

File No. 200754

Committee Item No. _____

Board Item No. 8

COMMITTEE/BOARD OF SUPERVISORS

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Date: _____

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Date: August 25, 2020

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Prepared by: Lisa Lew

Date: August 21, 2020

Prepared by: _____

Date: _____

The Law Offices of Gloria D. Smith
48 Rosemont Place
San Francisco, CA 94103
(415) 308-9124
gloria@gsmithlaw.com

March 23, 2020

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

RE: Notice of Appeal and Appeal of San Francisco Planning Commission's CEQA Exemption for 66 Mountain Spring Avenue, (Case No. 2018-007763ENV)

Dear Ms. Calvillo:

PLEASE TAKE NOTICE THAT, pursuant to San Francisco Administrative Code Section 31.16, and on behalf of Ms. Margaret Niver, Mr. Ronald Niver ("Nivers") and Rosemarie MacGuiness (collectively "appellants"), this letter appeals the San Francisco Planning Department's issuance of a categorical exemption from the California Environmental Quality Act ("CEQA") for the above referenced matter. Specifically, this appeal arises from the Planning Commission's grant of discretionary review on February 20, 2020. (Exhibit A) As of this writing, neither the Planning Department nor the Department of Building Inspection have issued final permits for the proposed project.

I. Introduction

Code Section 31.16 requires appellants to submit a letter of appeal to the Clerk of the Board within 30 calendar days of the approval action describing the grounds for appeal. Here, the Planning Department asserts the approval action is the Planning Commission's February 20, 2020 vote to grant discretionary review *and* approve the project. The appellants' grounds for

appeal include violations of CEQA, San Francisco’s Slope and Seismic Hazard Zone Protection Act and San Francisco’s Residential Design Guidelines. Specifically, as more fully discussed below, prior to project construction, CEQA requires the City to:

1. Conduct required seismic and geo-technical analyses to ensure that the project has fully mitigated all potential slope instability impacts;
2. Investigate potentially significant impacts on aesthetic resources due to the City’s failure to comply with its own land use planning requirements.

II. Background

1. The City’s Project Description

The City’s CEQA determination described the project as: “Demolition of a two-story single family home and construction of a new three-story single family home.”¹

2. Actual Project Description

Mountain Spring Avenue is a small street just below the Sutro Tower in an area of Twin Peaks known as Clarendon Heights. There are approximately 15 houses on the north side of Mountain Spring Avenue, including several historic homes. The project proponent, Transatlantic Construction Company (“developer”), seeks to demolish one of those homes, a 2,100 square foot house built in 1947 by noted San Francisco architect Oliver Rousseau, and replace it with a structure approximately three times as large (5,869 square feet according to the Section 311 Notice). The proposed project would be massive by comparison to the other homes on the north side of Mountain Spring Avenue -- much larger overall, much taller at the street level and much larger in comparison to the lot size. The developer’s proposed structure is also inconsistent with the design and character of the other homes on the north side of Mountain Spring Avenue.

3. Procedural Background

On December 4, 2018, twenty-nine neighbors, nearly every person residing on Mountain Spring Avenue, signed a letter to the developer requesting additional information, including a copy of any historic resource evaluation, geotechnical reports and information about the amount

¹ CEQA Categorical Exemption Determination, p. 1.

of excavation the proposed project would entail. However, the developer refused to provide the residents with any of the requested information. The neighbors' letter also contained a detailed description of their concerns, including specifics about project modifications necessary to bring the project into compliance with the City's Residential Design Guidelines. The letter requested a response but the developer never provided one. Instead, the final building plans submitted to the City ignored almost all of the neighbors' requests and actually increased the square footage of the proposed project.

On November 1, 2020, six neighbors, including two who live adjacent to the project site, filed requests for discretionary review with the Planning Commission based on nearly identical grounds that the project was inconsistent with San Francisco's Residential Design Guidelines and the Residential Design Team's analyses, and presented serious seismic and steep slope concerns.

On February 6, 2020, the Nivers sent a letter to the Planning Commission detailing the historic and cultural significance of Mountain Spring Avenue and its place in the surrounding neighborhood.

On February 19, 2020, the Nivers sent a letter to the Planning Commission specifically pointing out the project was not eligible for a CEQA Class 1 exemption because the project was not in compliance with San Francisco's Slope and Seismic Hazard Zone Protection Act,² and was inconsistent with local land use requirements such as San Francisco's Residential Design Guidelines.

On February 20, 2020, the Planning Commission held a hearing where appellants and other members of the public spoke out against the proposed project; opposing it on grounds that a massive 3-story building with a roof deck (which no other home on the north side of Mountain Spring has) was wholly out of character with the other homes on Mountain Spring Avenue.

The developer's team initially defended the full proposal to the Commission, but during the course of the hearing, the developer pivoted, and offered a set of minor cosmetic changes to the Commission. The DR requesters were blindsided by the developer's last-minute offer of

² San Francisco Ordinance 121-18.

these changes and were not given a reasonable opportunity to consider them. Importantly, these changes did not address the DR requesters principle concerns about the project. The developer made no attempt to achieve a mutually acceptable solution with the community.

In the moment, the DR requesters did their best to review and respond to a new project proposal not described in writing. Appellant Rosemarie MacGuinness asked the Commission to postpone the hearing so they could assess the changes away from the pressure of an ongoing public hearing, but the Commission did not grant a continuance. Instead, absent any factual analysis of whether the developer's 11th hour proposed changes resolved anything, the Commission hastily granted discretionary review, but approved the project with the developer's new modifications. Again, members of the public were only afforded a few minutes, an insufficient time, to digest the new proposal before its adoption. The Commission made the following changes:

1. Eliminate the west property line windows at the upper two floors;
2. Provide a notch at the northwest rear corner at the upper two floors to match the notch at the northeast corner and;
3. Reduce the roof deck to maintain 10 feet from the side building walls and an additional 5 feet from the front.³

Therefore, despite the Commission's grant of discretionary review and findings the project presented extraordinary circumstances, the proposed project remains an enormous three-story single-family dwelling with a rooftop deck and parapet, resulting in a street-facing two-story flat roof building with a mass that is grossly out of scale with all of the other north-side, downslope homes on Mountain Spring Avenue. As approved, the new building would unnecessarily add a wholly discordant element to that side of the block. In addition, the parcel itself is a steep hillside at risk of slope failure in the event of an earthquake;⁴ or, increasingly, climate-related intense winter storms.⁵

³ See Exhibit A, attached hereto.

⁴ One of the General Plan's priority policies is that "the City achieves the greatest possible preparedness to protect against injury and the loss of life in an earthquake."

⁵ California Climate Adaptation Strategy. A Report to the Governor of the State of California in Response to Executive Order S-13-2008.

III. Grounds for Appeal: California Environmental Quality Act

The ‘foremost principle’ in interpreting CEQA is that it must be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.⁶ CEQA requires agencies to conduct a three-tier process to ensure that the environmental consequences of their decisions are fully considered.⁷ The first tier is jurisdictional, requiring an agency to complete a preliminary review to determine whether an activity is subject to CEQA.⁸ An activity that is not a “project” is not subject to CEQA.⁹ The second-tier concerns exemptions from CEQA review, both statutory and categorical.¹⁰ If a project does not fall within an exemption, the agency must “conduct an initial study to determine if the project may have a significant effect on the environment.”¹¹

If there exists “no substantial evidence that the project **or any of its aspects** may cause a significant effect on the environment,” the agency prepares a “negative declaration” that briefly describes the reasons supporting its determination.¹² CEQA's third tier applies if the agency determines substantial evidence exists that an aspect of the project may cause a significant effect on the environment. In that event, the agency must prepare a full environmental impact report. As a preliminary and overarching matter, all available evidence shows this project is not eligible for a categorical exemption under CEQA. Categorical exemptions are allowed for certain classes of activities that can be shown to not have significant effects on the environment.¹³ Public agencies utilizing CEQA exemptions must support their determination that a particular project is exempt with substantial evidence that supports each element of the invoked exemption.¹⁴ A court will reverse an agency’s use of an exemption if the court finds evidence a project may have an adverse impact on the environment.¹⁵

⁶ *Communities for a Better Env’t v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 109.

⁷ *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 74.

⁸ CEQA Guidelines, § 15060; see Pub. Resources Code, § 21065.

⁹ Public Resources Code (see § 21065).

¹⁰ Pub. Resources Code, § 21080(b)(1) (2).

¹¹ CEQA Guidelines, § 15063(a).

¹² *Id.*, §§ 15063(b)(2);15070 (emphasis added).

¹³ CEQA § 21084(a).

¹⁴ CEQA § 21168.5.

¹⁵ *Dunn Edwards Corp. v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644, 656.

1. The project may cause significant seismic and geo-technical impacts

The City's categorical exemption omitted any discussion of how the project would meet the requirements to comply with San Francisco's Slope and Seismic Hazard Zone Protection Act (SSPA).¹⁶ The SSPA applies to all property that exceeds an average slope of 4H:1V (25%) or falls within certain mapped areas of the City.¹⁷ Reviewing the Planning Department's map makes clear the subject property is within an identified hazardous zone. Specifically, the subject property appears within hazard zone section 2706 of the City's map. And even a visual inspection of the site confirms the project would be located on a very steep hillside with residences directly below.

At this juncture the City is unable to assess the project's potential seismic and slope impacts because there is no evidence in the record the developer complied with the SSPA. The developer was required to submit a SSPA checklist and information sheet to the Department of Building Inspection and Planning Department describing the proposed construction, average slope of the property, the property location and other pertinent details. The results of a developer's SSPA analysis informs the City on the additional documentation needed to ensure any construction activities and permanent structures would be safe. None of this basic information was included with the categorical exemption materials.

Where a local or regional policy of general applicability, such as an ordinance, is adopted to avoid or mitigate environmental effects, a conflict with that policy in itself indicates a potentially significant impact on the environment.¹⁸ In fact, inconsistencies between a proposed project and applicable local rules must be looked at under CEQA.

¹⁶ See San Francisco Ordinance 121-18. The San Francisco Board of Supervisors passed the SSPA on May 15, 2018, two days before the developer sought an application for a demolition permit with DBI; therefore, the SSPA is the operative ordinance for this project appeal. However, were the Planning Department to claim the SSPA is inapplicable, the project site is nonetheless subject to the earlier Slope Protection Act and must comply with the City's landslide requirements.

¹⁷ https://s3.amazonaws.com/sfplanninggis/Slopes+Poster_lowRes70DPI.pdf

¹⁸ *Pocket Protectors v. Sacramento* (2005) 124 Cal.App.4th 903.

Accordingly, because the City has failed to comply with the SSPA, neither City agencies or the public have any technical information on whether project construction could undermine slope stability at the project site and what measures would be required to safeguard adjacent and downslope residences. The City must prepare a proper CEQA analysis on this potentially significant impact.

2. The project may cause significant impacts on aesthetic resources

Pursuant to Appendix G of the CEQA Guidelines, agencies must assess whether a project would conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project adopted for the purpose of avoiding or mitigating environmental effects. The record shows the proposed project is not consistent with San Francisco's Residential Design Guidelines or with the residential design team's (RDT) recommendations. Instead, the RDT reviewed the developer's proposed project and found:

“The mass of the project is out of scale with adjacent homes. These homes reduce their scale through a combination of sloping down to the entry and multiple volumes and shaped roofs that break up their massing. Recommend maintaining slope down to entry, lowering ceiling height of second floor, eliminating parapet, and breaking up massing/ roof forms to reduce scale.”

The RDT went on to find that the project ran afoul of numerous Residential Design Guidelines regulating residential buildings':

- Visual character;
- Scale and form;
- Scale at the street;
- Topography;
- Proportion;
- Rooflines;
- Entrances; and
- Parapets.

In response to these concerns, the developer offered to make a modest reduction of the overall street-facing height of the proposed project. Inexplicably, the RDT accepted this superficial change which did nothing to address the applicable Guideline requirements. The appellants agree with the RDT's findings that the street-level height and massing of the proposed

project is grossly out of proportion with all other residences on the downslope, north side of Mountain Spring Avenue. The proposed project would result in negative aesthetic impact for all of Mountain Spring Avenue, and must be analyzed under CEQA.

As shown above, when a project conflicts with local ordinances, adopted to avoid or mitigate environmental effects, those conflicts themselves indicate potentially significant impacts on the environment.¹⁹ In fact, inconsistencies between a proposed project and applicable local rules must be looked at under CEQA. Here the City invoked a Class 1 categorical exemption which applies to existing facilities. Exempt projects include interior or exterior alterations, additions to existing structures that do not double the size of the building or additions under 10,000 sq/ft.²⁰ But the City's exemption document admits the proposed would be the "demolition of a two-story single family home and construction of a new three-story single family home." Therefore, on its face, the project is not eligible for the CEQA exemption the City invoked.

There is substantial evidence in the record showing the project presents potentially significant impacts on local land use rules and ordinances. Accordingly, the proposed project may not be exempted from CEQA. Instead, the City must prepare an environmental document that proposes feasible alternatives and mitigation measures to the project that would reduce or eliminate impacts on the neighborhood.

THE LAW OFFICES OF GLORIA D. SMITH



By: Gloria D. Smith

¹⁹ *Id.*

²⁰ CEQA Guidelines § 15301.



SAN FRANCISCO PLANNING DEPARTMENT

Discretionary Review Action DRA-0687

HEARING DATE: FEBRUARY 20, 2020

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Record No.: 2018-007763DRP-06
Project Address: 66 Mountain Spring Avenue
Building Permit: 2018.0517.9469
Zoning: RH-1(D) [Residential House, One-Family-Detached]
40-X Height and Bulk District
Block/Lot: 2706 / 025
Project Sponsor: Amir Afifi
SIA Consulting
1256 Howard Street
San Francisco, CA 94103
DR Requestors: Rosemarie McGuinness
60 Mountain Spring Avenue
San Francisco, CA

Megan O'Keefe
75 Mountain Spring Avenue
San Francisco, CA

Lynn and Roy Oakley
32 Mountain Spring Avenue
San Francisco, CA

Dagmar Beyerlein
74 Mountain Spring Avenue
San Francisco, CA

Margaret and Ronald Niver
65 Mountain Spring Avenue
San Francisco, CA

Michael and Catherine Donovan
50 Mountain Spring Avenue
San Francisco, CA
Staff Contact: David Winslow – (415) 575-9179
David.Winslow@sfgov.org

ADOPTING FINDINGS RELATED TO TAKING DISCRETIONARY REVIEW OF RECORD NO. 2018-007763DRP-06 AND THE APPROVAL OF BUILDING PERMIT APPLICATION NO. 2018.0517.9469 TO DEMOLISH AN EXISTING 2-STORY, ONE-FAMILY HOUSE AND CONSTRUCT A NEW 3-STORY SINGLE-FAMILY HOUSE AT 66 MOUNTAIN SPRING AVENUE WITHIN THE RH-1(D) (RESIDENTIAL HOUSE, ONE-FAMILY-DETACHED) ZONING DISTRICT AND A 40-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On May 17, 2018, Amir Afifi filed for Building Permit Application No. 2018.0517.9469 to demolish an existing 2-story, single-family house, and construct a new 3-story single-family house at 66 Mountain Spring Avenue within the RH-1(D) (Residential House, One-Family-Detached) Zoning District and a 40-X Height and Bulk District.

On November 1, 2019 Rosemarie McGuinness, Megan O'Keefe, Lynn and Roy Oakley, Dagmar Beyerlein, Margaret and Ronald Niver, Michael and Catherine Donovan, (hereinafter "Discretionary Review (DR) Requestors") filed an application with the Planning Department (hereinafter "Department") for Discretionary Review (2018-007763DRP-06) of Building Permit Application No. 2018.0517.9469.

The Project is exempt from the California Environmental Quality Act ("CEQA") as a Class 3 categorical exemption.

On February 20, 2020, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Discretionary Review Application 2018-007763DRP-06.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties.

ACTION

The Commission found there are extraordinary or exceptional circumstances in this case and hereby takes Discretionary Review requested in Record No. 2018-007763DRP-06 and approves Building Permit Application 2018.0517.9469 with the following conditions:

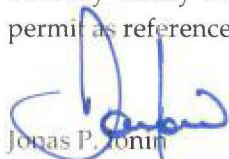
1. Eliminate the West property line windows at the upper two floors;
2. Provide a notch at the nothwest rear corner at the upper two floors to match the notch at the northeast corner and;
3. Reduce the roof deck to maintain 10 feet from the side building walls and an additional 5 feet from the front.

APPEAL AND EFFECTIVE DATE OF ACTION: Any aggrieved person may appeal this Building Permit Application to the Board of Appeals only after the Department of Building Inspection (DBI) takes action (issuing or disapproving) the permit. Such appeal must be made within fifteen (15) days of DBI's action on the permit. For further information, please contact the Board of Appeals at (415) 415-575-6880, 1650 Mission Street # 304, San Francisco, CA, 94103-2481.

Protest of Fee or Exaction: You may protest any fee or exaction subject to Government Code Section 66000 that is imposed as a condition of approval by following the procedures set forth in Government Code Section 66020. The protest must satisfy the requirements of Government Code Section 66020(a) and must be filed within 90 days of the date of the first approval or conditional approval of the development referencing the challenged fee or exaction. For purposes of Government Code Section 66020, the date of imposition of the fee shall be the date of the earliest discretionary approval by the City of the subject development.

If the City has not previously given Notice of an earlier discretionary approval of the project, the Planning Commission's adoption of this Motion, Resolution, Discretionary Review Action or the Zoning Administrator's Variance Decision Letter constitutes the approval or conditional approval of the development and the City hereby gives **NOTICE** that the 90-day protest period under Government Code Section 66020 has begun. If the City has already given Notice that the 90-day approval period has begun for the subject development, then this document does not re-commence the 90-day approval period.

I hereby certify that the Planning Commission takes Discretionary Review and approved the building permit as referenced in this action memo on February 20, 2020.



Jonas P. Smith
Commission Secretary

AYES: Diamond, Fung, Imperial, Johnson, Koppel, Moore

NAYS: None

ABSENT: Richards

ADOPTED: February 20, 2020

From: [BOS Legislation. \(BOS\)](#)
To: gloria@gsmithlaw.com; [John Kevlin](#)
Cc: [PEARSON, ANNE \(CAT\)](#); [STACY, KATE \(CAT\)](#); [JENSEN, KRISTEN \(CAT\)](#); [Teague, Corey \(CPC\)](#); [Sanchez, Scott \(CPC\)](#); [Gibson, Lisa \(CPC\)](#); [Jain, Devyani \(CPC\)](#); [Navarrete, Joy \(CPC\)](#); [Lewis, Don \(CPC\)](#); [Varat, Adam \(CPC\)](#); [Sider, Dan \(CPC\)](#); [Starr, Aaron \(CPC\)](#); [Rodgers, AnMarie \(CPC\)](#); [Ionin, Jonas \(CPC\)](#); [Range, Jessica \(CPC\)](#); [Bihl, Lauren \(CPC\)](#); [Rosenberg, Julie \(BOA\)](#); [Sullivan, Katy \(BOA\)](#); [Longaway, Alec \(BOA\)](#); [BOS-Supervisors](#); [BOS-Legislative Aides](#); [Calvillo, Angela \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [BOS Legislation. \(BOS\)](#)
Subject: PLANNING DEPARTMENT RESPONSE: Appeal of CEQA Exemption Determination - Proposed Project - 66 Mountain Spring Avenue - Appeal Hearing August 25, 2020
Date: Monday, August 17, 2020 12:14:51 PM
Attachments: [image001.png](#)

Greetings,

The Office of the Clerk of the Board received the following appeal response from the Planning Department, regarding the appeal of CEQA Exemption Determination for the proposed project at 66 Mountain Spring Avenue.

[Planning Department Response - August 17, 2020](#)

I invite you to review the entire matter on our [Legislative Research Center](#) by following the links below:

[Board of Supervisors File No. 200754](#)

Best regards,

Jocelyn Wong

San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
T: 415.554.7702 | F: 415.554.5163
jocelyn.wong@sfgov.org | www.sfbos.org

(VIRTUAL APPOINTMENTS) To schedule a “virtual” meeting with me (on Microsoft Teams), please ask and I can answer your questions in real time.

Due to the current COVID-19 health emergency and the Shelter in Place Order, the Office of the Clerk of the Board is working remotely while providing complete access to the legislative process and our services



Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form

The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation, and archived matters since August 1998.

Disclosures: Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors' website or in other public documents that members of the public may inspect or copy.



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.

From: [BOS Legislation. \(BOS\)](#)
To: gloria@gsmithlaw.com; [John Kevlin](#)
Cc: [PEARSON, ANNE \(CAT\)](#); [STACY, KATE \(CAT\)](#); [JENSEN, KRISTEN \(CAT\)](#); [Teague, Corey \(CPC\)](#); [Sanchez, Scott \(CPC\)](#); [Gibson, Lisa \(CPC\)](#); [Jain, Devyani \(CPC\)](#); [Navarrete, Joy \(CPC\)](#); [Lewis, Don \(CPC\)](#); [Varat, Adam \(CPC\)](#); [Sider, Dan \(CPC\)](#); [Starr, Aaron \(CPC\)](#); [Rodgers, AnMarie \(CPC\)](#); [Ionin, Jonas \(CPC\)](#); [Range, Jessica \(CPC\)](#); [Bihl, Lauren \(CPC\)](#); [Rosenberg, Julie \(BOA\)](#); [Sullivan, Katy \(BOA\)](#); [Longaway, Alec \(BOA\)](#); [BOS-Supervisors](#); [BOS-Legislative Aides](#); [Calvillo, Angela \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [BOS Legislation. \(BOS\)](#)
Subject: PROJECT SPONSOR RESPONSE: Appeal of CEQA Exemption Determination - Proposed Project - 66 Mountain Spring Avenue - Appeal Hearing August 25, 2020
Date: Friday, August 7, 2020 3:52:03 PM
Attachments: [image001.png](#)

Hello,

The Office of the Clerk of the Board received the following appeal response from the Project Sponsor, John Kevlin of Reuben, Junius & Rose, LLP, on behalf of the property owner, regarding the appeal of CEQA Exemption Determination for the proposed project at 66 Mountain Spring Avenue.

[Project Sponsor Brief - August 7, 2020](#)

I invite you to review the entire matter on our [Legislative Research Center](#) by following the links below:

[Board of Supervisors File No. 200754](#)

Best regards,

Lisa Lew

San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
T 415-554-7718 | F 415-554-5163
lisa.lew@sfgov.org | www.sfbos.org

(VIRTUAL APPOINTMENTS) To schedule a “virtual” meeting with me (on Microsoft Teams), please ask and I can answer your questions in real time.

Due to the current COVID-19 health emergency and the Shelter in Place Order, the Office of the Clerk of the Board is working remotely while providing complete access to the legislative process and our services.



Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form

The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation, and archived matters since August 1998.

Disclosures: Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors' website or in other public documents that members of the public may inspect or copy.

REUBEN, JUNIUS & ROSE, LLP

John Kevlin
jkevin@reubenlaw.com

August 7, 2020

Delivered Via Email (bos.legislation@sfgov.org)

President Norman Yee and Supervisors
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102

**Re: 66 Mountain Spring Avenue
Opposition to Appeal of the Categorical Exemption
Planning Department Case No. 2018-007763ENV
Our File No.: 11597.01**

Dear President Yee and Supervisors:

This office represents the owner of the property located at 66 Mountain Spring Avenue (“Property”). The owner is proposing to demolish the existing building and construct a new three-story home to more comfortably accommodate his family (“the “Project”). The Property is located on a steeply sloped block, with an overall development pattern of downslope homes that are 1-2 stories at street level and upslope homes that are 3-4 stories at street level. The proposed Code-compliant Project is 2 stories at street level, within the allowable buildable area, and the Planning Department determined it is consistent with the Residential Design Guidelines (“RDG”). On February 20, 2020 the Planning Commission took Discretionary Review and unanimously approved the Project with three minor conditions, including eliminating some of the property line windows, providing a notch on one of the rear corners of the building, and reducing the size of the roof deck.

The appellant fails to show that the categorical exemption is not supported by substantial evidence or that any exceptions to the exemption apply here. The appellant’s claims that the Project may result in significant aesthetic or geotechnical impacts are baseless. The Project has incorporated the recommendations of the geotechnical report and will comply with the Slope and Seismic Hazard Zone Protection Act during Shoring & Structural addenda review as required under the Code. In addition, the Project is compatible with the existing development pattern in the area and will also not result in significant aesthetic impacts. Therefore, the appeal is without merit and should be dismissed.

A. Standard of Review

Under San Francisco Administrative Code Section 31.16, the Board of Supervisors is required to affirm the exemption determination if it finds that the project conforms to the requirements for exemptions set forth under CEQA.

CEQA designates certain classes of projects as “categorically exempt.”¹ The lead agency’s determination that a project is categorical exempt is subject to the substantial evidence test.² Because CEQA does not require public agencies to follow any specific procedure for the exemption determination, an agency is not limited to asserting only those exemptions that were asserted in the administrative record before the reviewing body.³

If a project fits within one or more of the categorical exemptions listed in the CEQA Guidelines, the lead agency does not need to conduct environmental review unless the project fits within one of the delineated exceptions. Such limited circumstances include the following: (1) there is a reasonable possibility of a significant effect on the environment due to unusual circumstances; (2) significant cumulative impacts from projects of the same type will result; or (3) the project will have impacts on a uniquely sensitive environment.⁴ When an agency finds that a proposed project is subject to a categorical exemption, it is not required to determine that none of the exceptions applies. Instead, the burden of proof shifts to the appellant to produce evidence that one of the exceptions to the categorical exemption applies.⁵

The Project was issued a Class 1 and Class 3 exemption. A Class 1 exemption applies to the “[d]emolition and removal of individual small structures” including “up to three single-family residences” in urbanized areas.⁶ A Class 3 exemption applies to the new construction of “one single-family residence...in a residential zone” or in urbanized areas “up to three single-family residences.”⁷ The new construction of the 3-story single-family home at issue here clearly fits within the class of activities subject to a Class 3 exemption. It is well-established that an agency may combine several exemptions to find a project exempt.⁸

Appellant makes no attempt to argue an exception to the exemption applies. Rather, appellant argues the Project will cause a significant impact based on its noncompliance with the Slope and Seismic Hazard Zone Protection Act and based on its aesthetics.

Reversal of the Planning Department’s determination is only appropriate if substantial evidence fails to support such determination.⁹ Substantial evidence is defined as “enough relevant information and reasonable inferences from this information that a fair argument can be made to

¹ Pub. Resources Code § 21084(a), 21080(b)(9); 14 Cal. Code Regs. § 15300, et seq. (CEQA Guidelines).

² *Save the Plastic Bag Coalition v. County of Marin* (2013) 218 Cal.App.4th 209, 219-220.

³ See, e.g., *California Farm Bureau Fed’n v. California Wildlife Conserv. Bd.* (2006) 143 Cal.App.4th 173, 190.

⁴ CEQA Guidelines § 15300.2.

⁵ *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1105 (“*Berkeley Hillside*”).

⁶ CEQA Guidelines § 15301(l).

⁷ CEQA Guidelines § 15303(a).

⁸ See, e.g., *Surfrider Foundation v. California Coastal Commission* (1994) 26 Cal.App.4th 151.

⁹ *Berkeley Hillside*, *supra*, 60 Cal.4th at p. 1114-1116.

support a conclusion, even though other conclusions might also be reached.”¹⁰ In applying the deferential substantial evidence standard, any reasonable doubts must be resolved in the lead agency’s favor.¹¹

B. CEQA Issues Raised

1. The Project Will Not Result in Significant Seismic or Geotechnical Impacts

The appellant argues that the City is unable to assess the Project’s potential seismic and slope impacts because the Project did not comply with the Slope and Seismic Hazard Zone Protection Act (“SSPA”). In fact, a geotechnical report was prepared that specifically addresses the potential applicability of the SSPA, notes that during the site visit no evidence of active slope instability was observed, and provides recommendations that have been incorporated into the Project. As required, the Project will comply with the SSPA during the Department of Building Inspection’s review of the Shoring & Structural addenda and will undergo additional review by the Structural Advisory Committee. All seismic and geotechnical concerns will be resolved as part of this process. This is standard practice for applying the SSPA and because the SSPA is a legal obligation no mitigation measure is necessary to apply it to the Project.

2. The Project Will Not Result in Significant Impacts to Aesthetic Resources

Appellant argues that the Project conflicts with a number of Residential Design Guidelines and therefore results in significant aesthetic impacts. However, due to an amendment to CEQA enacted in 2013, **aesthetic impacts are not considered significant under CEQA for residential projects on infill sites within transit priority areas**.¹² As a residential in-fill Project within one-half mile of multiple major bus stops, the Project is exempt from review of aesthetic impacts.

Even if aesthetic impacts were evaluated for significance, the appellant has not met their burden of showing that the Project involves unusual circumstances and that an exception to the exemption applies here. As discussed in detail below, the proposed 5,454 square foot home is similar in both square footage and FAR to other homes in the area. In a case involving a much larger 6,478 square foot single-family home with an attached 3,394 square foot 10-car garage, the First District Court of Appeal found that the project did not present unusual circumstances sufficient to overturn the use of a Class 3 exemption.¹³ The same is true here.

Contrary to the appellant’s claims, the Project is consistent with the RDG, as determined by Planning staff. The RDG set forth general guidelines to “[d]esign the scale of the building to be compatible with the height and depth of surrounding buildings.”¹⁴ The Project team incorporated recommendations from RDAT to make the Project compatible with the

¹⁰ CEQA Guidelines § 15384(a).

¹¹ *Berkeley Hillside*, *supra*, 60 Cal.4th at p. 1114-1115.

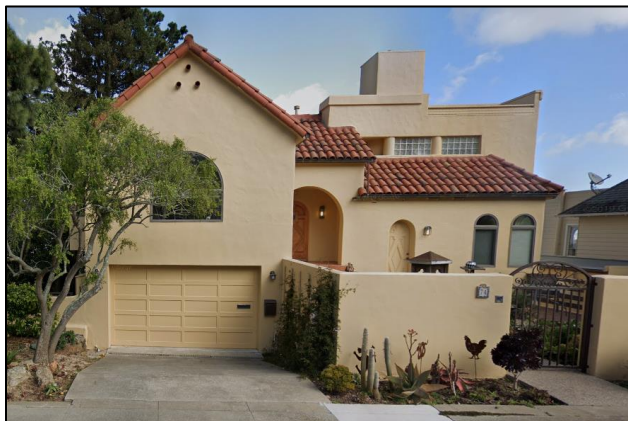
¹² CEQA Guidelines § 21099(d)(1).

¹³ *Berkeley Hillside Preservation v. City of Berkeley* (2015) 241 Cal.App.4th 943, 956-957.

¹⁴ Residential Design Guidelines, p. 32.

neighborhood. These design features include varying the front facade, lowering the height, adding window configurations that break the line of sight with the adjacent neighbors, creating cutouts in the rear corners of the building, and increasing side setbacks.

Appellant’s claim that the massing and height of the building are out of character with the neighborhood are unfounded. Like the proposed Project, most properties on the downslope portion of the street are three stories and present as two stories at street level. In fact, the property next door at 74 Mountain Spring Avenue is very similar in terms of massing at the street level. Both have a one-story over garage massing at the front-most portion of the property with the main entrance set back and a portion of the upper floor further stepped back. This implements recommendations in the RDG and from RDAT to reduce massing through façade articulation and setbacks at upper floors and is compatible with the neighborhood character regardless of square footage.



74 Mountain Spring Avenue



Proposed Project at 66 Mountain Spring Avenue

Even so, the square footage of the proposed Project is consistent with new development in the area despite the appellant’s claims to the contrary. The chart below shows the projects in the area that are over 5,000 square feet. It is clear that the Project is similar to other existing buildings in the area both in terms of square footage and FAR. Nothing about the height or massing of the Project presents unusual circumstances, and the appellant has not met their burden of proving that the Project *will* have a significant environmental effect.

SIMILAR PROJECTS IN THE NEIGHBORHOOD¹⁵ (in ascending order)			
Address	Building Area (sf)	Lot Area (sf)	FAR (rounded)
100 Palo Alto Ave	5,177	5,000	1.0
53 Saint Germain Ave	5,248	4,000	1.3
3 Clarendon Ave	5,400	4,459	1.2
66 Mountain Spring	5,454	5,000	1.1
140 Saint Germain Ave	5,701	5,000	1.1
75 Mountain Spring	5,732	9,997	0.6
33 Mountain Spring	5,928	13,194	0.4

¹⁵ All information in this table is from the Multiple Listing Service.

170 Saint Germain Ave	6,500	4,996	1.3
65 Saint Germain Ave	6,897	8,786	0.8
401 Twin Peaks Blvd	7,056	6,442	1.1
150 Glenbrook Ave	7,346	5,271	1.4
37 Saint Germain Ave	7,557	4,000	1.9
50 Saint Germain Ave	7,616	5,000	1.5

B. Conclusion

Requiring further environmental review to be conducted for the Project is unnecessary and unsupported by law. The appellant has not provided evidence that any of the exceptions to the exemption apply here and has not met the standard necessary to overturn the City's decision to issue a categorical exemption for the Project. Therefore, we respectfully request that you deny the appeal.

Very truly yours,

REUBEN, JUNIUS & ROSE, LLP



John Kevlin

cc: Supervisor Sandra Lee Fewer
Supervisor Catherine Stefani
Supervisor Aaron Peskin
Supervisor Gordon Mar
Supervisor Dean Preston
Supervisor Matt Haney
Supervisor Rafael Mandelman
Supervisor Hillary Ronen
Supervisor Shamann Walton
Supervisor Ahsha Safai
Angela Calvillo, Clerk of the Board
Michelle Taylor, Environmental Planner
Lisa Gibson, Environmental Review Officer

From: [BOS Legislation. \(BOS\)](#)
To: gloria@gsmithlaw.com; [John Kevlin](#)
Cc: [PEARSON, ANNE \(CAT\)](#); [STACY, KATE \(CAT\)](#); [JENSEN, KRISTEN \(CAT\)](#); [Teague, Corey \(CPC\)](#); [Sanchez, Scott \(CPC\)](#); [Gibson, Lisa \(CPC\)](#); [Jain, Devyani \(CPC\)](#); [Navarrete, Joy \(CPC\)](#); [Lewis, Don \(CPC\)](#); [Varat, Adam \(CPC\)](#); [Sider, Dan \(CPC\)](#); [Starr, Aaron \(CPC\)](#); [Rodgers, AnMarie \(CPC\)](#); [Ionin, Jonas \(CPC\)](#); [Range, Jessica \(CPC\)](#); [Bihl, Lauren \(CPC\)](#); [Rosenberg, Julie \(BOA\)](#); [Sullivan, Katy \(BOA\)](#); [Longaway, Alec \(BOA\)](#); [BOS-Supervisors](#); [BOS-Legislative Aides](#); [Calvillo, Angela \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [BOS Legislation. \(BOS\)](#)
Subject: HEARING NOTICE: Appeal of CEQA Exemption Determination - Proposed Project - 66 Mountain Spring Avenue - Appeal Hearing August 25, 2020
Date: Tuesday, August 11, 2020 9:02:20 AM
Attachments: [image001.png](#)

Hello,

The Office of the Clerk of the Board has scheduled a hearing for Special Order before the Board of Supervisors on **August 25, 2020, at 3:00 p.m.**, to hear an appeal of a Categorical Exemption Determination under the California Environmental Quality Act, for the proposed project at 66 Mountain Spring Avenue.

Please find the following link to the hearing notice for the matter.

[Public Hearing Notice - August 11, 2020](#)

I invite you to review the entire matter on our [Legislative Research Center](#) by following the links below:

[Board of Supervisors File No. 200754](#)

Regards,

Lisa Lew
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
T 415-554-7718 | F 415-554-5163
lisa.lew@sfgov.org | www.sfbos.org

(VIRTUAL APPOINTMENTS) To schedule a “virtual” meeting with me (on Microsoft Teams), please ask and I can answer your questions in real time.

Due to the current COVID-19 health emergency and the Shelter in Place Order, the Office of the Clerk of the Board is working remotely while providing complete access to the legislative process and our services.



Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form

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BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

NOTICE OF PUBLIC HEARING

BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO
Sent via Email and/or U.S. Postal Service

NOTICE IS HEREBY GIVEN THAT the Board of Supervisors of the City and County of San Francisco will hold a remote public hearing to consider the following appeal and said public hearing will be held as follows, at which time all interested parties may attend and be heard:

Date: Tuesday, August 25, 2020

Time: 3:00 p.m.

Location: REMOTE MEETING VIA VIDEOCONFERENCE

Watch: www.sfgovtv.org

SF Cable Channel 26 once the meeting starts, the telephone number and Meeting ID will be displayed on the screen.

Public Comment Call-In: <https://sfbos.org/remote-meeting-call>

Subject: **File No. 200754.** Hearing of persons interested in or objecting to the determination of exemption from environmental review under the California Environmental Quality Act issued as a Categorical Exemption by the Planning Department on February 12, 2019, for the proposed project at 66 Mountain Spring Avenue, Assessor's Parcel Block No. 2706, Lot No. 025; to demolish an existing two-story, one-family house and construct a new three-story single-family house within the RH-1(D) (Residential House, One-Family-Detached) Zoning District and a 40-X Height and Bulk District. (District 7) (Appellants: Gloria Smith of Law Offices of Gloria D. Smith, on behalf of Margaret Niver, Ronald Niver, and Rosemarie MacGuiness) (Filed March 23, 2020)

On March 17, 2020, the Board of Supervisors authorized their Board and Committee meetings to convene remotely and allow for remote public comment due to the Coronavirus - 19 pandemic. Therefore, Board of Supervisors meetings that are held through videoconferencing will allow remote public comment. Visit the SFGovTV website (www.sfgovtv.org) to stream the live meetings or watch them on demand.

PUBLIC COMMENT CALL-IN

WATCH: SF Cable Channel 26, once the meeting starts, and the telephone number and Meeting ID will be displayed on the screen; or

VISIT: <https://sfbos.org/remote-meeting-call>

Please visit the Board's website (<https://sfbos.org/city-board-response-covid-19>) regularly to be updated on the City's response to COVID-19 and how the legislative process may be impacted.

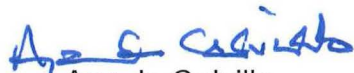
In accordance with Administrative Code, Section 67.7-1, persons who are unable to attend the hearing on this matter may submit written comments prior to the time the hearing begins. These comments will be made as part of the official public record in this matter and shall be brought to the attention of the Board of Supervisors. Written comments should be addressed to Angela Calvillo, Clerk of the Board, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA, 94102 or sent via email (board.of.supervisors@sfgov.org). Information relating to this matter is available in the Office of the Clerk of the Board or the Board of Supervisors' Legislative Research Center (<https://sfbos.org/legislative-research-center-lrc>). Agenda information relating to this matter will be available for public review on Friday, August 21, 2020.

For any questions about this hearing, please contact one of the Legislative Clerks:

Lisa Lew (lisa.lew@sfgov.org ~ (415) 554-7718)

Jocelyn Wong (jocelyn.wong@sfgov.org ~ (415) 554-7702)

Please Note: *The Department is open for business, but employees are working from home. Please allow 48 hours for us to return your call or email.*



Angela Calvillo
Clerk of the Board of Supervisors
City and County of San Francisco

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

PROOF OF MAILING

Legislative File No. 200754

Description of Items: Hearing - Appeal of Determination of Exemption From Environmental Review - 66 Mountain Spring Avenue - 9 Notices Mailed.

I, John Bullock, an employee of the City and County of San Francisco, mailed the above described document(s) by depositing the sealed items with the United States Postal Service (USPS) with the postage fully prepaid as follows:

Date: August 11, 2020

Time: 0945

USPS Location: Repro Pick-up Box in Building Management's Office (Rm 8)

Mailbox/Mailslot Pick-Up Times (if applicable): N/A

Signature: 

Instructions: Upon completion, original must be filed in the above referenced file.

9 MAILINGS

From: [BOS Legislation. \(BOS\)](#)
To: gloria@gsmithlaw.com
Cc: [PEARSON, ANNE \(CAT\)](#); [STACY, KATE \(CAT\)](#); [JENSEN, KRISTEN \(CAT\)](#); [Teague, Corey \(CPC\)](#); [Sanchez, Scott \(CPC\)](#); [Gibson, Lisa \(CPC\)](#); [Jain, Devyani \(CPC\)](#); [Navarrete, Joy \(CPC\)](#); [Lewis, Don \(CPC\)](#); [Varat, Adam \(CPC\)](#); [Sider, Dan \(CPC\)](#); [Starr, Aaron \(CPC\)](#); [Rodgers, AnMarie \(CPC\)](#); [Ionin, Jonas \(CPC\)](#); [Range, Jessica \(CPC\)](#); [Bihl, Lauren \(CPC\)](#); [Rosenberg, Julie \(BOA\)](#); [Sullivan, Katy \(BOA\)](#); [Longaway, Alec \(BOA\)](#); [BOS-Supervisors](#); [BOS-Legislative Aides](#); [Calvillo, Angela \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [BOS Legislation. \(BOS\)](#)
Subject: Appeal of CEQA Exemption Determination - Proposed Project - 66 Mountain Spring Avenue - Appeal Hearing August 25, 2020
Date: Monday, August 3, 2020 8:42:48 AM
Attachments: [image001.png](#)

Greetings,

The Office of the Clerk of the Board has scheduled a remote hearing for Special Order before the Board of Supervisors on **Tuesday, August 25, 2020, at 3:00 p.m.**, to hear the appeal of the CEQA Exemption Determination for the proposed 66 Mountain Spring Avenue project.

Please find linked below the letter of appeal filed against the proposed 66 Mountain Spring Avenue project, as well as a direct link to the Planning Department's Timeliness for appeal, and an information letter from the Clerk of the Board.

[CEQA Appeal Letter - March 23, 2020](#)

[Planning Department Memo - July 13, 2020](#)

[Clerk of the Board Letter - July 31, 2020](#)

I invite you to review the entire matter on our [Legislative Research Center](#) by following the links below:

[Board of Supervisors File No. 200754](#)

Best regards,

Jocelyn Wong

San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
T: 415.554.7702 | F: 415.554.5163
jocelyn.wong@sfgov.org | www.sfbos.org

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BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
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July 31, 2020

Gloria Smith
The Law Offices of Gloria D. Smith
48 Rosemont Place
San Francisco, CA 94103

**Subject: File No. 200754 - Appeal of CEQA Categorical Exemption
Determination - Proposed Project at 66 Mountain Spring Avenue**

Dear Ms. Smith:

As you know, in response to the challenges posed during this health emergency, we have been working diligently the last several months to stabilize the remote meeting system and establish processes to execute efficient, complex hearings at the Board of Supervisors. Now that we have reached confidence in the remote meeting system, we are resuming scheduling of the appeal queue. In order to alleviate deadline concerns due to the sizable queue, Mayor London N. Breed issued the Twenty-Second Supplement to the Declaration of the Emergency that provides the Board until September 30, 2020, to schedule all of the initial hearings for pending appeals.

The Office of the Clerk of the Board was in receipt of a memorandum dated July 13, 2020, from the Planning Department regarding their determination on the timely filing for appeal of the Categorical Exemption Determination issued by the Planning Department under CEQA for the proposed project at 66 Mountain Spring Avenue.

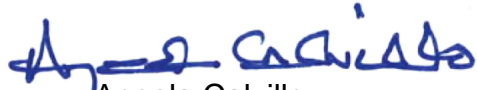
The Planning Department has determined that the appeal was filed in a timely manner (copy attached).

Pursuant to Administrative Code, Section 31.16, a remote hearing date has been scheduled for **Tuesday, August 25, 2020, at 3:00 p.m.**, at the Board of Supervisors meeting.

Please provide to the Clerk's Office by noon on Friday, August 7, 2020, names and addresses of interested parties to be notified of the hearing, in spreadsheet format. If there is supporting documentation you wish to be include for the hearing, please email an electronic copy by Thursday, August 20, 2020, at noon to bos.legislation@sfgov.org. Any materials received after this date, will still be distributed to all parties and be included as part of the official file.

If you have any questions, please feel free to contact Legislative Clerks Lisa Lew at (415) 554-7718, Jocelyn Wong at (415) 554-7702, or Brent Jalipa at (415) 554-7712.

Very truly yours,



Angela Calvillo
Clerk of the Board of Supervisors
City and County of San Francisco

- c: Anne Pearson, Deputy City Attorney
Kate Stacy, Deputy City Attorney
Kristen Jensen, Deputy City Attorney
Corey Teague, Zoning Administrator, Planning Department
Scott Sanchez, Acting Deputy Zoning Administrator, Planning Department
Lisa Gibson, Environmental Review Officer, Planning Department
Devyani Jain, Deputy Environmental Review Officer, Planning Department
Joy Navarette, Environmental Planning, Planning Department
Don Lewis, Environmental Planning, Planning Department
Adam Varat, Acting Director of Citywide Planning, Planning Department
Dan Sider, Director of Executive Programs, Planning Department
Aaron Starr, Manager of Legislative Affairs, Planning Department
AnMarie Rodgers, Legislative Affairs, Planning Department
Jonas Ionin, Planning Commission Secretary, Planning Department
Jessica Range, Staff Contact, Planning Department
Julie Rosenberg, Executive Director, Board of Appeals
Katy Sullivan, Legal Assistant, Board of Appeals
Alec Longaway, Legal Process Clerk, Board of Appeals



Categorical Exemption Appeal Timeliness Determination

DATE: July 13, 2020
TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Devyani Jain, Acting Environmental Review Officer
RE: Appeal Timeliness Determination – 66 Mountain Spring Avenue Categorical Exemption; Planning Department Case No. 2018-007763ENV

On March 23, 2020, Gloria Smith, on behalf of Ms. Margaret Niver, Mr. Ronald Niver and Rosemarie MacGuinness (Appellants) filed an appeal with the Office of the Clerk of the Board of Supervisors of the Categorical Exemption for the proposed project at 66 Mountain Spring Avenue. As explained below, the appeal is timely.

Date of Approval Action	30 Days after Approval Action	Appeal Deadline (Must Be Day Clerk of Board’s Office Is Open for Remote Business)	Date of Appeal Filing	Timely?
Thursday, February 20, 2020	Saturday, March 21, 2020	Monday, March 23, 2020	Monday, March 23, 2020	Yes

Approval Action: On February 12, 2019, the Planning Department issued a Categorical Exemption for the proposed project. The Approval Action for the project was approval of the building permit by the Planning Commission through the discretionary review process. On February 20, 2020, the Planning Commission approved the building permit.

Appeal Deadline: Sections 31.16(a) and (e) of the San Francisco Administrative Code state that any person or entity may appeal an exemption determination to the Board of Supervisors during the time period beginning with the date of the exemption determination and ending 30 days after the Date of the Approval Action. The 30th day after the Date of the Approval Action was Saturday, March 21, 2020. The next day when the Office of the Clerk of the Board of Supervisors was open was Monday, March 23, 2020 (Appeal Deadline).

Appeal Filing and Timeliness: The Appellant filed the appeal of the exemption determination on Monday, March 23, 2020, prior to the end of the Appeal Deadline. Therefore, the appeal is timely.

From: [BOS Legislation, \(BOS\)](#)
To: [Hillis, Rich \(CPC\)](#)
Cc: [PEARSON, ANNE \(CAT\)](#); [STACY, KATE \(CAT\)](#); [JENSEN, KRISTEN \(CAT\)](#); [Teague, Corey \(CPC\)](#); [Sanchez, Scott \(CPC\)](#); [Gibson, Lisa \(CPC\)](#); [Jain, Devyani \(CPC\)](#); [Navarrete, Joy \(CPC\)](#); [Lewis, Don \(CPC\)](#); [Varat, Adam \(CPC\)](#); [Sider, Dan \(CPC\)](#); [Starr, Aaron \(CPC\)](#); [Rodgers, AnMarie \(CPC\)](#); [Ionin, Jonas \(CPC\)](#); [Range, Jessica \(CPC\)](#); [Rosenberg, Julie \(BOA\)](#); [Sullivan, Katy \(BOA\)](#); [Longaway, Alec \(BOA\)](#); [Calvillo, Angela \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [BOS Legislation, \(BOS\)](#); [BOS-Supervisors](#); [BOS-Legislative Aides](#)
Subject: Appeal of CEQA Exemption Determination - Proposed Project - 66 Mountain Spring Avenue
Date: Friday, July 10, 2020 7:24:15 PM
Attachments: [COB Ltr 071020.pdf](#)
[Appeal Ltr 032320.pdf](#)

Good afternoon Director Hillis,

The Office of the Clerk of the Board is in receipt of an appeal of the CEQA Categorical Exemption for the proposed project at 66 Mountain Spring Avenue. The appeal was filed by Gloria Smith on behalf of Margaret Niver, Ronald Niver, and Rosemarie MacGuinness.

Please find the attached letter of appeal and timely filing determination request letter from the Clerk of the Board. Kindly review for timely filing determination. It would be greatly appreciated if we could receive the determination as soon as possible. If the appeal is timely, we are looking to send out public hearing notices by July 14, 2020. Thank you.

Regards,

Brent Jalipa

Board of Supervisors - Clerk's Office
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
(415) 554-7712 | Fax: (415) 554-5163
brent.jalipa@sfgov.org | www.sfbos.org

(VIRTUAL APPOINTMENTS) To schedule a “virtual” meeting with me (on Microsoft Teams), please ask and I can answer your questions in real time.

Due to the current COVID-19 health emergency and the Shelter in Place Order, the Office of the Clerk of the Board is working remotely while providing complete access to the legislative process and our services.


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July 10, 2020

To: Rich Hillis
Planning Director

From:  Angela Calvillo
Clerk of the Board of Supervisors

Subject: Appeal of California Environmental Quality Act (CEQA) Determination of Exemption from Environmental Review - 66 Mountain Spring Avenue

An appeal of the CEQA Determination of Exemption from Environmental Review for the proposed project at 66 Mountain Spring Avenue was filed with the Office of the Clerk of the Board on March 23, 2020, by Gloria Smith on behalf of Margaret Niver, Ronald Niver, and Rosemarie MacGuinness.

Pursuant to Administrative Code, Chapter 31.16, I am forwarding this appeal, with attached documents, to the Planning Department to determine if the appeal has been filed in a timely manner.

If you have any questions, please feel free to contact Legislative Clerks Lisa Lew at (415) 554-7718, Jocelyn Wong at (415) 554-7702 or Brent Jalipa at (415) 554-7712.

c: Anne Pearson, Deputy City Attorney
Kate Stacy, Deputy City Attorney
Kristen Jensen, Deputy City Attorney
Corey Teague, Zoning Administrator, Planning Department
Scott Sanchez, Acting Deputy Zoning Administrator, Planning Department
Lisa Gibson, Environmental Review Officer, Planning Department
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Aaron Starr, Manager of Legislative Affairs, Planning Department
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Jonas Ionin, Planning Commission Secretary, Planning Department
Jessica Range, Staff Contact, Planning Department
Julie Rosenberg, Executive Director, Board of Appeals
Katy Sullivan, Legal Assistant, Board of Appeals
Alec Longaway, Legal Process Clerk, Board of Appeals

From: [BOS Legislation. \(BOS\)](#)
To: gloria@gsmithlaw.com
Cc: [Calvillo, Angela \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [BOS Legislation. \(BOS\)](#)
Subject: CLERK'S CORRESPONDENCE TO APPELLANTS AND PROJECT SPONSORS: Appeal of CEQA Exemption Determination - Proposed Project - 66 Mountain Spring Avenue
Date: Friday, July 31, 2020 3:48:05 PM
Attachments: [COB Memo 073020.pdf](#)
[image001.png](#)

Greetings,

Please find attached correspondence from the Clerk of the Board regarding pending appeals, which is being sent to all appellants, project sponsors, and interested parties.

If you have any questions or concerns in the meantime, please reach out and our team will be diligently reviewing and addressing all issues as timely as possible. We thank you for your patience during this time.

Best regards,

Jocelyn Wong

San Francisco Board of Supervisors

1 Dr. Carlton B. Goodlett Place, Room 244

San Francisco, CA 94102

T: 415.554.7702 | F: 415.554.5163

jocelyn.wong@sfgov.org | www.sfbos.org

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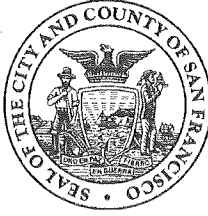


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July 30, 2020

Dear Appellant/Project Sponsor or interested party,

I am pleased to announce that we have addressed the technical challenges and enhanced our online platforms to an acceptable standard that will allow us to conduct fair and accessible remote hearings and address the queue of filed appeals received since the beginning of the COVID-19 health emergency. As you can imagine, the queue is considerable, so we appreciate your patience as we address these matters as expeditiously as possible.

In order to provide the Board of Supervisors with sufficient time to address the queue of appeals, Mayor London N. Breed issued the Twenty-Second Supplement to the Proclamation Declaring the Existence of a Local Emergency on July 15, 2020, which suspended the various code authorities for all appeals filed after March 11, 2020, and provides the Board until September 30, 2020, to schedule all of the initial hearings.

My staff are working closely with the Planning Department and other City departments to expedite the receipt of timeliness determinations for the appeals that are awaiting a determination. As we receive those determinations, staff will be notifying you that your appeal is ready to move forward and will provide you with the anticipated hearing date. After receiving that notification, you will also be receiving a formal hearing notice by the required deadline, depending on the type of appeal you filed.

If you have any questions or concerns in the meantime, please don't hesitate to reach out to one of our Legislative Clerks below:

Lisa Lew (lisa.lew@sfgov.org ~ (415) 554-7718)
Jocelyn Wong (jocelyn.wong@sfgov.org ~ (415) 554-7702)

Again, we want to thank you for your patience and apologize for the inconvenience and significant disruption to beginning your appeal process.

Thank you,

A handwritten signature in black ink, appearing to read "Angela Calvillo".

Angela Calvillo
Clerk of the Board of Supervisors
City and County of San Francisco

Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor inquiries"
- 5. City Attorney Request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Subject:

The text is listed:

Signature of Sponsoring Supervisor: