

Betsy Brown, Chris Witteman on Behalf of 14 Named Individuals

(Bernal/Powhattan Neighbors) c/o 114 Nevada St SF 94110
chriswit@saber.net

betsybrown@comcast.net

September 3, 2015

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2015 SEP -3 PM 1:58

Re: Appeal of Tentative Subdivision Decision for Lot at 40 Bernal Heights Drive
(Block/Lot 5640 010)

Dear Board of Supervisors:

Please accept this Appeal of Tentative Approval of 4 Lot Subdivision at Powhattan Avenue and Bernal Heights Boulevard.

We the undersigned neighbors appeal the attached August 24, 2015 "Notification Letter" informing us that the City and County Surveyor, apparently in conjunction with the SF Planning Dept., has approved a four-lot subdivision of one lot that sits on a tiny and irregular-shaped triangle at the corner of Powhattan Avenue and Bernal Heights Boulevard in Bernal Heights. See Attachment A. This lot is one of the last open space hillsides on East Slope of Bernal, and offers commanding views to pedestrians, bike riders, car passengers, and commuters on the 67 Bernal Heights bus.

Our primary objection to this development, however, is that it is too large and too dense for the space, and for the neighborhood. The four houses proposed for this space are hugely out of proportion with surrounding houses, even those built at the height of the 1960s square-box trend. Properties within a 300' radius of the proposed development average 1313 square feet of livable space on lots averaging 2064 square feet. The developers of this lot, however, flip this ratio, proposing to build four luxury houses averaging 2139 square feet of livable space (with garages and roof decks that can take that square footage close to or over 3000 square feet), on lots averaging only 1903 square feet. See neighborhood email to Planning Department, Attachment B.

We have requested that the developers reduce the footprint of this development to three houses at 2,000 square feet, and the East Slope Design Review Board has also made a similar suggestion, to no avail. More than 120 neighbors have signed a letter opposing the development in its current configuration. See letter, Attachment C. We believe the tentative subdivision approval was made in derogation of the City's General Plan, its Residential Design Guidelines, the Bernal Heights East Slope Building Guidelines, and the Bernal Heights Special Use District, *all* of which put a high premium on retaining neighborhood character. This massive, dense development will materially alter the character of our neighborhood. We ask you to stop it in its current configuration, and send it back to the Planning Department for further consideration.

Sincerely,

Bernal Heights Neighbors

Deborah Barron, 1 Nebraska Street; Linda Bettencourt, 3 Nebraska Street; Mike Boss, 42 Nevada Street; Betsy Brown, 2 Nebraska Street; Kelly Carlone, 98 Nevada Street; Erin Cunningham, 140 Chapman; Steve Fritz-Rudser, 120 Chapman; Nic Griffin, Prentiss/Powhattan; Michael Lerner, 9 Nebraska Street; Lindy McKnight, 140 Chapman; Karteek Patel, 38 Nebraska Street; Colin Petheram, 38 Nebraska Street; Melissa Shaw, 3 Nebraska Street; Chris Witteman, 114 Nevada Street



Date: August 24, 2015
PID: 8257

THIS IS NOT A BILL.

The City and County Surveyor has approved a tentative map for a proposed subdivision located at:

Address	Block	Lot(s)
40 Bernal Heights	5640	010

Edwin M. Lee
Mayor

Mohammed Nuru
Director

Jerry Sanguinetti
Bureau of Street Use & Mapping
Manager

Bruce R. Storrs P.L.S.
City and County Surveyor

Bureau of Street Use & Mapping
1155 Market St., 3rd floor
San Francisco, CA 94103
tel (415) 554-5827
Subdivision.Mapping@sfdpw.org

sfpblicworks.org
facebook.com/sfpblicworks
twitter.com/sfpblicworks

This subdivision will result in:

4 Lot Subdivision

This notification letter is to inform you of your right to appeal this tentative approval.

IF YOU WOULD LIKE TO FILE AN APPEAL OF THE TENTATIVE APPROVAL:

You must do so in writing with the Clerk of the Board of Supervisors within ten (10) days of the date of this letter along with a check in the amount of \$306.00, payable to SF Public Works.

The Clerk of the Board is located at: City Hall of San Francisco
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
(415) 554-5184

If you have any questions on this matter, please call us at (415) 554 – 5827 or our email address: Subdivision.Mapping@sfdpw.org.

Sincerely,

Bruce R. Storrs, P.L.S.
City and County Surveyor
City and County of San Francisco

From: Betsy Brown <betsybrown@comcast.net>
Subject: 40 Bernal Heights Subdivision Application — follow-up data
Date: August 14, 2015 at 1:15:34 PM PDT
To: brittany.bendix@sfgov.org
Cc: Deborah Barron <barrondeborah@hotmail.com>, Linda Bettencourt <lbetten29@gmail.com>, Mike Boss <mbooss@rockandrose.com>, Kelly Carlone <kellycarlone@gmail.com>, Erin Cunningham <erinmckc@yahoo.com>, SRudser@aol.com, Michael Lerner <mlerner@learnthenet.com>, Lindy McKnight <lindymck2@yahoo.com>, Karteek Patel <karteek@hotmail.com>, Colin Petheram <colin.petheram@gmail.com>, Melissa Shaw <melissashaw@mindspring.com>, Max.setyadiputra@sfgov.org, Jenny.delumo@sfgov.org, Amir Afifi <amir@siaconsult.com>, reza@siaconsult.com

Dear Ms. Bendix:

Thank you once again for meeting with representatives from our neighborhood group last month to discuss the proposed subdivision of the vacant lot at the intersection of Bernal Heights Drive, Nevada St., and Powhattan. We have been tracking the status of the subdivision decision online and see that approval by city agencies is pending.

We understand from our discussion with you that the relationship between lot size and proposed livable space does not figure into a subdivision decision. However, we remain concerned that a four-lot approach to this unique space will result in properties that are out of character with our neighborhood. We have gathered data to that effect, and wanted to share it with you as a follow-up to our meeting.

As you can see, compared to a neighborhood average based on information from the Recorder's Office, the proposed project would put nearly 1,000 *additional* square feet of livable space on each of four lots that are, on average, smaller than others in the vicinity.

	Neighborhood Average*	Proposed Project**
Livable space	1,313 sq. ft.	2,139 sq. ft.
Total lot size	2,064 sq. ft.	1,903 sq. ft.

*Based on houses within a 300-foot radius of the site

**Average of four proposed houses/lots

We believe this data supports our concern that the proposed project is out of scale and character with the surrounding neighborhood.

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B-1

Thank you for allowing us to have a voice in this process. If you have questions — or any additional information to share with our group — please do not hesitate to be in touch.

Sincerely,

Deborah Barron, 1 Nebraska Street

Linda Bettencourt, 3 Nebraska Street

Mike Boss, 42 Nevada Street

Betsy Brown, 2 Nebraska Street

Kelly Carlone, 98 Nevada Street

Erin Cunningham, 140 Chapman

Steve Fritz-Rudser, 120 Chapman

Michael Lerner, 9 Nebraska Street

Lindy McKnight, 140 Chapman

Karteek Patel, 38 Nebraska Street

Colin Petheram, 38 Nebraska Street

Melissa Shaw, 3 Nebraska Street

cc: Amir Afifi
Reza Khoshnevisan
Max Putra
Jenny Delumo

March 2, 2015

Jenny Delumo
San Francisco Planning Department
1650 Mission St., Suite 400
San Francisco, CA 94103-2479
Jenny.Delumo@sfgov.org

Bruce R. Storrs, P.L.S.
City & County Surveyor
Department of Public Works,
Bureau of Street Use & Mapping
1155 Market St., 3d Floor
San Francisco, CA 94103
bruce.storrs@sfdpw.org

Re: Comments in Response to "Notification of Project Receiving Environmental Review" (Case No. 2014-0002982ENV)
40 Bernal Heights Blvd/965-1025 Powhattan Avenue —
Protest & Objection to DPW Tentative Approval of Subdivision Map

Dear Ms. Delumo and Mr. Storrs:

We the undersigned provide these comments on the environmental impact of the above-referenced project, in response to the Planning Department's February 17, 2015 Notification of Project Receiving Environmental Review, and in response to an earlier notice of approval of tentative subdivision map, purportedly dated January 15, 2015.

We also take this opportunity to strenuously object to and protest the deeply flawed process by which DPW and the Planning Department arrived at their Tentative Map Decision, approving the subdivision of one lot into four substandard parcels, without any formal findings, based on materially misleading or incorrect statements by the developers, and with entirely inadequate notice to affected neighbors and nearby landowners.

In short, the current scope of the project greatly exceeds the existing scale of the neighborhood and is too large for the site. The project would block views, exacerbate neighborhood parking problems, and chew up one of the last open spaces on the Bernal Heights East Slope, home or potential home to threatened animal and plant species. The proposed market-rate (luxury) homes will do nothing to affect affordable housing.

We ask that this project, if it is built at all, be approved only after the current subdivision approval is rescinded and the subdivision reconsidered, and after substantial reductions to the project size are effected, in order to minimize the impact on open space, and

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conform it to existing neighborhood scale and character. We note that the assertions in this letter are based on the information we have been able to obtain from the City and analyze (in conjunction with limited expert input) in the last ten days.

In particular:

1. The project exceeds the existing scale of neighborhood and is too large for the site. Until very recently, there was only one lot on the site, filling an irregular, acute-angled space where Nevada St., Powhattan Ave., and Bernal Heights Blvd. come together. The developer has requested subdivision into two lots, which will in turn consist of two parcels each, producing four parcels in the range of 1755-2073 square feet each, all substantially smaller than the 2500-square-foot and larger lot parcels on adjoining Nevada Street. On these relatively smaller lots, the developer plans to build structures substantially bigger than anything else in the neighborhood, ranging from 2760 to 3430 square feet when structures on adjoining streets are in the 900-1300-square-foot range.¹ The size of these proposed structures exceeds what would be permitted under the Bernal Heights Special Use District, while backyards, setbacks, and other design parameters are also not in conformance – reflecting, again, that the proposed structures are too big for the neighborhood.
2. The project will eliminate the largest piece of open hillside on the East Slope of Bernal Heights, destroy large trees and native grasses, and destroy potential habitat for threatened species. This irregular lot, together with Rosenkranz and Carver Street easements, currently constitutes the largest piece of open hillside remaining on the East Slope of Bernal Heights. Amazingly, the developers' Proposition M Findings Form states that "No ... open space will be affected by this development," the first of several materially incorrect statements in that Form. This open meadow — which was reseeded with Bernal grasses and secured by new retaining walls as part of major life-safety and utility upgrades to the neighborhood in the last decade — contains beautiful wildflowers in the spring and other flora throughout the year, and provides habitat for a rich array of bird life and other fauna. We have reason to believe that rare, endangered, or threatened species, including unique various forms of manzanita,² are found

¹ On Nebraska and other adjoining Bernal streets, lot size may be as small as 25x75, or 1875 square feet, still putting two of this project's lots below the lower norm of lot size in Bernal (lots on which the built square footage typically hovers around 1000).

² For example, Bernal Heights is a designated habitat for the Franciscan Manzanita. See <https://www.federalregister.gov/articles/2012/09/05/2012-21744/endangered-and-threatened-wildlife-and-plants-designation-of-critical-habitat-for-franciscan>, and linked findings:

or could be found on this property.³ In addition, there are a number of trees on the property which command its crest, at least two of which fit the San Francisco definition of "Significant Trees," and may not be removed without a special proceeding and permit.⁴ Such open space is increasingly rare, and important, in a city of increasing density. Particularly in Bernal, such open space contributes an essential element of the neighborhood character.

3. The project will block views. Neighbors, pedestrians, and riders of the 67 Muni bus now enjoy expansive views of the East Bay and South Bay and out the Alemany Gap to the west as they travel Bernal Heights Blvd. in either direction between the Nevada/Powhattan intersection and upper Bradford Street. These vistas will be virtually obliterated by the proposed 30'-high structures. In addition, the developers apparently intend to excavate deeply into the existing hillside in order to build these houses, and will of necessity have to build large fences along Bernal Heights Blvd. to protect against pedestrians accidentally falling into these excavated "back yards." Yet again the Proposition M Findings Form submitted by developers — dated May 21, 2014 but not provided to neighbors until a February 2015 Public Records Act Request, and on which the City may have relied to make its tentative subdivision approval — flatly and incorrectly states that "the project will not block access to sunlight or vistas."
4. The project will cause parking problems. Although final plans are not yet available, the developers will presumably be required to make 3 or 4 substantial curb cuts along Powhattan Ave. to accommodate driveways, which will in turn take away approximately 6-8 parking spaces from Powhattan. In addition, these 2760- to 3430-square-foot households will almost surely have and attract more

*Unit 10: Bernal Heights -- Unit 10 consists of approximately 24 ac (10 ha), is located north of Cortland Avenue and west of U.S. Highway 101, and is surrounded by Bernal Heights Blvd. This unit is currently unoccupied. The unit is within an area that experiences summer fog; is located on sloping terrain; and contains Franciscan Complex (greenstone) and Franciscan bedrock outcrops of chert, volcanic, and sedimentary materials, soils derived from these formations, and open grassland habitat. This unit would assist in establishing an additional population of *A. franciscana* outside the Presidio and Mount Davidson areas. As a result, we have determined that the area is essential for the conservation of the species, because it provides for one of multiple independent sites for *A. franciscana* and contains some of the last remaining appropriate habitat for the species within the area.*

³ No study has been done. This is why it is critically important to revisit the behind-closed-doors Tentative Map Decision, which without explanation exempted the project from environmental review.

⁴ San Francisco Public Works Code, Article 16, Urban Forestry Ordinance, Section 808a.

cars than can fit inside the proposed garages.⁵ Parking spaces are already scarce in Bernal Heights. (The Proposition M Findings Form submitted by developers however, states that the Project “will not overburden ... street traffic nor will it cause parking problems,” with no backup for this assertion.)

5. The project will not contribute any affordable housing to the city's stock. Nothing in developers' package suggests that the four proposed structures will be anything other than market-rate, luxury homes.

6. The subdivision of this lot was done behind closed doors, without adequate notice to neighbors, with no supporting findings of fact, and apparently based on materially incorrect or misleading statements in the developers' application. As detailed in various emails to Messrs. Storrs and Lee at DPW, neighbors were entirely unaware that a subdivision process was ongoing.⁶ The subdivision approval and exemption from environmental review was approved with no findings,⁷ and based (if based on any factual record) on the developers' material misrepresentations in the Proposition “M” Findings Form (which asserted there was no impact on open space, views, or parking, among other statements). We are now informed that DPW now admits that the environmental exemption was a mistake. It must, therefore, revisit the tentative approval of the subdivision map. We believe that dividing one lot into four parcels raises a number of environmental issues which should be considered here.

Moreover, the San Francisco Subdivision Code clearly contemplates that neighbors will have ten days to decide whether or not to appeal a subdivision decision,⁸ and in this case neighbors effectively had only three days to file such an appeal. At least two households are willing to sign declarations that they clearly remember *not receiving* the putative January 15, 2015 notice until late in

⁵ Early plans for the project call for elevator-stacking garages accommodating more than one car in at least some of the structures. As a threshold matter, such plans indicate the luxury nature of this development. Moreover, visitors to these residences — and residents who choose not to use their elevator-stacked parking (e.g., for quick trips to the market) — will compete with neighbors for the reduced amount of street parking.

⁶ Neighbors met with the developers in Fall of 2014 under the auspices of the Bernal Heights East Slope Design Review Board. At that time, the developers stated that they “would be” applying for subdivision approval, even though the subdivision process was then pending.

⁷ The Tentative Map Decision refers to “attached findings,” but we are informed by Mr. Storrs, a signatory to that Decision, that there were no attached findings.

⁸ San Francisco Subdivision Code Article 9, SEC. 1314 provides that an appeal must be filed “in writing with the Clerk of the Board within 10 days of release of the decision appealed.”

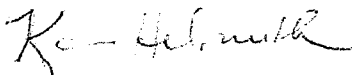
the day on January 20, leaving only 3 days to appeal (the 24th and 25th being weekend days). There are many other anomalies with the notice.⁹

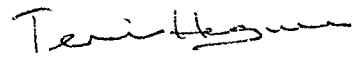
Many of the undersigned property owners have been in the neighborhood for more than 20 years, and they deserved meaningful notice of, and an opportunity to be heard on, the substantial changes to neighborhood character which the proposed subdivision threatens. Three days is not enough, not under the City's Subdivision Code, and not in any sense of fairness. For this reason, the undersigned neighbors protest and object to the tentative approval of the subdivision, and ask that it be reconsidered.

For the foregoing reasons, the undersigned neighbors object to the project as proposed, and ask that the project not be approved, or not be approved until the subdivision decision is re-analyzed and the project's scope and scale are substantially reduced.

This letter may be signed in counterparts.

Very truly yours,


Karen Helmuth, Psy.D.
76 Bernal Heights Blvd.
San Francisco, CA 94110


TERRI HAGUE
76 Bernal Heights Blvd
SF, CA 94110

cc: Supervisor David Campos
Supervisor John Avalos
Frank Lee, DPW

⁹ The envelopes were postmarked June 6, 2014, over 7 months *before* DPW says it mailed the notice. DPW confirms that it does not have any certificate or proof of service for the purported January 15, 2015 mailing – nor could it. The actual mailing is apparently not done by DPW, but by a separate office. Moreover, the Tentative Map Decision is dated January 9, 2015, almost a week before the purported notification letter, leaving in question when the Decision was “released.” The notification letter also contains this confusing header: “THIS IS NOT A BILL.” Contrast this with the “Notification of Project Receiving Environmental Review,” which was dated, postmarked *and* received on February 17, 2015.

List of Signatories to March 2, 2015 Neighborhood Comments re Bernal Heights/Powhattan Subdivision
(partial)

Betsy Brown
Helene Brow (sp?)
Sam T Urai
Melissa A Shaw
Linda Betten
Socorro Molina (sp?)
Andres & Socorro Malina Living Trust (sp?)
Nelson Kobayashi
Sandra D. Barron (sp?)
Peter J Dardis
Fozia Sacet (sp?)
Victoria Gonzalez
Shelley Munger (sp?)
Kenneth Garrett
Julie Fong
Alain Vandiepenbeeck
Michael Groh
Carole Zingesen
Jose Garrotte
Hilary Hobbs
M B Bongroun (sp?)
Valerie Sinkavich
Frank Sinkavich
Barbara Underberg
Mary Carisolo (sp?)
Heather Lidemann (sp?)
Erin Cunningham
Lindy McKnight
Oliver Shock
Kirsten Quinto
Ronald Lang
Steven Fritsch-Rudser
Edric Alunan
Nancy Zeches
Sid Hilderson (sp?)
Edward A. Jackson (sp?)
Mike Boss
Robyn Talman
Thomas Wu
Rachel Chin

Zuceli Sedar
Warren Sch? (sp?)
Jennifer Cohn
Jeff Couture
Lena D'Giulia
David Page
Loretta Wilson
Shawn Scott
Lua Scott (sp?)
J Bowers (sp?)
Russ? Kelo (sp?)
Kelly O'Brien
A.M.O.
Judy Hiserman
Micaela Guitron
Juan Antonio Guitron
Alondra Orellana (sp?)
Chris Witteman
Matt Peterson
Amy Peterson
Dennis Berrios
Jennifer K Devlin
Nic Griffin
Michael Marrelli
John N. Mathies
Kevin Chard
Alfonso D'Allesandro
Doug Dunderdale
Leonor Vera
Dafna Wu
Kathy Angus
Larry Nelson
Geraldyn Koziarski
Lawrence Montgomery
Deborah Gerson
Herb Felsenfeld
Gail Newman
Patricia B. Hughes
Sam Orr
Ann Lockett
Marilyn Waterman
Karen Helmuth
Terri Hague

Michelle Wolf
Gina Black
Arash Babaki
Joseph Bartlow Jr.
Bob Muller Jr.
Robert Muller Sr.
Henrietta Muller
Polly Arenberg
Graciela Trevisan
Lisa Rofel
Bethany Gradert
Niroj Hazari (sp?)
Bardell J Beversdorf
Evelyne Michaut
Milton Brown
Felicitas W. Brown
Melody Mundy
Mita Naff (sp?)
Tom Donald
Sarah Thompson
Bayinaah Jones
Jeff Kilik
G... Kim (sp?)
Allen B. Bennett
David Radke
Amy Reticker
Michael Snead
Divya Patel
Souran Bandyopadhyay
David McCarthy
Keisha McCarthy

Signatures on file with Planning Dept

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BOARD OF SUPERVISORS
SAN FRANCISCO

2015 SEP -3 PM 1:54

PO

CHRISTOPHER P WITTEMAN
114 NEVADA ST
SAN FRANCISCO, CA 94110

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CW
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Date

PAY TO THE
ORDER OF

SF Public Works

\$ 306.⁰⁰

Three hundred six and ⁰⁰/₁₀₀

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The Golden 1 Credit Union
11th & O
PO BOX 15966 SACRAMENTO, CA 95852-0966

For Appeal of Tentative Subdivision



↳ 40 Bernal Heights

Harland Clarke

California's Leading Credit Union