

Location:	491 Bellevue Avenue (see map on reverse)
Assessor's Parcel Number:	010 -0765-004-03
Proposal:	To appeal a zoning approval to: rehabilitate a two-story duplex, convert it into four units, and construct a rear four-story three-unit apartment building with a seven-stall parking garage.
Appellant/ Phone Number:	Mr. Richard Fishman / Bellevue-Statens HOA (510) 501-1420
Owner:	Ms. Tammy Beaulieu
Applicant:	Mr. Ross Levy, Architect
General Plan:	Urban Residential
Zoning:	RU-3 Urban Residential Zone/S-7 Preservation Combining Zone/ S-12 Residential Parking Combining Zone
Zoning Approvals Required:	Regular Design Review for alterations and construction including new dwelling units; Additional findings for Design Review & CEQA Class 32
Environmental Determination:	Infill Exemption; Minor Variance for required rear yard Exempt, Section 15332 of the State CEQA Guidelines: Infill Development Projects; Statutorily Exempt, Section 15270: Projects Which Are Disapproved
Historic Status:	Designated Historic Property, Survey rating: C1+ (Clarke-Gross House by Ratcliff, Bellevue-Statens Apartment Historic District - Area of Primary Importance)
Service Delivery District:	3
City Council District:	3
Date Filed:	January 22, 2015
Action to be Taken:	<i>Deny the Appeal and uphold the Zoning Manager's Decision</i>
Finality of Decision:	<i>Final (Not Appealable pursuant to OMC Sec. 17.132.030)</i>
For Further Information:	Contact case planner Aubrey Rose, AICP at (510) 238-2071 or arose@oaklandnet.com

SUMMARY

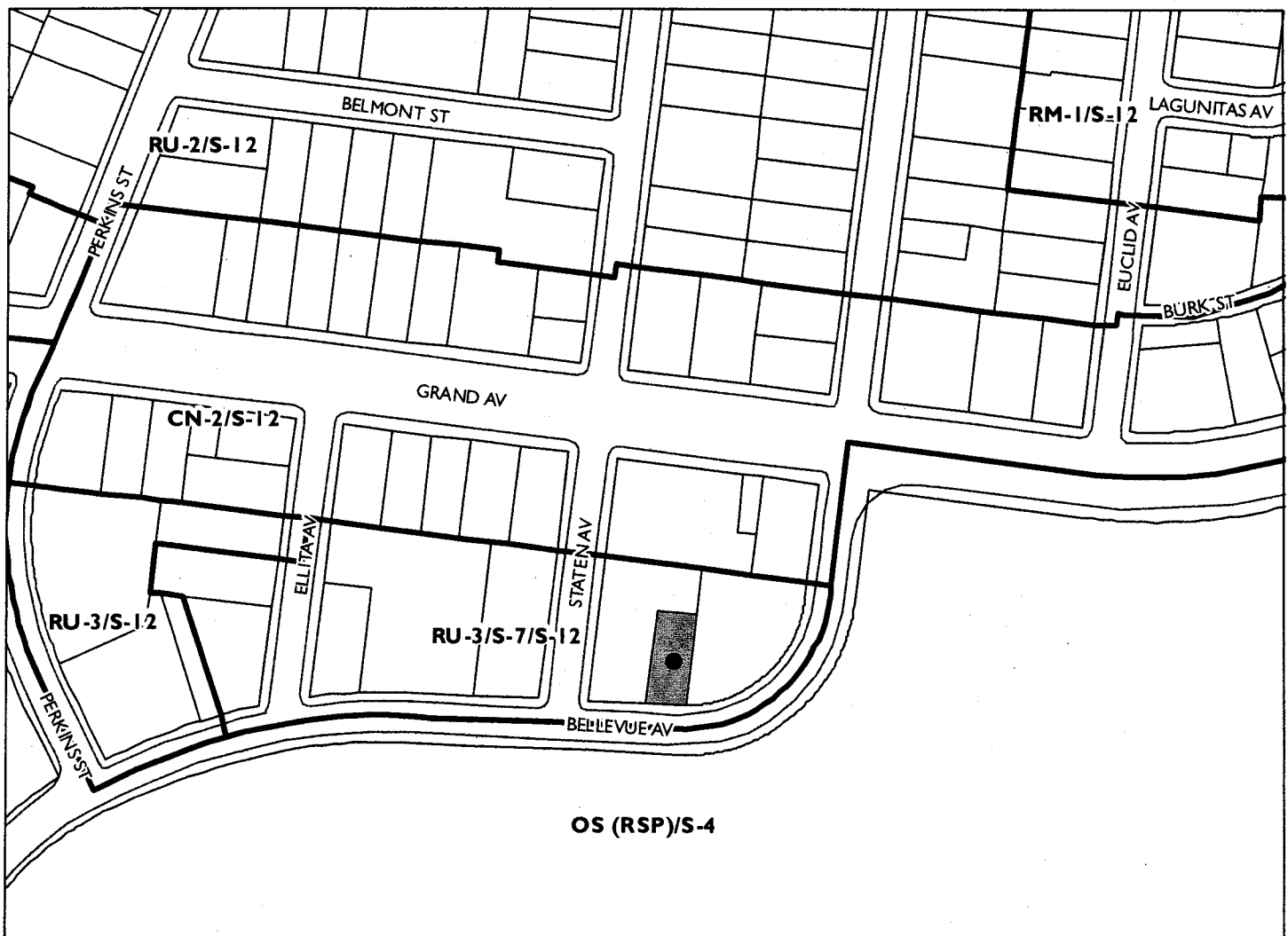
The Appellant requests the Planning Commission grant an appeal of the Zoning Manager's approval of a Regular Design Review, Variance, and additional findings to convert a duplex into a four-unit apartment building and construct a rear four-story three-unit apartment building with a seven-stall parking garage serving both structures.

Staff recommends the Planning Commission deny the appeal and uphold the Zoning Manager's decision as described in this report.

BACKGROUND

This is an Appeal of a Zoning Manager approval of a Regular Design Review, a Variance (required rear yard), and additional findings including an environmental exemption to rehabilitate a two-story duplex, convert it into four units, and construct a rear four-story building containing three-units over a seven-stall parking garage serving both buildings. Prior to approval, various proposals were submitted to the City under Zoning Pre-Applications. Each proposal incorporated feedback and thus featured an improved design. The final, approved proposal was reviewed extensively by Oakland Cultural Heritage Survey staff, including the secretary to the Landmarks Board, and Landmarks Board subcommittees. Their numerous comments were incorporated into the design. The project was formally submitted and was reviewed by the Landmarks Preservation Advisory Board on January 14, 2013, which forwarded the proposal to the Zoning Manager with a recommendation of approval subject to conditions. The Zoning Manager's decision to approve the project was issued on January 2, 2015.

CITY OF OAKLAND PLANNING COMMISSION



0 125 250 500 750 1,000 Feet



Case File: DVI2218-A01
Appellant: Richard Fishman
Address: 491 Bellevue Avenue
Zone: RU-3 / S-7 / S-12

APPEAL DESCRIPTION

An Appeal was timely submitted on January 22, 2015 (an extension to the standard ten-day period was granted because the decision letter was not timely forwarded to interested parties). The Appeal is treated as an administrative appeal of a decision made by the Zoning Manager, pursuant to the 'Planning Appeal to Planning Commission—Regular design review' procedure (OMC Sec. Code's 17.136.080). The basis for the appeal and staff's responses are included in following sections of this report.

PROPERTY DESCRIPTION

The property is a nearly-level lot facing Lakeside Park and Lake Merritt across Bellevue Avenue. The lot measures approximately fifty-feet in width and averages one hundred twelve feet in depth. The two-story duplex at the property, originally a single-family home (built c. 1913), is a Designated Historic Property for its architect and for its inclusion in an Area of Primary Importance (notably, for the presence of Lake Merritt and the adjacent Bellevue-Staten Apartments). The property holds an Oakland Cultural Heritage Survey rating of C1+, so its designation is less related to the building's design than other factors noted. The home has a rear yard formerly containing a detached garage that has been demolished, with access across an easement along the eastern side of the adjacent lot to the left at 492 Staten Avenue. That corner property contains an A rated 176-foot tall fifteen-story brick condominium apartment tower (Bellevue-Staten, built c. 1929); the apartments facing the project site are corner units with windows on two sides of the building, and the building is set back at this area. To the rear is a 68-foot tall brick and concrete parking garage structure serving the tower and accessed from Staten Avenue. To the right is a 43-foot tall three-story apartment with a rear 11-foot tall carport. The neighborhood is located between the Grand Avenue commercial corridor and Lake Merritt/Lakeside Park; upslope beyond Grand Avenue is the Adams Point mixed residential district, and Bellevue Avenue is essentially a continuation of that medium to high density neighborhood.

GENERAL PLAN ANALYSIS

The property is located in the Urban Residential area of the General Plan's Land Use and Transportation Element. The intent of the area is: "To create, maintain, and enhance areas of the City that are appropriate for multi-unit mid-rise or high-rise residential structures in locations with good access to transportation and other services."

The proposal to convert a two-unit property into seven-units with enhancements to the historic property, a compatible new building, and conforming on-site parking is consistent to this intent and the following LUTE Policies as indicated in the findings to approve the project (Attachment B):

Policy N3.2 Encouraging Infill Development.

In order to facilitate the construction of needed housing units, infill development that is consistent with the General Plan should take place throughout the City of Oakland.

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 N8.2 Making Compatible Interfaces Between Densities.

The height of development in urban residential and other high density residential areas should step down as it near lower density residential areas to minimize conflicts at the interface between the different types of development.

Policy N9.8 Respecting Architectural Integrity.

The City encourages rehabilitation efforts which respect the architectural integrity of a building's original style.

ZONING ANALYSIS

The property is located in the RU-3 Urban Residential, S-7 Preservation Combining, and S-12 Residential Parking Combining Zones. The intent of the RU-3 Zone is: “to create, maintain, and enhance areas of the City that are appropriate for multi-unit, low-rise or mid-rise residential structures at somewhat higher densities than RU-2, and neighborhood businesses where appropriate in locations with good access to transportation and other services.” The intent of the S-7 Zone is: “to preserve and enhance the cultural, educational, aesthetic, environmental, and economic value of structures, other physical facilities, sites, and areas of special importance due to historical association, basic architectural merit, the embodiment of a style or special type of construction, or other special character, interest, or value, and is typically appropriate to selected older locations in the City. The intent of the S-12 Zone is: “to create, preserve, and enhance areas with high concentrations of Residential Facilities, to ensure that adequate off-street parking is provided for those facilities, and to maximize the general availability of on-street parking, and is typically appropriate in high density residential neighborhoods, adjacent commercial areas, and other neighborhoods where high concentrations of Residential Facilities may contribute to on-street parking congestion.”

The proposal to convert a two-unit property into seven-units with enhancements to the historic property, a compatible new building, and conforming on-site parking is consistent to these intents. All findings required to approve the project were made (Attachment B).

STAFF’S RESPONSE TO APPEAL

The Planning Code’s ‘Planning Appeal to Planning Commission—Regular design review’ procedure (OMC Sec. Code’s 17.136.080) describes the bases to appeal a decision of the Zoning Manager that either an *error or abuse of discretion* was committed by the Zoning Manager, or the *decision is not supported by the evidence in the record*. The decision on the appeal is made by the Planning Commission which considers the appeal in light of the intent of the applicable Zoning Ordinance. The decision is final (non-appealable).

The following is a restatement of the bases of the appeal (**shown in bold**), with staff’s responses (*shown in italics*). Staff’s responses show that there was neither an error nor abuse of discretion by the Zoning Manager and the decision was supported by the evidence in the record.

Summary of Appeal

The appeal rests on four bases discussed below. None of these bases relate directly to required zoning approvals relating to design and relief from development standards (variance); they relate to contents of an easement on the neighboring property of the appellant; contents of a deed restriction on the subject property, reliability of plans, and adherence to required public notification. Two of the four bases, adjacent easement and site deed restriction, relate indirectly to Regular Design Review and Variance given the new building’s form and density will increase height and parking and involve property values in an historic district, requiring relief from a development standard to do so. Environmental exemption was included as a concern on the appeal form but not addressed in the appeal letter; the exemption is addressed in the “Environmental Determination” section of this report. The appeal also refers to an attached letter (dated July 25, 2013) prior to project approval regarding the case, and references attachments to the letter that were not included with the appeal (Appellant’s attachments to the 7/25/13 letter are part of the City’s record and are already in the file). The appeal lastly expresses the desire to address any forthcoming issues. Staff would point out that only items explicitly raised in the appellant’s letter itself constitute the body of the appeal, and therefore only such items are addressed in this report; all documents provided as part of the appeal are attached as exhibits to this report (Attachment A).

(1) Deed restriction on the project site precludes approved new building height.

The Appellant states: "According to the 1956 deed for the property, no structures at 491 Bellevue Avenue shall exceed the elevation of the fifth floor window sills in the adjacent Bellevue-Staten building. Those window sills are approximately 38 feet 7 inches above the finished floor level of the existing house at 491 Bellevue Avenue. The construction document...shows the highest point of the proposed apartment building (the roof deck handrail) to be 44 feet 6.5 inches above the finished floor level of the existing house..."

STAFF'S RESPONSE

A deed restriction is a private legal restriction on the use of land that is contained in the deed to the property or otherwise formally recorded. Issues pertaining to competing, private rights in a parcel of land are private property disputes and not for the City to adjudicate.

The Zoning Manager's approval was based on a review of the plans against the Zoning Code requirements. The roof height reflected in the Approved Plans (Attachment C) does not exceed the height limit under the Zoning Code.

Nonetheless, staff is empathetic to the underlying concern that the new building could provide a view (or privacy or solar) impact and would point out that the new and existing building will be located approximately thirty-feet apart, and that the building's height is primarily due to its accommodation of parking in a district lacking on-street options to the extent that a parking-related combining zone applies. Findings to approve the project also state:

"The project will improve both the appearance of the existing building, and, the context of the site with its surroundings. The existing historical building is dilapidated and will be renovated. The new rear building will consist of an intermediate height between the existing building and rear parking garage. The design will use materials and architecture that will honor but not compete with adjacent historic structures. The height increase will improve consistency with the neighborhood's urban form...The building and front yard will be preserved and enhanced. The existing home exterior will be enhanced with new wood sash windows. All of the distinctive materials and front yard landscaping will be retained. The proposed addition/new construction will provide a transition in height within the historic district."

(2) Plans and approval are inconsistent, as plans indicate existing building to be moved on lot while approval does not.

The Appellant states: "Although the City of Oakland approval document indicates that the existing house will not be moved...the plans still indicate on the existing site plan, drawing A0.2, that "RESIDENCE to be moved 8' toward street."

STAFF'S RESPONSE

The reference on the plans to move the residence 8' toward the street is a typographical error that the applicant inadvertently failed to omit from the prior iteration. This reference will need to be corrected/removed at the Building Permit stage. The Zoning Manager's decision letter to approve the project memorializes the fact that the final approval did not involve building-moving in its Findings:

"The proposal involved moving the existing structure forward on the lot..., but has since been revised to not involve building-moving..." (Regular Design Review Criteria, Finding 1.)

Staff therefore does not consider this to be an outstanding issue.

(3) A driveway easement on adjacent property was not properly analyzed and should preclude the project.

The Appellant states: "The driveway on the West side of this property...is part of the Bellevue-Staten property..." and goes on to indicate that any approval should involve Bellevue-Staten consent for use of the easement both during construction and ongoing as there is currently no agreement between the homeowner of 491 Bellevue Avenue and the Bellevue-Staten in place.

STAFF'S RESPONSE

Issues pertaining to the easement rights related to 491 Bellevue Avenue are a private property dispute, and the City's approval of the Applicant's design review application is impliedly conditioned upon resolution of whether the Applicant has valid access/easement rights from the neighboring property.

Section 17.07.040(D) of the Oakland Planning Code provides, "The zoning regulations are not intended to abrogate, annul, or impair any easement, covenant, or other agreement between parties."

The appellant states the desire for an agreement, but does not assert that there is no legal right to use the easement. The applicant feels their client already has the right for ongoing use of the easement. Out of consideration for the possible underlying concern for the project's ongoing use of the easement for a larger than original rear structure and related issues such as noise, and for construction-phase usage, staff would point out that the project involves use by modern cars and an attached parking garage with lifts as opposed to early model automobiles [and a detached garage, and therefore use could be quieter than in the past. Also, conditions of approval address construction-related staging, with the intent of eliminating impacts during construction and ongoing.

(4) Public notification was flawed.

The Appellant states: "We understand that...we were noticed...in January 2013. We ask whether in the interim there have been any public meetings or opens sessions regarding this proposal."

STAFF'S RESPONSE

The project was properly noticed with seventeen-day notification to property owners within three hundred feet of site; posting on site; notice online; and notice at City Hall. (See Attachment D). There have been no public meetings for this project, which the City is authorized to approve administratively. Therefore, public notice was provided in accordance with the Municipal Code.

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines categorically and statutorily exempts specific types of projects from environmental review. The approval relied upon a Section 15332 Infill Development Project environmental exemption given the proposal satisfied five required criteria: General Plan and Zoning consistency; site less than five acres; no species habitat on site; no significant environmental effects (traffic, noise, air quality, water quality) as a result of the project; and, site can be served by utilities and public services. Section 15270 statutorily exempts projects that are disapproved (that is, which a public agency rejects). Staff's recommendation to disapprove this appeal conforms to Section 15270. Hence, these actions are exempt from Environmental Review.

CONCLUSION

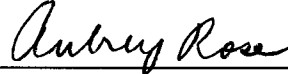
In conclusion, staff finds that the Appellant has neither found error nor abuse of discretion by the Zoning Manager, or that his decision is not supported by the evidence in the record. The Zoning Manager followed City Ordinance and the Appellant has not disputed that the City properly applied the Municipal Code or that

approved permits did not meet the intent of applicable Ordinances. The resolution of issues pertaining to competing, private rights in a parcel of land (including the deed restrictions and easement rights) are private property disputes and not for the City to adjudicate. The approval involves an attractively-designed and appropriately-scaled project that should not generate impacts temporarily with regards to construction or ongoing with regards to transportation-related or view, privacy or solar issues. Staff, therefore, recommends that the Planning Commission deny the appeal and uphold the Zoning Manager's environmental determination and decision to approve a Regular Design Review, Variance (required rear yard), and additional findings including environmental exemption at 491 Bellevue Avenue.

RECOMMENDATIONS:

1. Affirm staff's environmental determination.
2. Deny the appeal and uphold the Zoning Manager's administrative decision to approve the Regular Design Review, Variance (required rear yard), and additional findings including environmental exemption.

Prepared by:



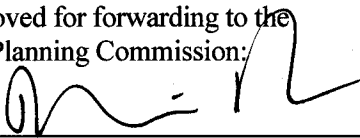
AUBREY ROSE, AICP
Planner III

Approved by:



SCOTT MILLER
Zoning Manager

Approved for forwarding to the
City Planning Commission:



DARIN RANELLETTI, Deputy Director
Bureau of Planning

ATTACHMENTS:

- A. Appeal letter dated January 22, 2015
- B. Decision letter (Approval) dated January 2, 2015
- C. Approved Plans dated October 29, 2012 and revised May 6, 2013
- D. Public Notice dated January 18, 2013

LEGAL NOTICE: This action of the Planning Commission is final and is not administratively appealable. Any party seeking to challenge such decision in court must do so within ninety (90) days of this decision, unless a different date applies.

Record ID: DV12218-A01

[Menu](#)[Reports](#)[Help](#)File Date: 01/22/2015Application Status: FiledApplication Detail: DetailApplication Type: AppealAddress: 491 bellevue AVE, OAKLAND, CA 94610

Owner Name:

Owner Address:

Application Name: Appeal of DV12218 approved 1-2-15 for 491 Bellevue AveParcel No: 010 076500403Description of Work: Appeal of DV12218 approved 1-2-15 for 491 Bellevue Ave

Contact Info: Name	Organization Name	Contact Type
<u>Richard Fishman</u>		Appellant

Job Value: \$0.00Total Fee Assessed: \$6,435.85Total Fee Invoiced: \$6,435.85Balance: \$6,435.85

Workflow Status: Task	Assigned To	Status
<u>Application Intake</u>		
Appeal Processing		
Closure		

Condition Status: Name	Short Comments	Status
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Application Specific Info: PLN_APL
APPEAL OF

<u>Billboard Amortization</u>	<u>Zoning Administrator Determination</u>
<u>Creek Permit</u>	<u>Planning Commission Decision</u>
<u>Creek Determination</u>	<u>Environmental Determination</u>
<u>Administrative Decision</u>	

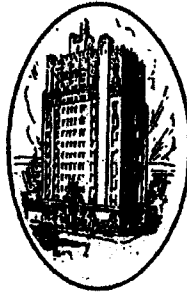
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LEGISLATIVE ACTIONS

Action	Action Number	Action Date	Effective Date	Comments
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ATTACHMENT A

Rick Fishman
President
Jeff Robbins
Treasurer
Sarah Lawrence
Secretary



BELLEVUE-STATEN

Don Beil
Vice President
Gil Murray
Vice President

January 22, 2015

ATTN: Aubrey Rose AICP Planner II
c/o Bureau of Planning, Zoning Division
City of Oakland
250 Frank H. Ogawa Plaza, Suite 2114
Oakland CA 94612

Dear Mr. Rose:

This set of documents is an appeal which I am submitting on behalf of the Bellevue-Staten Homeowners Association (BVS HOA) of which I am the President, and is submitted regarding the decision of the Bureau of Planning to approve the application for Case File No. DV12218, 491 Bellevue Avenue (APN: 010 -0765-004-03).

We ask you instead to reverse that decision and deny that application.

Enclosed with this letter are:

1. "City of Oakland Appeal Form for Decision to Planning Commission, City Council, or Hearing Officer."
2. A check for \$1,352.91 in accordance with the City of Oakland Master Fee Schedule.
3. A document detailing the basis for our appeal, itself containing several appendices.

Please note that your email to Mr. Donald Beil (vice president of the BVS HOA) detailing the City of Oakland approval was emailed to us on January 12, 2015 and included these words:

"...- this letter was not timely forwarded so please disregard the appeal deadline if there is any interest on that and we can adjust it -..."

A subsequent email from you to me dated January 13, 2015 indicated:

"...- please note, 10 calendar days starting yesterday is the window for submitting an appeal (the decision letter indicates otherwise, please disregard) -..."

**The Bellevue-Staten Condominium Association
492 Staten Avenue Oakland, CA 94610**

Thus the appeal contained in this and the attached documents is submitted to you in a timely way, although the initial document states an earlier time by which appeals must be submitted.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Richard Fishman', with a long horizontal flourish extending to the right.

Richard Fishman

Attachments (as noted above)



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

PROJECT INFORMATION

Case No. of Appealed Project: DV12218
Project Address of Appealed Project: 491 BELLEVUE AVENUE
Assigned Case Planner/City Staff: AUBREY ROSE, AICP, PLANNER II

APPELLANT INFORMATION:

Printed Name: RICHARD FISHMAN Phone Number: 510-501-4020
Mailing Address: 492 STATEN AVE, #401 Alternate Contact Number: _____
City/Zip Code OAKLAND 94610 Representing: BELLEVUE-STATEN HOME
Email: RIKMARTINI@ME.COM OWNERS ASSOCIATION (PRESIDENT)

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 Secs. 17.152.150 &/or 17.156.160)
- ☐ Other (please specify) _____

(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.

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.)*

SEE ATTACHED SHEETS

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.)*

SEE ATTACHED SHEETS FOR LIST OF DOCUMENTS ATTACHED

(Continued on reverse)

(Continued)



Signature of Appellant or Representative of
Appealing Organization

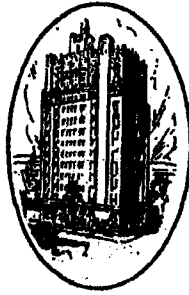
x 1/22/15
Date

Date/Time Received Stamp Below:

Below For Staff Use Only

Cashier's Receipt Stamp Below:

Rick Fishman
President
Jeff Robbins
Treasurer
Sarah Lawrence
Secretary



BELLEVUE-STATEN

Don Beil
Vice President
Gil Murray
Vice President

**Bellevue-Staten Appeal Requesting Reversal
of the City of Oakland Approval
of Case File DV12218: 491 Bellevue Avenue (APN: 010-0765-004-03)**

**Submitted January 22, 2015
by Richard Fishman, President
on Behalf of
the Bellevue-Staten Homeowners Association**

This appeal by the Bellevue-Staten Homeowners Association (HOA) requests reversal of the approval granted by the City of Oakland Bureau of Planning for Case File No. DV12218, 491 Bellevue Avenue (APN: 010-0765-004-03) based on the following issues:

1. Per our architectural assessment, the height of the building does not meet the limitation imposed in the deed to the property at 491 Bellevue Avenue.
2. The architectural plans for the building that we received indicate that the current home is to be moved forward eight (8) feet despite the statement in the City of Oakland approval document to the contrary.
3. We do not believe the easement on the driveway – crucial for the proposed development – has been properly considered in the review.
4. We are concerned we may not have been properly notified of hearings regarding these plans.

Additional explanations of each of these items follow.

1. Proposed building height exceeds deed.

Although the proposed plans make note that the height of the proposed new building is below the "Bellevue-Staten 5th floor window sill" (for example on drawing A3.2 Proposed West Elevation), our review – conducted by a Bellevue-Staten architect resident – indicates a height for the proposed building that extends significantly above the 5th floor window sill.

**The Bellevue-Staten Condominium Association
492 Staten Avenue Oakland, CA 94610**

According to the 1956 deed for the property, no structures at 491 Bellevue Avenue shall exceed the elevation of the fifth floor window sills in the adjacent Bellevue-Staten building. Those window sills are approximately 38 feet 7 inches above the finished floor level of the existing house at 491 Bellevue Avenue. The construction document, drawing A3.1, revised on May 4, 2013, shows the highest point of the proposed apartment building (the roof deck handrail) to be 44 feet 6.5 inches above the finished floor level of the existing house. Therefore, per our dimensions and calculations, the proposed apartment building exceeds the height limit by approximately 6 feet.

See our submitted Attachment A, a drawing we prepared that supports our position on this issue.

The height of the proposed structure has been a long-standing issue regarding this project, as indicated in Attachment B, email from Richard Ferguson to Aubrey Rose and others, dated July 29, 2013, which in the summary requests:

"2. Delay action on building permit until Ross Levy has an opportunity to measure the height of his proposed building to see whether they are or are not above the bottom of the fifth floor window."

For this part of our appeal, we ask that the approval be reversed and the application be denied because it does not meet the *significant* height condition specified in the deed.

2. Moving the current house.

Although the City of Oakland approval document indicates that the existing house will not be moved ("The proposal ... has since been revised to not involve building-moving ..." per the City of Oakland approval document page 3, fourth paragraph), the plans still indicate on the existing site plan, drawing A0.2, that "RESIDENCE to be moved 8' toward street."

For this part of our appeal, we ask that if the current house is being moved that the approval be reversed and the application be denied because the approval was made on the assumption of a condition that is not correct.

3. Driveway easement

The driveway on the West side of this property is not owned by the 491 Bellevue Avenue homeowner, but rather is part of the Bellevue-Staten property which is making this request to reverse the approval and deny the application. We strongly believe that the approval should be made pending having the homeowner of 491 Bellevue Avenue present the Bureau of Planning with an agreement between the homeowner of 491 Bellevue Avenue and the Bellevue-Staten which would allow the use of that driveway for the intended use per the building application plans, including whatever usage might be made of the driveway during proposed construction.

There is currently no agreement between the homeowner of 491 Bellevue Avenue and the Bellevue-Staten which would allow for the use of our driveway as intended in the application or for its use during construction of the proposed apartment structure.

As further documentation regarding the easement, we have attached a letter (Attachment C), from Richard Ferguson which provides considerable information regarding the easement. We have attached it without its extensive attachments, which should be part of the existing file on record with the City of Oakland for this application.

For this part of our appeal, we ask that the approval be reversed and made conditional on the receipt of a written agreement between the Bellevue-Staten and the homeowner of 491 Bellevue Avenue that would allow for the use of the driveway by the tenants of the proposed apartments and for the use of the driveway during construction by various workers' vehicles.

4. Notifications

We understand per an email from Mr. Rose, that we were noticed regarding this proposal two years ago in January 2013. We ask whether in the interim there have been any public meetings or open sessions regarding this proposal? We have not been noticed of any such meetings, and the best information that we have indicates that nothing has been posted on the property. If such open sessions have been held, we appeal on the basis that we have not received proper notification of such meetings.

For this part of our appeal, we ask that if the record indicates that we were not properly noticed, that the process be reopened to allow us the opportunity to comment before final approval is granted.

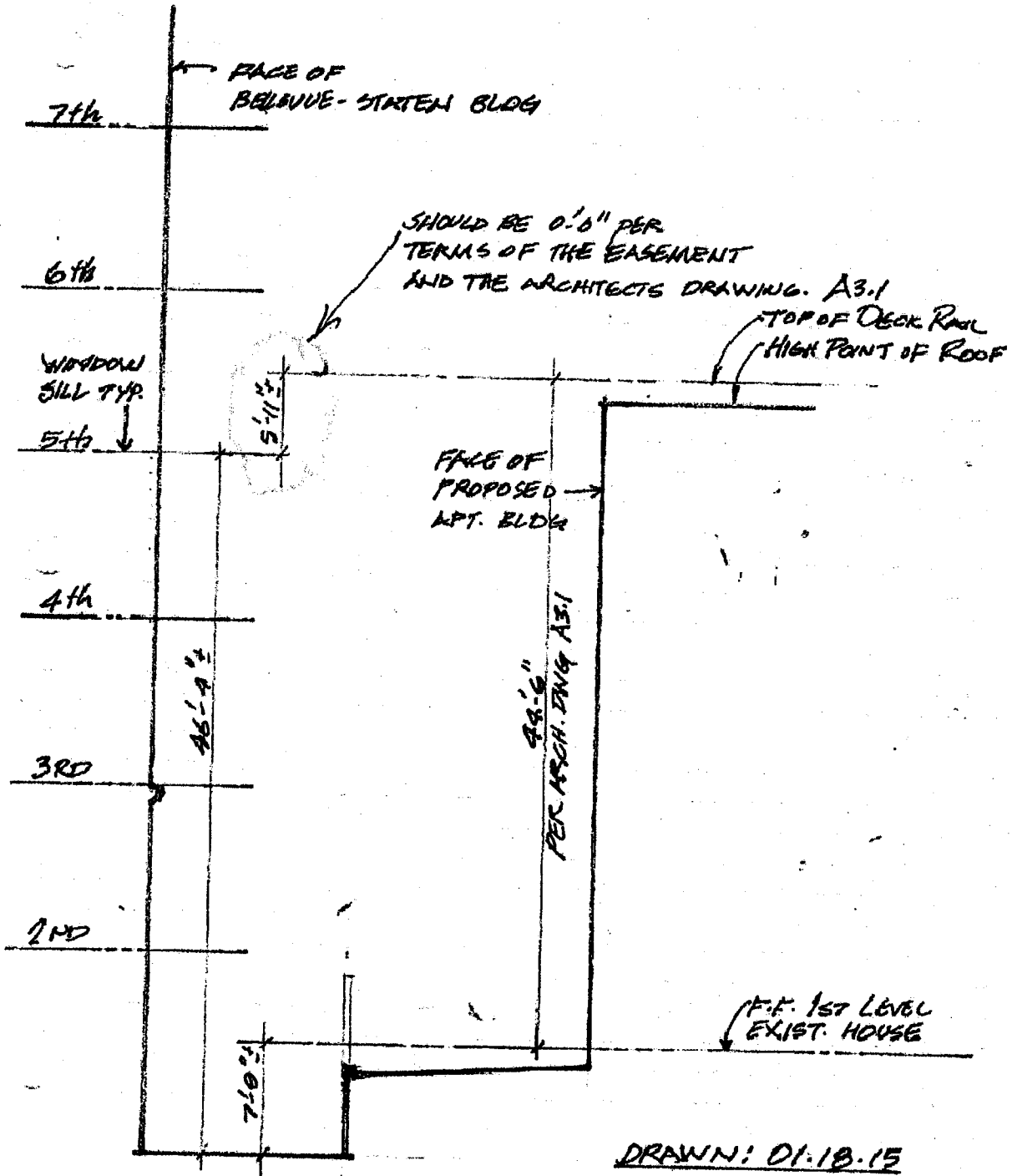
Finally, we ask to reserve the right to discuss any other issues in any appeal hearing not listed here as they arise or become known to us.

In conclusion we believe we have provided appropriate rationale for reversing this decision, and we look forward to notification of an appeal hearing at which we will be able to make these points before the Planning Commission.

Attachments:

- ATTACHMENT A: Bellevue Staten Drawing Illustrating Deed Height Restriction Violation
- ATTACHMENT B: Email Ferguson to Aubrey Rose and Others Regarding Height Restrictions
- ATTACHMENT C: Letter Ferguson to Aubrey Rose Explaining Easement Issues

ATTACHMENT A: Bellevue Staten Drawing Illustrating Deed Height Restriction Violation



ATTACHMENT B: Email Ferguson to Aubrey Rose and Others Regarding Height Restrictions

----- Forwarded Message -----

From: "RLFerguson@aol.com" <RLFerguson@aol.com>

To: ARose@oaklandnet.com; cchen@oaklandcityattorney.org; steve@stevensackslaw.com

Cc: bevhanlon@yahoo.com; carolesl@jps.net; RLFerguson@aol.com

Sent: Monday, July 29, 2013 9:50 AM

Subject: Re: Bellevue Staten objection to 491 Bellevue Building Permit

Greetings,

This letter is to recap the letter sent to you on July 25, 2013 regarding the objections of the Bellevue Staten Condominium Association and Norman Levenson whose property is adjacent to 491 Bellevue.

We make a recommendation that action on the 491 Bellevue Building Permit be delayed until Steven Sacks has an opportunity and the obligation to provide the documents alluded to in his March 1, 2013 letter to Aubrey Rose regarding possible enlargements (or removal of restrictions) on the easements granted to 491 Bellevue from our property.

We also recommend that the decision be delayed until Ross Levy has an opportunity to investigate or hire a surveyor to investigate the problem of his proposed building being higher than the bottom of the fifth floor windows of the Bellevue Staten overlooking 491 Bellevue. As I explained in that July 25, 2013 letter, after I had a chance to review those plans sent to me last week, the proposed building is approximately 6 feet above the lower level of the fifth floor windows (highlight added) The 1956 deed to that property has the building restriction that no building can be higher than the bottom of the fifth floor window.

Please, have Ross Levy contact me or Steve, you can contact me, to arrange a time for you to do your own measurements.

These preliminary steps should be taken. Otherwise there will be a law suit to argue points that could possibly be corrected and agreed upon before such legal action has to be taken.

Perhaps a conference call would be in order. I am difficult to reach, though.

In summary:

1. Delay action on building permit to allow Steve to find the documents he believes are in existence.
2. Delay action on building permit until Ross Levy has an opportunity to measure the height of his proposed building to see whether they are or are not above the bottom of the fifth floor window.
3. Without this delay there will be legal actions filed which might not have to be filed or which would extend the controversy into areas in which there needn't be controversy.

Sincerely,

Richard L. Ferguson

(510) 835-2387 or (510) 839-1483

ATTACHMENT C: Letter Ferguson to Aubrey Rose Explaining Easement Issues

**Law Offices of Richard L. Ferguson
A Professional Corporation
385 Grand Avenue, Suite 200
Oakland, California 94610
Telephone: (510) 839-1483
Fax: (510) 832-0470**

July 25, 2013

Aubrey Rose, AICP Planner II
City of Oakland Department of Planning
150 Frank H. Ogawa Plaza, 2nd Floor
Oakland, CA 94612-2031

Celena Chen
Oakland City Attorney
1 Frank H. Ogawa Plaza, 6th Floor
Oakland, CA 94612

Steven M. Sacks
730 Noe Street
San Francisco, CA 94114

Bev Hanlon
492 Staten Avenue, Unit 1002
Oakland, CA 94610

Norman Levensen
492 Staten Avenue, Unit 503
Oakland, CA 94610

RE: Additional Objection to Building Proposal at 491 Bellevue Avenue, Oakland, CA
Case File Numbers DV12-218/T13-007, Applicant Ross Levy

Dear Gentle People:

I represent the Bellevue Staten Condominium Board of Directors, the executive body in charge managing and maintaining of the common area of the Bellevue Staten Condominium Association located at 492 Staten Avenue, Oakland adjacent to 491 Bellevue Avenue. I also represent Norman Levenson, a condominium owner of unit 503 in the Bellevue Staten Condominium Association, a unit on the fifth floor with windows which face out east over 491 Bellevue Avenue. The building permit application of Ross Levy touches upon land owned by the Bellevue Staten Condominium Association and the views and light through the windows of Norman Levenson's condominium unit on the east side of the building.

Both the Board of Directors and Norman Levenson request that the present application of Ross Levy for the building permit on 491 Bellevue be denied for the reasons outlined below as well as the reasons indicated in the July 15, 2013 letter of Bev Hanlon, president of the Bellevue Staten Condominium Association to Aubrey Rose, Ross Levy, and Tammy Beaulieu making specific objections.

I just received a copy of the March 1, 2012 letter that Steven M. Sacks wrote to Aubrey Rose stating that he represented Tammy Beaulieu, one of the owners of record of 491 Bellevue Avenue. A copy of that letter is attached to this letter as Exhibit A. *(NOTE: Attachments are not included with this appeal of January 22, 2015 as that material should be in the City of Oakland file for this case.)* Mr. Sacks' March 1, 2013 letter was in support of her previous building permit application. However that letter makes several misstatements of law and fact which should be straightened out before you make your building permit decision. Had I received this letter earlier, I would have responded earlier.

Steven Sacks' March 1, 2013 letter makes five erroneous statements of factors he alleges that I have made. Those five statements, though, are not what I alleged.

First, Mr. Sacks alleges that I stated "the easements granted to Ms. Beaulieu from Richard and Irene Yeung exceed the scope of the original easements." What I allege is that the deed from Richard and Irene Yeung to Ms. Beaulieu and James Hare recorded May 4, 1998 does not contain explicit reference to the restrictions on the easements granted over the property now owned by the Bellevue Staten Condominium Association and the owners of the units in that condominium. It also does not contain explicit reference to the rights of the owners of the Bellevue Staten Condominiums to limit buildings put up on 491 Bellevue Avenue in the deed to Josephine Bargiacchi recorded March 15, 1956. A copy of the deed recorded March 15, 1956 is attached to this letter as Exhibit B. *(NOTE: Attachments are not included with this appeal of January 22, 2015 as that material should be in the City of Oakland file for this case.)* A copy of the deed recorded May 4, 1998 is attached to this letter as Exhibit E. *(NOTE: Attachments are not included with this appeal of January 22, 2015 as that material should be in the City of Oakland file for this case.)*

Second Mr. Sacks alleges that I stated "The easements granted to Richard and Irene Yeung from Ellis and Jane Lowe should have been restricted in an identical manner to the original grant of easement given to Josephine Bariacchi." That statement is wrong. The limited easements so granted to 491 Bellevue and the restrictions on building on 491 Bellevue are included in that August 15, 1986 grant deed to Richard and Irene Yeung by reference in the fourth paragraph on page 2 of that August 15, 1986. The 1986 deed explicitly states that the easements are those "Easements granted in the deed to Josephine Bargiacchi, recorded March 15, 1956, Book 7967, OR, page 531, Series No. AL/28211." By explicit reference to that March 15, 1956 deed and by indicating the Book and OR, those limitations are included in the August 15, 1986 deed granted to Richard and Irene Yeung. Also the restrictions to the building on 491 Bellevue are similarly indicated. A copy of the August 15, 1986 Deed to Richard and Irene Yeung is attached to this letter as Exhibit D. *(NOTE: Attachments are not included with this appeal of January 22, 2015 as that material should be in the City of Oakland file for this case.)* A copy of the March 15, 1956 Deed is attached to this letter as Exhibit B. *(NOTE: Attachments are not included with this appeal of January 22, 2015 as that material should be in the City of Oakland file for this case.)*

Third, Mr. Sacks alleges that I stated "The easements granted to Ellis and Jane Lowe should have been restricted in an identical manner to the original grant of easement given to Josephine Barriacchi." That statement is wrong. The February 6, 1979 deed granted by Dewey Bargiacchi, Executor of the Estate of Josephine Bargiacchi to Ellis and Jane Lowe again contains explicit reference to the limitations of any Easements granted in the deed to Josephine Bargiacchi, recorded March 15, 1956, Book 7967, OR, Gage 31, Series No. AL/28211." This explicit reference is found in the fourth paragraph of page 2 of that 1979 Deed. By explicit reference to that March 15, 1956 deed, in that February 6, 1979 deed transferring 491 Bellevue from the Estate of Josephine Bargiacchi to

Ellis and Jane Lowe those restrictions and limitations are included in the deed recorded February 6, 1979. A copy of the deed to 491 Bellevue Avenue from the Executor of the Estate of Josephine Bargiacchi to Ellis and Jane Lowe is attached to this letter as Exhibit C. *(NOTE: Attachments are not included with this appeal of January 22, 2015 as that material should be in the City of Oakland file for this case.)* A copy of the March 15, 1956 Deed is attached to this letter as Exhibit B. *(NOTE: Attachments are not included with this appeal of January 22, 2015 as that material should be in the City of Oakland file for this case.)*

In summary, contrary to what Mr. Sacks alleges, the chain of title on 491 Bellevue from Morgan-Peacock Properties Corporation to Josephine Bargiacchi to Ellis and Jane Lowe to Richard and Irene Yeung make explicit reference and include the limitations on the easements over property now owned by the Bellevue Staten Condominium Association and the restrictions on building on 491 Bellevue given as indicated in that deed recoded on March 15, 1956.

On page 2 of Mr. Sacks' March 1, 2013 letter he also states that "there may in fact be a separate document yet discovered that provides for the expansion of the easements. Further the intent of the change in language is unknown at this time. Additional investigation into the grant of the easements is necessary."

However, it has been over four months since Mr. Sacks wrote this March 1, 2013 letter, and no additional documents have been provided to us. Furthermore I believe that the only parties that could increase the easement rights of 491 Bellevue over property owned by 492 Staten Avenue, or decrease the rights of 492 Staten over the property of 491 Bellevue are the owners of 492 Staten Avenue subsequent to the grant deed given to Richard Yeung and Irene Yeung in 1986.

Since 1981 the property originally known as the Bellevue Staten Apartments has belonged to the Bellevue Staten Condominium association. I can guarantee that no such additional rights to 491 Bellevue have been made since 1981 by the Bellevue Staten Condominium Association.

If there were or are other documents expanding the rights of the owners of 491 Bellevue, Mr. Sacks has not provided them. Such leads me to believe there are no such documents.

However, if Mr. Steven Sacks still maintains that there are such documents, I request that you contact Steven Sacks and see how much more time he needs to investigate and search for such documents. I would recommend withholding any decision of the proposed application for a building permit until after that period has expired and the documents that Mr. Sacks might provide in this time are reviewed. His rights he claims now held by 491 Bellevue do not exist without these documents, and our objections to the application for the building permit for 491 Bellevue are valid.

To base a finding on what easements or restrictions are or are not on a property because of what a partisan party thinks he might be able to discover with further research makes no sense. Otherwise all a party needs to challenge restrictions or create easements is "further research might show otherwise."

In summary since March 1, 2013, Mr. Sacks has given us no further factual basis for his unequivocal refutation. It is a bald unequivocal refutation without facts, documents, or law to support it. These bald unequivocal refutations cannot be used in your decision process as to whether to grant or deny the building permit application of Ross Levy.

Fourth Mr. Sacks states that I allege "the easements can be lost if certain events occur." That is certainly true. However, this allegation as in relation to the garage which he states was severely damaged during the 1994 Northridge earthquake. As a point of reference, it is far more likely that the garage to which Mr. Sacks refers was damaged in the 1989 earthquake which affected Oakland, an event more than twenty years ago. The Bellevue Staten was damaged in the 1989 earthquake but not the 1994 Northridge earthquake. I do not know how Ms Beaulieu knows whether any earthquake damage was from 1994 or 1989, as she did not purchase the property until 1998. The difference of course is the twenty year statute of limitations for abandonment. If the beginning point to rebuild the garage was 1989, the twenty year statute has expired. I would like a copy of the permit for demolition that Ms. Beaulieu had to have received before she could legally tear down the garage and the reasons she gave for it.

The 1956 condition for termination of the ingress/egress easement is that the garage be destroyed. (See Exhibit B, page 2, paragraph 5). (NOTE: Attachments are not included with this appeal of January 22, 2015 as that material should be in the City of Oakland file for this case.) It does not matter the reason for the demolition. However, assume for the sake of argument, Ms Beaulieu does have the right to rebuild the garage damaged beyond her control by the earthquake and the twenty year statute of limitations has not tolled. However the garage that was torn down was a one car garage damaged by earthquake in 1989 or in 1994. The garage she wants to replace it with is a seven car garage. A seven car garage is an entirely different type of garage than a one car garage. She does not want to rebuild the old one car garage. She wants to build a new seven car garage.

Mr. Sack's reference to Faus vs. The City of Los Angeles (1967) 67 C2d 350 in support of the continuation of the driveway easement is no help to him. The decision in Faus vs. The City of Los Angeles was not based on the requirement that easements must be allowed to change for time. The decision was based rather on the fact that the 1910 easement was still applicable and included the present use by the City of Los Angeles. The 1967 California Supreme Court found this as a matter of law looking at the language of the initial easement granted in 1910. This analysis has been further developed in the July 15, 2013 letter from Bev Hanlon which I drafted.

In our case, the 1956 Deed is very clear that the easement over the Bellevue Staten property ends under certain conditions. The purpose was to maintain the views and privacy and freedom from close neighbors while allowing the owner to use the present 1956 garage. A replacement seven car garage from a one car garage needing to be demolished because of an unexpected earthquake was never envisioned in that document. It goes against the very purpose of the granting of this limited easement.

My clients' second and new objection to the present proposed plans in the Ross Levy building permit application is that they envision building to heights not allowed on 491 Bellevue. More particularly that March 15, 1956 Deed granting 491 Bellevue to Josephine Barriachhi states on page two and three:

"The portion of the above described property which lies within Lot 7 in Block of the map above referred to is conveyed subject to the conditions and restrictions that no building or structure of any kind shall ever be built or placed thereon higher than the level of the bottom of the windows of the fifth floor of the building known as the Bellevue Staten Apartments, as the same now exists. . . . It is understood and agreed that said conditions and restrictions are for the benefit of and appurtenant to the real property upon which said Bellevue Staten Apartments are located. . . . It is further understood and agreed that the conditions and restrictions hereby imposed are to run with the land against which they are imposed, and shall run with the land benefited thereby,

binding upon the grantors and grantees, herein and their respective successors and assigns." A full copy of this deed is attached to this letter as Exhibit B. *(NOTE: Attachments are not included with this appeal of January 22, 2015 as that material should be in the City of Oakland file for this case.)*

Until Mr. Sacks can provide us with written and recorded documents to show that this explicit easement and limitation on building height recorded in March 15, 1956 and confirmed in the February 6, 1979 Deed (Exhibit C, Page 2, paragraph 4) *(NOTE: Attachments are not included with this appeal of January 22, 2015 as that material should be in the City of Oakland file for this case.)* and the August 15, 1986 Deed (Exhibit D, page 2, paragraph 4) *(NOTE: Attachments are not included with this appeal of January 22, 2015 as that material should be in the City of Oakland file for this case.)* was changed subsequent to August 15, 1986, the above restriction on building on 491 Bellevue as made explicit in the deed recorded March 15, 1956 remains.

I had the height of the bottom of the windows on the fifth floor measured from Norman Levenson's condominium unit 503 on the fifth floor. It was discovered that the bottom of the windows on the fifth floor of the Bellevue Staten Condominium Association facing east are 46 feet and 2 inches from the ground at the Bellevue Staten. However, the ground floor of the Bellevue Staten in the area below the window is 5 feet 8 inches lower than the property at 491 Bellevue. The drawing labeled A3.1 in their plans does show but does not quantify the increase in elevation on the back and eastern side of 491 Bellevue. Excerpts from these drawings are attached to this letter as Exhibit F. *(NOTE: Attachments are not included with this appeal of January 22, 2015 as that material should be in the City of Oakland file for this case.)*

These drawings show that the buildings are intended to reach a height of 46 feet and 6 ½ inches. All the drawings in A3.1, A3.2, A3.3 and A4.1 show intended heights of 46 feet 6 ½ inches. I have included magnifications of each drawing so you can read the height more correctly. However 5 feet 8 inches must be added to the height of the building in the plans to determine where it would hit the bottom of the windows on the fifth floor of the Bellevue Staten.

Coupling this 5 feet 8 inch lower level of the Bellevue Staten, this means that the proposed additions are 52 feet 2 ½ inches high from the perspective of the bottom of the windows on the fifth floor of the Bellevue Staten. Under the restrictions on building, the highest these proposed additions can be is 46 feet 2 inches.

In short the proposed plans envision building 6 feet above what that is allowed on 491 Bellevue.

Norman Levenson who purchased unit 503 had every reason to believe the restriction that no building would be above the bottom of his windows would be violated. His condominium unit is directly affected by any building above the bottom of his windows on the fifth floor. He is injured and not given the free view the restrictions on building at 491 Bellevue were intended to give.

Unless Mr. Sacks can provide some documents to show that this height restriction of building on 491 Bellevue has been changed, the proposed plans have proposed buildings at heights not allowed in the deed given to Tammy Beaulieu.

Although I do not believe such documents exist, I recommend that you give Mr. Sacks the time he believes he needs to find those documents and delay making a decision on the building application until after that time and after looking at the documents he might provide. If he can provide no such documents, I request that the building permit be denied.

If you have any further questions, please feel free to contact me.

Sincerely,

Richard L. Ferguson

INDEX OF EXHIBITS ATTACHED TO LETTER

(NOTE: Exhibits are not included with this appeal of January 22, 2015 as that material should be in the City of Oakland file for this case.)

EXHIBIT A: March 1, 2013 letter of Steven M. Sacks to Aubrey Rose, no copy of which was Given to Richard Ferguson until July 23, 2013.

EXHIBIT B: Grant Deed recorded March 15, 1956 from Morgan-Peacock Properties Corporation transferring property commonly known as 491 Bellevue Avenue. 465 Bellevue Avenue, and 461 Bellevue Avenue to Josephine Bargiacchi. (This Deed is also identified as "Deed 1.")

EXHIBIT C: Grant Deed recorded February 6, 1979 from Dewey Bargiacchi, executor of the Estate of Josephine Bargiacchi transferring property commonly known as 491 Bellevue Avenue to Ellis Lowe and Jane Lowe. (This Deed is also Identified as "Deed 2.")

EXHIBIT D: Grant Deed recorded August 15, 1986 from Ellis Lowe and Jane Lowe Transferring property commonly known as 491 Bellevue Avenue to Richard Yeung and Irene Yeung. (This Deed is also identified as "Deed 3.")

EXHIBIT E: Grant Deed recorded May 4, 1998 from Richard Yeung and Irene Yeung Transferring property commonly known as 491 Bellevue Avenue to James Hare and Tammy L. Beaulieu. (This Deed is also identified as "Deed 4.")

EXHIBIT F: Pages of blue print drawings of proposed building changes to 491 Bellevue in Ross Levy's application for the building permit now before the City of Oakland to make these changes.

CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA • SUITE 3315 • OAKLAND, CALIFORNIA 94612

Planning and Building Department
Bureau of Planning

(510) 238-3941
FAX (510) 238-6538
TDD (510) 238-3254

Sent via U.S. Mail and Electronic Mail

January 2, 2015

Mr. Ross Levy
1286 Sanchez St
San Francisco, CA 94114

RE: Case File No. DV12218; 491 Bellevue Avenue (APN: 010 -0765-004-03)

Dear Mr. Levy:

Your application, as described below, has been **APPROVED** for the reasons stated in Attachment A, which contains the findings required to support this decision. Attachment B contains the Conditions of Approval for the project. This decision is effective ten (10) days after the date of this letter unless appealed as explained below.

The following table summarizes the proposed project:

Proposal:	To rehabilitate a two-story duplex, convert it into four units, and construct a rear four-story three-unit apartment building with a seven-stall parking garage. <i>The project was reviewed by the Landmarks Preservation Advisory Board.</i>
Planning Permits Required:	Regular Design Review for alterations and construction including five new dwelling units; Design review criteria for construction or alteration; CEQA Class 31 Historical Resource Restoration/Rehabilitation Exemption; CEQA Class 32 Infill Exemption; Minor Variance for no rear yard where fifteen-feet are required;
General Plan:	Urban Residential
Zoning:	RU-3 Urban Residential Zone/ S-7 Preservation Combining Zone/ S-12 Residential Parking Combining Zone

ATTACHMENT B

Environmental Determination:	Exempt, Section 15301 of the State CEQA Guidelines: Existing Facilities; Exempt, Section 15303: New Construction or Conversion of Small Structures; Exempt, Section 15305(a): Minor Alterations in Land Use Limitations (set back variance); Exempt, Section 15331: Historical Resource Restoration/Rehabilitation; Exempt, Section 15332: Infill Development Projects; Section 15183 of the State CEQA Guidelines: Projects Consistent with a Community Plan, General Plan or Zoning
Historic Status:	Designated Historic Property/DHP, Survey rating: C1+ (Clarke-Gross House by Ratcliff, Area of Primary Importance/API: Bellevue-Staten Apartment Historic District)
Service Delivery District:	3
City Council District:	3

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 January 12, 2015**. An appeal shall be on a form provided by the Bureau of Planning / Zoning Division, and submitted to the same at 250 Frank H. Ogawa Plaza, Suite 2114, to the attention of **Aubrey Rose AICP, Planner II**. 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 **\$1,352.91** 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.

A signed Notice of Exemption (NOE) is enclosed certifying that the project has been found to be exempt from CEQA review. It is your responsibility to record the NOE and the Environmental Declaration at the Alameda County Clerk's office at 1106 Madison Street, Oakland, CA 94612, at a cost of \$50.00 made payable to the Alameda County Clerk. Please bring the original NOE related documents and five copies to the Alameda County Clerk, and return one date stamped copy to the Zoning Division, to the attention of **Aubrey Rose AICP, Planner II**. Pursuant to Section 15062(d) of the California Environmental Quality Act (CEQA) Guidelines, recordation of the NOE starts a 35-day statute of limitations on court challenges to the approval under CEQA.

If you have any questions, please contact the case planner, **Aubrey Rose AICP, Planner II** at (510) 238-2071 or arose@oaklandnet.com, however, this does not substitute for filing of an appeal as described above.

Very Truly Yours,


SCOTT MILLER
Zoning Manager

Attachments:

- A. Findings
- B. Conditions of Approval, including Standard Conditions of Approvals

ATTACHMENT A: FINDINGS

This proposal meets all the required findings under the Design Review Procedure/Regular Design Review Criteria (OMC Sec. 17.136.050(A)), S-7 Preservation Combining Zone Regulations/Design review criteria for construction or alteration (OMC Sec. 17.84.040), and Variance Procedure/Findings required (OMC Sec. 17.148.050) of the Oakland Planning Code (OMC Title 17) and CEQA Class 31 and 32 Exemptions of the State of California, Public Resources Code as set forth below and which are required to approve your application. Required findings are shown in bold type; reasons the proposal satisfies them are shown in normal type.

Regular design review criteria/ For Residential Facilities (OMC Sec. 17.136.050(A))

1. That the proposed design will create a building or set of buildings that are well related to the surrounding area in their setting, scale, bulk, height, materials, and textures:

The proposal is to rehabilitate a two-story duplex, convert it into four units, and construct a rear four-story building containing three-units over a seven-stall parking garage. The project requires a Regular Design Review for alterations and construction including five new dwelling units. To the left of the site is an A rated 176-foot tall brick apartment tower (Bellevue-Staten at 492 Staten Avenue); the adjacent apartments in the tower are corner units with windows on more than one building side, and the tower building is setback at the area adjacent to new construction on the subject site. To the rear is a 68-foot tall brick and concrete parking garage structure serving the tower; and to the right is a typical small apartment with rear garage. The tower's garage is taller than the existing structure on the subject site. The site's driveway is an easement across the tower property which will be used to access the new rear building. To the right is a 43-foot tall apartment with a rear 11-foot tall carport.

Various proposals have been submitted to the City under zoning pre-applications. Each proposal has incorporated prior feedback and thus featured an improved design. The current proposal was reviewed extensively the Cultural Heritage survey staff, the secretary to the Landmarks Board, and Landmarks Board subcommittees. Their numerous comments were incorporated into the design. The project was formally submitted and was reviewed by the Landmarks Preservation Advisory Board who forwarded the proposal to the Zoning Manager with a recommendation of approval subject to conditions. The proposal involved moving the existing structure forward on the lot and provided deficient usable open space, but has since been revised to not involve building-moving and to provide conforming usable open space. Residents of the Bellevue-Staten expressed concern for use of the easement and for new building construction facing some units in their building. The project will improve both the appearance of the existing building, and, the context of the site with its surroundings. The existing historical building is dilapidated and will be renovated. The new rear building will consist of an intermediate height between the existing building and rear parking garage. The design will use materials and architecture that will honor but not compete with adjacent historic structures. The height increase will improve consistency with the neighborhood's urban form.

2. That the proposed design will protect, preserve, or enhance desirable neighborhood characteristics;

The project will improve both the appearance of the existing building, and, the context of the site with its surroundings. The existing historical building is dilapidated and will be renovated. The new rear building will consist of an intermediate height between the existing building and rear parking garage. The design will use materials and architecture that will honor but not compete with adjacent historic structures. The height increase will improve consistency with the neighborhood's urban form.

3. That the proposed design will be sensitive to the topography and landscape.

The design will preserve and enhance the mature front yard at the historic property that is relatively level but which contains a slight slope at the sidewalk.

4. That, if situated on a hill, the design and massing of the proposed building relates to the grade of the hill;

The project site is not located on a hill so no silhouetting effect is possible.

5. That the proposed design conforms in all significant respects with the Oakland General Plan and with any applicable design review guidelines or criteria, district plan, or development .

The project site is located in the Urban Residential area of the General Plan's Land Use and Transportation Element (LUTE). The Intent of the area is: "To create, maintain, and enhance areas of the City that are appropriate for multi-unit, mid-rise or high-rise residential structures in locations with good access to transportation and other services." The proposal will conform to this Intent and to the following LUTE Policies:

Policy N8.2 Making Compatible Interfaces Between Densities.

The height of development in urban residential and other high density residential areas should step down as it nears lower density residential areas to minimize conflicts at the interface between the different types of development.

Policy N9.8 Respecting Architectural Integrity.

The City encourages rehabilitation efforts which respect the architectural integrity of a building's original style.

S-7 Preservation Combining Zone Regulations/Design review criteria for construction or alteration (OMC Sec. 17.84.040)

A. That the proposal will not substantially impair the visual, architectural, or historic value of the affected site or facility. Consideration shall be given to design, form, scale, color, materials, texture, lighting, detailing and ornamentation, landscaping, Signs, and any other relevant design element or effect, and, where applicable, the relation of the above to the original design of the affected facility.

The project will preserve and enhance the historic building and site. The site is historic for the structure as well as for the district and for a former owner/occupant. Proposed changes will not negatively impact the district and will have no impact on the site's history. The new structure will be secondary in architecture to the existing structure on the site and surrounding sites in terms of design and bulk and will incorporate architectural elements of surrounding structures as well as consist of high quality materials and colors.

B. That the proposed development will not substantially impair the visual, architectural, or historic value of the total setting or character of the surrounding area or of neighboring facilities. Consideration shall be given to integration with, and subordination to, the desired overall character of any such area or grouping of facilities. All design elements or effects specified in Subsection A of this Section shall be so considered.

The proposal respects neighboring sites by rehabilitating the existing structure and constructing a structure that is in between sizes of the subject structure and surrounding structures. The new building will contain architectural elements of the site and surrounding structures without mimicking or competing with any of them.

C. That the proposal conforms with the Design Guidelines for Landmarks and Preservation Districts as adopted by the City Planning Commission and, as applicable for certain federally related projects, with the Secretary of the Interior's Standards for the Treatment of Historic Properties.

There is no such adopted Guideline at this time and applicable design review findings are provided in lieu. Secretary of Interior's Standards are described in a following section of this report.

Variance Procedure/Findings required (OMC Sec. 17.148.050)

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.

The proposal includes construction of a rear building at zero lot line where fifteen-feet are required and the project therefore requires a Minor Variance. Conditions of design do not allow permitted density to be achieved without construction at either the front or rear of the site. The alternate to the proposal, to construct in the front yard, would not constitute a preferable design. Furthermore, the property is directly across the street from Lakeside Park, and, to the rear of the property is a 68-foot tall parking garage for the adjacent apartment building. The rear yard is therefore less usable than a typical residential yard and the intent of the ordinance for required yards is therefore met by the proposal. Lastly, the design has the added benefit of providing rear covered parking for the entire site and new upper units that will take advantage of views of Lake Merritt. Therefore, the proposal constitutes an effective design solution improving livability, operational efficiency and 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;

The Minor Variance allows a more conforming density at the property while preserving the front yard, taking advantage of the adjacent park and views of Lake Merritt, and utilizing a rear yard that is shaded by the adjacent property structure.

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;

To provide conforming usable space and rear yard at the property would not benefit the property or adjacent properties; the adjacent apartments in the tower are corner units with windows on more than one building side, and the tower building is setback at the area adjacent to new construction on the subject site.

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;

Other properties that are nonconforming for required rear yards exist in the district.

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;

The new building is subject to Design Review; findings can be made to approve the design as described in previous sections of this Attachment.

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.

The proposal conforms to the following LUTE Policies:

Policy N3.2 Encouraging Infill Development.

In order to facilitate the construction of needed housing units, infill development that is consistent with the General Plan should take place throughout the City of Oakland.

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.

7. For proposals involving one or two 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 (60) percent 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 closest lots on each side of the project site plus the ten 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.**

The proposal involves conversion of a two-unit property into a five-unit property and the Minor Variance is for required rear yard. This finding is therefore inapplicable.

Class 15331 Historical Resource Restoration/Rehabilitation

a) A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.

The property will remain residential and additional dwelling units will be added. The existing home exterior will be enhanced with new wood sash windows. All of the distinctive materials and front yard landscaping will be retained. The proposed addition/new construction will provide a transition in height within the historic district.

b) The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.

The building and front yard will be preserved and enhanced. The existing home exterior will be enhanced with new wood sash windows. All of the distinctive materials and front yard landscaping will be retained. The proposed addition/new construction will provide a transition in height within the historic district.

c) Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.

No false historical alterations will be made to the existing structure; a new structure will be constructed to the rear which is a contemporary but compatible design, incorporating architectural elements of surrounding buildings without mimicking them.

d) Changes to a property that have acquired historic significance in their own right shall be retained and preserved.

This finding is inapplicable; no alterations are worthy of historic status.

e) Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

The structure will be restored to contain wooden sash windows and the slope at the front yard will be retained.

f) Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.

The house and front yard will be rehabilitated.

g) Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

A Condition of Approval is attached to address this item.

h) Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

A Condition of Approval is attached to address this item.

i) New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

The addition/new construction does not destroy historic materials or features. The existing rear porch will be removed from the house to accommodate the addition/new construction. Removal at the rear of this porch structure will not impact the overall integrity of the house, especially since it is not visible from the public way. New windows will contain wooden sashes. The new guardrail on the upper front deck above the entry porch will be wood and is compatible with the existing Craftsman architectural style. Spatial relationships will not be destroyed. The district is composed of ten buildings, varying in architectural style, and between two to fourteen levels tall. The new +/- 46 foot tall (in effect a 4-story building) construction appears as a separate building in back of the two-story house. Its contemporary architectural style clearly marks it as an addition to the district of early 20th century revivals. The existing house is currently surrounded by taller buildings on both sides and a partially taller structure to the rear. The proposed new construction provides a transition at the rear between the existing house and the district contributor to the rear. The proposed new construction's height does not impact the district because it is lower (approximately equivalent to four stories) or equal to other district contributors of four to twelve stories and it does not impact the house as much taller existing district structures surround the property.

j) The proposed addition/new construction is compatible with the house with respect to: gable roof form, with dormer and eaves features, horizontal orientation of the proposed addition/new construction based on orientation of gable roof and the window band; scale and massing, as an appropriate height transition to the rear and adjacent side buildings; overall building proportion, as stated above, and proportion of windows/window divisions at the front façade to the existing windows of the house.

New additions and construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired. The rear addition/new construction could be removed, and the demolished house porch replaced. The project will not impact the integrity of the front yard.

Class 15332 In-Fill Development Projects

(a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.

The project is consistent with the General Plan and Planning Code as described in the previous sections of this attachment.

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(b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.

The property measures .12 acres in area.

(c) The project site has no value as habitat for endangered, rare or threatened species.

The property has been developed for approximately one century.

(d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.

Increased effects of density of five new dwelling units in an urbanized area with public transit and services will be negligible.

(e) The site can be adequately served by all required utilities and public services.

The site is already served by utilities.

ATTACHMENT B: CONDITIONS OF APPROVAL

1. Approved Use

Ongoing

- a) The project shall be constructed and operated in accordance with the authorized use as described in the application materials, letter, and the revised plans dated **October 29, 2012 for the application** originally submitted on **November 5, 2012 and resubmitted on October 2, 2014**, and as amended by the following conditions. Any additional uses or facilities other than those approved with this permit, as described in the project description and the approved plans, will require a separate application and approval. Any deviation from the approved drawings, Conditions of Approval or use shall require prior written approval from the Director of City Planning or designee.
- b) This action by the **Zoning Manager** ("this Approval") includes the approvals set forth below. This Approval includes:
 - i. Regular Design Review for alterations and construction including five new dwelling units with additional Design Review findings for the S-7 Zone; CEQA Class 31 and 32 findings; and a Minor Variance for required rear yard to: rehabilitate a two-story duplex, convert it into four units, and construct a rear three-unit four story apartment building with a seven stall parking garage at the rear of the lot.

2. Effective Date, Expiration, Extensions and Extinguishment

Ongoing

Unless a different termination date is prescribed, this Approval shall expire **two calendar years** from the approval date, unless within such period all necessary permits for construction or alteration have been issued, or the authorized activities have commenced in the case of a permit not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this permit, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit for this project may invalidate this Approval if the said extension period has also expired.

3. Scope of This Approval; Major and Minor Changes

Ongoing

The project is approved pursuant to the **Planning Code** only. Minor changes to approved plans may be approved administratively by the Director of City Planning or designee. Major changes to the approved plans shall be reviewed by the Director of City Planning or designee to determine whether such changes require submittal and approval of a revision to the approved project by the approving body or a new, completely independent permit.

4. Conformance with other Requirements

Prior to issuance of a demolition, grading, P-job, or other construction related permit

- a) The project applicant shall comply with all other applicable federal, state, regional and/or local laws/codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City's Building Services Division, the City's Fire Marshal, and the City's Public Works Agency. Compliance with other applicable requirements may require changes to the approved use and/or plans. These changes shall be processed in accordance with the procedures contained in Condition of Approval 3.
- b) The applicant shall submit approved building plans for project-specific needs related to fire protection to the Fire Services Division for review and approval, including, but not limited to automatic extinguishing systems, water supply improvements and hydrants, fire department access, and vegetation management for preventing fires and soil erosion.

5. Conformance to Approved Plans; Modification of Conditions or Revocation

Ongoing

- a) Site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within 60-90 days of approval, unless an earlier date is specified elsewhere.

- b) The City of Oakland reserves the right at any time during construction to require certification by a licensed professional that the as-built project conforms to all applicable zoning requirements, including but not limited to approved maximum heights and minimum setbacks. Failure to construct the project in accordance with approved plans may result in remedial reconstruction, permit revocation, permit modification, stop work, permit suspension or other corrective action.
- c) Violation of any term, **Conditions** or project description relating to the Approvals is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approvals or alter these **Conditions** if it is found that there is violation of any of the **Conditions** or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it, limit in any manner whatsoever the ability of the City to take appropriate enforcement actions. The project applicant shall be responsible for paying fees in accordance with the City's Master Fee Schedule for inspections conducted by the City or a City-designated third-party to investigate alleged violations of the Conditions of Approval.

6. Signed Copy of the Conditions

With submittal of a demolition, grading, and building permit

A copy of the approval letter and **Conditions** shall be signed by the property owner, notarized, and submitted with each set of permit plans to the appropriate City agency for this project.

7. Indemnification

Ongoing

- a) To the maximum extent permitted by law, the applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and its respective agents, officers, and employees (hereafter collectively called City) from any liability, damages, claim, judgment, loss (direct or indirect) action, causes of action, or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul, (1) an approval by the City relating to a development-related application or subdivision or (2) implementation of an approved development-related project. The City may elect, in its sole discretion, to participate in the defense of said Action and the applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.
- b) Within ten (10) calendar days of the filing of any Action as specified in subsection A above, the applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Letter of Agreement shall survive termination, extinguishment or invalidation of the approval. Failure to timely execute the Letter Agreement does not relieve the applicant of any of the obligations contained in this condition or other requirements or conditions of approval that may be imposed by the City.

8. Compliance with Conditions of Approval

Ongoing

The project applicant shall be responsible for compliance with the recommendations in any submitted and approved technical report and all the Conditions of Approval set forth below at its sole cost and expense, and subject to review and approval of the City of Oakland.

9. Severability

Ongoing

Approval of the project would not have been granted but for the applicability and validity of each and every one of the specified conditions, and if one or more of such conditions is found to be invalid by a court of competent jurisdiction this Approval would not have been granted without requiring other valid conditions consistent with achieving the same purpose and intent of such Approval.

10. Job Site Plans

Ongoing throughout demolition, grading, and/or construction

At least one (1) copy of the stamped approved plans, along with the Approval Letter and Conditions of Approval, shall be available for review at the job site at all times.

11. Special Inspector/Inspections, Independent Technical Review, Project Coordination and Management

Prior to issuance of a demolition, grading, and/or construction permit

The project applicant may be required to pay for on-call third-party special inspector(s)/inspections as needed during the times of extensive or specialized plancheck review or construction. The project applicant may also be required to cover the full costs of independent technical review and other types of peer review, monitoring and inspection, including without limitation, third party plan check fees, including inspections of violations of Conditions of Approval. The project applicant shall establish a deposit with the Bureau of Building, as directed by the Building Official, Director of City Planning or designee.

12. Required Landscape Plan for New Construction and Certain Additions to Residential Facilities

Prior to issuance of a building permit

Submittal and approval of a landscape plan for the entire site is required for the establishment of a new residential unit (excluding secondary units of five hundred (500) square feet or less), and for additions to Residential Facilities of over five hundred (500) square feet. The landscape plan and the plant materials installed pursuant to the approved plan shall conform with all provisions of Chapter 17.124 of the Oakland Planning Code, including the following:

- a) Landscape plan shall include a detailed planting schedule showing the proposed location, sizes, quantities, and specific common botanical names of plant species.
- b) Landscape plans for projects involving grading, rear walls on downslope lots requiring conformity with the screening requirements in Section 17.124.040, or vegetation management prescriptions in the S-11 zone, shall show proposed landscape treatments for all graded areas, rear wall treatments, and vegetation management prescriptions.
- c) Landscape plan shall incorporate pest-resistant and drought-tolerant landscaping practices. Within the portions of Oakland northeast of the line formed by State Highway 13 and continued southerly by Interstate 580, south of its intersection with State Highway 13, all plant materials on submitted landscape plans shall be fire-resistant. The City Bureau of Planning / Zoning Division shall maintain lists of plant materials and landscaping practices considered pest-resistant, fire-resistant, and drought-tolerant.
- d) All landscape plans shall show proposed methods of irrigation. The methods shall ensure adequate irrigation of all plant materials for at least one growing season.

13. Landscape Requirements for Street Frontages.

Prior to issuance of a final inspection of the building permit

- a) All areas between a primary Residential Facility and abutting street lines shall be fully landscaped, plus any unpaved areas of abutting rights-of-way of improved streets or alleys, provided, however, on streets without sidewalks, an unplanted strip of land five (5) feet in width shall be provided within the right-of-way along the edge of the pavement or face of curb, whichever is applicable. Existing plant materials may be incorporated into the proposed landscaping if approved by the Director of City Planning.
- b) In addition to the general landscaping requirements set forth in Chapter 17.124, a minimum of one (1) fifteen-gallon tree, or substantially equivalent landscaping consistent with city policy and as approved by the Director of City Planning, shall be provided for every twenty-five (25) feet of street frontage. On streets with sidewalks where the distance from the face of the curb to the outer edge of the sidewalk is at least six and one-half (6 ½) feet, the trees to be provided shall include street trees to the satisfaction of the Director of Parks and Recreation.

14. Assurance of Landscaping Completion.

Prior to issuance of a final inspection of the building permit

The trees, shrubs and landscape materials required by the conditions of approval attached to this project shall be planted before the certificate of occupancy will be issued; acceptable to the City, shall be provided for the planting of the required landscaping. The amount of such shall equal the greater of two thousand five hundred dollars (\$2,500.00) or the estimated cost of the required landscaping, based on a licensed contractor's bid.

15. Construction-Related Air Pollution Controls (Dust and Equipment Emissions)

Ongoing throughout demolition, grading, and/or construction

During construction, the project applicant shall require the construction contractor to implement all of the following applicable measures recommended by the Bay Area Air Quality Management District (BAAQMD):

Water all exposed surfaces of active construction areas at least twice daily (using reclaimed water if possible). Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever possible.

- a) Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).
- b) All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- c) Pave all roadways, driveways, sidewalks, etc. as soon as feasible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used.
- d) Enclose, cover, water twice daily or apply (non-toxic) soil stabilizers to exposed stockpiles (dirt, sand, etc.).
- e) Limit vehicle speeds on unpaved roads to 15 miles per hour.
- f) Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485, of the California Code of Regulations. Clear signage to this effect shall be provided for construction workers at all access points.
- g) All construction equipment shall be maintained and properly tuned in accordance with the manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- h) Post a publicly visible sign that includes the contractor's name and telephone number to contact regarding dust complaints. When contacted, the contractor shall respond and take corrective action within 48 hours. The telephone numbers of contacts at the City and the BAAQMD shall also be visible. This information may be posted on other required on-site signage.

16. Days/Hours of Construction Operation

Ongoing throughout demolition, grading, and/or construction

The project applicant shall require construction contractors to limit standard construction activities as follows:

- a) Construction activities are limited to between 7:00 AM and 7:00 PM Monday through Friday, except that pile driving and/or other extreme noise generating activities greater than 90 dBA shall be limited to between 8:00 a.m. and 4:00 p.m. Monday through Friday.
- b) Any construction activity proposed to occur outside of the standard hours of 7:00 am to 7:00 pm Monday through Friday for special activities (such as concrete pouring which may require more continuous amounts of time) shall be evaluated on a case by case basis, with criteria including the proximity of residential uses and a consideration of resident's preferences for whether the activity is acceptable if the overall duration of construction is shortened and such construction activities shall only be allowed with the prior written authorization of the Bureau of Building.
- c) Construction activity shall not occur on Saturdays, with the following possible exceptions:
 - i. Prior to the building being enclosed, requests for Saturday construction for special activities (such as concrete pouring which may require more continuous amounts of time), shall be evaluated on a case by case basis, with criteria including the proximity of residential uses and a consideration of resident's preferences for whether the activity is acceptable if the overall duration of construction is shortened. Such construction activities shall only be allowed on Saturdays with the prior written authorization of the Bureau of Building.

- ii. After the building is enclosed, requests for Saturday construction activities shall only be allowed on Saturdays with the prior written authorization of the Bureau of Building, and only then within the interior of the building with the doors and windows closed.
- d) No extreme noise generating activities (greater than 90 dBA) shall be allowed on Saturdays, with no exceptions.
- e) No construction activity shall take place on Sundays or Federal holidays.
- f) Construction activities include but are not limited to: truck idling, moving equipment (including trucks, elevators, etc) or materials, deliveries, and construction meetings held on-site in a non-enclosed area.
- g) Applicant shall use temporary power poles instead of generators where feasible.

17. Noise Control

Ongoing throughout demolition, grading, and/or construction

To reduce noise impacts due to construction, the project applicant shall require construction contractors to implement a site-specific noise reduction program, subject to the Bureau of Planning / Zoning Division and the Bureau of Building review and approval, which includes the following measures:

- a) Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible).
- b) Except as provided herein, Impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used, if such jackets are commercially available and this could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever such procedures are available and consistent with construction procedures.
- c) Stationary noise sources shall be located as far from adjacent receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or use other measures as determined by the City to provide equivalent noise reduction.
- d) The noisiest phases of construction shall be limited to less than 10 days at a time. Exceptions may be allowed if the City determines an extension is necessary and all available noise reduction controls are implemented.

18. Noise Complaint Procedures

Ongoing throughout demolition, grading, and/or construction

Prior to the issuance of each building permit, along with the submission of construction documents, the project applicant shall submit to the Bureau of Building a list of measures to respond to and track complaints pertaining to construction noise. These measures shall include:

- a) A procedure and phone numbers for notifying the Bureau of Building staff and Oakland Police Department; (during regular construction hours and off-hours);
- b) A sign posted on-site pertaining with permitted construction days and hours and complaint procedures and who to notify in the event of a problem. The sign shall also include a listing of both the City and construction contractor's telephone numbers (during regular construction hours and off-hours);
- c) The designation of an on-site construction complaint and enforcement manager for the project;
- d) Notification of neighbors and occupants within 300 feet of the project construction area at least 30 days in advance of extreme noise generating activities about the estimated duration of the activity; and

- e) A preconstruction meeting shall be held with the job inspectors and the general contractor/on-site project manager to confirm that noise measures and practices (including construction hours, neighborhood notification, posted signs, etc.) are completed.

19. Interior Noise

Prior to issuance of a building permit and Certificate of Occupancy

If necessary to comply with the interior noise requirements of the City of Oakland's General Plan Noise Element and achieve an acceptable interior noise level, noise reduction in the form of sound-rated assemblies (i.e., windows, exterior doors, and walls), and/or other appropriate features/measures, shall be incorporated into project building design, based upon recommendations of a qualified acoustical engineer and submitted to the Bureau of Building for review and approval prior to issuance of building permit. Final recommendations for sound-rated assemblies, and/or other appropriate features/measures, will depend on the specific building designs and layout of buildings on the site and shall be determined during the design phases. Written confirmation by the acoustical consultant, HVAC or HERS specialist, shall be submitted for City review and approval, prior to Certificate of Occupancy (or equivalent) that:

- (a) Quality control was exercised during construction to ensure all air-gaps and penetrations of the building shell are controlled and sealed; and
- (b) Demonstrates compliance with interior noise standards based upon performance testing of a sample unit.
- © Inclusion of a Statement of Disclosure Notice in the CC&R's on the lease or title to all new tenants or owners of the units acknowledging the noise generating activity and the single event noise occurrences. Potential features/measures to reduce interior noise could include, but are not limited to, the following:
 - i. Installation of an alternative form of ventilation in all units identified in the acoustical analysis as not being able to meet the interior noise requirements due to adjacency to a noise generating activity, filtration of ambient make-up air in each unit and analysis of ventilation noise if ventilation is included in the recommendations by the acoustical analysis.
 - ii. Prohibition of Z-duct construction.

20. Operational Noise-General

Ongoing.

Noise levels from the activity, property, or any mechanical equipment on site shall comply with the performance standards of Section 17.120 of the Oakland Planning Code and Section 8.18 of the Oakland Municipal Code. If noise levels exceed these standards, the activity causing the noise shall be abated until appropriate noise reduction measures have been installed and compliance verified by the Bureau of Planning / Zoning Division and Bureau of Building.

21. Construction Traffic and Parking

Prior to the issuance of a demolition, grading or building permit

The project applicant and construction contractor shall meet with appropriate City of Oakland agencies to determine traffic management strategies to reduce, to the maximum extent feasible, traffic congestion and the effects of parking demand by construction workers during construction of this project and other nearby projects that could be simultaneously under construction. The project applicant shall develop a construction management plan for review and approval by the Bureau of Planning / Zoning Division, the Bureau of Building, and the Transportation Services Division. The plan shall include at least the following items and requirements:

- a) A set of comprehensive traffic control measures, including scheduling of major truck trips and deliveries to avoid peak traffic hours, detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes.
- b) Notification procedures for adjacent property owners and public safety personnel regarding when major deliveries, detours, and lane closures will occur.
- c) Location of construction staging areas for materials, equipment, and vehicles at an approved location.
- d) A process for responding to, and tracking, complaints pertaining to construction activity, including identification of an onsite complaint manager. The manager shall determine the cause of the complaints and shall take prompt action to correct the problem. The Bureau of Planning / Zoning Division shall be informed who the Manager is prior to the issuance of the first permit issued by Bureau of Building.
- e) Provision for accommodation of pedestrian flow.

22. Erosion and Sedimentation Control

Ongoing throughout demolition grading, and/or construction activities

The project applicant shall implement Best Management Practices (BMPs) to reduce erosion, sedimentation, and water quality impacts during construction to the maximum extent practicable. Plans demonstrating the Best Management Practices shall be submitted for review and approval by the Bureau of Planning / Zoning Division and the Bureau of Building. At a minimum, the project applicant shall provide filter materials deemed acceptable to the City at nearby catch basins to prevent any debris and dirt from flowing into the City's storm drain system and creeks.

23. Hazards Best Management Practices

Prior to commencement of demolition, grading, or construction

The project applicant and construction contractor shall ensure that construction of Best Management Practices (BMPs) are implemented as part of construction to minimize the potential negative effects to groundwater and soils. These shall include the following:

- a) Follow manufacture's recommendations on use, storage, and disposal of chemical products used in construction;
- b) Avoid overtopping construction equipment fuel gas tanks;
- c) During routine maintenance of construction equipment, properly contain and remove grease and oils;
- d) Properly dispose of discarded containers of fuels and other chemicals.
- e) Ensure that construction would not have a significant impact on the environment or pose a substantial health risk to construction workers and the occupants of the proposed development. Soil sampling and chemical analyses of samples shall be performed to determine the extent of potential contamination beneath all UST's, elevator shafts, clarifiers, and subsurface hydraulic lifts when on-site demolition, or construction activities would potentially affect a particular development or building.
- f) If soil, groundwater or other environmental medium with suspected contamination is encountered unexpectedly during construction activities (e.g., identified by odor or visual staining, or if any underground storage tanks, abandoned drums or other hazardous materials or wastes are encountered), the applicant shall cease work in the vicinity of the suspect material, the area shall be secured as necessary, and the applicant shall take all appropriate measures to protect human health and the environment. Appropriate measures shall include notification of regulatory agency(ies) and implementation of the actions described in the City's Standard Conditions of Approval, as necessary, to identify the nature and extent of contamination. Work shall not resume in the area(s) affected until the measures have been implemented under the oversight of the City or regulatory agency, as appropriate.

24. Waste Reduction and Recycling

The project applicant will submit a Construction & Demolition Waste Reduction and Recycling Plan (WRRP) and an Operational Diversion Plan (ODP) for review and approval by the Public Works Agency.

Prior to issuance of demolition, grading, or building permit

Chapter 15.34 of the Oakland Municipal Code outlines requirements for reducing waste and optimizing construction and demolition (C&D) recycling. Affected projects include all new construction, renovations/alterations/modifications with construction values of \$50,000 or more (except R-3), and all demolition (including soft demo). The WRRP must specify the methods by which the development will divert C&D debris waste generated by the proposed project from landfill disposal in accordance with current City requirements. Current standards, FAQs, and forms are available at www.oaklandpw.com/Page39.aspx or in the Green Building Resource Center. After approval of the plan, the project applicant shall implement the plan.

Ongoing

The ODP will identify how the project complies with the Recycling Space Allocation Ordinance, (Chapter 17.118 of the Oakland Municipal Code), including capacity calculations, and specify the methods by which the development will meet the current diversion of solid waste generated by operation of the proposed project from landfill disposal in accordance with current City requirements. The proposed program shall be implemented and maintained for the duration of the proposed activity or facility. Changes to the plan may be re-submitted to the Environmental Services Division of the Public Works Agency for review and approval. Any incentive programs shall remain fully operational as long as residents and businesses exist at the project site.

25. Lighting Plan

Prior to the issuance of an electrical or building permit

The proposed lighting fixtures shall be adequately shielded to a point below the light bulb and reflector and that prevent unnecessary glare onto adjacent properties. Plans shall be submitted to the Bureau of Planning / Zoning Division and the Electrical Services Division of the Public Works Agency for review and approval. All lighting shall be architecturally integrated into the site.

26. Vibrations Adjacent Historic Structures

Prior to issuance of a demolition, grading or building permit

The project applicant shall retain a structural engineer or other appropriate professional to determine threshold levels of vibration and cracking that could damage the **Bellevue-Staten Apartments at 492 Staten Avenue** (Historic Structure) and design means and methods of construction that shall be utilized to not exceed the thresholds.

27. Stormwater and Sewer

Prior to completing the final design for the project's sewer service

Confirmation of the capacity of the City's surrounding stormwater and sanitary sewer system and state of repair shall be completed by a qualified civil engineer with funding from the project applicant. The project applicant shall be responsible for the necessary stormwater and sanitary sewer infrastructure improvements to accommodate the proposed project. In addition, the applicant shall be required to pay additional fees to improve sanitary sewer infrastructure if required by the Sewer and Stormwater Division. Improvements to the existing sanitary sewer collection system shall specifically include, but are not limited to, mechanisms to control or minimize increases in infiltration/inflow to offset sanitary sewer increases associated with the proposed project. To the maximum extent practicable, the applicant will be required to implement Best Management Practices to reduce the peak stormwater runoff from the project site. Additionally, the project applicant shall be responsible for payment of the required installation or hook-up fees to the affected service providers.

28. Compliance with the Green Building Ordinance, OMC Chapter 18.02

Prior to issuance of a demolition, grading, or building permit

The applicant shall comply with the requirements of the California Green Building Standards (CALGreen) mandatory measures and the applicable requirements of the Green Building Ordinance, OMC Chapter 18.02.

- a) The following information shall be submitted to the Building Services Division for review and approval with the application for a building permit:
 - i. Documentation showing compliance with Title 24 of the 2008 California Building Energy Efficiency Standards.
 - ii. Completed copy of the final green building checklist approved during the review of the Planning and Zoning permit.
 - iii. Copy of the Unreasonable Hardship Exemption, if granted, during the review of the Planning and Zoning permit.
 - iv. Permit plans that show, in general notes, detailed design drawings, and specifications as necessary, compliance with the items listed in subsection (b) below.
 - v. Copy of the signed statement by the Green Building Certifier approved during the review of the Planning and Zoning permit that the project complied with the requirements of the Green Building Ordinance.
 - vi. Signed statement by the Green Building Certifier that the project still complies with the requirements of the Green Building Ordinance, unless an Unreasonable Hardship Exemption was granted during the review of the Planning and Zoning permit.
 - vii. Other documentation as deemed necessary by the City to demonstrate compliance with the Green Building Ordinance.
- b) The set of plans in subsection (a) shall demonstrate compliance with the following:
 - i. CALGreen mandatory measures.

- ii. All pre-requisites per the **GreenPoint Rated** checklist approved during the review of the Planning and Zoning permit, or, if applicable, all the green building measures approved as part of the Unreasonable Hardship Exemption granted during the review of the Planning and Zoning permit.
- iii. **Minimum 23 points (3 Community; 6 IAQ/Health; 2 Resources; 4 Water)** per the appropriate checklist approved during the Planning entitlement process.
- iv. All green building points identified on the checklist approved during review of the Planning and Zoning permit, unless a Request for Revision Plan-check application is submitted and approved by the Planning and Zoning Division that shows the previously approved points that will be eliminated or substituted.
- v. The required green building point minimums in the appropriate credit categories.

During construction

The applicant shall comply with the applicable requirements CALGreen and the Green Building Ordinance, Chapter 18.02.

- a) The following information shall be submitted to the Building Inspections Division of the Bureau of Building for review and approval:
 - i. Completed copies of the green building checklists approved during the review of the Planning and Zoning permit and during the review of the building permit.
 - ii. Signed statement(s) by the Green Building Certifier during all relevant phases of construction that the project complies with the requirements of the Green Building Ordinance.
 - iii. Other documentation as deemed necessary by the City to demonstrate compliance with the Green Building Ordinance.

After construction, as specified below

Within sixty (60) days of the final inspection of the building permit for the project, the Green Building Certifier shall submit the appropriate documentation to **Build It Green** and attain the minimum certification/point level identified in subsection (a) above. Within one year of the final inspection of the building permit for the project, the applicant shall submit to the Planning and Zoning Division the Certificate from the organization listed above demonstrating certification and compliance with the minimum point/certification level noted above.

29. Compliance with the Green Building Ordinance, OMC Chapter 18.02, for Building and Landscape Projects Using the StopWaste.Org Small Commercial or Bay Friendly Basic Landscape Checklist

Prior to issuance of a building permit

The applicant shall comply with the requirements of the California Green Building Standards (CALGreen) mandatory measures and the applicable requirements of the Green Building Ordinance, (OMC Chapter 18.02.) for projects using the StopWaste.Org Small Commercial or Bay Friendly Basic Landscape Checklist.

- a) The following information shall be submitted to the Bureau of Building review and approval with application for a Building permit:
 - i. Documentation showing compliance with the 2008 Title 24, California Building Energy Efficiency Standards.
 - ii. Completed copy of the green building checklist approved during the review of a Planning and Zoning permit.
 - iii. Permit plans that show in general notes, detailed design drawings and specifications as necessary compliance with the items listed in subsection (b) below.
 - iv. Other documentation to prove compliance.
- b) The set of plans in subsection (a) shall demonstrate compliance with the following:
 - i. CALGreen mandatory measures.
 - ii. All applicable green building measures identified on the StopWaste.Org checklist approved during the review of a Planning and Zoning permit, or submittal of a Request for Revision Plan-check application that shows the previously approved points that will be eliminated or substituted.

During construction

The applicant shall comply with the applicable requirements of CALGreen and Green Building Ordinance, Chapter 18.02 for projects using the StopWaste.Org Small Commercial or Bay Friendly Basic Landscape Checklist.

- a) The following information shall be submitted to the Building Inspections Division for review and approval:
 - i. Completed copy of the green building checklists approved during review of the Planning and Zoning permit and during the review of the Building permit.
 - ii. Other documentation as deemed necessary by the City to demonstrate compliance with the Green Building Ordinance.

PROJECT-SPECIFIC CONDITIONS

30. Windows, Eaves and Door Details

Prior to issuance of building permit.

The applicant shall submit to the Bureau of Planning / Zoning Division for review and approval, a window, eaves and door schedule, including cross-sections and elevations, and final architectural details of the structure. Details shall show wood or wood-like (such as aluminum clad) windows that have a minimum two inch recess from the surrounding exterior walls, have wood-like sash dimensions, and contain exterior trim with minimum depth of 2-inches from the surrounding exterior walls. Each window shall be single or double vertically hung.

31. Exterior Materials Details

Prior to issuance of building permit

The applicant shall submit for review and approval of the Bureau of Planning / Zoning Division, plans that show the details of the exterior of each building. These details shall include the labeling of all the materials and treatments proposed for the exterior of each building. All materials and treatments shall be of high quality that provides the building with significant visual interest. All stucco shall be smooth coat and applied wet at the site. All material at ground level shall be made of durable material that can be maintained in an urban environment.

32. Landmarks Preservation Advisory Board conditions of approval

Prior to submitting for a building permit

The following conditions of approval required by the Landmarks Board on January 14, 2013 shall be incorporated into plans, submitted, or and required as applicable:

a. Materials and Color Samples

Materials and color samples including fiber cement panels shall be submitted for review and approval by Historic Preservation staff prior to submitting for a Building Permit and shall be reviewed by staff in the field.

b. Windows

All existing aluminum sash windows shall be replaced with wooden sash windows.

c. Panel Rivets

Proposed panel rivets should be the same color as the panel, not metal.

d. Archaeological Resources

Ongoing throughout demolition, grading, and/or construction

i) Pursuant to CEQA Guidelines section 15064.5 (f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore, in the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist or paleontologist to assess the significance of the find. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified archaeologist would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Oakland. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and a report prepared by the qualified archaeologist according to current professional standards.

ii) In considering any suggested measure proposed by the consulting archaeologist in order to mitigate impacts to historical resources or unique archaeological resources, the project applicant shall determine whether avoidance is necessary and feasible in light of factors such as the nature of the find, project design, costs, and other considerations. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while measure for historical resources or unique archaeological resources is carried out.

iii) Should an archaeological artifact or feature be discovered on-site during project construction, all activities within a 50-foot radius of the find would be halted until the findings can be fully investigated by a qualified archaeologist to evaluate the find and assess the significance of the find according to the CEQA definition of a historical or unique archaeological resource. If the deposit is determined to be significant, the project applicant and the qualified archaeologist shall meet to determine the appropriate avoidance measures or other appropriate measure, subject to approval by the City of Oakland, which shall assure implementation of appropriate measure measures recommended by the archaeologist. Should archaeologically-significant materials be recovered, the qualified archaeologist shall recommend appropriate analysis and treatment, and shall prepare a report on the findings for submittal to the Northwest Information Center.

e. Human Remains

Ongoing throughout demolition, grading, and/or construction

In the event that human skeletal remains are uncovered at the project site during construction or ground-breaking activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.

f. Paleontological Resources

Ongoing throughout demolition, grading, and/or construction

In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards (SVP 1995,1996)). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.

g. Chemical or Physical Treatments

Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

Case no. DV12218
491 Bellevue Avenue

City of Oakland
Bureau of Planning / Zoning Division
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612

NOTICE OF EXEMPTION

TO: Alameda County Clerk
1106 Madison Street
Oakland, CA 94612

Project Title: Case No. DV12218/T1300007

Project Applicant: Mr. Ross Levy

Project Location: 491 Bellevue Av (APN: 010 -0765-004-03)

Project Description: To convert a two-unit apartment building into a four-unit building and construct a new three-unit building at the rear of the property.

Exempt Status:

Statutory Exemptions

- ☐ Ministerial {Sec.15268}
- ☐ Feasibility/Planning Study {Sec.15262}
- ☐ Emergency Project {Sec.15269}
- ☐ Other: {Sec. _____}

Categorical Exemptions

- ☒ Existing Facilities {Sec.15301}
- ☐ Replacement or Reconstruction {Sec.15302}
- ☒ Small Structures {Sec.15303}
- ☒ Minor Alterations in Land Use Limitations {Sec.15305}
- ☒ Historical Resource Restoration/Rehabilitation {Sec.15331}
- ☒ In-fill Development {Sec. 15332}

Other

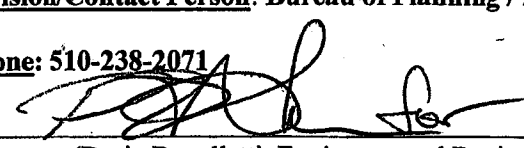
- ☒ Projects consistent with a community plan, general plan or zoning {Sec. 15183(f)}

Reasons why project is exempt: To convert a two-unit apartment building into a four-unit building and construct a new three-unit building at the rear of the property located in an urbanized apartment district area will not have a significant effect on the environment.

Lead Agency: City of Oakland, 250 Frank H. Ogawa Plaza, Suite 2114, Oakland, CA 94612

Division/Contact Person: Bureau of Planning / Zoning Division: Aubrey Rose AICP, Planner II

Phone: 510-238-2071


Signature (Darin Ranalletti, Environmental Review Officer)

1/2/15
Date:

Pursuant to Section 711.4(d)(1) of the Fish and Game Code, statutory and categorical exemptions are also exempt from Department of Fish and Game filing fees.

***ENVIRONMENTAL DECLARATION**
(CALIF. FISH AND GAME CODE SEC. 711.4)

: FOR COURT USE ONLY

NAME AND ADDRESS OF APPLICANT OR LEAD AGENCY

LEAD AGENCY: CITY OF OAKLAND
Bureau of Planning / Zoning Division
250 Frank H. Ogawa Plaza
Oakland, CA 94612

APPLICANTS: Mr. Ross Levy
1286 Sanchez St
San Francisco, CA 94114

: FILING NO.

CLASSIFICATION OF ENVIRONMENTAL DOCUMENT: Check the box(es) that applies.

CLERKS
USE ONLY

1. **NOTICE OF EXEMPTION**

☒ A - STATUTORILY OR CATEGORICALLY EXEMPT
\$50.00 (Fifty Dollars) - CLERK'S FEE

PLU 117

☐ B - FEE EXEMPTION - NO IMPACT DETERMINATION ISSUED BY F&G
\$50.00 (Fifty Dollars) - CLERK'S FEE

PLU 117

2. **NOTICE OF DETERMINATION**

☐ A - NEGATIVE DECLARATION
\$2,044.00 (Two Thousand Forty Four Dollars) - STATE FILING FEE
\$50.00 (Fifty Dollars) - CLERK'S FEE

PLU 116

☐ B - MITIGATED NEGATIVE DECLARATION
\$2,044.00 (Two Thousand Forty Four Dollars) - STATE FILING FEE
\$50.00 (Fifty Dollars) - CLERK'S FEE

PLU 116

☐ C - ENVIRONMENTAL IMPACT REPORT

PLU 115

\$2,839.25 (Two Thousand Eight Hundred Thirty Nine Dollars and Twenty Five Cents) - STATE FILING FEE

\$50.00 (Fifty Dollars) - CLERK'S FEE

3. ☐ **OTHER** (Specify) Notice of Finding of No Significant Impact
\$50.00 (Fifty Dollars) - CLERK'S FEE

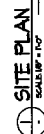
PLU 117

***THIS FORM MUST BE COMPLETED AND SUBMITTED WITH ALL ENVIRONMENTAL DOCUMENTS FILED WITH THE ALAMEDA COUNTY CLERK'S OFFICE.**









FOUR COPIES OF ALL NECESSARY DOCUMENTATION ARE REQUIRED FOR FILING PURPOSES.

APPLICABLE FEES MUST BE PAID AT THE TIME OF FILING AN ENVIRONMENTAL DOCUMENT WITH THE ALAMEDA COUNTY CLERK'S OFFICE.

MAKE CHECK PAYABLE TO: ALAMEDA COUNTY CLERK



LEGEND

	SECTOR REFERENCE SHEET NUMBER
	DEVAL REFERENCE SHEET NUMBER
	DOOR SYMBOL
	GLAZING SYMBOL
	REVISION
	EXISTING WALL TO REMAIN
	EXISTING WALL TO BE REMOVED
	NEW WALL

[illegible]

A0.2

Sheet

448 BELLEVUE

Drawn

Scale

Date

APN 010-0765-004-03

491-493 Bellevue Ave

Oakland, CA 94612

APN 010-0765-004-03

491-493 Bellevue Ave

Oakland, CA 94612

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491-493 Bellevue Ave

Oakland, CA 94612

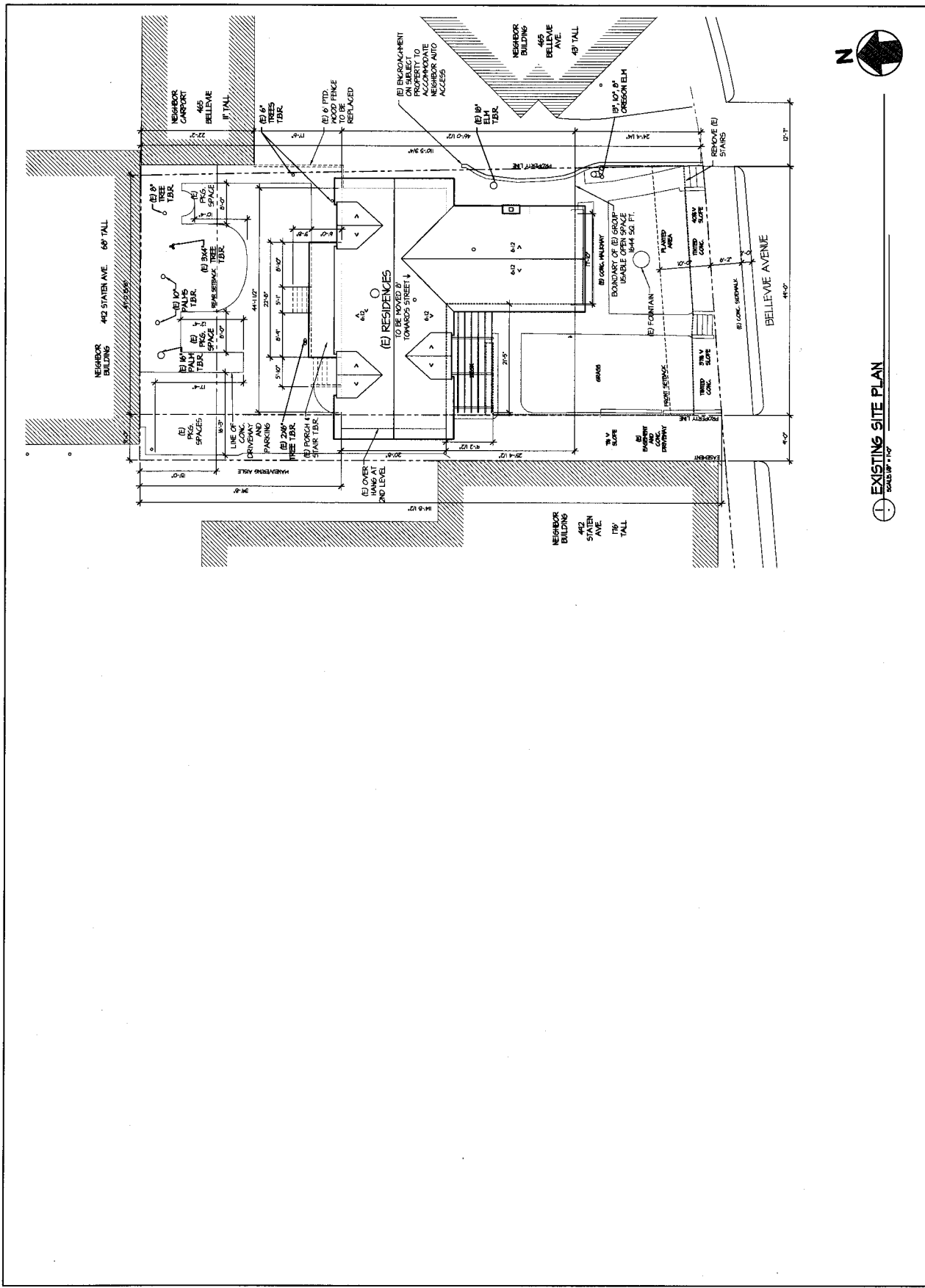
APN 010-0765-004-03

491-493 Bellevue Ave

Oakland, CA 94612



EXISTING SITE PLAN
SCALE: 1/8" = 1'-0"



ART & ARCHITECTURE INC.
WWW.LAVY.B.B.COM
1288 SANCHEZ ST SAN FRANCISCO CA 94116
415.961.7330
415.961.1710

REVISION	BY	DATE
1	HA	05.05.2020

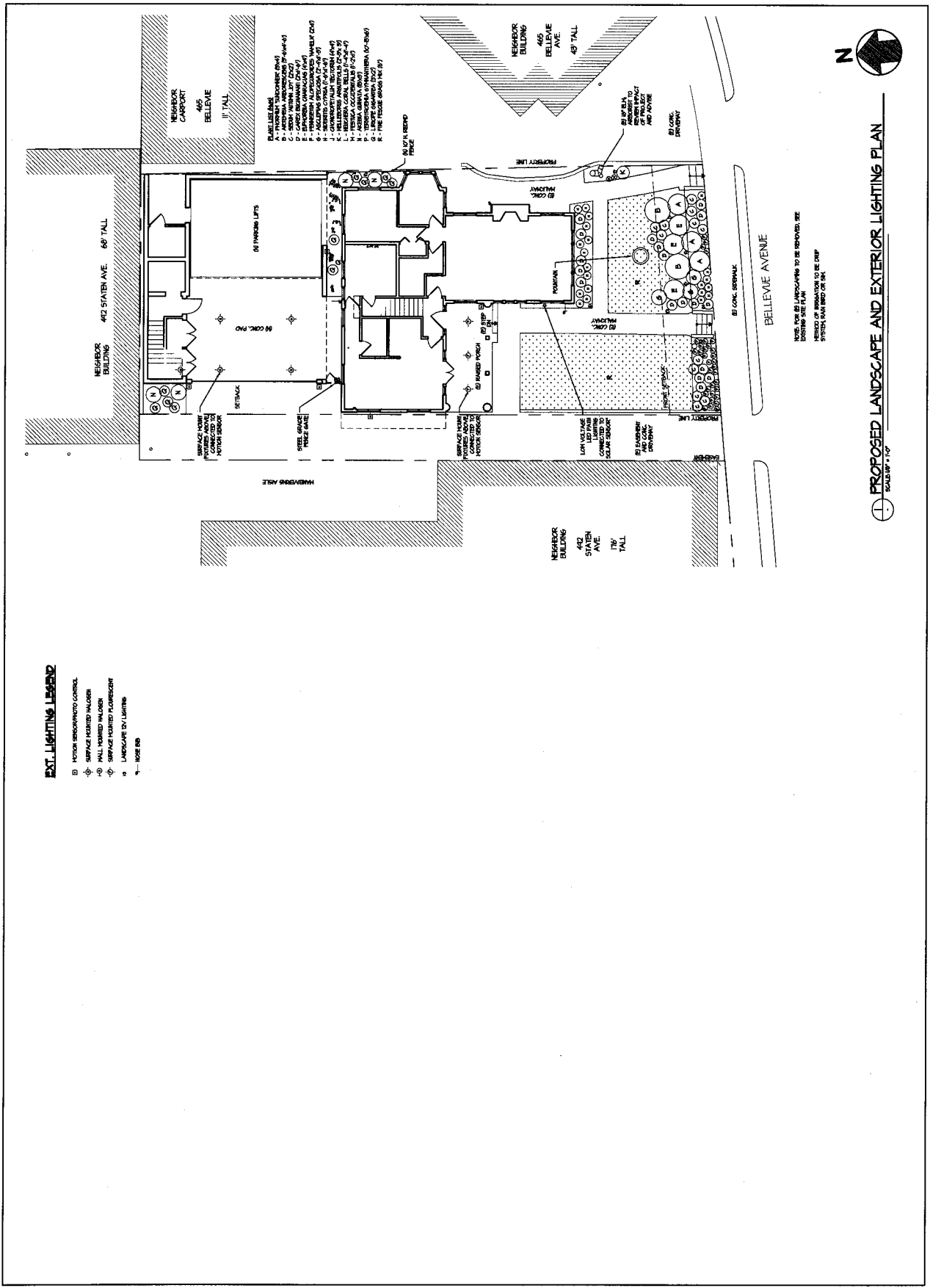
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 WWW.LEVYB.A.COM
 ART & ARCHITECTURE INC.



491-493 Bellevue Ave
 Oakland, CA 94612
 APN 010-0765-004-03

Description	LANDSCAPE & EXTERIOR LIGHTING PLAN
Date	05.05.2020
Scale	AS NOTED
Drawn	HA
Job	BELLEVUE
Sheet	A0.3

A0.3



- EXT. LIGHTING LEGEND**
- NOTION SIGNIFICANT CORREL.
 - SURFACE MOUNTED HALOGEN
 - HALL MOUNTED HALOGEN
 - SURFACE MOUNTED FLUORESCENT
 - LANDSCAPE EXTERIOR LIGHTING

PROPOSED LANDSCAPE AND EXTERIOR LIGHTING PLAN

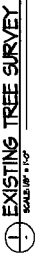


NOTES: SEE ALL LANDSCAPING TO BE REMOVED. SEE
 EXISTING SITE PLAN.
 METHOD OF IRRIGATION TO BE DETERMINED.
 SYSTEM SHALL BE DETERMINED OR AS SHOWN.

BELLEVUE AVENUE

NEIGHBOR BUILDING
 442 STATE AVE
 17' TALL

NEIGHBOR BUILDING
 445 BELLEVUE AVE
 43' TALL



SURVEY PREPARED BY:
ROSS LEVY, AIA
4/5/64-7320

REVISION	BY	DATE
1	HA	05/03/2010
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10	HA	

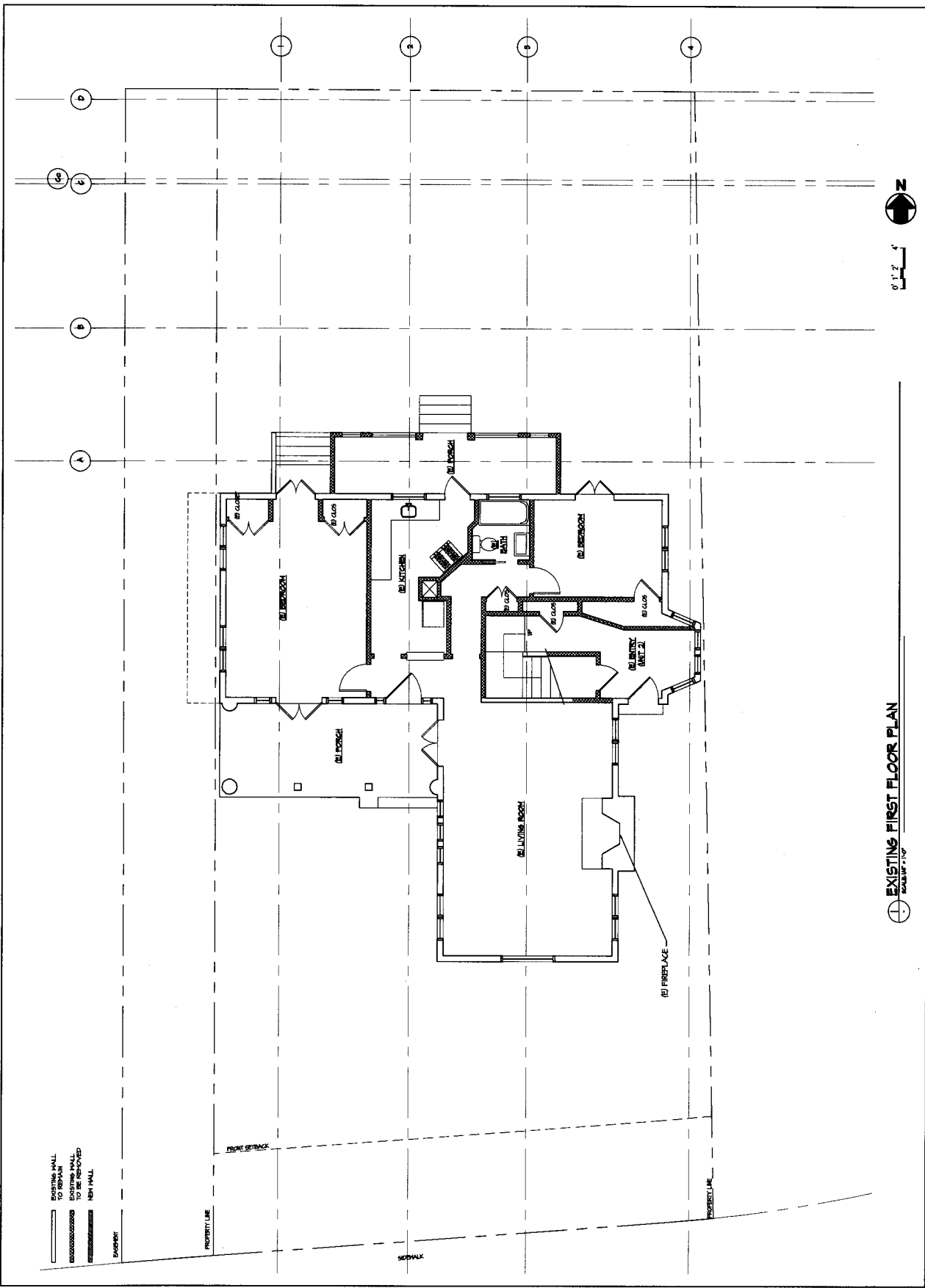
ART & ARCHITECTURE INC.
 WWW.LEVY.AA.COM
 1248 SANCHEZ ST SAN FRANCISCO CA 94110
 415.861.7300
 415.861.7310



491-493 Bellevue Ave
 Oakland, CA 94612
 APN 010-0765-004-03

Description	Bellevue Place
Date	10/20/2002
Scale	AS NOTED
Drawn	HA
Job	BELLEVUE
Sheet	

A1.1



DATE	06.05.2016	BY	W
REVISION			

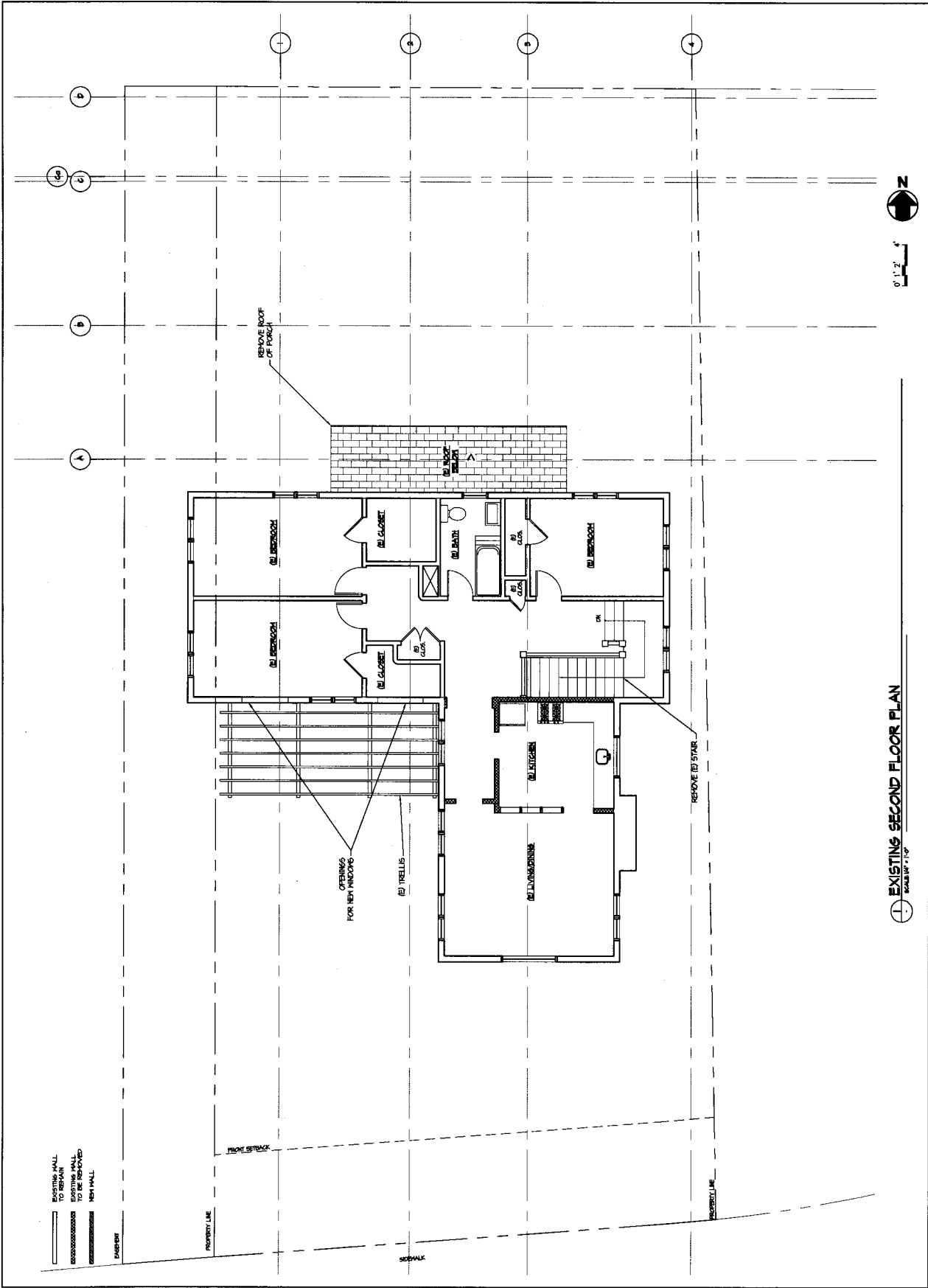
ART & ARCHITECTURE INC.
 WWW.ARTAARCHITECTURE.COM
 1228 SANCHEZ ST SAN FRANCISCO, CA 94116
 415.841.7320
 415.841.7320




APN 010-0765-004-03
 491-493 Bellevue Ave
 Oakland, CA 94612

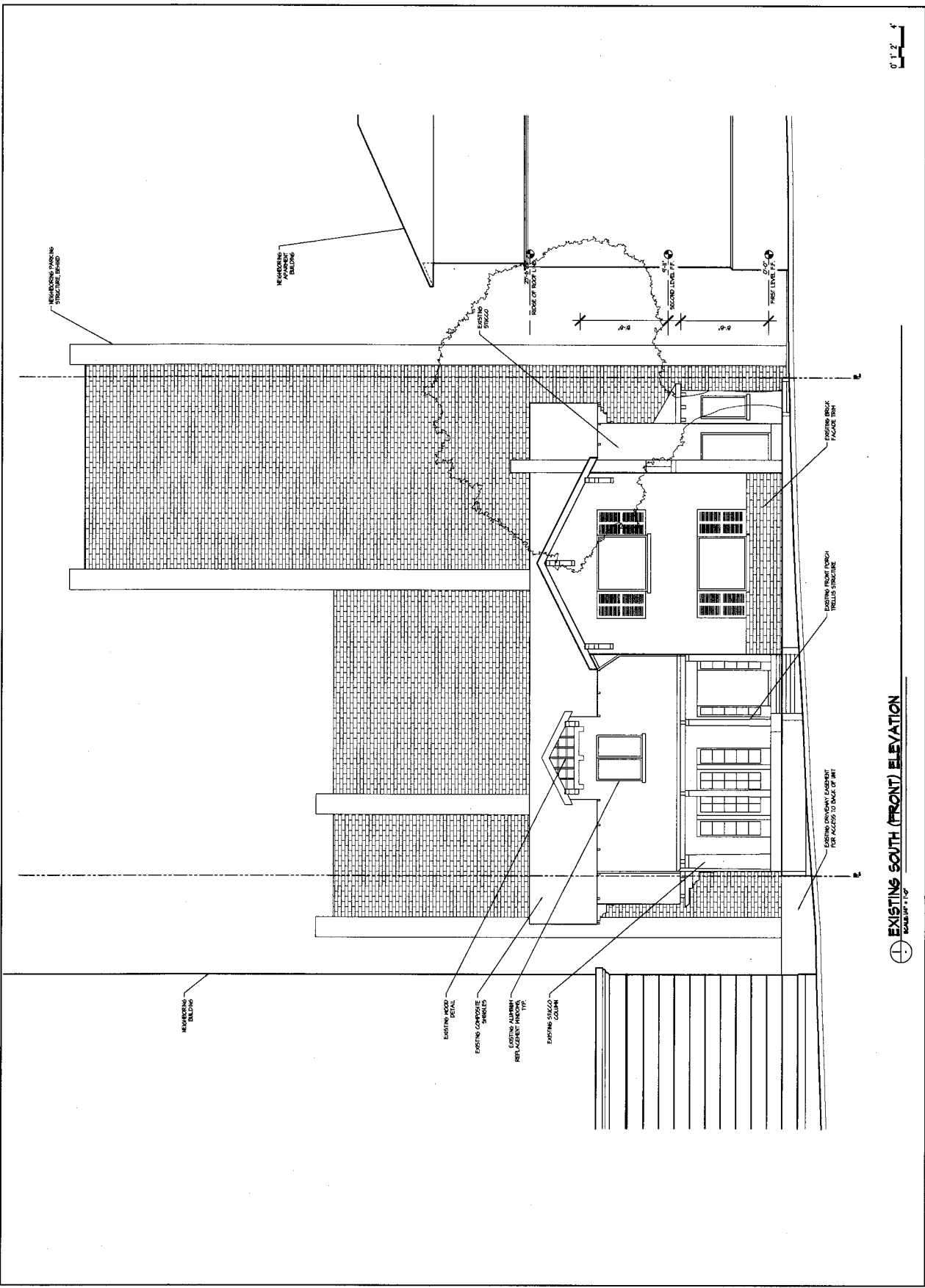
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Drawn	W
Scale	AS NOTED
Date	06/05/2016
Sheet	1 of 1
Job	491-493
Client	DELVE

A1.2



Description	Date:	Soles:	AS NOTED
EXPENSE ELEVATIONS	10.24.2012		

HA	SIZE 90/90	
AS	SHOULDER	



0' 1" 2" 4"

1. EXISTING NORTH ELEVATION
SCALE: 1/8" = 1'-0"

A1.6

Sheet

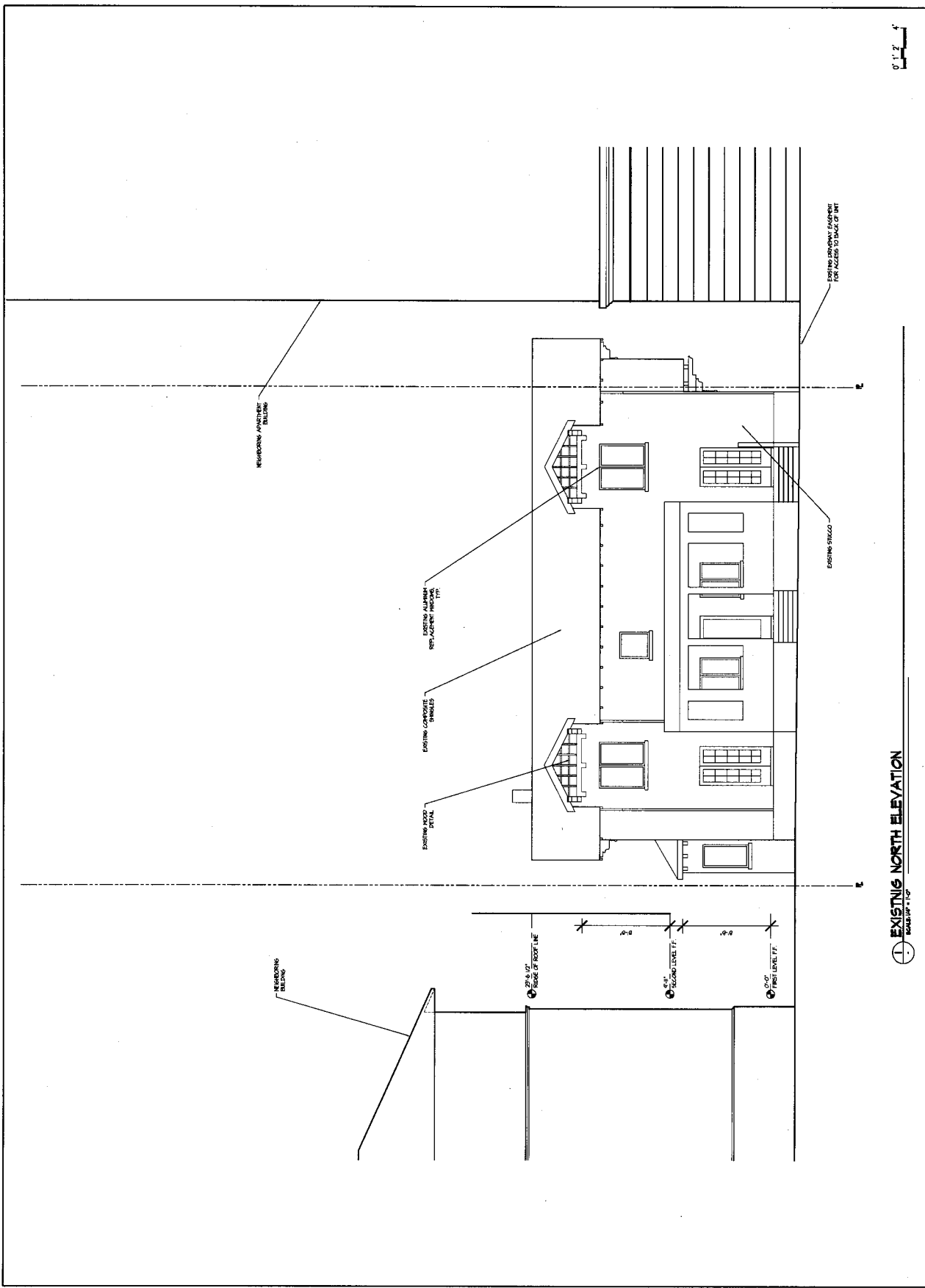
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Project	491-493 Bellevue Ave
Location	Oakland, CA 94612
Scale	AS NOTED
Date	10/24/2002
Drawn	MA
Job	BELLEVUE

APN 010-0765-004-03
491-493 Bellevue Ave
Oakland, CA 94612



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1245 SANCHEZ ST. SAN FRANCISCO, CA 94116
WWW.LEVY.B.B.COM
415.961.7320
F. 415.961.1710

REVISIONS	BY	DATE
1	MA	05/09/2003



APN	010-0765-004-03
DATE	02/01/2020
BY	HA
REVISION	
NO.	
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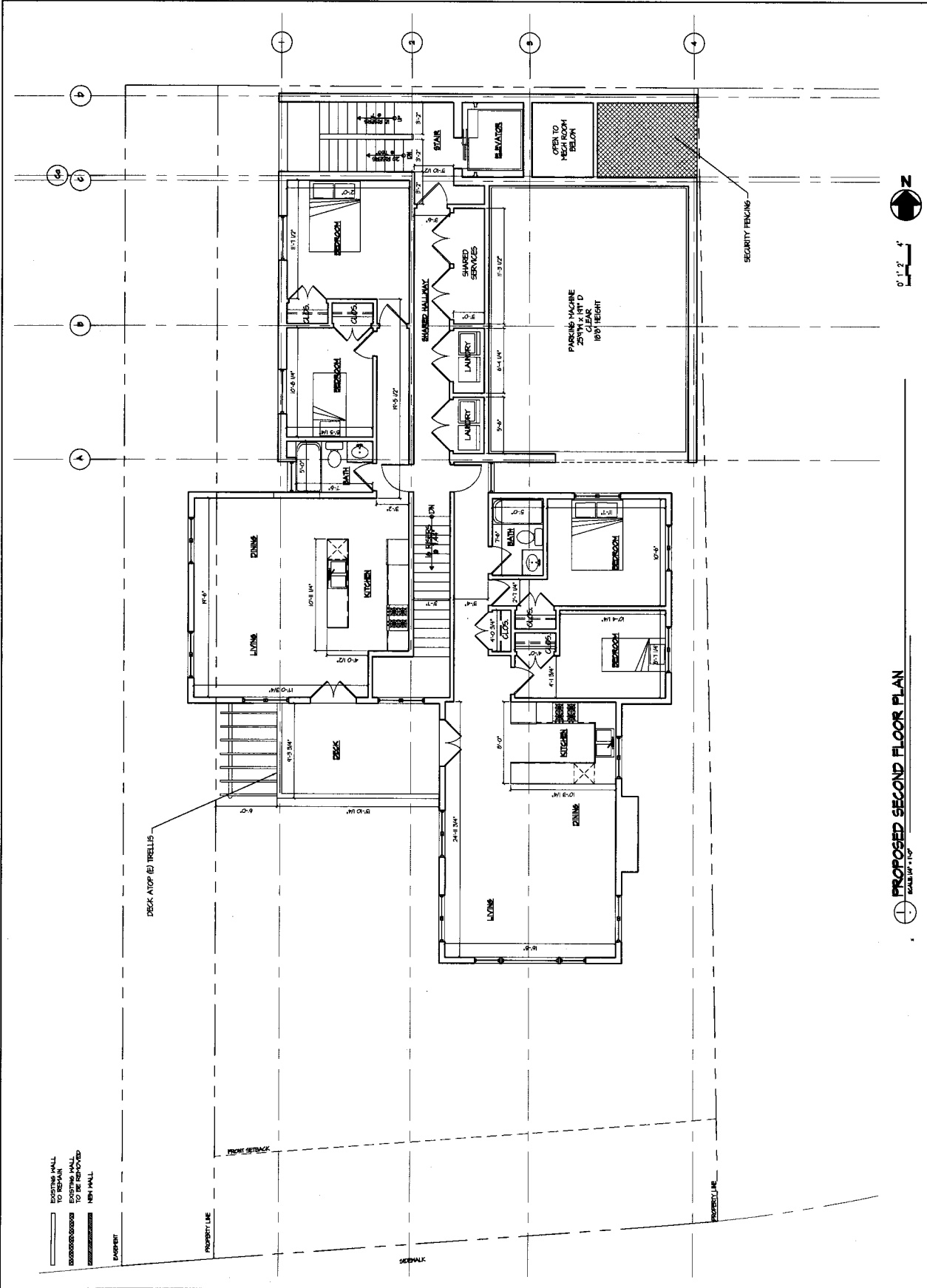
ART & ARCHITECTURE INC.
 1288 SANCHEZ ST SAN FRANCISCO, CA 94116
 WWW.LEVYB.B.COM
 415.441.7320
 415.441.7320



491-493 Bellevue Ave
 Oakland, CA 94612
 APN 010-0765-004-03

Description	PROPOSED FLOOR PLAN
Date	02/01/2020
Scale	AS NOTED
Drawn	HA
Job	RENAME
Sheet	

A2.2



REVISIONS	BY	DATE	HA
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3	AL	04/03/2010	HA
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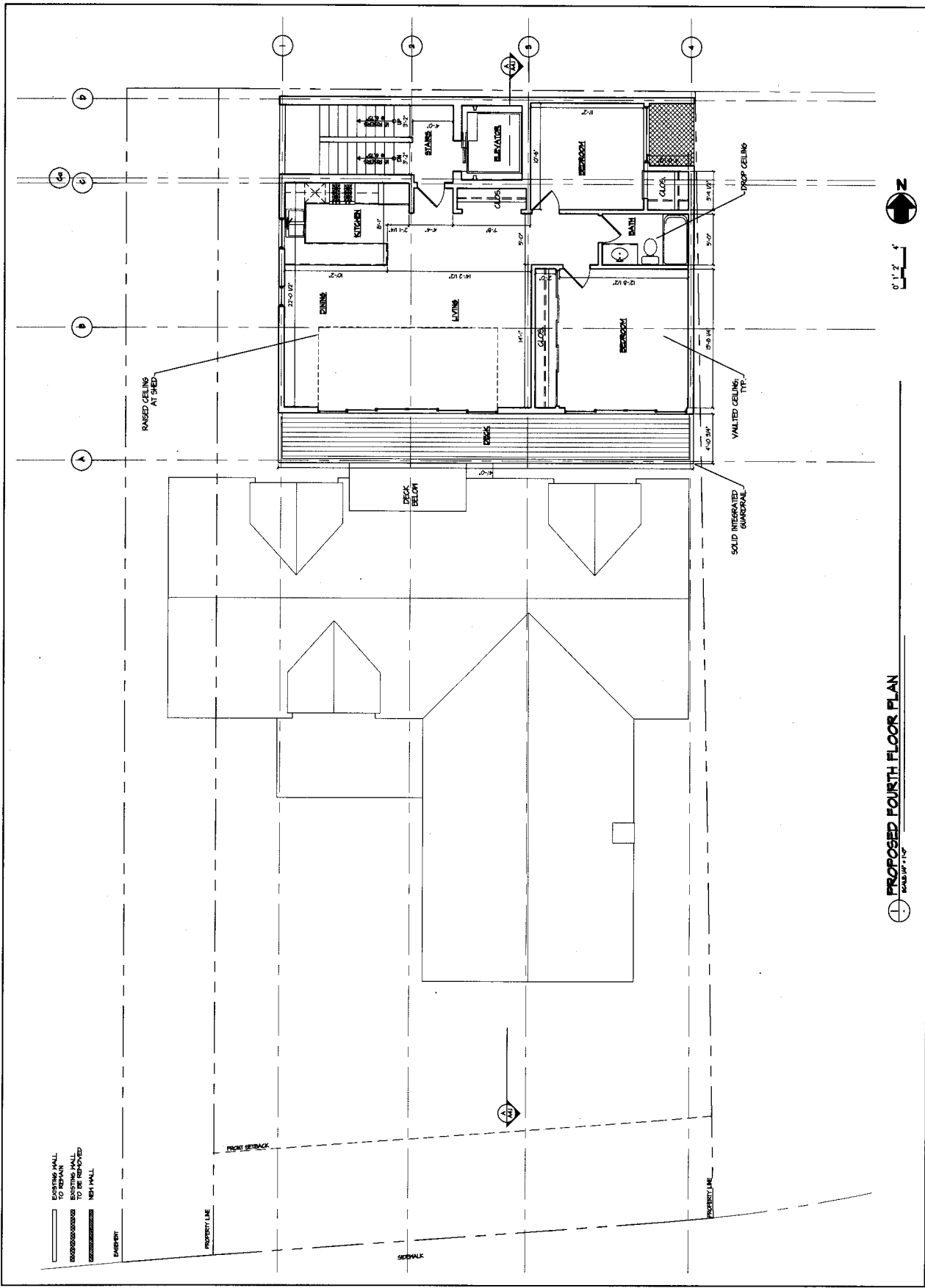
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 1268 SANCHEZ ST SAN FRANCISCO, CA 94116
 WWW.LAVY.B.B.COM
 415.841.7330
 415.841.1710



491-493 Bellevue Ave
 Oakland, CA 94612
 APN 010-0765-004-03

DESCRIPTION	PROPOSED FLOOR
DATE	03/24/2010
SCALE	AS NOTED
DRAWN	HA
CHECKED	HA
JOB	BELLEVUE
SHEET	A2.4

A2.4



REVISION	BY	DATE
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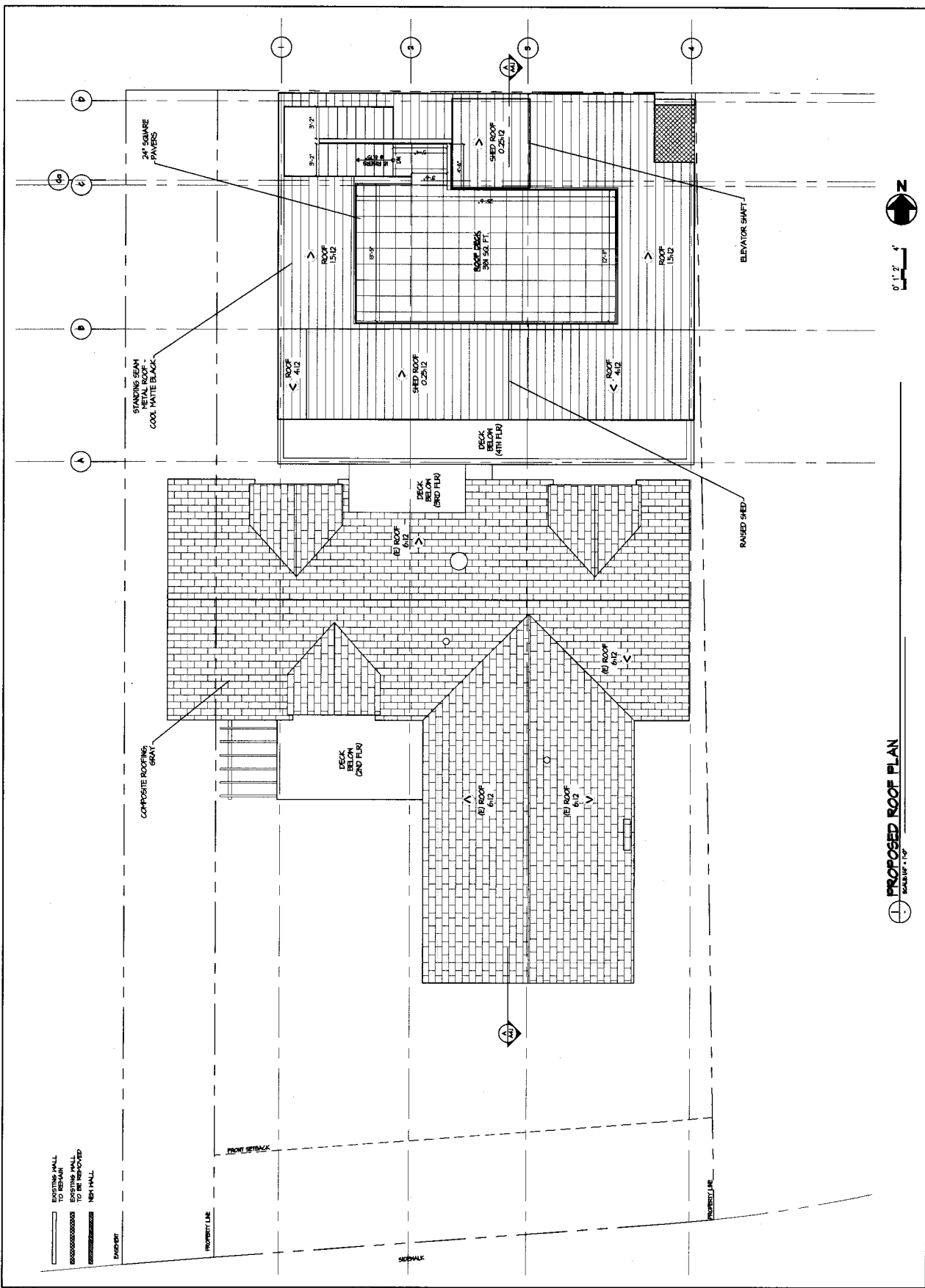
ART & ARCHITECTURE INC.
 1248 SANCHEZ ST SAN FRANCISCO, CA 94116
 WWW.LAVY.B.B.COM
 415.961.1320
 415.961.1710



APN 010-0765-004-03
 491-493 Bellevue Ave
 Oakland, CA 94612

Description	PROPOSED PLANS
Date:	10/24/2022
Scale:	AS NOTED
Drawn:	HA
Job	BELLVAE

A2.5



PROPOSED ROOF PLAN
 SCALE: 1/8" = 1'-0"

EXISTING HALL
 TO REMAIN
 0000000000000000
 EXISTING HALL
 TO BE REMOVED
 0000000000000000
 NEW HALL
 0000000000000000

DATE	01.03.2023	BY	HA
REVISION			

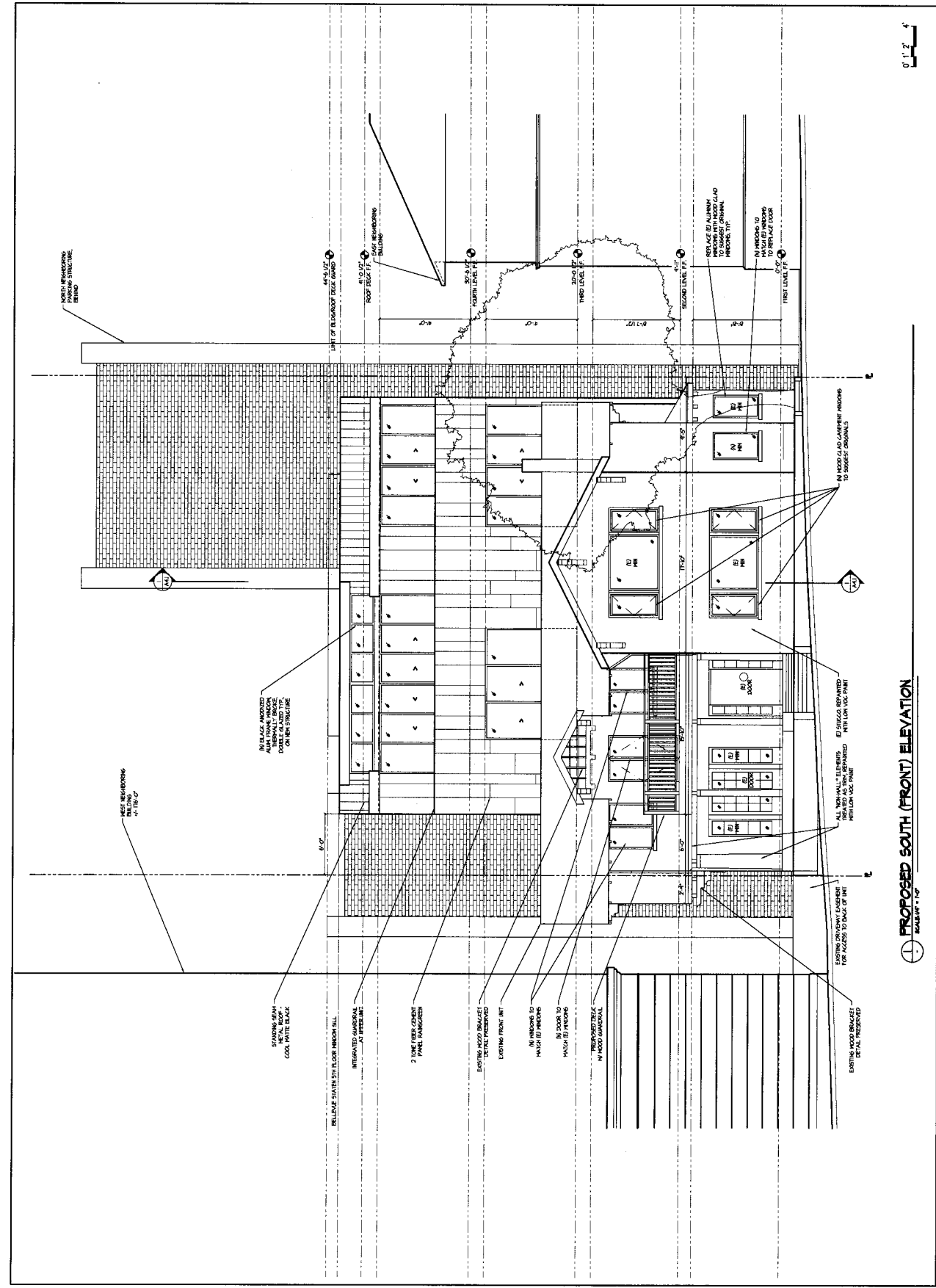
ART & ARCHITECTURE INC.
WWW.LEVY.B.B.COM
1248 SANCHEZ ST SAN FRANCISCO
E 415.841.7220
CA 94110



491-493 Bellevue Ave
Oakland, CA 94612
APN 010-0765-004-03

DESCRIPTION	PROPOSED ELEVATIONS
DATE	01.03.2023
SHEET	AS NOTED
DRWN	HA
APP	RELLAME
SHEET	

A3.1



PROPOSED SOUTH (FRONT) ELEVATION
SCALE: 1/4" = 1'-0"

BY	1A
DATE	02/03/20
REVISION	

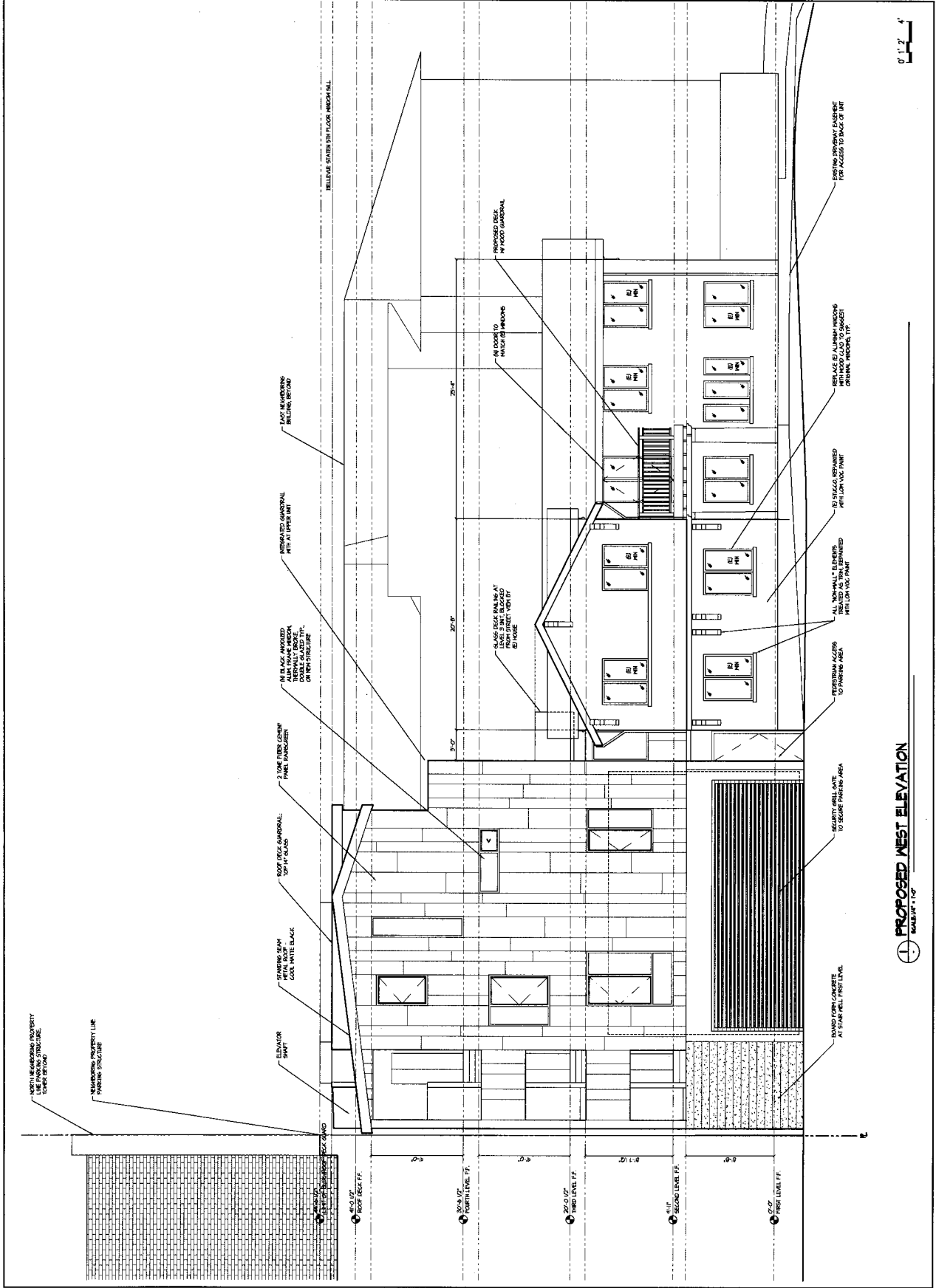
ART & ARCHITECTURE INC.
 1248 RANCHER ST SAN FRANCISCO, CA 94133
 WWW.LEVYR.B.B.COM
 415.961.7330
 415.961.1710



APN 010-0765-004-03
 491-493 Bellevue Ave
 Oakland, CA 94612

DESCRIPTION	PROPOSED ELEVATION
DATE	02/03/20
SCALE	AS NOTED
DRAWN	1A
SHEET	000
PROJECT	BELLEVUE

A32



0.1.2

PROPOSED WEST ELEVATION
 SCALE: 1/4" = 1'-0"

0' 1" 2" 4"

PROPOSED NORTH ELEVATION

1/4" = 1' - 0"

A3.3

Sheet

RELEASE

DATE

BY

FOR

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491-493 Bellevue Ave
Oakland, CA 94612
APN 010-0765-004-03



ART & ARCHITECTURE INC.
WWW.ARTAARCH.COM
1235 SANCHEZ ST SAN FRANCISCO, CA 94116
F. 415.841.1330

DATE	BY	FOR
12/31/2020	ART	ART

REVISION	BY	DATE
1	ART	01/25/20
2	HA	
3		
4		
5		
6		
7		
8		
9		
10		

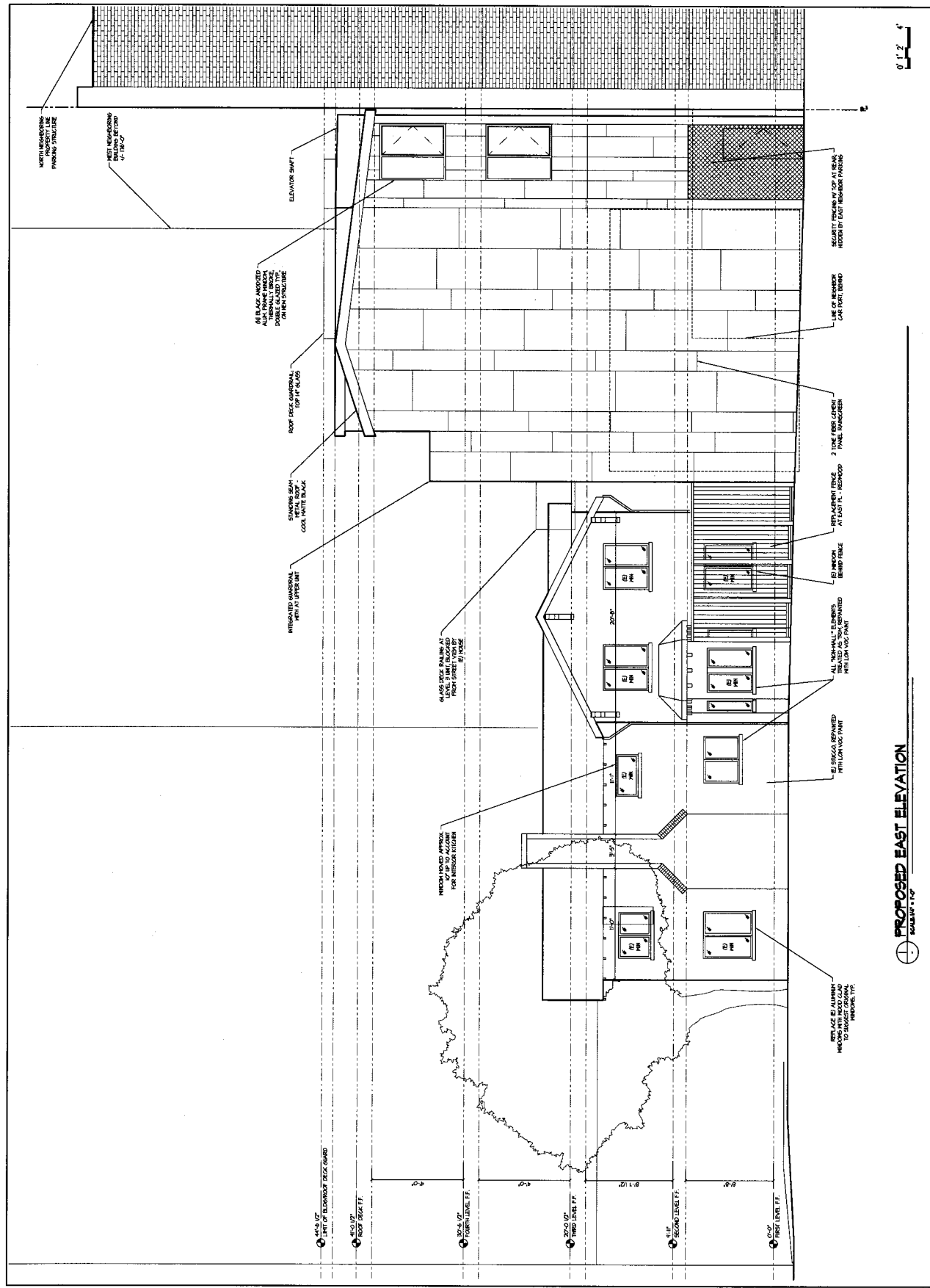
ART & ARCHITECTURE INC.
 WWW.LEVYBA.COM
 1225 SANCHEZ ST SAN FRANCISCO, CA 94110
 415.881.7330
 415.881.7110



491-493 Bellevue Ave
 Oakland, CA 94612
 APN 010-0765-004-03

DESCRIPTION	PROPOSED ELEVATIONS
DATE	01/25/20
SHEET	44 OF 40
DRAWN	HA
CHECKED	HA
DATE	01/25/20

A3.4
 Sheet



PROPOSED EAST ELEVATION
 SCALE: 1/4" = 1'-0"



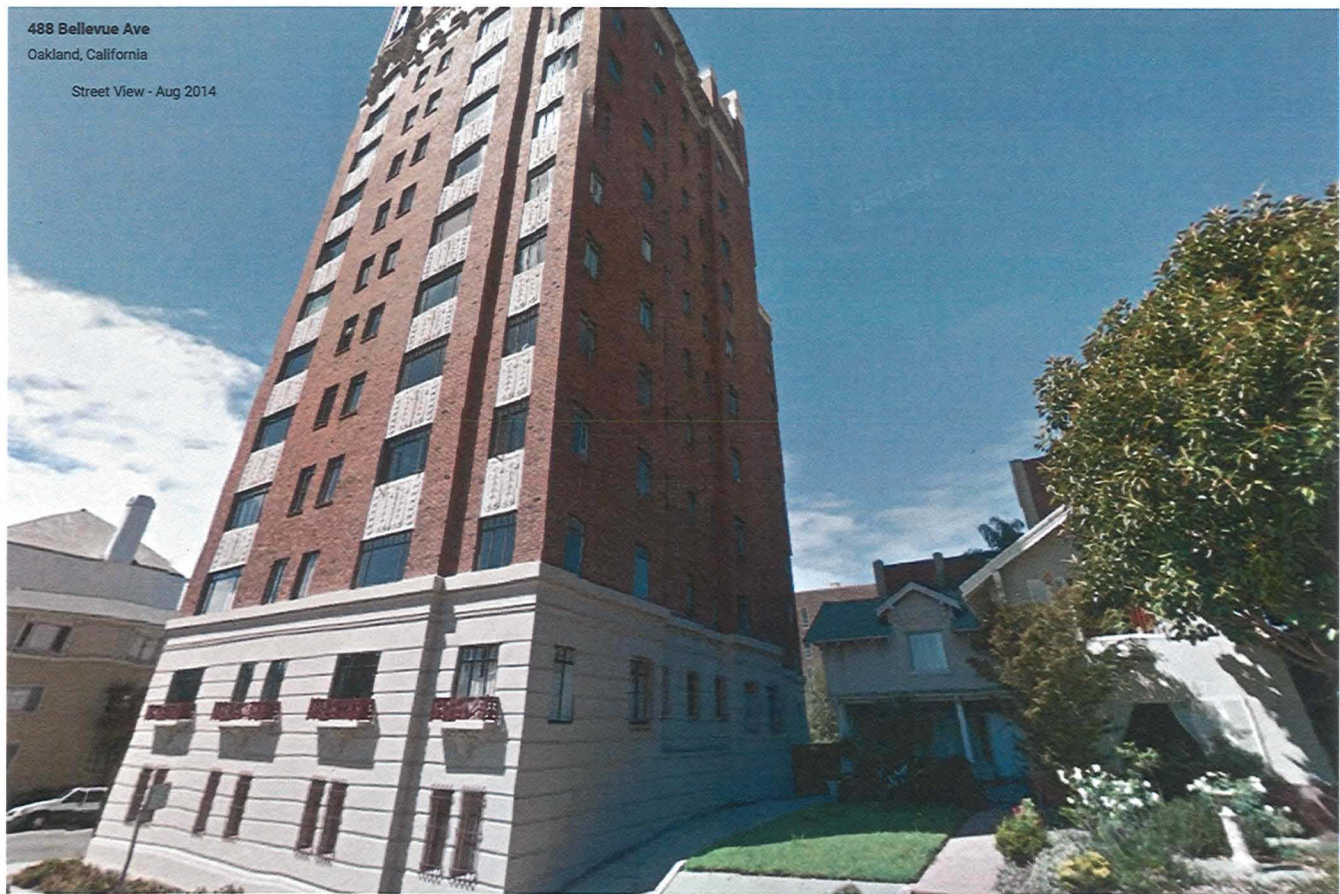
491 BELLEVUE AVE.
010-0765-004-03

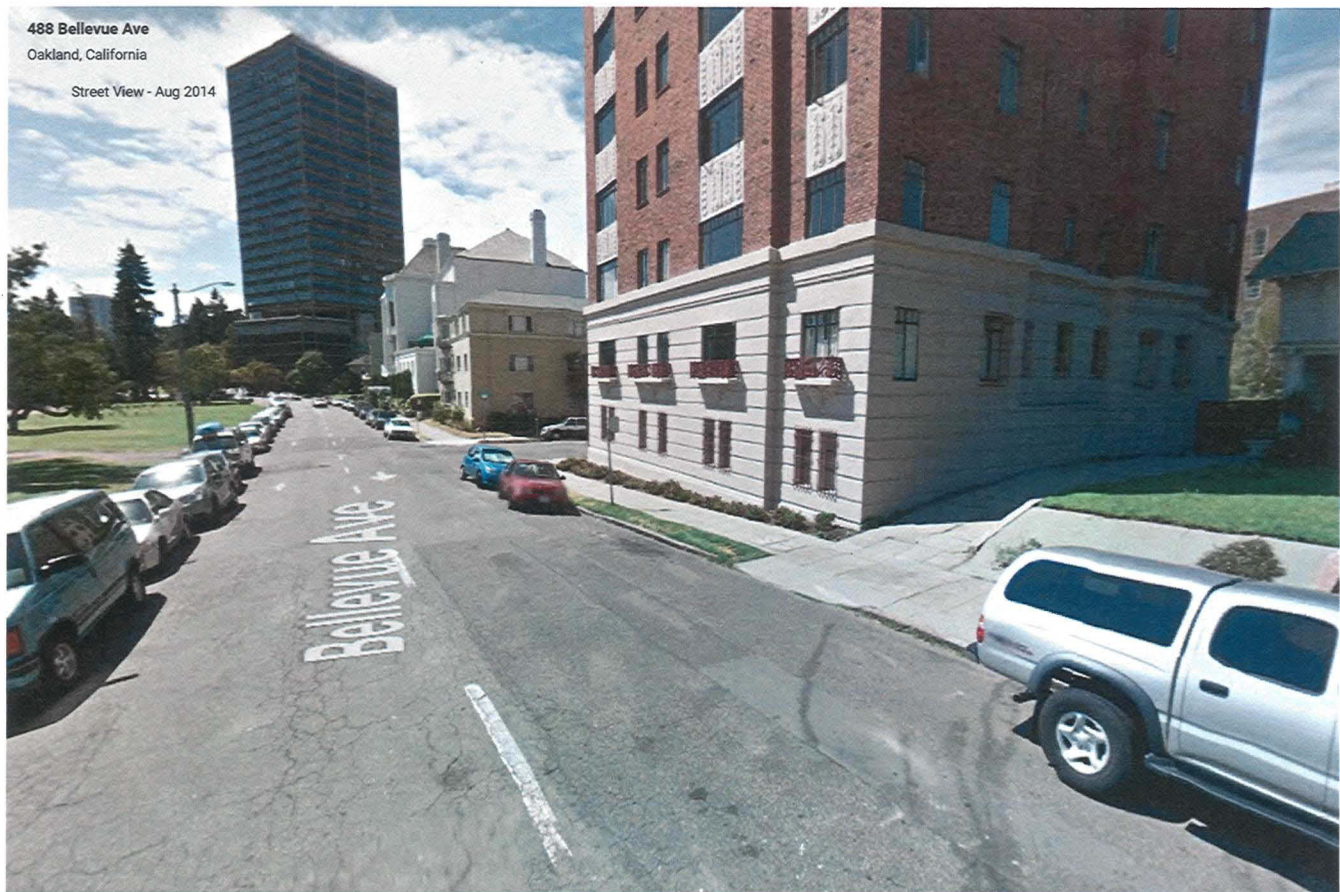
FRONT ELEVATION
1/8" = 1'

SCHEME 5B







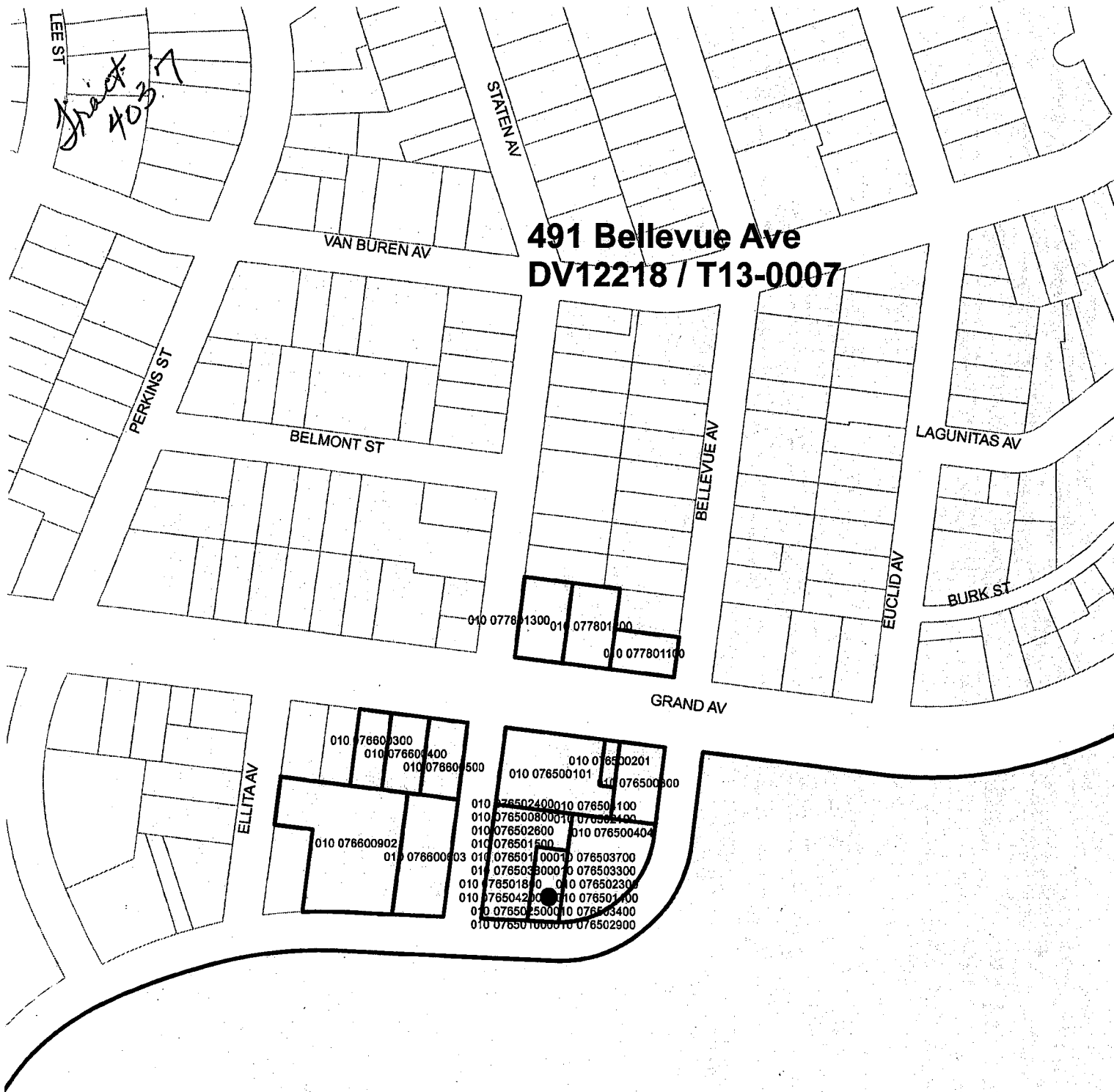












401 GRAND ASSOCIATES LLC
MASON MCDUFFIE FINCL
2030 FRANKLIN ST, 7TH FLR
OAKLAND CA 94612
DV12218

AMBASSADOR APARTMENTS LLC
THE ENTERPRISE COMPA
2909 MCCLURE ST
OAKLAND CA 94609
DV12218

AN CHUL S & OK J TRS
1151 SUNRISE HILL
CONCORD CA 94518
DV12218

BEIL DONALD H & MARIAN H TRS
492 STATEN AVE 1003
OAKLAND CA 94610
DV12218

BELLEVUE CLUB
525 BELLEVUE AVE
OAKLAND CA 94610
DV12218

BERROL CYNTHIA F TR
492 STATEN AVE 1001
OAKLAND CA 94610
DV12218

BERZOK JOSEPH & MAXINE TRS
492 STATEN AVE 1501
OAKLAND CA 94610
DV12218

BLACKWELL ANGELA G ETAL
492 STATEN AVE
OAKLAND CA 94610
DV12218

CITY OF OAKLAND
REAL ESTATE DIVISION
250 FRANK H OGAWA PLZ 4
OAKLAND CA 94612
DV12218

COHEN JOYCE W
492 STATEN AVE 801
OAKLAND CA 94610
DV12218

DETORRES GEORGETTE J & JESSE A
492 STATEN AVE 502
OAKLAND CA 94610
DV12218

DILLINGHAM J P TR
492 STATEN AVE
OAKLAND CA 94610
DV12218

DONHAM DONALD L
492 STATEN AVE 1502
OAKLAND CA 94610
DV12218

DUDELL GOLDE G
492 STATEN AVE 1202
OAKLAND CA 94610
DV12218

E P MADIGAN & SON INC ETAL
5528 GLENBROOK DR
OAKLAND CA 94618
DV12218

FERGUSON RICHARD L
492 STATEN AVE 902
OAKLAND CA 94610
DV12218

FISHMAN RICHARD
492 STATEN AVE
OAKLAND CA 94610
DV12218

FLAME MOUNTAIN LLC
PO BOX 32387
OAKLAND CA 94604
DV12218

FOUR TWENTY SEVEN GRAND
AVENUE
SIDNEY J COHEN ATTY
427 GRAND AVE
OAKLAND CA 94610
DV12218

FUSS RONETTE D
492 STATEN AVE 203
OAKLAND CA 94610
DV12218

GOLUCK MARY T ETAL
E P MADIGAN & SON
5528 GLENBROOK DR
OAKLAND CA 94618
DV12218

GRAND FIVE CO
ANDERSEN/SPANIER
385 GRAND AVE 200
OAKLAND CA 94610
DV12218

GRANT ANDREW H & ROBERTA A
492 STATEN AVE 603
OAKLAND CA 94610
DV12218

GURARIEH CHAIM & ELISHEVA TRS
492 STATEN AVE 1401
OAKLAND CA 94610
DV12218

HANLON JAMES M SR & BEVERLY H
ETAL
600 VALLE VISTA AVE
OAKLAND CA 94610
DV12218

HARE JAMES & BEAULIEU TAMMY L
29935 NEAL AVE
LINDSTROM MN 55045
DV12218

HARPER WALTER G
492 STATEN AVE 702
OAKLAND CA 94610
DV12218

HOSKIN FRANK G & LEAH M TRS
492 STATEN AVE 301
OAKLAND CA 94610
DV12218

HULL JEFFERY TR
492 STATEN AVE 1201
OAKLAND CA 94610
DV12218

KARP RICHARD M
492 STATEN AVE 201
OAKLAND CA 94610
DV12218

KERSH EDWARD S & ABBY T
492 STATEN AVE 903
OAKLAND CA 94610
DV12218

KONNERT TOM & ELLEN L TRS
492 STATEN AVE 1402
OAKLAND CA 94610
DV12218

LAWRENCE SARAH
427 GRAND AVE
OAKLAND CA 94610
DV12218

LEVENSON NORMAN TR
CAROLE S. LEVENSON
492 STATEN AVE 1103
OAKLAND CA 94610
DV12218

LIPPINCOTT RAYMOND J TR
492 STATEN AVE 303
OAKLAND CA 94610
DV12218

MURRAY GILMUR R
492 STATEN AVE 803
OAKLAND CA 94610
DV12218

POLSTON BERNARD & BETTY
492 STATEN AVE 1101
OAKLAND CA 94610
DV12218

RAPPAPORT JUDITH B TR
492 STATEN AVE 601
OAKLAND CA 94610
DV12218

REILEY MURIEL
492 STATEN AVE 901
OAKLAND CA 94610
DV12218

REILLY BONNIE
492 STATEN AVE 402
OAKLAND CA 94610
DV12218

ROBBINS JEFFREY D & SPLETTER
MARY J TRS
492 STATEN AVE 703
OAKLAND CA 94610
DV12218

RUE-ELL ENTERPRISES INC
2437 DURANT AVE 204
BERKELEY CA 94704
DV12218

SCHARCH STEWART
492 STATEN AVE 802
OAKLAND CA 94610
DV12218

SHAPIRO IRVING D & REYNA MARIA
492 STATEN AVE 1102
OAKLAND CA 94610
DV12218

STINSON RALF H II & A P A FUND
ETAL
440 GRAND AVE 320
OAKLAND CA 94610
DV12218

SUSSMAN NEEDLE HOUSE PTP
734 ALBEMARLE ST
EL CERRITO CA 94530
DV12218

TASCHIAN JOAN B
492 STATEN AVE 302
OAKLAND CA 94610
DV12218

TAYLOR LEON TR
1628 UNION ST
SAN FRANCISCO CA 94123
DV12218

TUFEL ROBERT L & SASSO MICHAEL
492 STATEN AVE 501
OAKLAND CA 94610
DV12218

NEIGHBORHOOD
GROUPS CENSUS TRACT
4037:

C-33
FR TIMOTHY K JOHNSON
176 RIDGEWAY AVE
OAKLAND CA 94611

O-3-1
GORDON LINK
6510 RAYMOND ST
OAKLAND CA 94609

CENSUS TRACT 4037:
C-33, F-11, J-6, O-3-1,

F-11 (& F-13)
JOHN JAY
10700 MACARTHUR BLVD STE 200
OAKLAND CA 94605

DV12-218/T13-0007

J-6
CHRISTINE ANDERSON
5095 DUBLIN AVE
OAKLAND CA 94602

APPLICATIONS ON FILE
January 18, 2013

CITY OF OAKLAND
DEPARTMENT OF PLANNING, BUILDING AND
NEIGHBORHOOD PRESERVATION
Zoning Division
250 Frank H. Ogawa Plaza, 2nd Floor
Oakland, California 94612-2031

In addition to those applications listed on the City Planning Commission Agenda, the City has also received the applications included in this notice for review and action.

You have received this notice because our records indicate that you own property and/or reside near one of the project locations listed below or you have indicated your interest in one of the applications.

You may view the project applications and/or plans by visiting our offices. The case planner need not be present to see the project file. Your comments and/or questions regarding an application must be directed to the Department of Planning, Building and Neighborhood Preservation – Zoning Division to the attention of the designated case planner, and by the end of the 17-day public comment period:

February 4, 2013

In your comment letter please indicate the case number (which is identified on each notice) at the upper right hand corner of your letter so it will reach the case planner promptly.

A decision will be made on the application after this date. If you decide to appeal the Zoning Manager's decision or challenge the application in court, you will be limited to issues raised in written correspondence or email and delivered to the Zoning Division on, or prior to the end of the 17-day public comment period as indicated above. If you wish to be notified of the decision of any of these cases, please indicate the Case Number and submit a self-addressed stamped envelope for each case, to Department of Planning, Building and Neighborhood Preservation – Zoning Division at the address indicated above.

Except where noted, once a decision is reached by the Zoning Manager on these cases, they are appealable to the Planning Commission. If any interested party seeks to challenge such decision in court, an appeal **must be filed** within ten (10) calendar days of the date of decision by the Zoning Manager and by 4:00p.m. An appeal shall be on a form provided by the **Department of planning, Building and Neighborhood Preservation – Zoning Division**, and submitted to the same at 250 Frank H. Ogawa Plaza, Suite 2114, to the attention of the Case Planner. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the City of Oakland or wherein the decision is not supported by substantial evidence and must include payment in accordance with the City of Oakland Master Fee Schedule. Failure to file a timely appeal will preclude you from challenging the City's decision in court. The appeal itself must raise every issue that is contested along with all the arguments and evidence previously entered into the record during the previously mentioned seventeen (17) day public comment period. Failure to do so will preclude you from raising such issues during the appeal hearing and/or in court.

Please help up achieve wider notification by alerting your friends and neighbors if you believe they would be interested in any or the cases listed below. Please note that the descriptions of the applications found below are preliminary in nature and that the projects and/or such descriptions may change prior to a decision being made.

4. **Location:** 491 Bellevue Ave. (APN: 010 -0765-004-03) 11/5/12

Proposal: To move a two-story house forward on the lot, rehabilitate it and convert it into four units, and construct a rear three-unit apartment building over a seven-stall parking garage (two stories of residences over a double story garage) at the rear of the lot.

On January 14, 2013 the Landmarks Preservation Advisory Board reviewed the application and recommended approval

Applicant / Ross Levy /

Phone Number: (415) 641-7320

Owner: Tammy Beaulieu

Case File Numbers: DV12-218 / T13-0007

Planning Permits Required: Regular Design Review for alterations and construction including three new dwelling units;

Additional findings for Local Register Properties that are not Landmarks or located in the S-7 or S-20 zone + For Potential Designated Historic Properties that are not Local Register Properties + CEQA Class 32 Infill Exemption;

Minor Variances (2) for required rear yard + usable open space;

Tree Protection and Removal Permit to protect 1 tree and remove 3 trees

General Plan: Urban Residential

Zoning: RU-3 Urban Residential Zone – 3/
S-7 Preservation Combining Zone/
S-12 Residential Parking Combining Zone

(continued on page 4)

Applications on File for the Week of January 18, 2013

