



# SAN FRANCISCO PLANNING DEPARTMENT

## Discretionary Review Analysis Full Analysis

HEARING DATE JANUARY 20, 2011

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

Reception:  
**415.558.6378**

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Planning  
Information:  
**415.558.6377**

*Date:* January 13, 2011  
*Case No.:* 2010.0805D  
*Project Address:* 1787 Union Street  
*Permit Application:* 2010.06.04.3920  
*Zoning:* Union Street Neighborhood Commercial District  
40-X Height and Bulk District  
*Block/Lot:* 0544/017  
*Project Sponsor:* The Brick Yard  
c/o Darren Matte  
1787 Union Street  
San Francisco, CA 94123  
*Staff Contact:* Mary Woods – (415) 558-6315  
[mary.woods@sfgov.org](mailto:mary.woods@sfgov.org)  
*Recommendation:* **Take Discretionary Review and approve the project with conditions**

### PROJECT DESCRIPTION

The project proposes to legalize the removal of an elevated glass sunroom enclosure and, in its place, establish an open patio (an "outdoor activity area," as defined in Planning Code Section 790.70) at the front of the building for an existing full-service restaurant and bar (dba "The Brick Yard"). The sunroom enclosure was removed and replaced with an open patio without proper notification to the neighborhood. The subject permit application was filed in response to a Notice of Violation and Penalty issued by the Planning Department on June 2, 2010. This irregularly-shaped open patio, located to the east of the front entrance, is elevated approximately five feet from the ground, measuring approximately 9 feet deep by 16 feet wide, containing approximately 144 square feet. A maximum of four tables are proposed with seating for up to 12 patrons. The patio is accessible only through the interior of the restaurant by way of a five-panel folding door between the outdoor patio and the indoor restaurant. The existing restaurant began operation on June 5, 2010. Previous occupants included the "Bayside Sports Bar and Grill", "Margaritaville Restaurant and Bar", and "Sun Grove Restaurant and Bar".

### SITE DESCRIPTION AND PRESENT USE

The project site is located at 1787 Union Street, Lot 17 in Assessor's Block 0544, on the south side of the street between Octavia and Gough Streets in the Union Street Neighborhood Commercial District (NCD) and 40-X Height and Bulk District. The subject L-shaped, up-sloping lot contains approximately 2,100 square feet with frontages on Union and Octavia Streets. The existing restaurant occupies the entire building with a primary entrance on Union Street and a small handicapped accessible entrance on Octavia Street. The subject building is one story, built in 1978.

### SURROUNDING PROPERTIES AND NEIGHBORHOOD

The project site is located near the eastern edge of the Union Street NCD in the Marina neighborhood. This neighborhood contains a variety of neighborhood-serving uses, including a mixture of food establishments, personal services, and small retail establishments. The food service establishments are primarily full-service restaurants. Two blocks north of the Project Site is the Lombard Street commercial corridor. Land uses in the project vicinity consist of two- and three-story tourist-oriented lodging facilities, multiple-unit residential buildings, restaurants, and neighborhood-serving retail businesses. Buildings on the subject block and the facing blocks range from two to four stories tall.

### BUILDING PERMIT APPLICATION NOTIFICATION

TYPE	REQUIRED PERIOD	NOTIFICATION DATES	DR FILE DATE	DR HEARING DATE	FILING TO HEARING TIME
312 Notice	30 days	7/27/10 - 9/8/10	9/7/10	1/20/11	135 days

### HEARING NOTIFICATION

TYPE	REQUIRED PERIOD	REQUIRED NOTICE DATE	ACTUAL NOTICE DATE	ACTUAL PERIOD
Posted Notice	10 days	January 10, 2010	January 10, 2010	10 days
Mailed Notice	10 days	January 10, 2010	January 10, 2010	10 days

### PUBLIC COMMENT

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

The Department has received eight letters in opposition to the proposed project. The primary concern raised is that noise would be generated from the outdoor dining patio by people talking and drinking in the patio area. The Department has also received 12 letters in support of the project.

### DR REQUESTOR

Ms. Skye Czember owns a property, across the street, at 1782 Union Street, a distance of more than 70 feet from the project site.

## DR REQUESTOR'S CONCERNS AND PROPOSED ALTERNATIVES

Ms. Czember has requested DR based on the negative impact the illegal alteration to the front of the building has caused and the following exceptional and extraordinary circumstances (see attached *DR Application*):

1. disregard of City laws and regulations;
2. illegal unpermitted construction even after receipt of specific instructions from SF Planning, Stop Work Orders and Notices of Violation from SF Building and Planning;
3. piecemeal permitting (playing SF Building against SF Planning): (a) permits issued by Building prior to sign off by Planning; (b) permits issued by Building contrary to what had been authorized by Planning;
4. the complete lack of community outreach by the true sponsor of the project, Mr. Faidi;
5. the architectural drawings submitted with the 312 notification are erroneous;
6. the extremely negative impact to the quality of life of the nearby residents and invasion of the public realm;
7. the refusal of the responsible party to mediate either through recognized community organizations or through the Community Boards;
8. there has been no environmental impact study conducted regarding the impact of an open elevated front bar deck in terms of noise, safety and livability on residences within 75 feet as well as adjacent blocks; and
9. the front outdoor activity area and building envelope alteration does not meet the City's General Plan/Planning Code criteria.

Based on discussions with the DR requestor, her preference is that the project sponsor re-installs the glass enclosure or converts the glass bi-fold doors to a stucco wall.

Please see the *DR Application* for additional information. The *DR Application* is an attached document.

## PROJECT SPONSOR'S RESPONSE

The project sponsor, the DR requestor, and other neighbors have been in discussion but have not reached any compromise. The project sponsor has suggested the following modification/conditions to address neighbors' concerns (see attached *Response to DR*):

1. close two of the panel doors (east side) at all times; open one panel at all times for ingress/egress, and open the other two panel doors (center) when weather permits;
2. limit the outdoor seating to a maximum of 12 people for up to 4 tables only;
3. the outdoor patio would close at 10 p.m. daily. When the patio is not in use, the bi-fold doors would remain fully closed;
4. will not request additional sidewalk seating;
5. will install a retractable angled canvas awning that would provide additional sound dampening;
6. will install flower/planting boxes along the iron railing at the patio to help prevent any items from falling to the sidewalk below.

Please see the *Response to DR* for additional information. The *Response to DR* is an attached document.

## PROJECT ANALYSIS

Under the Union Street NCD controls, an "outdoor activity area" is allowed at the front of the building as-of-right. According to a survey provided by the project sponsor, 18 restaurants in the Union Street NCD have outdoor dining at the front of their respective establishments. A total of 32 restaurants are allowed in the Union Street NCD per Board of Supervisor's legislation adopted in January 2009. With regard to the DR requestor's concerns, each item will be addressed according to the numbers referenced above under the DR requestor's concerns:

**Issue #1: disregard of City laws and regulations** – It may appear that the project sponsor has deviated from the description of the project, specifically the wording of "replace" versus "removal" of front glass sunroom enclosure. However, the architectural drawings of the approved plans under Building Permit Application No. 2010.02.02.5765 stated "removal" on various plan details, and not "replace". The ambiguity of the plans and the project description could have caused confusion for all parties involved.

**Issue #2: illegal unpermitted construction even after receipt of specific instructions from SF Planning, Stop Work Orders and Notices of Violation from SF Building and Planning** – The project sponsor filed for a Building Permit Application (No. 2010.06.04.3920) two days after receiving the Planning Department's Notice of Violation and Penalty, dated June 2, 2010. (Please also see response under Issue #1.)

**Issue #3: piecemeal permitting (playing SF Building against SF Planning): (a) permits issued by Building prior to sign off by Planning; (b) permits issued by Building contrary to what had been authorized by Planning** – Each agency, whether Building or Planning, generally reviews and considers permit applications based on their compliance with the various rules and regulations under their respective jurisdictions.

**Issue #4: the complete lack of community outreach by the true sponsor of the project, Mr. Faidi** – Under the project sponsor's submittal for *Response to DR*, a letter from Mr. Faidi is attached for more information. According to the project sponsor, community outreach has been ongoing from April, 2010 to the present.

**Issue #5: the architectural drawings submitted with the 312 notification are erroneous** – Based on discussions with the DR requestor, Ms. Czember believes that the restaurant's bar is longer than what is shown on the plans; specifically, the bar is approximately five feet away from the new patio doors rather than 10 feet from the patio doors. The Planning Code does not regulate the length of a bar counter.

**Issue #6: the extremely negative impact to the quality of life of the nearby residents and invasion of the public realm** – Some of the concerns raised by neighbors include (1) noise coming from the interior of the restaurant when the glass bi-fold doors are open; also resulting in (2) lack of privacy because bar patrons have direct views of residences across the street; (3) noise permeates homes which have double-paned windows on Octavia Street; (4) bar noise; (5) poor bar behavior since it primarily attracts a very

young, heavy drinking crowd, and (6) safety from objects that can become dangerous projectiles raining down on passers-by from an elevated deck (either accidentally or deliberately when sports' passions run high). Generally, the Planning Code does not regulate views or human behavior. Union Street is also a well-known and established commercial corridor. In an effort to address concerns related to interior noise, the project sponsor has installed sound dampening panels and double-depth drywall throughout various portions of the interior in order to minimize the noise effects. Mitigation measures have been developed to address the concerns, and the project sponsor has agreed to the additional conditions related to the use of the outdoor patio. These mitigation measures will be implemented as "Conditions of Approval" for the project (see below Basis for Recommendation item 6). The new outdoor dining patio is located on private property, not on public sidewalk or right-of-way.

**Issue #7: the refusal of the responsible party to mediate either through recognized community organizations or through the Community Boards** – According to the project sponsor, community outreach began in April, 2010, months before the restaurant was opened on June 5, 2010, and has continued to the present (see attached *Response to DR* for chronology of events).

**Issue #8: there has been no environmental impact study conducted regarding the impact of an open elevated front bar deck in terms of noise, safety and livability on residences within 75 feet as well as adjacent blocks** – The Department has determined that the outdoor activity use is exempt from environmental review (see below Environmental Review determination). In Neighborhood Commercial Districts, an outdoor activity area is permitted as a principal use at the front of a building, whether located on private properties or sidewalks. In an urban environment, some noise would be expected on commercial corridors, such as the Union Street NCD.

**Issue #9: the front outdoor activity area and building envelope alteration does not meet the City's General Plan/Planning Code criteria** – The outdoor activity area is a common feature for many eating and drinking establishments in the City. For that reason, the Planning Code allows outdoor activity areas in the front of buildings as principally permitted uses.

The Department has reviewed the proposed project and finds that in all of its features, it fully complies with the requirements of the Planning Code.

## ENVIRONMENTAL REVIEW

The project was determined by the Department to be categorically exempt from the California Environmental Quality Act ("CEQA") Guidelines under Section 15301, Class One.

## DISCRETIONARY REVIEW REFORM LEGISLATION

Under the Commission's pending DR Reform Legislation, this project would be referred to the Commission, as this project involves creating an outdoor activity area at the front of the building.

## BASIS FOR RECOMMENDATION

The Department believes the proposed project does have exceptional or extraordinary circumstances for the following reasons:

1. The project site has contained continuous commercial/retail activities for over 30 years, and the proposed outdoor activity area at the front of the building would not be expected to impact existing traffic patterns.
2. An eating and drinking establishment has been operating at the site since 1985.
3. The project will preserve and enhance the cultural and economic diversity of the neighborhood commercial character of Union Street.
4. The project site is well-served by public transit lines. Metered and non-metered parking spaces are provided on the streets.
5. The project complies with the requirements of the Planning Code.
6. The project could have potential noise impacts on the neighborhood. Therefore, mitigation measures have been developed to address neighbors' concerns related to noise. These mitigation measures would be implemented as "Conditions of Approval" for the project. They are as follows:
  - a) the two easternmost panel doors shall remain closed at all times; one panel door shall remain open at all times for ingress/egress, and the other two panel doors (center) may be open when weather permits;
  - b) outdoor seating shall be limited to a maximum of 12 people for up to 4 tables only;
  - c) outdoor patio shall close at 10:00 p.m. daily. When the patio is closed, the bi-fold doors shall remain fully closed;
  - d) no additional sidewalk seating shall be allowed;
  - e) a retractable angled canvas awning shall be installed over the front patio to provide additional sound dampening;
  - f) flower/planting boxes shall be installed along the iron railing at the patio to help prevent any items from falling to the sidewalk below; and
  - g) prior to the issuance of a Building Permit Application for the legalization of the open patio, the project sponsor or the responsible party shall record a Notice of Special Restrictions as approved by the Zoning Administrator in the Official Records of the Recorder of City and County of San Francisco for the premises (Assessor's Block 0544, Lot 017), which notice shall state that the proposed use has been authorized by the Planning Commission and is subject to the conditions attached to this DR.

**RECOMMENDATION: Take Discretionary Review and approve the project with conditions**

### Attachments:

Block Book Map  
Sanborn Map

Aerial Photographs

Section 311 Notice

DR Application dated September 7, 2010

Project Sponsor's Submittal dated January 10, 2011:

- Response to DR Application
- Exhibit A: Letter from architect, Onju Updegrave with attachments
- Exhibit B: Letter from KAP Investments manager, Zack Faidi
- Exhibit C: Plans submitted for 312 Notification (BPA No. 2010.06.04.3920)
- Exhibit D: Photos of interior sound panels
- Exhibit E: Sound Report from Entertainment Commission Inspector Granelli
- Exhibit F: Photos of 1787 Union front previous vs. current
- Exhibit G: Email correspondence between Darren Matte & Skye Czember
- Exhibit H: Photos of 1787 Union proposed patio
- Exhibit I: Panoramic photos of Union & Octavia Streets; Enlarged photos of The Brick Yard - interior & exterior

mw/g:\documents\dr\1787 Union St - DR Analysis

# Zoning / Parcel Map

DR REQUESTOR'S PROPERTY  
AT 1782 UNION STREET



SUBJECT PROPERTY

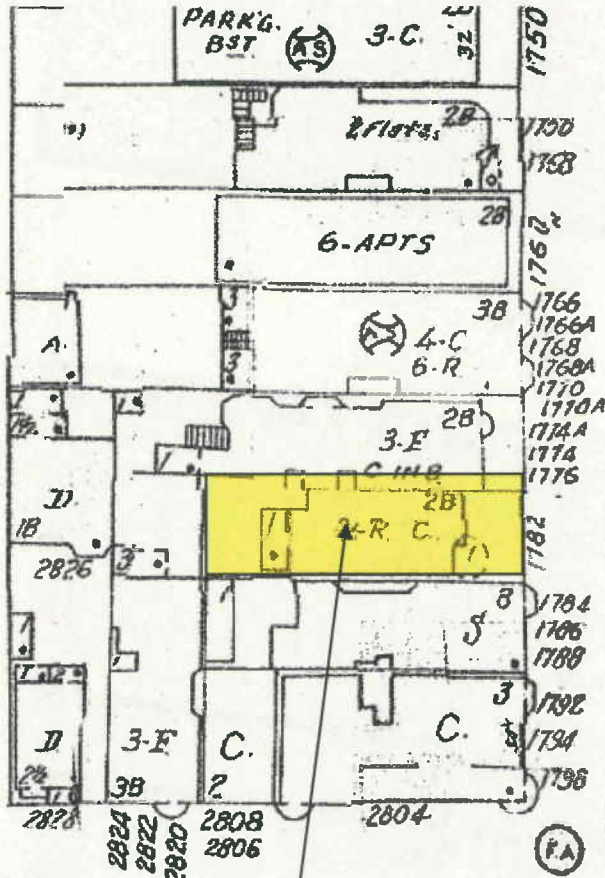




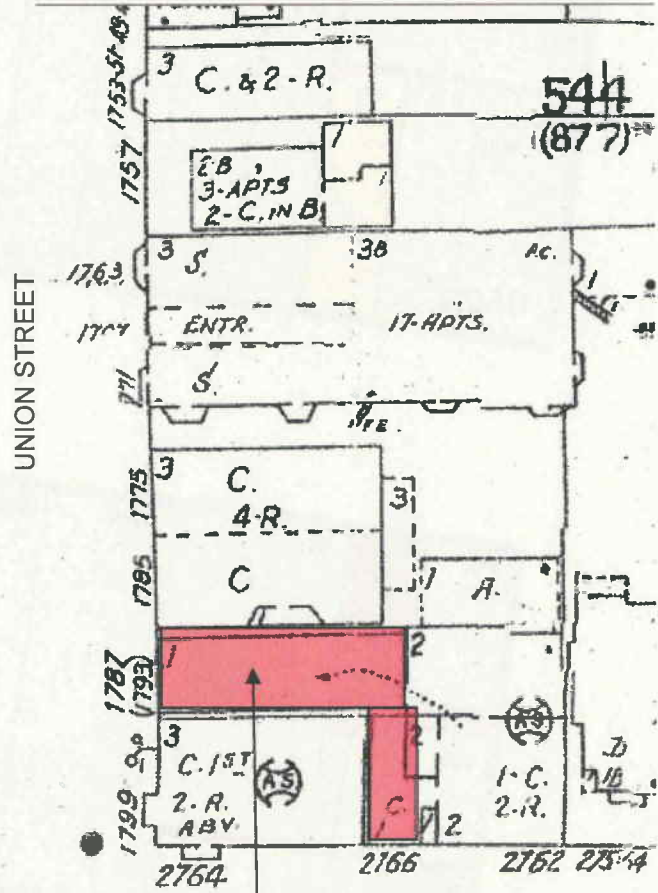
# Sanborn Map\*

\*The Sanborn Maps in San Francisco have not been updated since 1998, and this map may not accurately reflect existing conditions.

GOUGH STREET



DR REQUESTOR'S PROPERTY  
AT 1782 UNION STREET



SUBJECT PROPERTY



Discretionary Review Hearing  
Case Number 2010.0805D  
1787 Union Street

# Aerial Photo

SUBJECT PROPERTY



DR REQUESTOR'S PROPERTY  
AT 1782 UNION STREET



# Aerial Photo

DR REQUESTOR'S PROPERTY  
AT 1782 UNION STREET

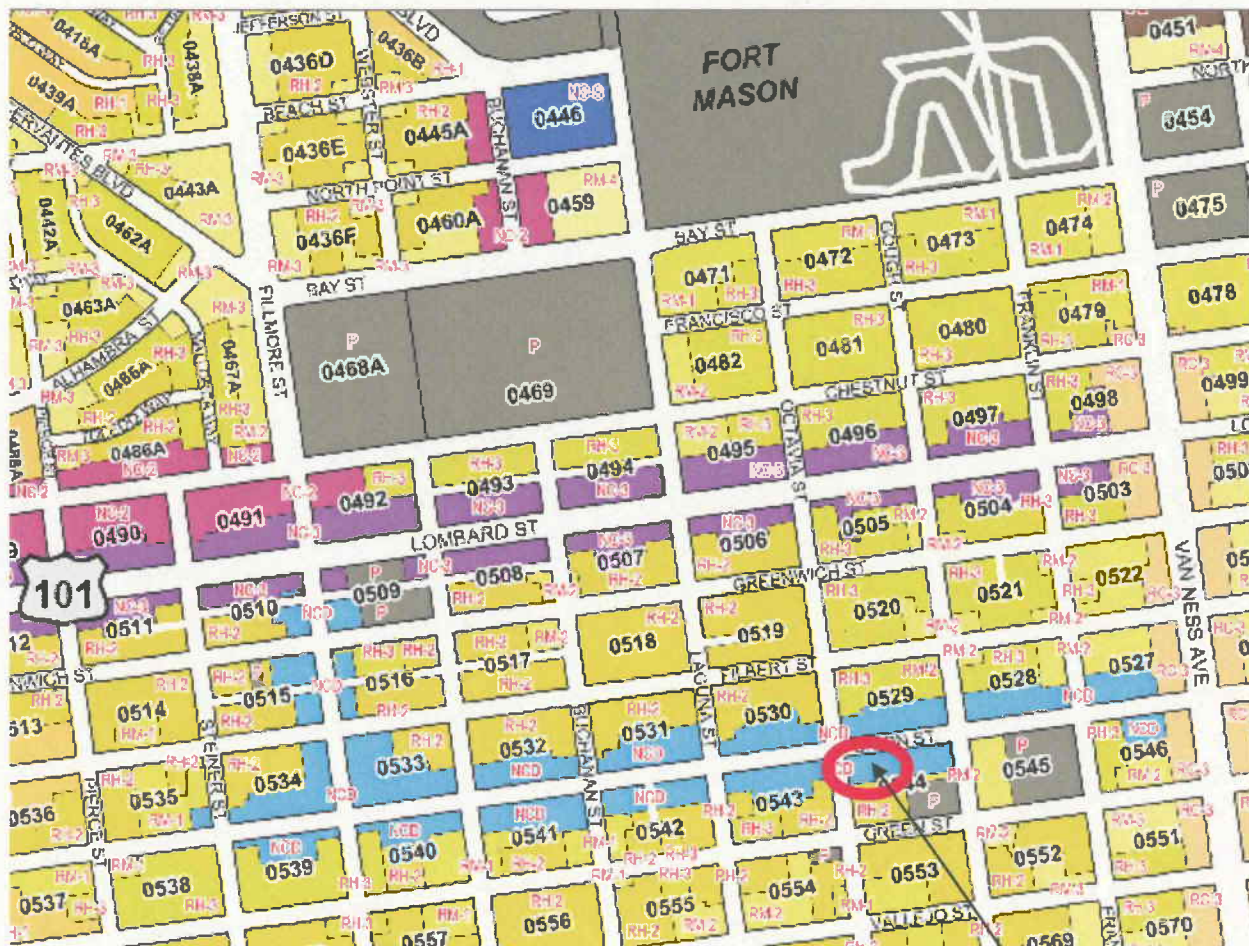


SUBJECT PROPERTY



Discretionary Review Hearing  
Case Number 2010.0805D  
1787 Union Street

# Zoning Map



PROJECT SITE

## ZONING USE DISTRICTS

### RESIDENTIAL, HOUSE DISTRICTS

RH-1(D) RH-1 RH-1(S) RH-2 RH-3

### RESIDENTIAL, MIXED (APARTMENTS & HOUSES) DISTRICTS

RM-1 RM-2 RM-3 RM-4

### NEIGHBORHOOD COMMERCIAL DISTRICTS

NC-1 NC-2 NC-3 NCD NC-S

### SOUTH OF MARKET MIXED USE DISTRICTS

SPD RED RSD SLR SLI SSO

### COMMERCIAL DISTRICTS

C-2 C-3-S C-3-G C-3-R C-3-O C-3-OSD

### INDUSTRIAL DISTRICTS

C-M M-1 M-2

### CHINATOWN MIXED USE DISTRICTS

CRNC CVR CCB

### RESIDENTIAL-COMMERCIAL DISTRICTS

RC-3 RC-4

### REDEVELOPMENT AGENCY DISTRICTS

MB-RA HP-RA

### DOWNTOWN RESIDENTIAL DISTRICTS

RH DTR TB DTR

### MISSION BAY DISTRICTS

MB-OS MB-O

### PUBLIC DISTRICT

P



Discretionary Review Hearing  
Case Number 2010.0805D  
1787 Union Street



# SAN FRANCISCO PLANNING DEPARTMENT

1650 Mission Street Suite 400 San Francisco, CA 94103

## NOTICE OF BUILDING PERMIT APPLICATION (SECTION 312)

On **June 4, 2010**, the Applicant named below filed Building Permit Application No. 2010.06.04.3920 (Alteration) with the City and County of San Francisco.

CONTACT INFORMATION		PROJECT SITE INFORMATION	
Applicant:	Rachel Abraham, SF Garage Co.	Project Address:	1787 Union Street
Address:	50 Otis Street	Cross Streets:	Gough/Octavia
City, State:	San Francisco, CA 94103	Assessor's Block /Lot No.:	0544/017
Telephone:	(415) 828.3964	Zoning Districts:	Union NCD/40-X

Under San Francisco Planning Code Section 312, 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		
<input type="checkbox"/> DEMOLITION	and/or	<input type="checkbox"/> NEW CONSTRUCTION or <input checked="" type="checkbox"/> ALTERATION
<input type="checkbox"/> VERTICAL EXTENSION		<input type="checkbox"/> CHANGE # OF DWELLING UNITS <input checked="" type="checkbox"/> FACADE ALTERATION(S)
<input type="checkbox"/> HORIZ. EXTENSION (FRONT)		<input type="checkbox"/> HORIZ. EXTENSION (SIDE) <input type="checkbox"/> HORIZ. EXTENSION (REAR)
PROJECT FEATURES	EXISTING CONDITION	PROPOSED CONDITION
BUILDING USE .....	Restaurant .....	Restaurant
BUSINESS NAME .....	formerly "Bayside" .....	The Brick Yard
PROJECT DESCRIPTION		

The proposal is to legalize the removal without permit of the glass-enclosed sunroom at the front of the full-service restaurant doing business as "The Brick Yard," and establish an outdoor activity area (open patio) in its place. Access to the open patio (which is raised several feet above the Union Street sidewalk) is by way of folding glass doors that separate the restaurant's interior from the open patio. The folding glass doors were installed under separate permit (Building Permit Application No. 2010.05.20.2833).

PLANNER'S NAME: David Lindsay

PHONE NUMBER: (415) 558-6393

EMAIL: david.lindsay@sfgov.org

DATE OF THIS NOTICE: 7-25-10

EXPIRATION DATE: 8-25-10



# SAN FRANCISCO PLANNING DEPARTMENT

1650 Mission Street Suite 400 San Francisco, CA 94103

## NOTICE OF BUILDING PERMIT APPLICATION (SECTION 312)

On **June 4, 2010**, the Applicant named below filed Building Permit Application No. **2010.06.04.3920** (Alteration) with the City and County of San Francisco.

CONTACT INFORMATION		PROJECT SITE INFORMATION	
Applicant:	Rachel Abraham, SF Garage Co.	Project Address:	1787 Union Street
Address:	50 Otis Street	Cross Streets:	Gough/Octavia
City, State:	San Francisco, CA 94103	Assessor's Block /Lot No.:	0544/017
Telephone:	(415) 828.3964	Zoning Districts:	Union NCD/40-X

Under San Francisco Planning Code Section 312, 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					
<input type="checkbox"/> DEMOLITION	and/or	<input type="checkbox"/> NEW CONSTRUCTION	or	<input checked="" type="checkbox"/> ALTERATION	
<input type="checkbox"/> VERTICAL EXTENSION		<input type="checkbox"/> CHANGE # OF DWELLING UNITS		<input checked="" type="checkbox"/> FACADE ALTERATION(S)	
<input type="checkbox"/> HORIZ. EXTENSION (FRONT)		<input type="checkbox"/> HORIZ. EXTENSION (SIDE)		<input type="checkbox"/> HORIZ. EXTENSION (REAR)	

PROJECT FEATURES	EXISTING CONDITION	PROPOSED CONDITION
BUILDING USE .....	Restaurant .....	Restaurant
BUSINESS NAME .....	formerly "Bayside" .....	The Brick Yard

### PROJECT DESCRIPTION

The proposal is to legalize the removal without permit of the glass-enclosed sunroom at the front of the full-service restaurant doing business as "The Brick Yard," and establish an outdoor activity area (open patio) in its place. Access to the open patio (which is raised several feet above the Union Street sidewalk) is by way of folding glass doors that separate the restaurant's interior from the open patio. The folding glass doors were installed under separate permit (Building Permit Application No. 2010.05.20.2833).

PLANNER'S NAME: **David Lindsay**

PHONE NUMBER: **(415) 558-6393**

EMAIL: **david.lindsay@sfgov.org**

DATE OF THIS NOTICE:

EXPIRATION DATE:

9/8/10  
↑  
extended from  
8/25 per  
Scott S.  
due to  
improper  
posting of  
312 poster

September 7, 2010

San Francisco Planning Department  
San Francisco Planning Commission  
1650 Mission Street  
San Francisco, CA 94101

**Re: Request for Discretionary Review -1787 Union Street – Permit 2010.06.04.3920**

To all concerned parties:

We are respectfully submitting the attached request for Discretionary Review of the above referenced project.

While the 312 process is designed for the community to come to the table with a project sponsor prior to the commencement of the project to negotiate the terms of what works for everybody, in this case, a 312 notification has been issued in a sole attempt to legalize what has already been constructed against City regulations, Notices of Violation and without any dialogue or mediation with the affected residents and community.

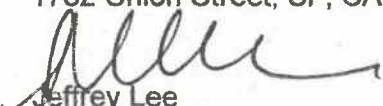
The responsible party, the building owner, refused to discuss plans with the community and affected residents prior to the unpermitted construction, refused to discuss plans with the community and affected residents during the unpermitted construction, refused to meet with the community when it became apparent that nearby residents had serious concerns regarding his design, and has refused to participate in Community Boards sponsored mediation (requested July 8, 2010).

All of us have successfully co-existed with similar establishments in this location for the past several decades, and in one of our cases, almost forty years, due to it being a fully enclosed building with four walls which contained the sound. The illegal removal of the front building facade and creation of outdoor front elevated deck opens up the bar directly into our homes and neighborhood, negatively impacting our community and completely destroying the ability to live in our homes.

Due to the exceptional and extraordinary circumstances surrounding this project from start to the present as detailed in the attached Application, we are requesting the Planning Commission grant Discretionary Review in this matter.

Sincerely,

Jerry Czember  
Skye Czember   
1782 Union Street, SF, CA 94123

  
Jeffrey Lee  
Megan Chechile  
1792 Union Street, SF, CA 94123

**RECEIVED**

100  
SEP 07 2010

CITY & COUNTY OF S.F.  
DEPT. OF CITY PLANNING  
PIC

10.0805D

**APPLICATION REQUESTING DISCRETIONARY REVIEW ("D.R.")**

This application is for projects where there are exceptional and extraordinary circumstances that justify further consideration, even though the project already meets requirements of the Planning Code, City General Plan and Priority Policies of the Planning Code.

D.R. Applicant's Name Skye Cember Telephone No: 415.474.1782

D.R. Applicant's Address 1782 Union Street  
Number & Street (Apt. #)  
San Francisco CA 94123  
City Zip Code

Please see attached cover letter for other interested parties.  
D.R. Applicant's telephone number (for Planning Department contact): 415.474.1782  
If you are acting as the agent for another person(s) in making this request please indicate the name and address of that person(s) (if applicable):

Name \_\_\_\_\_ Telephone No: \_\_\_\_\_

Address \_\_\_\_\_  
Number & Street (Apt. #)  
\_\_\_\_\_ City Zip Code

Address of the property that you are requesting the Commission consider under the Discretionary Review: 1787 Union Street, San Francisco, CA 94123

Name and phone number of the property owner who is doing the project on which you are requesting D.R.: Zack Z, Faide | KAP Investments LLC ; 415.289.1316 x104

Building Permit Application Number of the project for which you are requesting D.R.: 2010.06.04.3920

Where is your property located in relation to the permit applicant's property?  
Less than 75 feet directly across the street.

**A. ACTIONS PRIOR TO A DISCRETIONARY REVIEW REQUEST**

Citizens should make very effort to resolve disputes before requesting D.R. Listed below are a variety of ways and resources to help this happen.

1. Have you discussed this project with the permit applicant? YES  NO
2. Did you discuss the project with the Planning Department permit review planner? YES  NO
3. Did you participate in outside mediation on this case? Community Board  Other  NO



4. If you have discussed the project with the applicant, planning staff or gone through mediation, please summarize the results, including any changes that were made to the proposed project so far.

See attached page "1".

**B. DISCRETIONARY REVIEW REQUEST**

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?

See attached pages "2 & 3".

2. 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 page "4".

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 B1)?

See attached page "4".

Please write (in ink) or type your answers on this form. Please feel free to attach additional sheets to this form to continue with any additional information that does not fit on this form.

**CHECKLIST FOR APPLICANT:**

Indicate which of the following are included with this Application:

**REQUIRED:**

- Check made payable to Planning Department (see current fee schedule).
- Address list for nearby property owners, in label format, plus photocopy of labels.
- Letter of authorization for representative/agent of D.R. applicant (if applicable).
- Photocopy of this completed application.

**OPTIONAL:**

- Photographs that illustrate your concerns.
- Covenants or Deed Restrictions.
- Other Items (specify).

**File this objection in person at the Planning Information Center.** If you have questions about this form, please contact Information Center Staff from 8 a.m. to 5 p.m., Monday to Friday.

**Plan to attend the Planning Commission public hearing which must be scheduled after the close of the public notification period for the permit.**

Signed  Applicant Sept 7, 2010 Date

**4. If you have discussed the project with the applicant, planning staff or gone through mediation, please summarize the results, including any changes that were made to the proposed project so far.**

Please note that the 312 Notification for which this DR application is filed has been issued to the community after the unpermitted construction in an attempt to legalize what has been conducted in violation of the rules and regulations of San Francisco Planning and Building. The community was denied any opportunity to comment on or mediate proposed changes by the owner/project sponsor prior to or during the unpermitted construction. The alteration of the building envelope and creation of the elevated front deck was made without due process/notification, community outreach and in direct violation of City regulations. Despite this, the community repeatedly reached out via the Golden Gate Valley Association, individual affected residents and the Community Boards in an attempt to resolve the matter and not have to pursue this to a Discretionary Review. Our attempts have been to no avail.

The sponsor of the project and building owner, Mr. Zack Zi Faidi, and management company, 1799 Restaurants LLC/The Brick Yard, of which Mr. Faidi is also an owner, has repeatedly refused to meet with concerned residents and neighborhood associations or participate in Community Boards mediation which was requested on July 8, 2010. We met with the managers running The Brick Yard (on May 19) and the contractor for the project (on June 16), at which times they informed us they had no power to negotiate any aspect of construction and that power rested solely with the building's owner.

The building owner and project sponsor had opportunities to halt construction or change their design prior to the illegal removal of the building facade when (1) they were informed by San Francisco Planning that a 312 notification was required for building facade alteration; (2) multiple outreach attempts were made by community organizations and individual affected property owners to the building owner/project sponsor, and (3) when specifically instructed by Mr. Isoken Omokaro/San Francisco Planning via phone on May 12 that alteration was not permitted according to the plans approved by SF Planning.

We have communicated regarding this project with San Francisco Planning staff (Isoken Omokaro, Larry Badiner, Kelly Amdur, Scott Sanchez, Rachna Rachna, David Lindsay) on numerous occasions prior to, during and after the unpermitted construction at 1787 Union. These communications were: (1) with the project Planner, Mr. Isoken Omokaro, when the community noticed a pattern by the owner's contractor in obtaining building permits contrary to plans approved by SF Planning (prior to illegal removal of the front building facade); (2) when the building owner removed the front facade of the building without permits against the specific instructions of San Francisco Planning; (3) when the building owner continued unpermitted construction after a Stop Work Order from Building and Notice of Violation from Planning were issued; (4) when the building owner's permit expediter, John Pollard/SF Garage, installed open bi-fold doors as the front facade of the building misrepresenting this on the permit as a door replacement for the sunroom which no longer existed, opening up an elevated bar directly into our homes/neighborhood; (5) when the building owner's contractor installed a railing on the illegal front elevated deck; (6) regarding the neighborhood's recourse to address these illegal activities; (7) regarding the 312 notification process; and (8) request to the Planning Department via Mr. Lindsay to sponsor mediation with the building owner since he refused mediation through the Community Boards (Ref #10-0287).

In addition, the Planning Department has received inquiries and feedback from many in our community throughout this entire process regarding the significant negative impact of this unpermitted front building envelope alteration on our quality of life and our community in general. More information is being provided daily.

B. DISCRETIONARY REVIEW REQUEST

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?**

The applicants for this Discretionary Review, the immediate neighbors of 1787 Union Street, have not complained in 25 years (and in one property owner's case 40 years) about other similar establishments that have occupied this location. The exceptional and extraordinary circumstances that surround this entire project have caused us to request this Discretionary Review to redress the extremely negative impact this unpermitted alteration has already had to nearby residents and the community. **These exceptional and extraordinary circumstances include:**

1. disregard of City laws and regulations;
2. illegal unpermitted construction even after receipt of specific instructions from SF Planning, Stop Work Orders and Notices of Violation from SF Building and Planning;
3. piecemeal permitting (playing SF Building against SF Planning);
  - a. Permits issued by Building prior to sign off by Planning;
  - b. Permits issued by Building contrary to what had been authorized by Planning;
4. the complete lack of community outreach by the true sponsor of the project, Mr. Faidi;
5. the architectural drawings submitted with the 312 notification are erroneous;
6. the extremely negative impact to the quality of life of the nearby residents and invasion of the public realm;
7. the refusal of the responsible party to mediate either through recognized community organizations or through the Community Boards;
8. there has been no environmental impact study conducted regarding the impact of an open elevated front bar deck in terms of noise, safety and livability on residences within 75 feet as well as adjacent blocks; and
9. the front outdoor activity area and building envelope alteration does not meet the City's General Plan/Planning Code Criteria.

According to the **SAN FRANCISCO GENERAL PLAN:**

*"3. Environmental Quality*

*The third goal is to maintain and enhance the environment. San Francisco's unique and attractive environment is one of the principal reasons San Francisco is a desirable place for residents to live, businesses to locate, and tourists to visit. **The pursuit of employment opportunities and economic expansion must not be at the expense of the environment appreciated by all.***

*"Eating and drinking uses should be adequately soundproofed or insulated for noise so as to reasonably **protect adjoining and surrounding upper story residences from disturbances.***

In addition, **ARTICLE 7: NEIGHBORHOOD COMMERCIAL DISTRICTS>> SECTION 725.1 – UNION STREET NEIGHBORHOOD COMMERCIAL DISTRICT** states:

*"The Union Street District controls are designed to provide sufficient growth opportunities for commercial development **that is in keeping with the existing scale and character...and protect adjacent residential livability.** ....Controls are necessary to preserve the remaining convenience businesses and **to reduce the cumulative impacts which the growth of certain uses have on neighborhood residences.**"*

While the SF Planning Code for the Union Street NCD permits limited outside activity areas (EC. 145.2. - **OUTDOOR ACTIVITY AREAS AND WALK-UP FACILITIES IN NC DISTRICTS**), the code specifically states that such areas “*..[can]not detract from the livability of surrounding uses.*” It further states that criteria to be used for establishment of such areas are that “*(A) The nature of the activity operated in the outdoor activity area is compatible with surrounding uses; and (B) The operation and design of the outdoor activity area does not significantly disturb the privacy or affect the livability of adjoining or surrounding residences.*”

The alteration of the building envelope and proposed outdoor front activity area clearly does not meet the City’s General Plan/Planning Code Criteria:

The property is located in a highly residential, quiet block of the Union Street Neighborhood Commercial District, which is considered a potentially historical district. Allyne Park, where children play, is situated in the same block. Sherman Elementary School is a block away. Residences are less than 75 feet directly across the street from the proposed elevated open front facade/outside front deck. There are NO elevated outside activity areas on Union Street. The only outside activity area on Union Street is located at ground level across from a medical office building, not residences, and the restaurant is completely sealed off from the outside area.

An outside elevated front deck 6 feet above and immediately overlooking the sidewalk is not a safe or healthy environment for patrons, neighbors or the public. Objects can become dangerous projectiles raining down on passers-by from an elevated deck (either accidentally or deliberately when sports’ passions run high).

There are also other General and Master Plan issues concerning this project.

**2. If you believe your property, the property of others or the neighborhood would be adversely affected, please state who would be affected and how.**

Due to the illegal construction and establishment of a de facto elevated front deck with an immediately adjacent open bar, DR applicants have already experienced the effects of the front building facade change: destruction of quality of life and our ability to live in our homes. With the current design, glass bi-fold doors are folded back flush with the wall directly adjacent to the bar area, projecting the noise from the elevated open bar/deck and large square footage space directly into second and third story residences less than 75 feet away across Union Street. There is nothing to block the sound: bar noise, behavior and lewd language from this ~3,000 s.f. tunnel-like space effectively trumpets right in our homes. In addition to the sound reverberation caused by the elevation of the property, the open facade now provides a direct view for bar patrons into second and third floor residences, eliminating any sense of privacy. This is extremely invasive, intimidating, disturbing and destructive to our ability to quietly enjoy our property. When the wall of bi-fold doors is open, the noise permeates our entire homes, all the way to the back of our properties and into the residences of neighbors who have double paned windows on Octavia Street.

In addition to the destructive impact to the nearby residences, the elevated front deck and open bar facade is an encroachment on the public realm. This is a highly residential neighborhood with many children. It is completely inappropriate to have bar behavior exhibited on what is in essence an elevated stage. When the doors have been open, the community and passers-by have literally stood with their jaws open gaping at the spectacle.

While classified as a bar/restaurant, The Brick Yard is primarily a bar that attracts a very young, heavy drinking crowd. While we have co-existed successfully with similar establishments in this location for many decades, this will no longer be the case with the proposed design/front elevated deck.

**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 B1)?**

Please note that neither the Planner in charge of the 312 notification for which this Discretionary Review Request is filed nor the building owner have acknowledged our concerns much less offered to discuss and negotiate possible mitigations.

We believe full re-enclosure to mitigate the excessive sound from what is primarily a bar with a very young, heavy drinking crowd is the best solution to allow us to continue to co-exist, as we have for many decades with similar establishments. We seek to have the building owner replace what he never had permission to remove. Sidewalk seating, which exists in the Union Street NCD, would allow true restaurant patrons to dine outside while preserving the ability of nearby residents to live in their homes. There were other alternatives we were willing to discuss had they come to the table.

Although the applicant/building owner's representative told our community association, GGVNA, on June 16 that full enclosure with sidewalk seating was 'the best idea he had heard yet' and that he simply needed some time to talk it over with the building owner, up to this date, no response has been received and calls to the building owner and the applicant have not been returned.

**Other Items Included with this Discretionary Review Application:**

Pictures:

- 1787 Union Street Prior to Sunroom Removal and Facade Alteration
- Removal of Sunroom Enclosure – May 12, 2010
- Violation of Stop Work Order – May 22, 2010
- Installation of Bi-Fold Doors/Open Facade – June 4, 2010

Documents:

- Letter requesting Building Permit suspension from Lawrence Badiner/SF Planning to Vivian Day/Department of Building Inspection – May 13, 2010
- Stop Work Notice from Department of Building Inspection – May 20, 2010
- Notice of Violation and Penalty from Kelly Amdur – June 2, 2010
- Letter of Determination from Kelly Amdur – June 4, 2010
- Letters from DR Requestors and community

10.0805D



**1787 Union Street Prior to Sunroom Removal and Facade Alteration**

10.0805D





**May 12, 2010 – Removal of Sunroom Enclosure**

10.0805D



May 22, 2010 – Violation of Stop Work Order

10.08050  
10.08050



**June 4, 2010 – Installation of Bi-fold Doors/Open Facade**

10.0805D



# SAN FRANCISCO PLANNING DEPARTMENT

May 13, 2010

Vivian L. Day, C.B.O., Director  
Department of Building Inspection  
City and County of San Francisco  
1660 Mission Street  
San Francisco, CA 94103

RE: 1787 Union Street (Union Street Neighborhood Commercial Zoning District)  
Assessor's Block/Lot: 0544/017  
Building Permit Application No. 2010.02.02.5765

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

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

Dear Ms. Day:

This letter is to request the Department of Building Inspection to suspend Building Permit Application No. 2010.02.02.5765 to remodel bathrooms for accessibility and remove sunroom enclosure at front of building. At the time this permit was presented for approval at the Planning Information Counter, it was communicated to the applicant that the removal of the sunroom enclosure will turn the front of the building to an outdoor activity area, which will require a 30-day notice to all property owners within 150 feet of the subject property to satisfy the requirements of Section 312 of the Planning Code. The applicant then deleted "remove the sunroom enclosure" and replaced it with "remove and replace 9 glazed windows in sunroom area".

The Planning Department approved Building Permit Application No. 2010.02.02.5765 to remodel bathrooms, remove and replace 9 glazed windows at sunroom at the front of building and not to remove the sunroom enclosure. It has come to our knowledge that the applicant has exceeded the scope of work approved by this permit by removing the sunroom enclosure. The Planning Department is therefore requesting the suspension of Building Permit Application No. 2010.02.02.5765 for non-compliance with the approved permit.

Should you have any questions about the content of this letter, please contact Isoken Omokaro of my staff at (415) 558-6403.

If any interested party believes it is an abuse of discretion by the Zoning Administrator, an appeal may be filed with the Board of Appeals within fifteen (15) days of the date of this letter. For further information, please contact the Board of Appeals in person at 1650 Mission Street, 3<sup>rd</sup> Floor (Room 304) or call 415-575 6880.

Sincerely,

Lawrence B. Badiner  
(Zoning Administrator)

GC: Document1

No. 201002025765 5/10 2010

CITY AND COUNTY OF SAN FRANCISCO  
DEPARTMENT OF BUILDING INSPECTION

**CORRECTION NOTICE  
AND REPORT**

Location	<u>1727 UNION ST.</u>	Code Section	
Remarks:	<u>IMMEDIATELY STOP</u>		
	<u>ALL WORK RELATED TO THE</u>		
	<u>DEMOLITION OF THE SUN-</u>		
	<u>ROOM AT THE FRONT OF</u>		
	<u>THE BUILDING. NO FURTHER</u>		
	<u>WORK MAY COMMENCE UNTIL</u>		
	<u>FURTHER NOTICE.</u>		
	<u>OTHER WORK UNDER THIS</u>		
	<u>PERMIT WHICH IS NOT RELATED</u>		
	<u>TO THE SUNROOM ENCLOSURE</u>		
	<u>MAY CONTINUE.</u>		

Contact Inspector STEVE HASTING  
 Div. 510, 1660 Mission Street or phone: 557-6702  
 Supervisor JOE TERRY Date 5/20/10

9003-444 (Rev. 2/02)

10.0805D



# SAN FRANCISCO PLANNING DEPARTMENT

## NOTICE OF VIOLATION AND PENALTY Planning Code Section 176

June 2, 2010

**Property Owner**

Zack Zi Faidi  
Kap Investments LLC  
85 Liberty Ship Wy #105  
Sausalito, CA 94965

**Business Owner**

The Brick Yard  
1799 Restaurants, LLC  
1787 Union St.  
San Francisco, CA 94123

**RE: Violation of Planning Code Section: 312, Exterior Alterations to create an outdoor activity area without public notification process  
174 for non-compliance with work authorized under Building Permit Application No. 2010.02.02.5765**

**Complaint Identification Number:** 10718  
**Site Address:** 1787 Union St.  
**Assessor's Block/Lots:** 0544/017  
**Zoning District:** Union Neighborhood Commercial District  
**Staff Contact:** Rachna, (415) 575-6806 or [rachna.rachna@sfgov.org](mailto:rachna.rachna@sfgov.org)

Dear Property and Business Owner:

It has come to the Planning Department's attention that a Planning Code violation exists on your above referenced property that needs to be resolved. The purpose of this notice to inform you about the Planning Code Enforcement Process so you can take appropriate action to bring your property in compliance with Planning Code. As the owner or leaseholder of the subject property, you are a responsible party. The details of violation are discussed below:

### DESCRIPTION OF VIOLATION

Our records indicate that a Building Permit Application # 2010.02.02.5765 approved by the Planning Department authorized scope of work as to remodel bathrooms and remove and replace nine glazed windows at sunroom in front of the existing restaurant building on the above property. This application did not authorize the removal of existing sunroom enclosure on the subject property. The applicant was specifically advised that such removal requires Section 312 Public Notification process. It has been reported that despite Planning Department's advice on the planning procedures, the sunroom enclosure

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

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

has been removed. Additionally, a new front deck has been created as an outdoor activity area without such authorization. The 'before' and 'after' site photographs confirm above actions. A 'Stop Work Order' was also issued by the Department of Building Inspection to discontinue such unauthorized work. However, it has been reported that the 'Stop Work Order' has been disregarded and the unauthorized work continues.

Pursuant to Planning Code Section 174, every condition, stipulation, special restriction, and other limitation imposed by administrative actions pursuant to Planning Code, whether such actions are discretionary or ministerial, shall be complied with in the development and use of land and structures. Such conditions, stipulations, special restrictions, and other limitations include conditions prescribed by the Zoning Administrator in actions on Building Permits pursuant to the authority prescribed by Planning Code, and in the performance of other powers and duties to secure compliance with this Code. All such conditions, stipulations, special restrictions and other limitations become requirements of this Code. Failure to comply with any condition, stipulation, special restriction or other limitation constitutes a violation of Planning Code under Code Section 176.

## HOW TO CORRECT THE VIOLATION

The Planning Department requires that you immediately stop all work on the front façade of the existing restaurant building and proceed to abate the violation as following.

- File a Building Permit Application to reinstate the front façade enclosure in compliance with Planning Code.

Or

- File a Building Permit Application with Section 312 Public Notification to seek legalization of exterior alterations and front outdoor activity area potentially created as a result of demolition of the existing sunroom enclosure. Please be advised that such Building Permit is subject to public notification and public comment.

Please visit the Department of Building Inspection (DBI), 1660 Mission Street, San Francisco, CA 94103, telephone: (415) 558-6088 or 558-6570, website: [www.sfgov.org/dbi](http://www.sfgov.org/dbi), regarding the Building Permit Application process and other requirements.

**To verify correction of the violation and avoid accrual of penalties, please contact the staff planner shown at the top of this notice immediately. The responsible party will need to provide sufficient evidence to demonstrate that the violation has been abated. The abatement action shall be taken as early as possible. Any unreasonable delays in abatement of violation may result in further enforcement action by the Planning Department.**

## TIMELINE TO RESPOND

The responsible party has **fifteen (15) days from the date of this notice** to either 1) correct the violation as outlined above with or 2) appeal this notice and assessment of penalties as outlined below.

## PENALTIES

Failure to respond to this notice with evidence of compliance or correction of violation **within 15 days and no later than June 17, 2010, 5PM** will result in accrual of administrative penalties of **\$250 per day** to the each responsible party. This notice and any assessed penalties may be appealed to the Board of Appeals. The Board of Appeals may not reduce the amount of the penalty below \$100 per day for each day the violation exists, excluding the period of time the matter has been pending either before the Zoning Administrator or before the Board of Appeals.

## APPEAL PROCESSES

If the responsible party believes that this order to remove a violation of Planning Code is an abuse of discretion by the Zoning Administrator, the following appeal processes are available **within fifteen (15) days from the date of this notice and no later than June 17, 2010:**

- 1) The responsible party may request a Zoning Administrator's hearing to show cause why this notice and assessment of penalties are in error and should be rescinded by filing a written request with the Planning Department (see attached form). The Zoning Administrator shall render a decision within 30 days of such hearing and the responsible party may appeal the Zoning Administrator's decision to the Board of Appeals within 15 days from the date of the decision.
- 2) The responsible party may request that the Zoning Administrator refer the matter to the Director of Planning for enforcement action under the process set forth in Planning Code Section 176.1 by filing a written request with the Planning Department (see attached form). The Zoning Administrator shall render a decision within 30 days of such request and the responsible party may appeal the Zoning Administrator's decision to the Board of Appeals within 15 days from the date of this notice. If the Zoning Administrator determines that the enforcement case will proceed under the Planning Code Section 176 that determination shall be made as part of a final decision and is not appealable separately from the decision on the merits of the case.
- 3) The responsible or any interested or party may waive the right to a Zoning Administrator's hearing and proceed directly to file an appeal to the Board of Appeals, 1660 Mission Street, Room 3036, San Francisco, CA 94103, telephone: (415) 575-6880, website: [www.sfgov.org/bdappeal](http://www.sfgov.org/bdappeal).

If the responsible party does not request any of the above appeal processes and does not take corrective action to abate the violation within the 15-day deadline as noted above, this Notice of Violation and Penalty will become final on June 17, 2010 and the penalties will start to accrue on **June 17, 2010** and each day thereafter the violation continues unabated. Accordingly, the Planning Department will send a Penalty Notice specifying the penalty amount due to the Planning Department. Please be advised that if the penalty payment is not received in full within 30 days from the date of the Penalty Notice, the Planning Department will forward the matter to the Bureau of Delinquent Revenue for collection as authorized by Article V, Section 10.39 of the San Francisco Administrative Code. Also, note that payment of the penalty does not excuse failure to correct the violation or bar further enforcement action.



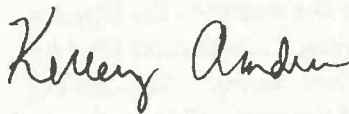
### ENFORCEMENT TIME AND MATERIALS FEE

Pursuant to Planning Code Section 350(c)(1), the Planning Department shall charge for 'Time and Materials' to recover the cost of correcting Planning Code violations and violations of Planning Commission and Planning Department conditions of approval. Accordingly, the responsible party will be subject to an amount of \$1080 plus additional 'Time and Materials' cost for Code Enforcement investigation and correction of violation. This fee is separate from the violation penalties as noted above.

### OTHER APPLICATIONS UNDER CONSIDERATION

The Planning Department requires that any pending violations be resolved prior to the approval and issuance of any new applications that you may wish to pursue in the future. Therefore, any applications not related to the abatement of violation and including the referral of Health Permit Application No. MB1000545 on the new restaurant, The Brick Yard at the subject property will be placed on hold until corrective actions are taken to abate the violation. We want to assist you in ensuring that the subject property is in full compliance with Planning Code. You may contact the enforcement planner as noted above for any questions.

Sincerely,



Kelley Amdur  
Acting Zoning Administrator

Enc.: Request for Zoning Administrator Hearing Form  
Request for Director of Planning Hearing Form

cc: Michela Alioto-Pier, Supervisor District 2  
Daniel Lowrey, Chief Building Inspector, Department of Building Inspection  
Department of Public Health

中文詢問請電 558.6378  
Para Información en Español llamar al: 558.6378



# SAN FRANCISCO PLANNING DEPARTMENT

## Letter of Determination

June 4, 2010

**Property Owner**  
Zack Zi Faidi  
Kap Investments LLC  
85 Liberty Ship Wy #105  
Sausalito, CA 94965

**Business Owner**  
Darren Matte (Darren@brickyardsf.com)  
The Brick Yard  
1799 Restaurants, LLC  
1787 Union St.  
San Francisco, CA 94123

**Site Address:** 1787 Union St.  
**Assessor's Block/Lots:** 0544/017  
**Zoning District:** Union Neighborhood Commercial District  
**Staff Contact:** Rachna, (415) 575-6806 or [rachna.rachna@sfgov.org](mailto:rachna.rachna@sfgov.org)

**RE: Permit to Operate Rear Portion of Existing Restaurant**

Dear Property and Business Owner:

As stated in the Notice of Violation and Penalty letter dated June 2, 2010, our records indicate that Building Permit Application # 2010.02.02.5765, approved by Planning staff on 2/4/10 and issued by DBI on 2/22/10, authorized a scope of work to remodel bathrooms in the existing restaurant area and to remove and replace nine windows in the sunroom in the front of the existing restaurant. This application did not authorize the removal of an existing sunroom enclosure on the subject property. The applicant was specifically advised that such removal (and thus the creation of an "outdoor activity area") would require a 30-day notification per Planning Code Section 312. It has been reported that despite Planning Department's advice on the planning procedures, the sunroom enclosure has been removed. Additionally, a new front deck has been created as an outdoor activity area without authorization.

Per the Notice of Violation and Penalty letter the Planning Department requires that you immediately stop all work on the front outdoor area and proceed to abate the violation as following.

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

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

- File a Building Permit Application to reinstate the front façade enclosure in compliance with Planning Code.

Or

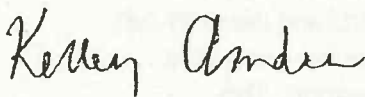
- File a Building Permit Application with Section 312 Public Notification to seek legalization of exterior alterations and front outdoor activity area created as a result of the demolition of the sunroom enclosure.

The Planning Department typically requires that any pending violations be resolved prior to the approval and issuance of any new applications that you may wish to pursue in the future. **However, I hereby determine that the rear portion of the restaurant, namely the main building area behind what used to be the sunroom, may be occupied and opened for business.** This determination is based on the fact that as of today, June 4, 2010, you have filed an application with the Building Department to legalize the removal of the sunroom and the creation of an outdoor activity area, and the rear portion of the restaurant is clearly separated from the front. Also, it is my understanding that the front area is blocked off and unable to be accessed by restaurant patrons or staff. Furthermore, the restaurant use is pre-existing, and although the space has been vacant for approximately 2 years the re-opening of a restaurant in this location does not require 312 notification.

This letter does NOT supersede the Notice of Violation and Penalty letter and all other information contained therein still applies.

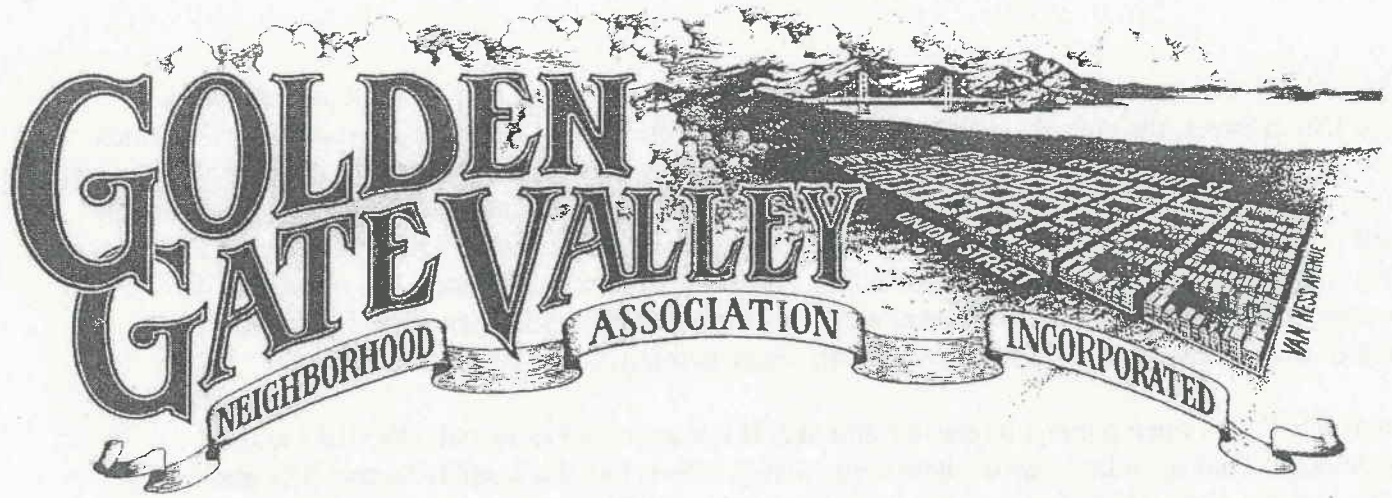
If you believe this determination represents an error in interpretation of the Planning Code or abuse in discretion by the Zoning Administrator, an appeal may be filed with the Board of Appeals within 15 days of the date of this letter. For information regarding the appeals process, please contact the Board of Appeals located at 1650 Mission Street, Room 304, San Francisco, or call (415) 575-6880.

Sincerely,



Kelley Amdur  
Acting Zoning Administrator

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Post Office Box 29086, Presidio Station, San Francisco, California 94129 (415) 931-3438

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

September 6, 2010

RE: Building Permit Application No. 2010.06.04.3920 (Alteration) at the Brickyard, 1787 Union Street

Golden Gate Valley Neighborhood Association requests that the Planning Commission take Discretionary Review over the proposed outdoor activity area in front of the full-service restaurant doing business as "The Brick Yard" at 1787 Union Street.

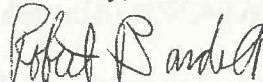
It's hard to imagine a design more suited to trumpeting crowd noise out into the surrounding neighborhood than that proposed by The Brick Yard. The bar/restaurant itself lies above street level. The un-permitted open patio, originally a glassed-in section of the Sun Grove, now stands like a podium above Union Street. The already-installed bi-fold doors can be folded back flush with the wall behind The Brick Yard's bar area, creating an opening about sixteen feet wide and eight or nine feet high. Veneer brick, an excellent sound-reflecting medium, occurs throughout The Brick Yard as a design element. A considerable amount of floor space is given over to the bar loitering area, where patrons mill around, drinks in hand. The bar itself is adjacent to the opening created by the bi-fold doors. The Brick Yard's web site boasts that it can accommodate 150 people at events or parties. Get a crowd anywhere near this size—for a sporting event or on a weekend night—open the bi-fold doors, and noise will broadcast over the neighborhood so loud as to be audible through double-paned windows as far away as Octavia below Union, something a homebound resident there discovered to her dismay during the recent World Cup.

Many people will testify that the operation and design of the outdoor activity area at The Brick Yard have already disturbed the privacy *and* affected the livability of adjoining or surrounding residences. And this is without anyone being permitted to congregate on the podium patio with drinks in hand. The Brick Yard sits on the quiet end of the Union Street Neighborhood Commercial District. Sherman School is a block away, and Allyn Park is practically in its backyard. An establishment designed like a suburban "party pad" hardly fits in with the low-key 1700 block of Union Street, if it belongs on Union Street at all.

It is instructive to compare The Brick Yard's outdoor activity area with that of Nettie's Crab Shack at 2032 Union Street, the only other restaurant in the Union Street NCD with an open outdoor activity area in front. (Extreme Pizza, at 1980 Union Street, has a small, covered front porch.) The outdoor activity area at Nettie's lies at street level where parked cars and pedestrians damp down crowd noise. The restaurant itself is totally enclosed, and interior noise is largely confined inside. Nettie's neighbors across the street are a giant medical-dental building, a restaurant, and a shuttered movie theater—no residences. In contrast, The Brick Yard faces residences across the street, can be wide open at the front, and has an outdoor activity area that sits above street level, where nothing damps down crowd noise.

The Brick Yard's open patio is largely constructed. If it is approved as is, not only will a major neighborhood nuisance be created where none existed before, but also a safety hazard. The glassed-in section of the original building rested on a short parapet wall. That wall remains and is now surmounted by an openwork metal railing. The railing is too open to stop something—a glass, a bottle—from falling from the patio to the street below, and the parapet wall is simply too short to provide a margin of safety. Two people collide on the patio and a glass or plate goes flying onto Union Street. Someone sets a beer bottle down on the top of the railing and then someone else bumps into it or starts the railing shaking. Down falls the bottle onto the sidewalk. Such accidents will surely happen at a place like The Brick Yard, which attracts a young, heavy-drinking crowd.

Sincerely,



Robert Bardell

President, Golden Gate Valley Neighborhood Association

August 31, 2010

San Francisco Planning Commission  
San Francisco Planning Department  
1650 Mission Street  
San Francisco, CA 94103

Re: 1787 Union Street – Opposition to Legalization of Building Alteration (312 Notice)

I am the long time owner (25 years), resident and landlord of two properties immediately across from 1787 Union Street and am writing this letter in **OPPOSITION** to the legalization of the outside elevated front deck at this property. This is a densely residential block of Union Street and is a completely inappropriate location for an outside elevated front deck off a large bar area which projects directly into residences and the surrounding neighborhood.

There are no elevated outside front decks on Union Street, and certainly one should not be permitted in this highly residential block. Should this illegal construction be permitted to stand, please know this would be **extremely and permanently detrimental to the quality of life** of both my tenants and myself as well as the surrounding neighborhood, which is primarily residential and from my understanding is entitled to certain protections under the San Francisco Planning Code. The bedrooms and living areas of my property are directly across from 1787 Union and the noise from bar patrons, loud televisions and music which emanate from this open bar and elevated deck, would seriously and negatively impact the ability of my tenants to continue to reside in this property, with a consequent negative impact on revenues provided to the City of San Francisco.

In addition to impacting the residential quality of life and quiet enjoyment of my property, there are serious security concerns that this deck poses to the public at large. This deck is elevated (approximately 6 feet just to ground level) where objects and harassment from patrons could easily rain down on passers by, especially from a heavy drinking crowd that has traditionally frequented these premises and continues to do so under the auspices of the current project sponsor, The Brick Yard. The project sponsors portray this as a small business that just wants to serve brunch out on the deck. The reality is that this is primarily a bar that attracts heavy drinking crowds, especially for sporting events (as they have already demonstrated and we have experienced), and their open activity area would be an extension of the bar (immediately adjacent to the front deck), subjecting the entire neighborhood to noise and rowdy behavior which has always been kept within the building. When the newly installed bi-fold glass doors are open (which are now the removable front of the building due to the illegal tear down of the sunroom), unbelievably loud noise funnels directly into my units, making them uninhabitable. My residential tenants have had to pull their shades and shut their windows in a fruitless attempt to preserve their privacy and mitigate the noise when these doors are open.

My tenants and I have successfully managed to live with previous bars at this location over the past 25 years. We are a Neighborhood Commercial District – residential *Neighborhood* and Commercial –and I believe protections for quality of life contained in the San Francisco Planning Code are designed to ensure that both

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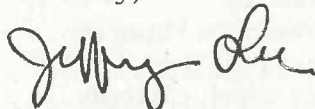
residences and commercial enterprises can co-exist. The alteration of the building envelope of 1787 Union Street, if legalized, would obliterate these protections and make such co-existence impossible.

As a property owner and landlord with both commercial and residential tenants, I have operated under the assumption that the laws of San Francisco govern my actions and responsibilities. The owner of 1787 Union Street apparently feels that San Francisco Planning and Building regulations do not apply to him.

Our community has attempted repeatedly to meet with the building owner who controls the construction to come to a resolution of this matter to no avail. The building owner refused to communicate with us and continued his illegal activities unabated until forced to desist by your department. We now have no choice but to use the legal channels that are available to address this situation and ensure our quality of life is preserved.

**I respectfully request that due to the extraordinary circumstances of this situation, that the Planning Commission apply the protections of the SF Planning Code, grant Discretionary Review and deny the legalization of this elevated front deck to preserve our ability to live in our homes.**

Sincerely,



Jeffrey Lee  
Property Owner, Resident and Landlord  
(415) 385-1882  
1792-1796 Union Street  
2804-2808 Octavia Street

Cc: Ms. Kelley Amdur  
Mr. John Rahaim  
Supervisor Michela Alioto-Pier

Skye Czember  
1782 Union St  
San Francisco, CA 94123

San Francisco Planning Department  
San Francisco Planning Commission

September 7, 2010

Re: Permit Application No. 2010.06.04.3920  
1787 Union Street - The Brick Yard Bar & Restaurant

Dear Commissioners:

I'm writing you regarding 1787 Union St. currently owned by KAP Investments LLC. The current establishment (The Brick Yard) is managed by The Brickyard Bar & Restaurant LLC. Our community has serious concerns regarding the un-permitted alterations to the building envelope that the owner now seeks to legalize.

As SF Planning is well aware, the building owner has disregarded San Francisco Planning and Building regulations and procedures and conducted non-permitted construction (and demo) with associated violations at 1787 Union Street - resulting in a front wall of bi-fold doors opening onto an elevated front open bar deck.

My husband and I live directly across the street at 1782 Union Street. This has been my home for the last 20 years and home to my husband for the last 40 years. During most of this time there has been a bar/restaurant across from us at 1787 Union St. Until recently, the entire front of 1787 was always fully enclosed. This created a sound and privacy buffer - allowing the bar and the near by residents to co-exist.

I am concerned at the disregard shown for not only the laws and regulations of San Francisco but also for myself, my husband and our community. Numerous attempts were made to meet with the owner of 1787 Union and mediate these issues/concerns of our community via The Golden Gate Valley Neighborhood Association and through the Community Boards (CB Ref#10-0287), all to no avail.

Because of the above and following list of circumstances – which I believe meet the qualification of exceptional and extraordinary – I respectfully request that the Planning Commission grant Discretionary Review so that issues concerning the un-permitted front deck at 1787 Union Street can be resolved.

- Loss of our quality of life and quiet enjoyment of our home – if the elevated deck is permitted – bar noise/ruckus will invade our home, making it unlivable. This is not conjecture, we have already experienced the significant negative impact the change to the structure has caused. The elevated & deep ~3,000 sq ft space with a front wall of bi-fold doors (when open) creates an amplified sound tunnel. The bar noise trumpets out to the neighborhood and directly into our home. This has created a serious and negative impact upon the physical and psychological health of us both.

- Loss of privacy – The newly opened front of the building now opens the bar to open public view and vice-versa. Patrons sitting at/near the service bar now have a direct view into our living room and bedrooms, (as will everyone on the patio if it is approved) This also negatively impacts our quality of life and our physical and psychological health and well being.

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- Public Safety Hazard – Having an elevated patio 7 feet above the public thoroughfare is not only psychologically intimidating, but presents a real and serious public safety danger. Any object (bottles, tableware, etc.) could easily fall on and injure pedestrians.

I believe The General Plan of San Francisco includes protection for the rights of residents concerning the livability & the quiet enjoyment of their homes. If the elevated open bar deck is allowed - those protections will no longer exist.

I hope that DR is granted and that these issues can be resolved so that our home (and the homes of our neighbors) remains livable and all members of our community can again live and work in amicable co-existence.

Thank you for your time and consideration.

Sincerely,



Skye Czember  
1782 Union St  
San Francisco, CA 94123

02080.01

August 31, 2010

San Francisco Planning Commission  
1650 Mission Street, Suite 400  
San Francisco, CA 94103

Re: 1787 Union Street – 312 Notification for 2010.06.04.3920

Dear Commissioners:

I am writing this letter in opposition to the legalization of the outside front activity area at 1787 Union Street and requesting the Planning Commission take Discretionary Review in this matter. I understand that the SF Planning Code for this NCD permits limited outside activity areas, however, according to the Code (EC. 145.2. - OUTDOOR ACTIVITY AREAS AND WALK-UP FACILITIES IN NC DISTRICTS), it specifically states that such areas “..[can]not detract from the livability of surrounding uses.” It further states that criteria to be used for establishment of such areas are that “(A) The nature of the activity operated in the outdoor activity area is compatible with surrounding uses; and (B) The operation and design of the outdoor activity area does not significantly disturb the privacy or affect the livability of adjoining or surrounding residences.”

The proposed outside activity area at 1787 Union Street clearly does not meet this criteria.

To put this in perspective, I am a long time resident of over 23 years and have managed to live amicably with the preceding bar/restaurants at this location over these same years. These premises have always been enclosed, which has contained the noise and activities within the building. With the proposed outside front elevated deck and bi-fold doors which now constitute the (open) front facade of the building, this would no longer be the case – destroying the very ability to live in my home.

This is not conjecture on my part. Due to the illegal construction and establishment of a de facto elevated front deck with an immediately adjacent open bar, I, as well as nearby residents, have unfortunately already experienced what legalization of this building envelope change would mean → permanent destruction of our quality of life. My residence and those of my close neighbors are less than 75 feet away from the proposed deck at 1787 Union Street. Since the unpermitted construction, noise from the heavy drinking bar crowd that patronizes the premises has projected out the open front into my third story residence, making it uninhabitable. This is not an exaggeration, this is FACT. I can literally hear bar glasses clinking and most disturbing of all, often lewd language as if the bar were right in my house! When young children stay with me, I have had to relocate them to the back of my home to attempt to insulate them from the noise and spectacle.

I wrote several times to the Planning Department when this first occurred, expressing my absolute disbelief that our community found itself in this situation. For us, it wasn't a simple matter of the building owner blowing off the regulations of the City, but the real and serious impact these illegal actions had on our lives. We can't just close our windows and retreat into our homes. When the front facade is open, the noise permeates my entire home, all the way to the back of my unit and into the residences of my neighbors on Octavia Street. The only way to escape the cacophony is to leave. It is honestly a surreal situation.

I have never witnessed such callous disregard for the City's regulations and in my opinion, deliberate piecemeal permitting designed to circumvent the laws and regulations of the City. One example is the bi-fold doors which were installed on June 4 even though no permit was on file. Eventually a permit showed up in the system indicating that it had been filed as a replacement for doors in the sunroom area, as if this were a slight internal modification (see attached). However, the sunroom area no longer exists due to its illegal removal, the bi-fold doors therefore constituting another significant building envelope change well after the owner and project sponsor had already accumulated Notices of Violation!

I believe the City's laws exist for all of us to follow. Otherwise what is the point? What does it mean when a building owner can simply treat these as optional, work the system and just ask for legalization after the fact without any consideration for the people most impacted by their activities? The very serious and real impact this has had to our lives and the time that has already been taken just by the Building and Planning Departments to address this situation is unjustifiable.

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Our attempts to resolve this situation with the property owner, who controls the construction of the building, were rebuffed. He refused to share his plans in advance of construction, refused several invitations to meet with the community and refused to participate in Community Boards mediation when it became apparent that the neighborhood had serious concerns regarding his unpermitted alteration of the building envelope.

Since San Francisco Planning required The Brick Yard/1787 Union Street to comply with the 312 notification process, they have for the most part kept the bi-fold doors closed which has mitigated the situation tremendously and provided an environment in which we can co-exist successfully, as we have with previous establishments at this location over the years. It is my sincere hope that the Commission diligently apply the SF Planning Code to this situation and require the re-enclosure of 1787 Union Street.

Sincerely,



Megan Chechile  
1792 Union Street  
San Francisco, CA 94123

Jerry Czember  
1782 Union St.  
San Francisco, CA 94123

San Francisco Planning Department  
San Francisco Planning Commission

September 7, 2010

Re: Permit Application No. 2010.06.04.3920  
1787 Union Street - The Brick Yard Bar & Restaurant

Dear Commissioners:

I have lived in my home at 1787 Union St. for 40 years. Recently, without proper permits, the property owner across the street, at 1787 Union St. removed the front envelope of the building (sunroom enclosure) and created an elevated open front deck which extends out from the now open front façade.

Due process was not followed by this property owner. Neither I (nor my wife or neighbors) were given any prior notification of this major change of use. I was completely denied my right to protest or comment or express my concerns as to how this change of use would negatively affect my quality of life and the livability of my home.

For many years the front enclosure contained the bar noise, allowing me to live in my home all these years. I am not opposed to bar establishments, all the former managers at 1787 Union were considerate of the neighbors. If the elevated front deck and open front is allowed, the noise coming from the bar patrons will come right into my home. This noise will make living in my home sound like the inside of a bar, as I have experienced already because of the un-permitted change.

Do the regulations and procedures of SF Planning and Building not apply to this property owner? This seems to be the case. Now, after the fact, the 312 Notification was issued and I am requesting DR for a case in which due process was not followed.

To me, just the facts above are exceptional and extraordinary. The extreme negative impact upon; my quality of life, the livability of my home and my physical and psychological well being only adds to these facts.

I ask that The San Francisco Planning Commission grant Discretionary Review in this case so that the livability of my home and my quality of life can be preserved and this complete disregard for due process and denial of my right to public comment can be resolved.

Sincerely,



Jerry Czember  
1782 Union St.  
San Francisco, CA 94123

10.08050



**ROYEE CHEN**

2741 Octavia Street  
San Francisco, CA 94123

August 30, 2010

San Francisco Planning Commissioners  
Supervisor Michela Alioto-Pier

RE: Building Permit App. No. 2010.06.04.3920 / 1787 Union Street

I am writing to oppose the removal of the enclosed sunroom at this location.

Having lived in the area for 22 years, I have witnessed the bar/drinking scene at this location and its impact on the neighborhood. The previous businesses at this location operated with the full enclosure of the front of the building. With the unsanctioned removal of the sunroom by the current owner, a third opening to the restaurant/bar was created (the two being the front entrance on Union Street and the side entrance on Octavia Street). This third opening significantly altered the building envelope and affected the neighborhood in the following ways:

- **NOISE AND QUALITY OF LIFE.** When the sunroom enclosure was removed, huge bi-fold doors were installed in the 18-foot wide opening – effectively opening up the restaurant to the outside. This has been disruptive to the neighborhood on warm days, when the bi-fold doors are folded completely back, allowing the noise of the packed bar/restaurant to stream out to Union Street and directly impact the quality of life of nearby residents.
- **INAPPROPRIATE USE AS BEER GARDEN.** If this open patio is legalized, it has the potential of evolving into an outdoor beer garden - a beer garden that would be an extension of the interior bar space. This would be an atypical beer garden, as the patio is elevated several feet from the sidewalk, and perched above pedestrians. A packed beer garden in this outdoor space would have repercussions on noise, safety and excessive alcohol consumption. There is no precedent for a beer garden of this type, and it would be most inappropriate for this block of Union Street.

**The conversion of the enclosed sunroom into an outdoor patio does not appear to be an essential feature to the bar/restaurant's ongoing concern. It also risks undermining the fabric of the community, and upsetting the enjoyment of life and property.**

Regards,

Royee Chen

10.08050

-----Original Message-----

From: Serena Bardell

To: [david.lindsay@sfgov.org](mailto:david.lindsay@sfgov.org)

Cc: [Michela.Alioto-Pier@sfgov.org](mailto:Michela.Alioto-Pier@sfgov.org)

Sent: Fri, Aug 20, 2010 6:50 pm

Subject: The Brick Yard 1787 Union

Dear Mr. Lindsey:

As a resident of historic Golden Gate Valley, I send this message in support of the immediate neighbors of The Brick Yard, whose ability to enjoy reasonable peace and quiet is threatened by the prospect of a raised open patio broadcasting loud noise from "partying" patrons, and in opposition to allowing circumstances that make it more difficult for those who live in the neighborhood and those who operate businesses therein to get along.

Custom and law may permit (in both senses) such establishments to do business, but because of the immediate proximity of residences and the fact that this remains primarily a residential neighborhood, one hopes the Planning Department will do its utmost to ensure that noise be confined within the premises.

Although a noisy, hard-drinking establishment obviously affects those living nearby the most, it also has a negative effect on the overall quality of life in the neighborhood by dramatically increasing the numbers of intoxicated young folks treating the whole area like an "entertainment district" where yelling in the wee hours, vandalism, and just plain incivility are considered acceptable.

By not allowing an open space attached to the premises, perhaps the Department will send a subtle message reinforcing the difference between what is permissible within four walls and impermissible out in the open that will carry over to some degree when patrons leave The Brick Yard and disperse onto our sidewalks and streets.

Thank you for your kind attention.

Yours truly,

Serena Bardell  
1922 Filbert Street  
SF 94123

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D J Branning  
2741 Octavia Street  
San Francisco, CA 94123-

September 1, 2010

To:

San Francisco Planning Commission  
Michela Alioto-Pier, Supervisor

Subject: Building Permit App. No. 2010.06.04.3920  
1787 Union Street

Ladies and Gentlemen:

I would like to respond to the Section 312 Building Permit Application filed at 1787 Union Street. I oppose the legalization of the removal of the glass-enclosed sunroom, as well as the establishment of any outdoor activity in its place.

Having lived in the area off and on for over 40 years, I have witnessed the heavy bar/drinking scene on Union Street and at this particular location for over 20 years. These activities have had significant detrimental impact on the surrounding residential neighborhood.

I believe that what is now the outdoor patio was originally enclosed almost 40 years ago for the Sun Grove restaurant and remained that way until a few months ago. This at least contained most of noise associated with sporting events, etc. With the unapproved removal of the sunroom structure, the noise is reflected from inside the space outward onto Union Street disrupting the whole neighborhood, not to mention the patrons streaming outside smoking, etc..

I therefore object to the application and request that the City direct the building owner to re-enclose the patio.

Thank you for your consideration.

Very truly yours,



D J Branning

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### Online Permit and Complaint Tracking

**Permit Details Report**

**Report Date:** 9/6/2010 9:36:56 PM

Application Number: 201005202833  
 Form Number: 8  
 Address(es): 0544 / 017 / 0 1787 UNION ST  
 Description: REPLACE SLIDING GLASS DOOR WITH BI-FOLDING GLASS DOOR IN SUN ROOM AREA  
 Cost: \$2,000.00  
 Occupancy Code: A-2,M  
 Building Use: 05 - FOOD/BEVERAGE HNDLNG

**Disposition / Stage:**

Action Date	Stage	Comments
5/20/2010	TRIAGE	
5/20/2010	FILING	
5/20/2010	FILED	
6/15/2010	APPROVED	
6/15/2010	ISSUED	

**Contact Details:**

**Contractor Details:**

License Number: 684863  
 Name: JOHN C. POLLARD  
 Company Name: 5-12 CONSTRUCTION INC/DBA: SF GARAGE CO  
 Address: 50 OTIS ST \* SAN FRANCISCO CA 94103-0000  
 Phone: 4158260606

**Addenda Details:**

**Description:**

Step	Station	Arrive	Start	In Hold	Out Hold	Finish	Checked By	Hold Description
1	BLDG	5/20/10	5/20/10			5/20/10	HUI TOM	
2	CP-ZOC	6/4/10	6/4/10			6/4/10	IONIN JONAS	
3	SPFD	6/15/10	6/15/10			6/15/10	CURD JOHN	
4	CPB	6/15/10	6/15/10			6/15/10	LAURENTE YOLANDA	

This permit has been issued. For information pertaining to this permit, please call 415-558-6096.

**Appointments:**

Appointment Date	Appointment AM/PM	Appointment Code	Appointment Type	Description	Time Slots
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**Inspections:**

Activity Date	Inspector	Inspection Description	Inspection Status
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**Special Inspections:**

Addenda No.	Completed Date	Inspected By	Inspection Code	Description	Remarks
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For information, or to schedule an inspection, call 558-6570 between 8:30 am and 3:00 pm.

[Station Code Descriptions and Phone Numbers](#)

[Online Permit and Complaint Tracking](#) home page.

**Technical Support for Online Services**

If you need help or have a question about this service, please visit our FAQ area.



**1787 Union Street DR Response**

Submitted by: Darren Matte

[darren@brickyardsf.com](mailto:darren@brickyardsf.com)

(415) 516-4089 (cell)

**Package Contents:**

Discretionary Review Response – standard form with expanded details

- Exhibit A: Letter from architect, Onju Updegrave with attachments:  
*Exhibit 1 – Photos of the former glass enclosure*  
*Exhibit 2 – Approved Permit Plans*  
*Exhibit 3 – Detail Note Sheet A2*  
*Exhibit 4 – Detail Sheet A1*  
*Exhibit 5 – Online Permit Tracking detail*  
*Exhibit 6 – Permit Application*
- Exhibit B: Letter from KAP Investments manager, Zack Faidi
- Exhibit C: Plans submitted for 312 Notification
- Exhibit D: Photos of interior sound panels
- Exhibit E: Sound Report from Entertainment Commission Inspector Granelli
- Exhibit F: Photos of 1787 Union front previous vs. current
- Exhibit G: Email correspondence between Darren Matte & Skye Czember
- Exhibit H: Photos of 1787 Union proposed patio
- Exhibit I: Panoramic photos of Union Street & Octavia Street  
Enlarged photos of The Brick Yard – interior & exterior



# SAN FRANCISCO PLANNING DEPARTMENT

## RESPONSE TO DISCRETIONARY REVIEW

Case No.: \_\_\_\_\_  
Building Permit No.: 2010.06.04.3920  
Address: 1787 Union Street, 94123

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

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

Project Sponsor's Name: The Brick Yard c/o Darren Matte  
Telephone No.: 415-516-4089 (for Planning Department to contact)

1. Given the concerns of the DR requester and other concerned parties, why do you feel your proposed project should be approved? (If you are not aware of the issues of concern to the DR requester, please meet the DR requester in addition to reviewing the attached DR application.)

please see attached

2. What alternatives or changes to the proposed project are you willing to make in order to address the concerns of the DR requester and other concerned parties? If you have already changed the project to meet neighborhood concerns, please explain those changes. Indicate whether the changes were made before filing your application with the City or after filing the application.

please see attached

3. If you are not willing to change the proposed project or pursue other alternatives, please state why you feel that your project would not have any adverse effect on the surrounding properties. Please explain your needs for space or other personal requirements that prevent you from making the changes requested by the DR requester.


please see attached

If you have any additional information that is not covered by this application, please feel free to attach additional sheets to this form.

4. Please supply the following information about the proposed project and the existing improvements on the property.

<u>Number of</u>	<u>Existing</u>	<u>Proposed</u>
Dwelling units (only one kitchen per unit – additional kitchens count as additional units) .....	_____	_____
Occupied stories (all levels with habitable rooms) ...	_____	_____
Basement levels (may include garage or windowless storage rooms) .....	_____	_____
Parking spaces (Off-Street) .....	_____	_____
Bedrooms .....	_____	_____
Gross square footage (floor area from exterior wall to exterior wall), not including basement and parking areas....	_____	_____
Height .....	_____	_____
Building Depth .....	_____	_____
Most recent rent received (if any) .....	_____	_____
Projected rents after completion of project .....	_____	_____
Current value of property .....	_____	_____
Projected value (sale price) after completion of project (if known) .....	_____	_____

I attest that the above information is true to the best of my knowledge.

  
 \_\_\_\_\_  
 Signature

1/3/2011  
 \_\_\_\_\_  
 Date

Darren Matte  
 \_\_\_\_\_  
 Name (please print)

**1. Given the concerns of the DR requester and other concerned parties, why do you feel your proposed project should be approved?**

The proposed project consists of a patio in the Union Street Neighborhood Commercial District, which is permitted as of right. The DR requester does not provide evidence that extraordinary circumstances exist that would support the Planning Commission taking discretionary review to disapprove the project.

The patio portion of our project will provide an open dining area for the enjoyment of neighbors, residents and tourists and we believe it should be approved as an asset to the neighborhood. The Union Street Neighborhood Commercial District (Planning CodeSec. 725.1) states that "Important aspects of Union Street's business activity are eating and drinking establishments," while also noting that such establishments "are open into the evening hours." These aspects were so important that the Union Street Association worked in concert with Supervisor Michela Alioto-Pier to remove a ban allowing new restaurants and bars in January of 2009. They felt retailers were struggling to create foot traffic and generate sales without the symbiotic relationship they share with these establishments.

While we applaud the Planning Commission's approval of new restaurants, including conditional use authorization at 1784 Union, the subject site has already been a restaurant for some time, and as such, will not intensify impacts to neighbors. As is common in the restaurant industry, remodeling and renovation are key components to attracting and retaining patrons. The approved patio is an integral amenity that we want to provide for our patrons.

Obviously not all parties will agree on every project. The DR requestors have previously opposed a project at 1784 Union Street, which although approved by the Commission, did not open. We respectfully agree that the DR requestors have one legitimate concern: ***The potential for noise from the establishment.*** We consider this a sensitive issue and have made considerable efforts to address this concern so that The Brick Yard, its patrons and neighboring residents can peacefully co-exist.

The additional documentation regarding the permitting, construction, and neighborhood outreach are a matter of public record. We engaged in construction based on permits we believe to be in good standing. We operate pursuant to an Order of Determination from the Planning Department that recognizes the existing restaurant may operate as-of-right, and that we have the right to seek to operate as proposed.

With regards to the specific concerns referenced by the DR Requester as listed below, we have addressed each concern in the following pages:

1. disregard of City laws and regulations;
2. illegal unpermitted construction even after receipt of specific instructions from SF Planning, Stop Work Orders and Notices of Violation from SF Building and Planning;
3. piecemeal permitting (playing SF Building against SF Planning);
  - a. Permits issued by Building prior to sign off by Planning;
  - b. Permits issued by Building contrary to what had been authorized by Planning;
4. the complete lack of community outreach by the true sponsor of the project, Mr. Faidi;
5. the architectural drawings submitted with the 312 notification are erroneous;
6. the extremely negative impact to the quality of life of the nearby residents and invasion of public realm;
7. the refusal of the responsible party to mediate either through recognized community organizations or through the Community Boards;

8. there has been no environmental impact study conducted regarding the impact of an open elevated front bar deck in terms of noise, safety and livability on residences within 75 feet as well as adjacent blocks;
9. the front outdoor activity area and building envelope alteration does not meet the City's General Plan/Planning Code Criteria.

### **Concerns #1-3 - Permitting and Construction**

The first three concerns all relate to the legality of the permitting and construction process. The project was originally approved as constructed by the Department of Building Inspection, with referral to the Planning Department. We proceeded with construction of the project with the reasonable understanding that we had a permit for the full scope of work shown on the approved permit plans. The primary documents relied upon were the approved Job Copy of the plans which were the basis for the work performed. We followed standard protocol for completing this work. Attached as **Exhibit A** is a letter from the architect on the project, Onju Updegrave, describing the sequence of events in detail. Attached as **Exhibit B** is a letter from the manager of KAP Investments, Zack Faidi.

As described by the architect in the letter, the building permit included plans comprised of three pages, all of which are titled "Bath Remodel and Sunroom Removal". Page A1 of the plans is the cover page and does not contain any drawings. Page A2 of the plans shows details for the bathrooms and clearly details the "Sunroom Enclosure Removal" as well as the creation of the patio. Page A3 of the plans is entirely dedicated to the new exterior elevation of the building and clearly shows the sunroom removed and references the "Balcony". All 3 pages were stamped "APPROVED" by both the Building and Planning Departments on 2/2/2010 and 2/8/2010 respectively. Additionally, the City's online permit tracking system describes the project as *"Remodel bathrooms for accessibility. remove sunroom enclosure at front of building. Replace sheetrock. Signage on separate permit."*

We became aware of the requirement for a 312 notification after the majority of work was completed. At this point the Planning Department contacted us, told us the notification was necessary, and a stop work order was issued. As soon as the stop work order was issued, all work was halted. After the stop work order was issued, we appealed to Supervisor Alioto-Pier, who contacted the Planning Department to ask for a compromise. The compromise agreed to by all parties, including the Health Department, is that we may operate the inside while waiting for this issue to be resolved.

Acting Zoning Administrator Kelly Amdur issued a Notice of Determination and we are here pursuant to that document. While The DR requestor thought this was illegal work, the Zoning Administrator authorized it for life-safety reasons. Besides this authorized work there has been no other work on the exterior of the venue and use of the outdoor patio has not been permitted since The Brick Yard opened June 5<sup>th</sup>, 2010. We continue to work within the confines of the San Francisco Building and Planning codes and procedures to complete this process.

### **Concern #4 - Neighborhood Outreach**

The DR requestors complain of a lack of communication from our group, specifically Mr. Faidi, regarding the patio and concept. We disagree with this assertion. Mr. Faidi is frequently travelling outside of the country so in an effort to facilitate outreach, he authorized his business partner, Darren Matte, to act on his behalf.

**1. Given the concerns of the DR requester and other concerned parties, why do you feel your proposed project should be approved?**

The proposed project consists of a patio in the Union Street Neighborhood Commercial District, which is permitted as of right. The DR requester does not provide evidence that extraordinary circumstances exist that would support the Planning Commission taking discretionary review to disapprove the project.

The patio portion of our project will provide an open dining area for the enjoyment of neighbors, residents and tourists and we believe it should be approved as an asset to the neighborhood. The Union Street Neighborhood Commercial District (Planning CodeSec. 725.1) states that "Important aspects of Union Street's business activity are eating and drinking establishments," while also noting that such establishments "are open into the evening hours." These aspects were so important that the Union Street Association worked in concert with Supervisor Michela Alioto-Pier to remove a ban allowing new restaurants and bars in January of 2009. They felt retailers were struggling to create foot traffic and generate sales without the symbiotic relationship they share with these establishments.

While we applaud the Planning Commission's approval of new restaurants, including conditional use authorization at 1784 Union, the subject site has already been a restaurant for some time, and as such, will not intensify impacts to neighbors. As is common in the restaurant industry, remodeling and renovation are key components to attracting and retaining patrons. The approved patio is an integral amenity that we want to provide for our patrons.

Obviously not all parties will agree on every project. The DR requestors have previously opposed a project at 1784 Union Street, which although approved by the Commission, did not open. We respectfully agree that the DR requestors have one legitimate concern: ***The potential for noise from the establishment.*** We consider this a sensitive issue and have made considerable efforts to address this concern so that The Brick Yard, its patrons and neighboring residents can peacefully co-exist.

The additional documentation regarding the permitting, construction, and neighborhood outreach are a matter of public record. We engaged in construction based on permits we believe to be in good standing. We operate pursuant to an Order of Determination from the Planning Department that recognizes the existing restaurant may operate as-of-right, and that we have the right to seek to operate as proposed.

With regards to the specific concerns referenced by the DR Requester as listed below, we have addressed each concern in the following pages:

1. disregard of City laws and regulations;
2. illegal unpermitted construction even after receipt of specific instructions from SF Planning, Stop Work Orders and Notices of Violation from SF Building and Planning;
3. piecemeal permitting (playing SF Building against SF Planning);
  - a. Permits issued by Building prior to sign off by Planning;
  - b. Permits issued by Building contrary to what had been authorized by Planning;
4. the complete lack of community outreach by the true sponsor of the project, Mr. Faidi;
5. the architectural drawings submitted with the 312 notification are erroneous;
6. the extremely negative impact to the quality of life of the nearby residents and invasion of public realm;
7. the refusal of the responsible party to mediate either through recognized community organizations or through the Community Boards;

8. there has been no environmental impact study conducted regarding the impact of an open elevated front bar deck in terms of noise, safety and livability on residences within 75 feet as well as adjacent blocks;
9. the front outdoor activity area and building envelope alteration does not meet the City's General Plan/Planning Code Criteria.

### **Concerns #1-3 - Permitting and Construction**

The first three concerns all relate to the legality of the permitting and construction process. The project was originally approved as constructed by the Department of Building Inspection, with referral to the Planning Department. We proceeded with construction of the project with the reasonable understanding that we had a permit for the full scope of work shown on the approved permit plans. The primary documents relied upon were the approved Job Copy of the plans which were the basis for the work performed. We followed standard protocol for completing this work. Attached as **Exhibit A** is a letter from the architect on the project, Onju Updegrave, describing the sequence of events in detail. Attached as **Exhibit B** is a letter from the manager of KAP Investments, Zack Faidi.

As described by the architect in the letter, the building permit included plans comprised of three pages, all of which are titled "Bath Remodel and Sunroom Removal". Page A1 of the plans is the cover page and does not contain any drawings. Page A2 of the plans shows details for the bathrooms and clearly details the "Sunroom Enclosure Removal" as well as the creation of the patio. Page A3 of the plans is entirely dedicated to the new exterior elevation of the building and clearly shows the sunroom removed and references the "Balcony". All 3 pages were stamped "APPROVED" by both the Building and Planning Departments on 2/2/2010 and 2/8/2010 respectively. Additionally, the City's online permit tracking system describes the project as *"Remodel bathrooms for accessibility. remove sunroom enclosure at front of building. Replace sheetrock. Signage on separate permit."*

We became aware of the requirement for a 312 notification after the majority of work was completed. At this point the Planning Department contacted us, told us the notification was necessary, and a stop work order was issued. As soon as the stop work order was issued, all work was halted. After the stop work order was issued, we appealed to Supervisor Alioto-Pier, who contacted the Planning Department to ask for a compromise. The compromise agreed to by all parties, including the Health Department, is that we may operate the inside while waiting for this issue to be resolved.

Acting Zoning Administrator Kelly Amdur issued a Notice of Determination and we are here pursuant to that document. While The DR requestor thought this was illegal work, the Zoning Administrator authorized it for life-safety reasons. Besides this authorized work there has been no other work on the exterior of the venue and use of the outdoor patio has not been permitted since The Brick Yard opened June 5<sup>th</sup>, 2010. We continue to work within the confines of the San Francisco Building and Planning codes and procedures to complete this process.

### **Concern #4 - Neighborhood Outreach**

The DR requestors complain of a lack of communication from our group, specifically Mr. Faidi, regarding the patio and concept. We disagree with this assertion. Mr. Faidi is frequently travelling outside of the country so in an effort to facilitate outreach, he authorized his business partner, Darren Matte, to act on his behalf.

Our outreach started as early as April and continues to this day. When we initially met with Robert Bardell of the Golden Gate Valley Neighborhood Association and the Union Street Association members in early May we communicated our concept and construction concepts and integrated their recommendations for sound deadening into the restaurant. Below is a small snapshot of the ongoing outreach that has been done by The Brick Yard:

- April 27, 2010 – email to Robert Bardell to share business concept, building plans and learn of any concerns.
- April 28, 2010 – email to Richard Merryman (Octavia Street neighbor) to share business concept, building plans and learn of any concerns.
- 1<sup>st</sup> week of May 2010 – initial meeting between Robert Bardell, Logan Shedd, Darren Matte
- May 12, 2010 – presented to Union Street Association with residential neighbors in attendance included Robert Bardell, Skye Czember and Megan Checile.
- May 19, 2010 – presented business concept and building plans to Golden Gate Valley Neighborhood Association in attendance included Robert Bardell, Serena Bardell, Skye Czember, Jerry Czember, Megan Checile, Royee Chen and approximately 10 other neighbors.
- June 5, 2010 – The Brick Yard opens for business.
- July 6, 2010 – received letter from Community Boards requesting mediation with Skye Czember and Robert Bardell. Darren Matte called back on July 16 and spoke with Chelsea informing her of his marriage on July 24 and travel for three weeks following.
- July 12, 2010 – met with Golden Gate Valley Neighborhood Association in attendance included Robert Bardell, Serena Bardell, Skye Czember, Jerry Czember, Megan Checile, Royee Chen and approximately 10 other neighbors.
- August 30, 2010 – The Brick Yard hosted a launch party for a new association, “Union Street Enrichment Association”. Approximately 70 neighbors and political figures were in attendance.
- September 30, 2010 – dinner with Robert Bardell at The Brick Yard to discuss compromises prior to the Discretionary Review.
- October 5, 2010 – called Patricia Vaughey to coordinate meeting at The Brick Yard to discuss neighbor concerns.
- November 19, 2010 – met with Patricia Vaughey to discuss neighbor concerns and potential compromises.
- November 23, 2010 – spoke with Amanda at Community Boards to try and coordinate mediation with other party.
- December 14, 2010 – received email from Skye Czember stating “a member of our side will not be available until after Jan 15th”.
- December 15, 2010 – responded to Skye Czember email requesting other arrangements to facilitate a Community Boards mediation or meeting prior to Discretionary Review hearing.
- January 5, 2011 – met with Skye Czember, Megan Checile, Patricia Vaughey and Mary Woods (SF Planning) at The Brick Yard to talk through potential compromises. While no agreement was made, it seemed some progress was made with regard to the intended use of the patio.

While we have not been able to come to a compromise with the DR requestor, many other neighbors and residents have provided constructive criticism which we have integrated into the premises. For example, after speaking with Richard Merryman whose home on Octavia Street shares the same wall as the back section of the restaurant, we invested additional money in soundproofing this wall to ensure the peaceful enjoyment of his residence. Further, after learning the exhaust fans on the roof were audible from his home, we had a specialist tune the fans and reduce the excess noise. The Brick Yard invested over \$4,000 in addressing these concerns because we are a good neighbor.



### **Concern #5 – 312 Notification drawings are erroneous**

The plans submitted for the 312 notification have been confirmed to be accurate with regards to all aspects of the patio and exterior of the building. The only discrepancy is the length of the bar counter at the interior of the restaurant. These plans are shown as **Exhibit C**.

### **Concern # 6 - Negative impact to the quality of life of the nearby residents**

As any of the 18 restaurants on Union Street that have outdoor seating can attest – it is important to consider the residential and commercial neighbors when operating an exterior seating or activity area. With this in mind, our group initially met with Robert Bardell and presented to both the Union Street Association and Golden Gate Valley Neighborhood Association in early May regarding our concept and patio. We took their concerns and recommendations and integrated them into the construction of the Brick Yard's interior configuration. At the direction of a sound engineer we constructed over 750 square feet of sound dampening panels and constructed the interior and seating to minimize the effects of restaurant noise and voices (**see Exhibit D**). We also installed double – depth drywall throughout various portions of the interior in order to minimize any additional noise emanating from the interior. Our direct residential neighbor to the rear, Richard Merryman, has attested on multiple occasions when the restaurant has been full that he is not affected whatsoever. We have spent in excess of \$11,000 of additional expenditures to ensure we operate as a good neighbor with respect to noise and sound.

It is understandable that the DR requestors may be concerned with noise emanating from the premises and as such we have quantified these concerns by taking measurements of the premises with the patio doors closed and open during various times. The intersection of Union Street and Octavia in the Union Street Commercial District is a pedestrian and vehicular corridor that has an inherent amount of ambient noise. Readings on various days during daytime and evening hours indicate average ambient dBA levels can vary from 51 dBA to 63 dBA with spikes up to 75 dBA when buses or other loud vehicles pass by.

On Saturday, December 18, 2010, Vajra Granelli from the San Francisco Entertainment Commission inspected and measured the area surrounding the premises for sound. We specifically planned his visit for a weekend evening to analyze a busy night at the restaurant – on this particular Saturday the venue was close to capacity with approximately 130 patrons inside the premises. Inspector Granelli's report is attached as **Exhibit E** in which he specifically notes no violations of SF MPC 49 or 2900 at the premises. The DR requestors have failed to provide independent proof of their noise concerns.

In an effort to provide a worst case scenario for the planning commission to make informed decisions regarding the possibility of sound emanation from the premises, we took additional sound readings on Sunday, January 2, 2011 at 3:49 PM. During this testing, we measured audible dBA both with the bi-fold patio doors fully open and fully closed. The restaurant was busy with approximately 80 patrons, many of which were enjoying NFL Football playoff games. Our readings were taken over a ten minute period from directly in front of the restaurant with the doors closed and open and then across Union Street (in front of the DR requester residence) with the doors closed and open. The following results show a minimal increase in sound levels from across the streets when the bi-fold patio doors were fully open:

- In Front, Doors Closed: 54, 51, 56, 53
- In Front, Doors Open: 65, 59, 62, 56
- Across Street, Doors Closed: 52, 58, 54, 55
- Across Street, Doors Open: 55, 53, 61, 59

We were somewhat surprised but encouraged by the minimal increases in sound from the interior. After noting these results we measured the interior front area as a test and noted the following results:

- Interior: 74, 82, 77, 76

It should be noted that although the previous venue, Bayside Sports Bar & Grill, had an enclosed sunroom, there were windows that opened to the outside. The Bayside windows are shown in **Exhibit F** and when fully open represent approximately 50 square feet of open air. Per the DR requester comments, there had been no complaints about noise or invasion of the public realm for the 15 years that this venue operated as Bayside. With this space now being outside, it will be used less frequently than when it was enclosed due to weather, with no operation on rain days and colder days. We estimate the outdoor patio can only be used by patrons of The Brick Yard for 6-8 months of the year due to weather. This would actually result in less “invasion of public realm”.

We realize that with the approval of the patio there may be instances where sound may be an issue. With this in mind we are still committed to maintaining a good neighbor policy by policing and carefully managing the patio and doors to ensure our neighbors are not disturbed by our clientele. Approval of our patio does not automatically guarantee success and we realize, along with the other 18 restaurants and bars with exterior areas, that we must responsibly manage the area.

#### **Concern #7 – Refusal to mediate**

This simply isn't true. We were first invited to mediate via a letter dated July 6<sup>th</sup> from Community Boards (reference #10-0287). At that time I called Community Boards and spoke with Chelsea. While we were open to mediate, the immediate timing was challenging as I was getting married on July 24<sup>th</sup> and then was spending the following 3 weeks on my honeymoon. I told Chelsea to contact me after August to schedule mediation.

We heard back from Community Boards on November 18<sup>th</sup> at which time I called back and spoke to Amanda informing her we were available to meet anytime. On December 14<sup>th</sup> I received an email from Skye Czember stating “a member from our side will not be available until after Jan 15<sup>th</sup>.” My response to Skye Czember's request to delay the DR hearing is included as **Exhibit G**.

Fortunately, we have just scheduled mediation with Community Boards for January 12<sup>th</sup>.

#### **Concern #8 - No environmental impact study conducted**

The proposed patio is not tangibly different than any other outdoor seating or activity area on Union Street and therefore is properly exempt from environmental review. The patio measures approximately 9' by 15' and would provide seating for 10-12 guests. This is comparable to most sidewalk seating offered by other restaurants on Union Street. In fact, of the estimated 26 full service restaurants on Union Street between Van Ness Avenue and Fillmore Street, 18 of them have an outdoor area for their patrons to enjoy. In total, these 18 restaurants offer outdoor seating for over 200 people (see list below). Many of these restaurants also have doors or large windows that open to outside. Without being able to offer outdoor seating, The Brick Yard would be at a disadvantage to reasonably compete with these other establishments.

#### **Restaurants with outdoor seating/areas**

- Roam Artisan Burger (1785 Union St) – sidewalk seating for 10 people
- Capannina Ristorante (1809 Union St) – sidewalk seating for 12 people
- Caffe Union (1830 Union St) – sidewalk seating for 6 people

- Ottimista Enoteca'café (1838 Union St) – outdoor covered seating for 20 people recessed from sidewalk
- Luisa's Italian (1851 Union St) – occasional sidewalk seating for 10 people
- Unwind Kitchen & Back Bar (1875 Union St) – sidewalk seating for 12 people
- La Boulange (1909 Union St) – sidewalk seating for 12 people
- Perry's (1944 Union St) – sidewalk seating for 12 people
- Extreme Pizza (1980 Union St) – elevated outdoor seating for 12 people
- Bar None (1980 Union St) – outdoor area for 20 people
- Café Des Amis (2000 Union St) – sidewalk seating area for 14 people
- Betelnut (2030 Union St) – sidewalk seating for 14 people
- Nettie's Crab Shack (2032 Union St) – sidewalk & outdoor patio seating for 20 people
- La Cucina (2136 Union St) – sidewalk seating for 12 people
- The Brixton (2140 Union St) – sidewalk seating for 12 people
- Crepes A-Go-Go (2165 Union St) – sidewalk seating for 6 people
- Jovina (2184 Union St) – sidewalk seating for 8 people

**Concern #9 – The front outdoor activity area does not meet the City's General Plan/Planning Code Criteria**

Per Sec. 725.1 of the San Francisco Planning Code: "The Union Street District controls are designed to provide sufficient growth opportunities for commercial development that is in keeping with the existing scale and character, promote continuous retail frontage, and protect adjacent residential livability."

The venue that now occupies The Brick Yard had been vacant since March 2008. This vacancy along with numerous other vacancies along the Union Street NCD contributed to City officials removing a ban allowing new restaurants effective January 2009.

Further SEC. 790.70 describes and an outdoor activity area is "located outside of a building or in a courtyard which is provided for the use or convenience of patrons of a commercial establishment including, but not limited to, sitting, eating, drinking, dancing, and food-service activities." The Brick Yard's proposed patio is located at the front of the restaurant facing Union Street. It's location within property limits does not obstruct pedestrian traffic on the sidewalk and the elevated nature of the patio makes it only accessible from with the restaurant premises. All design elements of the patio including but not limited to the railing are within Building Code requirements.

**2. What alternatives or changes to the proposed project are you willing to make in order to address the concerns of the DR requester and other concerned parties? If you have already changed the project to meet neighborhood concerns, please explain those changes. Indicate whether the changes were made before filing your application with the City or after filing the application.**

Since beginning the project we have proposed solutions to concerns that neighbors and residents have voiced. A lot of progress has been made simply through communication. Neighbors are happy to hear the outdoor patio is NOT designed to be a "beer garden" or "smoking lounge." The proposed use for the patio is an outdoor seating area for 10-12 people consisting of 3-4 tables with chairs. The majority of concerns from people listed in the discretionary review are not over the patio itself, but the fact that the front of the venue can open with bi-fold doors and the potential "trumpeting crowd noise" from inside the restaurant. Given these concerns, we invested significant time and resources into sound dampening and additionally propose the following compromise(s):

- 1) During the initial construction we installed over 750 square feet of sound installation at the front of the premises to prevent noise from "escaping" to Union Street (**see Exhibit D**).
- 2) The patio would close at 10:00 PM. When the patio is not in use the bi-fold doors would remain fully closed.
- 3) The 2 door panels fixed to the wall (east side) would remain fixed at all times. The majority of time only the one door panel would be open. With only one access door panel used the opening to outside is only 27 square feet - compared with the windows of Bayside opening 50 square feet (**see Exhibit F**)
- 4) We will install a retractable angled canvas awning that would provide additional sound dampening.
- 5) Flower boxes with ivy would be placed along all of the iron railings on the patio to help prevent any items from falling to the sidewalk below. (**see Exhibit H**)
- 6) We will not request additional sidewalk seating to minimize the number of guests at the exterior of the venue.

We understand and respect the fact that our neighbors have the right to peaceful enjoyment of their property. We have no desire to interfere with this right and want to co-exist with all of our neighbors on Union Street – both commercial and residential. We feel that with the above measures and responsible management in place, there can be a compromise that would address both viewpoints.

- 3. If you are not willing to change the proposed project or pursue other alternatives, please state why you feel that your project would not have any adverse effect on the surrounding properties. Please explain your needs for space or other personal requirements that prevent you from making the changes requested by the DR requester.**

After extensive outreach and meetings, the only proposed solution from the neighbors who filed the Discretionary Review is to re-enclose the patio. This proposal would preclude The Brick Yard from being able to compete with other restaurants in the Union Street Neighborhood Commercial District that offer outdoor dining, and it certainly does not represent a compromise.

With the proposed changes that we have included and responsible management monitoring noise, there should be no adverse affects on our neighbors. From the outset we have been committed to outreach and acting in good faith and as a good neighbor for the benefit of all. With the approval of the patio we will be even more determined to prove that the neighbors, residents, and patrons of the Brick Yard can co-exist peacefully.

Further, the majority of feedback we have received has been supportive. We have collected over 1,000 physical signatures of residential neighbors and basically have the support of all our residential neighbors (compared with the 7 residential neighbors who oppose). Our immediate business neighbors on either side have written letters of support. In addition to our immediate neighbors, we have support from the Union Street Association, Union Street Enrichment Association and numerous other businesses on Union Street.

We made a considerable investment into Union Street and San Francisco in one of the worst recessions in history. The Brick Yard employs a staff of approximately 50 people and has paid over one hundred thousand dollars in taxes. We invested a considerable amount into this venue to create an enjoyable venue where patrons and neighbors can enjoy each other's company, watch sports, or savor great food from a local chef and hope they are able to do so with the benefit of a patio.

# Exhibit A



Onju Updegrave  
Architect

To: San Francisco Planning Department  
Re: 1787 Union Street Permit No. 201002025765  
December 20, 2010

To Who it may concern,

As the architect of record for the above referenced building permit, I am providing in this letter a description of the steps taken to secure the above referenced permit which is titled on the approved permit plan "Bathroom Remodel & Sunroom Removal" as well as describe the approved permit plans.

On January 14, 2010, I visited the Over-The-Counter Services at the Department of Building Inspection with plans that I had prepared and for which I hoped to secure a building permit. These plans specified work required to remodel bathrooms for accessibility as well as remove a glass structure located at the street front of the building and create in place of the glass structure an open deck/patio area comprising of approximately 144 sq. ft. [*see Exhibit 1- photographs of the former glass enclosure sunroom*].

The Building Division staff reviewed my plans and instructed me to revise the bathroom layout for accessibility compliance and to insert minor occupancy load and code notations on the plans and then resubmit the plans for their approval. The Building Division staff also directed me to the Planning Division so that planning staff can review the zoning requirements for the proposed work. I met with planning staff at the public service counter, I showed them the proposed plans which included the creation of a patio, elevations, exterior photographs of the sunroom and I described in detail the scope of the project. I was told that the entire proposed work scope could be approved over the counter and no separate design review was required. I reported the above information to my client.

During the week of January 18<sup>th</sup>, 2010, as instructed by the Building Division, I revised the bathroom layout and inserted the minor code compliance notations on the plans but I did not make any other changes to the plans or elevations because no other changes were requested by either the Building or Planning Departments. In an effort to save on my fees, my client asked SF Garage Company to submit my plans to the City and obtain a permit for the work outlined in the plans. Using SF Garage to obtain the permit seemed more economically efficient as I am located in Marin and the OTC permitting process can take many hours.

SF Garage obtained the building permit on February 22, 2010. This building permit included my plans which comprise of only three pages, all of which are titled "Bath Remodel and Sunroom Removal". Page A1 of the plans is the cover page and does not contain any drawings. Page A2 of the plans shows details for the bathrooms and clearly details the "Sunroom Enclosure Removal" as well as the creation of the patio. Page A3 of the plans is entirely dedicated to the new exterior elevation of the building and clearly shows the sunroom removed and references the "Balcony". [*see Exhibit 2-Approved Permit Plans*]

These plans describe the creation of the patio in numerous ways, including the following:

- a. The plans show the removal of the existing sunroom wall and ceiling glazing;
- b. The plans show the installation of stucco on the exterior patio wall;
- c. The plans show the addition of an iron handrail that is required to prevent people from falling off the open patio which is elevated above the street;

366 Butterfield Road • San Anselmo, CA 94960 • Phone (415) 457-7788 • Fax 457-7747



Onju Updegrave  
Architect

- d. The plans show floor drains required to drain rain water from the patio;
- e. The plans show “deck tile” floors slanted toward the floor drains required to prevent water puddles from forming in the patio;
- f. The plans show the addition of a new exterior glass door located between the interior space and the new patio area.
- g. The plans show a threshold separating the interior space from the new patio.
- h. The plans show a new light in the patio.

Each page of my plans was stamped “APPROVED”, signed and dated by both the Building and Planning Departments (for a total of six stamps), indicating that the plans were thoroughly reviewed. City officials also made two handwritten notations on these APPROVED plans: One note which appears on the top right section of page A2 requires the glass used in the new glass patio door to meet a certain minimum efficiency standard [see Exhibit 3-Detail Note Sheet A2]. This note is very clear and was made next to the detail of the new exterior glass patio door. The other change appears in the bottom right corner of page A1 and comprises of replacing the word “remove” with the word “replace” and what appears to be insertion of the number “9”. This modification effectively changes the sentence “Remove Front Glass Sunroom Enclosure” to “Replace Front 9 Glass Sunroom Enclosure”. This change was only noticed during my review of the plans for the purpose of this letter and it’s meaning is unclear [see Exhibit 4-Detail Sheet A1].

Additionally, the City’s online permit tracking system describes our project as:

*“Remodel bathrooms for accessibility. remove sunroom enclosure at front of building. Replace sheetrock. Signage on separate permit.”*

Not only is our project described as we presented it on the plans, but the only noted permit exclusion relates to the building sign [see Exhibit 5-Online Permit Tracking detail].

Customarily, if there are major changes required to the scope of work, City Building and Planning officials require plans to be revised/redrawn and resubmitted for approval. This was true for the bathroom portion of this project, as I was asked to revise the bathroom layout shown on my original plans, insert certain notations and resubmit the plans for approval, which I did. The only known exception to this methodology is when only minor clarifications are required that can be noted in writing on plans, typically in red ink.

If the removal of the sunroom was not approved as shown on the submitted plans stamped “APPROVED”, then this portion of the work, as minimal standard of clarification, should have been crossed off the plans and the building elevations page. The elevations sheet A3 was entirely dedicated to the patio should certainly not have been stamped “APPROVED” twice by the Building and Planning Departments without any notations made on it.

Assuming the “APPROVED” plans were accurate, my client relied on and in good faith effectuated construction based on the permitted plans. After the patio was constructed and the sunroom glazing removed, a Planning Department official notified my client that the permit issued by the City excluded the removal of the sunroom, citing an illegible hand written comments on a separate permit application





Onju Updegrave  
Architect

form that apparently accompanied the permit and which my client was not aware of. [see Exhibit 6-Permit Application] This came as a complete surprise to all of us since we were working off the assumption that any major change of scope would have required a new set of drawings

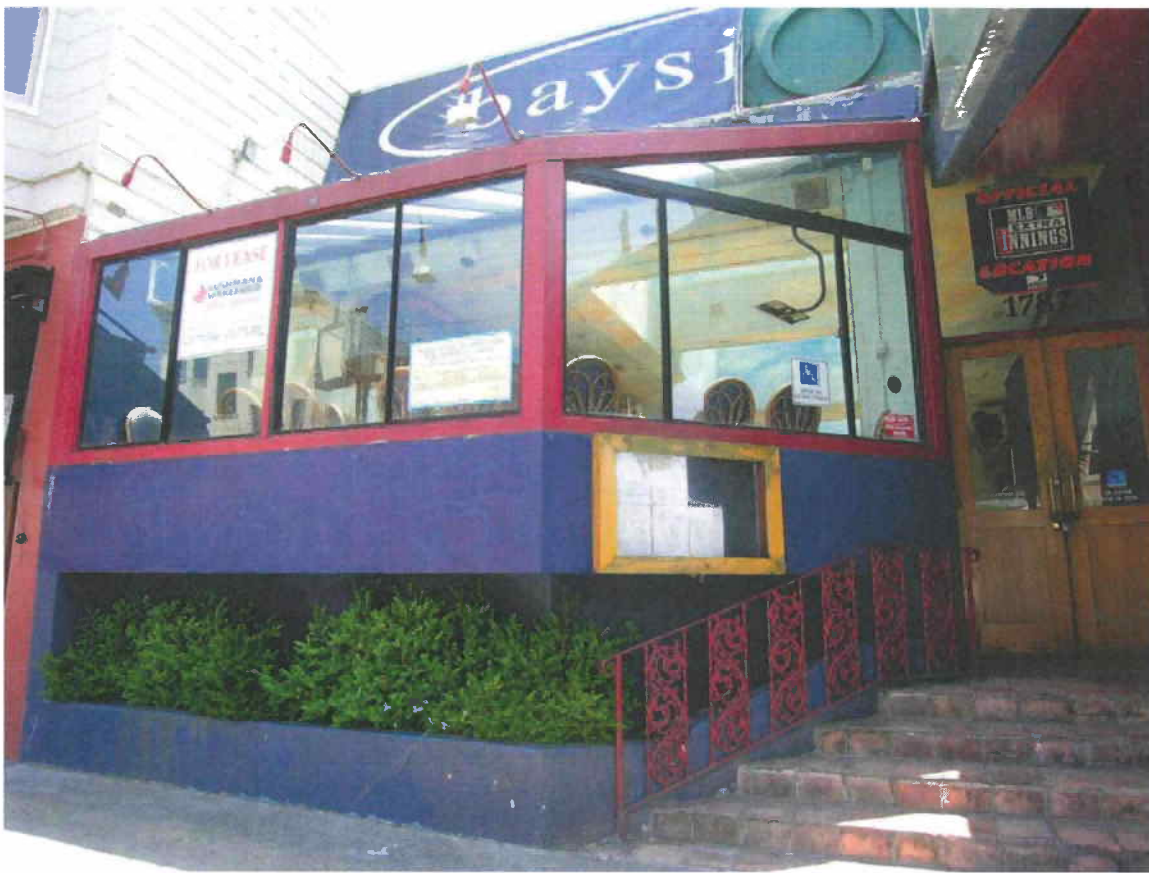
My client had no way of knowing or any reason to suspect that half of the work called for on the "Approved" plans was actually not approved as described. It would be inaccurate for anyone to accuse my client of purposely building the patio without a permit when my client effectively completed work exactly as shown on "APPROVED" permitted plans. In addition, all work completed under the scope of the project had the appropriate inspections and approvals throughout the course of the project, including but not limited to the Building Department.

My client has suffered significant loss as a direct result of this situation. Due to a stop work order, my client has been prevented by the City from completing the required improvements on the building façade and from using the patio. For over seven months now, the restaurant in the building has been operating without a main building sign and with an incomplete building façade, which my client has unsuccessfully attempted to mask with a white sheet of fabric.

This entire situation is puzzling. If the creation of a patio was not approved, then why would the City Official who approved the plans note on Sheet A2 that the patio door glazing be a type required for exterior applications? When looking at the approved exterior elevation drawings, it is obvious that the project would result in the creation of an outdoor patio with a railing and patio door. Looking at the approved plans, it's clear the patio door was also approved - why would this project require patio doors if the scope of work didn't call for a newly created exterior patio area? Otherwise, you would have an exterior patio door contained within the interior of the restaurant. If the creation of a patio was not approved, why would there not be a single comprehensible notation anywhere on the plans indicating that a major portion of the work depicted was excluded from the scope of the permit.

To summarize, my client proceeded with construction of the project with the reasonable understanding that they had a permit for the full scope of work shown on the approved permit plans. This understanding came from the approved permit plans in addition to the online permit tracking system. The primary documents relied upon were the approved Job Copy of the plans which were the basis for the work performed. My client followed standard protocol for completing this work and certainly did nothing illegal as it relates to performing work that was not approved by City officials. Additionally, this patio is in harmony with the remainder of Union Street and the Brick Yard Restaurant has made a significant contribution toward reenergizing this end of Union Street. My client has endured and continues to endure undeserved hardship as a direct result of this episode.

Onju Updegrave, Architect



1. Former Glass Enclosure at Patio



2. Union Street View of Former Glass Enclosure

**EXHIBIT No. 1**

ABBREVIATION INDEX

Table with 3 columns: Abbreviation, Description, and Unit/Category. Includes entries for AAC, AIA, ADA, etc.

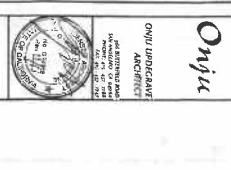
- GENERAL NOTES: 1. PROJECT TO CONSIST OF... 2. OWNER SHALL BE RESPONSIBLE FOR THE PROTECTION OF ADJACENT PROPERTIES... 3. THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS...

Form C: DISABLED ACCESS 20% RULE. Section A: Cost of Construction: \$10,000. Section B: 20% of A: \$2,000. Total Disabled Expenditure: \$20,000.

APPROVED [Signature] FEB 18 2010 DIRECTOR OF BUILDING INSPECTION

DA CHECKLIST (p. 2 of 2). Section 1: Proposed Use of the Project. Section 2: Describe the nature of proposed... Section 3: Construction Cost of the Project... Section 4: A. In a DA project... Section 5: Hazard A through C below... Section 6: Hazard D through F below...

PROJECT SUMMARY: BATH REMODEL & SUNROOM REMOVAL. 1787 UNION STREET, SAN FRANCISCO. OWNER: KAP Investments, LLC. RECEIVED FEB 18 2010. DRAWING INDEX: A1 DA CHECKLIST GENERAL NOTES, A2 PLANS, ATTACHED ELEVATIONS, A3 ELEVATIONS.



DA CHECKLIST, GENERAL NOTES

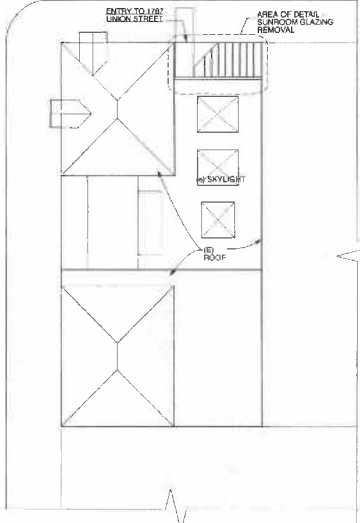
BATH REMODEL & SUNROOM REMOVAL 1787 UNION STREET, SAN FRANCISCO OWNER: KAP Investments, LLC

2010/0202/5765

REVISIONS	BY

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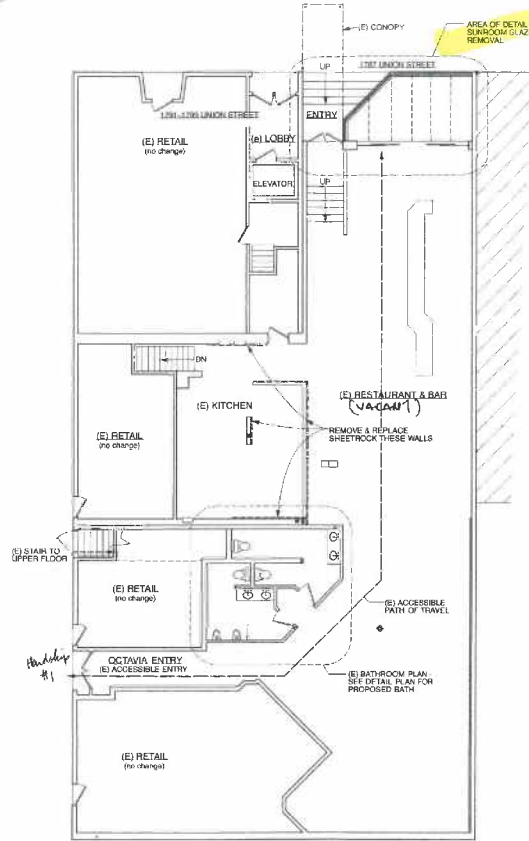
OCTAVIA STREET



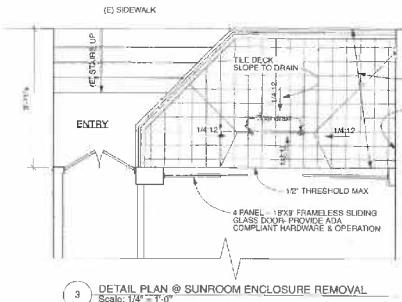
1 VICINITY MAP/ROOF PLAN  
 Scale: 1/8" = 1'-0"

UNION STREET

OCTAVIA STREET

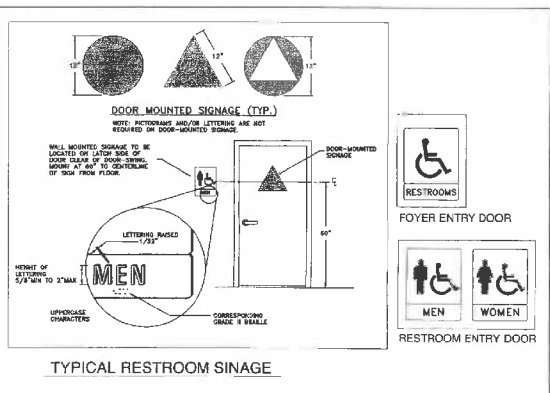


2 GROUND FLOOR PLAN  
 Scale: 1/8" = 1'-0"

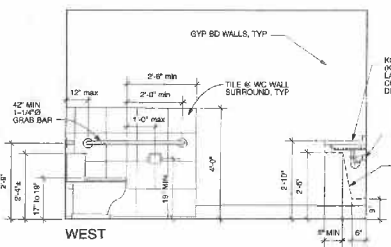


3 DETAIL PLAN @ SUNROOM ENCLOSURE REMOVAL  
 Scale: 1/4" = 1'-0"

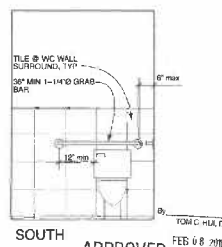
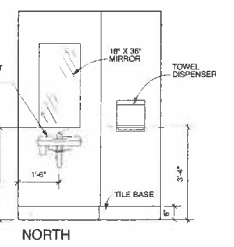
REMOVE #1 SUNROOM WALL & CEILING GLAZING THIS AREA  
 STUCCO FINISH @ WALL  
 All new glazing w/ max 4-1/2" x 6-7/8" @ 77



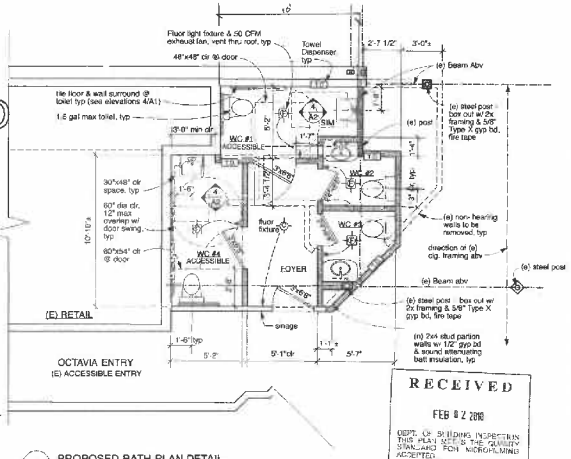
TYPICAL RESTROOM SIGNAGE



4 ACCESSIBLE BATH INTERIOR ELEVATIONS  
 Scale: 1/2" = 1'-0"



APPROVED  
 FEB 2 2010  
 DEPT. OF BUILDING INSPECTION  
 1787 UNION STREET, SAN FRANCISCO  
 OWNER: KAP Investments, LLC

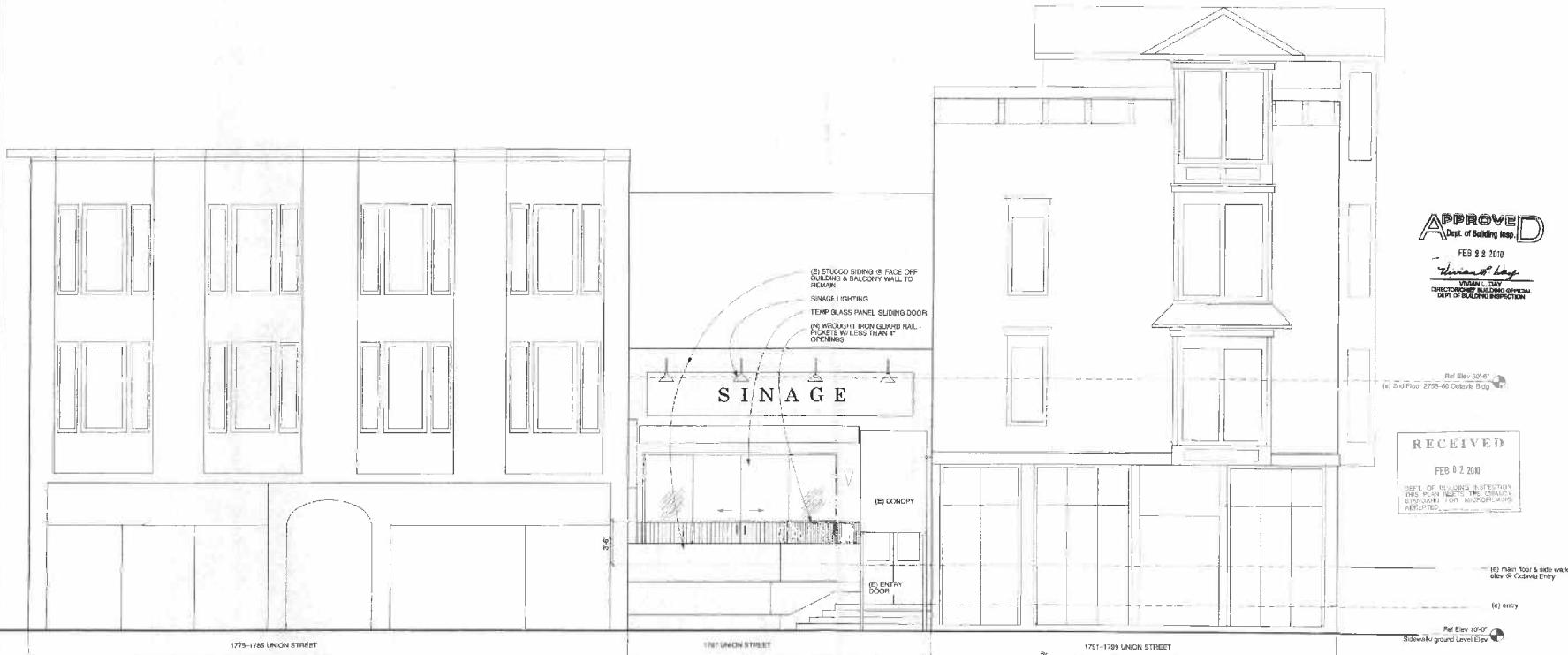


5 PROPOSED BATH PLAN DETAIL  
 Scale: 1/4" = 1'-0"

RECEIVED  
 FEB 4 2010  
 DEPT. OF BUILDING INSPECTION  
 1787 UNION STREET, SAN FRANCISCO  
 OWNER: KAP Investments, LLC



2 EXISTING NORTH/UNION STREET ELEVATION  
Scale: 1/8" = 1'-0"



1 NORTH/UNION STREET ELEVATION  
Scale: 1/8" = 1'-0"

APPROVED  
PER PLANS AND APPLICATION  
TOM C. HUI, DBP  
FEB 03 2010  
PLANNING DEPARTMENT

APPROVED  
Dept. of Building Insp.  
FEB 22 2010  
VINCENT L. DAY  
DIRECTOR/CITY BUILDING DEPARTMENT  
DEPT. OF BUILDING INSPECTION

RECEIVED  
FEB 02 2010  
DEPT. OF BUILDING INSPECTION  
THIS PLAN MEETS THE MINIMUM  
STRUCTURAL PLAN REQUIREMENTS  
REQUIREMENTS.

Onju

ONJU UPDEGRAVE  
ARCHITECT

1445 FULTON STREET  
SAN FRANCISCO, CA 94102  
PHONE: 415.437.1044  
FAX: 415.437.1744



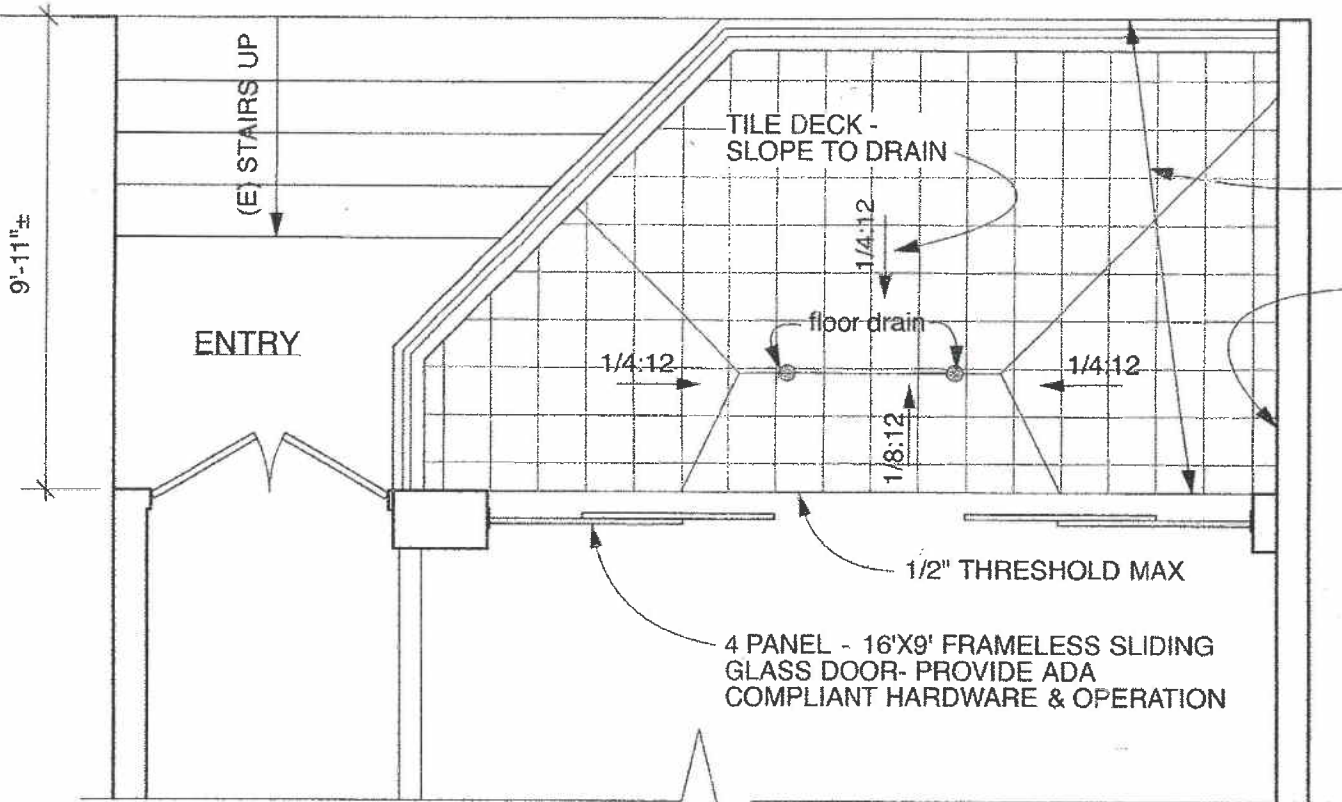
ELEVATIONS

BATH REMODEL & SUNROOM REMOVAL  
1787 UNION STREET, SAN FRANCISCO  
OWNER: KAP Investments, LLC

REV	NO	BY	DATE

DATE: 18 JAN 2010  
SCALE: AS NOTED  
DRAWN:  
SHEET: A3

(E) SIDEWALK



REMOVE (E) SUNROOM WALL & CEILING GLAZING THIS AREA

STUCCO FINISH @ WALL

*All new glazing w/ max u-factor 0.77*

4 PANEL - 16'X9' FRAMELESS SLIDING GLASS DOOR- PROVIDE ADA COMPLIANT HARDWARE & OPERATION

1/2" THRESHOLD MAX

1/4:12

1/8:12

1/4:12

floor drain

1/4:12

(E) STAIRS UP

ENTRY

9'-11"±

3

DETAIL PLAN @ SUNROOM ENCLOSURE REMOVAL

Scale: 1/4" = 1'-0"

JEFF LAI, DBI

FEB 08 2010

By \_\_\_\_\_



ONJU

36 SAN / PL



IONS

**PROJECT SUMMARY:**

BUILDING CONSTRUCTION TYPE: V-A  
OCCUPANCY: A (RESTAURANT)-2  
OCCUPANCY LOAD:  
EXISTING = 145  
PROPOSED = 138

**SCOPE OF WORK:**

1. REMODEL AREA OF EXISTING BATH FOR PROVISION OF ACCESSIBILITY
2. REMOVE FRONT GLASS SUNROOM ENCLOSURE

Replace 9

JEFF LAI, DBI

FEB 08 2010

By *JL*

**RECEIVED**

FEB 02 2010

DEPT. OF BUILDING INSPECTION  
THIS PLAN MEETS THE QUALITY  
STANDARD FOR MICROFILMING  
ACCEPTED

**APPROVED**

PER PLANS AND APPLICATION

*[Signature]*

PLANNING DEPARTMENT

By *TUH*

TOM C. HUI, DBI

FEB 08 2010

DRAWING INDEX	
A1	DA CHECKLIST, GENERAL NOTES
A2	PLANS, INTERIOR ELEVATIONS
A3	ELEVATIONS

**BATH REMODEL &**  
1787 UNION STRE  
OWNER: KAF

20101

REVISIONS	BY
DATE	18 JAN 2010
SCALE	AS NOTED
DRAWN	
SHEET	<b>A1</b>

# Online Permit and Complaint Tracking

## Permit Details Report

**Report Date:** 11/12/2010 1:18:59 PM

Application Number: 201002025765

Form Number: 8

Address(es): 0544 / 017 / 0 1787 UNION ST

Description: to comply with nov#200929699. Remodel bathrooms for accessibility. remove sunroom enclosure at front of building. Replace sheetrock. signage on separate permit.

Cost: \$30,000.00

Occupancy Code: M,A-2

Building Use: 05 - FOOD/BEVERAGE HNDLNG

## Disposition / Stage:

Action Date	Stage	Comments
2/2/2010	TRIAGE	
2/2/2010	FILING	
2/2/2010	FILED	
2/22/2010	APPROVED	
2/22/2010	ISSUED	

## Contact Details:

### Contractor Details:

License Number: 684863

Name: JOHN C. POLLARD

Company Name: 5-12 CONSTRUCTION INC/DBA: SF GARAGE CO

Address: 50 OTIS ST \* SAN FRANCISCO CA 94103-0000

Phone: 4158260606

## Addenda Details:

### Description:

Step	Station	Arrive	Start	In Hold	Out Hold	Finish	Checked By	Hold Description
1	INTAKE	2/2/10	2/2/10			2/2/10	VALLE JAIME	
2	CP-ZOC	2/4/10	2/4/10			2/4/10	OMOKARO ISOKEN	
3	BLDG	2/8/10	2/8/10			2/8/10	HUI TOM	
4	MECH	2/8/10	2/8/10			2/8/10	LAI JEFF	approved-otc.
5	SFFD	2/4/10	2/4/10			2/4/10	HAYES JANICE	N/A no change in exiting.
6	BID-INSP	1/29/10	1/29/10			1/29/10		APPROVED BY DL
7	CPB	2/22/10	2/22/10			2/22/10	ALARCON SONIA	

This permit has been issued. For information pertaining to this permit, please call 415-558-6096.

## Appointments:

Appointment Date	Appointment AM/PM	Appointment Code	Appointment Type	Description	Time Slots
------------------	-------------------	------------------	------------------	-------------	------------

## Inspections:

Activity Date	Inspector	Inspection Description	Inspection Status
5/6/2010	Steve Hajnal	SHEETROCK NAILING	SHEETROCK NAILING
5/4/2010	Steve Hajnal	ROUGH FRAME	ROUGH FRAME
4/30/2010	Steve Hajnal	SITE VERIFICATION	SITE VERIFICATION

## Special Inspections:



<u>Addenda No.</u>	<u>Completed Date</u>	<u>Inspected By</u>	<u>Inspection Code</u>	<u>Description</u>	<u>Remarks</u>
--------------------	-----------------------	---------------------	------------------------	--------------------	----------------

For information, or to schedule an inspection, call 558-6570 between 8:30 am and 3:00 pm.

[Station Code Descriptions and Phone Numbers](#)

[Online Permit and Complaint Tracking](#) home page.

**Technical Support for Online Services**

If you need help or have a question about this service, please visit our FAQ area.

APPROVED FOR ISSUANCE

**APPROVED**  
Dept. of Building Insp.

FEB 22 2010

APPLICATION NUMBER  
2010-02055

OSHA APPROVAL REQ.   
APPROVAL NUMBER:

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

CITY AND COUNTY OF SAN FRANCISCO  
DEPARTMENT OF BUILDING INSPECTION

*Vivian Day*  
VIVIAN DAY  
DEPT. OF BUILDING INSPECTION OFFICIAL

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

FORM 3  OTHER AGENCIES REVIEW REQUIRED

FORM 8  OVER-THE COUNTER ISSUANCE

NUMBER OF PLAN SETS 7/5

DO NOT WRITE ABOVE THIS LINE

DATE FILED <u>2/18/10</u>	FILING FEE RECEIPT NO. <u>PLNS FEE</u>	(1) STREET ADDRESS OF JOB <u>787 Union St</u>	BLOCK & LOT <u>6544 517</u>
PERMIT NO. <u>1705511</u>	ISSUED <u>2/22/10</u>	(2A) ESTIMATED COST OF JOB <u>30,000</u>	(2B) REVISED COST <u>30,000</u>

**INFORMATION TO BE FURNISHED BY ALL APPLICANTS**

**LEGAL DESCRIPTION OF EXISTING BUILDING**

(4A) TYPE OF CONSTR.	(5A) NO. OF STORIES OF OCCUPANCY	(6A) NO. OF BASEMENTS AND CELLARS	(7A) PRESENT USE <u>RESTAURANT</u>	(8A) OCCUP CLASS <u>A-2</u>	(9A) NO. OF DWELLING UNITS <u>0</u>
----------------------	----------------------------------	-----------------------------------	---------------------------------------	--------------------------------	--

**DESCRIPTION OF BUILDING AFTER PROPOSED ALTERATION**

(4) TYPE OF CONSTR.	(5) NO. OF STORIES OF OCCUPANCY	(6) NO. OF BASEMENTS AND CELLARS	(7) PROPOSED USE (LEGAL USE) <u>RESTAURANT</u>	(8) OCCUP CLASS <u>A-2</u>	(9) NO. OF DWELLING UNITS <u>0</u>
---------------------	---------------------------------	----------------------------------	---	-------------------------------	---------------------------------------

(10) IS AUTO RUNWAY TO BE CONSTRUCTED OR ALTERED? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	(11) WILL STREET SPACE BE USED DURING CONSTRUCTION? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	(12) ELECTRICAL WORK TO BE PERFORMED? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	(13) PLUMBING WORK TO BE PERFORMED? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
--	--	--	--

(14) GENERAL CONTRACTOR <u>S.F. Garage</u>	ADDRESS <u>501 CHS</u>	ZIP <u>94102</u>	PHONE <u>415-774-7111</u>	CALIF. LIC. NO. <u>58756</u>	EXPIRATION DATE <u>1/30/11</u>
---	---------------------------	---------------------	------------------------------	---------------------------------	-----------------------------------

(15) OWNER - LESSEE (CROSS OUT ONE)	ADDRESS <u>955 22nd St</u>	ZIP <u>94102</u>	BTRC# <u>94925 415-299-1310</u>	PHONE (FOR CONTACT BY DEPT.) <u>415-299-1310</u>
-------------------------------------	-------------------------------	---------------------	------------------------------------	---

(16) WRITE IN DESCRIPTION OF ALL WORK TO BE PERFORMED UNDER THIS APPLICATION (REFERENCE TO PLANS IS NOT SUFFICIENT)  
Remove kitchen hood, remove burner, install new building. Repair electrical. Signage on separate permit.

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

OWNERS AUTHORIZED AGENT  Number of attachments

NOTIFIED MR.	REASON:	DATE:	APPROVED:	REDEVELOPMENT AGENCY	HOUSING INSPECTION DIVISION
--------------	---------	-------	-----------	----------------------	-----------------------------

## CONDITIONS AND STIPULATIONS

REFER TO:	<p style="font-size: small; border: 1px solid black; padding: 2px;">                     Call 311-300-6970, to schedule inspections for building, electrical and / or plumbing. This application is approved without site inspection, detailed plumbing or electrical plan review and does not constitute an approval of the building. Work authorized must be done in strict accordance with all applicable codes. Any electrical or plumbing work shall require appropriate separate permits.                 </p> <p style="text-align: right; font-size: x-large; font-weight: bold;">                     Com A                      FEB 08 2010                 </p>	DATE: <u>1/29/10</u> REASON: <u>10570</u> NOTIFIED MR. _____
	BUILDING INSPECTOR, DEPT. OF BLDG. INSP.	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/>	APPROVED: <u>Remodel bathrooms. Remove and replace 9 glazed windows @ Sunroom @ front of bldg.</u> <p style="font-size: small; text-align: center;">                     CATEGORICALLY EXEMPT FROM DEPARTMENT OF CITY PLANNING                 </p> <p style="text-align: right; font-size: x-large; font-weight: bold;">                     2/4/2010                 </p>	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/>	APPROVED: _____ <p style="text-align: center; font-size: small;">                     BUREAU OF FIRE PREVENTION &amp; PUBLIC SAFETY                 </p> <p style="text-align: right; font-size: x-large; font-weight: bold; color: red;">                     N/A                      2/4                 </p>	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input checked="" type="checkbox"/>	APPROVED: <u>ofc</u> <ul style="list-style-type: none"> <li>• All replacement glazing w/ u-factor 0.77</li> <li>• map under separate permit</li> </ul> <p style="text-align: right; font-size: small;">                     JEFF LAI DBI                      FEB 08 2010                 </p> <p style="text-align: center; font-size: small;">                     MECHANICAL ENGINEER, DEPT OF BLDG. INSPECTION                 </p>	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/>	APPROVED: _____ <p style="text-align: center; font-size: x-large; font-weight: bold;">                     N/A TCAH                 </p> <p style="text-align: center; font-size: small;">                     CIVIL ENGINEER, DEPT. OF BLDG INSPECTION                 </p>	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/>	APPROVED: _____ <p style="text-align: center; font-size: small;">                     BUREAU OF ENGINEERING                 </p>	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/>	APPROVED: _____ <p style="text-align: center; font-size: small;">                     DEPARTMENT OF PUBLIC HEALTH                 </p>	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/>	APPROVED: _____	DATE: _____ REASON: _____ NOTIFIED MR. _____

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

# Exhibit B

# KAP INVESTMENTS, LLC

85 LIBERTY SHIP WAY, Suite 105, SAUSALITO, CALIFORNIA 94965  
TELEPHONE 415.289.1316 FACSIMILE 415.289.1345

---

To Whom It May Concern

January 2, 2011

Re: 1787 Union Street Permit No. 201002025765

Dear Sir/Mme:

This letter summarizes our understanding of the building permit obtained for the construction of the patio at the above referenced premises. The facts surrounding the permit are listed below.

1. The subject property is owned by KAP Investments, LLC ("KAP") and I, the undersigned, am the manager of KAP.
2. In late 2009, I asked our architect, Onju Updegrave ("Onju"), to prepare drawings and obtain a permit to reconstruct the bathrooms and create a small outdoor patio at the front of the subject building.
3. In January 2010, I reviewed plans which Onju prepared and which she intended to submit to the City for permits. These plans clearly indicated the creation of the patio.
4. In January 2010, Onju told me that she reviewed these plans with the San Francisco Planning and Building Departments and that the Planning Department told her the patio was allowed and would be approved over the counter exactly as it is shown on the plans and without any separate design review process. However, the Building Department required the bathrooms shown on the plans to be revised.
5. In January 2010, Onju revised the portion of the plans that related to the bathrooms and since her office is located in San Anselmo, she told me that it would be more economical to send the plans to SF Garage to pull the permit as their office is located across the street from the Building Department. I agreed and she sent the plans to SF Garage.
6. In February 2010, I was told by SF Garage that our permits were issued by the City.
7. Shortly after I was notified that the permits were issued, our builder told me that he collected the approved permit plans from SF Garage and started construction.
8. On several occasions during the course of construction, I inspected the construction work and I referred to the jobsite copy of the permit plans. These plans clearly indicated the patio work and contained numerous Planning and Building Department "Approved" stamps and official signatures.
9. By May 13, 2011, the original glass patio enclosure had been removed and most of the patio work was finished.
10. At all times prior to May 13, 2010, I had a clear and absolute understanding that we had a permit to create the outdoor patio and I was not aware of any permitting problems with the establishment of this patio. We started construction after our Building Permit was issued, all of the patio work was done openly and in full view of the public, all work was performed in accordance with the approved permit plans and we had Building Department inspections in the premises during this construction period.

11. My first knowledge of the patio permit problems is outlined below.
- a) On or about May 12, 2010, I received a telephone message from Mr. Omokaro Isoken of the San Francisco Planning Department which I returned on that same day. During that call, Mr. Isoken asked me what do we intend to use the patio for. I told him that the building will be used as a restaurant as shown on the permit plans and we expected people to dine and drink on the patio. Mr. Isoken then asked me if I was aware that we require another permit in order to use the patio. I told him that I was not aware of any additional use permit requirement and that I would ask our architect to contact him and obtain the additional permit.
  - b) On or about May 13, 2010, which was after the patio was established, I received two telephone messages from Mr. Isoken and I returned those calls on that same day. During that phone conversation, Mr. Isoken told me that we did not have a permit for the patio, that he had only approved the replacement of a few pieces of glass at the original glass patio enclosure and something to the effect that he had sent the matter to someone higher up in his department who will contact us.

The substance of this conversation was a complete surprise to me and I found it puzzling especially since during my prior day's conversation with Mr. Isoken, he inferred that we had a permit to establish the patio but we needed an additional permit in order to use the patio. Additionally, I wondered why Mr. Isoken would approve replacement of glass which we never requested and I found it curious that Mr. Isoken would approve glass replacement when such glass replacement would not have required Planning Department approval. In fact, our permit plans would not have even been sent to the Planning Department for their review if the only exterior work that we applied for in our permit application was to replace a few pieces of existing glass.

12. Shortly after my May 13, 2010 conversation with Mr. Isoken, we received a stop work order and we stopped all work. We then requested our permit expediter, Mr. John Pollard of SF Garage, to help us resolve this matter. Mr. Pollard worked with the Building and Planning Departments to correct the issue and we proceeded with the notification process. He also obtained from Ms. Kelley Amdur, the acting Zoning Administrator, permission to install the front patio doors in order to seal the front of the building as well as permission to install the patio handrail as the handrail is a life-safety issue. Besides these two authorized completions there has not been any additional work done to the exterior of the building and that is why it still looks unfinished. Additionally, as instructed, we have never used the outdoor patio since June 5, 2010 which was the opening date of The Brick Yard and until today, we continue to work within the confines of the San Francisco Building and Planning codes and procedures to complete this process.

In the process of establishing this patio, we followed all of the proper protocols and government rules, we obtained a permit and we constructed the patio exactly as outlined in our approved permit plans.

Unfortunately, there is a select group of neighbors who are intent on preventing the Brick Yard and other businesses that they do not like from operating in this neighborhood. While we understand that City residents have a right to peaceful enjoyment of their homes, we believe that these neighbors have used this right as a disguise to attack us. They have done this because they wish to control the makeup of the businesses on Union Street – even though it is a designated Neighborhood Commercial District. These same neighbors have opposed and prevented several other businesses from opening on Union Street. In 2009, they threatened to ruin the business of a tenant who leased this building and as a direct result of their threats, that tenant requested that we cancel their lease and refund their deposit, which we did. Then in early 2010, the same neighbors prevented Giordano Brothers from opening a location on Union Street and again in late 2010, they interfered with the permitting process of Bistro Unique which is now in the process of opening on Union Street as a full service restaurant.

We believe that the Brick Yard is the ideal business operation for this building. This business has been operated in a professional and responsible manner, it is a permitted use that it is consistent and harmonious with other uses on Union Street, it is an asset to the community and it enjoys extensive community support. Thank you.

Sincerely yours,

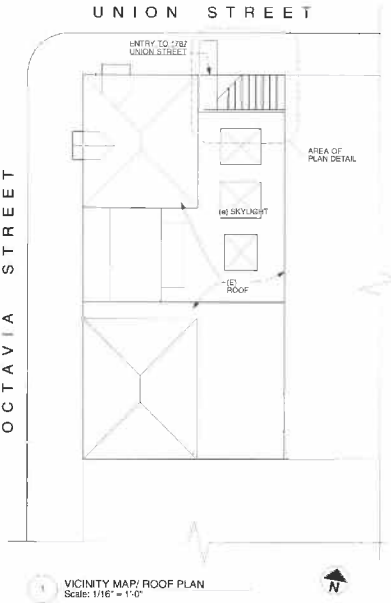


Zack Faidi  
Manager

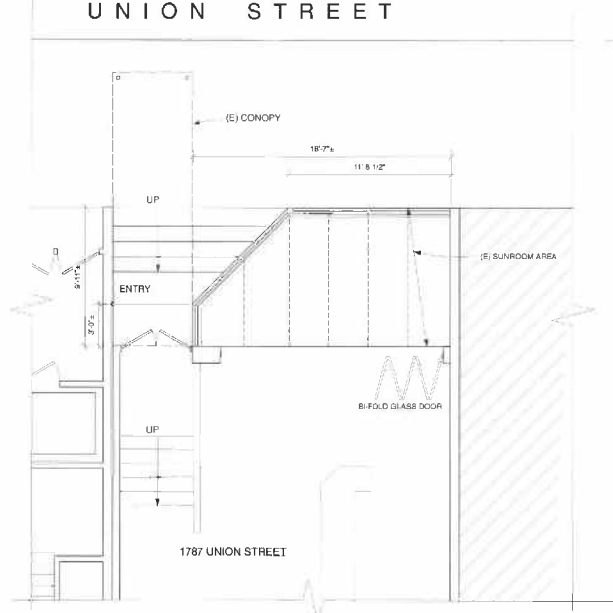
# Exhibit C

REVISIONS	BY
12.AA.2010	

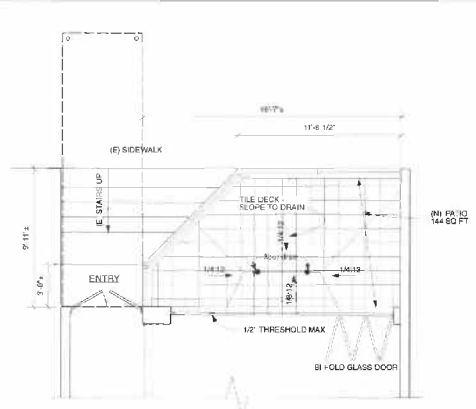
DATE: # JULY 2010  
SCALE: AS NOTED  
DRAWN:  
SHEET



1 VICINITY MAP/ ROOF PLAN  
Scale: 1/16" = 1'-0"



2 SUNROOM PLAN PRIOR TO DEMOLITION  
Scale: 1/4" = 1'-0"

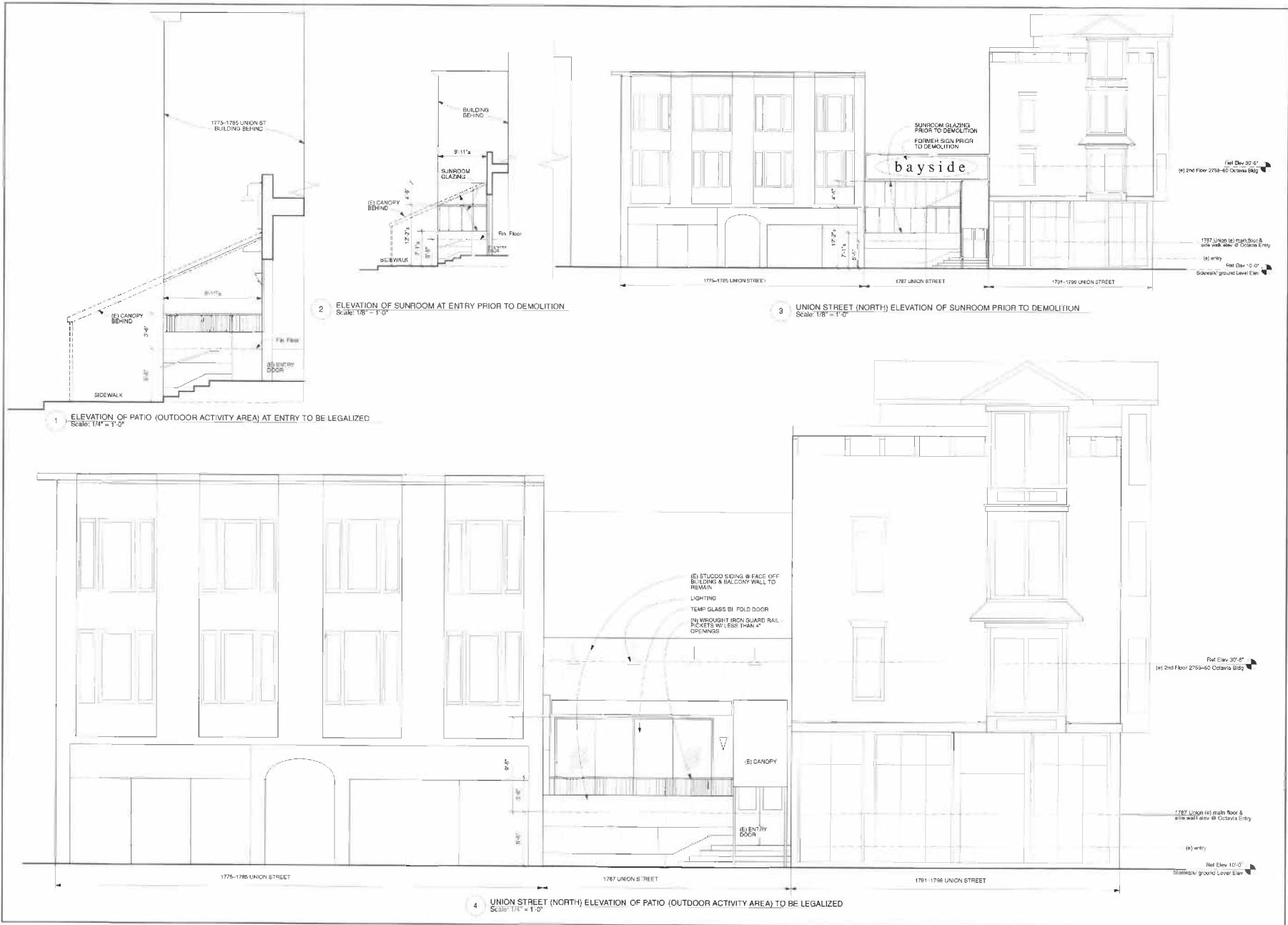


3 PLAN OF PATIO (OUTDOOR ACTIVITY AREA) TO BE LEGALIZED  
Scale: 1/4" = 1'-0"

DRAWING INDEX	
A1	PLANS
A2	ELEVATIONS

**PROJECT SUMMARY**  
To legalize removal without permit of sunroom and to establish outdoor activity area (open patio) at front of the restaurant. Note that installation of bi-fold doors between restaurant and open patio area was approved under separate permit, Application No. 201005202833





# Exhibit D

sound dampening panels



The Brick Yard skylights with sound panels on vertical walls covering approx. 500 sq ft

sound dampening panels

entryway doors



The Brick Yard front entranceway with sound panels on left side covering approx 260 sq ft

# Exhibit E



## VENUE INSEPCION

Sound Test \_\_\_ Venue Investigation   x   Case Record \_\_\_ Venue Complaint \_\_\_

**Reported By / Complainant's Information**
**Organization Involved**

<b>Date:</b> 12-18-2010 10:54 PM	<b>Name of Venue:</b> The Brick Yard
<b>Name:</b> Vajra Granelli	<b>Venue Address:</b> 1787 Union st. SF CA 94123
<b>Phone:</b> 415-554-6007	<b>Name of Owner / Manger:</b> Darren Matte
<b>Address:</b> city hall room 453	<b>Venue Phone:</b> 415-400-4712

**Nature of Complaint / Violation Description:**
**Involved Persons:**
**Address:**
**Phone:**

1		
2		
3		
4		

**Narrative / Details / Report:** I arrived in the area at 10:45 PM. I parked on Union street and approached the venue from the east on foot. I arrived at the venue and identified my self to the door security staff. I then was introduced to the manger on duty; I explained to him that I was there to take sound readings concerning his venue. I then exited the venue and took sound readings outside the front and side door of the venue (see below). During the sound test I was unable to document a violation of SF MPC 49 and 2900. The sound from the venue was barely audible at 20 feet. The only time the sound level increased was when the door opened to allow patrons to exit or enter the venue; theses spikes in sound did not last longer then 1 to 2 minutes. I then left the area.

End Report.

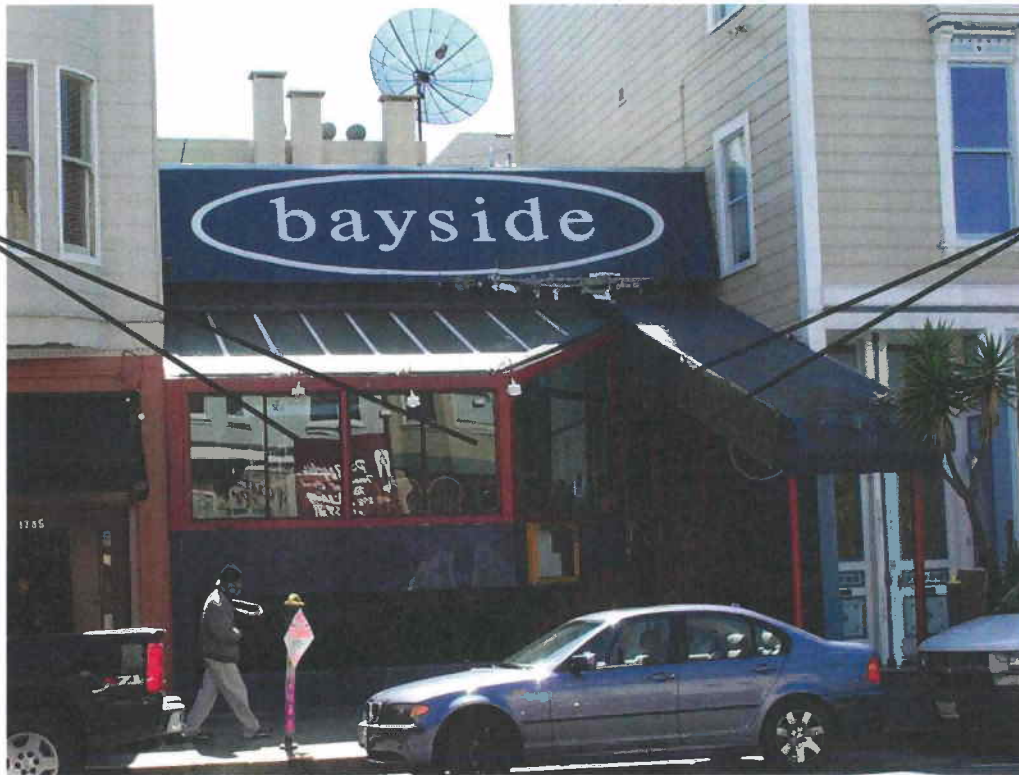
<b>Time &amp; Date:</b> 12-18-2010 10:54 PM	<b>Time &amp; Date:</b> 12-18-2010 10:54 PM
<b>Location:</b> 1787 Union st. SF CA 94123	<b>Location:</b> Octavia st. st. SF CA 94123
<b>Ambient Noise Average (dBA):</b>	<b>Ambient Noise Average (dBA):</b>
<b>Sound Equipment Settings:</b>	<b>Sound Equipment Settings:</b>
<b>Sound Readings (dBA):</b> 52 58 57 61- across the street from venue – 52 51 50	<b>Sound Readings (dBA):</b> 43 44 42 - across the street from venue – 44 42 43

**Recommendation / Results/Observations:** when I was taking sound reading I observed lager groups of people talking and yelling as the moved west on Union street. This area of Union street is used by people for parking. Once they have exited their cars they will head west on Union street to venues farther down the street.

# Exhibit F

# 1787 Union Street - previous & current

sliding windows  
of old sunroom  
that opened to  
outside



sliding window  
of old sunroom  
that opened to  
outside

previous - Bayside

temporary canvas  
covering old  
"SUN GROVE" sign

unfinished facade  
due to stop work  
order  
(since 6/4/10)



single panel  
access door  
to patio

2 left panels of  
bi-fold door  
can remain fixed

current - The Brick Yard

# Exhibit G



**From:** [Darren Matte](mailto:Darren_Matte)  
**To:** [mindmap123@aol.com](mailto:mindmap123@aol.com); [info@brickyardsf.com](mailto:info@brickyardsf.com)  
**Cc:** [mary.woods@sfgov.org](mailto:mary.woods@sfgov.org)  
**Subject:** RE: Darren Matte/Community Boards  
**Date:** Wednesday, December 15, 2010 12:35:22 PM

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Hi Skye,

Thanks for your email.

I'm sorry to hear that you won't be able to attend Community Boards mediation until after January 15<sup>th</sup>. I've been working closely with Amanda at Community Boards over the past month trying to get a date on the calendar but I understand schedules are sometimes hard to coordinate.

As you know, we opened for business June 5<sup>th</sup> and since that time have not been able to finish the front of our façade or use the space that is now designated as an outdoor seating area. This has caused the business significant financial hardship for a couple of reasons: 1) we haven't been able to fairly compete with other businesses on the street that can offer outdoor/sidewalk seating and 2) our unfinished storefront is deterring potential customers from entering the restaurant (we don't even have a sign on the front of the façade and we've had to temporarily cover the old "Sun Grove" sign with canvas material).

Based on the above factors and financial hardship the business continues to face, we simply can't afford to prolong this matter being resolved another month.

Since before we opened for business our side has always hoped we could work this out prior to any DR. Through various meetings with community members it seems we have made some progress but unfortunately the two sides are still apart on a mutual resolution. We continue to welcome constructive conversations and/or mediation to resolve this matter before the scheduled January 20<sup>th</sup> Discretionary Review. Would it be possible to designate other people on your side to represent you at Community Boards over the next month? If that's not possible, we are happy to meet with you separately at any time in order to keep our DR process on track. Please let me know when would be convenient for you.

Best regards,  
Darren

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**From:** mindmap123@aol.com [mailto:mindmap123@aol.com]  
**Sent:** Tuesday, December 14, 2010 10:12 PM  
**To:** info@brickyardsf.com  
**Cc:** mary.woods@sfgov.org  
**Subject:** To:Darren Matte/Community Boards

Hi Darren -

Mary Woods at SF Planning suggested I write you.

It has been hard for both our sides and Community Boards to all find a time to meet.

And now a member of our side will **not** be available until after Jan 15th.

As you know our DR hearing is on Jan 20th - and that does not leave enough time for us meet and mediate with Community Boards before the DR date.

A question - Is your side willing to move our DR date from January 20 up to February 24 - so we can have the time to schedule and mediate with Community Boards?

I respect your decision either way - but if you decline to move the DR date please state why.

I hope this can all be resolved soon - maybe at mediation?

Please respond soon and also email Mary Woods your decision: [mary.woods@sfgov.org](mailto:mary.woods@sfgov.org),

Regards,  
Skye Czember

# Exhibit H

planter boxes to  
line the railing



1787 Union Street Patio from street



4 tables proposed for  
outdoor dining area with  
up to 12 chairs

9'

16'

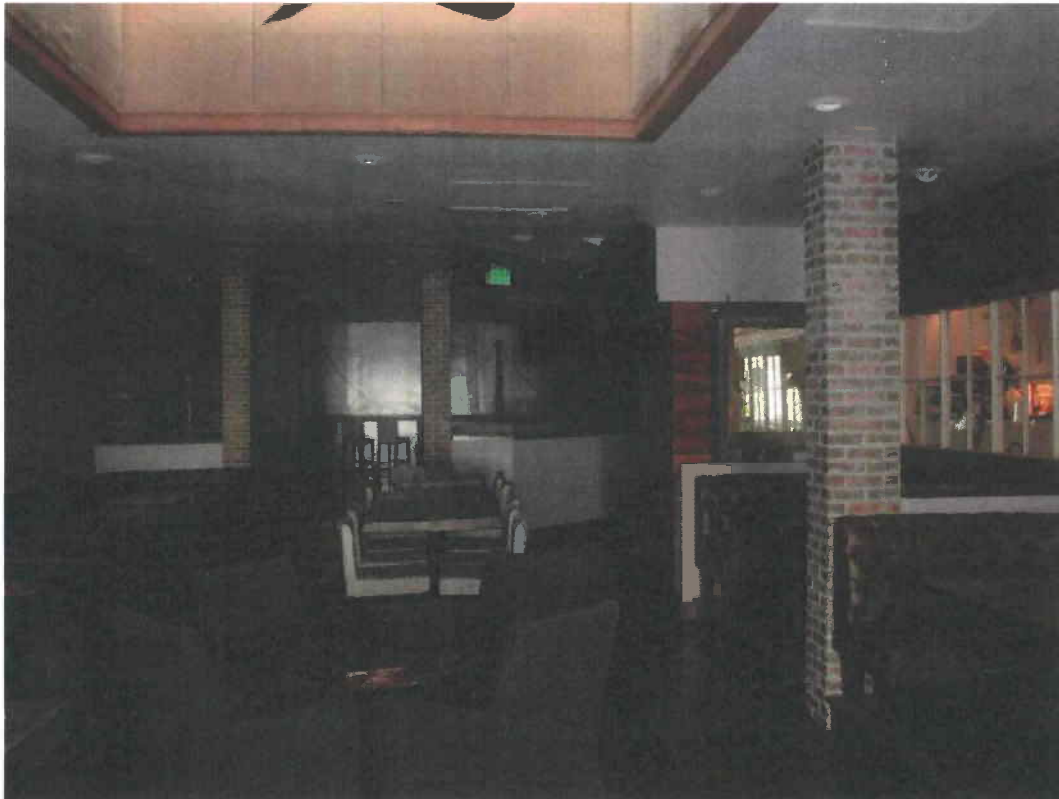
1787 Union Street Patio from roof

bi-fold door  
system opens  
from this side



bi-fold door  
system anchors  
to this side

The Brick Yard front bi-fold doors to patio



The Brick Yard restaurant & dining area

# Exhibit I

# Union Street between Gough & Octavia

DR Requestor's Building at 1782 Union Street

Octavia Street



Gough Street

North Side

Subject Building at 1787 Union Street

Gough Street



Octavia Street

South Side

# Octavia Street between Union & Green

Union Street



Green Street

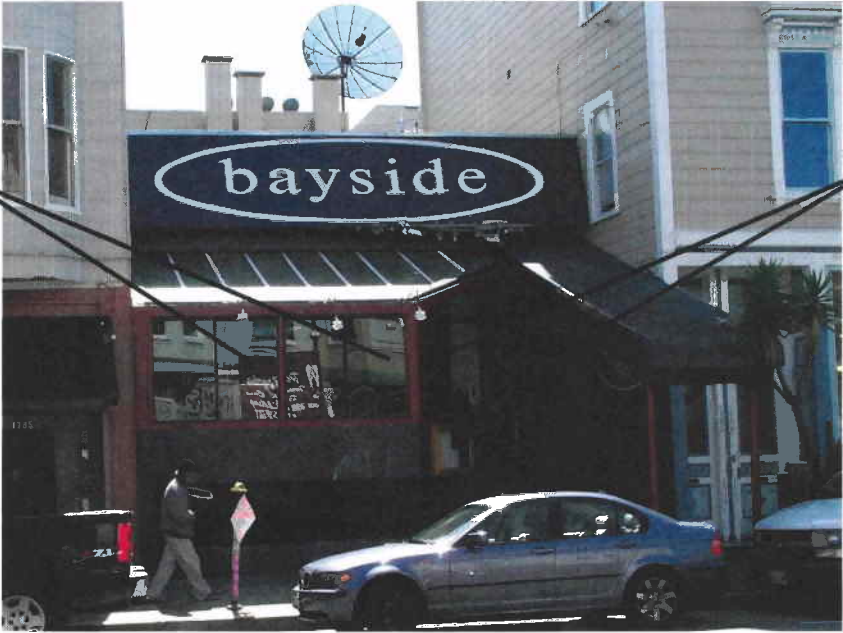
East Side

Subject Building at 1787 Union Street  
ADA entrance & emergency exit



1787 Union Street - previous & current

sliding windows  
of old sunroom  
that opened to  
outside



sliding windows  
of old sunroom  
that opened to  
outside

previous - Bayside

temporary canvas  
covering old  
"SUN GROVE" sign

unfinished facade  
due to stop work  
order  
(since 6/4/10)



single panel  
access door  
to patio

2 left panels of  
bi-fold door  
can remain fixed

current - The Brick Yard

bi-fold door system opens from this side



bi-fold door system anchors to this side

The Brick Yard front bi-fold doors to patio



The Brick Yard restaurant & dining area

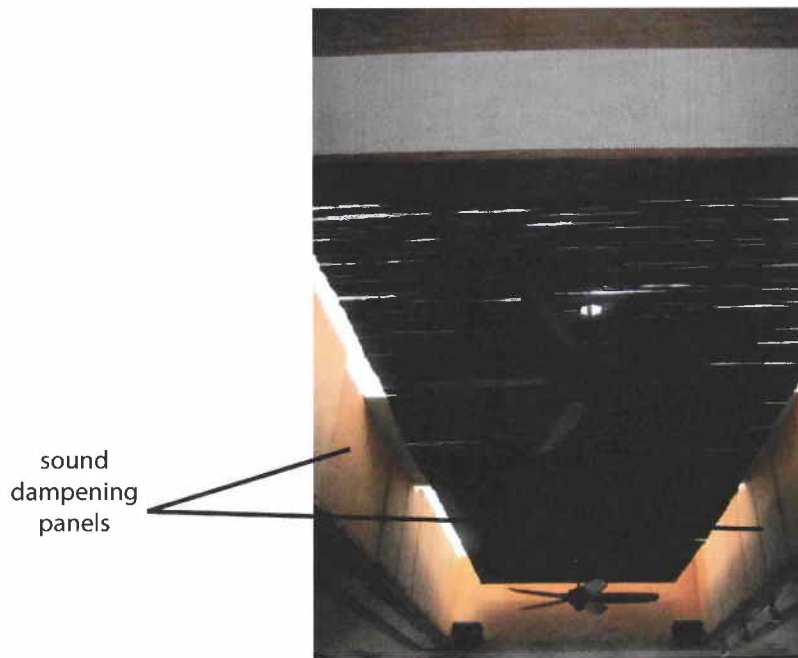
planter boxes to  
line the railing



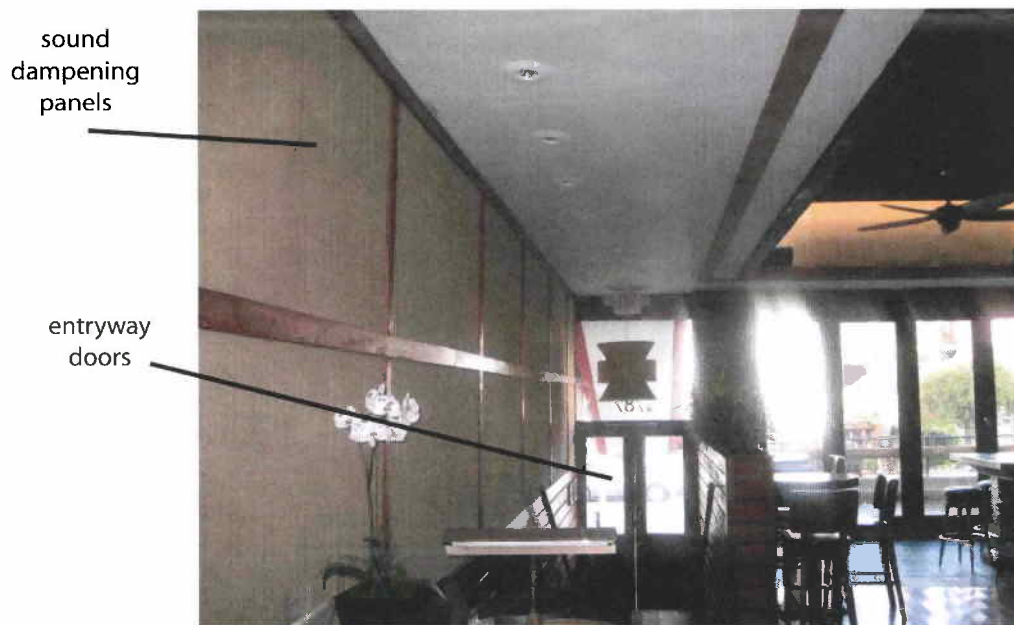
1787 Union Street Patio from street



1787 Union Street Patio from roof



The Brick Yard skylights with sound panels on vertical walls covering approx. 500 sq ft



The Brick Yard front entranceway with sound panels on left side covering approx 260 sq ft