

From: [Gloria D Smith](#)
To: [John Kevlin](#); [BOS Legislation, \(BOS\)](#)
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 \(BOS\)](#); [Meg Niver](#); [Low, Jen \(BOS\)](#)
Subject: Re: Appellants' Request for Hearing Continuance for Proposed Project - 66 Mountain Spring Avenue - Appeal Hearing August 25, 2020
Date: Friday, August 21, 2020 11:47:49 AM
Attachments: [66 Mountain Spring Ave Request for hearing continuance.pdf](#)
[8 7 20 email from J. Horn re revised plans \(2\).pdf](#)
[image001.png](#)

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Board of Supervisors:

Please find attached Appellants' request for a continuance in the matter of the CEQA determination for 66 Mountain Spring Avenue. Please contact me if you have any questions or need additional information. Thank you for your attention to this matter.

The Law Offices of Gloria D. Smith
(415) 308-9124



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On Tuesday, August 11, 2020, 09:01:37 AM PDT, BOS Legislation, (BOS) <bos.legislation@sfgov.org> wrote:

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

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.*

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

August 21, 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: Request for Continuance of Hearing on 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, my office on behalf of Ms. Margaret Niver, Mr. Ronald Niver ("Nivers") and Rosemarie MacGuinness (collectively "Appellants"), respectfully requests a continuance of the hearing on their appeal of the San Francisco Planning Department's issuance of a categorical exemption from the California Environmental Quality Act ("CEQA") for the above referenced matter.

As more fully explained below, the City has put Appellants in an unfair and untenable position by fast tracking a CEQA exemption appeal for a project that continues to expand and change in ways contrary to the Planning Commission's direction. The developer has refused to make the changes ordered by the Planning Commission at the February 20 hearing on the Discretionary Review requests filed by Appellants and four other neighbors, and the Planning Department has rejected the developer's revised plans. Indeed, should the developer continue to

insist on again increasing the floorplan of this massive project, it may be necessary to re-commence the section 311 notice procedures and start all over again.

I. Re-cap of Project Status

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 asserted the approval action was the Planning Commission's February 20, 2020 vote to grant discretionary review based on extraordinary circumstances *and* approve the project. In my experience, the Commission does only one of these things following a hearing, not both. Typically, if the Commission grants discretionary review, the project returns to the Commission for further public review after the Commission's ordered changes have been made. Such a process protects against exactly what happened here: The Commission ordered the developer to make changes, which he has refused to make and instead has attempted to expand the project beyond what the Commission approved, with no notice to appellants or the public.

As described in our March 23rd appeal, the discretionary review process itself was highly flawed and prejudicial against members of the public directly impacted by the proposed project. At the February 20 Planning Commission hearing, the developer's team initially defended the full proposal to the Commission, but then mid-hearing, pivoted, and offered the Commission a set of minor cosmetic changes. The DR requesters were blindsided by the developer's last-minute offers and were not given a reasonable opportunity to consider them. Importantly, these changes did not address the DR requesters principle concerns about the project: safety and code compliance. The developer made no attempt to achieve a mutually acceptable solution with the community.

The DR requesters 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, *and* approved the project with the developer's new modifications:

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.

Appellants made clear to the Commission that the last minute, unreviewed changes did nothing to satisfy their concerns about the project's impacts. The Commission ignored their concerns.

II. Grounds for Continuance of CEQA Hearing

In their appeal, Appellants pointed out that the project could not be exempted from CEQA until the City:

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

A. Requiring a CEQA Appeal Prior to a Final Project Prejudices Appellants

As of this writing, neither Appellants nor the Planning Department know what the actual scope of the final project will be. This is because the developer continues to increase the project's size. Despite clear direction from the Planning Commission in February enumerating three changes to which the developer agreed at the hearing, none of which would have made the house larger, the developer submitted revised plans to the Planning Department that did not make the required changes. Instead, recent correspondence between the Planning Department and the developer reveal that the developer's project has increased in square-footage on both the first and second floors, expanding the project from 5,859 to 6,022 for one single-family residence (See attached August 7, 2020 email from Senior Planner Jeff Horn to the developer)

This means the developer is proposing a larger project absent an opportunity for impacted neighbors to voice their concerns. Nor has the developer shown any willingness to comply with the Planning Commission's three directives, again, based on changes offered by the developer himself. But the City's process has cut the public out of that aspect as well. According to the

Planning Department, “the Approval Action for the project was approval of the building permit by the Planning Commission through the discretionary review process.” Perhaps under normal circumstances, this schedule makes sense. But here the Planning Department and developer are at an impasse; thus, project plans, say nothing to a building permit, do not appear forthcoming. The City should not insist that the CEQA appeal go forward prior to Planning Department’s approval of plans that comply with the Planning Commission’s order. Instead, the City should grant a continuance of the hearing on this appeal until 30 days after the Planning Department approves the developer’s revised plans.

As the appeal sets out, Appellants have particular concerns about the thoroughness of the developer’s geo-technical report (which is mostly boilerplate and not site specific) and project disclosures under the Slope and Seismic Hazard Zone Protection Act. In early March, Appellants engaged a highly-regarded geo-technical engineer who made a street level assessment of both Clarendon and Mountain Spring Avenues. The expert observed evidence of landslide potential, including recent debris falls between Mountain Spring and Clarendon Avenue. Specifically, the property at 71 Clarendon indicated signs of recent erosion and hillside instability. Appellants’ expert intended to return to make a more thorough written assessment based on gaining access to several Clarendon properties. However, those plans have been disrupted due to Covid-19 concerns. The expert is the sole caretaker of an at-risk spouse and the Clarendon residents have been supportive but likewise hesitant to conduct in-person slope and soil assessments during a global pandemic. Under these circumstances, it is wrong for the City to insist on conducting a CEQA hearing on an amorphous project, plans for which have not yet been approved by the Planning Department. These actions prejudice appellants.

B. Requiring a CEQA Appeal Prior to a Determination the Project Would Comply with the SSPA Prejudices Appellants

Equally prejudicial is the City’s policy to finalize CEQA exemptions *before* the Planning Department and Department of Building Inspection address critical safety issues for projects in identified landslide hazard zones. Failure to comply with an ordinance adopted to avoid or mitigate environmental impacts indicates a potentially significant impact on the environment under CEQA.¹ But the City’s SSPA process unfolds in secret and deliberately excludes

¹ *Pocket Protectors v. Sacramento* (2005) 124 Cal.App.4th 903.

concerned members of the public who may live adjacent to or directly below major construction projects that could pose safety and environmental risks. Under the City's review process only the developer, DBI and Planning are privy to such safety decisions, and neighbors are supposed to take it on faith that over-worked city planners and profit-oriented developers will be diligent and scrupulous in ensuring the SSPA is fully complied with. While the Planning Department acknowledged that the SSPA applies to this proposed project, it has not made the developer submit the SSPA checklist with his plans so that affected members of the public can review it. This is not a robust public process for an issue critical to this City; and it risks undermining residents' faith in local government.

Appellants had every intention of providing the Board with their own geo-technical assessment, but those plans were thwarted due to no fault of their own. Therefore, for the above-described reasons, Appellants respectfully request a continuance of the hearing on this appeal until 30 days after the Planning Department approves the developer's revised plans in compliance with the Planning Commission's February 20 order.

THE LAW OFFICES OF GLORIA D. SMITH

A handwritten signature in black ink, appearing to read "Gloria D. Smith". The signature is fluid and cursive, with the first name being the most prominent.

By: Gloria D. Smith

Fwd: 66 Mountain Spring Revised Plans

Horn, Jeffrey (CPC) <jeffrey.horn@sfgov.org>

Fri, Aug 7, 2020 at 2:45 PM

To: Mark Luellen <mark@3ssanfrancisco.com>

Cc: Dagmar Beyerlein <cyclogoat@gmail.com>, Dagmar Beyerlein <dagmarbeyerlein@gmail.com>, Meg Niver <meg.niver@gmail.com>

Hi Mark,

Below are my review comments just sent to the Sponsor of 66 Mountain Spring on the 3/13/2020 plans. Further below, are responses to Dagmar's comments and questions from 4/11, my responses are in **red**, and the Sponsor's comments (from 6/17) are in **blue**.

Thank you all for patience in this response. Per the City's first Shelter-in-Place Health Department Order, Planning Staff was to focus work on "essential" projects. Since this project does not add any new housing (and is only replacing an existing home) it did not qualify as an essential project. This project re-entered my queue for review in June (When the "Shelter-in Place" order was replaced with the current "Safer-at-Home" order), and I have (per the comments below) now today finalized my review.

Thank you!

Jeff Horn, Senior Planner**Southwest Team, Current Planning Division**

San Francisco Planning

PLEASE NOTE MY NEW ADDRESS AND PHONE NUMBER AS OF AUGUST 17:[49 South Van Ness Avenue, Suite 1400, San Francisco, CA 94103](#)Direct: 628.652.7633 | www.sfplanning.org

San Francisco Property Information Map

IN ORDER FOR US TO MOVE, OUR OFFICE WILL BE CLOSED WITH NO ACCESS TO PHONES OR E-MAIL ON THURSDAY, AUGUST 13 and FRIDAY, AUGUST 14. WE APPRECIATE YOUR PATIENCE.

Due to COVID-19, San Francisco Planning is not providing any in-person services, but we are operating remotely. Our staff are available by e-mail, and the Planning and Historic Preservation Commissions are convening remotely. The public is encouraged to participate. Find more information on our services [here](#).

I am working from home during this time and will be available through email.

From: Horn, Jeffrey (CPC)
Sent: Friday, August 07, 2020 2:33 PM
To: Winslow, David (CPC) <david.winslow@sfgov.org>; Amir Afifi <amir@siaconsult.com>
Cc: Reza Khoshnevisan <reza@siaconsult.com>; Brad Terrell <brad@siaconsult.com>; Leo Cassidy <leo@transatlanticinc.net>; Renee Lu <renee@siaconsult.com>; SIA Consulting <admin@siaconsult.com>
Subject: RE: 66 Mountain Spring Revised Plans

Hi Amir,

I have completed a review of your response to the neighbors' comments (6/17/2020) and a review of the 3/13/2020 revised plans (submitted in response to the DR Action Memo), this was a bit difficult as the changes (including expansions) were made at every floor, however, no bubbling or other notations were provided that called-out these changes. In total, the revised structure per the 3/13/2020 plans is 6,022 gross square feet (GSF), when the project was sent out for Section 311 notification and reviewed by the Planning Commission, the size was 5,869 (GSF).

On a floor-by-floor review, the changes made to the project are:

1. The 1st Floor increased from 1,720 GSF to 1,842 GSF. The additional square footage is the result of 1) extending an 18'-6" length of the western foundation wall outwards 3' to the west property line's required side setback, 2) extending a 12'-6" length of the eastern foundation wall a outwards 2'-5" to the east property line's required side setback, and 3) extending the front foundation wall forwards at varying lengths (9'-6" and 5') to a depth that is 20 feet setback from the front property line. In a review of the Site Survey and the existing grade line on the Section Drawing (Sheet A-4.1), the sidewall expansions are occurring above grade and would, therefore, be expansions of the area that was noticed to the neighborhood and presented to the Planning Commission. However, the area will behind a non-structural (skirt) wall that was shown on the elevations that were sent out for Section 311.

2. The 2nd Floor, including the garage, increased from 2,122 GSF to 2,218 GSF.

- a) At the northwest corner, the 5'-0" x 7'-4" slanted notch (with a flat roof below) was replaced with a 5'x 5' notch with a roof deck. This notch should be 8.5' in length to match the NE notch at the 3rd Floor when the building is viewed from the rear (i.e.. symmetrical) per the DR Action Memo (DRAM), therefore the setback dimensions should be 5' along the west side wall (as proposed during 311), and 8.5' along the north (rear) wall. There should be no roof deck at this notch at the NW corner, as it could create a new privacy concern that the neighbors have not been allowed to review or comment on, maintain the unoccupied flat roof per the original proposal.

- b) At the southwest corner, the 7'-0" x 23' (approximately) setback/notch was filled-in except for a 5'x5' notch, this appears to be a misinterpretation of Condition #2 of the DRAM, "Provide a notch at the northwest rear corner at the upper two floors to match the notch at the northeast corner."

The Commission did not discuss this area being modified or the setbacks being reduced (Commissioner Moore's

comments on symmetry were related to the new notches provided at the NW corner, not altering the existing notches on the northeast). Maintain the design as proposed during the Section 311 notification.

3. The 3rd Floor decreased from 2,027 GSF to 1,962 GSF.

a) At the northwest corner, the 5'-0" x 7'-4" slanted notch (with a flat roof) was replaced with a 5' x 5'. Please provide a 5' x 8.5' notch, similar to the discussion of the 2nd floor above.

b) At the southwest corner, the 4'-0" x 8'-6" setback/notch was replaced with a 5'x5' notch, this appears to be a misinterpretation of Condition #2 of the DR Action Memo, "Provide a notch at the northwest rear corner at the upper two floors to match the notch at the northeast corner." The Commission did not discuss this area being modified or the setbacks being reduced (Commissioner Moore's comments on symmetry were related to the new notches provided at the NW corner, not altering the existing on the northeast). Maintain the design as proposed during the Section 311 notification.

4. The roof deck was set back 10' from the 3rd floor's front wall on the 311 plan set, the Commission condition an additional 5 feet be added to the front, for a total of 15 feet. The 3/13/2020 plans reduced the setback to 8'-2"? Increase this setback to 15'.

5. All property line windows on the west sidewall needs to be removed per Condition #1 of the DR Action Memo.

In total, the revised plans you submit should conform to the plans reviewed by the Planning Commission, (dated February 6, 2020) with the following changes 1) All property line windows at the 2nd and 3rd Floors of the west wall should be removed, if a bedroom is sought, an alternative design approach would be needed, 2) At NW corner of 2nd and 3rd Floors, the notch is increased/modified to 5'x8.5', and 3) The roof deck should be setback an additional 5' from the front. Please see my additional comments in **red** below.

Thank you.

Jeff Horn, Senior Planner

Southwest Team, Current Planning Division

San Francisco Planning Department

1650 Mission Street, Suite 400, San Francisco, CA 94103

Direct: 415-575-6925 | **Email:** jeffrey.horn@sfgov.org

www.sfplanning.org | [San Francisco Property Information Map](#)

The Planning Department is open for business during the Stay Safe at Home Order. Most of our staff are working from home and we're available by e-mail. Our [Public Portal](#), where you can file new applications, and our [Property Information Map](#) are available 24/7. The Planning and Historic Preservation Commissions are convening remotely and the public is encouraged to participate. The Board of Appeals, Board of

Supervisors, and Planning Commission are accepting appeals via e-mail despite office closures. All of our in-person services at 1650 and 1660 Mission Street are suspended until further notice. [Click here for more information.](#)

I am working from home during this time and will be available through email.

From: Amir Afifi <amir@siaconsult.com>
Sent: Wednesday, June 17, 2020 12:05 PM
To: Horn, Jeffrey (CPC) <jeffrey.horn@sfgov.org>; Leo Cassidy <leo@transatlanticinc.net>; Winslow, David (CPC) <david.winslow@sfgov.org>
Cc: Reza Khoshnevisan <reza@siaconsult.com>; Brad Terrell <brad@siaconsult.com>; Renee Lu <renee@siaconsult.com>; SIA Consulting <admin@siaconsult.com>
Subject: Re: 66 Mountain Spring Revised Plans

Hi Jeff,

Thank you for sharing our neighbor's comments with me.

Below, please find our response (and also question for you and David Winslow) to some of the issues raised, in **blue**.

- Eliminate the West property line windows at the upper two floors.

We have removed most of windows along West side of the property (Garage window will be removed as well) and the only window remained is 3rd floor's Bedroom window, which is required for Fire Dept. Egress & Safety access. We can frost that window to better satisfy our neighbor to the West. As I re-watched the Hearing again, I believe that would comply with commissioners intent of motion. Please advise.

The 2nd Floor garage level, and the 3rd Floor bedroom window need to be removed. David and I do not see an alternative to the Commission's very explicit language to remove all property line facing windows (the was actually proposed by the Sponsor's team). Consult with Fire and DBI if there are any alternative designs available that could allow for the proposed bedroom to remain.

- Provide a notch at the northwest rear corner at the upper two floors to match the notch at the northeast corner.

The NE notch in 311 plan is 8.5'x4'. As discussed during the Hearing, commissioners' feedback was to re-do the NE notch AND match the NW notch with that. I believe the PCH Motion did not capture the full intent of what was discussed and the revised notch would better benefit the adjacent neighbors' line of view and privacy. Please let me know if there are any feedback on this. **The DR Action Memo**

(DRAM) does not state to re-do or reduce the length of the NE notch, you have reduced the notch from 8.5' to only 5'? that is an expansion of the building which would require a new 311 notification. The DRAM states to match the NW notch, there should be no change to the depth that had been proposed on the angled notch (5') and the length should match at 8.5'.

- Reduce the roof deck to maintain 10 feet from the side building walls and an additional 5 feet from the front.

We'll comply with the PCH Motion. See Planning Comments above.

There are also some other issues and changes that were made to the plans since the 311 notice. These include:

- A third floor bay window above the garage does not meet the 15' setback requirement. **N/A, bay window in question is same as approved by the PC and also complies with bay window standards. Bay windows is a permitted obstruction. The bay window is code-compliant per Section 136, and this was not an issues discussed by the Commission.**
 - An 8' setback on the northwest corner of the first floor has changed to a 5' setback. **First Floor layout has been modified to better accommodate the foundation and structural plans per structural engineer's feedback. All the modified area is subterranean. The Section drawing shows some of the excavation to be above existing grade, although per the elevations, this would be located behind a skirt wall that is shown on the elevations.**
- It looks like there will be additional excavation to accommodate the 1st floor. **See Above. The ground floor's area is larger on the 3/20 plans.**
- The ceiling heights have changed from the 311 plans as shown in the table below. Our preference is shown in the right column of the table below. This would reduce the building bulk and height without significant sacrifice. 10-13' ceiling heights are more than adequate. **N/A, Project height is same as approved by the PC. The overall height is consistent between all Plan submittals, at 21'-0" (elevation of 964.3'). The rear building wall begins at the same elevation as well for both plans, 658.05'.**

Please review and let us know if there are any feedback.

Best regards,

- Amir Afifi

415.528.7021