



Categorical Exemption Appeal

66 MOUNTAIN SPRING AVE

DATE: August 17, 2020
TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Devyani Jain, Environmental Review Officer – (628) 652-7574
Lauren Bihl lauren.bihl@sfgov.org – (628) 652-7498
RE: Planning Record No. 2018-007763APL
Appeal of Categorical Exemption for 66 Mountain Spring Ave
HEARING DATE: August 25, 2020

PROJECT SPONSOR: John Kelvin, Reuben, Junius & Rose, LLP, 415-567-9000
APPELLANT(S): Gloria Smith of The Law Offices of Gloria D. Smith, on behalf of Margaret Niver, Ronald Niver. And Rosemarie MacGuinness

INTRODUCTION

This memorandum and the attached documents are a response to the letter of appeal to the board of supervisors (the board) regarding the planning department's (the department) issuance of a categorical exemption (CEQA determination) under the California Environmental Quality Act (CEQA, Pub. Resources Code Section 21,000 et seq.), the CEQA Guidelines (California Code of Regulations Title 14, Section 15,000 et seq.) and chapter 31 of the administrative code for the proposed 66 Mountain Spring Avenue project (project).

The department, pursuant to Article 19 of the CEQA Guidelines, issued a categorical exemption for the project on February 12, 2019 finding that the proposed project is exempt from CEQA as a class 1 categorical exemption.

The decision before the board is whether to uphold the department's decision to issue a categorical exemption and deny the appeal, or to overturn the department's decision to issue a categorical exemption and return the project to the department staff for additional environmental review.

SITE DESCRIPTION AND EXISTING USE

The approximately 5,000-square-foot project site is located in the Twin Peaks neighborhood on assessor's block and lot 2706/025 which is bound by Clarendon Avenue to the north, Twin

Peaks Boulevard to the east, Mountain Spring Avenue to the south and the Stanyan Street right-of-way to the west. The surrounding area is characterized by a mix of single-family homes that are typically two to four stories tall and many contain garage parking on the ground level. There are also a variety of parks and recreational resources nearby including: Twin Peaks Park, Mt. Sutro Open Space Reserve, Interior Greenbelt, Tank Hill, and more.

The subject site is currently occupied by an approximately 15-foot-tall, two-story, 4,459-square-foot single-family home constructed in 1947 that has been determined not to be a historic resource.¹ The home contains four bedrooms and 303 square feet of garage parking. The site is located within a landslide zone and contains slopes of 25% or greater. The topography in the vicinity of the site slopes downward toward the north. The house and connected garage are set back 21 feet from the front lot line with the main entrance to the house on the first level and the entrance to the garage on the basement level.

PROJECT DESCRIPTION

The proposed project consists of the demolition of the existing two-story, single-family home and the construction of an approximately 22-foot-tall, three-story, 5,405-square-foot single-family home with an attached two-car garage. The building would be set back 15 feet from the front lot line and the main entrance as well as the garage and would both be accessed from the street level. The proposed structure would contain four bedrooms with a home office that could optionally be used as a fifth bedroom.

BACKGROUND

On October 24, 2018, Leanne Lei on behalf of Leo Cassidy and Deirdre Cassidy (hereinafter project sponsor) filed an application with the planning department (hereinafter department) for CEQA evaluation.

On February 12, 2019, the department determined that the project was categorically exempt under CEQA class 1 – Existing Facilities, and that no further environmental review was required.

On February 20, 2020, the planning commission took discretionary review for the proposed project and approved the building permit with conditions. The planning commission's

¹ Allison Vanderslice, Preservation Team Review Form, January 8, 2019. This document (and all documents cited in this appeal response unless otherwise noted) is available for review on the San Francisco Property Information Map, which can be accessed at <https://sfplanninggis.org/PIM/>. The file can be viewed by clicking on the Planning Applications link, clicking the "More Details" link under the project's environmental record number 2018-007763ENV and then clicking on the "Related Documents" link.

discretionary review of the project constituted the approval action under San Francisco Administrative Code Chapter 31.²

On March 23, 2020, Gloria Smith, on behalf of Margaret Niver, Ronald Niver, and Rosemarie MacGuinness (collectively hereafter referred to as appellant) filed an appeal of the categorical exemption determination.

On July 13, 2020, following a request by the clerk of the San Francisco Board of Supervisors, the planning department determined that the appeal of the categorical exemption had been timely filed.

CEQA GUIDELINES

Categorical Exemptions

In accordance with CEQA section 21084, CEQA Guidelines sections 15301 through 15333 list classes of projects that have been determined not to have a significant effect on the environment and are exempt from further environmental review.

CEQA Guidelines section 15301 (existing facilities), or class 1, consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. CEQA Guidelines section 15301 provides examples of the types of projects that are exempt under class 1, including but not limited to: “demolition and removal of individual small structures [such as]: one single-family residence. In urbanized areas, up to three single-family residences may be demolished under this exemption.” The key consideration is whether the project involves negligible or no expansion of use.

CEQA Guidelines section 15303 (new construction or conversion of small structures), or class 3 consists of construction of limited numbers of new, small facilities or structures. CEQA guidelines section 15303 provides examples of the types of projects covered under class 3, including but not limited to: “one single-family residence, or a second dwelling unit in a residential zone. In urbanized areas, up to three-single-family residences may be constructed or converted under this exemption.”

In determining the significance of environmental effects caused by a project, CEQA Guidelines section 15064(f) states that the decision as to whether a project may have one or more significant effects shall be based on substantial evidence in the record of the lead agency. CEQA Guidelines section 15064(f)(5) offers the following guidance: “Argument, speculation, unsubstantiated

² The building permit is not finally approved until the building department approves the building permit in accordance with state and local building codes.

opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumption predicated upon facts, and expert opinion supported by facts.”

PLANNING DEPARTMENT RESPONSES

The concerns raised in the appeal letter are addressed in the responses below.

Response 1: The environmental review of the proposed project appropriately and adequately analyzed the potential seismic and geotechnical impacts of the proposed project.

The appellant alleges that the categorical exemption determination for the 66 Mountain Spring Avenue project ignores environmental impacts associated with the proposed project’s location on a steep slope. The appellant claims that the city is “unable to assess the project’s seismic and slope impacts because there was no evidence in the record the developer complied with the SSPA [Slope and Seismic Hazard Protection Zone Act].” The project site is located on a steep slope (greater than 25 percent) and a portion of it is located within a state designated landslide hazard zone. The geotechnical report identifies that the project may be subject to the Slope and Seismic Protection Act.

To ensure that the potential for adverse effects related to geology and soils are adequately addressed, San Francisco relies on the state and local regulatory process for review and approval of building permits pursuant to the California Building Code and the San Francisco Building Code, which is the state building code plus local amendments that supplement the state code, including the building department’s administrative bulletins. The building department also provides implementing procedures in its information sheets. Compliance with these building codes and procedures ensures the safety of all new construction in the city.

Pursuant to these requirements, the project sponsor provided a geotechnical investigation that complies with provisions of the building code and recommends measures to minimize the risk of geologic hazards. The geotechnical report for 66 Mountain Spring Avenue was prepared by a qualified licensed geotechnical engineer and is based on an understanding of conditions at the site. The geotechnical report’s conclusion regarding slope stability for 66 Mountain Spring Avenue is that the potential for damage due to slope instability at the site is low provided the recommendations presented in the report are incorporated into the design and construction of the project.³

The determination of whether the proposed project would be subject to the requirements of the Slope and Seismic Protection Act would occur during the building department’s review of the

³ Gruen, Allen H. *Report Geotechnical Investigation: Planned Improvements at 66 Mountain Spring Avenue*, April 28, 2018.

building permit.⁴ At that time, the building department will review the project construction plans for conformance with the recommendations in the project-specific geotechnical report. In addition, the building department may require additional site-specific report(s) through the building permit review process and its implementing procedures, as needed. The building department's requirement for a geotechnical report and review of the building permit application pursuant to its implementation of the building code would ensure that the proposed project would not result in any significant impacts related to soils, seismicity, or other geological hazards.

Response 2: Aesthetic impacts of the proposed project were not analyzed, in accordance with CEQA's mandate.

CEQA Guidelines section 21099(d)(1) states, "aesthetic and parking impacts of a residential, mixed-use residential, or employment center project on an infill site within a transit priority area *shall not* be considered significant impacts on the environment." (emphasis added). CEQA section 21099(a)(7) defines a transit priority area as an area within one-half mile of a major transit stop. A major transit stop is defined, in part, as an existing rail or bus rapid transit station or as the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods (CEQA section 21064.3). An infill site is defined, in part, as a lot located within an urban area that has been previously developed (CEQA section 20199(a)(4)).

The project site is within a transit priority area because it is located within one-half mile of a transit stop for the Muni Metro N line. In addition, the site is also within one-half mile of transit stops for the Muni-6, Muni-33, and Muni-43 lines which run every 10 to 20 minutes.⁵ The project also qualifies as an infill site because it is located within an urban area that has been previously developed. Further, the project is a residential project. Therefore, the project meets the criteria of CEQA section 21099 and any aesthetic impacts of the proposed project cannot be considered a significant impact on the environment under CEQA.

Response 3: The proposed project is exempt from additional environmental review under CEQA.

The appellant claims that the issuance of a class 1 categorical exemption under CEQA does not cover the entirety of the proposed project. The project includes demolition of an existing single-

⁴ As stated in footnote 2, the building permit is not finally approved until the building department approves the building permit in accordance with state and local building codes.

⁵ COVID-19 has resulted in changes to the service and scheduled frequencies of the Muni Core Service Plan until further notice. See website for details. <https://www.sfmta.com/getting-around/muni/routes-stops>.

family home and construction of new single-family home. As explained above, the demolition of the existing structure is covered under a class 1 categorical exemption. Additionally, while not stated on the exemption, construction of a new single-family home is covered under a class 3 categorical exemption (CEQA Guidelines section 15303). Therefore, the proposed project is appropriately exempt from further CEQA review under the class 1 and class 3 categorical exemption. It is appropriate to combine different exemptions to find a proposed project exempt if the exemptions together cover the entire project. The project fits within the scope of the categorical exemptions, there are no exceptions that preclude reliance on that exemptions and the city complied with all posting and noticing requirements in chapter 31 of the administrative code.

CONCLUSION

The department has determined that the proposed project is categorically exempt from environmental review under CEQA on the basis that: (1) the project meets the definition of one or more of the classes of projects that the Secretary of Resources has found do not have a significant effect on the environment, and (2) none of the exceptions specified in CEQA Guidelines section 15300.2 prohibiting the use of a categorical exemption are applicable to the project. The appellant has not demonstrated that the department's determination is not supported by substantial evidence in the record.

For the reasons stated above and in the February 12, 2019 CEQA categorical exemption determination, the CEQA determination complies with the requirements of CEQA and the project is appropriately exempt from environmental review pursuant to the cited exemption and class 3. The department therefore respectfully recommends that the board uphold the CEQA categorical exemption determination and deny the appeal of the CEQA determination.