

BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal of
KEN MILLER & JULIE MCKENZIE, _____)
Appellant(s))
vs.)
DEPARTMENT OF BUILDING INSPECTION, _____)
PLANNING DEPARTMENT APPROVAL Respondent

Appeal No. 14-162

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT on September 18, 2014, the above named appellant(s) 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.

The substance or effect of the decision or order appealed from is the ISSUANCE on September 08, 2014, to Clay Leighton & Andrea Sello, of an Alteration Permit (new three-story rear addition with 3rd floor 72sf deck) at 1264 - 6th Avenue.

APPLICATION NO. 2013/06/26/0594S

FOR HEARING ON November 19, 2014

Address of Appellant(s):

Address of Other Parties:

Ken Miller & Julie McKenzie, Appellants 1260 - 6th Avenue San Francisco, CA 94122	Clay Leighton & Andrea Sello, Permit Holders 1264 - 6th Avenue San Francisco, CA 94122
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Date Filed:

BOARD OF APPEALS

CITY & COUNTY OF SAN FRANCISCO
BOARD OF APPEALS

SEP 18 2014

APPEAL #

14-162

PRELIMINARY STATEMENT OF APPEAL

I / We, **Ken Miller & Julie McKenzie**, hereby appeal the following departmental action: **ISSUANCE of Alteration Permit -BPA NO. 2013/06/26/0594S** by the **Department of Building Inspection** which was issued or became effective on: **September 08, 2014**, to: **Clay Leighton & Andrea Sello**, for the property located at: **1264 - 6th Avenue.**

BRIEFING SCHEDULE:

The Appellant may, but is 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.

Appellant's Brief is due on or before: **October 30, 2014, (no later than three (3) Thursdays prior to the hearing date)**, up to 12 pages in length, double-spaced, with unlimited exhibits, with (eleven) 11 copies delivered to the Board office by 4:30 p.m., and with additional copies delivered to the other parties the same day.

Respondent's and Other Parties' Briefs are due on or before: **November 13, 2014, (no later than one (1) Thursday prior to hearing date)**, up to 12 pages in length, doubled-spaced, with unlimited exhibits, with (eleven) 11 copies delivered to the Board office by 4:30 p.m., and with additional copies delivered to the other parties the same day.

Only photographs and drawings may be submitted by the parties at hearing.

Hearing Date: **Wednesday, November 19, 2014, 5:00 p.m., City Hall, Room 416, One Dr. Carlton B. Goodlett Place.**

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 change to the briefing schedule.

In order to have their documents sent to the Board members prior to hearing, **members of the public** should submit (eleven) 11 copies of all documents of support/opposition no later than one (1) Thursday prior to hearing date by 4:30 p.m. 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 at the Board's office. You may also request a copy of the packet of materials that are provided to Board members at a cost of 10 cents per page, per S.F. Admin. Code Ch. 67.28.

If you have any questions please call the Board of Appeals at 415-575-6880

The reasons for this appeal are as follows:

see attached.

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Appellant or Agent (Circle One):

Signature:

Print Name:

Julie McKenzie Ken Miller

BOARD OF APPEALS

SEP 18 2014

APPEAL # 14-162

September 18, 2014

To: SF Board of Appeals

Re: Preliminary Statement of Appeal of Permit #201306260594, at 1264 6th Ave.

To whom it may concern: We have owned our home at 1260 6th Ave. for 22 years, And we are the southerly next-door neighbors to Andrea Sello and Clay Leighton. We absolutely support our neighbor's intent to complete much-needed home improvements and a remodel, however we are extremely concerned about the negative impacts that such a large-scale project (in its proposed state) will have on our home. Since May of 2013 we have invested much time, money and good faith in attempting to reach a mutually acceptable compromise with the Leightons, but unfortunately to no avail. After we applied for a DR hearing, the Leightons were finally willing to speak with us regarding compromises, but in Jan. 2014, they abruptly cut off negotiations between our architects, claiming that we were asking for modifications beyond what was mentioned in the DR app. (in fact, in the spirit of negotiation, we were asking for less- but they were unwilling to negotiate further). Later, the Leightons refused mediation. It is important to note that we did an extensive remodel of our home in 2002, maintaining the scope and character of our home, while being respectful of our neighbor's light and privacy. We only hope for the same consideration from the Leightons. Our modest requests are only that the Leightons pull back the rear of the sunroom 2 feet, and gable the roof of the small bedroom on the 3rd floor, thus maintaining the light through our skylights and into the rear of our home. In addition, we have a great many neighbors on our block who are highly concerned about the precedent that the scale of this project will set. We have many letters from neighbors, which will attest to this.

Thank you for considering our appeal.

Julie McKenzie and Ken Miller



Capacity Charges
 Water: \$ 620.⁰⁰
 Wastewater: \$ 210.⁰⁰
 AK 7/14/17

SEP 08 2014

SFUSD
 SFUSD

DEPT. OF BUILDING INSPECTION
 TOM C. HEIN
 BUILDING PERMIT
 DESCRIPTION
 VERTICAL
 HORIZONTAL

APPROVED PERFORMANCE

3/8
 5 2014
 APPLICATION NUMBER: 2010 0020 0594-S

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

**CITY AND COUNTY OF SAN FRANCISCO
 DEPARTMENT OF BUILDING INSPECTION**

FORM 3 OTHER AGENCIES REVIEW REQUIRED

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

FORM 8 OVER-THE COUNTER ISSUANCE

2 NUMBER OF PLAN SETS

DO NOT WRITE ABOVE THIS LINE

DATE FILED JUN 27 2013 6/26/13	FILED FEE RECEIPT NO. 19062214	(1) STREET ADDRESS OF JOB 1264 SIXTH AVE. 1754/019	BLOCK & LOT
PERMIT NO. 1305308	ISSUED SEP - 8 2014	(2A) ESTIMATED COST OF JOB 3000.000	(2B) REVERSED COST: \$ 300K DATE: 7/9

APPROVAL NUMBER:
 BOARD OF APPEALS
 SEP 18 2014
 APPEAL # 14-162

INFORMATION TO BE FURNISHED BY ALL APPLICANTS

LEGAL DESCRIPTION OF EXISTING BUILDING					
(4A) TYPE OF CONSTR. VB	(5A) NO. OF STORIES OF OCCUPANCY 3	(6A) NO. OF BASEMENTS AND CELLARS 0	(7A) PRESENT USE SINGLE FAMILY	(8A) OCCUP. CLASS R3	(9A) NO. OF DWELLING UNITS 1
DESCRIPTION OF BUILDING AFTER PROPOSED ALTERATION					
(4) TYPE OF CONSTR. VB	(5) NO. OF STORIES OF OCCUPANCY 3	(6) NO. OF BASEMENTS AND CELLARS 0	(7) PROPOSED USE (LEGAL USE) SINGLE FAMILY	(8) OCCUP. CLASS R3	(9) NO. OF DWELLING UNITS 1
(10) IS ALSO NECESSARY TO BE CONSTRUCTED OR ALTERED? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	(11) WILL STREET SPACE BE USED DURING CONSTRUCTION? YES <input checked="" type="checkbox"/> NO <input 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 checked="" type="checkbox"/> NO <input type="checkbox"/>		
(14) GENERAL CONTRACTOR NOT YET SELECTED					
(15) OWNER - LESSEE (CROSS OUT ONE) D ANDREA SELO / CLAY LEIGHTON - 1264 6TH AVE 94122 415 743-2960					

(14) WRITE IN DESCRIPTION OF ALL WORK TO BE PERFORMED UNDER THIS APPLICATION (REFERENCE TO PLANS IS NOT SUFFICIENT)
 NEW THREE STORY REAR ADDITION W/ 3RD. FLR. 72 SQ. FT. DECK
 PROVIDES NEW INTERIOR PARTITIONS AND FINISHES PER PLANS
 PROVIDES NEW WINDOWS & SKYLIGHTS IN NEW REAR ADDITION
 PROVIDE NEW MECHANICAL, PLUMBING, AND ELECTRICAL SYSTEMS
 IN NEW PROPOSED ADDITION AND IN EXISTING AREAS AS INDICATED ON PLANS

(17) DOES THIS ALTERATION CREATE ADDITIONAL HEIGHT OR STORY TO BUILDING? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	(18) IF (17) IS YES, STATE NEW HEIGHT AT CENTER LINE OF FRONT 29'-6" FT.	(19) DOES THIS ALTERATION CREATE DECK OR PORCH EXTENSION TO BUILDING? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	(20) IF (19) IS YES, STATE NEW GROUND FLOOR AREA 136 SQ. FT.
(21) WILL SIDEWALK OVER SUR-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"/> LESLIE ARNOLD 63 VERNA ST. S.F., CA 94127		CALIF. CERTIFICATE NO. C23246	
(26) CONSTRUCTION LEADER (ENTER NAME AND BRANCH DESIGNATION IF ANY. IF THERE IS NO KNOWN CONSTRUCTION LEADER, ENTER "UNKNOWN") NA			

IMPORTANT NOTICES

No change shall be made in the character of the occupancy or use without first obtaining a Building Permit authorizing such change. The San Francisco Building Code and San Francisco Housing Code.

No portion of building or structure or scaffolding used during construction, to be closer than 6' to any into containing more than 750 volts San Geo 365, 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 related drawings showing correct grade lines, cuts and fills together with precise 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 (16) (11) (12) (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 THERE TO 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 claim, 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 or 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 (I), or (II) designated below or shall indicate item (II), or (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 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 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 therewith with the provisions of Section 3800 of the Labor Code, that the permit herein applied for shall be deemed revoked.

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 workers' compensation laws of California and who, prior to the commencement of any work, will be a completed copy of this form with the Central Permit Bureau.
 Signature of Applicant or Agent: [Signature]
 Date: 6-26-13

CONDITIONS AND STIPULATIONS

REFER TO:	APPROVED: <u>[Signature]</u> Civil En. DBI 11.11.09 2014 BUILDING INSPECTOR, DEPT. OF BLDG. INSP.	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/>	APPROVED: PER APPLICATION AND PLANS (REVISION 2). DR (CASE NO. 2013.1765D) NOT TAKEN PER ACTION DRA-0361. <u>[Signature]</u> 06.12.14 DEPARTMENT OF CITY PLANNING	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/>	APPROVED: <u>[Signature]</u> BUREAU OF FIRE PREVENTION & PUBLIC SAFETY	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: DPW/BSM SIGN OFF ON JOB CARD REQUIRED PRIOR TO DBI FINAL CALL 354-7149 TO SCHEDULE By <u>[Signature]</u> 7/18/14 CIVIL ENGINEER, DEPT. OF BLDG INSPECTION	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/>	APPROVED: SFPUC Capacity Charges See attached SFPUC Capacity Charge invoice for total amount due. Do not collect amount amount before the Site Permit is issued by electric utility and collected by SFPUC directly. SFPUC <u>[Signature]</u> Ajay Kumar 7/18/14 DEPARTMENT OF PUBLIC HEALTH	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/>	APPROVED: <u>[Signature]</u> REDEVELOPMENT AGENCY	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/>	APPROVED: <u>[Signature]</u> HOUSING INSPECTION DIVISION	DATE: _____ REASON: _____ NOTIFIED MR. _____

BOARD OF APPEALS
 SEP 18 2014
 APPEAL # 14-162



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

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

Number of attachments [Signature]
 OWNER'S AUTHORIZED AGENT

San Francisco Board of Appeals
Appeal No. 14-162

Julie McKenzie and Ken Miller,
Appellants,

v.

San Francisco Dept of Building Inspection,
Respondent.

Andrea Sello and Clay Leighton, Permit Holders

APPELLANTS' BRIEF

Permit No. 201306260594

Appeal of Permit Issued for 3-Story Rear Addition

Date: Wednesday, November 19, 2014

Time: 5:00pm

Location: City Hall , Room 416

#1 Dr. Carlton B. Goodlet Place

San Francisco, CA

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INTRODUCTION

We have owned and lived in our home at 1260 Sixth Ave for 22 years. Our home is adjacent and immediately north of the Subject Property at 1260 Sixth Avenue. Because the proposed project is a three-story addition adjacent to our home on the south side, we are extremely concerned about the negative impacts that such a large-scale project (in its proposed state) will have on our home. Since May of 2013 we have invested much time, money, and good faith in attempting to reach a mutually acceptable compromise with the Project Sponsors, but unfortunately to no avail. Only after we applied for a DR hearing and hired an attorney were the Project Sponsors finally willing to speak with us regarding modifications to the plans. We also hired an architect to provide an analysis and to discuss with their architect ways to mitigate the light and shadow impacts to our home and rear yard. The architects met and discussed the project and we thought a resolution had been reached.

However, in January 2014, the Sponsors abruptly cut off negotiations between our architects, claiming that we were asking for modifications beyond what was stated in the DR application. In fact, in the spirit of negotiation, we were actually asking for less-----but they were unwilling to negotiate further. They also refused our request for mediation. Our modest requests are only that the Sponsors pull back the east wall of their new “sunroom” by two feet, and gable the roof of the small bedroom on the third floor, thus maintaining a portion of the light through our skylights and into the rear of our home.

In addition, we have a great many neighbors on our block and in our neighborhood who are highly concerned about the precedent that the scale of this project will set. Nine immediate neighbors of the project supported our DR request and 15 neighbors submitted letters to the Commission supporting a compromise on the project. Not one neighbor supports the project. We

have made constant efforts in good faith over the last 18 months to reach a mutually acceptable compromise with the Sponsors, and to express the concerns of our neighborhood regarding this project. We do not believe that the Planning Commission properly heard our case and we were given misinformation by the Planner. There were important procedural problems at our DR Hearing, which prevented a fair hearing and eliminated the chance for any compromise at all. The adjacent neighbor to the south at 1256 12th Avenue, Cynthia Smith was denied the right to speak at all at the hearing.

APRIL 23, 2014, DR HEARING –Adjacent Neighbor Not Permitted to Testify

At our DR hearing, we were represented by attorney Kristen Kerr. She no longer represents us as the expense was simply too great. Prior to this hearing our attorney inquired via email to the Project Planner Christine Lamorena, whether our neighbor Cynthia Smith (who is the adjacent next door neighbor to south of the Subject Property, and had supported but not joined in the DR application), would be given three minutes to speak at the hearing. The project planner responded that Cynthia would be allotted 3 minutes. (See email dated 4/21/14, Exhibit # A). We therefore based our allotted five-minute presentation to include only our attorney Kristin and Julie to speak. We allotted the 2 minute rebuttal time for our architect Glenn Lym to speak and to show detailed drawings of our requested modifications, which the Sponsors never saw because they cut off negotiations between our architects in January of 2014. (See emails dated 1/24/14, Exhibit # E).

At the hearing Cynthia, the neighbor to the south was prevented from testifying when she began to speak by Planning Commission Secretary Jonas Ionin. When our attorney brought up the fact that we were informed the day before by the project planner that Cynthia would be allowed to testify, David Lindsey, who was presenting the case for the Dept, would still not

allow her to express her concerns or state her case as the adjacent neighbor. Cynthia had additional concerns, not included in the DR application, which were never heard. We tried to give her the 2 minute rebuttal period, but Cynthia barely spoke, and our architect never was able to speak to the Commission *at all* and was not able to show important drawings of the proposed modifications. As such, many important items were never heard at the Commission, and our message of compromise was entirely lost. In addition, 3 of the 7 commissioners left before our case was heard and we only had 4 Commission members present during our hearing.

DECEPTIVE FROM BEGINNING—Project Description is Not Accurate

We did an extensive remodel of our home in 2002, maintaining the scope and character of our home, while being respectful of both adjacent neighbors' light and privacy. We only hope for the same consideration from the Proposed Project. Our lot and our neighbor's lot are not standard lots—and fall below the standard 2,500 square feet designated in the Planning Code for RH-1 neighborhoods. Our lots are only 95 feet (95') deep so that the rear yards take on a heightened importance as do light wells and setbacks on adjacent homes.

This project has been inaccurately and deceptively described from the beginning. The 311 notification states that the horizontal extension into the rear yard will only be two feet. The Project Sponsors repeated and emphasized this statement repeatedly at the Planning Commission.

This is simply not accurate. Because the current structure has many different setbacks, voids, and small "pop-out additions the project consists of filling in and expanding all of these voids and setbacks. The entire rear façade of the building is being demolished and then extended at three levels to a point that is only two feet further than one of the small "pop-outs" that

currently exist. The result is a new three story high wall on these small substandard lots. (See Exhibit # A-1)

The proposed rear yard extension consists of a build out at the first level of some 15-18 feet into the rear yard, a build out at the second level of an additional 10 to 15 feet and a third floor which is also built out an additional 10 to 15 feet. The overall addition is approximately 800 square feet on three different floors. Obviously, a “two foot” addition could not provide that amount of new habitable living space. This is a substantial addition into these very small rear yards and the project extends past both adjacent neighbors at three levels.

Project Sponsor Refused to Provide Plans or Show True Extent of Proposed Project

Beginning with the Pre-App meeting on May 29th, 2013, there were concerns about the overall scope and size of the project. In response to neighbors’ concerns, the Sponsor’s architect Leslie Arnold told neighbors that “story poles” would be erected to demonstrate the scope of the proposal. A response to the concern of the scope and size on the 3rd floor was that it is necessary due to Andrea’s health issues, to have the laundry room located on the third floor. When neighbors expressed concern regarding the potential for an illegal second unit to be built in the very large ground floor addition, the Sponsors expressly denied having any intent to do so. We were also promised that we would receive a copy of the plans after the Pre-App. Meeting.

The promised “story poles” were not erected, the Sponsors were out of town from May until September, and the story poles never were erected after that. With regard to the third story laundry room being a necessity, we would like to point out that there has always been a laundry room on the third story; therefore, there is no need to enlarge the third story to accommodate one. In the latest revision of their plans, a second laundry room has been added on the ground floor. Therefore, it appears that there may be intent to add a second unit, which was expressly

denied at the Pre-App meeting and violates the zoning. In addition, we were never given any plans after the pre-app meeting. Two weeks later, the Sponsors suddenly requested that if neighbors were to give any suggestions of modifications, they needed them in 3 days. Hence, only very general input regarding modifications could be provided.

In early October 2013 the Sponsors invited us to their home to view their latest plans. These plans seemed vague and unclear to us. The Sponsors would not allow us to borrow the plans overnight, or to take photos of them to study. Three weeks later, on the EVE of the 311 public notice being sent to us by SF Planning, the Sponsors put plans in our mailbox (“as a courtesy”, we were later told). These plans (and the plans that came out the next day with the 311 notice) did not include important dimensions, such as the current or proposed depth of their home, or dimensions of the rear rooms of the property. Some neighbors were not given notices at all.

As noted above, the 311 notice project description of a 2’ rear build out fails to state that these measurements were given from only the deepest part of their existing building- which is currently only one small room. This existing small “sunroom” on stilts, was an add-on, done before the Sponsors purchased the property. It is important to note that this existing add-on already extends six feet beyond the rear wall of our home. In fact, their current proposal will extend approximately 16 feet from their existing ground floor, from approximately 4 to 6 feet on various sections of their 2nd floor, and from approximately 10-16 feet of various sections of their 3rd floor. The project description deliberately minimizes the scope of this project, and fails to include the significant 2 additional feet of bay window, which will further cut off and box in neighboring homes.

We subsequently had great difficulty in obtaining plans with clear and detailed dimensions. We were operating within a 30-day window in which to file for DR, during which time we employed attorney Kristin Kerr to help us with the DR application, and architect Glenn Lym to assist us by creating sun-shadow studies- but he was not able to start without more detailed plans. More delays occurred, and it was not until late in the evening on October 31, that a new set of plans was hand-delivered to our mailbox. Glenn was finally able to start working on the sun-shadow studies, but we had lost much valuable time due to the fact that the plans we had been given up until then were deficient.

As it became clear to the Sponsors that we were filing for DR and that we were intent on finding a compromise and wanted to work with them, they agreed to a meeting with us, and with our respective architects. The Sponsors expressly excluded any neighbors from this meeting, including our neighbor Cynthia, who lives on the other side of the Sponsors, and who had expressed concern about the project to them many times. After viewing our sun-shadow studies, The Sponsors and their architect Leslie Arnold seemed to understand our concerns to some degree. However, they were unwilling to meet with us again to attempt any resolution. They claimed they would “wait and see what the City says to do”. We tried to tell them that the Planning Commission wants to see that neighbors have made every attempt to work things out on their own, but they still flatly refused to meet again.

A month later we received an email, stating that as a next step, they proposed a meeting between the architects (see email 12/17/13, Exhibit # B). Fortunately, even though we were in the midst of the holiday season, Glenn was available to meet with Leslie on Dec. 23 (see email 12/23/13, Exhibit # C). Glenn gave us very encouraging news later that day, saying that the Sponsors were willing to pull back the Eastern, rear walls of levels 1 and 2 by 2 feet, and that on

the 2nd level they would reduce the depth of the bay window to 10". This seemed like a promising start, and we were very encouraged. This revision also indicated a gabled roof over the master bedroom on the 3rd floor. The small 3rd floor bedroom showed no change. In exchange for pulling back their floor 1 and 2 rear wall, the revision extended the master bedroom rear wall out 18", eliminating the balcony. Glenn indicated to Leslie that much of this was helpful, but asked that she seriously consider finding a way to lower the small NE bedroom's roof, as that is what would cause much of the shadowing to our home. Leslie said she would check with her structural engineer about this and get back to Glenn, and that she would then send him sketches. She did not leave Glenn any copies of the two hand drawn sketches they had reviewed. On Dec. 31, 2013 we heard from Glenn that he had received the sketches from Leslie, and the small bedroom roof was still flat, but had been lowered by 8". The 1st and 2nd floors had not been pulled back at all, and Leslie claimed that these PDF sketches were the same as the hand-drawn sketches that she had shown to Glenn at their meeting the week before.

After this huge misunderstanding, we were still determined to negotiate in good faith to find a workable compromise with the Sponsors. On January 7th, 2014, Glenn presented some possible creative solutions to the Sponsors for their consideration. (See 1/7/14 feedback on Leslie Arnold's proposed revisions, Exhibit # D). We proposed that the ground floor remain at its original depth, demonstrating a compromise to our DR request of pulling back the entire east wall by two feet. We also proposed that the Sponsors pull back only the North half of the second level by two feet, and that their proposed 10 inch deep bay window was acceptable. This demonstrates another creative compromise from our original DR request of pulling back the entire East wall by two feet. On the third floor, the only revision we requested was that the small N.E. bedroom roof be gabled or shed-roofed, as this bedroom as proposed has major shadowing

impact on our kitchen and dining area skylights. We were even willing to consider further extension of the master bedroom. This demonstrates yet another compromise from our DR request.

On January 24th, 2014 Glenn emailed us (see 1/24/14 email, exhibit # E) and informed us that Leslie Arnold reported that “the Sponsors felt that since the Miller/McKenzies were imposing new constraints on the project beyond the DR letter that nothing could be gained by further design revisions, and that the Sponsors would just proceed with the DR.” We were dismayed at this response, as we had come up with several creative compromises, and we hoped to continue these discussions in good faith. In fact, at this point we were asking for significantly less in the way of compromise than what was presented in our DR letter. (Please see drawings showing suggested revisions, exhibit # F). It seemed incomprehensible to us that we had spent so much time, effort and money on working out a compromise with the Sponsors, only to be shut down so abruptly. We are astounded at the lack of regard that the Sponsors have demonstrated for our continued good-faith efforts.

UNUSUAL/EXCEPTIONAL CIRCUMSTANCES

Given the substandard lot size of 95’ x 25’ that we and the Sponsors occupy, as well as most of the surrounding properties on our small block, this project in its current form will have a huge impact on the open space and light that we and our neighbors currently enjoy. According to the SF Planning Code Residential Design Guidelines, “ buildings must be compatible with the form of surrounding buildings”. As planned, this project will extend 10 feet beyond the rear wall of our home, cutting us off from the open space we now enjoy, reducing light to our home and creating a depressing, boxed in-in effect. (see aerial view of mid-block open space and varied types of buildings- with proposed project, Exhibit # G, and “Sun Studies” Exhibit G-1).

In 2002, we did an extensive remodel to our home, with the intent of maximizing our light and exposure to open space, while being respectful of the effect our addition would have on our neighbor's light and enjoyment of the open space. As Julie has a diagnosis of Seasonal Affective Disorder, it was extremely important to bring in as much light to our home as possible. The Sponsors project as currently designed, would have an extremely negative impact on Julie's health, as it would severely diminish the overall light to our home and into our skylights. It is also important to note that significant remodels and additions have recently been done on other single-family homes within our block, which had little or no impact on their neighbors or to our mid-block open space. (See photos Exhibit # G-2)

NEIGHBORHOOD CONCERNS :

The neighbors on our block and in the surrounding community have overwhelmingly supported us throughout this difficult ordeal. They have written many letters in support of our concerns, and expressing their own concerns regarding the negative impacts that this project will have (Please see attached letters Exhibit # H). We also had a very strong showing of support from our neighbors and the community at the DR Hearing. To our knowledge, the Project Sponsors have no support from our immediate neighborhood whatsoever.

CONCLUSION

This project was not accurately described to the surrounding community in the public notices. The neighbors do not believe their concerns were fairly heard by the Planning Commission and one adjacent neighbor was refused the opportunity to present any testimony to the Commission. Because of these errors in the time allotted our architect was not able to present any testimony or his suggestions for mitigation. Because the project represents a large new rear addition at three levels on substandard lots, the impacts to the adjacent neighbors are substantial.

The loss of light and air to both adjacent neighbors would be substantial, because the proposed project extends well past both adjacent neighbors, and violates the residential design guidelines which suggest matching rear yard extensions and the incorporation of setbacks and light wells. We request that this project be returned to the Planning Department for a fair and accurate notification to the public and to provide the adjacent neighbors with the opportunity to present their concerns.

Sincerely,

Julie McKenzie and Ken Miller

LIST OF EXHIBITS

Exhibit A) Emails between attorney Kristin Kerr and Planner Chistine Lamorena 4/21/2014

Exhibit A-1) Plans showing deceptive depth of proposed addition

Exhibit B) Email from The Sponsors proposing meeting of architects 12/17/2013

Exhibit C) Email from Appellant's architect reporting on the meeting of both architects 12/23/2013

Exhibit D) Email: Feedback from Appellant's architect 1/7/2014

Exhibit E) Email re: Telephone conversation w Project Sponsors' architect 1/24/2014

Exhibit F) Appellants' suggested revisions for 2nd and 3rd floors

Exhibit G) Aerial view of Mid-Block open space

Exhibit G1-) Sun-Studies

Exhibit G-2) Photos

Exhibit H) Letters from our neighbors

Exhibit "A", Page 1

From: Kristin Kerr [mailto:kristin@wolfflaw.com]
Sent: Monday, April 21, 2014 3:19 PM
To: Lamorena, Christine (CPC)
Subject: DR Hearing 1264 Sixth Ave.

Hi Christine,

Quick question in advance of the Discretionary Review hearing. My client's neighbor Cynthia Smith joined in the DR Application. Will she be allowed 5 min to speak as a separate requestor?

Also is there an estimated start time for our matter?

Thank you for your continued assistance on this matter.

Yours Truly,

Kristin Kerr

Kristin Kerr, Esq.
Law Office of George W. Wolff

505 Sansome Street, Suite 1525
P.O.Box 26749
San Francisco, CA 94126-6749
Telephone: (415)788-1881, ext.232
Telecopier: (415)788-0880
e-mail: kristin@wolfflaw.com
website: www.wolfflaw.com

Julie McKenzie <jewelflute@gmail.com>
To: Kristin Kerr <kristin@wolfflaw.com>
Cc: Ken Miller <kenbasso4@gmail.com>, "architectlym@gmail.com" <architectlym@gmail.com>, "Dr. Smith Cynthia DPM" <swimminghorse@att.net>

Tue, Apr 22, 2014 at 2:05 PM

Hi Kristin- Thanks for clarifying this. Are you available to talk anytime soon?

Thanks-
Julie



Julie McKenzie <jewelflute@gmail.com>

EXHIBIT "A", Page 2

FW: DR Hearing 1264 Sixth Ave.

24 messages

Kristin Kerr <kristin@wolfflaw.com>

Tue, Apr 22, 2014 at 10:08 AM

To: Julie McKenzie <jewelflute@gmail.com>, Ken Miller <kenbasso4@gmail.com>, "architectlym@gmail.com" <architectlym@gmail.com>, "Dr. Smith Cynthia DPM" <swimminghorse@att.net>

Per email below Cynthia will have 3 minutes.

From: Lamorena, Christine (CPC) [mailto:christine.lamorena@sfgov.org]
Sent: Tuesday, April 22, 2014 9:56 AM
To: Kristin Kerr
Subject: RE: DR Hearing 1264 Sixth Ave.

Hi Kristen –

No, since Cynthia joined the Miller/McKenzie party in their request, she is not considered a separate requestor. She would be considered separate if she filed her own DR application/request. She is allowed 3 minutes as explained under item #3 of page 5 of the DR packet (<http://www.sf-planning.org/Modules/ShowDocument.aspx?documentid=491>).

There is no estimated start time. The item is listed as #16 on the calendar (<http://www.sf-planning.org/index.aspx?page=3803>) with the hearing beginning at 12 noon.

Thank you,

**Christine Lamorena, LEED AP
Planner, Northwest Quadrant, Current Planning**

Planning Department, City and County of San Francisco
1650 Mission Street, Suite 400, San Francisco, CA 94103

Direct: 415-575-9085 **Fax:** 415-558-6409

Email: christine.lamorena@sfgov.org

Web: www.sfplanning.org



Exhibit A-1

Addition at First Floor Extends Approx. 18' From Existing Structure and Past BOTH Neighbors 10'-12'. This is not a two foot (2') Addition as Stated in the 311 Notification and to the Planning Commission.

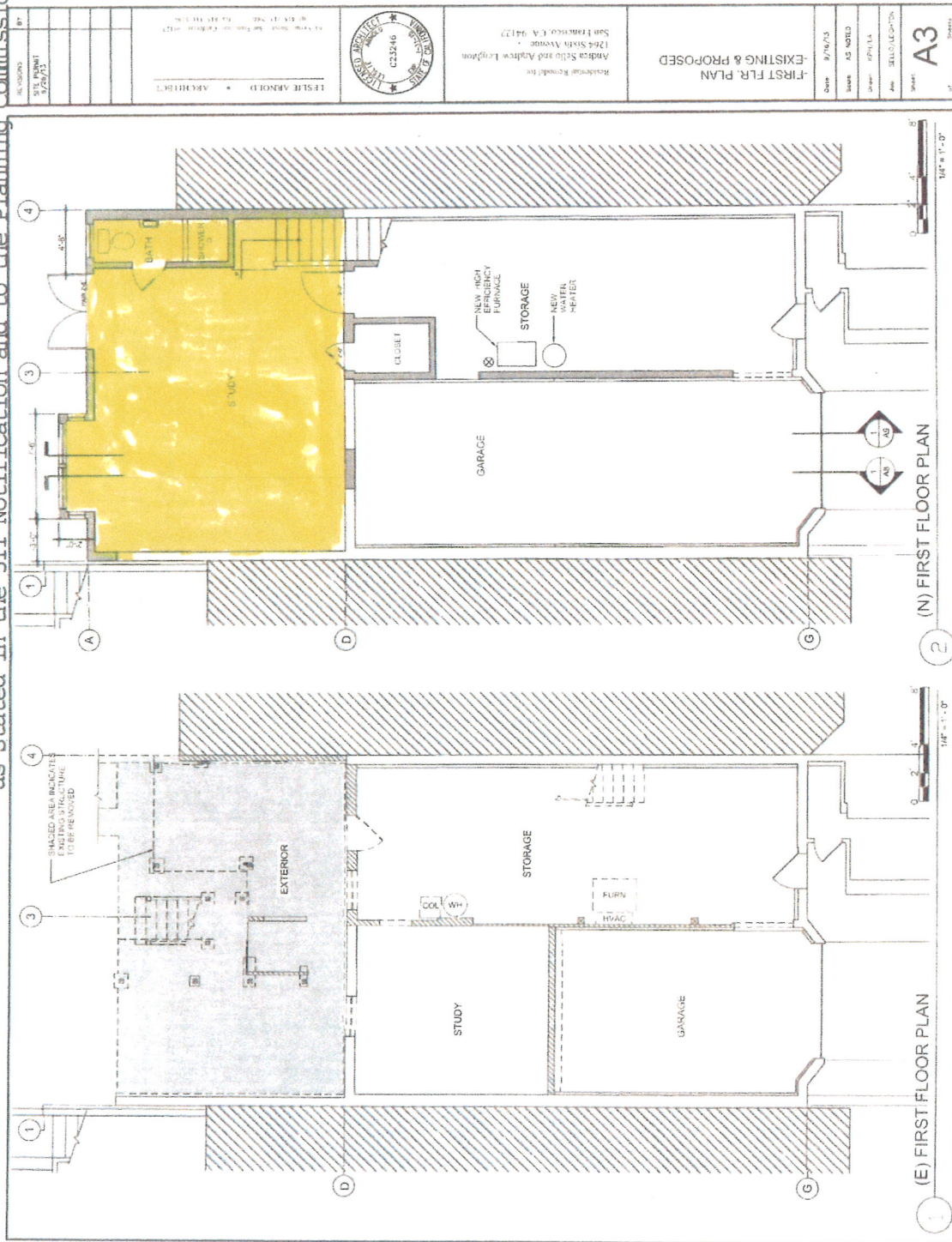


Exhibit A-1, page 1

PROJECT NO. 07/20/15	DATE 07/20/15	SCALE AS NOTED	APP. SHEET NO. 001	SHEET A3
PROJECT NAME 1515E ARNOLD	ARCHITECT 1515E ARNOLD	RESIDENTIAL ARCHITECT FOR ANDREA STEIN AND ANDREW LEIGHTON 1266 SOUTH AVENUE SAN FRANCISCO, CA 94133	PROJECT NO. 07/20/15	DATE 07/20/15
FIRST FLOOR PLAN - EXISTING & PROPOSED		C22246		

EXHIBIT "B"

Next Step

23 messages

Clay Leighton <clay.leighton@gmail.com>

Tue, Dec 17, 2013 at 10:44 AM

To: Ken Miller <kenbasso4@gmail.com>, Julie McKenzie <jewelflute@gmail.com>

Cc: Andrea Sello <acsello@aol.com>, christine.lamorena@sfgov.org, Leslie Arnold <lesliearnoldsf@mac.com>

Hi Ken and Julie,

We have now received a copy of your Discretionary Review filing. Based upon our review of your filing, we believe you are proposing the following changes to our plans:

"The Miller/McKenzie's seek minor modifications to the project in the form of a reduction of the total depth of the addition from 4ft. to 2 ft. (inclusive of the bay windows). This could be obtained by eliminating either the added 2 ft. of building depth or eliminating the bay widows. The result could also be achieved by reducing the building depth by 1 ft., and reducing the bay window depth to 1 ft. Adding a sloped roof would also significantly reduce the shadow impacts, and bulkiness of the addition." (Page 6)

As a next step and rather than engaging in a formal mediation process, we would like to propose that our two architects, Leslie and Glenn, discuss possible changes to our proposed plans that could lead to a design acceptable to both of us. If you agree to this, we would like to have them talk and/or meet later this week.

Any changes that we propose to our plans will be made with the objective of finding a mutually acceptable design and eliminating the protracted and expensive Discretionary Review process. If we are unable to agree upon a modified design, we will continue to move forward with our current plans and the City DR process.

Let us know if this is an acceptable next step from your perspective.

Best wishes,

Clay and Andrea

Ken Miller <kenbasso4@gmail.com>

Tue, Dec 17, 2013 at 12:21 PM

To: Kristin Kerr <kristin@wolfflaw.com>, Glenn Lym <architectlym@gmail.com>, Julie McKenzie <jewelflute@gmail.com>, Cynthia <swimminghorse@att.net>

Hi,

Just received this email from the Leightons.

Kristin, I believe that you suggested the same idea as they are saying here. The architects getting together.

Of course, they want this to happen by the end of the week, right? :)

We could have done this a long time ago.

Like to get your take on how to proceed.

And Glen, what is your availability in the coming weeks?

EXHIBIT BC

Meeting with Lesile Arnold Architect 12-23-2013

1 message

Glenn Lym <architectlym@gmail.com>

Mon, Dec 23, 2013 at 5:55 PM

To: Julie McKenzie <jewelflute@gmail.com>, "Kenneth (Julie McKenzie) Miller" <kenbasso4@gmail.com>, Kristin Kerr <kristin@wolfflaw.com>

Lesile and I met for about an hour at Cafe Flore today.

She presented some revisions to the earlier scheme that she has developed with the Leightons. These revisions consist of the following:

1. They are willing to pull back the eastern, rear wall of floors 1 and two back 2 feet. Instead of their two feet deep bay window(s) on each floor, they would remove the bay window on the first floor. On the second floor, they would have a bay window that projects out from the rear wall 10". This bay window would not descend to the floor or ceiling level. Its bottom would be several feet above the floor and its top would be below the interior ceiling. It would be a 10" deep box attached to the rear wall, in place of of yet in the same lateral location was their earlier proposed full height bay window.
2. On floor level 3, the revision shows a gable roof over the main south east bedroom. This configuration lowers the north roof eave point to several inches over 8' above the floor, a drop of a little less than 24".
3. In exchange for pulling back their floor one and two rear wall, the revision extends the east wall of the main south east bedroom eastward 18". The balcony previously designated over the floor below, outside this bedroom would be removed, leaving simply the roof of the floor below.
4. Over the smaller, north east bedroom, the revision still shows no change. It shows a flat roof at the 10'-8" height of the earlier scheme.

I told Leslie that the design directions behind items 1 and 2 were useful.

I told her that Julie and Ken looked favorably on a bay window having canted or cambered sides. She said she would look into this, noting that the 10" bay under item 1 could not have side windows given how shallow it was in its rectangular plan configuration.

I asked that she seriously consider finding a way to lower the north east bedroom's north roof edge (item 4 above). We discussed several ways this might happen. She said she would consult with her structural engineer about this.

She indicated that the concept of having higher interior ceilings with gabled roofs over one or both bedrooms through interesting to her, is not of interest to the Leighton's as they want flat interior bedroom ceilings. She discussed how they are considering having interior ceiling coves to accommodate the lowered gable roof in the south east bedroom proposed revision.

I asked Leslie about what kinds of deadlines they are operating under. At first she indicated that they had no deadlines. Later, she indicated that the date for the DR hearing can not be set until it is clear no negotiated adjustment can be reached. She indicated that the Planning Department is mostly shut down with personnel returning on January 6, 2014. I got the sense, wrong or right, that the Planner associated with this project - Cynthia - is due back on January 6, and thus it could be useful to reach some agreement by then. Leslie did say, that if no agreement were possible, the Leighton's would proceed with a DR hearing.

Leslie will copy and send me me sketches after she has a chance to talk to her structural engineer about the north east bedroom roof. She did not leave me any copies of the two hand drawn sketches we reviewed.

Christine

EXHIBIT "D"

1-7-2014 Feedback on Leslie Arnold's 12-31-2013 Proposed Revisions to the earlier 9-16-2013 Remodeling Designs for 1264 6th Ave

Floor Level One:

. The original 9-16-2013 design for this level with its bay window at its 2' deep east exterior wall is acceptable.

going back to original ground floor depth -
We are compromising our DR request.

Floor Level Two:

. In the 9-16-2013 design, the east exterior wall at the new kitchen is acceptable. But it imperative that the new east rear exterior wall from the north property line to the northern edge of the new Kitchen not extend eastward beyond the existing Level Two East Wall at the north property line. The 10" deep bay window as shown in the 12-31-2013 East Exterior Elevation, applied to this pulled back Sunroom east wall would be acceptable.

This is asking for a pullback only on half of 2nd floor

Floor Level Three:

. The small, northeast bedroom has major impact on shadowing the Miller McKenzie's Kitchen Dining Skylights. The roof over this bedroom (with no fire parapets) should be gabled or shed roofed to bring down this bedroom's north property line roof edge to 30" below the 30'-6" Third Floor Roof datum line.

. The 9-16-2013 proposed flat roof over the Master Bedroom is acceptable. Further extension of the Master Bedroom east wall could be considered.

This shows our only concern on 3rd floor is roof of small bedroom due to shadowing



Julie McKenzie <jewelflute@gmail.com>

EXHIBIT "E"

Telephone discussion w Leslie Arnold 1-24-2014

8 messages

Glenn Lym <architectlym@gmail.com>

Fri, Jan 24, 2014 at 6:14 PM

To: Julie McKenzie <jewelflute@gmail.com>, Ken Miller <kenbasso4@gmail.com>

Cc: kristin@wolfflaw.com, George Wolff <george@wolfflaw.com>

Leslie called me this morning.

She indicated that since the McKenzie Miller's were imposing new constraints on the project beyond the DR letter, that the Leighton's felt that nothing could be gained by further design revisions and that the Leighton's would just proceed with the DR.

I put forth my view of the situation which differs in significant ways from what Leslie depicted. I told her that it was my understanding after she had received my 1-7-2014 Feedback on their 12-31-2013 proposal, she had said that if the McKenzie Millers could except the east level two wall where shown in the 12-31-2013 proposal, then they might be able to do more in terms of level 3. In today's call, I told her explicitly that in my feedback of 1-7-2014, I and the McKenzie Millers had not outright rejected the location of that east wall. Rather, we awaited what to see what Leslie would mean by doing more about level 3.

She reiterated that the Leighton's consider that since the McKenzie Miller's demands were beyond their DR letter, that the Leighton's would proceed with DR.

After several rounds of Leslie and I stating our positions, Lesile said that she had reworked the level 3 floor plan, but that it resulted in configurations unacceptable to the Leighton's. She specifically mentioned that pulling the north roof edge of the NE bedroom down 30" below the SFCP submitted scheme would result in an interior room ceiling height unacceptable to the Leighton's. I reiterated that my comments that I had made to her in our telephone conversation of 1-8-2014 in which I noted that our 1-7-2014 feedback did not necessarily imply pulling down the whole roof down but could include putting a gable on the smaller NE bedroom. She reiterated her earlier comments by saying that the Leighton's did not want sloped bedroom ceilings. They wanted flat ceilings.

Lesile continued, saying that the Leighton's neighbor to the south, Cynthia, had sent a letter. Leslie and the Leighton's had not been aware that Cynthia was a part of the DR. Leslie said they have reached out to Cynthia but so far not heard from her. Leslie further indicated that there was no way that extending out the MBR east wall would fly from that neighbor's point of view. It was not clear if she was referring to the extension proposed in Leslie's 12-31-2013 scheme or an additional extensions suggested in our 1-7-2014 feedback.

I then revisited Leslie and my Cafe Flore discussions, noting again that my impression from those informal discussions was that Leslie's sketches showed both a pull back of the rear wall and the bay window. Leslie's restated her earlier position that I had been mistaken.

.....

What to make of this. Things are quite unclear.

Leslie is in effect saying that the negotiation path we were heading down in terms of the 12-31-2013 proposal and 1-7-2014 feedback is now no longer operative using the reason that the McKenzie Miller's will not except any scheme that does not pull back the level 2 east wall. Yet in fact such a position has not been made by my and not been made by the McKenzie Miller's

It is not clear, what proposal is on the table, if any. Are they saying that they are pulling back their 12-31-2013 proposal and going back to their submitted scheme? But if so, does that mean they will not attempt to negotiate with Cynthia on her concerns?

It is also clear that Leslie was unable to deliver on her suggestion that if the McKenzie Miller's could accept the

2nd floor suggested revision

EXHIBIT "F", page 1

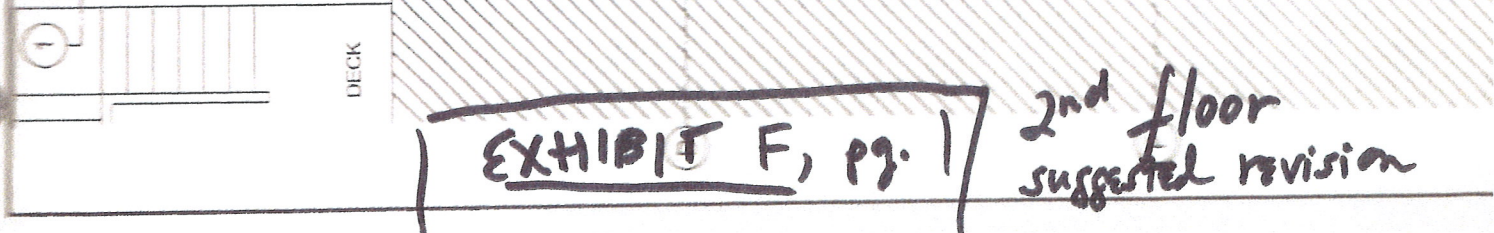
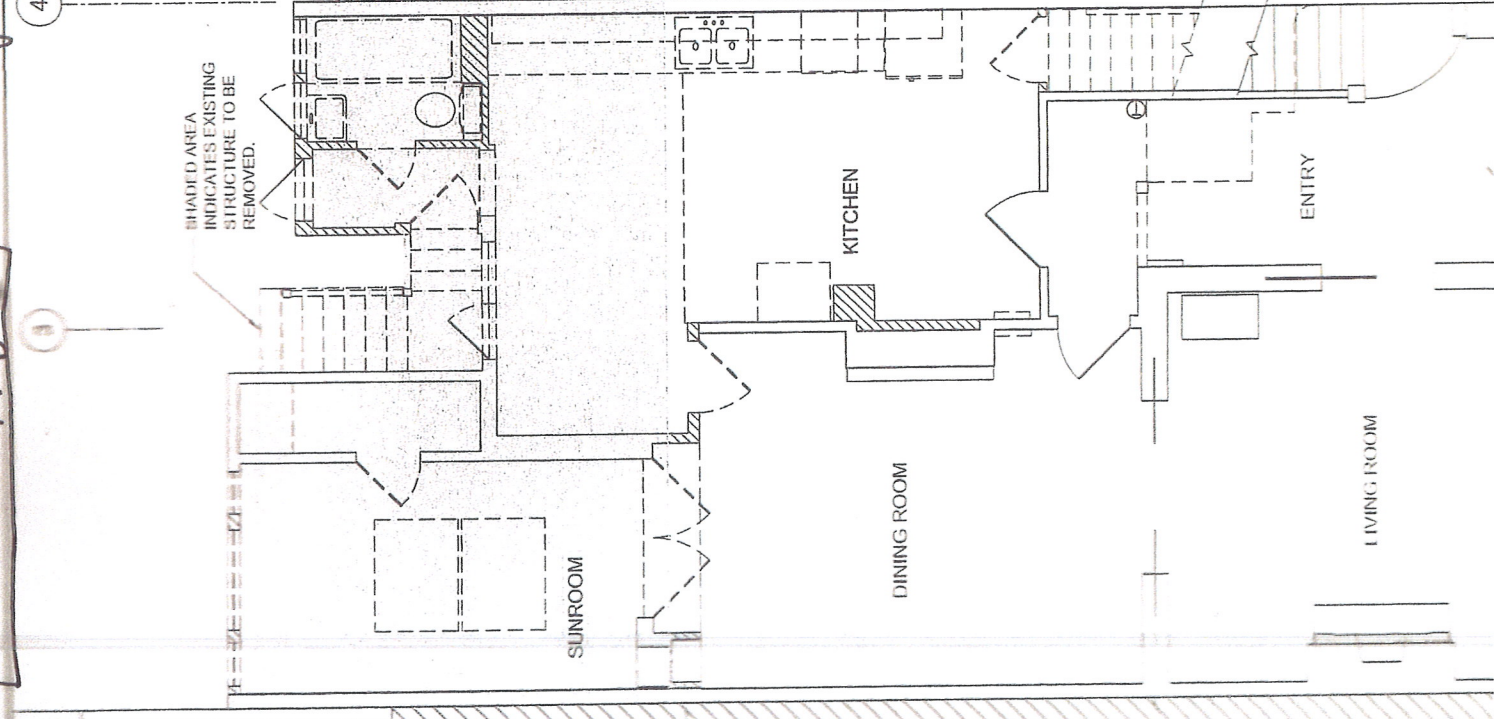
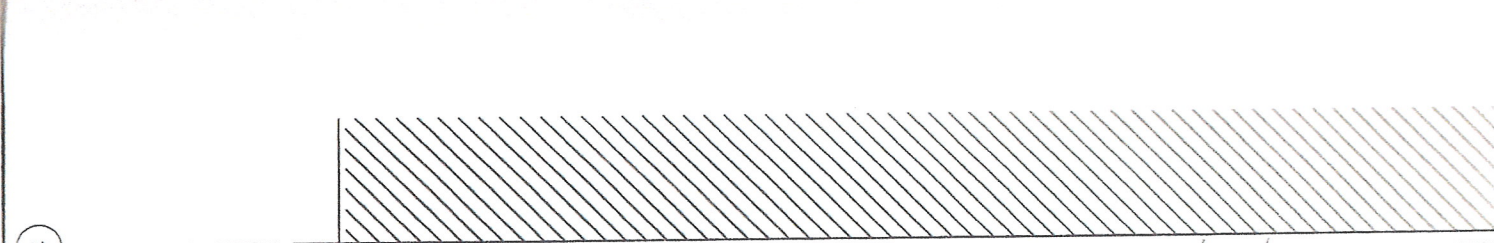
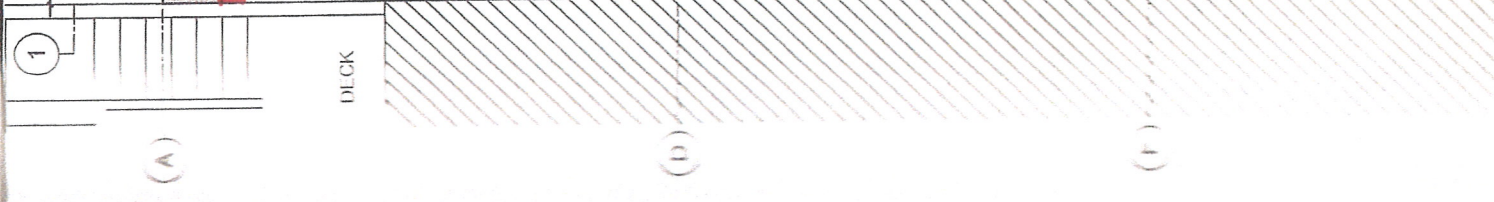
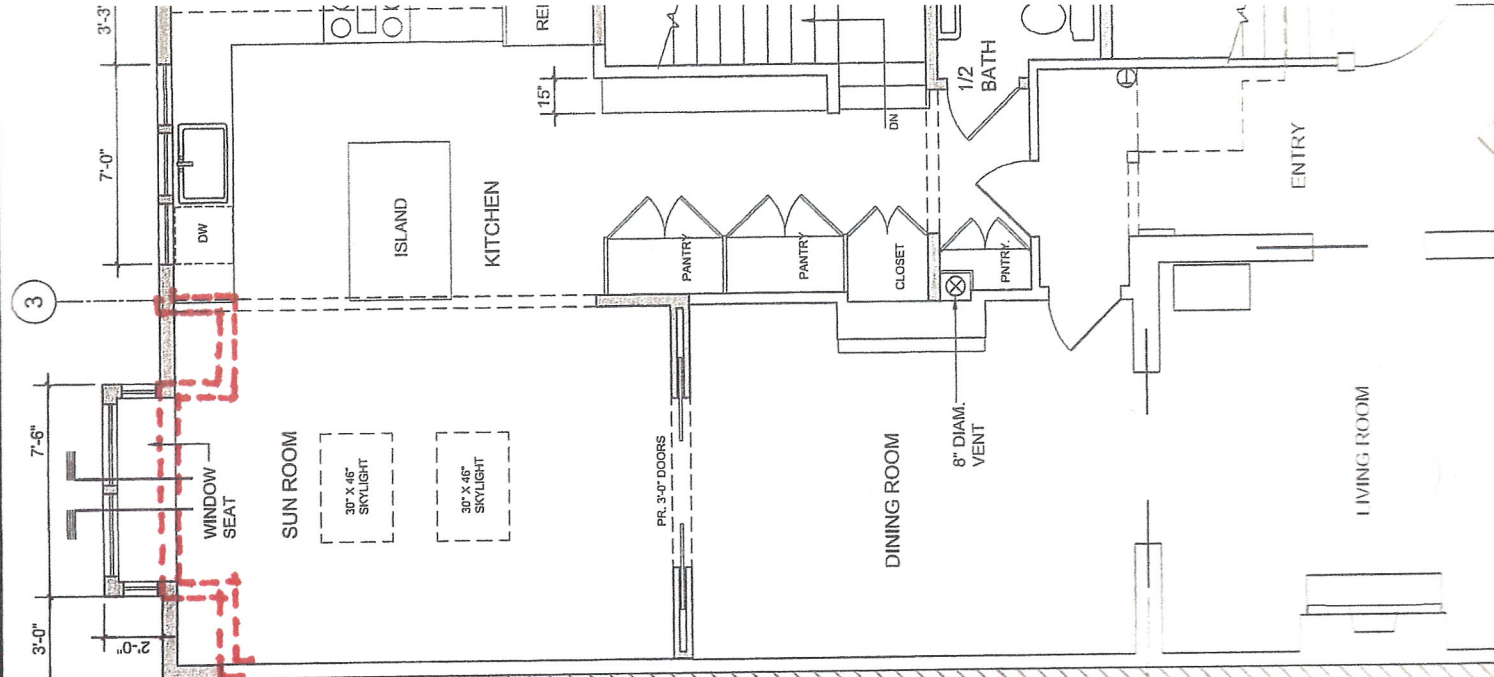


EXHIBIT F, pg. 1 / 2nd floor suggested revision

EXHIBIT F, page 2

3rd floor suggested revision

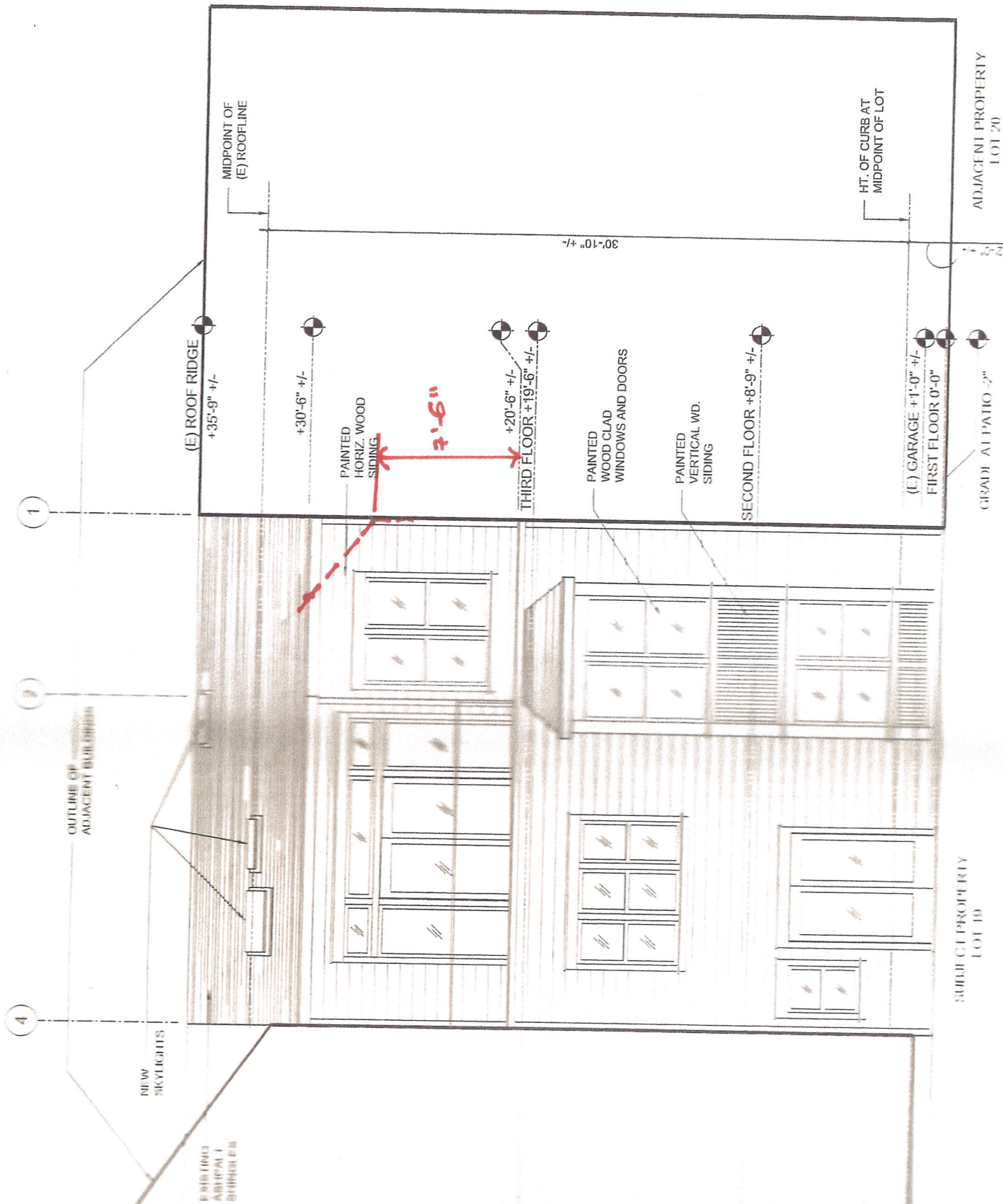


EXHIBIT F, pg. 2

3rd floor suggested revision