BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal of
STEPHEN WILLIAMS,)
Appellant(s))
)
vs.)
)
ZONING ADMINISTRATOR,)
Respondent

Appeal No. **20-051**

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT on August 3, 2020, 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 July 22, 2020 to Brian Villavicencio, of a Rear Yard Modification (the project proposes to construct an approximately 166 square foot rear addition at the second floor of the two-story over basement residential building that will extend approximately one foot and four inches into the required rear yard; therefore a rear yard modification is required by Planning Code Section 134; the Zoning Administrator granted the rear yard modification upon a determination that the facts of the case meet the three requirements of Planning Code Section 134(e)) at 1926 Divisadero Street.

APPLICATION NO. 2018-013422VAR

FOR HEARING ON September 2, 2020

Address of Appellant(s):	Address of Other Parties:
Stephen Williams, Appellant(s) The Law Office of Stephen M. Williams 1934 Divisadero Street San Francisco, CA 94115	Brian Villavicencio, Determination Holder(s) 160 Birch Street, Suite B Redwood City, CA 94062

Date Filed: August 3, 2020

CITY & COUNTY OF SAN FRANCISCO
BOARD OF APPEALS

PRELIMINARY STATEMENT FOR APPEAL NO. 20-051

I / We, **Stephen Williams**, hereby appeal the following departmental action: **ISSUANCE** of **Rear Yard Modification Decision No. 2018-013422VAR** by the **Zoning Administrator** which was issued or became effective on: **July 22, 2020**, to: **Brian Villavicencio** for the property located at: **1926 Divisadero Street**.

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: **August 13, 2020**, **(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 should be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org and scott.sanchez@sfgov.org,

Respondent's and Other Parties' Briefs are due on or before: **August 27, 2020**, **(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 doubled-spaced with a minimum 12-point font. An electronic copy should be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org, scott.sanchez@sfgov.org, and smw@stevewilliamslaw.com.

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

Hearing Date: **Wednesday, September 2, 2020, 5:00 p.m.,** 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 change 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/boaYou 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.

The reasons for this appeal are as follows:

Reasons to be set forth in brief.

Appellant or Agent (Circle One):

Signature:_____
Print Name: Filed electronically by Stephen Williams

SAN FRANCISCO
PLANNING DEPARTMENT

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

Reception:
415.558.6378

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Information:
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Rear Yard Modification Decision

Date:	July 22, 2020
Case No.:	**2018-013422VAR**
Project Address:	**1926 Divisadero Street**
Zoning:	NC-2 (Small Scale Neighborhood Commercial) District 40-X Height and Bulk District
Block/Lot:	1027/024
Applicant:	Brian Villavicencio The Kastrop Group 160 Birch Street, Suite B Redwood City, CA 94062 brian@kastropgroup.com
Owners:	Irina Shestakova and Lothar Determann 1926 Divisadero Street San Francisco, CA 94115
Staff Contact:	Sharon M. Young – (415) 558-6346 sharon.m.young@sfgov.org

DESCRIPTION OF VARIANCE – REAR YARD MODIFICATION SOUGHT:

The proposed project is to construct an approximately 166 square foot rear addition at the second floor of the two-story over basement residential building. The proposed rear addition (approximately 10 feet 2 inches to 16 feet 6 inches wide to 14 feet 5 feet deep) will abut the north side property line and will be set back approximately 6 feet from the south property line. A portion of the proposed second floor addition will extend into the required rear yard.

Planning Code Section 134 requires a rear yard in the NC-2 Zoning District where a dwelling is located which is 25% of the total depth on the lot on which the building is situated but in no case less than 15 feet. The subject property, with a lot depth of 100 feet, has a required rear yard of 25 feet. The proposed rear addition on the second floor will extend approximately 1 foot 4 inches into the required rear yard. Therefore, a rear yard modification is required.

PROCEDURAL BACKGROUND:

1. The Project is exempt from the California Environmental Quality Act ("CEQA") as a Class 1 categorical exemption.

2. Planning Code Section 134(h) required rear yard modifications to follow the same procedures and processes as variances. The requested rear yard modification under **Variance Application No. 2018-013422VAR** is less than 10% deviation from the Planning Code requirement. Planning Code Section 305(c) grants the Zoning Administrator the power to decide such variances

without a public hearing. This project falls within that threshold, and the Zoning Administrator elected to not hold a public hearing.

3. Planning Code Section 311 notification was mailed for Building Permit Application No. 2018.0808.6813 on October 30, 2019 and expired on December 2, 2019. Due to insufficient posting of the Section 311 poster, the Zoning Administrator required the reposting of the Section 311 poster for an additional 30 days.

4. On December 2, 2019, Steve Williams, the adjacent neighbor to the north of the subject property at 1934 Divisadero Street, filed a request for Discretionary Review of Building Permit Application No. 2018.0808.6813 within the Section 311 notification period. On June 25, 2020, the San Francisco Planning Commission conducted duly noticed public hearing at a regularly scheduled meeting on Discretionary Review Application Record No. 2018-013422DRP and found that there are no extraordinary or exceptional circumstances in this case and did not take Discretionary Review of the Project.

5. On May 24, 1977, the Zoning Administrator granted lot width and lot area variances for a lot split under Variance Case No. VZ77.011 to separate the subject property 1926 Divisadero Street with the adjoining property to the south at 1924 Divisadero Street. The two properties will continue to share an adjoining party wall along the south side property line with the proposed project.

DECISION:

GRANTED, in general conformity with the plans on file with this application, shown as EXHIBIT A, to construct an approximately 166 square foot rear addition at the second floor of the two-story over basement residential building that will extend into the required rear yard, subject to the following conditions:

1. The authorization and rights vested by virtue of this decision letter **shall be deemed void and cancelled** if (1) a Site or 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 Site or 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 implementation of the project is delayed by a public agency, an appeal or a legal challenge and only by the length of time for which such public agency, appeal or challenge has caused delay.

2. 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.

3. The proposed project must meet these conditions and all applicable City Codes. In case of conflict, the more restrictive controls apply.

4. Minor modifications as determined by the Zoning Administrator may be permitted.

5. 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.

6. This 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, if applicable.

REAR YARD MODIFICATION CRITERIA:

Planning Code Section 134(e) states that in order to grant a Rear Yard Modification in a Neighborhood Commercial zoning district, the Zoning Administrator must determine that the facts of the case are sufficient to establish the following three 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 is entirely residential in use and involves expanding development to improve the livability of the subject property with the proposed second floor rear addition (to accommodate a new full bathroom and closet), which would be constructed above the existing first floor roof area. The existing residential building has three bedrooms and one full bathroom. The rear yard modification is to allow the proposed second floor rear addition to structurally align with the rear most walls of the first and basement floors below as misalignment of the existing first floor wall and the proposed second floor will result in additional costly work on the first floor to support a bearing wall above it. Because the proposed addition will be located on the first floor, it will not affect the amount of existing usable open space accessible to the residents of the development within the existing rear yard.

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 subject lot is approximately 1,619 square feet (16.188 feet wide by 100 feet deep) in size and the existing building was constructed circa 1900. The existing residential building has approximately 2,642 square feet of floor area and is a potential historic resource, which limits

the proposed expansion of the building primarily to the rear portion of the lot that is not visible from the public right-of-way. The Planning Department's Residential Design Team (RDAT) reviewed the proposed project and found that the proposed second floor addition is consistent with the Residential Design Guidelines and will not significantly impede the access of light and air from adjacent properties. The General Plan, Planning Code, and Residential Design Guidelines do not provide for protecting views from private property.

B. A request for Discretionary Review (Record No. 2018-013422DRP) was filed by the neighboring property (1934 Divisadero Street) to the north due to concerns that the proposed project was not properly noticed and does not comply with the Residential Design Guidelines (to articulate the building to minimize impact to light, air, and privacy and to design the height and depth of the building to be compatible with the existing building scale at the mid-block open space). Although the proposed second floor addition will abut the north side property line, a side setback will be maintained for most of their common length. The Planning Commission found no extraordinary or exceptional circumstances in this case and did not take Discretionary Review of the proposed project.

CRITERION 3.
The proposed new or expanding structure will not adversely affect the interior block open space formed by the rear yards of adjacent properties.

Requirement Met.

A. Because the proposed second floor rear addition will have similar building footprint as the floors below the residential building, it will not significantly affect the existing interior block open space formed by the rear yards of adjacent properties. The proposed rear addition will not extend beyond the rearmost building wall from the neighboring property to the north and will match the rearmost building wall of the neighboring property to the south. Furthermore, there are other neighboring properties within the mid-block open space (1916 Divisadero Street, 1908 & 1910 Divisadero Street, and 1900, 1902 & 1904 Divisadero Street) that already extend into their required rear yards.

PRIORITY POLICIES FINDINGS
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.

2. The proposed project will be in keeping with the existing housing and neighborhood character. The proposal will preserve the existing single-family home on the property.

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.

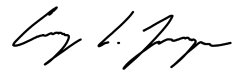
Once any portion of the granted rear yard modification is used, all specifications and conditions of the authorization become immediately operative.

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 Rear Yard Modification Decision. For further information, please contact the Board of Appeals in person at 1650 Mission Street, 3rd Floor (Room 304), call 575-6880, or visit www.sfgov.org/bdappeal.

Very truly yours,



Corey A. Teague, AICP
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.

APPELLANT’S BRIEF

San Francisco Board of Appeals
Appeal No. **20-051**

Stephen Williams
Appellant,
v.
Zoning Administrator,
Respondent.

Project Sponsor,
Brian Villavicencio,

Appellants' Brief In Support of Appeal

Variance Application # 2018-013422VAR **1926 Divisadero Street**

Appeal of Grant of Variance Application # 2018-013422VAR by the Zoning Administrator.

Hearing Date:	Wednesday, September 2, 2020
Time:	5:00 PM
Location:	City Hall, Room 416 #1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102

Stephen M. Williams SBN: 122103
1934 Divisadero Street
San Francisco, CA 94115
Tel: (415) 292-3656
smw@stevewilliamslaw.com
Appellant

INTRODUCTION

The requested expansion of the building at 1926 Divisadero Street with a variance will cause real harm to the adjacent neighbor to the north. It is legally and morally wrong to take the rights and protections granted to the neighbor under the Planning Code (the right to sunlight into south facing windows) and transfer those rights and protections to the Project Sponsor without legal justification for such an expansion of a non-conforming structure.

The proposed project at 1926 Divisadero Street is to build a rear yard addition and expand the non-conforming (and we believe illegally constructed) "pop-out" addition to the northern property line at the upper floor. Appellant owns the property that will be injured at 1934 Divisadero Street and it is directly adjacent and to the north. It is a much smaller one-story building and it will be negatively impacted if the proposed project is approved as the new three-story addition will block all direct sunlight to four windows.

The neighbors made their objections to the variance and to the project itself known to the applicant, early on without result. The head architect for the Planning Dept, David Winslow, suggested several compromises (sloped roof or a shelf-like set-back) which Appellant agreed to as a compromise solution. However, without explanation, the Sponsors refused and insisted on building the addition directly on the property line at thirty feet (30') in height. The new addition is nearly 15' feet tall....almost the equivalent of two stories. It could easily be reduced in height to ease the impact on the neighbor.

Subject Site and Past Variance

Much of the problem with the project is the subject site. It is an extremely substandard lot at only 1,619 square feet. (*minimum* Code complying lot size is 2500 square feet). This small lot size is the result of a prior variance granted to the site to allow a lot split. The prior variances

granted to this property were to allow a substandard lot size and a substandard width of the lot at just a little over sixteen feet (16') wide. If the lot had remained at its code-complying width, requiring a setback would not be an issue. Granting multiple variances to the same development site is an unfair use of the variance process and directly contrary to the standards and law that should guide the granting of variances.

While the proposed addition is relatively small in square footage, it is extremely TALL for a one-story addition (14'8"). A single-story addition that is just under fifteen feet (15') tall, will effectively cut all direct sunlight to four windows on the neighboring building at 1934 Divisadero Street to the north. For the Board's reference, a series of photos showing the southside windows at 1934 Divisadero Street, exterior and interior attached hereto as Exhibit 1.

A variance may not be granted when it is detrimental or injurious to neighboring properties. No honest assessment of the impacts of this project and its variance can conclude that it does not cause harm to the neighbor. If the project is to be approved, it must be approved without a variance which violates all accepted standards for such variances.

The Variance Decision Letter is Filled with Errors and Misstatements of Law

The Variance Decision Letter (for the Board's convenience, the Letter is attached hereto as Exhibit 2) is riddled with errors and misstates not only the code section applicable to the variance requested, but also many of the necessary findings to grant a rear yard variance. The Variance Decision Letter also fails to provide the *mandatory* findings needed under state law and the City's Planning Code before a variance may be granted. The three criteria under Section 134(h) (mistakenly cited as Section 134(e) in the Variance Decision Letter, page 3 ---miss-numbered as page 5) are insufficient alone to grant a variance and the Planning Code and California State Law require additional mandatory findings.

The entire Variance Decision Letter appears to be a very badly crafted "cut and paste" job which contains numerous sloppy errors. For example, in addition to citing the wrong code section, every page in the Variance Decision Letter, which is six pages in length, is numbered as page "5." This careless error makes it difficult to easily reference pages of the Letter for the purposes of this appeal. At a minimum, the Variance Decision Letter must be rescinded, corrected, and recirculated. The Zoning Administrator also applied the wrong standard for granting the variance and misstates the law applicable to granting a variance. For example, the Decision Letter boldly states that:

"The General Plan, Planning Code, and Residential Design Guidelines do not provide for protecting views from private property" (Variance Decision Letter, page 4 (mistakenly numbered as page 5) last sentence of first paragraph)

Although the Planning Dept. loves to recite this statement as one of its mantras, it is clearly wrong and an error as a matter of law. Private views **are** protected from variances. The Code Section being applied by the Zoning Administrator (cited as Section 134(e) but is actually Section 134(h)) specifically states that a variance may only be granted on a finding that the variance does not impede, "*views from adjacent properties*." See, Section 134(h)(B). In other words, the Planning Code *does* protect views from the granting of variances, the exact opposite conclusion stated in the Variance Decision Letter.

The Planning Code also protects the light and air to adjacent properties from "new or expanding structures" being granted a variance. In this instance, the expanding of the structure at 1926 Divisadero Street to 30' feet in height directly on the property line with a variance will significantly impede the direct sunlight which is able to reach the windows on the building at 1934 Divisadero Street and which face the subject structure. Accordingly, the variance should not be granted, and the project should be disallowed.

The Submitted Plans Do Not Meet the Minimum Code Mandated Standards

The plans submitted for the project are not code compliant. The plans failed to show any of the basic features or openings of the neighboring building to the north at 1934 Divisadero Street which will be severely impacted. The plans violate the Planning Code and should have never been accepted by either the Department of Building Inspection or the Planning Department. Because the plans for the project are not code compliant, at a minimum, the plans must be redrafted, correctly this time, and recirculated to the public.

I. THE VARIANCE DECISION LETTER IS RIDDLED WITH ERRORS AND MISSTATEMENTS OF LAW

As noted above, the Variance Decision Letter is filled with errors. These include clerical errors as well as substantive legal errors. The Letter cites Planning Code Section 134(e) as the controlling section of the Code to be satisfied. (page 3 –miss-numbered as page 5, paragraph 5 "Rear Yard Modification Criteria") Section 134(e) is not applicable to the site which is zoned NC-2 (Small-Scale Neighborhood Commercial District) such as the subject site. Section 134(e) refers only to residential districts and the determination of the rear yard requirement for parcels zoned RH-2, RH-3, RTO, RTO-M, RM-1, and RM-2. The correct code section is Section 134(h)(1) which is for "Modification of Requirements in NC Districts."

The Variance Decision Letter also misstates the physical dimensions and statistics for the site and the building. The Letter states that the residential building has approximately 2,642 square feet. This is also incorrect. According to the Assessor's Office, (Assessor's Summary Report attached as Exhibit 3) the official size of the building area is 1,616 square feet, more than a thousand square feet less than that stated in the analysis done by the Department. (See Variance Decision Letter, page 3, last paragraph, miss-numbered as page 5). Because of the numerous

clerical and substantive errors in the variance decision letter, at a minimum, it should be amended, and recirculated prior to any project going forward at the site.

II. The Proposed Variance Does Not Meet the Mandatory Criteria of State Law or the San Francisco Planning Code

The decision to approve or deny a Variance application must be based on findings established by Section 305 of the San Francisco Planning Code in compliance with California State law (Government Code Section 65906). The findings, described in further detail below, cannot be made if a reasonable alternative project design would satisfy these concerns without requiring a Variance. The Zoning Administrator may approve a Variance application, with or without conditions, only if all of the following findings can be made

In order to justify a variance, the applicant must show:

(1). Exceptional and extraordinary circumstances applicable to the property involved or to the intended use of this property that do not apply generally to other properties in the same zone or vicinity. **(None)**
(2) This exceptional and extraordinary circumstances cause some hardship or practical difficulty if the variance is not granted; **(None)**
(3) Without the variance, the subject property will be denied a right enjoyed by owners of similar property; **(None)**
(4) The variance will not harm the neighbors; **(It will)** and,
(5) The variance is in harmony with the city's General Plan and the general intent of the Planning Code. **(It is not)**

If the Sponsor cannot meet **all** these requirements, then the application must be rejected. In this instance, the applicant cannot meet any of the criteria let alone all of the components needed for a variance. The Sponsor has failed to offer any evidence to sustain a claim that any of the requirements are met.

Eliminating the rear yard requirement and extending the building to the property line at 30' feet in height is detrimental to the neighbor to the north. Such a building will impermissibly

block views and sunlight for the neighbor to the north and will cast shadows across the property line to the north on the rear yard and windows of the neighbor at 1934 Divisadero. The Sponsor (not the neighbors) must affirmatively establish that there are "extraordinary and exceptional" circumstances that apply only to the subject site. The Sponsor cannot do this because none exist. The *only* "hardship" or "extraordinary and exceptional" circumstance cited in the application is the claim that others on the block also invade the rear yard....the Variance Application (Attached hereto as Exhibit 4) states:

"There are several properties in the same block similar in size & length to the subject property. Several of the neighboring buildings go beyond the required 25% (25') rear setback. Our request is to be granted the same rear setback line encroachment as the neighbors."(Variance App. Exhibit 4, first page ---numbered as page "3" third paragraph)

The Variance Application goes on to boldly state:

"*our requested variance is to simply have what others already have....*"
."(Variance App. Exhibit 4, second page ---numbered as page "4" second paragraph)

The Applicant fails to prove there are extraordinary and exceptional conditions pertaining to this particular piece of property. Such a situation cannot be used to justify a variance for new proposed non-complying project. This would mean that most of the lots on this block and would be "exceptional and extraordinary," not the usual definition applied to those words by the Dept.

The "hardship" justifying a variance must be tied to the *unique* physical condition of the development lot, and, regardless of the claimed hardship, the variance cannot be granted if it is detrimental or harmful to neighboring properties. In this case, small, substandard lots such as this one is quite common and can never honestly be considered "extraordinary or exceptional," or as imposing a unique hardship on this Sponsor.

A variance is a waiver or modification of some requirement contained in the zoning ordinance. The statutory justification for a variance is that the owner would otherwise suffer

unique hardship under general zoning regulations because his or her particular parcel is different from others to which the regulation applies due to size, shape, or topography. That is simply not present in this case.

The Applicant does not argue that the lot or situation is a unique, "exceptional and extraordinary,"....just the opposite. The Applicant argues that because other structures invade the rear yard so it should be permitted on the subject lot to do so as well. There are no extraordinary conditions pertaining to the particular piece of property that would effectively prohibit or unreasonably restrict the utilization of the property.

III. The Variance Application Falls Far Short of Satisfying the Code Requirements

No Claimed "Hardship" or "Exceptional and Extraordinary" Circumstance is Present or Even Articulated in the Application

The application for the variance (Exhibit 4) requested in this case falls far short of providing ANY justification or facts which would satisfy the code requirements for "exceptional and extraordinary" circumstances or "hardship," or "difficulty" or "loss of a property right" or "that do not apply generally to other property or uses in the same class or district. The variance application is not legally sufficient and makes no sense. It does not even bother to articulate any circumstance that might justify a variance. The variance application states that the "exceptional and extraordinary circumstances applying to the property ...that do not apply to other properties" is that, "*Our request is to be granted the same rear setback line encroachment as the neighbors.*"

This does not address the findings required, violates the law and is actually an incorrect statement of the factual circumstance present at the site. MOST of the properties on the block supply the code required rear yard. The only other justification supplied by the applicant is that, "This is structurally the most efficient & cost-effective design..." Again, this statement misses

the point. A variance may not be granted to simply save the Applicant money. It is certainly not necessary to invade the minimum rear yard or to expand the unpermitted 'pop-out". The illegally constructed extension should be removed, not expanded to provide a code-compliant rear yard. This application is wholly inadequate. There are no special circumstances that physically differentiate the project site from its neighbors. It is one of four identically configured historic homes in a row on this portion of Divisadero Street. Further, there is no perceivable "unnecessary hardship" that would result from these circumstances in the event that a variance was not approved.

Approval of the variance in these circumstances "would [amount] to the kind of 'special privilege' explicitly prohibited by Government Code section 65906." (*Orinda Association v. Board of Supervisors*) The applicants are not seeking a variance from the Code to allow them to enjoy a privilege the neighbors already have, the applicants seek to obtain a special privilege no one else enjoys.

IV. The Drawings do not Show the Features of Neighboring Buildings (in Violation of Section 311) and Therefore Fail to Show the Adversely Impacted Windows and Openings

The drawings supplied by the applicant do not comply with Planning Code Section 311 and are inadequate to demonstrate the impacts and potential impacts for the proposed variance and project. Submitted herewith as Exhibit 1 are a series of photographs which depict the actual configuration of windows which exists at the side-elevation of the building at 1934 Divisadero Street. Project Plan Sheet A5.2 (Exhibit 5) for the north elevation is mandated to show all of these windows and it fails to illustrate any of them.

Planning Code Section 311(d)(7)(H) states as follows:

"(H) The existing and proposed elevations shall document the change in building volume: height and depth. Dimensional changes shall be documented, including overall building height

and also parapets, penthouses and other proposed vertical and horizontal building extensions. The front and rear elevations shall include the full profiles of the adjacent structures including the adjacent structures' doors, windows and general massing. ***Each side elevation shall include the full profile of the adjacent building in the foreground of the project, and the adjacent windows, lightwells and general massing shall be illustrated.*** "(Red emphasis added)

The plans completely omit any illustration of the many (four) windows on the north side at 1934 Divisadero street. Exhibit 5 is two pages. The first page is how the plan sheet appears in the packet. Page two of Exhibit 5 highlights the windows on the adjacent building as they should have been depicted in order the comply with the Code. The plans are NOT code compliant and the project should be rejected in its entirety. No variance should be granted.

These building were built in 1878, (not 1900 as stated in the Dept. Letter) before the great San Francisco earthquake and are in the City's 1976 Survey of Historic Resources. Remarkably, with the exception of the unpermitted structure on the rear of the subject site at 1926 Divisadero Street, no rear yard extensions have been added to these buildings. They are all perfectly aligned and simpatico at the rear wall.

As can be seen from the photographs (Exhibit 1), the proposal to construct a rear yard extension directly at the property line will be incredibly disruptive to the neighbors at 1934 Divisadero Street. This proposed construction would introduce new issues of invasion of privacy and shadowing which do not exist at any of the other neighboring buildings in the entire row. A rear addition is out of character and would directly harm and injure the neighboring properties.

Further, because the entire proposed structure will fall directly at the property line, it is anticipated that the applicant would soon seek to place an elevated deck on top of the new structure or to expand the bedroom the same distance. A new deck could be placed on a flat roof without neighborhood notification. The drawings are nearly impossible to read and do not

present an accurate depiction of the conditions at the site. It is impossible to determine impacts of a variance unless the actual configuration is clearly depicted now.

V. If Permitted, the New Structure Should be Moved Away from the Property Line and Restricted to Forbid Future Elevated Decks

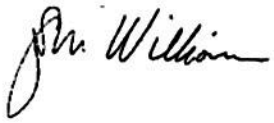
The Proposed addition is obtrusive and harms the neighbors in large part because it is too close to the property line. The neighbors oppose the expansion and point to the pattern of the entire row, which is no extension at the rear of these buildings. However, if an expansion is to be permitted, it should be moved three feet from the property line, reduced in height and conditioned by a Notice of Special Restriction forbidding additions in the future or of an elevated deck. With such conditions and restrictions, many of the potential impacts would be resolved and it would soften its appearance a great deal if it were redesigned in this manner.

Attached as Exhibit 6 are two illustrations, the first showing the addition directly on the property line and the second showing the addition matching the already existing three-foot (3') setback. This simple setback would allow the identical square footage to be captured but would alleviate much of the negative impact on the north neighbor.

Conclusion

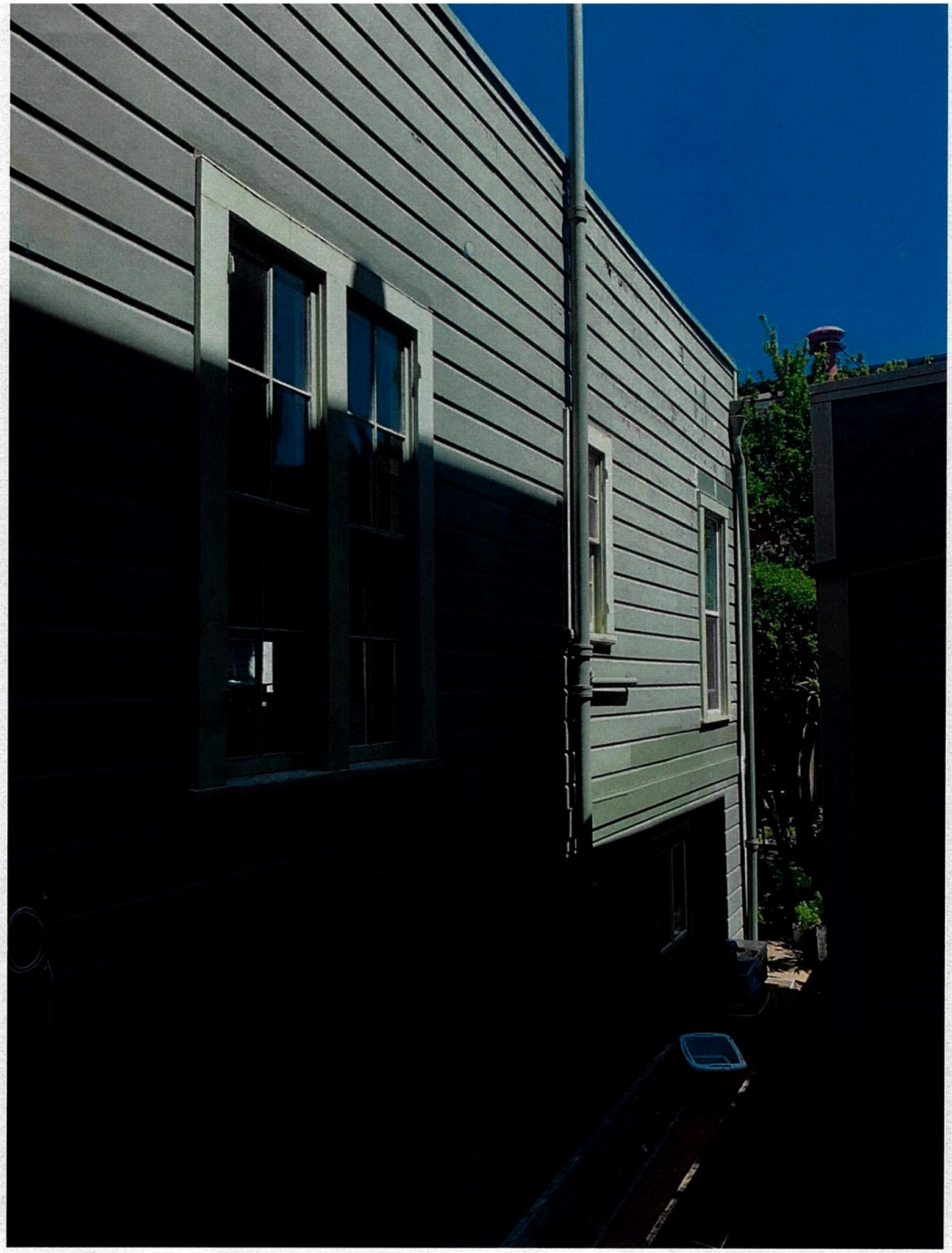
The application for the proposed variance and the Plans, as drawn, are incomplete and insufficient. The failure to depict the neighboring building's multiple windows and the inaccurate drawings require that the applicant resubmit new and complete drawings. Further, the applicant should be required to explain how granting the variance would not constitute a special privilege since it will be the ONLY elevated rear addition at 30' feet in height in the entire historic row. The addition should not be permitted, but if it is, it should be redesigned and moved away from the property line, reduced in height, and restricted by an NSR excluding future roof top decking.

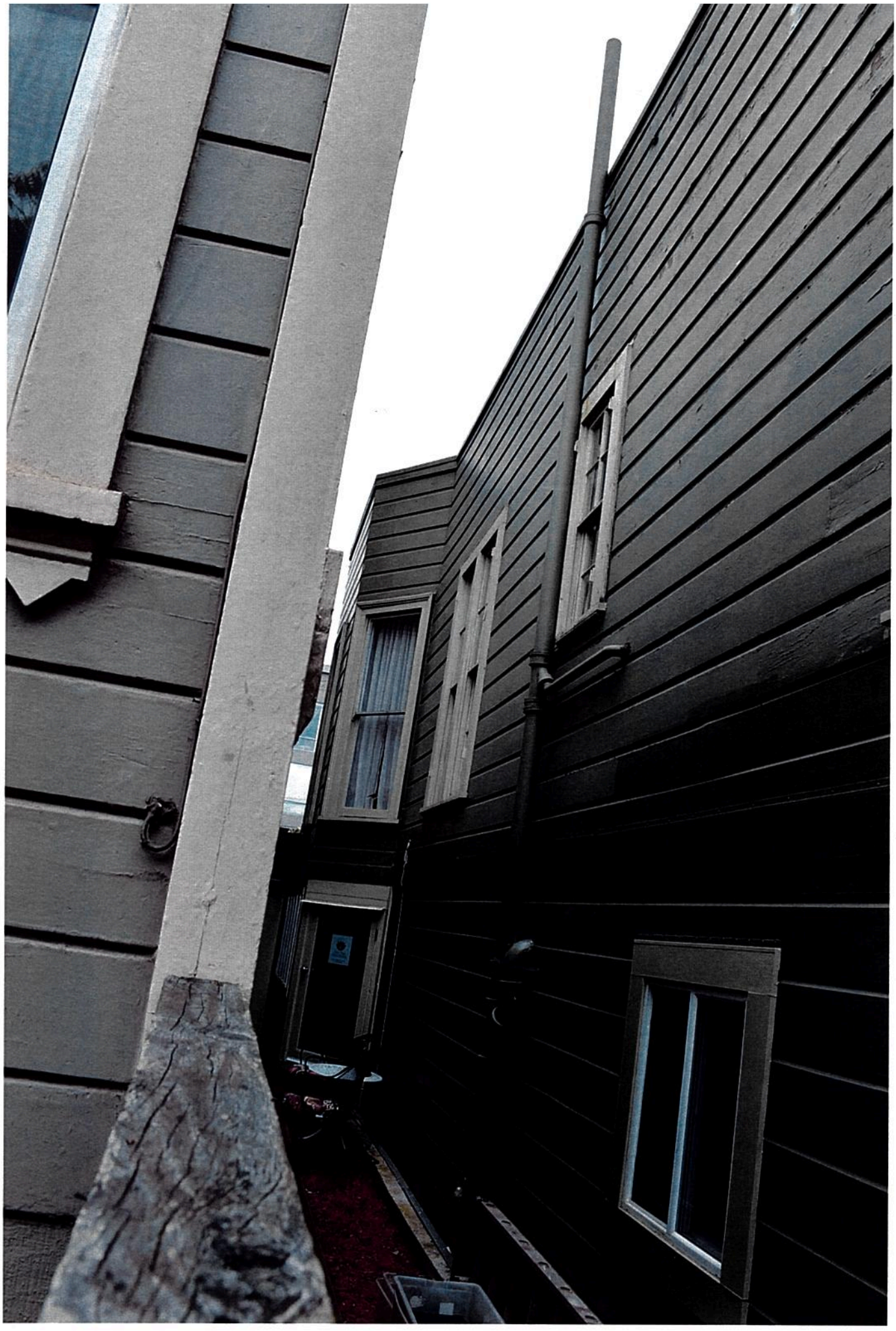
Sincerely,

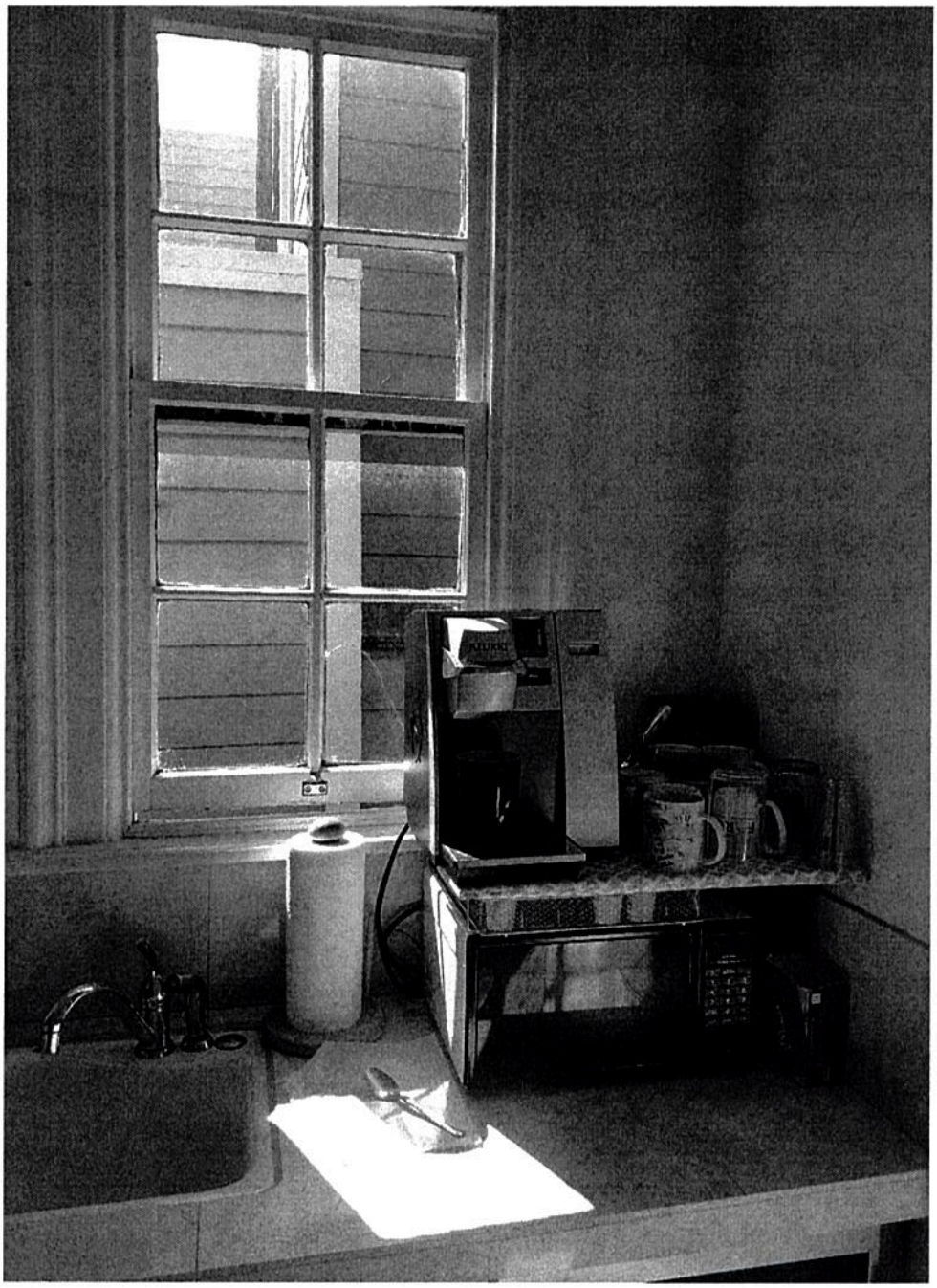


Stephen M. Williams, Appellant

EXHIBIT 1







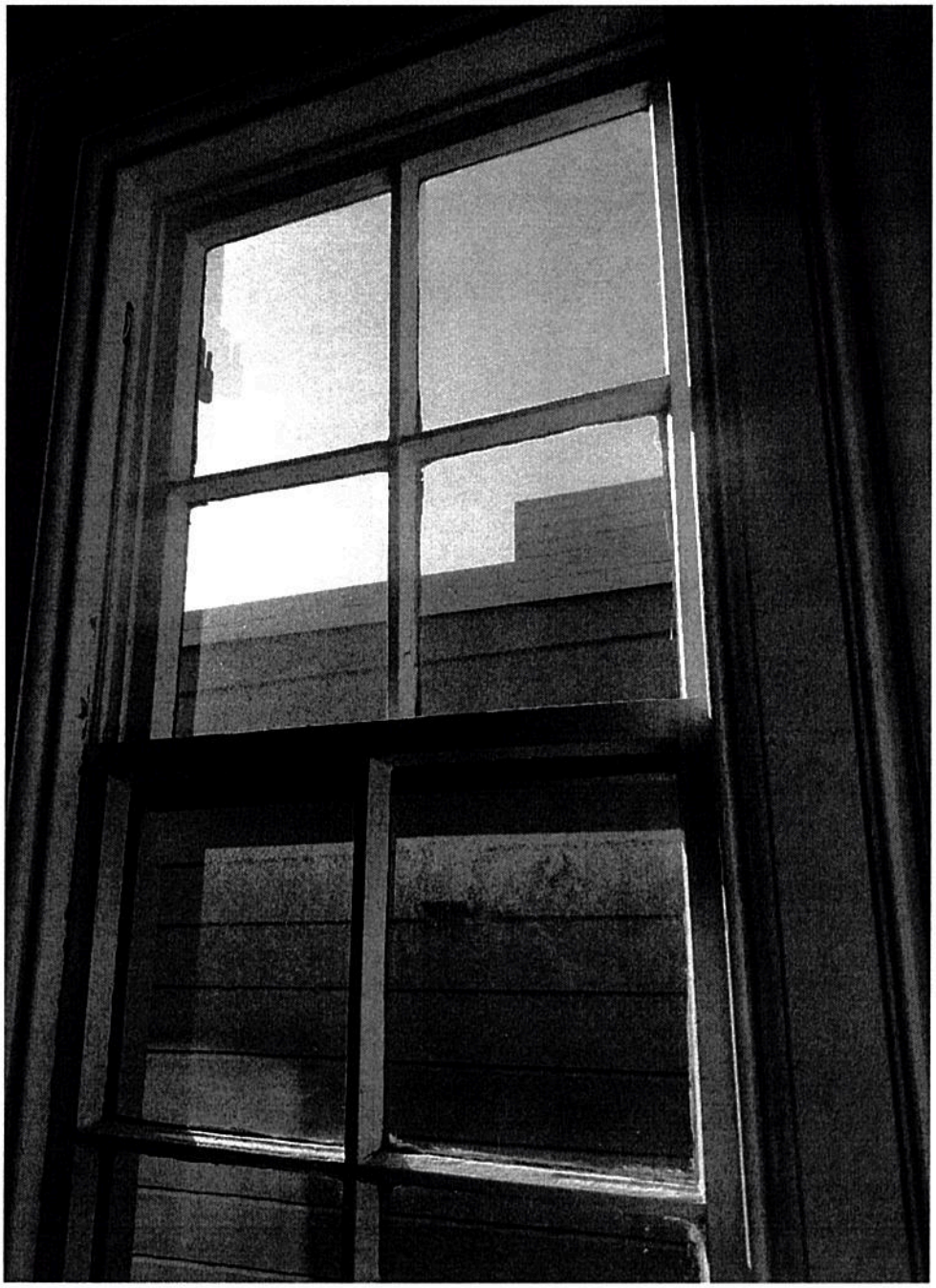


EXHIBIT 2

SAN FRANCISCO
PLANNING DEPARTMENT

Rear Yard Modification Decision

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Date:	July 22, 2020
Case No.:	**2018-013422VAR**
Project Address:	**1926 Divisadero Street**
Zoning:	NC-2 (Small Scale Neighborhood Commercial) District 40-X Height and Bulk District
Block/Lot:	1027/024
Applicant:	Brian Villavicencio The Kastrop Group 160 Birch Street, Suite B Redwood City, CA 94062 brian@kastropgroup.com
Owners:	Irina Shestakova and Lothar Determann 1926 Divisadero Street San Francisco, CA 94115
Staff Contact:	Sharon M. Young – (415) 558-6346 sharon.m.young@sfgov.org

DESCRIPTION OF VARIANCE – REAR YARD MODIFICATION SOUGHT:

The proposed project is to construct an approximately 166 square foot rear addition at the second floor of the two-story over basement residential building. The proposed rear addition (approximately 10 feet 2 inches to 16 feet 6 inches wide to 14 feet 5 feet deep) will abut the north side property line and will be set back approximately 6 feet from the south property line. A portion of the proposed second floor addition will extend into the required rear yard.

Planning Code Section 134 requires a rear yard in the NC-2 Zoning District where a dwelling is located which is 25% of the total depth on the lot on which the building is situated but in no case less than 15 feet. The subject property, with a lot depth of 100 feet, has a required rear yard of 25 feet. The proposed rear addition on the second floor will extend approximately 1 foot 4 inches into the required rear yard. Therefore, a rear yard modification is required.

PROCEDURAL BACKGROUND:

1. The Project is exempt from the California Environmental Quality Act ("CEQA") as a Class 1 categorical exemption.

2. Planning Code Section 134(h) required rear yard modifications to follow the same procedures and processes as variances. The requested rear yard modification under **Variance Application No. 2018-013422VAR** is less than 10% deviation from the Planning Code requirement. Planning Code Section 305(c) grants the Zoning Administrator the power to decide such variances

without a public hearing. This project falls within that threshold, and the Zoning Administrator elected to not hold a public hearing.

3. Planning Code Section 311 notification was mailed for Building Permit Application No. 2018.0808.6813 on October 30, 2019 and expired on December 2, 2019. Due to insufficient posting of the Section 311 poster, the Zoning Administrator required the reposting of the Section 311 poster for an additional 30 days.

4. On December 2, 2019, Steve Williams, the adjacent neighbor to the north of the subject property at 1934 Divisadero Street, filed a request for Discretionary Review of Building Permit Application No. 2018.0808.6813 within the Section 311 notification period. On June 25, 2020, the San Francisco Planning Commission conducted duly noticed public hearing at a regularly scheduled meeting on Discretionary Review Application Record No. 2018-013422DRP and found that there are no extraordinary or exceptional circumstances in this case and did not take Discretionary Review of the Project.

5. On May 24, 1977, the Zoning Administrator granted lot width and lot area variances for a lot split under Variance Case No. VZ77.011 to separate the subject property 1926 Divisadero Street with the adjoining property to the south at 1924 Divisadero Street. The two properties will continue to share an adjoining party wall along the south side property line with the proposed project.

DECISION:

GRANTED, in general conformity with the plans on file with this application, shown as EXHIBIT A, to construct an approximately 166 square foot rear addition at the second floor of the two-story over basement residential building that will extend into the required rear yard, subject to the following conditions:

1. The authorization and rights vested by virtue of this decision letter **shall be deemed void and cancelled** if (1) a Site or 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 Site or 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 implementation of the project is delayed by a public agency, an appeal or a legal challenge and only by the length of time for which such public agency, appeal or challenge has caused delay.

2. 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.

3. The proposed project must meet these conditions and all applicable City Codes. In case of conflict, the more restrictive controls apply.

4. Minor modifications as determined by the Zoning Administrator may be permitted.

5. 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.

6. This 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, if applicable.

REAR YARD MODIFICATION CRITERIA:

Planning Code Section 134(e) states that in order to grant a Rear Yard Modification in a Neighborhood Commercial zoning district, the Zoning Administrator must determine that the facts of the case are sufficient to establish the following three 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 is entirely residential in use and involves expanding development to improve the livability of the subject property with the proposed second floor rear addition (to accommodate a new full bathroom and closet), which would be constructed above the existing first floor roof area. The existing residential building has three bedrooms and one full bathroom. The rear yard modification is to allow the proposed second floor rear addition to structurally align with the rear most walls of the first and basement floors below as misalignment of the existing first floor wall and the proposed second floor will result in additional costly work on the first floor to support a bearing wall above it. Because the proposed addition will be located on the first floor, it will not affect the amount of existing usable open space accessible to the residents of the development within the existing rear yard.

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 subject lot is approximately 1,619 square feet (16.188 feet wide by 100 feet deep) in size and the existing building was constructed circa 1900. The existing residential building has approximately 2,642 square feet of floor area and is a potential historic resource, which limits

the proposed expansion of the building primarily to the rear portion of the lot that is not visible from the public right-of-way. The Planning Department's Residential Design Team (RDAT) reviewed the proposed project and found that the proposed second floor addition is consistent with the Residential Design Guidelines and will not significantly impede the access of light and air from adjacent properties. The General Plan, Planning Code, and Residential Design Guidelines do not provide for protecting views from private property.

B. A request for Discretionary Review (Record No. 2018-013422DRP) was filed by the neighboring property (1934 Divisadero Street) to the north due to concerns that the proposed project was not properly noticed and does not comply with the Residential Design Guidelines (to articulate the building to minimize impact to light, air, and privacy and to design the height and depth of the building to be compatible with the existing building scale at the mid-block open space). Although the proposed second floor addition will abut the north side property line, a side setback will be maintained for most of their common length. The Planning Commission found no extraordinary or exceptional circumstances in this case and did not take Discretionary Review of the proposed project.

CRITERION 3.
The proposed new or expanding structure will not adversely affect the interior block open space formed by the rear yards of adjacent properties.

Requirement Met.

A. Because the proposed second floor rear addition will have similar building footprint as the floors below the residential building, it will not significantly affect the existing interior block open space formed by the rear yards of adjacent properties. The proposed rear addition will not extend beyond the rearmost building wall from the neighboring property to the north and will match the rearmost building wall of the neighboring property to the south. Furthermore, there are other neighboring properties within the mid-block open space (1916 Divisadero Street, 1908 & 1910 Divisadero Street, and 1900, 1902 & 1904 Divisadero Street) that already extend into their required rear yards.

PRIORITY POLICIES FINDINGS
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.

2. The proposed project will be in keeping with the existing housing and neighborhood character. The proposal will preserve the existing single-family home on the property.

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 rear yard modification is used, all specifications and conditions of the authorization become immediately operative.

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 Rear Yard Modification Decision. For further information, please contact the Board of Appeals in person at 1650 Mission Street, 3rd Floor (Room 304), call 575-6880, or visit www.sfgov.org/bdappeal.

Very truly yours,

Corey A. Teague, AICP
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.

EXHIBIT 3

Assessor's Report

×

Parcel 1027/024 **Address** 1926 DIVISADERO ST

Assessed Values

Construction Type	Wood or steel frame
Land	$748,822.00
Use Type	Dwelling
Structure	$499,212.00
Units	1
Fixtures-	
Stories	2
Personal Property	-
Rooms	6
Last Sale	6/3/2004
Rooms -	
Last Sale Price	$960,000.00
Bathrooms	1
Year Built	1900
Basement	-

Building Area 1,616 sq ft

Parcel Area	1,619 sq ft

Parcel Shape

-

Parcel Frontage

-

Parcel Depth

-

Please send questions about this report to the Office of the Assessor-Recorder .

EXHIBIT 4

PROJECT APPLICATION RECORD NUMBER (PRJ)

San Francisco Planning

VARIANCE FROM THE PLANNING CODE

SUPPLEMENTAL APPLICATION

Property Information

Project Address: 1926 DIVISADERO STREET Block/Lot(s): 1027/24

Variance Findings

Pursuant to Planning Code Section 305(c), before approving a variance application, the Zoning Administrator needs to find that the facts presented are such to establish the findings stated below. In the space below and on separate paper, if necessary, please present facts sufficient to establish each 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 property or uses in the same class of district;

There are several properties in the same block similar in size & length to the subject property. Several of the neighboring buildings go beyond the required 25% (25') rear setback. Our request is to be granted the same rear setback line encroachment as the neighbors. Our proposed second floor addition would go 16" beyond the required 25% (25') rear setback.

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;

The existing first floor of the subject property already goes beyond the required 25% (25') rear setback line. The proposed second floor is designed to line up with the rear most wall of the existing first floor. This is structurally the most efficient & cost-effective design. Misalignment of the existing first floor wall and the proposed second floor wall will result in additional costly work on the first floor to support a bearing wall above it.

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;

Similar to the response to item #1, our request is to be granted the same rear setback line encroachment as our neighbors. Our proposed second floor addition would not go beyond any of the neighbors' rear building line. The following neighbors already have buildings that go beyond the required 25% (25') rear setback line:
a. 1918 Divisadero Street – south of the subject property, 2 lots over
b. 1908 & 1910 Divisadero Street – south of the subject property, 4 lots over
c. 1900, 1902 & 1904 Divisadero Street - south of the subject property, 5 lots over, corner of Pine Street

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;

Since our requested variance is to simply have what others already have, it will not be detrimental to the neighborhood. Our second floor addition is at the rear of the property and would be similar to existing neighboring buildings. No work will be visible from the street.

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 General Plan.

Similar to the response to item #4, our second floor addition is at the rear of the property and would be similar to existing neighboring buildings. The proposed work will actually bring more consistency when viewed from the backyards of the subject property & neighboring properties.

APPLICANT'S AFFIDAVIT

Under penalty of perjury the following declarations are made:

a) The undersigned is the owner or authorized agent of the owner of this property.

b) The information presented is true and correct to the best of my knowledge.

c) Other information or applications may be required.

d) I herby authorize City and County of San Francisco Planning staff to conduct a site visit of this property as part of the City's review of this application, making all portions of the interior and exterior accessible through completion of construction and in response to the monitoring of any condition of approval.

e) I attest that personally identifiable information (PII) - i.e. social security numbers, driver's license numbers, bank accounts - have not been provided as part of this application. Furthermore, where supplemental information is required by this application, PII has been redacted prior to submittal to the Planning Department. I understand that any information provided to the Planning Department becomes part of the public record and can be made available to the public for review and/or posted to Department websites.

Signature

BRIAN VILLAVICENCIO

Name (Printed)

7/10/19

Date

DESIGNER

Relationship to Project
(i.e. Owner, Architect, etc.)

650/299-0303

Phone

BRIAN@KASTROPGROUP.COM

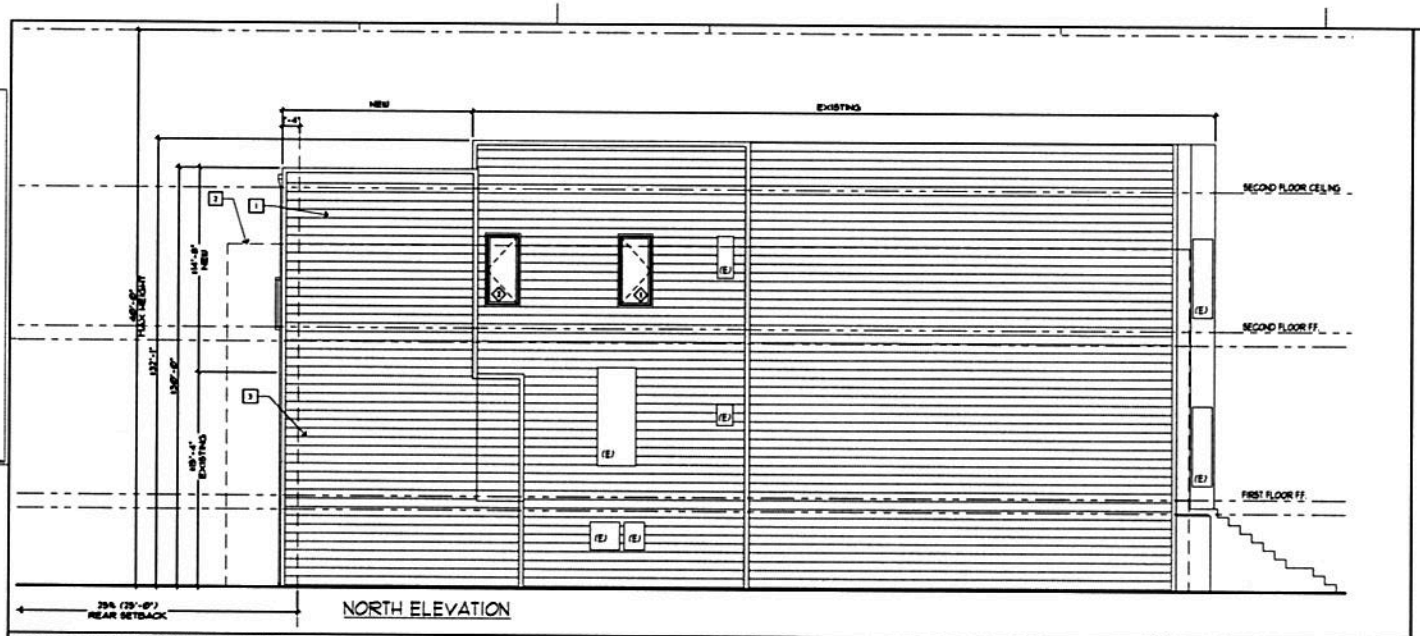
Email

For Department Use Only

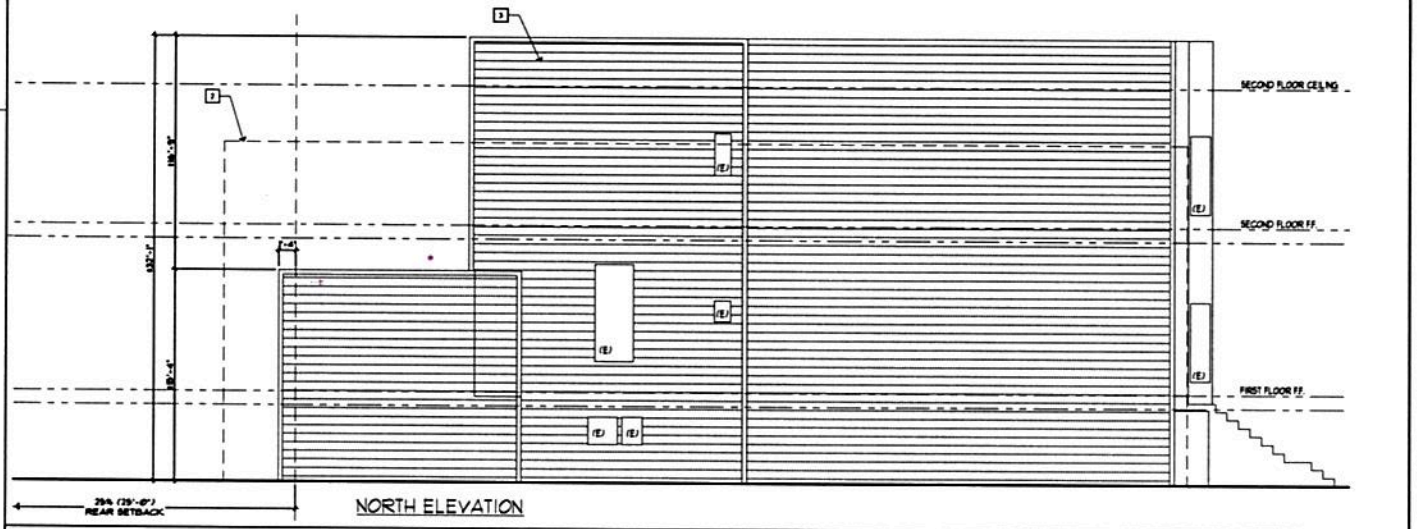
Application received by Planning Department:

By: _____ Date: _____

EXHIBIT 5



PROPOSED NORTH ELEVATION



(E) NORTH ELEVATION

KEY NOTES:

1. EXTERIOR WALL ONE HOUR RATED. ½" PAINTED REDWOOD SHIPLAP SIDING OVER 2 LAYERS OF TYPE "D" BUILDING PAPER, 2 LAYERS OF ⅝" TYPE X GYP BOARD, 1 LAYER EACH SIDE OF STUDS FOR NEW WALLS AT PROPERTY LINE.
2. (E) LINE OF ADJACENT BUILDING (1934 DIVISADERO STREET)
3. (E) SIDING

LEGEND:

- DOOR TAGS - SEE DOOR + HARDWARE SCHEDULE
- KEY NOTE TAGS - SEE KEY NOTES + LEGEND THIS SHEET
- WINDOW TAGS - SEE WINDOW SCHEDULE
- ONE-HOUR RATED WALL, ⅝" TYPE-X GYP BD, MUD + FIRE TAPE
- FINISHED CEILING HEIGHT
- AREA TO BE DEMOLISHED
- (E) WALLS TO REMAIN
- NEW WALLS

KEY NOTES + LEGEND

THE KASTROP GROUP, INC.
ARCHITECTS
160 BIRCH STREET, SUITE B
REDWOOD CITY, CA 94062
T: 650.299.0303
www.kastropgroup.com

RESIDENTIAL REMODEL/ ADDITION

SHESTAKOVA + DETERMANN RESIDENCE

1926 DIVISADERO STREET
SAN FRANCISCO, CA 94115

ORIGINAL SIGNATURE IN BLUE INK

THESE DRAWINGS CONSTITUTE THE ORIGINAL WORK OF THE ARCHITECTS AND MAY NOT BE USED WITHOUT THEIR WRITTEN CONSENT

SHEET TITLE:
PROPOSED NORTH ELEVATION
(E) NORTH ELEVATION

DATE	ISSUE TITLE
4/2/18	EXISTING CONDITIONS
5/4/18	APPROVED DESIGN
8/1/19	ISSUE FOR PLAN CHECK
03/26/19	PLAN CHECK COMMENTS
07/10/19	VARIANCE APPLICATION

JOB NO.: 18638
DRAWN: NS
CHECKED: DMK
SCALE: AS NOTED

A5.2
OF 20

BLDG PERMIT APP NO.

NORTH ELEVATION

PROPOSED NORTH ELEVATION

0 5 10 1/4"=1'-0" G

NORTH ELEVATION

(E) NORTH ELEVATION

0 5 10 1/4"=1'-0" E

KEY NOTES:

1. EXTERIOR WALL ONE HOUR RATED. 1" PAINTED REDWOOD SHIPLAP SIDING OVER 2 LAYERS OF TYPE "D" BUILDING PAPER, 2 LAYERS OF 5/8" TYPE X GYP BOARD, 1 LAYER EACH SIDE OF STUDS FOR NEW WALLS AT PROPERTY LINE.
2. (E) LINE OF ADJACENT BUILDING (1934 DIVISADERO STREET)
3. (E) SIDING

LEGEND:

- DOOR TAGS - SEE DOOR + HARDWARE SCHEDULE
- KEY NOTE TAGS - SEE KEY NOTES + LEGEND THIS SHEET
- WINDOW TAGS - SEE WINDOW SCHEDULE
- ONE-HOUR RATED WALL | TYPE-X GYP BD, MLD + FIRE TAPE
- FINISHED CEILING HEIGHT
- AREA TO BE DEMOLISHED
- (E) WALLS TO REMAIN
- NEW WALLS

KEY NOTES & LEGEND A

THE KASTROP GROUP, INC. ARCHITECTS
160 BIRCH STREET, SUITE B
REDWOOD CITY, CA 94062
T: 650.299.0303
www.kastropgroup.com

RESIDENTIAL REMODEL/ ADDITION

SHESTAKOVA + DETERMANN RESIDENCE

1926 DIVISADERO STREET
SAN FRANCISCO, CA 94115

ORIGINAL SIGNATURE IN BLUE INK

REGISTERED ARCHITECT JOHN M. KASTROP NO. C 15783 MAY 2021 STATE OF CALIFORNIA

THESE DRAWINGS CONSTITUTE THE ORIGINAL WORK OF THE ARCHITECTS AND MAY NOT BE USED WITHOUT THEIR WRITTEN CONSENT

SHEET TITLE:
PROPOSED NORTH ELEVATION
(E) NORTH ELEVATION

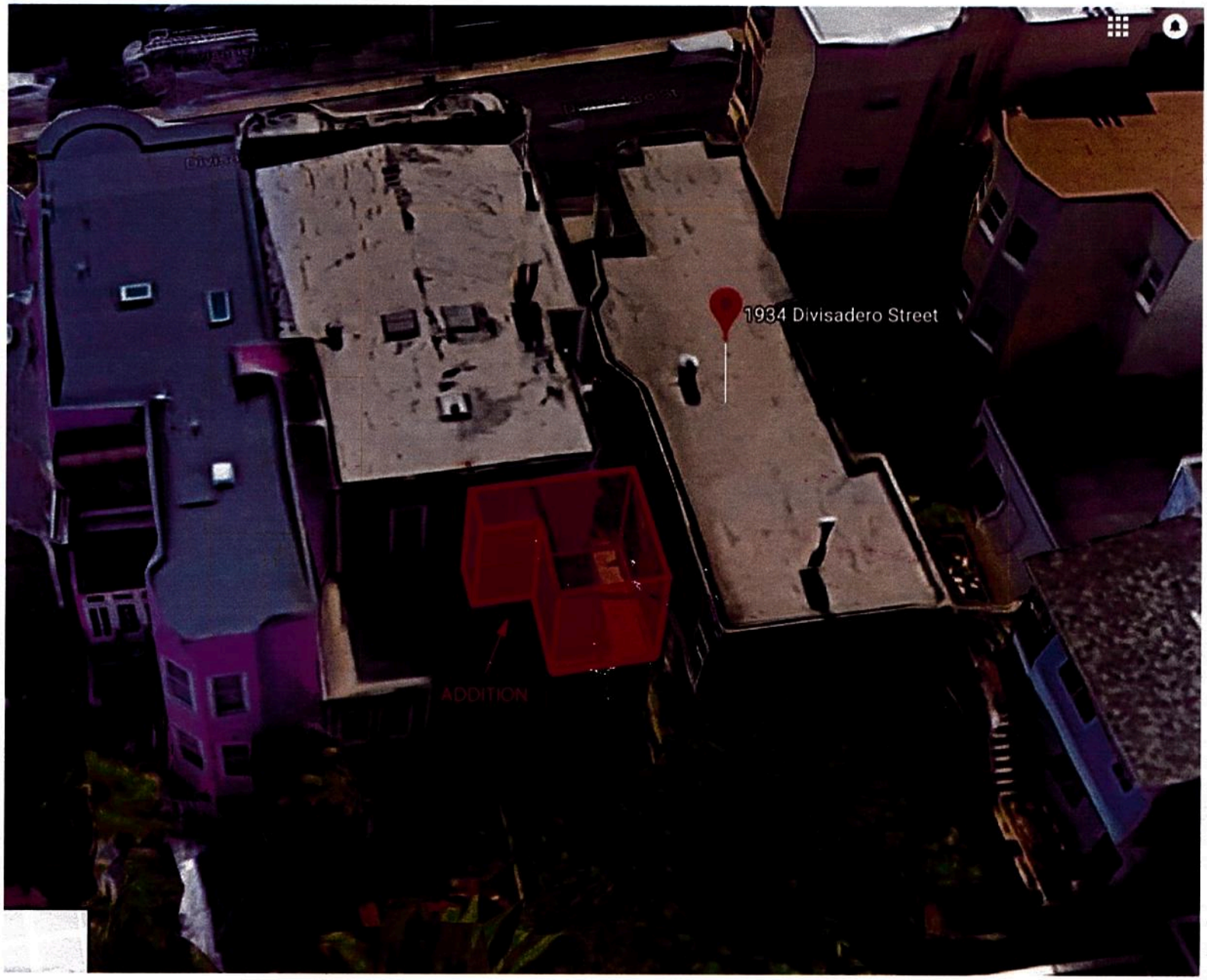
DATE	ISSUE TITLE
4/2/18	EXISTING CONDITIONS
5/4/18	APPROVED DESIGN
8/1/18	ISSUE FOR PLAN CHECK
05/28/19	PLAN CHECK COMMENTS
07/10/19	VARIANCE APPLICATION

JOB NO: 18636
DRAWN: NB
CHECKED: DMK
SCALE: AS NOTED

A5.2
OF 20

BLDG PERMIT APP NO:

EXHIBIT 6


1934 Divisadero Street
ADDITION

The addition should be set-back.

DETERMINATION HOLDER'S BRIEF

City and County of San Francisco

Board of Appeals

Appeal No.:	20-051
Appeal Title:	Williams vs. ZA
Subject Property:	1926 Divisadero Street
Determination or Permit Type:	Rear Yard Modification
Determination or Permit No.:	2018-013422VAR
Hearing Date:	Wednesday, September 2, 2020 at 5:00pm
Location:	via Zoom Video Conference

Respondent's Brief to Deny Appeal; 8/27/2020

Part One of the Brief Authored by:

Irina Shestakova and Lothar Determann, Property Owners

1926 Divisadero Street

San Francisco, CA 94115

Part Two of Brief Authored by:

Brian Villavicencio

Project Manager

The Kastrop Group Architects Inc.

160 Birch Street, Suite B

Redwood City, CA 94062

-PART ONE-

Dear Board Members,

In anticipation of the appeal hearing requested by the owner of 1934 Divisadero office building (the "1934 Office Building"), we would like to provide you with additional information about the project and its non-impact on the 1934 Office Building.

We would like to make a modest addition to our living space for the following main reasons:

- The second floor has 3 bedrooms and only one very small bathroom that can only accommodate 1 person at a time. The proposed bathroom addition will allow our adult daughter (29 years old) and her boyfriend to live with us. Currently, we cannot maximize the benefits of having 3 bedrooms on the second floor. The proposed bathroom would make the house more livable for a pair of adult couples. This is in line with the movement in San Francisco and the State to create more affordable housing. The house has the space, but not the facilities. Our daughter and her boyfriend, cannot at this point of their lives, afford to rent their own apartment in San Francisco;

- to keep the costs of construction reasonable and have a minimum impact on the neighbors, we reviewed the old plans for a much bigger addition that was permitted by the SF Planning & Building Department back in 2001. We are at the most only planning on implementing one third of the original project. No aspect of our current project exceeds the boundaries of the old plans previously permitted; and,

- the addition of the bathroom will make our house more water & energy efficient. The proposed addition is required to have water efficient plumbing fixtures, high efficiency lighting fixtures and would be the most insulated part of the house – thus it will help to insulate the room below it and the room beside it.

Our project does not have an impact on the 1934 Office Building for the following reasons:

- the 1934 Office Building is a one-story building hosting a one-person law office plus a basement that was at some point converted into an office space and was rented to an acupuncture business. We were not notified of these conversions and we did not formally object to these measures either in the spirit of being good neighbors. Each room on the north side of the 1934 Office Building has big windows that face our two-story Victorian house.

- The proposed addition is designed to be 2 feet below the current height of the house.

- The proposed addition will not have any windows facing the office building.

- our respective buildings are 4' apart from each other, and in some areas 7'-6" at the rear of the property;

- our project will not result in additional obstruction of any views because the windows of the 1934 Office Building, a one-story building, already face our 2 story house. The windows of the 1934 Office Building end at approximately the same level as our first floor windows;

- in the mornings and in the evenings when the sun is on the east and west, respectively, the new addition would have no impact on the 1934 Office Building. When the sun is in the south standing in the zenith, there is already now a minor degree of shading because our house is a two-story building while the 1934 Office Building has only one story;

- on most days in our neighborhood in San Francisco, it is foggy, and the shading is not a factor;

- we have discussed various alternatives to our project with our architect including the changes proposed by the owner of the 1934 Office Building. They are either prohibitively expensive or reduce the added living space disproportionally. And, they do not reduce the already existing marginal shading on the 1934 Office Building. The changes to the project proposed by the owner of the 1934 Office Building would result in misalignment of the current structure and new addition and clash with the Victorian style of the house;

- as good neighbors, we did offer to the owner of the 1934 Office Building a compromise to reduce the height of the addition by one foot and was not accepted by the owner of the 1934 Office Building; and

- the Variance Application approved by the Zoning Administration, which is the subject matter of the appeal filed by the owner of the 1934 Office Building, is for the east side of the project. The 1934 Office Building is located on the north side of the project. The rear end set back approved by the Zoning Administration has minimal

impact on the 1934 Office Building located on the north side of the project. There is no requirement for a side setback on the north property line adjacent to the office building.

We would very much appreciate if you could please consider the foregoing factors and approve the Variance Decision granted by the Zoning Administrator of the City and County of San Francisco on July 22, 2020**.**

Thank you for your consideration.

Best regards,

Irina & Lothar (1926 Divisadero St)

-PART TWO-

PROPOSED PROJECT:

We have proposed a modest addition of 166 SF to add a bathroom and a closet on the second floor. The need for a variance application was triggered because of the last 16" that was over the 25' (25%) rear setback line. The room below the proposed addition was already past the same line. After consulting with the Planning Department, our General Contractor, our Structural Engineer and reviewing buildings of the same block, we concluded that a variance application was worth the effort. Because the property is an interior substandard lot, there is no other place for an expansion other than the rear. Also, there are multiple second story buildings already past the rear setback.

We considered the ramifications on the last window of the office building to the north. Since the building was longer than the subject property, the proposed addition would have minimal impact on the window.

REQUESTED ACTION:

We request of the Board to uphold the findings by the Zoning Administrator for a Rear Yard Modification (2018-013422VAR) for 1926 Divisadero Street on July 22, 2020 and deny the appeal by the Appellant.

DESCRIPTION OF EXHIBITS:

- *EXHIBIT A* - This shows a view of the backyard of both properties. The Subject Property is on the left and the Appellant's building is on the right.

- *EXHIBIT B* – Is the same image but with our massing study applied. Our new walls will stack directly under the existing walls underneath. Our proposed roof is lower the existing roof. The small orange portion is the area past the rear setback. Please make note of the Pink building on the left.
- *EXHIBIT C* - A parallel line shows that some buildings are already past the 25' rear yard setback. All the properties south of ours is the same zoning.
- *EXHIBIT D* - This is a picture of the existing office room that we are proposing to build on top off. Please note that this rear most face is already past the setback.
- *EXHIBIT E* - On the right side of the photo is the same office room. The 2 properties on the left, 1918 & 1924 Divisadero, are also already past the setback line. This is the pink house and the adjacent gray house. The pink house, 1918 Divisadero, has a zero-lot line, which it is allowed to have due to its zoning.
- *EXHIBIT F* - On the left side of the screen is the same office room. The green house is the Appellant's Building. His building is about 3' longer than the subject house, though he does have a longer property. The window in the center of the photo is the one in question.
- *EXHIBIT G* - This photo was taken from the Subject Property's dining room window. This photo was taken in March around 3pm. The shadow of the Subject Property is cast on the Appellant's Building. The red shaded area shows the assumed shadow our addition would cast. The yellow shaded area near the end shows the assumed shadow that would be cast by the portion that was approved with a Variance. We also made assumptions of the shadow at the best & worst case. Summer providing the most light

because the sun is high & Winter the least because the sun is lower in the horizon. From our studies, the addition only affected at the most 2 windows.

- *EXHIBIT H* – On March 6, 2020, we took the offer by the Planning Department to meet with the Appellant prior to our Discretionary Review Hearing. Several ideas were discussed, and we proposed a revision 3 days later. However, it was rejected by the Appellant.
- *EXHIBIT I* – This is a letter of support from the Subject Property's next-door neighbor, 1924 Divisadero Street.

Sincerely,

Brian Villavicencio

The Kastrop Group Architects, Inc.

EXHIBIT A
SUBJECT PROPERTY:
1926 DIVISADERO
1934 Divisadero Street
APPELLANT

EXHIBIT B
SUBJECT PROPERTY:
1926 DIVISADERO
1934 Divisadero Street
APPELLANT
ADDITION
PORTION REQUIRED
FOR VARIANCE

EXHIBIT C

RED DOTS SHOW EXISTING BUILDINGS ALREADY PAST THE 25'-0" REAR SETBACK

1924 DIVISADERO
EXHIBIT D
1926 DIVISADERO
(SUBJECT PROPERTY)
1934 DIVISADERO
(APPELLANT)

EXHIBIT E
SUBJECT PROPERTY
1918 DIVISADERO
1924 DIVISADERO

1926 DIVISADERO
(SUBJECT PROPERTY)
EXHIBIT F
1934 DIVISADERO
(APPELLANT)
W 1

EXHIBIT G

WINTER

SUMMER

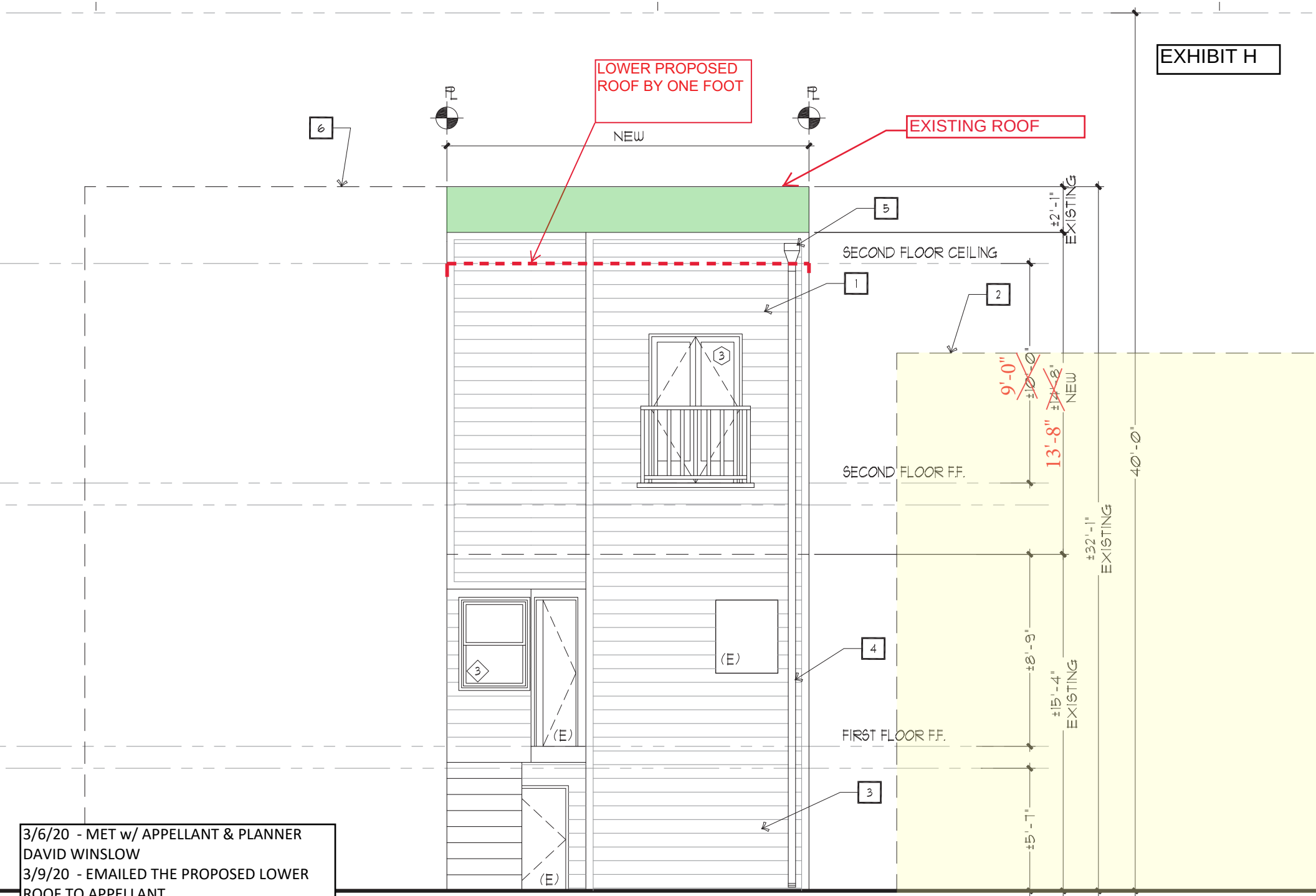
W 1

SHADOW CREATED BY ADDITION GRANTED BY VARIANCE

PHOTO TAKEN FROM SUBJECT PROPERTY'S DINING ROOM WINDOW IN MARCH, AROUND 3PM

RED AREA SHOWS FUTURE SHADOW DUE TO PROPOSED ADDITION

EXHIBIT H



3/6/20 - MET w/ APPELLANT & PLANNER DAVID WINSLOW
3/9/20 - EMAILED THE PROPOSED LOWER ROOF TO APPELLANT
3/18/20 - APPELLANT REJECTED PROPOSED LOWER ROOF

EAST ELEVATION

EXHIBIT I

Dear Board Members,

My name is Susan Powell and I am a next-door neighbour of Irina and Lothar at 1926 Divisadero. Our houses share a common wall and are mirror image of each other.

I am writing this letter in support of the rear addition project for 1926 Divisadero.

Our houses have three bedrooms on the second floor and one tiny bathroom. Without an additional bathroom upstairs, it is not practical to use the upstairs bedrooms. My neighbours have a 29 years old daughter who would like to live with her parents. With the additional bathroom, the house will become much more liveable. I know this because when my family and friends stay with me, there is always a line for a bathroom.

Of course, for neighbours, there is always some impact from any building project. The construction itself creates noise. Nevertheless, I fully support the rear addition project for 1926 Divisadero. It would result in creating better affordable housing in our city and particularly, because Irina and Lothar were so thoughtful in their planning, minimizing the impact on neighbours. The previous owner of the house had obtained a building permit for a significantly larger extension (which I would have accepted also), but Irina and Lothar reduced the project. The way they designed the second floor extension will actually make our house - and our block - look better aesthetically and it fits very nicely in the style of the neighbourhood. Shading is not a true concern in our neighbourhood - given the fog and dense placement of houses. Bottom line, the project is a net positive for our neighbourhood and our City and should be supported. I feel bad for my neighbours how much their project was already delayed and hope it will be finally approved and proceed soon.

With my regards,

Susan

PUBLIC COMMENT

Reply all Delete Junk Block ···

Appeal No. 20-15 Letter in Support of 1926 Divisadero St Construction Proposal

SP

Susan Powell <sp_513@yahoo.com>
Thu 8/27/2020 3:04 PM
To: BoardofAppeals (PAB)

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board Members,

My name is Susan Powell and I am the owner of 1924 Divisadero. My next-door neighbours, Irina and Lothar at 1926

share a common wall. Our houses' are mirror images of each other. Currently, our houses have 3 bedrooms upstairs and

one bathroom.

An additional bathroom upstairs would be a value-add for our houses and the City in general since home-owners in our

block have been and are currently seeking to maintain and improve their properties. The other property on the other side

of mine, as well as the one adjacent to it, were both modernized relatively recently. Both remodels included additions to

the backs of their houses.

Besides the normal noise and dust impacts on the neighbors during the construction phase, I see no other downside to the

project on the neighborhood. A one-foot extension would not create any adverse implications for me and in my opinion,

no one else in our back gardens.

Sincerely,