

## Carroll, John (BOS)

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**From:** John Kevlin <jkevin@reubenlaw.com>  
**Sent:** Friday, November 20, 2015 10:53 AM  
**To:** BOS Legislation, (BOS); Carroll, John (BOS); Board of Supervisors, (BOS); Caldeira, Rick (BOS)  
**Cc:** Boe Hayward  
**Subject:** 40 Bernal Height Subdivision Map Appeal: BOS File 150858  
**Attachments:** LTR - 40 Bernal Heights Blvd - Lot Subdivision Appeal Opposition 11-20-2015.pdf  
**Categories:** 150858

Hi John,

I just left you a voicemail. Please find attached the project sponsor's brief in opposition to the above-referenced subdivision map appeal. Please let me know if you need anything else from me. Thank you.

John

## REUBEN, JUNIUS & ROSE, LLP

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# REUBEN, JUNIUS & ROSE, LLP

November 20, 2015

## By E-Mail

Board of Supervisors, City and County of San Francisco  
Attn: Clerk of the Board  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102

**Re: 40 Bernal Heights Boulevard and 965, 985, and 1025 Powhattan Avenue  
(Block 5640, Lot 010)  
Project Sponsor's Brief in Opposition to Appeal of Lot Subdivision  
Planning Department Case No.: 2014.1032S  
Bureau of Street Use & Mapping Project ID 8257  
Our File No. 8506.02**

Dear President Breed and Board of Supervisors,

This office represents Ciaran and Patrick Harty, the project sponsors ("Project Sponsor") of the lot subdivision at 40 Bernal Heights Boulevard and 965, 985, and 1025 Powhattan Avenue (Block 5640, Lot 010; the "Property"). The Property is zoned Residential – House, One Family ("RH-1") and consists of an unimproved, triangular-shaped, lot with a parcel area of approximately 7,612 square feet. The Project Sponsor proposes to subdivide the existing lot into four new, separate lots ("Project"), which would result in a 2,073 square-foot lot at 965 Powhattan Avenue, a 1,997 square-foot lot at 985 Powhattan Avenue, a 1,755 square-foot lot at 1025 Powhattan Avenue, and a 1,787 square-foot lot at 40 Bernal Heights Boulevard.

City and County Surveyor Bruce Storrs approved the tentative map on August 24, 2015 for the proposed subdivision that will result in four lots located at the Property. Notification letters to interested parties were sent on that date. On September 3, 2015, the subject appeal was filed.

This letter is submitted in opposition to the appeal of the approval of the tentative map. While the appellants have stated their objection to the four single-family homes proposed to be constructed on the resulting lots, **they have not provided any grounds for denial of the tentative map under the Subdivision Map Act or the Subdivision Code.**

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## Legal Background

The Subdivision Division Map Act (California Government Code §§66410-66499.37; the “Map Act”) sets forth the controlling law for subdivisions in the state. It also authorizes local legislative bodies to regulate and control the design and improvement of subdivision in the local jurisdiction.<sup>1</sup> The Map Act provides limited criteria under which a tentative map may be disapproved. The legislative body of a city shall disapprove a tentative map for any of the following criteria:

- a. The tentative map fails to comply with the Map Act or the Subdivision Code;<sup>2</sup>
- b. The tentative map, design, or improvement is inconsistent with the City’s General Plan;<sup>3</sup>
- c. The site is not physically suitable for the type or proposed density of development;<sup>4</sup>
- d. The design or proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat;<sup>5</sup>
- e. The design or type of improvements is likely to cause serious public health problems;<sup>6</sup> or
- f. The design or improvements will conflict with public easements for access through or use of, property within the proposed subdivision.<sup>7</sup>

None of the criteria above apply to the Project. First, the Project Sponsor is in full compliance with the Map Act and the Subdivision Code. The Project Sponsor has worked with the Planning Department and the Bureau of Street Use and Mapping throughout the process to ensure the Project complies with state and local law.

Second, the tentative map, design, and improvement are consistent with the General Plan and meet the eight priority General Plan policies. In its memo to the Board urging the rejection of this appeal, the Planning Department outlines how the Project is consistent with the Housing

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<sup>1</sup> Govt. Code §66411.

<sup>2</sup> Govt. Code §66473.

<sup>3</sup> Govt. Code §66474(a)-(b).

<sup>4</sup> Govt. Code §66474(c)-(d).

<sup>5</sup> Govt. Code §66474(e).

<sup>6</sup> Govt. Code §66474(f).

<sup>7</sup> Govt. Code §66474(g).

Element of the General Plan. The appellants have not cited one General Plan policy that the subdivision would be in conflict with.

Third, site is physically suitable for the type and proposed density of the development. The Project proposes four lots ranging in size from 1,755 square feet to 2,073 square feet in place of the existing 7,612-square-foot lot. The Property is zoned RH-1, which principally permits one dwelling unit per lot. The Project Sponsor proposes to construct one single-family home upon each of these four lots, which is in compliance with the RH-1 zoning district.

Fourth, the Project will not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat. The Property is a vacant, sloping lot that is not inhabited by fish or wildlife other than small plants and groundcover. As part of environmental review for the Project which resulted in issuance of a Class 32 categorical exemption, the Planning Department specifically analyzed whether the Property has any potential as a habitat for endangered, rare or threatened species, and explicitly concluded that it did not. The Project is modest in scale, and is consistent with other urban infill development projects in San Francisco that are approved on a regular basis.

Fifth, the Project will not cause serious public health problems. The Project was deemed exempt from environmental review from CEQA and the Planning Department determined that none of the established exceptions to the application of a categorical exemption to a project applied. The Project proposes a four unit, residential infill development. This is consistent with the low-density Bernal Heights neighborhood, but also with the city as a whole. New housing does not cause serious health problems. In fact, new housing in urban areas furthers smart growth and helps reduce carbon emissions due to the availability of mass transit and other non-automobile modes of transportation.

Sixth, the Project will not conflict with public easements for access through or use of property within the proposed subdivision. This criterion is inapplicable because no public easements exist at the Property. In fact, the Project Sponsors have agreed to pay for and construct improvements to improve Carver Street, a paper street that connects Powhattan Avenue and Bernal Heights Boulevard, with a staircase, seating areas and landscaping, so the Project will result in more public access to the site.

### **Conclusion**

Appellants identify no evidence to justify any findings that the state Map Act requires for disapproval of a subdivision map. The Project complies with the Map Act, Subdivision Code, and General Plan. The site is physically suitable for the single-family homes and is in a neighborhood generally consisting of single-family homes. The Project will provide a significant public benefit by creating a new staircase along Carver Street. We respectfully urge that you deny this appeal, and uphold the approval of the tentative map.

One Bush Street, Suite 600  
San Francisco, CA 94104

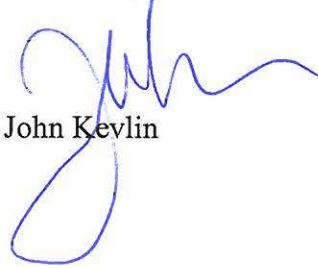
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Very truly yours,

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