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PATTERSON & O'NEILL, PC

2024 MAR -8 PM 4:59

BY 

235 Montgomery Street, Suite 950
San Francisco, CA 94104
Telephone: (415) 907-9110
www.pattersononeill.com

March 8, 2024

VIA EMAIL

President Aaron Peskin and Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Re: Appeal of CEQA Exemption Determination
72 Harper Street (Case No. 2023-002706ENV)

Dear President Peskin and Supervisors:

Our office represents Krishna Ramamurthi, Tusi Chowdhury, and David Garofoli, owners of neighboring properties adjacent to the proposed project at 72 Harper Street. The project site is developed with a modest two-story over garage Queen Anne Cottage built in 1905 that is approximately 2,096 square feet. The applicant proposes to expand the existing building with a vertical addition measuring 44 feet from the curb, which will tower over the existing façade and mimic the historical gable roof design.

We submit this letter pursuant to Administrative Code § 31.16(e) to appeal the Exemption Determination for the project at 72 Harper Street (Case No. 2020-005176ENV). The Exemption Determination violates the California Environmental Quality Act ("CEQA") because the Planning Department failed to adequately study whether the project will have a significant adverse impact on historic resources, did not determine whether the project meets the Secretary of Interior's Standards for the Treatment of Historic Properties, and failed to adequately study whether the project is located in an eligible historic district. Due to these deficiencies, the appellants respectfully request the Board reverse the Exemption Determination; and direct the Planning Department to conduct further environmental review.

The CEQA Guidelines state that an Exemption "**shall not be used** for a project which may cause a substantial adverse change in the significance of a historical resource." (See CEQA Guidelines § 15300.2(f).) Courts are clear that the failure to adequately discuss potential impacts is a procedural error, and the "omission of required information constitutes a failure to proceed in the manner required by law." (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502.) Procedural failures must be overturned in order to "scrupulously enforce all legislatively mandated CEQA requirements." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.)

Moreover, the "foremost principle under CEQA is that the Legislature intended the act to be interpreted in such manner as to afford the fullest possible protection to the environment

within the reasonable scope of the statutory language.” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390.) To that end, an exemption shall not be used if there is a “fair argument” that the proposed project may cause a substantial adverse change in the significance of an historical resource. (*See Valley Advocates v. City of Fresno* (2008) 160 Cal.App.4th 1039, 1072.)

The Exemption Determination in this case is not legally adequate because the Planning Department failed to adequately analyze the potential impacts to historic resources, and there is a fair argument that the project may cause a substantial adverse change to a historic resource. The Exemption Determination found that the existing building qualifies as a historic resource, yet still found the project exempt without even conducting a Historic Resource Evaluation. The project sponsor also acknowledged that existing home is a historic resource, and even submitted an Historic Resource Evaluation application that demonstrated the existing home has distinct architectural features that have generally remained largely unchanged since the building was first constructed in 1905.

Despite receiving an application for a Historic Resource Evaluation, the Planning Department failed to complete a Historic Resource Evaluation Response. The Exemption simply says “addition visible but compatible with existing structure” and “entry sequence change meets standard and no impacts to potential remaining CFDs [character defining features].” This analysis is wholly inadequate. The analysis states “no impacts to *potential*” character defining features, without even conducting an analysis to identify what the character defining features of the property actually are. The analysis also states that the “change meets standards,” presumably referring to the Secretary of Interior’s Standards, yet the Planning Department did not complete a Historic Resource Evaluation to analyze the project against the standards. The Planning Department could not possibly determine that the project meets the Secretary of Interior’s Standards for protecting the character defining features of historic properties when the Department never identified the features in the first place.

Moreover, the project is located in an area known as Fairmount Heights that was developed by the Fairmount Homestead Association shortly after the Civil War in the 1860s. The neighborhood contains many century-old modest cottages that reflect the neighborhood’s historic blue-collar demographic. The Planning Department did not evaluate at all whether the surrounding area could be eligible as a historic district, nor identify any potential character defining features of the surrounding properties. The Planning Department’s complete omission of any analysis or information on the potential impacts to a an eligible historic district or surrounding historic properties was a procedural error, and therefore the Exemption Determination must be overturned.

Finally, there is a fair argument that the project may cause a substantial adverse change to a historic resource. Secretary of Interior Standard 9 requires that any new additions to a historic structure must not destroy the “spatial relationships that characterize the property” and any new work must be “differentiated from the old” and “compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.” Rather than being differentiated from the old as required by the standards, the new addition mimics the original architectural features with faux historic features. Moreover, the new addition towers over the original roof form, and is completely out of scale and proportion with


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the mass of the existing modest home. The addition fails to reflect the property's history as a post-Civil War era home for working class San Franciscans.

The Exemption Determination for this project violates CEQA. The project's potential impacts to historic resources were not adequately identified or evaluated, which constitutes a failure to proceed in the manner required by law. This project, which includes an addition that towers over and mimics the original historic features, substantially impacts the character defining features of this historic 1905 cottage. The Board should therefore reverse the Exemption Determination and direct the Planning Department to conduct further review of potential impacts to historic resources.

Very truly yours,

PATTERSON & O'NEILL, PC



Brian J. O'Neill
Ryan J. Patterson



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on

49 South Van Ness Avenue, Suite 1400
San Francisco, CA 94103

628.652.7600
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CEQA Exemption Determination

PROPERTY INFORMATION/PROJECT DESCRIPTION

Project Address		Block/Lot(s)
72 HARPER ST (ADU)		6652010
Case No.		Permit No.
2023-002706ENV		
<input checked="" type="checkbox"/> Addition/ Alteration	<input type="checkbox"/> Demolition (requires HRE for Category B Building)	<input type="checkbox"/> New Construction
Project description for Planning Department approval. 3 story rear addition, convert 1st fl to adu, elevate portion of roof, interior partition changes on all floors, construct excavated rear yard light court, re-build front steps in kind to met egress code, install fire sprinkler system, full seismic upgrade of bldg, new fixtures fitting & finishes throughout.		

EXEMPTION TYPE

The project has been determined to be exempt under the California Environmental Quality Act (CEQA).	
<input checked="" type="checkbox"/>	Class 1 - Existing Facilities. (CEQA Guidelines section 15301) Interior and exterior alterations; additions under 10,000 sq. ft.
<input type="checkbox"/>	Class 3 - New Construction. (CEQA Guidelines section 15303) Up to three new single-family residences or six dwelling units in one building; commercial/office structures; utility extensions; change of use under 10,000 sq. ft. if principally permitted or with a CU.
<input type="checkbox"/>	Class 32 - In-Fill Development. (CEQA Guidelines section 15332) New Construction of seven or more units or additions greater than 10,000 sq. ft. and meets the conditions described below: (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations. (b) The proposed development occurs within city limits on a project site of no more than 5 acres substantially surrounded by urban uses. (c) The project site has no value as habitat for endangered rare or threatened species. (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality. (e) The site can be adequately served by all required utilities and public services.
<input type="checkbox"/>	Other _____
<input type="checkbox"/>	Common Sense Exemption (CEQA Guidelines section 15061(b)(3)). It can be seen with certainty that there is no possibility of a significant effect on the environment.

ENVIRONMENTAL SCREENING ASSESSMENT

Comments:

Geology and Soils: A preliminary geotechnical report was prepared by Frank Lee & Associates (dated 7/18/2023), confirming that the proposed project is on a site subject to 25 percent slope. The project's structural drawings would be reviewed by the building department, where it would be determined if further geotechnical review and technical reports are required.

Archeological Resources: The department's staff archeologist conducted preliminary archeological review on 6/22/2023 and determined that no CEQA-significant archeological resources are expected within project-affected soils.

Planner Signature: Don Lewis

PROPERTY STATUS - HISTORIC RESOURCE

PROPERTY IS ONE OF THE FOLLOWING:

<input type="checkbox"/>	Category A: Known Historical Resource.
<input checked="" type="checkbox"/>	Category B: Potential Historical Resource (over 45 years of age).
<input type="checkbox"/>	Category C: Not a Historical Resource or Not Age Eligible (under 45 years of age).

PROPOSED WORK CHECKLIST

Check all that apply to the project.

<input type="checkbox"/>	Change of use and new construction. Tenant improvements not included.
<input type="checkbox"/>	Regular maintenance or repair to correct or repair deterioration, decay, or damage to building.
<input type="checkbox"/>	Window replacement that meets the Department's <i>Window Replacement Standards</i> .
<input type="checkbox"/>	Garage work. A new opening that meets the <i>Guidelines for Adding Garages and Curb Cuts</i> , or replacement of a garage door in an existing opening that meets the Residential Design Guidelines.
<input type="checkbox"/>	Deck, terrace construction, or fences not visible from any immediately adjacent public right-of-way.
<input type="checkbox"/>	Mechanical equipment installation that is not visible from any immediately adjacent public right-of-way.
<input type="checkbox"/>	Dormer installation that meets the requirements for exemption from public notification under <i>Zoning Administrator Bulletin No. 3: Dormer Windows</i> .
<input checked="" type="checkbox"/>	Addition(s) not visible from any immediately adjacent public right-of-way for 150 feet in each direction; or does not extend vertically beyond the floor level of the top story of the structure, or does not cause the removal of architectural significant roofing features.
<input type="checkbox"/>	Façade or storefront alterations that do not remove, alter, or obscure character-defining features.
<input type="checkbox"/>	Restoration based upon documented evidence of a building's historic condition, such as historic photographs, plans, physical evidence, or similar buildings.
Note: Project Planner must check box below before proceeding.	
<input type="checkbox"/>	Project is not listed.
<input checked="" type="checkbox"/>	Project involves scope of work listed above.

ADVANCED HISTORICAL REVIEW

Check all that apply to the project.

<input type="checkbox"/>	Reclassification of property status. (Attach HRER Part I relevant analysis; requires Principal Preservation Planner approval) <input type="checkbox"/> Reclassify to Category A <input type="checkbox"/> Reclassify to Category C <input type="checkbox"/> Lacks Historic Integrity <input type="checkbox"/> Lacks Historic Significance
<input type="checkbox"/>	Project involves a known historical resource (CEQA Category A)
<input checked="" type="checkbox"/>	Project does not substantially impact character-defining features of a historic resource (see Comments)
<input type="checkbox"/>	Project is compatible, yet differentiated, with a historic resource.
<input type="checkbox"/>	Project consistent with the Secretary of the Interior Standards for the Treatment of Historic Properties
Note: If ANY box above is checked, a Preservation Planner MUST sign below.	
<input checked="" type="checkbox"/>	Project can proceed with EXEMPTION REVIEW. The project has been reviewed by the Preservation Planner and can proceed with exemption review.
Comments by Preservation Planner: Addition visible, but compatible with existing structure. Entry sequence change meets standards and no impacts to potential remaining CDFs.	
Preservation Planner Signature: Elizabeth Gordon Jonckheer	

EXEMPTION DETERMINATION

<input checked="" type="checkbox"/>	No further environmental review is required. The project is exempt under CEQA. There are no unusual circumstances that would result in a reasonable possibility of a significant effect.	
	Project Approval Action: Building Permit	Signature: Ashley Lindsay 12/14/2023
	If Discretionary Review before the Planning Commission is requested, the Discretionary Review hearing is the Approval Action for the	
	Supporting documents are available for review on the San Francisco Property Information Map, which can be accessed at https://sfplanninggis.org/pim/ . Individual files can be viewed by clicking on the Planning Applications link, clicking the "More Details" link under the project's environmental record number (ENV) and then clicking on the "Related Documents" link. Once signed and dated, this document constitutes an exemption pursuant to CEQA Guidelines and Chapter 31 of the SF Admin Code. Per Chapter 31, an appeal of an exemption determination to the Board of Supervisors shall be filed within 30 days after the Approval Action occurs at a noticed public hearing, or within 30 days after posting on the Planning Department's website a written decision or written notice of the Approval Action, if the approval is not made at a noticed public hearing.	

March 8, 2024

*Re: 72 Harper Street, Block/Lot 6652/010, Case No. 2023-002706ENV
Appeal of CEQA Determination*

To Whom It May Concern:

We hereby authorize the attorneys of Patterson & O'Neill, PC to file an appeal on our behalf of the environmental determination for Building Permit Application No. 202303163798 for the property at 72 Harper Street.

Signed,

DocuSigned by:

Krishna Ramamurthi

2FE2AD1093CE46D

By: Krishna Ramamurthi

DocuSigned by:

David Garofoli

EFC41DECB9EE4A0

By: David Garafoli

DocuSigned by:

Tusi Chowdhury

EAD3A8D36A1F43F

By: Tusi Chowdhury

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Office of the Clerk of the Board
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102

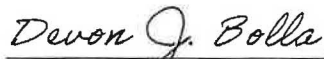
Re: Appeal of CEQA Exemption Determination
72 Harper Street (Case No. 2023-002706ENV)

Dear Clerk,

Please find enclosed a check in the amount of \$729.00 for the appeal filing fee in the above-referenced matter.

Please be advised that the filing will be submitted electronically by emailing the appeal filing with supporting documents to bos.legislation@sfgov.org and that this payment is being sent prior to the filing.

Sincerely,



Devon J. Bolla
Paralegal

Encl.

Check in the amount of \$729.00 made payable to the San Francisco Planning Department.

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DATE 3/8/24

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Case# 2023-002706ENV

MEMO Appeal of CEDA Exemptions

341 7174



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