

**From:** [Starr, Aaron \(CPC\)](#)  
**To:** [BOS Legislation, \(BOS\)](#)  
**Cc:** [Conner, Kate \(CPC\)](#); [Westhoff, Alex \(CPC\)](#)  
**Subject:** Revised response for 249 Texas Street Appeal, BF 210791  
**Date:** Wednesday, October 13, 2021 12:10:47 PM  
**Attachments:** [249 Texas CUA Appeal Response 10 13 21.pdf](#)

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Attached, please find Planning Department's revised response to the CU Appeal for 249 Texas Street. Additional information was added to Response 2 regarding the previous tenants.

Sincerely,

**Aaron Starr, Manager of Legislative Affairs**  
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[San Francisco Property Information Map](#)



# Conditional Use Authorization Appeal

## 249 Texas Street

**DATE:** October 13, 2021  
**TO:** Angela Calvillo, Clerk of the Board of Supervisors  
**FROM:** Rich Hillis, Planning Director – Planning Department (628) 652-7600  
Alex Westhoff, Case Planner – Planning Department (628) 652-7314  
**RE:** Board File No. 210791, Planning Case No. 2020-003223CUA  
Appeal of Conditional Use Authorization for 249 Texas Street  
**HEARING DATE:** October 19, 2021  
**PROJECT SPONSOR:** John Maniscalco, John Maniscalco Architecture, 442 Grove Street, San Francisco  
CA 94102  
**APPELLANTS:** Kathleen Roberts-Block, Sasha Gala

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### INTRODUCTION

This memorandum and the attached documents are a response to the letters of appeal to the Board of Supervisors (“Board”) regarding the Planning Commission’s (“Commission”) approval of the application for Conditional Use Authorization under Planning Department Case Number 2020-003223CUA (hereinafter “Application”) pursuant to Planning Code Sections:

- 303 (Conditional Use Authorization); and
- 317 (Loss of Residential and Unauthorized Units Through Demolition, Merger, and Conversion).

This memorandum addresses the appeal to the Board, filed on July 6, 2021, by adjacent neighbors Kathleen Roberts-Block and Sasha Gala.

The decision before the Board is whether to uphold, overturn, or amend the Planning Commission’s approval of an application for Conditional Use Authorization to allow the proposed Project at the subject property.

### PROJECT DESCRIPTION

The Project proposes the demolition of an existing three-story, single-family residence with an unauthorized dwelling unit (containing approximately 3,098 sq ft) and the construction of a three-story, 30-ft tall, residential building (containing approximately 4,864 sq ft) with two dwelling units, two below-grade off street parking spaces, and two Class 1 bicycle parking spaces (“Project”) located at 249 Texas Street, lot 017A in Assessor’s Block 4001 (hereinafter “Project Site”).

## SITE DESCRIPTION & PRESENT USE

The Project is located on a rectangular lot measuring 2,500 sq ft with 25-ft of frontage along Texas Street. The project site contains an existing three-story-over-basement, single family residence with an unauthorized dwelling unit on the ground floor level.

## SURROUNDING PROPERTIES AND NEIGHBORHOOD

The Project Site is located within the RH-2 (Residential-House Two Family) Zoning District and a 40-X Height and Bulk District. The immediate context is largely residential, with commercial uses along both 18th and Mariposa Streets. The immediate neighborhood includes a four-unit two-story apartment to the south, a single-family one-story home to the north, one- to two-story residential units to the west across Texas Street as well as to the east along Mississippi Street behind the subject property. Other zoning districts in the vicinity of the project site include: UMU, (Urban Mixed-Use), RH-3 (Residential-House Three Family), NC-2 (Neighborhood Commercial Small Scale), and P (Public).

## BACKGROUND

- On February 19, 2020, the Project Sponsor filed the Application with the Planning Department (hereinafter “Department”).
- On February 4, 2021, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on the Application. At this hearing, the Commission continued the Project to the public hearing on March 4, 2021. The hearing was subsequently continued, at the request of the project sponsor, to the April 1, 2021, April 15, 2021, May 13, 2021, and June 3, 2021 hearings.
- After reviewing the revised project, and taking public comment, the Planning Commission voted five to two to approve the project with conditions. In addition to the standard Conditions of Approval proposed by Planning Department staff, an additional condition to the approval was included which reads as follows:

*Rent Stabilization and Arbitration Ordinance. As required by California SB 330, the Project shall be subject to the City’s Rent Ordinance, Administrative Code Chapter 37, and the Project Sponsor shall record a restriction on the property records that both units shall be subject to the City’s Rent Ordinance and shall comply with all applicable provisions of Chapter 37 and California SB 330.*

## CONDITIONAL USE AUTHORIZATION REQUIREMENTS

Planning Code Section 303 establishes criteria for the Commission to consider when reviewing all applications for Conditional Use approval. To approve the project, the Commission must find that these criteria have been met:

1. That the proposed use or feature, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community; and
2. That such use or feature as proposed will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity, or injurious to property,

improvements or potential development in the vicinity, with respect to aspects including but not limited to the following:

- a. The nature of the proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;
  - b. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;
  - c. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;
  - d. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs; and
3. That such use or feature as proposed will comply with the applicable provisions of this Code and will not adversely affect the General Plan.
  4. That such use or feature as proposed will provide development that is in conformity with the stated purpose of the applicable Use District.

## **APPELLANT ISSUES AND PLANNING DEPARTMENT RESPONSES**

**ISSUE 1: The Planning Commission mistakenly found the demolition of this type of housing as being “necessary and desirable” for the community, contrary to the public good in the middle of an affordability crisis.**

**RESPONSE 1: The project provides two code compliant rent-controlled dwelling units with more habitable space and bedrooms, while preserving neighborhood character.**

The size of the proposed three-story two-unit property is in keeping with other residential properties in the neighborhood and at 30 feet is within the allowable height range of the 40-X height and bulk district. The property is compliant with the San Francisco Planning Code and Residential Design Guidelines. While the building is modern in appearance the subject block has a mixed visual character. The property is designed appropriately to minimize light and privacy impacts to surrounding properties. The lightwell dimensions match the lightwell of the southerly adjacent property to continue to allow that property to receive light and air.

The existing lower-story Unauthorized Dwelling Unit is not code compliant, and contains no code compliant bedrooms. The current ceiling height is substandard, and the unit’s foundation does not comply with existing codes. The project will thus increase the amount of habitable space, and code compliant bedrooms, while meeting the Planning Code’s open space and setback requirements. Historical review concluded that the existing structure is not considered a historic resource under CEQA and thus its demolition will not cause the loss of a historic property.

A condition of approval was included, which subjects the development to the rent stabilization and arbitration ordinance. Thus, the project will not result in any loss of rent controlled dwelling units.

**ISSUE 2:** The project sponsor and staff falsely claimed that the new development is a SB 330 project, and as such that the replacement units would be rent controlled dwellings.

**RESPONSE 2:** The conditional use authorization includes a condition of approval requiring the project to comply with the City's rent ordinance, as required by SB330. Furthermore, the project increases the net number of code-compliant bedrooms.

Under SB 330, if existing units to be demolished are subject to the City's Rent Ordinance and the income of the last occupant is above 80% of AMI, as is the case here, the Project Sponsor must provide replacement units that are subject to the Rent Ordinance. Here, the Project Sponsor has provided information showing that the current and most recent previous upper unit tenants' incomes are above 80% of AMI. Additionally, there is no evidence that there have been any low-income tenants residing in either of the units. Accordingly, the Project Sponsor and the City agree that the units resulting from the Project shall be subject to the Rent Ordinance. A condition of approval has been included to reflect the rent-control status of the Project.

Under SB 330, the replacement units are required to provide the same number of bedrooms. In the case of this project, more code-compliant bedrooms are being provided. The existing authorized unit contains two bedrooms, and the unauthorized unit contains three rooms, which may have been used as bedrooms. These three rooms, however, do not meet building code requirements for bedrooms as none of them have code-compliant ceiling heights. The project includes one four-bedroom unit and one studio unit. Thus, the project is net increasing the number of code compliant bedrooms from two to four.

### **SUMMARY RESPONSE**

The appellants contend that the Planning Commission's approval of the Project was made mistakenly, and that the project is not compliant with the requirements of SB330; however, the project is fully code compliant, and meets the required conditional use findings pursuant to Planning Code Section 303 as being both necessary and desirable for the City. The project will replace an existing substandard non-code compliant property, with a two-unit code-compliant property with more habitable bedrooms. Furthermore, the project's conditions of approval require the replacement units to be subject to the rent control ordinance, per the requirements of SB330.

### **CONCLUSION**

For the reasons stated in this document, in the attached Motion, and in the Planning Department case file, the Planning Department recommends that the Board uphold the Planning Commission's decision in approving the Conditional Use Authorization for the Project.