

BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal of
TAMAR BEN-SHACHAR and MICHAEL JIN,)
Appellant(s))
vs.)
DEPARTMENT OF BUILDING INSPECTION,)
PLANNING DEPARTMENT APPROVAL Respondent)

Appeal No. **22-056**

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT on August 1, 2022, Debbie Kartigarner and Constantin Tanno (appellants) filed an appeal with the Board of Appeals of the City and County of San Francisco from the decision or order of the above-named department(s), commission, or officer. On August 10, 2022, the appellants notified the Board Office that their property had been sold and the appeal would be taken over by the new owners, Tamar Ben-Shachar and Michael Jin (above-named appellants).

The substance or effect of the decision or order appealed from is the ISSUANCE on July 19, 2022, of an Alteration Permit (remove existing 50 square-foot wood framed deck (non-conforming) and wood framed stairs; remove existing man-door & replace with new window) at 51 Pixley Street.

APPLICATION NO. 2021/04/16/8740

FOR HEARING ON October 12, 2022

Address of Appellant(s):

Address of Other Parties:

Tamar Ben-Shachar and Michael Jin, Appellant(s) 51 Pixley Street San Francisco, CA, 94123	N/A
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Date Filed: August 1, 2022

**CITY & COUNTY OF SAN FRANCISCO
BOARD OF APPEALS**

PRELIMINARY STATEMENT FOR APPEAL NO. 22-056

I / We, **Debbie Kartiganer & Constantin Tanno**, hereby appeal the following departmental action: **ISSUANCE of Alteration Permit No. 2021/04/16/8740** by the **Department of Building Inspection** which was issued or became effective on: **July 19, 2022**, to: **Debbie Kartiganer & Constantin Tanno**, for the property located at: **51 Pixley Street**.

BRIEFING SCHEDULE:

The Appellants may, but are not required to, submit a one page (double-spaced) supplementary statement with this Preliminary Statement of Appeal. No exhibits or other submissions are allowed at this time.

Appellants' Brief is due on or before: 4:30 p.m. on **August 18, 2022, (no later than three Thursdays prior to the hearing date)**. The brief may be up to 12 pages in length with unlimited exhibits. It shall be double-spaced with a minimum 12-point font. An electronic copy shall be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org, tina.tam@sfgov.org and corey.teague@sfgov.org.

Respondent's and Other Parties' Briefs are due on or before: 4:30 p.m. on **September 1, 2022, (no later than one Thursday prior to hearing date)**. The brief may be up to 12 pages in length with unlimited exhibits. It shall be double-spaced with a minimum 12-point font. An electronic copy shall be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org, dlksf2@gmail.com and constantin.tanno@gmail.com.

Hard copies of the briefs do NOT need to be submitted to the Board Office or to the other parties.

Hearing Date: **Wednesday, September 7, 2022, 5:00 p.m., Room 416 San Francisco City Hall, 1 Dr. Carlton B. Goodlett Place**. The parties may also attend remotely via Zoom. Information for access to the hearing will be provided before the hearing date.

All parties to this appeal must adhere to the briefing schedule above, however if the hearing date is changed, the briefing schedule MAY also be changed. Written notice will be provided of any changes to the briefing schedule.

In order to have their documents sent to the Board members prior to hearing, **members of the public** should email all documents of support/opposition no later than one Thursday prior to hearing date by 4:30 p.m. to boardofappeals@sfgov.org. Please note that names and contact information included in submittals from members of the public will become part of the public record. Submittals from members of the public may be made anonymously.

Please note that in addition to the parties' briefs, any materials that the Board receives relevant to this appeal, including letters of support/opposition from members of the public, are distributed to Board members prior to hearing. All such materials are available for inspection on the Board's website at www.sfgov.org/boa. You may also request a hard copy of the hearing materials that are provided to Board members at a cost of 10 cents per page, per S.F. Admin. Code Ch. 67.28.

The reasons for this appeal are as follows:

See attachment to the preliminary Statement of Appeal.

Appellant or Agent:

Signature: Via Email

Print Name: Debbie Kartiganer, appellant

51 Pixley Street – APPEAL STATEMENT

DBI Permit

We appeal a building permit issued to us by the Department of Building Inspection to remove an unpermitted deck and exterior staircase at the rear of the house. We ask that the Board of Appeals **deny or modify** this permit to allow the deck and exterior staircase to remain in substantially their existing configuration.

Our lot was the product of a lot split in the early 1980s, which was approved subject to a variance that prohibited any obstructions in the 15-foot-deep rear yard. The back deck and staircase nevertheless appear to have been constructed at least thirty years ago, and no one has ever complained about them. In early 2021, we submitted a building application to reconstruct the deck in a wider format but with a less obtrusive staircase to the rear garden. We then applied for a variance to permit this proposal, justifying it in part by noting that since several homes on the three blocks of Pixley Street (which is an alley – almost all the houses along it have the same type of shallow lot) have obtained variances for the same types of decks and staircases, this variance was necessary in order for us to have the same rights as our neighbors. The Zoning Administrator indicated in December 2021 that he planned to deny our variance request, in part because it conflicted with the terms of the prior variance. We then withdrew our application because we were not sure whether we wanted to appeal a variance denial or not. Since then, the Planning Department has required us to modify our building permit proposal to remove the deck and stairs and has consistently asked for updates on the situation. We knew that any further variance requests would be futile, and we expected soon to be issued a notice of violation if we did not obtain the building permit to remove the deck and stairs. Therefore, we obtained the building permit and now appeal it to ask that the **existing deck and stair configuration** (not the 2021 proposal) be allowed to remain. Thank you for your consideration.

APPROVED
Dept. of Building Insp.
- San Francisco -

JUL 19 2022

Patrick O'Riordan
PATRICK O'RIORDAN
DIRECTOR
DEPT. OF BUILDING INSPECTION

DCP
FEE

BUILDING
DESCRIPTION
 VERTICAL
 HORIZONTAL

APR 07 2022
APPROVED FOR ISSUANCE

BLDG. FORM 3/8

APPLICATION NUMBER
202104168740

OSHA APPROVAL REQ'D
APPROVAL NUMBER

**APPLICATION FOR BUILDING PERMIT
ADDITIONS, ALTERATIONS OR REPAIRS**

**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 THE PLANS AND SPECIFICATIONS SUBMITTED HERewith AND ACCORDING TO THE DESCRIPTION AND FOR THE PURPOSE HEREINAFTER SET FORTH.

FORM 3 OTHER AGENCIES REVIEW REQUIRED

FORM 8 OVER-THE-COUNTER ISSUANCE

2 NUMBER OF PLAN SETS

▼ DO NOT WRITE ABOVE THIS LINE ▼

DATE FILED 4/12/2021	FILING FEE RECEIPT NO. 20210416-1100L	(1) STREET ADDRESS OF JOB 51 PIXLEY STREET	BLOCK & LOT 0517 / 029
PERMIT NO. 20220414.1170L	ISSUED JUL 19 2022	(2A) ESTIMATED COST OF JOB \$ 15,000.00	(2B) REVISED COST: BY: \$ 15,000.00 DATE: 3/31/22

INFORMATION TO BE FURNISHED BY ALL APPLICANTS

LEGAL DESCRIPTION OF EXISTING BUILDING

(4A) TYPE OF CONSTR. 5B	(5A) NO. OF STORIES OF OCCUPANCY: 3	(6A) NO. OF BASEMENTS AND CELLARS: 0	(7A) PRESENT USE: SINGLE FAMILY DWELLING	(8A) OCCUP. CLASS R-3	(9A) NO. OF DWELLING UNITS: 1
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DESCRIPTION OF BUILDING AFTER PROPOSED ALTERATION

(4) TYPE OF CONSTR. 5B	(5) NO. OF STORIES OF OCCUPANCY: 3	(6) NO. OF BASEMENTS AND CELLARS: 0	(7) PROPOSED USE (LEGAL USE) SINGLE FAMILY DWELLING	(8) OCCUP. CLASS R-3	(9) NO. OF DWELLING UNITS: 1
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(10) IS AUTO RUNWAY TO BE CONSTRUCTED OR ALTERED? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	(11) WILL STREET SPACE BE USED DURING CONSTRUCTION? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	(12) ELECTRICAL WORK TO BE PERFORMED? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	(13) PLUMBING WORK TO BE PERFORMED? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
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(14) CONTRACTOR TBD OWNER BUILDER	ADDRESS	ZIP	PHONE	CALIF. LIC. NO.	EXPIRATION DATE
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(15) OWNER - LESSEE (CROSS OUT ONE) CONSTANTIN TANNO DEBBIE KARTNIGANER	ADDRESS 51 PIXLEY STREET, SF, CA 94123	ZIP	BTRC#	PHONE (FOR CONTACT BY DEPT.) (415) 902-8747
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(16) WRITE IN DESCRIPTION OF ALL WORK TO BE PERFORMED UNDER THIS APPLICATION (REFERENCE TO PLANS IS NOT SUFFICIENT)

- REMOVE EXISTING ~50 SF WOOD FRAMED DECK (NON-CONFORMING) AND WOOD FRAMED STAIRS, REMOVE
ADD FIRE RATED WALLS AT SIDE PROPERTY LINES
(5) MAN-DOOR & REPLACE WITH WINDOW
4/9/2022

ADDITIONAL INFORMATION

(17) DOES THIS ALTERATION CREATE ADDITIONAL HEIGHT OR STORY TO BUILDING? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	(18) IF (17) IS YES, STATE NEW HEIGHT AT CENTER LINE OF FRONT	(19) DOES THIS ALTERATION CREATE DECK OR HORIZ. EXTENSION TO BUILDING? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	(20) IF (19) IS YES, STATE NEW GROUND FLOOR AREA SQ. FT.
(21) WILL SIDEWALK OVER SUB-SIDEWALK SPACE BE REPAIRED OR ALTERED? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	(22) WILL BUILDING EXTEND BEYOND PROPERTY LINE? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	(23) ANY OTHER EXISTING BLDG. ON LOT? (IF YES, SHOW ON PLOT PLAN) YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	(24) DOES THIS ALTERATION CONSTITUTE A CHANGE OF OCCUPANCY? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>

(25) ARCHITECT OR ENGINEER (DESIGN <input type="checkbox"/> CONSTRUCTION <input type="checkbox"/> BENJAMIN FARRELL, 610 COLOMA STREET, #727, SAUSALITO, CA 94965	ADDRESS	CALIF. CERTIFICATE NO. C29919
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(26) CONSTRUCTION LENDER (ENTER NAME AND BRANCH DESIGNATION IF ANY. IF THERE IS NO KNOWN CONSTRUCTION LENDER, ENTER "UNKNOWN") NONE	ADDRESS
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IMPORTANT NOTICES

No change shall be made in the character of the occupancy or use without first obtaining a Building Permit authorizing such change. See San Francisco Building Code and San Francisco Housing Code.
No portion of building or structure or scaffolding used during construction is 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, and complete details of retaining walls and wall footings 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.

In dwellings, all insulating materials must have a clearance of not less than two inches from all electrical wires or equipment.

CHECK APPROPRIATE BOX

- OWNER
- LESSEE
- CONTRACTOR
- ARCHITECT
- AGENT
- ENGINEER

APPLICANT'S CERTIFICATION

I HEREBY CERTIFY AND AGREE THAT IF A PERMIT IS ISSUED FOR THE CONSTRUCTION DESCRIBED IN THIS APPLICATION, ALL THE PROVISIONS OF THE PERMIT AND ALL LAWS AND ORDINANCES THERETO WILL BE COMPLIED WITH.

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 worker's compensation coverage under (I) or (II) designated below, or shall indicate item (III), (IV), or (V), whichever is applicable. If however item (V) is checked, item (IV) must be checked as well. Mark the appropriate method of compliance below.

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

- () I. I have and will maintain a certificate of consent to self-insure for worker's compensation, as provided by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued.
- () II. I have and will maintain worker's compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. My worker's compensation insurance carrier and policy number are:
Carrier
Policy Number
- () III. The cost of the work to be done is \$100 or less.
- () IV. 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 worker's compensation laws of California. I further acknowledge that I understand that in the event that I should become subject to the worker's 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.
- () V. I certify as the owner (or the agent for the owner) that in the performance of the work for which this permit is issued, I will employ a contractor who complies with the worker's compensation laws of California and who, prior to the commencement of any work, will file a completed copy of this form with the Central Permit Bureau.

BENJAMIN FARRELL
Digitally signed by BENJAMIN FARRELL
DN: c=US, e=BENJ@F.A.US, O=Farrell
Architecture, cn=BENJAMIN FARRELL
Date: 2021.04.12 20:18:29-06'00'



4/12/2021

Signature of Applicant or Agent

Date

CONDITIONS AND STIPULATIONS

51 PIXLEY STREET

REFER TO: <input type="checkbox"/>	APPROVED:  Sue Quan, DBI MAR 31 2022 _____ PLAN REVIEW SERVICES, DEPT. OF BLDG. INSP.	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/>	APPROVED: <i>Remove deck set stop at rear; as fill for for new window</i>  2.10.22 _____ DEPARTMENT OF CITY PLANNING Planning Dept. Moses Corrette	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/>	APPROVED: _____ SAN FRANCISCO FIRE DEPARTMENT	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/>	APPROVED: _____ MECHANICAL ENGINEER, DEPT. OF BLDG. INSPECTION	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/>	APPROVED: _____ CIVIL ENGINEER, DEPT. OF BLDG. INSPECTION	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/>	APPROVED: _____ DEPT. OF PUBLIC WORKS	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/>	APPROVED: _____ PUBLIC UTILITIES COMMISSION	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/>	APPROVED: _____ DEPT. OF PUBLIC HEALTH / OCII (CROSS ONE OUT)	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/>	APPROVED: _____ HOUSING INSPECTION DIVISION, DEPT. OF BLDG. INSPECTION	DATE: _____ REASON: _____ NOTIFIED MR. _____

HOLD SECTION - NOTE DATES AND NAMES OF ALL PERSONS NOTIFIED DURING PROCESSING

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

Number of attachments

OWNER'S AUTHORIZED AGENT

Permit Details Report**Report Date:** 8/1/2022 2:25:11 PM

Application Number: 202104168740
 Form Number: 3
 Address(es): 0517 / 029 / 0 51 PIXLEY ST
 Description: REMOVE EXISTING ~50SF WOOD FRAMED DECK (NON-CONFORMING) AND WOOD FRAMED STAIRS. REMOVE (E) MAN-DOOR & REPLACE W/ (N) WINDOW
 Cost: \$15,000.00
 Occupancy Code: R-3
 Building Use: 27 - 1 FAMILY DWELLING

Disposition / Stage:

Action Date	Stage	Comments
4/16/2021	TRIAGE	
4/16/2021	FILING	
4/16/2021	FILED	
4/7/2022	PLANCHECK	
4/7/2022	APPROVED	
7/19/2022	ISSUED	

Contact Details:**Contractor Details:**

License Number: OWNER
 Name: OWNER
 Company Name: OWNER
 Address: OWNER * OWNER CA 00000-0000
 Phone:

Addenda Details:**Description:**

Step	Station	Arrive	Start	In Hold	Out Hold	Finish	Checked By	Hold Description
1	CPB	4/16/21	4/16/21			4/22/21	ZHAO WILLIAM	04/16/2021: Sent filing fees; PAID. Pending drop-off of plans -WZ 04/22/2021: Accepted plans, 16pgs, route to PPC -WZ
2	CP-ZOC	4/22/21	2/10/22			2/10/22	CORRETTE MOSES	Variance application withdrawn. Approve removal of unpermitted deck and stair at rear in-fill door for new window.
3	CP-NP	10/1/21	10/1/21			11/23/21	CORRETTE MOSES	10/1/21: Emailed the 311 cover letter. (JL) 11/23/21: Mailed the 311 notice on 12/6/21; expires on 1/5/22. (JL)
4	BLDG	2/11/22	2/15/22			2/15/22	LOVE GARY	Since the project is much simplified, applicant would like to continue as Form 8 if possible. OTC EL
5	BLDG	2/16/22	3/31/22			3/31/22	QUAN SUE	Approved
6	PERMIT-CTR	2/4/22	2/4/22			2/4/22	TEK VIGETH	02/17/2022: Project has been received by Permit Center Team. Applicant may collect the project to pursue OTC review. See email from gary.love@sfgov.org for details. -VT 02/04/2022: Project received by Permit Center Team and transferred to SF Planning Intake for review (CP-ZOC). Applicants may contact pic@sfgov.org for further project updates. -HE
7	PERMIT-CTR	3/10/22	3/10/22			3/10/22	ESPINO HENRY	03/10/2022: Applicant did not start OTC review within 3 weeks of OTC invitation. OTC review window has expired. Project transferred to PPC. -HE
8	PPC	4/4/22	4/4/22			4/4/22	EAKIN MIGUEL	04/04/22: TO CPB;me 03/10/22: OTC EXPIRED plans returned to PPC;me 2/16/22 Approved for OTC. To Permit center to be picked up by applicant @ Permit Center Helpdesk 2ND Floor; HP 02/11/22: TO BLDG;me 4/22/21: To CP-ZOC (Planning); NL
9	CPB	4/4/22	4/7/22			7/19/22	SECONDEZ GRACE	7/19/22: issued. rec'd owner builder form. gs 4/14/22: invoiced. gs 4/7/22: approved. need payer info, contr stmt or owner builder form. gs 4/6/22: emailed architect. gs

This permit has been issued. For information pertaining to this permit, please call 628-652-3450.

Appointments:

Appointment Date	Appointment AM/PM	Appointment Code	Appointment Type	Description	Time Slots
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Inspections:

Activity Date	Inspector	Inspection Description	Inspection Status
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Special Inspections:

Addenda No.	Completed Date	Inspected By	Inspection Code	Description	Remarks
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For information, or to schedule an inspection, call 628-652-3400 between 8:30 am and 3:00 pm.

[Station Code Descriptions and Phone Numbers](#)

[Online Permit and Complaint Tracking](#) home page.

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BRIEF SUBMITTED BY THE APPELLANT(S)

Hello City & County of San Francisco Board of Appeals,

We are first time homeowners and the new owners of 51 Pixley St. We have taken up this appeal from the previous owners. We are appealing a permit from the Department of Building Inspection to remove an unpermitted rear deck and staircase, built over 30 years ago. We are asking for the permit to be denied or granted a variance to allow the rear deck and staircase to remain as-is.

In taking over this appeal, we set out to understand what has changed to motivate the city to pursue urgent removal of something that has been sitting unchanged for 30 years, and with no plans to make any modifications.

Our first expectation was fire or emergency safety concerns, but that was not the issue in this case. We found no building codes that the deck or stairs were in violation of.

The next potential issue we sought to investigate was neighbor complaints. In speaking with the BDI Inspector for our district, Daniel Helminiak, he stated there has never been a complaint lodged about this issue, and was also not clear why there was a permit to remove the deck and stairs, given that there's never been a complaint from neighbors.

The permit specifies that the deck is non-confirming, in this case too close to the edge of the property line. The reason this code exists is the following, copied here for convenience.

(a) **Purpose.** The rear yard requirements of this Section [134](#) are intended to:

(1) assure the protection and continuation of established mid-block landscaped open spaces;

(2) maintain a scale of development appropriate to each district, complementary to the location of adjacent buildings;

(3) provide natural light and natural ventilation to residences, work spaces, and adjacent rear yards; and

(4) provide residents with usable open space and views into green rear-yard spaces.

(3) is the purpose in question here. Yet, after 30 years there has been no problem from any neighbors. In fact, the neighbor abutting the side of the deck has an outdoor staircase also right next to their property line. On the other side, there is a parking garage.

We seek to maintain the original character of the neighborhood. Pixley Street is an alley street, and our property along with a majority of our neighbors on the 3 blocks that this street makes up, has a shallow lot. Due to that, many of our neighbors have been granted variances for decks adjoining a property line, given the constraints of the lots. We are asking for the same rights as our neighbors, in order to maintain the character of the neighborhood, without causing any harm.

Therefore we appeal and we ask that the 30 year old rear deck and stairs be allowed to remain unchanged either by denial of the permit or variance granted. We ask that we not be singled out, and be inflicted with financial strain and loss of property value.