

From: [Leadbetter Law](#)
To: [Board of Supervisors, \(BOS\)](#); [BOS Legislation, \(BOS\)](#)
Cc: [Denise Leadbetter](#)
Subject: Case No. 2016-013505APL - Respondents" Reply Brief
Date: Friday, October 1, 2021 5:03:58 PM
Attachments: [2021.10.01 RESPONDENT"S REPLY BRIEF.pdf](#)

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Dear Clerk of the Board of Supervisors,

Attached please find Respondents' Reply Brief in opposition to the above-titled appeal. If you have any issues opening or downloading the document, please let me know.

Best,

Shoshana Raphael, Esq.
Law Offices of Denise A. Leadbetter
The Flood Building
870 Market Street, Suite 450
San Francisco, CA 94102
Tel: 415.408.6044
Fax: 415.449.3670
[Email: shoshana@leadbetterlaw.com](mailto:shoshana@leadbetterlaw.com)

Website: <https://avanan.url-protection.com/v1/url?o=www.LeadbetterLaw.com&g=M2VmYTdiMzUxMjAyOWQ4NQ==&h=MTEwMGEwMDhkODJlMTQ2YmYwOTUyYTk0YTgyNWMyZmVlZWwNjhjYmU3ODY3NTJhMGIxMzI0ZmYxNWY2MjQ0MQ==&p=YXAzOnNmZHQyOmF2YW5hbGpvOmJmNGNkYjUyMTIxMjBhYTVkMTcwZWZmODIxZmVlZmUzOnYx>

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San Francisco, CA 94102
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Fax: (415) 449.3670
Email: Denise@LeadbetterLaw.com

October 1, 2021

President Shamann Walton and Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102
Via Clerk of the Board of Supervisors
bos.legislation@sfgov.org
bos@sfgov.org

Re: 35 Ventura Avenue
Case No.: 2016-013505APL
Respondent's Reply to Additional Materials Submitted by Appellants

Dear President Walton and Supervisors:

This office represents Respondents Jennifer Wong and Michael Miranda (“Respondents”), long-time residents of 35 Ventura Avenue (the “Subject Property”). Please allow this letter to serve as a response to Appellants Tom and Kari Rocca’s Supplemental Materials.

Appellants have taken great pains to expound on their claims that Planning Department, through a lack of diligence, failed to recognize the Subject Project as a contributor to the Forest Hills Historic District. This is deliberate misdirection on Appellants’ part in order to utilize public resources to stop their next-door neighbor’s modest addition because Appellants simply do not like it.

I. Appellants’ Allegations of Unpermitted Work Are False.

In furtherance of what can only be described as personal animosity against my clients, Appellants have repeatedly claimed that Respondents have performed unpermitted work at the Property resulting in a loss of status as a contributor. They further contend that Respondents should be punished for performing unpermitted work to discourage developers from deliberately removing historic elements without permits in order to destroy historic status. They even claim that the Planning Department turned a blind eye, alleging that “The Department also failed to analyze the cumulative impact of past unpermitted development that occurred at the property.” (Response, p. 1.) However, it is not the responsibility of the Planning Department now to analyze construction from the past.

It is not the role of CEQA to punish unpermitted work. CEQA analysis does not give preference to permitted work versus unpermitted work; it considers only existing conditions. Regardless, **the work here was permitted**. Plans from 2003, attached hereto at Exhibit H, clearly show the addition of the portico to the front entry – the most impactful of the allegedly unpermitted alterations. The corresponding permit, attached hereto as Exhibit I, shows that the Planning

Department approved of the issuance of the permit “per plans”. The addition of the portico was indeed permitted and approved by the Planning Department (among other changes to the street-facing side of the Subject Property).

Appellants simply did not do their homework. Plans associated with the permitted remodels at the Subject Property over the course of the last 35 years are publicly available from the Department of Building Inspection. If they chose, Appellants could have requested the plans and confirmed for themselves whether the alterations they complain of were permitted. They chose not to do so, assumed the worst, and thus needlessly accuse Respondents of malfeasance. Appellants’ allegations to the contrary are an attempt confuse the issues. Certainly, developers performing unpermitted work on historic houses is certainly a hot topic in our City at the moment. But it is wholly irrelevant and inapt here.

Similarly, Appellants rather audaciously attempt to raise issues of social equity with regard to this Project. They claim that the Forest Hills Historic District “is a group of middle-class dwellings, not a group of homes for wealthy persons” and imply that Forest Hills is or was “a working-class neighborhood.” (Supplemental Information, p. 5.) Nothing could be further from the truth. The HRE notes, “Forest Hill is an affluent residential neighborhood” and always has been. “According to the original permit application, the cost of the house was \$7,400 – a relatively high amount for the Depression, but not all that high for affluent Forest Hill.” (HRE, pp. 17 and 22.) This is another red herring. This appeal is about Appellants and their own personal interests in the home they purchased next to Respondents.¹

II. The Relevant Resource for Analysis is the Forest Hills Historic District.

Appellants devote much attention to the Subject Property’s status as a contributor. Certainly, the Planning Department adequately analyzed the data to determine that the subject property is not a contributor to the Forest Hills Historic District. The Respondents and the Planning Department itself have highlighted in earlier submission to the Board why alterations to the Subject Property could lead the HRE to conclude that the Subject Property is a contributor and simultaneously the Planning Department could reasonably find otherwise on the basis of the same facts. (Not to mention that that the Planning Department is not bound by the findings of any HRE.) However, the determinative issue is not whether the Subject Property is a contributor; it is ***whether the Project is compatible with the historic district.***

Appellants’ contention that the Planning Department did not consider the Project’s impact on the Forest Hills Historic District is unsupported. The CatEx itself clearly states:

The proposed project is in conformance with the Secretary of the Interior’s Standards and would not have a significant impact on the historic district or any off-site historical resources. The proposed design at would be would be [sic] of its own time and is consistent with the size, scale, massing, and materials of the existing [structure].

Appellants may not like the Department’s conclusion, but that does not mean it did not conduct an analysis of the Project.

Appellants further assert that “The Department also failed to analyze the cumulative impact of past unpermitted development that occurred at the property.” (Response, p. 1.) They cite to

¹ It should be noted that Appellants purchased their home for \$2,155,000 in 2013, before performing extensive renovations.

Section 15300.2(b) of the CEQA guidelines which, states that a CatEx is “inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.” (Response, p. 5.) The Department was not required to do so. The permitted changes to the Subject Property were not of the same type and were not closely related in time. It is a logical leap to contend, as Appellants do, that two separate remodel projects from thirty and fifteen years ago respectively must be included in the analysis of the current Project under CEQA.

Appellants have argued that the Project “may” have an impact on the historic district, citing to Secretary of the Interior’s Standards for Rehabilitation. (Appeal Letter, p. 3.) As the HRE notes,

Conformance with the Rehabilitation Standards does not determine whether a project would cause a substantial adverse change in the significance of a historical resource under CEQA. Rather, projects that comply with the Standards benefit from a regulatory presumption that they would have a less-than significant adverse impact on a historical resource. (HRE, p. 34.)

These are guidelines, not rules, and are not determinative. Overall, the HRE (and the Department) found that the Project would not have a substantial adverse impact on the Forest Hills Historic District because Forest Hills is a large historic district (650 homes) and the Project is consistent with the district.²

III. Conclusion

Appellants’ arguments are misdirection. Respondents have proposed a thoughtful Project, in keeping with their beloved historic neighborhood. Appellants have personal reasons to oppose this Project; they used enough of the City’s resources to accomplish their personal goals. Respondents respectfully request that the Board of Supervisors deny this appeal and allow the Project to proceed forward.

Respectfully submitted,

Denise A. Leadbetter

Denise A. Leadbetter

Exhibits:

H) Plans associated to Permit #200312031546 (excerpts from complete plan set)

I) Permit #200312031546

² All properties within Forest Hill are also subject to the Forest Hills CC&Rs, clearly requiring compliance of further Architectural Design review. Appellants are aware of these restrictions; Tom Rocca is the currently the Pr3esident of the Forest Hills Homeowners’ Association.

-- EXHIBIT H --

-- EXHIBIT H --

COPY

STRUCTURAL CALCULATION FOR:

ADDITION
35 VENTURA AVENUE
SAN FRANCISCO, CA

APPROVED
DEPARTMENT OF BUILDING INSPECTION
AUG 18 2004

[Signature]
FRANK Y. CHIU, DIRECTOR

**FINAL PLANS
REVISION**

JUL 19 2004

**SITE PERMIT ADDENDUM
FOR CONSTRUCTION OF:
SINGLE ADDENDUM (S1)**

REPORT PREPARED BY:
SANTOS & URRUTIA, INC.
STRUCTURAL ENGINEERS
2451 HARRISON STREET
SAN FRANCISCO, CA 94110
Phone (415) 642-7722
Fax (415) 642-7590



REVISION: July 6, 2004

APPLICATION # 2003/12/03/1540
ADDITIONAL PGS: 36 & 37 S1/R1

S & U JOB#: 5329

DATE: July 6, 2004

PAGES: 37

APPROVED: July 13, 2004

ADDITIONAL PG. 38

2003/12/03/1540-15-R3

3/31/04	RESPONSE TO PLANCHICK #1	TK	KGS
12/02/03	SUBMITTED - SITE PLANNING PERMIT	TK	KGS
REV.	DATE	DESCRIPTION	BY /CHK

PROJECT NORTH



Kase G. Smith

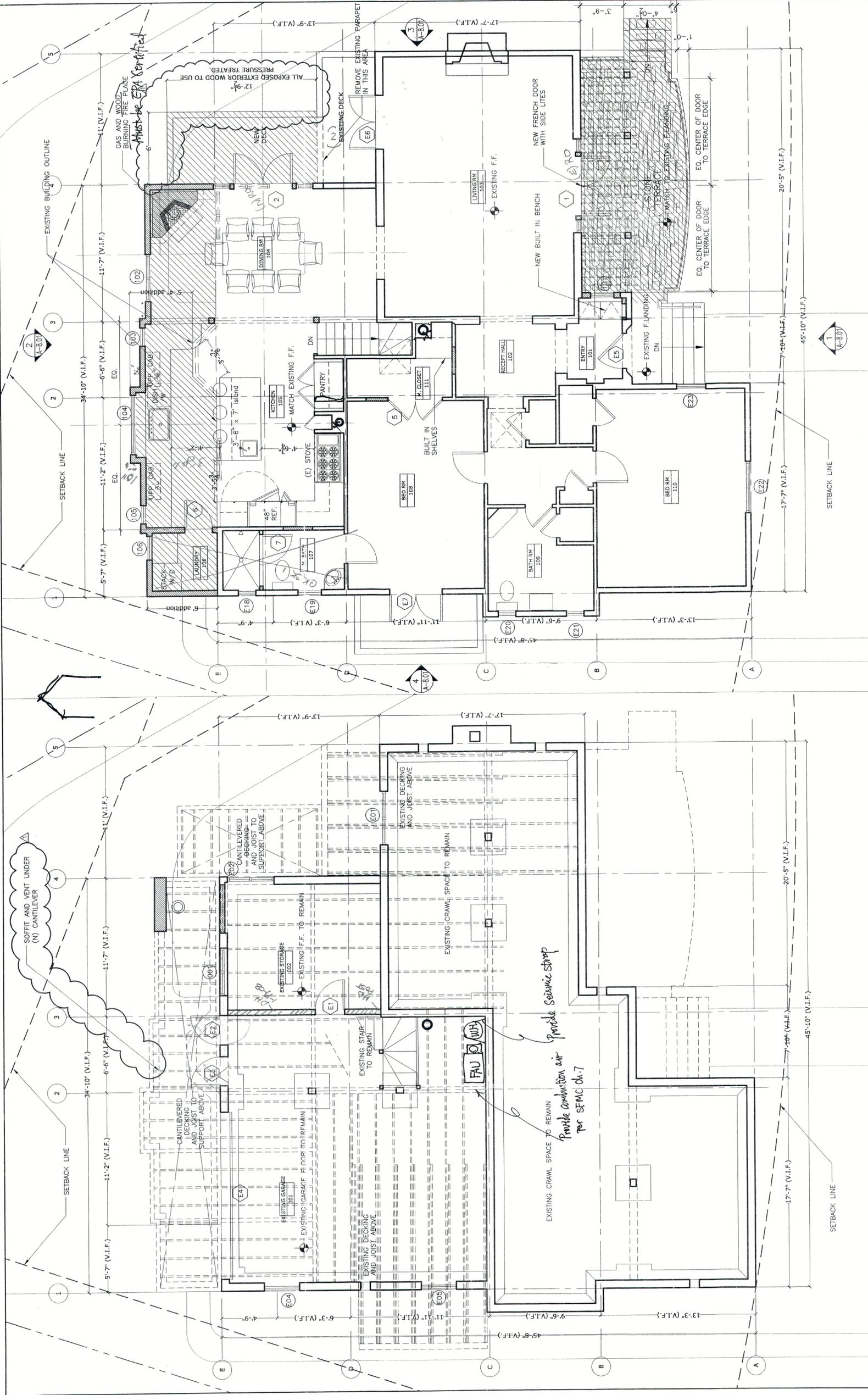
WONG RESIDENCE

35 VENTURA AVENUE
SAN FRANCISCO, CA 94116

APPROVED:
CHECKED BY:
DRAWN:
JOB: 200338
SCALE: 1/4" = 1'-0"

GROUND FLOOR AND
BASEMENT PLAN

A-2.01



PROPOSED GROUND FLOOR PLAN
1/4"=1'-0" 1

PROPOSED BASEMENT PLAN
1/4"=1'-0" 2

SHEET LEGENDS

	EXISTING WALL
	WALL ABOVE
	AREA OF ADDITION
	NEW WALL



APPROVED
DEPARTMENT OF BUILDING INSPECTION
AUG 19 2004
FRANK Y. CHIU, DIRECTOR

FINAL PLANS
MAR 31 2004
SITE PERMIT ADDENDUM FOR CONSTRUCTION OF:
SINGLE ADDENDUM (S1)

REV.	DATE	DESCRIPTION	BY	CHK.
3/31/04		RESPONSE TO PLANCHECK #1	TK	KCS
12/02/03		SUBMITTED - SITE PLANNING PERMIT	TK	KCS



Karl G. Smith

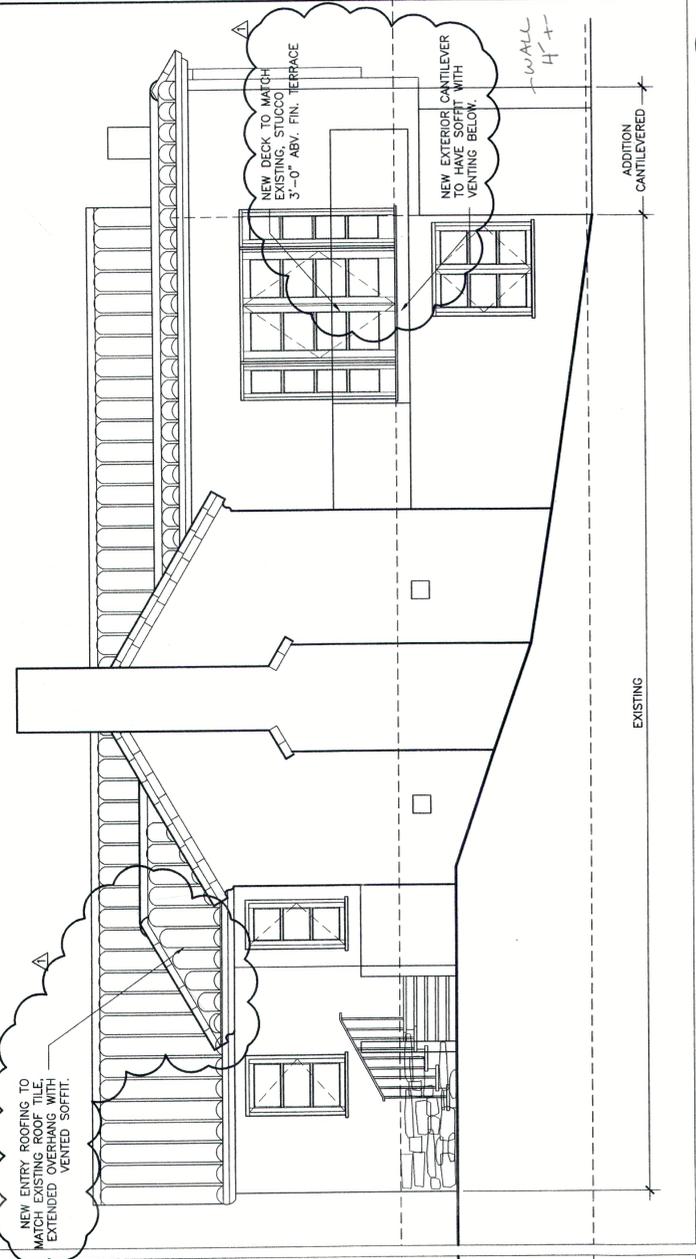
WONG RESIDENCE

35 VENTURA AVENUE
SAN FRANCISCO, CA 94116

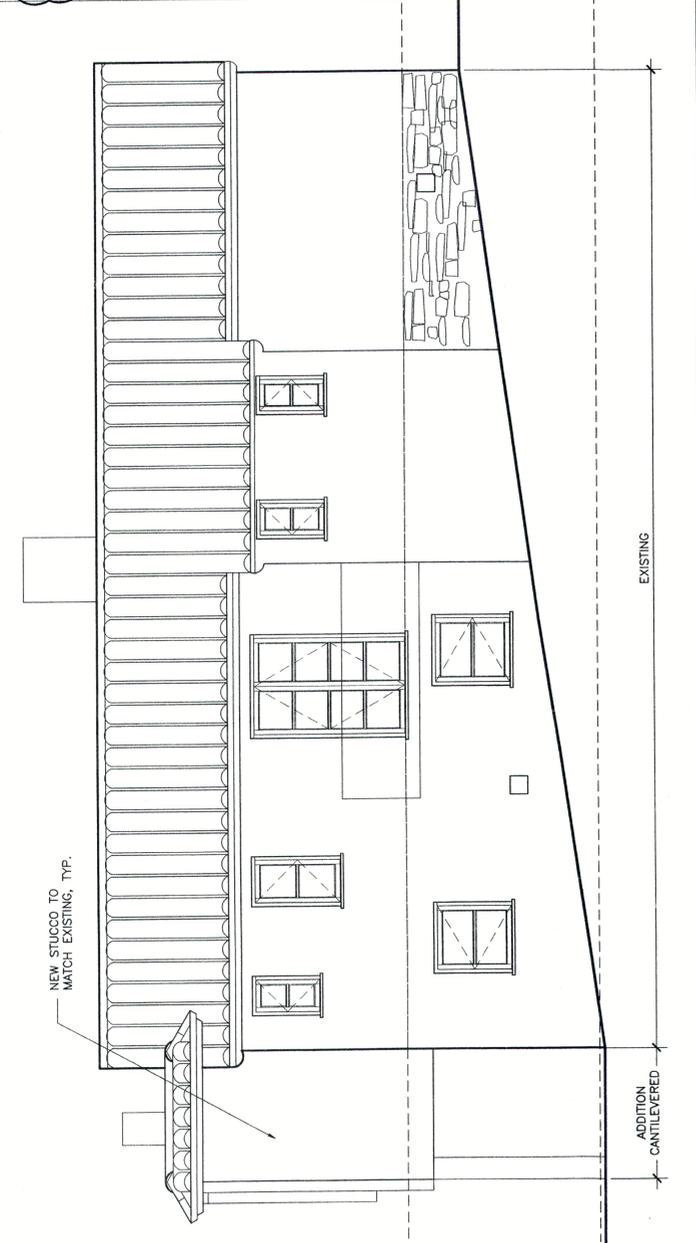
APPROVED:
CHECKED BY:
DRAWN: 200338
JOB:
SCALE: 1/4" = 1'-0"

ELEVATIONS

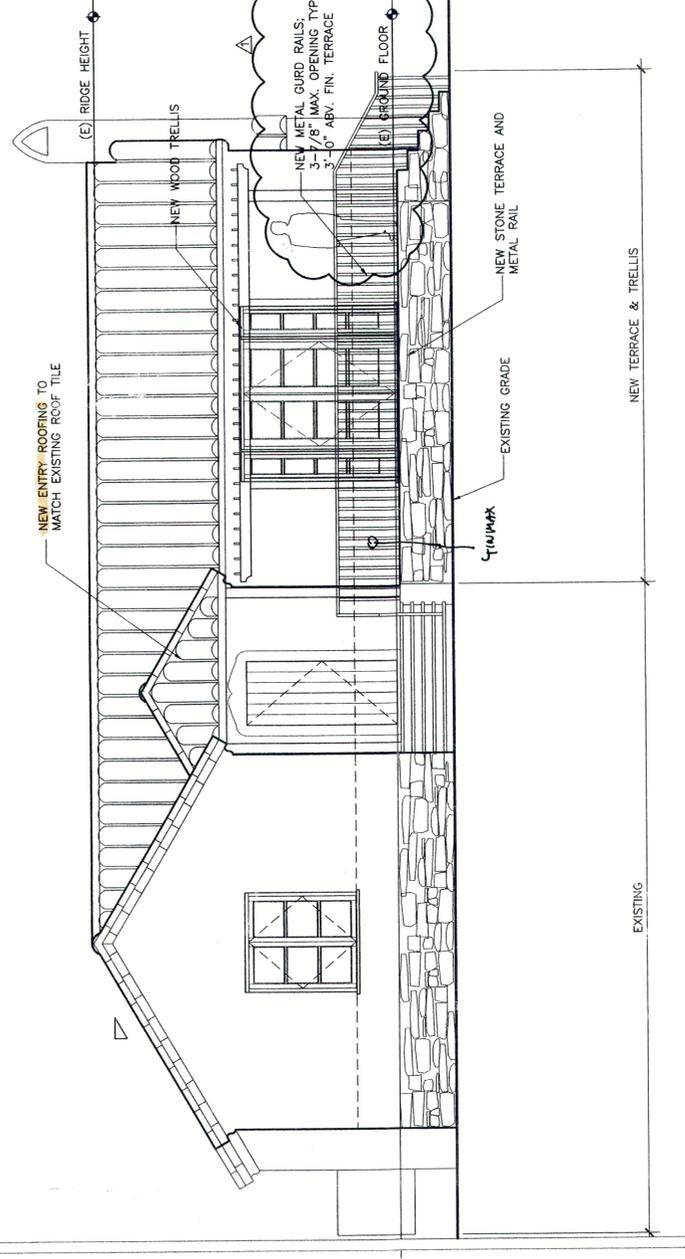
A-8.01



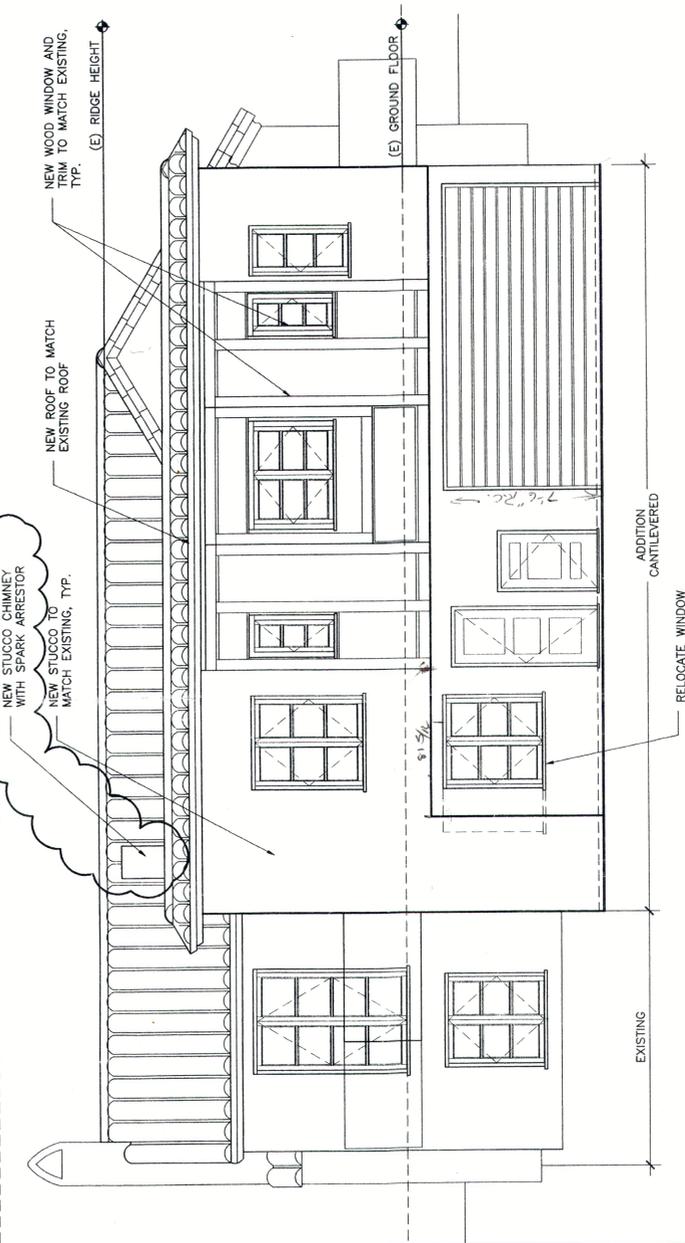
ELEVATION EAST
1/4"=1'-0"
3



ELEVATION WEST
1/4"=1'-0"
4



ELEVATION SOUTH
1/4"=1'-0"
1



ELEVATION NORTH
1/4"=1'-0"
2

ELEVATION NOTES SHEET NOTES

-- EXHIBIT I --

-- EXHIBIT I --

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BUILDING ENLARGEMENT APPROVED DEPARTMENT OF BUILDING INSPECTION AUG 19 2004

SITE PERMIT DEC 02 2003 THIS APPLICATION APPROVED FOR SITE PERMIT ONLY. NO WORK SHALL BE STARTED UNTIL CONSTRUCTION PLANS HAVE BEEN APPROVED.

BLDG. FORM 318 AUG 1 2004 NOV 23 2004 APPLICATION NUMBER 2003/12/03/154455 APPROVAL NUMBER: OSHA APPROVAL RECORD

APPLICATION FOR BUILDING PERMIT, ADDITIONS, ALTERATIONS OR REPAIRS

CITY AND COUNTY OF SAN FRANCISCO DEPARTMENT OF BUILDING INSPECTION

FORM 3 [X] OTHER AGENCIES REVIEW REQUIRED

APPLICATION IS HEREBY MADE TO THE DEPARTMENT OF BUILDING INSPECTION OF SAN FRANCISCO FOR PERMISSION TO BUILD IN ACCORDANCE WITH THE PLANS AND SPECIFICATIONS SUBMITTED HERewith AND ACCORDING TO THE DESCRIPTION AND FOR THE PURPOSE HEREINAFTER SET FORTH.

FORM 8 [] OVER-THE-COUNTER ISSUANCE

2 NUMBER OF PLAN SETS

DO NOT WRITE ABOVE THIS LINE

Table with fields: DATE FILED (12/02/2003), FILING FEE RECEIPT NO. (341493), STREET ADDRESS OF JOB (35 Ventura Ave.), BLOCK & LOT (2816 & 008), PERMIT NO. (D33696), ISSUED (8-19-04), ESTIMATED COST OF JOB (\$100,000), REVED COST (\$120,000), DATE (1/1/04)

INFORMATION TO BE FURNISHED BY ALL APPLICANTS LEGAL DESCRIPTION OF EXISTING BUILDING

Table with fields: (14) TYPE OF CONSTR. (5), (15) NO. OF STORIES (1), (16) NO. OF BASEMENTS AND CELLARS (1), (17) PRESENT USE (Single/residential), (18) OCCUP. CLASS (R-3), (19) NO. OF DWELLING UNITS (1), (20) TYPE OF CONSTR. (5), (21) NO. OF STORIES (1), (22) NO. OF BASEMENTS AND CELLARS (1), (23) PROPOSED USE (Single Residential), (24) OCCUP. CLASS (R-3), (25) NO. OF DWELLING UNITS (1), (26) IS AUTO RUNWAY TO BE CONSTRUCTED OR ALTERED? (NO), (27) WILL STREET SPACE BE USED DURING CONSTRUCTION? (NO), (28) ELECTRICAL WORK TO BE PERFORMED? (YES), (29) PLUMBING WORK TO BE PERFORMED? (YES), (30) GENERAL CONTRACTOR (Unknown at this time), (31) OWNER - LESSEE (Jennifer Wong), (32) ADDRESS (35 Ventura Ave. SF, CA. 94116), (33) PHONE (415.661.3768)

(34) WRITE IN DESCRIPTION OF ALL WORK TO BE PERFORMED UNDER THIS APPLICATION (REFERENCE TO PLANS IS NOT SUFFICIENT) Addition to existing house - @ REAR of the property - DECK ADDITION ON EAST SIDE, - TERRACE @ FRONT of the property

ADDITIONAL INFORMATION (35) DOES THIS ALTERATION CREATE ADDITIONAL HEIGHT OR STORY TO BUILDING? (NO), (36) WILL BUILDING SUB-SIDEWALK SPACE BE REPAIRED OR ALTERED? (NO), (37) ARCHITECT OR ENGINEER (Brayton Hughes + Smith Architectural Studio), (38) CONSTRUCTION LEADER (Brayton Hughes + Smith Architectural Studio)

IMPORTANT NOTICES No change shall be made in the character of the occupancy or use without first obtaining a Building Permit... BUILDING NOT TO BE OCCUPIED UNTIL CERTIFICATE OF FINAL COMPLETION IS POSTED ON THE BUILDING OR PERMIT OF OCCUPANCY GRANTED, WHEN REQUIRED... APPROVAL OF THIS APPLICATION DOES NOT CONSTITUTE AN APPROVAL FOR THE ELECTRICAL WIRING OR PLUMBING INSTALLATIONS... THIS IS NOT A BUILDING PERMIT. NO WORK SHALL BE STARTED UNTIL A BUILDING PERMIT IS ISSUED.

NOTICE TO APPLICANT HOLD HARMLESS CLAUSE. The permittee(s) by acceptance of the permit, agree(s) to indemnify and hold harmless the City and County of San Francisco from and against any and all claims, demands and actions for damages resulting from operations under this permit... I hereby affirm under penalty of perjury one of the following declarations: I have and will maintain a certificate of consent to self-insure for worker's compensation... I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California.

Signature of Applicant or Agent: Karl G Smith, Date: 12/2/03

ORIGINAL

OFFICIAL COPY

SAN FRANCISCO

PROVIDE SMOKE DETECTOR(S) PER SFBC SEC. 310.9.1

CONDITIONS AND STIPULATIONS

DEPARTMENT OF BUILDING INSPECTION

APPROVED: [Signature] DATE: APR 01 2004
REASON: [Blank]
NOTIFIED MR. [Blank]

Robert J Power
ROBERT POWER, DBI
APR 01 2004

APPROVED: [Signature] DATE: [Blank]
REASON: [Blank]
NOTIFIED MR. [Blank]

FOR SINGLE FAMILY USE ONLY

Sara Velhe 2/17/04

DEPARTMENT OF CITY PLANNING

APPROVED: [Signature] DATE: [Blank]
REASON: [Blank]
NOTIFIED MR. [Blank]

BUREAU OF FIRE PREVENTION & PUBLIC SAFETY

APPROVED: [Signature] DATE: [Blank]
REASON: [Blank]
NOTIFIED MR. [Blank]

By [Signature]
Ward JAMES ZHANG, DBI

AUG 13 2004

MECHANICAL ENGINEER, DEPT OF BLDG. INSPECTION

APPROVED: [Signature] DATE: [Blank]
REASON: [Blank]
NOTIFIED MR. [Blank]

SPECIAL INSPECTIONS AND TESTS ARE REQUIRED AS PER BUILDING CODE SECTION 1701

By [Signature] DAVID PANG, DBI

JUN 08 2004

By [Signature] DAVID PANG, DBI

AUG 02 2004

CIVIL ENGINEER, DEPT. OF BLDG INSPECTION

APPROVED: [Signature] DATE: [Blank]
REASON: [Blank]
NOTIFIED MR. [Blank]

N/A; Applicant refused Street Space; All Construction Staging shall be inside the property. EPT 8/13/04

BUREAU OF ENGINEERING BSM

APPROVED: [Signature] DATE: [Blank]
REASON: [Blank]
NOTIFIED MR. [Blank]

N/A

DEPARTMENT OF PUBLIC HEALTH

APPROVED: [Signature] DATE: [Blank]
REASON: [Blank]
NOTIFIED MR. [Blank]

REDEVELOPMENT AGENCY

APPROVED: [Signature] DATE: [Blank]
REASON: [Blank]
NOTIFIED MR. [Blank]

HOUSING INSPECTION DIVISION

I agree to comply with all conditions or stipulations of the various bureaus or department noted on this application, and attached statements of conditions or stipulations, which are hereby made a part of this application.

Number of attachments []

OWNER'S AUTHORIZED AGENT [Signature]

OFFICIAL COPY



ADDRESS OF JOB		BLOCK/LOT	APPLICATION NO.			
35 VENTURA AV		2816/008	200312031546			
OWNER NAME			TELEPHONE			
WONG JENNIFER			(415)661-3768			
ESTIMATED COST	FILE DATE	DISPOSITION	DISPOSITION DATE	PERMIT NO.	EXPIRATION DATE	
\$100,000	12/03/03	ISSUED	08/19/04	200312031546	08/19/05	
FORM	CONST. TYPE	OCCUPANCY CODES	PLANS	STORIES	UNITS	DISTRICT
3	5	R-3	2	1	1	13
CONTACT NAME			TELEPHONE			
			13 BID-INSP			
DESCRIPTION/BLDG. USE			OTHER DESCRIPTION			
1 FAMILY DWELLING			ADD TO EXIST HOUSE AT REAR OF THE PROPER TY-DECK ADDITION ON EAST SIDE-TERRACE AT			
SPECIAL INSPECTIONS?	YES	FIRE ZONE	NO			
SPECIAL USE DISTRICT		TIDF	NO			
		PENALTY	NO			
NOTES:			COMPLIANCE WITH REPORTS			

9003-15

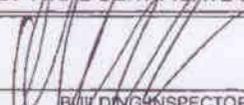
PERMIT INSPECTION RECORD
DEPARTMENT OF BUILDING INSPECTION
CITY AND COUNTY OF SAN FRANCISCO
- BUILDING INSPECTION JOB CARD

OFFICIAL COPY



DATE	BUILDING INSPECTORS JOB RECORD
1/04/05	ok to pour by C.S.
4/14/05	shear wall ok by C.S.
6/28/05	mechanical ok by C.S.
8/08/05	R/F ok to cover by C.S.
8/31/05	S/R wall ok by C.S.
11/10/05	ok to pour by C.S.
/ /	
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/ /	
/ /	
/ /	
/ /	
/ /	
7/20/06	<input checked="" type="checkbox"/> FINAL EXPIRE 106.4.4
/ /	
/ /	By 
/ /	Darlene Hartley, DBI

WORK COMPLETED. FINAL CERTIFICATE ISSUED

APP. NO. 200312031546 

BUILDING INSPECTOR