



CATEGORICAL EXEMPTION APPEAL

72 Harper Street

Date: April 15, 2024
To: Angela Calvillo, Clerk of the Board of Supervisors
From: Lisa Gibson, Environmental Review Officer – (628) 652-7571
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RE: Board File No. [240246](#)
Planning Case No. 2023-002706ENV and 2023-002706APL
Appeal of Categorical Exemption for 72 Harper Street

Hearing Date: April 23, 2024
Attachment(s): n/a

Project Sponsor: Dennis Budd, Gast Architects (dbudd@gastarchitects.com, 415-828-8648)
Appellant: Brian J. O’Neill and Ryan J. Patterson of Patterson & O’Neill, PC on behalf of Krishna Ramamurthi, Tusi Chowdhury, and David Garofoli

Introduction

This memorandum is a response to the March 8, 2024, letter of appeal to the board of supervisors (the board) regarding the planning department’s (the department’s) issuance of a categorical exemption under the California Environmental Quality Act (CEQA) determination for the proposed 72 Harper Street project.

The department, pursuant to Article 19 of the CEQA Guidelines, issued a categorical exemption for the project on December 14, 2023, finding that the proposed project is exempt from CEQA as a Class 1-Existing Facilities 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.

On Friday, April 12, 2024, the project sponsors submitted supplemental letters on the appeal. Subsequently, after the close of business hours on Friday, April 12, 2024, the appellants filed supplemental materials regarding the appeal. The department reviewed the supplemental materials from the project sponsors and the appellants, and determined that the new materials do not contain any new substantive information that would alter the department’s decision to issue a category exemption for the proposed project.

Site Description and Existing Use

The 4,338 square-foot project site consists of one lot (Block 6652, Lot 010) located within the Glen Park neighborhood of San Francisco. The site is on the block bounded by 30th Street to the north, Harper Street to the east, Laidley Street to the south, and Noe Street to the west.

The project site is occupied by an existing three-story (two stories-over-basement) single-family dwelling. The site is approximately 40 feet wide by 125 feet deep and upsloped from west to east and surrounded by other single-family residential buildings. The building pattern of this block of Harper Street consists of two- to three-story houses set back from the street with gabled roof forms. The rear walls of the buildings on the block are likewise consistent except at the south end of the block where the angular street results in a stepped/staggered siting of buildings. This building pattern provides for large front setbacks and a corresponding staggering of rear walls at the south end of the mid-block open space. The site is within a 40-X Height and Bulk District and a RH-1 Zoning District. Additionally, the site is within the Central Neighborhoods Large Residence Special Use District (SUD). The project site has a historic resource status of B – Unknown/Age Eligible.

Project Description

The 72 Harper Street project proposes interior and exterior modifications to the existing single-family dwelling on-site. The project would convert the existing unoccupied basement level to a one-bedroom, one-bathroom accessory dwelling unit (ADU), construct a three-story rear addition attached to the existing single-family dwelling to a maximum height of approximately 30 feet, elevate portions of the existing roof to add a bedroom and bathroom to the primary unit, make seismic improvements to the building, and rebuild the existing front stairs in-kind to meet current egress requirements. Additionally, the project proposes interior changes, including changes to interior partitioning on all floors, installation of a fire-sprinkler system, new skylights and light wells, and upgrades to mechanical, electrical, and plumbing systems on-site.

The existing dwelling is 3,183 square feet in area with 323 square feet of parking. The proposed project would add 2,156 net new square feet of total area for a total area of 4,274 square feet with 352 square feet of parking, of which 3,033 square feet would be the primary residential unit and 1,048 square feet would be the ADU.¹ Construction of the proposed project is estimated to be 15 months and would require approximately 148 cubic yards of soil excavation over an approximately 1,198 square-foot area to a maximum depth of approximately 12 feet below ground surface for foundation work.

¹ Note: Calculation for net new and total area include the following area types: Primary unit, ADU, unconditioned areas, and mechanical areas.

Background

On March 16, 2023, Dennis Budd (hereinafter project sponsor) filed a building permit and project application with the planning department. The 30-day building permit notification under Planning Code Section 311 ended on November 11, 2023. On December 14, 2023, the department determined that the project was categorically exempt under CEQA Class 1 – Existing Facilities, and that no further environmental review was required. The project received four Discretionary Review requests and the Planning Commission’s 20-day Notice occurred from January 20, 2024, to February 8, 2024. At the Planning Commission Discretionary Review hearing on February 8, 2024, planning department staff supported the proposed project as being code complying and meeting the Residential Design Guidelines and Preservation criteria. On February 8, 2024, the Planning Commission did not find exceptional or extraordinary circumstances related to the project and did not take discretionary review on the project (see further discussion under Response 2 below). The department approved the permit on February 23, 2024. The permit is still under review with the other city departments.

On March 8, 2024, Brian O’Neill and Ryan Patterson of Patterson & O’Neill, PC, on behalf of Krishna Ramamurthi, Tusi Chowdhury, and David Garofoli (appellants) filed an appeal of the categorical exemption determination.

CEQA Guidelines

Categorical Exemptions

CEQA section 21084 and CEQA Guidelines sections 15301 through 15333 list classes of projects that have been determined to not have a significant effect on the environment and are exempt from further environmental review. In accordance with CEQA Guidelines section 15301 (Existing Facilities), or Class 1 exemptions, projects that involve negligible or no expansion of existing facilities are categorically exempt from CEQA. Such a project could include, but is not limited to, additions to existing structures totaling less than 10,000 square feet if the project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and if the area in which the project is located is not environmentally sensitive.

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 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.”

Historical Resources

Projects that may cause a substantial adverse change in the significance of a historical resource cannot be exempted from CEQA (CEQA Sections 21084(e) and 21084.1; CEQA Guidelines Section 15300.2(f)). Per CEQA section 21084.1, a historical resource for the purposes of CEQA includes, among other things, a historical resource listed in, or determined to be eligible for listing in, the California Register of Historical Resources, as well as a resource included in a local register of historical resources or determined to be a historic resource by the lead agency. As stated in CEQA Section 21084.1 and CEQA Guidelines Section 15064.5(b), a project with an effect that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment. A substantial adverse change in the significance of an historical resource is defined as follows:

- (1) Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired.
- (2) The significance of an historical resource is materially impaired when a project: (A) Demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in the California Register of Historical Resources; or (B) Demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources pursuant to section 5020.1(k) of the Public Resources Code or its identification in an historical resources survey meeting the requirements of section 5024.1(g) of the Public Resources Code, unless the public agency reviewing the effects of the project establishes by a preponderance of evidence that the resource is not historically or culturally significant; or (C) Demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify its eligibility for inclusion in the California Register of Historical Resources as determined by a lead agency for purposes of CEQA.
- (3) Generally, a project that follows the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings or the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (Secretary Standards, 1995)², Weeks and Grimmer, shall be considered as mitigated to a level of less than a significant impact on the historical resource.

Planning Department Responses

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

² The Secretary of the Interior's Standards for the Treatment of Historic Properties (Secretary Standards) are federal standards used in the evaluation of projects proposed for historic properties in accordance with federal regulations. The Secretary Standards are used in making decisions about the identification, evaluation, registration, and treatment of historic properties. The list of 10 Rehabilitation Standards, published as the Secretary of the Interior's Standards, is aimed at retaining and preserving those features and materials that are important in defining the historic character of a resource. (Adapted from San Francisco Planning Department Bulletin No. 17.)

https://sfplanning.org/sites/default/files/documents/preserv/bulletins/HistPres_Bulletin_17.PDF

Response 1: The department properly determined that the project is categorically exempt under CEQA Class 1 – Existing Facilities in accordance with CEQA Guidelines section 15301.

Pursuant to CEQA Guidelines section 15301, projects that involve negligible or no expansion of existing facilities may qualify for a Class 1 categorical exemption. Examples of such projects include, but are not limited to, additions of 10,000 square feet or less to existing structures, provided that the project is in an area where public services and facilities are available, and the area is not environmentally sensitive. As described above, the project proposes additions and modifications totaling less than 10,000 net new square feet to an existing single-family dwelling.

Furthermore, the project does not meet any of the exceptions described in CEQA Guidelines section 15300.2 that would make the project ineligible for a categorical exemption. The project site is occupied by a single-family dwelling in an urban residential neighborhood with other single-family dwellings and is not in an environmentally sensitive area. The project site is not on a hazardous waste site, would not damage a scenic highway, and would not result in off-site cumulative impacts or significant impacts. The project site also does not contain a historic resource and there are no historic resources in the immediate vicinity of the project site, as described further in Response 2 below. For these reasons, the department determined that the project is categorically exempt under CEQA and eligible for a Class 1 – Existing Facilities exemption in accordance with CEQA Guidelines section 15301.

Response 2: The Department reviewed the project scope and appropriately determined that the proposed changes would not have the potential to result in any significant impacts to historic resources. The proposed scope of work does not materially impair potential character defining features associated with the building and meets the Secretary of the Interior’s Standards for Treatment of Historic Properties.

As documented in the issued categorical exemption, the department determined that the proposed project met the Secretary of the Interior’s Standards and would not cause a material impairment to the subject building or surroundings. According to the Secretary of the Interior’s Standards for the Treatment of Historic Properties (Standards), rehabilitation is the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features that convey its historical, cultural, or architectural values.³ For purposes of historic preservation and CEQA, the environment is that which is visible or accessible by the public. In the case of the subject building, the environment is that which is visible from the public right of way (e.g. the street). Therefore, when evaluating potential impacts of the proposed project, department staff considered potential impacts to those portions of the building that are visible from the street. Similarly, character-defining features are the elements, materials, spaces, and finishes that contribute to the overall visual character of a building as a historic resource.

³ U.S Department of the Interior National Park Service. (2017). The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings. Washington, D.C.: Technical Preservation Services

The proposed project scope is limited to a modest modification to the front steps and a vertical addition with a gable roof set back 19 feet and 5 inches from the front building wall. As noted in the categorical exemption, the department found the proposed work to be consistent with the Standards, because no potential character-defining features are proposed to be removed, and new elements would be compatible with the existing building. Staff appropriately determined that the proposed scope of work would not alter visible features associated with the 1905 building, including the gable roof form, wood windows, wood ornamentation, and mix of wood siding. Nor would the scope of work diminish the visibility of these elements. The appellants also contend that the proposed vertical addition is not adequately set back. However, the addition is setback 4 feet and 5 inches further than the typical 15 feet from the front building wall and the upper floor addition would be setback 19 feet and 5 inches from the front façade, thereby maintaining the gable roof form of the existing building. The existing building extends approximately 54 feet from an irregular (triangular) front yard off of Harper Street. The building is set back approximately 1.5 to 27 feet along Harper Street and the proposed vertical addition is set back a further 19 feet and 5 inches from the existing front façade. Furthermore, based on the submitted sightline study for the project, the proposed vertical addition is sufficiently set back from the front façade so as to not visually or physically alter the overall form or massing of the existing building. Moreover, the addition also does not intrude into the mid-block open space. Therefore, the department found that the proposed project would not alter potential character defining features, would not cause a material impairment to the subject building or surroundings, and is categorically exempt.⁴

In addition to the CEQA review process, the proposed project underwent the department's design review process, which includes a review pursuant to the adopted Residential Design Guidelines. The Residential Design Guidelines are intended to result in building designs that are compatible with the patterns of existing context, such that a contemporary building can fit aesthetically with the context of older buildings. In evaluating the project's conformance with applicable design guidelines, department staff determined that the massing, composition, materials, proportions, and details of the proposed addition to 72 Harper Street would be consistent with and compatible with the other buildings in the surrounding neighborhood. The Planning Commission concurred with staff findings at a public hearing on February 2, 2024, when the Commission voted unanimously against four discretionary review requests against the project.⁵

Response 3: A Historic Resource Evaluation was not necessary to evaluate potential impacts to historic resources.

The appellants assert that an evaluation of the property was necessary to determine whether a historic resource is present. However, a historic resource evaluation of a property is not necessary for all proposed projects. The department requests an evaluation of a property when a proposed scope of work would significantly alter publicly visible portions of a building. The department does not conduct extraneous environmental review when a project would not materially impair features of a building that are part of the environment. Therefore, although the project sponsor submitted a historic resource evaluation document, the department determined that such analysis was not required in the first place to evaluate whether the proposed work would materially impair a resource.

⁴ For purposes of review of Queen Anne characteristics, please see the Victorian Era Styles Context Statement (1870-1910) (Adopted 2022) at <https://sfplanning.org/project/citywide-historic-context-statement#completed>, starting on Page 22.

⁵ See Case No.'s 20203-002706DRP, 20203-002706DRP02, 20203-002706DRP-03, and 20203-002706DRP-04 available on PIM: <https://sfplanninggis.org/PIM/>

As noted above in Response 2, the proposed project would not alter those features which help to identify the subject building as a 1905 Queen Anne style cottage. For example, the department's Victorian Era Styles Context Statement (1870-1910) that was adopted in 2022 lists potential character-defining features for Queen Anne Cottages that include (but are not limited to): wood construction, gable-front roofs for rowhouses and cottages (complex roof shapes for detached, single family houses: front-gabled or hipped roofs with cross gables, towers, and/or turrets), towers, rounded, square, or octagonal, full-height angled bay windows, machine-made wooden ornamentation (such as scroll-sawn ornament (ex. brackets), bargeboards, and floral and sunburst patterns) and a variety of detailing styles.⁶ Under the Statement of Significance, the Context Statement states that significant examples of Queen Anne architecture typically display a full expression of the style, drawing from the character-defining features, and finds that significance is also impacted by unique or rare architectural massing, as well as exuberant displays of ornamentation. In this case, the proposed scope of work would maintain the street-visible portions of the building and detailing, would not constitute a significant alteration to a front facade and the setback of the vertical addition would be substantial enough such that the historic roof form would be retained. Therefore, because the project would not alter those visible features which could have the potential to be identified as character-defining as noted above, and the proposed work could be removed in the future without detriment to the extant building features, a historic resource evaluation was not necessary.

The appellants also erroneously assert that the categorical exemption prepared by department determined "that the existing building qualifies as a historic resource." This is incorrect. The department did not determine that the subject building is a historic resource. The categorical exemption clearly states that the subject building is a "Category B: Potential Historical Resource (over 45 years of age)". The CEQA exemption determination includes a section where the department can update, or reclassify, the historical status of the building to an A (known historic resource) or C (no historic resource); however, this section of the categorical exemption section is blank because it is not required to be completed. Not all projects that are classified as Category B need to be reclassified as an A or C if the project does not propose changes to potentially character defining features. As discussed above, a historic resource evaluation was not necessary and, therefore, it was also not necessary to reclassify the building and/or make a formal determination of the building's historic status.

Similarly, the appellants mistakenly assert that the "project sponsor acknowledged that [the] existing home is a historic resource." With regards to this assertion, the historical documentation provided by the project sponsor did not include a formal evaluation arguing whether the subject building is or is not a historic resource. Instead, the document provided by the project sponsor included basic building information, including permit history, photographs, and a list of past owners and occupants. The appellants have not presented any information to support their assertion that the proposed project would have an adverse effect on any potential character defining features of the subject property such that there could be a significant impact to a historic resource.

⁶ For purposes of review of Queen Anne characteristics, please see the Victorian Era Styles Context Statement (1870-1910) (Adopted 2022) at <https://sfplanning.org/project/citywide-historic-context-statement#completed>, starting on Page 22.

Response 4: The evaluation of impacts to a potential historic district was not necessary because the proposed project met the Secretary of the Interior’s Standards for Treatment of Historic Properties.

The appellants do not provide a fair argument based on substantial evidence that the proposed project would result in the inability of a potential historic district in the vicinity of the project to express its historical significance. If a project is found to meet the Standards, then further analysis of potential impacts to a potential historic district is not warranted. This is because the proposed addition does not remove or alter those features that would likely be associated with a potential district, specifically, features visible from the public right of way. The scope of work proposed by the project would alter 72 Harper Street in an architecturally compatible manner that meets the Secretary Standards. Ultimately, the proposed alteration of one building, particularly if those proposed building alterations meet the Secretary Standards, does not meet the threshold for a significant impact to a potential historic district.

Furthermore, previous evaluations of nearby properties in the vicinity of the subject property did not identify the presence of a historic district. For example, a historic evaluation for a nearby property, 76 Harper Street (case no. 2023-004270GEN), concluded that there did not appear to be a “significant concentration of historically or aesthetically unified buildings such that it would rise to the level of an eligible historic district.” This conclusion is further supported by additional evaluations conducted for other nearby properties, including 105 Laidley Street (case no. 2015-006770ENV), 1783 Noe Street (2014.1079E), 278 Randall Street (case no. 2020-000199ENV), and 279 Randall Street (2021-010580GEN), all of which reached conclusions similar to the one in the 76 Harper Street (case no. 2023-004270GEN) evaluation. As the department may consider past evaluations, records, and available documentation when making a determination, it is fair to conclude that a proposed project that would meet the Standards would not materially impair the surrounding area.

The department appropriately evaluated potential impacts and adequately determined that the proposed work would not impact any potential historic resources.

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 appellants have not demonstrated that the department’s determination is not supported by substantial evidence in the record.

For the reasons stated above and in the December 14, 2023 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. The department therefore respectfully recommends that the board uphold the CEQA categorical exemption determination and deny the appeal of the CEQA determination.