

## SAN FRANCISCO PLANNING DEPARTMENT

# Letter of Determination

September 1, 2017

Ms. Patricia Hayes 120 Stonecrest Drive San Francisco CA 94132 1650 Mission St. Suite 400 San Francisco, CA 94103-2479

Reception: 415.558.6378

Fax: 415.558.6409

Planning Information: **415.558.6377** 

Site Address:	21 Brompton Avenue
Assessor's Block/Lot:	6744/031
Zoning District:	Glen Park Neighborhood Commercial Transit/
	RH-2 (Residential – House, Two Family)
Staff Contact:	Erika Jackson, (415) 558-6363 or <u>erika.jackson@sfgov.org</u>
Record No.:	2017-009091ZAD

Dear Ms. Hayes:

This letter is in response to your request for a Letter of Determination regarding the property at 21 Brompton Avenue. This parcel is located within two separate zoning districts: Glen Park Neighborhood Commercial Transit and a RH-2. The request is whether 1) the vacant lot, currently being used for parking, could be considered a legal nonconforming use, and 2) the lot could be developed with a surface paid public parking lot.

## **Proposed Project Scope**

The proposed project is to develop the subject lot into a surface paid public parking lot with 19 parking spaces. The proposal requires a Variance from the Zoning Administrator because it would not comply with Planning Code Section 156(g)(1), which requires street trees at a ratio of one tree per five parking spaces. Additional authorizations are required from the Planning Commission, as discussed below.

## Planning Code Provisions Relating To Parking Uses

With respect to the portion of the lot located in the Glen Park Neighborhood Commercial Transit District, Planning Code Section 756 requires a Conditional Use Authorization for a Public Parking Lot use. With respect to the portion of the lot located in the RH-2 Zoning District, Planning Code Section 209.1 requires a Conditional Use Authorization for a Private Parking Lot use and prohibits a Public Parking Lot use. Per Planning Code Section 102, the distinction between a Private Parking Lot and Public Parking lot is that a Public Parking Lot is a retail use, where the parking spaces are rented out to the general public, and the Private Parking Lot is a non-retail use not open to the general public.

## **Relevant History**

A Planned Unit Development application was approved by the Planning Commission on July 11, 1963. Filed by the City's Real Estate Department, the application was sought in connection with the proposed acquisition of private property for public use, specifically the widening of Bosworth Street. At the time of filing, the subject property was seven separate lots, with the first three lots from the east zoned C-2 and developed with a mixture of single-family and two-family dwellings, stores and a gas station at the rear

September 1, 2017 21 Brompton Avenue Letter of Determination

of the lot on the northeast corner of Diamond Street and Bosworth Street. The four lots on the western portion of the block were zoned R-2 and developed with a two-family dwelling and three single-family dwellings. In the years immediately following the application's approval, these buildings were demolished and relocated.

Bosworth Street was widened and the remaining portion of the lot was reserved for a future City-owned parking lot under the City's neighborhood parking program, as indicated in the Planning Commission report for Case R70.13:

"The sale of Lot 29, Block 6744 is in conflict with the Master Plan because a portion of it has been landscaped by the City as a part of the Bosworth Street widening project and because the remainder of it should be reserved for a public parking lot under the City's neighborhood parking program."

However, as indicated in a Memorandum to the City Planning Commission from the Director of Planning on December 13, 1971 in reference to Case R71.48, the City's Parking Authority had failed to demonstrate further interest in the parking lot proposal and the lot was proposed for sale:

"The Parking Authority has shown no interest in developing a neighborhood shopping district parking lot on the level portion of the property. The site would be suitable for housing for the elderly and staff members of Housing Authority have shown some interest, but at present the outlook for public housing there seems remote because of federal policies. In the meantime, a local realtor has actively sought to have the property declared surplus, and since there is no immediate public use it is difficult to recommend that the City retain it on the basis of unforeseen future public needs."

In 1971, and as a result of the proposed sale, the Planning Department issued a General Plan Referral finding that the sale of the landscaped portion of the subject lot along Bosworth Street was in conflict with the Master Plan, but that sale of the un-landscaped portion of the property along Kern Street – that which is now the subject property - would be consistent with the Master Plan. Three years later the sale of that portion of the property was consummated; I understand from your request that you were the purchaser.

As part of the General Plan Referral case file, a July 21, 1971 Memorandum identified potential uses of the lot and gave recommendations for future development. The Memorandum specified that the thencurrent use of the lot was that of "unauthorized parking":

"Parking Authority does not see need to develop subject city-owned lot for parking; however lot is presently used for unauthorized parking."

### Conclusion

Although evidence demonstrates that the subject property has been used for parking since the 1970's, this use was never established or operated with the benefit of permit, nor was a Public Parking Lot a permitted use under the R-2 Zoning District in the 1970's. Further, no evidence has been provided that

Ms. Patricia Hayes 120 Stonecrest Drive San Francisco CA 94132 September 1, 2017 21 Brompton Avenue Letter of Determination

the use operated as a retail use, consistent with the definition of Public Parking Lot. Accordingly, I cannot find that the subject property contains a nonconforming Public Parking Lot use.

Furthermore, and as discussed above, today's Planning Code allows for a Public Parking Lot use only within the Glen Park NCT, and only then with Conditional Use authorization. It does not allow a Public Parking Lot use in an RH-2 Zoning District. As such, the closest related land use that one could pursue would be that of a Private Parking Lot, which similarly would require Conditional Use authorization.

Please note that a Letter of Determination is a determination regarding the classification of uses and interpretation and applicability of the provisions of the Planning Code. This Letter of Determination is not a permit to commence any work or change occupancy. Permits from appropriate Departments must be secured before work is started or occupancy is changed.

**APPEAL:** 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,

Scott F. Sanchez Zoning Administrator

cc: Erika Jackson, Planner Property Owner Neighborhood Groups BBN Requestor (if any)

July 10, 2017

Scott Sanchez Zoning Administrator San Francisco Planning Office Office of the Zoning Administrator 1650 Mission Street, Suite 400 San Francisco, CA 94103

R # 2017-009091ZAP CK-1 183 \$664.-D. WASHINGTON (SW)

## RECEIVED

JUL 1 1 2017

CITY & COUNTY OF S.F. PLANNING DEPARTMENT

ZA OFFICE

Ref: Block 6744, Lot 31, 21V Brompton Street

Dear Mr. Sanchez,

I respectfully request a letter of determination to continue the use of 21V Brompton Street as a parking lot.

## **Background:**

My husband Tom and I purchased 21 V Brompton Street as a vacant parcel from the City of San Francisco in 1974. We later shared a 50% interest in the parcel with our business partner. The parcel was and remains zoned as NCT and RH-2. Even though not zoned for parking, since at least 1974, the parcel has operated continuously as both a paid and unpaid parking lot for residents, merchants, and customers of the Glen Park business district – over 43 years.

Throughout the years, we had several detailed development plans for this and surrounding parcels. The size and scope was not supported by the City and community at the time, and when the climate and necessity for development arrived, the prospect of developing moved beyond me and our business partner.

My husband Tom passed away in 2010, and, in December 2016, I along with the support of my children bought the 50% interest from our business partner. It was important for my late husband, me and our children to keep the property in the family. At 92, I continue to reside in my native San Francisco and all four of my children live and work in the bay area, three living and working in San Francisco and one is a resident of Glen Park.

The long term goal of my children and grandchildren is to develop 21V Brompton Street and the adjoining building of 2860 Diamond Street. We understand that the City's Planning Department land use policies and programs discourage private automobile use. We concur with the City's plan to develop innovative housing in transit rich areas. However, we are not in a position to do so for at least five years. In the short term, we request approval to proceed with the appropriate building permits to improve the parcel as a legal paid general parking lot to continue to provide much needed support to the residents, merchants and customers of the Glen Park businesses. In fact, the parking lot is very much a part of the fabric of the Glen Park community. The support we have from the community to maintain parking, albeit paid, cannot be understated. Monetizing the parking will generate much needed revenue to support our ability to maintain the property in a local San Francisco family, improve the parcel, and environs, and assist us financially as we work with Planning and the community towards a thoughtful long-term housing development plan.

As the sole owner of this property now, allowing unpaid parking, in an unlit, unsafe, unpaved parcel cannot be sustained. I know the community not only depends on this space to park, but the success of the longtime local merchants, in part, is due to the availability of short-term parking.

Your Planning staff has advised my children that the zoning on the RH-2 portion of the parcel does not allow for parking and a Conditional Use Permit for the NCT portion is not a workable option. Every day, for over 43 years, vehicles come and go, day and night to park in this lot. I contend that the City is estopped from prohibiting me from establishing a legal parking lot because the City has explicitly approved its use as parking for at least 40 years.

Attached documents and photos attest to its use and implicit and explicit sanction as a parking lot. This is well documented back to the late 1970's and is codified in the Glen Park Community Plan adopted by the Board of Supervisors in 2012.

Below are some relevant sections:

City and County of San Francisco, Planning Department, *Glen Park Community Plan Summary*, p. 9.

Kern Street

"Since it does not function as a through street and has few cars, the one block of Kern Street provides a unique opportunity to provide new public space in downtown. Special pavement, street trees and shared street treatments could provide room for outdoor seating, dining and gathering. **If the parking lot along Kern is ever developed,** opportunities to orient commercial uses towards the street should be considered."

"A description of anticipated maximum development at these two infill development sites is presented below. Northwest Corner of Diamond Street and Bosworth Street. The Diamond/Bosworth infill site includes five parcels on both sides of Kern Street, between Diamond Street, Bosworth Street, and Brompton Avenue (Assessor's Block 6744; Lots 013, 025, 027, 030, and 031). These parcels total approximately 22,859 gsf. The site is occupied by three residential properties (zoned RH-1) on Lots 030 and 013, fronting onto Brompton Avenue; two mixed-use buildings (zoned NC-2) on Lots 25 and 27, fronting onto Diamond Street; and a gravel parking lot on Lot 31 (zoned RH-2)."

## 2010 Environmental Impact Report

## "Parking (Criterion f)

Parking is a concern for many residents, businesses, and commuters in the Glen Park neighborhood. Merchants want to ensure that their customers are able to find short-term parking; residents desire available on-street parking near their houses; and commuters desire short- and long-term parking near the BART station and other transit options. However, parking availability in the plan area is limited. The draft Community Plan indicates that there are nearly 200 free, unregulated, all-day parking spaces within 1,500 feet of the BART station and the commercial district. Other existing parking areas in the plan area include a gravel parking lot at the northwest corner of Diamond Street and Boswell Street and the 54-space BART parking lot. However, existing parking management strategies do not fully address the need for short-term commercial parking and other parking priorities identified by the community."

It is my sincere hope that you reach a determination that allows for formalizing parking at 21 V Brompton Street as soon as practicable.

Sincerely,

Catricia A. Hayes

Patricia A. Hayes 120 STONECREST SF, CA 94132 Attachments as stated

LIBER 1949 PAUL 485 HORTH NOT STITLE INS. C. Veed to Lot 31 WHEN RECORDED MAIL TO: RECORDING FEE \$5.00 1974 HOY 15 PH 1: 17 REAL FROPINTY CRAUBLY S. A. 33 22 SAN FRANCISCO, CALL DEED RTHERN COUCHTIES TITLE INSURANCE COMPARY G.H. MALLA REC. POLL # An X30450 FIRM MANT ΈŻ PARTY ON AGENT ----CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, the first party, pursuant to Resolution No. 689-74, adopted by its Board of Supervisors on September 10, 1974, and approved by the Mayor on September 13, 1974, hereby grants, without warranty, to THOMAS F. HAYES and PATRICIA A. HAYES, his wife, the second party, the following described real property situated in the City and County of San Francisco, State of California: BEGINNING at a point on the easterly line of Brompton Avenue distant thereon 27 feet northerly of the northerly line of Bosworth Street as said lines of said avenue and said street are shown on that certain map entitled, "Map Showing the Widening of Bosworth Street from Arlington St. Westerly to Elk St.," recorded February 16, 1968 in Book "V" of Maps at page 20 in the office of the Recorder of the City and County of San Francisco; thence proceeding northerly and along said easterly line of Brompton Avenue a distance of 39 feet to the southerly line of Kern Street; thence easterly along said southerly line of Kern Street, a distance of 162.497 feet; thence at a right angle southerly, a distance of 39 feet; Orisina Deed thence at a right angle westerly, a distance of 162.497 feet to the point of beginning. IN WITNESS WHEREOF, the said first party has executed this conveyance this  $2^{\mu^{d}}$  day of October , 1974. BLOCK 6744 CITY AND COUNTY OF SAN FRANCISCO, Lot 31 a municipal corporation APPROVED : Ву Mayor C. C.L. Unt Director of Property By FORM APPROVED: Clerk of the Board of Supervisors THOMAS M. Q'CONNOL y Attorney

NUMBER OF CONTRACT PROVIDE WHEN RECORDED MAIL TO: RECORDINC FEE \$5.00 1974 HOY 15 PH 1:17 REAL PROPERTY SUMPLYE T. 2 932 SAN FRANCISCO, CALL DEED TELEN COUNTRES HTLE INSURANCE COMPANY & Dipary FLICE MARKE DY FARTY OF AGENT G.H. NMH REC. PTE **X304**50 CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, the first party, pursuant to Resolution No. 689-74, adopted by its Board of Supervisors on September 10, 1974, and approved by the Mayor on September 13, 1974, hereby grants, without warranty, to THOMAS F. HAYES and PATRICIA A. HAYES, his wife, the second party, the following described real property situated in the City and County of San Francisco, State of California: BEGINNING at a point on the easterly line of Brompton Avenue distant thereon 27 feet northerly of the northerly line of Bosworth Street as said lines of said avenue and said street are shown on that certain map entitled, "Map Showing the Widening of Bosworth Street from Arlington St. Westerly to Elk St.," recorded February 16, 1968 in Book "V" of Maps at page 20 in the office of the Recorder of the City and County of San Francisco; thence proceeding northerly and along said easterly line of Brompton Avenue a distance of 39 feet to the southerly line of Kern Street; thence easterly along said southerly line of Kern Street, a distance of 162.497 feet; thence at a right angle southerly, a distance of 39 feet; thence at a right angle westerly, a distance of 162.497 feet to the point of beginning. IN WITNESS WHEREOF, the said first party has executed this conveyance this  $2n^d$  day of October , 1974. CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation APPROVED : Ву Mayo CCH Director of, Property Unit Ву FORM APPROVED: of the Board of Supervisors THOMA Attorney DESCRIPTION 1. 2 1-

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STATE OF CALIFORNIA

On the  $2^{nd}$  day of October, 1974, before me,  $\sqrt{W}$ . O'Brian Cast, County Clerk of the City and County of San Francisco, and ex officio Clerk of the Superior Court of the State of California, in and for the City and County of San Francisco, personally appeared Peter Tamaras, actime Mayor of the City and County of San Francisco, a municipal corporation and Robert  $\sqrt{Do/an}$  flerk of the Board of Supervisors of the City and County of San Francisco, known to me to be the

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acting Mayor and the Clerk of the Board of Supervisors of the municipal corporation described in and who executed the within instrument and also known to me to be the persons who executed it on behalf of the municipal corporation therein named, and they and each of them acknowledged to me that such municipal corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco, State of California, the day and year in this certificate first above written.

(Issistant County Clerk of the City and Cou of San Francisco, State of Califo and ex officio Clerk of the Supe Court of the State of Californi in and for the City and County of San Francisco.

**Recording Requested** by Bonald S. Solow, Attorney at Law

Mail recorded deed and tax statement to Mrs. PATRICIA A. HAYES 120 Stonecrest Dr. San Francisco CA94132

San Francisco Assessor-Recorder Phil Ting, Assessor-Recorder DOC- 2011-J261427-00 Check Number 2686 Monday, AUG 29

GRANT

DEED

Lot 31

Ttl Pd \$14.00 K47 REEL

#### INDIVIDUAL GRANT DEED

Patricia A. Hayes Block 6744, The undersigned grantor declares: Documentary transfer tax is \$0; R&TC 11930; Transfer to grantor tru

PATRICIA A. HAYES, Trustee, HAYES Trust

hereby grants to

PATRICIA A. HAYES, Trustee, HAYES Bypass Trust

the following described property in the City of San Francisco, County Castancisco, State of California.

FOR LEGAL DESCRIPTION, SEE EXHIBIT A ATTACHED HERETO.

Block 6744, Lot 31 Commonly known as 21 V Brompton

Dated: (2 - 1) = 1

State of California County of Contra Costa San Francisco

On <u>February 12, 2011</u>, before me, <u>Honsen Quilar</u>, Notary Public, personally appeared PATRICIA A. HAYES, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that we she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY of PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

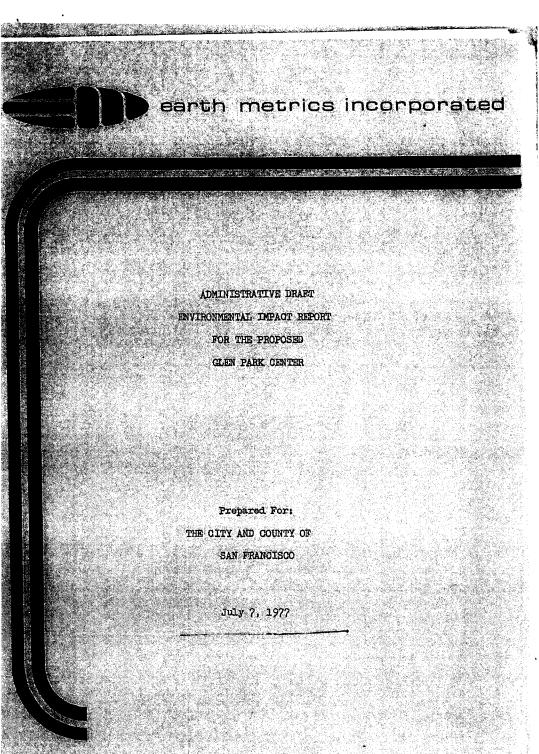
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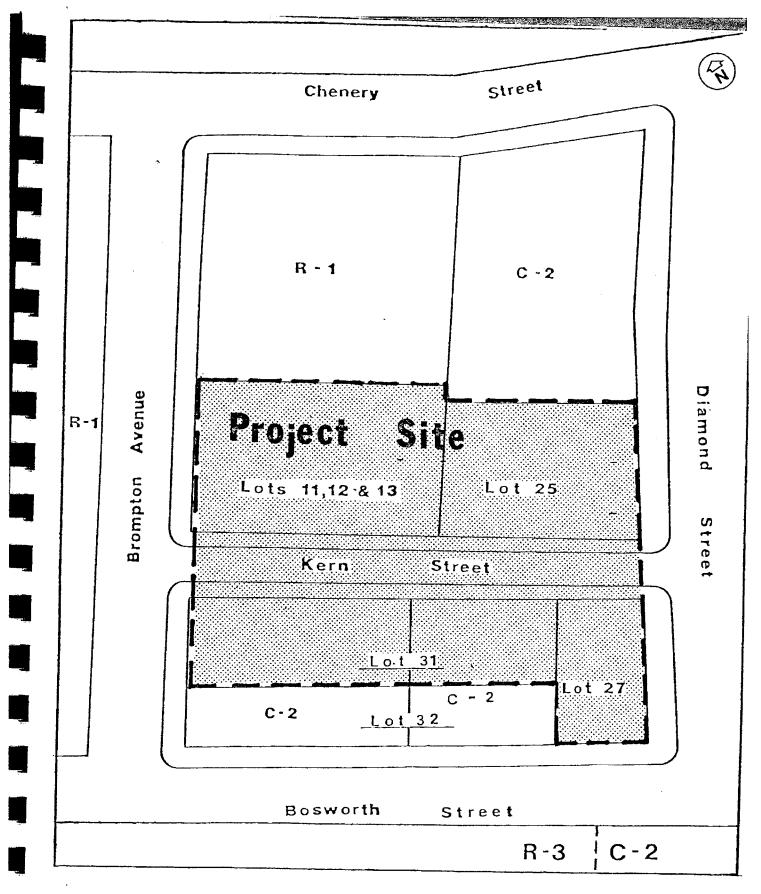
## EXHIBIT "A"

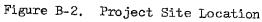
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A.P.N. Block 6744, Lot 31



Development Plans from 1977 EIR Report





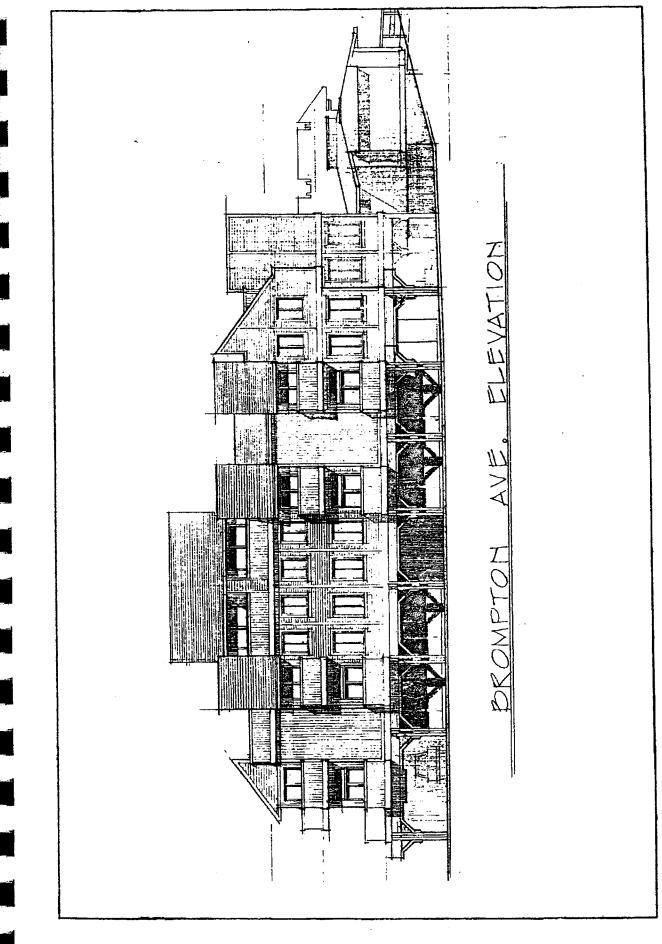
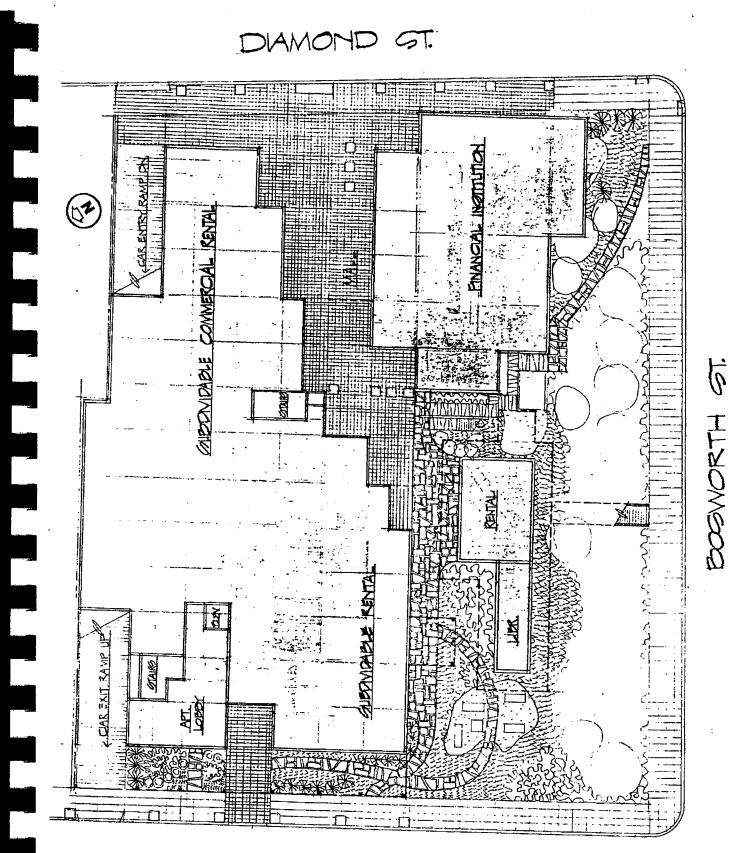


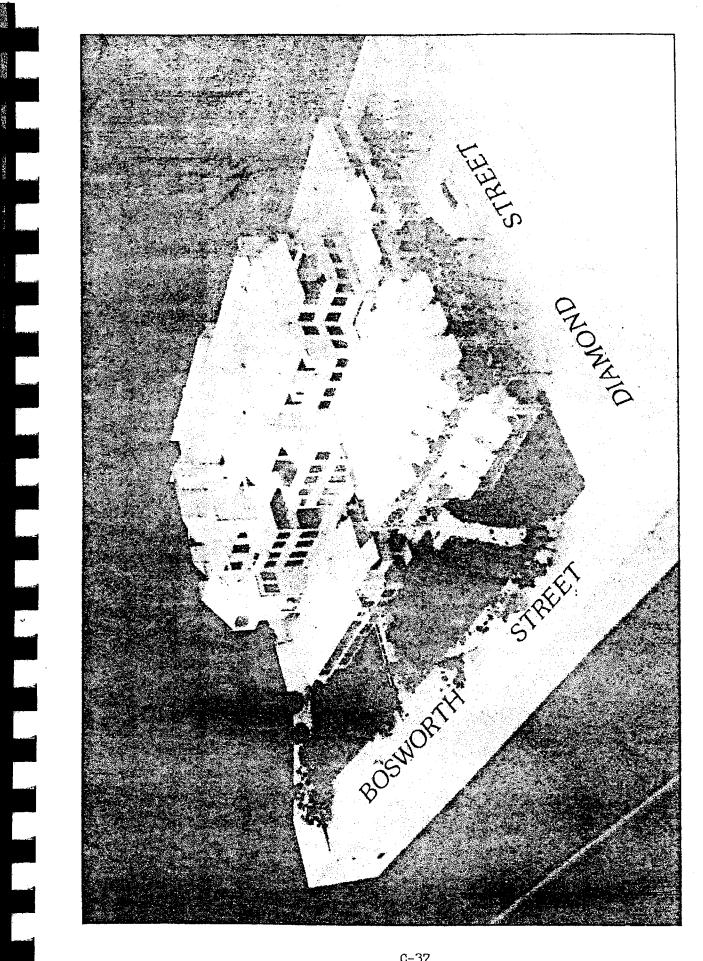
Figure C-9. Brompton Avenue Elevation



BROMPTON , AVE.

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not cleaned by the City of San Francisco. Chenery Street, a narrow street 33 feet wide to the north of the site, has one moving lane and one parking lane in each direction. The parking is not metered except near the intersection with Diamond Street. Only the Bosworth Street intersection with Diamond Street is controlled by a signal light in this area.

There are four metered parking places along the Diamond Street border of the project site. On Brompton Avenue, approximately four to five unmetered parking places border the site. Twenty-five parking places on the project site are now rented out to BART-commuters. There are three metered parking places and approximately four unmetered spaces on Kern Street.

Parking in the Glen Park area has been a major problem since the opening of the Glen Park BART station since no parking facilities are provided for BART riders. A dramatic increase in the number of utilized unmetered parking spaces in the area has occurred since the opening of the BART station in 1973;<sup>1</sup> during a mid-afternoon observation in 1976, the unmetered parking spaces were completely utilized.<sup>2</sup> On Diamond, Chenery, Kern and also Wilder Streets, there are 36 metered parking spaces, 90 percent of which were utilized during the 1976 observations. As a result of parking spaces being utilized all day by BART commuters, existing residents and shoppers may have more difficulty in finding a space in this area. The problem of commuter parking in residential areas has been addressed in a proposed Preferential Parking Plan<sup>3</sup>. Under this proposal, time limits on parking in designated neighborhood areas would be imposed, but neighborhood residents would be exempt from such restrictions. Residents would be allowed to purchase stickers to attach to their windshields to show their exempt status.

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(Another alternative to address parking demands in the area would be the construction of a parking lot across from the BART station, although no specific plan has been formulated). Peak hour traffic (4:30 p.m. to 6:30 p.m.) at the intersection of Diamond and Bosworth Streets is shown on Figure C-2. These counts were manual counts and were taken on a midweek day in June 1976. The "24 Hour Traffic Flows, 1969-73, San Francisco Division of Traffic

<sup>1.</sup> City and County of San Francisco, Glen Park Neighborhood Study, 1976.

<sup>2.</sup> James B. Lubin, Glen Park Center Transportation Impact Study, 1976.

<sup>3. &</sup>lt;u>A Preferential Parking Program for San Francisco</u>, San Francisco. Department of City Planning, March 1976.

Parking. The proposed project would remove a rental parking lot on Kern Street. Additionally three metered parking spaces and approximately four unmetered spaces on Kern Street would be removed. At least two metered parking spaces on Diamond Street and one unmetered space on Brompton Avenue would be removed for the proposed entrance and exit ramps. A loading zone on Diamond Street would remove approximately two metered parking places. The proposed project would provide for a total of 73 parking spaces, 36 for residential use and 37 for commercial use (see Figure C-3). The commercial places would be separately marked. The seven metered parking places to be eliminated, now principally used by shoppers on or near the site would be replaced in the proposed project. The loss of the 25 rental spaces and the five unmetered places will principally displace BART parkers, who would then either have to park farther from the BART station, or use other modes of travel to the BART station.

As discussed, the Glen Park area currently experiences parking problems related to BART commuters. The BART commuters who now use the parking spaces to be removed would have to park in other areas and would thus contribute to the existing problem. The loss of the 25 parking place lot must be seen, however, in relation to the potential use of the lot even without the proposed project. That is, the existing rental lot is an interim use of land zoned for residential and commercial use. The 25 places could be eliminated at sometime in the future with or without the proposed project. Seen in this light, the removal of these 25 places would not produce a net difference in long term parking demands. One factor that may reduce the immediate reduction in available commuter parking places would be the residents of the proposed project who could walk to BART. Should people move into the project, who now are commuting to the BART station and parking nearby, the overall parking impact may be reduced. At this time, the extent of this effect cannot be determined. On a larger scale, areawide plans such as the Proposed Preferential Parking Plan or additional parking lots may help to alleviate parking problems in the long term.

Other parking demands created by the project would be due to people visiting the proposed residential units. Most visits would, however, probably take place during evening hours when more commercial parking places might be available. Again, a certain decrease in visits made by auto would be expected due to the proximity to BART.

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## No Project Alternative

F.

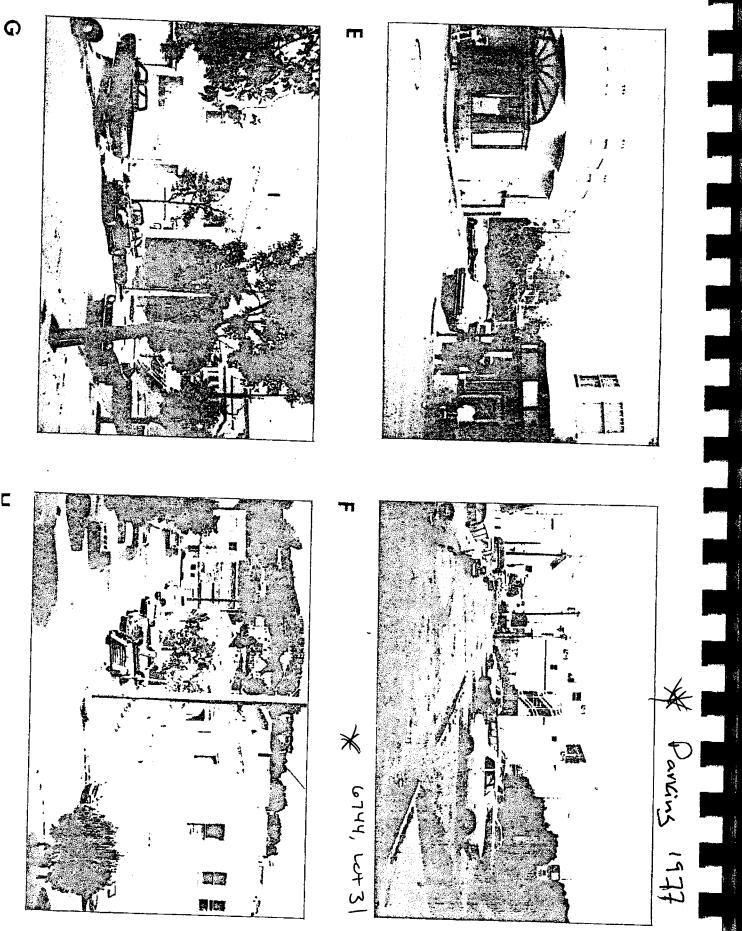
Without new development of any kind, the site would retain the characteristics as described in the existing setting sections. Even without the proposed project and zoning change, however, the project site could undergo a number of changes consistent with established zoning districts. Without the proposed project, the site would retain its existing zoning status under the proposed interim classifications (See Figure C-5). The maximum amount of commercial development would be 43,674 square feet with an estimated 16 residential units permitted under the zoning district. (See Section C-3.) Zoning would remain strictly residential along Brompton Avenue. The existing parking lot along Kern Street (Lot 31) could be developed for residential as well as commercial use, on applicable portions of the lot. A number of variations exist under this alternative. Existing buildings along Diamond Street could be upgraded or expanded, or replaced with new commercial or combined commercial/residential units. Existing residential units on Brompton could remain as they exist today, or new residential single family units built to replace them. The environmental impacts associated with this alternative would vary, depending on the particular future changes that could be accommodated under present zoning. Construction of new commercial or residential units would present impacts similar to those created by the proposed project, but they would occur on an incremental basis as new units were built. The cost for new residential or commercial units or for upgrading of existing units would vary depending on the specific design. Rents for new or upgraded residential and commercial facilities would be expected to increase to cover construction costs. Traffic levels could be less than the p proposed project due to fewer residential units, but would vary considerably depending on the amount of new commercial facilities added. Kern Street would not be eliminated and the existing view corridor would remain. Energy consumption would vary depending on the types and amounts of development and building design characteristics.

#### Higher Density Project

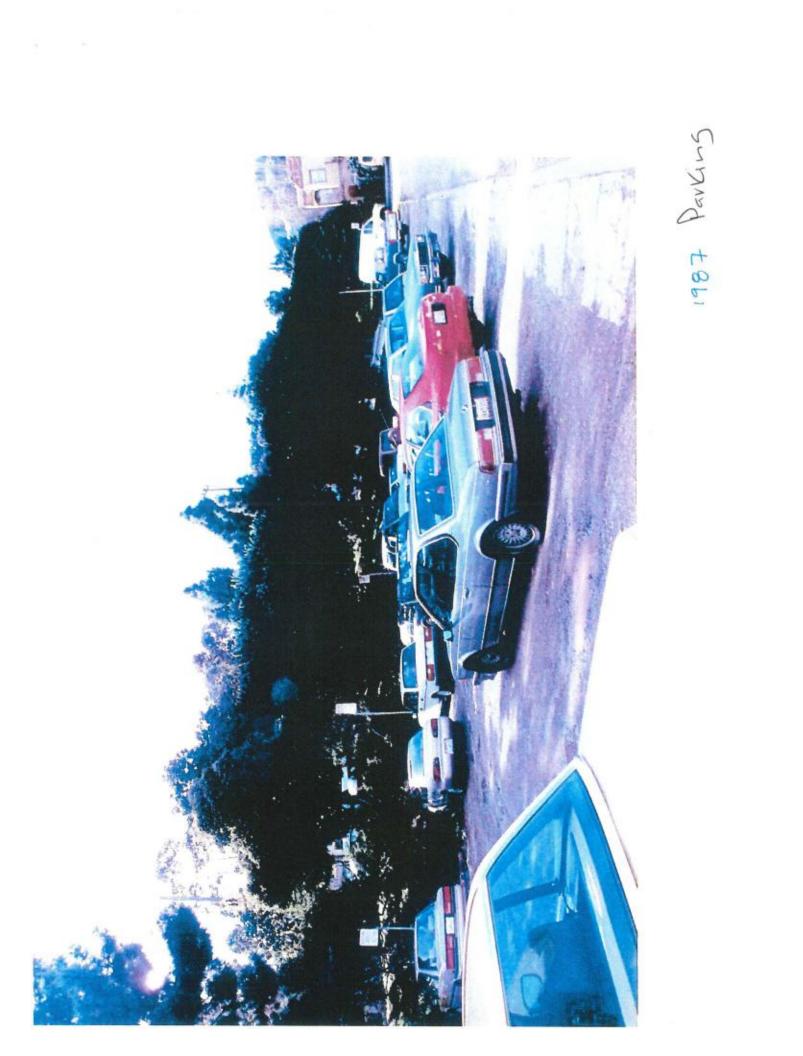
This alternative would involve higher residential or commercial density than envisioned in the project proposal. Visual and traffic impacts would

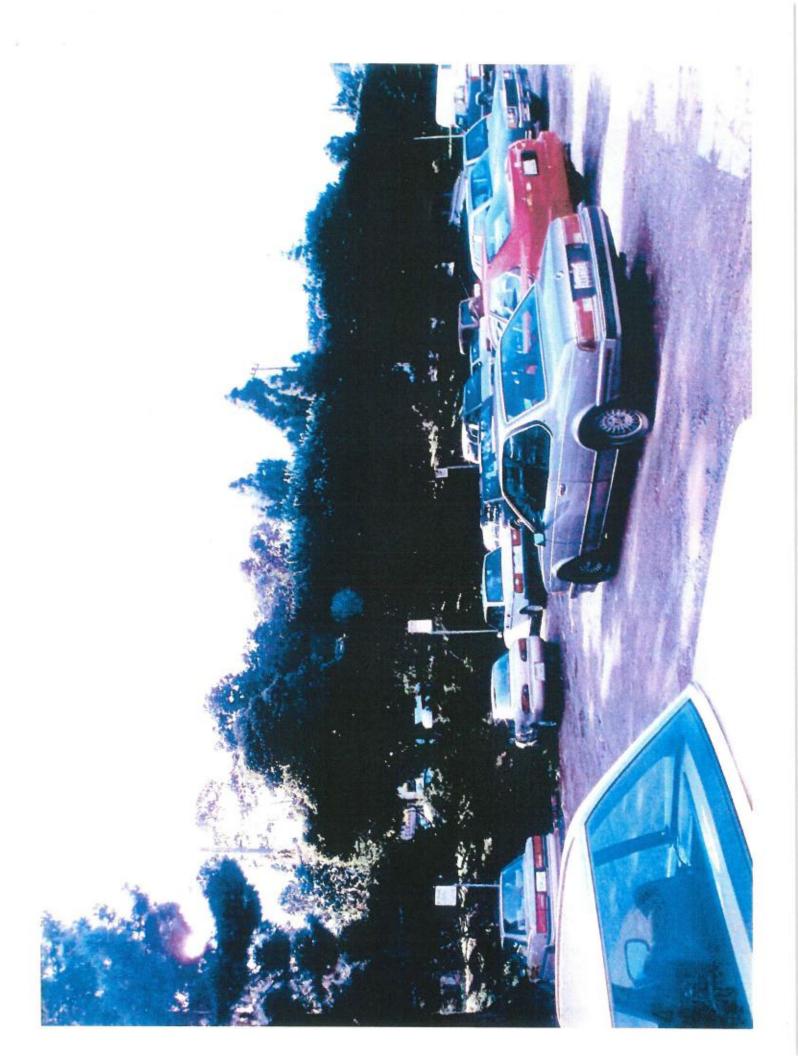
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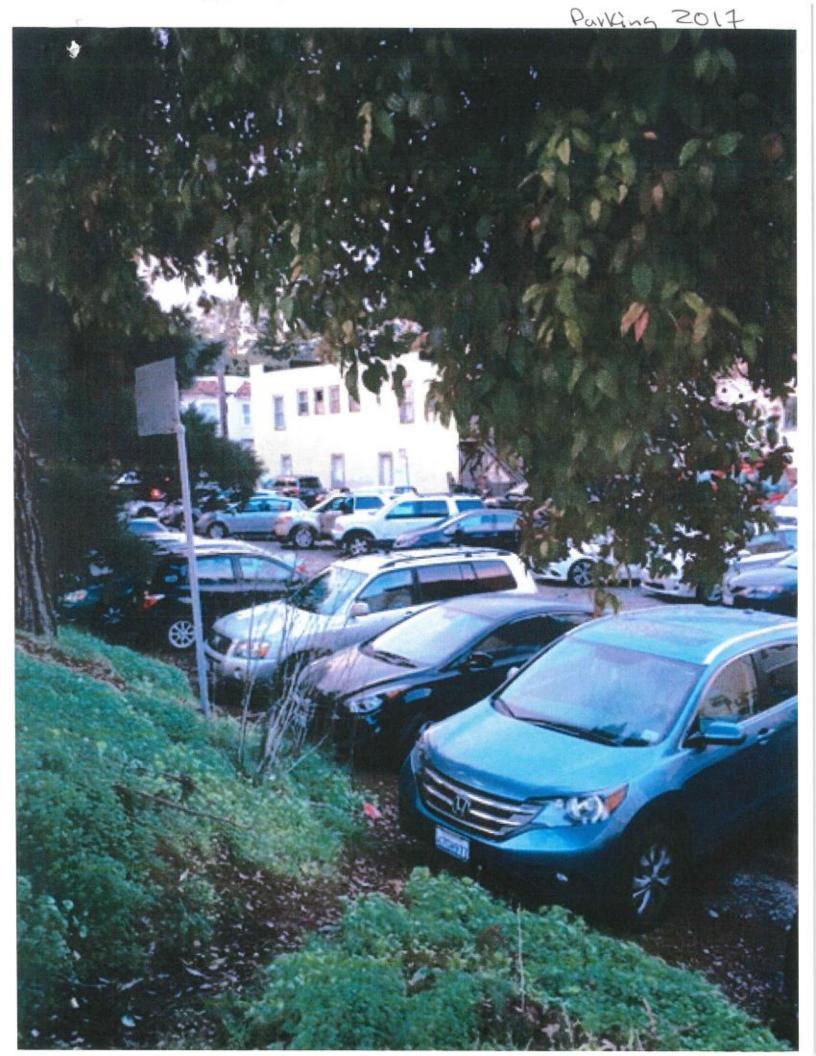
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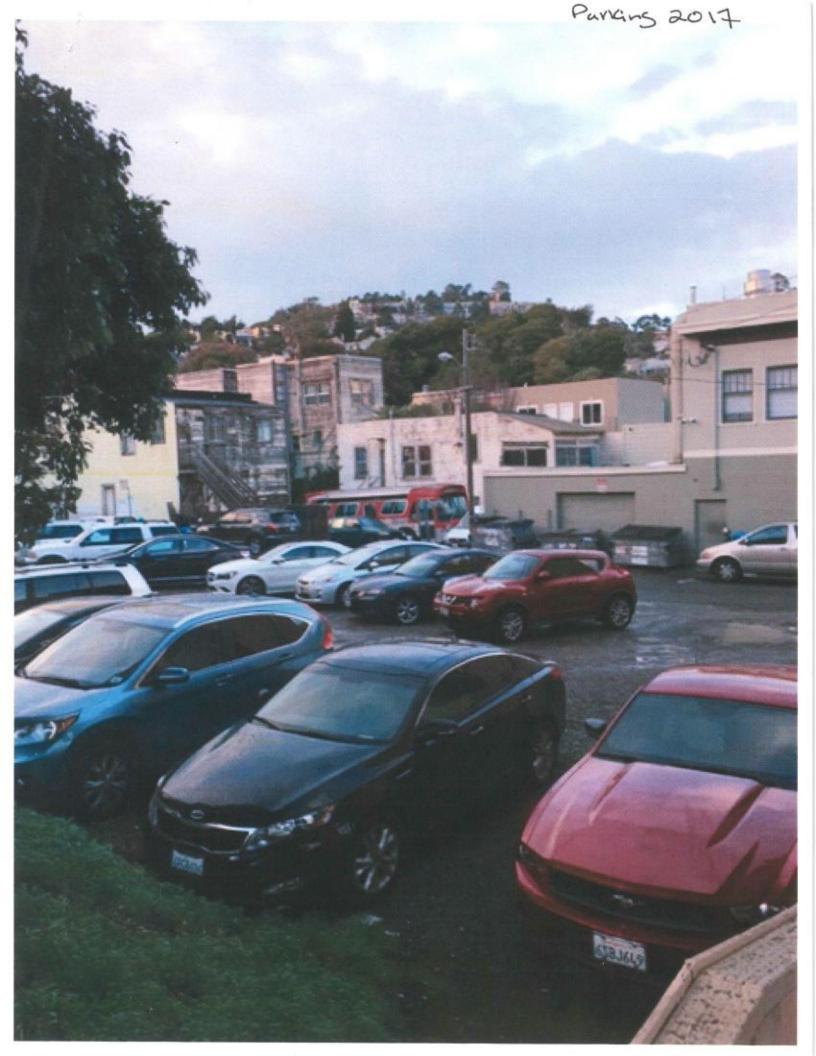




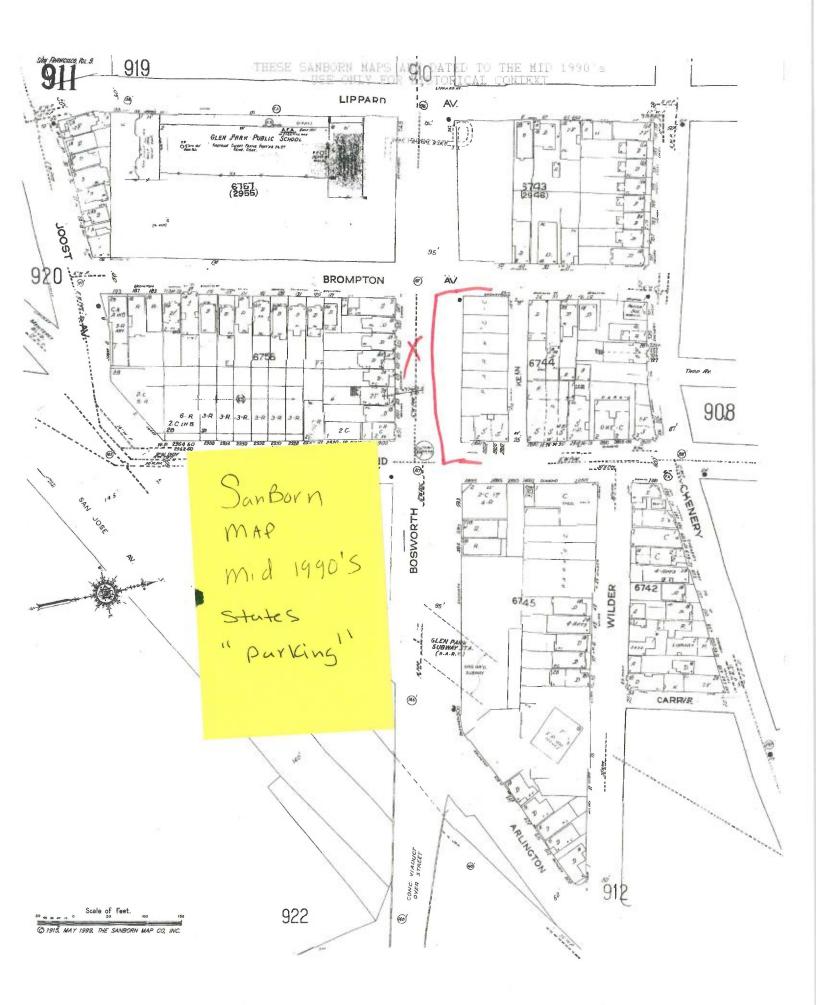








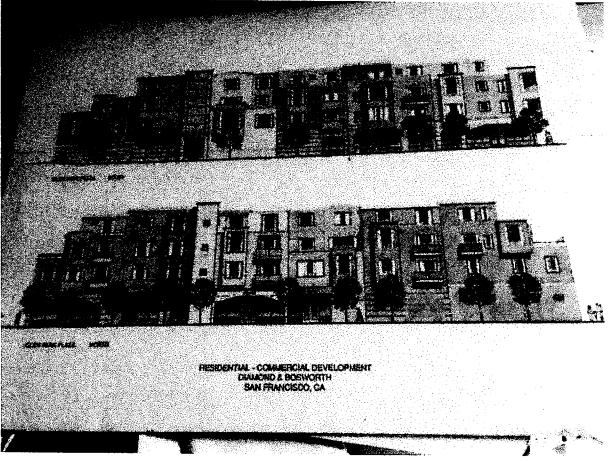






Plans in early 2000 +

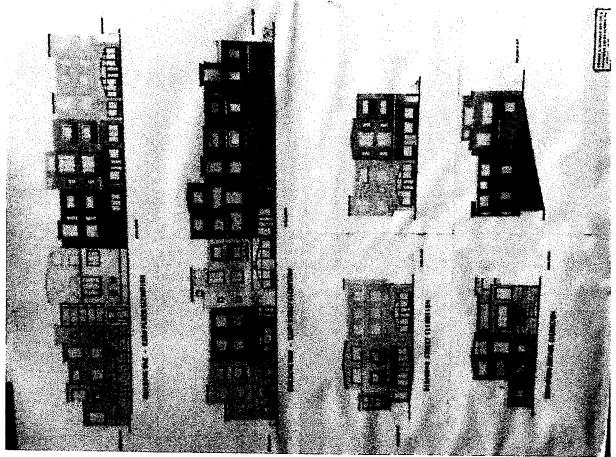
### NO DISCERNIBLE CLASSIFICATION



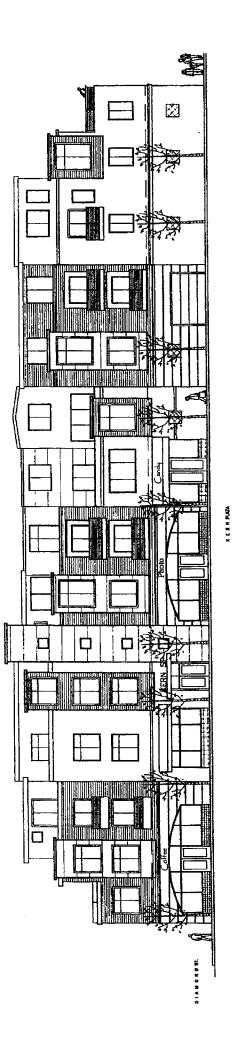
#### NO DISCERNIBLE CLASSIFICATION



NO DISCERNIBLE CLASSIFICATION



Sent from my iPhone





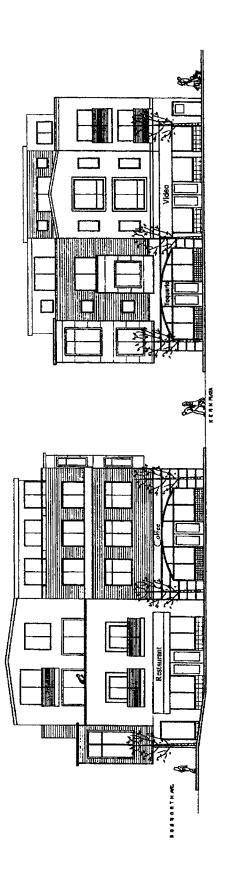
KERN PLAZA - BUILDING 2 1/16" = 1'-0"

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Architects Zoe Street Suite 200 invoicen California 94107

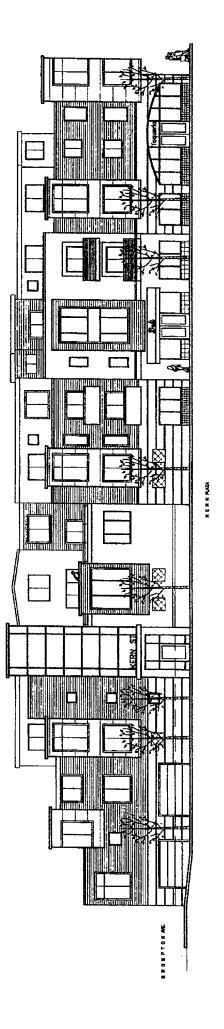
Kotas/Pantaleoni

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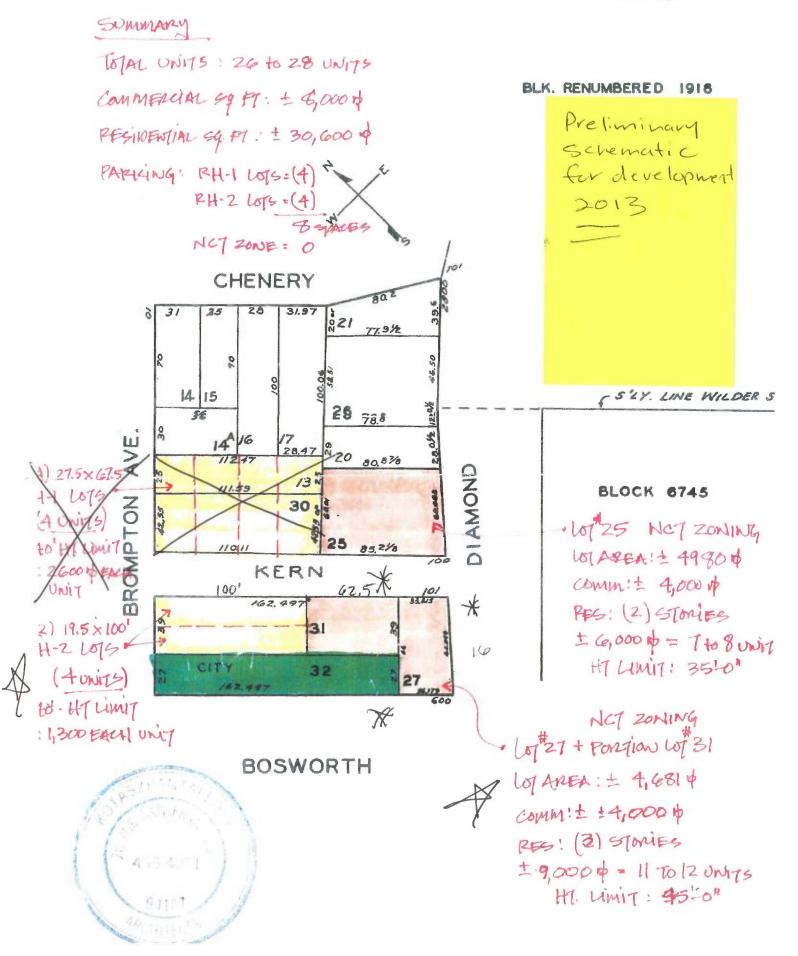
DIAMOND STREET ELEVATION





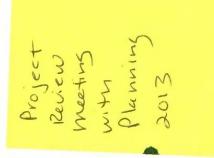
KERN PLAZA - BUILDING 1









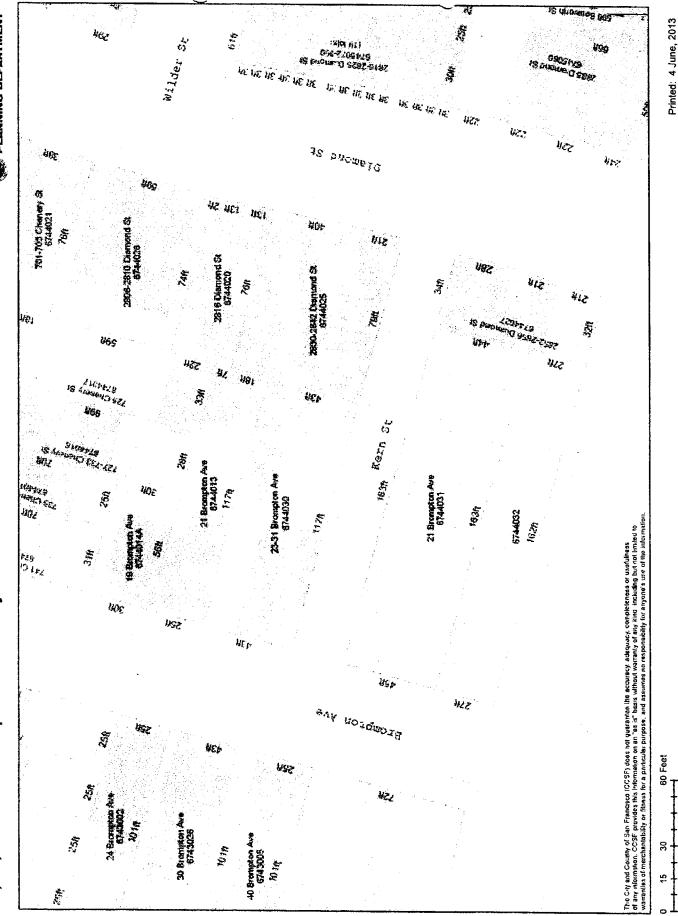




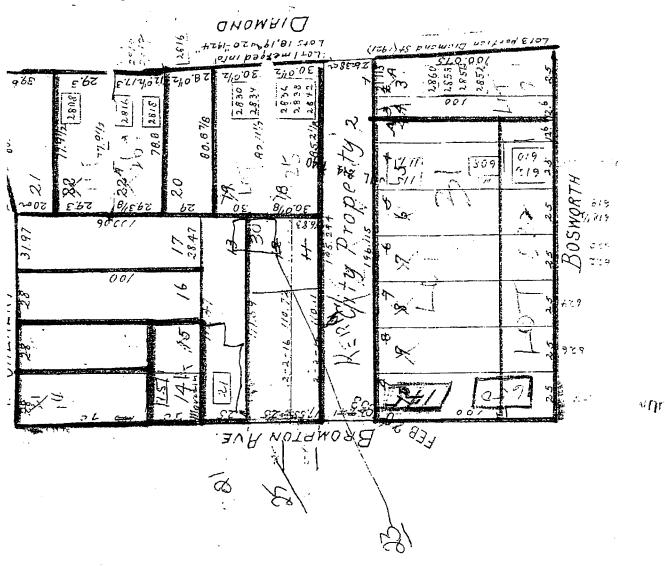
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