Dear Honorable Members of the Board of Supervisors,

Thank you for hearing my appeal regarding the unjust and ill-conceived proposed subdivision of 653-655 Fell Street, which would quite literally mean approving the destruction of six feet off the back of my home, the loss of my backyard and so much more. I sincerely appreciate you continuing this matter so that I can more clearly inform you of the issues at hand, and how they are not in the interest of the neighborhood, City or myself, as a tenant and contract holder for real property.

Briefly, I do wish to convey my regret that I did not know to offer information earlier to the Board. I have never appealed a municipal action before, much less contemplated appearing before the Board of Supervisors, nor what information the Board would have or not have in such a hearing situation. I hope this document will be concise, out of respect for your valuable time, as well as fully informative on this matter. In the event that you have any questions at all, I would be grateful to be allowed the opportunity to discuss further with you, or your staff. My contact information follows:

Jeremy Herzog
653 Fell Street
San Francisco, CA 94102
(206) 303 – 8842 (mobile)

Thank you in advance for your time and that of your staff in considering this matter.

Very Truly Yours,

Jeremy Herzog

Executive Summary:

- The proposed subdivision will not just subdivide land; it will cause the removal of six feet of my home. I do not wish to lose this area nor do I wish any modifications to my home or the area I lease. By approving this sub-division, the City of San Francisco would be approving the removal of part of my home and cause me injury.

- The lease I hold, as well as physical evidence, gives me exclusive use of the back room, as well as the backyard. RWW misunderstands or misstates the lease to which I am a party, which they assumed. I pay utilities for the back room; whereas if it were a common space RWW would pay the utilities.

- RWW also misstates the nature of the space- it is not a shed, not even close. It is plumbed, has electric and gas, carpeting and permanent fixtures. It is a finished room that I actively use (see photos in Appendix B).

- The proposed subdivision will reduce the space I have leased for a private backyard. I do not wish my backyard to be reduced.

- The proposed subdivision would essentially draw a line through the area that I have leased.

- Sunlight will be reduced to my unit and south-facing windows will be removed.

- The subdivision is not in the spirit of the General Plan and conflicts with Policy 11.1.

- The city of San Francisco, as a third party, will change the definition of the premises I have leased and cause me real damage if it approves this subdivision.

- DPW has failed to establish effective justification for the granting of variances in five of its findings concerning this lot subdivision. I dispute their findings in detail in this document.

- The injury caused by the project outweighs any benefits.

- RWW misled me as to the true nature of their project. I seek relief in this appeal.

Table of Contents

Background Information:

I have been a resident of 653 Fell Street for 4 years, since 2011. I have lived in the city since 2006, where I have worked at both UCSF Children's Hospital and Oakland Children's Hospital as a medical technician. I came to this city first on a travel contract, and after only a few weeks, I had fallen in love with San Francisco, and have never left. My home on Fell Street is the ground floor unit of a 2-unit building; the second unit (655 Fell) is on the second floor of the building. My unit is a two bedroom, one bath unit.

When I moved in, the original private owner, Erma Encinas, owned the building. In 2012, I received a notice that the building had been foreclosed upon and sold at auction. I was very surprised (a theme that may prove to be recurring in this document). The building was purchased by an LLC based in Oakland, CA: RWW Properties, LLC. A representative of RWW contacted me a few weeks after the property was acquired. Very professional, very routine; they told me this was one of their first properties in San Francisco and we seemed to start a friendly relationship, much like I enjoyed with Erma.

In the late summer of 2013, a representative of RWW contacted me to request access to my apartment to place a "permit" in my window (which was actually a "notice"). I asked what it was about and was told they wanted to "split" the lot, so that they could build a small house where the standalone three-car garage (a completely separate structure from the house, and on the other side of the backyard). Building a new building where there was already a building standing, seemed non-invasive to me, in the way it was presented.

Instead, as I have learned this year, the sub-division was not really a permit to build another building, but actually a request for the City of San Francisco to approve plans to tear off the back of my house and remove most of my developed and contractually leased backyard. To be clear, I was given a white-washed, misleading story about the nature of the notice, which very specifically focused on convincing me that the development/subdivision would be on the other side of the lot, when, in fact, it will intrude and tear off part of my home. In this document, I will illustrate, the neighborhood and City will not benefit from this sub-division, it is, in fact, in conflict with priorities of the City, and furthermore, the rationale used by the SF DPW to approve *extraordinary* variances is, at best, flawed and not in harmony with our City's General Plan.

After the posted notice was removed last year, I heard nothing about the matter until April 9th, 2014. On that day, I received a letter dated April 8th, from Bruce Storrs. In this letter, Mr. Storrs advised me that a tentative sub-division had

been approved and I had 10 days to appeal. I filed an appeal on the very same day I received the letter. And, while not actually germane to the appeal, since RWW has cast some question as to why I didn't contact them first, I appealed as soon as I got the letter because on April 9 (day after the letter was received) I would take a red eye to Europe for a wedding and would be gone two weeks: I had to get the appeal filed or miss the appeal window.

CAUSES FOR APPEAL OF SUBDIVISION

If the Board will kindly take notice of File #140355, for Planning Case No. 2013.07128, the case file for this appeal, the Board will see the details of the request for the subdivision they are asked to approve.

Reduction of My Home by SIX FEET

In filings, RWW Properties swore the following the following to the City (emphasis in bold):

> Said Restrictions consist of conditions attached to a variance granted by the Zoning Administrator of the City and County of San Francisco on January 6, 2014 (Case No. 2013.0712V, to subdivide a through lot containing a two-unit building fronting on Fell Street and a garage fronting on Hickory Street. **The existing structure fronting on Fell Street will be reduced by approximately six feet in depth at the rear**.

As the Board will take note, RWW's filing for subdivision is not just subdivision of raw land. In practice, the city does consider subdivision requests, but those subdivision requests, so far as I can determine, typically involve the subdivision of lots by affecting raw land contained within them. However, in this case, RWW has proposed to go **far** beyond dividing the raw land on the lot, such that the subdivision would require the **demolition** of six feet of depth of my home. They literally will chop off the back of my house if this is approved. By approving this subdivision, the City of San Francisco would be approving the removal of part of my home. Furthermore, as evidenced in Appendix A, a letter from my upstairs neighbors in 655 Fell, the proposed area to be demolished is area to which my lease allowed exclusive use. Action by the City to approve this subdivision would irreversibly alter my contract for lease of real property that I entered into with the landlord, and which RWW has legally assumed. Please, please do not approve this subdivision, and, in doing so, remove part of my home.

Reduction of Private Open Usable Space

Similar to the back of my house being removed, the proposed subdivision

will also remove a substantial portion of my backyard, which is private open, usable space. A key reason for my interest in this home was to have a nice backyard. Because I have acted upon reliance of the terms of my rent-controlled lease– which will allow me to remain a resident for many years to come– I developed the backyard with the approval of the original owner. While recognizing that tenant improvements may be at the risk of the tenant, a tenant can reasonably rely upon rent control allowing one to remain at a certain premises for a length of time. A tenant may similarly rely on a contract granting exclusive use to a private open, usable space to feel confident in making an investment in that space. Upon reliance on both of the above, I entered into my lease and have developed the open space. However, RWW, through their proposed subdivision filing, wishes to:

- Terminate my right to exclusive use of my backyard;
- Divide the backyard currently afforded by my lease across two lots, the newer of which would not be defined in my lease (further discussion in next section);
- Diminish the backyard afforded to my residence to be less than that required by *Planning Code Section 135*
- Create a backyard for the new lot that would be **80% LESS** (to be 3 feet, required is at least 15 feet) than that which the planning code requires. This almost certainly suggests that the private open, usable space to which I am currently entitled would be encroached upon by any user of development on the new lot;
- Receive a variance from DPW to deviate from the *Planning Code Section 134* to have these extraordinary open spaces with such shallow depths.

In fact, RWW wishes to make my backyard smaller, then use a piece of it to create a FAR too small backyard for a new lot/home, which would ultimately lead to conflict and not enough open space for all residents. Please do not approve this subdivision and remove my contractually guaranteed open space. Please do not approve this subdivision and create a drastic shortage of open space on the newly proposed lot.

Proposed Subdivision Substantively Alters Lease Contract

I entered into a contract to lease real property at 653 Fell Street. The premises I contracted to lease include the 2-bedroom, 1-bath unit and the private backyard adjacent to the unit, as well as the back room that RWW proposes to demolish.

The proposed subdivision would essentially draw a line through the area which I have leased. Even if RWW were to "respect" my lease rights, the subdivision would cause an irrevocable ambiguity upon the contract because the contract defines the premises to be lease as 653 Fell Street. The subdivision will create a new address for part of these premises, that will not be addressed as 653 Fell Street. Therefore, approval of this subdivision will mean that the City, as a third party, will

change the definition of the premises I have leased and cause me real damages. **The City may incur some level of liability for any approval of this plan**, which would knowingly alter a contract.

Finding 1 of DPW is Defective

In the first finding, DPW found (emphasis added in bold):

> 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 properties or uses in the same class of district.

DPW justified this finding by the following:

> The subject block is bifurcated by Hickory Street with lots on its north and south sides. The subject property is located on the north side of Hickory Street. Many lots on the south side of Hickory Street, directly across from the subject property, as well as the property immediately adjacent and to the west at 663 Fell Street, were subdivided and developed with buildings fronting on the front and rear of their respective lots.

In this justification (A), DPW has failed to establish anything extraordinary or exceptional. Not only do those very words fail to appear here, leaving us in clear doubt as to how they wish to establish the requirement, but the description provides absolutely no differentiation nor examples of similar class lots.

In a later justification (B) DPW established that this property has a greater depth than the typical lot depth. However, DPW has not established or provided any evidence that this typical depth is for homes in the same class as the subject property. Further, DPW has not established that 120 feet would in any way be exceptional or irregular. In fact, upon review of the entire document, it seems that 120 feet is **not** exceptional because it will still require multiple variances and the **back of my house to be cut off** to create two lots. Any lot that requires the back of a house to be cut off to create a subdivision hardly seems extraordinary or exceptional; instead, granting the variance would be extraordinary and exceptional.

Finding 2 of DPW is Defective on its Face

DPW is required to find the following to grant variances necessary

for subdivision:

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

In its finding, DPW essentially found that because 8 other lots in the neighborhood were subdivided, it would create a difficulty or unnecessary hardship for the current owner by not approving the subdivision.

RWW had the freedom to propose any subdivision plan that they wished, and therefore it is by definition established that RWW's proposal is by their own creation. **RWW wishes to cut off the back of my house** and remove my backyard. They wish to remove parking from the neighborhood (addressed in detail in a later section). They are not asking for little things to be overlooked, which is the spirit of this test; they are asking for huge exceptions and exceptions that will have an irrevocable material impact on others. RWW creates their own practical difficulties and hardship in this instance, and does not meet the test required.

DPW offers no review of the circumstances of the subdivision of the other properties cited. That other properties converted becomes moot unless other properties that converted **also** created identical problems for residents **and** variances were of a similar impact. This finding is defective on its face.

Finding 3 of DPW Lacks Sufficient Data to Establish a Conclusive Finding

DPW was required to make a finding relative to the following requirement to grant a variance:

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

DPW in Finding Three writes:

> 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.

> Specifically, nearby projects include the properties at 663 Fell Street, located immediately adjacent to the subject property, which was granted lot size, rear yard, open space and off-street parking variances on March 20, 2008 (Case No. 2007.1044V) and 513 and 519 Hickory Street, located directly across Hickory Street, which were granted lot size, rear yard, open space and off-street parking variances on November 8, 1990 (Case No. 1990.094V). ·

In this finding DPW has claimed that two properties nearby have been allowed to subdivide. DPW has **not** shown that **this** property is entitled to receive the property right to subdivide, given its unique circumstances as a property. Rather, demolition of six feet of the housing structure at 655 Fell Street is a substantial encumbrance of others' rights.

Demonstration of other subdivisions– in general, without significant detail– does not establish a substantial right of the subject property to subdivide. The subject property may have other factors pertaining to it which would encumber such a right; similarly, nearby properties may have had factors that may have emboldened their right to subdivide. This is not contemplated in the finding, rendering it so inconclusive as to be defective.

Furthermore, I request that the Board take notice of the basic premise on which this finding is based. The premise is akin to: "If others are doing it, it is okay for me to do it too." It recalls memories, which perhaps we all may share, of our parents or teachers admonishing us, "If yours friends jumped off a bridge should you do it too?" And knowing the obvious danger, we would say, "Of course not!"

Accordingly, this premise is a gross generalization and questionable public policy. Honorable Members, please take note of the dates of the two **most recent** subdivisions cited: one is 6 years old, and the most recent preceding that is **25 years old**. We are being implicitly asked to accept that current public policy towards subdivision should follow the example set by previous policy in subdivision dating back **25 years or greater**.

Our City has changed drastically in the last five years, and again in the last ten; I can only imagine the changes before that compared to now, and how the City's Master Plan and other policy agendas have changed. I call to your attention the prudence of allowing the decisions of 25 years ago to dictate the planning and housing related decisions of modern San Francisco, and its radically different challenges and priorities.

Finding 4 of DPW is Defective on its Face

DPW was required to make a finding relative to the following requirement to grant a variance:

> 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.

DPW failed to create a compelling finding meeting the required test. DPW essentially found that the neighborhood wouldn't be injured since nothing would expand beyond the property. However, DPW in their finding failed to contemplate that the modifications of removing six feet of the structure on the property would be considered injurious. A rationale citizen would reasonably conclude that alteration of an existing structure is injurious to the property. All DPW concluded was that it would not be injurious to improvements in the vicinity.

DPW failed to meet **both** prongs of the required test, and therefore their finding is defective on its face.

Finding 5 of DPW is Not in the Spirit of SF General Plan

The most relevant section of the SF General Plan to the proposed subdivision is Policy 11.1.

> POLICY 11.1
>
> Promote the construction and rehabilitation of well-designed housing that emphasizes beauty, flexibility, and innovative design, and respects existing neighborhood character.
>
> 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.

> The City should continue to improve design review to ensure that the review process results in good design that complements existing character. The City should also seek out creative ways to promote design excellence. Possibilities include design competitions that foster innovative thinking, and encouraging designers to meet with other local architects to provide peer review. New York City recently implemented a similar initiative that awards public projects, including affordable housing, based on talent and experience rather than to the lowest bidder, which has resulted in several buildings with lauded design.

The plan put forward by the development company and tentatively approved by The Department of Planning is not consistent with one of the core points of the San Francisco General Plan. Specifically, Policy 11.1, in which it is, described that construction and rehabilitation of housing should carry specific emphasis on beauty, innovative design, and flexibility while respecting existing neighborhood characteristics.

The removal of well developed private open usable space and existing leased living area without a well conceived alternative does not constitute an improvement inline with the General Plan. Removing a functional portion of habitable living space in order to squeeze enough square footage into a proposed lot for an unimagined project does not promote **forward thinking** of design or respect for neighborhood character. On the contrary, moving boundaries, shuffling amenities, and whitewashing intentions for development in the name of making the most profit from a foreclosure sale are in direct contrast to the initiative set forth in Policy 11.1 of the San Francisco General Plan. First of all, the subdivision, as currently set forth, does not provide added flexibly to the current living environment, but rather, through variances granted by the Department of Planning, creates compressed open private space less then 30% of what is required by SF Planning Code (Section 134). Secondly, the lack of a definitive plan for new construction does not give assurance that innovative design will follow the proposed division of this specific lot. It seems that a well thought out plan for development should be a requiem for granting multiple variances of city planning codes. Finally, upholding of the Department of Planning's decision to sub-divide the lot in question does not lend to the notion set forth by the General Plan (Policy 11.1) that residents of the city should be able to live in well-designed housing suited to specific needs, as this subdivision would remove a well designed area for gardening, entertaining, and personal enjoyment. In other words, simply because there is the potential for new development it does not automatically qualify the project as an improvement.

Rebuttal of RWW's Response

RWW Properties, LLC submitted a response to the appeal hearing to the City of San Francisco and its Board of Supervisors on May 19, 2014. This section contains rebuttal of certain points of RWW's response.

Of special note: I call *special* attention to the Board of the Respondent's terminology, across multiple pages of their response, referring to my back room (that is clearly part of my unit) as a "garden tool shed." As the following sections show, it is not a shed and is in fact a completely finished room that is part of my unit.

Structure to Be Removed is Not a Common Area and is Leased Property

In their response, Page 3, 2nd Bullet, RWW states to the City:

> The 2-units share a common laundry shed located at the rear of the 1st Floor Unit. Although the First Floor Tenant has direct access to the laundry room, this room is not part of his lease.

Later, RWW states on Page 8:

> The loss of 86 sqft in question is a common laundry area. This area is not part of the tenant's lease.

RWW misunderstands or misstates the lease to which I am a party, which they assumed. The lease I hold, as well as physical evidence, includes the space in question as part of my unit with exclusive use of this back room, as well as the backyard.

RWW makes reference to a "laundry shed" and then, a "laundry room." In fact, the area to which they refer is a back room. It happens to have a washer and dryer in it, but those appliances take up approximately no more than 15% of the square footage of the room (please see attached photographs in Appendix B). Laundry is not even the primary use of the room; I use it for extra guests to sleep in, storage, and as a workspace. It is simply a back room, which is part of the unit I have contracted to lease. The following are *irrefutable* reasons that define this space as part of my unit:

1. I pay the utilities for the back room. If it were a common area then the owner would be required to pay the utilities. If it is a common area, then the owner

should be able to produce the utility bills for this area, which the City would *require* them to pay for any common area utilities.

2. The room is part of the house. It is not a separate structure. It is *not* a shed. It is plumbed with hot and cold water. It has electricity, with outlets in the drywall, like any other normal room in a house. It has carpet. It has windows. It has two doors, one to the outside and one into my apartment.

3. The doors are **very** telling: the exterior door is literally an exterior door, as defined by the **SF Building Code**. It even has a chain on it (see photographs in Appendix B). Nobody places an interior locking chain on a common area. However, the interior door (see Appendix B) is an interior door, as defined by the building code. The code would require a completely different type of door if that door were really a boundary of my unit. The fact that it does not meet the City's standards for being an entrance of a unit is extremely telling that the intent and use of the back room is that it is actually a back room that was and is intended to be part of the unit. The construction and fittings are not consistent with the claim of it being either a "shed" or a "common area."

Parking Spaces

In their response, RWW stated on Page 8, Item 3, that I raised:

> That his (sic) was losing parking spaces – section 159 of the planning code

While a minor misunderstanding, I wish to briefly clarify that I did not state I was losing parking spaces. Instead I stated that the neighborhood was losing parking spaces – which it appears to be. I have a hard time finding parking on the street now, and removing 3 off-street parking spaces from this area will only make it more difficult.

Illusion of Collaboration

Through their response, RWW attempts to create an illusion of collaboration. While RWW has not been adversarial, they have certainly not been transparent nor collaborative as they suggest.

RWW writes:

> Rather, [RWW] tried to reach out to him via mail to arrange for a meeting to discuss the project. No response was received. See attached copy of Letter dated 4/24/14.

It is important to clarify the timeline here to understand this in context:

- 10/3/13 – Notice posted on Herzog's home
- 10/5, 6 or 7/13 – Sergio, representative of RWW spoke in person to Herzog and gave white-washed story of what the "permit" was all about (as described in background section).
- 4/8/14 – Notice of Tentative Subdivision Mailed by City to Herzog
- 4/9/14 – Herzog Received Notice, Researches & is STUNNED by findings. Herzog files appeal within hours.
- 4/10/14 – Herzog flies to Europe at 7am for wedding
- 4/24/14 – RWW writes Herzog. Letter states they will not change plans but can explain anything I don't understand. (Page 9, RWW Response)
- 5/6/14 – Appeal hearing is heard before Supervisors, and continued.

For the sake of clarity, I wish to make it clear that RWW spoke to me and obfuscated what was happening days after the notice was posted. In fact, the man that took the photos in their response, Sergio, gave me the story when he came to take those photographs.

Later, I received a letter from the city about a 10-day period to appeal, became concerned about why I might want to appeal something, did some research and realized what was happening, and immediately filed an appeal before embarking on international travel.

RWW contacted me less than 10 days before the appeal hearing with a letter that offered no negotiation, only to help me understand things I ostensibly was not understanding, and specifically stating they would not change course on **tearing off part of my home and violating our lease**. Unfortunately, at this point I did understand all their horrible intentions all too well, and we were only days from the hearing. **I wish they had just been forthcoming earlier.**

Removal of South Facing Window Will Remove Sunlight

RWW states in their response that I will not face a reduction of sunlight. They state:

> Loss of open space – Although the lot subdivision will reduce the rear yard, the tenant's access to sunlight will not be impacted.

That is not factual. The RWW proposed subdivision plan, because it **removes part of my structure**, will also remove the **second largest** window in my home, which is south facing. Pictures of this window may be seen in Appendix B.

Lack of Supporting Evidence

RWW concludes their case on page 12 of their response with:

> In conclusion, we believe the request for the lot subdivision is in keeping with the guidelines of the San Francisco General Plan and similar lot subdivisions granted on the subject block.

A common thread throughout this entire appeal: claims have been made that this subdivision is in keeping with past practice, while never establishing how or why. And, even when pressed to answer "when" as DPW did, it turned out to be 25 years or greater in every unfamiliar case (with one minor exception).

The truth here is that nobody has looked into previous subdivisions or their details. This therefore makes it, as a rationale, unstable. Even if it were stable, with a rapidly changing City of San Francisco, and a regularly updated General Plan, we must all ask ourselves, as rational individuals, if this can truly be a valid measuring stick when both the home and a contract for real property are being altered in the approval of such a subdivision.

I believe that the City would not only make decisions inconsistent with rules and policy, but also considerable overreach in approving this plan.

I humbly request the Board of Supervisors to **REJECT** this proposed subdivision plan for all of the reasons stated herein.

Thank you for your time, that of your staff and that of our city departments,

Jeremy Herzog
Appellant for Fell 653-655

Appendix A

May 14, 2014

To Whom It May Concern:

When my husband (Charles R. Staley, Jr.) and I (Kirsten D. Staley) chose to move into 655 Fell St. on February 20, 2010, one of the primary factors for us in this decision was the proximity of laundry facilities. These facilities are in a storage room attached to, and part of, the 653 Fell St. unit, and the costs of all utilities required to run the washer and drier are incurred exclusively by the tenant(s) of the 653 Fell St. unit. It is due to the generosity of the tenant(s) of this unit (now Jeremy) that we have had consistent, free access to these facilities. In exchange, we pay entirely for garbage services through Recology SF for both the 655 and 653 units.

Sincerely,

Kirsten D. Staley

Charles R. Staley, Jr.

Appendix B

Figure 1.

Looking from kitchen to back room
kitchen
with bathroom door on the left

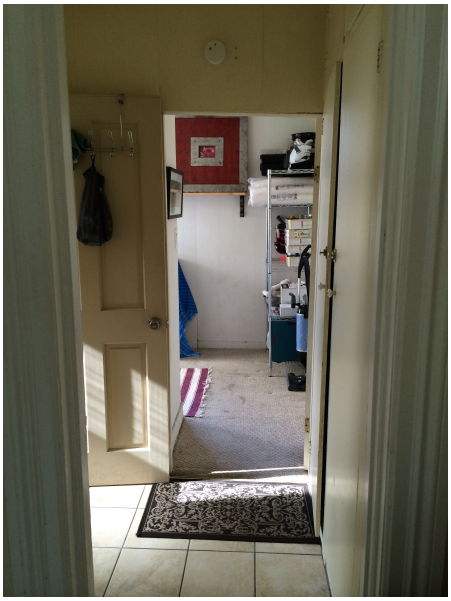


Figure 2.

Looking from back room into

with bathroom on the right

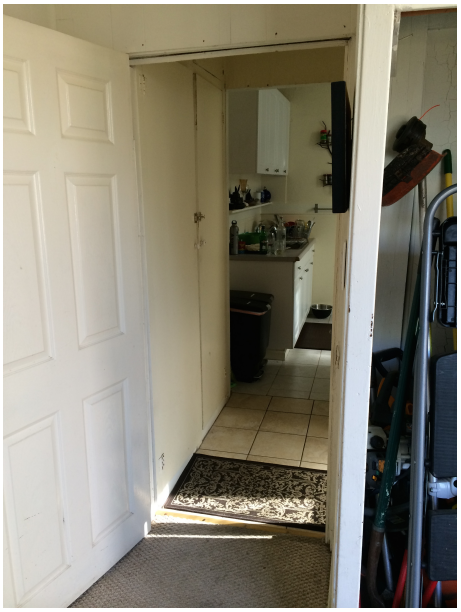


Figure 3.
Back room door to the outside,
with deadbolt and chain

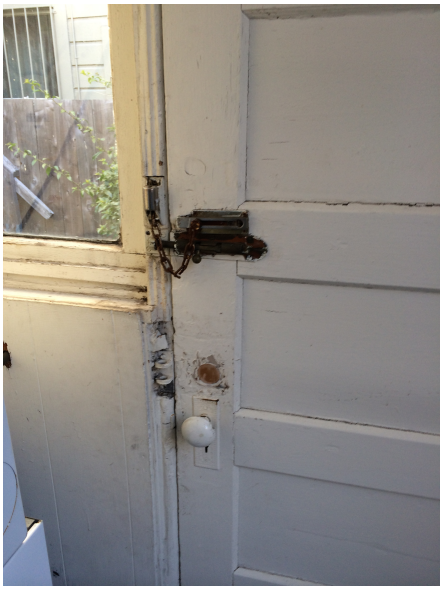


Figure 4.
View from in back room through
windows to back yard

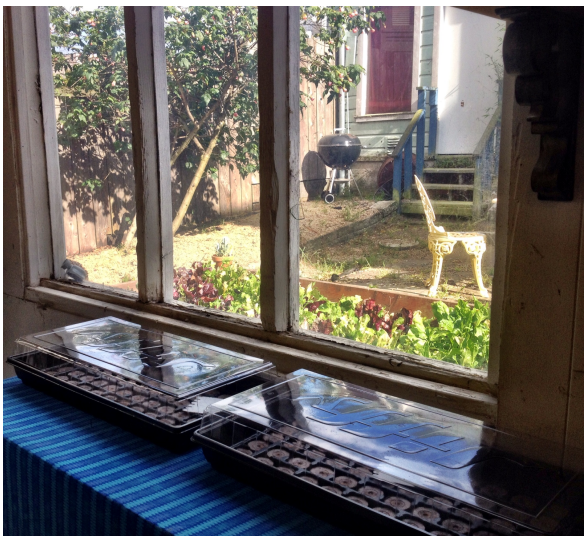
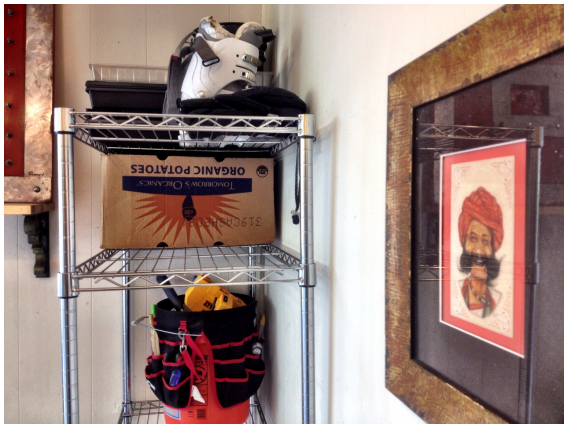


Figure 5.

Figure 6.
Back room - Storage shelf



Back room - Laundry units

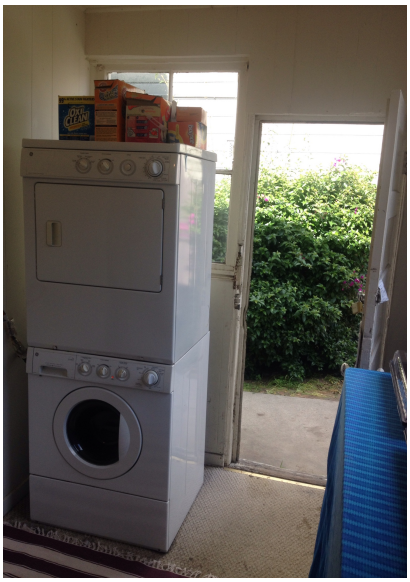


Figure 7.
Back room - Plants and artwork

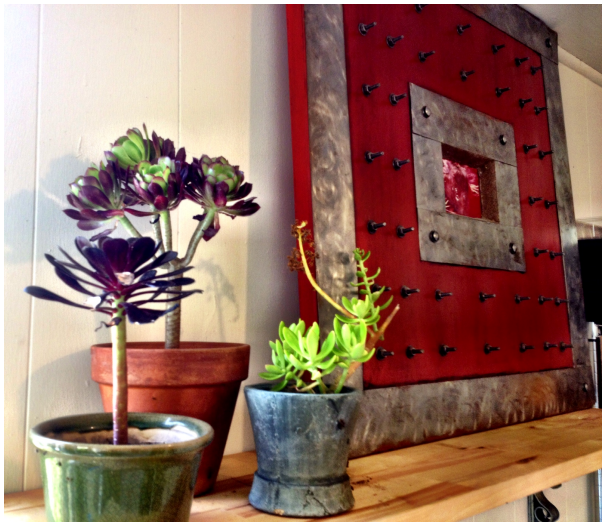


Figure 8.
Back room - Windows, Outside door

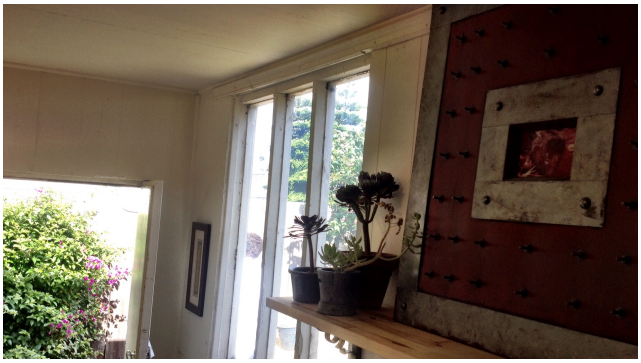


Figure 9.
Back yard - view from stairs looking at Hickory St.

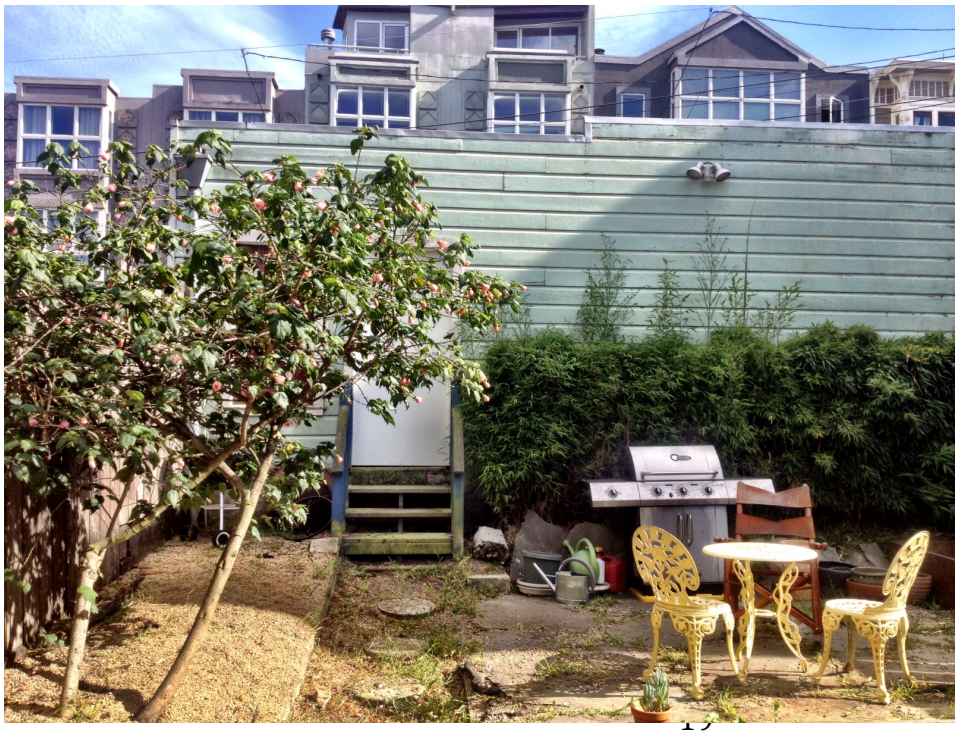
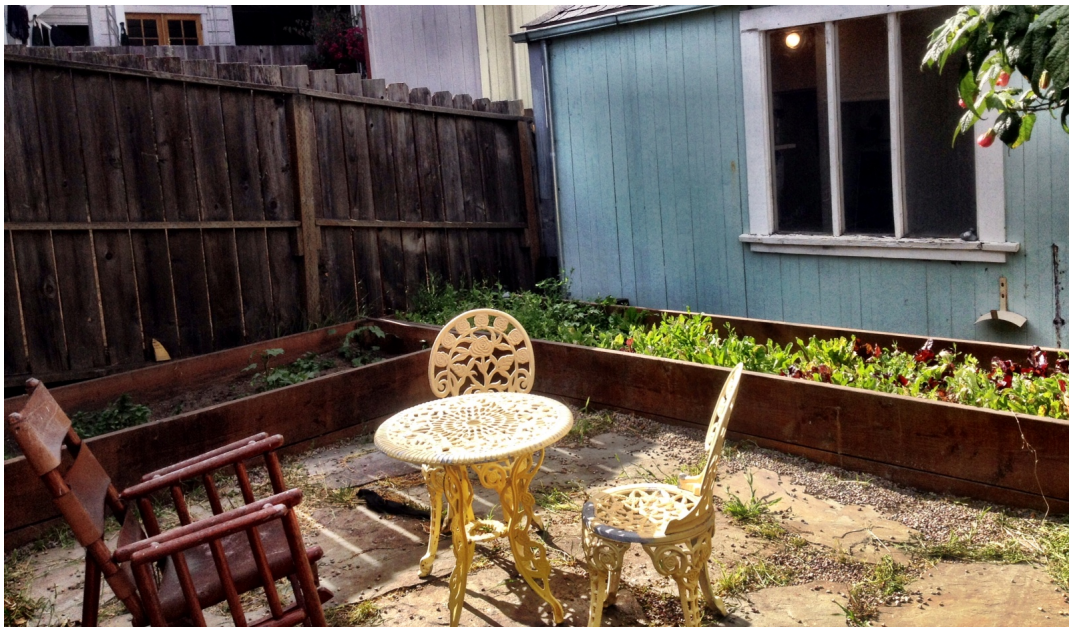


Figure 10. Back yard - Patio and Garage

Figure 11. Back yard - Patio and



looking at back room of 653 Fell St

Figures 12 & 13. Back yard - Planters, Patio, and Spring Beets

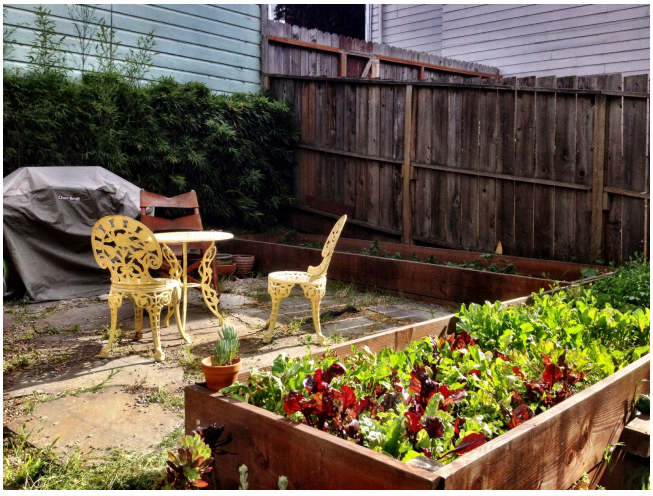
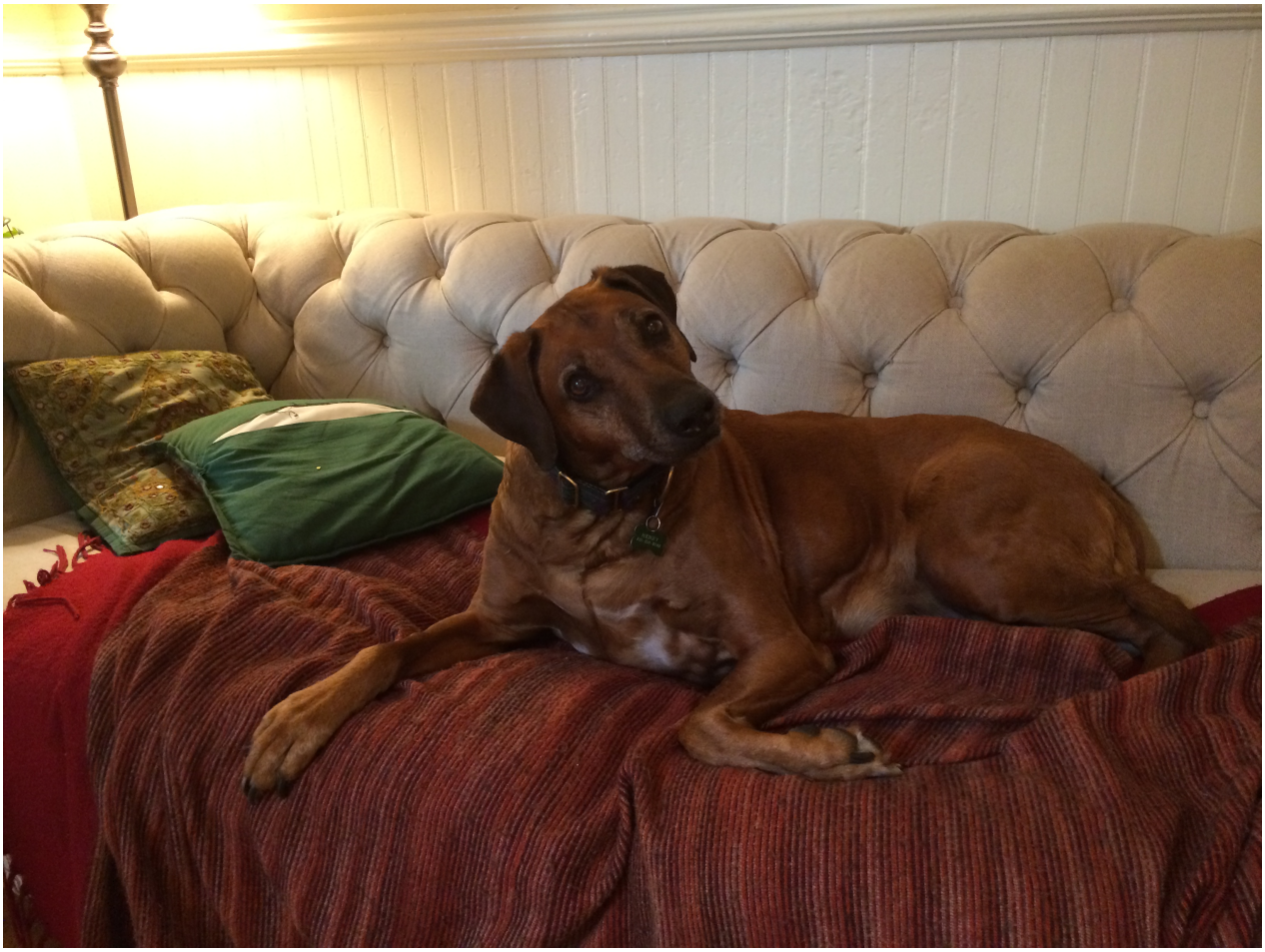


Figure 14.



Henry loves our home and back yard. As a LARGE dog, he needs a lot of space to run and stay healthy.