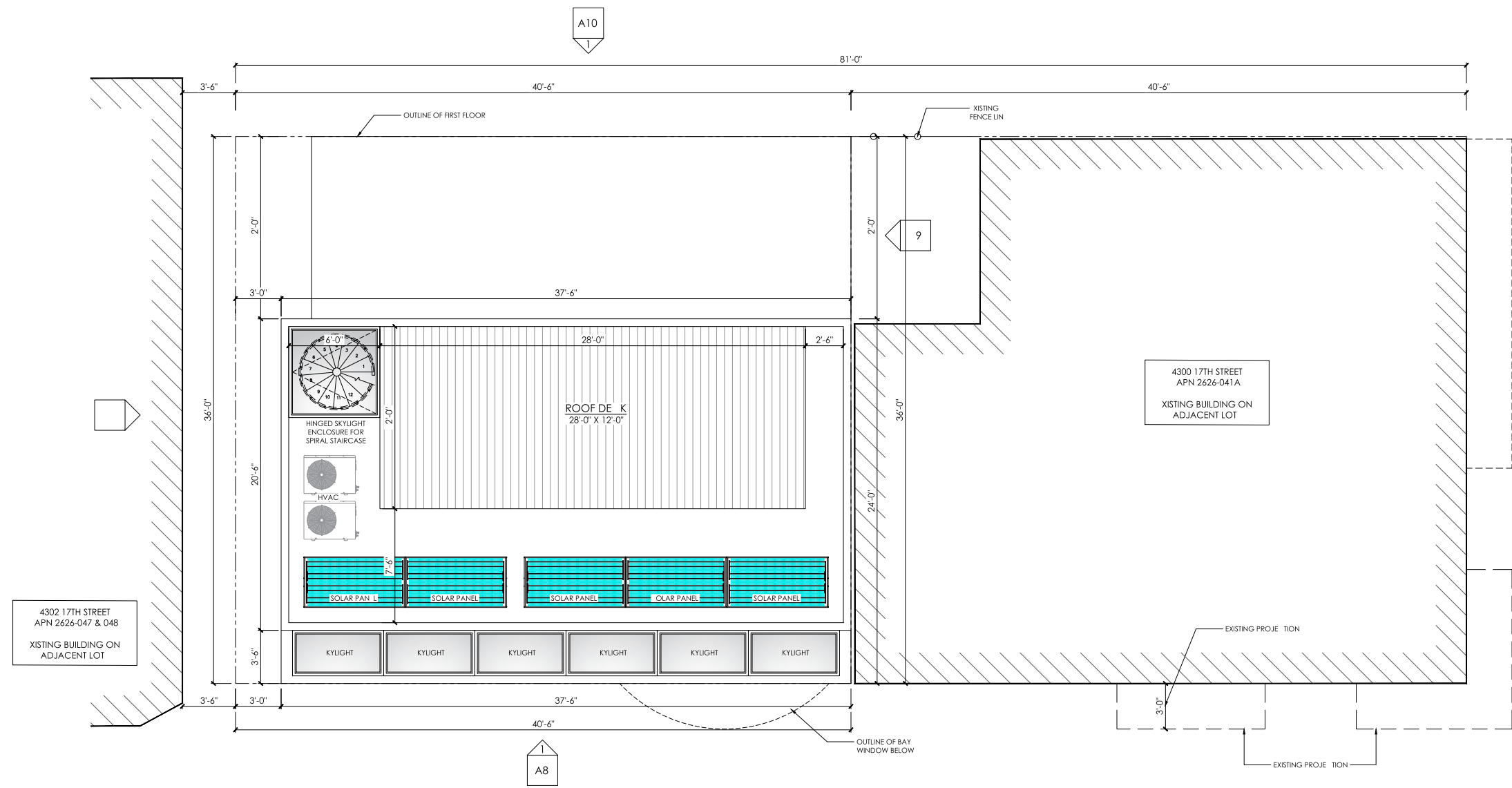
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PROPOSED THIRD FLOOR PLAN

DRAWINGS PROVIDED BY:  
SANJAY KUMAR VERMA  
SANVERMA DESIGN

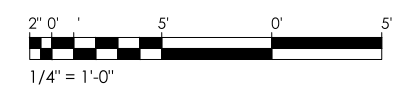
DATE:  
MAY 20, 21

SCALE:  
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SHEET NO:  
A5.0



ROOF PLAN  
1/4" = 1'-0"



REVISION TABLE			
NUMBER	DATE	REVISION BY	DESCRIPTION

CLIENT:  
SCOTT PLUTA  
ADDRESS:  
4300 17TH STREET,  
SAN FRANCISCO CA 94114

TITLE:  
ROOF PLAN

DRAWINGS PROVIDED BY:  
SANJAY KUMAR VERMA  
SANVERMA DESIGN

DATE:

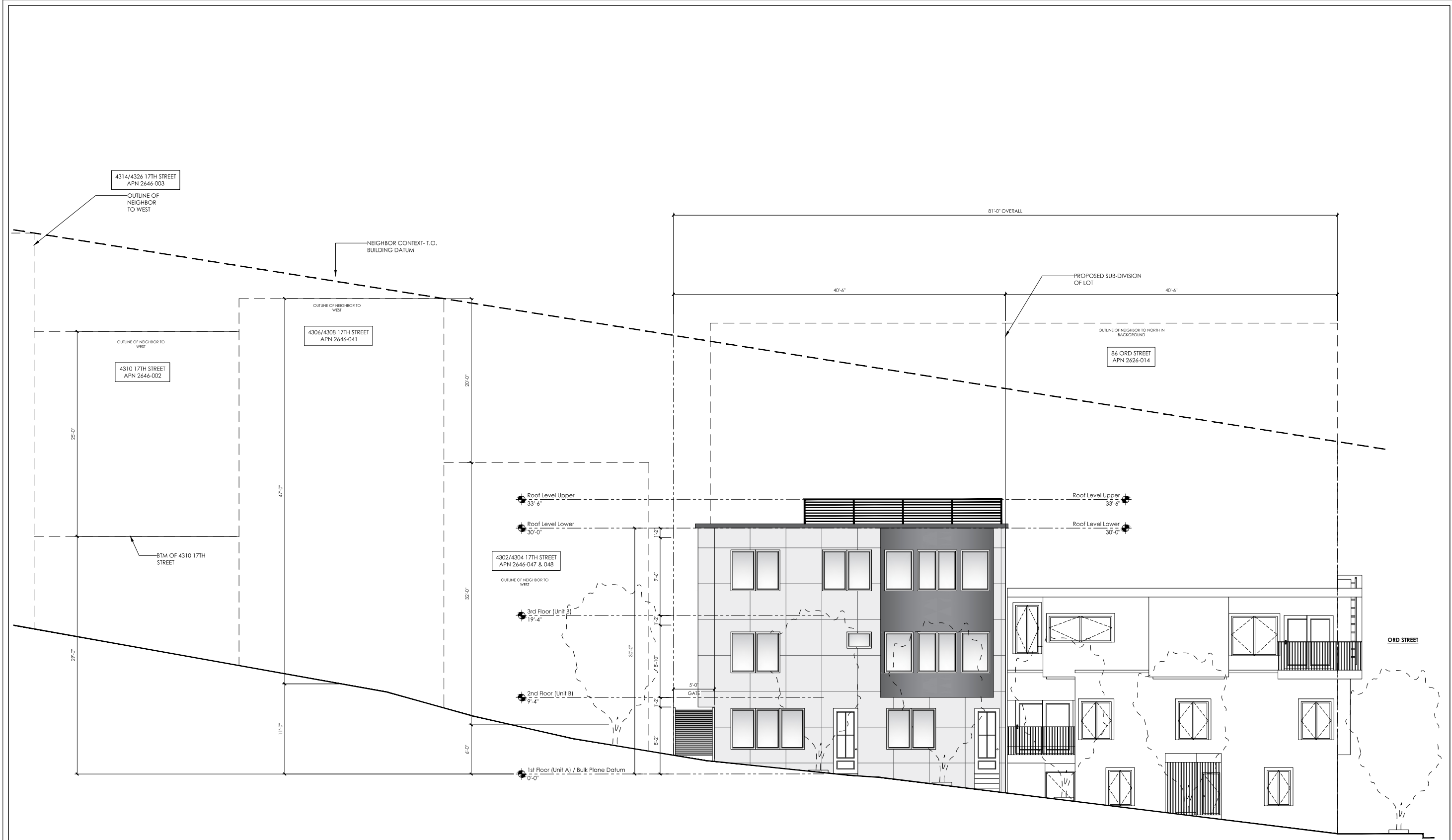
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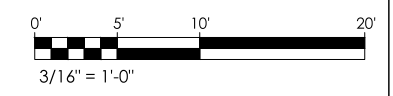
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SHEET NO:

A6.0



1 17TH STREET ELEVATION -SOUTH  
 SCALE: 3/16" = 1'-0"



REVISION TABLE	
NUMBER	DATE / REVISION BY / DESCRIPTION

CLIENT:  
 SCOTT PLUTA  
 ADDRESS:  
 4300 17TH STREET,  
 SAN FRANCISCO CA 94114

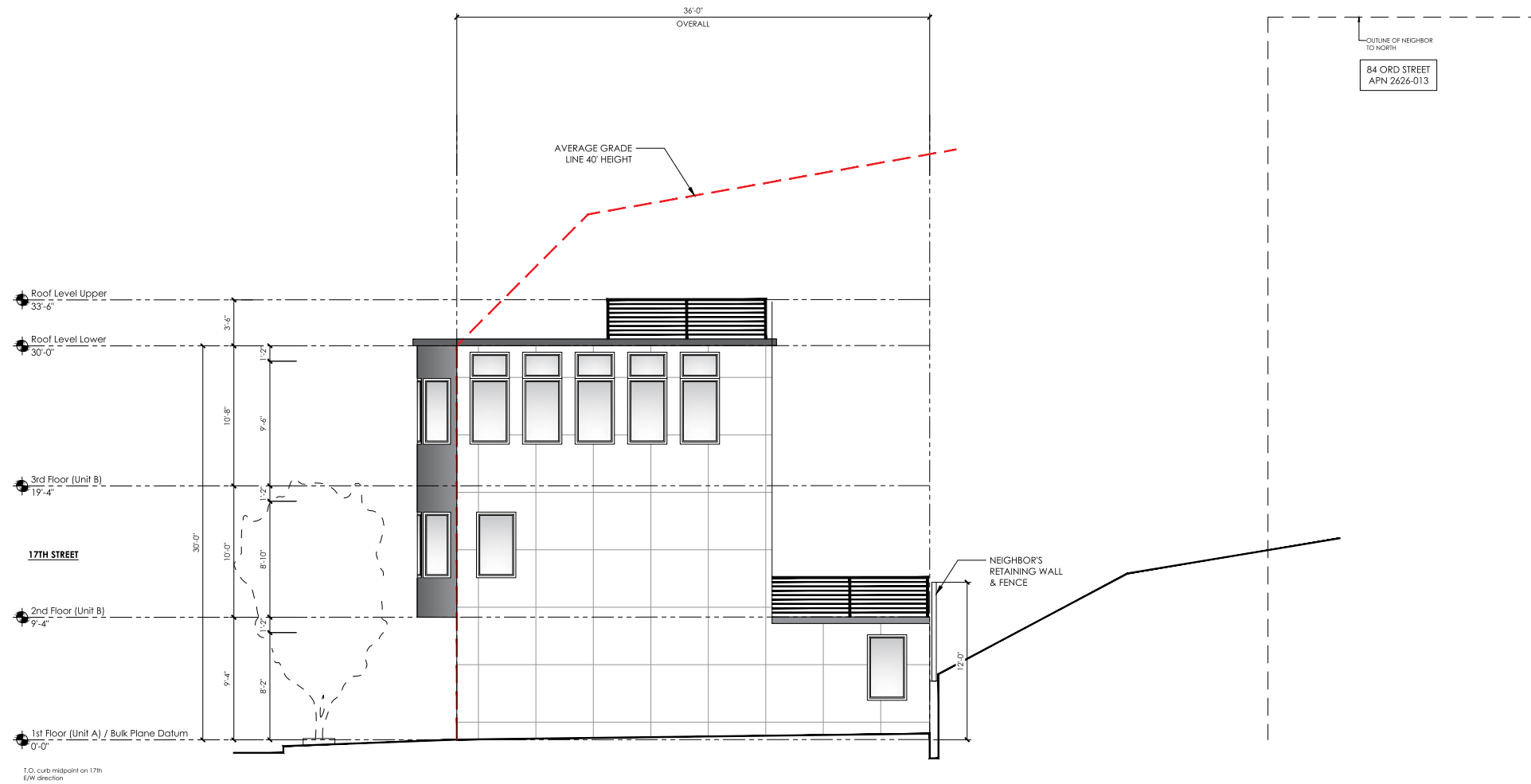
TITLE:  
 SOUTH ELEVATION

DRAWINGS PROVIDED BY:  
 SANJAY KUMAR VERMA  
 SANVERMA DESIGN

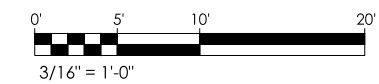
DATE:  
 MAY 20, 21

SCALE:  
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SHEET NO:  
**A7.0**



**1** ORD STREET ELEVATION -EAST  
SCALE: 3/16" = 1'-0"



REVISION TABLE			
NUMBER	DATE	REVISOR	DESCRIPTION

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SCOTT PLUTA  
**ADDRESS:**  
4300 17TH STREET,  
SAN FRANCISCO CA 94114

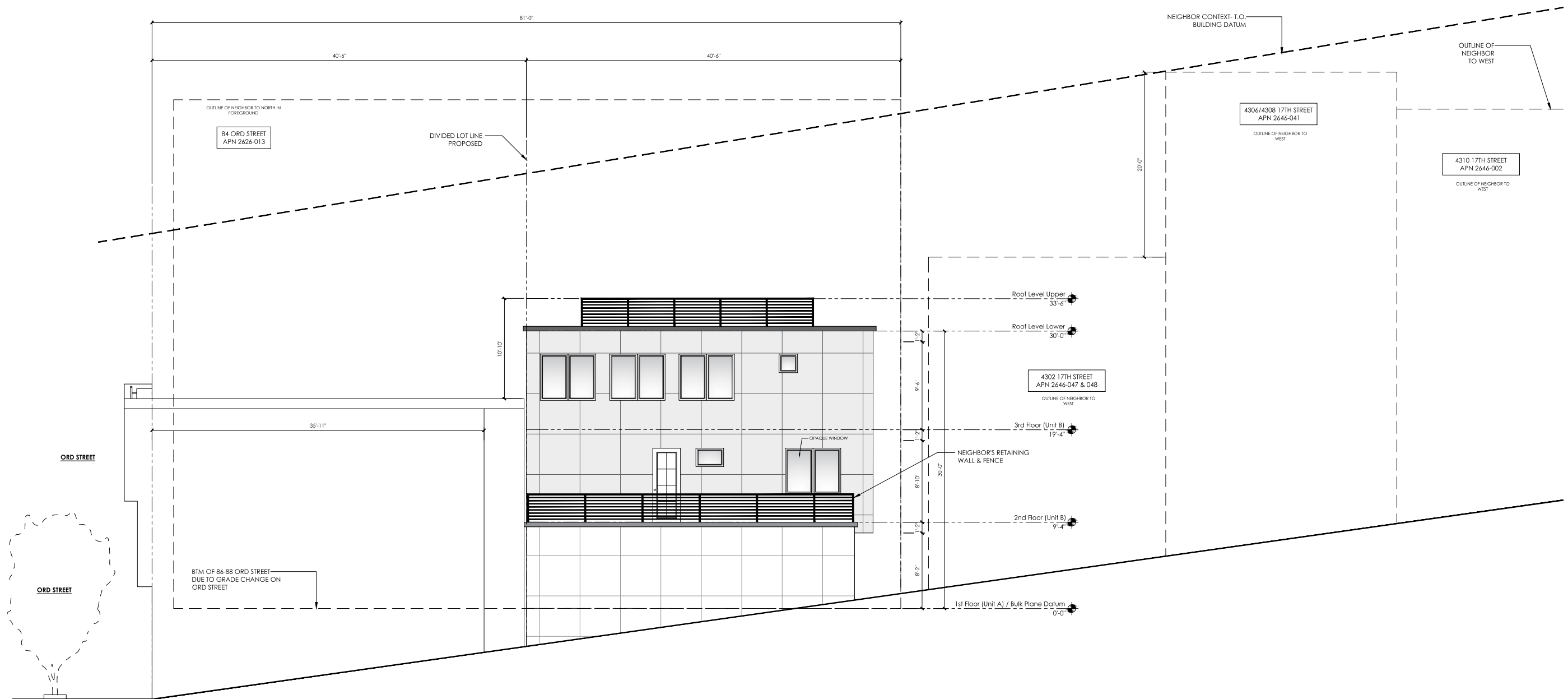
**TITLE:**  
EAST ELEVATION

**DRAWINGS PROVIDED BY:**  
SANJAY KUMAR VERMA  
SANVERMA DESIGN

**DATE:**  
MAY 20, 21

**SCALE:**  
3/16"=1'-0"

**SHEET NO:**  
**A8.0**



**1 NORTH ELEVATION**  
SCALE: 3/16" = 1'-0"

REVISION TABLE			
NUMBER	DATE	REVISOR	DESCRIPTION

**CLIENT:**  
SCOTT PLUTA  
**ADDRESS:**  
4300 17TH STREET,  
SAN FRANCISCO CA 94114

**TITLE:**  
NORTH ELEVATION

**DRAWINGS PROVIDED BY:**  
SANJAY KUMAR VERMA  
SANVERMA DESIGN

**DATE:**

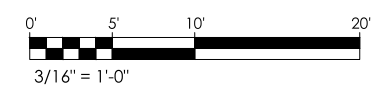
MAY 20, 21

**SCALE:**

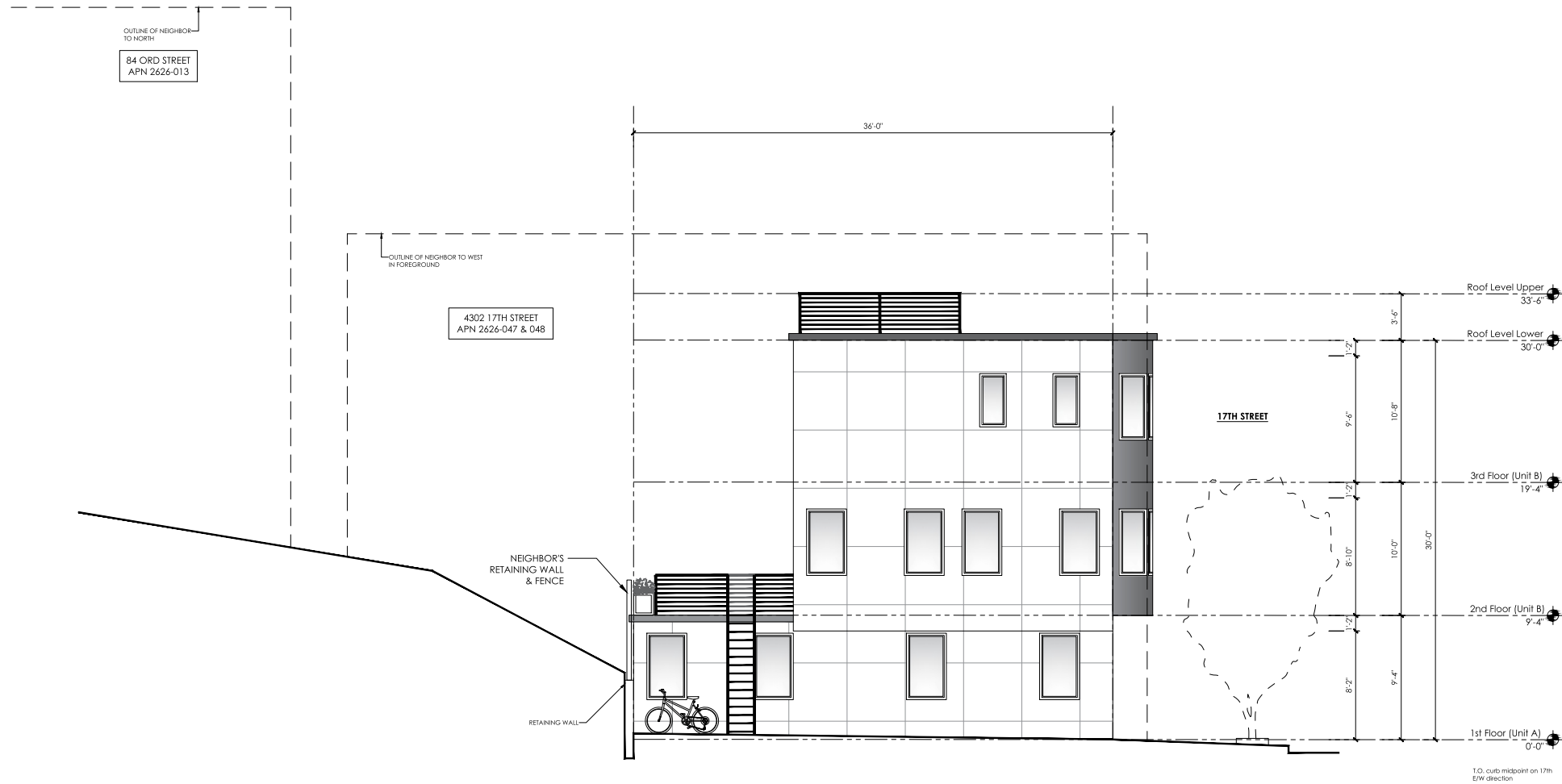
3/16" = 1'-0"

**SHEET NO.:**

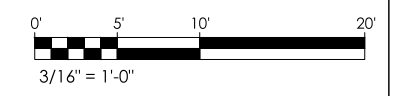
**A9.0**







**1** WEST ELEVATION  
SCALE: 3/16" = 1'-0"



REVISION TABLE	
NUMBER	DATE

**CLIENT:**  
SCOTT PLUTA  
**ADDRESS:**  
4300 17TH STREET,  
SAN FRANCISCO CA 94114

**TITLE:**  
WEST ELEVATION

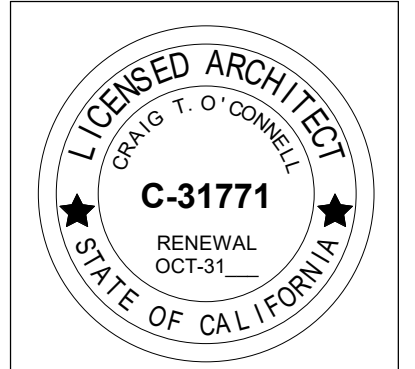
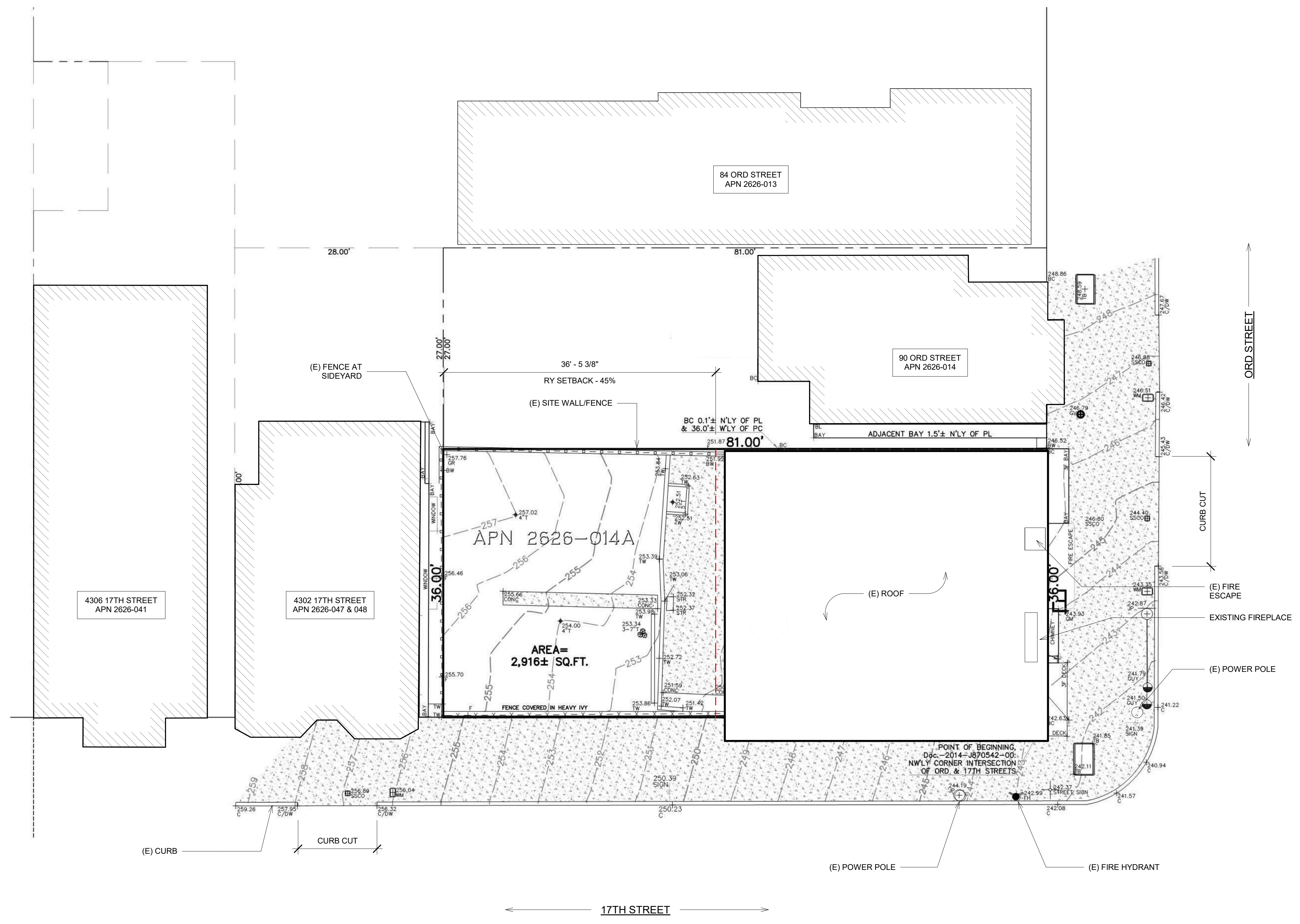
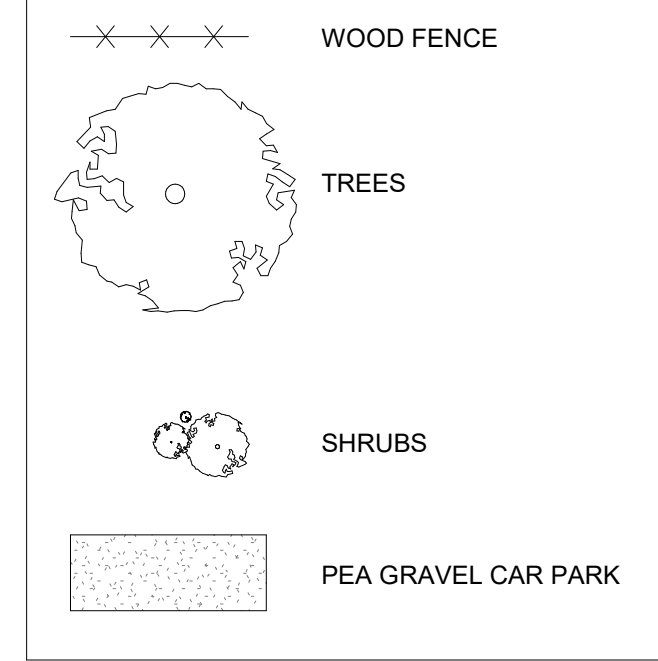
**DRAWINGS PROVIDED BY:**  
SANJAY KUMAR VERMA  
SANVERMA DESIGN

**DATE:**  
MAY 20, 21

**SCALE:**  
3/16"=1'-0"

**SHEET NO:**  
**A10**

NEW SITE LEGEND



**Pluta- ADU**  
4000 17th Street,  
San Francisco, CA  
94114

REVISIONS

No.	Description	Date
1	Pre-App Bldg	9.16.19

**ADU**

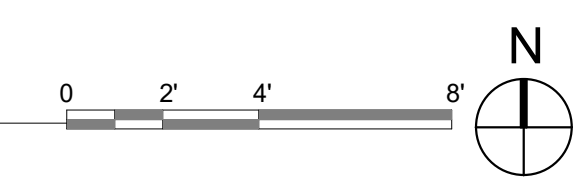
**Existing Site Plan**

Project number 19-18  
Date 07.11.19

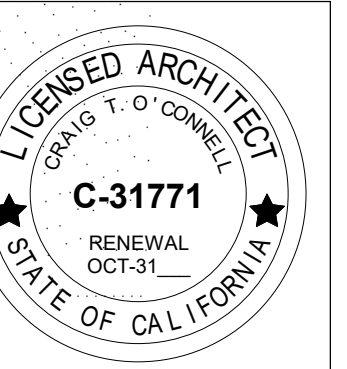
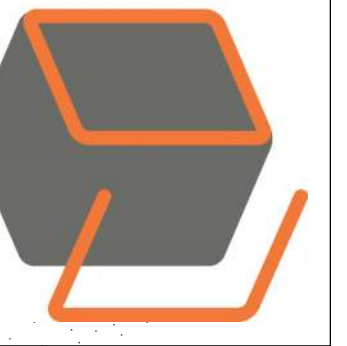
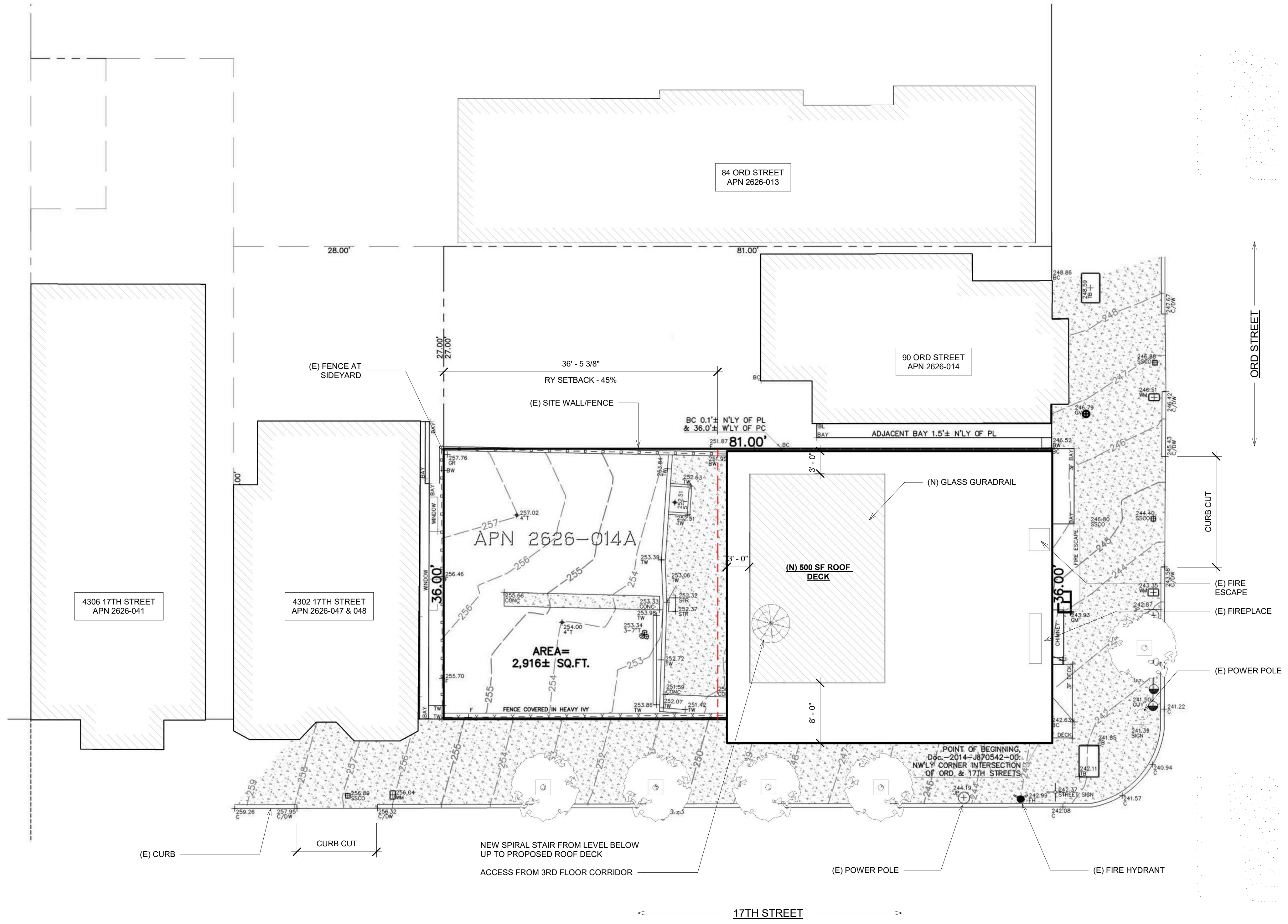
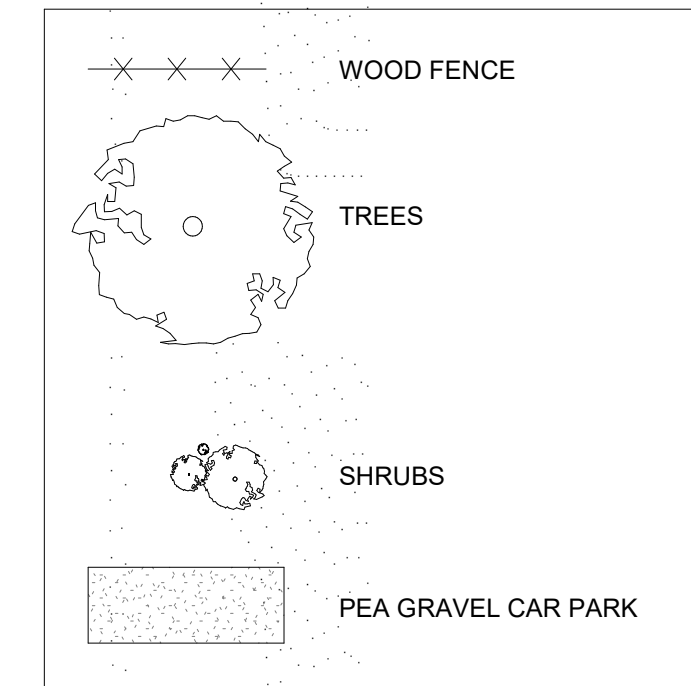
Drawn by RB  
Checked by CO

**A1**  
Scale AS SHOWN

**1 Existing Site Plan**  
1/8" = 1'-0"



NEW SITE LEGEND



Pluta-ADU  
4000 17th Street,  
San Francisco, CA  
94114

REVISIONS

No.	Description	Date
1	Pre-App Blg	9.16.19

ADU

New Site Plan

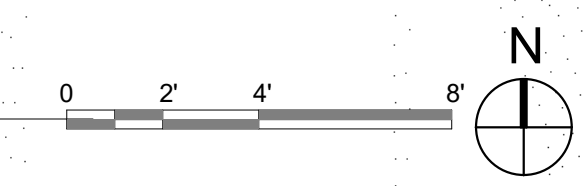
Project number 19-18

Date 07.11.19

Drawn by RB  
Checked by CO

A1.1  
Scale AS SHOWN

1 New Site Plan  
1/8" = 1'-0"



**SHEET NOTES**

SMOKE DETECTORS TO BE INSTALLED ARE TO ALSO FUNCTION AS CARBON MONOXIDE ALARMS  
SMOKE DETECTORS TO BE PROVIDED WITH AC POWER AND BE INTERCONNECTED FOR SIMULTANEOUS ALARM

ALL NEW / REPLACED LUMINAIRES TO BE HIGH EFFICACY

OUTDOOR LIGHTING MUST BE HIGH EFFICACY OR CONTROLLED BY A PHOTOCONTROL/MOTION SENSOR COMBINATION

ALL NEW / REPLACED RECEPTACLES TO BE TAMPER-RESISTANT AND WITH ARC-FAULT INTERRUPTERS AS REQUIRED

LIGHTS INTEGRAL TO EXHAUST FANS TO BE SWITCHED SEPARATELY

LOW FLOW TOILETS IN BATHROOMS 1.28 GALLONS PER FLUSH MAX.

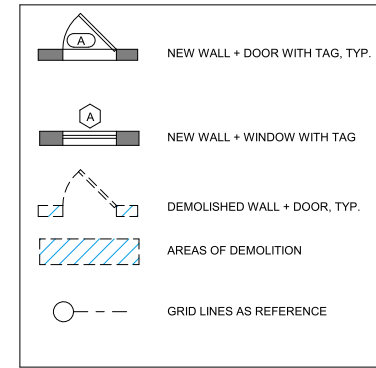
PRESSURE BALANCE VALVE ADJUSTS AT SHOWERS

SHOWERHEADS 2.0 GPM MAX. KITCHEN AND LAVATORY FAUCETS 1.8 & 1.5 GPM MAX. RESPECTIVELY

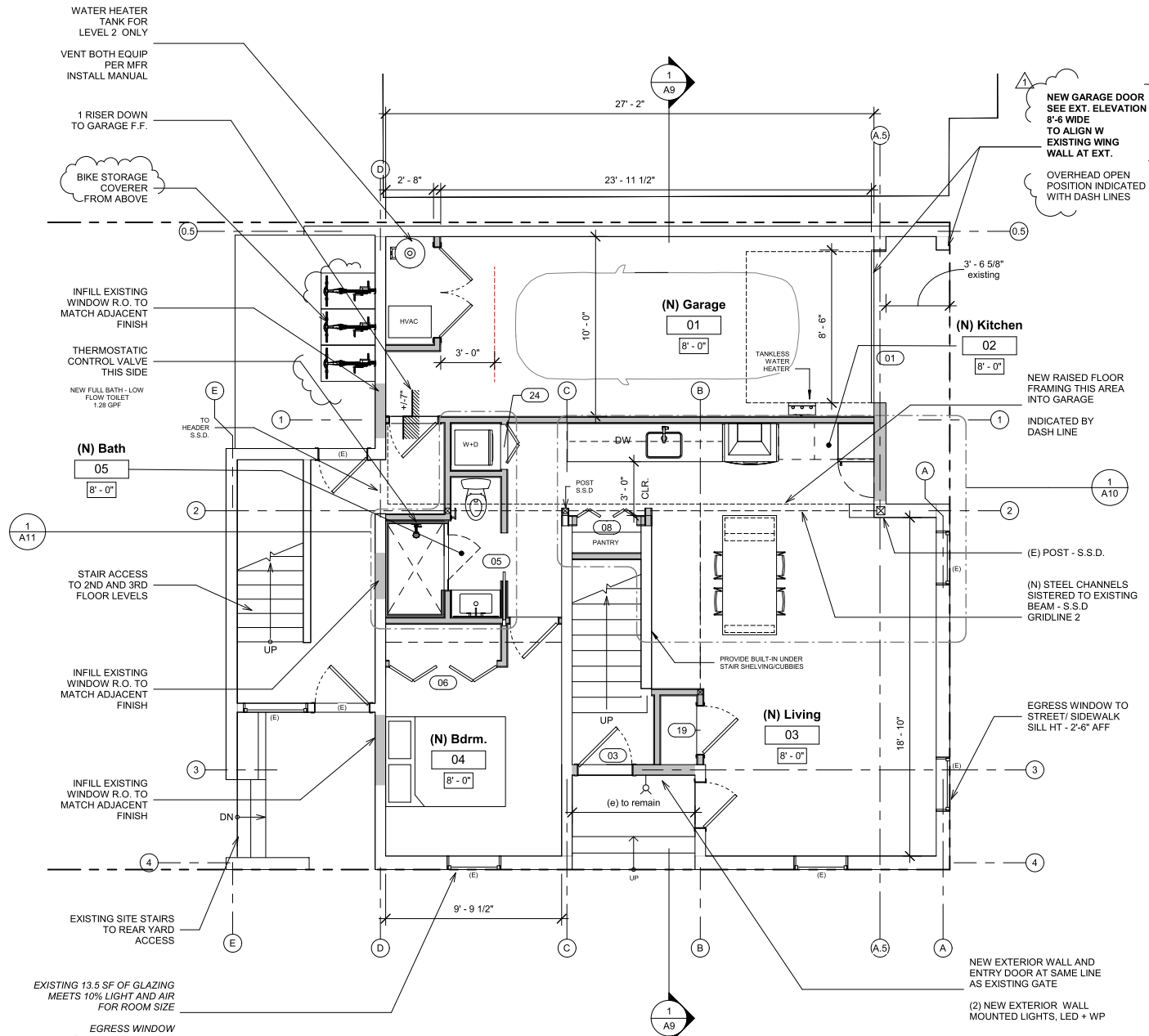
PANASONIC 'GREEN' BATH FANS TO SUFFICE FOR 'WHOLE HOUSE' FAN - SEE CALCS BELOW - MODEL # FV-11-15V14 120 C.F.M. PER UNIT

KITCHEN REQUIRES MECHANICAL VENTILATION TO THE OUTSIDE WITH MINIMUM OF 100 FCM. BATHROOMS REQUIRE A MINIMUM OF 50 FCM.

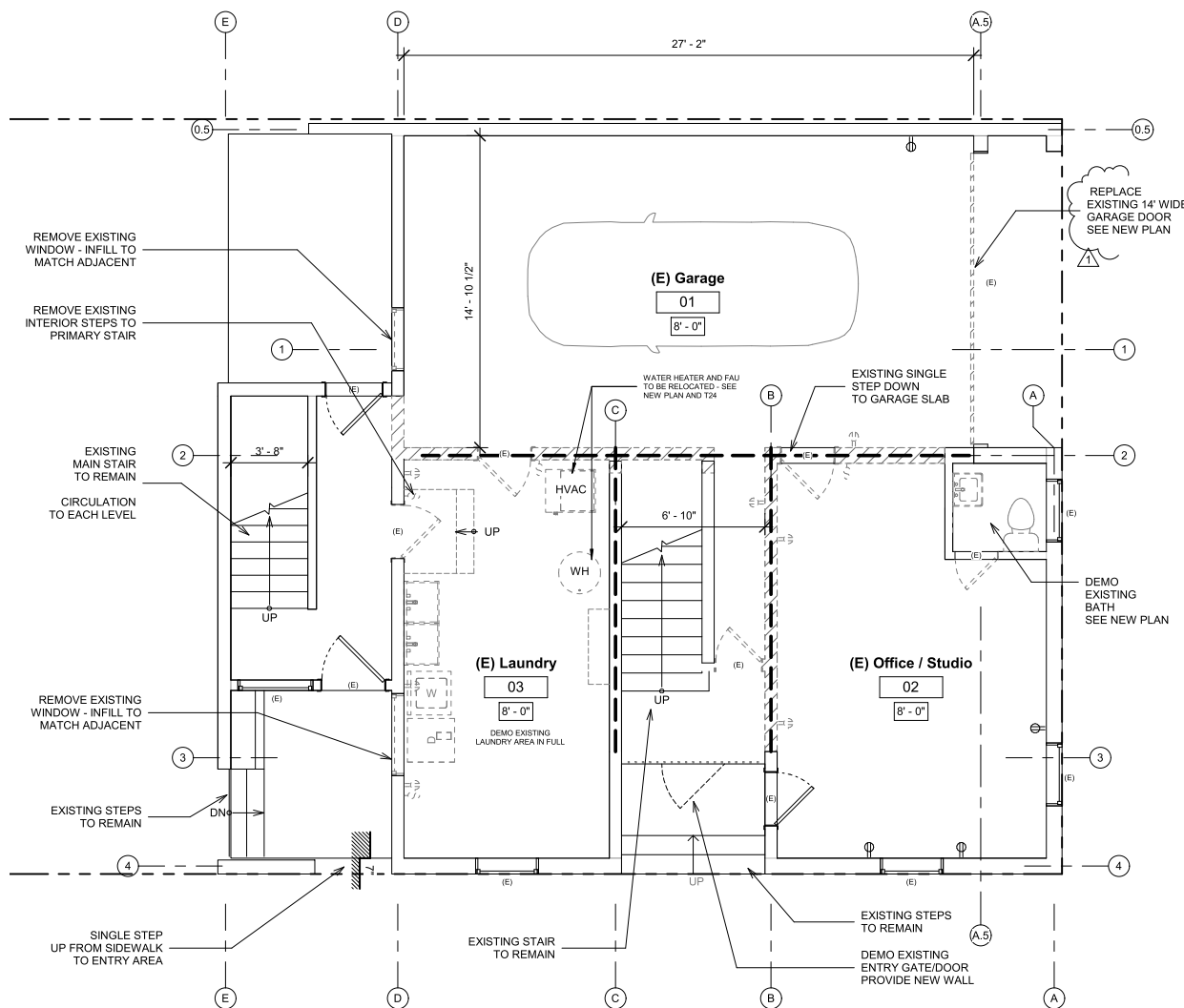
**LEGEND**



1st Floor Net Area		
Level	Name	Area
Basement	(N) Bdrm.	125 SF
Basement	(N) Living	199 SF
Basement	(N) Bath	39 SF
Basement	Room	118 SF
Basement	(N) Kitchen	111 SF
<b>Total Net Area</b>		<b>592 SF</b>



**2 1st Floor - New**  
1/4" = 1'-0"



**1 1st Floor - Existing**  
1/4" = 1'-0"



**Affordable Housing ADU**  
4300 17th Street  
San Francisco CA

**REVISIONS**

No.	Description	Date
1	Building Permit	4.5.21
2	Phasing Set	6.05.20
3	Phasing comments	7.03.21

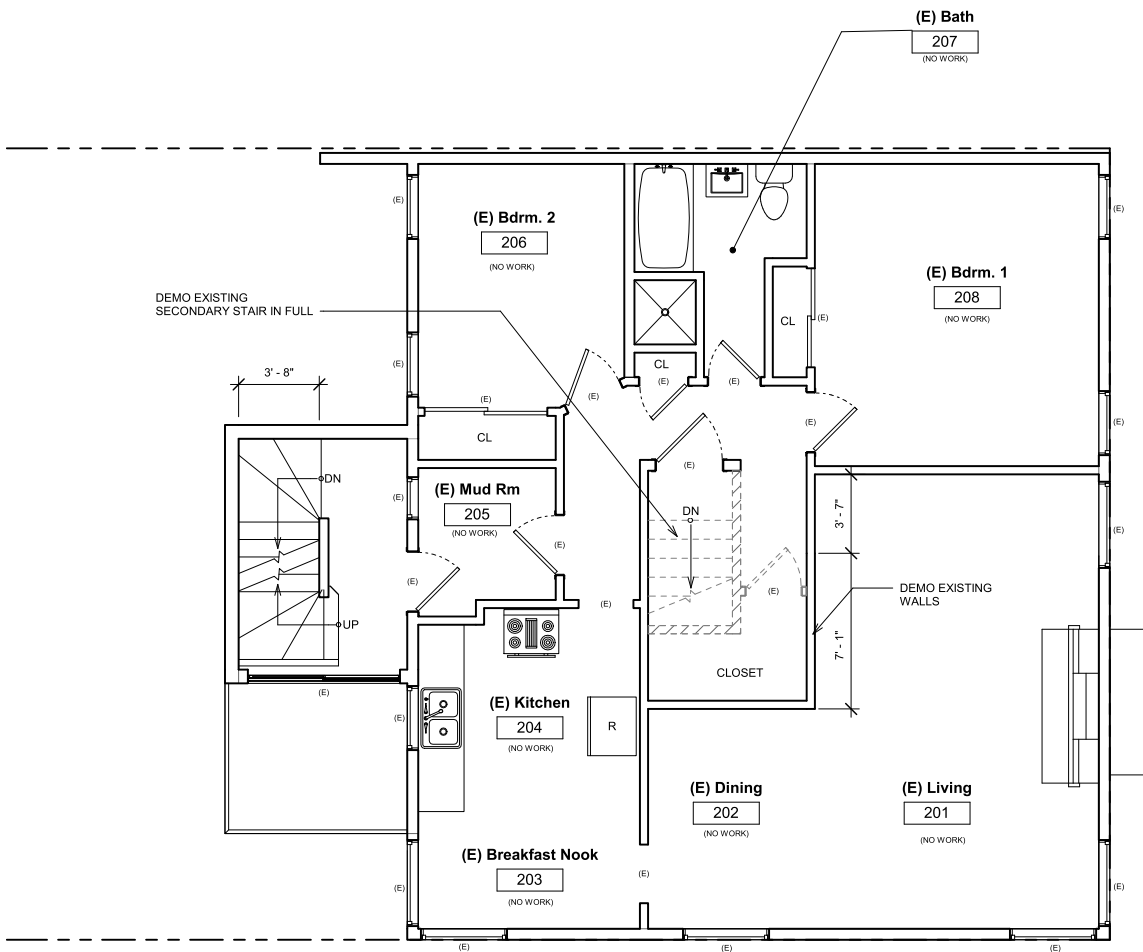
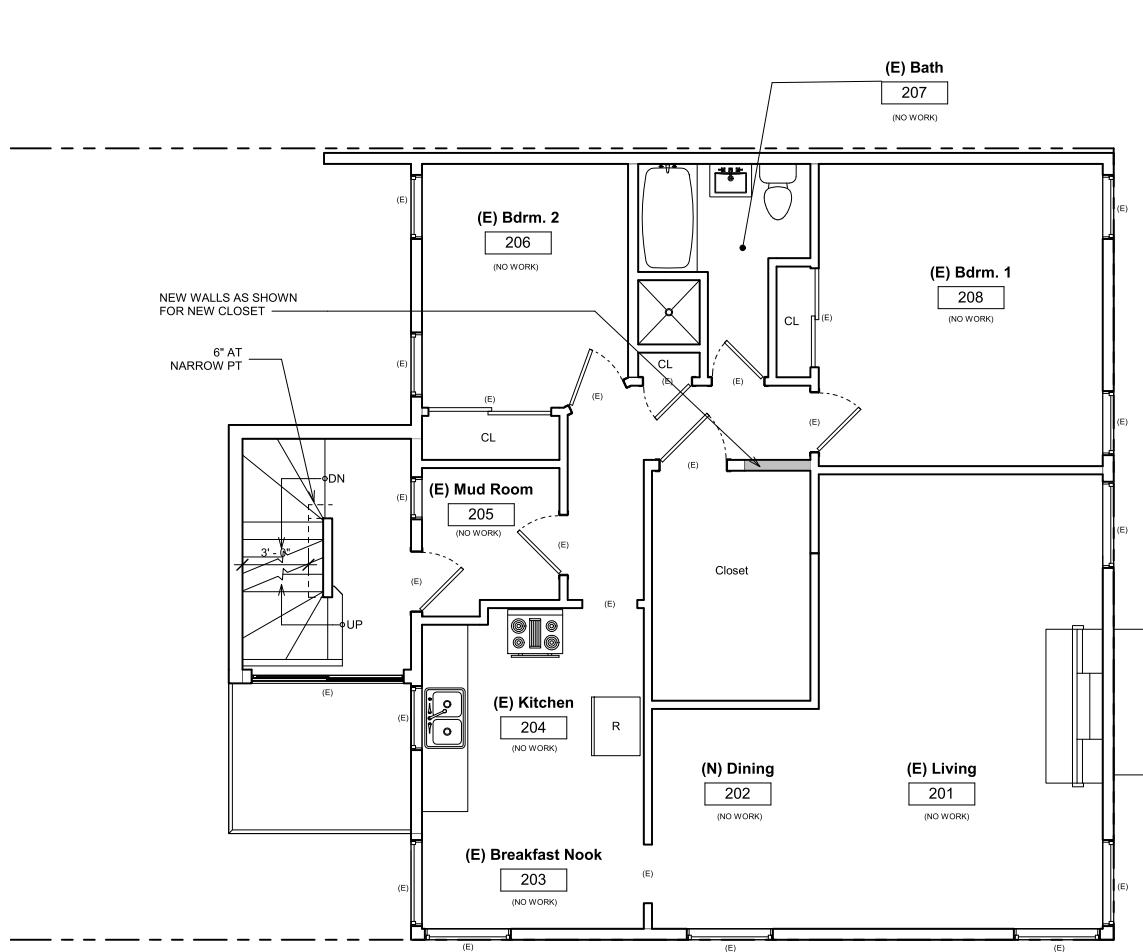
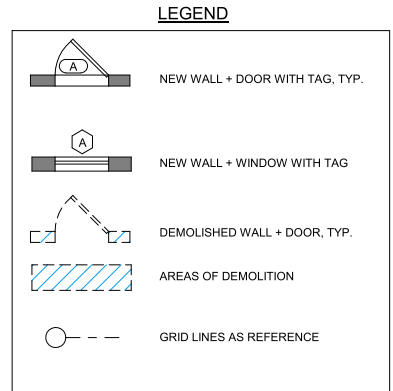
**ADU**  
08/23/2021

**1st Floor Plan**

Project number	21-08
Date	4.2.21
Drawn by	RB
Checked by	CO
<b>A3</b>	
Scale	AS SHOWN

REVISIONS

No.	Description	Date
Pre-App Bldg		8.16.19



**2** 2nd Floor - New  
1/4" = 1'-0"

**1** 2nd Floor - Existing  
1/4" = 1'-0"



**REVISIONS**

No.	Description	Date
1	Pre-App Bldg	6.16.19

**ADU**

**Existing/New  
3rd Floor Plan**

Project number **19-18**

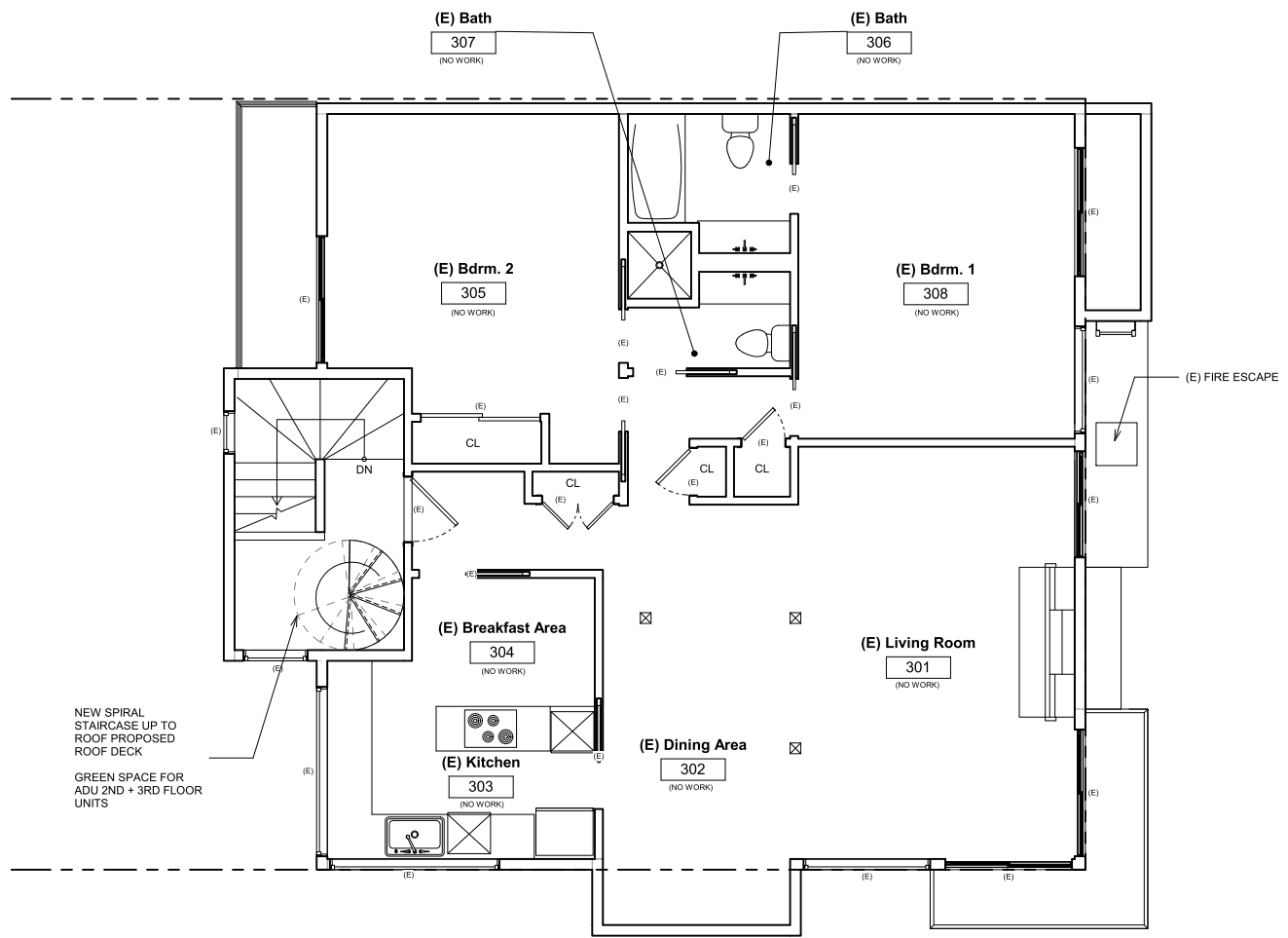
Date **07.11.19**

Drawn by **RB**  
Checked by **CO**

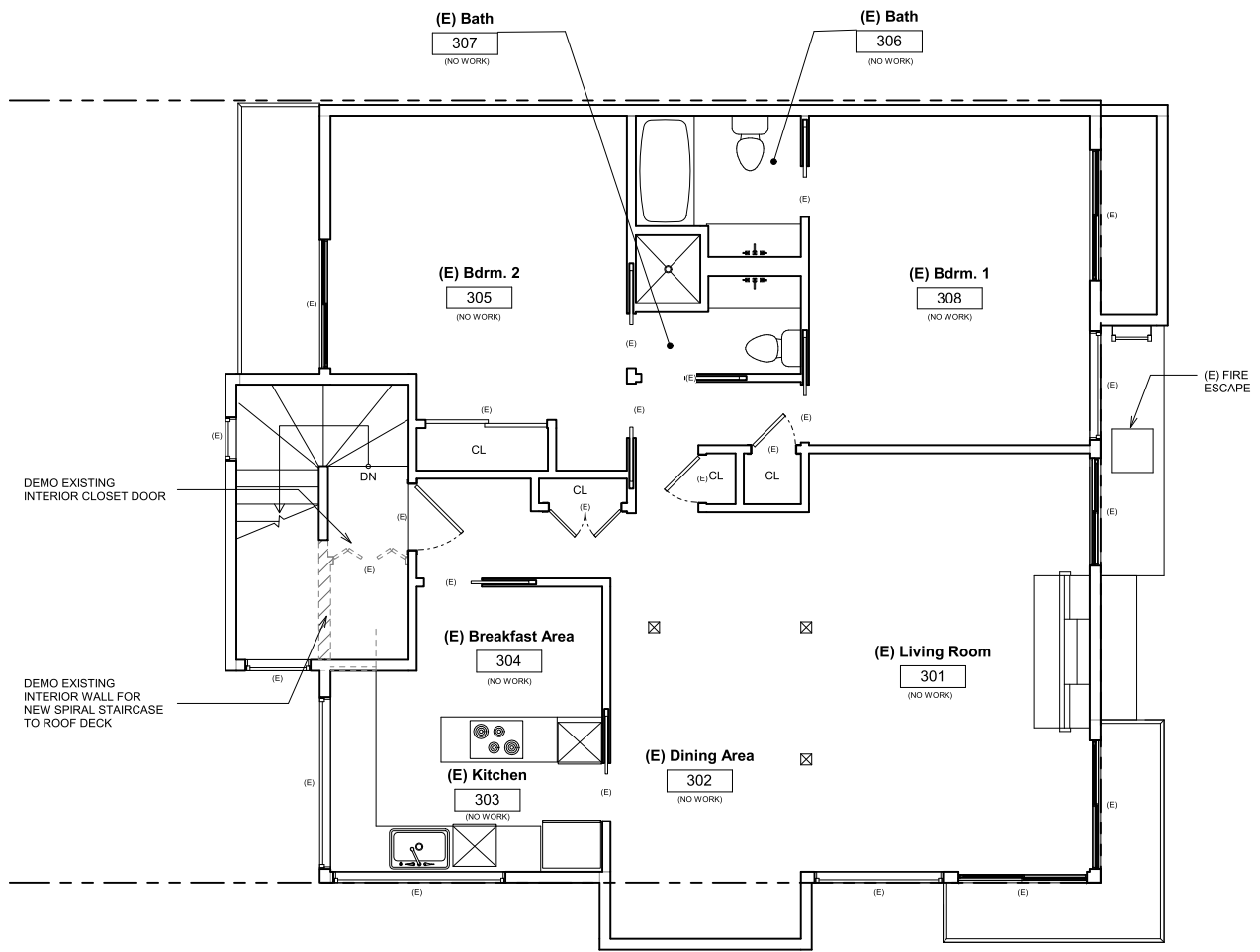
**A4**  
Scale **AS SHOWN**

**LEGEND**

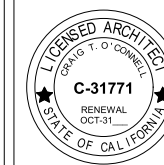
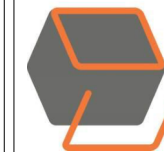
- NEW WALL + DOOR WITH TAG, TYP.
- NEW WALL + WINDOW WITH TAG
- DEMOLISHED WALL + DOOR, TYP.
- AREAS OF DEMOLITION
- GRID LINES AS REFERENCE



**2** **3rd Floor - New**  
1/4" = 1'-0"



**1** **3rd Floor - Existing**  
1/4" = 1'-0"



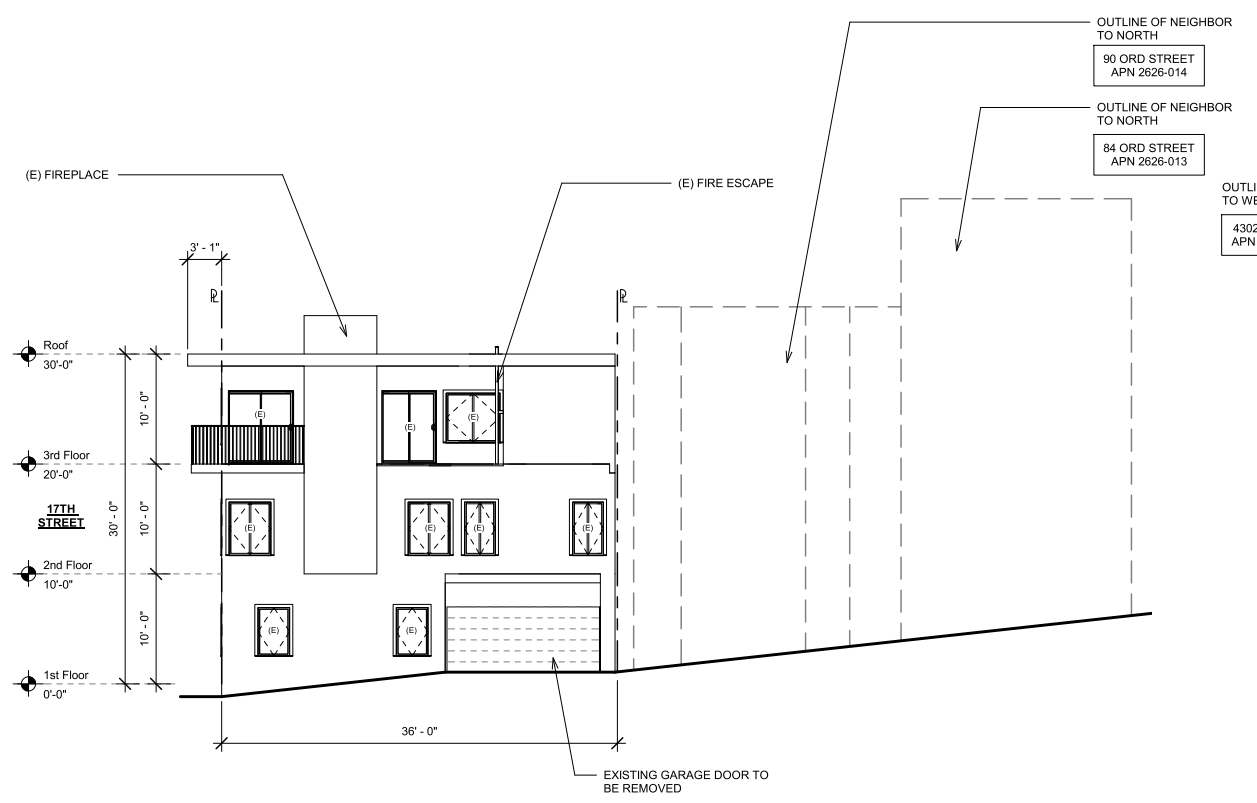
**REVISIONS**

No.	Description	Date

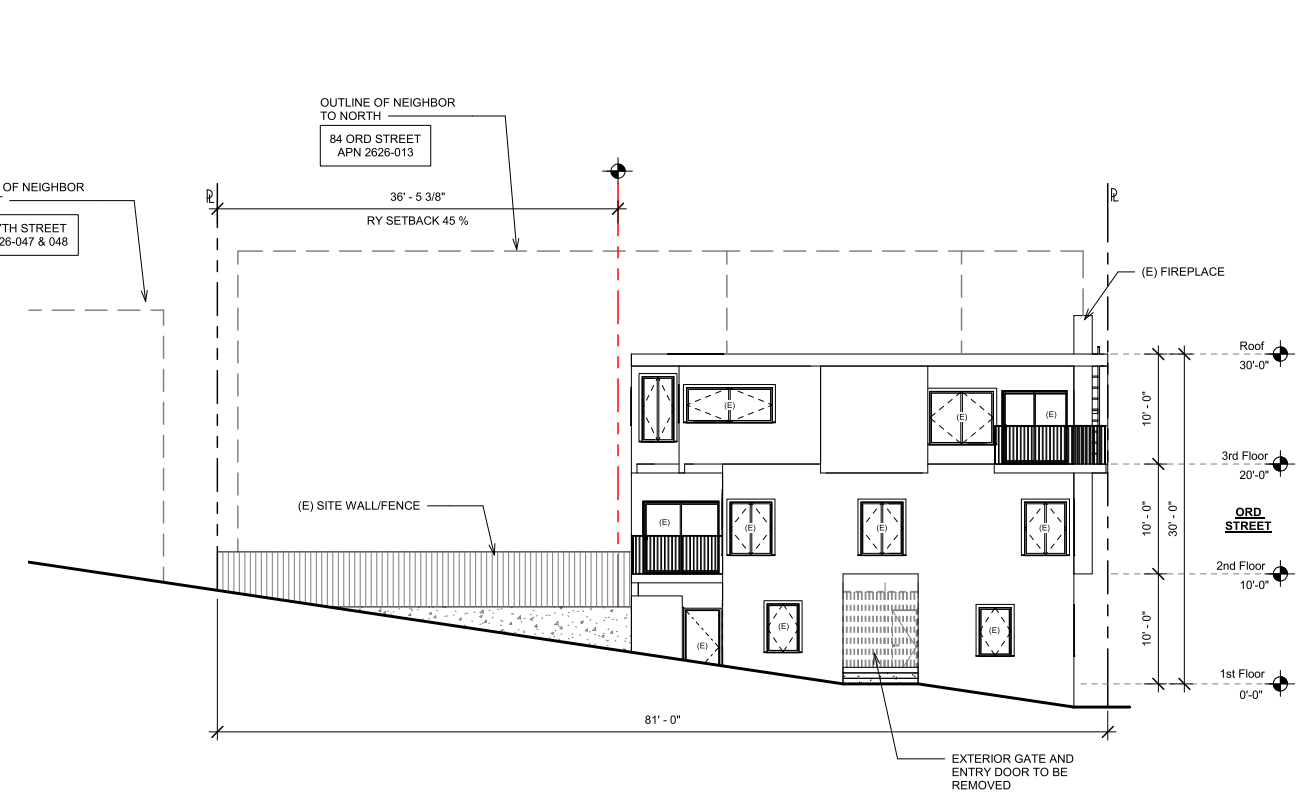
**ADU**

**Elevations**

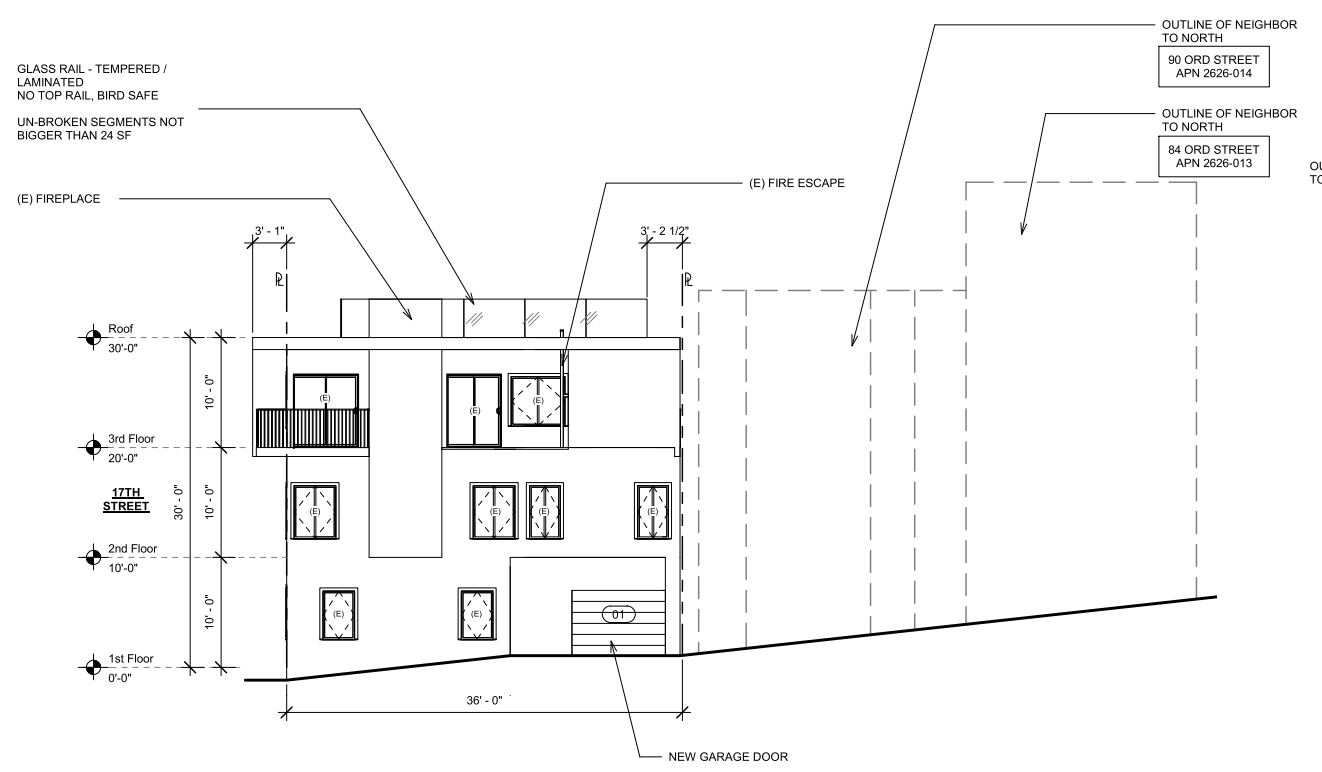
Project number	19-18
Date	07.11.19
Drawn by	RB
Checked by	CO
<b>A5</b>	
Scale	AS SHOWN



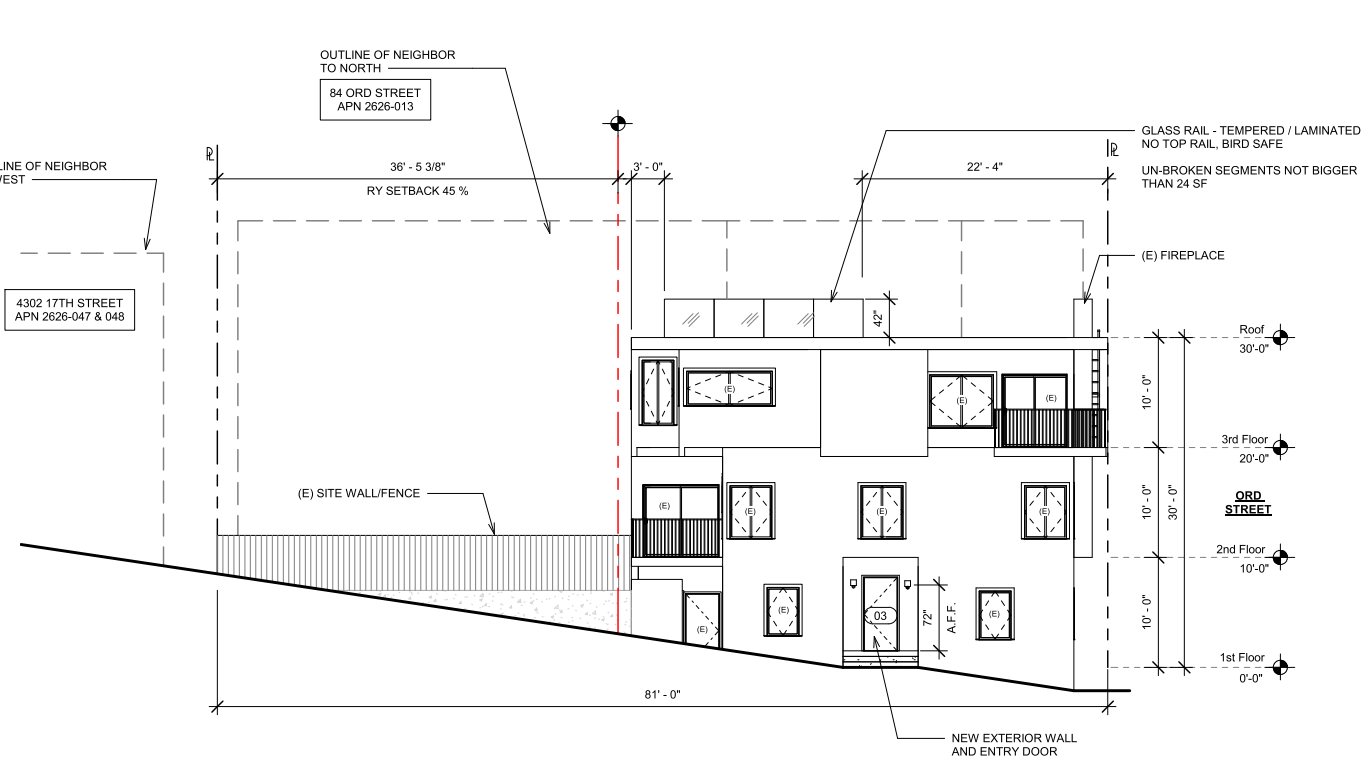
**3 Existing East Elevation (Ord Street)**  
1/8" = 1'-0"



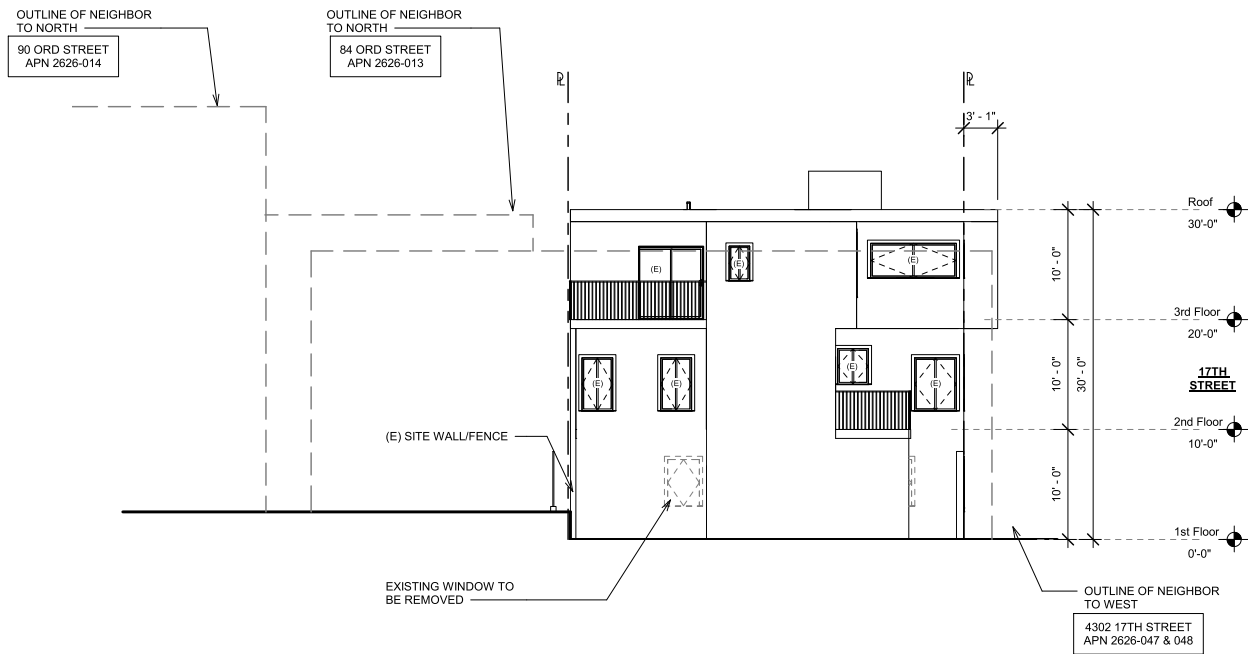
**1 Existing South Elevation (17th Street)**  
1/8" = 1'-0"



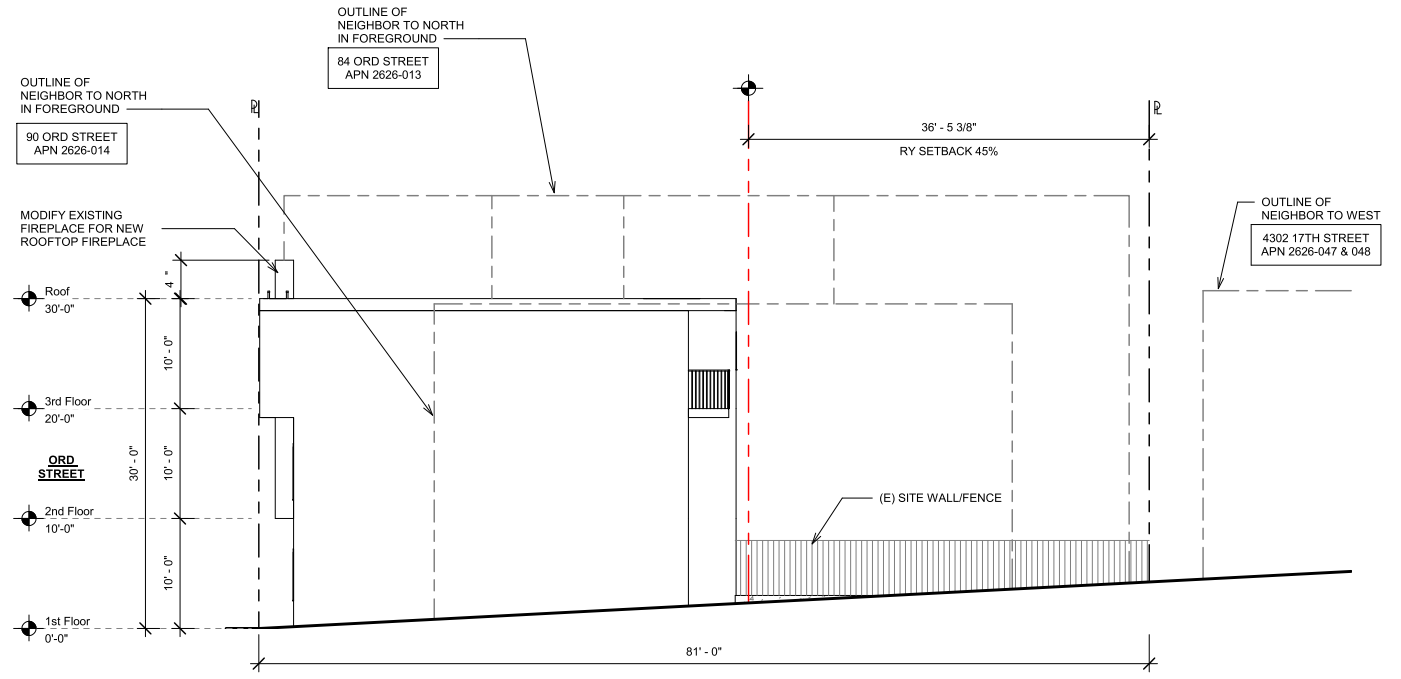
**4 New East Elevation (Ord Street)**  
1/8" = 1'-0"



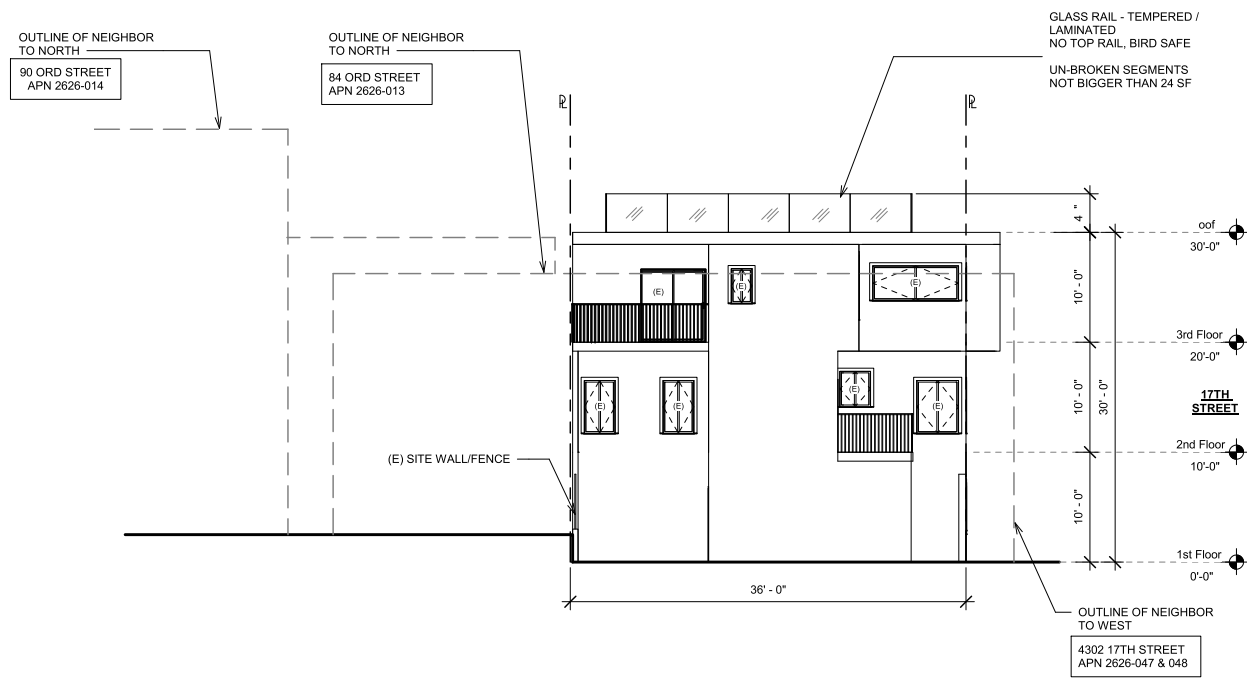
**2 New South Elevation (17th Street)**  
1/8" = 1'-0"



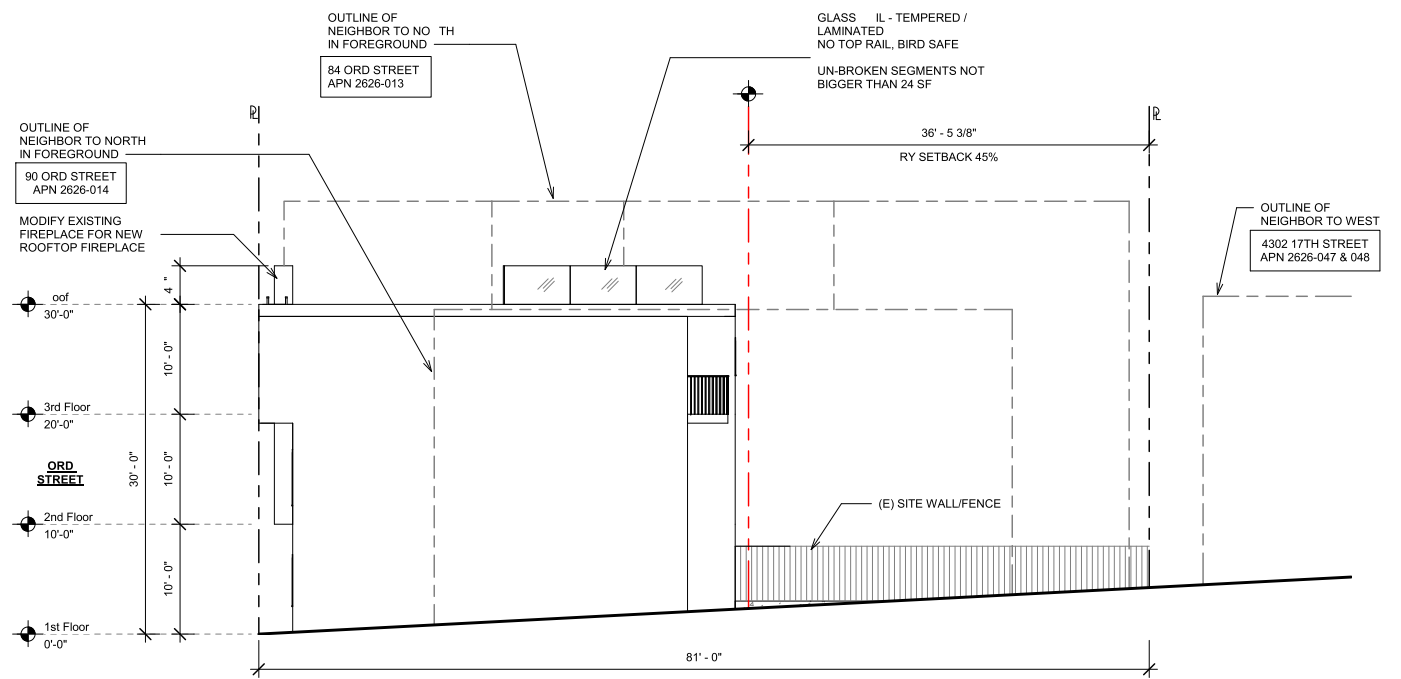
3 Existing West Elevation  
1/8" = 1'-0"



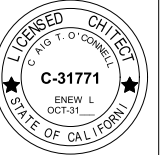
1 Existing North Elevation  
1/8" = 1'-0"



4 New West Elevation  
1/8" = 1'-0"



2 New North Elevation  
1/8" = 1'-0"



Puta- DU  
4300 17th Street,  
San Francisco, CA  
94114

REVISIONS

No.	Description	Date
1	Pre-App B-09	6.16.19

DU

Elevations

Project number 19-18

Date 07.11.19

Drawn by RB

Checked by CO

A6

Scale S SHOWN













## LAND USE INFORMATION

PROJECT ADDRESS: 4300 17TH ST  
RECORD NO.: 2019-013808CUAVAR

	EXISTING	PROPOSED	NET NEW
<b>GROSS SQUARE FOOTAGE (GSF)</b>			
Parking GSF	401	272	-129
Residential GSF	3,981	3,128	3,128
Retail/Commercial GSF			
Office GSF			
Industrial/PDR GSF <i>Production, Distribution, &amp; Repair</i>			
Medical GSF			
Visitor GSF			
CIE GSF			
Usable Open Space	1,458	646 and 500	-312
Public Open Space			
Other ( )			
<b>TOTAL GSF</b>	<b>4,382</b>	<b>3,128</b>	<b>3,128</b>
	<b>EXISTING</b>	<b>NET NEW</b>	<b>TOTALS</b>
<b>PROJECT FEATURES (Units or Amounts)</b>			
Dwelling Units - Affordable		1 (volunteered)	1 (volunteered)
Dwelling Units - Market Rate	2	2	4
Dwelling Units - Total	2	3	5
Hotel Rooms			
Number of Buildings	1	1	2
Number of Stories	3	3	3
Parking Spaces	1	0	1
Loading Spaces			
Bicycle Spaces	0	5	5
Car Share Spaces			
Other ( )			

	EXISTING	PROPOSED	NET NEW
LAND USE - RESIDENTIAL			
Studio Units			
One Bedroom Units			
Two Bedroom Units	2	4	2
Three Bedroom (or +) Units			
Group Housing - Rooms			
Group Housing - Beds			
SRO Units			
Micro Units			
Accessory Dwelling Units	0	1	1

# Parcel Map

© COPYRIGHT SAN FRANCISCO CITY & COUNTY ASSessor 1988

2626

**LOTS MERGED**  
 LOT 10 19 04/12/20 147 25:1828

lot15 into lots41&42 for 2005 roll  
 lot9A into lots43&44 for 2006 roll  
 lot7 into lots49&50 for 2008 roll  
 lot1 into lots45&46 for 2008 roll  
 lot14B into lots47&48 for 2008 roll  
 lot26 into lots51&52 for 2009 roll  
 lot30 into lots53&54 for 2013 roll  
 lot32 into lots72&73 for 2013 roll  
 Lot 9 into lots 64 & 65 for 2017 roll

44.9% LOWER TERRACE

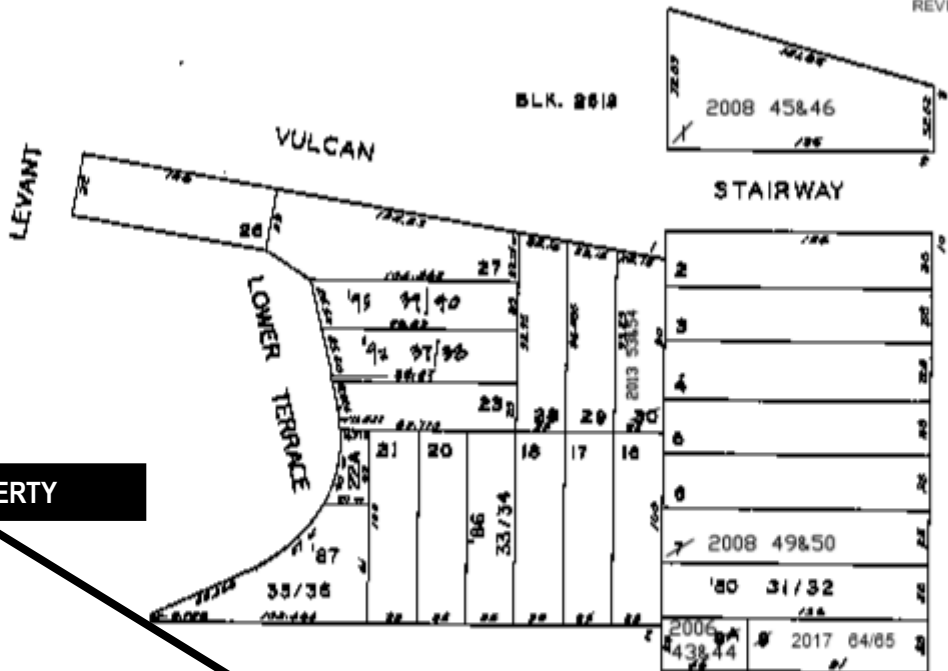
A CONDOMINIUM

LOT	UNIT	% COMM. AREA
89	56	69.72
90	54	39.28



REVISED '00  
 '88  
 '87  
 '92  
 '95  
 Revised 2005  
 Revised 2006  
 Revised 2008  
 Revised 2009  
 Revised 2013  
 REVISED 2017

PARK LANE TR, 2 & 3 BLK. U  
 HORNERS ADDN, BLK. 203



**SUBJECT PROPERTY**

4306-4308 17th St.  
A CONDOMINIUM

LOT	UNIT	% COMM. AREA
41	4306	51.34
42	4308	48.66

1 SATURN ST.  
A CONDOMINIUM

LOT	UNIT	% COMM. AREA
43	1	35.01
44	2	64.99

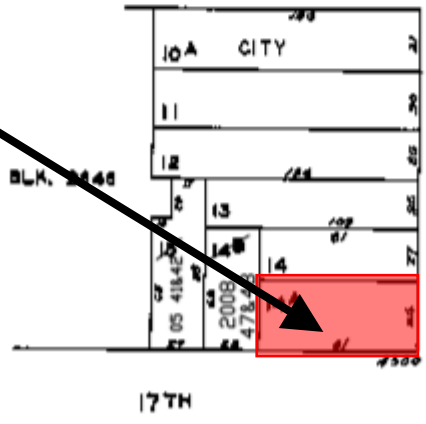
30 DRD STREET  
A CONDOMINIUM

LOT NO.	UNIT NO.	%COMMON AREA
31	1	50
32	2	50

14-16 SATURN ST.  
A CONDOMINIUM

LOT	UNIT	% COMM. AREA
33	14	31.36
34	16	68.64

10-12 LOWER TERRACE



Conditional Use Hearing  
 Case Number 2019-013808CUAVAR  
 4300 17th Street

# Sanborn Map\*

SUBJECT PROPERTY



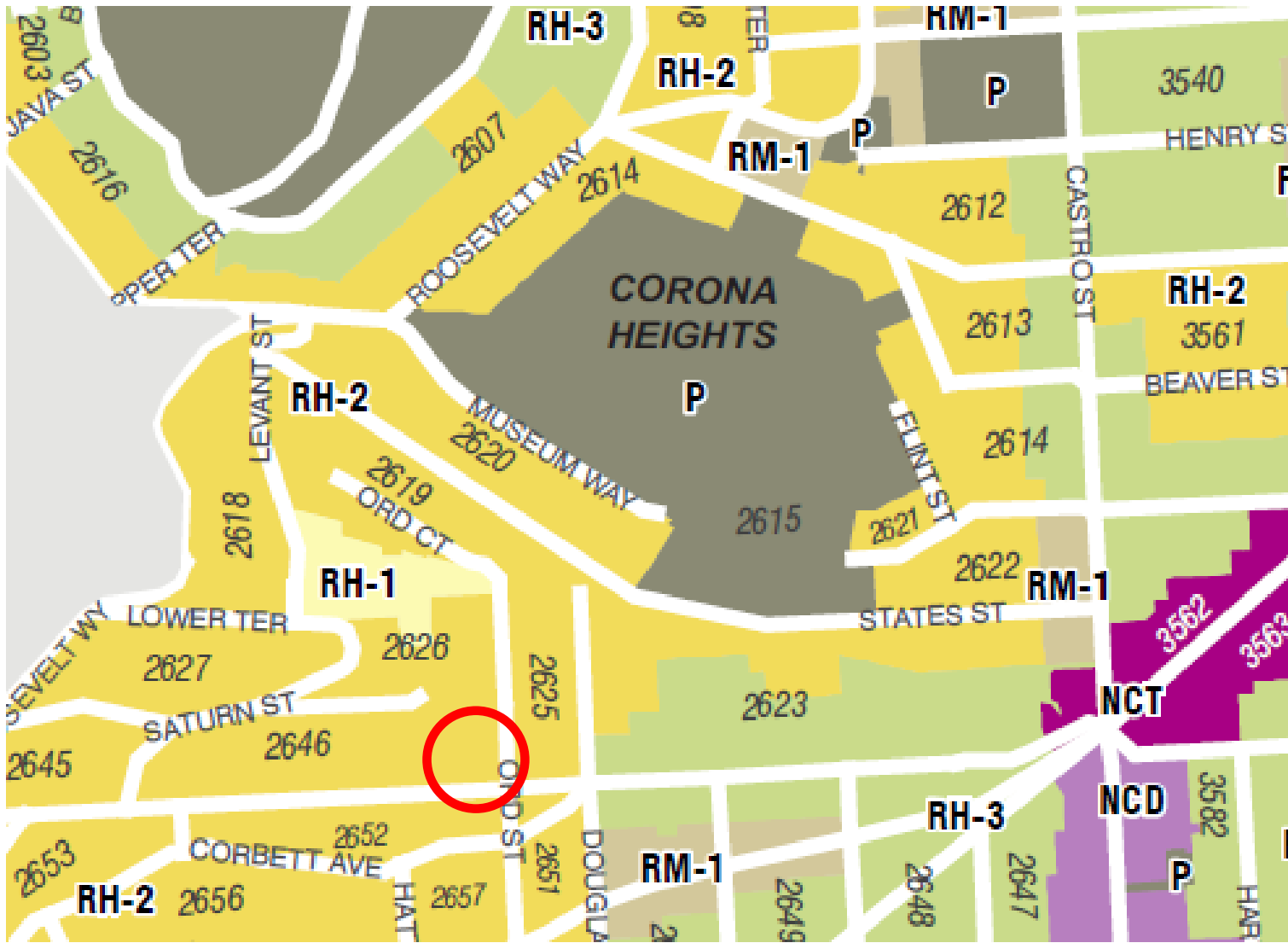
\*The Sanborn Maps in San Francisco have not been updated since 1998, and this map may not accurately reflect existing conditions.

Conditional Use Hearing  
Case Number 2019-013808CUAVAR  
4300 17th Street





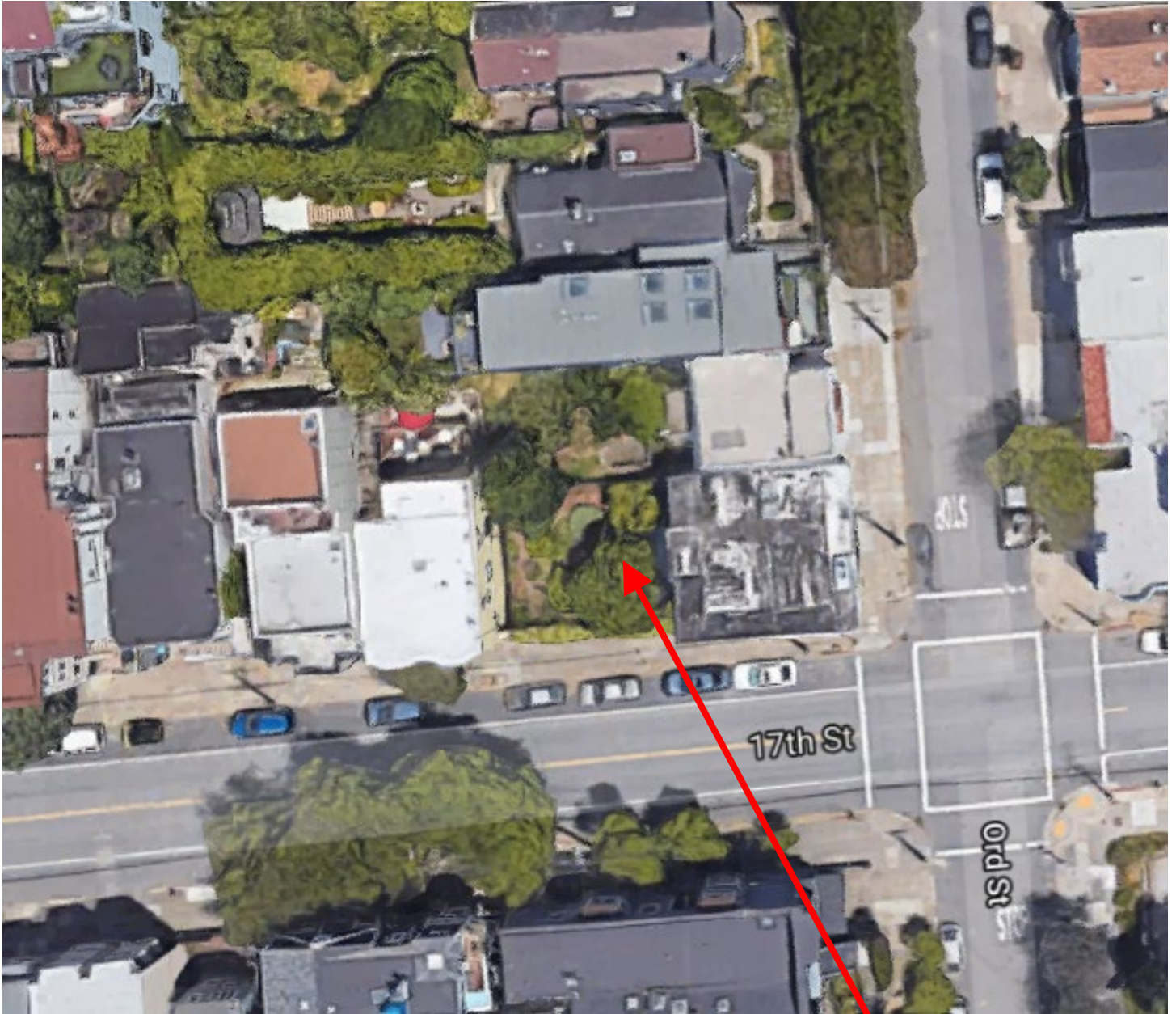
# Zoning Map



Conditional Use Hearing  
Case Number 2019-013808CUAVAR  
4300 17th Street



# Aerial Photo



**SUBJECT PROPERTY**



Conditional Use Hearing  
Case Number 2019-013808CUAVAR  
4300 17th Street

# Aerial Photo



**SUBJECT PROPERTY**



Conditional Use Hearing  
Case Number 2019-013808CUAVAR  
4300 17th Street

# Existing Site Photo



Conditional Use Hearing  
Case Number 2019-013808CUAVAR  
4300 17th Street

# Existing Site Photo



Conditional Use Hearing  
Case Number 2019-013808CUAVAR  
4300 17th Street

# Existing Site Photo



Conditional Use Hearing  
Case Number 2019-013808CUAVAR  
4300 17th Street

## Attachment in Support of Entitlement Applications - 4300 17th Street / Pluta

---

- I. Background**
    - A. Site Description
    - B. Project Description
    - C. Surrounding Neighborhood & Properties
    - D. Community Outreach
  - II. Application of the Planning Code**
    - A. Planning Code Compliance
  - III. Application of the Conditional Use Authorization Requirements**
    - A. San Francisco General Plan
    - B. Planning Code Section 303 Criteria
    - C. Planning Code Section 101.1(b) Priorities
  - IV. The Special Use District and Ordinance**
    - A. Corona Heights Large Residence Special Use District
    - B. Application of the Special Use Ordinance
  - V. Analysis of Section 305(c) Variance Criteria**
    - A. Authority
    - B. Analysis of the Zoning Administrator’s Application of Section 305(c) Criteria
    - C. Examples of the Most Factually Relevant Precedent
  - VI. Application of Section 305(c)’s Variance Criteria**
    - A. Application of Section 305(c)
- 

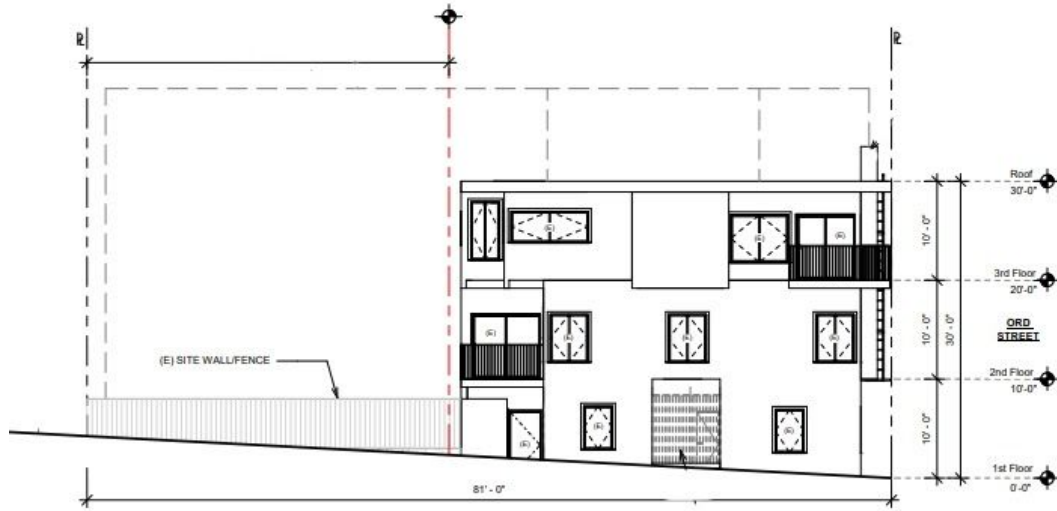
### I. BACKGROUND

- A. Site Description.** 4300 17th Street (the “Property” or “Subject Lot”) is a 2,916 square feet (“sqft”) corner lot (2626/014A) zoned multi-unit residential (RH-2).<sup>1</sup> Built in 1953 and vertically expanded in 1960, an existing two-unit residential building (the “Existing Building”) currently occupies the eastern half of the Subject Lot. The Existing Building has 2,544 sqft of living space across three floors; a rent-controlled dwelling on each of the top two floors and a ground floor with garage, utility, and storage space.

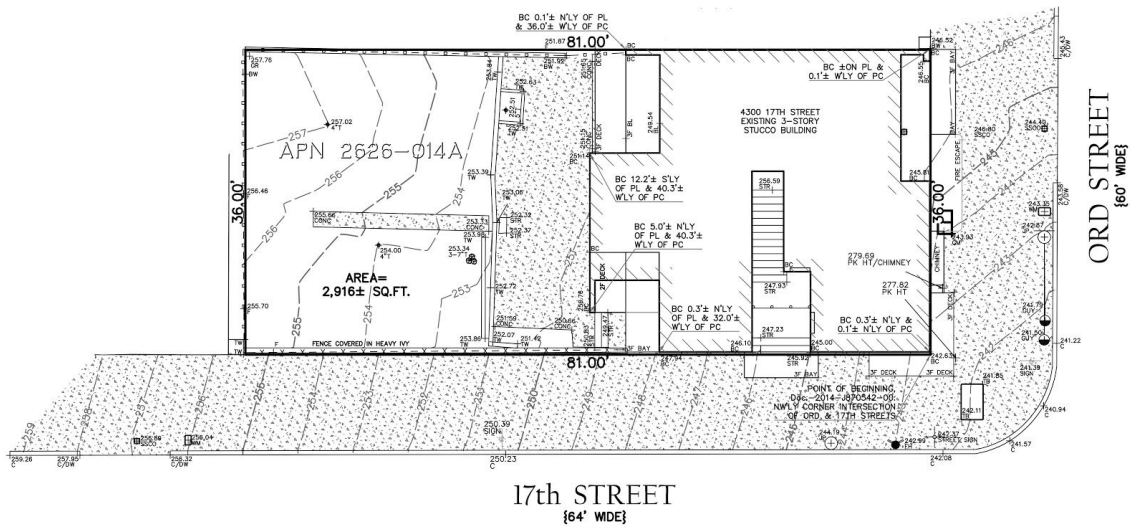
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<sup>1</sup> The Applicant is the owner of the Property and resides in one of the two units in the Existing Building. The other unit has been occupied by the same tenant (the “Tenant”) for the last 16 years. The Existing Building is subject to rent- and eviction-control. No evictions have occurred at the Property to the Applicant’s knowledge. Exhibit A (Accessor Blocks 2626 and 2646)

Attachment in Support of Conditional Use Application - 4300 17th Street / Pluta



The Property is located on the northwest corner of the intersection of 17th Street and Ord Street in the Corona Heights neighborhood of San Francisco, District 8.



The western half and backyard of the Subject Lot is sloped, fenced in, vacant land. **The Property is unique in that it contains a large, undeveloped section of land adjacent to the public right of way in a transit-rich part of San Francisco.**<sup>2</sup>

<sup>2</sup> Exhibit B (Photographs of the Property and Surrounding Area).





**B. Project Description.** The main purpose of this project is to build Below Market Rate (“BMR”) affordable housing rental units in the Corona Heights neighborhood of San Francisco. In order to do so, Applicant is seeking variance from Sections 121 (lot size), 134 (rear yard setback), and 135 (usable open space) of the Planning Code in order to subdivide the Subject Lot into two legally-distinct lots (the “Proposed Lots”) and a Conditional Use Authorization as necessitated by Planning Code Sections 249.77(d)(1) (gross floor area exceeding 3,000 square feet) and 249.77(d)(4) (less than 45% rear yard depth), both conditions within the *Corona Heights Large Residence Special Use District* (“Special Use District” or “Special Use Ordinance”).<sup>3</sup> Approvals would allow the Applicant to construct:

1. **New Building.** A new two regulation-unit plus accessory dwelling unit (“ADU”) building (the “New Building”) on the western, now-vacant half of the Subject Lot. The New Building would have approximately 3,099 sqft of living space across three units and four levels (plus a 235 sqft ground floor garage with one-vehicle and three Class 1 bicycle parking spaces). Individually, the New Building would contain:
  - a. **ADU.** A ground floor ADU-studio apartment with 473 sqft of living space and an independent entryway with direct access to 17th Street.
  - b. **Middle Unit.** A second floor two-bedroom apartment with 972 sqft of living space.
  - c. **Upper Unit.** A third- and fourth-floor, three-bedroom apartment with 1,419 sqft of living space.

---

<sup>3</sup> San Francisco, California, Municipal Code, Art. III, §§ [121](#), [134](#), [135](#) and [249.77](#). The original version of this Project proposed roof decks for both the New and Existing Buildings in order to satisfy the open space requirements of Section 135. Based on guidance from Planning Department staff, those roof decks have been removed and variance from Section 135 added. At the option of the City, the Applicant is open to adding one or both roof decks back to the Project to satisfy the requirements of Section 135.

2. **ADU in Existing Building.** A new one-bedroom ADU would be constructed within the ground floor of the Existing Building.<sup>4</sup> The ADU would have ~607 sqft of living space, access to one-vehicle and three Class 1 bicycle parking spaces, and an independent entryway with direct access to the street.<sup>5</sup>

No.	Unit	Building	Type	Rental Type	Floor(s)	Bedroom(s)	Area (sqft)
1	Existing	Existing	Regulation	Rent-controlled	Upper	2	1,103
2	Existing	Existing	Regulation	Rent-controlled	Middle	2	934
3	New	Existing	ADU	BMR Affordable Housing	Ground	1	607
4	New	New	Regulation	Market-rate	Upper	3	1,419
5	New	New	Regulation	Market-rate	Middle	2	972
6	New	New	ADU	BMR Affordable Housing	Ground	Studio	473

- C. **Surrounding Neighborhood and Properties.** The surrounding neighborhood consists of a diverse mixture of residential buildings representing a wide variety of architectural styles and features.<sup>6</sup> West and upslope on 17th Street (adjacent to Applicant’s backyard), is a three-story, two-unit condominium (4302-4304 17th St.), a five-story, two-unit condominium (4306-4308 17th St.), and a two-building, three-unit dwelling (4310 17th St.), respectively.

<sup>4</sup> As discussed in greater detail in footnote 34, the Existing Building BMR ADU is not a financially viable standalone project, and is therefore included in the scope of this Project.

<sup>5</sup> To create additional living space for the ADU, a ground floor staircase in the existing building will likely be removed, which would add an additional ~30 sqft of living space to the Tenant’s middle unit.

<sup>6</sup> In August 2017 the San Francisco Historic Preservation Commission adopted a Historic Context Statement commissioned specifically for the Corbett Heights neighborhood (which included the Property). Corbett, Michael R., [Corbett Heights Historic Context Statement](#), (Aug. 16, 2017). According to the *Historic Context Statement* the area contains a vast array of architectural styles, however “[t]he buildings of Corbett Heights are not generally distinguishable in their physical characteristics from buildings of the same periods in other San Francisco neighborhoods. The structural systems and materials, styles, forms and features, and siting of these buildings are associated with historic contexts that could be written for the entire city.” See also Section III.A.D., below.

Attachment in Support of Conditional Use Application - 4300 17th Street / Pluta



North and upslope on Ord Street is a three-story, single-unit dwelling (90 Ord St.), a four-story, two-unit dwelling (84-86 Ord St.), and a two-story, single-unit dwelling (80 Ord St.), respectively.



Applicant's downslope and across-the-street neighbors represent a similarly diverse mix of styles, features, densities, and sizes.

**D. Community Outreach.** Applicant lives in the Existing Building. His goal is to build the first ever BMR affordable housing in Corona Heights. From the very inception of the Project, Applicant

has been as open, transparent, and communicative as possible with his neighbors, the surrounding community, and the local neighborhood associations. Applicant's outreach efforts began in the spring of 2019 with handwritten cards and letters to his 30 closest neighbors, introducing himself, and offering an introductory meeting (and coffee). Throughout 2019 there were countless one-on-one briefings, phone calls, emails, sidewalk chats, and other interactions with his neighbors about the Project. Applicant is a dues paying member of both neighborhood associations, has attended quarterly member meetings for both, and committed to both that he will attend each and every membership meeting to be available to answer questions and receive feedback. Contemporaneous with filing this application in December 2019 Applicant distributed flyers to his closest ~150 neighbors and posted on *NextDoor.com* introducing himself, sharing details of the Project, and offered to meet and add any interested neighbor to a listserv Applicant created to provide updates on the status of the Project going forward.<sup>7</sup> The onset of the Coronavirus pandemic made continued in-person engagement with the neighbors impossible. To overcome this challenge, in the month before Applicant's Planning Commission hearing date, Applicant intends to host several Zoom conference calls to further discuss the Project and answer questions from his neighbors. Applicant has also announced his intention to run for a seat on the Board of the one remaining Neighborhood Association on a platform focused on encouraging the addition of affordable housing in Corona Heights.

Applicant has also focused on engaging with the Existing Building's Tenant every step of the way. Tenant has provided invaluable feedback that materially changed and improved the Project; including a range of planned improvements to Tenant's rent-controlled apartment as well as steps to minimize any disruption related to future construction activity.

## **II. APPLICATION OF THE PLANNING CODE**

**A. Planning Code Compliance.** The Project is consistent with relevant provisions of the Planning Code in the following manner:

1. **Height.** Planning Code Section 260 requires that all structures be no taller than the height prescribed in the subject height and bulk district.<sup>8</sup> The Project is located in a 40-X Height and Bulk District; the New Building would comply fully with all related height and bulk limits.
2. **Front Setback.** Planning Code Section 132 requires, in RH-2 Districts, a front setback that complies with legislated setbacks (if any) or a front setback based on the average of adjacent properties (and in no case shall the required setback be greater than 15 feet).<sup>9</sup> The New Building would adopt the required front setback based on the average of adjacent neighbors along 17th Street.
3. **Side Yard.** Planning Code Section 133 does not require side yard setbacks in RH-2 Districts, however, the New Building would include a side yard set back of 3.5 feet on

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<sup>7</sup> Indeed, anyone reading *this* document is invited to email Applicant (scott.pluta@gmail.com) and join the Project listserv, ask questions, and provide feedback.

<sup>8</sup> S.F. Code [§ 260](#) (2018).

<sup>9</sup> *Id.* at [§ 132](#) (2019).

the eastern side of the New Building, symmetrical with the adjacent neighbor's building.  
<sup>10</sup>

4. **Street Frontage.** The ground floor of the New Building would meet the standards set forth in Planning Code Section 144 with respect to entrance dimensions and features; the off-street parking entrance would not exceed 10 feet and the minimum one-third width visual relief at the ground floor street frontage would be provided.<sup>11</sup>
6. **Off-Street Parking.** Planning Code Section 151 requires one off-street parking space per dwelling unit.<sup>12</sup>
  - a. **Existing Building.** It is unclear the number of official parking spaces attributed to the Existing Building, however, in order to maximize living space for the new rent-controlled ADU, the garage space would be reduced by ~150 sqft, though one full off-street parking space would remain. Per City Ordinance, "[n]o parking is required for the ADU."<sup>13</sup>
  - b. **New Building.** The original design for the New Building included two off street parking spaces, however, based on direction from the Department of Planning staff the design was reduced to one off-street parking spot.<sup>14</sup>
7. **Bicycle Parking.** Planning Code Section 155.2 requires one Class 1 Bicycle Parking space per dwelling unit.<sup>15</sup> The Project proposes to meet that requirement with three each Class 1 Bicycle Parking spaces for both the New and Existing Buildings.
8. **Density.** Planning Code Section 209.1 permits up to two dwelling units per lot in an RH-2 District.
  - a. **Existing Building.** The Project proposes construction of a BMR affordable housing ADU (in addition to the two existing regulation dwelling units); a legally permissible exception to the zone's density limit.<sup>16</sup>
  - b. **New Building.** The Project proposes the construction of two regulation dwellings units plus another BMR affordable housing ADU; a legally permissible exception to the District's density limit.<sup>17</sup>

### III. APPLICATION OF THE CONDITIONAL USE AUTHORIZATION REQUIREMENTS

- A. **San Francisco General Plan.** Planning Code Section 303 establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use Authorization

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<sup>10</sup> *Id.* at [§ 133](#) (2019).

<sup>11</sup> *Id.* at [§ 144](#) (2013).

<sup>12</sup> *Id.* at [§ 151](#) (2019).

<sup>13</sup> Department of Building Inspection, San Francisco, [Accessory Dwelling Unit Program per Ordinance 162-16](#) (2016).

<sup>14</sup> *Id.*

<sup>15</sup> S.F. Code [§ 155.2](#) (2017).

<sup>16</sup> [Ordinance No. 162-16](#) (2016).

<sup>17</sup> *Id.*

approval.<sup>18</sup> One of Section 303's criterion specifically evaluates consistency with the Objectives and Policies of the San Francisco General Plan.<sup>19</sup> Applicant's Project is not only consistent with but advances at least 22 important Objectives and Policies of the General Plan; the elements of which fall broadly into the following categories: **(1) Housing, (2) Transportation, (3) Environment, and (4) Design.**

1. **Housing.** The introduction to the General Plan's Housing Objective notes succinctly: "[a]ffordable housing is the most salient housing issue in San Francisco and the Bay Area"<sup>20</sup> Consistent with this statement, **Applicant's Project will add the first and only BMR affordable rental housing in the Corona Heights neighborhood.** To achieve these policy ends, the General Plan encourages and highlights (c) flexibility in the City's zoning and entitlement process, and (d) the essential role private capital plays in the development of housing in San Francisco.

**a. Applicant's Project Will Add Affordable Rental Housing**

*Policy 1.1 - Plan for the full range of housing needs in the City and County of San Francisco, especially affordable housing. San Francisco's housing policies and programs should provide strategies that promote housing at each income level, and furthermore identify sub-groups, such as middle income and extremely low income households that require specific housing policy. Policy 8.1 - Support the production and management of permanently affordable housing. Policy 1.5 - Consider secondary units in community planning processes where there is neighborhood support and when other neighborhood goals can be achieved, especially if that housing is made permanently affordable to lower-income households. Secondary units ("in-law" or "granny units") are smaller dwelling units within a structure containing another much larger unit(s), frequently in basements, using space that is surplus to the primary dwelling. Secondary units represent a simple and cost-effective method of expanding the housing supply. Such units could be developed to meet the needs of seniors, people with disabilities and others who, because of modest incomes or lifestyles, prefer or need small units at relatively low rents. Policy 4.1 - Develop new housing, and encourage the remodeling of existing housing, for families with children. Much of the new housing constructed in the last decade was smaller studios and one-bedroom units. Policy 4.4 - Encourage sufficient and suitable rental housing opportunities, emphasizing permanently affordable rental units wherever possible. The City should make a concerted effort to do what is within its control to encourage the continued development of rental housing throughout the city, including market-rate rentals that can address moderate and middle income needs. Sixty-two percent of San Francisco's residents are renters. In the interest of the long term health and diversity of the housing stock the City should work to preserve this approximate ratio of rental units. Policy 4.5 - Ensure that new permanently affordable housing is located in all of the city's neighborhoods, and encourage integrated neighborhoods, with a diversity of unit types provided at a range of income levels. While San Francisco's neighborhoods are more economically integrated than their suburban counterparts, concentrations of low-income households still exist. Special efforts should be made to expand housing opportunities for households of lower-income levels in other areas of the city, and community planning efforts should include policies and programs that foster a diverse, integrated housing stock. These planning efforts should also include protections against the displacement of existing low- and moderate-income households by higher income groups. Construction of new affordable housing projects should likewise be*

<sup>18</sup> S.F. Code [§ 303](#) (2019). See Department of Planning, San Francisco, [General Plan](#) (1996). A substantially similar requirement is also found in an application for variance. See [Variance from the Planning Code Application](#).

<sup>19</sup> S.F. Code [§ 303\(c\)\(3\)](#).

<sup>20</sup> [General Plan, Housing Element](#), Part II: Objectives and Policies, at 2 (2014).

*distributed throughout the city, to ensure equitable neighborhoods as well as equal access to residents living in different parts of San Francisco.*<sup>21</sup>

The very first policy of the first element in the very first section of the General Plan is Policy 1.1, entitled “Plan for the full range of housing needs in the City and County of San Francisco, **especially affordable housing.**”<sup>22</sup> The Project’s diverse distribution of dwelling unit types and sizes is consistent with Policy 1.1 as well as 4.5 and 8.1 of the *General Plan*; the creation of housing, especially affordable housing, across multiple “sub-groups” including middle income and low income households. Consistent with these Policies two of the four proposed dwellings units would be BMR affordable housing units and therefore “permanently affordable to lower-income households.”<sup>23</sup>

All four new dwelling units would add directly to the City’s *rental* housing inventory, consistent with Policies 3.1 and 4.4. This fact is positively unique among recent one- and two-unit new residential development in San Francisco. In 2018, eight *two-unit buildings* were completed, seven were condominiums and only the eighth added a single rental unit to the City’s inventory. In 2018, 29 *single family homes* were completed, and none appear to have been made available for rent.<sup>24</sup>

Policy 4.5 seeks to ensure that “new permanently affordable housing is located in all of the city’s neighborhoods.” The Mayor’s Office of Housing and Community Development (“MOHCD”) currently manages approximately 22,797 affordable housing units across 376 locations throughout San Francisco.<sup>25</sup> **However, not a single affordable housing unit or location exists within the Corona Heights neighborhood.**

With respect to ADUs, since the inception of the program in 2014, of the ~150 “naturally affordable” ADUs completed in San Francisco to date, **only one ADU has been completed in the Corona Heights Special Use District** and none of the ~150 ADUs are BMR affordable units. Applicant’s Project would add two BMR affordable housing ADUs and advance Policy 4.5’s goal of inclusive housing in a neighborhood that has never had any affordable housing.

#### **b. Applicant’s Project Will Add Rent-Controlled Housing**

*Policy 3.1 Preserve rental units, especially rent controlled units, to meet the City’s affordable housing needs. Sixty-two percent of San Francisco’s residents are renters. In the interest of the long term health and diversity of the housing stock the City should work to preserve this approximate ratio of rental units. The City should pay particular attention to rent control units which contribute to the long term existence and affordability of the city’s rental housing stock without requiring public subsidy, by continuing their protection and supporting tenant’s rights laws. Efforts to preserve rental units from physical deterioration include programs that support landlord’s efforts to maintain rental housing such as: maintenance assistance programs, programs to support*

<sup>21</sup> *Id.* at 20.

<sup>22</sup> *Id.* at 10. (emphasis added).

<sup>23</sup> *Id.* at 10.

<sup>24</sup> Database the Department of Building Inspection maintains for ADUs, Public Records Request (Sept. 23, 2019).

<sup>25</sup> See [Mayor’s Office of Housing and Community Development Affordable Rental Portfolio](#), DataSF.gov. See also [Inclusionary Housing Monthly Report](#) (Sept. 2019). [Ordinance 49-14](#) (the precursor/pilot ADU ordinance) an ADU that was constructed in February 2018 at 97 Saturn Street (Permit 201506017714) is one of 16 included in the City’s Inclusionary Housing Report however is not technically considered a BMR affordable housing unit. Subsequent ADUs (per [Ordinance 162-16](#)) are not included in the Report.

*and enhance property management capacity, especially for larger companies, and programs to provide financial advice to landlords.*<sup>26</sup>

Approval of the Project would also ensure that the Existing Building remained rent-controlled rental housing into the future. Between 2007 and 2013 alone, 2,718 rent-controlled units in two-unit buildings were converted into condominiums in San Francisco.<sup>27</sup> Five of Applicant's most immediate seven neighbors on 17th Street previously took advantage of the condominium conversion process (4302-4304, 4306-4308, 4318 #1/#2, 4322 A/B, 4328-4328a 17th Street), removing rent-controlled units from the City's rental inventory. If the Project is approved, Applicant would not pursue the condominium conversion process in either the Existing or New Buildings nor in any other way remove rent-controlled housing from the City's inventory

### c. Flexibility and Accommodations

*Policy 7.5 - Encourage the production of affordable housing through process and zoning accommodations, and prioritize affordable housing in the review and approval processes. Local planning, zoning, and building codes should be applied to all new development, however when quality of life and life safety standards can be maintained zoning accommodations should be made for permanently affordable housing. For example exceptions to specific requirements including open space requirements, exposure requirements, or density limits, where they do not affect neighborhood quality and meet with applicable design standards, including neighborhood specific design guideline, can facilitate the development of affordable housing. Policy 10.1 - Create certainty in the development entitlement process, by providing clear community parameters for development and consistent application of these regulations. The ultimate goal of a 'certain' development entitlement process is to create greater transparency and accountability in the process for all parties, empowering both the public and developers.*

Policy 7.5 of the *General Plan* encourages "the production of affordable housing through process and zoning accommodations."<sup>28</sup> Applicant's Project would add two new affordable housing units. These additions are wholly contingent upon the outcome of the Conditional Use Authorization and variance applications. Entitlements are exceptional privileges given by the City that, under the circumstances, would be consistent with and in furtherance of Policy 7.5 of the *General Plan*.

Policy 10.1 encourages certainty in the development entitlement process. Before undertaking this project, Applicant performed a substantial amount of research and reviewed, among other things, all lot subdivision-related variance decisions from January 2000 through May 2019 [and subsequently extended through June 2020]. During this time period, 111 unique variance applications were heard by the Zoning Administrator. Of those, 92 (or 82.9%) were granted outright and 19 were denied. Of the 19 that were denied, 10 were appealed, two were upheld, one was withdrawn, and seven were overturned (and granted) on appeal. **Including successful appeals, therefore, 99 of 111 (or 89.2%) variance applications were eventually granted.**<sup>29</sup> Among the 12 applications that were denied, nine were largely due to the loss of affordable housing generally and rent-controlled housing specifically, one involved

<sup>26</sup> *General Plan*, at 15.

<sup>27</sup> *General Plan*, at A-14.

<sup>28</sup> *General Plan*, at 28.

<sup>29</sup> Of the applications that sought variance from both Code Sections 121 and 134 as Applicant is seeking here, 59 of 59 (or 100%) were granted.



illegal housing, and two proposed lot patterns drastically inconsistent with the surrounding areas.<sup>30</sup> Applicant also reviewed the six Conditional Use Authorization applications filed pursuant to the Special Use Ordinance.<sup>31</sup> Thus far all have been approved by the City. Applicant compared the facts of his Project with previously successful entitlement applications, concluded that his Project fit squarely within those precedents, and only then decided to move forward with this Project.

Where Policy 10.1 promotes certainty in the development entitlement process, nothing could provide more certainty than consistency and predictability in entitlement administration.

#### d. Private Sector Participation

*Policy 7.7 - Support housing for middle income households, especially through programs that do not require a direct public subsidy. The City should support innovative market-based programs and practices that enable middle income housing opportunities. Creating smaller and less expensive unit types that are “affordable by design” can assist in providing units to households falling in this gap.<sup>32</sup> Policy 2.4 - Promote improvements and continued maintenance to existing units to ensure long term habitation and safety. As the city’s housing stock ages, maintenance becomes increasingly important. The majority of San Francisco housing is more than 60 years old. Property owners should be encouraged and supported in efforts to maintain and improve the physical condition of housing units. Policy 3.1 Preserve rental units, especially rent controlled units, to meet the City’s affordable housing needs. Efforts to preserve rental units from physical deterioration include programs that support landlord’s efforts to maintain rental housing such as: maintenance assistance programs, programs to support and enhance property management capacity, especially for larger companies, and programs to provide financial advice to landlords.”<sup>33</sup>*

Policy 7.7 of the *General Plan* encourages market-based programs to help address the City’s housing crisis. The typical affordable housing development in San Francisco is a combination of market-rate and affordable housing units, where in part the market-rate units subsidize the affordable housing units. Applicant’s Project is no different; **the ability to bundle BMR affordable housing with market rate housing is absolutely essential to the economic viability of the overall Project.**<sup>34</sup>

<sup>30</sup> In one case, the applicant was seeking to create the two smallest lots (~1,600 sqft each) on a block where the typical lot size was over 3,000 sqft. In the other decision, the standard development pattern was single family homes on ~2,500 sqft lots, whereas the applicant was seeking to create one lot as small at 1,390 sqft. These stand in stark juxtaposition to what Applicant is proposing here; lot patterns and sizes wholly consistent with the surrounding area. See Section III.B.2(a)(i).

<sup>31</sup> Six Conditional Use Authorization applications have been filed and decided to date; four have been approved and one is currently pending. See 48 Saturn Street (Approved April 2018 after a 2nd Unit was added per the Commission); 143 Corbett Avenue (Approved June 2018); 88 Museum Way (Approved January 2019); and 42 Ord Court (Approved September 2019 with modifications); 271 Upper Terrace (Approved December 2018); 37 Saturn Street (Approved January 2020).

<sup>32</sup> The middle unit in the New Building would fit solidly in this “middle income” sub-group. See *General Plan*, Part II, at p.29 (“Market rate housing in San Francisco is generally affordable to households making 180% of median income or above. Affordable housing programs, including City subsidized affordable housing and inclusionary housing, are provided to households making 120% of median income or below. This leaves a gap of housing options for households in between those two categories, referred to as ‘middle income’ households and defined for the purposes of this Housing Element as households making between 120 and 150% of median income. Unfulfilled demand for middle income housing impacts the supply and pressure on housing stock for lower income households.”).

<sup>33</sup> *Id.*

<sup>34</sup> For example, based solely on its individual economics, **the proposed BMR ADU in the Existing Building would not be a financially viable standalone project.** The average cost to construct an ADU in San Francisco is ~\$200,000. See Civil Grand Jury, at 9. Due to additional Code-related costs the average bid received to construct this ADU was \$311k. Assuming rent of \$2,050 per month (80% of the Unadjusted Area Median Income for the Department of Housing and Urban Development [Metro Fair Market Rent Area](#) that contains San Francisco is \$2,000 for two people, 30% of which is \$24,600, or \$2,050 per month), to cover *only the cost of construction*, the payback period would be 12 years and eight months. Including all other unit-related

Consistent with Policies 2.4 and 3.1 of the *General Plan*, approval of the Project would allow for the improvement and continued maintenance of the Existing Building and the rent-controlled units therein. As stated in the *General Plan*, “[i]n order to successfully deliver affordable housing the City and private sector must have the tools they need to develop and rehabilitate affordable housing. It is in the interest of the City to ensure that both public and private entities that participate in the delivery and maintenance of affordable housing have resources and materials, in addition to funding that are necessary to deliver affordable housing.”<sup>35</sup>

The upper- and middle- market rate units in the New Building are required to subsidize, not only the addition of the two BMR affordable housing units, but also to address significant deferred maintenance and upgrades in the rent-controlled Existing Building. The Existing Building was built in 1953 and a third floor was added in 1960. Since then few if any improvements or upgrades were made to the two existing rent-controlled units. Applicant’s Project would include among other maintenance projects and upgrades: repair an unsafe balcony and roof; renovation of the kitchens and bathrooms; upgrading windows on the second and third floors; adding ceiling fans; in-unit washer and dryer units on the second and third floors, wood flooring on the third floor, new heating and air conditioning systems, and a wide range of additional fire and earthquake safety features including a sprinkler system and seismic retrofit.

## **2. Transportation**

*Policy 1.10 - Support new housing projects, especially affordable housing, where households can easily rely on public transportation, walking and bicycling for the majority of daily trips. Infill housing in transit-rich areas can provide lower income households, affordable unsubsidized housing opportunities. Housing with easy access to transit facilitates the City’s efforts to implement the City’s Transit First policy. Additionally, housing near transit can provide site efficient and cost effective housing. In reviewing reliance on public transportation, it is important to distinguish areas that are “transit-rich,” and located along major transit lines, from those that are simply served by transit. Policy 13.1 Support “smart” regional growth that locates new housing close to jobs and Transit. In San Francisco, and in many of the other job centers in the Bay Area, workers struggle to find housing they can afford. At the same time, employers have difficulty recruiting employees, because of the lack of affordable options near their locations. These trends exacerbate long-distance commuting, one of the primary sources of greenhouse gas emissions; they also negatively impact the working families struggling with such commutes by demanding more travel time and higher travel costs. The City should support efforts to construct more housing near jobs, and near transit. Policy 12.2 - Consider the proximity of quality of life elements, such as open space, child care, and neighborhood services, when developing new housing units. These elements enable residents to continue to live in their neighborhood as their needs change, and encourage neighborhood relationships. Access to these amenities and services at a neighborhood level enables residents to make many trips on foot or public transportation. Policy 13.3 Promote sustainable land use patterns that integrate housing with transportation in order to increase transit, pedestrian, and bicycle mode share. Sustainable land use patterns include those located close to jobs and transit, as noted above. But they also include easy access to, and multiple travel modes between, other services, shopping and daily needs. This could mean all services needed are located within an easy walk of the nearby housing; it could also mean that such services are available by bike or transit, or in the best cases, by all modes. The common factor in sustainable land use patterns is that the need for a private car is limited. Policy 12.1 - Encourage new housing that relies on transit use and environmentally sustainable patterns of movement. To the extent possible these trips should be easily accommodated on the existing transportation network with increased services. To that end the city should promote housing development in areas that are well*

operating and maintenance expenses over that period of time would push the breakeven point to 20+ years. Neither time horizon would reasonably support investment in the Existing Building BMR ADU as a standalone project.

<sup>35</sup> *General Plan*, at 30.

*served with transportation infrastructure including BART trains, and Muni light rail trains. Additionally, bicycle amenities can and should be an integral component to housing and supporting the City's Transit First policy.*

Applicant is proposing to build new affordable and market rate housing in an area well-served by the City's public transit system. **The Property is located a mere 0.3 miles, or a five minute walk, from the Castro neighborhood mass transportation hub** which includes a Muni Metro Rail station (KT, L, M, S lines), Muni Bus lines (24, 35, 37), and a Historic Streetcar line (F).<sup>36</sup> Redfin.com describes the Corona Heights neighborhood as “a walker's paradise — daily errands do not require a car. It's a rider's paradise, with world-class public transportation.”<sup>37</sup>

“Infill housing in transit-rich areas can provide lower income households, affordable unsubsidized housing opportunities” (Policy 1.10); exactly the type of opportunity envisioned by this Project’s two BMR affordable housing units. San Franciscans living in the New and Existing Buildings would “easily rely on public transportation, walking and bicycling for the majority of daily trips” (Policy 1.10), be located “close to jobs and Transit” (Policy 13.1), be proximate to “quality of life elements” (Policy 12.2), and a range of multimodal, environmentally sustainable, transportation options (Policies 13.3 and 12.1).

### 3. Environment

*Environmental Protection: Objective 13 - Enhance the Energy Efficiency of Housing in San Francisco. Actions taken to increase the efficient use of energy may raise initial housing costs for private owners in some cases. These actions will, however, promote affordable housing in the long run by reducing annual utility expenses. San Francisco residents can save substantial sums of money and energy by undertaking an aggressive energy management program that includes community education and promotion, regulation, creative financing, and some capital investment. Special emphasis should be devoted to programs that benefit the city's renter and elderly residents, since this portion of the population pays a higher proportion of their income on energy bills. Policy 13.4 - Promote the highest feasible level of “green” development in both private and municipally-supported housing. Green development specifically relates to the environmental implications of development. Green building integrates the built environment with natural systems, using site orientation, local sources, sustainable material selection and window placement to reduce energy demand and greenhouse gas emissions. Policy 4.7 - Consider environmental justice issues when planning for new housing, especially affordable housing. The City should promote new, and rehabilitated, low-income housing on sites that do not have negative health impacts, near services and supplies so that residents have access to transit and healthy fresh food, jobs, child care and youth programs.*

Consistent with Objective 13 and Policy 13.4, the Existing and New Buildings seek to achieve the highest feasible levels of green development and operation.

As a greenfield opportunity, the New Building would provide an opportunity for a wide range of potential green building elements including but not limited to use of fly ash and otherwise recycled concrete aggregate, reclaimed bricks from demolished buildings, reused and recycled mortar mix, metal BONE Structure® framing (made from recycled steel and laser cut to eliminate waste), above-code insulation including closed cell green foam and other low embodied energy insulation, sustainable gypsum wall board throughout, Forest Stewardship Council (“FSC”) certified wood (for any rough

<sup>36</sup> Municipal Transportation Agency, San Francisco, [Muni System Map](#) (2019).

<sup>37</sup> Redfin.com, [Transportation in Corona Heights](#).

framing infill and exterior finish wood details), low volatile organic compound finish and FSC certified carcass material cabinetry and casework, an environmentally conscious flat roof membrane, stormwater harvesting and use system, a passive and active solar energy system, Energy Star® appliances, windows, and lighting, and maximum use of passive and natural ventilation systems (rather than mechanical).

Consistent with Policy 4.7, the Existing Building would be retrofitted with a number of energy-saving and efficient features including a new heating and air conditioning systems, additional insulation, and window upgrades to help minimize the rent-controlled tenants' electric bills and environmental footprints.

#### 4. Design

*Policy 11.1 - Promote the construction and rehabilitation of well-designed housing that emphasizes beauty, flexibility, and innovative design, and respects existing neighborhood character. The General Plan notes that, San Francisco has a long standing history of beautiful and innovative architecture that builds on appreciation for beauty and innovative design. Residents of San Francisco should be able to live in well-designed housing suited to their specific needs. The City should ensure that housing provides quality living environments and complements the character of the surrounding neighborhood, while striving to achieve beautiful and innovative design that provides a flexible living environment for the variety of San Francisco's household needs." and "The City should also seek out creative ways to promote design excellence. Policy 11.9 Foster development that strengthens local culture sense of place and history. Elements of community heritage can include the public realm, including open space and streets; and the built environment, institutions, markets, businesses that serve local needs, and special sites. Other, non-physical aspects can include ethnicity, language, and local traditions. Development of new housing should consider all of these factors, and how they can aide in connecting to them. Housing types that relate to the community served, particularly the income, household and tenure type of the community, can help to address negative changes in socioeconomic conditions, and reduce displacement. Constructing housing that includes community components that build upon this sense of place, such as public plazas, libraries, community facilities, public art, and open spaces, can build a stronger sense of community heritage. And the development of neighborhood-specific design guidelines, as discussed above, should review local neighborhood characteristics that contribute to and define its character beyond the physical.<sup>38</sup>*

Consistent with Policy 11.1, the New Building perfectly threads the needle between blending into existing neighborhood character and innovative design.<sup>39</sup>

**Existing Neighborhood and Building Style.** With respect to the existing neighborhood, the *Historic Context Statement* observed broadly that:

*The buildings of Corbett Heights are not generally distinguishable in their physical characteristics from buildings of the same periods in other San Francisco neighborhoods. The structural systems and materials, styles, forms and features, and siting of these buildings are associated with historic contexts that could be written for the entire city.<sup>40</sup>*

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*Most buildings in the neighborhood might be defined as "vernacular" in the sense that they were not designed by trained architects. However, in this report vernacular refers to*

<sup>38</sup> *General Plan*, at 39.

<sup>39</sup> The New Building was designed by distinguished local architect, [Craig O'Connell](#).

<sup>40</sup> *Historic Context Statement*, at 66.

*those buildings characterized by an absence or near absence of decorative details for which the overall form is the most noticeable feature. Buildings classified as vernacular from [1945-1973] may be simple rectangular boxes in form with channel rustic siding, gable roofs, double-hung windows, and paneled doors.*<sup>41</sup>

The Existing Building is a prime example of this vernacular style; and specifically **Contractor Modern**.<sup>42</sup>

*Contractor Modern, occasionally referred to as Vernacular Modern, is not a style per se; rather it denotes the absence of style. The term is used to identify buildings that selectively borrow from the basic design tenets of Modern design, particularly the lack of exterior ornament, in the pursuit of inexpensive construction costs. Simple box-like forms, flat exterior surfaces, and inexpensive construction materials typify Contractor Modern buildings.*<sup>43</sup>

**New Building's Style.** Without a distinct neighborhood style to adopt, Applicant modeled the New Building's design after that of the neighboring buildings, *i.e.*, a general lack of exterior ornament, bay windows, and a simple box-like form. From there, the New Building's design pulls in stylistic elements from other contemporaneously-built homes and related styles in the neighborhood, *e.g.*, Streamline Moderne (flat roof, wraparound windows at the corners, glass block windows, and stainless steel windows),<sup>44</sup> International Style (exterior walls of brick, flat roof, strong right angles and simple cubic forms, walls of glass, open interior floor plans, square and rectangular building footprints, stress on volume rather than mass),<sup>45</sup> Second Bay Tradition (plain, simple, or vernacular appearance, emphasis on volume rather than ornament, open floor plan),<sup>46</sup> and Midcentury Modern (large steel-framed windows, strong right angles and simple cubic forms, integrated planters).<sup>47</sup>

**New Building's Form and Scale.** The form and scale of the New Building mimics that found in the neighborhood during the most recent period of development ("1945 – 1973 and beyond"), *i.e.*, easily graded, accessible sites, rectangular lot, rectangular core with some combination of projections at front and rear, walkable bay windows, flat roof, and built-in garage.<sup>48</sup> The New Building also borrows and abstracts from the "early suburban tract homes" built throughout San Francisco and the neighborhood during the first half of the 20th Century.<sup>49</sup> These building typologies were characterized broadly by a built-in garage on an asymmetrical first floor, popped-out subsequent floors for living space, and

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<sup>41</sup> *Id.* at 93.

<sup>42</sup> [San Francisco Modern Architecture and Landscape Design Historic Context Statement](#), at 205 (2011). The initial two floors of the Existing Building (built in 1953) are particularly consistent with this description, featuring each and every one of the characteristics of Contractor Modern listed. When the third floor was added in 1960, some character was added to the overall design, namely: (1) horizontal punch out, push and pull forms on three of the four third-floor sides of the house, (2) opting for aluminum sliding casement windows as opposed to the wood-framed casement windows on the first two floors, and (3) some vertical wood board cladding on the street-facing pop outs (as opposed to the otherwise stucco finish). A simple four-sided box with a flat roof and built in garage, completely devoid of ornamentation on an easily graded, accessible site, the Existing Building is (for better or worse) as the *Historic Context Statement* notes, "not architecturally significant." *Id.* at 177.

<sup>43</sup> *Id.* at 176-177.

<sup>44</sup> *Id.* at 164-165.

<sup>45</sup> *Id.* at 175.

<sup>46</sup> *Id.* at 181-182.

<sup>47</sup> *Id.* at 189-190.

<sup>48</sup> *Id.* at 183.

<sup>49</sup> Brown, Mary, *Sunset District, Residential Builders 1925-1950*, [Historic Context Statement](#) (April 3, 2013).

recessed side entry access. The New Building has a built in garage on the first floor with an ADU front door and single window, bay windows in the front, and side entry access.<sup>50</sup>

**New Building's Framing and Cladding.** While period-respectful on the outside, on the inside the framing of the New Building would utilize an ultra modern steel construction framing system, allowing for the most structurally sound, energy efficient, open floor plan possible. The New Building's stucco cladding would be both aesthetically-neighborhood-harmonious and also consistent with Policy 11.9's goal of "strengthen[ing] local culture and sense of place and history."

**B. Planning Code Section 303**, in addition to consistency with the *General Plan*, lays out additional criteria for the Planning Commission to consider when reviewing applications for Conditional Use Authorization approval.<sup>51</sup> The Project complies with said criteria in that:

1. The proposed use or feature, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community.
  - a. **Necessary.** San Francisco is experiencing an acute housing crisis.<sup>52</sup> And this nation, state, and city are also in the throes of a long overdue reckoning on social and racial justice inexorably connected to our housing crisis. The situation in Corona Heights is representative of both of these issues.
    - i. **Affordable Housing.**
      - Not a single unit of the City's 22,797 affordable housing units is located in the SUD.
      - The SUD is becoming less affordable over time for the market rate housing that is there; in May 2010 the average home price was \$846k and in March 2020 it was \$1.81m (a 114% increase).<sup>53</sup>
      - Since 2010, only two new homes have been constructed within the Special Use District.<sup>54</sup> In fact, the number of "housing units" in the SUD actually declined overall by 23 units from 2010 (4,249) to 2017 (4,226).<sup>55</sup>
    - ii. **Diversity**

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<sup>50</sup> *Id.*

<sup>51</sup> S.F. Code [§ 303](#).

<sup>52</sup> Civil Grand Jury, at 3-4 ("The housing crisis in San Francisco is an ongoing, well-known problem. A host of complications has created a dire shortage in affordable housing as we approach the end of the decade. Although the City's population has surged over the last 25 years, from 723,496 in 1990 to 884,363 in 2017 current studies and polls show the population starting to level out, and even decline, probably due to high housing costs. If a city can't sustain working class housing, then not only police, firefighters, teachers, and nurses will be gone, but also a large number of service industry workers."). "San Francisco is now the world's most expensive place to build. The city's construction costs rose 5% last year, and it's now more pricey than New York, according to a report released Thursday by consulting company Turner & Townsend." San Francisco Chronicle, *San Francisco Passes New York To Become World's Costliest Place To Build* (April 11, 2019). See also Curbed, *San Francisco rents declared highest worldwide—again* (Mar. 15, 2019).

<sup>53</sup> See [Corona Heights Home Prices & Values](#), Zillow.com.

<sup>54</sup> Adjacent buildings, [176-178 States Street](#) were completed in 2015 as part of one project.

<sup>55</sup> 2010, 2017 U.S. Census Data.

- The SUD lacks diversity. Corona Heights is overwhelmingly white (84%), male (61%), childless (92%), and wealthy (62% higher than median household income in San Francisco).<sup>56</sup>
- These numbers are trending more, not less, homogeneous over time; for example since 2010 the already very low percentage of African Americans living in Corona Heights dropped by half (to 3%) and the Hispanic-Latino population dropped by a quarter (to 6%).
- The fact is that this lack of diversity is no accident; but instead the natural and too often intentional consequence of among other forces, long, medium, and short term institutional racism and exclusion.<sup>57</sup>

**This Project is necessary to counter an acute lack of housing and as importantly a lack of diversity in the area. Applicant's Project represents an infill housing opportunity in a transit-rich area that would turn a vacant ground floor and unused vacant land into four much-needed dwelling units, including two BMR affordable housing units that almost certainly will add much needed diversity to the Corona Heights Special Use District.**

Specifically the average occupant in the Mayor's Inclusionary Housing Program for BMR Rentals is radically more diverse in the following ways:

- Of the 382 BMR applicants granted BMR housing in FY 2018-2019, a full 90% were non-white, people of color<sup>58</sup> versus the current 16% non-white, people of color.
- 58% were women<sup>59</sup> versus the current 39%.

It is a near statistical certainty that this Project would add much needed diversity to the SUD.

- b. **Desirable.** The Project is desirable in that it adds new and potentially diverse tax-paying neighbors in new and affordable BMR housing units within an architecturally significant home on an unused piece of vacant land in a transit-rich area.<sup>60</sup>

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<sup>56</sup> *Id.*

<sup>57</sup> See David, Todd and Cook, Stevon, [A Brief History of Institutional Racism in San Francisco's Land Use Choices—and the Impacts that Remain Today](#) San Francisco Housing Action Coalition (June 2020); Brinklow, Adam, [Young and black communities can't afford homes because cities won't build enough](#) SF Curbed (Dec. 2019); Pandell, Lexi, [The Racist Origins of San Francisco's Housing Crisis](#), The New Republic (May 31, 2019); Winkler, Elizabeth, ['Snob zoning' is racial housing segregation by another name](#), Washington Post (Sept. 2017).

<sup>58</sup> [Mayor's Office of Housing and Community Development, 2018-2019 Annual Progress Report](#).

<sup>59</sup> Flannery, Eugene, email communication (July 24, 2020) (203 of 348 that declared a gender).

<sup>60</sup> Conservatively, this Project would add approximately \$60k in annual incremental income and property taxes to the city of San Francisco.

- c. **Compatible.** The size and height contemplated is wholly compatible with the neighborhood:
- i. **Area.** The New Building would include two regulation dwelling units (2,391 sqft combined) and one BMR ADU (473 sqft), totalling 3,099 sqft of living space. The average living area per unit for the New Building is 955 sqft/unit across all three units, 1,196 sqft/unit if limited to the two regulation units. **These averages would place the New Building in the 16th and 28th percentile, respectively, for sqft/unit among the 991 properties in the Special Use District.**<sup>61</sup> The New Building’s units are therefore wholly compatible with the neighborhood.
  - ii. **Height.** The Existing Building is at its foundation and roofline the lowest of all 85 homes on both the 17th and Ord Street Assessor Blocks.<sup>62</sup> As such, when evaluating height compatibility it is relevant to also consider the topography and relative elevation of neighboring buildings. As the following table illustrates, the New Building is wholly compatible with the neighborhood in both proposed building height and height relative to topographical elevation.

Direction	Address	Elevation*	Building Height**	Elevation + Building Height
North ↑	72 - 74 Ord St.	284	25	309
	80 Ord St.	279	25	304
	84 - 86 Ord St.	252	55	307
	90 Ord St.	247	31	278
<b>Corner - 17th Street and Ord Street</b>				
West ↓	Existing Building	245	30	275
	<b>New Building</b>	252	43	295
	4302 - 4304 17th St.	258	32	290
	4306 - 4308 17th St.	263	47	310
	4310 17th St.	281	25	306
	4314 - 4326 17th St.	286	32	318
	4318 17th St. #1 & 2	277	43	320
	4322 17th St. A & B	277	43	320

\*survey data; otherwise measured via Google Earth at each lot’s curb midpoint  
 \*\* site plans or permits; otherwise measured via drone

<sup>61</sup> The San Francisco Assessor’s Office maintains living space sqft and unit count data on 991 of 1,003 unique Special Use District properties. Citywide, of the eight one-unit and 29 two-unit buildings completed in 2018, the average sqft/unit was 3,503 sqft/unit (3,764 sqft for one unit homes and 2,721 for two unit homes);  **multiples of what the Applicant is proposing for the New Building.** See [Housing Inventory 2018](#) (March 2019).

<sup>62</sup> The Subject Lot sits at the intersection of two Assessor Blocks, 2626 and 2646. See Exhibit B (Assessor Blocks 2626 and 2646).



Attachment in Support of Conditional Use Application - 4300 17th Street / Pluta



The New Building's height would be wholly compatible with the neighborhood and surrounding buildings. The fit will become even more compatible if and more likely when over time the adjacent neighbors (the yellow, gray, and white homes above) expand vertically to their zoning height limits.

2. Such use or feature as proposed will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity, or injurious to property, improvements or potential development in the vicinity, with respect to aspects including but not limited to the following:
  - a. Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures
    - i. **Size and Shape of Lots.** The Proposed Lots would not be detrimental to property, improvements, or potential development in the vicinity:
      - **Consistent in Lot Size.**
        - The Proposed Lots are wholly consistent with comparable lots in the immediate area. Corner and corner adjacent lots, as Section 121(e) recognizes, are typically much smaller than their mid-block cousins (1,750 vs. 2,500 sqft).<sup>63</sup> For example, the blocks to the immediate south and east of the Subject Lot both have small non-conforming corner adjacent lots; on the south side of 17th Street, **a mere 63 feet from the Subject Lot is a 832 sqft lot (2652/031), and 128 feet east on 17th Street is a lot that is 1,210 sqft (2625/023).** The Proposed Lots would be 1,458 sqft each. Within 1,200 feet there are a total of 27 lots that are smaller than the Proposed Lots, and hundreds that are the same or slightly larger in size.
        - In terms of conformity with Planning Code requirements, among the 14 closest Assessor Blocks (~564 Lots) along the 17th Street Corridor over half are non-conforming lots sizes. Of the 87 lots in the two contiguous Assessor Blocks (2626/2646) that the Subject Lot is part of, 58 (or 67%) are non-conforming lot sizes.
        - Examining the proposed lot sizes that have been granted variances since January 2000 (179 lots with data) , Applicant’s Proposed Lots (1,458 sqft) would be in the 81st percentile if compared to the smaller-of-the-two-lots created by subdivision (91) and in the 65th percentile overall when compared to the entire cohort of subdivided lots (all 179). In other words, the Proposed Lots would be well above average

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<sup>63</sup> S.F. Code [§ 121](#).

in terms of lot size conformity with respect to previously granted variances.

- Lastly, the amount that the Proposed Lots deviate from Section 121(e)'s 1,750 sqft requirement is relatively small (17%) and as the Board of Appeals has noted, "[t]he code has in the past permitted lots as small as 1,437.5 square feet to be developed as legal lots of record," and "[t]he code currently allows the City Planning Commission under Section 121(f) to authorize new lots with an area as low as 1,500 square feet with widths less than 25 feet."<sup>64</sup> The Proposed Lots would deviate a mere 42 sqft (or 3%) from the authority granted the Commission outright in Section 121(f).
  - **Consistent in Lot Shape.** The Proposed Lots would be similar in shape and pattern to other development in the area. Applicant was able to identify at least 25 substantially similar corner lots within a half mile of the Subject Lot with a similar pattern of use and intensity - subdivided corner lots with buildings on each - including an example on the same block (2626) and two examples on adjacent blocks.<sup>65</sup>
- ii. **Proposed size, shape, and arrangement of structures.** Neither the New Building's size (Section III.B.1(c)(i)-(ii)), shape (Section III.A.4), nor arrangement (not applicable), would be detrimental to property in the vicinity.
- b. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading
- The New Building would provide one-vehicle and three Class 1 bicycle parking spaces. The Existing Building would continue to provide a single-vehicle parking space and would add three Class 1 bicycle parking spaces. Otherwise, this relatively small residential project will not have significant impacts on area traffic.

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<sup>64</sup> 1299 Quesada Avenue (2000.1201V).

<sup>65</sup> Exhibit C (Map and Addresses of Corner Lot Examples).

- c. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor
    - The Project will comply with all applicable regulations relating to construction noise and dust. It will not produce, nor include any permanent uses that generate substantial levels of noxious or offensive emissions, such as noise, dust, glare, or odor.
  - d. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs
    - The proposal does not include loading or services areas, nor will it include atypical lighting or signage. The New Building's east-side egress will be screened appropriately by a gate.
    - To honor the loss of the Property's backyard:
      - The Project includes planting additional and replacement street trees and the installation of sidewalk planters in all existing and new street tree installations.<sup>66</sup>
      - The Project would install trellises and green ivy on both the east and west side of the New Building as well as planters along the fourth floor setback.
3. Such use or feature as proposed will comply with the applicable provisions of this Code and will not adversely affect the General Plan

The Project complies with nearly all applicable requirements and standards of the Planning Code, with three exceptions, Sections 121, 134 and 135. Please see Section V-VI, below, for a detailed treatment of these exceptions.

And as detailed in Section III.A., above, the Project is wholly consistent with and advances the Objectives and Policies of the *General Plan*.

4. Such use or feature as proposed will provide development that is in conformity with the stated purpose of the applicable Use District

The Project is consistent with the stated purpose of a RH-2 District. The New Building is compatible with the height and size of development expected in this District, and is within the permitted density.

### C. Planning Code Section 101.1(b) Priorities

Proposition M was adopted by the voters on November 4, 1986. It requires that the City shall find that proposed alterations and demolitions are consistent with eight priority policies set forth in Section 101.1

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<sup>66</sup> The Project's landscape improvements would be consistent with [Better Streets San Francisco Guidelines: Designing Great Streetscapes](#).

**Attachment in Support of Conditional Use Application - 4300 17th Street / Pluta**

of the Planning Code. The Project is wholly consistent with the eight priority-planning policies memorialized in Planning Code Section 101.1(b):

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced.
  - The Project will not affect existing neighborhood-serving retail uses.
2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;
  - The Project is consistent with this policy, as detailed in Section III.A.4, above.
3. That the City's supply of affordable housing be preserved and enhanced;
  - The Project does not propose to remove any affordable housing units; in fact *it would add two BMR affordable housing units* to the City's housing stock.
4. That commuter traffic not impede Muni transit service or overburden our streets or neighborhood parking;
  - The Project is located in an area well-served by the City's public transit systems, proposes an additional off street parking space (plus one existing) and provides six new Class 1 bicycle parking spaces (three in each of the New and Existing Buildings). The Castro MUNI Rail Station and several MUNI bus lines are in close proximity to the subject property (0.3 miles), therefore the Project will not overburden streets or neighborhood parking.
5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;
  - This policy does not apply to the Project, as it does not include commercial office development and will not displace industrial or service sector uses.
6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;
  - The New Building is designed to conform to the structural and seismic safety requirements of the City Building Code. The Existing Building would receive a seismic retrofit, and several fire-related upgrades.
7. That landmarks and historic buildings be preserved; and
  - The Project will not adversely affect any landmarks or historic buildings.
8. That our parks and open space and their access to sunlight and vistas be protected from development.

- The Project will not affect any City parks, open space, nor their access to sunlight or vistas.

#### IV. THE SPECIAL USE DISTRICT AND ORDINANCE

##### A. Corona Heights Large Residence Special Use District

###### 1. The Special Use Ordinance

The Project is located within the boundaries of the Special Use District and is subject to the conditions in the Special Use Ordinance. The Ordinance was adopted “to protect and enhance existing neighborhood character, encourage new infill housing at compatible densities and scale, and provide for thorough assessment of proposed large-scale residences that could adversely impact the area and affordable housing opportunities.”<sup>67</sup> To meet these goals, the Ordinance requires Conditional Use Authorization for four types of development, two of which are triggered by Applicant’s Project:<sup>68</sup>

- Section 249.77(d)(1) (“for residential development of vacant property that will result in total gross floor area exceeding 3,000 sqft”); and
- Section 249.77(d)(4) (“for residential development that results in less than 45% rear yard depth”).

###### 2. Applicant’s Decision to Seek a Conditional Use Authorization

The triggering language of the Special Use District Ordinance is quite broad. Even so, the Applicant *could* propose a much narrower course of development that would likely avoid the Special Use Ordinance altogether. Given the greatly increased costs in terms of time, money, and overall project risk that a Conditional Use Authorization and corresponding Planning Commission review entails, this was a very tempting path. However, any project that would avoid the Special Use Ordinance would result in the loss of two and likely three of the proposed four additional dwelling units **including both BMR affordable housing units**.

After weighing the various pros and cons of each course of action, the Applicant remains committed to building new and affordable housing in San Francisco, and thus ultimately decided to pursue this Conditional Use Authorization.

###### 3. Applicant’s Project is Consistent with the Spirit of the Special Use District

It bears repeating that the language of the Special Use District Ordinance is quite broad. **So much so that the vast majority of existing homes in the Special Use District would require Conditional Use Authorization to be built today.** For example, Section 249.77(d)(4) requires no “less than 45% rear yard depth”. There are approximately

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<sup>67</sup> S.F. Code [§ 249.77\(b\)](#).

<sup>68</sup> *Id.* at [§ 249.77\(a\)](#).

1,003 lots in the Special Use District. While the City does not maintain property-level data on rear yard setbacks, accurate measurement and analysis is possible using tools available in Google Maps and Google Earth. Based on a random sample of 100 homes in the Special Use District, **74% of homes have “less than 45% rear yard depth.”**<sup>69</sup> The requirement that homes be no more than 3,000 sqft of total gross floor area produces similar results; conservative analysis suggests that **more than one third of homes in the Special Use District have more than 3,000 sqft of total gross floor area.**<sup>70</sup>

Much like the vast majority of existing homes in the Special Use District, Applicant’s Project is consistent with the spirit, even if not the letter, of the Special Use Ordinance. Specific to the two requirements triggered by the Project:

- **3,000 sqft of Gross Floor Area.** The total gross floor area of the New Building is 4,196. While technically this amount exceeds the 3,000 sqft limit in the Special Use Ordinance, **no single dwelling unit (2,029, 1,355, and 812 sqft) individually exceeds 3,000 sqft and the average is a mere 1,692 sqft (including all three units, 1,399 sqft excluding the ADU).**

As stated above, the Project could conceivably be scaled down to below 3,000 sqft of “gross floor area”, however, that would require removing two of the three proposed dwelling units in the New Building including the BMR affordable housing unit. This outcome would run counter to at least part of the stated purpose of the Special Use Ordinance to “encourage new infill housing,” and not “adversely impact...affordable housing opportunities.”

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<sup>69</sup> Exhibit D (List of Sample Properties and Map)). Random sample (n=100) selected (using “randbetween” in Microsoft Excel) from master sample set (n=1,003 lots) minus non-residential buildings and duplicates (same lot, multiple units).

<sup>70</sup> The City similarly does not maintain a dataset containing the total gross floor area for homes in San Francisco; the Assessor’s office only tracks “living area” or “building area”. In order to estimate total gross floor area for all Special Use District dwellings, Applicant created a dataset containing all RH-1, RH-2, and RH-3 homes with available living area data from the San Francisco Office of the Assessor. As the terms suggest, “living area” means the interior habitable area of a dwelling unit,” and excludes, e.g., any garage, unfinished basement, storage, utility, or lightwell spaces. See Cal. Gov. Code [§ 65852.2](#). “Gross floor area”, on the other hand, is considerably broader and includes essentially anything interior to a building, e.g., basement and cellar space, elevator shafts, stairwells, attic space, and interior balconies. See S.F. Code [§ 102](#). In order to calculate incremental gross floor area, the analysis conservatively assumed a figure equal to 50% of a single average floor of living space for each individual dwelling.

- **45% rear yard depth.** The language of Section 249.77(d)(4) in the Special Use Ordinance mirrors [and significantly narrows] Planning Code Section 134(a)(2) which states that “[t]he minimum rear yard depth shall be equal to 45 percent of the total depth of the lot on which the building is situated, except [under certain circumstances] a depth equal to 25 percent...or to less than 15 feet, whichever is greater.”

The City has stated repeatedly that “[t]he intent of the rear yard requirement [in Section 134] is to preserve mid-block open areas.”<sup>71</sup>

**This is relevant because the Subject Lot is completely cut off from the mid-block space, and thus any rear yard setback would be totally divorced from the legislative purpose of the underlying requirement.<sup>72</sup>**



Subject Lot =

Mid-Block Open Space =

<sup>71</sup> 47 - 75 Topaz Way; see also 1111-1133 Green Street (“The purpose of Section 134 of the Planning Code is to maintain a midblock corridor”); 1155-1157 Treat Avenue & 54 Balmy Street (“Granting the rear yard variance will not affect the mid-block open space.”); 799 Castro Street & 3878-3880 21st Street (“The purpose of Section 134 of the Planning Code is to maintain a midblock corridor. However, the courtyard is surrounded by the subject building on the west side and the adjacent building on the east side. As a result, there is no well-defined pattern of mid-block open space adjacent to the courtyard. The two adjacent properties to the east are developed deep into their lots, which along with the existing rear building on the subject property, effectively cuts off the subject property from the block’s mid-block open space.”).

<sup>72</sup> For a detailed view, see Exhibit E (Aerial View of Property Relative to the Midblock Space). Not only is the Subject Lot noncontiguous with the mid-block space, but at 40-50 feet below the mid-block space in elevation it is even more cut off and isolated than the illustration suggests.



## B. Application of the Special Use Ordinance

According to the text of the Special Use District: “[i]n acting on any application for Conditional Use authorization within the Corona Heights Large Residence Special Use District, the Commission shall consider the Conditional Use authorization requirements set forth in subsection 303(c) and, in addition, shall consider whether facts are presented to establish, based on the record before the Commission, *one or more of the following*.”<sup>73</sup>

a. The Proposed Project Promotes Housing Affordability By Increasing Housing Supply

**The Project promotes housing affordability (1) by increasing housing supply and (2) by specifically building new BMR affordable housing.** As detailed above, the Project would lead directly to the addition of four new dwelling units in San Francisco. Two of the four new units would be BMR affordable housing ADUs and all four new units would be rental units.

b. The Proposed Project Maintains Affordability of Any Existing Housing Unit; or

The Existing Building has two rent-controlled units. The middle unit has been occupied for 16 years by the Tenant. The affordability of this unit will continue apace with San Francisco’s rent control program. In fact Tenant’s middle unit will become at least in part more affordable with *a reduction* in his utility bills. Nothing in the Project would diminish the affordability of any existing housing units.

c. The Proposed Project is Compatible With Existing Development

The Project would be wholly compatible with existing development in the area:

- **Compatible Lot.** As discussed above, the Proposed Lots would be compatible with existing lots in the area in terms of size and shape (Section III.B.2(a)(i)).
- **Compatible New Building.** As discussed above, the New Building would be compatible with existing development in area (Section III.B.1(c)(i)), height (Section III.B.1(c)(ii)), and all character defining features (Section III.A.4).

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<sup>73</sup> *Id.* at [§ 249.77\(e\)](#)(emphasis added).

## V. ANALYSIS OF SECTION 305(C) VARIANCE CRITERIA

### A. Authority

Per the San Francisco Department of Planning website:<sup>74</sup>

Under the City Charter (Section 4.105), the Zoning Administrator has the power to grant only those variances that are consistent with the general purpose and the intent of the Planning Code. The power to grant a variance shall be applied only when the plain and literal interpretation and enforcement of the Code would “result in practical difficulties, unnecessary hardships, or where the results would be inconsistent with the general purpose of the [Code].” Planning Code Section 305(c) outlines the five criteria that must be met in order for the Zoning Administrator to grant a variance.

The Section 305(c) criteria are as follows:<sup>75</sup>

1. That there are exceptional or extraordinary circumstances applying to the property involved or to the intended use of the property that do not apply generally to other property or uses in the same class of district;
2. That owing to such exceptional or extraordinary circumstances the literal enforcement of specified provisions of this Code would result in practical difficulty or unnecessary hardship not created by or attributable to the applicant or the owner of the property;
3. That such variance is necessary for the preservation and enjoyment of a substantial property right of the subject property, possessed by other property in the same class of district;
4. That the granting of such variance will not be materially detrimental to the public welfare or materially injurious to the property or improvements in the vicinity; and
5. That the granting of such variance will be in harmony with the general purpose and intent of this Code and will not adversely affect the Master Plan.

### B. Analysis of the Zoning Administrator’s Application of Section 305(c) Criteria

Aside from the plain text of the above criteria, Applicant was unable to locate much in the public domain to help guide responses to the variance application. In an effort to better understand how to complete a successful application, as detailed in Section III.A.1(c), above, Applicant reviewed and analyzed all 111 lot subdivision-related variance decisions and listened to every available lot subdivision-related variance hearing<sup>76</sup> from January 2000 through June 2020. In reviewing the 20-year cohort of previous variance decisions, a handful of high-level themes emerged.

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<sup>74</sup> Department of Planning, San Francisco, [Variance From the Planning Code, Informational Packet](#).

<sup>75</sup> S.F. Code [§ 305\(c\)](#) (2017).

<sup>76</sup> San Francisco Department of Planning, [Online Variance Hearing Audio Recordings](#).

The most important factor in evaluating an application was how consistent (or inconsistent) the facts and measures of a given project were with the relevant surrounding area.<sup>77</sup>

### 1. Consistency

The predominant theme that emerged from analyzing previous variance decisions was that of consistency. Over and over, the actual language that appeared in decisions was some form of the question: *whether or not a given project was consistent with the:*

- *neighborhood pattern*
- *neighborhood character*
- *pattern of development*
- *existing building pattern within the neighborhood*
- *prevailing pattern of development on the block*
- *existing housing and neighborhood character*
- *similar development pattern*
- *residential pattern*
- *existing housing and neighborhood character*
- *predominant pattern of residential development in the surrounding vicinity*
- *existing character and development pattern of the neighborhood*
- *character with the size of lots in the vicinity and prevailing lot size pattern*
- *manner consistent with the surrounding land uses*

Across 20 years and 111 variance decisions, seven particularly probative characteristics and measures relevant to evaluating the consistency of a given project emerged. A non-exhaustive list included:

- **Lot Frontage (or width).** Length, in feet, of the side of the lot directly adjacent to the [usually] public right of way.
- **Lot Depth (or length).** Length, in feet, of the side(s) of the lot [usually] perpendicular to the frontage/right of way.
- **Lot Size.** The total area of a lot in sqft.
- **Lot Shape.** The geometric shape of the lot; usually a four-sided rectangle, but occasionally ranging from a triangle to a multi-sided irregular polygon.
- **Lot Position on the Block.** The position of the lot relative to the typical layout of a block of lots. There were essentially four lot positions: (1) through lots (bisecting a block with frontage on two right of ways), (2) corner lots, (3) mid-block lots (a lot adjacent to only one right of way), and (4) other (*e.g.*, narrow triangle corner lots or oversized irregular shapes).

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<sup>77</sup> Relevant to evaluating the consistency of a given project was and is the determination of the relevant geographic unit in comparison. A survey of recent decisions revealed a range of potential boundaries, for example (roughly from largest to smallest): surrounding vicinity, the area, immediate area, neighborhood, surrounding neighborhood, lots in the vicinity, adjacent block, block, block face, surrounding properties, neighboring property, and adjacent property. For purposes of the analysis used in this application, the Applicant attempted to mirror whichever geographic unit the Planning Department typically used for that criteria.

- **Other Relevant Variances Granted in the Area.** Whether or not and what type of variances had previously been granted in the area.
- **Conforming or Non-conforming to Code.** The degree to which other lots in the area did or did not conform to the relevant sections of the Planning Code.

## 2. Important Secondary Themes

In addition to evaluating a project's consistency, important secondary themes emerged that were relied upon to help supplement the decision whether to grant or deny a given application:

- **Effect on the City's Housing Stock.** It was widely acknowledged that San Francisco is and was experiencing a housing crisis.<sup>78</sup> Therefore, whether or not a given project added (or subtracted) dwelling units from the city's housing stock was a material factor in evaluating variance applications. Indeed, this factor - additional housing - was the only one that across 111 decisions appeared in all five Section 305 criteria responses.
- **Effect on Existing Rent-Controlled Housing.** Any removal of rent-controlled housing was perceived as a material obstacle to granting any variance. This included even the possibility that a variance may put an applicant in a position to more easily remove rent-controlled housing later on, *e.g.*, where but for lot subdivision a property was ineligible for condo conversion (which can lead to the elimination of rent controlled housing).
- **Condo Conversion.** Tangentially related to the above, a material factor weighing against several recent variance applications was a perception that applicants were pursuing a lot subdivision in lieu of the statutory condo conversion process.<sup>79</sup> Indeed, the most recently denied applications cited the potential availability of the condo conversion process (or the ability to otherwise build additional units as a matter of right within the existing lot) as the principal factor weighing against those applications.
- **Neighborhood Support or Opposition.** Whether neighbors or tenants were in favor, neutral, or opposed to a given project was occasionally a supplemental factor in the City's analysis of a given application. Where opposition did exist, whether or not the applicant actively communicated and engaged with neighbors, tenants, and Department of Planning staff seemed to be the deciding factor in the analysis.

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<sup>78</sup> See fn 52, above.

<sup>79</sup> In certain circumstances, the condo conversion process has arguably more controls and limits than outright subdivision. See Sirkin, Andy, [San Francisco Condominium Conversion Rules and Process](#) (7/30/17). And the number of avenues through which a condo conversion can occur have likewise narrowed over time. *Id.* ("Buildings with 2-4 residential units may qualify for conversion three ways: (i) automatic (lottery bypass) qualification for two-unit buildings where each unit is owner-occupied by a separate owner; (ii) the "Expedited Conversion Program", created June 11, 2013, under which buildings owned as a TIC as of April 15, 2013, may convert between 2013 and 2020 (however, note that as of July 2017, the City is not accepting ECP applications from buildings with renters because of a recently-filed lawsuit challenging the constitutionality of the lifetime lease requirement); and (iii) the annual conversion lottery, which has been suspended but is expected to return beginning in 2024.").

- **Existing Non-compliance and Intensification of Non-compliance.** Parallel to Section 188 of the Code, the “intensification” of an existing non-conformity weighed against granting a variance.

### 3. Themes from Denied Variance Decisions

Of the 111 variance decisions that were analyzed, 12 (or 10.8%) were ultimately not granted. Individual examination of those decisions revealed four key themes that were particularly decisive to their outcome:

1. **Availability of an Alternative Procedure.** Five of the 12 denials were principally focused on the ability of the applicant to potentially achieve their purpose through alternative means, either constructing one or more additional units on the existing lot or taking advantage of the condo conversion process.
2. **Loss of or Potential Loss of Rent-Controlled Housing.** Four of the 12 denials were principally focused on the actual or potential loss of rent-controlled housing if the variance were granted.
3. **Illegal Housing as Bad Precedent.** One decision involved an applicant that had constructed an illegal ground floor dwelling and through the subdivision process was seeking in part to legalize that dwelling. The Zoning Administrator pointed out that “rewarding” a property owner who has already shown “disregard for the Planning Code” by adding an illegal dwelling unit would set a bad precedent.
4. **Inconsistent Lot Patterns.** The remaining two denials were broadly focused on the gross inconsistency that would have been created by granting a variance for lot subdivision. In one case, the applicant was seeking to create the two smallest lots (~1,600 sqft each) on a block where the typical lot size was 3,000+ sqft. In the other decision, the standard development pattern was single family homes on ~2,500 sqft lots, whereas the applicant was seeking to create one lot as small at 1,390 sqft.

Once again underlining the importance of housing, nine of the 12 (or 75%) denied variance decisions were largely based on the loss of affordable housing generally and rent-controlled housing specifically.

#### C. Examples of the Most Factually Relevant Precedent

As detailed further below, Applicant’s Project is wholly consistent with the subset of successful variance applications in the aggregate. The following represents a small subset of particularly noteworthy relevant precedent:

- **699 Paris Street** (2000.870V) was granted a variance from Sections 121(e) (minimum lot area), 132(d)(2) (special lot situations), and 134 (rear yard setback) of the Code to subdivide a 3,150 sqft corner lot for the purpose of building a single family home on the newly created 1,260 sqft

lot. The new buildable lot in question was a vacant side yard adjacent to the public right of way.  
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- **1316 Bowdoin Street** (2004.0426V) was granted a variance from Sections 121(d) (minimum lot width) and 121(e) (minimum lot area) of the Code to subdivide a 3,150 sqft lot for the purpose of building a single family home on the newly created 1,330 sqft lot. The Zoning Administrator granted the variance, noting among other things: (1) “[t]he subject property is exceptionally large with an area of 3,150 square feet and a width of 45 feet..[t]his lot size does not apply generally to other properties in the same class of district, which more typically have lot sizes ranging from 1,750 to 2,500 square feet”, and (2) “subdivision of an oversized lot [would allow] for the development of a new single-family dwelling on what is a visually and functionally distinct portion of the property.”
- **1299 Quesada Avenue** (2000.1201V) was granted a variance from Section 121 (minimum lot area) of the Code to subdivide a vacant 5,000 sqft corner lot into three 1,667 sqft lots for the purpose of building new single family homes on each. A variance was granted on appeal, the Board noting among other things that: (1) “[t]here is a pattern of similarly sized and oriented lots in corner lot situations in this neighborhood and in the immediate vicinity”, (2) wider lots “promote a more efficient and livable floor plan”, and (3) “the site is available for new infill housing at a time when all policy makers have concluded that a critical housing shortage exists in the City”.
- **1806-1810 8th Avenue** (2019-006762VAR) was granted a variance from Section 121 (minimum lot area) of the Code to subdivide a vacant 2,945 sqft midblock lot into two lots (1,490 and 1,455) or only ~60% of that required by the Planning Code.<sup>81</sup> The Zoning Administrator noted that the subject lot had “50 feet of frontage, which is double the typical 25 feet of frontage for residential lots in the City,” and therefore had “sufficient street frontage to accommodate two single-family structures.”
- **2255-2257 Pine Street** (2005.1128V) was granted a variance from Sections 121(e) (minimum lot area), 134 (rear yard setback), and 159(a) (off-street parking) of the Code to subdivide a 3,188 sqft lot for the purpose of building a single family home on a newly created 1,169 sqft lot. The original lot featured an existing duplex and was zoned RH-2; the addition of a new single family home on a newly created lot therefore effectively allowing densification of the original property.
- **690A Arkansas Street** (2009.0803V) was granted a variance from Sections 121(d) (minimum lot width), 121(e) (minimum lot area), and 132 (minimum front setback) of the Code to subdivide a 2,800 sqft lot for the purpose of building a new single family home on the newly created 900 sqft lot. The Zoning Administration noted that “[l]iteral enforcement of the lot area requirements in this case would require that a functionally separate unit of property remain a

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<sup>80</sup> Observing that the “vacant lot [was] just lying idle and difficult to maintain currently overgrown with weeds and infested with slugs”. Applicant’s neighbors and his tenant shared with him that the Property’s vacant backyard - given thick ivy along the fence and a fruit-bearing loquat tree - regularly attracts and is infested by rats.

<sup>81</sup> A three unit building that had previously occupied the original lot was destroyed by fire the previous year (of “undetermined cause”) which displaced 13 people and killed one person. See Ravani, Sarah, [Neighbors mourn woman killed in fire in SF’s Inner Sunset](#), San Francisco Chronicle (April 2019). Despite being zoned RH-2 the Applicants were limited to building single-family structures without explanation, resulting in a net loss of housing for the City.

part of a larger lot in a situation where there is no public benefit to be gained by such a requirement.”

- **70 Douglass Street & 67 Ord Street** (2008.1233V) was granted a variance from Sections 121(e) (minimum lot area) and 134 (rear yard setback) of the Code to subdivide a 3,690 sqft lot for the purpose of building a new single family home on a 1,267 sqft lot. Notably, the property in question is only 137 feet from the Subject Lot.
- **653-655 Fell Street** (2013.0712V) was granted a variance from Sections 121(e) (minimum lot area), 134 (rear yard setback), and 135 (open space) of the Code to subdivide a code-compliant 3,240 sqft lot in order to demolish a garage and construct a new residential building.

## VI. APPLICATION OF SECTION 305(C)'S VARIANCE CRITERIA

### A. Application of Section 305(c)

Applicant has made every effort to match, criteria-by-criteria, the reasoning applied in previous variance decisions to this Project. As such, any and all citations within a given numbered criterion come directly from the same in a previous variance decision (or appeal).

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

Based on a review of past variance decisions, the Subject Lot has numerous exceptional and extraordinary circumstances that do not apply generally to other properties in the same class of district. Among these circumstances are the many ways in which the Subject Lot is currently inconsistent with the surrounding area:

- **Break in Block Face.** The Subject Lot is one of 29 lots that make up the 17th Street block face between Ord Street and Temple Street. The Subject Lot’s vacant backyard is the only material break in the entire length of the block face.<sup>82</sup> This is true for at least a quarter mile in both directions on the north side of 17th Street, and in fact, almost every other building on 17th Street *is in direct physical contact* with their neighbors.<sup>83</sup>
- **Inconsistent in Lot Frontage.** The Subject Lot has substantially more width and street frontage - 81 feet - than almost any other lot in the neighborhood.<sup>84</sup> Examining the 14 closest Assessor

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<sup>82</sup> Exhibit F (Panoramic of 17th Street Block Face); *see also 35 Wilder Street* (“Future development of the site will strengthen neighborhood character by filling a void in the urban street wall.”), *5 Upper Terrace* (“There is generally continuous frontage of residential or accessory buildings along the subject block face on Masonic Avenue.”).

<sup>83</sup> *Id.*

<sup>84</sup> *See, e.g., 800 Bay Street* (“The subject lot is 57’ wide and approximately 69’ deep, for a total of 3,933 square feet. The subject lot contains...over twice the amount of street frontage.”), *28 Sweeny Street* (“The subject property has more lot frontage than other properties within the vicinity. The subject property has 50 of lot frontage and other properties in the vicinity have 25’ to 33’ of lot frontage.”), *1457 Florida St.* (“The subject lot is unique in that it is 43.469 in width, substantially wider than the standard 25 lot width found in the RH-2 District...”), *1850 Palou Avenue* (“The subject property is a corner lot with a lot width of 40 feet along Cortland Avenue and 75 feet deep along Nevada Street.”), *60 Teddy Avenue* (“The subject parcel is 50 feet wide by 65 feet deep. The width is double the code minimum lot width of 25 feet. 25 feet is the predominate lot width for residential development in all zoning districts except the RH-1 (D) district.”), *690A Arkansas Street* (“The lot is irregularly shaped but has

## Attachment in Support of Conditional Use Application - 4300 17th Street / Pluta

Blocks (and 564 lots)<sup>85</sup> along the 17th Street Corridor, the Subject Lot is in the 97th percentile in terms of frontage, 2.6x (81 ft/31 ft) the average lot frontage, and 3.2x (81 ft/25 ft) median lot frontage.<sup>86</sup>

- **Inconsistent with Existing Lot Patterns.** 50% of the Subject Lot is vacant and is adjacent to the public right of way.<sup>87</sup> This fact makes it exceptionally unique to the area. Applicant was unable to locate a single half-vacant-corner-lot-adjacent-to-the-public-right-of-way within at least a half mile of the Subject Lot.<sup>88</sup>
- **Inconsistent in Lot Size.** The Subject Lot is materially larger than other lots in the area.<sup>89</sup> The Subject Lot is 2,916 sqft; which is 30% larger than the median lot size in the neighborhood. And as the Planning Code envisions corner lots being smaller on average than their mid-block cousins (minimum lot size requirements of 1,750 and 2,500 sqft, respectively), the oversized nature of the Subject Lot is even more striking.
- **Corner Lot.** The Property is on a block corner, situated at the northwest intersection of 17th Street and Ord Street. While not *per se* extraordinary, corner lots do receive unique treatment in the Planning Code and variance administration, coloring relevant analysis, and informing the appropriate cohort for what is considered “consistent” in a given area, *e.g.*, lot pattern and configuration.<sup>90</sup>

While the Subject Lot is inconsistent in many ways with the surrounding lots, the Proposed Lots on the other hand would be wholly consistent with other lots in the neighborhood in a number of important ways:

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sufficient frontage [50 feet] equal to the width of two standard lots.”), *35 Wilder Street* (“The subject property is irregularly shaped with 50-feet of frontage on Wilder Street.”).

<sup>85</sup> Exhibit G (Map of 14 Accessor Blocks Along 17th Street Corridor).

<sup>86</sup> *Id.*

<sup>87</sup> A number of variance applications that were granted effectively split the lot in half. *See, e.g., 800 Bay Street* (“Only half of the lot is developed.”), *2686-2694 McAllister Street* (45% proposed vacant lot), *325 Bowdoin Street* (51% proposed vacant lot), *699 Paris Street* (55% proposed vacant lot).

<sup>88</sup> The three corner lots within a half mile that come the closest are: (1) 4682 19th St. (existing dwelling plus deck on 3,131 sqft lot takes up 72% of the lot), (2) 3786 16th St. (existing dwelling on 3,555 sqft lot takes up 62% of the lot), and (3) 100 Corbett Ave. (existing dwelling takes up ~50% of the lot however hypothetical split lots would only be ~1,147 sqft each).

<sup>89</sup> *See 1316 Bowdoin Street* (“The subject property is exceptionally large with an area of 3,150 square feet and a width of 45 feet. This lot size does not apply generally to other properties in the same class of district, which more typically have lot sizes ranging from 1,750 to 2,500 square feet.”), *4200 Moraga Street* (“The existing lot is...substantially larger than the average lot in the immediate neighborhood.”), *1850 Palou Avenue* (“When compared to the majority of other lots on the block, the existing subject lot is much larger in size...[t]he subject property with a lot area of 3,300 square feet is substantially larger than the predominant lot size in this district.”), *1286-1298 Treat Avenue* (“The subject lot is unusually large for the area and is atypical for RH-2 lots.”).

<sup>90</sup> The Municipal Code contains dozens of distinct references to “corner lots”, *e.g.*, § 101.1 [General Plan Consistency and Implementation](#) (unique definition for “Lot, Corner”), § 121(e)(2) [Minimum Lot Width and Area](#) (“In all other zoning use districts: 2,500 square feet, except that the minimum lot area for any lot having its street frontage entirely within 125 feet of the intersection of two streets that intersect at an angle of not more than 135 degrees shall be 1,750 square feet.”), § 125(a) [Floor Area Premiums](#), § 132(d)(1) [Front Setback Areas](#). And previous variance decisions favorably differentiate corner lots from other types of lots, *see, e.g., 1850 Palou Avenue* (“The subject property is a corner lot...”), *4200 Moraga Street* (“The existing lot is located at the intersection of two streets...”), *161-165 Newman Street* (“The Unit located on a large corner lot.”). The *San Francisco Residential Design Guidelines* contain an entire sub-section labeled “Special Building Locations” dedicated to “Corner Buildings”, another example of the exceptional and extraordinary circumstances a corner lot presents. [San Francisco Residential Design Guidelines](#) (December 2003).



- **More Consistent Lot Frontage.** The street frontage of the Proposed Lots would be much more in line with the other lots in the neighborhood; 40.5 feet (down from 81 feet) versus the neighborhood median of 25 feet.<sup>91</sup> Furthermore, the proposed newly created vacant lot would retain the relatively wider-than-deep ratio which according to the Board of Appeals provides “more efficient and livable floor plans” than narrow lots.<sup>92</sup>
- **Consistent with Existing Lot Patterns and Previous Lot Splits.** “The proposed lot split would not alter the pattern of use” for the surrounding area and would be similar to previous lot splits in the area.<sup>93</sup> Applicant was able to identify at least 25 substantially similar corner lots within a half mile of the Subject Lot with a similar pattern of proposed use - subdivided corner lots with buildings on each - including one example on the same block and two examples on adjacent blocks.<sup>94</sup>
- **Consistent with Previous Variances.** Applicant was able to identify at least 14 examples of variance-related lot subdivisions within a half mile of the Subject Lot, including one a mere 137 feet away and another 239 feet away.<sup>95</sup> Expanding the analysis to all types of variances and narrowing to the 14 closest Assessor Blocks (and 564 lots) along the 17th Street corridor, at least 61 (or 11% of homes) variances were recently granted.<sup>96</sup>
- **Consistent in Lot Size.** The Proposed Lots (1,458 sqft each) would have similarly sized comparables in the neighborhood. Corner and corner adjacent lots, as Section 121(e) recognizes, are typically much smaller than mid-block lots (1,750 vs. 2,500 sqft).<sup>97</sup> For example, the blocks to the immediate south and east of the Subject Lot both have small non-conforming

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<sup>91</sup> See 2779 Diamond Street (“As a result of the lot split, the undeveloped portion at the rear of the existing lot would become a separate lot with its own 25-foot frontage on Surrey Street and would not be out of character with the existing properties in the area.”), 435-441 Burnett Avenue (“As a result of the requested lot subdivision, the current undeveloped portion of the subject lot (opposite Diamond Street frontage) would become a separate lot with its own 25-foot frontage on Surrey Street. Both of the newly created lots will be compatible with the surrounding lot pattern on the subject block.”); see also Teague, Corey, Acting-Zoning Administrator, Variance Hearing [Audio Recording re 653-655 Fell Street](#), at 40:49 (Oct. 23, 2013) (“It is true there is a pattern of this type of split and development on the lot and I know that there is one in particular that received a variance in in 2008”).

<sup>92</sup> See 1299 Quesada Avenue (“This code section does not address wider, shallower lots for special conditional use treatment. The lots proposed have an area greater than 1,500 square feet and provide better access to light and air for all rooms due to the wide street frontage and rear yard exposure for the units. This allows all the rooms within the building to derive light and exposure without interior courts. On the whole the wider lot promotes a more efficient and livable floor plan.”); see also 1806-1810 8th Avenue (2019-006762VAR).

<sup>93</sup> 2285 and 2299 40th Avenue; see also 1299 Quesada Avenue (“There is a pattern of similarly sized and oriented lots in corner lot situations in this neighborhood and in the immediate vicinity.”), 2775 Diamond Street (“Both of the newly created lots will be compatible with the surrounding lot pattern on the subject block.”), 2255-2257 Pine Street (“With the proposed lot split, the existing two-family dwelling and the proposed new single family dwelling would be deficient in rear yard depth. Some adjacent lots have a similar development pattern and lot size pattern on the subject block. Lots were either split prior to 1946 and therefore considered lots of legal record, or variances were granted for the subdivision of these parcels.”), 5 Upper Terrace (“The proposed lot split will be similar to other properties...”), 1138 Treat Avenue (“The subject property is in a neighborhood containing similarly split lots.”), 537 Grove Street (“Other properties on the block have been subdivided into two smaller parcels, or have been developed with separate structures, one fronting on Grove Street and the other on Ivy Street.”).

<sup>94</sup> Exhibit C.

<sup>95</sup> Exhibit H (Maps and Addresses of Other Variance Examples). See 2255-2257 Pine Street (“With the proposed lot split, the existing two-family dwelling and the proposed new single family dwelling would be deficient in rear yard depth. Some adjacent lots have a similar development pattern and lot size pattern on the subject block. Lots were either split prior to 1946 and therefore considered lots of legal record, or variances were granted for the subdivision of these parcels.”).

<sup>96</sup> *Id.* Only those recent enough to be reflected on the San Francisco Department of Planning’s Property Information Map are included in this figure.

<sup>97</sup> S.F. Code [§ 121](#).

corner adjacent lots; **on the south side of 17th Street, a mere 63 feet from the Subject Lot is a 832 sqft lot (2652/031), and 128 feet east on 17th Street is a lot that is 1,210 sqft (2625/023).** Within 1,200 feet there are a total of 27 lots that are smaller than the Proposed Lots, and hundreds that are the same or slightly larger in size. Furthermore, the amount that the Proposed Lots deviate from Section 121(e)'s 1,750 sqft requirement is relatively small (83%) and as the Board of Appeals has noted, "[t]he code has in the past permitted lots as small as 1,437.5 square feet to be developed as legal lots of record," and "[t]he code currently allows the City Planning Commission under Section 121(f) to authorize new lots with an area as low as 1,500 square feet with widths less than 25 feet."<sup>98</sup> The Proposed Lots would deviate a mere 42 sqft (or 3%) from the authority granted the Commission outright in Section 121(f).<sup>99</sup>

**The Subject Lot is materially inconsistent with other lots in the area (and the Proposed Lots would be materially more consistent).** Exceptional and extraordinary circumstances that apply to the Subject Lot do not apply to other lots in the same class of district.

In addition to the question of consistency (and inconsistency) detailed above, previous variance decisions have also evaluated the impact on the mid-block space and housing stock.

- **Mid-block Space.** According to the text of several decisions, one of the "principal purposes" of Section 134's rear yard requirement is the maintenance of a given block's mid-block space.<sup>100</sup> It is noteworthy therefore that the Subject Lot is completely cut off from the Subject Lot's mid-block space.<sup>101</sup> As such, the proposed lot subdivision and subsequent new home construction would have no effect whatsoever on the mid-block open space and thus any rear yard setback would be totally divorced from the legislative purpose of the underlying requirement.
- **Additional Housing Stock.** "Although the granting of the subject variance will create lots that do not have the minimum lot size required by the Planning Code, this is necessary to maintain the City policy of encouraging infill residential units and the project does not seem to have any

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<sup>98</sup> *1299 Quesada Avenue* ("This code section does not address the wider, shallower lots for special conditional use treatment. The subject lots proposed have an area of 1,666.66 square feet, a minor deviation of 4.7%."); *see also 4200 Moraga Street* ("The dimension of the usable open space being two feet shorter than required by Code is inconsequential compared to the benefit to the City of having two more dwelling units in its housing stock."), *1316 Bowdoin Street* ("The existing structure was built in 1969 and occupies 26ft-2in of the 45-foot-wide lot, leaving 18ft-10in for a second lot, which, at 1,330 square feet is only 170 square feet less than the minimum 1,500 square feet required to avoid the variance process altogether.").

<sup>99</sup> *See Sanchez, Scott, Zoning Administrator, Variance Hearing Audio Recording re 563-565 Haight Street*, at 59:52 (Nov. 17, 2010) ("[T]here really is a solid pattern of these smaller lots and I think that's a key when reviewing lots splits and subdivisions that result in lots that are substandard."); *Sanchez, Scott, Zoning Administrator, Variance Hearing Audio Recording re 537 Grove Street*, at 35:50 (Feb. 22, 2012) ("[T]here is a clear pattern here of small lots and you have demonstrated that successfully as well.").

<sup>100</sup> *1111-1133 Green Street; see also 47 - 75 Topaz Way* ("The intent of the rear yard requirement is to preserve mid-block open areas."), *1542-1544 Vallejo Street and 39-41 Bonita Terrace* ("One intent of the rear yard requirement is to preserve the mid-block pattern of open areas."), *1155-1157 Treat Avenue & 54 Balmy Street* ("Granting the rear yard variance will not affect the mid-block open space.").

<sup>101</sup> *Exhibit A. See 799 Castro Street & 3878-3880 21st Street* ("The purpose of Section 134 of the Planning Code is to maintain a midblock corridor. However, the courtyard is surrounded by the subject building on the west side and the adjacent building on the east side. As a result, there is no well-defined pattern of mid-block open space adjacent to the courtyard. The two adjacent properties to the east are developed deep into their lots, which along with the existing rear building on the subject property, effectively cuts off the subject property from the block's mid-block open space.").

adverse effect on the City.”<sup>102</sup> Of the 99 variance applications that were granted - and data was available (96) - the amount of proposed housing varied: 64 (or 67%) proposed no additional housing, 20 (or 21%) planned to add one unit, four projects (4%) planned to add two additional units, four projects (4%) planned to add three units, three applications planned to add four units, and one actually removed a unit of housing. Granting this variance application and related Conditional Use Authorization would lead directly to the addition of four incremental dwelling units to San Francisco’s housing stock. **Not a single variance granted by the City in 20 years has added a single BMR affordable housing unit to the City’s housing stock.**

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

Based on a review of past variance decisions, the test for the second criterion appears to be that, “[l]iteral enforcement of the Planning Code requirements for lot area imposes undue hardship on the applicant/owner without any compensating public benefit since there are other parcels”<sup>103</sup> in the area that are smaller,<sup>104</sup> developed similarly,<sup>105</sup> or both<sup>106</sup> and that “[d]isapproving the variance would deny the owners parity of treatment.”<sup>107</sup>

- **Smaller Existing Lots.** The Proposed Lots would be 1,458 sqft each. In an analysis of the surrounding neighborhood, as noted above, there would be at least 27 smaller lots in terms in

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<sup>102</sup> 2779 Diamond Street; see also 1299 Quesada Avenue (“This site is available for new infill housing at a time when all policy makers have concluded that a critical housing shortage exists in the City.”), 1850 Palou Avenue (“The new lot would utilize the existing vacant space and allow the construction of a new single-family dwelling.”), 690A Arkansas Street (“Although the granting of the subject variance will create a new lot that does not meet the lot requirements prescribed by the Planning Code, this is necessary to support the City policy of encouraging individual home ownership and the project does is [sic] not anticipated to have any adverse effect on the City.”).

<sup>103</sup> 1542-1544 Vallejo Street and 39-41 Bonita Terrace. (emphasis added).

<sup>104</sup> See 537 Grove Street (“Approximately 53% of the lots on the subject Assessor’s block are less than 2,500 square feet in area. Other blocks in the area feature a higher percentage of substandard lots”), 266 Wailer Street (“The existing neighborhood character features a pattern of small lots. Of 23 lots on the subject block, 19 are of substandard lot size (less than 2,500 square feet.”), 1299 Quesada Avenue (“The exceptional feature is that hundreds of lots of comparable or similar size in the South Bayshore area and the City as a whole have been permitted as legal lots and have been permitted to construct buildings of various sizes and residential densities...seventeen (17) specific properties in the immediate South Bayshore area that have areas less than the proposed Quesada Avenue lots, with some lots having substantially less lot area. In addition at least 37 lots have frontage on north-south oriented streets, including areas no greater than 1,750 square feet.”).

<sup>105</sup> See 2255-2257 Pine Street (“Literal enforcement of the Planning Code requirements for lot area, [and] rear yard depth” would preclude the applicant “from developing their property in the manner proposed and would result in an unnecessary hardship with no compensating benefit since other parcels on the subject block have been developed similarly to that proposed.”), 266 Wailer Street (“The pattern of development on the subject block includes several properties subdivided in a similar manner. Granting these variances will allow the subject property to be subdivided into two separate lots, a substantial property right possessed by other properties in the same class of district.”).

<sup>106</sup> See 1138 Treat Avenue (“The literal enforcement of the Planning Code requirements for minimum lot area and rear yard imposes an undue hardship on the applicant/owners without any compensating public benefit since there are many other parcels in the surrounding area that are either smaller or split in a manner similar to the subject property.”).

<sup>107</sup> 1542-1544 Vallejo Street and 39-41 Bonita Terrace. The second criteria also requires that the “unnecessary hardship not [be] created by or attributable to the applicant or the owner of the property.” One of Applicant’s neighbors suggested to him that since Applicant bought the Property with current Code requirements in place, he may be ineligible for a variance. Applicant researched this issue and learned that even though Applicant only recently purchased the property (May 10, 2019), this fact does not make Applicant unique among other applicants of granted variances. Of the 95 variances that were granted in the analysis, for those properties where data is available (92) **the median amount of time between filing the variance and the previous sale of the associated property was only two years (the shortest being a mere 11 days).** All 95 successful applicants were granted a variance for Code sections that were in place when they purchased their respective properties.

absolute square footage nearby, and several substantially smaller lots (680, 832, 1,210, 1,260, 1,267, 1,213, and 1,211 sqft) all within a few hundred feet of the Subject Lot.<sup>108</sup>

- **Similar Development.** At least 25 lots in the area have similar corner lot patterns and there are no examples of other half-vacant corner lots adjacent to the right of way in the area.<sup>109</sup>
- **Similar Variances.** At least 14 lots within a half mile of the Subject Lot “have enjoyed lot splits creating substandard lots.”<sup>110</sup> Numerous variances unrelated to lot splits have also been granted in the area, *e.g.*, neighbors two (84-86 Ord St.) and three (80 Ord St.) doors down from Applicant received variances from rear yard setback requirements.

The Proposed Lots would be wholly in line with the current pattern and development of the area. The Project would also provide:

- **Additional Housing Stock.** Previous variance decisions and appeals consistently held that the denial of a variance application with one (let alone four) additional units of housing was itself an unnecessary hardship without “compensating public benefit” and therefore weighed heavily in favor of granting a variance.<sup>111</sup>

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

Based on a review of past variance decisions, it is considered a substantial property right to develop property consistent with similarly situated properties in the area; “[t]he granting of this variance is the only feasible manner by which the applicant/owner can enjoy the same full use of his property that similarly situated property owners enjoy.”<sup>112</sup> Past variance decisions have focused analysis for this

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<sup>108</sup> Exhibit G.

<sup>109</sup> Exhibit C.

<sup>110</sup> Exhibit H. *See also 1860 Lombard Street* (“A number of other properties in the neighborhood have enjoyed lot splits creating substandard lots”).

<sup>111</sup> *699 Paris Street* (“The application precisely requests for a variance from the minimum lot size in order to utilize an empty side lot to construct one additional housing unit in San Francisco, which is the compensating public benefit.”); *see also 1148-1150 Treat Ave. & 47 Lucky St.* (“The two smaller lots each present an opportunity for more affordable home-ownership.”), *2779 Diamond Street* (“The creation of a separate lot...will enable the owner to provide another residential unit...”), *28 Sweeny Street* (“Literal enforcement of the Planning Code would prevent a dwelling unit from being added to the City's housing stock.”), *1316 Bowdoin Street* (“As such, to deny this variance represents a hardship in that...this would result in...one less dwelling than the proposal, which would benefit no one.”), *1850 Palou Avenue* (“Literal enforcement of the minimum lot size requirement of the Planning Code would prevent...the development of approximately 1,687 square feet of existing vacant lot area.”), *60 Teddy Avenue* (“The result would be the loss of a potential housing opportunity for residents in San Francisco.”), *40-42 Cortland Avenue* (“The newly created lots each present an opportunity for more affordable homeownership.”).

<sup>112</sup> *5 Upper Terrace*; *see also 1316 Bowdoin Street* (“The granting of this variance is the best and most feasible manner by which the owners of the subject property can enjoy the same full use of their property that owners of similarly situated property owners enjoy because it only allows the subdivision of an oversized lot for the development of a...dwelling on what is a visually and functionally distinct portion of the property...”), *1850 Palou Avenue* (“The approval of this variance will allow the applicant to use the subject property in a manner consistent with the surrounding land uses and substantially in conformance with the requirements of the Planning Code.”), *1299 Quesada Avenue* (“A property right should be vested to permit this variation when it furthers a property right enjoyed by other properties in this and other residential zoning districts.”).

## Attachment in Support of Conditional Use Application - 4300 17th Street / Pluta

criterion on the existence of similarly small lots,<sup>113</sup> similar subdivisions,<sup>114</sup> and similarly non-conforming lots.

As detailed previously, there are abundant examples of similarly small lots and similar subdivisions in the area.<sup>115</sup> It is also the case that there are numerous examples of **similarly non-conforming lots** in the area:

- **Non-conforming Lot Sizes.** Of the 87 lots in the two contiguous Assessor Blocks<sup>116</sup> that the Subject Lot is part of, 58 (or 67%) are non-conforming based on lot size.<sup>117</sup> The most common lot

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<sup>113</sup> See *35 Wilder Street* ("The granting of this variance would allow the subject property owners to create a lot that is smaller than required by Code but similar in size to other small lots within the neighborhood, a substantial property right given the irregular character of the properties within the neighborhood."), *2255-2257 Pine Street* ("The proposed subdivision would create two lots with dimensions compatible with those of other lots in the vicinity. Some adjacent lots on the subject block have a similar development pattern and lot size pattern."), *1299 Quesada Avenue* ("The following examples cited by President Chin illustrate this fact. Lots 31, 34, 35 and 36 in Block 5341 have been resubdivided and developed with the same lot area and lot width as the proposal."), *161-165 Newman Street* ("Under the proposal, the larger lot would be 1,550 square feet and the smaller lot would be 1,100 feet. There are twenty-two (22) lots located within a quarter mile of the Property equal to or less than 1,100 square feet in lot area. This includes lots which resulted from previously subdivided lots directly across Newman street from the Property, and at the corner of Andover and Ellert Street.").

<sup>114</sup> See *740 Church Street* ("There are a number of corner properties in the neighborhood that have been subdivided resulting in lots that are smaller than the average lot size."), *537 Grove Street* ("Many of the other lots on the subject block have been subdivided in a manner similar to what is proposed for this project."), *1327-1329 Kearny Street and 28-30 Sonoma Street* ("On the same portion of Assessor's Block 0115 (bounded by Sonoma, Kearny, Union, and Green Streets), there have been two other similar subdivisions, including the granting of Variance Case No. 2004.1144V at 1347-1349 Kearny Street in 2005."), *653-655 Fell Street* ("Other properties on the block have enjoyed the ability to split lots and create development on Hickory Street, a substantial property right possessed by other properties in the same class of district. Variances were granted to other similar projects on the subject block."), *161-165 Newman Street* ("Since the planning code was adopted in 1946, the City has approved six lot split requests in the surrounding neighborhood with lot sizes as small or smaller than the Proposal, and with smaller rear yard and unusable open space dimensions.").

<sup>115</sup> Exhibits C and G.

<sup>116</sup> The Subject Lot sits at the intersection of two Assessor Blocks, 2626 and 2646, and while technically in the former (2626), block face and address-wise (4300 17th Street) it is comparable with the latter (2646). For purposes of this analysis, therefore, the blocks are examined together. See Exhibit \_\_.

<sup>117</sup> *Id.* See *537 Grove Street* ("More than half of the properties on the block do not comply with the minimum 2,500 sq. ft. lot requirement of Planning Code Section 121. Subdivision of the subject property would create two lots that are similar in size and character to the majority of others on the block. The property is 3,150 square feet in area and it would not be possible to subdivide the lot into two code-compliant parcels."), *329-31 Waller Street* ("Of the twenty-four lots on the subject block, only five currently meet the minimum lot size requirement."), *35 Wilder Street* ("Due to the angled nature of the streets within the neighborhood there are several properties that are smaller than required by the Code. Including but not limited to 10, 14, 18, and 22 Wilder Street and 56 and 62 Natick Street. Other smaller lots include 600, 612, 616, 624, and 632 Arlington Street. The granting of this variance would allow the subject property owners to create a lot that is smaller than required by Code but similar in size to other small lots within the neighborhood."), *1327-1329 Kearny Street and 28-30 Sonoma Street* ("Of the 53 lots on the subject block (Assessor's Block 0115 bounded by Kearny, Green, Grant, and Union Streets), 41 (71 percent) are noncomplying with respect to minimum lot width and minimum lot area requirements. There is a precedent on the subject block for noncomplying lots, and the granting of this variance is necessary for the enjoyment of a substantial property right possessed by other properties in this district."), *2907 Octavia Street* ("Subject Block 519 contains forty-six lots with twenty-seven of the lots being smaller than the 2,500 square feet (sf) required by Planning Code Section 121. Twenty-seven lots on the block are substandard in lot size and do not meet Planning Code lot size requirements."), *1860 Lombard Street* ("Within an approximately four-block radius there are twenty-one lots which are substandard in lot size (being smaller than the 2,500 square feet (sf) required by Planning Code Section 121)."), *1327-1329 Kearny Street and 28-30 Sonoma Street* ("Of the 53 lots on the subject block (Assessor's Block 0115 bounded by Kearny, Green, Grant, and Union Streets), 41 (71 percent) are noncomplying with respect to minimum lot width and minimum lot area requirements. There is a precedent on the subject block for noncomplying lots, and the granting of this variance is necessary for the enjoyment of a substantial property right possessed by other properties in this district."), *20-30 Jansen Street* ("The existing neighborhood character features a pattern of small lots. Of 24 lots in the vicinity of the subject lot, 19 are of substandard lot size (less than 2,500 square feet). Of the 19 substandard lots, 15 have a lot area less than 1,650 square feet, similar to the proposed lot sizes resulting from the lot split. Given the nature of the subject block and properties in the vicinity, granting the variances will provide the property owners with a property right similar to others in the neighborhood."), *2010-2012 Filbert Street* ("The pattern of development on the subject and adjacent block includes several properties with non-complying lots sizes and structures in the rear yard. Granting

## Attachment in Support of Conditional Use Application - 4300 17th Street / Pluta

size (42 of the 87 lots are 25 ft x 87.5 ft = 2,188 sqft) is 88% in compliance with minimum lot size requirements. The Proposed Lots would be approximately 83% (1,458/1,750) compliant with their minimum lot size requirement. In other words, the Proposed Lots would be substantially in line with the average conformity of the other lots in the neighborhood. Examining the proposed lot sizes that have been granted variances (179 lots with data), Applicant's proposed lot sizes (1,458 sqft) would be in the 81st percentile if compared to the smaller-of-the-two-lots created by subdivision (91) and in the 65th percentile overall when compared to the entire cohort of subdivided lots (179). In other words, the proposed lots would be well above average in terms of size and conformity with respect to past variance decisions.

- **Non-conforming Rear Yards.** The archetypical lot size in San Francisco is 2,500 sqft (25' x 100'). As noted above, however, the predominant lot depth on 17th Street (Block 2646, the closest mid-block space) is only 87.5 feet. As detailed above, the surrounding lots are smaller than typical, which naturally diminished rear yard setbacks in the area. While the City does not maintain data on actual rear yard setback measurements for the surrounding area, a visual inspection via Google Maps suggests that the vast majority of area lots are non-conforming.<sup>118</sup>
- **Additional Housing Stock.** And as with all other Section 305 criteria, the need for incremental housing stock was an important factor weighing in favor of successful applications; "[g]iven the corner lot site and the housing needed to satisfy the jobs housing nexus for the City, this owner should be granted the right granted other similar properties."<sup>119</sup>

The consistent administration of variance applications creates substantial property rights for property owners. Sections III-V, above, detail the consistency of the Applicant's Project with the 99 successful variance applications (and dissimilarity with the 12 that have been denied). The following additional data analysis strengthens this point.

- **Approval by These Planning Code Sections.** Of the 99 applications that were granted variance from Code Sections 121 (lot size) and 134 (rear yard setback), and 135 (open space), 30 of 35 (or 86%) were granted.

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these variances will allow the subject property to add an additional dwelling unit, a substantial property right similar to others in the neighborhood.").

<sup>118</sup> See *5 Upper Terrace* ("A number of buildings with abutting rear yards on the subject property are separated by less than the 25 percent of lot depth required for building separation on the subject property."), *132 Cortland Avenue* ("There are three other properties on the same block with similar building size, lot coverage, and lot sizes."), *2255-2257 Pine Street* ("With the proposed lot split, the existing two-family dwelling and the proposed new single family dwelling would be deficient in rear yard depth. Some adjacent lots have a similar development pattern and lot size pattern on the subject block."), *4200 Moraga Street* ("Other properties in the vicinity contain buildings that encroach into the required open areas, thereby establishing a precedence of properties having usable open space dimensions less than required by Code."), *537 Grove Street* ("Expansive rear yards are not typical on the subject block. Some of the properties fronting on Octavia and Laguna Streets have little to no rear yard space."), *10-12 Lucky Street* ("Many of the lots on the same block do not meet the 25 percent required rear yard or open space requirements."), *329-31 Waller Street* ("Of the twenty-four lots on the subject block, only five currently meet the minimum lot size requirement. Additionally nearly all of the lots on this block have little to no rear yard open space which is consistent with the subject property."). For in depth analysis specific to the Corona Heights Special Use District, see related *Attachment in Support of Conditional Use Application* ("Based on a random sample of 100 homes in the Special Use District, 74% of homes have "less than 45% rear yard depth.").

<sup>119</sup> *1299 Quesada Avenue*; see also *1316 Bowdoin Street* ("Subdivision of this property with lot size and width variances is the only method by which the family can create a new Code-complying dwelling unit...the provision of a new lot and new dwelling...provides new and more affordable home ownership opportunities.").

## Attachment in Support of Conditional Use Application - 4300 17th Street / Pluta

- **Incidence and Approval by Lot Type.** Of the 99 applications that were granted, 44 were through lots but most (56%) were not; 24 were corner lots, 25 mid-block rectangles, 3 L-shaped lots, and 3 mid-block polygons. And 75% (24/32) of all corner lot applications were successful.
- **Approval by Housing Added.** Of the 99 applications that were granted, a full 67% (66/99) did not add a single unit of housing to the San Francisco housing stock. 20% added one unit, 4% added two units, 5% added three units, and 3% added four units of housing. Of the eight applications that sought to add three or more units of housing 100% were granted. Of the 99 applications that were granted, not a single one added a unit of affordable housing.
- **Approval by Rear Yard Setback.** 92% (121 of 131) had non conforming rear yard setbacks, 50% (65/131) were 33% or less conforming, and 23% (30 of 131) had no rear yard setback at all.

To deny the variances being sought would be to deny Applicant's established substantial property right to "enjoy the same full use of his property that similarly situated property owners enjoy."

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

Based on a review of past variance decisions, if the proposed development is "consistent with other properties" in the area, it was *per se* not materially detrimental or injurious to the property in the vicinity.<sup>120</sup> As detailed in the previous Sections, the Project is wholly consistent with what exists and has been permitted in the area by the City.

**Potential Neighborhood Support or Opposition.** As of the date of this submission, it is unclear whether on balance Applicant's neighbors will be supportive, neutral, or opposed the Project.<sup>121</sup> Previous variance decisions held, however, that neighborhood opposition could be addressed if the Applicant actively communicated and engaged with neighbors, any tenants, and City staff.<sup>122</sup>

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<sup>120</sup> 3559, 3559A, 3561, and 3561A 17th Street ("This variance is granted to allow a level of development consistent with other properties or improvements in the vicinity."), 2285 and 2299 40th Avenue ("The variance is granted to allow a level of development consistent with, rather than injurious to the property and improvements in the vicinity."), 537 Grove Street ("The requested variances would simply make the development on the property consistent with the pattern of development on the block and in the area in general"), 161-165 Newman Street ("Due to the presence of lots that do not meet the Code required lot area in the immediate and general vicinity, the granting of these Variances will be consistent with the established neighborhood character.").

<sup>121</sup> Unfortunately Applicant anticipates strong opposition from at least one of his neighbors. Once Applicant made a final decision on the scope of the Project and obtained initial site plans, he wanted to provide an update to those neighbors that would be most directly impacted, 4302-4304 17th Street. Applicant invited his neighbors over to his home and shared details of the Project. Unfortunately, one of Applicant's neighbors became very upset. He said that the Project was "unacceptable," he called the Applicant a "liar", a "DC type", that Applicant was "everything that is wrong with San Francisco" and used profanity - including the "f" word - on several occasions. This neighbor indicated that he would fight Applicant's Project "tooth and nail" and "the neighborhood" would as well. He ended by saying "we don't care if you want to be liked, we don't like you" and left shortly thereafter.

<sup>122</sup> See 2686-2694 McAllister Street ("The granting of the rear yard variance at 2686 will have an impact on the neighbors immediately to the north and east, but will be significantly mitigated by the fact that the building will be stepped back 6 to 8 feet at each story to preserve as much light and air as possible to these adjacent properties."), 47 - 75 Topaz Way ("The Department received one phone call from a homeowner residing at the Topaz Townhomes, who was concerned about the practicality of the proposed lot subdivision and a second phone call from a representative of the Diamond Heights Community Association, who was concerned about the impact on the neighborhood character as a result of future development of the proposed vacant lot fronting on Diamond Heights Boulevard. The Zoning Administrator, however, believes that the proposed project limited by the conditions of this variance decision in conjunction with the circumstantial evidence filed under this variance application would not be materially detrimental to the public welfare or materially injurious to the improvements in the vicinity and, in fact, would improve the urban design of the area by defining the street wall of Diamond Heights

**Additional Housing Stock.** As with all other criteria, past variance applications have noted the material benefits of additional housing; “[g]ranteeing the variances would add one new residence to the City’s housing stock and would not be materially detrimental to the public welfare or materially injurious to the neighboring properties.”<sup>123</sup>

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

Based on a review of past variance decisions, the fifth and last criterion weighs whether “[t]he proposal is in harmony with the generally stated intent and purpose of the Planning Code to promote orderly and beneficial development.”<sup>124</sup> Variance decisions often cited housing-related policies from the San Francisco *General Plan* which “encourage[s] residential development when it preserves or improves the quality of life for residents of the City.”<sup>125</sup> Applicant’s Project is not only consistent with but advances at least 22 important Objectives and Policies of the General Plan (see Section III.A., above).

The last criterion also often discussed:

**Parking.** The provision of off street parking was occasionally cited as an important factor in some variance decisions. Here, “[n]eighborhood parking would not be impacted because the Applicant has

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Boulevard.”), 740 Church Street (“Residents of neighboring properties have expressed concerns regarding the proposed lot subdivision because the light, air, and privacy of these residents would be inhibited by the removal of the existing trees and the construction of a building. To address their concerns the Applicant has agreed to [do five things including limit hours of construction and plant trees.]”), 1050, 1052, 1054 and 1054A Guerrero Street (“The Department received telephone calls and letters from neighbors residing or owning properties in this block, who expressed opposition to the proposed lot subdivision and the second floor addition to the existing rear building fronting Ames Alley. These neighbors were concerned about the negative impact on their properties and the neighborhood character as a result of the project. The project sponsor was advised by the Zoning Administrator after the variance hearing to work with these neighbors on their concerns.”), 144 Lexington Street (“Addition of a 3rd story at 144 Lexington Street would likewise have no apparent adverse effect. The Project Sponsor has worked with the adjacent property to the north to resolve privacy/light/air concerns. These modifications are represented on the plans on file with this application.”).

<sup>123</sup> 2010-2012 Filbert Street; see also 4200 Moraga Street (“The granting of this variance will allow four new housing units to be built that are compatible with surrounding development, and increase the city’s overall housing stock.”), 1514 25th Street (“The granting of this variance will create additional housing opportunity...”), 1316 Bowdoin Street (“Also as stated earlier, the existing dwelling could be expanded to greater lot coverage without a variance, but this would only create a larger and less affordable dwelling. The variance is the only way to subdivide the lot for the creation of a new smaller dwelling, which the City urgently needs.”), 35 Wilder Street (“The granting of this variance will be beneficial to the City in that it could result in additional in-fill housing within an established neighborhood that is well served by transit.”), 2010-2012 Filbert Street (“Granting the variances would add one new residence to the City’s housing stock and would not be materially detrimental to the public welfare or materially injurious to the neighboring properties.”).

<sup>124</sup> 1138 Treat Avenue.

<sup>125</sup> San Francisco General Plan, *Housing Element* (2014). 2285 and 2299 40th Avenue; see also 1138 Treat Avenue (“The proposal is consistent with Objective 12 of the Residence Element of the General Plan, which is to provide a quality living environment. Under this Objective, Policy 4 is to promote construction of well designed housing that conserves existing neighborhood character.”), 2285 and 2299 40th Avenue (“The proposal is consistent with the generally stated intent and purpose of the Planning Code to promote orderly and beneficial development. The proposal is in harmony with the Residence Element of the General Plan to encourage residential development when it preserves or improves the quality of life for residents of the City.”), 28 Sweeny Street (“The proposal is also consistent with the following Objectives and Policies of the General Plan, Objective 1, Policy 4 of the Residence Element to locate infill housing on appropriate sites in established neighborhoods, and Objective 12, Policy 4 of the Residence Element to promote construction of well designed housing that conserves existing neighborhood character.”), 2775 Diamond Street (“The proposal is in harmony with the Residence Element of the General Plan to encourage residential development when it preserves or improves the quality of life for residents of the City: Policy 1-4: Locate in-fill housing on appropriate sites in established neighborhoods. Policy 2-1: Set allowable densities in established residential areas at levels, which will promote compatibility with prevailing neighborhood scale and character. Policy 12-4: Promote construction of well-designed housing that conserves existing neighborhood character.”).



agreed to provide two off-street parking spaces with any proposed building for the property” and will replace any lost vehicle parking in the Existing Building with Class 1 Bicycle Parking spaces.<sup>126</sup>

**Additional Housing Stock.** Applicant is proposing the addition of four additional units of housing, two of which are considered affordable options, and one would be rent-controlled. Overall, “[g]ranting this variance will add to the quality of the City’s housing stock by helping to retain the existing supply of housing while preserving the aesthetics and functionality of the subject property”<sup>127</sup> and “improve the supply of affordable housing.”<sup>128</sup>

And in all variance decisions, the “eight priority-planning policies” codified in Planning Code Section 101.1 were relied upon when evaluating this criterion (in Section III).

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<sup>126</sup> 740 Church Street.

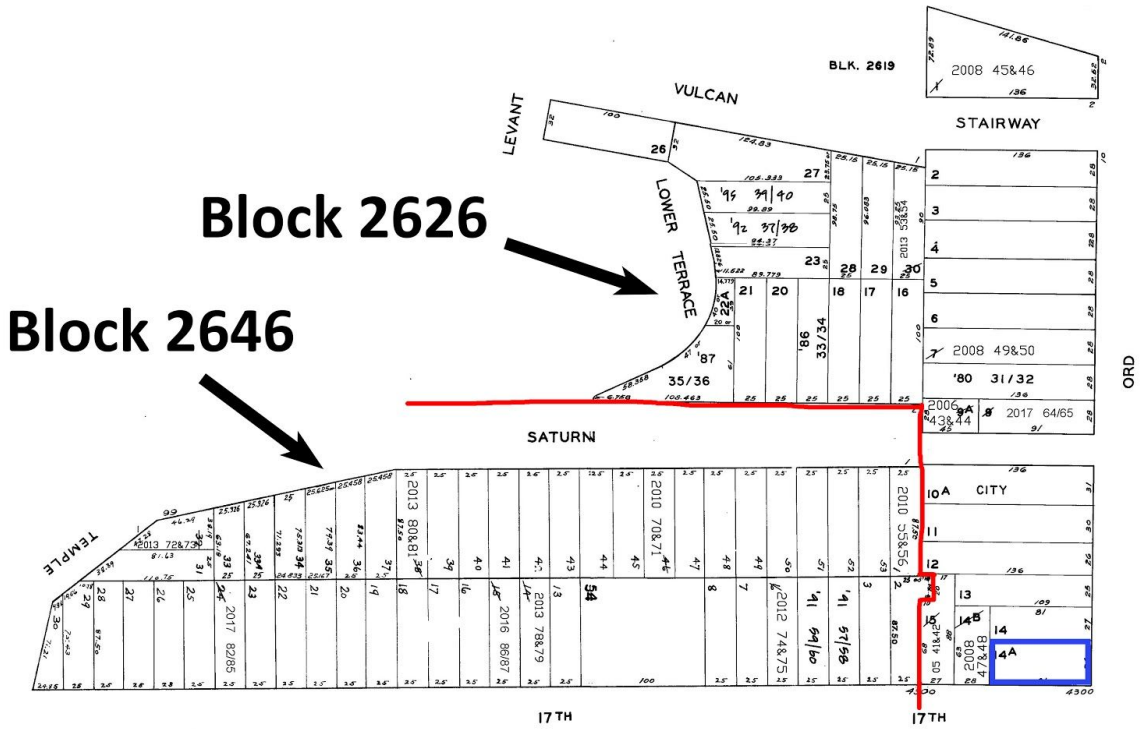
<sup>127</sup> 2255-2257 Pine Street; see also 740 Church Street (“The proposal would add one dwelling unit to the city’s [sic] housing stock.”), 1963-65 Oakdale Ave/ 1955 Oakdale Ave (“[A]llowing for the construction of three additional, smaller units will enhance the natural affordability for future residents.”).

<sup>128</sup> 1860 Lombard Street; see also 2686-2694 McAllister Street (“The project would maintain on the City’s supply of affordable housing by providing four new family-sized dwelling units, and would protect.”), 410 Hearst Avenue (“The proposed project will be relatively affordable, given the small floor area of the building.”); but see 1286-1298 Treat Avenue (“At the public hearing, many speakers voiced concern about the possible loss of affordable units and about the possibility of being displaced. The subdivision of a property of seven units into properties with four or fewer units enables the properties to be possibly divided into condominiums, where it would not be possible with the existing condition.”).

**Exhibit List**

- Exhibit A (Accessor Blocks 2626 and 2646)
- Exhibit B (Photographs of the Property and Surrounding Area)
- Exhibit C (Map and Addresses of Corner Lot Examples)
- Exhibit D (List of Sample Properties and Map)
- Exhibit E (Aerial View of Property Relative to the Midblock Space)
- Exhibit F (Panoramic of 17th Street Block Face)
- Exhibit G (Map of 14 Accessor Blocks Along 17th Street Corridor)
- Exhibit H (Maps and Addresses of Other Variance Examples)

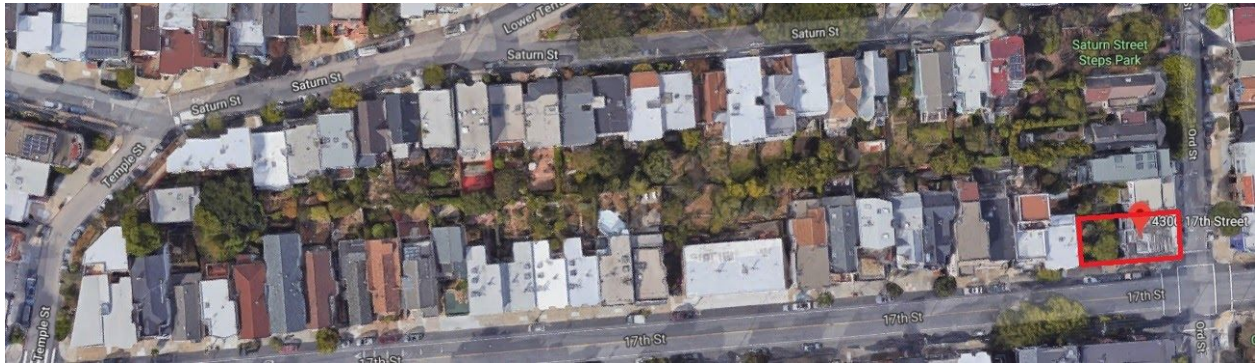
Exhibit A (Accessor Blocks 2626 and 2646)



Subject Lot =       

Boundary between Blocks =

**Exhibit B - Photographs and Links to Video of the Property and Surrounding Area**



Attachment in Support of Conditional Use Application - 4300 17th Street / Pluta



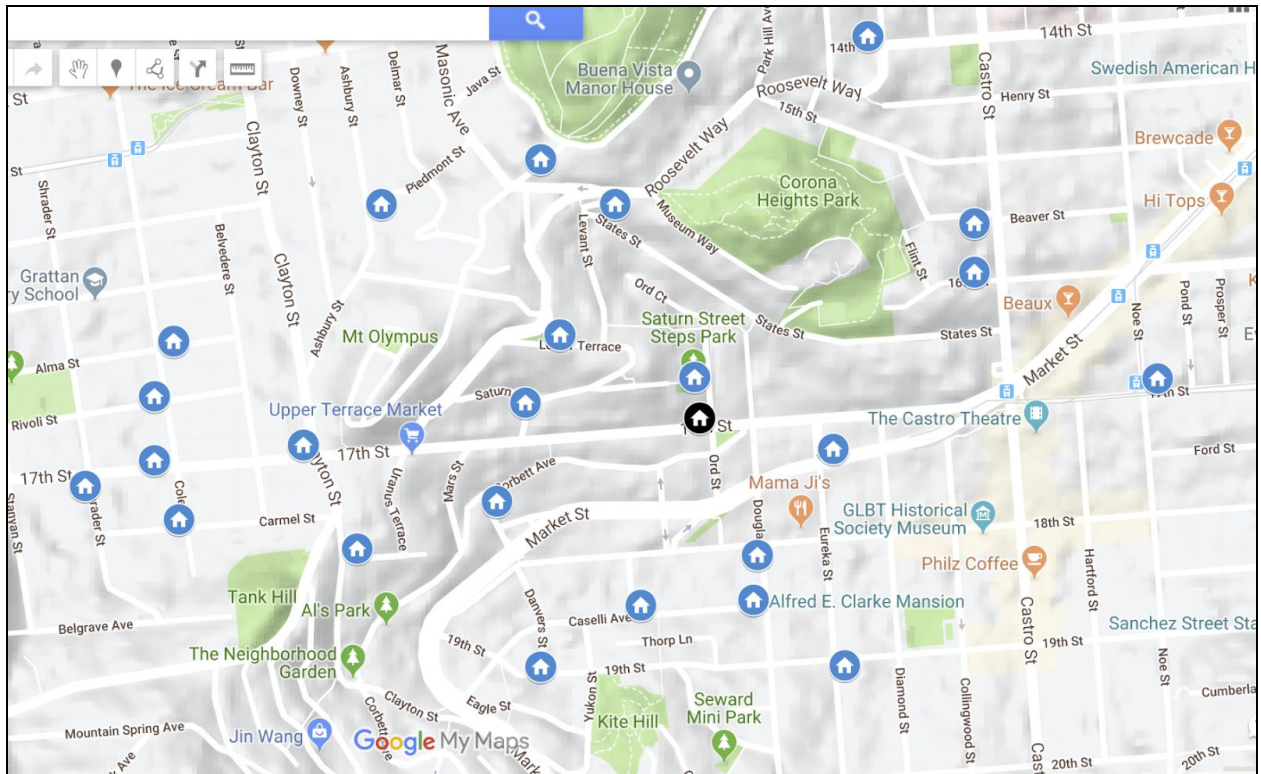
**Attachment in Support of Conditional Use Application - 4300 17th Street / Pluta**



**Applicant uploaded drone video of the Property and surrounding area on YouTube:**

- [Approach to 4300 17th Street from the South East](#)
- [Pan of Ord Street Block Face](#)
- [Pan of 17th Street Block Face](#)
- [View of Adjacent Neighbors on 17th Street with Height Perspective](#)

Exhibit C (Map and Addresses of Corner Lot Examples)



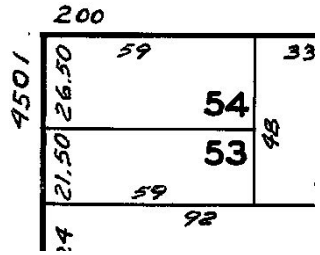
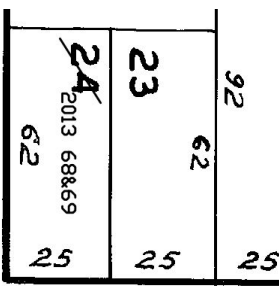
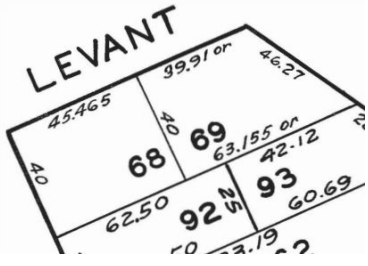
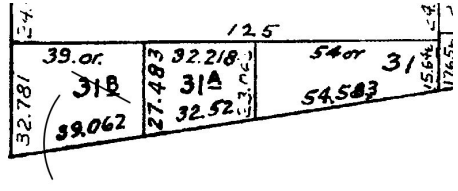
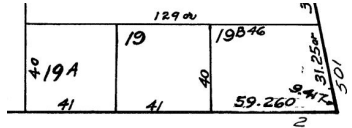
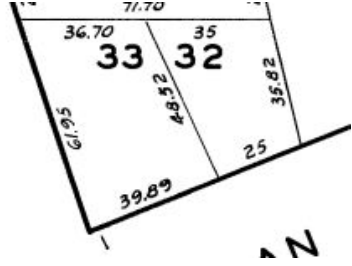
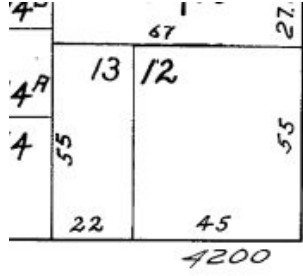
<p><b>201 &amp; 203 Eureka St.</b></p>	<p><b>3716-18 &amp; 3700 16th St</b></p>	<p><b>1066-68 &amp; 1070-72 14th St</b></p>
		<p>JRN</p>

Attachment in Support of Conditional Use Application - 4300 17th Street / Pluta

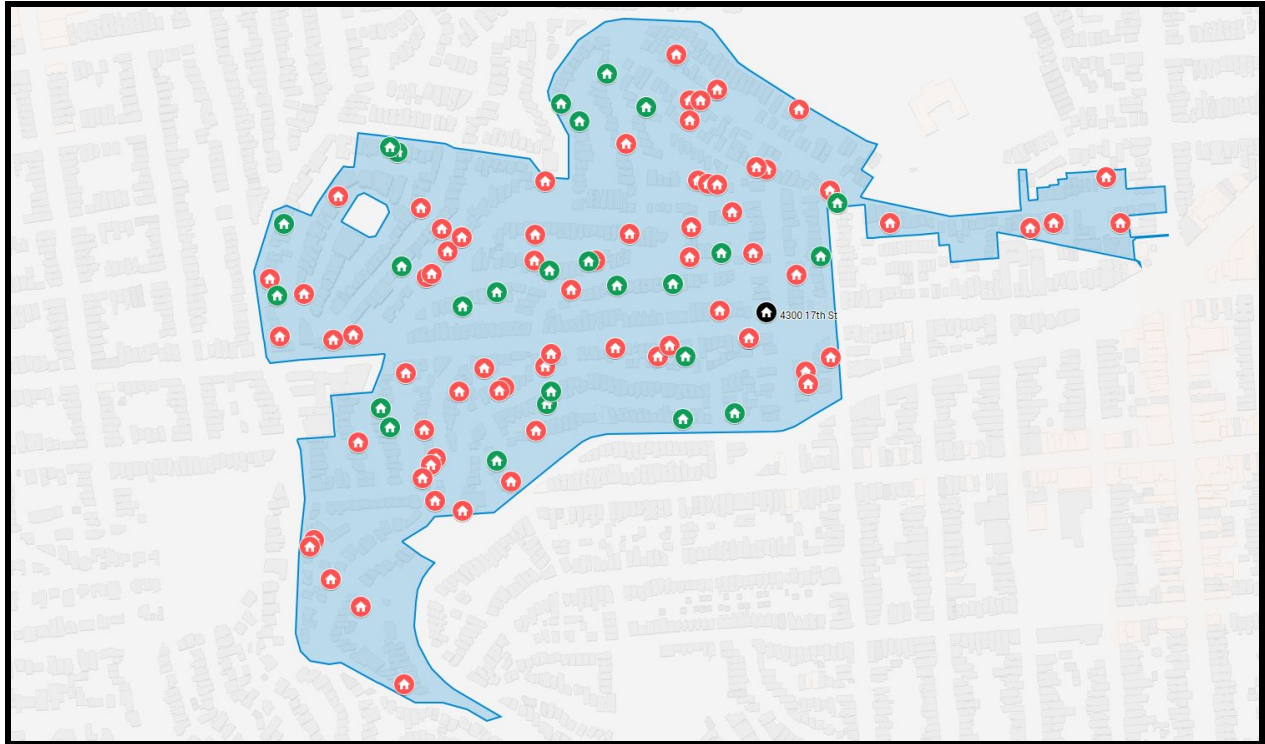
<p>111 Beaver St. &amp; 250 Castro St.</p>	<p>4812 17th St &amp; 4800 17th St.</p>	<p>1 Saturn St. &amp; 58-60 Ord St.</p>
<p>4903 &amp; 4911 17th St</p>	<p>102 &amp; 112 Carmel St.</p>	<p>1175 Clayton St. &amp; 4614 17th St.</p>
<p>1154 Cole St &amp; 56 Alma St.</p>	<p>930 Ashbury St. &amp; 85 Piedmont St.</p>	<p>1290 Clayton St &amp; 76 Deming St.</p>
<p>3894 17th St &amp; 389 Noe St.</p>	<p>101 &amp; 125 Saturn St.</p>	<p>122 &amp; 100 Rivoli St.</p>



Attachment in Support of Conditional Use Application - 4300 17th Street / Pluta

<p>477 Roosevelt Way &amp; 180 Lower Terrace Way</p>	<p>222 Danvers St. &amp; 4750 19th St.</p>	<p>246 Douglass St. &amp; 20 Caselli Ave.</p>
		
<p>4501 &amp; 4503 18th St.</p>	<p>90 &amp; 96 Caselli Ave</p>	<p>333 Roosevelt Way &amp; 288 States Street</p>
	 <p>TERRACE</p>	
<p>2650 &amp; 2640 &amp; 2630 Market St.</p>		<p>22 Upper Terrace &amp; 24 Upper Terrace &amp; 67 Buena Vista Ave W</p>
		
<p>5 Danvers St. &amp; 249-253 Corbett Ave</p>	<p>4202 17th St. &amp; 99 Ord St</p>	

## Exhibit D (List of Sample Properties and Map)



**Sampleset (n=100):** 24 Levant St, 66 Levant St, 429 Roosevelt Way, 419 Roosevelt Way, 1474 Clayton St, 26 Vulcan Stairway, 50 Vulcan Stairway, 37 Levant St, 1 Douglass St, 44 Vulcan Stairway, 44 Ord Ct, 16 Ord Ct, 261 States St, 263 States St, 276 States St, 254 States St, 252 States St, 110 Museum Way, 120 Douglass St, 5 Douglass St, 65 States St, 25 States St, 85 States St, 85 States St, 163 States St, 71 Ord St, 66 Douglass St, 8 Saturn St, 22 Saturn St, 50 Ord St, 46 Lower Ter, 1 Vulcan Stairway, 80 Saturn St, 84 Saturn St, 112 Saturn St, 124 Saturn St, 121 Lower Ter, 183 Lower Ter, 20 Ord Ct, 520 Roosevelt Way, 550 Roosevelt Way, 552 Roosevelt Way, 245 Upper Ter, 4508 17th St, 4528 17th St, 534 Roosevelt Way, 223 Upper Ter, 232 Upper Ter, 1180 Clayton St, 1150 Clayton St, 1138 Clayton St, 1082 Ashbury St, 147 Clifford Ter, 155 Clifford Ter, 169 Saturn St, 137 Saturn St, 97 Saturn St, 69 Saturn St, 37 Saturn St, 4318 17th St, 56 Mars St, 123 Ord St, 1 Clifford Ter, 4347 17th St, 4381 17th St, 4351 17th St, 4307 17th St, 2805 Market St, 156 Corbett Ave, 210 Corbett Ave, 236 Corbett Ave, 242 Corbett Ave, 37 Mars St, 4411 17th St, 4441 17th St, 353 Upper Ter, 78 Mars St, 4311 17th St, 55 Uranus Ter, 37 Uranus Ter, 4485 17th St, 82 Mars St, 68 Uranus Ter, 3012 Market St, 3090 Market St, 225 Corbett Ave, 223 Corbett Ave, 31 Hattie St, 40 Danvers St, 315 Corbett Ave, 62 Danvers St, 368 Corbett Ave, 26 Deming St, 32 States St, 381 Corbett Ave, 308 Corbett Ave, 401 Upper Ter, 135 Ord St, 1320 Clayton St, 1316 Clayton St

Exhibit E (Aerial View of Property Relative to the Midblock Space)



Exhibit F (Panoramic of 17th Street Block Face)

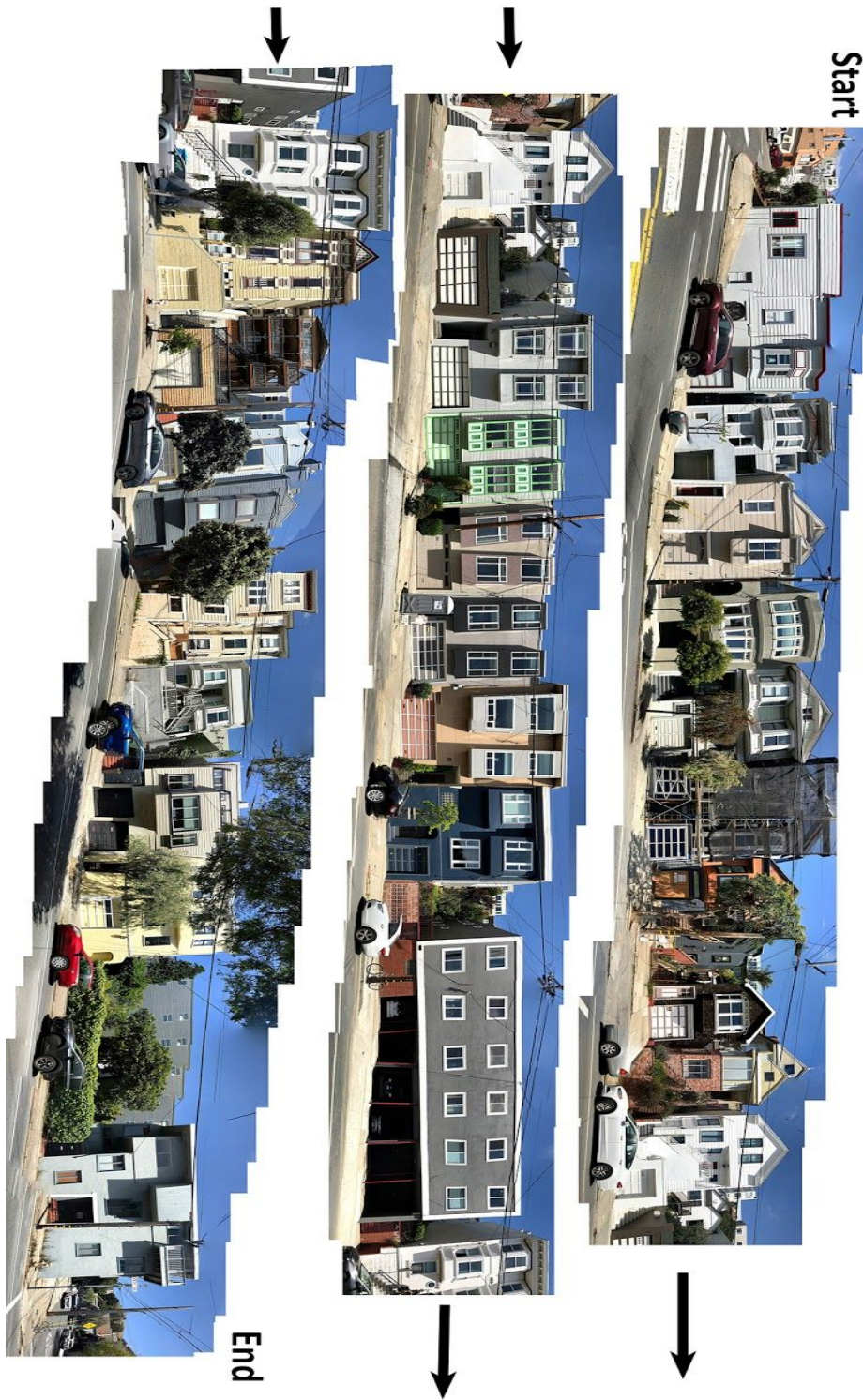
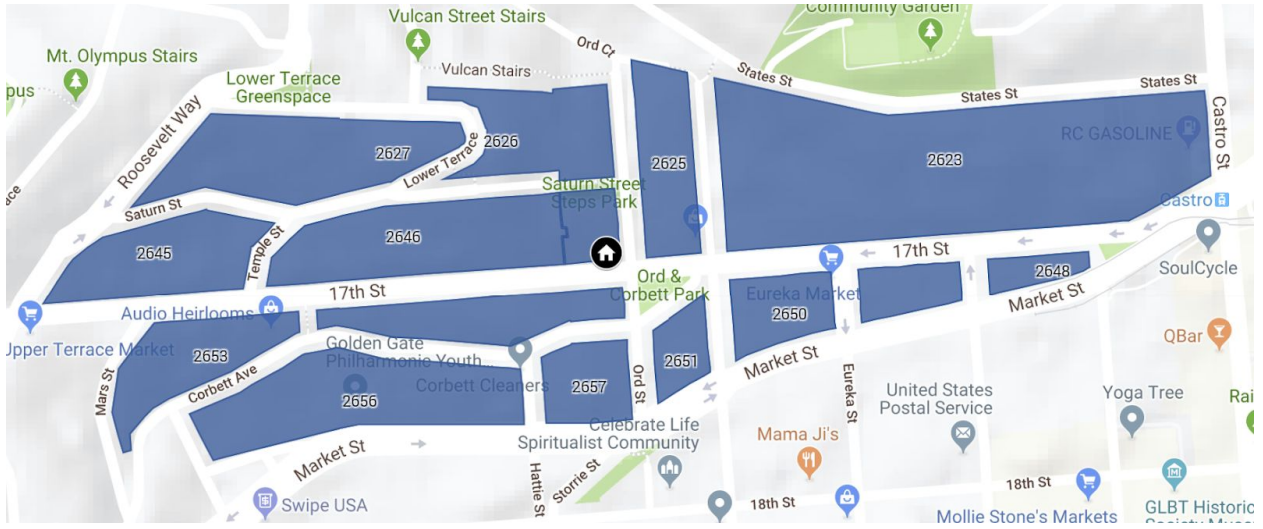
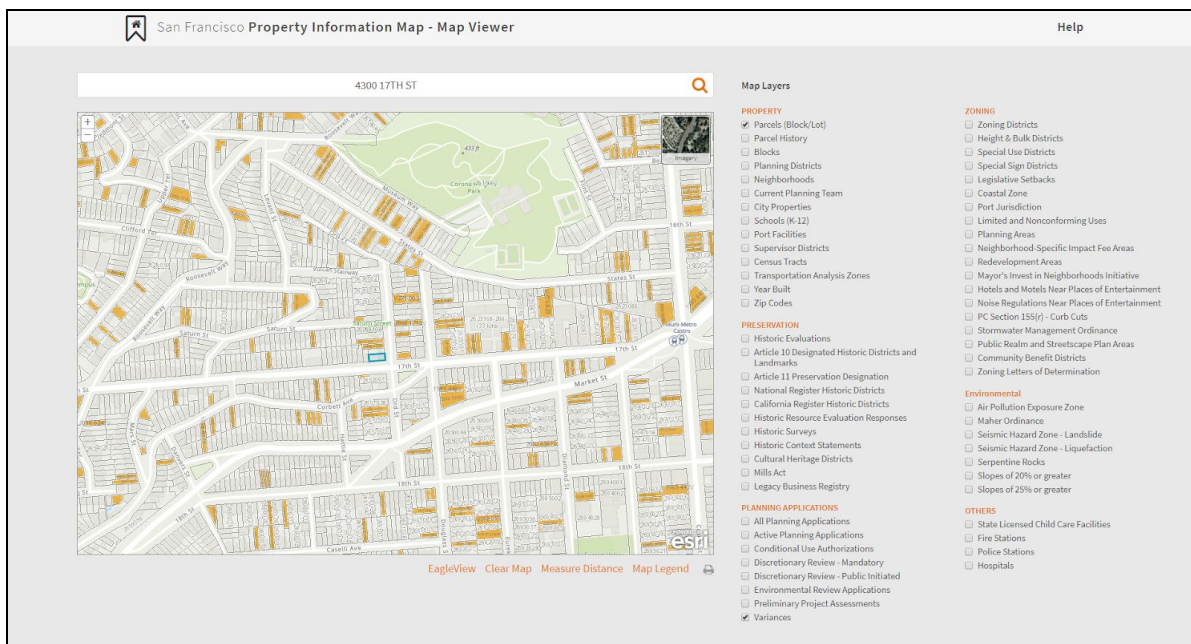
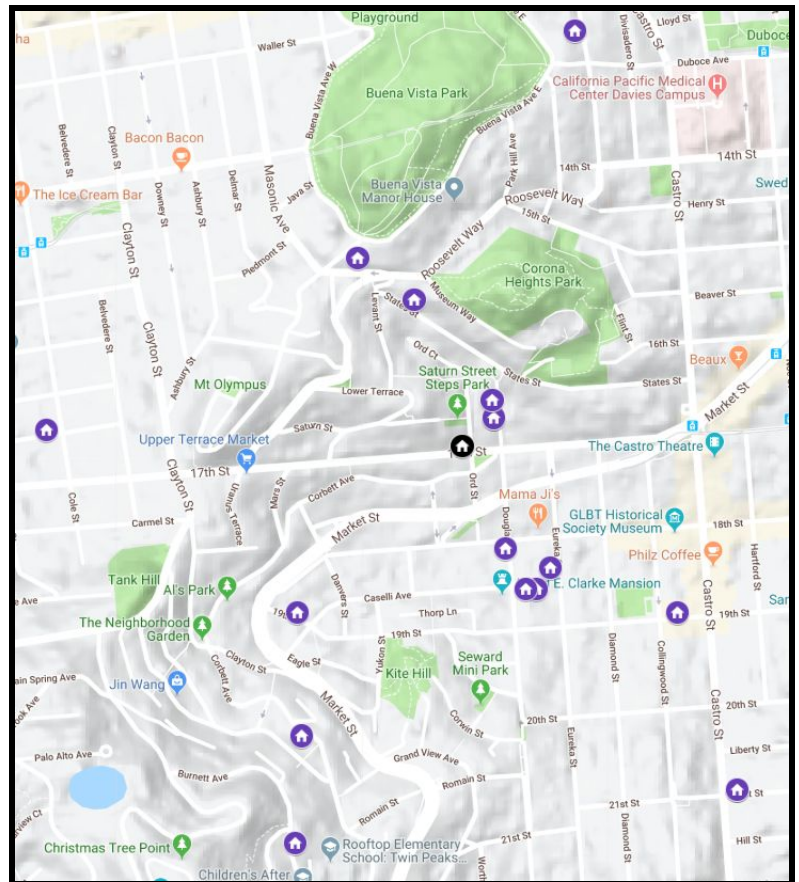


Exhibit G (Map of 14 Accessor Blocks Along 17th Street Corridor)



### Exhibit H (Maps and Addresses of Other Variance Examples)

1. 122 Rivoli Street
2. 441 Burnett Avenue
3. 4822 19th Street
4. 570 Corbett Avenue
5. 5 Upper Terrace
6. 270 States Street
7. 4501 18th Street
8. 128 Eureka Street
9. 229 Douglass Street
10. 4134 19th Street
11. 3878 21st Street
12. 52 Alpine Terrace
13. 48 Douglass Street
14. 70 Douglass Street



## **Summary of Community Outreach**

4300 17th Street

*October 6, 2021*

The below is a non-exhaustive list of the community outreach for 2019-013808 PRJ (4300 17th Street). This list does not include the countless one-on-one briefings, phone calls, emails, sidewalk chats, and other interactions Applicant has had with his neighbors over the last two and a half years about this Project.

### **2019**

- On May 23, 2019 Applicant sent handwritten cards to his four closest neighbors on 17th and Ord Streets introducing himself and offering an introductory coffee. Applicant met his adjacent neighbors to the north (90 Ord Street) on June 1st, and provided a tour of the Property. Applicant met his adjacent neighbors to the west (4302 17th Street) for coffee on June 15th. Applicant did not receive responses from 4304 17th Street or 84-86 Ord Street.
- On June 18, 2019 Applicant sent handwritten letters to his 26 next closest neighbors on both sides of 17th and Ord Streets, as well as one of the area neighborhood associations, similarly introducing himself and offering to meet. Applicant received five replies and spoke with each of the five neighbors to talk about the Project, answer questions, and receive feedback.
- On June 19th Applicant became a dues-paying member of the Corona Heights Neighborhood Association (“CHNA”). On June 28th Applicant met with the head of CHNA to discuss the neighborhood and potential development options for the Property. On July 15th Applicant attended the quarterly CHNA membership meeting.
- On July 16th, Applicant held a Project Review Meeting with the San Francisco Department of Planning. Shortly thereafter, Applicant settled on the current outline of the Project, and reached out to his adjacent neighbors on 17th Street and Ord Street to share the final details of the Project.
- On July 17th Applicant became a dues-paying member of Corona Heights Neighbors (“CHN”) neighborhood association.
- On July 24th Applicant met with the owners of both 4302 and 4304 17th Street. Once Applicant made a final decision on the scope of the Project and obtained site plans, he wanted to provide an update to those neighbors that would be most directly impacted, 4302-4304 17th Street (Casey and Greg Rando). Applicant invited his neighbors over to his home and shared details of the Project. Unfortunately, one of Applicant’s neighbors (Casey) became very upset. He said that the Project was “unacceptable,” he called the Applicant a “liar”, a “DC type”, that Applicant was “everything that is wrong with San Francisco” and used profanity - including the “f” word - on several occasions. This

neighbor indicated that he would fight Applicant's Project "tooth and nail" and "the neighborhood" would as well. He ended by saying "we don't care if you want to be liked, we don't like you" and left shortly thereafter.

- On July 25th Applicant attended a quarterly CHN membership meeting. At the meeting Applicant shared a high level overview of the Project with those in attendance.
- On August 12th Applicant held the required Pre-Application Meeting on the ground floor of the Existing Building; making draft site plans available and answering questions. Approximately 12 neighbors attended the two hour gathering including six from one neighboring building (4302-4304 17th Street).
- During the first two weeks of October 2019, Applicant hand delivered flyers to his closest 150 neighbors introducing himself, sharing the details of the Project, and offering to meet or add any interested neighbor to a listserv Applicant created to provide future updates on the status of the Project. Applicant did not receive any responses.
- On October 9, 2019, Applicant posted project details on the website *NextDoor.com*, soliciting feedback. Applicant received one response.
- On November 1, 2019, Applicant filed Project Application (2019-013808PRJ Project Profile (PRJ) 4300 17th Street)

## **2020**

- On August 10, 2020, Applicant launched a website (430017th.com) that provided all available details for the Project. Between the launch of the website and the date of the Planning Commission Hearing on November 19, 2020, there were 1,546 unique visitors.
- On October 30, 2020, Applicant posted the required Planning Commission Hearing Notices at 4300 17th Street. Applicant also posted accompanying informational flyers about the Project including the website address and related QR code for 430017th.com
- The week of November 16, 2021, Applicant and his partner knocked on the doors of the closest 50 neighbors, dropping off flyers and offering to answer questions about the Project. Applicant spoke with two neighbors, both of whom were supportive of the Project. Applicant received one follow up response from a neighbor who was also supportive of the Project.
- On November 16, 2020 Applicant posted Project details on the website *NextDoor.com*, soliciting feedback. The post went to the "1,233 neighbors" in Corona Heights in addition to another 11 surrounding neighborhoods. Applicant's post got two "heart" emojis and no replies.
- On November 19, 2020, the first Planning Commission Hearing was held.



## 2021

- On May 25, 2021, Applicant emailed 29 of the 42 individuals that submitted letters of opposition to the Project the email text pasted below. Applicant did not include 13 individuals<sup>1</sup> who over the previous two years had exhibited toxic and or harassing behavior. Applicant received only three responses, all of which were opposed to the Project and Applicant, *e.g.*, “you’re disgusting.”

I am writing to follow up on your letters of opposition to my project at 4300 17th Street.

At the end of the Planning Commission hearing last November, I was asked by the Commission to “[w]ork with the Department to develop a scale and building typology here that does add density without maybe some of the negatives that this project brings.”

Since then I have been working with Planning Commission staff to do just that. And because of how important yours and other neighbor’s feedback is to me, I wanted to share with you - as neighbors who voiced their opposition to my project - a middle path design that is consistent with the direction from the Commission (and hopefully more closely aligns to the degree of housing development you may be open to).

In summary, the following changes were made to the original design:

- Removal of the 4th floor
- 12’ setback in the rear yard (at the second/third floor)
- 5’ setback of the eastern side yard

These changes, along with many others, represent a drastic downsizing of the scale of the project (subtracting over a third of the original square footage).

I hope that these changes will help address your concerns about my project.

If you have any feedback or questions regarding what I am proposing above, please do not hesitate to email me. And if you’d prefer to ask questions or discuss over the phone, as always please feel free to call me directly at 202-360-2289.

Thank you for your time,

Scott Pluta

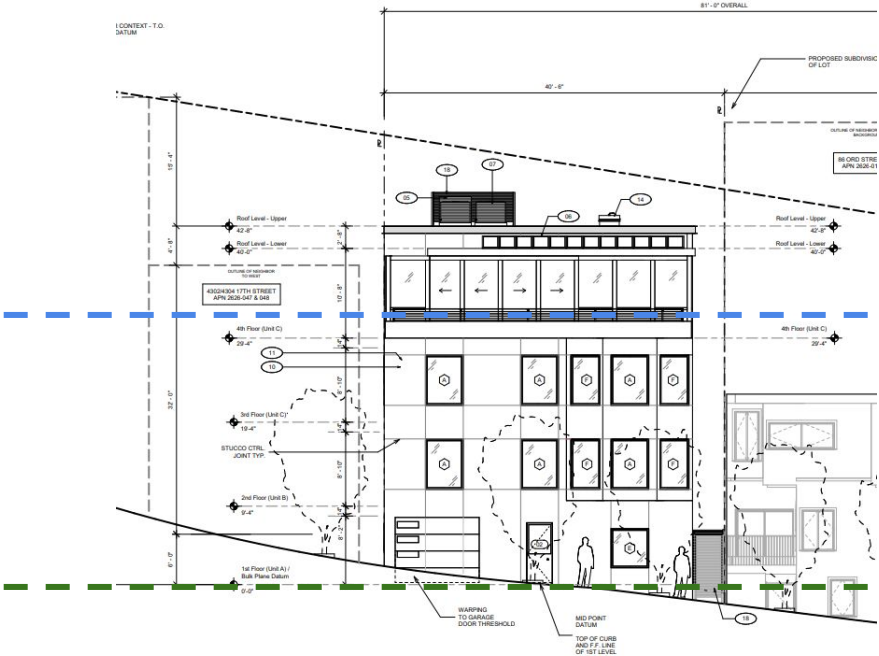
- At some point over the summer of 2021, Applicant was involuntarily removed from the CHN mailing list and banned from running for a seat on the Board.
- On August 13, 2021, Applicant posted the required Planning Commission Hearing Notices at 4300 17th Street. Applicant again posted accompanying informational flyers about the Project including the website address and related QR code for 430017th.com
- From January 1, through October 6, 2021, 430017th.com had 2,992 unique visitors.
- On October 14, 2021, the second Planning Commission Hearing is scheduled to be held.

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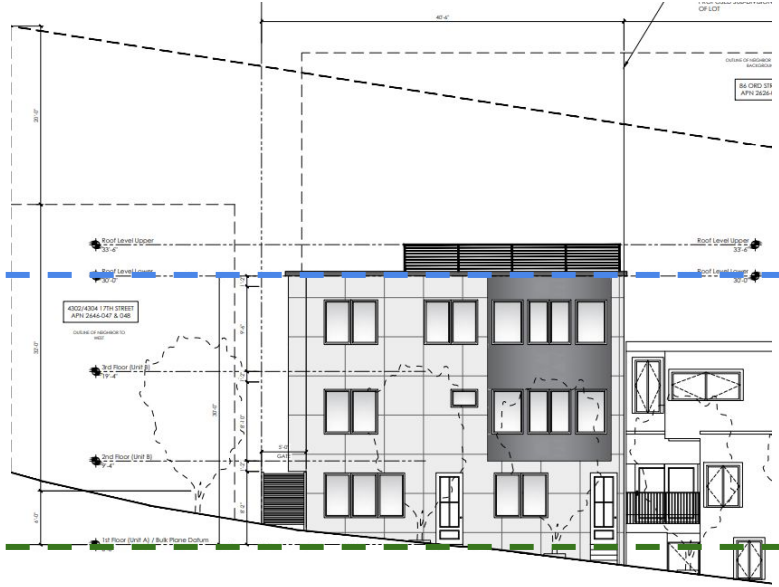
<sup>1</sup> Casey Rando, Greg Rando, Jann Reed, Jessica LeClaire, Maria Chambers Hutchins, Mark Ryser, Tyrell Waiters, John Koelsch, Leslie Koelsch, Maryann Dresner, SF Land Use Coalition (Gary Weiss), Tim Wu, and YinLan Zhang.

# 4300 17th Street (2019-013808PRJ)

Original Design



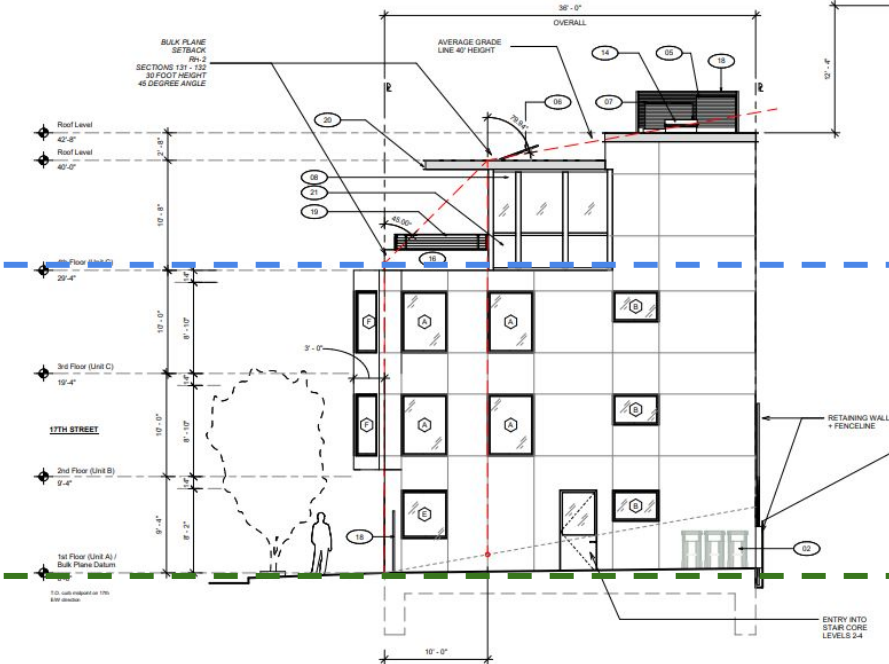
Revised Design



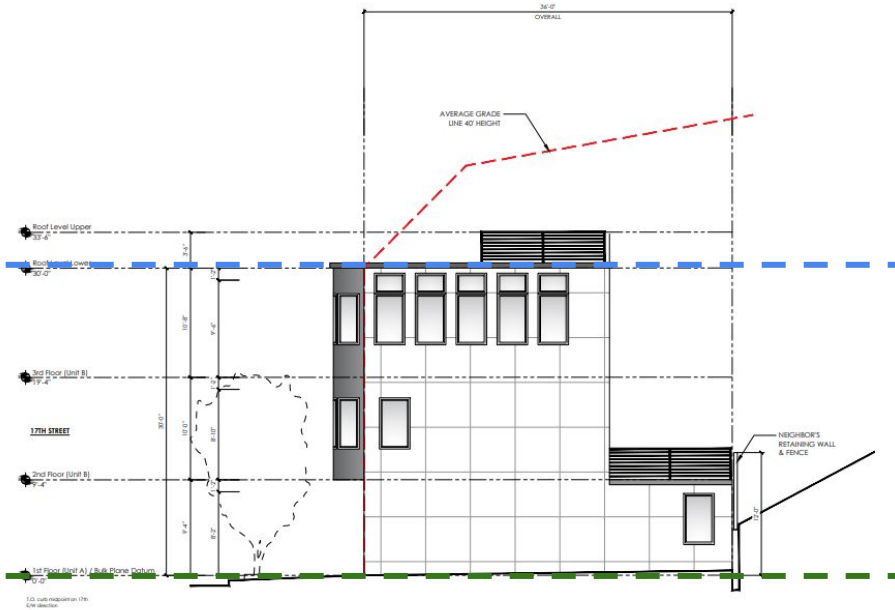
17th Street Elevation - Looking North

# 4300 17th Street (2019-013808PRJ)

## Original Design



## Revised Design



Ord Street Elevation - Looking East

## Memorandum

**To: Mr. Jeffrey Horn, Senior Planner, San Francisco Planning Commission**

**From: Corbett Heights Neighbors, a Neighborhood Association**

**Re: November 19 Hearing on 4300 17th St.; Record No. 2019-013808CUAVAR**

**Date: November 10, 2020**

### Executive Summary

Corbett Heights Neighbors (“CHN”) is a 17 year old neighborhood association with more than 110 paid household members representing scores more individuals resident in those homes. The proposed Project is within CHN’s boundaries. CHN strongly opposes Sponsor’s extraordinary pursuit of a basket of zoning variances and conditional use authorizations at the Commission without, as far as we can tell, deigning to acknowledge or act upon any of Staff’s objections first memorialized in its Plan Check Letter of April 27, 2020. (“Check Letter”). CHN endorses Staff’s disapproval of the Project as first articulated in that letter.

Perhaps seeking to sharpen the public’s focus on a trivial (by square feet) aspect of the project in order to distract us from seeing its true nature, the Project is touted as one of “mixed, affordable housing.” That is a bit like saying the Flood Building on Market street towered majestically on the afternoon of April 18, 1906; there may be some truth to that statement but it conceals far more than it reveals. So it is with this Project: an attempt to subdivide in an RH-2 zone an existing 2,916 square foot lot with an extant building of 2,544 square feet in order to create two 1,458 square foot lots on the newer of which the Sponsor would construct a four story, three unit 4,196 square foot apartment building. In short: split the lot, build a four story apartment building, and incidentally include two small ADUs, perhaps rent controlled. A label of “affordable housing” should not blind us from seeing the enormity of the Project and its utter disregard for the Planning Code.

Planning Department Staff in its Check Letter rejected the proposed Project because of the “intensity of non-compliance” and urged that it be redesigned to accommodate the two ADUs on the current, undivided lot and building. We endorse this April Staff conclusion and, accordingly, urge the Commission to deny the requested variances and conditional use authorizations.

To be clear: we do not oppose the construction of Code compliant affordable housing in our neighborhood. We do oppose, for this Project and any like it, an ad hoc, case by case, variance by variance, CUA by CUA, block by block approach that would brush aside a host of Code provisions. The Sponsor promotes the Project — and presumably this overall approach to modern zoning and land use control — as a

“model” and a “blueprint” for adding affordable housing in the city. Quite the blueprint: Ignore the Planning Code. SB 50 redux.<sup>1</sup>

Should policy makers deem it appropriate to encourage the construction of more affordable housing in an RH-2 District there is a better way to plan for it: following professional analysis and public input, develop conditions precedent, standards, and criteria that would apply uniformly within a District and city wide, then promulgate same in advance. That is the proper way to develop a “blueprint.”

Finally, we note our dismay that a Sponsor can so blithely design a project disregarding so many Code sections, ignore Planning Staff conclusions and recommendations, and then a few months later march directly to this Commission for permission. It is as if the rules that apply to the rest of us simply do not apply to this Project.

## **Discussion**

### **A. CHN Has a Direct Community Interest in the Project**

Corbett Heights Neighbors (“CHN”; <https://www.corbettneighbors.com>) is a 17 year old neighborhood association with more than 110 paid household members and scores more resident in those households. Our neighborhood boundaries are Douglas to Clayton; Market to Lower Terrace and Ord Ct. Over the years we have assisted in maintaining and improving our handful of very small parks (titled in the name of the Department of Public Works); sponsoring quarterly membership meetings with prominent guests;<sup>2</sup> working with adjacent neighborhood organizations; and assisting in the drafting and passage of the Corona Heights Special Use District Code provision, Sec. 249.77. The board of directors of CHN is elected annually in a confidential electronic vote of its paid household members. The current board, most recently elected in September, has nine members, two of whom have a conflict of interest and therefore were not involved in determining CHN’s position on this matter.<sup>3</sup>

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<sup>1</sup> SB 50, of course, was a 2018 proposal (itself progeny of SB 827) that would override local zoning in order to permit the construction of new housing.

<sup>2</sup> Our most recent, virtual, September 14 meeting included Supervisor Mandelman; Dr. Susan Philip from the Department of Public Health; and Dylan Rose Schneider from the Department of Homelessness and Supportive Services.

<sup>3</sup> The Board members are: Bill Holtzman, President; Maryann Dresner, Vice President; Leslie Koelsch, Treasurer; Paul Allen, Secretary. Additional members are: Josh Baskin, Maria Hutchins Chambers, Mark Ryser, Casey Rando, and Scott Pluta. Mr. Pluta is the Project Sponsor and Mr. Rando is an adjacent neighbor to Mr. Pluta. As such, neither participated in the deliberations or vote on this matter, nor in the preparation of this Memorandum.

## **B. The Project Calls for the Construction of a Four Story Apartment Building on a Severed Lot, Contrary to Code, to the Detriment of Neighbors and the Neighborhood, Under the Guise of Affordable Housing.**

Let us deal first with what the Project is not. On its promotional website, Sponsor touts the Project as a “First of its Kind.. Small-scale mixed-affordable housing project in San Francisco.”<sup>4</sup> While the Project is certainly in San Francisco, the other claims are a bit misleading.

### **1. This Project is not Mainly About Affordable Housing.**

The Sponsor’s website and memorandum to the Planning Department extolls the Project as a model for how affordable housing can be built in the City. This is a new pitch; or at least a change in emphasis. In November 2019 Sponsor described the Project this way:

The purpose of the Project is twofold: (1) build the Applicant’s home and permanent residence and (2) develop affordable housing to help address San Francisco’s current housing crisis.<sup>5</sup> (emphasis added)

Sponsor later changed that purpose, deleting point number One, but the Project itself seems not to have changed in the interim.<sup>6</sup> To be sure, Sponsor’s purpose — perhaps the word motivation is more accurate — is not particularly relevant to the legal or policy issues at hand, although the change in articulation might be revealing. No matter. The Project is this: in this RH-2 zone, to divide a single 2,916 square foot lot currently holding a single building with 2,544 feet of living space, into two 1,458 lots. On the new lot, Sponsor would construct a 4,196 square foot, four story, three unit apartment building.

Turning to the affordable housing elements of the Project, in the new four story, three unit building on the newly created lot Sponsor would put a 473 square foot<sup>7</sup>, ground floor ADU, variously described as “Below Market Rate” or “Affordable Housing” on Sponsor’s website; or “rent controlled” in some submissions to the Planning Department. In the existing building on the original lot, a 607 square foot ADU would be constructed; this would be rent controlled as well. However, upon completion of the Project, the Sponsor himself would relocate from his current abode in the existing

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<sup>4</sup><https://430017th.com>

<sup>5</sup> San Francisco Planning, Pre-Application Meeting Packet, November 2, 2019, Attachment to Notice of Pre-Application Meeting - 4300 17th Street/PLUTA. The same statement is made, inter alia, in Sponsor’s Variance from the Planning Code Application.

<sup>6</sup> The Attachment in Support of Preliminary Use Application - 4300 17th Street / Pluta Project. In this document, purpose one — building Applicant’s permanent residence - is omitted.

<sup>7</sup> The 473 square feet consists of: ADU (376), Bath (57), and Mud (40). See Pluta 8-20-20 Final Plant to City PDF, at A3.

building to the new building, apparently the new building would be entirely market rate, and a second ADU would be added to the current building.<sup>8</sup>

In short, while the Project would add 2 ADUs it seems to us rather generous to characterize the entire project as “affordable housing” when only 16% of the building(s)’ project square footage would be “affordable” or rent controlled. It is, instead, the construction of a four story, three unit market rate apartment building on a newly severed lot, ostensibly to subsidize two ADUs.

## **2. CHN Supports Affordable Housing Sensibly Planned with Uniform Criteria.**

We acknowledge the obvious: affordable housing, new rent controlled units — call them what you will — when built by private investors necessarily involve some sort of subsidy, be it from government or from other homeowners or renters in the building at issue. To the extent this can be done in our RH-2 zone consistent with Code we support and indeed encourage that sort of development. That is impossible with this Project that could only proceed with numerous variances and authorizations from Code, the granting of which would be detrimental to immediate neighbors and the integrity of the Planning Code, as we describe on the next page.

The Project Sponsor declares on page one of his website that:

This is a first-of-its-kind approach to building affordable housing in San Francisco and could be a blueprint for hundreds of additional units of affordable housing throughout the City.<sup>9</sup> (emphasis added.)

His blueprint is simple: Ignore the Planning Code, or honor it only insofar as variances and authorizations are granted on an ad hoc basis. That is hardly a sensible “model” for adding affordable housing. No, if we are to have a blueprint for adding hundreds of additional affordable housing units in RH-2 Districts — and perhaps we should — let us draft that blueprint after professional analysis and guidance as well as public input; develop criteria, standards, and conditions precedent; and apply the blueprint city wide, or at least uniformly across a particular zoning district.<sup>10</sup>

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<sup>8</sup> Attachment in Support of Variance Application - 4300 17th Street / Pluta, page 2.

<sup>9</sup><https://430017th.com> Project Summary

<sup>10</sup> We are not yet at the point where, as originally proposed by Sen. Weiner in S.B. 902 (introduced January 30, 2020) a neighborhood multifamily project is a use by right in residential zones; nor the presently amended version granting local governments greater authority to similarly zone for up to 10 units of residential density per parcel. [http://www.leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200SB902](http://www.leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB902)

### **3. The Project Requires Numerous Concessions, None Warranted and All Ill Advised**

We will not belabor all the Planning Code sections at issue, nor the particulars of the variances and conditional use authorizations requested. We leave that mostly to those most directly affected — the neighbors. However, we will note that the “price” for adding two modest ADUs — one 473 square feet, the other 607 — seems very high indeed: variances needed for the lot area, front set back, rear yard, open space, and permitted obstructions. Together with the issues posed by Conditional Use Authorizations, as well as non compliance with the Residential Design Guidelines cited by Staff (see immediately below), if permitted this extraordinary density would be tantamount to “...an effect substantially equivalent to a reclassification of the property...” contrary to Sec. 305(a).

The Project would need a Conditional Use Authorization in connection with the Corona Heights Special Use District (Sec. 249.77), a code provision that became effective in August of 2017 after considerable input and support from CHN. We do not believe the Sponsor meets the tests posed in Sec. 303(c), a conclusion apparently shared by Staff in its Check Letter; and we conclude that the Sponsor has not established a record sufficient to meet the threshold set forth in subsection (e) of that Code provision.

Again, we leave to others, the nearby property owners, a full description of the obviously detrimental effects should the Commission approve this Project. Suffice to say that they are material, consequential, and vastly outweigh whatever benefit might transiently accrue from the modest and not clearly permanent increase in affordable housing stock.<sup>11</sup>

#### **C. We Endorse Staff's Initial April 27, 2020 Conclusions.**

On April 27, 2020 Planning Staff issued its Check Letter in which it opposed the Project as then conceived, urging the Sponsor to modify it according to recommendations made therein. On August 20, 2020 Sponsor submitted its Final Plans to the Department. There is nothing in that document, nor have we been able to find any Sponsor document on the Planning Department’s website, that suggests that the Project has been modified in any way to take account of Staff’s April conclusions. Hence, this extraordinary Commission hearing.

Pursuant to Commission hearing procedures, we do not expect to see Staff’s final recommendation in advance of our submission of this memorandum. But we would

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<sup>11</sup> It is not at all clear from public documents available at the time of this submission, more than a week before the scheduled November 19, 2020 hearing, how and for how long, the two ADUs will be considered “affordable” or subject to rent control. As noted above, p. 3, the ADU in the new building will become market rate.



hope that Staff's position would be the same as memorialized on April 27, and we call out the most salient conclusions therein:

...the Department's Senior Management has reviewed the proposed project and does not support the intensity of non-compliance the proposal seeks to achieve higher density [sic] at the site (a lot split and new construction with variances.) The Department recommends the project be revised to be code conforming within the existing lot, and if the Sponsor seeks density greater than that allowed in the RH-2 District please continue to pursue accessory dwelling units within the existing structure and within an [sic] detached auxiliary structure (Section 207(c) (6), if feasible. <sup>12</sup> (emphasis added)

Staff further noted in April that the Project does not conform to the Residential Design Guidelines because, among other things, the Project "...would have significant negative impacts to neighboring properties." Accordingly, the RDAT (Residential Design Guidelines Team) opposed the project, including the lot split and variance request, and urged the Sponsor to re-design the proposal to be Code compliant. Notably, the RDAT urged the Sponsor, again, to consider options for an ADU in the rear yard, as well as in the current building.<sup>13</sup>

#### **D. Conclusion**

Procedurally, this is an egregious attempt to leap frog Planning Staff that had the temerity — we would say courage — to disapprove the Project because it is so obviously impermissible as proposed. Substantively, the variance and conditional use authorization requests should be denied for the reasons stated herein. CHN supports the addition of affordable housing units in our neighborhood consistent with the Code. Should there be a need to relax the current rules in order to more easily accommodate such units, whether in RH-2 districts or otherwise, there should be a proper fact finding, analytic, and deliberative process leading to the development of appropriate criteria and standards and then the application of same in a uniform manner, not as proposed here on an ad hoc basis. That is the proper blueprint or model for adding such units.

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<sup>12</sup> Check Letter, page 2, Project Review Comments, number 1.

<sup>13</sup> Check Letter, page 2, Project Review Comments, number 2.

## Memorandum

To: Mr. Jeffrey Horn, Senior Planner ([jeffrey.horn@sfgov.org](mailto:jeffrey.horn@sfgov.org))

From: Corbett Heights Neighbors<sup>1</sup> ([info@corbettneighbors.com](mailto:info@corbettneighbors.com))  
Paul Allen, CHN Secretary ([sfcapaul@mac.com](mailto:sfcapaul@mac.com))

Re: 4300 17th St. (2019-013808UA/VAR)

Date: August 19, 2021

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CHN intends to vigorously oppose this Project as we did in 2020 because, without a grab bag of Conditional Use Authorizations and zoning variances, it is grossly non compliant with the Planning Code and, to repeat Staff's conclusions of one year ago, its extraordinary density would have an effect "substantially equivalent to reclassification of the property" contrary to Sec. 305(a); and "is not compatible with the immediate neighborhood, and would have significant negative impacts to neighboring properties." The latest iteration of the Project does not change this conclusion in the slightest. Accordingly, we will file a lengthier memorandum in opposition prior to next week's 8 day pre-hearing deadline but here we summarize our position in the hope that you will consider it as you finalize your Staff Executive Summary

History. As you know better than most, almost two years ago the Sponsor submitted plans for a Project that is substantially the same as the current one — see more on this below — and in that November 2019 Application said that it's purpose was two fold: (1) build the applicant's home and permanent residence and (2) develop affordable housing. A year ago, one year from the original application and leading up to the November 2020 Commission hearing, the sponsor mostly deleted the first point for reasons that remain obscure. But the size of the project remained the same as did its numerous violations of the Planning Code (without the grant of CUAs and variances). CHN's November 10, 2020 Memorandum in Opposition to the Project pointed out the threadbare link to affordable housing.

Even now, the shifting motivations leave us a bit confused, although no doubt we will hear more about this at the hearing. The sponsor's May 2021 application repeats the mantra that "The purpose of this project is to build mixed-affordable housing..." and even declares that two units would be "deed restricted Below Market Rate." But there is no verification or further evidence that this project, if consummated, has anything to do with that or that those pronouncements will be carried out. As we wrote in our submissions a year ago, we do not oppose affordable housing per se. Regardless of

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<sup>1</sup> CHN is an 18 year old neighborhood association in the Corona Heights Neighborhood. The Project is within CHN's boundaries.

motivation, a development must be evaluated for what it is and for what it does as a structure, or in this case structures; and for what it does to the neighborhood, neighbors, and the Code.

Staff's November 19, 2020 Executive Summary issued on the eve of the hearing opposed the grant of CUAs and variances; recommended that the Project be revised to be code conforming; and declared that the Project did not comply with the Residential Design Guidelines because, among other things, it "...would have significant negative impacts to neighboring properties." For these reasons and many more set forth in that document, Staff recommended that the Project be redesigned. The Commission followed your advice.

You might also recall that on November 16, 2020 just prior to the last hearing on this Project but after the release of your Executive Summary, CHN filed a Supplemental Memorandum in order to correct errors in Staff's Executive Summary, errors that appeared to be due to a misplaced reliance upon unverified representations to the Staff by the Sponsor. By sending this memo now, we hope to avoid a repeat of that incident.

#### The Current Iteration of the Project.

As noted above, we will file a memorandum next week but surely you know from your review of the current iteration of the Project that nothing essential to Staff's conclusions a year ago has changed. Of course, in the face of concerns expressed by some Commissioners in November 2020, and we hope subsequently from Staff, the Sponsor was forced to make some changes. But from the standpoint of the Planning Code — and, importantly, the neighbors — the changes are trivial and indeed insulting to those who might have expected that the Sponsor would respect one of the many central conclusions of Staff's 2020 Executive Summary: "The Department recommends that the proposal at this site be redesigned at a less intense scale that respects the mid-block open space and maintains adjacent properties' access to light and air by providing adequate setbacks and yard." p.3.

What has changed with this new proposal that is being rushed to a hearing in less than 2 weeks? Let's take a look:

- The 2020 proposal would split a 2916 square foot lot into two 1458 square foot lots, necessitating a variance from the 1458 minimum square foot requirement. Code section 121. The 2021 proposal? Same.
- The 2020 proposal called for both structures, the old 4382 square foot structure and the new 5042 square foot structure, to "...be developed to a depth equal to their respective property lines, resulting in full coverage, therefore both lots would require a variance for rear yard," thereby implicating the Corona Heights Special Use District provisions as well as Sec.134. (November 19, 2020 Executive Summary at p. 3, emphasis supplied.) This utter destruction of the back yard caused the Residential Design Advisory Team to decry the "...significant negative impacts to neighboring

properties...” The 2021 proposal? In so far as the green space is concerned: Same. (We acknowledge that the square footage of the new building has been reduced — but not its effect on the rear yard.)

Apparently, variances and/or CUAs will be required for other matters but a central flaw of this project remains unaddressed, two years later, in defiance of code, common sense, the Staff, the Commission, and respect for neighbors and neighborhood alike.

Procedure. By this memorandum we also wish to express our consternation at the rush to Commission hearing, a full 8 months after the last hearing and without prior outreach to the neighborhood to explain the (not very) new plan or the reasons therefor. Let us be clear: there has been no outreach to CHN, or as far as we know to the neighborhood generally, even though CHN was designated as “organized opposition” in November 2020. Some neighbors who have contacted us, prior opponents of the Project as well, told us that they have not been contacted by the Sponsor or advised of the revised plans. They, too, are rushing to understand the revised nature of the Project and to prepare for the hearing. Further, it appears that as recently as August 6 there may have been a Staff review meeting on this matter. Could not the results have been publicly shared?

Yet here we are, facing a September 2 Commission hearing, opposition preparation for which occurs during a pandemic summer when many of the neighborhood’s residents are away. It almost appears a concerted plan.

Given these facts, of course we will request a continuance at the Commission hearing but, obviously, we must prepare our submission that necessarily will be written without benefit of Staff’s always helpful and enlightening Executive Summary.

Two years on, little has changed.