Discretionary Review Abbreviated Analysis

HEARING DATE: MAY 26, 2011

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

Reception:

415.558.6378

Fax:

415.558.6409

Planning Information: 415.558.6377

Date: May 19, 2011

Case No.: 2011.0093D

Project Address: 2350 Broadway

Permit Application: 2010.10.08.2625

Zoning: RH-1 [Residential House, One-Family]

40-X Height and Bulk District

Block/Lot: 0563/007

Project Sponsor: John Maniscalco Architecture

422 Grove Street

San Francisco, CA 94102

Staff Contact: Aaron Starr – (415) 558-6362

aaron.starr@sfgov.org

Recommendation: Do not take DR and approve as proposed

PROJECT DESCRIPTION

The proposal is to extend the rear wall of the ground floor approximately 7′ into the rear yard, infilling the area under the existing deck and expanding the deck at the west side of the property by approximately 3.5′. At the east side of the first floor (the floor above the ground floor) the proposed project would extend a 13′ wide section of the rear wall approximately 7′ into the rear yard to the end of the existing deck and extend the rest of the rear wall at the first floor so that it is within 7′ of the end of the existing deck. The project also proposes to construct a staircase from the first floor deck to the rear yard and interior alterations.

SITE DESCRIPTION AND PRESENT USE

The subject property, located on the north side of Broadway between Steiner and Fillmore Streets in the City's Pacific Heights neighborhood, is a four-story-over-basement, single-family residence. The subject property is a down sloping lot that measures 40' wide by 137.5' long, and the subject building covers approximately 63% of the lot.

SURROUNDING PROPERTIES AND NEIGHBORHOOD

The subject property is located on the north end of the City's Pacific Heights Neighborhood approximately two blocks northeast of Alta Plaza Park. The neighborhood is entirely residential and consists mainly of large three- and four-story, single-family homes.

BUILDING PERMIT NOTIFICATION

ТҮРЕ	REQUIRED PERIOD	NOTIFICATION DATES	DR FILE DATE	DR HEARING DATE	FILING TO HEARING TIME
311/312 Notice	30 days	12/27/10 to 1/26/11	1/26/2011	5/26/2011	119 days

HEARING NOTIFICATION

TYPE	REQUIRED PERIOD	REQUIRED NOTICE DATE	ACTUAL NOTICE DATE	ACTUAL PERIOD
Posted Notice	10 days	May 16, 2011	May 16, 2011	10 days
Mailed Notice	10 days	May 16, 2011	May 16, 2011	10 days

PUBLIC COMMENT

	SUPPORT	OPPOSED	NO POSITION
Adjacent neighbor(s)	-	1	-
Other neighbors on the			
block or directly across	-	-	-
the street			
Neighborhood groups	-	-	-

Other than the DR Request, the Department has not received any comments on the proposed project from other neighbors or neighborhood groups.

DR REQUESTOR

Adam Rubinson, 2347 Vallejo Street, Directly behind the subject property to the north

DR REQUESTOR'S CONCERNS AND PROPOSED ALTERNATIVES

See attached Discretionary Review Application, dated January 26, 2011.

PROJECT SPONSOR'S RESPONSE TO DR APPLICATION

See attached Response to Discretionary Review, dated May 18, 2011

ENVIRONMENTAL REVIEW

The Department has determined that the proposed project is exempt/excluded from environmental review, pursuant to CEQA Guideline Section 15301 (Class One - Minor Alteration of Existing Facility, (e) Additions to existing structures provided that the addition will not result in an increase of more than 10,000 square feet).

RESIDENTIAL DESIGN TEAM REVIEW

The Residential Design Team (RDT) did not find the project to contain or create any exceptional
or extraordinary circumstances. Under the Commission's pending DR Reform Policy, the project
would not be referred to the Commission. As such, the DR warrants an abbreviated staff
analysis.

SAN FRANCISCO
PLANNING DEPARTMENT

- The project will not adversely impact the mid-block open space, as the addition will not extend any further than the existing rear decks, and the addition is compatible with the depths of the adjacent properties. Excavation, as proposed at the ground floor level, is often encouraged as a way to minimize additional building mass, thereby minimizing shadows and encroachment into the mid-block open space and rear yard areas.
- The project will not create any unusual privacy impacts on the DR Requestor's interior living space. The proposed rear building wall is over 50' from DR Requestor's building, and the proposed rear wall includes a similar amount of glazing as the existing structure.

The issue of serial permitting does not fall under the purview of the RDT; however the Department considers the project sponsor's actions to be sequential permitting and not serial permitting. Serial permitting is typically characterized by work that is allowed to occur piecemeal in order to avoid a process or regulation. Sequential permitting allows different scopes of work to proceed independently in order to save time and cost, particularly when an applicant wishes to phase construction work as not all building permit applications required Planning Department review. The project sponsors have not circumvented any notification requirements or Planning Code regulations. Please see the Project Sponsor's submittal for a more in-depth response to this issue.

Under the Commission's pending DR Reform Legislation, this project would not be referred to the Commission as this project does not contain or create any exceptional or extraordinary circumstances.

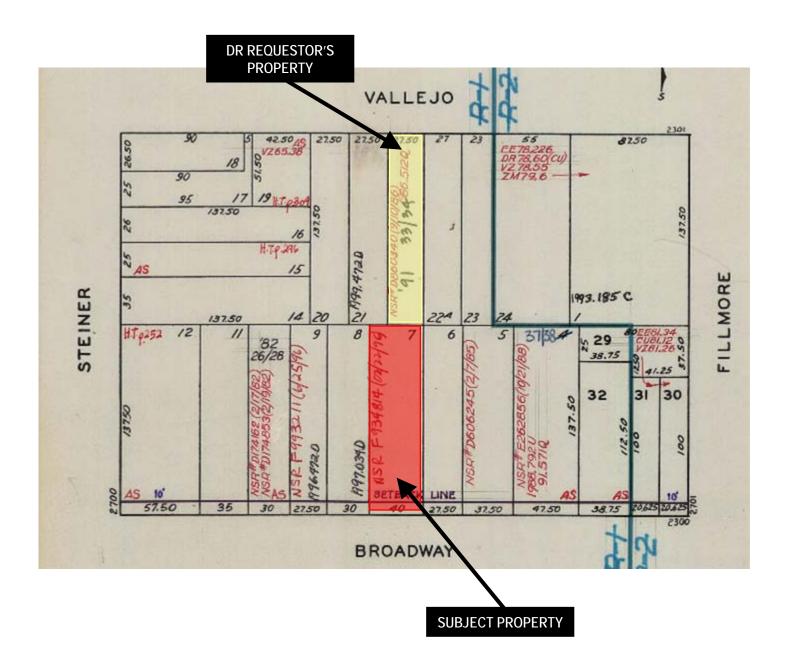
RECOMMENDATION: Do not take DR and approve project as proposed

Attachments:

Block Book Map
Sanborn Map
Zoning Map
Aerial Photographs
Section 311 Notice
DR Application
Response to DR Application dated May 18, 2011
Context Photographs
Reduced Plans

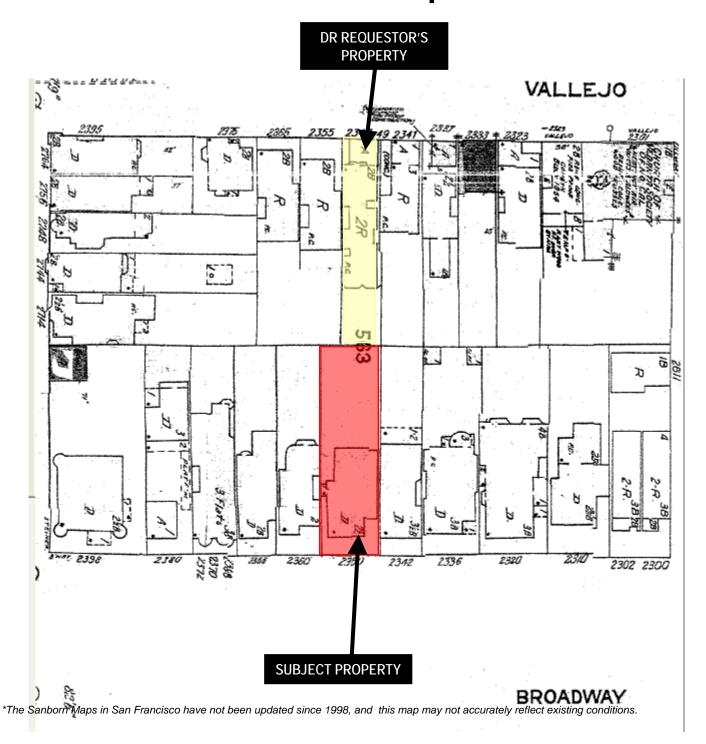
AS: G:|DOCUMENTS|Discretionary Review|2350 Broadway|2350 Broadway.Case Report.doc

Parcel Map



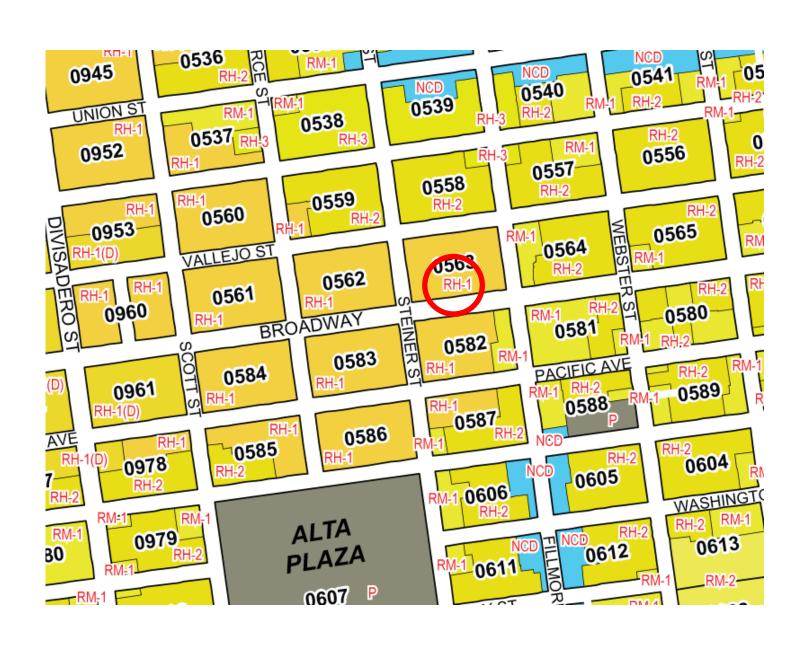


Sanborn Map*





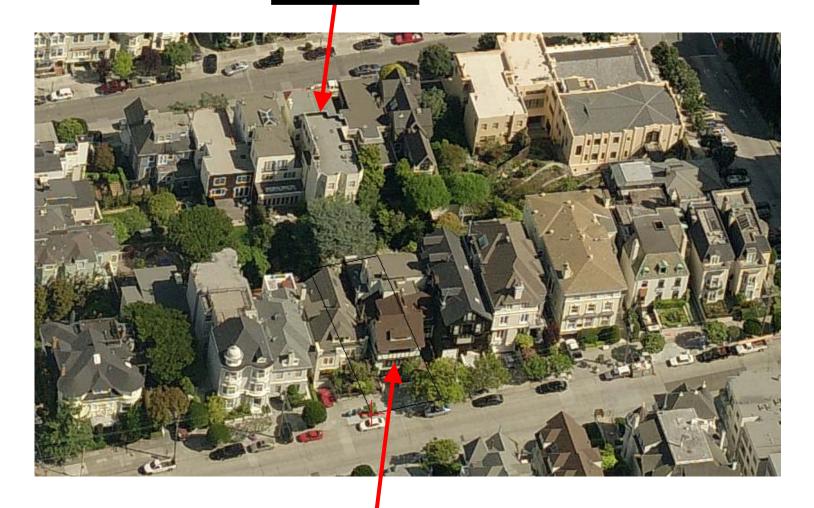
Zoning Map





Aerial Photo

DR REQUESTOR'S PROPERTY



SUBJECT PROPERTY



Aerial Photo

DR REQUESTOR'S PROPERTY



SUBJECT PROPERTY



SAN FRANCISCO PLANNING DEPARTMENT

1650 Mission Street Suite 400 San Francisco, CA 94103

NOTICE OF BUILDING PERMIT APPLICATION (SECTION 311)

On October 8, 2010, the Applicant named below filed Building Permit Application No. 2010.10.08.2625 (Alteration) with the City and County of San Francisco.

	CONTACT INFORMATION	PROJECT	SITE INFORMATION
Applicant: Address:	John Maniscalco Architecture 422 Grove Street	Project Address: Cross Streets:	2350 Broadway Steiner St./Fillmore St.
City, State:	San Francisco, CA 94102	Assessor's Block /Lot No.:	
Telephone:	(415) 864-9900	Zoning Districts:	RH-1 /40-X

Under San Francisco Planning Code Section 311, you, as a property owner or resident within 150 feet of this proposed project, are being notified of this Building Permit Application. You are not obligated to take any action. For more information regarding the proposed work, or to express concerns about the project, please contact the Applicant above or the Planner named below as soon as possible. If your concerns are unresolved, you can request the Planning Commission to use its discretionary powers to review this application at a public hearing. Applications requesting a Discretionary Review hearing must be filed during the 30-day review period, prior to the close of business on the Expiration Date shown below, or the next business day if that date is on a week-end or a legal holiday. If no Requests for Discretionary Review are filed, this project will be approved by the Planning Department after the Expiration Date.

	PROJECT SCOPE	
[] DEMOLITION and/or	[] NEW CONSTRUCTION or	[X] ALTERATION
[] VERTICAL EXTENSION	[] CHANGE # OF DWELLING UNITS	[] FACADE ALTERATION(S)
[] HORIZ. EXTENSION (FRONT)	[] HORIZ. EXTENSION (SIDE)	[X] HORIZ. EXTENSION (REAR)
PROJECT FEATURES	EXISTING CONDITIO	N PROPOSED CONDITION
BUILDING DEPTH	67.5 <u>'</u>	72.5'
	49.5'	
	44	
NUMBER OF DWELLING UNITS	1	No Change
NUMBER OF OFF-STREET PARKING S	SPACES3	No Change
		-
	DDO IECT DESCRIPTION	

The proposal is to extend the rear wall of the ground floor approximately 7′ into the rear yard, infilling the area under the existing deck and expanding the deck at the west side of the property by approximately 3.5′; extend a 13′ wide section of the rear wall of the first floor at the east side property line approximately 7′ into the rear yard to the end of the existing deck and extend the rest of the rear wall at the first floor so that it is within 7′ of the end of the existing deck; construct a three-story tall spiral staircase at the west side property line; and interior alterations.

EMAIL:	aaron.starr@sfgov.org	EXPIRATION DATE:
PHONE NUMBER:	(415) 558-6362	DATE OF THIS NOTICE:
PLANNER'S NAME:	Aaron Starr	

NOTICE OF BUILDING PERMIT APPLICATION GENERAL INFORMATION ABOUT PROCEDURES

Reduced copies of the site plan and elevations (exterior walls), and floor plans (where applicable) of the proposed project, including the position of any adjacent buildings, exterior dimensions, and finishes, and a graphic reference scale, have been included in this mailing for your information. Please discuss any questions with the project Applicant listed on the reverse. You may wish to discuss the plans with your neighbors and neighborhood association or improvement club, as they may already be aware of the project. Immediate neighbors to the project, in particular, are likely to be familiar with it.

Any general questions concerning this application review process may be answered by the Planning Information Center at 1660 Mission Street, 1st Floor (415/558-6377) between 8:00 a.m. - 5:00 p.m. Please phone the Planner listed on the reverse of this sheet with questions specific to this project.

If you determine that the impact on you from this proposed development is significant and you wish to seek to change the proposed project, there are several procedures you may use. We strongly urge that steps 1 and 2 be taken.

- 1. Seek a meeting with the project sponsor and the architect to get more information, and to explain the project's impact on you and to seek changes in the plans.
- 2. **Call the nonprofit organization Community Boards at (415) 920-3820**. They are specialists in conflict resolution through mediation and can often help resolve substantial disagreement in the permitting process so that no further action is necessary.
- 3. Where you have attempted, through the use of the above steps, or other means, to address potential problems without success, call the assigned project planner whose name and phone number are shown at the lower left corner on the reverse side of this notice, to review your concerns.

If, after exhausting the procedures outlined above, you still believe that exceptional and extraordinary circumstances exist, you have the option to request that the Planning Commission exercise its discretionary powers to review the project. These powers are reserved for use in exceptional and extraordinary circumstances for projects, which generally conflict with the City's General Plan and the Priority Policies of the Planning Code; therefore the Commission exercises its discretion with utmost restraint. This procedure is called Discretionary Review. If you believe the project warrants Discretionary Review by the Planning Commission over the permit application, you must make such request within 30 days of this notice, prior to the Expiration Date shown on the reverse side, by completing an application (available at the Planning Department, 1660 Mission Street, 1st Floor, or on-line at www.sfplanning.org). You must submit the application to the Planning Information Center (PIC) during the hours between 8:00 a.m. and 5:00 p.m., with all required materials, and a check, for each Discretionary Review request payable to the Planning Department. To determine the fee for a Discretionary Review, please refer to the Planning Department Fee Schedule available at www.sfplanning.org or at the PIC located at 1660 Mission Street, First Floor, San Francisco. For questions related to the Fee Schedule, please call the PIC at (415) 558-6377. If the project includes multi building permits, i.e. demolition and new construction, a separate request for Discretionary Review must be submitted, with all required materials and fee, for each permit that you feel will have an impact on you. Incomplete applications will not be accepted.

If no Discretionary Review Applications have been filed within the Notification Period, the Planning Department will approve the application and forward it to the Department of Building Inspection for its review.

BOARD OF APPEALS

An appeal of the approval (or denial) of the permit application by the Planning Department or Planning Commission may be made to the **Board of Appeals within 15 days** after the permit is issued (or denied) by the Superintendent of the Department of Building Inspection. Submit an application form in person at the **Board's office at 1650 Mission Street, 3rd Floor, Room 304**. For further information about appeals to the Board of Appeals, including their current fees, **contact the Board of Appeals** at **(415) 575-6880**.

Application	on for Discretionary Review
CASE NUMBER: For Staff Use only	

APPLICATION FOR

Discretionary Review Application

1. Owner/Applicant Information		
DR APPLICANT'S NAME:		
Adam S. Rubinson		
DR APPLICANT'S ADDRESS:	ZIP CODE:	TELEPHONE:
2347 Vallejo Street	94123	(415) 274-9403
PROPERTY OWNER WHO IS DOING THE PROJECT ON WHICH YOU ARE REQUE	STING DISCRETIONARY REVIEW NAME:	
Michael Dykhovsky / Charo Gonzalez		
ADDRESS:	ZIP CODE:	TELEPHONE:
2350 Broadway Street	94123	· ()
CONTACT FOR DR APPLICATION:		
Same as Above John M. Sanger, Sanger & Olsor	n (attorney)	
ADDRESS:	ZIP CODE:	TELEPHONE:
576 Sacramento Street, Seventh Floor	94111	(415) 693-9300
E-MAIL ADDRESS:		
sanger@sanger-olson.com		
STREET ADDRESS OF PROJECT: 2350 Broadway Street CROSS STREETS: Steiner Street / Fillmore Street		ZIP CODE: 94123
ASSESSORS BLOCK/LOT: LOT DIMENSIONS: LOT AREA (SQ FT)	: ZONING DISTRICT:	HEIGHT/BULK DISTRICT:
0563 / 007	RH-1	40-x
3. Project Description Please check all that apply Change of Use Change of Hours New Constr		Demolition ☐ Other 区
Additions to Building: Rear ☑ Front ☐ Heig	1. 🗀	
B . B . TT	ght ☐ Side Yard ☐	
Present or Previous Use: residential	gnt □ Side Yard □	
Proposed Use: residential	gnt □ Side Yard □	

11.00930

4. Actions Prior to a Discretionary Review Request

Prior Action	YES	NO
Have you discussed this project with the permit applicant?	X	
Did you discuss the project with the Planning Department permit review planner?	X	
Did you participate in outside mediation on this case?		X

5. Changes Made to the Project as a Result of Mediation

If you have discussed the project with the applicant, planning staff or gone through mediation, please summarize the result, including any changes there were made to the proposed project.

(SEE ATTACHED LETTER)

Application	on for Disc	cretionary Review
CASE NUMBER: For Staff Use only		

Discretionary Review Request

In the space below and on separate paper, if necessary, please present facts sufficient to answer each question.

1. What are the reasons for requesting Discretionary Review? The project meets the minimum standards of the Planning Code. What are the exceptional and extraordinary circumstances that justify Discretionary Review of the project? How does the project conflict with the City's General Plan or the Planning Code's Priority Policies or Residential Design Guidelines? Please be specific and site specific sections of the Residential Design Guidelines.

(SEE ATTACHED LETTER)

2. The Residential Design Guidelines assume some impacts to be reasonable and expected as part of construction. Please explain how this project would cause unreasonable impacts. If you believe your property, the property of others or the neighborhood would be adversely affected, please state who would be affected, and how:

(SEE ATTACHED LETTER)

3. What alternatives or changes to the proposed project, beyond the changes (if any) already made would respond to the exceptional and extraordinary circumstances and reduce the adverse effects noted above in question #1?

(SEE ATTACHED LETTER)

Applicant's Affidavit

Under penalty of perjury the following declarations are made:

- a: The undersigned is the owner or authorized agent of the owner of this property.
- b: The information presented is true and correct to the best of my knowledge.

c: The other information or applications may be required.

Signature:

Date: /-26-1/

Print name, and indicate whether owner, or authorized agent:

John M. Sanger

Owner Authorized Agent (circle one)

576 SACRAMENTO STREET SEVENTH FLOOR SAN FRANCISCO, CALIFORNIA 94111-3023 TEL 415 693 9300 ■ FAX 415 693 9322

John M. Sanger, Esq. sanger@sanger-olson.com

January 26, 2011

VIA HAND DELIVERY

Miguel Ruben, President, and Members of the San Francisco Planning Commission 1650 Mission Street, Suite 400 San Francisco, CA 94103-9425

Re: Request for Discretionary Review of Application for Building Permit

No. 2010.10.08.2625 (Alteration)

2350 Broadway Block 0563, Lot 007

Dear President Ruben and Commissioners:

We represent Adam Rubinson, the DR Requestor and owner of the home located at 2347 Vallejo Street which borders the rear property line of 2350 Broadway. On behalf of our client, we are requesting discretionary review of Building Permit Application No. 2010.10.08.2625 (the "Second Building Permit"). The permit applicant is John Maniscalco Architecture, acting on behalf of the property owners Michael Bykhovsky and Charo Gonzalez (collectively, the "Applicant").

This is the second building permit application sought by the Applicant. The San Francisco Department of Building Inspection ("DBI") issued the first permit, Building Permit No. 2010.09.27.1718 (the "First Building Permit"), on November 15, 2010. The First Building Permit authorized a complete interior renovation, replacement of all exterior façade windows, excavation of the existing basement for a new basement floor at the rear of the structure, the installation of a new interior stairwell and skylight, and the complete remodeling of all floors, at an estimated cost of approximately \$950,000.00. Our client has no recollection of ever receiving any notice of issuance or an opportunity to review the First Building Permit. Accordingly a request for the Board of Appeals to take jurisdiction of the First Building Permit is pending and set for hearing on February 9, 2011. To date, extensive excavation work has begun in the rear yard and a tree apparently eligible for landmark status has already been removed despite the contractor's statement to the DR Requestor that it would not be removed made only a day or two before its removal. It was such work which made neighbors aware of the extensive planned changes to the existing house at 2350 Broadway.

President Ruben and Commissioners of the Planning Commission January 26, 2011 Page 2

Neighboring property owners received a Section 311 Notice in connection with the Second Building Permit. Since plans for the First Building Permit have not been provided to adjacent landowners the only recourse has been to review them on DBI's computers and it is difficult to determine their precise scope or the degree of exterior additions due to the limited sections and lack of clarity as to where the section was cut. Plans for the Second Building Permit appear to confirm greater exterior changes than appear in the plans for the First Building Permit.

The Applicant filed an application for the Second Building Permit on November 12, 2010, three days prior to DBI's issuance of the First Building Permit, for the construction of further additions at the rear of the property. This second round of construction depends entirely on the excavation and other improvements authorized by the First Building Permit which appear clearly intended to pave the way (literally and figuratively) for the additional work. The Applicant consciously segmented the permit process to avoid the requirements imposed by Section 311 until after the bulk of the work had been approved. Now the Applicant seeks to extend two floors beneath an existing, elevated balcony appended to the home. As shown in the plans for the Second Building Permit the actual extension of the rear building wall would range between 19 feet and 7 feet, not the 7 feet stated in the 311 Notice, which is simply the degree of extension beyond the edge of the open balcony two levels higher supported on wood posts which is appended to the actual structure. Substantial additional improvements are also included in order to provide two additional levels to the structure for full occupancy and use so that the house could have more bedrooms, several family and recreational rooms, a spa and other amenities. The entire rear wall would be brought deeper into the rear vard on the two lower levels which previously stopped at the slope of the steep hill.

On December 27, 2010, the Planning Department issued a Section 311 Notice to adjacent landowners. Since December 27, 2010, significant construction and excavation work has already commenced, including what appears to be work beyond the scope of the First Building Permit, as well as the removal of a significant tree and all existing vegetation and, possibly, preliminary construction of a retaining wall, as shown on the photograph attached hereto as **Exhibit A**. A photograph showing the significant tree and pre-construction view of the site is attached hereto as **Exhibit B**, illustrating the height of the appended balcony above the two lower levels. Some of this work does not appear to be authorized by the First Building Permit. Nor were any of the adjacent landowners given notice nor any opportunity to comment on the entire project. Since our complaint to DBI, the forms for the apparent retaining wall have been removed.

This request for discretionary review is before you because the Applicant has engaged in improper segmentation of the entitlement process, resulting in approval of the First Building Permit authorizing excavation in preparation for next phase in order to avoid review of the project as a whole and a concomitant violation of the spirit of the Section 311 process. The Second Building Permit, if approved, would also violate the San Francisco Planning Code and the Residential Design Standards incorporated by reference by Section 311. As currently designed, the improvements contemplated by the Applicant do not respect site design principles with respect to topography, privacy, unwarranted penetration into midblock space. The proposed

President Ruben and Commissioners of the Planning Commission January 26, 2011 Page 3

use of floor to ceiling glazing and other design features would cause glare for neighbors, especially given the elimination of vegetation with the expressed aim of removing all obstacles to unimpeded views from the rear of 2350 Broadway. Accordingly, and for the reasons set forth more fully below, we request that the Planning Commission grant this request for discretionary review and require, at minimum, the submission of a full and complete plan for rear yard improvements and landscaping to provide adequate privacy and screening and to mitigate glare as a condition to issuance of the Second Building Permit. We also request that implementation of such an approved plan be a pre-condition to occupancy so that neighbors are assured of such screening.

1. EXCEPTIONAL AND EXTRAORDINARY CIRCUMSTANCES JUSTIFY DISCRETIONARY REVIEW

The Project as currently designed neither enhances nor conserves the character of the neighborhood, nor properly considers impacts to adjacent property owners. An historic tree has already been removed along with all existing vegetation in the rear yard. The Project disregards the existing topography of the site and its relationship to neighboring properties. Extensive excavation of the steeply sloping rear yard has already occurred and more appears to be planned. The Project has diminished adjacent owners' rights to privacy by removing existing vegetation, protection from glare and protection of mid-block open space and will aggravate the situation by extending two floors further into the rear yard at the same elevation as the opposing upper level living room and bedroom areas on the lots downslope from the Project.

2. THE APPLICANT ENGAGED IN IMPROPER SEGMENTATION OF THE ENTITLEMENT PROCESS IN VIOLATION OF THE SPIRIT OF THE SECTION 311 PROCESS

The timing of the Applicant's two building permit applications suggests deliberate piecemealing of the entitlement process in an effort to avoid requirements imposed by Section 311 until after the majority of the Project had been approved and work carried out pursuant to the First Building Permit. The overlap between the work authorized in the First Building Permit, involving deep excavation and new foundation construction at the rear of the structure was clearly designed to permit extension for the lesser proposed work in the Second Building Permit application, involving further extension of the lower two levels at the rear of the structure and related improvements. Significant disparities in cost exist between the two "phase" (\$950,000.00 for the first "phase" authorized by the First Building Permit, and \$115,000.00 for the second "phase" proposed in the Second Building Permit). The Planning Department should have been provided with the opportunity to review the project as a whole so that it could determine appropriateness for Section 311 review in the first instance. Had the Applicant not engaged in improper piecemealing then the Planning Department would also have known of the Applicant's intent to extend into the rear yard and construct related improvements. Moreover, adjacent landowners should have been provided with notice and the opportunity to weigh in on the Project as a whole so that their concerns could be identified and resolved before excavation and construction commenced.

President Ruben and Commissioners of the Planning Commission January 26, 2011 Page 4

3. THE APPLICANT HAS REFUSED TO RESPOND TO OR DISCUSS CONCERNS.

The Applicant offered one meeting with regard to the 311 Notice but effectively refused to discuss any of the neighbors concerns, including those of our client, suggesting that future landscaping and screening were not subjects within the scope of discussion and that all discussion had to be limited to the structural changes themselves. As a consequence our client is simply forced to object to the extensions and their proposed extensive glazing rather than to suggest mitigation measures which would obviate conflict.

- 4. THE PROJECT IS INCONSISTENT WITH THE NEIGHBORHOOD CHARACTER AND THE RESIDENTIAL DESIGN STANDARDS AND WILL CREATE ADVERSE IMPACTS ON ADJACENT PROPERTIES.
 - a. THE PROJECT DISREGARDS EXISTING TOPOGRAPHICAL CONDITIONS IN THE MID-BLOCK OPEN SPACE AREA.

The excavation work already underway, as shown on **Exhibit B**, disregards the topography of the site and changes in it on neighboring properties occasioned by lowering a significant portion of the rear yard in order to extend the first two levels to the rear. This work comes at the expense of the natural slope of the site and enjoyment of mid-block open space by adjoining and opposing residences.

b. The Project Creates Significant Privacy Impacts on Adjacent Properties.

The project will cause two additional levels of fully glazed floors at an elevation, by reason of topography, at the same level as opposing upper level living and bedroom areas. In connection with the absence of any specification or conditions that would restore rear yard landscaping or vegetation to provide some privacy, as designed there is a complete unmitigated line of sight from the proposed new floor extensions and the opposing buildings in violation of Planning Code Section 101. This omission is particularly disturbing in light of the permanent removal of a large tree and other vegetation which previously screened the home.

c. THE PROJECT DISREGARDS THE CHARACTER OF MID-BLOCK OPEN SPACE.

The project further ignores its immediate context by intruding into the mid-block open space in the rear yard. The Applicant apparently contends that this penetration is justified under the theory that such penetration has already occurred by reason of the elevated third level open balcony. But the project would convert all three stories of the now-open area beneath the elevated third level balcony into actual interior building space effectively enlarging the building volume by a substantial amount and having quite a different effect on mid-block open space. And the sought after extensions are deeper than most adjacent structures, thereby disturbing the character of the mid-block open space and disrupting the rear yard setback pattern.

President Ruben and Commissioners of the Planning Commission January 26, 2011 Page 5

d. The Project's Use of Floor to Ceiling Glazing Will Create Significant Visual Impacts.

The project's use of floor to ceiling glazing will create disturbing glare and reflections to nearby and opposing dwellings by reason of morning and afternoon sun reflections. Again, the absence of any specifications or conditions that would screen these impacts by providing for rear yard landscaping exacerbates these impacts. The use of these materials is also inconsistent with the character of windows in adjacent dwellings, and therefore incompatible with the architectural character of the neighborhood and mid-block open space.

5. THE PLANNING COMMISSION SHOULD GRANT DISCRETIONARY REVIEW AND IMPOSE ADDITIONAL CONDITIONS TO RESPECT THE PRIVACY OF NEIGHBORS AND REDUCE VISUAL IMPACTS.

Because the project considered as a whole does not satisfy the Residential Design Standards, and because the Applicant's conduct violates the spirit of the Section 311 process as set forth above, we request that the Planning Commission grant this request for discretionary review and suspend all excavation and construction until such time as a full and complete plan for the rear yard excavation, structuring and landscaping is developed which incorporates the following reasonable design modifications as conditions of approval:

- 1. The project should include additional rear yard improvements to provide adequate privacy and screening, including the replacement of vegetation and landscaping; and
- 2. The project should be modified to reduce the reflective impacts of floor to ceiling glazing to mitigate glare.

Including these two modifications as conditions of approval and their implementation as conditions to occupancy would vastly improve the project. They would also allay the concerns of neighbors. Alternatively, the Planning Commission should disallow the proposed extensions.

We therefore ask that the Planning Commission grant this request for discretionary

review.

JMS: wmc

Enclosure

cc: Allan E. Low, Esq. Adam S. Rubinson

Exhibit B

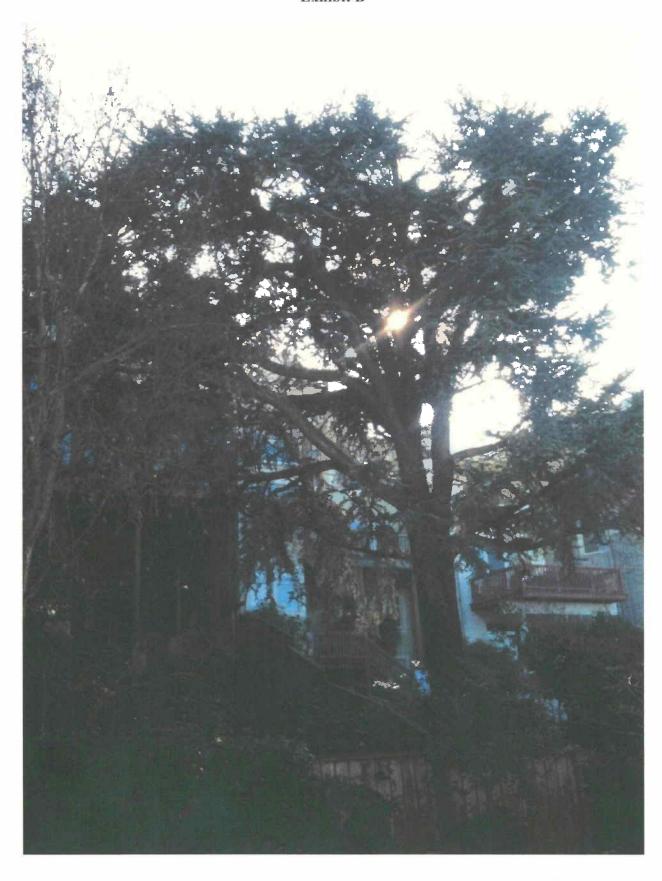
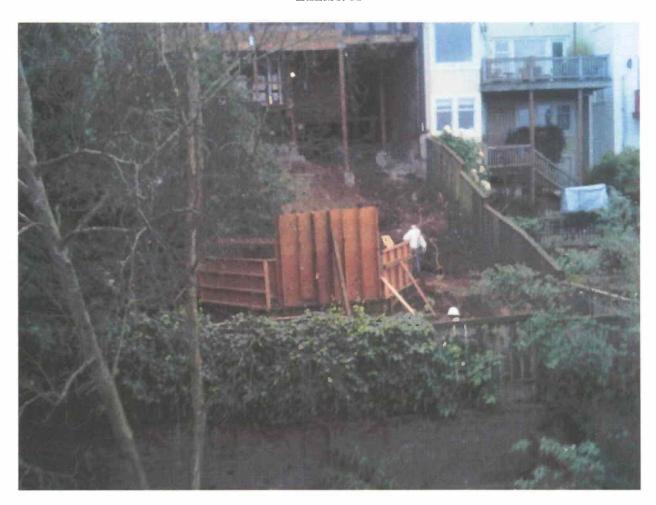


Exhibit A





One Embarcadero Center 18th Floor San Francisco, California 94111-3600 (415) 984-8200 Fax: (415) 984-8300

Allan E. Low
Direct Dial: (415) 984-8208
E-Mail: alow@nixonpeabody.com

May 18, 2011

Ms. Christina Olague President San Francisco Planning Commission 1650 Mission Street, Suite 400 San Francisco, California 94103

Re: <u>Project Sponsor's Response to Request for Discretionary Review</u>

Subject Property: 2350 Broadway Street, San Francisco

Hearing Date: May 26, 2011

Dear President Olague:

Nixon Peabody LLP represents Michael and Maria Gonzalez Bykhovsky (collectively, the "<u>Bykhovskys</u>") in connection with the Request for Discretionary Review filed by Adam Rubinson ("<u>Rubinson</u>") and with respect to the property located at 2350 Broadway Street, San Francisco (the "<u>Bykhovskys Home</u>"). Rubinson's Request for Discretionary Review is the sole opposition in this matter and is essentially a request for privacy from the Bykhovskys. The Bykhovskys plan to provide adequate screening and privacy between the Bykhovskys Home and Rubinson's home, as provided in the landscape plans, attached hereto as <u>Exhibit A</u> and the recommendation of the Rubinson's landscape architect Steven Suzman, which includes the planting of bamboo and other "inter-planting vegetation," as outlined in <u>Exhibit B</u> attached

Planning Commission Project Sponsor Brief May 18, 2011 Page 2

hereto. Rubinson's privacy concerns are adequately met and the Request for Discretionary Review should be denied.

Background

On September 27, 2010, the Bykhovskys caused to be filed an Application for Building Permit, Additions, Alterations or Repairs, Application No. 201009271718 (the "First Permit"), based on architectural plans prepared by John Maniscalco Architecture. The scope of the Permit was for interior renovations, including work on all floors, replacement "in kind" of existing windows on the street façade, and excavation for a new basement floor at the rear of the structure. The scope of work under the Permit is entirely limited to construction within the existing envelope of the Bykhovskys Home. Because the alterations were to the interior of the Bykhovskys Home, no notification was under the San Francisco Planning Code, Section 311. After expiration of the 15-day appeal period, and having not received any appeals to the issuance of the First Permit, construction commenced and is diligently continuing. ¹

The permit that is the subject of Rubinson's Request for Discretionary Review is a second permit application for a different scope of work. On October 8, 2010, the Bykhovskys caused to have a second Application for Building Permit, Additions, Alterations or Repairs, Application No. 201010082625 (the "Second Permit Application"). The scope of the proposed alterations under this Second Permit Application is for the construction of a horizontal bay addition at the rear of the property, the addition of an exterior spiral stair, and an "infill" horizontal addition beneath an existing deck. There are no material changes to the rear yard

Due to a structural addition to the Bykhovskys Home, the Department of Building Inspection issued a Notification of Structural Addition on November 15, 2010. The appeal period expired on November 30, 2010. Rubinson filed a late appeal and a Request for Jurisdiction that was later withdrawn on February 10, 2011.

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May 18, 2011

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patterns of the homes adjacent to the Bykhovskys Home and no new intrusion into the mid-block

open space. The proposed bay addition will not, as Rubinson contends, feature any reflective

glass that will produce excessive glare. The topography of the rear yard is respected and a new

retaining wall will be constructed within the boundaries of the Bykhovskys Home to keep the

integrity of the topography of the site.²

The proposed alterations under the Second Permit Application were separated from the

construction under the Permit because of the interest of the Bykhovskys to complete the interior

renovations under the Permit and have their family move into their home. Due to the extended

timing associated with work outside of the building envelope of the Bykhovskys Home, the

Bykhovskys believed that the interior work under the Permit, which has little or no impact to

their neighbors, could be completed first before the proposed alterations under the Second Permit

Application.

After determining that the proposed alterations under the Second Permit Application

complied with the San Francisco Planning Code and the Residential Design Review Guidelines.

the San Francisco Planning Department mailed the notification and package required under the

San Francisco Planning Code, Section 311 on December 27, 2010. Rubinson filed a Request for

Discretionary Review on January 26, 2011.

Analysis

The exercise of discretionary review is a "sensitive discretion . . . that must be exercised

with the utmost restraint" and should only be exercised "to deal in a special manner with

The retaining wall will be constructed under DBI Permit No. 201103162231. This permit was issued on March

16, 2011 and no appeal was made to this permit.

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NIXON PEABODY LLP

exceptional cases." (City Attorney's Opinion, No. 845, May 26, 1954.) Discretionary review should only be exercised for "exceptional" and "extraordinary" cases. Rubinson's Request for Discretionary Review is only an insistence for his privacy and no exceptional or extraordinary exists to grant discretionary review.

1. <u>Rubinson's Sole Concern is Maintaining His Privacy</u>.

Rubinson's Request for Discretionary Review is solely about maintaining his privacy.

He is the only neighbor who has raised any objections to the proposed construction under the Second Permit Application. Rubinson wants "rear yard landscaping or vegetation to provide some privacy." (Rubinson's Request for Discretionary Review, 4.b.). Arguing of the potential glare from a window, he complains of the "absence of any specifications or conditions that would screen these impacts (perceived glare) by providing for rear yard landscaping exacerbates these impacts." (Rubinson's Request for Discretionary Review, 4.d.)

In an urban environment, privacy is not an extraordinary or exceptional circumstance warranting discretionary review. Rubinson can take his own measures to insure the privacy he seeks. A distance of over 200 feet separates the properties. Nonetheless, Bykhovskys will be planting bamboo and other inter-planting vegetation to provide a privacy screen between the properties and whatever glare Rubinson believes will emanate from windows.

2. There Is No New Intrusion Or Changes Into The Mid-Block Open Space.

There currently exists a deck in the rear yard of the Bykhovskys Home. Substantially all of the proposed additions under the Second Permit Application will be within the footprint of the deck and there will not be any new intrusion into the mid-block open space. Attached hereto as

Exhibit "C" is an aerial photo of the rear block patterns of neighboring properties. The proposed additions under the Second Permit Application do not change this block pattern.

3. The Project Respects The Existing Topography Of The Site.

There will be no material changes to the topography of the rear yard of the Bykhovskys Home. A new retaining wall will be constructed entirely within the lot lines of the Bykhovskys Home to provide sub-lateral support and to preserve the existing topography of the site. As demonstrated in the attached landscape plans, the landscaping and construction of the rear yard improvements will improve the integrity of the topography of the rear yard with substantially the same slopes that currently exist.

4. There is No Improper Segmentation of the Entitlement Process.

The Bykhovskys desired to have the interior work under the First Permit – which has no impact on the neighbors – completed in order to allow their family to move into the home earlier and in advance of the completion of the work contemplated under the Second Permit Application. There is nothing in the Planning Code which prohibits a homeowner from completing interior improvements, which requires no Section 311 notice and has no impact on neighbors, and later completing the work that requires a Section 311 notice. The interior renovations under the First Permit, which have no impact to neighbors and do not alter the exterior of a property, need not be subject to the scrutiny of neighbors or the subject of a discretionary review before this Commission. Certainly, as demonstrated by this request for discretionary review, the interior work inside the Bykhovskys Home should not be held hostage to the privacy concerns of Rubinson.

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Conclusion

Rubinson's Request for Discretionary Review is only about Rubinson's privacy and

wanting to be shielded from his neighbors. He cannot escape the realities of living in an urban

environment with neighbors and extend a bubble of privacy beyond the legal boundaries of his

property. Rubinson's privacy issues cannot support a finding that "exceptional" and

"extraordinary" circumstances exist for discretionary review to be granted.

Rubinson can take measures to mitigate the perceived impairment on his privacy.

Nonetheless, the Bykhovskys will be implementing a landscape plan that will provide adequate

privacy between the Bykhovskys Home and Rubinson's home. No "extraordinary" or

"exceptional" case exists for the planting of a privacy shield between the homes.

The Bykhovskys respectfully request that Rubinson's Request for Discretionary Review

be denied.

ery truly yours,

Dortman

Partner

AEL/cat

Exhibits

Exhibit A-Landscape Plans

Exhibit B-Suzman Recommendations

Exhibit C-Rear Block Plans

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Ron Miguel, Vice President cc:

Michael J. Antonini, Commissioner Gwyneth Borden, Commissioner Kathrin Moore, Commissioner Hisashi Sugaya, Commissioner Rodney Fong, Commissioner

Aaron Starr, Planner

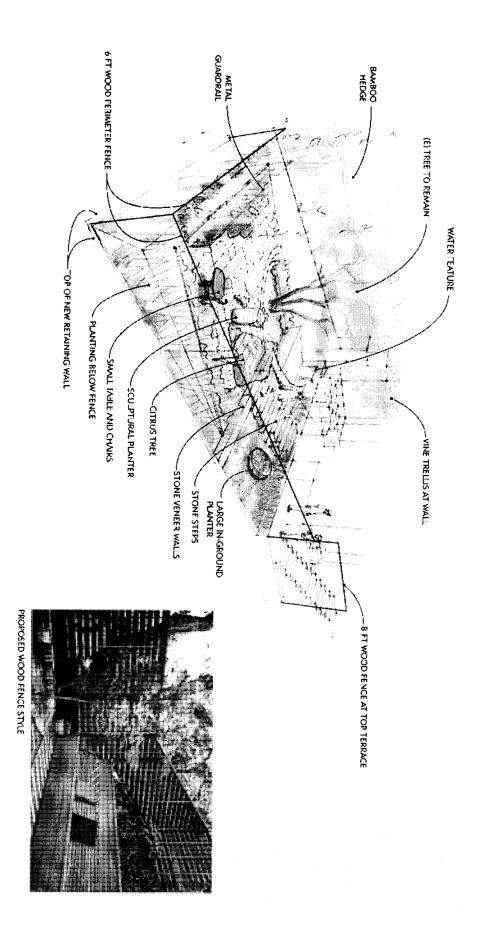
Scott Sanchez, Acting Zoning Administrator

John Sanger, Esq. Sanger & Olson (via email only)

Michael Bykhovsky (via email only)

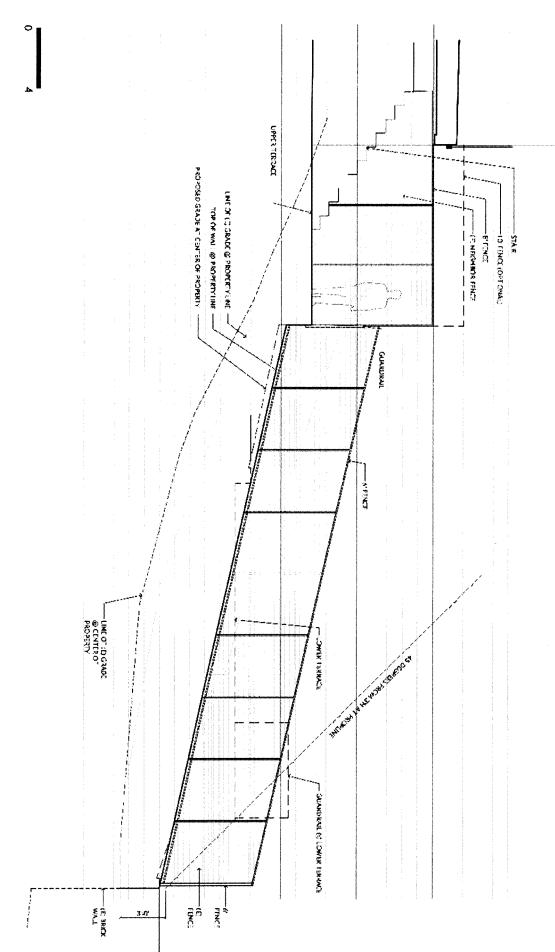
John Maniscalco John Maniscalco Architecture (via email only)

Exhibit A



LANDSCAPE PERSPECTIVE

SHADES
OF GREEN
LANDSCAPE
ARCHITECTURE
1300 BRIDGEWAY SAUSALITO, CA
P 415 322 1485 intr@whodoexlgrmmle.com



OF GREEN
LANDSCAPE
ARCHITECTURE
1306 861301 For Tolyndraffy Carlo
T415 1127 481 Tolyndraffy Ca

Exhibit B

Bamboo Planting

With regard to the proposed Bamboo planting in your client's rear yard planter box, we have contacted Instant Jungle, the potential supplier of the Phyllostachys nigra 'Henon' (Henon Bamboo), specified by Shades of Green. We were able to verify that the 36"-42"box plants are in fact 35'-45' tall, however, their canes are relatively bare for the bottom 10-15'. We would like assurance from your client that smaller plants (possibly 15 gallon size will serve the purpose) of the same variety be inter-planted with the larger box plants to create a substantial barrier. As discussed during our meeting on April 12th, one out of every three of the oldest canes should be removed annually to encourage full foliage to the ground level/base of the cluster at all times.

Exhibit C

DR REQUESTER'S PROPERTY 2347 VALLEJO DASPED LINE OF BAY BELOW EXISTING DECK EXISTING DECK SUBJECT PROPERTY 2350 BROADWAY



ADJACENT SUBJECT PROPERTY ADJACENT 1360 BROADWAY 2350 BROADWAY 2342 BROADWAY

ADJACENT 2342 BROADWAY





2350 BROADWAY

ADMOST BOX

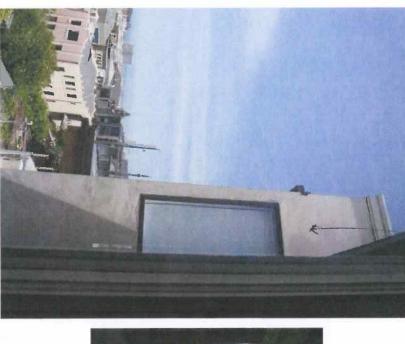
Joseph Level

lingually property



2350 PARESMAN'S





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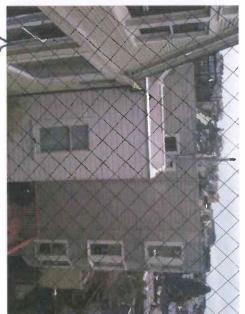
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vadam and want

VIEW FROM JED FL. EAST PROP. LINE. WINDOW







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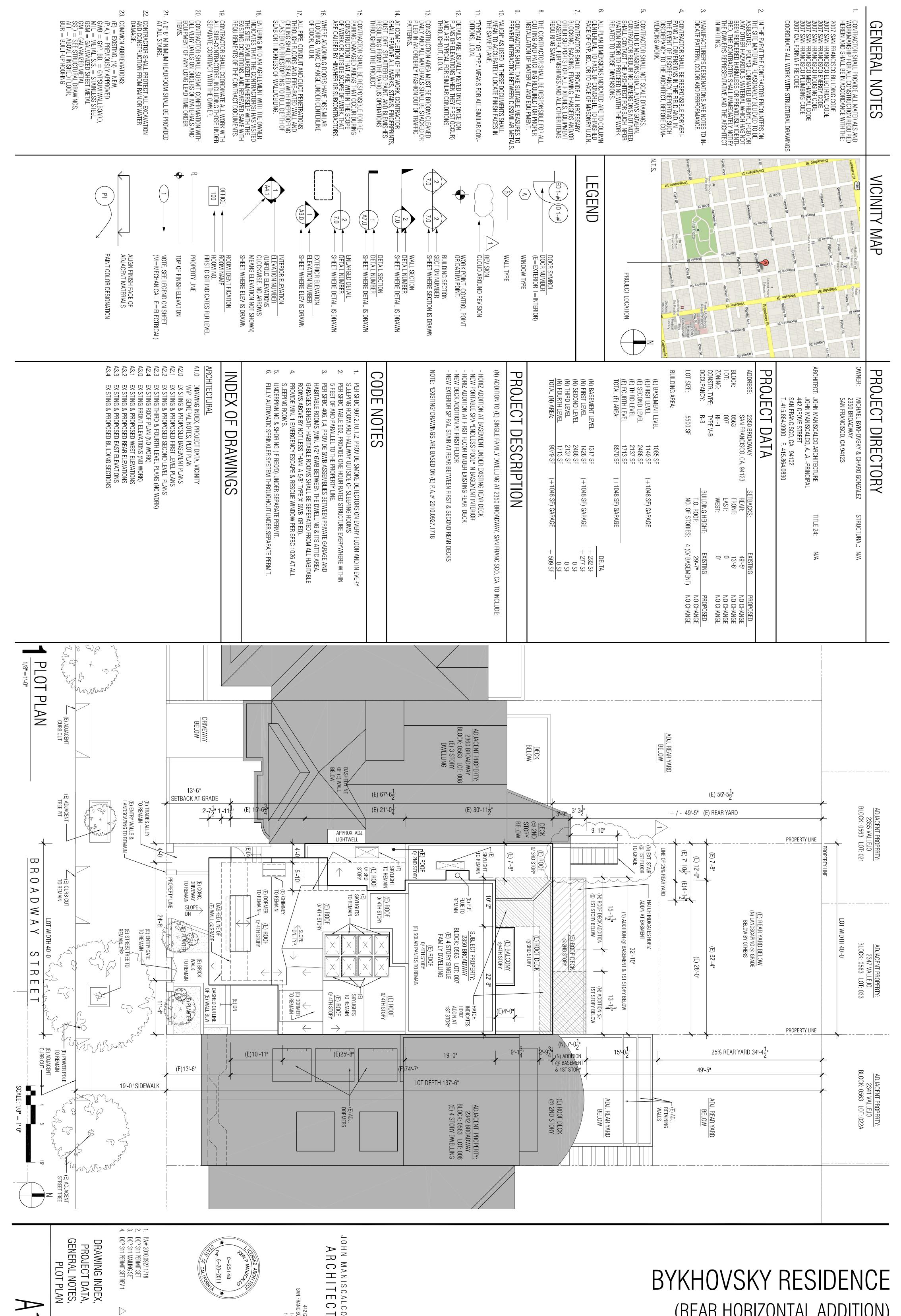
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CHOCAMIN CHOCAMES : 242

SHOP SHOP SOR

2550 F. WAY

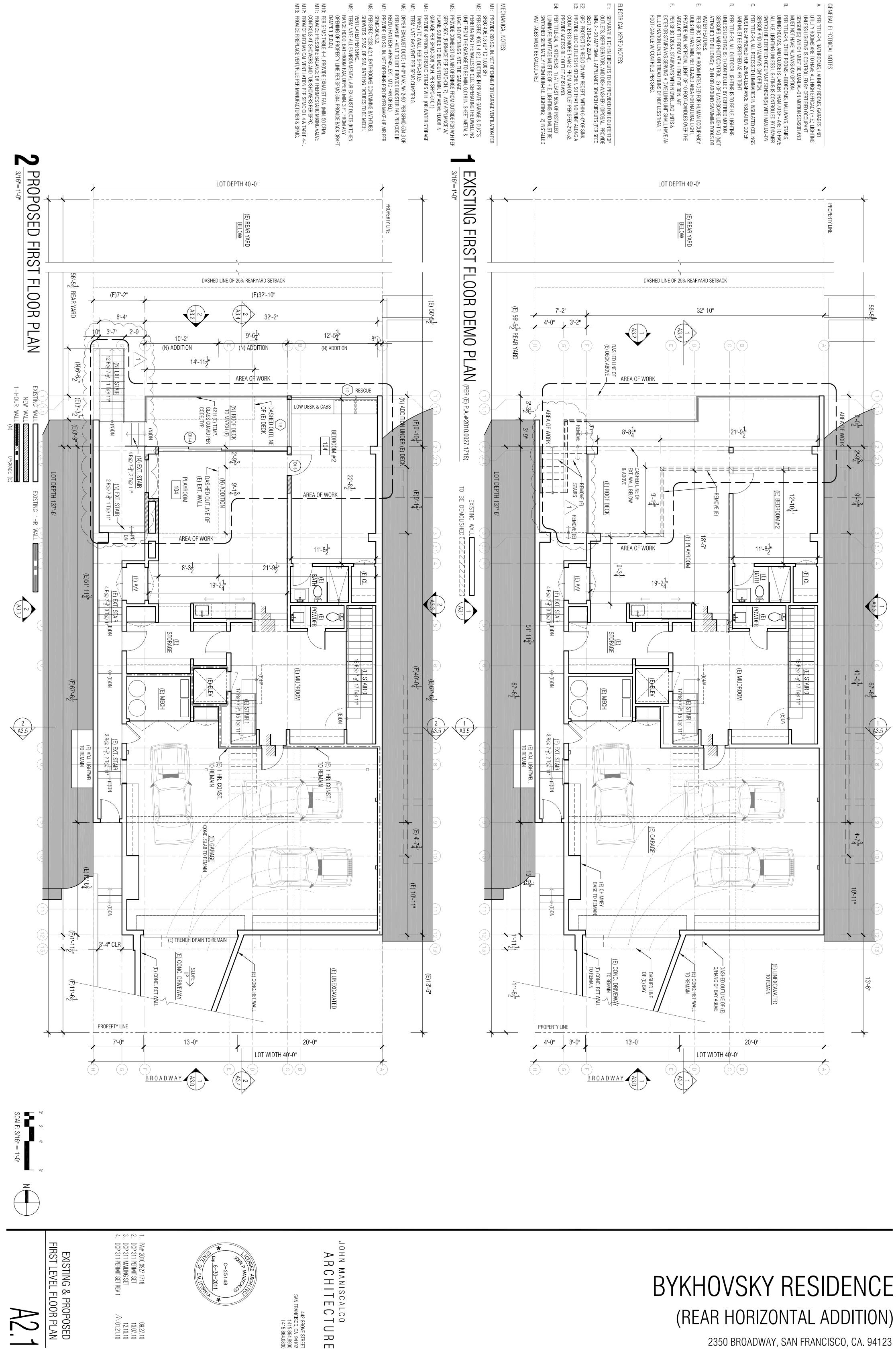


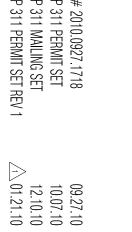
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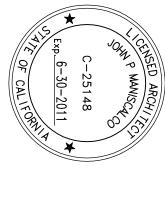
(REAR HORIZONTAL ADDITION)

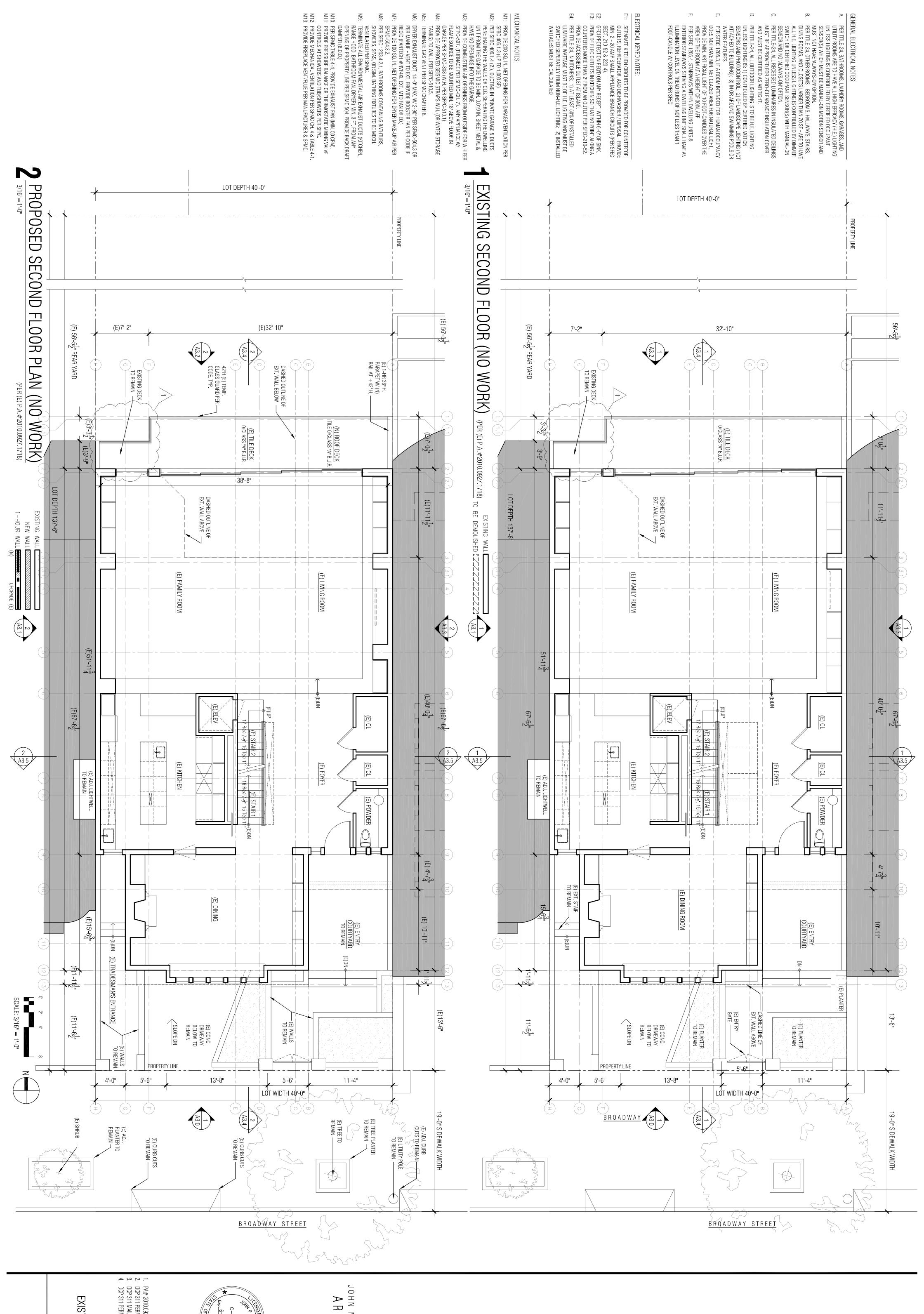
2350 BROADWAY, SAN FRANCISCO, CA. 94123

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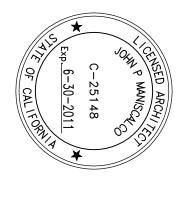






EXISTING & PROPOSED SECOND LEVEL FLOORPLAN

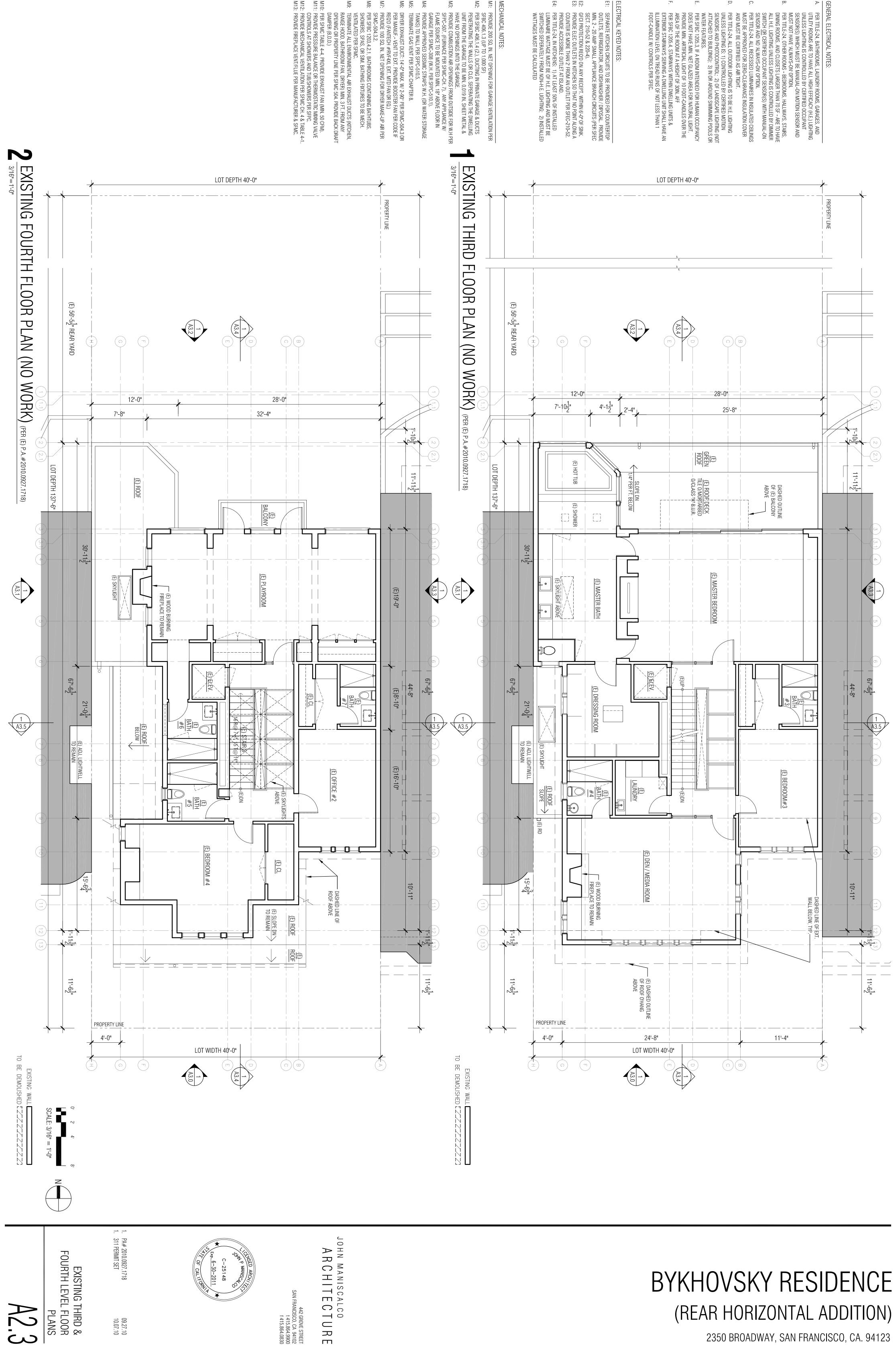
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ARCHITECTURE

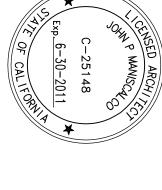
ARCHITECTURE

442 GROVE STREET
SAN FRANCISCO, CA 94102
t 415.864.9900
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EXISTING THIRD & FOURTH LEVEL FLOOR PLANS

09.27.10 10.07.10



GENERAL ELECTRICAL NOTES:

A. PER TITLE-24, BATHROOMS,

M6: DRYER EXHAUST DUCT: 14'-0" MAX. W/ 2-90° PER SFMC-504.3 OR PER MANUF. - VENT TO EXT. PROVIDE BOOSTER FAN PER CODE IF REQ'D (FANTECH #RVF4XL EXT. MTD FAN OR EQ.)
M7: PROVIDE 100 SQ. IN. NET OPENING FOR DRYER MAKE-UP AIR PER SFMC-504.3.2.
M8: PER SFBC 1203.4.2.1, BATHROOMS CONTAINING BATHTUBS, SHOWERS, SPAS, OR SIM. BATHING FIXTURES TO BE MECH. VENTILATED PER SFMC.
M9: TERMINATE ALL ENVIRONMENTAL AIR EXHAUST DUCTS (KITCHEN, RANGE HOOD, BATHROOM FAN, DRYER) MIN. 3 FT. FROM ANY OPENING OR PROPERTY LINE PER SFMC 504. PROVIDE BACK DRAFT DAMPER (B.D.D.)
M10: PER SFMC TABLE 4-4, PROVIDE EXHAUST FAN (MIN. 50 CFM).
M11: PROVIDE PRESSURE BALANCE OR THERMOSTATIC MIXING VALVE CONTROLS AT SHOWERS AND TUB/SHOWERS PER SFPC.
M12: PROVIDE MECHANICAL VENTILATION PER SFMC CH. 4 & TABLE 4-1. MECHANICAL NOTES:

M1: PROVIDE 200 SQ. IN M1: PROVIDE 200 SQ. IN. NET OPENING FOR GARAGE VENTILATION PER SFBC 406.1.3 (UP TO 1,000 SF)

M2: PER SFBC 406.1.4 (2.), DUCTING IN PRIVATE GARAGE & DUCTS PENETRATING THE WALLS OR CLG. SEPERATING THE DWELLING UNIT FROM THE GARAGE TO BE MIN. 0.019 IN. SHEET METAL & HAVE NO OPENINGS INTO THE GARAGE.

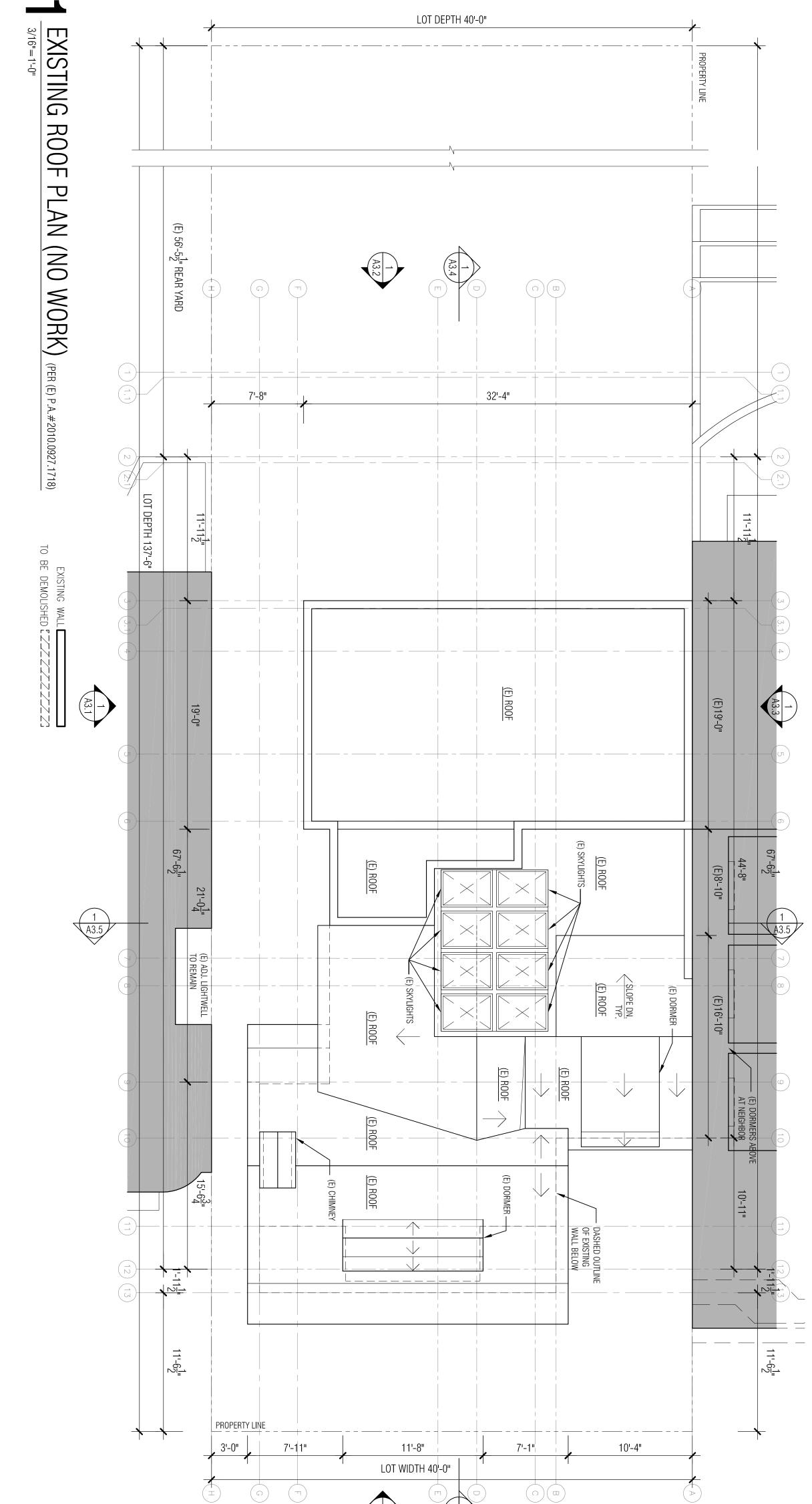
M3: PROVIDE COMBUSTION AIR OPENINGS FROM OUTSIDE FOR W.H PER SFPC-507. (FURNACE PER SFMC-CH. 7). ANY APPLIANCE W/ FLAME SOURCE TO BE MOUNTED MIN. 18" ABOVE FLOOR IN GARAGE PER SFMC-308 (W.H. PER SFPC-510.1).

M4: PROVIDE APPROVED SEISMIC STRAPS W.H. (OR WATER STORAGE TANKS) TO WALL PER SFPC-510.5.

M5: TERMINATE GAS VENT PER SFMC CHAPTER 8. OUTLETS, REFRIGERATOR, AND DISHWASHER / DIPOSAL. PROVIDE MIN. 2 - 20 AMP SMALL APPLIANCE BRANCH CIRCUITS (PER SFEC SECT. 210-52 & 220-4).

2: GFCI PROTECTION REQ'D ON ANY RECEPT. WITHIN 6'-0" OF SINK.
3: PROVIDE ELEC OUTLETS IN KITCHEN SO THAT NO POINT ALONG A COUNTER IS MORE THAN 2' FROM AN OUTLET PER SFEC-210-52. PROVIDE ACCESSIBLE OUTLET AT ISLAND.

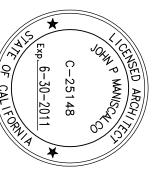
4: PER TITLE-24, IN KITCHENS: 1) AT LEAST 50% OF INSTALLED LUMINAIRE WATTAGE MUST BE OF H.E. LIGHTING AND MUST BE SWITCHED SEPERATELY FROM NON-H.E. LIGHTING; 2) INSTALLED WATTAGES MUST BE CALCULATED

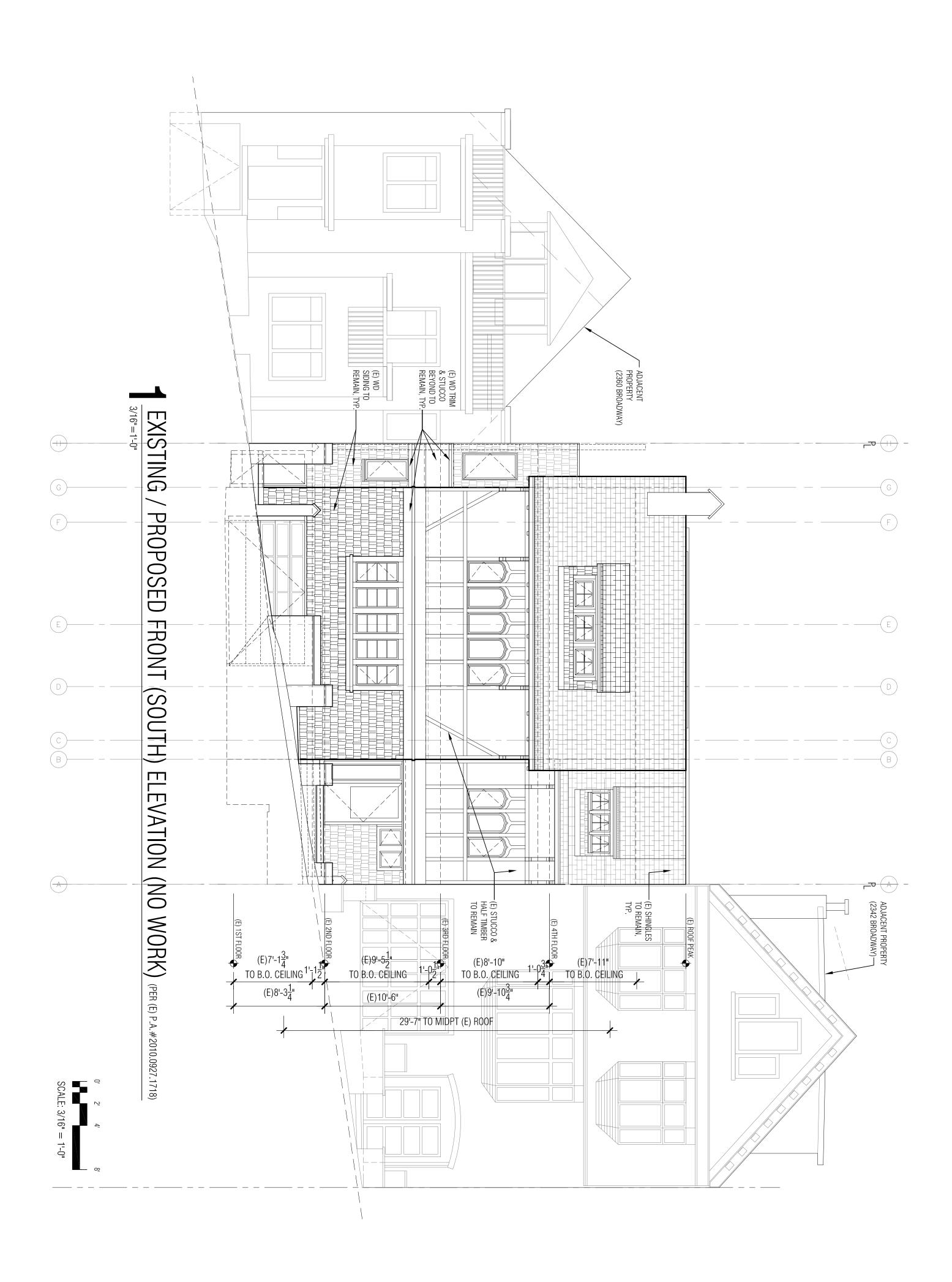


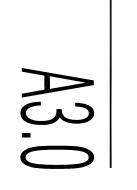


EXISTING ROOF LEVEL PLAN



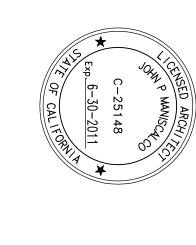






EXISTING & PROPOSED FRONT (SOUTH) ELEVATIONS

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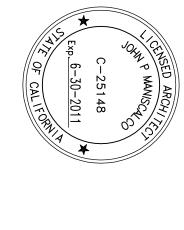




A3.1

EXISTING & PROPOSED WEST ELEVATIONS



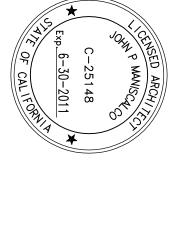


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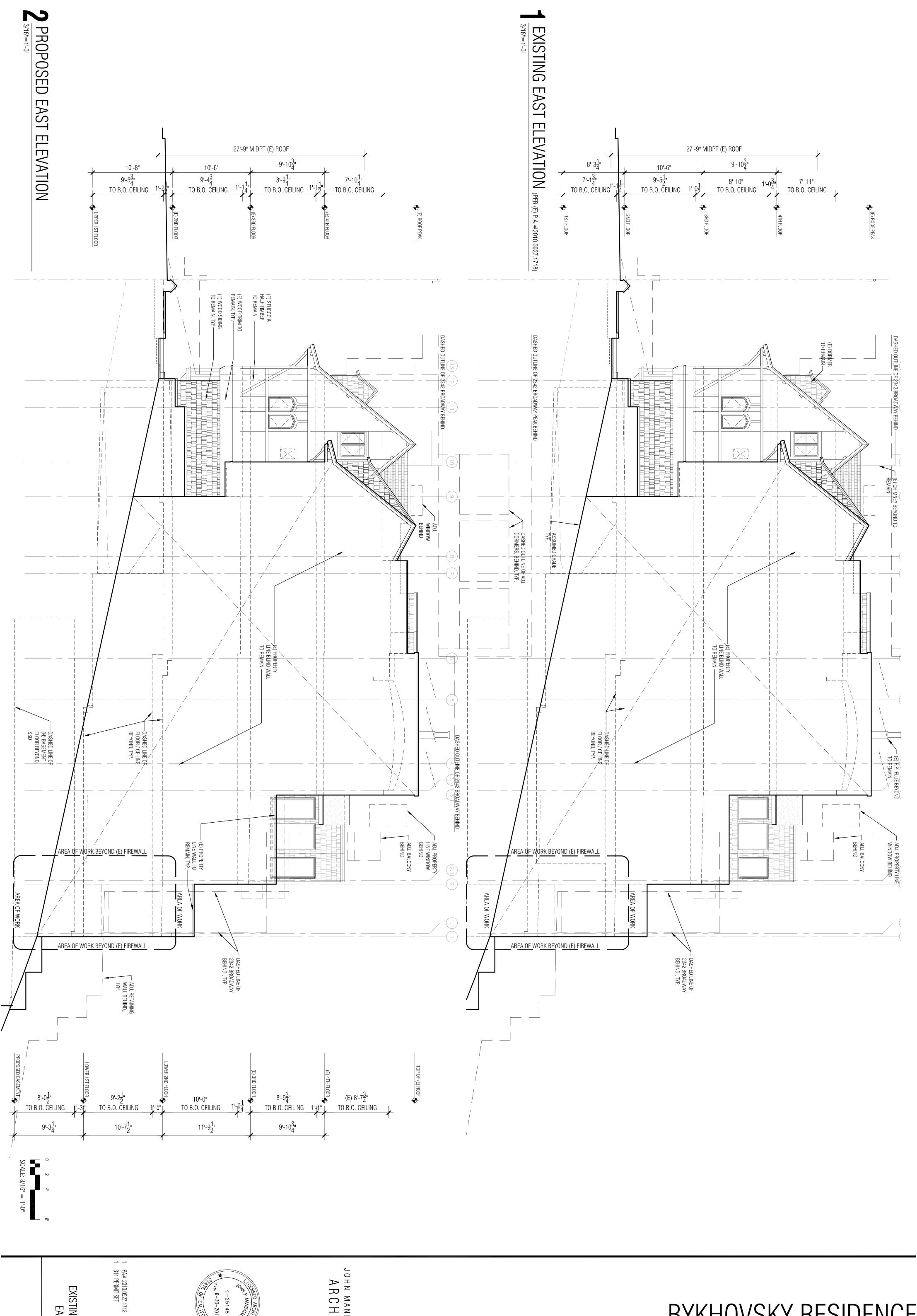






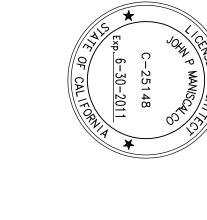
JOHN MANISCALCO
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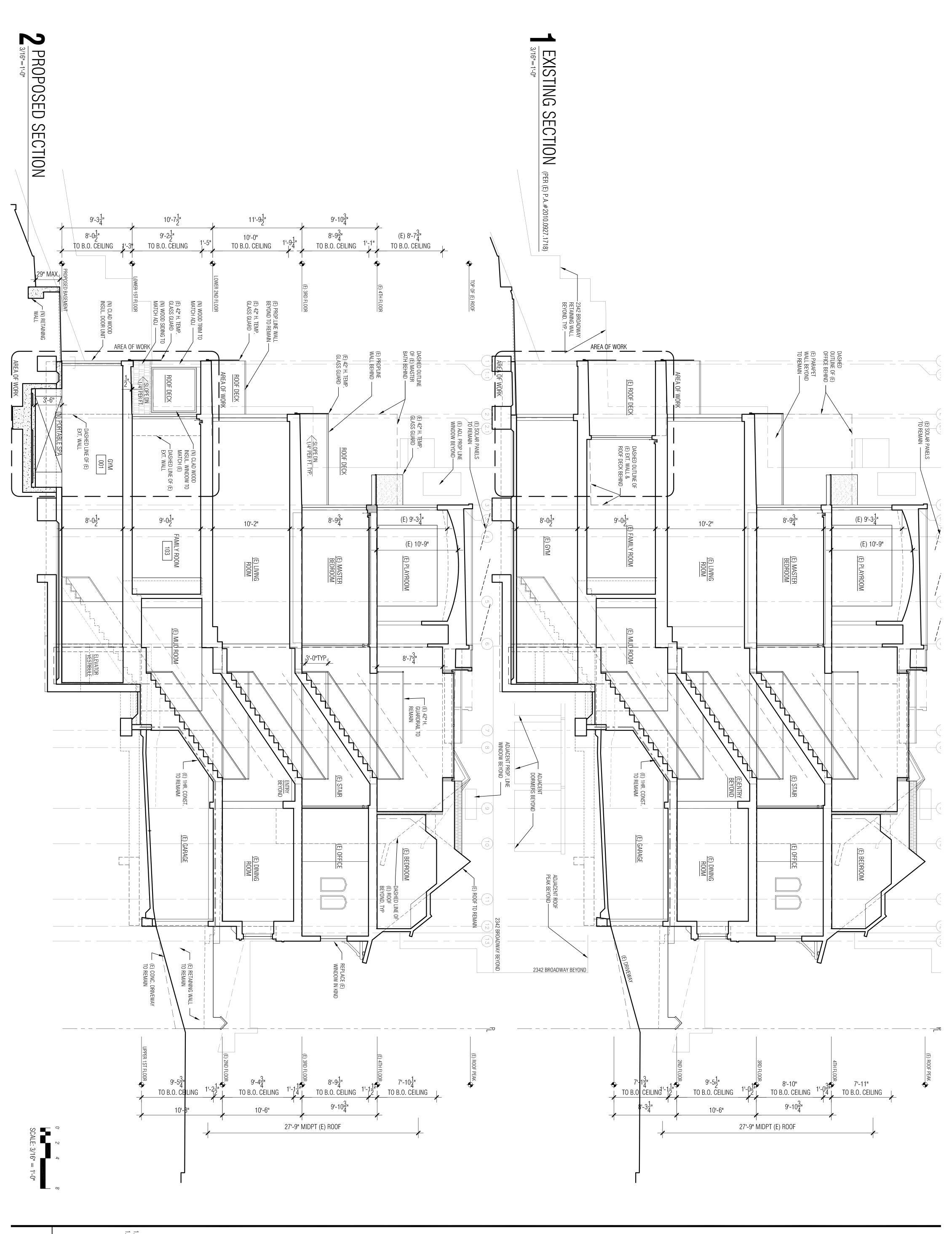




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ARCHITECTURE



A3.4

EXISTING & PROPOSED LONGITUDINAL SECTIONS



