HERZIG & BERLESE

ATTORNEYS AT LAW

IVY COURT, SUITE 5, 414 GOUGH STREET, SAN FRANCISCO, CA 94102 (415) 861-8800 FAX (415) 861-0259

BARBARA E. HERZIG MARGARET J. BERLESE (Of Counsel) CANDICE MACARIO (Of Counsel)

November 6, 2016

Board of Supervisors City and County of San Francisco 1 Dr. Carlton B. Goodlett Plaza, #244 San Francisco, CA, 94102

Re: Board of Supervisors File No. 161174
Tentative Map Approval Appeal - 162 -164 Alhambra Street

Dear Supervisors:

This letter is in response to the appeal of a tentative map approval filed by John (Jeb) Barrett and Kathleen Eckhart, who reside 162 Alhambra Street, and Mauricio Franco, a neighbor on Mallorca Way. Mr. Barrett has resided at 162 Alhambra Street since 2011. Ms. Eckhart moved in after Mr. Barrett signed his lease and has not been recognized as a tenant by the property owner. The appeal by Mr. Barrett is fundamentally a landlord-tenant matter that belongs at the San Francisco Rent Board, and not before the Board of Supervisors. The tentative map approval will in no way affect Mr. Barrett's tenancy. The appeal does not give any reasons why Mr. Franco is affected by the approval.

162 - 164 Alhambra Street is an existing two-unit condominium project. Last year Charles Cross, the owner of the property, applied for and obtained a building permit to construct a third unit at the property, then applied for and received tentative map approval to make this new unit into a condominium. The basis of Mr. Barrett's objection to the tentative map approval is that the property is being converted to condominiums in violation of the law and that he is entitled to the rights of a tenant in a property that is being converted to condominiums. Mr. Barrett's position, which is understandable given the complexity of the laws governing condominium conversion, is simply wrong. The property already is a condominium, so the application filed by Mr. Cross cannot be an application for a conversion.

The Bureau of Street Use and Mapping (BSM) of the Department of Public Works has two classifications of applications for condominiums – new construction and conversion. I have many years of experience working with BSM and my office has received several approval such as this one, allowing a new dwelling unit added to an existing condominium project to be a condominium. In those cases, we have submitted "new construction" applications, and the projects have routinely been approved. In keeping with this practice, Mr. Cross submitted a "new construction" application,

which was accepted by BSM. Further, the Planning Department, which reviews all subdivision applications, did not consider the application a "conversion" or it would have denied approval.

It is correct that under the new Accessory Dwelling Unit legislation that went into effect just last September an ADU cannot be made into a condominium. However, Mr. Cross's third unit is not an ADU. His permits issued in 2015 before the legislation was passed. Therefore the restriction on making an ADU into a condominium does not apply in this case.

Mr. Barrett's third ground for challenging the subdivision approval – that a public mailing was not done and that tenant rights were disregarded — is also incorrect. A public mailing to all owners does not require notice to tenants, so Mr. Barrett would not have received a notice under that mailing. In any case, Mr. Barrett has notice of the application and has filed this appeal, so he has in fact received satisfactory notice. Mr. Barrett is also incorrect in saying that he was entitled to notification under Government Code Sections 66427.1 and 66451.3, that he was not offered a right of first refusal to purchase under San Francisco Subdivision Code Section 1387 and Government Code Section 66427.1, and that 40% of tenants have to consent to the application. Government Code Sections 66427.1 and 66451.3 apply only to conversions of buildings with five or more units. San Francisco Subdivision Code Section 1387 in also inapplicable because it requires a landlord to give a right to purchase to a tenant is occupancy at the date of issuance of a final public report by the California Department of Real Estate, but public reports are not issued for two-unit projects. Since the application is not for a conversion and the building will not have five units, these code sections are not applicable. The requirement that 40% of tenants consent to an application applies to conversion applications, and the Alhambra Street application is not for a conversion.

Finally, I would like to address the issues raised by Mr. Barrett about PG&E and the letter from Conrad Donner to Mr. Barrett, a copy of which is attached to Mr. Barrett's appeal. The property is contaminated with toxic materials along with a number of other properties in the vicinity. PG&E dumped the waste and is now responsible for cleaning it up. Mr. Donner's letter was intended to give the tenants at the building notice of the condition of the property, and to advise them that they would not be held to their respective lease terms if they chose to move. The choice to stay or to move was entirely up the tenants. The tenants in Unit 164 chose to move. Mr. Barrett decided to stay. PG&E has approached Mr. Cross about buying 162-164 Alhambra Street in connection with the clean up of toxic waste, and Mr. Cross is considering a sale to PG&E. To the extent that remediation of toxic waste or other construction at the site affects Mr. Barrett's tenancy, the Rent Board can hear a petition for decrease in services. However, a sale of the building to PG&E, or any other party for that matter, is not a violation of Mr. Cross's rights as a tenant. Denial of Mr. Cross's application to treat a non-ADU new unit as a new condominium in an existing condominium project will do nothing to protect the tenancy. It will, however, discourage construction of one unit of the new housing San Francisco so desperately needs.

Truly yours,

HERZIG & BERLESE

Barbara E. Herzig

cc: C. Cross

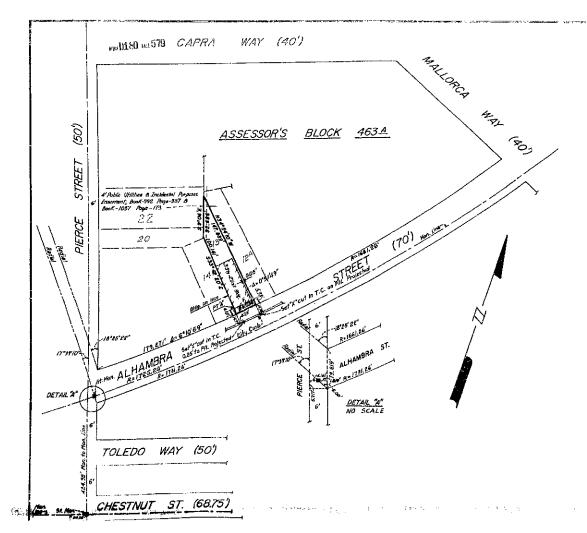
J. Barrett

Mauricio Franco

Encl: Recorded subdivision map
Approved Building Permit Application and Building Permit

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GENERAL NOTES PRIDISO Nº15789 3

- THE SUBDIVISION DEPICTED HEREON IS SUBJECT TO THE PROVISIONS OF THE CALIFORNIA CONDOMINUM ACT, TITLE 8, PART 4, DIVISION SECOND OF THE CIVIL CODE.
- "UNIT" MEANS A NUMBERED PARCEL SO DESIGNATED. THE BOUNDARIES OF EACH UNIT ARE THE INTERIOR UNFINISHED SURFACE (EXCLUSIVE OF PAINT, PAFER, MAX, TILE, ENAMEL, WALLS, FLOORS, FIREPLACES, CELMISS, WHOOMS AND WINDOW FRAMES, DOORS AND DOOR FRAMES AND TRANJAM INCLUDES BOTH THE PORTIONS OF A BUILDING SO DESCRIBED AND THE AIM SPACE SO ENDOMPASSED. ISSE SETTION INSECTION ISSECTION INSECTION ISSECTION. (PER SECTION 1350 (2) CALIFORNIA CIVIL CODE).
- 5. "COMMON AREA" MEANS ALL LANDS AND IMPROMEMENTS NOT LOCATED WITHIN ANY UNIT. THE COMMON AREA ALSO INCLUDES BUT NOT BY WAY OF LIMITATIONS ALL STARKAGES AND LIGHT WELLS, ROOFS, FOUNDATION, PIPES AND DUCTS FOR THE MUTUAL USE OF ADJOINING LINITS, LUBS, CHUTES, COMMUTS, COLUMNIS AND GILDENS TO THE UNFINANCE SUPFACE THERETO, ALL REGARDLESS OF LIDITATION WITHIN THE SAID UNITS.
- 4. THE OWNER OF EACH UNIT SHALL OWN AN UNDIVIDED INTEREST IN THE CO-MMON AREA AS SHOWN ON SHEET NO. 3.
- 5. ALL ANGLES SHOWN ARE 90 DEGRES UNLESS EXPRESSLY OTHERWISE INDI-
- 6. ALL WALLS ARE 0.34 THICK UNLESS OTHERWISE NOTED.
- 7. THE SERIALLY NUMBERED (LETTERED) PARCELS SHOWN ON SHEET 3, (P-1624 THROUGH P-164) ARE PANKING AREAS, EASEMENT FOR THE EXCLUSIVE USE OF SAID AREAS MAY BE GRANTED AS APPURTENANCES OF PARTICULAR UNITS.
- #. BENCH MARKS: ELEVATIONS SHOWN ARE BASED ON CITY DATUM AND WERE DRIAINED FROM A GROUP OF CITY BENCH MARKS, LOGATED AT THE INTERSECTION OF ALHAMBRA ST. & PIERCE ST.
- 4. THE SERIALLY NUMBER PARCEL (S) SHOWN ON SHEET 3, (5-162 THROUGH 5-164) IS A STORAGE AREA. EASEMENT FOR THE EX-CLUSIVE USE OF SAID AREA MAY BE GRANTED AS APPLICITANA-CES OF PARTICULAR LIMITS.

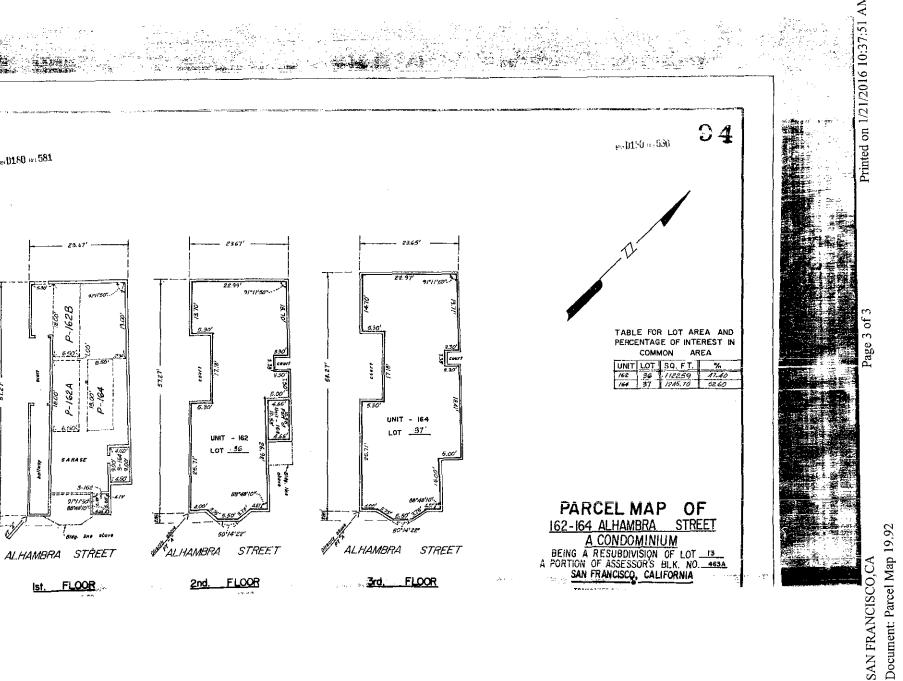
PARCEL MAP OF

162-164 ALHAMBRA STREET A CONDOMINIUM

BEING A RESUBDIVISION OF LOT 13 A PORTION OF ASSESSOR'S BLK. NO. 463A SAN FRANCISCO, CALIFORNIA

TRANSAMERICAN ENGINEERS & ASSOCIATES 3295 Mission Strast-Son Francisco, Ca.94110

SAN FRANCISCO,CA



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19 2015 TOM C. HUI, S.E.

APPROVED REVIEWED BY FIRE L'S FIRE DEPT.INSPECTION NOT REQUIRED

APPLIEST ON FOR BUILDING PERMIT ADDITIONS, ALTERATIONS OR REPAIRS

OTHER AGENCIES REVIEW REQUIRED

OVER-THE-COUNTER ISSUANCE

CITY AND COUNTY OF SAN FRANCISCO DEPARTMENT OF BUILDING INSPECTION

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

RITE ABOVE THIS LINE V

NUMBER OF PLAN SETS

1664

OCT 1 9 2015

INFORMATION TO BE FURNISHED BY ALL APPLICANTS

305 000,00

LEGAL DESCRIPTION OF EXISTING BUILDING

DESCRIPTION OF BUILDING AFTER PROPOSED ALTERATION

(7) PROPOSED USE (LEGAL USE) TELL PERSKING STORAG

DWELLING UNITS:

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FORM 8

YES D

AND CELLARS

(11) WILL STREET SPACE BE USED DURING CONSTRUCTION?

YES D

(12) ELECTRICAL WORK TO BE PERFORMED?

YES D

YES D NO

14) GENERAL CONTRACTOR

NO W

PHONE

EXPIRATION DATE

APPROVAL NUMBER:

(17) DOES THIS ALTERATION CREATE ADDITIONAL HEIGHT OR STORY TO BUILDING? (21) WILL SIDEWALK OVER

ADDITIONAL INFORMATION

YES D NO 4

YES I

NO (25) ARCHITECT OR ENGINEER (DESIGN Q CONSTRUCTION Q)

YES D

WILL BUILDING

YES NO L

YES D NO Q

CALIF CERTIFICATE NO

NO D

RIEGEN ARCHITECTS ARROY (26) CONSTRUCTION LENDER (ENTER NAME AND BRANCH DESIGNATION IF ANY IF THERE IS NO KNOWN CONSTRUCTION LENDER, ENTER "UNKNOWN").

IMPORTANT NOTICES

E ON

No portion of building or structure or scaffolding used during construction, to be closer than 6'0" to any wire containing more than 750 volts. See Sec. 385, California Penal Code.

Pursuant to San Francisco Building Code, the building permit shall be posted on the job. The owner is responsible for approved plans and application being kept at building site.

Grade lines as shown on drawings accompanying this application are assumed to be correct. If actual grade lines are not the same as shown revised drawings showing correct grade lines, cuts and fills together with complete details of retaining walls and wall footings required must be submitted to this department for approval.

ANY STIPULATION REQUIRED HEREIN OR BY CODE MAY BE APPEALED.

BUILDING NOT TO BE OCCUPIED UNTIL CERTIFICATE OF FINAL COMPLETION IS POSTED ON THE BUILDING OR PERMIT OF OCCUPANCY GRANTED, WHEN REQUIRED.

APPROVAL OF THIS APPLICATION DOES NOT CONSTITUTE AN APPROVAL FOR THE ELECTRICAL WIRING OR PLUMBING INSTALLATIONS. A SEPARATE PERMIT FOR THE WIRING AND PLUMBING MUST BE OBTAINED. SEPARATE PERMITS ARE REQUIRED IF ANSWER IS "YES" TO ANY OF ABOVE QUESTIONS (10) (11) (12) (13) (22) OR (24).

THIS IS NOT A BUILDING PERMIT. NO WORK SHALL BE STARTED UNTIL A BUILDING PERMIT IS ISSUED.

silings all insulating materials must have a clearance of not less than two inches from all

PROPRIATE BOX DIARCHITECT 10-19-13

NOTICE TO APPLICANT

HOLD HARMLESS CLAUSE: The permittee(s) by acceptance of the permit, agree(s) to indemnify and hold harmless the City and County of San Francisco from and against any and all claims, demands and actions for damages resulting from operations under this permit, regardless of negligence of the City and County of San Francisco, and to assume the defense of the City and County of San Francisco against all such claims, demands or actions.

In conformity with the provisions of Section 3800 of the Labor Code of the State of California, the applicant shall have coverage under (f), or (II) designated below or shall indicate item (III), or (IV), or (V), whichever is applicable. If however item (V) is checked item (IV) must be checked as well. ark the appropriate method of compliance below

I hereby affirm under penalty of perjury one of the following declarations:

- I have and will maintain a certificate of consent to self-insure for workers' compensation, as provided by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued.
- I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. My workers' compensation insurance carrier and policy number are:

Policy Number

() III. The cost of the work to be done is \$100 or less

I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California. I further acknowledge that I understand that in the event that I should become subject to the workers' compensation provisions of the Labor Code of California and fail to comply forthwith with the provisions of Section 3800 of the Labor Code, that the permit herein applied for shall be deemed revoked.

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OWNER'S AUTHORIZED AGENT

CENTRAL PERMIT BUREAU 1660 Mission Street San Francisco, California 94103

9003-18(Rev.10/95)

CITY AND COUNTY OF SAN FRANCISCO DEPARTMENT OF BUILDING INSPECTION (415)558-6088

Receipt No: 1372765

Application/Permit No: 201509177273

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