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November 17, 2014

VIA E-MAIL AND HAND DELIVERY

David Chiu, President
Board of Supervisors
City Hall
1 Dr. Carlton B. Goodlett Place
Legislative Chamber, Room 250
San Francisco, CA 94102

**Re: *Conditional Use Authorization Appeal - Respondent's Brief*
395 26th Avenue (Lot 017, Block 1407)
Case No. 2013.0205CEKSV**

Dear President Chiu and Members of the Board:

This firm is counsel for Mary Tom, the Project applicant and Respondent herein ("Respondent"). The Respondent has received Conditional Use approval to demolish a vacant two-story building (small ground floor commercial space and two residential units) at 395-26th Avenue (at Clement) in San Francisco (Block 1407, Lot 017), (the "Site"), subdivide the existing lot into two lots ("Lot A" and "Lot B"), and construct two three-unit, four-story buildings thereon (the "Project").

In addition to replacing the small existing commercial space with a larger retail high-ceiling space consistent with the Clement Street corridor, the Project will importantly add four new three-bedroom residential units to the City's family housing stock. The two existing small residential units will be replaced with three-bedroom units more suitable for families with children.

This appeal appears to be based solely on the claimed non-compliance with the criteria in Section 317 of the Planning Code, while ignoring the criteria in Section 303. But, as occurred here, while the Planning Code requires that the Commission find that all of the criteria in Section 303 are met for a Conditional Use approval, Section 317 requires only that the Commission *consider* the appropriate criteria for demolition of the existing second floor residential units on the Site. It is within the discretion of the Commission to determine how to weigh the criteria under Section 317, as occurred here. Thus, there is no proper basis for this appeal.

For the reasons discussed below, the Conditional Use application ("CU Application") granted by the Planning Commission meets the criteria of Sections 303 and 317 of the Planning Code. This appeal should be denied¹.

PROJECT SITE

The 4,366 sq. ft. Site is located at the northwest corner of Clement Street and 26th Avenue in the Outer Clement Neighborhood Commercial ("NC") District and in a 40-X height and bulk District.

The Site is currently improved with a 2,105 sq. ft. two-story building containing an office and two residential units. The ground floor consists of a one-bedroom residential unit and an office. The second floor contains a two-bedroom unit. The existing building currently has off-street parking in a paved open parking area located in the required rear yard.

The existing building was originally constructed in 1945, and the original owner was George Weissen, who resided there with his family until 1968, when the building was sold to Robert and Aileen Mellard. During the Mellard ownership, the ground floor garage was converted to a commercial real estate office. It appears that the ground floor residential unit was never rented, but instead used by members of the Mellard family when they visited the City.

Also during the Mellard ownership, the upper floor unit was rented to John and Agnes Fordemwalt, who resided there until 1996. After the Fordemwalts vacated the unit, it was never again rented and was also used by members of the Mellard family from time to time.

After the death of Robert and Aileen Mellard, the building was left to their daughter, Gail Timko. The building was finally sold in 2013 to the Respondent and Project Applicant Mary Tom.

The Planning Department has reviewed the Historic Resource Evaluation (HRE) Report prepared by Tim Kelley Consulting and concurs with the conclusion that the building is not a historic resource.

Only the Site and the lot to the west is zoned neighborhood commercial. The only ground floor commercial uses on this block are in the existing building and in the two-story building adjacent to the Site on Clement Street.

¹ One of the principal appellants here appears to be Anthony Lee, the owner of the neighboring property at 377 – 26th Avenue, who has been the sole owner of that property since September 22, 2008 upon transfer from his mother, Julie Lee. Mr. Lee's specific complaint appears to be that the Project will block his property line windows even though the Project was set back 3' to accommodate those windows. This firm first became aware of Mr. Lee's status as a principal appellant upon receipt of an August 22, 2014 letter from the appellants' attorney, in which he advised in pertinent part that: "I am representing Julie Lee, her son Tony Lee and other neighbors regarding a massive project proposed for 2500 Clement Street."

The Clement Street block face is developed with predominately three-story buildings, ranging from two-units to multi-unit apartment buildings. The 26th Avenue block face is developed with two to four-story buildings, with three-story buildings being predominate. The buildings range from single family homes to apartments. The opposite Clement Street block face is developed with two and three-story buildings with more ground floor retail use. The opposite 26th Avenue block face is developed with two to four-story buildings that range from single family homes to apartment buildings.

THE PROJECT

The Project approved by the Commission is:

1. Demolition of the existing building;
2. Subdivision of the existing lot into two lots with a 60'x37' (2,220 sq. ft.) corner lot at Clement Street and 26th Ave ("Lot A") and a 58'x 37' (2,146 sq. ft.) lot on 26th Avenue ("Lot B");
3. Construction of a 45' high, 7,533 gross square feet (gsf) mixed use building on Lot A with ground floor retail and 4 off-street parking space in stackers; and
4. Construction of a 40' high, 5,667 gsf three-unit residential building with two off-street parking spaces on Lot B.

See photomontages of the proposed building (Sheets A-0.0 – A-0.2 and A-3.0), block face photographs (Sheet A-0.3), site plan, existing and proposed plans, elevations and sections (A-1.0 to A-2.1 and A-3.1 to A-3.3) attached to the Planning Department's response to this appeal.

The Lot A building (2500-2502-2506-2508 Clement Street Building)

The Lot A building is a mixed use building with ground floor retail. The 2,184 sq. ft. ground floor of the Lot A building will have a 851 sq. ft., 14' floor to ceiling height retail space, a garage with four off-street parking spaces in car stackers, three secure class 1 bicycle parking spaces, and an entrance lobby to the 3 residential units above. The retail space will have frontage on both Clement Street and 26th Avenue with a large glazed store front window system to provide pedestrian interest. The upper floors will have bay windows. Access to garage is from 26th Avenue with a 10' curb cut and 16' wide garage door. Two Class 2 bicycle parking spaces will be located on the Clement Street sidewalk in front of the retail space.

The 15' deep rear yard will be at the first residential level, for which a variance has been issued by the Zoning Administrator.

The second floor will be a 1601 sq. ft. three bedroom flat with an approximately 519 sq. ft. deck as private open space. The third and fourth floors will each contain a 1,783 sq. ft. three-bedroom flat and will share a 340 sq. ft. roof deck as their common open space. The exterior material will be wood siding and stucco on the upper floors. The ground floor façade will be slate tile and glazing to form a base for the building.

The Lot B Building (381-387 26th Avenue Building)

The Lot B building is a residential building with three dwelling units – a townhouse unit and two flats. The ground floor will contain the entrance lobby, three class 1 secure bicycle lockers, a garage with two independently accessible parking spaces, and a bedroom that is part of the 1,378 sq. ft. three-bedroom second-floor townhouse unit. Access to the garage is off 26th Avenue.

The approximately 754 sq. ft. at-grade rear yard will be common usable open space to be shared by the townhouse and the third floor unit. The 1,170 sq. ft. fourth floor unit will have three bedrooms with the 316 sq. ft. roof deck as its private usable open space.

The southern two-thirds of the Lot B building is divided into a base, a middle and a top. The base is set back 1'-6" from the front property line and the exterior material will be wood with the recessed base framed in slate tile. The middle portion of the building is stucco with two two-story bay windows. The top of the building (the fourth floor) will have punch windows and the stucco exterior will be a complementing color. The northern portion of the building will have a vertical element created by a two-story bay window, the garage door and wood siding on all floors.

PROJECT HISTORY

The Respondent submitted the Conditional Use Application for the Project on February 26, 2013, seeking approval to demolish the existing second floor residential unit and construct the Project under Planning Code Section 717.37.

On March 13, 2013, the Respondent submitted an environmental review application and the Planning Department issued a Class 3 categorical exemption for the Project on June 18, 2013.

The Conditional Use and Variance hearings were originally scheduled for January 16, 2014 and continued to February 20, 2014 at the request of Supervisor Mar. The February 20, 2014 hearing was then continued at the request of the Respondent and the Planning Department because the Class 3 categorical exemption did not include a discussion of subdivision of the existing lot. The Planning Department then issued a Certificate of Class 32 categorical exemption on August 26, 2014.

The Planning Commission approved the Conditional Use Authorization under Planning Code Sections 303 and 317 at a hearing on September 4, 2014.

Thereafter, on October 24, 2014, the Zoning Administrator issued a Decision Letter granting a rear yard modification pursuant to Planning Code Section 134(e) and a street frontage variance pursuant to Planning Code Section 145.1. A copy of the Variance Decision is attached hereto as **Exhibit 1**. The appeal period for the Variance Decision to the Board of Appeal has expired and became final on November 3, 2014.

In the meantime, this appeal was filed with the Board of Supervisors ("Board") on October 6, 2014. Although originally scheduled for hearing on November 4, 2014, the appeal was rescheduled by mutual consent to November 25, 2014.

DISCUSSION

The Appellants present two major arguments. First, they attack the Commission's approval of the demolition of the existing residential units under Section 317 of the Planning Code, arguing that the Project is the demolition of two sound, affordable rent-controlled units which does not meet the mandatory criterion for a demolition. Second, they attack the decisions of the Zoning Administrator as not justified from an "exceptional and extraordinary" hardship standpoint, and as allowing "over-parking" in a transit corridor.

Below, we first address the second argument regarding the variances, then discuss the Section 317 issues, and conclude with a short discussion of the important Section 303 considerations.

A. The Variance Decisions Are Not Appealable to this Board, and were Properly Granted.

The obvious and fatal flaw in the arguments presented by the Appellants is that the variances granted by the Zoning Administrator are ***not appealable*** to the Board of Supervisors. San Francisco Charter Section 4.105 and Planning Code Section 308.2 vest appeals of variance decisions within the exclusive jurisdiction of the Board of Appeals. Thus, this Board does not have the jurisdiction to consider appeals of variance decisions. As stated above, the Variance Decision became final on November 3, 2014, in the absence of an appeal to the Board of Appeals.

Here, the variances are: (1) to provide a rear yard at the first residential level and not at grade as required by Section 134(a)(1)(A) for the Lot A building, (2) to provide off-street parking within the first 25' of the street frontage in lieu of active use as required by Section 145.1 for both the Lot A and Lot B buildings, and (3) to provide a 13' rear yard in lieu of 15' for the Lot B building.

In their brief, Appellants confuse the variance from the ground floor active use with a parking variance. The Planning Code requires one off-street parking space per unit. In this case, there are a total of six off-street parking spaces for six units as required by the Planning Code Section 151. Due to the depth of the lot being 37', it is impossible to accommodate off-street parking and active use in the first 25' of the building along the 26th Avenue frontage. Therefore, the Zoning Administrator correctly determined that a variance should be granted for the active use requirement along 26th Avenue.

The rear yard variance for the Lot A building is for location and not the depth of the lot. Specifically, the variance is for allowing the rear yard to be located at the first residential level. For the Lot B building, the variance is to deviate from the 15' minimum rear yard requirement of 25% if the lot depth is less than 15'. In this case, the lot depth is 37' and 25% of the lot depth would be 9.25'. Respondent's letter to the Zoning Administrator, dated August 25, 2014, explained why the rear yard variance requests meet the requirements of Section 305. A copy of this letter is attached hereto as **Exhibit 2** and is incorporated herein by reference.

Appellants also make the odd argument that the allowable density for the Project is seven units, not the six approved by the Commission. How that is legally relevant is unclear. The Planning Code sets forth the maximum allowable density and it is not a requirement that the maximum number of units must be constructed.

B. The Project Meets The Criteria of Planning Code Section 317.

Planning Code Section 317 provides the criteria by which the Planning Commission can approve the demolition of residential buildings. Section 317(d) provides as follows:

(1) No permit to Demolish a Residential Building in any zoning district shall be issued until a building permit for the replacement structure is finally approved, unless the building is determined to pose a serious and imminent hazard as defined in the Building Code. A Building permit is finally approved if the Board of Appeals has taken final action for approval on an appeal of the issuance or denial of the permit or if the permit has been issued and the time for filing an appeal with the Board of Appeals has lapsed with no appeal filed.

(2) If Conditional Use authorization is required for approval of the permit for Residential Demolition by other sections of this Code, the Commission shall consider the replacement structure as part of its decision on the Conditional Use application. If Conditional Use authorization is required for the replacement structure by other sections of this Code, the Commission shall consider the demolition as part of its decision on the Conditional Use application. In either case, Mandatory Discretionary Review is not required, although the Commission shall apply appropriate criteria adopted under this Section 317 in addition to the criteria in Section 303 of the Planning Code in its consideration of Conditional Use authorization. If neither permit application is subject to Conditional Use authorization, then separate Mandatory Discretion Review cases shall be heard to consider the permit applications for the demolition and the replacement structure.

The Site is in an NC zoning district where demolition of the ground floor residential unit is principally permitted and demolition of the upper floor residential unit is conditionally permitted under Planning Code Section 717.37. The Commission is only required to consider the Section 317 criteria in addition to those set forth in Section 303 of the Planning Code. In this case, only the demolition of the second floor two-bedroom unit requires conditional use authorization under Planning Code Section 317(d)(2). In that regard, the Commission is required to balance the criteria of both Planning Code Sections 303 and 317 to determine if the proposed project is necessary or desirable.

However, it is important to note, in contrast to the criteria under Planning Code Section 303, the criteria under Section 317 must only be *considered* by the Commission. The Project need not meet all the criteria, and it is within the purview of the Commission to determine how much weight to give to each. Here, as discussed below, the Commission properly considered each of the criteria and determined that, on balance, the fact this Project will add a net four three-bedroom units to the City's housing stock is more desirable and necessary than preserving a small second floor residential unit that was occupied only occasionally by the previous owners and their family members. As each of these units has three bedrooms, the Project will add to the City's family size housing stock, which need is well documented by the Planning Department. Finally, it should be noted that the Appellant's argument with regard to loss of two rent-controlled units is simply not true. The units have been vacant since 1996, except for the current occupants who are care-takers of the building for the Respondent and who pay no rent.

The Commission, after considering all of the Section 317 and Section 303(c) criteria, properly determined that the Project, on balance, meets the applicable criteria of Section 317 and all the criteria of Section 303(c), and that the Project is more desirable than the loss of a dwelling unit that has not been part of the City's rental housing stock for more than 18 years.

More specifically, Planning Code Section 317(d)(3)(C) specifies that the Planning Commission shall *consider* the following additional criteria in the review of applications to demolish residential upper floor units where permitted under a conditional use authorization:

(i) whether the property is free of a history of serious, continuing Code violations;

The Respondent has not submitted a soundness report or otherwise contended that the building is unsound, although the demolition of a nearly 60 year-old building and the replacement with a new structure will surely be beneficial.

(ii) whether the housing has been maintained in a decent, safe, and sanitary condition;

There is no contention or evidence that the Respondent has not maintained the existing building in proper condition.

(iii) whether the property is an "historical resource" under CEQA;

The Planning Department has reviewed the Historic Resource Evaluation Report prepared by Tim Kelley Consulting and concurs with the conclusion that the existing building is not a historic resource. There is no contention to the contrary.

(iv) whether the removal of the resource will have a substantial adverse impact under CEQA;

Not applicable as the existing building is not a historical resource.

(v) whether the project converts rental housing to other forms of tenure or occupancy;

While the Project will remove one vacant upper floor dwelling unit from the City's housing stock, the Project will replace both the upper floor unit and the ground floor unit (principally allowed to be demolished) with larger three-bedroom family size units, and add a net four three-bedroom units needed by the City. The new units will be condominiums.

(vi) whether the project removes rental units subject to the Rent Stabilization and Arbitration Ordinance;

The two units were owner-occupied before the Respondent's purchase. Both units would be subject to the Rent Stabilization and Arbitration Ordinance only if they are returned to the rental market.

(vii) whether the project conserves existing housing to preserve cultural and economic neighborhood diversity;

Table A-1 of the 2013 Housing Inventory published by the Planning Department showed that of the 1876 market rate housing units completed in the year, only 24 are three bedroom units. Table A-2 of the 2013 Housing Inventory published by the Planning Department also showed that of the 464 affordable housing units completed in the year, only 8 are three bedroom units. Therefore, the addition of six three-bedroom family size market rate condominium units will preserve and enhance the cultural and economic diversity of the neighborhood.

(viii) whether the project conserves neighborhood character to preserve neighborhood cultural and economic diversity;

The Lot A and Lot B buildings are similar in scale, height and massing to the existing buildings in the Project vicinity and with similar exterior material. Therefore, the Project will conserve the neighborhood character. The cultural and economic diversity of the neighborhood will be enhanced by providing needed family-sized housing.

(ix) whether the project protects the relative affordability of existing housing;

Inasmuch as the existing units are not part of the rental housing stock but occupied by the owners, these units are not part of the City's affordable housing stock and this criteria is not applicable.

(x) whether the project increases the number of permanently affordable units as governed by Section 415;

Planning Code Section 415 is not applicable to the Project, as the Project has less than ten units.

(xi) whether the project locates in-fill housing on appropriate sites in established neighborhoods;

The Project is located in an established mixed-use neighborhood as evidenced by the issuance of the Class 32 Categorical Exemption.

(xii) whether the project creates quality new family housing;

The Project will provide six units of family-sized housing with three bedrooms. The design, the exterior and interior materials will result in construction of quality residential units.

(xiii) whether the project creates new supportive housing;

The Project does not create supportive housing.

(xiv) whether the project promotes construction of well-designed housing to enhance existing neighborhood character;

The Project's overall scale, design, and materials are consistent with the existing buildings on the block faces and will complement the neighborhood character with a contemporary design. Appellants present no contention or argument to the contrary.

(xv) whether the project increases the number of on-site dwelling units;

The Project will increase the number of on-site units by four units.

(xvi) whether the project increases the number of on-site bedrooms.

The Project will replace the existing three bedrooms with 18 bedrooms.

3. The Project meets the criteria of Section 303 of the Planning Code.

In sharp contrast to the discretionary nature of the Section 317 criteria when applied to demolition of residential units requiring conditional use, the Commission was required to find that the Project meets all of the criteria of Planning Code Section 303(c). It is instructive and telling that the Appellants do not attempt to attack any of the Planning Commission's section 303(c) findings in that regard. By way of short review, the Project meets the criteria of Planning Code Section 303(c) as follows:

1. *The proposed use or feature, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary and desirable for, and compatible with, the neighborhood or the community.*

The buildings in the vicinity of 26th Avenue and Clement Street range from two units to eighteen units. The Project, with a total of six units, is similar to those on the block. The proposed three-bedroom units are moderately sized, similar in size to the flats in the area. The two demolished units will be replaced with six three-bedroom units which are more suitable for families with children. Therefore, the size and intensity of the Project will be compatible with and is necessary and desirable for the neighborhood and the community.

2. *The proposed uses or features will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity, or injurious to property, improvements or potential developments in the vicinity.*

A. The nature of the proposed Site, including its size and shape, and the proposed size, shape and arrangement of structures:

The existing lot is 118' deep. The allowable building depth would be 88.5' if the lot is not divided into two. The adjacent lot on Clement Street is improved with two buildings, with the approximately 60' long main structure (2512 Clement) at the front of the lot and a two-story cottage (2510 Clement) located partly in the required rear yard. By dividing the lot into two, the Lot A building will be shorter than the neighboring 2510-2512 Clement building and the rear cottage will face the at-grade rear yard of the Lot B building. The three bedroom units will range between 1,071 sq. ft. to 1,601 sq. ft., which will be more affordable than if the existing lot is not subdivided and new units in excess of 2,400 sq. ft. each are developed.

The Lot B building has been set back 3' from the north property line so that the property line windows of the 377 - 26th Avenue Building will not have to be closed. Therefore, the proposed size, shape and arrangement of the proposed buildings will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity, or be injurious to property or improvements.

- B. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading.

The traffic patterns for persons and vehicles around the Project Site will not be altered. Each of the dwelling units and the retail space will have an off-street parking space. Currently, there are five on-street parking spaces on 26th Avenue and one on Clement in front of the Site. The Project will not change the number of on-street parking spaces in front of the Site. The Environmental Planning section of the Planning Department has determined that the Project will not have an adverse effect on traffic, off-street parking and loading.

- C. The safeguards afforded to prevent noxious or offensive emissions, such as noise, glare, dust and odor.

A Noise Report prepared by Walsh Norris and Associates was requested by and submitted to Environmental Planning. All of the recommendations have been incorporated as part of the Project and the Project will therefore meet all of the City's Noise Ordinance governing noise levels after the buildings are completed.

- D. Treatment given, as appropriate to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs.

The three existing street trees (two on Clement Street and one on 26th Avenue) will be retained and four new street trees will be planted on 26th Avenue. All exterior lights will be down lighting to prevent glare to nearby neighbors. The garbage, recycle and compost bins will be located in the garage. Signs will comply with the requirements of Article 6 of the Planning Code.

3. *That such use or feature as proposed will comply with the applicable provisions of this Code and will not adversely affect the General Plan.*

The Site is zoned for mixed use development with ground floor retail and residential use on the upper floors. With the rear yard and ground floor active use variances granted, the Project will comply with all applicable Planning Code provisions applicable to the Site.

The Project is consistent with the following objectives and policies of the General Plan:

A. *HOUSING ELEMENT*

Objective 1: Identify and make available for development adequate sites to meet the City's housing needs, especially permanently affordable housing.

Policy 1.8 - Promote mixed use development, and include housing, particularly permanently affordable housing, in new commercial, institutional or other single use development projects.

Policy 1.10 - Support new housing projects, especially affordable housing, where households can easily rely on public transportation, walking and bicycling for the majority of daily trips.

The Site is currently under-utilized. While the existing units are not unsound housing, the units' size, design and construction deficiencies are obvious. The Project replaces 2 housing units with 6 housing units in an area easily accessible to public transit.

Objective 2: Retain existing housing units, and promote safety and maintenance standards, without jeopardizing affordability.

Policy 2.1: Discourage the demolition of sound existing housing unless the demolition results in a net increase in affordable housing.

The residential units to be demolished are not part of the City's affordable housing stock because they are owner-occupied. The Project will result in an increase of four additional units and all the units are three-bedroom units suitable for families with children with usable open space.

Objective 12: Balance housing growth with adequate infrastructure that serves the City's growing population.

Policy 12.1 - Encourage new housing that relies on transit use and environmentally sustainable patterns of movement.

Policy 12.2 - Consider the proximity of quality of life elements, such as open space, child care, and neighborhood services, when developing new housing units

Policy 12.3 - Ensure new housing is sustainably supported by the City's public infrastructure systems.

The Site is near public transit, neighborhood services and two of the major open spaces in the City (Golden Gate Park and the Presidio).

Objective 13: Prioritize sustainable development in planning for and constructing new housing.

Policy 13.3 - Promote sustainable land use patterns that integrate housing with transportation in order to increase transit, pedestrian, and bicycle mode share.

The Project is located near multiple transit lines and has easy access to all types of neighborhood-serving businesses.

B. COMMERCE AND INDUSTRY ELEMENT

Objective 1: Manage economic growth and change to ensure enhancement of the total City Living and working environment.

Policy 1.2 -Assure that all commercial and industrial uses meet minimum, reasonable performance standards.

Policy 1.3 – Locate commercial and industrial activities according to a generalized commercial and industrial land use plan.

The Site is located in a neighborhood commercial district. The current commercial space on the Site is 410 sq. ft. with 8'-0" high ceiling. The new retail space will have 897 sq. ft. and 14' floor to ceiling height that the City deems desirable and necessary by allowing an additional 5' height limit to achieve quality retail space in the City's commercial districts. Therefore the Project is consistent with and promotes Objective 1, policies 1.2 and 1.3 of this element.

Objective 3: Provide expanded employment opportunities for City residents, particularly the unemployed and economically disadvantaged.

Policy 3.1 – Promote the attraction, retention and expansion of commercial and industrial firms which provide employment improvement opportunities for unskilled and semi-skilled workers.

The Commerce and Industry element recognizes that the "one employment sector that often serves to be a source of employment opportunity to minorities and low-skilled workers is the small business sector that offers initial employment opportunities for the many low-skilled individuals. These individuals are often from within the community."

When compared to the existing building, where the small office space faces 26th Avenue and does not contribute to the continuing retail frontages on Clement Street, the Project includes a quality retail space at the corner of Clement Street and 26th Avenue that will strengthen and anchor this section of the Outer Clement Street Neighborhood Commercial District.

C. URBAN DESIGN ELEMENT

Objective 2 -- Conservation of resources which provide a sense of nature, continuity with the past, and freedom from overcrowding.

Policy 2.6 - Respect the character of older development nearby in the design of new buildings.

While the design of the new buildings is modern, the design complements the existing character of the area by incorporating bay windows and exterior materials common in the area.

Objective 4 -- Improvement of the neighborhood environment to increase personal safety, comfort, pride and opportunity.

Policy 4.12 - Install, promote and maintain landscaping in public and private areas.

Four new street trees will be planted on 26th Avenue, where only one currently exists.

D. TRANSPORTATION ELEMENT

Objective 11 -- Establish public transit as the primary mode of transportation in San Francisco and as a means through which to guide future development and improve regional mobility and air quality.

Policy 11.3 - Encourage development that efficiently coordinates land use with transit service, requiring that developers address transit concerns as well as mitigate traffic problems.

Objective 14 -- Develop and implement a plan for operational changes and land use policies that will maintain mobility and safety despite a rise in travel demand that could otherwise result in system capacity deficiencies.

Policy 14.7 - Encourage the use of transit and other alternatives modes of travel to the private automobile through the positioning of building entrances and the convenient location of support facilities that prioritizes access from these modes.

Policy 14.8 - Implement land use controls that will support a sustainable mode split, and encourage development that limits the intensification of automobile use.

The Site is conveniently located near public transit with connection directly or within easy walking or biking distance to large employers such as Kaiser Medical Center, UCSF Mount Zoin Campus, and other major employment centers in the City. The MUNI bus lines (#1, #1AX, #29, #38, #38AX, #38BX and #38L) are within two blocks of the Site and provide easy transfer to public transit serving other parts of the City and to the East Bay and South Bay.

The Project will provide Class 1 off-street secure bicycle parking spaces to encourage the combined use of transit and bicycle to work, for chores and recreation.

Objective 24 -- Improve the ambience of the pedestrian environment.

Policy 24.2 - Maintain and expand the planting of street trees and the infrastructure to support them.

Policy 24.4 - Preserve pedestrian-oriented building frontages.

Four new street trees will be planted to meet Planning Code Requirements which will enhance the pedestrian environment and the public realm.

Objective 28 -- Provide secure and convenient parking facilities for bicycles.

Policy 28.1 - Provide secure bicycle parking in new governmental, commercial, and residential developments.

Policy 28.3 - Provide parking facilities which are safe, secure, and convenient.

One secure Class 1 bicycle parking space will be provided for each of the units in the garages of the two new buildings. Two secure Class 2 bicycle parking spaces will be provided on Clement Street for visitors or patrons of the retail business .

E. RECREATION AND OPEN SPACE ELEMENT

Objective 4: Provide opportunities for recreation and the enjoyment of open space in every San Francisco neighborhood.

Policy 4.5 - Require private usable outdoor open space in new residential development.

The Project has more than the Planning Code required usable open space on the Site for the future occupants; four of the units have private usable open spaces and two of the units share a roof deck. The Site is within five blocks of Golden Gate Park and three blocks of the Presidio, two of the major open spaces in the City.

F. AIR QUALITY ELEMENT

Objective 2 -- Reduce mobile sources of air pollution through implementation of the transportation element of the general plan.

Applicable objectives and policies are listed under the Transportation Element and the City's Transit First Policy discussed above.

Objective 3 -- Decrease the air quality impacts of development by coordination of land use and transportation decisions.

Policy 3.9 Encourage and require planting of trees in conjunction with new development to enhance pedestrian environment and select species of trees that optimize achievement of air quality goals.

Four new street trees will be planted where one exists today along the 26th Avenue frontage.

Objective 5 -- Minimize particulate matter emissions from road and construction sites.

Policy 5.1 - Continue policies to minimize particulate matter emissions during road and building construction and demolition.

Policy 5.2 Encourage the use of building and other construction materials and methods which generate minimum amounts of particulate matter during construction as well as demolition.

The Applicant and contractor must and will comply with the City's Building Code provisions governing dust control, including watering of the Site with non-potable water.

G. COMMUNITY SAFETY ELEMENT

Objective 1 -- Reduce structural and non-structural hazards to life safety and minimize property damage resulting from future disasters.

Policy 1.3 - Assure that new construction meets current structural and life safety standards.

The new buildings will be constructed to meet all current Building Code seismic and fire safety standards; whereas the existing building does not meet those standards.

Policy 1.6 - Consider site soils conditions when reviewing projects in areas subject to liquefaction or slope instability.

A Geotechnical Report will be submitted to the Department of Building Inspection for review and approval as part of the building permit process to insure that the buildings' foundations will be designed appropriately.

Policy 1.11 - Continue to promote green stormwater management techniques.

The Project will comply with all City requirements related to stormwater management, the San Francisco Stormwater Management Ordinance, the SFPUC's Stormwater Design Guidelines and the San Francisco Green Building Code. The Project will also comply with

the San Francisco Green Building Requirements related to water use reduction by cutting potable water use by 20%.

H. ENVIRONMENTAL PROTECTION ELEMENT

Objective 1 -- achieve a proper balance among the conservation, utilization, and development of San Francisco's natural resources.

Policy 1.4 - Assure that all new development meets strict environmental quality standards and recognizes human needs.

The Project will comply with the San Francisco Green Building Requirements related to energy efficiency. The Applicant will provide documentation demonstrating that the Project achieves a 15% compliance margin over the 2008 Title 24 Part 6 Energy Standards. The Project will comply with the San Francisco Green Building requirements related to the commissioning of building energy and water systems. Design and construction commissioning will be conducted to verify that energy- and water-using components meet the owner's or owner representative's project requirements.

Objective 4 -- Achieve a proper balance among the conservation, utilization, and development of San Francisco's natural resources.

Policy 4.1 - Support and comply with objectives, policies, and air quality standards of the Bay Area Air Quality Management District.

Prior to issuance of any demolition permit, the Bay Area Air Quality Management District must inform the Department of Building Inspection that all asbestos containing building materials have been removed and disposed of in accordance of applicable state law and regulations.

Objective 5 -- With respect to applications filed pursuant to Article 7 of this Code, that such use or feature will provide development that is in conformity with the stated purpose of the applicable Neighborhood Commercial District, as set forth in zoning control category 1 of Section 701 through 729 of this Code.

The Site is at the end of the Outer Clement Street NCD, which is located on Clement Street between 19th Avenue and 27th Avenue, with small-scale convenience neighborhood-serving businesses, as well as many restaurants that serve both the neighborhood and Citywide clientele during the evening hours. The Outer Clement Street NCD is developed with many mixed-use buildings with more fully-residential buildings toward 27th Avenue.

Section 717.1 describes the Outer Clement Street NCD District controls as those “designed to promote development that is in keeping with the district’s existing small-scale, mixed-use character. The building standards monitor large-scale development and protect rear yards at all levels. Future commercial growth is directed to the ground story in order to promote more continuous and active retail frontage” and the controls are directed as preventing over-concentration of entertainment and financial services uses and restricts late-night activity, hotels, automobile uses, and drive-up facilities.”

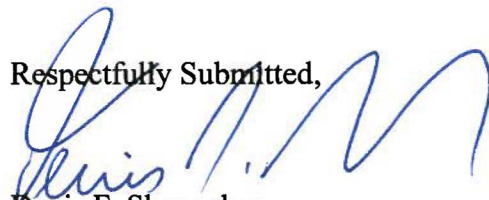
The Project is predominately residential in nature and the 897 sq. ft. ground floor retail space will be more suitable for neighborhood-serving businesses than the current 410 sq. ft. ground floor office space. Therefore, the Project is consistent with the purposes and objective of the Outer Clement Street NCD.

CONCLUSION

The Project will provide six three-bedroom units that are both necessary and desirable in the context of the City’s housing stock. The Project design is contextually appropriate. This mixed use Project, with ground floor commercial and residential units above, is consistent with the purpose and objective of the Outer Clement Street NCD. The size of the ground floor commercial unit at 897 sq. ft. will provide a transition from what is essentially a residential block between 26th and 27th Avenue to the more intense retail uses east of the Site along Clement Street.

The Planning Commission properly applied all of the criteria of Section 303 of the Planning Code in approving the Project. The Commission also properly considered the various criteria of Section 317 of the Planning Code and approved the demolition of the two existing residential units in order to expand the City’s housing stock by four units and fifteen bedrooms. It is respectfully submitted that this Board should deny this appeal.

Respectfully Submitted,



Denis F. Shanagher

DFS

cc: Supervisor John Avalos
Supervisor London N. Breed
Supervisor David Campos
Supervisor Malia Cohen
Supervisor Mark Farrell
Supervisor Jane Kim

Supervisor David Chiu
November 17, 2014
Page 19

Supervisor Eirc Mar
Supervisor Katy Tang
Supervisor Scott Wiener
Supervisor Norman Yee
Angela Calvillo, Clerk of the Board of Supervisors
Stephen Williams, Esq.
Mary Tom
Gabriel Ng

USW 804744030.5

EXHIBIT 1



SAN FRANCISCO PLANNING DEPARTMENT

Rear Yard Modification & Variance Decision

Date: October 24, 2014
Case No.: 2013.0205CEKSV
Project Address: 395 26th AVENUE
Zoning: Outer Clement Street Neighborhood Commercial District
40-X Height and Bulk District
Block/Lot: 1407/017
Project Sponsor: Gabriel Ng
Gabriel Ng & Architects, Inc.
1360 9th Avenue, Suite 210
San Francisco, CA 94122
Staff Contact: Christine Lamorena – (415) 575-9085
christine.lamorena@sfgov.org

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

DESCRIPTION OF REAR YARD MODIFICATION & STREET FRONTAGE VARIANCE SOUGHT:

The proposal is to 1) demolish an existing two-story mixed-use building containing two dwelling units with ground floor commercial space, 2) subdivide the lot into two lots, 3) construct a 45-foot tall, four-story mixed-use building fronting on Clement Street, containing three dwelling units, four residential parking spaces with ground floor commercial space, and 4) construct a 40-foot tall, four-story building fronting on 26th Avenue, containing three dwelling units and two residential parking spaces.

Per Section 134 of the Planning Code the subject property is required to maintain a rear yard of approximately 15 feet at all levels. The proposed buildings do not provide the required rear yard depth on the ground floor.

Per Section 145.1 of the Planning Code the subject property is required to set back parking 25 feet from any street frontage. The proposed parking is not set back 25 feet from the 26th Avenue frontage.

PROCEDURAL BACKGROUND:

1. The Project is exempt from the California Environmental Quality Act ("CEQA") as a Class 32 categorical exemption. The Certificate of Determination was issued on August 26, 2014.
2. The Zoning Administrator held a public hearing on the requests for **Rear Yard Modification and Variance Application No. 2013.0205V** on **September 4, 2014**.
3. Neighborhood Notification required by Planning Code Section 311 for Building Permit Application Nos. 2013.03.05.1498, 2013.03.05.1501, and 2013.03.05.1508 were mailed on December 26, 2013 and expired on January 16, 2014 in conjunction with the Conditional Use Authorization hearing notice (Case No. 2013.0205C).

DECISION:

GRANTED, in general conformity with the plans on file with this application, shown as EXHIBIT A, to 1) demolish an existing two-story mixed-use building containing two dwelling units with ground floor commercial space, 2) subdivide the lot into two lots, 3) construct a 45-foot tall, four-story mixed-use building fronting on Clement Street, containing three dwelling units, four residential parking spaces with ground floor commercial space, and 4) construct a 40-foot tall, four-story building fronting on 26th Avenue, containing three dwelling units and two residential parking spaces, subject to the following conditions:

1. Any future physical expansion, even in the buildable area, shall be reviewed by the Zoning Administrator to determine if the expansion is compatible with existing neighborhood character and scale. If the Zoning Administrator determines that there would be a significant or extraordinary impact, the Zoning Administrator shall require either notice to adjacent and/or affected property owners or a new Variance application be sought and justified.
2. The proposed project must meet these conditions and all applicable City Codes. In case of conflict, the more restrictive controls apply.
3. Minor modifications as determined by the Zoning Administrator may be permitted.
4. The owner of the subject property shall record on the land records of the City and County of San Francisco the conditions attached to this Variance decision as a Notice of Special Restrictions in a form approved by the Zoning Administrator.
5. This Modification and Variance Decision and the recorded Notice of Special Restrictions shall be reproduced on the Index Sheet of the construction plans submitted with the Site or Building Permit Application for the Project. This Index Sheet of the construction plans shall reference the Modification and Variance Case Number.

FINDINGS:

REAR YARD MODIFICATION

Planning Code Section 134(e) states that in order to grant a rear yard modification, and in accordance with Section 307(g), the Zoning Administrator must determine that the facts of the case are sufficient to establish each of the following criteria:

CRITERION 1.

Residential uses are included in the new or expanding development and a comparable amount of usable open space is provided elsewhere on the lot or within the development where it is more accessible to the residents of the development.

Requirement Met.

- A. The proposed project would provide six new dwelling units and would require a rear yard of approximately 555 square feet for proposed Lot A and 870 square feet for proposed Lot B, equal to 25 percent of the lot area for the respective lots, at all levels. Per Planning Code Section 135,

the project is required to provide 100 square feet of common usable open space for each dwelling unit, 80 square feet of private usable open space, or a combination of the two. On proposed Lot A, the proposed deck would provide 519 square feet of private open space for the second floor unit and the proposed roof deck would provide 340 square feet of common open space for the third and fourth floor units. On proposed Lot B, the proposed rear yard would provide approximately 754 square feet of common open space and the proposed roof deck would provide an additional 316 square feet of common open space for all units. The proposed size and configuration of the decks and rear yard are considered more useable than the otherwise required rear yard for both lots and would exceed the required amount of usable open space for the proposal.

CRITERION 2.

The proposed new or expanding structure will not significantly impede the access of light and air to and views from adjacent properties.

Requirement Met.

- A. The proposed project is located on a corner lot with massing organized in such a way that does not create significant adverse effects on the adjacent properties. On proposed Lot B, the proposal includes a rear yard depth of approximately 13 feet to allow for access of light and air to an existing noncomplying one-story residential building in the adjacent property's rear yard. Additionally, providing the code-required rear yards would not alter the overall 4-story height of the buildings, and therefore would have little impact on the amount of light, air, and views of adjacent properties.

CRITERION 3.

The proposed new or expanding structure will not adversely affect the interior block open space formed by the rear yard of adjacent properties.

Requirement Met.

- A. The subject property is a corner lot, and the adjacent buildings to the north and west separate it from the existing interior block open space. As such, any rear yard provided on the subject property will be stand-alone, and would not contribute to the interior block open space. Therefore, the proposed project would not adversely affect the interior block area.

VARIANCE

Section 305(c) of the Planning Code states that in order to grant a variance, the Zoning Administrator must determine that the facts of the case are sufficient to establish the following five findings:

FINDING 1.

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.

Requirement Met.

- A. The subject property is a corner lot with approximately 37 feet of frontage on Clement Street and approximately 118 feet of frontage on 26th Avenue. The proposal would provide off-street parking access to at-grade garages with two 10-foot curb cuts on 26th Avenue while maintaining a pedestrian realm along Clement Street. Additionally, the amount of on-street parking spaces would remain the same.

The existing property has a depth of only 37 feet measured from 26th Avenue. Providing the required 25-foot off-street parking setback of off 26th Avenue would leave only 12 feet of building area to provide off-street parking, which is inadequate. Additionally, due to the narrow nature of the property, locating the required off-street parking deeper into the lot would conflict with the rear yard requirements of Planning Code Section 134. Providing no parking for the project would require a parking modification pursuant to Planning Code 161(j) or a parking variance.

FINDING 2.

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.

Requirement Met.

- A. Based on the subject property's size and shape, strict enforcement Planning Code Section 145.1 would result other noncomplying features for the project, such as a less conforming rear yard, or a significant deficiency in required off-street parking. It could also result in the addition of a curb cut along Clement Street for proposed Lot A, which would limit the amount of active space and non-residential space that could be provided along the Neighborhood Commercial District corridor.

FINDING 3.

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.

Requirement Met.

- B. The Outer Clement Street NCD requires a minimum of one off-street parking space per residential dwelling unit. The project meets this provision and employs space-efficient parking techniques so that the ground floor can also accommodate residential lobbies and commercial space (proposed Lot A) or additional residential space (proposed Lot B). The variance is necessary to ensure that the subject property can provide the parking required by the Planning Code in a space efficient manner, which is a substantial property right possessed by other properties in the Outer Clement Street NCD.

FINDING 4.

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.

Requirement Met.

- A. Due to the use of car stackers, granting the variance would result in only one curb cut on 26th Avenue for each of the two proposed properties, which is standard in this and many other parts of the City. This also allows the two proposed buildings to still provide active uses on the ground floors to help ensure a more positive interaction at the street level. As such, granting the variance would not be materially detrimental to the public welfare or materially injurious to the neighboring properties.

FINDING 5.

The granting of such variance will be in harmony with the general purpose and intent of this Code and will not adversely affect the General Plan.

Requirement Met.

- A. This development is consistent with the generally stated intent and purpose of the Planning Code to promote orderly and beneficial development. Planning Code Section 101.1 establishes eight priority-planning policies and requires review of variance applications for consistency with said policies. The project meets all relevant policies, including conserving neighborhood character, and maintaining housing stock.
 - 1. Existing neighborhood retail uses will not be adversely affected by the proposed project. The existing commercial space on the ground floor is small, does not have a traditional storefront system, and generally provides very little transparency to the street. The proposed replacement commercial space will enhance the corner and represent a much more active use.
 - 2. The proposed project will be in keeping with the existing housing and neighborhood character.
 - 3. The proposed project will have no effect on the City's supply of affordable housing.
 - 4. The proposed project does not adversely affect neighborhood parking or public transit.
 - 5. The project will have no effect on the City's industrial and service sectors.
 - 6. The proposed project will have no effect on the City's preparedness to protect against injury and loss of life in an earthquake.
 - 7. The project will have no effect on the City's landmarks or historic buildings.
 - 8. The project would not affect any existing or planned public parks or open spaces.

The effective date of this decision shall be either the date of this decision letter if not appealed or the date of the Notice of Decision and Order if appealed to the Board of Appeals.

Once any portion of the granted variance is utilized, all specifications and conditions of the variance authorization became immediately operative.

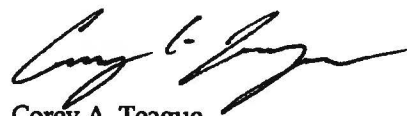
The authorization and rights vested by virtue of this decision letter shall be deemed void and cancelled if (1) a Building Permit has not been issued within three years from the effective date of this decision; or (2) a Tentative Map has not been approved within three years from the effective date of this decision for Subdivision cases; or (3) neither a Building Permit or Tentative Map is involved but another required City action has not been approved within three years from the effective date of this decision. However, this authorization may be extended by the Zoning Administrator when the issuance of a necessary Building Permit or approval of a Tentative Map or other City action is delayed by a City agency or by appeal of the issuance of such a permit or map or other City action.

Protest of Fee or Exaction: You may protest any fee or exaction subject to Government Code Section 66000 that is imposed as a condition of approval by following the procedures set forth in Government Code Section 66020. The protest must satisfy the requirements of Government Code Section 66020(a) and must be filed within 90 days of the date of the first approval or conditional approval of the development referencing the challenged fee or exaction. For purposes of Government Code Section 66020, the date of imposition of the fee shall be the date of the earliest discretionary approval by the City of the subject development.

If the City has not previously given Notice of an earlier discretionary approval of the project, the Planning Commission's adoption of this Motion, Resolution, Discretionary Review Action or the Zoning Administrator's Variance Decision Letter constitutes the approval or conditional approval of the development and the City hereby gives NOTICE that the 90-day protest period under Government Code Section 66020 has begun. If the City has already given Notice that the 90-day approval period has begun for the subject development, then this document does not re-commence the 90-day approval period.

APPEAL: Any aggrieved person may appeal this variance decision to the Board of Appeals within ten (10) days after the date of the issuance of this Variance Decision. For further information, please contact the Board of Appeals in person at 1650 Mission Street, 3rd Floor (Room 304) or call 575-6880.

Very truly yours,



Corey A. Teague
Acting Zoning Administrator

THIS IS NOT A PERMIT TO COMMENCE ANY WORK OR CHANGE OCCUPANCY. PERMITS FROM APPROPRIATE DEPARTMENTS MUST BE SECURED BEFORE WORK IS STARTED OR OCCUPANCY IS CHANGED.

CL: G:\DOCUMENTS\2013\Vs\2013.0205\395 26th Ave - Variance Decision Letter.doc
Copy to I:\Decision Documents\Variance Decision Letters\2013\2013.0205V - 395 26th Ave - Decision Letter

EXHIBIT 2

Albany
Atlanta
Brussels
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Miami
New York

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EMAIL ADDRESS
abarkley@mckennalong.com

August 25, 2014

Mr. Scott Sanchez
Zoning Administrator
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Re: **395 – 26th Avenue (Case No. 2013.0205CEKV)**
Request for Rear Yard and Street Frontage Variances

Dear Mr. Sanchez

This firm is counsel for Mary Tom, the Project Applicant ("Applicant"). The Applicant proposes to demolish a vacant two-story building (small ground floor commercial space and two residential units) at 395-26th Avenue in San Francisco (Block 1407, Lot 017 (the "Site")), subdivide the existing lot into two ("Lot A" and "Lot B"), and construct two four-story buildings (the "Project"). For the reasons discussed below, the Variance Application meets the criteria of Section 305(c) of the Planning Code. Therefore, the Planning Commission should approve the requested variances.

PROJECT HISTORY

The Applicant submitted the Variance Application for the Project on February 26, 2013. The Project will require deviation from ground level rear yard, minimum 15' rear yard depth and active uses on street frontage requirements of the Planning Code.

On March 13, 2013, the Applicant submitted an Environmental Review Application and the Planning Department issued a Class 3 categorical exemption for the Project on June 18, 2013. The Conditional Use and Variance hearings were originally scheduled for January 16, 2014 and continued to February 20, 2014 at the request of Supervisor Eric Mar. The February 20, 2014 hearing was continued at the request of the Planning Department and the Applicant because the Class 3 categorical exemption did not include a discussion of subdividing the existing lot.

The Planning Department re-issued a Certificate of Class 32 categorical exemption; a copy of which is attached to the Planning Department's updated case report before this Commission.

PROJECT SITE

The 4,366 sq. ft. Project Site is located at the northwest corner of Clement Street and 26th Avenue in the Outer Clement Neighborhood Commercial District ("Outer Clement NCD") and in a 40-X height and bulk District.

The Site is improved with a 2,105 sq. ft. two story building with an office and two residential units originally constructed in 1945. The ground floor contains a one-bedroom residential unit and an office. The second floor contains a residential unit. The building is a lawful non-complying structure in that the off-street parking is located in a paved open parking area located in the required rear yard. A photomontage of the proposed building, block face photographs, existing and proposed plans are attached hereto as **Exhibit 1**. See Sheet A-1.1 of Exhibit 1 for floor plans and elevations of the existing building.

The Planning Department has reviewed the Historic Resource Evaluation (HRE) Report prepared by Tim Kelley Consulting and concurs with the conclusion that the building is not a historic resource.

Although this block is zoned neighborhood commercial, the only ground floor commercial uses are in the Project Site building and in the two-story building adjacent to the Site on Clement Street. The Clement Street block face is developed with predominately three-story buildings, ranging from two-units to multi-unit apartment buildings. The 26th Avenue block face is developed with two to four-story buildings, with three-story buildings being predominate. The buildings range from single family homes to apartments. The opposite Clement Street block face is developed with two and three-story buildings with more ground floor retail use. The opposite 26th Avenue block face is developed with two to four-story buildings that range from single family homes to apartment buildings. See Sheet A-0.3 of the Plans attached to the Case Report.

All the corner buildings in the Outer Clement NCD have either no or minimal rear yards. See **Exhibit 2** for a Site plan showing the rear yard pattern of the corner buildings in Outer Clement NCD.

THE PROJECT

The Project is:

1. Demolition of the existing building;

2. Subdivision of the existing lot into two lots with a 60'x37' (2,220 sq. ft.) corner lot at Clement Street and 26th Ave ("Lot A") and a 58'x37' (2,146 sq. ft.) lot on 26th Avenue ("Lot B");
3. Construction of a 45' high, 7,533 gross square feet (gsf) mixed use building on Lot A with ground floor retail and 4 off-street parking space in stackers; and
4. Construction of a 40' high, 5,667 gsf three-unit residential building with three off-street parking spaces on Lot B.

The January 16, 2014 plans have been revised as follows:

1. The bay windows of both Lot A and Lot B buildings facing the rear yards have been eliminated;
2. The ground floor office space of the Lot B building has been incorporated into the second floor unit;
3. Each unit in the Lot B building has private usable open space;
4. One of the stair penthouses was eliminated from the Lot B building; and
5. One additional street tree is proposed for 26th Avenue, for a total of seven street trees for the Project.

The Lot A building (2500-2502-2520-2528 Clement Street)

The Lot A building is a mixed use building with ground floor retail. The ground floor will have a 851 sq. ft., 14' floor to ceiling height retail space, a garage with four off-street parking spaces in car stackers, three secure class 1 bicycle parking spaces, and an entrance lobby to the 3 residential units above. The retail space will have frontage on both Clement Street and 26th Avenue with a large glazed store front window system to provide pedestrian interest. The upper floors will have bay windows. Access to garage is from 26th Avenue with a 10' curb cut and 16' wide garage door. Two Class 2 bicycle parking spaces will be located on the Clement Street sidewalk in front of the retail space.

The 15' deep rear yard will be at the first residential level, which will require a variance. See Exhibit 1, Sheet A-2.0 and A.2.1. The rear yard will be the private open space for the second floor unit. The units on the third and fourth floors will share a 476 sq. ft. roof deck as common usable open space.

The Lot B Building (381-383-387 26th Avenue)

The Lot B building is a residential building with three dwelling units – a townhouse unit and two flats. The ground floor will contain the entrance lobby, three Class 1 secure bicycle lockers, a garage with three independently accessible parking spaces, and a bedroom that is part of the three-bedroom second-floor townhouse unit. Access to the garage is off 26th Avenue.

The 13' rear yard does not meet the Planning Code requirement of a minimum 15' rear yard, and only 37'-9" of the rear yard will be at grade, which is adjacent to the ground floor residential use. The approximately 235 sq. ft. deck will be the private open space for the townhouse unit. The third floor unit will have private access to the approximately 493 sq. ft. at-grade portion of the rear yard, and the fourth floor unit will have three bedrooms with private access to the 316 sq. ft. roof deck as its open space. See Sheet A-2.1 of plans attached to Case Report. Therefore, private usable open spaces in excess of Planning Code requirement will be provided to each of the proposed units.

REQUESTED VARIANCE

This Variance Application seeks relief from the rear yard and street frontage requirements (Planning Code sections 134 and 145.1). Specifically, the requested variances are as follow:

A. Lot A (2500 to 2508 Clement Street)

The proposed 2500-2508 Clement Street building would require variances to:

1. Provide a rear yard at the first residential level and not at grade level as required by Section 134(a)(1)(A).
2. Provide off-street parking spaces within the first 25' of the street frontage in lieu of active use as required by Section 145.1

B. Lot B (381-383 and 387 26th Avenue)

The proposed 381-383 and 387 26th Avenue building would require variances to:

1. Provide a 13' deep rear yard that is less than the required 15' under the Planning Code;
2. Provide the northern portion of the rear yard, measuring 13'x 19'-11" at the first residential level, and not at grade level as required by Section 134(a)(1)(A).
3. Provide a garage for off-street parking spaces within the first 25' of the street frontage in lieu of active use on 26th Avenue.

THE REQUIREMENTS OF PLANNING CODE SECTION 305 ARE MET:

The ground level rear yard locations for both Lots A and B, the deviation of 2' for the rear yard depth for a 37' deep lot (Lot B) and the street frontage variance from active use are warranted as discussed below:

1. 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 property or uses in the same class of district;

The Site is a corner lot located in the Outer Clement Street NCD, which requires the rear yard be located at grade level. Lot A is 2,220 sf. ft. and lot B is 2,146 sq. ft.; both lots comply with the Planning Code lot size requirement. (Code Section 121(d) and (e)(2).) The entire Clement Street frontage is devoted to active use as defined Code Section 145.1((b)(2), thereby requiring access to code required off-street parking from 26th Avenue. See Sheet A-0.2 of Exhibit 1. Additional Building and Planning Code requirements resulted in non-active use fronting on 26th Avenue for second means of egress and off-street parking.

With Lot A being only 37' x 60', 100% lot coverage at the ground level is necessary to accommodate acceptable square footage for a neighborhood serving business, the residential lobby and off-street parking. Similarly, Lot B being only 37' x 58' with access only from 26th Avenue, the proposed 76% lot coverage is necessary at the ground level to accommodate residential use, the residential lobby, a second means of egress, and required off-street parking.

With a 13' deep rear yard, the Lot B building is 24' deep inclusive of the exterior wall, which allows for two means of egress, a bath and a hall way on the west side and leaving room for the master bedroom and two minimum sized bedrooms on the side facing 26th Avenue. A rear yard that complies with the required 15' minimum depth rear yard would result in bedrooms that are 7'10" x 10' 6". Therefore the depth of the lot at 37' is an exceptional and extraordinary circumstance.

A survey of the corner lots along Clement Street between 24th and 27th Avenue clearly shows that *all* of the corner lot buildings either have 100% lot coverage or a rear yard that is substantially less than 15'. See **Exhibit 3** for photographs of corner buildings in the Outer Clement NCD. Therefore, exceptional circumstances apply to this property and the intended ground floor uses that do not apply to other properties or uses in the same district.

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2. That owing to such exceptional or extraordinary circumstances the literal enforcement of specified provisions of this Code would result in practical difficulty or unnecessary hardship not created by or attributable to the Applicant or the owner of the property;

With only a 37' x 60' lot, it is infeasible to comply with the street frontage requirements regardless where the entrance to off-street parking is located off 26th Avenue. Compliance with the street frontage requirements, which requires setting back the off-street parking 25' from the street, allows only 12' for parking and two means of egress. Based on the exceptional and extraordinary circumstances described above, it is impossible to have active uses along 26th Avenue, whether the existing lot remains as one lot or is subdivided into two lots.

As discussed above, 100% ground level coverage is necessary to provide a ground floor retail space as well as a garage for the Code required parking for the 2500 Clement Building. For the 381-383-387 building, a partial variance from the ground level rear yard is required to accommodate the code required off-street parking spaces. Therefore, the exceptional or extraordinary circumstances create practical difficulty or unnecessary hardship that were not created by and cannot be attributed to the Applicant and current owners of the property.

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

As can be seen in the Exhibit 3 photographs, none of the existing corner buildings meet the street frontage active use requirements of Section 145.1, and Exhibit 2. Therefore, granting the requested variances is necessary to preserve the property rights of other property similarly situated in the same class of district.

4. 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; and

The block face photographs shown on Sheet A-0.2 of Exhibit 1 demonstrate that this block is the last block of the Outer Clement NCD and, except for the small existing ground floor commercial on the Site and in the building immediately west of Site, the character of the block is overwhelmingly residential. On 26th Avenue, only the two corner buildings with frontage on Clement Street contain commercial/retail uses, with the remaining development on the block being entirely residential.

The Project has been set back three feet from the north property line to preserve the non-required lot line windows of the 377 – 26th Avenue building. The rear of the proposed buildings connect with the interior court and rear yard of the 2510 and 2512 Clement Street buildings. Therefore, the granting of the requested variances will not be materially detrimental to the public welfare or materially injurious to the property or improvements in the vicinity.

Mr. Scott Sanchez
August 25, 2014
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5. *That the granting of such variance will be in harmony with the general purpose and intent of this Code and will not adversely affect the Master Plan.*

For the sake of brevity, see the analysis of the Project's compliance with the City's General Plan Elements in the Applicant's letter to the Commission, pp. 4 to 14, attached hereto as **Exhibit 4**.

CONCLUSION

Based on the foregoing, it is respectfully submitted that the Project meets the requirements of Section 305(c) for granting the requested variances. Please contact me if you have any questions.

Respectfully Submitted,


Alice Barkley

cc: Christine Lamorena (via messenger and via e-mail)
Mary Tom (via e-mail)
Gabriel Ng (via e-mail)
Jeremy Schaub (via e-mail)

Mr. Scott Sanchez
August 25, 2014
Page 8

TABLE OF EXHIBITS

Exhibit 1	Existing and proposed plans
Exhibit 2	Site plan showing the rear yard pattern of the corner buildings in Outer Clement NCD
Exhibit 3	Photographs of corner buildings in the Outer Clement NCD and location map
Exhibit 4	August 25, 2014 Applicant's Letter to the Planning Commission in support of Conditional Use Application

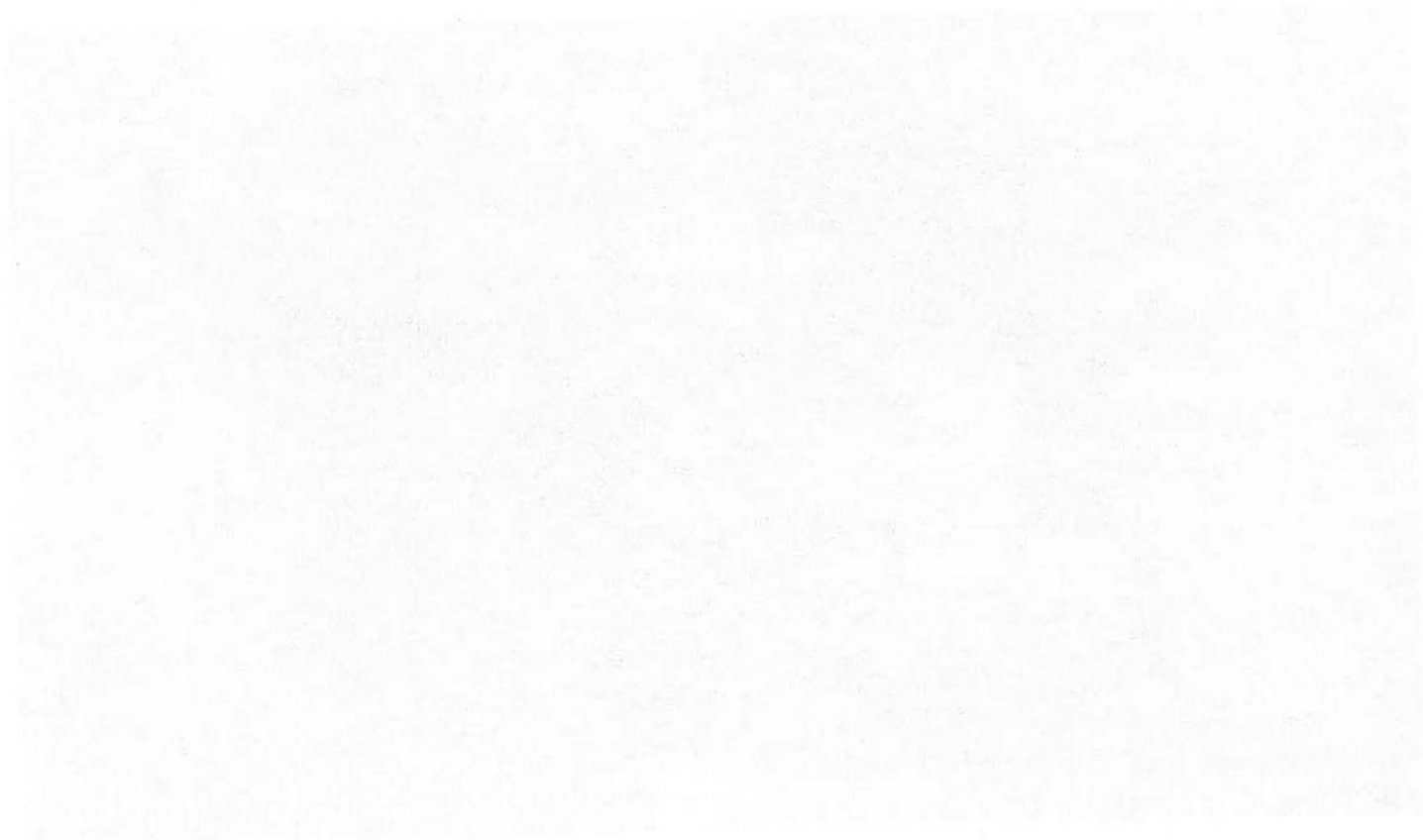
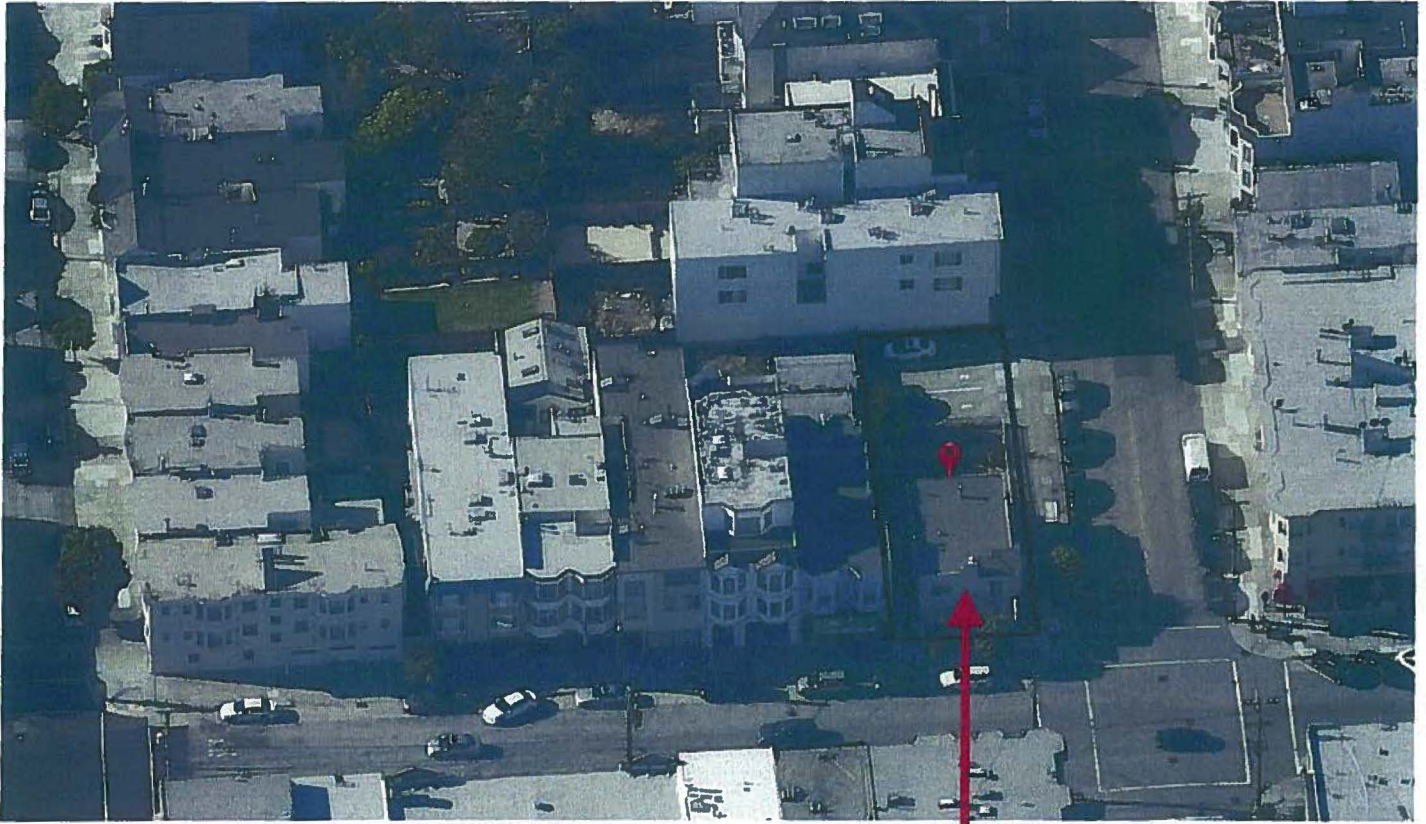


EXHIBIT 1

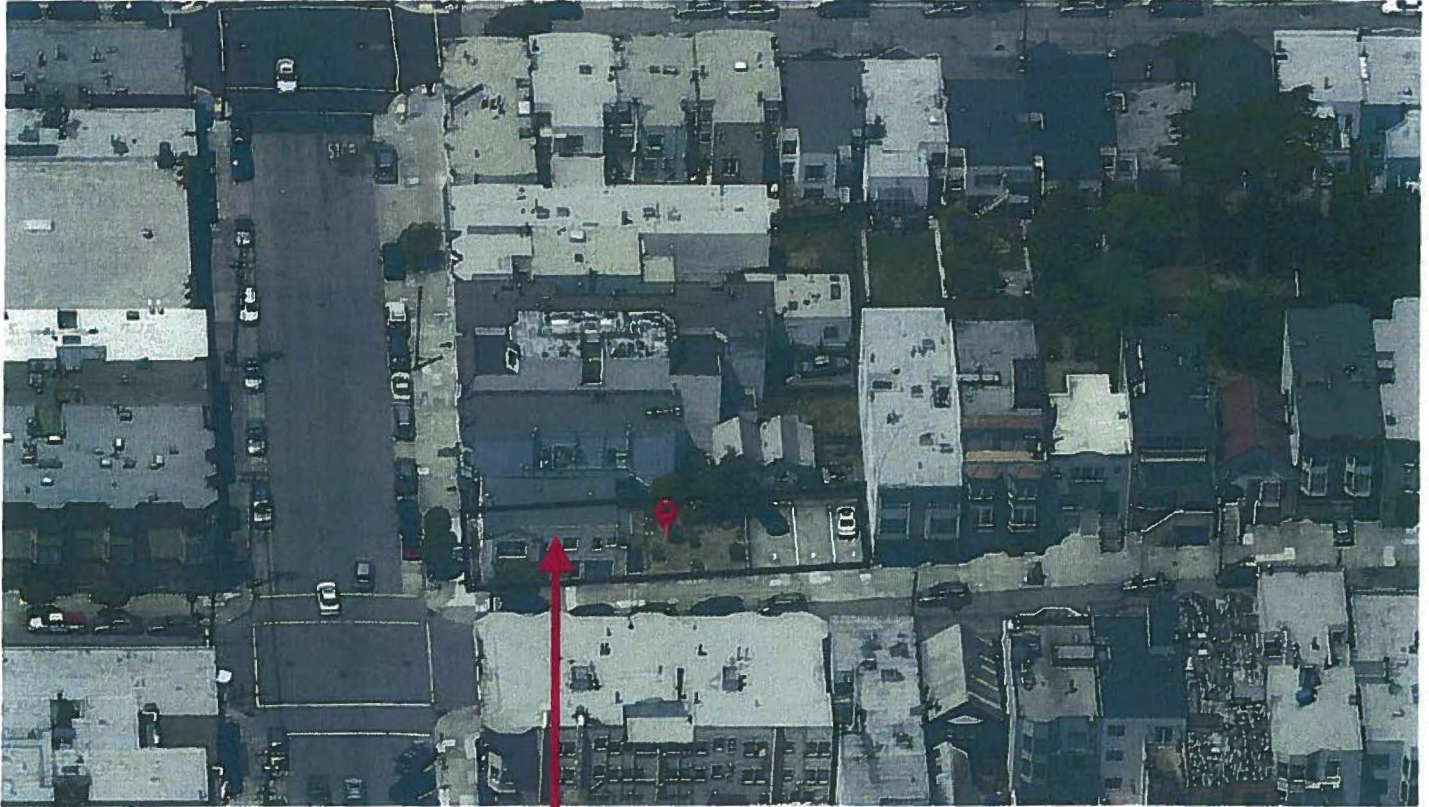
Aerial Photo – looking north



SUBJECT PROPERTY



Aerial Photo – looking west



SUBJECT PROPERTY

Site Photo

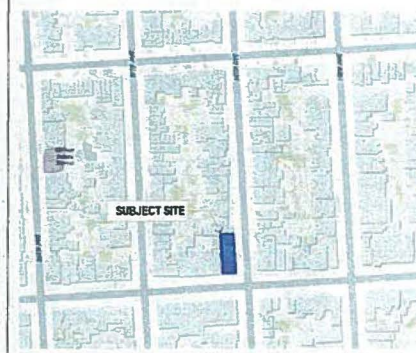


SUBJECT PROPERTY



SHEET INDEX

A-0.0	RENDERING FROM CLEMENT STREET & 26TH AVENUE
A-0.1	RENDERING FROM 26TH AVE LOOKING SOUTH
A-0.2	RENDERING FROM CLEMENT STREET LOOKING NORTH
A-0.3	CONTEXT PHOTOS
A-1.0	SITE PLAN / PROJECT INFORMATION
A-1.1	EXISTING / DEMO FLOOR PLANS & ELEVATIONS
A-2.0	2500-02-06-08 CLEMENT ST (LOT A) - FLOOR PLANS
A-2.1	381-83-97 26TH AVENUE (LOT B) - FLOOR PLANS
A-3.0	ELEVATIONS WITH FINISH MATERIALS
A-3.1	ELEVATIONS
A-3.2	SIDE ELEVATIONS
A-3.3	SECTIONS



VICINITY MAP



**GABRIEL NG +
ARCHITECTS INC.**
1360 9TH AVENUE, SUITE 210
SAN FRANCISCO CA 94122
415-682-8060 eFax 510-281-1359

**TWO NEW MIXED-USE BUILDINGS BY SUBDIVISION
2500-02-06-08 CLEMENT STREET & 381-83-87 26TH AVENUE**

BLOCK 1407, LOT 017
SAN FRANCISCO, CA 94121

RENDERING FROM CLEMENT STREET & 26TH AVENUE

SCALE: N.T.S.



9/16/13	YIP
10/24/13	YIP
2/28/14	YIP
3/12/14	YIP
5/23/14 - ADD STC REQ'MT.	MML

A-0.0



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**TWO NEW MIXED-USE BUILDINGS BY SUBDIVISION
2500-02-06-08 CLEMENT STREET & 381-83-87 26TH AVENUE**

BLOCK 1407, LOT 017
SAN FRANCISCO, CA 94121

RENDERING FROM 26TH AVE LOOKING SOUTH

SCALE: N.T.S.



9/16/13	YIP
10/24/13	YIP
2/28/14	YIP
3/12/14	YIP
5/23/14 - ADD STC REQ'MT.	MML

A-0.1



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**TWO NEW MIXED-USE BUILDINGS BY SUBDIVISION
2500-02-06-08 CLEMENT STREET & 381-83-87 26TH AVENUE**

BLOCK 1407, LOT 017
SAN FRANCISCO, CA 94121

RENDERING FROM CLEMENT STREET LOOKING NORTH

SCALE:

9/16/13
10/24/13
2/28/14
3/12/14
5/23/14 - ADD STC REQ'MT.

YIP
YIP
YIP
YIP
MML

A-0.2

SUBJECT SITE



1 SUBJECT AND ADJACENT BUILDINGS ON CLEMENT STREET



2 BUILDINGS ACROSS THE STREET ON CLEMENT STREET

SUBJECT SITE



3 SUBJECT AND ADJACENT BUILDINGS ON 26TH AVENUE



4 BUILDINGS ACROSS THE STREET ON 26TH AVENUE



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TWO NEW MIXED-USE BUILDINGS BY SUBDIVISION
2500-02-06-08 CLEMENT STREET & 381-83-87 26TH AVENUE
BLOCK 1407, LOT 017
SAN FRANCISCO, CA 94121

CONTEXT PHOTOS

SCALE:

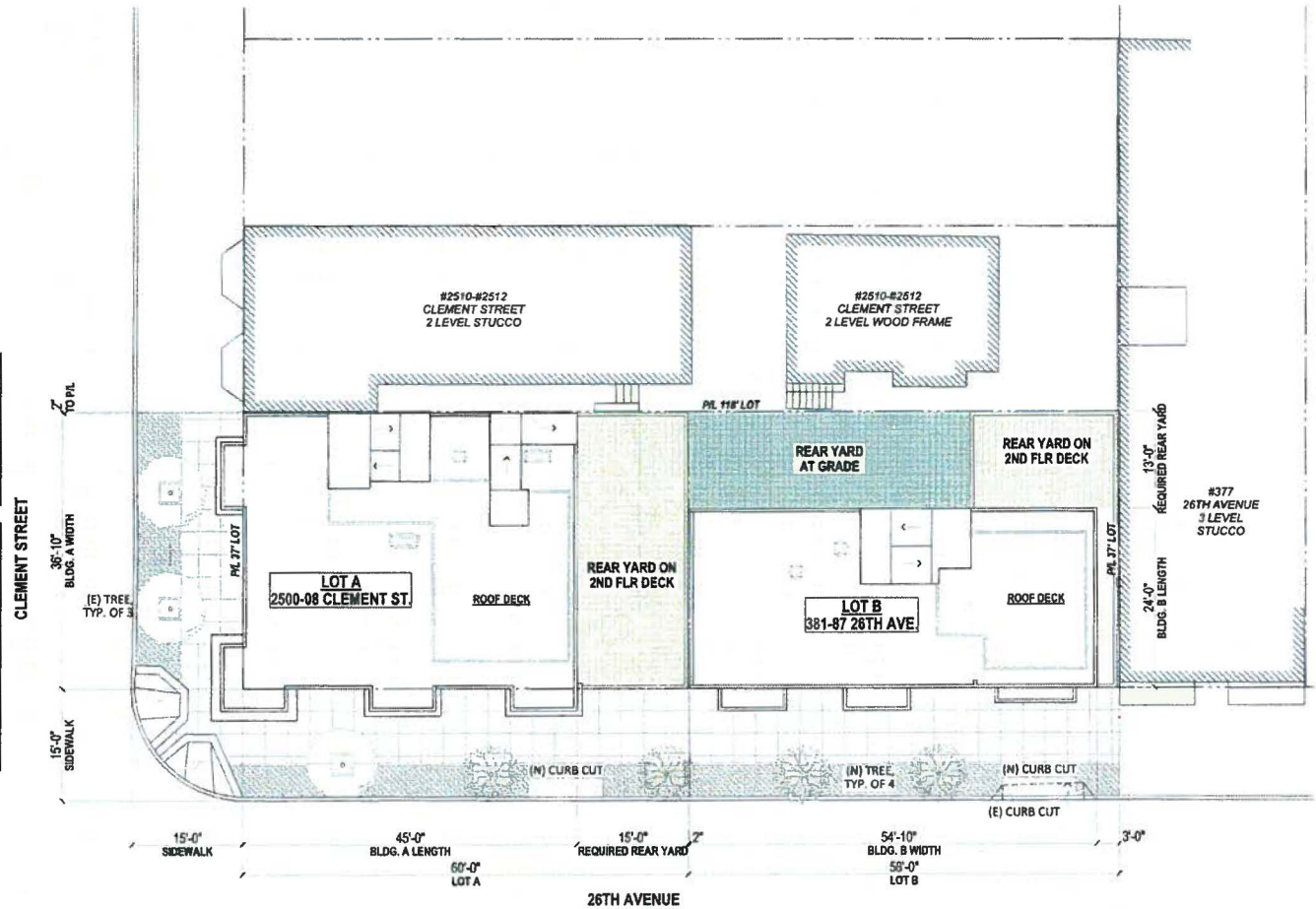
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10/24/13	YIP
2/28/14	YIP
3/12/14	YIP
5/23/14 - ADD STC REQ'MT.	MML

A-0.3

PROPERTY INFORMATION	
EXISTING	
ADDRESS	395 26TH AVE.
BLOCK / LOT	1407 / 017
LOT SIZE	118' x 37'
LOT AREA	4,366 S.F.
# OF RESIDENTIAL UNITS	2
# OF OFFICE SPACES	1

PROJECT PROPOSAL INFORMATION		
	LOT A	LOT B
ADDRESS	2500-02-06-08 CLEMENT ST.	381-83-87 26TH AVE.
LOT SIZE BY SUBDIVISION	60' x 37'	58' x 37'
LOT AREA	2,220 S.F.	2,146 S.F.
# OF RESIDENTIAL UNITS	3	3
# OF RETAIL SPACES	1	0
BUILDING HEIGHT	45'	40'

ZONING INFORMATION		CODE SECTION
ZONING	OUTER CLEMENT ST. NCD	\$717
HEIGHT LIMIT	40'-X, ADDITIONAL 5' FOR PARCELS WITH ACTIVE USES	\$263.20(b)(2)(B)
RESIDENTIAL DENSITY	1 UNIT PER 600 S.F.	\$207.4
VARIANCE REQUESTED	REQUIRED REAR YARD AT GROUND & 2ND - 4TH LEVELS PARKING WITHIN 25' OF STREET FRONTAGE	\$134(a) & (e) \$145.1(c)(1)(C)
CONDITIONAL USE REQUESTED	DWELLING UNIT REMOVAL ON 2ND FLOOR	\$717.39
SHADOW STUDY	BUILDINGS EXCEEDING 40' IN HEIGHT	\$295



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TWO NEW MIXED-USE BUILDINGS BY SUBDIVISION 2500-02-06-08 CLEMENT STREET & 381-83-87 26TH AVENUE

BLOCK 1407, LOT 017
SAN FRANCISCO, CA 94121

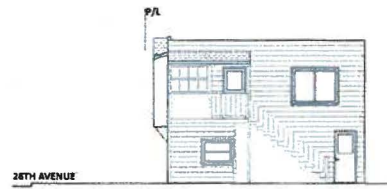
SITE PLAN / PROJECT INFORMATION

SCALE: 1/16" = 1'-0"

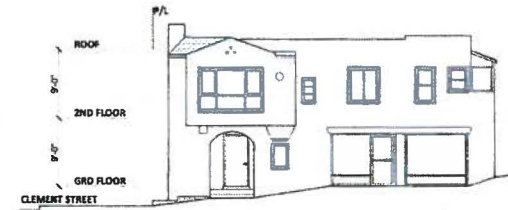


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10/24/13 YIP
2/28/14 YIP
3/12/14 YIP
5/23/14 - ADD STC REQ'MT. MML

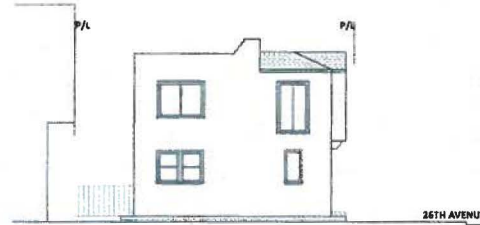
A-1.0



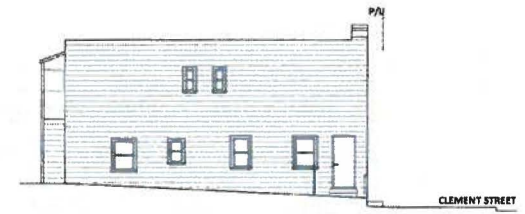
(E) NORTH ELEVATION



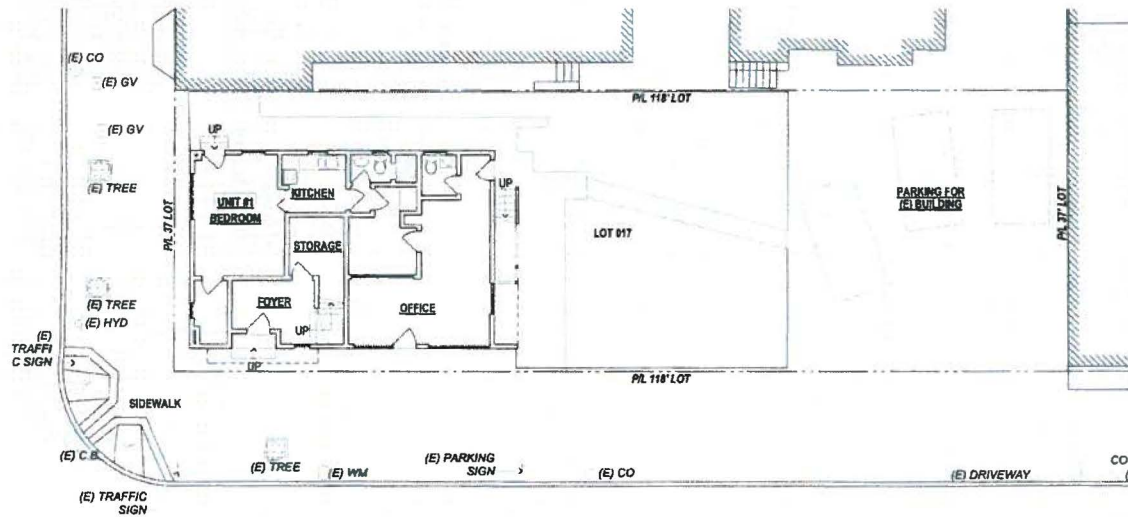
(E) EAST ELEVATION



(E) SOUTH ELEVATION



(E) WEST ELEVATION



EXISTING GROUND FLOOR PLAN



EXISTING SECOND FLOOR PLAN



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**TWO NEW MIXED-USE BUILDINGS BY SUBDIVISION
2500-02-06-08 CLEMENT STREET & 381-83-87 26TH AVENUE**

BLOCK 1407, LOT 017
SAN FRANCISCO, CA 94121

EXISTING / DEMO FLOOR PLANS & ELEVATIONS

SCALE: 1/16" = 1'-0"



9/16/13	YIP
10/24/13	YIP
2/28/14	YIP
3/12/14	YIP
5/23/14 - ADD STC REQ'MT.	MML

A-1.1

2500-02-06-08 Clement St. Lot A

Area Calculation (in square feet):

	2500 (Retail)	2502	2506	2508	Common Area	Garage	Total
4th Floor				1,601	182		1,783
3rd Floor			1,601		182		1,783
2nd Floor		1,601			182		1,783
Ground Floor	851				645	688	2,184
Total	851	1,601	1,601	1,601	1,191	688	7,533

Total Living Area for all Units = 4,803 S.F.
 Total Retail = 851 S.F.
 Total Common & Garage Area = 1,879 S.F.
 Total Gross Area = 7,533 S.F.

Open space calculation (in square feet) per §135(d):

	Required	Proposed
Common	212.8 (80x1.33x2)	340
Private	80 (2nd floor)	519
	292.8 total	859 total

Off-street Parking Requirement per §151:

	Required	Proposed
Car	3 total	4 total
	(1 per each residential unit)	(3 Res & 1 Retail)

Bicycle Parking Requirement per §155.5:

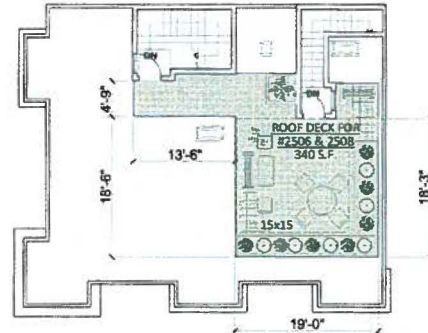
	Required	Proposed
Class 1	3 total	3 total
	(1 per each residential unit)	
Class 2	2 per each commercial	2 total

Ground Floor Glazing Area Calculation

Wall area calculation	Wall width (ft.)	Ceiling ht. (ft.)	Wall area (s.f.)
Clement St. frontage	36.83	13.5	497.21
26th Ave. frontage	30.67	13.5	414.05
Total wall area			911.25

Glazing area calculation	Glazing area (s.f.)
Clement St. frontage	302.00
26th Ave. frontage	248.00
Total glazing area	550.00

Glazing = 550.00
 Wall = 911.25 x100 = 60.4%



ROOF PLAN



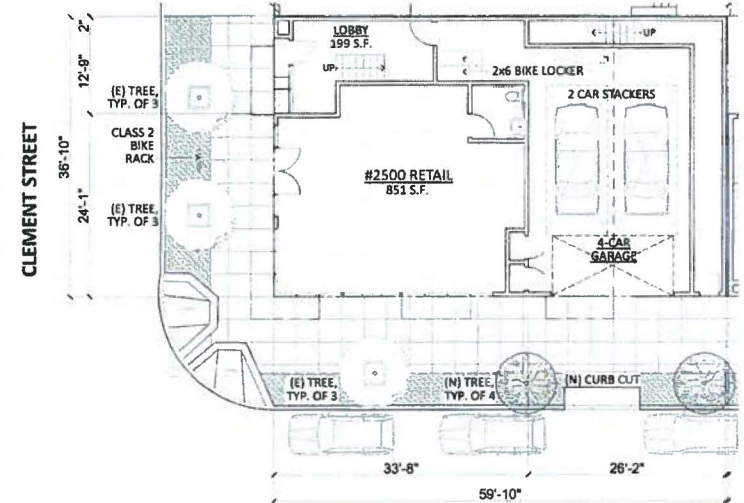
FOURTH FLOOR PLAN



THIRD FLOOR PLAN



SECOND FLOOR PLAN



GROUND FLOOR PLAN



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TWO NEW MIXED-USE BUILDINGS BY SUBDIVISION
2500-02-06-08 CLEMENT STREET & 381-83-87 26TH AVENUE

BLOCK 1407, LOT 017
 SAN FRANCISCO, CA 94121

2500-02-06-08 CLEMENT ST (LOT A) - FLOOR PLANS

SCALE: 1/16" = 1'-0"



9/16/13 YIP
 10/24/13 YIP
 2/28/14 YIP
 3/12/14 YIP
 5/23/14 - ADD STC REQ/MT. MML

A-2.0

381-83-87 26th Ave. Lot B

Area Calculation (in square feet):

	381	383	387	Common Area	Garage	Total
4th Floor			1,170	346		1,316
3rd Floor		1,190		202		1,392
2nd Floor	1,190			202		1,392
Ground Floor	341			354	872	1,567
Total	1,531	1,190	1,170	904	872	5,667

Total Living Area for all Units = 3,891 S.F.

Total Common & Garage Area = 1,776 S.F.

Total Gross Area = 5,667 S.F.

Open space calculation (in square feet) per §135(d):

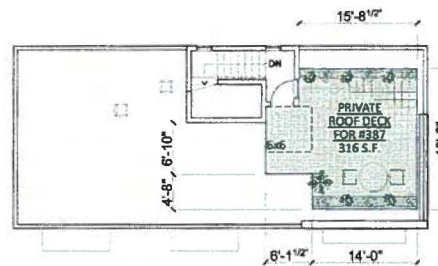
	Required	Proposed
Private	240	1044 total
(80/unit x 3)		

Off-street Parking Requirement per §151:

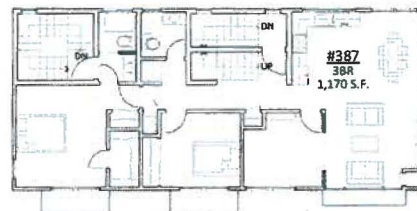
	Required	Proposed
Car	3 total	9 total
(1 per each residential unit)		

Bicycle Parking Requirement per §155.5:

	Required	Proposed
Class 1	3 total	3 total
(1 per each residential unit)		



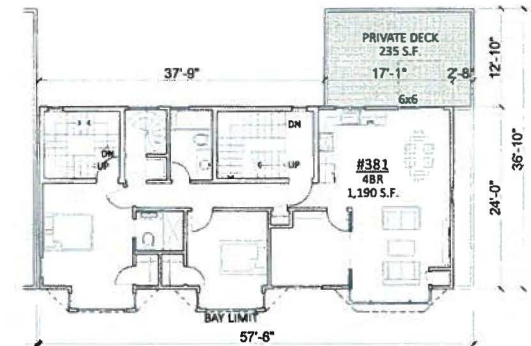
ROOF PLAN



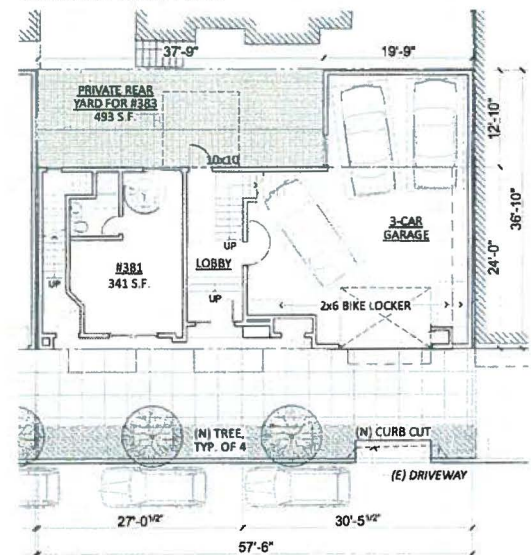
FOURTH FLOOR PLAN



THIRD FLOOR PLAN



SECOND FLOOR PLAN



GROUND FLOOR PLAN



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**TWO NEW MIXED-USE BUILDINGS BY SUBDIVISION
2500-02-06-08 CLEMENT STREET & 381-83-87 26TH AVENUE**

BLOCK 1407, LOT 017
SAN FRANCISCO, CA 94121

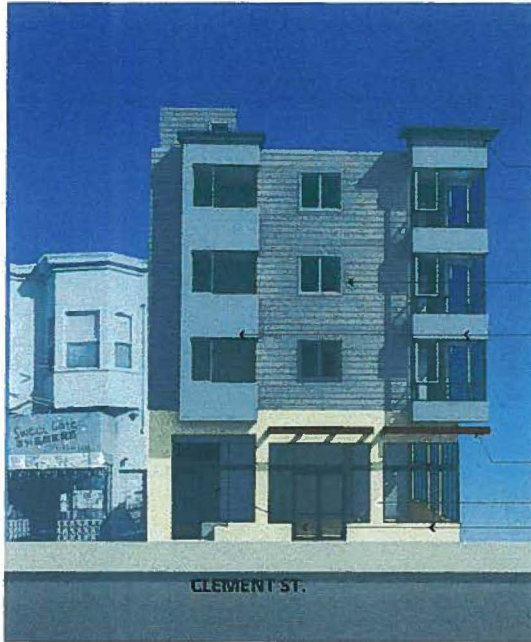
381-83-97 26TH AVENUE (LOT B) - FLOOR PLANS

SCALE: 1/16" = 1'-0"



9/16/13 YIP
10/24/13 YIP
2/28/14 YIP
3/12/14 YIP
5/23/14 - ADD STC REQ'MT. MML

A-2.1



WD. CORNICE
WOOD SIDING
3-COAT EXT. STUCCO
POWDER-COATED MET. CANOPY
SLATE TILE
ALUM. STOREFRONT SYSTEM



STAIR PENTHOUSE
GLASS GUARDRAIL
WOOD SIDING
WOOD SIDING
3-COAT EXT. STUCCO
SLATE TILE FRAME



GABRIEL NG + ARCHITECTS INC.

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**TWO NEW MIXED-USE BUILDINGS BY SUBDIVISION
2500-02-06-08 CLEMENT STREET & 381-83-87 26TH AVENUE**

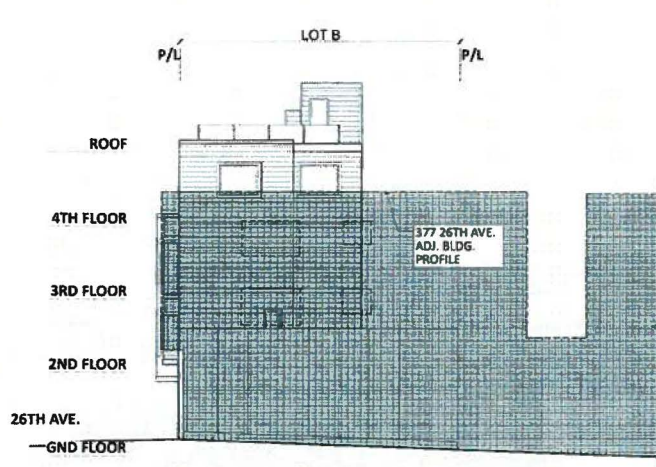
BLOCK 1407, LOT 017
SAN FRANCISCO, CA 94121

ELEVATIONS WITH FINISH MATERIALS

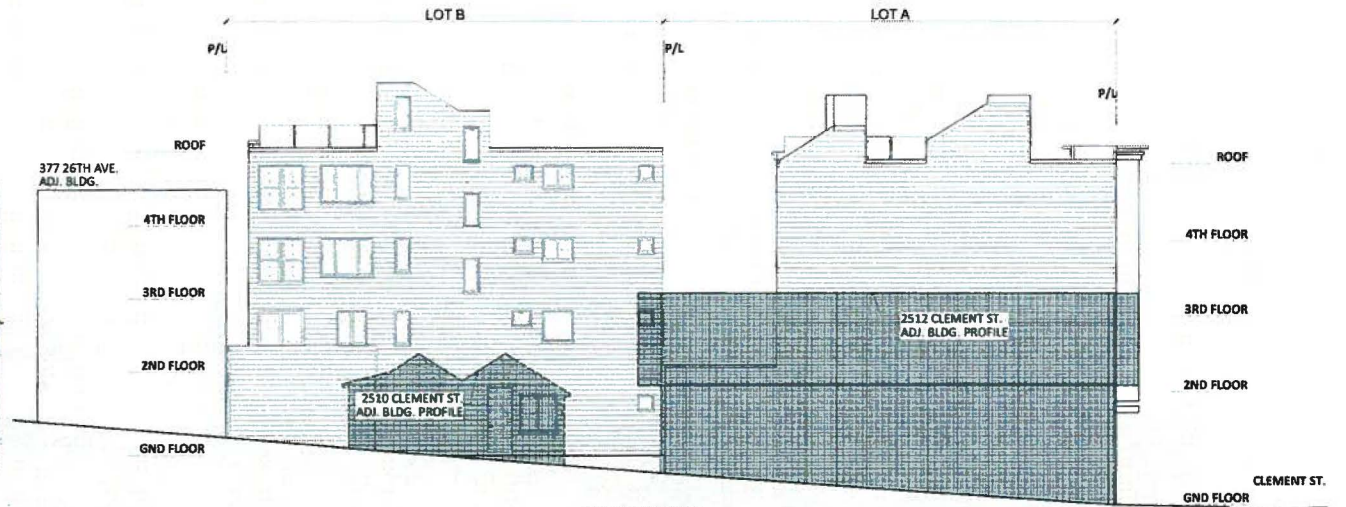
SCALE: N.T.S.

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10/24/13	YIP
2/28/14	YIP
3/12/14	YIP
5/23/14 - ADD STC REQ'MT.	MML

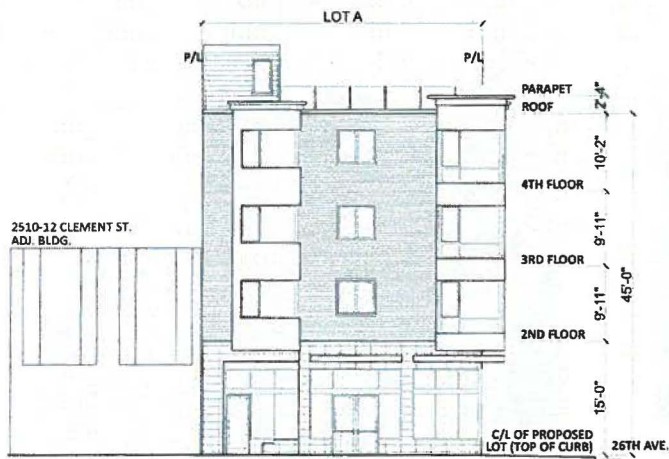
A-3.0



NORTH ELEVATION



WEST ELEVATION



SOUTH ELEVATION



EAST ELEVATION

ALL WINDOWS WITHIN LIVING AREA TO HAVE MINIMUM SOUND RATING OF STC 28, EXCEPT FOR REAR FACING WINDOWS OF BUILDING B, AND SUPPLEMENTAL MECHANICAL VENTILATION FOR EACH UNIT, PER NOISE EVALUATION REPORT BY WALSH, HARRIS & ASSOCIATES, INC. DATED 5/28/14



GABRIEL NG + ARCHITECTS INC.
1360 9TH AVENUE, SUITE 210
SAN FRANCISCO CA 94122
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TWO NEW MIXED-USE BUILDINGS BY SUBDIVISION
2500-02-06-08 CLEMENT STREET & 381-83-87 26TH AVENUE

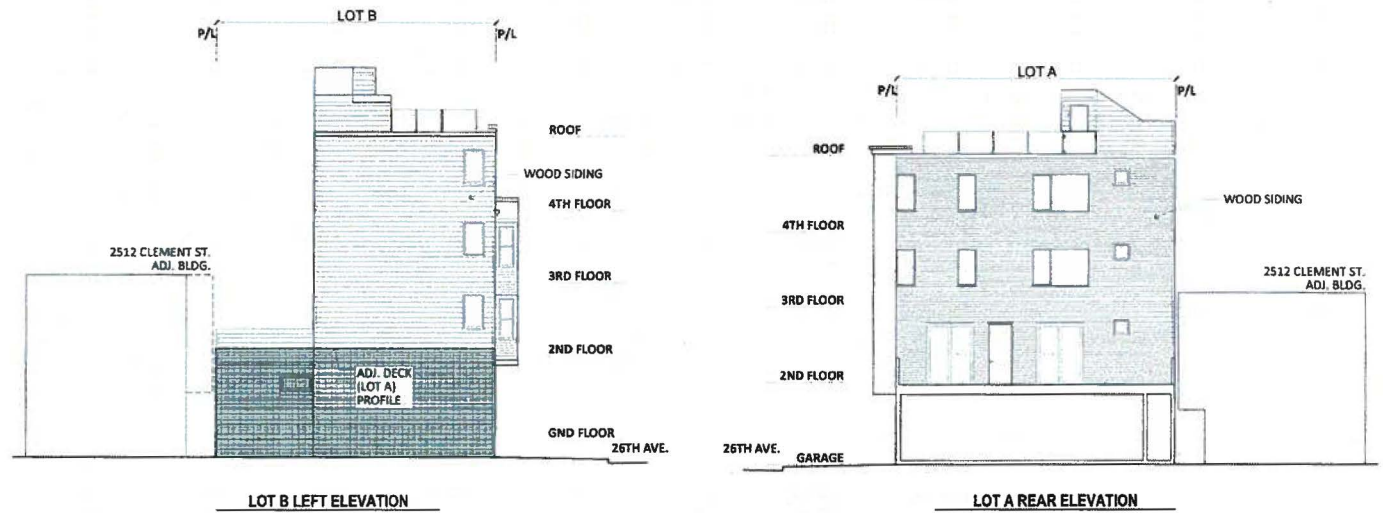
BLOCK 1407, LOT 017
SAN FRANCISCO, CA 94121

ELEVATIONS

SCALE: 1/16" = 1'-0"

9/16/13	YIP
10/24/13	YIP
2/28/14	YIP
3/12/14	YIP
5/23/14 - ADD STC REQ'MT.	MML

A-3.1



ALL WINDOWS WITHIN LIVING AREA TO HAVE MINIMUM SOUND RATING OF
STC 28, EXCEPT FOR REAR FACING WINDOWS OF BUILDING B, AND
SUPPLEMENTAL MECHANICAL VENTILATION FOR EACH UNIT, PER NOISE
EVALUATION REPORT BY WALSH, MORRIS & ASSOCIATES, INC. DATED 5/20/14



GABRIEL NG +
ARCHITECTS INC.
1360 9TH AVENUE, SUITE 210
SAN FRANCISCO CA 94122
415-682-8060 eFax 510-281-1359

TWO NEW MIXED-USE BUILDINGS BY SUBDIVISION
2500-02-06-08 CLEMENT STREET & 381-83-87 26TH AVENUE

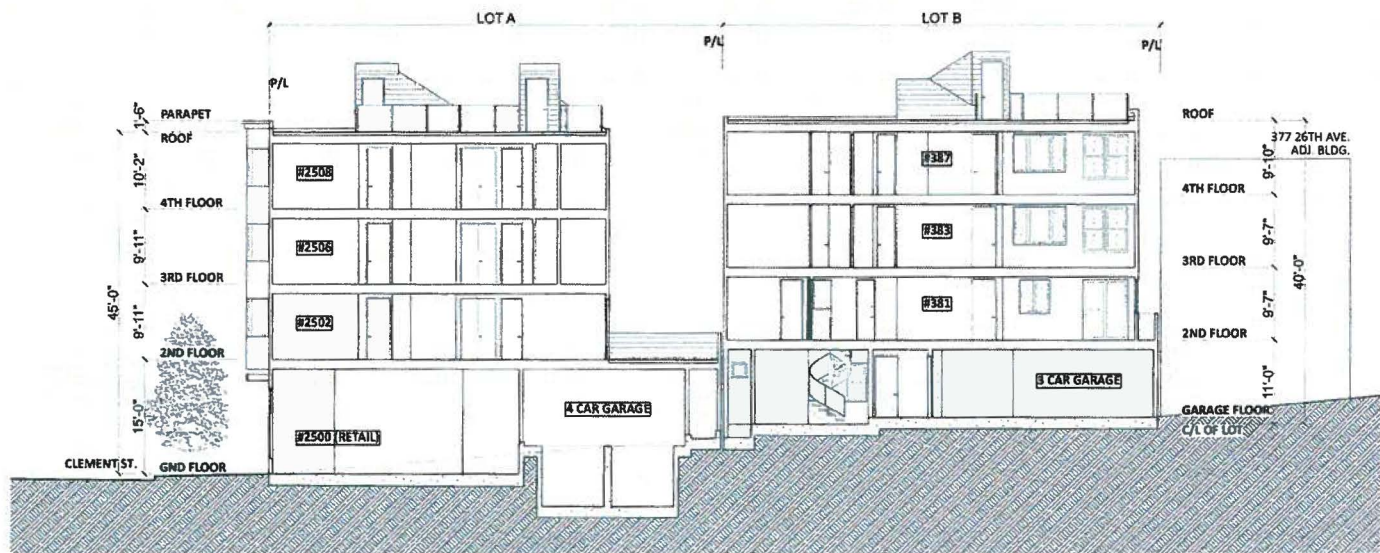
BLOCK 1407, LOT 017
SAN FRANCISCO, CA 94121

SIDE ELEVATIONS

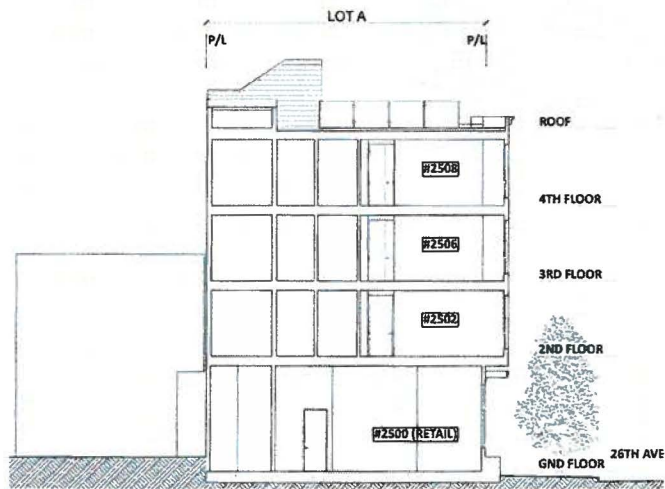
SCALE: 1/16" = 1'-0"

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10/24/13	YIP
2/28/14	YIP
3/12/14	YIP
5/23/14 - ADD STC REQ'MT.	MML

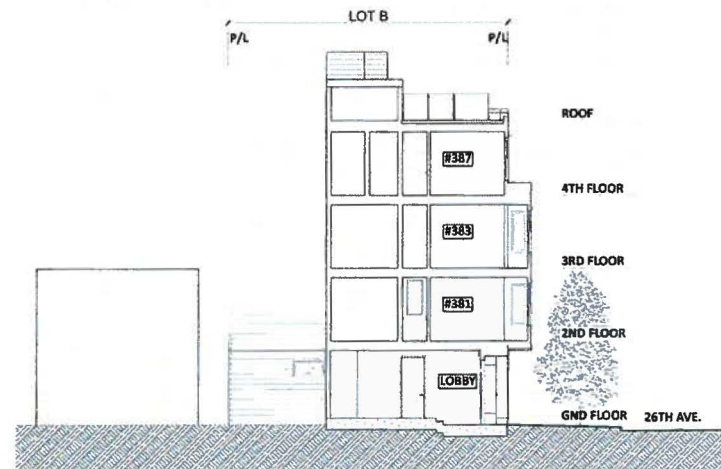
A-3.2



LONGITUDINAL SECTION



BUILDING A - CROSS SECTION



BUILDING B CROSS SECTION



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**TWO NEW MIXED-USE BUILDINGS BY SUBDIVISION
2500-02-06-08 CLEMENT STREET & 381-83-87 26TH AVENUE**

BLOCK 1407, LOT 017
SAN FRANCISCO, CA 94121

SECTIONS

SCALE: 1/16" = 1'-0"

9/16/13	YIP
10/24/13	YIP
2/28/14	YIP
3/12/14	YIP
5/23/14 - ADD STC REQ'MT.	MML

A-3.3

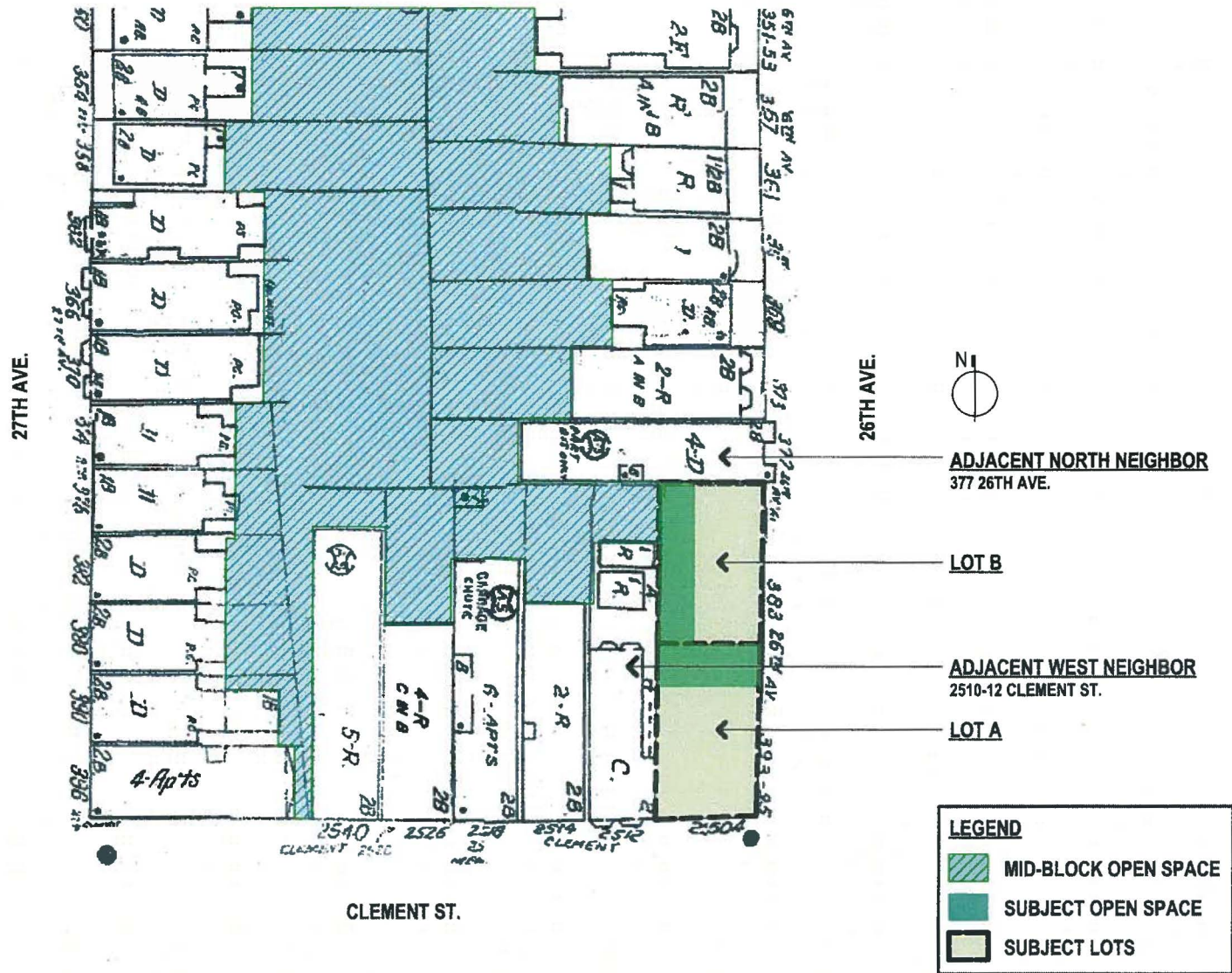
EXHIBIT 2



GABRIEL NG + ARCHITECTS INC.
 1360 9TH AVENUE, SUITE 210
 SAN FRANCISCO CA 94122
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REAR YARD PATTERN OF CORNER LOTS IN OUTER CLEMENT ST. NCD
TWO NEW MIXED-USE BUILDINGS BY SUBDIVISION
2500-02-06-08 CLEMENT STREET & 381-83-87 26TH AVENUE, BLOCK 1407 / LOT 017, SAN FRANCISCO CA 94121

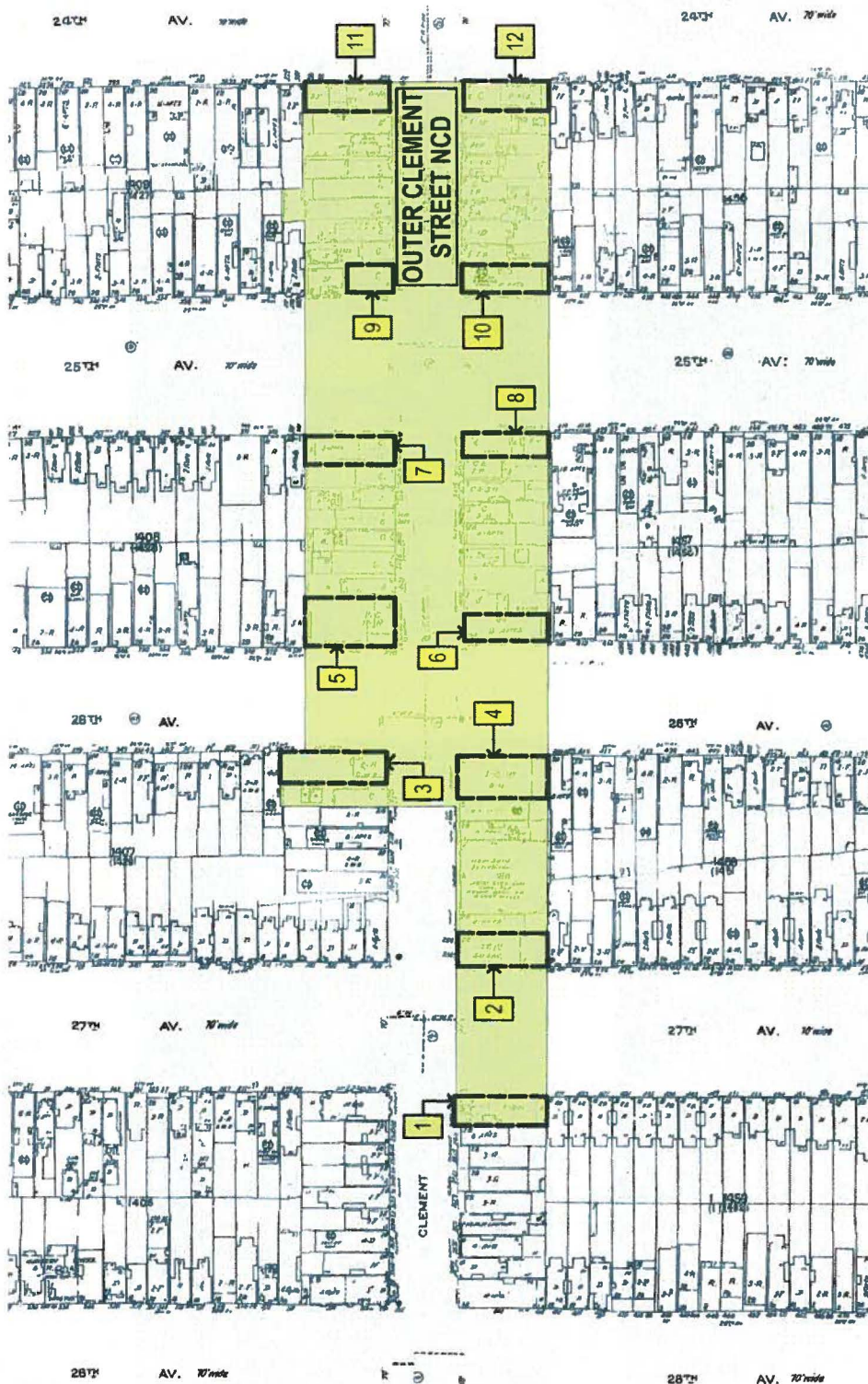
EXHIBIT #1
9/16/13



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EXHIBIT 3



CORNER BUILDINGS NEARBY IN OUTER CLEMENT STREET NCD
 395 26TH AVENUE, SAN FRANCISCO, CA 94121

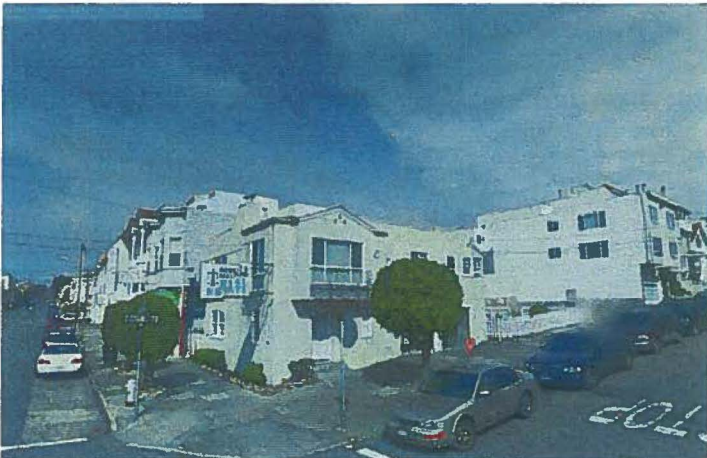




1. 405 27TH AVE



2. 400 27TH AVE



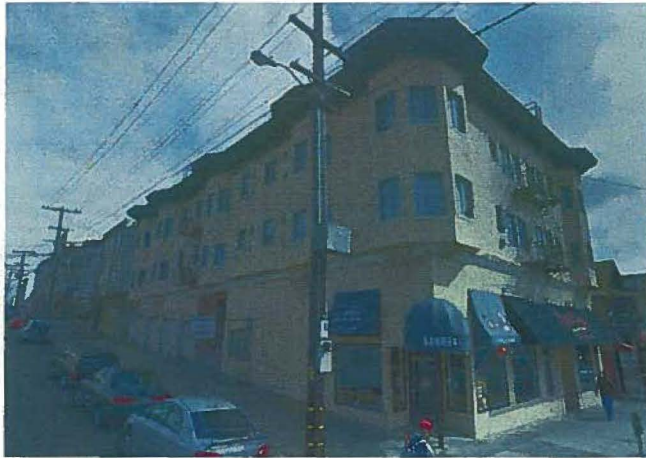
3. 395 26TH AVE



4. 401 26TH AVE



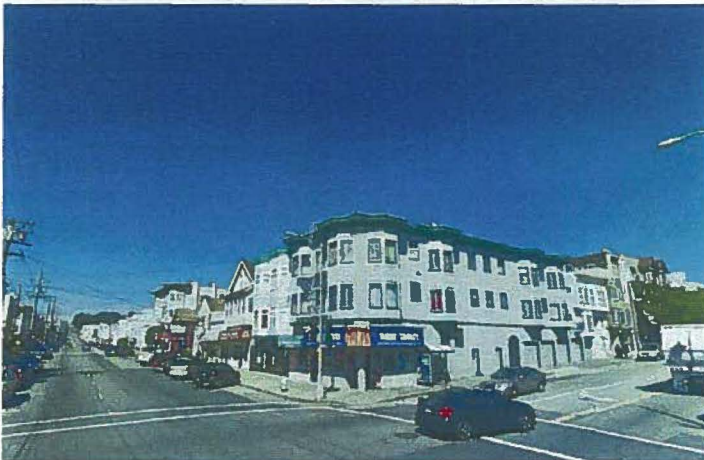
CORNER BUILDINGS NEARBY IN OUTER CLEMENT STREET NCD
 395 26TH AVENUE, SAN FRANCISCO, CA 94121



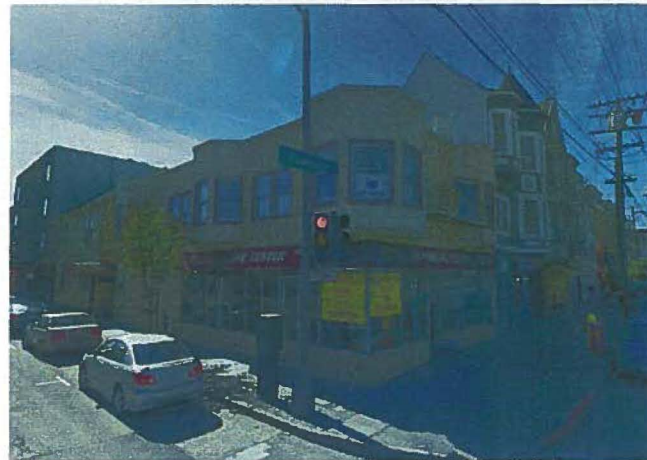
5. 390 26TH AVE



6. 400 26TH AVE

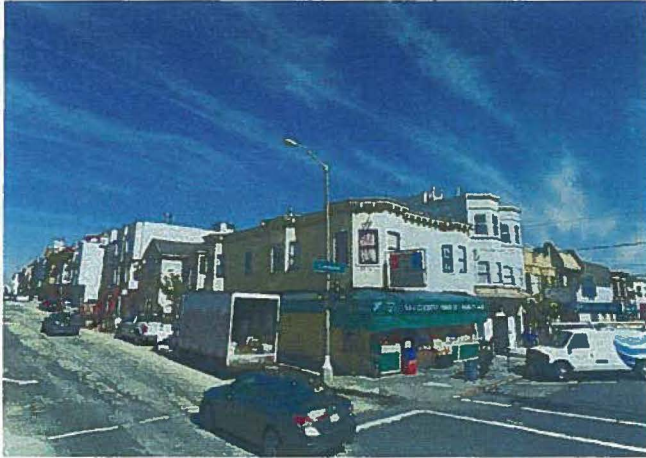


7. 395 25TH AVE

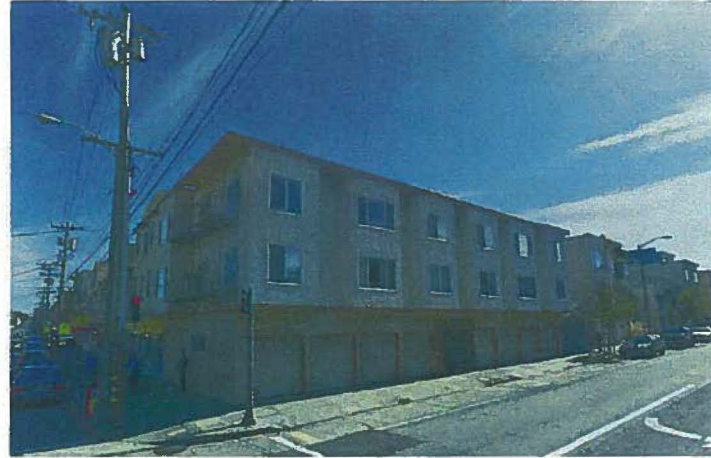


8. 2401 CLEMENT ST





9. 2350 CLEMENT ST



10. 400 25TH AVE



11. 2300 CLEMENT ST



12. 2301 CLEMENT ST



CORNER BUILDINGS NEARBY IN OUTER CLEMENT STREET NCD
395 26TH AVENUE, SAN FRANCISCO, CA 94121

8-20-14

EXHIBIT 4

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EXHIBIT 4

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August 25, 2014

Commissioner Cindy Wu
President, Planning Commission
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Re: 395 – 26th Avenue, San Francisco
Conditional Use Application (Case No. 2013.0205CEKV)

Dear Commissioner Wu:

This firm is counsel for Mary Tom, the Project applicant ("Applicant"). Here, the Applicant proposes to demolish a vacant two-story building (small ground floor commercial space and two residential units) at 395-26th Avenue in San Francisco (Block 1407, Lot 017), (the "Site"), subdivide the existing lot into two ("Lot A" and "Lot B"), and construct two four-story buildings (the "Project"). For the reasons discussed below, the Conditional Use application ("CU Application") meets the criteria of Section 303(c) and Section 317 of the Planning Code. Therefore, the Planning Commission should approve the CU Application.

PROJECT HISTORY

The Applicant submitted the CU Application for the Project on February 26, 2013. The Project will require a Conditional Use approval for demolition of the existing second floor residential unit and will require variances from the rear yard requirements and ground floor active use in a neighborhood commercial district.

On March 13, 2013, the Applicant submitted an environmental review application and the Planning Department issued a Class 3 categorical exemption for the Project on June 18, 2013. The 26th Avenue building originally included a 263 sq. ft. retail space. The Planning Department suggested that this small retail space be eliminated and converted to part of the residential use and that the Applicant lower the height of the building on Lot B to 40'.

The Conditional Use and Variance hearings were originally scheduled for January 16, 2014 and continued to February 20, 2014 at the request of Eric Mar. The February 20, 2014 hearing was then continued at the request of the Applicant and the Planning Department because the Class 3 categorical exemption did not include a discussion of subdivision of the existing lot. In advance of this hearing, the Planning Department re-issued a Certificate of Class 32 categorical exemption on, a copy of which is attached to the Planning Department's updated case report before this Commission.

PROJECT SITE

The 4,366 sq. ft. Project Site is located at the northwest corner of Clement Street and 26th Avenue in the Outer Clement Neighborhood Commercial District and in a 40-S height and bulk District. An additional 5' above the height limit is allowed for ground floor retail space.

The Site is improved with a 2,105 sq. ft. two story building with an office and two residential units originally constructed in 1945. The ground floor contains a one-bedroom residential unit and an office. The second floor contains a two-bedroom unit. The building is a lawful non-complying structure in that the off-street parking is located in a paved open parking area located in the required rear yard. A photomontage of the proposed building, block face photographs, existing and proposed plans are attached to the Case Report; see Sheet A-1.1 of Exhibit 1 for floor plans and elevations of the existing building.

The Planning Department has reviewed the Historic Resource Evaluation (HRE) Report prepared by Tim Kelley Consulting and concurs with the conclusion that the building is not a historic resource.

Although this block is zoned neighborhood commercial, the only ground floor commercial uses are in the Project Site building and in the two-story building adjacent to the Site on Clement Street. The Clement Street block face is developed with predominately three-story buildings, ranging from two-units to multi-unit apartment buildings. The 26th Avenue block face is developed with two to four-story buildings, with three-story buildings being predominate. The buildings range from single family homes to apartments. The opposite Clement Street block face is developed with two and three-story buildings with more ground floor retail use. The opposite 26th Avenue block face is developed with two to four-story buildings that range from single family homes to apartment buildings. See Sheet A-0.3 of the Plans attached to the Case Report.

THE PROJECT

The Project is:

1. Demolition of the existing building;

2. Subdivision of the existing lot into two lots with a 60'x37' (2,220 sq. ft.) corner lot at Clement Street and 26th Ave ("Lot A") and a 58'x37' (2,146 sq. ft.) lot on 26th Avenue ("Lot B");
3. Construction of a 45' high, 7,533 gross square feet (gsf) mixed use building on Lot A with ground floor retail and 4 off-street parking space in stackers; and
4. Construction of a 40' high, 5,667 gsf three-unit residential building with three off-street parking spaces on Lot B.

The plans before this Commission have been revised from those prepared for the originally-scheduled January 16, 2014 hearing as follows:

1. The bay windows of both the Lot A and Lot B buildings facing the rear yards have been eliminated;
2. The ground floor room of the Lot B building has been incorporated into the second floor unit;
3. Each unit in the Lot B building has private usable open space;
4. One of the stair penthouses was eliminated from the Lot B building; and
5. One additional street tree is proposed for 26th Avenue, for a total of seven street trees for the Project.

The Lot A building (2500-2502-2506-2008 Clement Street Building)

The Lot A building is a mixed use building with ground floor retail. The 2,184 sq. ft. ground floor of the Lot A building will have a 851 sq. ft., 14' floor to ceiling height retail space, a garage with four off-street parking spaces in car stackers, three secure class 1 bicycle parking spaces, and an entrance lobby to the 3 residential units above. The retail space will have frontage on both Clement Street and 26th Avenue with a large glazed store front window system to provide pedestrian interest. The upper floors will have bay windows. Access to garage is from 26th Avenue with a 10' curb cut and 16' wide garage door. Two Class 2 bicycle parking spaces will be located on the Clement Street sidewalk in front of the retail space.

The 15' deep rear yard will be at the first residential level, which will require a variance. See Sheet A-2.0 and A.2.1 of the plans attached to the Case Report.

The second floor will be a 1,783 sq. ft. three bedroom flat with an approximately 519 sq. ft. private open space. The third and fourth floors will each contain a 1,783 sq. ft. three-bedroom

flat and will share the 340 sq. ft. roof deck as their common open space. See Sheet A-2.0. The exterior material will be wood siding and stucco on the bay on the upper floors. The ground floor façade will be slate tile and glazing to form a base for the building. See Sheet A-3.0 and A-3.1 for the proposed elevations.

The Lot B Building (381-382-397 26th Avenue Building)

The Lot B building is a residential building with three dwelling units – a townhouse unit and two flats. The ground floor will contain the entrance lobby, three class 1 secure bicycle lockers, a garage with three independently accessible parking spaces, and a bedroom that is part of the 1,190 sq. ft. three-bedroom second-floor townhouse unit. Access to the garage is off 26th Avenue.

The approximate 235 sq. ft. deck will be the private open space for the townhouse unit. The 1,190 sq. ft. third floor unit will have private access to the approximately 493 sq. ft. at-grade rear yard, and the 1,170 sq. ft. fourth floor unit will have three bedrooms with private access to the 316 sq. ft. roof deck as its open space. See Sheet A-2.1 of plans attached to Case Report.

The southern two-thirds of the building is divided into a base, a middle and a top. The base is set back 1'-6" from the front property line and the exterior material will be wood with the recessed base framed in slate tile. The middle portion of the building is stucco with two bay windows. The top of the building (the fourth floor) will have punch windows and the stucco exterior will be a complementing color. The northern portion of the building will have a vertical element created by a two-story bay window, the garage door and wood siding on all floors. See Sheets A-3.0 and A-3.1 of Plans attached to Case Report for elevation.

THE PROJECT MEETS THE CRITERIA OF §303(c)

The Project meets the criteria of Planning Code Section 303(c) in that:

1. ***The proposed use or feature, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary and desirable for, and compatible with, the neighborhood or the community.***

The buildings in the vicinity of 26th Avenue and Clement Street range from two units to 18 units. The Project, with a total of six units, is similar to those on the block. The proposed three-bedroom units are moderately sized, similar in size to the flats in the area. See Sheet A-0.3 of the Plans attached to Case Report. The Project will add four new residential units to the City's housing stock. The two demolished units will be replaced with three-bedroom units which are more suitable for families with children. Therefore, the size and intensity of the Project will be compatible with and is necessary and desirable for the neighborhood and the community.

2. ***The proposed uses or features will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity, or injurious to property, improvements or potential developments in the vicinity.***

A. **The nature of the proposed Site, including its size and shape, and the proposed size, shape and arrangement of structures:**

The existing lot is 118' deep. The allowable building depth would be 88.5' if the lot is not divided into two. The adjacent lot on Clement Street is improved with two buildings, with the main structure (2512 Clement) at the front of the lot approximately 60' long and a two-story cottage (2510 Clement) located partly in the required rear yard. See Sheet A-1.0 of the Plans attached to the Case Report. By dividing the lot into two, the Lot A building will be shorter than the neighboring 2510-2512 Clement building and the rear cottage will face the at-grade rear yard of the Lot B building. The three bedroom units will range between 1,170 sq. ft. to 1,601 sq. ft., which will be more affordable than if the existing lot is not subdivided and new units in excess of 2,400 sq. ft. each are developed.

The Lot B building has been set back 3' from the north property line so that the non-required property line windows of the 377 - 26th Avenue Building do not have to be closed. See Exhibit 1 for a sketch of the 26th Avenue Building plans from the Department of Building Inspection microfilms showing that these property line windows are "non-required". Therefore, the proposed size, shape and arrangement of the proposed buildings will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity, or be injurious to property or improvements.

B. **The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading.**

The traffic patterns for persons and vehicles around the Site will not be altered. Each of the dwelling units and the retail space will have an off-street parking space. Currently, there are five on-street parking spaces on 26th Avenue and one on Clement in front of the Site. The Project will not change the number of on-street parking spaces in front of the Site. The Environmental Planning section of the Planning Department has determined that the Project will not have an adverse effect on traffic, off-street parking and loading.

- C. The safeguards afforded to prevent noxious or offensive emissions, such as noise, glare, dust and odor.

A Noise Report prepared by Walsh Norris and Associates was requested by and submitted to Environmental Planning. All of the recommendations have been incorporated as part of the Project and the Project will therefore meet all of the City's Noise Ordinance governing noise levels after the buildings are completed.

Construction of the Project will temporarily increase noise and vibration levels in the vicinity. Construction noise and vibration will fluctuate depending on the construction phase, equipment type, duration of use, and distance between the source and the listener. However, construction noise and vibration will be intermittent and limited to the construction period of the Project. Noise from construction activities is regulated by the San Francisco Noise Ordinance.

- D. Treatment given, as appropriate to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs.

The three existing street trees (two on Clement Street and one on 26th Avenue) will be retained and four new street trees will be planted on 26th Avenue. All exterior lights will be down lighting to prevent glare to nearby neighbors. The garbage, recycle and compost bins will be located in the garage. Signs will comply with the requirements of Article 6 of the Planning Code.

3. *That such use or feature as proposed will comply with the applicable provisions of this Code and will not adversely affect the General Plan.*

Plans and Policies

The Site is zoned for mixed use development with ground floor retail and residential use on the upper floors. With the rear yard and ground floor active use variances granted, the Project will comply with all applicable Planning Code provisions applicable to the Site. See Sheet A-1.0.

The Project is consistent with the following objectives and policies of the General Plan:

A. HOUSING ELEMENT

Objective 1: Identify and make available for development adequate sites to meet the City's housing needs, especially permanently affordable housing.

Policy 1.8 - Promote mixed use development, and include housing, particularly permanently affordable housing, in new commercial, institutional or other single use development projects.

Policy 1.10 - Support new housing projects, especially affordable housing, where households can easily rely on public transportation, walking and bicycling for the majority of daily trips.

The Site is under-utilized. The Case Report points out that while the existing units are not unsound housing, the units' size, design and construction deficiencies are obvious. The Project replaces 2 housing units with 6 housing units in an area easily accessible to public transit.

Objective 2: Retain existing housing units, and promote safety and maintenance standards, without jeopardizing affordability.

Policy 2.1: Discourage the demolition of sound existing housing unless the demolition results in a net increase in affordable housing.

The residential units proposed to be demolished are not part of the City's housing stock because they are owner-occupied. The Project will result in an increase of four additional units and all the units are three bedroom units suitable for families with children with usable open space.

Objective 12: Balance housing growth with adequate infrastructure that serves the City's growing population.

Policy 12.1 - Encourage new housing that relies on transit use and environmentally sustainable patterns of movement.

Policy 12.2 - Consider the proximity of quality of life elements, such as open space, child care, and neighborhood services, when developing new housing units

Policy 12.3 - Ensure new housing is sustainably supported by the City's public infrastructure systems.

The Project Site is near public transit, neighborhood services and two of the major open spaces in the City (Golden Gate Park and the Presidio).

Objective 13: Prioritize sustainable development in planning for and constructing new housing.

Policy 13.3 - Promote sustainable land use patterns that integrate housing with transportation in order to increase transit, pedestrian, and bicycle mode share.

The Project is located near multiple transit lines and has easy access to all types of neighborhood-serving businesses.

B. COMMERCE AND INDUSTRY ELEMENT

Objective 1: Manage economic growth and change to ensure enhancement of the total City Living and working environment.

Policy 1.2 -Assure that all commercial and industrial uses meet minimum, reasonable performance standards.

Policy 1.3 – Locate commercial and industrial activities according to a generalized commercial and industrial land use plan.

The Project Site is located in a neighborhood commercial district. The current commercial space on the Project Site is 410 sq. ft. with 8'-0" high ceiling. The new retail space will have 897 sq. ft. and 14' floor to ceiling height that the City deems desirable and necessary by allowing an additional 5' height limit to achieve quality retail space in the City's commercial districts. Therefore the Project is consistent with and promotes Objective 1, policies 1.2 and 1.3 of this element.

Objective 3: Provide expanded employment opportunities for City residents, particularly the unemployed and economically disadvantaged.

Policy 3.1 – Promote the attraction, retention and expansion of commercial and industrial firms which provide employment improvement opportunities for unskilled and semi-skilled workers.

The Commerce and Industry element recognizes that the "one employment sector that often serves to be a source of employment opportunity to minorities and low-skilled workers is the small business sector that offers initial employment opportunities for the many low-skilled individuals. These individuals are often from within the community."

When compared to the existing building, where the small office space faces 26th Avenue and does not contribute to the continuing retail frontages on Clement Street, the Project includes a quality retail space at the corner of Clement Street and 26th Avenue that will strengthen and anchor this section of the Outer Clement Street Neighborhood Commercial District.

C. URBAN DESIGN ELEMENT

Objective 2 – Conservation of resources which provide a sense of nature, continuity with the past, and freedom from overcrowding.

Policy 2.6 - Respect the character of older development nearby in the design of new buildings.

While the design of the new buildings are modern, the design complements the existing character of the area by incorporating bay windows and exterior materials common in the area.

Objective 4 – Improvement of the neighborhood environment to increase personal safety, comfort, pride and opportunity.

Policy 4.12 - Install, promote and maintain landscaping in public and private areas.

Four new street trees will be planted on 26th Avenue, where only one currently exists.

D. TRANSPORTATION ELEMENT

Objective 11 – Establish public transit as the primary mode of transportation in San Francisco and as a means through which to guide future development and improve regional mobility and air quality.

Policy 11.3 - Encourage development that efficiently coordinates land use with transit service, requiring that developers address transit concerns as well as mitigate traffic problems.

Objective 14 – Develop and implement a plan for operational changes and land use policies that will maintain mobility and safety despite a rise in travel demand that could otherwise result in system capacity deficiencies.

Policy 14.7 - Encourage the use of transit and other alternatives modes of travel to the private automobile through the positioning of building entrances and the convenient location of support facilities that prioritizes access from these modes.

Policy 14.8 - Implement land use controls that will support a sustainable mode split, and encourage development that limits the intensification of automobile use.

As will be fully discussed below, the Site is conveniently located near public transit with connection directly or within easy walking or biking distance to large employers such as Kaiser Medical Center, UCSF Mount Zion Campus, and other major employment centers in the City. The MUNI bus lines (#1, #1AX, #29, #38, #38AX, #38BX and #38L) are within two blocks of the Site and provide easy transfer to public transit serving other parts of the City and to the East Bay and South Bay.

The Project will provide Class 1 off-street secure bicycle parking spaces to encourage the combined use of transit and bicycle to work, for chores and recreation.

Objective 24 – Improve the ambience of the pedestrian environment.

Policy 24.2 - Maintain and expand the planting of street trees and the infrastructure to support them.

Policy 24.4 - Preserve pedestrian-oriented building frontages.

Four new street trees will be planted to meet Planning Code Requirements which will enhance the pedestrian environment and the public realm.

Objective 28 – Provide secure and convenient parking facilities for bicycles.

Policy 28.1 - Provide secure bicycle parking in new governmental, commercial, and residential developments.

Policy 28.3 - Provide parking facilities which are safe, secure, and convenient.

One secure Class 1 bicycle parking space will be provided for each of the units in the garages of the two new buildings. Two secure Class 2 bicycle parking spaces will be provided on Clement Street for visitors or patrons of the retail business .

E. RECREATION AND OPEN SPACE ELEMENT

Objective 4: Provide opportunities for recreation and the enjoyment of open space in every San Francisco neighborhood.

Policy 4.5 - Require private usable outdoor open space in new residential development.

The Project has more than the Planning Code required usable open space on the Site for the future occupants; four of the units have private usable open spaces and two of the

units share a roof deck. The Site is within five blocks of Golden Gate Park and three blocks of the Presidio, two of the major open spaces in the City.

F. AIR QUALITY ELEMENT

Objective 2 – Reduce mobile sources of air pollution through implementation of the transportation element of the general plan.

Applicable objectives and policies are listed under the Transportation Element and the City's Transit First Policy discussed above.

Objective 3 – Decrease the air quality impacts of development by coordination of land use and transportation decisions.

Policy 3.9 Encourage and require planting of trees in conjunction with new development to enhance pedestrian environment and select species of trees that optimize achievement of air quality goals.

Four new street trees will be planted where one exists today along the 26th Avenue frontage.

Objective 5 – Minimize particulate matter emissions from road and construction sites.

Policy 5.1 - Continue policies to minimize particulate matter emissions during road and building construction and demolition.

Policy 5.2 Encourage the use of building and other construction materials and methods which generate minimum amounts of particulate matter during construction as well as demolition.

The Applicant and contractor must comply with the City's Building Code provisions governing dust control, including watering of the Site with non-potable water.

G. COMMUNITY SAFETY ELEMENT

Objective 1 – Reduce structural and non-structural hazards to life safety and minimize property damage resulting from future disasters.

Policy 1.3 - Assure that new construction meets current structural and life safety standards.

The new buildings will be constructed to meet all current Building Code seismic and fire safety standards; whereas the existing building does not meet those standards.

Policy 1.6 - Consider site soils conditions when reviewing projects in areas subject to liquefaction or slope instability.

A Geotechnical Report will be submitted to the Department of Building Inspection for review and approval as part of the building permit process to insure that the buildings' foundations will be designed appropriately.

Policy 1.11 - Continue to promote green stormwater management techniques.

The Project will comply with all City requirements related to stormwater management, the San Francisco Stormwater Management Ordinance, the SFPUC's Stormwater Design Guidelines and the San Francisco Green Building Code. The Project will also comply with the San Francisco Green Building Requirements related to water use reduction by cutting potable water use by 20%.

H. ENVIRONMENTAL PROTECTION ELEMENT

Objective 1 – achieve a proper balance among the conservation, utilization, and development of San Francisco's natural resources.

Policy 1.4 - Assure that all new development meets strict environmental quality standards and recognizes human needs.

The Project will comply with the San Francisco Green Building Requirements related to energy efficiency. The Applicant will provide documentation demonstrating that the Project achieves a 15% compliance margin over the 2008 Title 24 Part 6 Energy Standards. The Project will comply with the San Francisco Green Building requirements related to the commissioning of building energy and water systems. Design and construction commissioning will be conducted to verify that energy- and water-using components meet the owner's or owner representative's project requirements.

Objective 4 – Achieve a proper balance among the conservation, utilization, and development of San Francisco's natural resources.

Policy 4.1 - Support and comply with objectives, policies, and air quality standards of the Bay Area Air Quality Management District.

Prior to issuance of any demolition permit, the Bay Area Air Quality Management District must inform the Department of Building Inspection that all asbestos containing building materials have been removed and disposed of in accordance of applicable state law and regulations.

Objective 5 – With respect to applications filed pursuant to Article 7 of this Code, that such use or feature will provide development that is in conformity with the stated purpose of the applicable Neighborhood Commercial District, as set forth I zoning control category .1 of Section 701 through 729 of this Code.

The Site is at the end of the Outer Clement Street NCD, which is located on Clement Street between 19th Avenue and 27th Avenue, with small-scale convenience neighborhood serving businesses, as well as many restaurants that serve both the neighborhood and Citywide clientele during the evening hours. The Outer Clement Street NCD is developed with many mixed-use buildings with more fully residential buildings toward 27th Avenue.

Section 717.1 describes the Outer Clement Street NCD District controls as those “designed to promote development that is in keeping with the district’s existing small-scale, mixed-use character. The building standards monitor large-scale development and protect rear yards at all levels. Future commercial growth is directed to the ground story in order to promote more continuous and active retail frontage” and the controls are directed as preventing over-concentration of entertainment and financial services uses and restricts late-night activity, hotels, automobile uses, and drive-up facilities.”

The Project is predominately residential in nature and the 897 sq. ft. ground floor retail space will be more suitable for neighborhood serving businesses than the current 410 sq. ft. ground floor office space. Therefore, the Project is consistent with the purposes and objective of the Outer Clement Street NCD.

THE PROJECT MEETS THE ADDITIONAL CRITERIA OF §317:

The Applicant concurs with the findings in the Case Report and Draft Motion before this Commission. The existing residential units on the Site are not rental or affordable units, but occupied by the owners and their family when they are in San Francisco. The Project will increase the number of residential units at the Site and the new three-bedroom units will be family sized units.

Commissioner Cindy Wu
President, Planning Commission
August 25, 2014
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CONCLUSION

The Project will provide six three-bedroom units that are both necessary and desirable in the context of the City's housing stock. The Project design is contextually appropriate. While it is taller than the adjacent building, the taller height is appropriate for a corner lot. This mixed use Project, with ground floor commercial and residential units above, is consistent with the purpose and objective of the Outer Clement Street NCD. The size of the ground floor commercial at 897 sq. ft. will provide a transition from what is essentially a residential block between 26th and 27th Avenue to the more intense retail uses east of the Site along Clement Street. Therefore, it is respectfully submitted that this Commission should grant the Conditional Use Application.

Respectfully Submitted,


Alice Suet Yee Barkley

ASYB

cc: Commissioner Rodney Fong
Commissioner Michael J. Antonini
Commissioner Christine D. Johnson
Commissioner Rich Hillis
Commissioner Kathrin Moore
Commissioner Dennis Richards
Jonas P. Ionin, Commission Secretary
Scott Sanchez, Zoning Administrator
Christine Lamorena (via e-mail)
Mary Tom (via e-mail)
Gabriel Ng (via e-mail)
Jeremy Schaub (via e-mail)

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