

Holland & Knight

50 California Street, Suite 2800 | San Francisco, CA 94111 | T 415.743.6900 | F 415.743.6910
Holland & Knight LLP | www.hklaw.com

Chelsea Maclean
415-743-6979
Chelsea.Maclean@hklaw.com

Letitia Moore
415-743-6948
Letitia.Moore@hklaw.com

October 5, 2021

Via email: bos.legislation@sfgov.org

San Francisco Board of Supervisors

Angela Calvillo
Clerk of the Board
City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Re: **Housing Accountability Act Protections Relating to the 450-474 O'Farrell Street/532 Jones Street Project Application**

Dear Board of Supervisors:

As outlined in our August 25, 2021 letter to you and our letter to the Planning Commission dated June 21 2021, Fifth Church of Christ, Scientist (the "Applicant") has rights under the California housing laws, including the Permit Streamlining Act, Housing Accountability Act ("HAA") and SB 330 (the "Housing Crisis Act of 2019"), for the project proposed at 450-474 O'Farrell Street/532 Jones Street (case number 2013.1535EIA-02). Under the limitations imposed by the California housing laws, the Board has no basis for granting this appeal and disapproving the project.

The HAA, similar to SB 330 and the Permit Streamlining Act, was enacted by the Legislature to ensure the timely construction of housing to combat California's housing crisis. Among the protections provided by the HAA are limitations on the local agency's criteria to disapprove a housing development project. To disapprove such projects, the local agency must find that the project would cause "a specific, adverse impact upon the public health or safety."¹ The local

¹ Gov. Code § 65589.5(j).

agency must find “significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete,” with no feasible way to mitigate the impact.² All local agencies are also required to affirmatively prove that there are no feasible means of addressing such “public health” and “safety” impacts other than rejecting or reducing the size of the project.³ Under the HAA, a local jurisdiction may not reject a housing development project or reduce its density based on any subjective or discretionary criteria, such as “suitability” or “compatibility.”⁴

The 450-474 O’Farrell Street/532 Jones Street project includes “316 group housing units (632 beds), 172,323 square feet of residential use, including amenities and common areas, 4,900 square feet of open space, 6,023 square feet of restaurant/retail space, and 9,924 square feet for religious institution use (i.e., replacement of the existing church)” (the “Project”). (Addendum 2 to Environmental Impact Report (“Addendum 2”), June 23, 2021, at 3.) As referenced in prior correspondence, the Project is therefore a “housing development project” as defined in Section 65589.5(h)(2) of the HAA and is entitled to the protections provided by the HAA. To disapprove the Project, the Board must find that the Project would cause a specific, adverse public health or safety impact. The record before the Planning Commission and environmental review for the Project clearly demonstrate that there is no support for such a finding. The Applicant has clearly stated that a denial of this group housing proposal will make the Project infeasible. As stated in our prior correspondence, the Board has no basis for disapproving the Project, therefore the only appropriate decision is denial of the appeal.

Sincerely yours,

HOLLAND & KNIGHT, LLP



Letitia Moore

CC: David Murray, Fifth Church of Christ, Scientist (david.murray08@gmail.com)
Ela Strong, Fifth Church of Christ, Scientist (ela@elastrong.com)
David Cincotta, Law Office of David Cincotta (davide@dpclawoffices.com)
Robin Pick, Storzer Law (pick@storzerlaw.com)
Roman Storzer, Storzer Law (storzer@storzerlaw.com)
Kate Stacy, San Francisco, Office of City Attorney (kate.stacy@sfgov.org)

² *Id.*

³ Gov. Code § 65589.5(j)(1)(B).

⁴ *Honchariw v. Cty. of Stanislaus*, 200 Cal. App. 4th 1066, 1076 & 1079 (2011).

Moore, Letitia D (SFO - X56948)

From: Moore, Letitia D (SFO - X56948)
Sent: Monday, October 04, 2021 11:49 PM
To: 'compliancereview@hcd.ca.gov'
Subject: HAA/SB330 Compliance Review Request
Attachments: SF Planning Appeal Response.pdf

Request for compliance review of San Francisco processing of application related to housing project.

Note: Continued hearing on appeal of Planning Commission approval is on SF Board of Supervisor's agenda for October 5, 2021.

450-474 O'Farrell Street/532 Jones Street Project: 316 group housing units (632 beds), 172,323 square feet of residential use, including amenities and common areas, 4,900 square feet of open space, 6,023 square feet of restaurant/retail space, and 9,924 square feet for religious institution use (i.e., replacement of the existing church) Property owner – Fifth Church of Christ, Scientist

Issues/Questions: (i) San Francisco has exceeded five (5) hearing limit and (ii) Board of Supervisors (BOS) cannot deny this housing development project unless find specific, adverse public health or safety impact.

Background:

On June 24, 2021, the San Francisco Planning Commission approved modifications to a Conditional Use Approval previously approved in 2018. [Planning Commission Motion](#). The application to modify the approval was submitted in January 2020. After eight (8) hearings/continuances (or six if not counting the hearings purportedly continued by the Applicant), the Planning Commission held another hearing on June 24, 2021 and approved the project.

An appeal of Planning Commission approval was filed on July 21, 2021. Copy of SF Planning response to the Appeal, without attachments, is attached. The Clerk of the BOS set the hearing for September 7, 2021 and on September 7th the BOS continued the hearing to September 28th. The BOS held a hearing on the appeal on September 28, 2021, took public comment and then continued the hearing again to October 5, 2021. The project has now been through eleven (11) hearings, with a 12th hearing scheduled for October 5, 2021.

The action before the Planning Commission was limited to proposed modification of conditions in the Conditional Use Approval. The substance of the Planning Commission action concerned modification of four (4) conditions from the original approval and addition of a condition of approval addressing the standards for group housing cooking facilities. The conditions that were modified concerned Parking for Affordable Units (#24), Car Share (#25), Bicycle Parking (#26), and the Inclusionary Affordable Housing Program (#32). The Planning Commission eliminated the Car Share and Parking for Affordable Unit conditions because they were no longer applicable, increased the number for Bicycle Parking, and clarified the application of the Inclusionary Affordable Housing Program. In accordance with SF Planning Code Section 303(e), the public hearing and notice procedures of Section 306 were appropriately followed for processing the modifications.

The proposed project is within approximately the same footprint and square footage of the 2018 approved project.

Finally, the City ultimately prepared two Addendums to the EIR prepared for the original 2018 project approval in considering the proposed CUA modification and concluded that no further environmental review was required for the current proposal. The Addendum made the following finding:

The revised project would not result in new or different environmental impacts, substantially increase the severity of the previously identified environmental impacts or require new mitigation measures. In addition, no new information has emerged that would materially change the analyses or conclusions set forth in the initial study and EIR. Therefore, the revised project would not change the analyses or conclusions in the initial study and EIR for the previous project.

Second Addendum to Environmental Impact Report, p. 11.

If you have any questions, please see my contact information below.

Letitia D. Moore | Holland & Knight

She/Her/Hers

Senior Counsel

Holland & Knight LLP

50 California Street, Suite 2800 | San Francisco, CA 94111

Phone 415.743.6948 | Fax 415.743.6910

letitia.moore@hklaw.com | www.hklaw.com