

Case File Number DET170053-A01 (DET170053)

May 16, 2018

Location:	825, 825 ½, 827 46 th Street – See map on reverse
Assessor's Parcel Number:	013 116604000
Proposal:	Appeal of the Zoning Manager's Determination.
Applicant/Owner:	Alexsandr Ivanov
Case File Number:	DET170053-A01
Original Case File Number:	DET170053
Planning Permits Required:	None
General Plan:	Mixed Housing Type Residential
Zoning:	RM-2
Environmental Determination:	Categorically Exempt under California Environmental Quality Act (CEQA) Guidelines Section 15306, Information collection
Historic Status:	Non-Historic Property
City Council District:	1
Status:	The Zoning Determination Letter was mailed on July 25, 2017 and again on February 02, 2018; Project appealed on February 13, 2018.
Staff Recommendation:	Deny the Appeal and uphold the Zoning Manager's Determination.
Finality of Decision:	Final (not administratively Appealable pursuant to OMC Sec. 17.132.030)
For Further Information:	Contact case Planner Brittany Lenoir at (510) 238-4977 or blenoir@oaklandnet.com

SUMMARY

A Zoning Manager's Determination Letter was requested on May 22, 2017 by Alexsandr Ivanov, the owner of 825-827 46th Street. This request was to make a determination regarding the legal number of units on the project site. A review of the permit history, historic and current Zone designations, Sanborn Maps, and Residential Building Records resulted in a determination of two legal units on-site, 825 and 827 46th Street. The unit designated as 825 ½, which is the unit to the rear of the lot, was determined to be unpermitted (Attachment 1A).

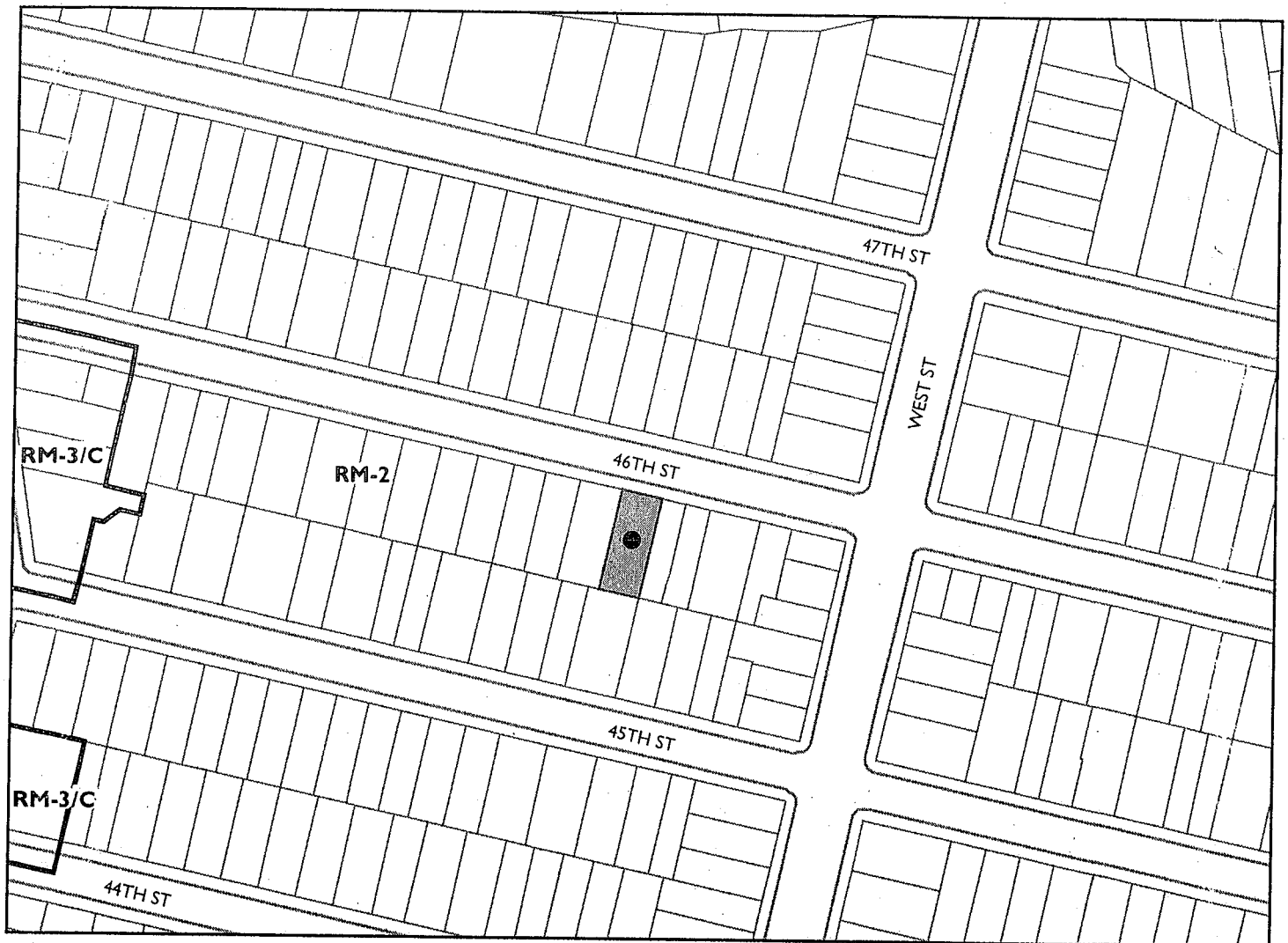
On July 25, 2017 the Determination Letter was mailed, but the applicant returned in September 2017 after the 10-day appeal period stating that he never received the letter. The Zoning Manager made the decision to then re-open the case and reconsider the Determination based on additional information the applicant provided. This information consisted of a historic parcel map and an additional copy of the Alameda County Residential Building Record free of handwritten supplemental notes.

After a review of this additional information, the follow-up Determination indicated the same outcome as the City's previous letter (Attachment 1). This letter was mailed February 02, 2018 via Certified U.S. Mail and was appealed in a timely manner by Mr. Ivanov on February 13, 2018 (Attachment 2).

Per Section 17.132.020 of the City of Oakland Planning Code, the Appellant must state where an error or abuse of discretion was made by the Zoning Manager or where the Zoning Manager's decision is not supported by evidence in the record. The arguments raised by the Appellant are summarized below in the *Basis for the Appeal* portion of this report, along with City staff's response to each argument.

For the reasons stated in this report and attachments, including the Appellant's failure to assert error, abuse of discretion or lack of evidence in the Zoning Manager's decision, staff recommends the Planning Commission deny the Appeal, thereby, upholding the Zoning Manager's Determination.

CITY OF OAKLAND PLANNING COMMISSION



0 100 200 400 600 800 Feet



Case File: DET170053-A01 (original DET170053)
Appellant: Aleksandr Ivanov
Address: 825, 825 1/2, 827 46th Street
Zone: RM-2

BACKGROUND

- 1919-1921: A portion of the west 10 feet of the lot was transferred to the neighboring lot, resulting in a new lot size of 4,000 square feet.
- 1924: A Building Permit was issued (#83213) to construct a one story, four-bedroom, single family dwelling.
- February 5, 1935: Zoning Laws, Ordinance 475-475 C.M.S. indicates 825 46th Street as being located within a Two-Family District ("B" District). The lot area requirements for this district were 4,000 square feet for each one-family or two-family dwellings; four thousand five hundred (4,500) square feet for each three-family multiple dwelling or group dwelling.
- February 25, 1936: A Dwelling Schedule dated February 25, 1936 specifies a "side by side" two-family facility with a 4-car garage, which was consistent with the corresponding Sanborn Map and Zoning Laws.
- May 13, 1954 – October 11, 1962: The County Residential Building Record shows the property was surveyed as having two residences and one addition. The survey of the units on the County Residential Building Record is inconsistent with what is shown as dwelling units on the Sanborn Map. The Sanborn Map shows the front two structures as individual dwelling units and the rear as a large garage, which is contrary to the Residential Building Record which shows one unit in the front and one unit at the rear with an addition connected to the two. While there is a discrepancy in what each record states, neither indicate a residential density of over two units.
- June 1957: Zoning Laws, Ordinance 474-475 C.M.S. adopted February 15, 1935 and as Amended in June 1957 indicate that the subject site was located within a Two-Family District. The two-family District required at least 4,000 square feet of lot area for each one-family or two-family dwelling; 4,500 square feet for each three-family multiple swelling or group dwelling.
- February 25, 1969: The City of Oakland Building and Housing Department sent an Urban Renewal Inspection Letter for 825 46th Street. The letter indicates the illegal conversion of the facility to a three-unit apartment house.
- June 17, 1969: The City of Oakland Building and Housing Department sent an Urban Renewal Inspection Letter indicating that a supplemental survey was conducted for units 825 ½ and 827 46th Street, which were not open for inspection at the time of the original survey.
- April 8, 2002: Report of Residential Building Record authenticated the total number of habitable buildings as one, the total number of accessory buildings as one, the total number of habitable rooms as four, and the total number of units or apartments as one.
- February 2, 2006: Facility complaint filed for "alteration of accessory building without a permit, install three meters and electrical, panels, built porches and decks, plumbing etc."
- April 2010: The subject site is zoned R-40, Garden Apartment Residential Zone. The intent of the R-40 zone is to create, preserve, and enhance areas containing a mixture of single- or two- family dwellings and garden apartment in spacious settings for urban living, and is typically appropriate to attractive areas of existing lower medium density residential development. The maximum

residential density for a lot which is 4,000-4,999 and 5,000 or more square feet is two dwelling units.

- April 21, 2017: Housing habitability complaint filed for “unapproved rear addition, conversion of accessory building, modifications to electrical and plumbing throughout, unpermitted water heater replacement, direct vent installation, and windows.”
- May 22, 2017: Letter of Determination requested to research the legal number of recognized units and what would have been allowed under the previous zoning, including whether the current property is legal non-conforming.
- July 25, 2017: A Zoning Manager’s Determination was mailed which indicated the presence of two legal units on-site, including 825 and 827 46th Street. This was based on research which found that the two front units, 825 and 827 46th Street, were existing since at least 1936 and would have been in accordance with the density requirements of the historic zoning designations. It was determined that 825 ½ 46th Street was not in accordance with the residential density requirements, and, in addition, no permits were found on file which legalized the conversion of this building or allowed for an additional unit to exceed the maximum allowed residential density.
- February 02, 2018: A revised Zoning Manager’s Determination was mailed which indicated the same outcome as the letter mailed July 25, 2017.
- February 13, 2018: The timely appeal of DET170053 was submitted by Mr. Ivanov.

PROPERTY DESCRIPTION

The subject site is located on 46th Street between West Street and Market Street. This lot has an area of 4,000 square feet, and has the dimensions of 40’x100’. The property is not considered historic, in that it does not have a historic rating from the Oakland Cultural Heritage Survey and is not located within a historic district. The surrounding neighborhood context is a mixed housing residential area primarily consisting of single-family homes and some duplexes. The neighborhood context, which is defined as the five lots to the right and left and the ten lots across the street from the subject site, have lot sizes ranging from approximately 2,500 square feet to 5,000 square feet. Of these lots, the median lot size is 3,500 square feet and the average is approximately 4,500 square feet. There is also a strong neighborhood context of long driveways along the side lot line which oftentimes lead to garages in the rear yard area, allowing for adequate off-street parking. Attachment 3 shows this neighborhood context through aerial images, with the subject site denoted in a red outline.

GENERAL PLAN ANALYSIS

The project site located at 825-827 46th Street is in the Mixed Housing Type Residential land use classification per the Oakland General Plan’s Land Use and Transportation Element (LUTE). This classification describes the intended intensity/density as appropriate for a mix of single-family homes, townhouses, commercial spaces, and compatible civic uses with neighborhoods of “lower density housing which should be preserved through appropriate zoning designations.” Projects within this classification should meet the applicable policy and objective goals of the Mixed Housing Type Residential Land Use Classification. Some examples include, but are not limited to:

Policy N3.9 Orienting Residential Development.

Residential development should be encouraged to face the street and to orient their units to desirable sunlight and views, while avoiding unreasonable blocking sunlight and views for neighboring buildings, respecting the privacy needs of resident of the development and surrounding properties, providing for sufficient conveniently located on-site open space, and avoiding undue noise exposure.

Policy N3.10 Guiding the Development of Parking.

Off-street parking for residential buildings should be adequate in amount and conveniently located and laid out, but its visual prominence should be minimized.

Policy N3.11 Enforcing Codes.

The City should aggressively enforce the requirements of the City's Housing Code and other applicable regulations on housing of all types.

Policy N7.2 Defining Compatibility

Infrastructure availability, environmental constraints and natural features, emergency response and evacuation times, street width and function, prevailing lot size, predominant development type and height, scenic values, distance from public transit, and desired neighborhood character are among the factors that could be taken into account when developing and mapping zoning designations or determining "compatibility." These factors should be balanced with the citywide need for additional housing.

Policy N11.3 Requiring Strict Compliance with Variance Criteria.

As variances are exceptions to the adopted regulations and undermine those regulations when approved in large numbers, they should not be granted lightly and without strict compliance with defined conditions, including evidence that hardship will be caused by unique physical or topographic constraints and the owner will be deprived of privileges enjoyed by similar properties, as well as the fact that the variance will not adversely affect the surrounding area nor will it grant special privilege to the property. In those instances where large numbers of variances are being requested, the City should review its policies and regulations and determine whether revisions are necessary.

ZONING ANALYSIS

The current Zoning designation for 825-827 46th Street is RM-2, Mixed Housing Type Residential, which is intended to create, maintain, and enhance residential areas characterized by a mix of single-family homes, duplexes, townhouses, small multi-unit buildings, and neighborhood businesses where appropriate. This Zone permits permanent residential activities as well as one-family dwellings, secondary units, and two-family dwellings. A Conditional Use Permit is required to establish a multifamily (3+) dwelling if each unit has 2,500 square feet of lot area. This would mean that three units can only reside on a lot which has a minimum of 7,500 square feet of lot area. Historically, this area was classified as a Two-Family District ("B District"). This designation allowed for a residential density of two units on lots that were 4,000 square feet or greater and three units on lots which were 4,500 square feet.

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines statutorily and categorically exempts specific types of projects from Environmental Review. Section 15306 exempts basic data collection and research. The determination letter pursuant to the City's Planning Code conforms to this Section, and hence the action is exempt from Environmental Review.

BASIS FOR APPEAL

The appellant filed a timely Appeal of the Zoning Manager's Determination on February 13, 2018.

The Appeal alleges that:

- 1) "The existing residential use of the rear unit (designated 825 ½ 46th Street) is appropriate for a variance or conditional use permit to allow its continued existence and use."
- 2) "Other properties in the neighborhood have more than two residential units, and [...] garage

- conversions (which apparently produced the 825 ½ unit) were common in this neighborhood, in the early years during which 825 ½ was created.”
- 3) “Allowing such a conditional, continued usage would not allow the continuation of any continued imminent life safety risk and would tend to preserve the City’s affordable housing stock.”
 - 4) “I believe that Exec. Order 2017-1 instructs City Departments to cooperate to allow property owners to enter into abatement and compliance plans for ‘existing buildings that are not permitted for residential occupancy and that do not otherwise conform to Building, Housing or Fire Code or zoning requirement including nonconforming residential... uses, but in the judgment of the Building Official or Fire Marshal, based on physical inspection and evaluation of... known conditions, do not represent an immediate threat to life safety of the individuals currently residing in the building or to surrounding properties’, and that the property owner is encouraged to enter into a compliance plan for such properties.”
 - 5) “The City’s criteria for a conditional use permit allowing a third unit in an RM-2 zone are believed to be satisfied, since the 825 ½ unit has coexisted in the neighborhood for as much as 85 years without aggravating neighborhood facilities or play spaces, most of which was built contemporaneously or afterwards in any event. Its construction, scale, height coverage and bulk are in harmony with the neighborhood, being merely a converted accessory building which was originally otherwise acceptable.”
 - 6) “The concept of “laches” as arising due to the long history of this property and unit 825 ½ unit, and the consequent difficulty in retrieving records [...] define the property’s legality over that period.”

The following is a summary of the specific issues raised in the Appeal along with staff’s response to each point. The basis for the appeal is shown in **bold** text and the staff response follows each point in regular type.

- 1) **“The existing residential use of the rear unit (designated 825 ½ 46th Street) is appropriate for a variance or conditional use permit to allow its continued existence and use.”**

Staff Response

The appellant alleges that the rear unit would be appropriate for a Variance or Conditional Use Permit (CUP). This argument that the unit is appropriate and the Planning Commission should overturn the Zoning Manager’s Determination based on it, is irrelevant. The applicant has not applied for either a Variance or CUP, only a Determination regarding the legal number of units on the property. As such, a Variance or CUP application would require a separate permit, process and decision other than as part of a Determination.

Per Oakland Planning Code (OPC) Section 17.17.06, the current Zoning designation of RM-2 would allow for a conditionally permitted density of three or more units. But, this use permit would only apply to lots which are 4,000 square feet or greater and each unit requires 2,500 square feet of lot area. Therefore, the lot would need to have a size of 7,500 square feet in order to provide the appropriate area for three units in the RM-2 Zone. Since the lot is only 4,000 square feet, the applicant could not apply for a Conditional Use Permit to legalize the third unit.

However, the applicant could apply for a Variance for density. Under OPC 17.148.020, this would be considered a Major Variance for exceeding the maximum number of living units and would be considered by the Planning Commission. The findings that would need to be made to approve this situation are the following (OPC 17.178.050):

1. *That strict compliance with the specified regulation would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning regulations, due to unique physical or topographic circumstances or conditions of design; or, as an*

- alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution improving livability, operational efficiency, or appearance.*
2. *That strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners of similarly zoned property; or, as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution fulfilling the basic intent of the applicable regulation.*
 3. *That the variance, if granted, will not adversely affect the character, livability, or appropriate development of abutting properties or the surrounding area, and will not be detrimental to the public welfare or contrary to adopted plans or development policy.*
 4. *That the variance will not constitute a grant of special privilege inconsistent with limitations imposed on similarly zoned properties or inconsistent with the purposes of the zoning regulations.*
 5. *That the elements of the proposal requiring the variance (e.g., elements such as buildings, walls, fences, driveways, garages and carports, etc.) conform with the regular design review criteria set forth in the design review procedure at Section 17.136.050.*
 6. *That the proposal conforms in all significant respects with the Oakland General Plan and with any other applicable guidelines or criteria, district plan, or development control map which have been adopted by the Planning Commission or City Council.*
 7. *For proposals involving one (1) or two (2) residential dwelling units on a lot: That, if the variance would relax a regulation governing maximum height, minimum yards, maximum lot coverage or maximum floor area ratio, the proposal also conforms with at least one of the following additional criteria:*
 - a. *The proposal when viewed in its entirety will not adversely impact abutting residences to the side, rear, or directly across the street with respect to solar access, view blockage and privacy to a degree greater than that which would be possible if the residence were built according to the applicable regulation and, for height variances, the proposal provides detailing, articulation or other design treatments that mitigate any bulk created by the additional height; or*
 - b. *Over sixty percent (60%) of the lots in the immediate vicinity are already developed and the proposal does not exceed the corresponding as-built condition on these lots and, for height variances, the proposal provides detailing, articulation or other design treatments that mitigate any bulk created by the additional height. The immediate context shall consist of the five (5) closest lots on each side of the project site plus the ten (10) closest lots on the opposite side of the street (see illustration I-4b); however, the Director of City Planning may make an alternative determination of immediate context based on specific site conditions. Such determination shall be in writing and included as part of any decision on any variance.*

As part of a Major Variance application, staff would further review the existing floor plan, site plan, character, and neighborhood context prior to a decision on whether a Major Variance could be supported. A review of aerial images also shows development up to the property lines, and therefore, Minor Variances would also be required to allow for development into required side and rear setbacks, more than 50% rear yard coverage with structures over six feet, and to reduce the amount of required open space and parking if this unit were to be brought up to current Code.

- 2) **“Other properties in the neighborhood have more than two residential units, and [...] garage conversions (which apparently produced the 825 ½ unit) were common in this neighborhood, in the early years during which 825 ½ was created.”**

Staff Response

This argument is irrelevant. The Determination was based on research done for this property and was not based on other situations in the area. In addition, it is possible that these units are not

legal garage conversions, the lots have the additional required lot size for three units, the properties include a single-family home with a legal Secondary Unit, or that the conversion of these garages occurred prior to the current zoning and converted legally per the proper permits. The unit designated as 825 ½ 46th Street has no such record validating its legal establishment; therefore, it would not be considered legal non-conforming. Furthermore, there have been numerous code violations that have been noted throughout the years for this unit. This includes Urban Renewal Inspection Letters from 1969 as well as current code violations that were noted on February 2, 2006 (Case No.0600493) and March 30, 2017 (Case No. 1701728) which notes the existence of an unpermitted unit.

- 3) **“Allowing such a conditional, continued usage would not allow the continuation of any continued imminent life safety risk and would tend to preserve the City’s affordable housing stock.”**

Staff Response

This argument is irrelevant. As discussed above, the project site does not have the required lot area to apply for a CUP for additional density. The continued use of the area for housing would need to be resolved through the proper Zoning Code process.

Furthermore, multiple code violations have been noted throughout the years which would conflict with the appellant’s claim that continued usage would not result in life safety risks. Some comments from the 1969 Inspection Letters, February 2, 2006 and March 30, 2017 inspections include:

- The construction between the garage and the residential portion of unit #825 ½ is not fire-resistive.
 - The ceiling heights in bedroom and kitchen of unit #825 ½ are less than the required standard.
 - The water closet compartment in unit #825 ½ opens directly onto a room where food is prepared or stored. Provide an approved separation.
 - Rear yard is less than what is required.
 - Additions to Unit A and Unit B were constructed without permits.
 - Detached accessory building (Unit C) has been extended and converted into a third unit without permits.
 - Electrical panels, wiring, and system, as well as plumbing, water heaters, vent wall heaters, and windows have been installed or modified without permits.
 - Alteration of accessory building without a permit, install three meters and electrical, panels, built porches and decks, plumbing etc.
- 4) **“ I believe that Exec. Order 2017-1 instructs City Departments to cooperate to allow property owners to enter into abatement and compliance plans for ‘existing buildings that are not permitted for residential occupancy and that do not otherwise conform to Building, Housing or Fire Code or zoning requirement including nonconforming residential... uses, but in the judgment of the Building Official or Fire Marshal, based on physical inspection and evaluation of... known conditions, do not represent an immediate threat to life safety of the individuals currently residing in the building or to surrounding properties’, and that the property owner is encouraged to enter into a compliance plan for such properties.”**

Staff Response

The purpose of the Mayor’s Executive Order 2017-1 is to allow a property owner to enter into abatement and attempt to legalize work completed without the benefit of permits if there is not an

immediate threat to life safety. This Executive Order was not intended to supersede the Zoning Code or basic density requirements.

As defined by the City of Oakland Code Enforcement Division, a Code Compliance Report means: "An agreement with the property owner/agent/buyer to rehabilitate the property, correct housing violations and pay fee assessments in an agreed timeline." If the appellant were to attempt to bring these units up to Code and to correct all violations, this would first require Planning review of a Major and Minor Variance application for exceeding permitted density, setbacks, open space, parking, etc. This is reiterated by the Frequently Asked Questions regarding Non-Conforming Residential Units, issued on March 29, 2017 by Barbara J Parker, Oakland City Attorney:

"If the property is not an immediate hazard to safety, the Building Official typically orders the property owner to cure the violations through a compliance plan in accordance with the Mayor's Executive order 2017-1 regarding non-permitted spaces. Some of these violations may be building code violations, work performed without permits, zoning violations (use not allowed without zoning permits or not allowed by the zoning at all). The property owner must enter into the compliance plan within sixty (60) days of the order."

- 5) **"The City's criteria for a conditional use permit allowing a third unit in an RM-2 zone are believed to be satisfied, since the 825 ½ unit has coexisted in the neighborhood for as much as 85 years without aggravating neighborhood facilities or play spaces, most of which was built contemporaneously or afterwards in any event. Its construction, scale, height coverage and bulk are in harmony with the neighborhood, being merely a converted accessory building which was originally otherwise acceptable."**

Staff Response

This argument is irrelevant. As discussed above, the project site does not have the required lot area to apply for a CUP for additional density, and therefore, a CUP is not the appropriate permitting process. A Major Variance for density would be required, and at that time, staff would review the proposal to see if the required findings could be satisfied.

When looking at the neighborhood, there is a strong context of primary residential structures with accessory garage facilities to the rear. But, the construction at 825-827 46th Street does look to exceed the corresponding as-built conditions and has extensive encroachments into the rear and west side setbacks with structures to the property lines. A review of the Sanborn Map shows the rear garage structure as smaller than what is existing, and it looks as if unpermitted additions were constructed to expand the floor area of the rear garage, resulting in this being more extensive than the conversion of a non-habitable garage to a habitable unit. This is supported by the list of violations that was sent as a result of inspections on February 2, 2006 and March 30, 2017 by the Code Enforcement Division. Per the current Zoning of RM-2, these units should have space for three off-street parking spaces as well as 900 square feet of group open space, but due to the layout of the existing structures this cannot be met and the applicant would also need to apply for several Minor Variances.

- 6) **"The concept of "laches" as arising due to the long history of this property and unit 825 ½ unit, and the consequent difficulty in retrieving records [...] define the property's legality over that period."**

Staff Response

Per the revised Zoning Determination Letter that was sent February 02, 2018:

[The argument of laches] is unpersuasive where the property condition is a violation of the Planning Code and akin to a nuisance per se. Further, laches is not a viable defense where the property owner makes no attempts to bring the property within the requirements of the law.

Violations of a planning code constitute a public nuisance. In such cases, courts have found that cities have the power to abate the nuisance. An owner in the position of appellant could not have reasonably assumed that his illegal unit complied with local law or that the City would never enforce its land use requirements. Moreover, equitable estoppel and laches usually are not available in land use cases because of public policy considerations, such as the City's need to protect the public health, safety and welfare of its residents and preserve orderly development that complies with the Planning Code.

In this case, neither current nor historic zoning regulations, as far back as 1935, allow for the establishment of three units on a lot of this size. Courts have held that the doctrine of laches cannot be used to essentially award offenders who quietly maintain illegal uses.

CONCLUSION

City of Oakland Planning staff believes that project site's density was appropriately identified, based on the evidence as described above and in the Determination Letters, and that the Determination is valid. Staff is well aware of the City's housing shortage, and that this Determination results in one less unit in Oakland's overall housing stock. However, permitting one illegal unit to receive legal status will do next to nothing to alleviate the housing crisis and the City, through its Housing Element, has identified numerous areas of the City that can reasonably accommodate far more units to assist in remedying the housing shortage. The Appellant has not demonstrated, as required per the Planning Code, an error in the City's research, lack of substantial evidence, or abuse in discretion by the Zoning Manager. Instead, the appellant cites irrelevant arguments related to a permit that he has not applied for, and that the City should waive the Zoning Code's density requirements despite the project not being up to Code for years. As a result, the Zoning Manager's Determination was issued correctly and the Appeal should be denied.

Finally, there is a process (Major and Minor Variance application), as outlined in this letter, by which the owner may apply in an attempt to legalize the unit.

RECOMMENDATIONS:

For approvals: 1. Deny the Appeal, thereby upholding the Zoning Manager's Determination of two legal units at 825-827 46th Street.

Prepared by:



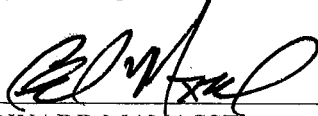
BRITTANY LENOIR
Planner I

Reviewed by:



ROBERT MERKAMP
Acting Zoning Manager

Approved for forwarding to the
City Planning Commission:



EDWARD MANASSE
Acting Deputy Director
Bureau of Planning

ATTACHMENTS:

1. Revised Zoning Manager Determination dated February 02, 2018 (Original Zoning Manager Determination dated July 25, 2017 noted as Attachment A)
2. Appeal of DET170053 dated February 13, 2018
3. Aerial images of the neighborhood context on 46th Street

LEGAL NOTICE:

ANY PARTY SEEKING TO CHALLENGE THIS DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE ANNOUNCEMENT OF A FINAL DECISION, PURSUANT TO THE CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1094.6, UNLESS A SHORTER PERIOD APPLIES.



CITY OF OAKLAND
BUREAU OF PLANNING - ZONING DIVISION
250 Frank H. Ogawa Plaza, Suite 2114, Oakland, CA 94612-2031
Phone: 510-238-3911 Fax: 510-238-4730

February 2, 2018

Alexsandr Ivanov
571 21st Avenue
San Francisco, CA 94121

Sent via U.S. Certified Mail and Electronic Mail

RE: Case File: DET170053; 825-827 46th Street; (APN: 013 116604000)

Dear Mr. Ivanov,

This letter is an update to a previous Zoning Determination Letter request dated May 22, 2017 and the resulting Determination Letter mailed July 25, 2017 (Attachment A). New information, including an assessor's map and new copies of the Residential Building Record, was presented September 12, 2017 which resulted in re-opening the Determination regarding the legal status of three dwelling units located at 827-825 46th Street. In addition, City staff received your letter dated October 8, 2017 regarding the applicability of laches to this case (Attachment B).

Staff reviewed property records including City building records, Sanborn maps, a 2002 3-R Report, County Records, as well as the Block Books in the Oakland History Room. **Based on this evidence, staff has again determined that 827 and 825 are legal non-conforming. However, the rear unit called "825 ½" is considered to be unpermitted; furthermore, historic and current zoning regulations would not permit a third unit. Therefore, steps will need to be taken to either demolish the structure or remove the unit from it.**

DISCUSSION

- The Block Books indicate that the west 10 feet of the lot originally associated with the subject parcel was transferred to the neighboring lot between 1919-1921. This transfer occurred prior to the construction of any structures; therefore, all Zoning regulations are based off the current size of the lot, which has the dimensions of 40 feet by 100 feet and is 4,000 square feet (Attachment C).
- City records for the subject property include a 1924 building permit (#83213) to construct a one story, four-bedroom, single family dwelling.
- A Dwelling Schedule dated February 25, 1936 specifies a "side by side" two-family facility with a 4-car garage, which is consistent with the Sanborn map of this time (Attachment D). This indicates that a second unit and garage were established sometime between 1923 and 1936. This increase in structures, specifically one additional dwelling unit, for a total of 2, and one, four-car garage conforms to the Zoning Ordinance of the time.
- Under the City of Oakland Zoning Law, Ordinances 474-475 C.M.S., adopted February 15, 1935, and revised to March 31, 1946, this property was in a two-family zone (Attachment E). This zone

allowed the maximum density of a one-family or two-family dwelling on lots that were 4,000 square feet.

- The Residential Building Record shows an initial entry date of May 13, 1954 (Attachment F). At that time, the property was surveyed as having two residences and one addition. The survey of the units on the Residential Building Record is inconsistent with what is shown as dwelling units on the Sanborn Map of this time (Attachment G). The Sanborn Map shows the front two structures as individual dwelling units and the rear as a large garage, which is contrary to what the Residential Building Record shows of one unit in the front and one unit at the rear with an addition connected to the two.
- On February 25, 1969 and again on June 17, 1969, the City of Oakland Building and Housing Department sent Urban Renewal Inspection Letters identifying many deficiencies with the structures on the lot, including: the side and rear yard is less than what is required, the construction between the garage and the residential portion of unit 825 ½ is not fire-resistive, the ceiling heights for the bedrooms and kitchens of units 827 and 825 ½ are insufficient, and a house number ending with "1/2" is not approved for dwelling unit designation. (Attachment H).
- On April 8, 2002, a Report of Residential Building Record authenticated the total number of habitable buildings as 1, the total number of accessory buildings as 1, the total number of habitable rooms as 4, and the total number of units or apartments as 1 (Attachment I). It is indicated that the outcome of this report was based off the previously mentioned 1969 Code Enforcement Letter. While the result of the 3-R report declares only one habitable unit, it has been determined that residence #2 (825 46th Street) existed and was established well before this time and was in accordance with the Zoning Code at time of construction, and therefore, this unit has been deemed valid. Please note that all unpermitted or illegal additions that were made to 825 46th Street need to be removed or should receive permits to legalize per the Urban Renewal Inspection Letters and Code Compliance.
- Unit 3, otherwise known as "825 ½", has been deemed unpermitted on the basis that previous and current Zoning Development Standards do not allow for three units on a lot of this size. Also, there has been no evidence that the garage conversion was done legally due to its inconsistency with setback and density regulations at the time of construction.
- We have reviewed your latest submission regarding the applicability of "laches". We find this argument is unpersuasive where the property condition is illegal and akin to a nuisance per se. Further, laches is not a viable defense where the property owner makes no attempts to bring the property within the requirements of the law. The 1969 Urban Renewal Inspection Letter addressed several violations for the units at 825-827 46th Street, including unsafe building materials and insufficient setback requirement. The 3-R report that was completed in 2002 also made note of the 1969 Code Enforcement letter, and while it has been over 40 years since the original letter there has been no evidence that there have been any steps taken to legalize these structures, and bring them up to code.
- This Determination is for Zoning purposes only. The building must also meet all applicable Building Code requirements deemed necessary by the Bureau of Building.

If you, or any interested party, seeks to challenge this decision, an appeal must be filed by no later than ten calendar (10) days from the date of this letter, by **4:00 pm on February 13, 2018**. An appeal shall be on a form provided by the Planning Bureau of the Planning and Building Department, and submitted to the

same at 250 Frank H. Ogawa Plaza, Suite 2114, to the attention of **Brittany Lenoir, Planner I**. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the Zoning Manager or wherein his/her decision is not supported by substantial evidence and must include payment of **\$1622.57** in accordance with the City of Oakland Master Fee Schedule. Failure to timely appeal will preclude you, or any interested party, from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record which supports the basis of the appeal; failure to do so may preclude you, or any interested party, from raising such issues during the appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the Zoning Manager prior to the close of the previously noticed public comment period on the matter.

For any further questions, please feel free to contact **Brittany Lenoir** at (510) 238-4977 or blenoir@oaklandnet.com

Sincerely,


Robert Merkamp
Acting Zoning Manager

Attachments

- A. Original Determination Letter date July 25, 2017
- B. Letter from Applicant dated October 8, 2017
- C. Correspondence with Betty Marvin, Planner III
- D. Dwelling Schedule from February 25, 1936
- E. Excerpt of Zoning Laws and Ordinances 474-475 C.M.S adopted February 15, 1935
- F. Residential Building Record
- G. Sanborn Map
- H. Urban Renewal Inspection Letters dated February 25, 1969 and June 17, 1969
- I. Report of Residential Building Record (3-R Report) dated April 9, 2002



ATTACHMENT A

CITY OF OAKLAND
BUREAU OF PLANNING - ZONING DIVISION
250 Frank H. Ogawa Plaza, Suite 2114, Oakland, CA 94612-2031
Phone: 510-238-3911 Fax: 510-238-4730

July 25, 2017

Alexsandr Ivanov
571 21st Avenue
San Francisco, CA 94121

RE: Case File: DET170053; 825-827 46th Street (APN: 013 -1166-040-00)

Dear Mr. Ivanov,

This letter is in response to your Zoning Determination Letter request dated May 22, 2017 regarding the legal status of three dwelling units located at 825-827 46th Street.

Staff reviewed property records including City building records, Sanborn maps, a 2002 3-R Report, and County Records. **Based on this evidence, staff has determined that 825 and 827 are legal non-conforming (that is, lacking permits but constructed legally prior to Code requirements for said permits). However, the rear structure called "825 ½" is considered to be unpermitted; furthermore, zoning regulations would not permit a third unit; therefore, steps will need to be taken to either demolish the structure or remove the unit from it.**

DISCUSSION

- City records for the subject property include a 1923 building permit to construct a one story, 4-bedroom single family dwelling. A Dwelling Schedule dated February 25, 1936 shows a singular two-family facility with a 4-car garage, which is consistent with the Sanborn map. This indicates that a second unit and garage were established between 1923 and 1936.
- Under the Zoning Law and Ordinances, 474-475 C.M.S. (1954), adopted February 15, 1935, this property was located at that time in a two-family zone (Attachment A).
- Remarks were made on the Residential Building Records dated October 11, 1962 indicating that a portion of the garage was remodeled and integrated with residence #2 (as opposed to conversion into a third unit).
 - A portion of the four-car garage located in the rear yard was converted at some time before 1962 to include an additional residence, resulting in a total of 3 units on the property and extensive additions were made to unit #2 at 827 46th Street.
- On June 17, 1969, an Urban Renewal Inspection Letter identified among other issues that the rear structure was not approved as a dwelling unit. (Attachment B).
- On April 8, 2002, a Report of Residential Building Record (Attachment C) authenticates the total number of habitable buildings as 1, the total number of accessory buildings as 1, the total number

of habitable rooms as 4, and the total number of units or apartments as 1. It is indicated that the outcome of this report was based off the previously mentioned 1969 Code Enforcement Letter. While the result of the 3-R report declares only one habitable unit, residence #2 (827 45th Street) has been determined to exist and be established well before this time and was in accordance with the Zoning Code at time of construction, and therefore this unit has been deemed valid. Again, all unpermitted or illegal additions that were made to 827 46th Street need to be abated or should attempt to receive approvals such as a Variance to legalize.

- This Determination is for Zoning purposes only. The building must also meet all applicable Building Code requirements deemed necessary by the Bureau of Building.

If you, or any interested party, seeks to challenge this decision, an appeal must be filed by no later than ten calendar (10) days from the date of this letter, by **4:00 pm on August 14, 2017**. An appeal shall be on a form provided by the Planning Bureau of the Planning and Building Department, and submitted to the same at 250 Frank H. Ogawa Plaza, Suite 2114, to the attention of **Brittany Lenoir, Planner I**. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the Zoning Manager or wherein his/her decision is not supported by substantial evidence and must include payment of \$ 1622.57 in accordance with the City of Oakland Master Fee Schedule. Failure to timely appeal will preclude you, or any interested party, from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record which supports the basis of the appeal; failure to do so may preclude you, or any interested party, from raising such issues during the appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the Zoning Manager prior to the close of the previously noticed public comment period on the matter.

For any further questions, please feel free to contact **Brittany Lenoir** at (510) 238-4977 or blenoir@oaklandnet.com

Sincerely,













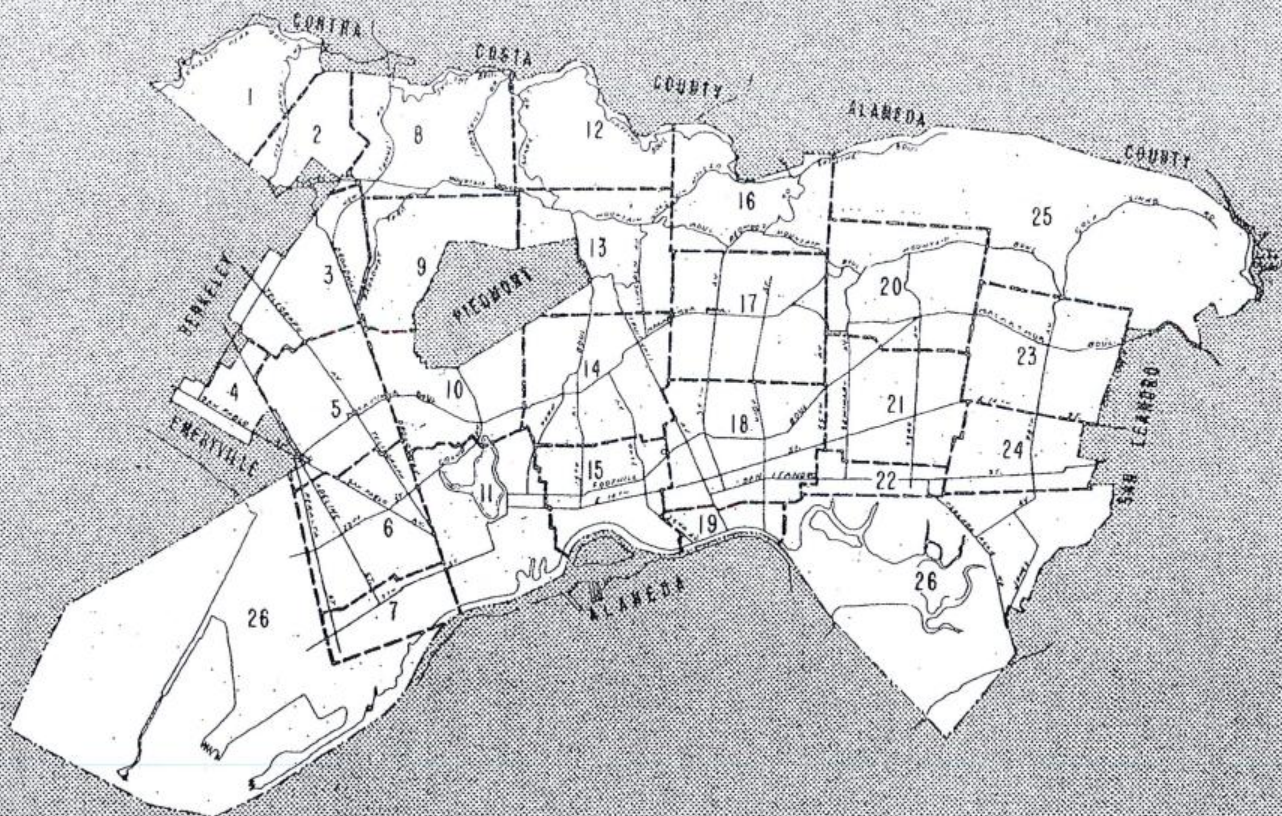
Scott Miller
Zoning Manager

Attachments

- A: Excerpt of Zoning Laws and Ordinances 474-475 C.M.S adopted February 15, 1935
- B: Excerpt of Urban Renewal Inspection Letter dated June 17, 1969
- C: Report of County Residential Building Record dated April 9, 2002

LEGEND FOR SECTION MAPS

 A ONE-FAMILY DISTRICT	 F GENERAL BUSINESS DISTRICT
 B TWO-FAMILY DISTRICT	 G CENTRAL BUSINESS DISTRICT
 C MULTIPLE DWELLING DISTRICT	 H LIGHT INDUSTRIAL DISTRICT
 D MULTIPLE DWELLING DISTRICT	 I HEAVY INDUSTRIAL DISTRICT
 E COMMERCIAL DISTRICT	 PUBLIC PROPERTY



INDEX TO SECTION MAPS

LEGEND

- 2 SECTION MAP NUMBER
- SECTION MAP BOUNDARY
- CITY BOUNDARY

ZONING LAWS
ORDINANCES
474-475 C.M.S.



OAKLAND

CITY PLANNING COMMISSION



JUNE 1954

SCALE IN MILES

Golf courses.
 Farms and truck gardens.
 Churches.
 Public and parochial elementary, junior high and high schools.
 Home occupations.
 Cemeteries, mausoleums, columbariums and crematories existing on January 1, 1935; alterations or additions thereto; uses requisite to, necessary for, related to, or incidental thereto.
 Accessory buildings on the same lot with any of the above uses, including one private garage, when located not less than sixty (60) feet from the front lot line, and provided that in no case shall any wall of the accessory building be nearer the side street line than the side line of the main building, and provided further, in the case of a through lot, no wall of the accessory building shall be nearer to the rear frontage than the line fixed by this ordinance for buildings on adjoining lots, and on a lot of not less than fifteen thousand (15,000) square feet, one private stable for the keeping of not to exceed three (3) horses, when located not less than sixty (60) feet from any street line, and not less than thirty (30) feet from any side or rear property line and not less than thirty (30) feet from any dwelling or any other building except an accessory building; and provided that the height of the stable shall not exceed one-and-a-half (1½) stories or twenty (20) feet, and provided further that no horses shall be boarded therein.

No outdoor advertising or display or sign of any character shall be permitted in the "A" District except: a name plate not exceeding one (1) square foot in area; a sign not exceeding six (6) square feet in area appertaining only to the lease, hire, sale or display of a building or premises; an identification sign not exceeding twelve (12) square feet in area, not illuminated, located flat against a wall of a museum, library, community center, public or parochial elementary, junior high or high school, or on the premises of a park, playground or golf course; provided that no such sign or name plate shall be permitted in a front, side or rear yard; a church identification sign for which a variance has been granted by the Board of Adjustments pursuant to Section 7-1.82; and except a bulletin board which, excluding ornamental trim, shall not exceed twenty (20) square feet in area, which, if lighted, shall be indirectly illuminated, which shall serve only to identify a church and announce its services and activities, and which shall be located flat against a wall of a church or in a front or side yard but no closer than ten (10) feet from any street line and no closer than five (5) feet from a side property line.¹

SEC. 7-1.09 BUILDING HEIGHT LIMIT IN "A" DISTRICT is two and one-half (2½) stories and not exceeding thirty-five (35) feet in height.

SEC. 7-1.10 SIDE YARDS REQUIRED IN "A" DISTRICT are five (5) feet in width on each side of a building; provided, however, that for a lot less than fifty (50) feet in width and of record on the first day of January, 1935, the side yard on each side of the building may be reduced to ten (10) per cent of the width of such lot, but shall be not less than three (3) feet in width.

SEC. 7-1.11 REAR YARD REQUIRED IN "A" DISTRICT is twenty-five (25) feet in depth; provided, however, that for a lot less than one hundred twenty-five (125) feet in depth and of record on the first day of January, 1935, the rear yard may be reduced to twenty (20) per cent of the depth of such lot, but shall be not less than fifteen (15) feet in depth.

SEC. 7-1.12 FRONT YARD REQUIRED IN "A" DISTRICT is twenty (20) feet in depth.

SEC. 7-1.13 LOT AREA REQUIRED IN "A" DISTRICT is five thousand (5000) square feet for each one-family dwelling.

"B" TWO-FAMILY DISTRICT

SEC. 7-1.14 "B" DISTRICT USES. In the "B" District the following regulations shall apply, and the following uses only are permitted:

Uses permitted in the "A" District.
 Two-family dwellings.

¹As amended by Ordinance No. 4150 C.M.S., passed June 2, 1953.

Multiple dwellings and group dwellings having accommodations for not more than four (4) families. Nurseries or greenhouses for the propagation or cultivation of plants; provided that no part of the premises shall be used primarily for the sale or display of the products therefrom.

No outdoor advertising or display or sign of any character shall be permitted in the "B" District except: a name plate not exceeding one (1) square foot in area; a sign not exceeding six (6) square feet in area appertaining only to the lease, hire, sale or display of a building or premises; an identification sign not exceeding twelve (12) square feet in area, not illuminated, located flat against a wall of a museum, library, community center, public or parochial elementary, junior high or high school, or on the premises of a park, playground or golf course; provided that no such sign or name plate shall be permitted in a front, side or rear yard; a church identification sign for which a variance has been granted by the Board of Adjustments pursuant to Section 7-1.82; and except a bulletin board which, excluding ornamental trim, shall not exceed twenty (20) square feet in area, which, if lighted, shall be indirectly illuminated, which shall serve only to identify a church and announce its services and activities, and which shall be located flat against a wall of a church or in a front or side yard but no closer than ten (10) feet from any street line and no closer than five (5) feet from a side property line.¹

SEC. 7-1.15 BUILDING HEIGHT LIMIT IN "B" DISTRICT Is the same as in the "A" District.

SEC. 7-1.16 SIDE AND REAR YARDS REQUIRED IN "B" DISTRICT are the same as in the "A" District.

SEC. 7-1.17 FRONT YARD REQUIRED IN "B" DISTRICT is fifteen (15) feet in depth.

SEC. 7-1.18 LOT AREAS REQUIRED IN "B" DISTRICT are: four thousand (4000) square feet for each one-family or two-family dwelling; four thousand five hundred (4500) square feet for each three-family multiple dwelling or group dwelling; five thousand (5000) square feet for each four-family multiple dwelling or group dwelling.

"C" MULTIPLE DWELLING DISTRICT

SEC. 7-1.19 "C" DISTRICT USES. In the "C" District the following regulations shall apply, and the following uses only are permitted:

Uses permitted in the "A" and "B" Districts.

Multiple dwellings; group dwellings.

Boarding houses.

Nursing homes as defined in Section 7-1.01 (w) of this Code.

Libraries; museums.

Private Clubs, fraternities, sororities, lodges, excepting those the chief activity of which is a service customarily carried on as a business.

Accessory buildings and uses customarily incident to any of the above uses when located in the same lot and not involving the conduct of a business including private and storage garages, when located not less than sixty (60) feet from the front lot line nor less than five (5) feet from any other street line, or when constructed as a part of the main building.

No outdoor advertising or display or sign of any character shall be permitted in the "C" and "D" Districts except: a name plate not exceeding one (1) square foot in area; a sign not exceeding six (6) square feet in area appertaining only to the lease, hire, sale or display of a building or premises; an identification sign not exceeding twelve (12) square feet in area, not illuminated, located flat against a wall of a museum, library, community center, public or parochial elementary, junior high or high school, or on the premises of a park, playground or golf course; provided that no such sign or name plate shall be permitted in a front, side or rear yard; a church identification sign for which a variance has been granted by the Board of Adjustments pursuant to Section 7-1.82; and except a bulletin board which, excluding ornamental trim, shall not exceed twenty (20) square feet in area, which, if lighted, shall be indirectly illuminated, which shall serve only to identify a church and announce its services and activities, and which shall be located flat against a wall of a church or in a front or side yard but no closer than five (5) feet from any street line and no closer than five (5) feet from a side property line.²

¹As amended by Ordinance No. 4013 C.M.S., passed October 30, 1952.

²As amended by Ordinance No. 4356 C.M.S., passed March 2, 1954.



OAKLAND CITY PLANNING COMMISSION

0 500 1000 1500 2000

SCALE IN FEET

June 17, 1969

Code No. H-12-701
Adm No. 8215-27-19th St.Hills L. Thigpen
925 46th Street
Oakland, California 94609

Dear Owner:

A supplemental survey of units 1224 and 1227 46th Street, which were not open for inspection at the time of the original survey, was conducted by Mr. J. M. Haire, District Urban Affairs Representative, on June 10, 1969.

The following deficiencies were noted and must be corrected and shall become a component part of the original compliance letter issued on February 25, 1969:

1. The construction between the garage and the residential portion of unit #825 is not fire-resistant. Sections 105(1) and 105(1)(b) OBC. Provide approved fire-resistant construction.
2. The water closet compartment in unit #825 and #827 is not properly onto a roof where food is prepared or stored. Section 105(1)(b) OBC. Provide an approved separation.
3. The ceiling height in bedroom and kitchen of unit #825 and the living room, kitchen and bathroom of unit #827 are less than the required 7 feet. Section 105(1)(b) OBC. Provide required ceiling heights.
4. The ceiling height in the bathroom of unit #825 is less than the required 7 feet 6 inches. Section 105(1)(b) OBC. Provide required ceiling height.
5. Ceiling height in the living room of unit #825 and the bedroom of unit #827 is less than the required 7 feet 6 inches. Section 105(1)(b) OBC. Provide required ceiling height.
6. The lighting fixture in the living room of unit #825 is not a fluorescent fixture. Section 105(1)(b) OBC. Provide required lighting fixture.
7. The door serving the living room of unit #825 is not a solid wood door. Section 105(1)(b) OBC. Provide required door.
8. The door serving the bedroom of unit #827 is not a solid wood door. Section 105(1)(b) OBC. Provide required door.

1110 L. Thompson
125 16th Street
June 17, 1969
Page Two

(2) 225/27 40th St.

9. The vent for the kitchen gas range and the gas heater in the living room of unit #027 are improperly installed. Section 1102.24C.

10. The use of a house number ending with "1/2" is not approved for dwelling unit designation. Apply to the House-numbering Section, 11th Floor, Oakland City Hall, 14th and Washington Streets, for an approved number.

Your Urban Renewal Representative, Mr. G. Walter Hahn, is available at your convenience to discuss any problems arising from this survey. Please call him to phone 173-1101 between the hours of 9:30 and 5:30 a.m., Monday through Friday, for any such discussion or to make an appointment to meet your Representative at the location of your property.

Sincerely,

RONICO LAMBERT
Housing Division Official

CHARLES E. HAHN
Senior Urban Renewal
Inspector

THMP:igjb

cc: JFR
TH(2)
B13g(2)
date file



Office of
Planning and Building
Oakland Housing Code, Sec. H-206

APPLICATION FOR REPORT OF RESIDENTIAL BUILDING RECORD (3-R Report)

FOR CITY USE ONLY

Address of Subject Property: <u>825-827 46th</u>		Street Avenue	Drive Way	OAKLAND
Name of Applicant: <u>Michele Rogan</u>				
Mailing Address of Applicant: <u>410 South 34th Street Apt. E</u> <u>Richmond, CA 94804</u>				
Name and address of Owner (if different from above):				

Date Completed 4/9/02

Expiration Date 7/9/02

Completed by S.M. Buggs

Total number of HABITABLE buildings on premises: 3

Existing BASEMENT or CELLAR? ☒ yes ☐ no

Existing ATTIC? ☒ yes ☐ no

Number of STORIES: 1

Owner occupied? ☐ yes ☒ no

Number of dwelling UNITS or APARTMENTS: 3

Number of KITCHENS: 3

Total number of ACCESSORY buildings on premises: _____

Habitable BASEMENT or CELLAR? ☒ yes ☐ no

Habitable ATTIC? ☐ yes ☐ no

Construction Material: ☒ Wood frame ☐ Block ☐ Steel

Number of HOUSEKEEPING units: 0

Number of HOTEL/Guest rooms: 0

Total number of HABITABLE ROOMS (excluding bath, toilet, laundry, utility rooms and closets): 3

I certify that I am the APPLICANT named hereto, that I have familiarized myself with the residential building with respect to preparing and filing this application, that the answers herein contained are in all respects true and accurate to the best of my knowledge and belief, and that they may not correlate with the City's official records as recorded below.

Signature of Applicant

Date

Telephone

REPORT OF RESIDENTIAL BUILDING RECORD

This is NOT to be construed that said residential building complies with all applicable laws of the City and only sets forth the report as of the date completed shown above.

Zone District: _____ Date of original building construction: 1924 Building type: VN

Original OCCUPANCY or USE: 1 story single family dwelling, 4 rooms

Plans on file ☒ yes ☐ no

SFD? ☐ no ☒ yes

Cert. of Occupancy issued? ☒ no ☐ yes

Date _____ Number _____

Total number of HABITABLE BUILDINGS: 1

Total number of ACCESSORY BUILDINGS: 1

Total number of HABITABLE ROOMS: 4

Total number of UNITS or APARTMENTS: 1

Building related PERMITS ISSUED:

Original construction permit

Permit # 83213 Date 5/12/24

Bathroom remodel

Permit # B36190 Date 1/29/67

Permit # _____ Date _____

Permit # _____ Date _____

Permit # _____ Date _____

Permit # _____ Date _____

CONDITIONS/VARIANCES:

Present AUTHORIZED OCCUPANCY or USE (insofar as ascertainable from existing City records): 1 story single family 4 rooms

*1969 Code Enforcement letter says 2 additional units illegal.

This Report of Residential Building Record shall not be construed as authority to violate, cancel, alter, or set aside any of the provisions or requirements of any laws or ordinances of the City of Oakland, nor shall such issuance thereafter prevent requiring corrections of errors, violations, or any applicable law or ordinance of the City of Oakland. This report contains information insofar as ascertainable from City records. It shall be unlawful for the owner or authorized agent of the owner, to sell this residential building without first delivering to the buyer this Report of Residential Building Record prior to the consummation of sale.

April 9, 2002

Date

Authorized Signature, City of Oakland

Sequonita M. Buggs

By: EBL Register RRP Receipt# 035487

04/02

ATTACHMENT B

October 8, 2017

Alexsandr Ivanov

571 21st Ave San Francisco, CA 94121

Re: DET70053

Dear Heather:

This letter is to supplement my pending appeal regarding the property at 825-827 46th Street, per your request. I appreciate the opportunity to provide this further clarification.

Some of this supplement is derived from facts which I have noted before, which generally indicate that the multiple structures at 46th Street have been in existence since at least 1953, with the knowledge of the City. It's pretty clear that the original structure was permitted under the permit applied for in September 1923. By 1954, the Residential Building Record showed three addresses -- 825, 825½ and 827.

The sequence of numbering of these units is also informative. The first structure was given the address of "827", the second was given "825", and the third was given "825½". This is out of sequence, since the normal construction of the first would appear to have normally been given "825." The actual dates of the construction appear confused as a result, although it's clear from the correspondence and the diagrams that sometime by or before 1954 all three had been constructed. Per the "Residential Building Record" the rear unit C -- #825½ -- had an "effective" date of 1928, as did the "B" structure -- #825 -- and 825½ had an "appr." date ("approved", presumably) of 1953, with #825 being apparently listed as an addition in 1961 (again, per the "Residential Building Record"). According to the tax assessor's records, the property had 3 dwellings as of 1954, with kitchens and baths; this hasn't changed since then, except that a bath remodel (apparently in #825) by then-owner Lila Thigpen, and the deficiencies listed in 1969 were at the least substantially inspected and finalized between February 7 and February 22, 1977, which inspection record showed the property as "3 units". The tax assessor is also believed to have assessed and collected taxes on the property since about 1953 on the basis of it being three units -- this also indicates that the three units existed prior to that time.

In searching the City's records to be able to find more specific dates and records of when these things occurred, and to find the documents showing them, I was informed by the City that such documents -- after 1947 or 1954 and into the 70's -- were simply unavailable. As a result, the documents that I've been able to provide so far are apparently the only documents not yet lost or destroyed. In this situation, the City is barred, under a legal doctrine called "laches", from abating or prohibiting the use of these structures at 825-825½-827. This doctrine is explained in the case of City and County of San Francisco v Pacello (1978) 85 Cal. App. 3d 637. The language pertaining to these issues is found starting at page 644.

In short, "laches" occurs when the City has caused an unexplained delay, together with there being prejudice to the owner during that delay. In the Pacello case, the delay was only 8 years, after

which the City was unable to take action to abate a non-conforming use where prejudice had occurred to the owner. Here, all the owners during that period, including myself, have (1) paid taxes on the basis of the property being 3 units, (2) committed to tenants who have moved in and lived there on the belief and basis that such use was legal, (3) those owners, and myself, have purchased the property on the belief and basis that the three-unit use was legal, (4) have spent money making alterations which were inspected and approved during this period, and (5) are now unable to demonstrate more details of the same due to the City's records being unavailable. This is prejudice exactly as considered in the Pacello case, where prior transcripts and records had been destroyed or were unavailable and the owners had relied on the legality of the property's zoning and use. In Pacello, the court stated that, (1) laches is unreasonable delay accompanied by resulting prejudice, and (2) that "where the delay caused important evidence before the [regulatory agency] to become unavailable, prejudice is manifest ... such prejudice, plus the unexplained delay, constitutes laches." Pacello at 645. Here, there has been over 50 years of delay, with prejudice of at least these 5 types resulting. Just like in Pacello, the City is now be subject to the laches doctrine and is required to allow the continued, non-conforming use.

I ask that you consider this material in your review and appeal. Thank you very much.

Attached: City and County of San Francisco v Pacello (laches)

A handwritten signature in dark ink, appearing to be 'Pacello' or similar, written in a cursive style.

From: Marvin, Betty
Sent: Thursday, September 14, 2017 11:31 AM
To: Alexandr Ivanov; Lenoir, Brittany
Cc: Lombardi, Gail
Subject: RE: 825 46th STREET! 3 units accessory building question

Hi, Alex and Brittany –

I went to the Oakland History Room to check the block books last night and here's what I found. The west 10' of original lot 15 was transferred to the neighbor (831 46th St., east 32' of lot 14) between 1919 and 1921. The owner of lot 15 before and after the transfer was T.F. Day, so if one wanted to look up the exact date and terms of the transfer at the County Recorder, Day would be the grantor. The neighbor on 14 was C.N. Anderson in 1919, G. Corzino in 1921, so one of them might be the grantee. Lot 15 was vacant through the 1923 block book (only the odd-numbered years are available). In 1925 there is a \$400 assessment for improvements on the 40x100' lot, owned by H. Vanvalkenburgh, noted as "partial," i.e. the building was not yet completed when the assessor came around. This would correspond to permit 83213, Sept. 18, 1923, owner/builder C. Van Valkenburg, for a 1-story 4-room dwelling, dimensions 22' x 26', to cost \$1800. The 1910s-20s block books clearly show that the lot existed in its present form well before any improvements were built. (Really the buildings show the same thing, since they're built right up to the present-day west lot line, but here you have it documented.)

By the way, the old zoning code already had pretty serious setback requirements ("Side and Rear Yards") – how does that fit with converting the garage to a dwelling unit, either then or now? Lack of "required side and rear yards" was noted as one of the "deficiencies" in the Urban Renewal letter of February 25, 1969 - on the Address Fiche.

Alex - Repeating from yesterday's message, there are a lot of notes and interpretations written on the scan of the Residential Building Record that I have. Also the **left-hand column is missing** on at least Sheet 1 of 3, which seems to have led to some misinterpretation. Please provide a clean and complete copy of the original – also to Brittany if you haven't already.

When you search the ledger books in pursuit of your statement "*In Tax records ... Res#2 was build 6 years later (in 1928) after Res#1 permitted in 1922*", note that those are not permit dates, those are assessor's estimates (see the little "E" after the numerals). The one permit we have (so far?) is the 1923 permit for the 1-story 4-room 22x26' dwelling. From Sanborn maps it appears that all 3 structures existed by 1936 (though all considerably smaller than today). All 3 structures were added to the Sanborn map at one time, on the same Sanborn layer with the 1924 houses next door at 815 and 811. This may (or may not...) help narrow down what you are looking for.

Thanks -

Betty Marvin, Historic Preservation Planner | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa Plaza, Suite 331.5 | Oakland, CA 94612 | Phone: (510) 238-6879 | Fax: (510) 238-6538 | Email: bmarvin@oaklandnet.com | Website: www.oaklandnet.com/planning

From: Marvin, Betty
Sent: Wednesday, September 13, 2017 1:31 PM
To: 'Alexandr Ivanov' <alexsandr.ivanov@yahoo.com>

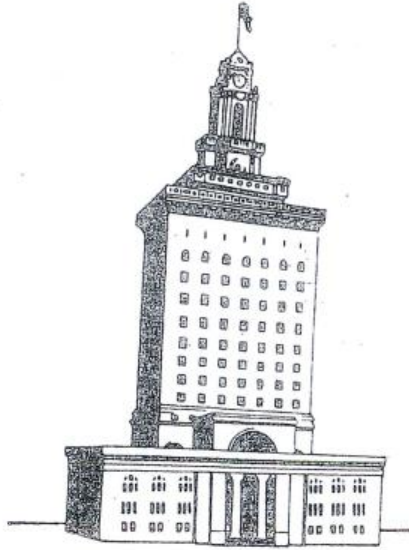
DWELLING SCHEDULE
 OAKLAND, CALIFORNIA
 C.T. 8-32
 STRUCTURE NUMBER 16
 BLDG NO. 8-32
 STREET 446 1/2
 CITY Alameda
 ZIP 94606
 APARTMENT NO. OR LOCATION 825

I. ENTIRE STRUCTURE 1. TYPE OF STRUCTURE 1. Single Family <input type="checkbox"/> Detached <input type="checkbox"/> 2. Single Family Attached <input type="checkbox"/> 3. Two Family Side by Side <input checked="" type="checkbox"/> 4. Two Family Two Decker <input type="checkbox"/> 5. Three Family Three Decker <input type="checkbox"/> 6. Four Family Double Two-Decker <input type="checkbox"/> No. of Units <u>1</u>		II. THIS DWELLING UNIT F. PLUSH TOILETS Number <u>1</u> G. BATHING UNITS Number <u>1</u> H. RUNNING WATER 1. Hot and Cold <input checked="" type="checkbox"/> 2. Cold Only <input type="checkbox"/> 3. None <input type="checkbox"/> I. HEATING 1. Cent. Steam or Hot Water <input type="checkbox"/> 2. Cent. Warm Air <input type="checkbox"/> 3. Other Installed <input type="checkbox"/> 4. None Installed <input type="checkbox"/> J. LIGHTING 1. Electric <input checked="" type="checkbox"/> 2. Gas <input type="checkbox"/> 3. Other <input type="checkbox"/> K. COOKING 1. Electric <input checked="" type="checkbox"/> 2. Gas <input type="checkbox"/> 3. Other Installed <input type="checkbox"/> 4. None Installed <input type="checkbox"/> L. REFRIG. EQUIPMENT 1. Electric <input checked="" type="checkbox"/> 2. Gas <input type="checkbox"/> 3. Ice <input type="checkbox"/> 4. None <input type="checkbox"/> M. NUMBER AND AGE OF ALL PERSONS Total <u>1</u> Under 1 year <u>1</u> 1-4 <u>1</u> 5-9 <u>1</u> 10-14 <u>1</u> 15-19 <u>1</u> 20-64 <u>1</u> 65 and over <u>1</u> N. RACE OF HOUSEHOLD 1. White <input checked="" type="checkbox"/> 2. Negro <input type="checkbox"/> 3. Other (Oriental) <input type="checkbox"/> O. ROOMERS Number <u>0</u> P. EXTRA FAMILIES 1. No. Extra Fam. <u>0</u> 2. No. Persons <u>0</u>	
III. CONDITION 1. Good Condition <input checked="" type="checkbox"/> 2. Minor Repairs <input type="checkbox"/> 3. Major Repairs <input type="checkbox"/> 4. Unfit for use <input type="checkbox"/> 5. Under Const. <input type="checkbox"/> IF OWNER OCCUPIED J. VALUE OF ENTIRE PROPERTY \$ <u>825</u> K. NO. MAJOR STRUCTURES INCLUDED IN VALUE <u>1</u> L. ENCUMBRANCE 1. Mortgage or Land Contract <input type="checkbox"/> 2. No Encumbrance <input checked="" type="checkbox"/> M. FOR OFFICE USE Persons per Room 1. <u>0</u> 2. <u>0</u> 3. <u>0</u>		IV. OCCUPANCY 1. Owner <input checked="" type="checkbox"/> 2. Tenants <input type="checkbox"/> 3. Vacant <input type="checkbox"/> B. DURATION 1. Time lived here Yrs. <u>1</u> Mos. <u>0</u> 2. Length of vacancy Yrs. <u>0</u> Mos. <u>0</u> C. MONTHLY RENT \$ <u>825</u> D. INCLUDED IN RENT 1. Furniture <input checked="" type="checkbox"/> 2. Garage <input type="checkbox"/> 3. Heat <input type="checkbox"/> 4. Hot Water <input type="checkbox"/> 5. Light <input type="checkbox"/> 6. Cook Fuel <input type="checkbox"/> 7. Mech. Refrig. <input type="checkbox"/> 8. Refrig. Fuel <input type="checkbox"/> E. TOTAL ROOMS Number <u>1</u>	

ATTACHMENT D

ZONING LAWS

OAKLAND, CALIFORNIA



Ordinance 474-475 C.M.S.

Adopted February 5, 1935

TEXT OF ORDINANCES AND MAPS

REVISED TO MARCH 31, 1946

KEY TO DISTRICT MAP

AS ADOPTED BY
ORDINANCE NO
875 C.M.S.



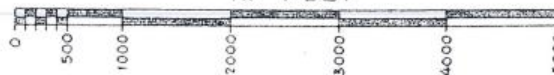
LEGEND FOR 'KEY' MAP

NUMBERS OF SECTION MAPS
BOUNDARIES OF SECTION MAPS
CITY BOUNDARY LINE

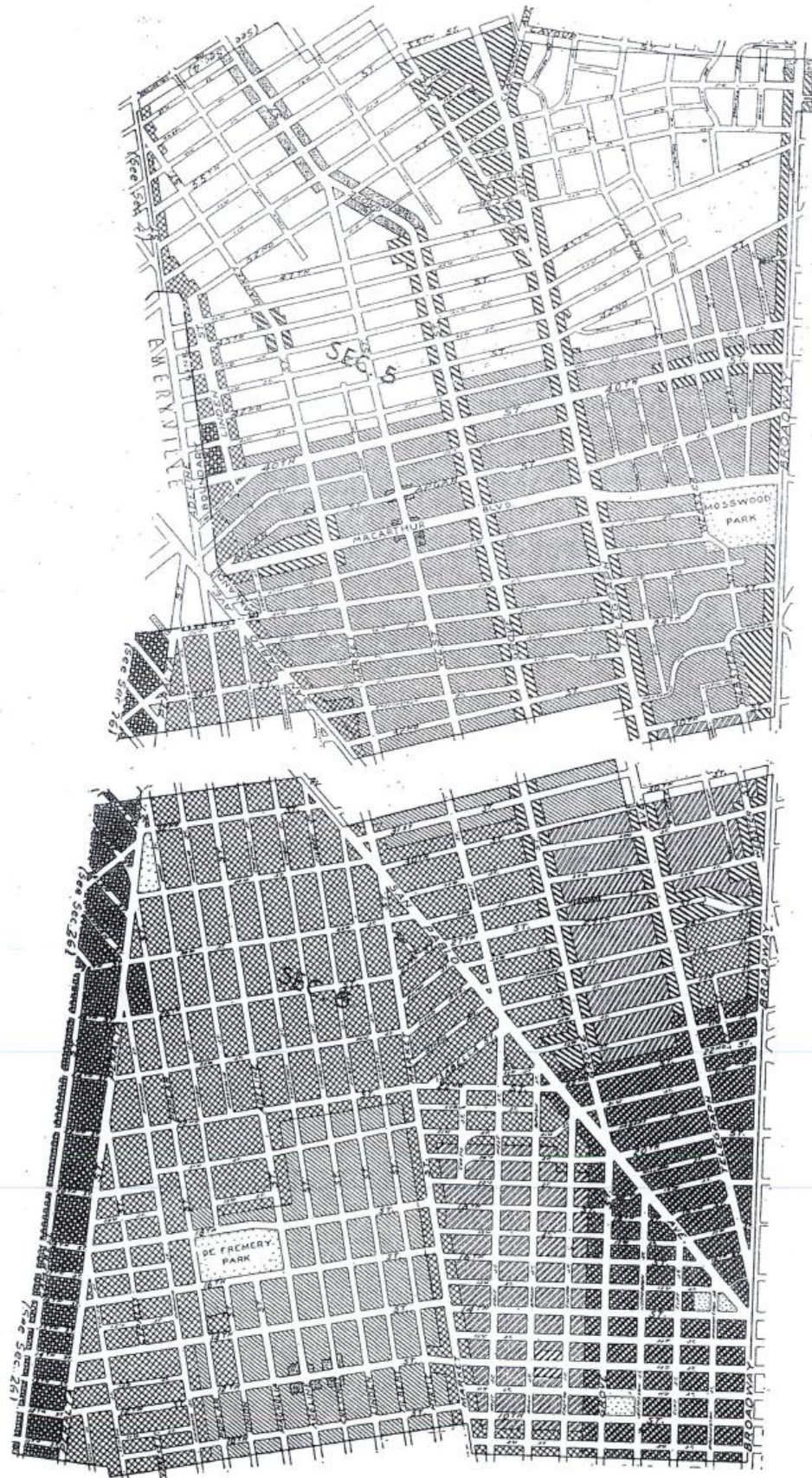
LEGEND FOR DISTRICT MAP

A ONE-FAMILY DISTRICT		F GENERAL BUSINESS DISTRICT	
B TWO-FAMILY DISTRICT		G CENTRAL BUSINESS DISTRICT	
C MULTIPLE DWELLING DISTRICT		H LIGHT INDUSTRIAL DISTRICT	
D MULTIPLE DWELLING DISTRICT		I HEAVY INDUSTRIAL DISTRICT	
E COMMERCIAL DISTRICT			

SCALE IN FEET



NOTE -
THIS GRAPHIC SCALE CAN BE USED
FOR ALL SECTION MAPS OF THE DISTRICT
MAP- EXCEPT SEC. 25. & 26.



REGULATIONS "A" ONE-FAMILY DISTRICT

SEC. 7-1.08. "A" DISTRICT USES. In the "A" One-Family District the following regulations shall apply, and the following uses only are permitted:

One-family dwellings.

Museums, libraries, parks, playgrounds or community centers owned and operated by the City of Oakland.

Golf courses.

Farms and truck gardens.

Churches.

Public and parochial elementary and high schools.

Home occupation.

Cemeteries, mausoleums, columbariums and crematories existing on January 1, 1935; alterations or additions thereto; uses requisite to, necessary for, related to, or incidental thereto.

Accessory buildings on the same lot with any of the above uses, including one private garage, or one private stable for the keeping of not to exceed three (3) horses, when located not less than sixty (60) feet from the front lot line nor less than five (5) feet from any other street line, or a private garage constructed as a part of the main building.

No outdoor advertising or display or sign of any character shall be permitted in the "A" District, except: a name plate not exceeding one (1) square foot in area, a sign not exceeding six (6) square feet in area appertaining only to the lease, hire, sale or display of a building or premises; provided further, that no sign or name plate shall be permitted in a front yard or its projection across the entire width of the lot. (As amended by Ordinance No. 1086 C.M.S., passed February 15, 1940.)

SEC. 7-1.09 BUILDING HEIGHT LIMIT IN "A" DISTRICT is two and one-half (2½) stories and not exceeding thirty-five (35) feet in height.

SEC. 7-1.10 SIDE YARDS REQUIRED IN "A" DISTRICT are five (5) feet in width on each side of a building; provided, however, that for a lot less than fifty (50) feet in width and of record on the first day of January, 1935, the side yard on each side of the building may be reduced to ten (10) per cent of the width of such lot, but shall be not less than three (3) feet in width.

SEC. 7-1.11 REAR YARD REQUIRED IN "A" DISTRICT is twenty-five (25) feet in depth; provided, however, that for a lot less than one hundred twenty-five (125) feet in depth and of record on the first day of January, 1935, the rear yard may be reduced to twenty (20) per cent of the depth of such lot, but shall be not less than fifteen (15) feet in depth.

SEC. 7-1.12 FRONT YARD REQUIRED IN "A" DISTRICT is twenty (20) feet in depth.

SEC. 7-1.13 LOT AREA REQUIRED IN "A" DISTRICT is five thousand (5000) square feet for each one-family dwelling.

REGULATIONS "B" TWO-FAMILY DISTRICT

SEC. 7-1.14 "B" DISTRICT USES. In the "B" District the following regulations shall apply, and the following uses only are permitted:

Uses permitted in the "A" District.

Two-family dwellings.

Multiple dwellings and group dwellings having accommodations for not more than four (4) families.

Nurseries or green houses for the propagation or cultivation of plants; provided, that no part of the premises shall be used primarily for the sale or display of the products therefrom.

SEC. 7-1.15 BUILDING HEIGHT LIMIT IN "B" DISTRICT is the same as in the "A" District.

SEC. 7-1.16 SIDE AND REAR YARDS REQUIRED IN "B" DISTRICT are the same as in the "A" District.

SEC. 7-1.17 FRONT YARD REQUIRED IN "B" DISTRICT is fifteen (15) feet in depth.

SEC. 7-1.18 LOT AREAS REQUIRED IN "B" DISTRICT are: four thousand (4000) square feet for each one-family or two-family dwelling; four thousand five hundred (4500) square feet for each three-family multiple dwelling or group dwelling; five thousand (5000) square feet for each four-family multiple dwelling or group dwelling.

REGULATIONS "C" MULTIPLE DWELLING DISTRICT

SEC. 7-1.19 "C" DISTRICT USES. In the "C" District the following regulations shall apply, and the following uses only are permitted:

Uses permitted in the "A" and "B" Districts.

Multiple dwellings; group dwellings.

Boarding houses.

Nursing homes as defined in Section 5-7.05 of this Code.

Hotels, in which business may be conducted for the sole convenience of the occupants of the building; provided, however, that there shall be no entrance to such place of business except from the inside of the building.

Libraries; museums.

Private clubs, fraternities, sororities, lodges, excepting those the chief activity of which is a service customarily carried on as a business.

Accessory buildings and uses customarily incident to any of the above uses when located in the same lot and not involving the conduct of a business including private and storage garages, when located not less than sixty (60) feet from the front lot line nor less than five (5) feet from any other street line, or when constructed as a part of the main building.

(As amended by Ordinance No. 1254 C.M.S., passed January 28, 1941.)

SEC. 7-1.20 BUILDING HEIGHT LIMIT IN "C" DISTRICT is six (6) stories and not exceeding seventy-five (75) feet in height.

SEC. 7-1.21 SIDE YARDS REQUIRED IN "C" DISTRICT: Not required except on that side of a lot abutting upon the side of a lot in the "A" or "B" District, in which case there shall be a side yard of not less than three (3) feet in width.

RESIDENTIAL BUILDING RECORD

13-1166-100

55330000 R25-877 - 26 to 28. 525 2. 2nd - 528 15. 6. 1988 1988 SPEC 1 30

SHOOTING TO WIN

[illegible]

ADDRESS 325-2.71-825¹/₂ Cent - A6

ADDRESS 325-211-8154 ext. 46

12116 2 38 11.11.13

12116 2 38 11.11.13

SHUTTER TO WILLABERG

CLASS & SHAPE		CONSTRUCTION		STANDARD		EXTERIOR		ROOF		LIGHTING		APPL. EQUIPMENT		FLOORS		ROOMS		FLOOR FINISH		WALLS		CEILING						
No.	Permit	Amount	Date	YEAR	YEAR	APR	APR	Age	Remaining Life	% GOOD	NORMAL	APR	YEAR	Cond.	Arch.	Fluor.	Con.	Storage Space	Work.	Fl.	Ma.	Floors	Walls	Material	Grade	TRIM	WALLS	CEILING
D 5 A																												
UNDEVELOPED																												
1 Stories																												
USE TYPE																												
Single																												
Double																												
Duplex																												
Apartment																												
Flat																												
Court																												
Hotel																												
Units																												
CONSTRUCTION RECORD																												
PERMIT																												
No.																												
For																												
Amount																												
Date																												
YEAR																												
APR																												
YEAR																												
1921																												
1922																												
1923																												
1924																												

127 5/13/54

Aggriser 13 Data

Appraiser & Date	RECEIVED 1-5-50						Articles 10-11-50					
	Unit	Avg Cost	Unit Cost	Cost	Unit Cost	Cost	Unit Cost	Cost	Unit Cost	Cost	Unit Cost	Cost
Res "D"		6.70					7.80	3.775		8.00	5.280	
H.C.												
GAB							1.50	5.94		2.20	4.80	
B. SINGH									.28		1.80	
TOTAL								4629		6.07		
NORMAL % GOOD								70		52		
R.C.L.M.D.								7240			8.59	

ADDRESS 825 - 827 - 825 1/2 Key - 46 1/2 St.

PARCEL 13-1166-10

SHEET 3 OF 3

SCREEN ONLY

DESCRIPTION OF BUILDINGS

[illegible]

MISCELLANEOUS STRUCTURES

Structure	Found	Comp	Ent	Roof	Floor	Int.	Size, etc.
GAP	M.S.	Box	Asph	Shes	Dirt	UNE	SEE P. 10
FENCE							SEE P. 10
SP. 561	2000	100	100				670
ASB. 501	510	40	100				1664

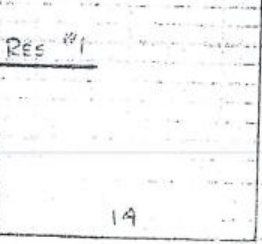
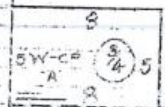
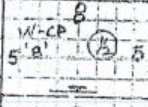
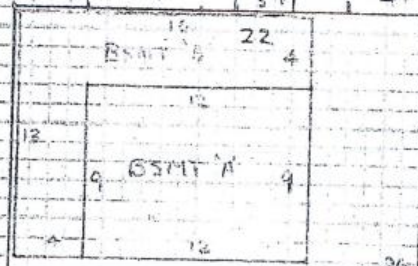
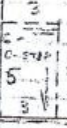
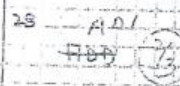
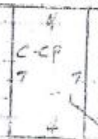
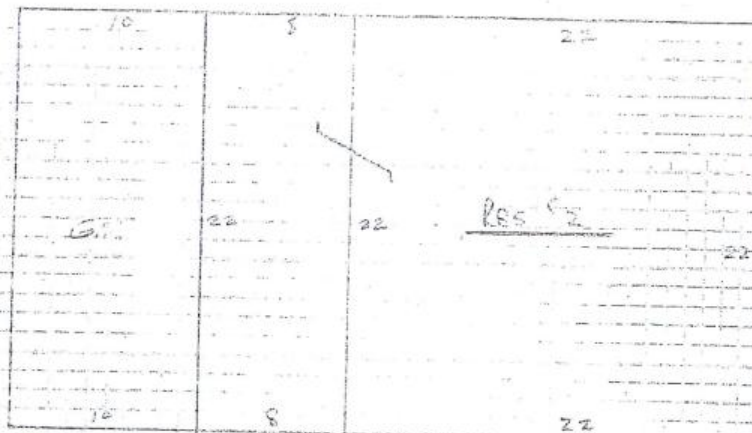
COMPUTATIONS

14 x 5 = 70	8 x 10 = 80	8 x 8 = 64
32 x 21 = 672	12 x 22 = 264	13 x 13 = 169
537	15 x 8 = 120	497
8 x 5 = 40	4 x 7 = 28	
12 x 9 = 108	18 x 22 = 396	
4 x 9 = 36	10 x 22 = 220	
16 x 4 = 64	10 x 22 = 220	

Position of Gap 5' from 100' line. 100' line is 100' from 100' line.

Position of Gap 5' from 100' line. 100' line is 100' from 100' line.

SEE SN 3 of 3 FOR SKETCH



FRONT

CITY OF OAKLAND
BUILDING AND HOUSING DEPARTMENT

JACK E. TAYLOR, ADMINISTRATOR

BUILDING DIVISION
LAWRENCE A. LANE
BUILDING INSPECTORCITY HALL
OAKLAND, CALIFORNIA 94612
173-3381HOUSING DIVISION
ENRICO LA BARBERA
URBAN RENEWAL

February 25, 1969. Case No. B-12-701

Lila M. Thigpen
825 46th Street
Oakland, California 94608

Address 825/37 46th St.

Occ. N F. Zone 3 Stones 1

Type V Z. Zone B-30 Survey C

Dear Owner:

Your property at 825/37 46th Street, Oakland, California, was surveyed on February 17, 1969, by personnel of this Department. Similar surveys are being conducted throughout the City for the purpose of bringing about a healthier, safer and more pleasing urban environment, by the elimination of undesirable and/or illegal housing and building conditions.

The survey revealed the existence of certain code violations. These violations are listed on the attached page(s) and are numbered 1 through 12.

The attached list of violations includes suggested methods of corrections. Other legal and appropriate means of correcting or abating the cited violations may be used. These matters and any other problems connected with the survey should be discussed with your Urban Renewal Representative, Mr. J. F. Haire, who may be reached at 273-3381 between 8:30 and 9:30 a.m., Monday through Friday. Our office is on the 5th floor of the City Hall, Room 615, Oakland.

Your attention is called to Section 211 of the Oakland Housing Code which provides for your right to appeal to the Housing Advisory and Appeals Board. It is recommended that this matter be fully discussed with your Urban Renewal Representative who will be most happy to fully advise you on the standard operational procedure of application to this Board.

The possession of a valid permit is essential to the satisfactory correction of most building, plumbing, heating and electrical violations.

A progress check of your property will be made on March 25, 1969, or soon afterwards. At this time you will be required to present a reasonable timetable for the elimination of any violations that have not as yet been corrected.

Please do not hesitate to call upon us for further information or assistance.

Sincerely,

ENRICO LA BARBERA
Housing Division Officialcc: WWW
JWH(2)
Bldg. (2)
Date fileEL:WWW:cjb
R-7
107-4 1117-11Enrico La Barbera, Acting
Representative

Lila L. Thigpen
825 43rd Street
February 25, 1969
Page Two

Re: 825/27 46th St.

The survey inspection was completed of the one-story, Type V, 32' x 98' asbestos-shingle sided building on the rear portion of the 40' x 100' lot, which was erected as a single-family dwelling under building permit #83212 issued on September 17, 1923. A subsequent conversion without benefit of permit, altered the use to a three-unit apartment house. At the time of the survey, the building was being illegally occupied as a three-unit apartment house.

The building must be made to comply for the present use, or the building must be returned to its legal status or any other legally authorized use.

The following deficiencies were noted and must be corrected:

1. Side yard on the north side is less than what is required. Section 3670 OMC. Provide required side yard.
2. Rear yard is less than what is required. Section 3670D OMC. Provide required rear yard.
3. The asbestos shingles at several locations are damaged or missing. Sections 1001.1 and 1402 OMC. Replace.
4. The roof drain downspouts at several locations are in a deteriorated condition. Section 1001.1 OMC. Repair or replace.
5. The roof gutters at several locations are loose and deteriorated. Section 1001.1 OMC. Repair or replace.
6. The underfloor area has inadequate ventilation. Section 1405 OMC. Provide required ventilation.
7. The underfloor area at the front and north side of the dwelling is open. Section 1405 OMC. Enclose the underfloor area and provide approved ventilation.
8. The ceiling height in the utility room, unit #825 is less than the required 7'6". Sections 503.1 and 503.2 OMC. Provide the required ceiling height or return to legal use.
9. The waste line at the rear of the dwelling is open. Sections 1102 OMC and 321 OMC. Cap as required.
10. The flue in the collar of unit #825 for the water heater is improperly installed. Sections 1102 OMC and 104 and 201(c) MC. Repair or replace.
11. The walls and ceiling in several rooms of unit #825 are not covered in an approved manner. Section 1001.5 OMC. Apply required materials as often as necessary to maintain the surfaces in a clean and sanitary condition.

Lila L. Whiggen
625 46th Street
February 25, 1946
Page Two

Re: 625/27 46th St.

13. The kitchen sink drainboard in the kitchen of unit #625 is not waterproofed. Section 909.2 NYC. Provide required waterproof drainboard.

The garage at rear and unit #625 - 627 were not open for inspection when this survey was made. Should any violations or deficiencies exist in these areas, they shall become a component part of this report and shall be corrected in an approved manner.

Upon completion of all required work, a Certificate of Occupancy will be issued by this Department. Your Representative, named in this report, will make periodic call-back visits to assist you and answer any questions you may have regarding this report.

Your Urban Renewal Representative, Mr. J. W. Hulse, is available at your convenience to discuss any problems arising from the survey. Please feel free to phone 273-1361 between the hours of 6:30 and 9:30 a.m., Monday through Friday, for any such discussion or to make an appointment to meet your Representative at the location of your property.

June 17, 1969

Code No: H-12-701
Address: 825 47th St.

Lila L. Thigpen
825 46th Street
Oakland, California 94608

Dear Owner:

A supplemental survey of units #8254 and #827 46th Street, which were not open for inspection at the time of the original survey, was conducted by Mr. J. W. Baird, District Urban Renewal Representative, on June 16, 1969.

The following deficiencies were noted and must be corrected and shall become a component part of the original compliance letter issued on February 25, 1969:

1. The construction between the garage and the residential portion of unit #8254 is not fire-resistive. Sections 503(d) CBC and 1301.3 CBC. Provide approved fire-resistive construction.
2. The water closet compartment in unit #8254 and #827 opens directly onto a room where food is prepared or stored. Section 901.5 CBC. Provide an approved separation.
3. The ceiling heights in bedroom and kitchen of unit #8254 and the living room, kitchen and bedroom of unit #827 are less than the required 6 feet. Section 503.1 CBC. Provide required ceiling height.
4. The ceiling height in the bathroom of unit #8254 is less than the required 7 feet 6 inches. Section 503.2 CBC. Provide required ceiling height.
5. Dwelling unit #827 does not contain a lavatory with hot and cold running water. Sections 901.1 and 901.2 CBC. Provide required facilities.
6. The lighting fixture in the bedroom closet of unit #827 is defective. Sections 1103.3 CBC and 701-a CBC. Repair or replace.
7. The trap serving the laundry tray in the utility room of unit #827 is unapproved. Sections 1103 CBC and 701 and 705(b) CBC. Repair or replace.
8. The vent piping for the bathroom in unit #827 does not extend above the roof in an approved manner. Sections 1103 CBC and 1903 CBC. Provide required vent termination.

Lila L. Thigpen
825 46th Street
June 17, 1969
Page Two

Re: 825 1/2 46th St.

9. The vent for the kitchen gas range and the gas heater in the living room of unit #827 are improperly installed. Section 1101 CMC.
10. The use of a house number ending with "1/2" is not approved for dwelling unit designation. Apply to the House-numbering Section, 11th Floor, Oakland City Hall, 14th and Washington Streets, for an approved number.

Your Urban Renewal Representative, Mr. J. Walter Haine, is available at your convenience to discuss any problems arising from the survey. Please feel free to phone 273-3181 between the hours of 9:30 and 5:30 a.m., Monday through Friday, for any such discussion or to make an appointment to meet your Representative at the location of your property.

Sincerely,

EMILIO LABAREERE
Housing Division Official

JULIE F. THIGPEN
Supervising Urban Renewal
Representative

ELJFT:gjb

cc: JFT
JTH(2)
Bldg.(2)
Data file



Office of
Planning and Building
Oakland Housing Code, Sec. H-206

APPLICATION FOR REPORT OF RESIDENTIAL BUILDING RECORD (3-R Report)

ATTACHMENT I

Address of Subject Property: <u>825-827 410th</u>		Street Avenue	Drive Way	OAKLAND
Name of Applicant: <u>Michele Rogan</u>				
Mailing Address of Applicant: <u>410 South 34th Street Apt. E</u> <u>Richmond, CA 94804</u>				
Name and address of Owner (if different from above):				
Date Completed <u>4/8/02</u>			Expiration Date <u>7/9/02</u>	
Completed by <u>S.M. Buggs</u>				

Total number of HABITABLE buildings on premises: 3
 Existing BASEMENT or CELLAR? ☒ yes ☐ no
 Existing ATTIC? ☒ yes ☐ no
 Number of STORIES: 1
 Owner occupied? ☐ yes ☒ no
 Number of dwelling UNITS or APARTMENTS: 3
 Number of KITCHENS: 3
 Total number of HABITABLE ROOMS (excluding bath, toilet, laundry, utility rooms and closets): 3
 Total number of ACCESSORY buildings on premises: 0
 Habitable BASEMENT or CELLAR? ☒ yes ☐ no
 Habitable ATTIC? ☐ yes ☐ no
 Construction Material: ☒ Wood frame ☐ Block ☐ Steel ☐
 Number of HOUSEKEEPING units: 0
 Number of HOTEL/Guest rooms: 0
 I certify that I am the APPLICANT named hereto, that I have familiarized myself with the residential building with respect to preparing and filing this application, that the answers herein contained are in all respects true and accurate to the best of my knowledge and belief, and that they may not correlate with the City's official records as recorded below.

Signature of Applicant: Michele Rogan Date: 4/5/02 Telephone: 510 237-2918

REPORT OF RESIDENTIAL BUILDING RECORD

This is NOT to be construed that said residential building complies with all applicable laws of the City and only sets forth the report as of the date completed shown above.

Zone District: _____ Date of original building construction: 1924 Building type: VN

Original OCCUPANCY or USE: 1 story single family dwelling 4 rooms

Plans on file ☒ no ☐ yes SFD? ☐ no ☒ yes Cert. of Occupancy issued? ☒ no ☐ yes Date: _____ Number: _____

Total number of HABITABLE BUILDINGS: 1 Total number of ACCESSORY BUILDINGS: 1 Total number of HABITABLE ROOMS: 4 Total number of UNITS or APARTMENTS: 1

Building related PERMITS ISSUED:

Permit #	Date	Permit #	Date
Original construction permit	Permit # <u>83213</u> Date <u>5/12/24</u>		
Bathroom remodel	Permit # <u>836190</u> Date <u>1/29/67</u>		
	Permit # _____ Date _____		
	Permit # _____ Date _____		
	Permit # _____ Date _____		
	Permit # _____ Date _____		
	Permit # _____ Date _____		

CONDITIONS/VARIANCES: _____

Present AUTHORIZED OCCUPANCY or USE (insofar as ascertainable from existing City records): 1 story single family 4 rooms

*1969 Code Enforcement letter says 2 additional units illegal.

This Report of Residential Building Record shall not be construed as authority to violate, cancel, alter, or set aside any of the provisions or requirements of any laws or ordinances of the City of Oakland, nor shall such issuance thereafter prevent requiring corrections of errors, violations, or any applicable law or ordinance of the City of Oakland. This report contains information insofar as ascertainable from City records. It shall be unlawful for the owner or authorized agent of the owner, to sell this residential building without first delivering to the buyer this Report of Residential Building Record prior to the consummation of sale.

April 19, 2002

Authorized Signature: S.M. Buggs
Sequonite M. Buggs

By: ESL Register RRP Receipt # 015887

04/19/02



CITY OF OAKLAND
APPEAL FORM
FOR DECISION TO PLANNING COMMISSION, CITY
COUNCIL OR HEARING OFFICER

PROJECT INFORMATION

Case No. of Appealed Project: DET170053
Project Address of Appealed Project: 825 46th Street (APN: 01311660400)
Assigned Case Planner/City Staff: Brittany Lenoir

APPELLANT INFORMATION:

Printed Name: Alexsandr Ivanov Phone Number: 415-272-6396
Mailing Address: 571 21st AVE Alternate Contact Number: _____
City/Zip Code SAN FRANCISCO, CA 94121 Representing: self
Email: ALEXSANDR.IVANOV@YAHOO.COM

An appeal is hereby submitted on:

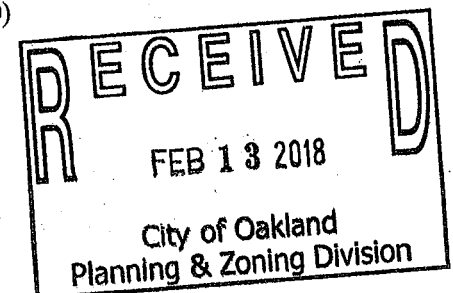
- ☐ **AN ADMINISTRATIVE DECISION (APPEALABLE TO THE CITY PLANNING COMMISSION OR HEARING OFFICER)**

YOU MUST INDICATE ALL THAT APPLY:

- ☐ Approving an application on an Administrative Decision
☐ Denying an application for an Administrative Decision
☒ Administrative Determination or Interpretation by the Zoning Administrator
☐ Other (please specify) _____

Please identify the specific Administrative Decision/Determination Upon Which Your Appeal is Based Pursuant to the Oakland Municipal and Planning Codes listed below:

- ☐ Administrative Determination or Interpretation (OPC Sec. 17.132.020)
☐ Determination of General Plan Conformity (OPC Sec. 17.01.080)
☐ Design Review (OPC Sec. 17.136.080)
☐ Small Project Design Review (OPC Sec. 17.136.130)
☐ Minor Conditional Use Permit (OPC Sec. 17.134.060)
☐ Minor Variance (OPC Sec. 17.148.060)
☐ Tentative Parcel Map (OMC Section 16.304.100)
☐ Certain Environmental Determinations (OPC Sec. 17.158.220)
☐ Creek Protection Permit (OMC Sec. 13.16.450)
☐ Creek Determination (OMC Sec. 13.16.460)
☐ City Planner's determination regarding a revocation hearing (OPC Sec. 17.152.080)
☐ Hearing Officer's revocation/impose or amend conditions (OPC Sec. 17.152.150 &/or 17.156.160)
☒ Other (please specify) ZONING DETERMINATION LETTER



(Continued on reverse)

(Continued)

- ☐ **A DECISION OF THE CITY PLANNING COMMISSION (APPEALABLE TO THE CITY COUNCIL)** ☐ Granting an application to: OR ☐ Denying an application to:

YOU MUST INDICATE ALL THAT APPLY:

Pursuant to the Oakland Municipal and Planning Codes listed below:

- ☐ Major Conditional Use Permit (OPC Sec. 17.134.070)
- ☐ Major Variance (OPC Sec. 17.148.070)
- ☐ Design Review (OPC Sec. 17.136.090)
- ☐ Tentative Map (OMC Sec. 16.32.090)
- ☐ Planned Unit Development (OPC Sec. 17.140.070)
- ☐ Environmental Impact Report Certification (OPC Sec. 17.158.220F)
- ☐ Rezoning, Landmark Designation, Development Control Map, Law Change (OPC Sec. 17.144.070)
- ☐ Revocation/impose or amend conditions (OPC Sec. 17.152.160)
- ☐ Revocation of Deemed Approved Status (OPC Sec. 17.156.170)
- ☐ Other (please specify) _____

FOR ANY APPEAL: An appeal in accordance with the sections of the Oakland Municipal and Planning Codes listed above shall state specifically wherein it is claimed there was an error or abuse of discretion by the Zoning Administrator, other administrative decisionmaker or Commission (Advisory Agency) or wherein their/its decision is not supported by substantial evidence in the record, or in the case of Rezoning, Landmark Designation, Development Control Map, or Law Change by the Commission, shall state specifically wherein it is claimed the Commission erred in its decision. The appeal must be accompanied by the required fee pursuant to the City's Master Fee Schedule.

You must raise each and every issue you wish to appeal on this Appeal Form (or attached additional sheets). Failure to raise each and every issue you wish to challenge/appeal on this Appeal Form (or attached additional sheets), and provide supporting documentation along with this Appeal Form, may preclude you from raising such issues during your appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.

The appeal is based on the following: (Attach additional sheets as needed.)

Please see details in attached letter from February 12, 2018
Also attached

- Executive Order 2017-1: Improving Safety of Non-Permitted Spaces While Avoiding Displacement
- FAQs Regarding Non-Conforming Residential Units in Light of the December 2, 2016 Warehouse Fire (1315-31st Avenue)

Supporting Evidence or Documents Attached. (The appellant must submit all supporting evidence along with this Appeal Form; however, the appeal will be limited evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.)

(Continued on reverse)

(Continued)

[Signature]
Signature of Appellant or Representative of
Appealing Organization

02/12/2018
Date

TO BE COMPLETED BY STAFF BASED ON APPEAL TYPE AND APPLICABLE FEE

APPEAL FEE: \$ _____

Fees are subject to change without prior notice. The fees charged will be those that are in effect at the time of application submittal. All fees are due at submittal of application.

Date/Time Received Stamp Below:

Below For Staff Use Only

Cashier's Receipt Stamp Below:

February 12, 2018

Robert Merkamp
Acting Zoning Manager
Bureau of Planning-Zoning Division
250 Frank H. Ogawa Plaza, Ste. 2114
Oakland, CA 94612-2031

Re: Your Case File DET170053; 825-825½-827 46th St (APN: 013 116604000)

Dear Mr. Merkamp:

Please accept this letter as a further appeal to your Zoning Determination Letter issued on February 2, 2018 regarding the above Case File and residential property located at 825-825½-827 46th St., Oakland.

This further appeal is submitted on the basis that I respectfully believe that the existing residential use of the rear unit (designated 825½ 46th St) is appropriate for a variance or conditional use permit to allow its continued existence and use, at least during the residency of the current, protected, tenant and per a compliance plan to correct building issues defined by the City building authority. I do not appeal the determination of the Planning-Zoning Division that the other two units on the property – 825 & 827 – are legal, non-conforming uses.

As to the "825½" unit, and as to the requirement for certain code compliance items imposed by your ruling, I believe that such structure should be allowed either a conditional use or a variance subject to conditions that existing Building Code violations be corrected within a reasonable period and for a period to allow the existing tenant at that location – a single mother with daughter attending high school and 2 year old son, protected tenant who has lived there for approximately 9 years – to avoid disruption and forced relocation. I believe that other properties in the neighborhood have more than two residential units, and that garage conversions (which apparently produced the 825½ unit) were common in this neighborhood, in the early years during which 825½ was created.

Allowing such a conditional, continued usage would not allow the continuation of any continued imminent life safety risk and would tend to preserve the City's affordable housing stock. A compliance plan would be a condition of this allowance, as referred to in Mayor Schaaf's Executive Order 2017-1, in order to comply with that Order's statement that "having housing . . . in unpermitted spaces that operate safely and responsibly are valuable to the community and the City should take actions to preserve and legalize these spaces to avoid adverse impacts on the City's affordable housing stocks . . .". I believe that Exec. Order 2017-1 instructs City Departments to cooperate to allow property owners to enter into abatement and compliance plans for "existing buildings that are not permitted for residential occupancy and that do not otherwise conform to Building, Housing or Fire Code or zoning requirements, including nonconforming residential . . . uses, but in the judgment of the Building Official or Fire Marshal, based on physical inspection and evaluation of . . . known conditions, do not represent an immediate threat to life safety of the individuals currently residing in the building or to the surrounding properties", and that the property owner is encouraged to enter into a compliance plan for such properties. That Order set criteria for conditionally legalizing residential units that, among others, included avoiding displacement of individuals residing in the property and allowing a time for correction stated in the abatement and compliance plan.

Mayor Schaaf ordered several departmental actions in her Executive Order 2017-1, including that the City Attorney generate a set of "Frequently Asked Questions" in this area. Those FAQ's, released on (I believe) March 29, 2017, make it clear that the Order applies to the situation at 825½. In them, an example of a "non-conforming residential unit" is that of a garage converted to residential unit (i.e., conversion of an accessory structure). The City's criteria for a conditional use permit allowing a third unit in an RM-2 zone are believed to be satisfied, since the 825½ unit has coexisted in the neighborhood for as much as 85 years without aggravating neighborhood facilities or play spaces, most of which was built contemporaneously or afterwards in any event. Its construction, scale, height coverage and bulk are in harmony with the neighborhood, being merely a converted accessory building which was originally otherwise acceptable.

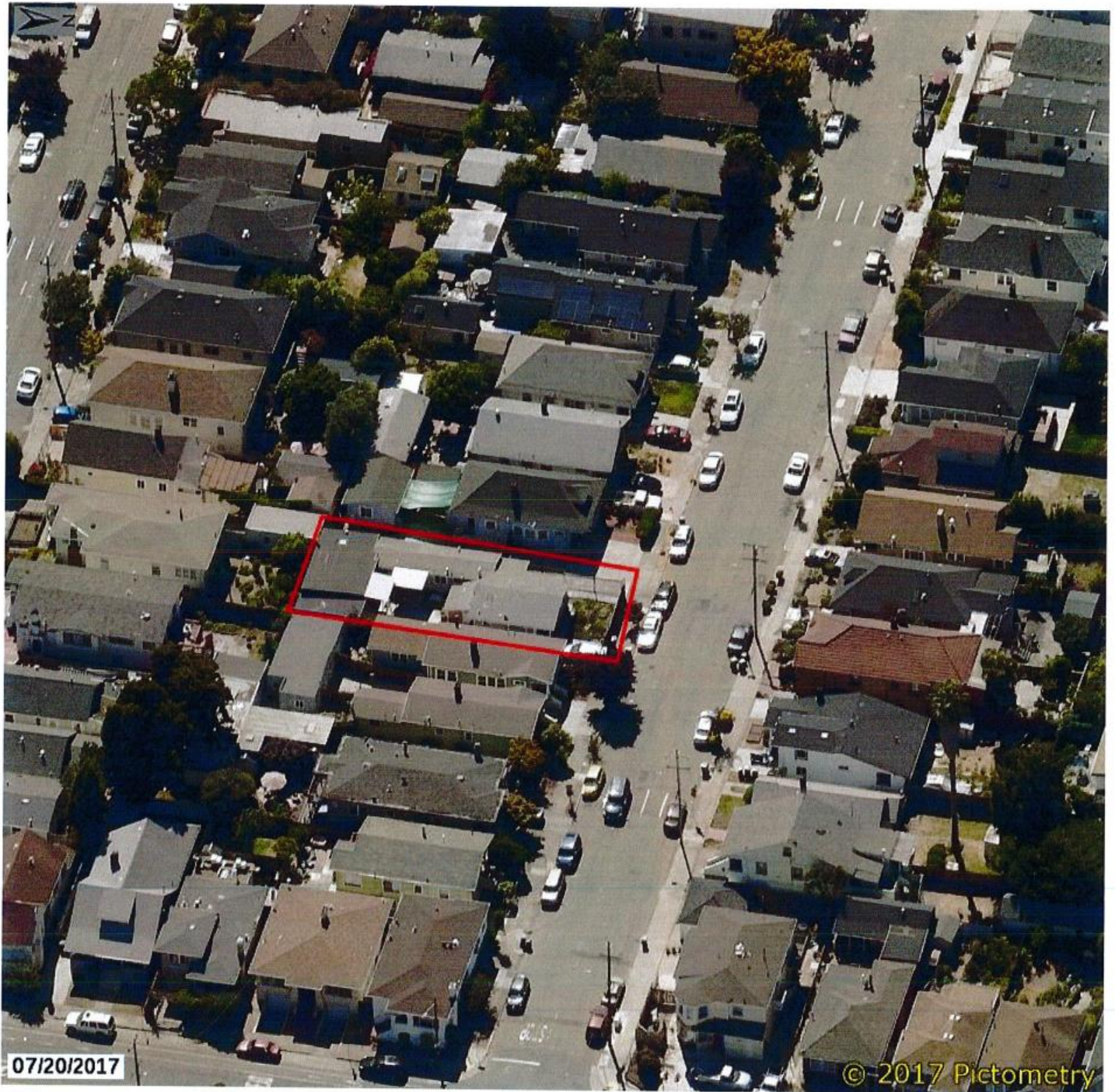
I request that this appeal be granted to allow at least 120 days within which to make an application for a conditional use permit or variance to allow the retention of the 825½ unit, and sanction the building locations on the property, and to propose and obtain approval of a compliance plan for the correction of such building code issues as are determined to be corrected by the building officials for the City. I request that the prior submittals for this Zoning Determination be incorporated into this appeal request, including my supplemental letter concerning the concept of "laches" as arising due to the long history of this property and unit 825½, and the consequent difficulty in retrieving records which define the property's legality over that period.

Owner

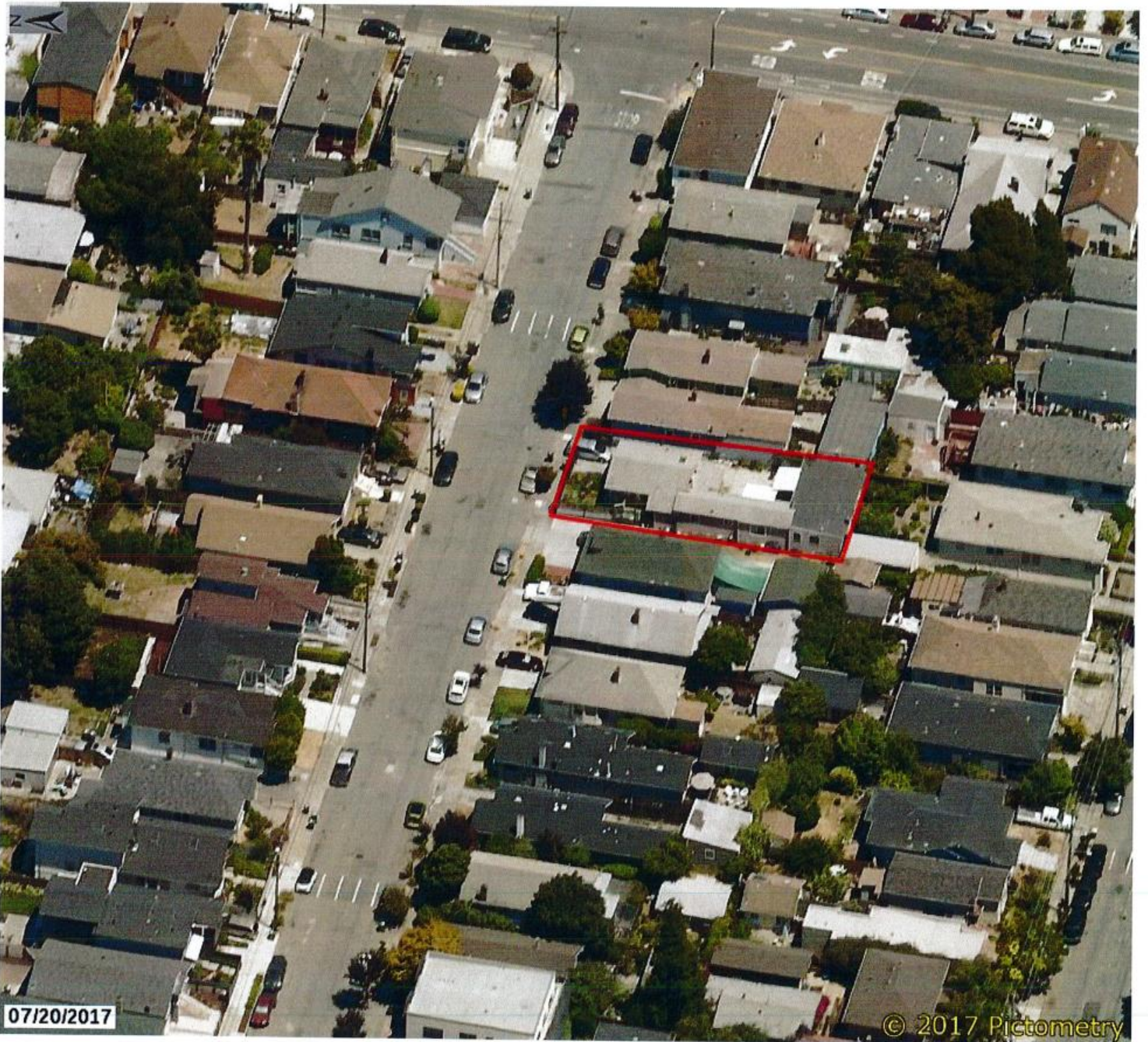
A handwritten signature in dark ink, appearing to read "Alexandr Ivanov", written over a horizontal line.

Alexandr Ivanov

Neighborhood Context Photographs



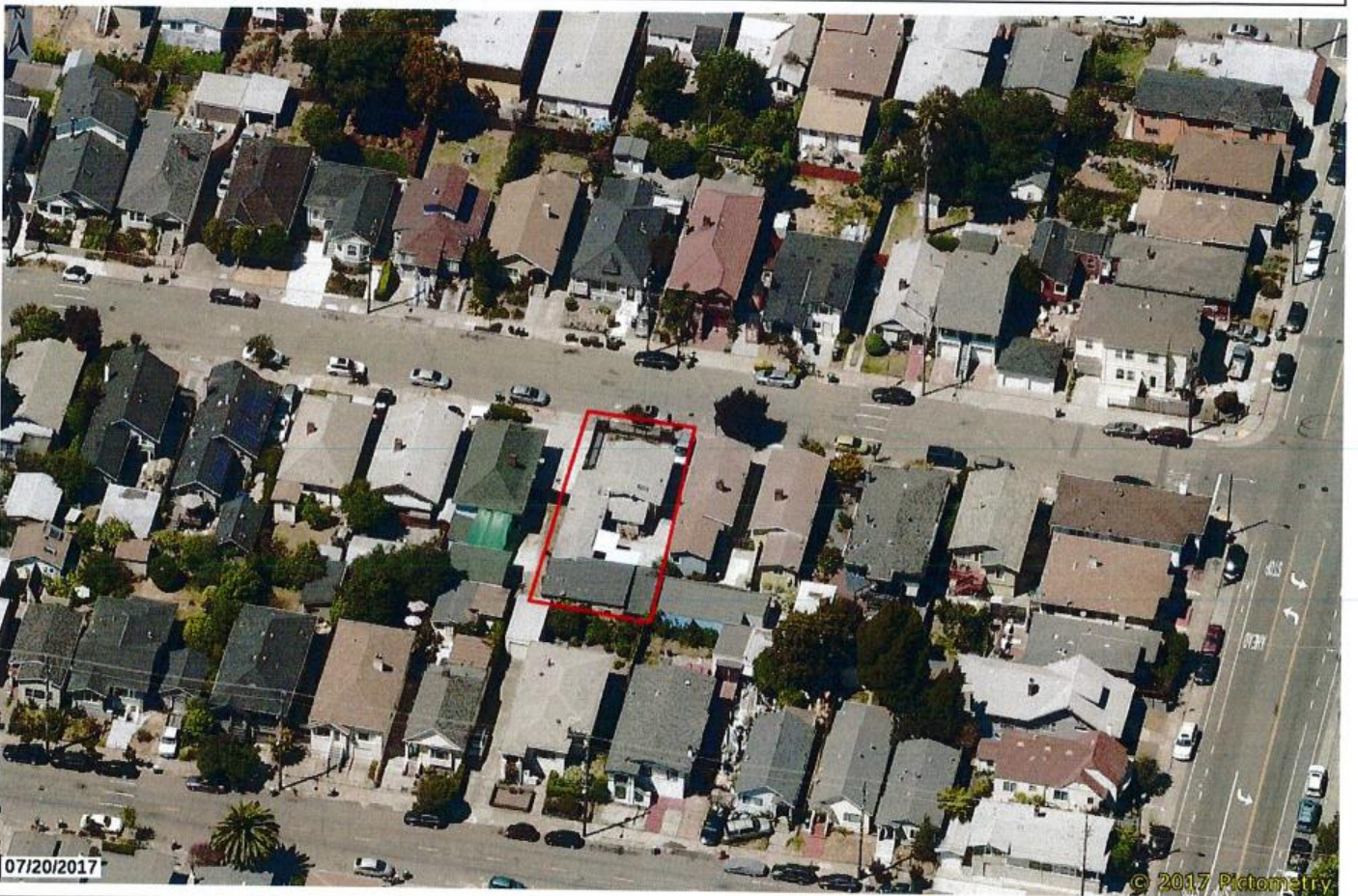
Aerial image showing the east elevation. The subject site is indicated in a red outline.



Aerial image showing the west elevation. The subject site is indicated in a red outline.



Aerial image showing the north elevation. The subject site is indicated in a red outline.



Aerial image showing the south elevation. The subject site is indicated in a red outline.