

**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Cc:** [Calvillo, Angela \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [BOS Legislation, \(BOS\)](#); [PEARSON, ANNE \(CAT\)](#)  
**Subject:** FW: 2417 Green Street – BOS File No. 210201; March 2, 2021 BOS Meeting - Objection to Motion Adopting Findings to Reverse FMND  
**Date:** Tuesday, March 2, 2021 4:25:26 PM  
**Attachments:** [2021.3.2 Ltr to BOS.pdf](#)  
**Importance:** High

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**From:** Emily Lowther Brough <emily@zfplaw.com>  
**Sent:** Tuesday, March 2, 2021 2:26 PM  
**To:** Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>  
**Cc:** Ryan Patterson <ryan@zfplaw.com>; Chandni Mistry <chandni@zfplaw.com>  
**Subject:** 2417 Green Street – BOS File No. 210201; March 2, 2021 BOS Meeting - Objection to Motion Adopting Findings to Reverse FMND  
**Importance:** High

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Dear Clerk of the Board:

Please find attached a letter for inclusion in the official record for this afternoon's Board of Supervisors regular meeting. Please also confirm receipt.

Best,  
Emily Brough

**PLEASE NOTE THAT ZACKS, FREEDMAN & PATTERSON WILL BE MOVING. EFFECTIVE MARCH 9, 2021, OUR NEW ADDRESS WILL BE:**  
**ZACKS, FREEDMAN & PATTERSON, PC**  
**601 MONTGOMERY STREET, SUITE 400**  
**SAN FRANCISCO, CA 94111**

Emily L. Brough  
Zacks, Freedman & Patterson, PC  
235 Montgomery Street, Suite 400  
San Francisco, CA 94104  
p (415) 956-8100  
f (415) 288-9755  
[www.zfplaw.com](http://www.zfplaw.com)

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# ZACKS, FREEDMAN & PATTERSON

A PROFESSIONAL CORPORATION

235 Montgomery Street, Suite 400  
San Francisco, California 94104  
Telephone (415) 956-8100  
Facsimile (415) 288-9755  
[www.zfplaw.com](http://www.zfplaw.com)

March 2, 2021

Board of Supervisors  
1 Dr. Carlton B. Goodlett Place,  
City Hall, Room 244  
San Francisco, CA 94102-4689  
Email: [bos@sfgov.org](mailto:bos@sfgov.org)  
[Board.of.Supervisors@sfgov.org](mailto:Board.of.Supervisors@sfgov.org)

VIA EMAIL

Re: 2417 Green Street – BOS File No. 210201  
March 2, 2021 BOS Meeting  
Objection to Motion Adopting Findings to Reverse FMND

Dear Board of Supervisors:

Our office is litigation counsel for Christopher Durkin, the Project Sponsor in the above-captioned project (the “Project”). We write to object to the Board’s motion adopting findings to reverse the Final Mitigated Negative Declaration (“FMND”) for the Project. We also incorporate by reference all prior objections to the Board’s grant of the appeal of the FMND.

The motion proposes to reverse the Planning Commission’s determination to adopt the FMND, and directs the Planning Department to prepare an EIR, however, the Board’s findings do not support such action. The Board may only direct the Planning Department to prepare an EIR after reversing a negative declaration, if the alleged significant environmental impact “cannot be avoided or mitigated to a less than significant level . . .” (SF Planning Code § 31.16(d)(5)(B).)

Here, there has been no finding that the alleged significant environmental impact(s) identified in the motion cannot be avoided or mitigated to less than a significant level. Nor is there substantial evidence to support such a finding. Rather, the motion provides that the mitigation measures set forth in the FMND are simply “insufficient”:


Based on the evidence presented at and prior to the hearing on this matter, the Board found that the record includes substantial evidence to support a fair argument that the Revised Project **may have a significant impact on the historic significance** of the historic Coxhead House, that the Revised Project **may compromise the structural integrity** of the neighboring property **and that the mitigation measure proposed in the FMND is insufficient to protect the historic resource;**

Based on the Board's finding that the FMND's mitigation measures are allegedly "insufficient," the Board *may not* direct the Planning Department to prepare an EIR, it may only remand the FMND to the Planning Department for further action consistent with the Board's findings.<sup>1</sup> (SF Planning Code § 31.16(d)(5).)

Pursuant to the above, because the motion is inconsistent with CEQA and local code, the Board should deny it.

Very truly yours,

ZACKS, FREEDMAN & PATTERSON, PC

  
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Emily L. Brough

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<sup>1</sup> See, e.g., BOS File No. 171022