

Lamug, Joy

From: 714515@gmail.com
Sent: Monday, December 08, 2014 2:02 PM
To: Lamug, Joy; Carroll, John (BOS)
Subject: 2853 Broderick CEQA appeal file 141083
Attachments: 2853 Brod Agreement 91212 complete sig and plans.pdf

Dear Ms. Lamug and Mr. Carroll:

Please attach to the file the attachment below which is the Agreement signed by Pam Whitehead and the surrounding neighbors on September 4, 2012 pursuant to the CEQA appeal that the neighbors filed. The Agreement was negotiated through Supervisor Farrell's office and it was after DBI and City Planning approved the plans that are initialed. Subsequent to the signing of the Agreement, Appellants withdrew the CEQA appeal in reliance on the plans being adhered to and enforced as approved. The Board of Appeals accepted the plans and allowed for Permit 201103252839 to be issued.

Thank you,
Irving Zaretsky
Appellant
Neighbors on Broderick and Filbert streets

**RECEIVED AFTER THE ELEVEN-DAY
DEADLINE, BY NOON, PURSUANT TO ADMIN.
CODE, SECTION 31.16(b)(5)**

**(Note: Pursuant to California Government Code, Section
66009(b)(2), information received at, or prior to, the public
hearing will be included as part of the official file.)**

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into as of September 4, 2012 (the "Effective Date"), by and between Pam Whitehead and Melinda Nykamp ("Permit Holder"), and Pat Buscovich, Irving Zaretsky, Kate Kardos Polevoi, Zeeva Kardos, Craig Jones, Michael Jaeger, Eric Reimers, Kelda Reimers, Rob Povlitz, Jennifer Povlitz, Don Morehead and Ann Morehead ("Appellant"). Permit Holder and Appellant are sometimes each referred to in this Agreement as a "Party" or "party" and collectively as the "parties."

This agreement applies solely to Building Permit Application No. 2011.03.25.2839 and to the CEQA appeal and BOA appeal as defined below.

RECITALS

This Agreement is executed with reference to the following facts:

A. Permit Holder is the owner of the real property commonly known as 2853-2857 Broderick Street, San Francisco, California, Block 0947, Lot 002 (the "Permit Holder Property").

B. Irving Zaretsky, Kate Kardos Polevoi and Zeeva Kardos are the owners of the real property commonly known as 2845-2847 Broderick Street, San Francisco, California, Block 0947, Lots 045 and 046 (the "Appellant Property").

C. The Permit Holder Property and the Appellant Property are adjacent and share a common property line ("Property Line"). Appellant has certain concerns and objections related to Permit Holder's work on the Permit Holder Property.

D. Permit Holder desires to obtain a permit that will allow for the raising of the existing building on the Permit Holder Property by 36 inches and construction of a new garage, among other things, pursuant to Building Permit Application No. 2011.03.25.2839 and the associated plans for the permit (collectively, the "Permit"). The Permit was issued on or about April 17, 2012.

E. On or about May 2, 2012, Appellant filed an appeal of the Permit with the San Francisco Board of Appeals ("BOA Appeal") that set forth various concerns and objections Appellant has with the Project. The BOA Appeal was considered at a Board of Appeals hearing on June 20, 2012 and was ultimately denied on a vote of 4 to 0.

F. On or about July 2, 2012, Appellant filed a request for rehearing of the BOA Appeal with the San Francisco Board of Appeals. A hearing to consider the request for rehearing was scheduled at the Board of Appeals on July 25, 2012. On July 18, 2012, Appellant filed a rescheduling request to reschedule the hearing until after September 19, 2012. The request was granted by the Board of Appeals on July 20, 2012, rescheduling the hearing to September 12, 2012.

G. On or about July 6, 2012, Appellant filed an appeal of the categorical exemption issued by the San Francisco Planning Department for the Project ("CEQA Appeal"), which set forth various concerns and objections Appellant has with the determination of categorical exemption from environmental review for the Permit.

H. All parties now desire to settle their differences on mutually agreeable terms.

NOW THEREFORE, for and in consideration of the promises, covenants, and releases hereinafter set forth in this Agreement, and for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. Recitals

The above recitals are incorporated herein by reference and are hereby made a part of this Agreement.

2. Permit Holder Obligations

Permit Holder hereby agrees to amend the Permit, and implement construction, such that it is consistent with, and as set forth in, the drawings dated August 22, 2012, and attached hereto and incorporated herein as **Exhibit A**. Permit Holder will amend the permit by requesting the Board of Appeals agree to a rehearing of the BOA Appeal and then requesting the Board of Appeals amend the Permit pursuant to the drawings attached as Exhibit A. In the case that the Board of Appeals does not agree to the rehearing or to amend the Permit pursuant to the drawings attached as Exhibit A, Permit Holder shall amend the Permit pursuant to the attached drawings on her own.

Minor modifications may be made to said plans to satisfy Planning Department and/or Department of Building Inspection requirements for the building permit application. "Minor modifications" do not include, and are not limited to:

- a) Enlargement of the envelope of 2853-2857 Broderick Street;
- b) Any increase in the building height beyond a maximum of 36 inches from current conditions (which already includes any tolerance otherwise permitted by the Department of Building Inspection and Building Code);
- c) Any modifications to the fire wall on the north elevation of the rear yard stair case.

Any non-Minor Modifications may be made to the plans upon the consent of all parties to this Agreement.

Permit Holder will mark the building prior to the lift so that once it is lifted it can be clearly determined that the lift was 36 inches.

Permit Holder releases any claims they may have against Appellants with respect to the approval and appeal process for the Permit.

3. Appellant Obligations

As long as the Permit to be issued remains, as set forth in the drawings attached, and is consistent with the drawings set forth on **Exhibit A** and as long as Permit Holder is not in breach of this Agreement, Appellant, including all individuals who have signed the BOA Appeal, the CEQA Appeal, or both, hereby agrees as follows:

- a) Appellant will not support the CEQA Appeal at the Board of Supervisors hearing on September 4, 2012, and will give testimony to the Board announcing a settlement of the matter.
- b) Appellants shall support the request for rehearing at the Board of Appeals hearing scheduled for September 12, 2012, for the purpose of having the Board of Appeals amend the Permit pursuant to the drawings attached as Exhibit A at the rehearing. Appellants shall also support the proposal to amend the Permit pursuant to these drawings at the Board of Appeals rehearing.
- c) Appellant shall file no future appeals of Building Permit Application No. 2011.03.25.2839, as set forth in the drawings attached as Exhibit A, including, but not limited to, any appeals with any department, office, board or other body of the City and County of San Francisco or any California state court or U.S. Federal court. This does not bar Appellant from filing any complaints against the Permit with the Department of Building Inspection after the Permit is issued.

Appellants release any claims they may have against Permit Holder with respect to the approval and appeal process for the Permit.

4. Successors and Assigns

This Agreement shall inure to the benefit of and shall be binding upon the parties to this Agreement and their respective heirs, successors, assigns or owners and their representatives, agents, shareholders, officers, partners, directors, employees, affiliates, subsidiaries, related corporations or entities. Each Party shall provide a copy of this Agreement to any successor, assign or new owner prior to transfer of their respective property.

5. Representations and Warranties

The persons signing this Agreement hereby warrant and represent that they have the power and authority to bind any party on whose behalf this Agreement is signed. Each party agrees to indemnify, defend, and hold harmless the other parties for any loss, costs, expenses, claims, or damages resulting from any breach of this paragraph.

6. Attorneys' Fees

The parties acknowledge and agree that if any party commences arbitration or litigation to interpret or enforce the terms of this Agreement, each party will be responsible for their own attorneys' fees. Appellants agree to not be represented by co-Appellant Kate Polevoi as an attorney in any arbitration or litigation relating to this dispute.

7. Entire Agreement; Controlling Law

This Agreement and all exhibits attached hereto and incorporated herein sets forth the entire agreement of the parties and any disputes concerning the subject matter of this Agreement, and shall not be modified or altered except by a subsequent written agreement signed by the parties. The laws of the State of California shall govern the validity, interpretation and enforcement of this Agreement. Subject to Section 6, the parties expressly consent to jurisdiction in the courts of California for any dispute regarding or relating to this Agreement or any other matter or claim released herein.

8. Counterparts; Severability; Time is of the Essence

This Agreement may be executed in multiple counterparts and signatures may be exchanged by facsimile or electronically, each of which shall be deemed to be an original document, and all of which together shall constitute one and the same document. In the event that any representation, warranty, acknowledgment, covenant, agreement, clause, provision, promise, or undertaking made by any party contained in this Agreement is deemed, construed, or alleged to be illegal, invalid, or unenforceable under present or future laws, in whole or in part, the parties acknowledge that each and every other term of this Agreement shall remain valid and enforceable. Time is of the essence for the completion of the acts described in and required by this Agreement.

9. Advice of Counsel

The parties represent and acknowledge that they have read and understood the terms of this Agreement and have had the opportunity to obtain the advice of counsel on the meaning and effect of this Agreement. The parties have had an opportunity to fully participate in preparing this Agreement and acknowledge that it is the product of the draftsmanship of the parties. Accordingly, this Agreement shall not be construed for or against any party by virtue of their participation, or lack of participation, in the drafting hereof.

[SIGNATURE BLOCKS FOLLOW ON NEXT PAGE]

This Agreement is executed as of the Effective Date by the parties.

Permit Holder:

Pam Whitehead
Pam Whitehead

Melinda Nykamp
Melinda Nykamp

9/4/12

Appellant:

Pat Buscovich
Pat Buscovich

Irving Zaretsky
Irving Zaretsky

Kate Kardos Polevoi
Kate Kardos Polevoi

Zeeva Kardos
Zeeva Kardos

Craig Jones

Michael Jaeger

Eric Reimers

Kelda Reimers

Rob Povlitz

Jennifer Povlitz

Don Morehead

Ann Morehead

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Permit Holder:

Pam Whitehead
Pam Whitehead

Melinda Nykamp
Melinda Nykamp

9/4/12

Appellant:

Pat Buscovich
Pat Buscovich

Irving Zaretsky
Irving Zaretsky

Kate Kardos Polevoi
Kate Kardos Polevoi

Zeeva Kardos
Zeeva Kardos

Craig Jones
Craig Jones

Michael Jaeger
Michael Jaeger

Eric Reimers
Eric Reimers

Kelda Reimers
Kelda Reimers

Rob Povlitz
Rob Povlitz

Jennifer Povlitz
Jennifer Povlitz

Don Morehead
Don Morehead

Ann Morehead
Ann Morehead

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Permit Holder:

Pam Whitehead

Melinda Nykamp

9/9/12

Appellant:

Pat Buscovich

Irving Zaretsky

Kate Kardos Polevoi

Zeeva Kardos

Craig Jones

Michael Jaeger

Eric Reimers

Kelda Reimers

Rob Povlitz

Jennifer Povlitz

Don Morehead

Ann Morehead

9/9/12 JVK
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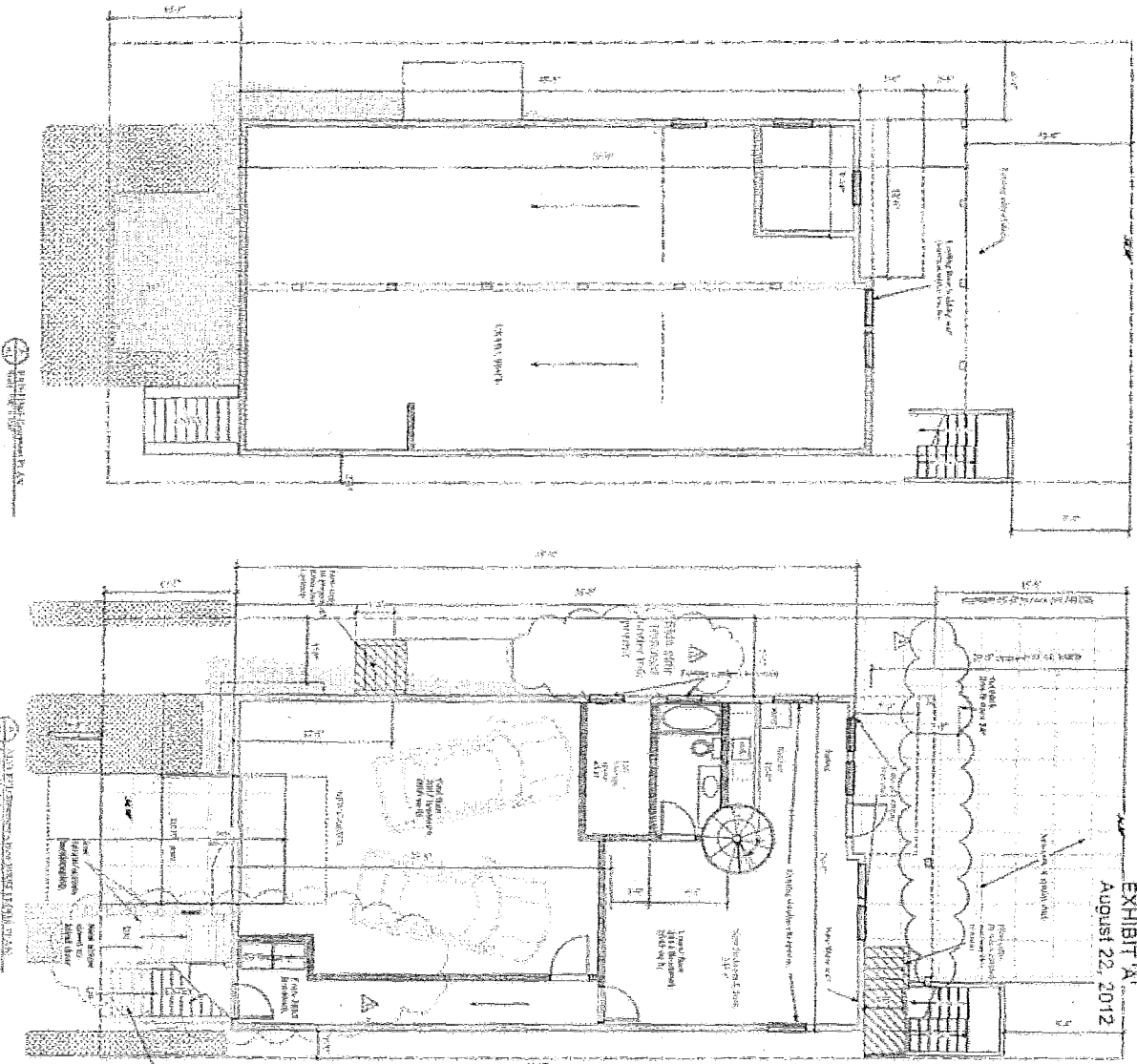


EXHIBIT 'A'
 August 22, 2012

A2

NO.	DATE	REVISION

ALTERATION & VARIANCE
 2853 & 2857 BROADRICK ST., SAN FRANCISCO, CA 94133
 Block (917) East 002

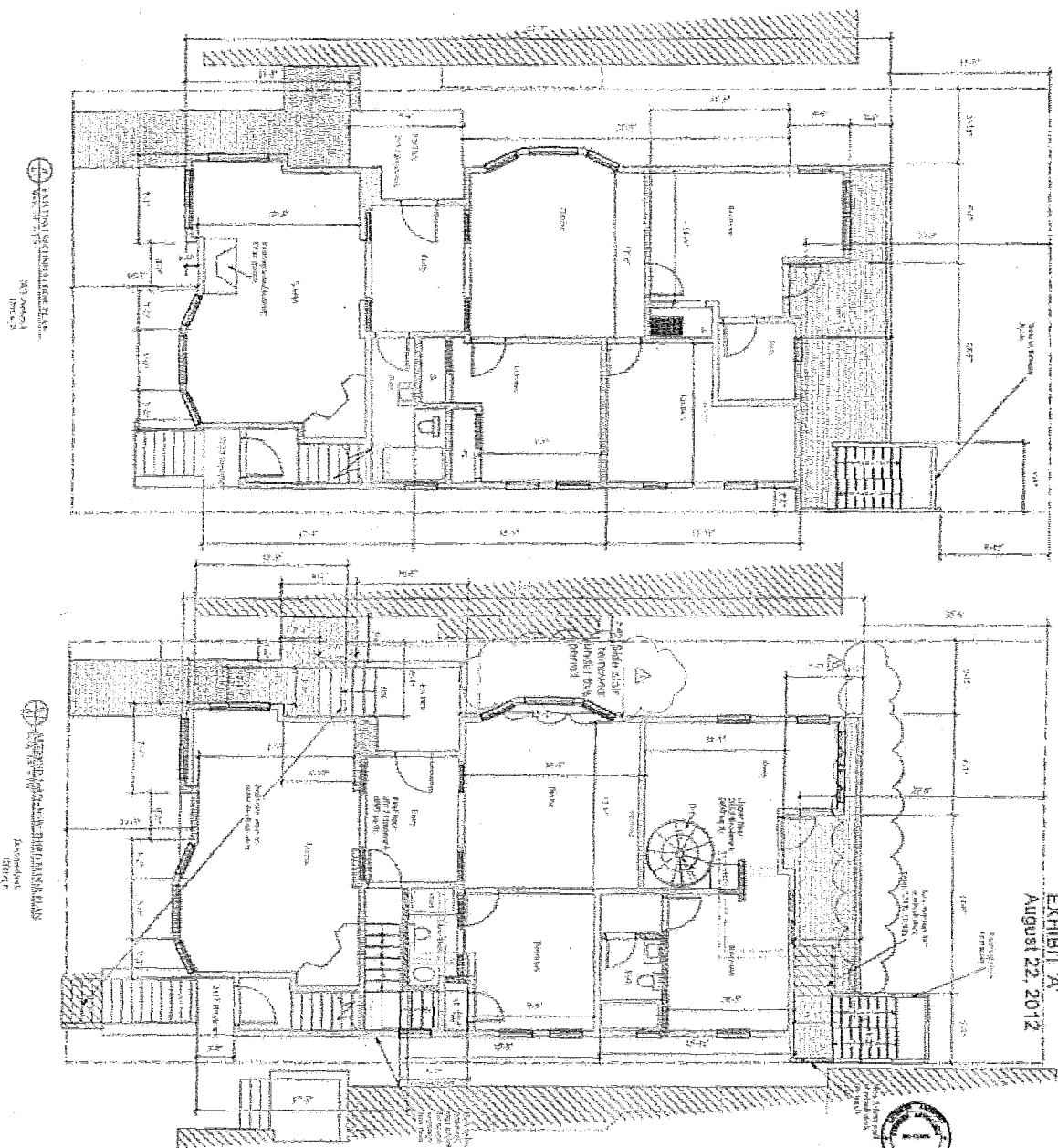
14 Alameda Street
 94102-3208
 415-774-4444

STEPHEN ANTONAROS
 ARCHITECT
 2101 Market Street #202
 San Francisco, California 94114
 415-774-4444



DATE	

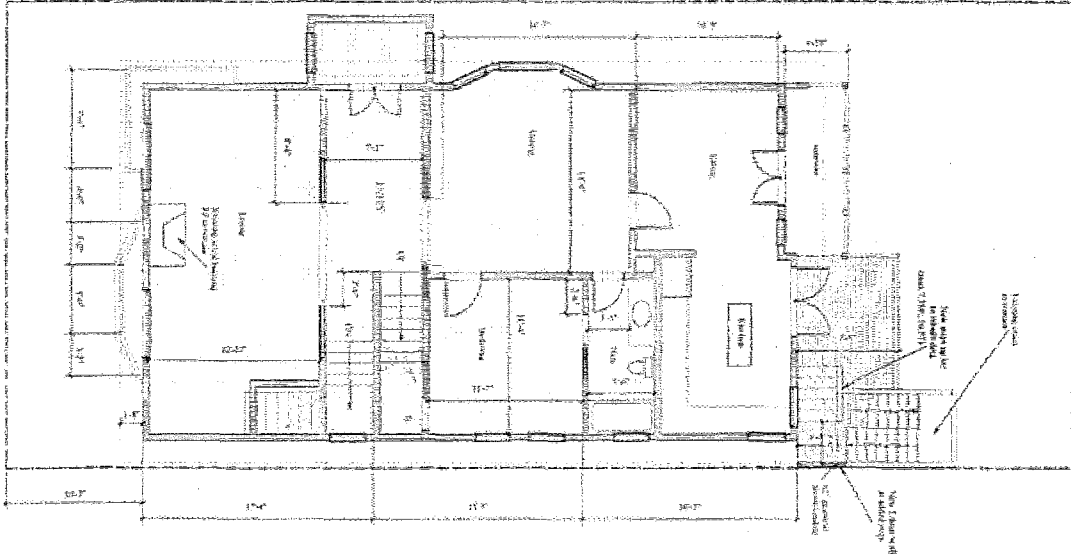
9/4/12
 JCK
 gpk



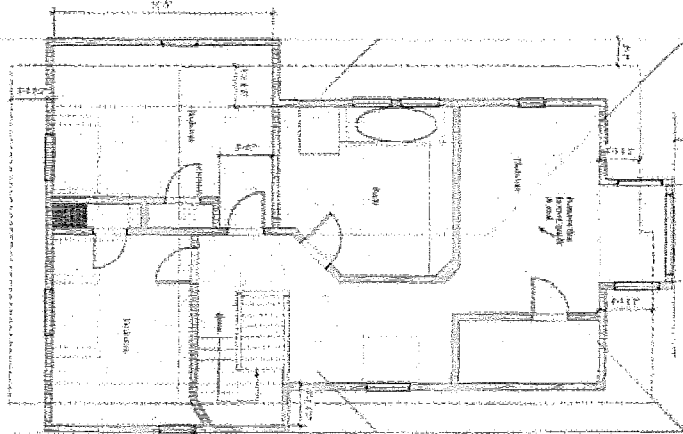
STEPHEN ANTONAROS ARCHITECT
 1853 & 2257 BROADVIEW ST., SAN FRANCISCO, CA 94133
 (415) 774-1100

STEPHEN ANTONAROS ARCHITECT
 1853 & 2257 BROADVIEW ST., SAN FRANCISCO, CA 94133
 (415) 774-1100

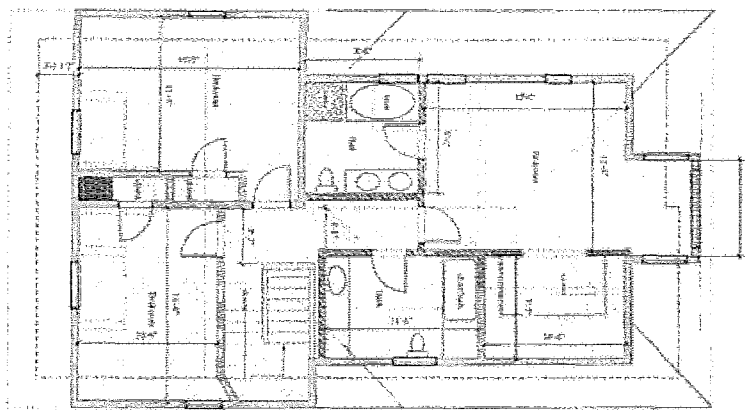
EXHIBIT 'A'
 August 22, 2012



STEPHEN ANTONAROS ARCHITECT
 2417 Broadway
 San Francisco, CA 94115
 No structural work to be done on this floor



STEPHEN ANTONAROS ARCHITECT
 2417 Broadway
 San Francisco, CA 94115
 No structural work to be done on this floor



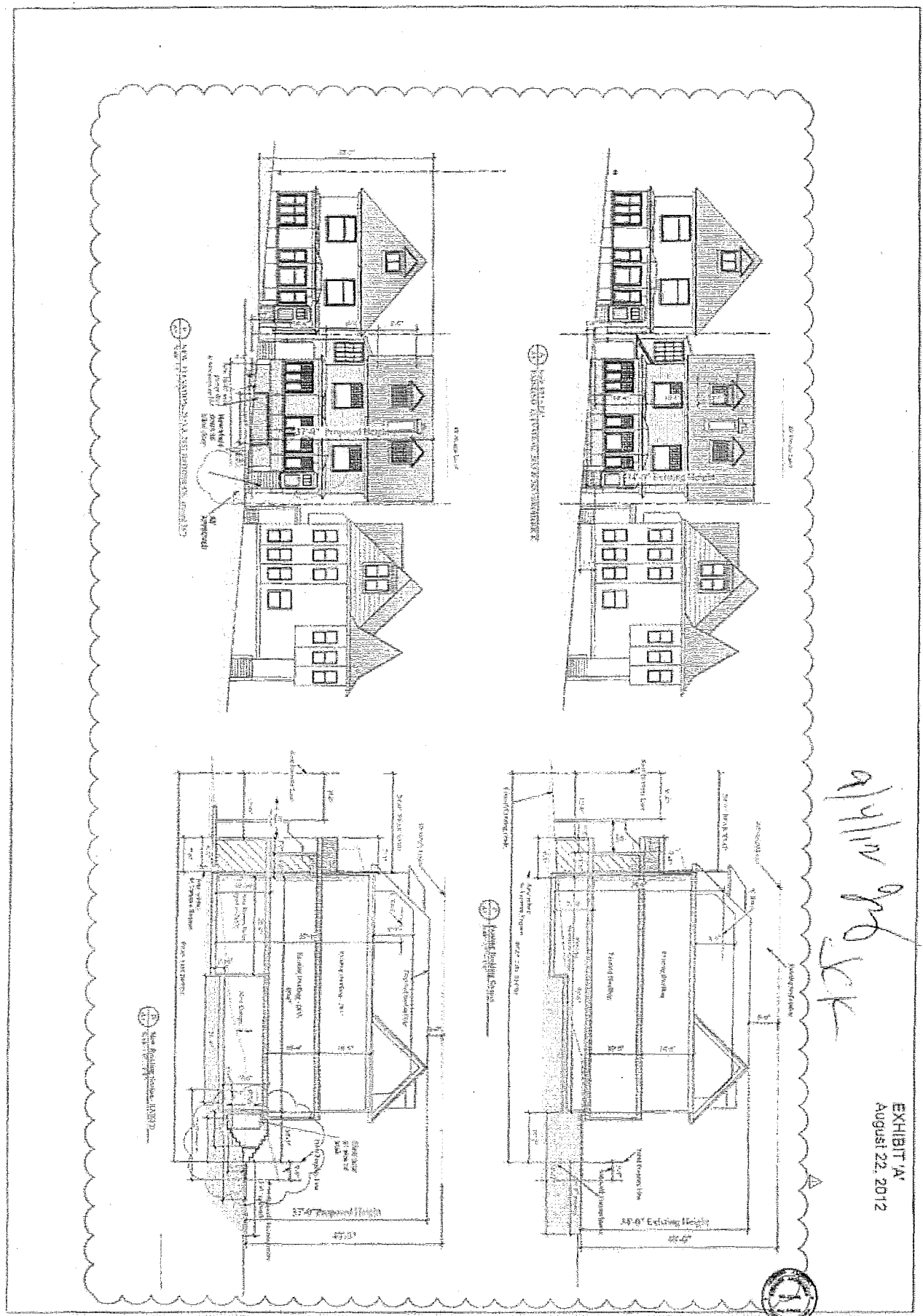
STEPHEN ANTONAROS ARCHITECT
 2417 Broadway
 San Francisco, CA 94115
 No structural work to be done on this floor

9/12/2012
SA

EXHIBIT 'A'
 August 22, 2012

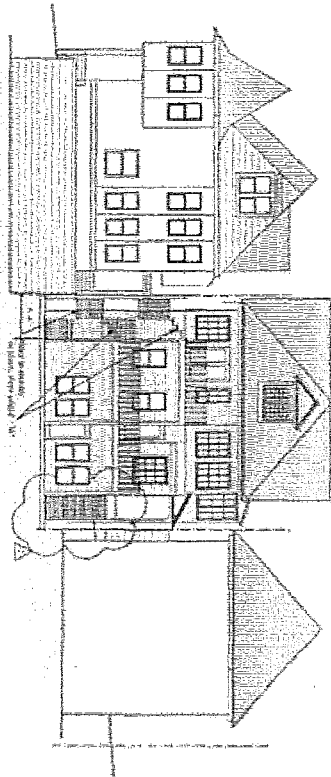


ALTERATION & VARIANCE 2851 & 2857 BRODERICK ST., SAN FRANCISCO, CA 94123 Block 6947 Lot 407		STEPHEN ANTONAROS ARCHITECT 2417 Broadway, San Francisco, CA 94115 Tel: 415.544.2241 Fax: 415.544.2242		Revision No. 1 Date 08/22/12
A4 1/1 1/1	1/1 1/1 1/1	1/1 1/1 1/1	1/1 1/1 1/1	1/1 1/1 1/1

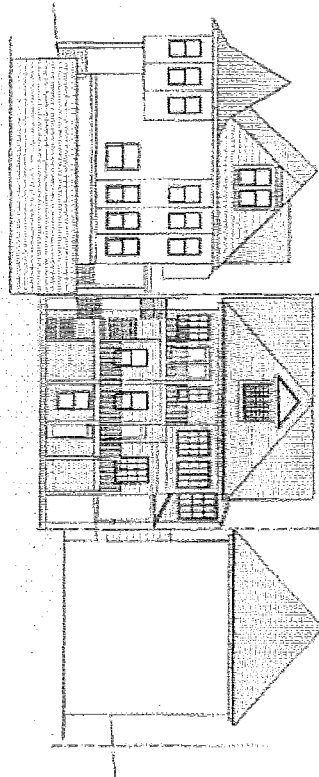


9/11/12 JAK

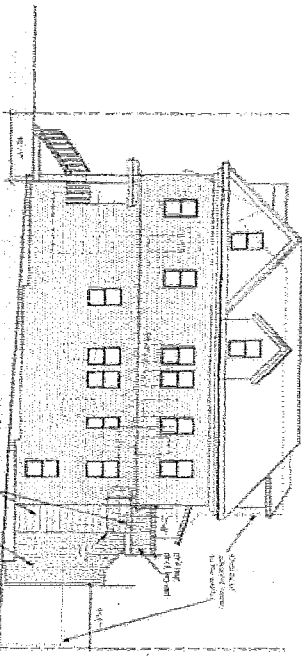
EXHIBIT 'A'
August 22, 2012



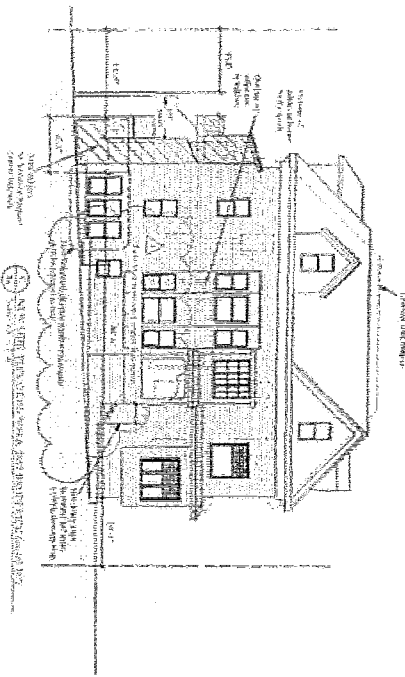
SECTION 1 - EAST SIDE ELEVATION AND SECTION



SECTION 2 - WEST SIDE ELEVATION AND SECTION



SECTION 3 - SOUTH SIDE ELEVATION



SECTION 4 - NORTH SIDE ELEVATION

9/11/12 gnb jck

EXHIBIT 'A'
August 22, 2012

