

# Moscone Emblidge & Rubens

220 Montgomery Street, Suite 2100, San Francisco, California 94104  
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October 7, 2021

*Via Email (shamann.walton@sfgov.org)*

Hon. Shamann Walton, President  
San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102-4689

SCOTT EMBLIDGE  
Partner  
[emblidge@mosconelaw.com](mailto:emblidge@mosconelaw.com)  
Direct: (415) 362-3591

Re: 249 Texas Street Condition Use Appeal

Dear President Walton and Members of the Board of Supervisors:

Our firm represents the project sponsors and respondents, Joanne Siu and Kerry Shapiro, who have obtained the Planning Commission's approval to replace a structure that has one permitted dwelling unit and one unpermitted, non-code-compliant unit with a new building with two fully code-compliant dwelling units. Although Joanne and Kerry intend to live in the upper unit and to have Joanne's elderly mother live in the lower unit, they have worked with the staff of your Planning Department, in consultation with the City Attorney's Office, to ensure that both units will be subject to the San Francisco Rent Ordinance so that if either unit is rented in the future it will be covered by the Rent Ordinance.

The Planning Department staff supported the project and it was approved by the Planning Commission on June 3 by 5-2 vote. We ask that the Board reject this appeal and let Joanne and Kerry move forward with their project.

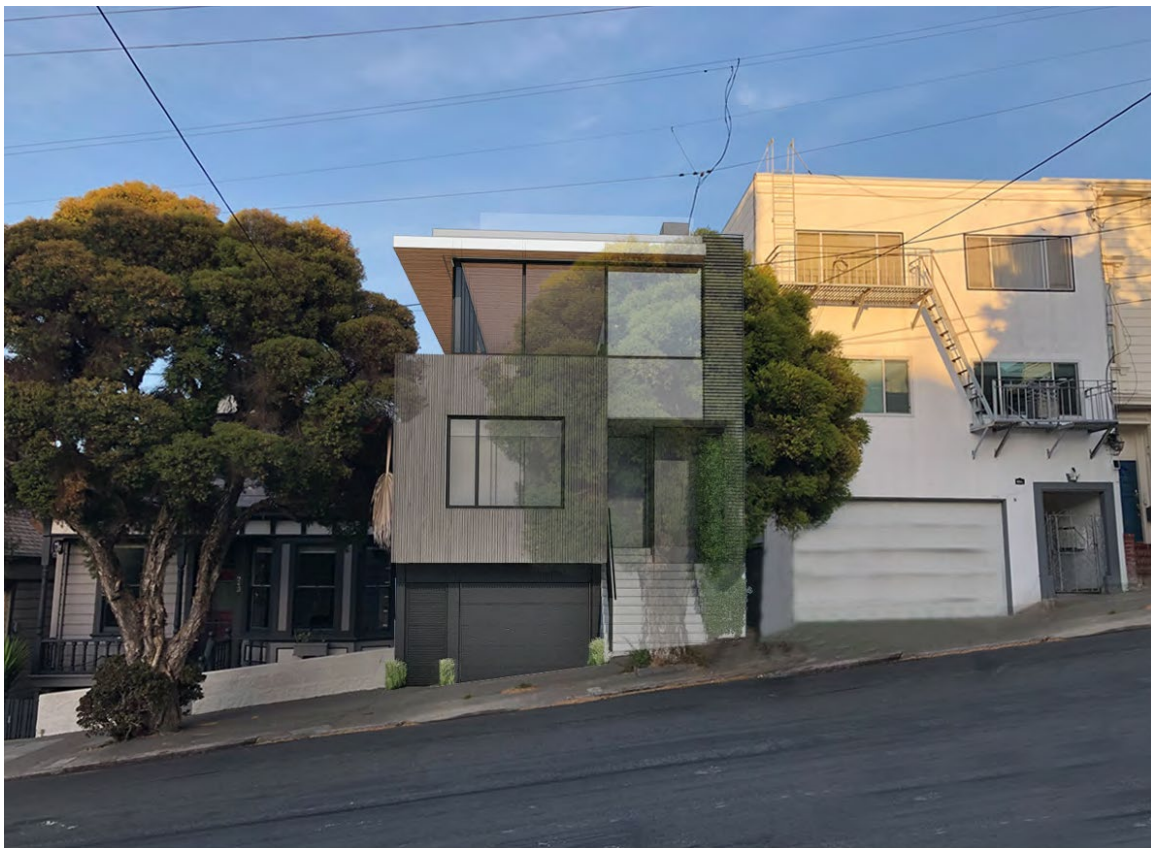
## Background

Joanne and Kerry are not developers looking to "flip" a property for a profit. They have been San Francisco residents for over 30 years and are looking for a place where they can raise their daughter and provide a safe space for Joanne's mother, who is 81 years old and suffers from Alzheimer's disease. A photo of Cho Yuk ("Joyce") Siu is attached as **Exhibit 1**. Joanne and Kerry want nothing more than to renovate the property so that it works for their family and allows them to care for Joyce. They, and several of their neighbors, are bewildered by the wild, unfounded accusations made by the appellants about Joanne, Kerry and their project.

## The Project & Support from Planning Dept and Planning Commission

249 Texas Street is in a two-family (RH-2) zoning district. The three-story structure currently at the site has a two-level authorized dwelling unit and a second unauthorized

dwelling unit constructed at the lower level (originally the garage space). The lower unit fails to comply with applicable codes in many respects, including ceilings that are too low, insufficient egress for spaces that have apparently been used as bedrooms in the past, and a substandard foundation. The project would replace these units with a three-story, 30-foot tall, residential building that has two fully code compliant dwelling units, two below-grade off street parking spaces, and two Class 1 bicycle parking spaces. The project would also be energy efficient and meet the modern standards of the San Francisco Building Code, including pervious concrete and the required landscaping in the front of the building.



Above is a depiction of what Joanne and Kerry plan to construct. As you can see, this is not a “monster home” out of context with the neighborhood. Rather it fits well on the block, with its mix of architecture and building sizes, maintains the downward sloping topography of the block face, and is beautifully designed by celebrated San Francisco architect John Maniscalco. (Please see **Exhibit 2** – photos of the two sides of this block depicting the variety of architectural styles and building sizes.)

Working with Planning staff, Mr. Maniscalco modified aspects of the design to ensure neighborhood compatibility. And, in response to comments raised by Planning Commissioners Kathrin Moore and Deland Chan, Mr. Maniscalco further modified the

design to enhance privacy protections for neighbors with set-backs that were beyond code requirements and to increase the lower unit's size. The lower unit is a spacious 1080 square feet.

The Planning staff and Commission supported this project because (1) the design respects the neighboring homes and the neighborhood character in general, (2) the project replaces the current unauthorized, non-code-compliant lower unit with a new, structurally sound and code compliant dwelling unit, (3) the cost of trying to renovate the existing unit (as opposing to dismantling and rebuilding) was shown to be cost prohibitive, and (4) despite the unclear rental history in the past, the project sponsors agreed that both units would be protected by the Rent Ordinance in the future.

In the two lengthy public hearings for this application, Planning Commissioners vetted many details of the project and delved into Planning staff's analysis and support for the project. The Commissioners voted to approve the project by a 5-2 vote.

#### Tenant History

The opponents of the project have raised many outrageously inaccurate claims about the rental history in this building. Fortunately, the tenant history is well-documented in writing. Here are what the facts show.

Prior to Joanne and Kerry acquiring the property in March 2019 there is no recorded history of tenant occupancy at the property. An Historic Resources Evaluation for the property revealed no evidence of any tenants. Planning staff's inquiry to the San Francisco Rent Board revealed "no tenant evictions or tenant buyouts with the past 10 years." A review of San Francisco "anti-eviction map," which compiles data from 1997 to the present, "reveals no tenancies or evictions at the property." (See <https://antievictionmap.com/sf-evictions>.)

Based on the HRE, court records regarding a dispute among prior owners, and testimony at the March 4 hearing, it appeared the house has been owner-occupied since it was relocated from Noe Valley to the current location in 1951. At the prior hearing on this matter, Ernesto Valencia, one of the prior record owners, testified that the house had been in his family for three generations. Court records show that Ernesto Valencia and Richard Boyd acquired the property from other members of the Valencia family in 2006 and occupied the property as TIC owners, with the Valencia family occupying the unauthorized, non-code-compliant, lower unit and Mr. Boyd occupying the upper unit.

At the June 3rd Planning Commission hearing, the opponents presented leases that purported to show that in the past the Valencia family rented out one of the non-code-compliant rooms for use as a bedroom in the unauthorized lower unit for short periods of time. Even accepting the validity of these "roommate" leases involving prior owners of the building, at the time Joanne and Kerry purchased the home, there were no tenants

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and no tenant history was disclosed to them. There is no evidence that anyone was ever evicted from the lower, unauthorized unit.

At Closing, the property was delivered vacant. Since Joanne and Kerry bought the property there have been two tenancies, both related to the upper, authorized unit. The first tenants occupied the unit from March 1, 2020, to October 31, 2020. The first tenants had asked Joanne and Kerry if they could end their lease early because they wanted to relocate out of San Francisco during the pandemic. Joanne and Kerry accommodated their request – agreeing to mitigate against damages by listing the unit immediately and, in the event the unit were not rented out, discounting the departing tenants’ rent obligations for the remaining lease term by 50%. Attached as **Exhibit 3** is an email string showing the first tenants’ request to terminate the lease early and the agreement the parties reached.

The second tenants have occupied the upper unit since November 1, 2020, pursuant to a one-year lease that expires on October 31, 2021. Attached as **Exhibit 4** is a letter from the current tenants explaining that prior to entering into their lease, Joanne and Kerry informed them that the rental was only for a one-year period without extension because Joanne and Kerry would be renovating and moving into the home as their residence and only were renting out the home while their plans were being developed and approved by the City. The tenants reaffirmed their plan to “move out of 249 Texas Street at the end of our one-year lease, in October 2021.” In sum, there is no evidence that anyone was evicted from the upper, authorized unit.

Without a shred of evidence (in fact, with written evidence to the contrary), appellants have claimed that Joanne and Kerry evicted the first tenants in order to increase the rent for the upper unit. In addition to having the facts backwards given that the first tenants contacted Joanne to ask to end the lease early, the first tenants paid \$3,800 per month for their rent and the second tenants paid \$300 less, at \$3,500 per month.

Appellants have also suggested that the project impacts low-income tenants. The rental application for the first tenants disclosed a combined annual salary of over \$250,000. The two current tenants have combined income of over \$300,000. Neither the first nor second tenants are low-income tenants. (Recently, units 1 and 2 of the units in Appellant’s adjacent apartment building were listed for \$3,695 and \$3,200 per month, respectively.)

Given this history and the existence of an unauthorized dwelling unit, it is far from clear whether any portion of the City’s Rent Stabilization and Arbitration Ordinance applies to the property. Nonetheless, Joanne and Kerry have agreed to impose a restriction on the property such that the two new units will be subject to the Rent Ordinance going forward. This type of restriction is authorized by Senate Bill 330, as determined by the Planning Staff in consultation with the City Attorney’s Office, and should fully address any concern that this project will result in the loss of rent-controlled housing.

In sum, contrary to Appellants' unfounded claims, no tenant has been evicted at the property, certainly not by Joanne and Kerry. The current tenants took possession of the upper unit fully aware of the need to vacate in October 2021 to allow this project to go forward and have affirmed their intent to do so. And the project does not impact any low-income tenants.

### Process Issues

Appellants have claimed that Joanne and Kerry did not engage in sufficient outreach or negotiate in good faith with their neighbors. The opposite is true. Joanne and Kerry held a pre-application meeting in November 2019 which was attended by six neighbors. Since that meeting, Joanne, Kerry, and Mr. Maniscalco, have had nearly 20 subsequent phone calls and many email exchanges with neighbors and interested parties clarifying details about the project. In fact, at the request of Appellant Sasha Boden Gala, Mr. Maniscalco prepared a solar impact study to address their concern about the extent of any shadow impact on their home.

In addition, in the weeks prior to the first Planning Commission hearing, the owners also had extensive email negotiations from February 22nd through March 3rd with Appellant Sasha Boden Gala and Matt Boden to address their concerns. Ms. Gala, who now claims to be motivated by preserving neighborhood character, said in February that if the owners paid her \$30,000 "immediately" (regardless of whether the Planning Commission even approved the project) she would "sever any collaboration immediately with neighbors to prep for the hearing, appeals, etc and we will not speak at the hearing, or any hearing thereafter, nor will we encourage opposition." (See **Exhibit 5**, documenting the extensive negotiation among the parties.) Joanne and Kerry agreed to pay the \$30,000 but only if the Planning Commission approved the project - they did not want to make a payment but be left without anything in return. Ms. Gala rejected this offer.

### Other Issues

The current design minimizes impacts on adjacent neighbors. Given that the project fully complies with the Planning Code, has been modified to minimize impacts on neighbors, and does not implicate any landlord-tenant issues, we can only assume that the opponents simply do not want to live adjacent to a construction site which, while understandable, is not a basis for denial of the conditional use permit.

This project will permit this multigenerational family to live together under one roof in San Francisco at a time when many families with elders and children have relocated to nearby suburbs. It creates housing stock that accommodates residents in different lifecycles. It will increase the number of code-compliant dwelling units at the site. It will provide rent-controlled units should either of the units be tenant-occupied in the

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future. And it is designed to be sensitive to neighborhood character and the homes adjacent to the project.

Please affirm the analysis of your Planning Department and Planning Commission and reject this appeal.

Sincerely,

A handwritten signature in cursive script that reads "G. Scott Emblidge".

G. Scott Emblidge

cc: Members of the Board of Supervisors  
Clerk of the Board of Supervisors  
Richard Sucre, Principal Planner  
Alex Westhoff, Senior Planner

# Exhibit 1





# Exhibit 2



SUBJECT  
PROPERTY

**1** EAST STREET ELEVATION - 200 BLOCK OF TEXAS STREET



**2** WEST STREET ELEVATION - 200 BLOCK OF TEXAS STREET

Potrero Hill  
Residence  
249 Texas St.  
San Francisco, CA

Site Context  
Images



1 STREET ELEVATION - FRONT FACADE OF SUBJECT PROPERTY



2 STREET ELEVATION - BUILDINGS FACING PROPOSED PROJECT

Potrero Hill  
Residence  
249 Texas St.  
San Francisco, CA

Site Context  
Images

# Exhibit 3

**From:** Joanne Siu [jsiusf@gmail.com](mailto:jsiusf@gmail.com)  
**Subject:** Re: 249 Texas - Lease  
**Date:** October 5, 2020 at 10:17 AM  
**To:** Hannah Suvalko [hsuvalko@gmail.com](mailto:hsuvalko@gmail.com)  
**Cc:** Kerry Shapiro [ks4@jmbm.com](mailto:ks4@jmbm.com), matt beach [mattybeach@gmail.com](mailto:mattybeach@gmail.com)



Hannah - think there is a typo on your email and that your last day is October 30th. We could do schedule a walk-through for that afternoon/evening depending on your schedule. Thanks so much Hannah. I will miss the doggy updates.  
Best to you both! Joanne

On Mon, Oct 5, 2020 at 10:10 AM Hannah Suvalko <[hsuvalko@gmail.com](mailto:hsuvalko@gmail.com)> wrote:  
Hey Joanne,

We will be here for November. I have booked a professional cleaner to come in for you guys so we will be out of here morning of Friday 30th.  
And we can do our walk-through etc then if that works :)

Thanks!  
H

On Mon, Oct 5, 2020 at 9:51 AM Joanne Siu <[jsiusf@gmail.com](mailto:jsiusf@gmail.com)> wrote:

Hi Hannah,  
When you have a chance, could you please confirm your move out date? Our new tenants' lease starts on November 1st, so I need to make sure the place is available and ready for them to move into the morning of November 1st.  
Thanks so much! Joanne

On Sat, Oct 3, 2020 at 7:52 AM Hannah Suvalko <[hsuvalko@gmail.com](mailto:hsuvalko@gmail.com)> wrote:  
Hey Joanne,

Yay! That's really good news to wake up to. Great stuff! I'm happy this has worked out for everyone.

I can pay the \$1200 and transfer that over.

Right now we are aiming to move out November 1st also, it may be earlier but I'm going to sell a lot of the furniture we have to do some decluttering :)

Out of interest which tenants did you go for? They were all great (from meeting with them).

Again, very happy that this has come to fruition. What a way to start the weekend.

Chat soon  
Hannah

On Fri, Oct 2, 2020 at 9:36 PM Joanne Siu <[jsiusf@gmail.com](mailto:jsiusf@gmail.com)> wrote:

Hi Matt and Hannah,  
I hope you are well. I have some good news to share.  
We just entered into a one-year lease with new tenants for 249 Texas Street for \$3,500, effective November 1st. Based on the remainder of your lease (4 months from November to February) and the modified monthly rent of \$3,800, the difference of your lease term at the \$300 rental difference total \$1,200. If you'd like, we could deduct this from your security deposit when we do a final review and settlement at your move out date.  
Hannah mentioned that you were planning to move out the wk of October 17/18th. Are you still planning to move out that weekend? Let's chat next week sometime.  
Have a great weekend. Joanne

--  
**Hannah Suvalko**  
  
**San Francisco**  
**+1 530 407 2822**

--  
**Hannah Suvalko**

**From:** matt beach mattybeach@gmail.com  
**Subject:** Re: Hello  
**Date:** September 20, 2020 at 9:36 AM  
**To:** Joanne Siu jsiusf@gmail.com  
**Cc:** Hannah Suvalko hsuvalko@gmail.com, kerry shapiro kshapiro60@yahoo.com

MB

Thanks Joanne,

I didn't realise you'd make us responsible for the difference in monthly rent that you were able to secure against \$3800. Also, does the 50% offer you have suggested not also apply to that cost?

If not, please go ahead and advertise the flat at \$3800. If you can get someone in at that number (or close to it) then great. If not, we don't have any option but to stay until the end of Feb.

Cheers,  
MB

On 20/09/2020, at 9:11 AM, Joanne Siu <jsiusf@gmail.com> wrote:

Thanks Matt,

We will advertise the flat right away and seek to get the best rental for it so that the amount of loss you would be responsible for could be reduced as much as possible. Under the lease, you are responsible for the rent up to \$3,800 per month. So if we are able to rent it out for \$3,000, that means you would only be responsible for \$800 per month of the remaining lease.

As you know, the current rent we receive from you does not cover our entire mortgage. So, in agreeing to a 50% reduction in the remaining lease, we are doing our best to compromise in this difficult situation for all concerned. I hope you understand that we too are in a hard place.

Thanks. Joanne

Please excuse typos - sent from my iPhone

On Sep 20, 2020, at 8:09 AM, Matt Beach <mattybeach@gmail.com> wrote:

Thanks Joanne,

Obviously we can't afford to pay that seeing the reason for requesting to break the lease in the first place are financial.

However, if you can get a new tenant it appears that it will be at no further cost for us. Therefore, could you please begin advertising the flat for a rental from Nov 1.

We'll be happy to work with you on viewings. We also suggest using the photos we sent you after we moved in too. Also just an FYI, we've been looking around at rental prices and they have fallen considerably so I would caution asking for the same rate in this market.

Does that work for you guys?

Cheers,  
MB

On 19/09/2020, at 8:25 PM, Joanne Siu <jsiusf@gmail.com> wrote:

Hannah,

If you plan to leave on November 1st, that means you will break the lease with four months remaining at the agreed rental price of \$3,800/month. So, half of that is two months' rent totaling \$7,600.  
I hope this helps. Joanne

Please excuse typos - sent from my iPhone

On Sep 19, 2020, at 3:24 PM, Hannah Suvalko <hsuvalko@gmail.com> wrote:

Can you please clearly state what you mean in a \$ amount? Email is a little unclear.

This isn't stated in the lease document we signed, so have no indication of how much we

THIS ISN'T STATED IN THE LEASE DOCUMENT WE SIGNED, SO HAVE NO INDICATION OF HOW MUCH WE WOULD OWE.

If this ends up being a lot we have no choice but to stay and negotiate a lower monthly rent.

Thanks

H

On Sat, Sep 19, 2020 at 2:14 PM Joanne Siu <[jsiusf@gmail.com](mailto:jsiusf@gmail.com)> wrote:

Hi Matt,

Covid has been difficult, and we certainly understand that you have reconsidered living in San Francisco.

Now that you have informed me that you plan to be out by November 1st, I will put an ad out on Zillow right away to try to find another tenant in order to mitigate the loss of rent from your breaking the lease. Please confirm the November 1st move out date so that I could move forward on advertising the home. We will work with you to schedule viewings as needed.

If we cannot find another tenant, perhaps we could agree for 50% of the remaining rent for the lease term.

Regards, Joanne

Please excuse typos - sent from my iPhone

On Sep 19, 2020, at 11:53 AM, Matt Beach <[mattybeach@gmail.com](mailto:mattybeach@gmail.com)> wrote:

Hi Joanne,

Thanks for coming back to us. So just to be clear, are you saying we can't break the lease unless you find a replacement tenant?

That's really unfortunate and we hoped you guys would understand that agreeing this lease pre COVID has not been advantageous for us.

We'd ideally like to be out by November 1st and we'd be happy to negotiate a small a break fee however, we won't be able to move out if we're tied to the full cost of the remaining lease.

Cheers,  
MB

On 18/09/2020, at 3:20 PM, Joanne Siu <[jsiusf@gmail.com](mailto:jsiusf@gmail.com)> wrote:

Hi Hannah and Matt,

Thank you for letting us know your intention to vacate our premises prior to the end of our fixed term lease. To the extent you vacate early, we understand, but you will remain obligated under the terms of the lease. We will seek to mitigate

damages by advertising the unit for rent as soon as possible after you notify me of your intended departure date. If you know of potential tenants to occupy the unit, that would be helpful as well. Please let us know when you have a move-out date.

Our very best to you. Joanne & Kerry

On Tue, Sep 8, 2020 at 5:32 PM Hannah Suvalko <[hsuvalko@gmail.com](mailto:hsuvalko@gmail.com)> wrote:

Hey Joanne,

Thanks for taking the time to chat yesterday, it was great catching up, and as I said - We

both hope everything is ok at home (with Ella and everyone). It's definitely a tough time, and a positive outlook is exactly what you need :)

I spoke to Matt and what we would like to investigate is ideally to move to outside of the city, currently thinking north somewhere close to Sonoma. From briefly looking I can get something for around the 3k mark. If we went down this route what would the total move out cost? And would you be flexible on move date? Obviously would give you as much notice as we can and work with you to figure something out. I know you mentioned you needed to do due diligence on your end, which I totally understand. Let me know what you think when you have chatted to Kerry.

Happy Tuesday!  
Hannah

On Thu, Sep 3, 2020 at 10:39 AM Joanne Siu <[jsiusf@gmail.com](mailto:jsiusf@gmail.com)> wrote:

ouch! I hope you stock up on some Mr.andMrs.Miscellaneous ice cream for Matt. I will try to call Saturday or Sunday afternoon... We're struggling through some things here too with Ella starting school and medical issues for various family members. Let's talk then. Joanne

On Thu, Sep 3, 2020 at 9:53 AM Hannah Suvalko <[hsuvalko@gmail.com](mailto:hsuvalko@gmail.com)> wrote:

Hey Joanne,

Matt is having his wisdom's out, so may be a bit swollen 😞but I will be around to chat. Just give me call when it suits you.

H

On Thu, Sep 3, 2020 at 7:33 AM Joanne Siu <[jsiusf@gmail.com](mailto:jsiusf@gmail.com)> wrote:

Hannah and Matt,

Thanks for reaching out and starting this conversation. Would you be available to speak some time this weekend? Let me know your availability.

Best, Joanne

Please excuse typos - sent from my iPhone

On Sep 1, 2020, at 5:59 PM, Hannah Suvalko <[hsuvalko@gmail.com](mailto:hsuvalko@gmail.com)> wrote:

Hey Joanne,

Hope you are well, have been thinking of you and the family in these tough times.

Just reaching out to you to chat about our future here at 249 Texas. You probably won't be aware however, during COVID-19 Matt's role has been considerably reduced for the foreseeable future. I will be continuing to work from home which has been confirmed until at least mid next year.

Therefore, we would like to discuss the potential of an early termination of the lease, if this is at all possible? As I'm sure you can understand these are very different times from when we signed the lease back in February, we are conscious it's a stressful time and don't want to add any further stress to you guys but we also need to make a financial change.

Our thought process is to find something more affordable and potentially outside of the city.

It would be great to have an open chat regarding our options, happy to call you or even meet for a (Socially distanced) coffee :)



Have a lovely evening  
Hannah & Matt

--  
**Hannah Suvalko**

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**+1 530 407 2822**

--  
**Hannah Suvalko**

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**Hannah Suvalko**

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# Exhibit 4

April 5, 2021

To whom it may concern:

We, Amadeia Rector and Gweltaz Lever, entered into a Residential Tenancy Agreement ("Agreement") for the rental of 249 Texas Street, San Francisco, CA 94107 for a term from November 1, 2020 to October 31, 2021 for a monthly rent of \$3,500.

Prior to entering into this Agreement, we had been informed and understand that the rental was only for a one-year period without extension because the Landlords, Joanne Siu & Kerry Shapiro, will be renovating and moving into the home as their residence and were renting out the home while their plans were being developed and approved by the City.

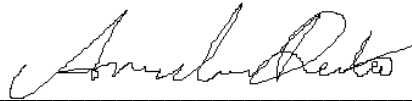
Consistent with this understanding and the terms of our lease, we plan to move out of 249 Texas Street at the end of our one-year lease, in October 2021.

Sincerely,



---

Gweltaz Lever



---

Amadeia Rector

# Exhibit 5

**From:** Matthew Boden <[matthew.t.boden@gmail.com](mailto:matthew.t.boden@gmail.com)>

**Sent:** Wednesday, March 3, 2021 4:28 PM

**To:** Shapiro, Kerry <[KS4@JMBM.com](mailto:KS4@JMBM.com)>; Joanne Siu <[jsiusf@gmail.com](mailto:jsiusf@gmail.com)>; Sasha <[sashagala@yahoo.com](mailto:sashagala@yahoo.com)>

**Subject:** Re: 249 Texas Street - proposal for consideration

Kerry and Joanne,

We decline your offer.

While we appreciate the attempt to compromise, you requiring a decision from us in a few hours the day before the hearing is unfair. As we stated, having no specifications around what constitutes a material alteration of the structure leaves us too vulnerable to you renegeing down the road. Furthermore, we have already spent an inordinate amount of time on this matter, and do not want to devote additional time to enforcing, contesting or otherwise contending with a contract with subjective terms.

We hope the hearing and appeals process will provide us a fair opportunity to be heard.

Matt & Sasha

On Wed, Mar 3, 2021 at 2:32 PM Shapiro, Kerry <[KS4@jmbm.com](mailto:KS4@jmbm.com)> wrote:

Matt, 4:00 pm is okay. --Kerry

**From:** Matthew Boden <[matthew.t.boden@gmail.com](mailto:matthew.t.boden@gmail.com)>

**Sent:** Wednesday, March 3, 2021 2:14 PM

**To:** Shapiro, Kerry

**Cc:** Sasha M. Gala <[sashagala@yahoo.com](mailto:sashagala@yahoo.com)>; Joanne Siu <[jsiusf@gmail.com](mailto:jsiusf@gmail.com)>

**Subject:** Re: 249 Texas Street - proposal for consideration

Kerry and Joanne,

Thank you for your offer. Sasha is at an appointment and I need to discuss this with her.

Can you give us until 4pm? After that, I can make sure we will move extremely quickly should we decide to accept the offer.

Thanks,

Matt

On Wed, Mar 3, 2021 at 12:34 PM Shapiro, Kerry <[KS4@jmbm.com](mailto:KS4@jmbm.com)> wrote:

Matt & Sasha,

We appreciate your ongoing effort to reach a solution. In reviewing your e-mail below, I think there are still some important issues on which we are just not seeing eye-to-eye. Given how close we are to the Thursday hearing, rather than going back and forth we offer one final proposal based in part on your reference below to a tiered approach:

1. A tiered offer of \$30k in two installments;

a. \$10k paid to you, contingent on your submittal of a letter of non-opposition by 5:00 pm Wednesday evening (today) and informing other neighbors of withdrawal of your opposition to the project.

b. \$20k paid to you, contingent upon (1) project approval absent material changes (as described in my prior e-mail of 2/28/21 at 1:19 am), and (2) contingent on you not, directly, or indirectly through encouragement of neighbors, appealing or supporting the appeal of the issuance of any permits or approvals associated with the Project, including, without limitation, construction of the Project in accordance with the Approved Plans or such minor amendments to those Approved Plans as may be approved by the applicable permitting agency.

c. Previously-offered work schedule restrictions as per 1.b., above.

2. The \$10k payment to be made within 24 hours of receipt of non-opposition letter via Zelle/other wire transfer process (or check if preferred).

3. Assuming we get through the Commission next Thursday, the final issuance of the Site Permit should take about 8-10 weeks. If there are no appeals to the Site Permit issuance, you would receive the remaining \$20,000 as soon as the 15-day appeal period runs. If there is an appeal, then you would receive the remaining \$20,000 as soon as the appeals board renders its decision (assuming no material changes, as discussed above).

We need to know you agree to these terms by 3:00 pm today. We have enclosed an Agreement evidencing these terms and a letter for you to submit to the Commission by 5:00 pm today.

Thank you,

--Joanne & Kerry

**From:** Sasha M. Gala <[sashagala@yahoo.com](mailto:sashagala@yahoo.com)>

**Sent:** Monday, March 1, 2021 12:38 PM

**To:** Matthew Boden <[matthew.t.boden@gmail.com](mailto:matthew.t.boden@gmail.com)>; Shapiro, Kerry <[KS4@JMBM.com](mailto:KS4@JMBM.com)>

**Cc:** Joanne Siu <[jsiusf@gmail.com](mailto:jsiusf@gmail.com)>

**Subject:** Re: 249 Texas Street - proposal for consideration

Hi Joanne and Kerry,

Thanks for getting back to us. We apologize for the delayed response - unintentional. I am sick since yesterday and Matt is on a work deadline.

We understand that the \$30k would not make sense if your home were to not be built. Sorry if we were not clear about that. Thanks for clarifying. We did not realize when John suggested mitigating harm in exchange for non-opposition that it came with all the additional strings. Not all similar deals have these contingencies that there be absolutely no modifications in exchange for the offset. There is a neighbor on our actual block who informed me she was proactively approached by a neighbor (behind her on an adjacent street) and offered a budget to offset the shade in her upstairs and deck without such contingencies but simply as a compensatory measure. My sister is a housing planner in the Bay Area and has brokered countless deals with neighbors, both commercial and residential, in similar contexts. She reminded me that the spirit of the deal is to offset negative impact to existing neighbors, not to strengthen the builder's position, and also that deals can have tiered payments depending on what ensues. We are concerned that "changes to the mass, volume and envelope" is too broad and leaves us in too vulnerable of a position. Regardless, unless the build were to have an extreme modification, we will still be impacted. Anyways, I am not sure where that leaves things, but we did not want to leave you hanging without a response.

Regards,

Sasha and Matt

On Sunday, February 28, 2021, 01:19:12 AM PST, Shapiro, Kerry <[ks4@jmbm.com](mailto:ks4@jmbm.com)> wrote:

Matt & Sasha,

Thank you again for your efforts to reach a resolution in this matter. We can accommodate your request to raise our initial offer of \$20k to meet your demand of \$30k, subject to the comments below:

We cannot eliminate the contingency in Item #7 of our proposal, which is a standard term in deals like this. I've not seen a settlement agreement in this context that did not have such a contingency. The reason is clear: If we pay you \$30k and the Commission or other board denies or materially modifies our home, we will not receive the benefit from this deal, but will be out-of-pocket \$30k. Conversely, you will receive \$30k, without having the building next door that was the basis for negotiating the \$30k. We hope this makes sense as a reasonable and fair approach for both parties.

What we can do is clarify the contingency to give you comfort each side will get the "benefit of the bargain." That is, even if other parties file appeals (which you cannot control), and even if the Commission or other board makes non-material changes to the design, you will still receive the \$30k. You would only lose the \$30k if the Commission or other board denied the project, or modified it in such a material way as to change the mass and volume, or overall envelop of the building configuration, relative to the plans attached to the recent Staff Report.

As for when you would receive the \$30k, assuming we get through the Commission next Thursday, the final issuance of the Site Permit should take about 8-10 weeks. If there are no appeals to the Site Permit issuance, you would receive the money as soon as the 15-day appeal period runs. If there is an appeal, then you would receive the money as soon as the appeals board renders its decision (assuming no material changes, as discussed above).

I hope you understand we are offering this in the utmost good faith. However, if this is unacceptable to you, we thank you for your efforts to try to get to the middle, and recognize that sometimes reasonable minds can differ on a matter like this.

Thank you and best regards,

--Joanne & Kerry

**From:** Sasha M. Gala <[sashagala@yahoo.com](mailto:sashagala@yahoo.com)>  
**Sent:** Saturday, February 27, 2021 12:31 PM  
**To:** Matthew Boden <[matthew.t.boden@gmail.com](mailto:matthew.t.boden@gmail.com)>; Joanne Siu <[jsiusf@gmail.com](mailto:jsiusf@gmail.com)>  
**Cc:** Shapiro, Kerry <[KS4@JMBM.com](mailto:KS4@JMBM.com)>  
**Subject:** Re: 249 Texas Street - proposal for consideration

Hi Joanne and Kerry,

We refuse your offer. Your offer to mitigate harm to us by making it contingent on the actions of other parties does not feel like a gesture of goodwill, nor a negotiation in good faith. We cannot control the decisions of the Planning Commission, the Building department and the neighborhood. Your offer puts us in an impossible position where any possible thing that goes sideways with your project can be blamed on us and be used to rescind. Further, there are other invested neighbors who have been engaged since day one. Regardless, is clear to all that it is our home that possesses the strongest case to oppose your building, not the other neighbors.

We will lower our original amount to \$30k, if you drop contingencies #7 and #8, we would be willing to sign your contract, immediately email a letter (in your presence) to the planning commission secretary but this would take place after a cashier's check is immediately deposited to our bank. We could meet at the bank, you could wire, or you could send someone who represents you to facilitate the transaction. In return, we promise to sever any collaboration immediately with neighbors to prep for the hearing, appeals, etc and we will not speak at the hearing, or any hearing thereafter, nor we will encourage opposition. In fact, we believe that the majority of people on our block will soften knowing that you had tried to make things right with us, but again we cannot guarantee others actions and be contractually bound by them. Anyways, you are both lawyers. Obviously, we would never be so foolish to violate our agreement with you, as we understand the repercussions, nor we would be so unethical.

For multiple reasons we won't state here, by all accounts, we have a stronger than usual case with the Planning Commission to ask for a delayed and/or modified build - even down to the fact that there are easy to prove inaccuracies in the case summary that was published yesterday that can be used to ask for an extension or go to appeals. That being said, we believe that accepting \$30k is a gracious and generous compromise on our parts in exchange for silencing our concerns. This amount of money will cover additional skylights and offset a portion of costs we will incur to work and be away from our home during your lengthy build. It does not cover the remainder of those costs, nor will it ever come close to the devaluing of our house, nor the experience in our home that we plan to live in for the rest of our lives. We have met with two realtors in the past two weeks that believe your build (even though it replaces a poorly maintained home) will potentially devalue our home's resell value. The compensation won't cover the fact that your retaining wall has fallen into our yard and ruined our fence we had to take down when you first bought the home. The compensation also does not also account for the 30-40 hours we have spent between both of us working the past weeks on reviewing building plans, watching commission hearings, understanding the planning process, meeting with neighbors, meeting and writing to the Planning Commission, meeting with John, realtors, paying for an appraisal, taking photographs, and more. I hope you can have appreciation for the lost time we have spent which is quite costly in and of itself. We are both in a busy season at work and we did not know the hearing was planned for February/March, so we have been stressed and scrambling to sort this whole thing out. We are not trying to diminish your original offer, but feel it's important for you to understand that some of our losses are incalculable. You have not been inside our home so it is difficult to articulate the losses that are very real for us despite John's statements to the planning commission that we are only mildly impacted. This has created an unfair and unduly burdensome position for us to be negotiating an offer a few days before our first community hearing when it could have been made many months prior. This is our final offer. Please let us know if you accept by 10 am tomorrow. We have commitments tomorrow to prepare for the hearing, and also one of us would have to take time off work Monday to handle the signing of the contract, transfer of funds and withdrawal so we need to know asap. If you accept our terms, include the draft of the contract and letter you would expect us to sign so we have enough time to review.

Regards,  
Sasha and Matt

On Friday, February 26, 2021, 05:02:00 PM PST, Joanne Siu <[jsiusf@gmail.com](mailto:jsiusf@gmail.com)> wrote:

Matt & Sasha,



We appreciate your prompt consideration of our offer and have considered your counteroffer. Your request for a one-time payment of \$35,000 is a substantial sum. We are willing to increase our original offer of \$20k to \$28k to demonstrate our commitment to reaching an agreement with you. We are mindful of the concerns you have expressed and consider this amount to be generous.

We've outlined the specifics of our agreement in the following bullet points:

1. One time lump-sum payment of \$28,000
2. Recognition that it is in everyone's best interest to complete the project as quickly as possible to minimize neighborhood inconvenience.
3. Consistent with #2, we anticipate our general work schedule to be from Monday to Friday, with limited exceptions for weekend work. We agree to limit the following construction activities during the weekend to 10 weekend days in a year (or 15 weekend days in a 18-month building period) ("Permitted Weekend Construction Days").
  - (a) Construction activity on the exterior of the building that is noisy and disruptive in nature, for example - demolition, excavation, framing, exterior siding, etc.
  - (b) Noisy carpentry, installing of sheetrock or hardwood floors after the building is enclosed will also be limited to the Permitted Weekend Construction Days.
  - (c) To the extent weekend work is done, we will instruct our GC to provide advance communication, unless the work is required due to urgent circumstances, such as to stabilize the building or site or to mitigate damage
4. You agree to submit to the Planning Commission by EOD Monday, March 1<sup>st</sup>, a letter of non-opposition in substantially the same form as the sample we provide.
5. You agree not to file for discretionary review and not to appeal the issuance of the site permit or building permit for the duration of the project.
6. You agree not to encourage other neighbors to oppose the project and not to further organize or participate in discussions with neighbors regarding the project.
7. Agreement will be null and void if the project design as presented in the 2/25/21 Staff Report is not approved or is significantly modified by the Planning Commission or if the project is not approved or is significantly modified by the Board of Permit Appeals or by any other official body of the City
8. The lump sum payment will be made by check and delivered within 3 days after all appeal periods, including the issuance of the site and building permits, have lapsed.

Please let us know your thoughts on next steps.

Thank you. Joanne & Kerry

On Feb 24, 2021, at 10:59 PM, Matthew Boden <[matthew.t.boden@gmail.com](mailto:matthew.t.boden@gmail.com)> wrote:

Joanne and Kerry,

Thank you for acknowledging the impact of your build on us and offer to mitigate the impact with a cash offer. While we appreciate the offer, it is not enough to compensate us for the short- and long-term impact we will experience. We ask you to consider increasing the one-time cash payment to \$35,000. Additionally, we would like to ask you to restrict weekend building except in extenuating circumstances not to be more than 10% of the overall time of the build.

We want to be transparent with you - yesterday (prior to receiving your request), we alerted Kathy Block to a potential negotiation between you and us, and that we may remove opposition should an agreement be reached. She seemed to understand our motivation, as she knows that we are significantly more impacted than her, and that we live on our premises. Per your request, we will keep this matter private from all neighbors, including Kathy from this point forward until our negotiations have ended. However, when we reach an agreement and withdraw our opposition, we want to be honest with our neighbors who we have collaborated with in this matter. Our reputation and relationships with neighbors, some who are our friends, are important to us and we cannot act in a dishonest manner towards them. Of course we understand that you do not want to open yourself to others pursuing their own agreements with you, and so we would withhold all details regarding the compensation.

Sasha understood from a conversation with Alex that we can redact/remove opposition up to a day before the hearing for it not to be considered at the CUA hearing.

Please let us know your thoughts regarding the counter-offer.

Thank you,

Matt & Sasha

On Wed, Feb 24, 2021 at 7:16 PM Joanne Siu <[jsiusf@gmail.com](mailto:jsiusf@gmail.com)> wrote:

Matt and Sasha,

As you review and consider our offer, we request that you keep this matter between the four of us.

Thank you. Joanne & Kerry

On Feb 24, 2021, at 6:48 PM, Joanne Siu <[jsiusf@gmail.com](mailto:jsiusf@gmail.com)> wrote:

Matt and Sasha,

Kerry and I appreciate you taking time over the past few weeks to meet with John to clarify your concerns. John prepared the sun and shade analysis to help assess the effect of our proposed home during different times of the day and the year. We trust the study and those discussions have been helpful.

Given the topography of the sites and the relationship between our two houses, we understand there may be some effect on direct sunlight into some of your skylights from our proposed home. We understand that you are considering ways to address that within your home through the potential addition of new skylights. To help address this, we would like to offer a one-time payment of \$20,000 as a contribution toward your efforts to address any potential effects. In exchange, we would ask for you to submit a written letter of non-opposition to the Planning

Commission far enough in advance of the March 4th Conditional Use Hearing for the opposition to be withdrawn/redacted from the Planning Commission records.

We would appreciate your consideration of this offer and letting us know if it is acceptable to you. If it is acceptable, we would be pleased to draft a simple agreement and provide a draft letter of non-opposition for submission to the Planning Commission. Thank you.

Regards, Joanne & Kerry