

File No. 091020

Committee Item No. 2

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date March 8, 2010

Board of Supervisors Meeting Date _____

Cmte Board

- Motion
- Resolution
- Ordinance
- Legislative Digest
- Budget Analyst Report
- Legislative Analyst Report
- Youth Commission Report
- Introduction Form (for hearings)
- Department/Agency Cover Letter and/or Report
- MOU
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract/Agreement
- Form 126 – Ethics Commission
- Award Letter
- Application
- * Public Correspondence

OTHER

(Use back side if additional space is needed)

- Planning Commission Resolution No. 17900
- _____
- _____
- _____
- _____

Completed by: Alisa Somera Date March 5, 2010

Completed by: _____ Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages.

1 [Discretionary Review; Fees.]
 2

3 **Ordinance amending the San Francisco Planning Code by amending Section 311 and**
 4 **312 to provide that a request for discretionary review will be heard by the Planning**
 5 **Commission or its designee if the application demonstrates exceptional and**
 6 **extraordinary circumstances as defined, to replace the term Residential Design**
 7 **Guidelines with the term Residential Design Standards, and to repeal the ability of a**
 8 **project sponsor to request discretionary review; amending Sections 352 and 355 to**
 9 **allow for collection and refund of fees associated with Planning Department**
 10 **Reconsideration; adopting environmental and Section 302 findings.**

11 NOTE: Additions are single-underline italics Times New Roman;
 12 deletions are ~~strike through italics Times New Roman~~.
 13 Board amendment additions are double-underlined;
 Board amendment deletions are ~~strikethrough normal~~.

14 Be it ordained by the People of the City and County of San Francisco:

15 Section 1. Findings.

16 (a) Environmental Finding. The Planning Department has determined that the
 17 actions contemplated in this ordinance comply with the California Environmental Quality Act
 18 (California Public Resources Code Section 21000 et seq.). Said determination is on file with
 19 the Clerk of the Board of Supervisors in File No. 091020 and is incorporated
 20 herein by reference.

21 (b) Section 302 Findings. This ordinance will serve the public necessity,
 22 convenience, and welfare for the reasons set forth in Planning Commission Resolution No.
 23 17908, and said reasons are incorporated herein by reference. A copy of
 24 Planning Commission Resolution No. 17908 is on file with the Clerk of the Board of
 25 Supervisors in File No. 091020.

Planning Commission
 BOARD OF SUPERVISORS

1 Section 2. The San Francisco Planning Code is hereby amended by amending Section
2 311, to read as follows:

3 SEC. 311. RESIDENTIAL PERMIT REVIEW PROCEDURES FOR RH, RM, AND RTO
4 DISTRICTS.

5 (a) Purpose. The purpose of this Section is to establish procedures for reviewing
6 building permit applications for lots in R Districts in order to determine compatibility of the
7 proposal with the neighborhood and for providing notice to property owners and residents
8 neighboring the site of the proposed project and to interested neighborhood organizations, so
9 that concerns about a project may be identified and resolved during the review of the permit.

10 (b) Applicability. Except as indicated herein, all building permit applications for
11 demolition and/or new construction, and/or alteration of residential buildings in RH, RM, and
12 RTO Districts shall be subject to the notification and review procedures required by this
13 Section. Subsection 311(e) regarding demolition permits and approval of replacement
14 structures shall apply to all R Districts. For the purposes of this Section, an alteration shall be
15 defined as any change in use or change in the number of dwelling units of a residential
16 building, removal of more than 75 percent of a residential building's existing interior wall
17 framing or the removal of more than 75 percent of the area of the existing framing, or an
18 increase to the exterior dimensions of a residential building except those features listed in
19 Section 136(c)(1) through 136(c)(24) and 136(c)(26).

20 (c) Building Permit Application Review for Compliance and Notification. Upon
21 acceptance of any application subject to this Section, the Planning Department shall review
22 the proposed project for compliance with the Planning Code and any applicable design
23 *guidelines standards* approved by the Planning Commission. Applications determined not to be
24 in compliance with the standards of Articles 1.2, 1.5, 2 and 2.5 of the Planning Code,
25 Residential Design *Standards Guidelines*, including design *standards guidelines* for specific areas

1 adopted by the Planning Commission, or with any applicable conditions of previous approvals
2 regarding the project, shall be held until either the application is determined to be in
3 compliance, is disapproved or a recommendation for cancellation is sent to the Department of
4 Building Inspection.

5 (1) Residential Design Standards Guidelines. The construction of new residential
6 buildings and alteration of existing residential buildings in R Districts shall be consistent with
7 the design policies and guidelines of the General Plan and with the "Residential Design
8 Standards Guidelines" as adopted and periodically amended for specific areas or conditions by
9 the City Planning Commission. The Director of Planning may require modifications to the
10 exterior of a proposed new residential building or proposed alteration of an existing residential
11 building in order to bring it into conformity with the "Residential Design Standards Guidelines"
12 and with the General Plan. These modifications may include, but are not limited to, changes in
13 siting, building envelope, scale texture and detailing, openings, and landscaping.

14 All references in this Code to the "Residential Design Guidelines" shall be deemed to mean the
15 "Residential Design Standards" set forth herein.

16 (2) Notification. Upon determination that an application is in compliance with the
17 development standards of the Planning Code, the Planning Department shall cause a notice
18 to be posted on the site pursuant to rules established by the Zoning Administrator and shall
19 cause a written notice describing the proposed project to be sent in the manner described
20 below. This notice shall be in addition to any notices required by the Building Code and shall
21 have a format and content determined by the Zoning Administrator. It shall include a
22 description of the proposal compared to any existing improvements on the site with
23 dimensions of the basic features, elevations and site plan of the proposed project including
24 the position of any adjacent buildings, exterior dimensions and finishes, and a graphic
25

1 reference scale. The notice shall describe the project review process and shall set forth the
2 mailing date of the notice and the expiration date of the notification period.

3 Written notice shall be mailed to the notification group which shall include the project
4 sponsor, relevant neighborhood organizations as described in Subparagraph 311(c)(2)(C)
5 below, all individuals having made a written request for notification for a specific parcel or
6 parcels pursuant to Planning Code Section 351 and all owners and, to the extent practical,
7 occupants, of properties in the notification area.

8 (A) The notification area shall be all properties within 150 feet of the subject lot in
9 the same Assessor's Block and on the block face across from the subject lot. When the
10 subject lot is a corner lot, the notification area shall further include all property on both block
11 faces across from the subject lot, and the corner property diagonally across the street.

12 (B) The latest City-wide Assessor's roll for names and addresses of owners shall be
13 used for said notice.

14 (C) The Planning Department shall maintain a list, available for public review, of
15 neighborhood organizations which have indicated an interest in specific properties or areas.
16 The organizations having indicated an interest in the subject lot or its area shall be included in
17 the notification group for the proposed project.

18 (3) Notification Period. All building permit applications shall be held for a period of
19 30 calendar days from the date of the mailed notice to allow review by residents and owners
20 of neighboring properties and by neighborhood groups.

21 (4) Elimination of Duplicate Notice. The notice provisions of this Section may be
22 waived by the Zoning Administrator for building permit applications for projects that have
23 been, or before approval will be, the subject of a duly noticed public hearing before the
24 Planning Commission or Zoning Administrator, provided that the nature of work for which the
25

1 building permit application is required is both substantially included in the hearing notice and
2 is the subject of the hearing.

3 (5) Notification Package. The notification package for a project subject to notice
4 under this Section 311 shall include:

5 (A) A description of the proposal compared to any existing improvements on the site
6 with dimensions of the basic features, elevations and site plan of the proposed project
7 including exterior dimensions and finishes, and a graphic reference scale.

8 (B) Information stating whether the proposed project includes horizontal, vertical, or
9 both horizontal and vertical additions.

10 (C) Information showing the relationship of the project to adjacent properties,
11 including the position and height of any adjacent building and location of windows facing the
12 subject property.

13 (D) 11 by 17 drawings at a measurable scale with all dimensions legible that shows
14 (i) both existing and proposed floor plans, (ii) specific dimensional changes to the building,
15 including parapets, penthouses, and other proposed building extensions and (iii) the location
16 and amount of removal of exterior walls.

17 (E) Floor plans where there is a new building, building expansion, or change in the
18 floor plans of an existing building.

19 (F) The name and telephone number of the project planner at the Planning
20 Department assigned to review the application.

21 (G) A description of the project review process, information on how to obtain
22 additional information about the project, and information about the recipient's rights to request
23 additional information, to request discretionary review by the Planning Commission, and to
24 appeal to other boards or commissions.

1 (d) Requests for Planning Commission Review. ~~A request for t~~The Planning
2 Commission or its designee shall consider a public request to exercise ~~its~~ discretionary review
3 powers over a specific building permit application if the application requesting discretionary
4 review demonstrates exceptional and extraordinary circumstances.

5 Exceptional and extraordinary circumstances occur where the standard application of adopted
6 design standards to a project does not enhance or conserve neighborhood character, or balance the
7 right to develop the property with impacts on nearby properties or occupants. These circumstances
8 may arise due to complex topography, irregular lot configuration, unusual context, or other conditions
9 not addressed in the design standards. shall be considered by the Planning Commission if An
10 application for discretionary review must be received by the Planning Department no later than
11 5:00 p.m. of the last day of the notification period as described under Subsection (c)(3) above,
12 subject to guidelines adopted by the Planning Commission.

13 ~~The project sponsor of a building permit application may request discretionary review by the~~
14 ~~Planning Commission to resolve conflicts between the Director of Planning and the project sponsor~~
15 ~~concerning requested modifications to comply with the Residential Design Guidelines.~~

16 (1) Scheduling of Hearing. The Zoning Administrator shall set a time for hearing
17 requests for discretionary review by the Planning Commission or its designee within a
18 reasonable period.

19 (2) Notice. Mailed notice of the discretionary review hearing ~~by the Planning~~
20 ~~Commission~~ shall be given not less than 10 days prior to the date of the hearing to the
21 notification group as described in Paragraph 311(c)(2) above. Posted notice of the hearing
22 shall be made as provided under Planning Code Section 306.8.

23 (e) Demolition of Dwellings, Approval of Replacement Structure Required. Unless
24 the building is determined to pose a serious and imminent hazard as defined in the Building
25 Code an application authorizing demolition in any R District of an historic or architecturally

1 important building or of a dwelling shall not be approved and issued until the City has granted
2 final approval of a building permit for construction of the replacement building. A building
3 permit is finally approved if the Board of Appeals has taken final action for approval on an
4 appeal of the issuance or denial of the permit or if the permit has been issued and the time for
5 filing an appeal with the Board has lapsed with no appeal filed.

6 (1) The demolition of any building whether or not historically and architecturally
7 important may be approved administratively where the Director of the Department of Building
8 Inspection or the Chief of the Bureau of Fire Prevention and Public Safety determines, after
9 consultation with the Zoning Administrator, that an imminent safety hazard exists, and the
10 Director of the Department of Building Inspection determines that demolition or extensive
11 alteration of the structure is the only feasible means to secure the public safety.

12 (f) Wireless Telecommunications Services Facility as Accessory Use, Notification
13 and Review Required. Building permit applications for new construction of a wireless
14 telecommunications services facility as an accessory use under Article 2 of the Planning Code
15 in RH and RM Districts shall be subject to the notification and review procedures required by
16 this Section.

17 Section 3. The San Francisco Planning Code is hereby amended by amending Section
18 312, to read as follows:

19 SEC. 312. NEIGHBORHOOD COMMERCIAL PERMIT REVIEW PROCEDURES FOR ALL
20 NC DISTRICTS.

21 (a) Purpose. The purpose of this Section is to establish procedures for reviewing
22 building permit applications for lots in NC Districts in order to determine compatibility of the
23 proposal with the neighborhood and for providing notice to property owners, occupants and
24 residents neighboring the site of the proposed project and to interested neighborhood
25

1 organizations, so that concerns about a project may be identified and resolved during the
2 review of the permit.

3 (b) Applicability. Except as indicated herein, all building permit applications for
4 demolition, new construction, changes in use to a formula retail use as defined in Section
5 703.3 of this Code or alterations which expand the exterior dimensions of a building shall be
6 subject to the notification and review procedures required by Subsection 312(d). Subsection
7 312(f) regarding demolition permits and approval of replacement structures shall apply to all
8 NC Districts. For the purposes of this Section, addition to a building of the features listed in
9 Section 136(c)(1) through 136(c)(24) and 136(c)(26) shall not be subject to notification under
10 this Section.

11 (c) Changes of Use. All building permit applications for a change of use to a bar, as
12 defined in Section 790.22, a liquor store, as defined in Section 790.55, a walkup facility, as
13 defined in Section 790.140, other large institutions, as defined in Section 790.50, other small
14 institutions, as defined in Section 790.51, a full-service restaurant, as defined in Section
15 790.92, a large fast food restaurant, as defined in Section 790.90, a small self-service
16 restaurant, as defined in Section 790.91, a self-service specialty food use, as defined in
17 Section 790.93, a massage establishment, as defined in Section 790.60, an outdoor activity,
18 as defined in Section 790.70, an adult or other entertainment use, as defined in Sections
19 790.36 and 790.38, or a fringe financial service use, as defined in Section 790.111, shall be
20 subject to the provisions of Subsection 312(d).

21 (d) Building Permit Application Review for Compliance and Notification. Upon
22 acceptance of any application subject to this Section, the Planning Department shall review
23 the proposed project for compliance with the Planning Code and any applicable design
24 *standards guidelines* approved by the Planning Commission. Applications determined not to be
25 in compliance with the standards of Articles 1.2, 1.5, 2 and 2.5 of the Planning Code, including

1 design *standards guidelines* for specific areas adopted by the Planning Commission, or with any
2 applicable conditions of previous approvals regarding the project, shall be held until either the
3 application is determined to be in compliance, is disapproved or a recommendation for
4 cancellation is sent to the Department of Building Inspection.

5 (1) Neighborhood Commercial Design *Standards Guidelines*. The construction of new
6 buildings and alteration of existing buildings in NC Districts shall be consistent with the design
7 policies and guidelines of the General Plan as adopted and periodically amended for specific
8 areas or conditions by the Planning Commission. The Director of Planning may require
9 modifications to the exterior of a proposed new building or proposed alteration of an existing
10 building in order to bring it into conformity with the General Plan. These modifications may
11 include, but are not limited to, changes in siting, building envelope, scale texture and detailing,
12 openings, and landscaping.

13 (2) Notification. Upon determination that an application is in compliance with the
14 development standards of the Planning Code, the Planning Department shall cause a notice
15 to be posted on the site pursuant to rules established by the Zoning Administrator and shall
16 cause a written notice describing the proposed project to be sent in the manner described
17 below. This notice shall be in addition to any notices required by the Building Code and shall
18 have a format and content determined by the Zoning Administrator. It shall include a
19 description of the proposal compared to any existing improvements on the site with
20 dimensions of the basic features, elevations and site plan of the proposed project including
21 the position of any adjacent buildings, exterior dimensions and finishes, a graphic reference
22 scale, existing and proposed uses and commercial or institutional business name, if known.
23 The notice shall describe the project review process and shall set forth the mailing date of the
24 notice and the expiration date of the notification period.

1 Written notice shall be mailed to the notification group which shall include the project
2 sponsor, relevant neighborhood organizations as described in Subparagraph 312(d)(2)(C)
3 below, all individuals having made a written request for notification for a specific parcel or
4 parcels pursuant to Planning Code Section 351 and all owners and, to the extent practical,
5 occupants, of properties in the notification area.

6 (A) The notification area shall be all properties within 150 feet of the subject lot in
7 the same Assessor's Block and on the block face across from the subject lot. When the
8 subject lot is a corner lot, the notification area shall further include all property on both block
9 faces across from the subject lot, and the corner property diagonally across the street.

10 (B) The latest City-wide Assessor's roll for names and addresses of owners shall be
11 used for said notice.

12 (C) The Planning Department shall maintain a list, updated every six months with
13 current contact information, available for public review, and kept at the Planning Department's
14 Planning Information Counter, and reception desk, as well as the Department of Building
15 Inspection's Building Permit Counter, of neighborhood organizations which have indicated an
16 interest in specific properties or areas. The organizations having indicated an interest in the
17 subject lot or its area shall be included in the notification group for the proposed project.
18 Notice to these groups shall be verified by a declaration of mailing signed under penalty of
19 perjury. In the event that such an organization is not included in the notification group for a
20 proposed project as required under this subsection, the proposed project must be re-noticed.

21 (3) Notification Period. All building permit applications shall be held for a period of
22 30 calendar days from the date of the mailed notice to allow review by residents, occupants,
23 owners of neighboring properties and by neighborhood groups.

24 (4) Elimination of Duplicate Notice. The notice provisions of this Section may be
25 waived by the Zoning Administrator for building permit applications for projects that have

1 been, or before approval will be, the subject of a duly noticed public hearing before the
2 Planning Commission or Zoning Administrator, provided that the nature of work for which the
3 building permit application is required is both substantially included in the hearing notice and
4 is the subject of the hearing.

5 (e) Requests for Planning Commission Review. ~~A request for~~ The Planning
6 Commission or its designee shall consider a public request to exercise ~~its~~ discretionary review
7 powers over a specific building permit application if the application requesting discretionary
8 review demonstrates exceptional and extraordinary circumstances.

9 Exceptional and extraordinary circumstances occur where the standard application of adopted
10 design standards to a project does not enhance or conserve neighborhood character, or balance the
11 right to develop the property with impacts on nearby properties or occupants. These circumstances may
12 arise due to complex topography, irregular lot configuration, unusual context, or other conditions not
13 addressed in the design standards. shall be considered by the Planning Commission if An application
14 for discretionary review must be ~~shall be considered by the Planning Commission if~~ received by the
15 Planning Department no later than 5:00 p.m. of the last day of the notification period as
16 described under Subsection (d)(3) above, subject to guidelines adopted by the Planning
17 Commission.

18 ~~The project sponsor of a building permit application may request discretionary review by the~~
19 ~~Planning Commission to resolve conflicts between the Director of Planning and the project sponsor~~
20 ~~concerning requested modifications to comply with relevant design guidelines of the General Plan.~~

21 (1) Scheduling of Hearing. The Zoning Administrator shall set a time for hearing
22 requests for discretionary review by the Planning Commission or its designee within a
23 reasonable period.

24 (2) Notice. Mailed notice of the discretionary review hearing ~~by the Planning~~
25 ~~Commission~~ shall be given not less than 10 days prior to the date of the hearing to the

1 notification group as described in Paragraph 312(d)(2) above. Posted notice of the hearing
2 shall be made as provided under Planning Code Section 306.8.

3 (f) Demolition of Dwellings, Approval of Replacement Structure Required. Unless
4 the building is determined to pose a serious and imminent hazard as defined in the Building
5 Code an application authorizing demolition in any NC District of an historic or architecturally
6 important building or of a dwelling shall not be approved and issued until the City has granted
7 final approval of a building permit for construction of the replacement building. A building
8 permit is finally approved if the Board of Appeals has taken final action for approval on an
9 appeal of the issuance or denial of the permit or if the permit has been issued and the time for
10 filing an appeal with the Board has lapsed with no appeal filed.

11 (1) The demolition of any building whether or not historically and architecturally
12 important may be approved administratively where the Director of the Department of Building
13 Inspection or the Chief of the Bureau of Fire Prevention and Public Safety determines, after
14 consultation with the Zoning Administrator, that an imminent safety hazard exists, and the
15 Director of the Department of Building Inspection determines that demolition or extensive
16 alteration of the structure is the only feasible means to secure the public safety.

17 (g) Wireless Telecommunications Services Facility as Accessory Use, Notification
18 and Review Required. Building permit applications for new construction of a wireless
19 telecommunications services facility as an accessory use under Article 7 of the Planning Code
20 in all NC Districts shall be subject to the notification and review procedures required by this
21 Section.

22 Section 4. The San Francisco Planning Code is hereby amended by amending Section
23 352, to read as follows:

24 SEC. 352. COMMISSION AND ZONING ADMINISTRATOR HEARING APPLICATIONS.

25 (a) Conditional Use (Section 303), Planned Unit Development (Section 304),

1	Estimated Construction Cost	Initial Fee
2	No construction cost, excluding	\$785.00
3	extension of hours	
4	No construction cost, extension of hours	\$1,206.00
5	Estimated Construction Cost	Initial Fee
6	\$1.00 to \$9,999.00	\$1,206.00
7	\$10,000.00 to \$999,999.00	\$1,206.00 plus 0.557% of cost over
8		\$10,000.00
9	\$1,000,000.00 to \$4,999,999.00	\$6,722.00 plus 0.664% of cost over
10		\$1,000,000.00
11	\$5,000,000.00 to \$9,999,999.00	\$33,315.00 plus 0.557% of cost over
12		\$5,000,000.00
13	\$10,000,000.00 to \$19,999,999.00	\$61,176.00 plus 0.290% of cost over
14		\$10,000,000.00
15	\$20,000,000.00 or more	\$90,213.00

(b) Variance (Section 305)

16	Estimated Construction Cost	Initial Fee
17	\$0.00--\$9,999.00	\$782.00
18	\$10,000.00--\$19,999.00	\$1,741.00
19	\$20,000.00 and greater	\$3,476.00

Variance fees are subject to additional time and material charges, as set forth in Section 350c.

(c) Downtown (C-3) District Review (Section 309) and Coastal Zone Permit (Section 330) Applications Commission Hearing Fee Schedule:

Estimated Construction Cost	Initial Fee
\$0.00 to \$9,999.00	\$244.00
\$10,000.00 to \$999,999.00	\$244.00 plus 0.112% of cost over \$10,000.00
\$1,000,000.00 to \$4,999,999.00	\$1,352.00 plus 0.133% of cost over \$1,000,000.00
\$5,000,000.00 to \$9,999,999.00	\$6,684.00 plus 0.111% of cost over \$5,000,000.00
\$10,000,000.00 to \$19,999,999.00	\$12,234.00 plus 0.058% of cost over \$10,000,000.00
\$20,000,000.00 or more	\$18,063.00

(1) Applications with Verified Violations of this Code: The Planning Department shall charge \$191.00 as an initial fee, plus time and materials as set forth in Section 350(c).

(2) Where an applicant requests two or more approvals involving a conditional use, planned unit development, variance, Downtown (C-3) District Section 309 review, certificate of appropriateness, permit to alter a significant or contributory building both within and outside of Conservation Districts, or a coastal zone permit review, the amount of the second and each subsequent initial fees of lesser value shall be reduced to 50 percent.

(3) Minor project modifications requiring a public hearing to amend conditions of approval of a previously authorized project, not requiring a substantial reevaluation of the prior authorization: \$896.00

(4) The applicant shall be charged for any time and materials beyond the initial fee in Section 352(a), as set forth in Section 350(c).

1 (5) An applicant proposing significant revisions to a project for which an application
2 is on file with the Planning Department shall be charged time and materials to cover the full
3 costs in excess of the initial fee.

4 (6) For agencies or departments of the City and County of San Francisco, the initial
5 fee for applications shall be based upon the construction cost as set forth above.

6 (d) Discretionary Review Requests: \$300.00; provided, however, that the fee shall
7 be waived if the discretionary review request is filed by a neighborhood organization that: (1)
8 has been in existence for 24 months prior to the filing date of the request, (2) is on the
9 Planning Department's neighborhood organization notification list, and (3) can demonstrate to
10 the Planning Director or his/her designee that the organization is affected by the proposed
11 project. Such fee shall be refunded to the individual or entity that requested discretionary
12 review in the event the Planning Commission denies the Planning Department's approval or
13 authorization upon which the discretionary review was requested.

14 (1) Mandatory ~~d~~Discretionary ~~r~~Reviews (Planning Commission or Planning Department
15 initiated): \$3,223.00.

16 (e) Institutional Master Plan (Section 304.5).

17 (1) Full Institutional Master Plan or Substantial Revision: \$11,492.00 plus time and
18 materials if the cost exceeds the initial fee as set forth in Section 350(c).

19 (2) Abbreviated Institutional Master Plan: \$2,103.00 plus time and materials if the
20 cost exceeds the initial fee as set forth in Section 350(c).

21 (f) Land Use Amendments and Related Plans and Diagrams of the San Francisco
22 General Plan: Fee based on the Department's estimated actual costs for time and materials
23 required to review and implement the requested amendment, according to a budget prepared
24 by the Director of Planning, in consultation with the sponsor of the request.
25

1 (g) General Plan Referrals: \$3,103.00 plus time and materials if the cost exceeds
2 the initial fee as set forth in Section 350(c).

3 (h) Redevelopment Plan Review: The Director of Planning shall prepare a budget to
4 cover actual time and materials expected to be incurred, in consultation with the
5 Redevelopment Agency. A sum equal to 1/2 the expected cost will be submitted to the
6 Department, prior to the commencement of the review. The remainder of the costs will be due
7 at the time the initial payment is depleted.

8 (i) Reclassify Property or Impose Interim Zoning Controls: \$6,611.00.

9 (1) The applicant shall be charged for any time and materials as set forth in Section
10 350(c).

11 (2) Applications with Verified Violations of this Code: The Planning Department shall
12 charge time and materials as set forth in Section 350(c).

13 (j) Setback Line, Establish, Modify or Abolish: \$2,672.00.

14 (k) Temporary Use Fees \$391.00 as an initial fee, plus time and materials if the cost
15 exceeds the initial fee, as set forth in Section 350(c).

16 (l) Amendments to Text of the Planning Code: \$13,209.00 as an initial fee, plus
17 time and materials if the cost exceeds the initial fee as set forth in Section 350(c).

18 (m) Zoning Administrator Conversion Determinations Related to Service Station
19 Conversions: \$2,609.00 as an initial fee, plus time and materials if the cost exceeds the initial
20 fee. (Section 228.4):

21 (n) Conditional Use Appeals to the Board of Supervisors:

22 (1) \$500.00 for the appellant of a conditional use authorization decision to the Board
23 of Supervisors; provided, however, that the fee shall be waived if the appeal is filed by a
24 neighborhood organization that: (1) has been in existence for 24 months prior to the appeal
25 filing date, (2) is on the Planning Department's neighborhood organization notification list, and

1 (3) can demonstrate to the Planning Director or his/her designee that the organization is
2 substantially affected by the proposed project.

3 (2) Such fees shall be used to defray the cost of an appeal to the Planning
4 Department. At the time of filing an appeal, the Clerk of the Board of Supervisors shall collect
5 such fee and forward the fee amount to the Planning Department.

6 Section 5. The San Francisco Planning Code is hereby amended by amending Section 355,
7 to read as follows:

8 Section 5. The San Francisco Planning Code is hereby amended by amending Section
9 355, to read as follows:

10 SEC. 355. PERMIT APPLICATIONS.

11 (a) Building permit applications for a change in use or alteration of an existing
12 building, to be collected by Central Permit Bureau; provided, however, that the fees charged
13 for Planning Department approval over-the-counter for the replacement of windows, roofs,
14 siding, and doors shall be reduced to 1/2 the fee set forth below.

15 Estimated 16 Construction 17 Cost	Initial Fee
18 \$0.00 to \$9,999.00	\$305.00
19 \$10,000.00 to 20 \$49,999.00	\$306.00 plus 3.196% of cost over \$10,000.00
21 \$50,000.00 to 22 \$99,999.00	\$1,585.00 plus 2.136% of cost over \$50,000.00 plus \$81.00 23 Discretionary Review Surcharge and \$267.00 Categorical 24 Exemption Stamp Fee
25 \$100,000.00 to	\$2,654.00 plus 2.337% of cost over \$100,000.00 plus

1 2	\$499,999.00	\$81.00 Discretionary Review Surcharge and \$267.00 Categorical Exemption Stamp Fee
3 4 5	\$500,000.00 to \$999,999.00	\$12,003.00 plus 0.591% of cost over \$500,000.00 plus \$81.00 Discretionary Review Surcharge and \$267.00 Categorical Exemption Stamp Fee
6 7 8	\$1,000,000.00 to \$4,999,999.00	\$14,959.00 plus 0.232% of cost over \$1,000,000.00 plus \$81.00 Discretionary Review Surcharge and \$267.00 Categorical Exemption Stamp Fee
9 10 11	\$5,000,000.00 to \$99,999,999.00	\$24,240.00 plus 0.004% of cost over \$5,000,000.00 plus \$81.00 Discretionary Review Surcharge and \$267.00 Categorical Exemption Stamp Fee
12 13 14	\$100,000,000.00 or more	\$28,041.00 plus \$81.00 Discretionary Review Surcharge and \$267.00 Categorical Exemption Stamp Fee

15 (1) Applications with Verified Violations of this Code: The Planning Department shall
16 charge time and materials as set forth in Section 350(c).

17 (2) Back-Check Fee for Permit Revisions: \$191.00 for the initial fee, plus time and
18 materials as set forth in Section 350(c), to be collected at time of permit issuance.

19 (3) Shadow Impact Fee for New Construction or Alteration Exceeding 40 Feet in
20 Height (Section 295): Additional \$438.00 plus time and materials as set forth in Section
21 350(c).

22 (4) Public Notification Fee for Projects Requiring Public Notice Pursuant to Section
23 311: \$45.00, plus \$3.03 per envelope (subject to increase based on envelope and postage
24 costs). The City's reprographics department will print and mail public notices.

1 (5) Public Notification Fee for Projects Requiring Public Notice Pursuant to Section
 2 312: \$45.00, plus \$0.89 per envelope (subject to increase based on envelope and postage
 3 costs). The City's reprographics department will print and mail public notices.

4 (6) For projects with a construction cost of \$100,000,000.00 or more, the applicant
 5 shall be charged the permit fee for a project with a \$100,000,000.00 construction cost.

6 (7) Permits for solar panels and over-the-counter permits for solar equipment
 7 installation shall be \$129.00 per permit.

8 (b) Building Permit Applications for a New Building:

9 10 Estimated 11 Construction Cost	Initial Fee
12 \$0.00 to \$99,999.00	\$1,734.00, plus \$81.00 Discretionary Review Surcharge 13 and \$267.00 Categorical Exemption Stamp Fee
14 \$100,000.00 to 15 \$499,999.00	\$1,735.00 plus 2.337% of cost over \$100,000.00 plus 16 \$81.00 Discretionary Review Surcharge and \$267.00 Categorical Exemption Stamp Fee
17 \$500,000.00 to 18 \$9,999,999.00	\$11,084.00 plus 0.746% of cost over \$500,000.00 plus 19 \$81.00 Discretionary Review Surcharge and \$267.00 Categorical Exemption Stamp Fee
20 \$1,000,000.00 to 21 \$4,999,999.00	\$14,815.00 plus 0.287% of cost over \$1,000,000.00 plus 22 \$81.00 Discretionary Review Surcharge and \$267.00 Categorical Exemption Stamp Fee
23 \$5,000,000.00 to 24 \$99,999,999.00	\$26,296.00 plus 0.005% of cost of \$5,000,000.00 plus 25 \$81.00 Discretionary Review Surcharge and \$267.00

	Categorical Stamp Fee
\$100,000,000.00 or more	\$31,047.00 plus \$81.00 Discretionary Review Surcharge and \$267.00 Categorical Exemption Stamp Fee

(c) Demolition Applications, to be collected by Central Permit Bureau: \$1,351.00.

(d) Fire, Police, Entertainment Commission, State Alcohol and Beverage Control and Health Department Permit Applications Referral Review: \$114.00 initial fee collected by the other Departments in conjunction with current fee collections, plus time and materials as set forth in Section 350(c).

(e) Sign Permit Applications, to be collected by Central Permit Bureau: \$119.00.

(f) Requests for Planning Department Reconsideration: \$300.00; provided, however, that the fee shall be waived if the reconsideration request is filed by a neighborhood organization that: (1) has been in existence for 24 months prior to the filing date of the request, (2) is on the Planning Department's neighborhood organization notification list, and (3) can demonstrate to the Planning Director or his/her designee that the organization is affected by the proposed project. Such fee shall be refunded to the individual or entity that requested reconsideration in the event the Planning Department determines that the Planning Code and/or adopted design standards were not appropriately applied to the subject building permit application under reconsideration.

Section 6. Report to the Board of Supervisors. Within 24 months after the operative date of this ordinance, the Planning Department shall present a report to the Board of Supervisors about the results of the Discretionary Review reform trial period. At that time, the Board may choose to introduce legislation to repeal or change the Discretionary Review reform legislation, or take no action should it feel that the reform has been successful during

1 the 24 month trial period. This Report shall be given subsequent to and shall include a
2 summary of a hearing before the Planning Commission on the same topic.

3 APPROVED AS TO FORM:
4 DENNIS J. HERRERA, City Attorney

5 By:


6 JUDITH A. BOYAJIAN
Deputy City Attorney

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

LEGISLATIVE DIGEST

[Discretionary Review; Fees.]

Ordinance amending the San Francisco Planning Code by amending Section 311 and 312 to provide that a request for discretionary review will be heard by the Planning Commission or its designee if the application demonstrates exceptional and extraordinary circumstances as defined, to replace the term Residential Design Guidelines with the term Residential Design Standards, and to repeal the ability of a project sponsor to request discretionary review; amending Sections 352 and 355 to allow for collection and refund of fees associated with Planning Department Reconsideration; adopting environmental and Section 302 findings.

Existing Law

Planning Code Section 311 establishes procedures for reviewing certain building permit applications in Residential zoning districts in order to determine compatibility of the proposal with the neighborhood, and for providing notice to property owners and residents neighboring the site and to interested neighborhood organizations so that concerns about a project may be identified and resolved during the review of the permit. Section 312 establishes similar review procedures and notice provisions for certain building permit applications in Neighborhood Commercial zoning districts.

Sections 311 and 312 give neighborhood residents, interested neighborhood organizations, or others 30 days to request the Planning Commission to exercise discretionary review (DR) over the project. If a request for DR is received within the 30-day period, the Commission must hold a public hearing to hear the matter. The project sponsor also has the right to request DR by the Planning Commission to resolve conflicts between the Planning Director and the sponsor concerning the project.

Amendments to Current Law

The proposed legislation amends Planning Code Sections 311 and 312 to eliminate the mandatory scheduling of a DR hearing before the Planning Commission upon receipt of a request for DR and instead allows some DR requests to be reviewed and heard administratively. It also eliminates the right of a project sponsor to request DR. Staff-initiated DRs and mandatory DRs required by the Commission will not be affected. In order to have a Commission hearing, a request by the public for DR must demonstrate "exceptional and extraordinary circumstances," which is defined as occurring "where the standard application of adopted design standards to a project does not enhance or conserve neighborhood character, or balance the right to develop the property with impacts on nearby properties or occupants." These circumstances may arise "due to complex topography, irregular lot configuration, unusual context, or other conditions not addressed in the design standards."

FILE NO.

Planning Code Section 352 is amended to provide that the existing \$3,223 DR fee will be assessed only for Planning Commission or Planning Department staff-initiated DRs. Section 355 is amended to add a \$300 fee for requests for reconsideration by the Department. This fee will be waived if the reconsideration request is filed by a neighborhood organization that "(1) has been in existence for 24 months prior to the filing date of the requests, (2) is on the Planning Department's neighborhood organization notification list, and (3) can demonstrate to the Planning Director or his/her designee that the organization is affected by the proposed project." The \$300 fee, if paid, will be refunded to the individual or entity that requested reconsideration in the event that the Department determines the Planning Code and/or adopted design standards were not appropriately applied to the project.

The legislation requires that the Planning Department present a report to the Board of Supervisors within 24 months of the operative date of the ordinance about the results of this DR reform legislation. This report will summarize the hearing before the Planning Commission on the same topic, that will be held prior to presenting the report to the Board.

Background Information

On July 17, 2008, the Planning Commission endorsed the Planning Department's Action Plan, which includes reforming the DR process. The reform proposal, which the Commission will implement during a two-year trial period, was initiated by the Commission on April 2, 2009 and approved by the Commission at a public hearing held on June 18, 2009. This legislation is part of the reform package.

The DR authority is codified in Section 26 of the San Francisco Business & Tax Regulations Code, which authorizes the agency granting or revoking any permit to take into consideration the effect of the proposal upon surrounding property and residents and to "exercise its sound discretion as to whether said permit should be granted, transferred, denied or revoked." The Commission currently exercises this authority by holding a public hearing to consider requests by the public for DR of a particular project prior to action by the Planning Department and the Department of Building Inspection on the building permit. Several independent audits and reports have suggested that the current DR process does not produce consistent or fair results, creates conflict in neighborhoods, has created unrealistic expectations on the part of filers and project sponsors, makes the development process more lengthy and costly for all involved, and takes time away from the Commission to address larger planning issues.

In developing the proposal to improve the DR process, Planning Department staff had extensive public outreach, researched the processes of other jurisdictions, reviewed case trends, and used professional experience. Staff also reviewed the Board of Supervisor's Budget Analyst audit dated June 2002, the Matrix Consulting report dated February 2008, and the SPUR/AIA report dated September 2007. The reform proposal adopted by the Commission includes many aspects which do not require Code changes to implement, such as strengthening pre-application meeting requirements, improving the Department's internal

FILE NO.

design review process, improving public information and access, adopting timelines, and ensuring that the Commission hear matters that are identified as representative of a broader policy issue or are otherwise exceptional. As one part of a phased implementation of reforms to the DR process, the proposed legislation will allow the Commission to control its time, improve the process, and better utilize Department staff while continuing to engage the public in land use development issues.



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Discretionary Review Reform Package HEARING DATE: FEBRUARY 22, 2010

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Name: Planning Commission's Discretionary Review Reform Legislation
Initiated by: Planning Commission as part of the Action Plan
Staff Contacts: Craig Nikitas, Senior Planner
craig.nikitas@sfgov.org, 415-558-6306
Elizabeth Watty, Planner
elizabeth.watty@sfgov.org, 415-558-6620
Reviewed by: Elaine Forbes, Chief Administrative Officer
elaine.forbes@sfgov.org, 415-558-6417
Lawrence Badiner, Zoning Administrator
larry.badiner@sfgov.org, 415-558-6350

BACKGROUND

As a component of the Planning Department's Action Plan, as adopted by the Planning Commission, the Department has worked with the public to create internal policies and amend legislation to reform the Discretionary Review (DR) process. Through staff and Commission dialog with the public, it became clear that DR requests have been symptomatic of problems in the review process; the public relies on the DR process as a way to be involved and as a measure of last resort. The current DR process does not produce consistent or fair results: it creates conflict in neighborhoods, it creates unrealistic expectations on the part of filers and project sponsors, it makes the development process more lengthy and costly for all involved, and it takes time away from the Commission that could be used to address larger planning issues. The Planning Commission approved a comprehensive DR Reform package that intends to institutionalize consistency, transparency, public access and fairness in the project review process. The Commission endorsed its DR Reform package on a two-year trial basis which will be fully evaluated with the public before the policy is made permanent.

DISCRETIONARY REVIEW REFORM PROPOSAL

On June 18, 2009, the Planning Commission adopted the Discretionary Review Reform Policy and recommended that the Board of Supervisor's approve the Discretionary Review Reform legislation; together the policy and legislation comprise the DR reform package. The Department believes that the Commission's Discretionary Review Reform Package, outlined below, maintains the benefits of the existing process, while advancing the key goals of the reform effort. The proposal provides for more community engagement in the development process, improves communication and the quality of customer service provided to the general public and project sponsors, and creates a more systematic, transparent, and predictable development process. Design standards will be improved by the heightened level of scrutiny applied to projects and by the renaming of the "Residential Design

Guidelines" to be the "Residential Design Standards". Overall, the Department's Discretionary Review reform proposal should provide improvements for all interested parties, which is the goal of the Department's Action Plan.

Planning Commission Policy

The Planning Commission's Discretionary Review Reform Policy does not require legislation and was implemented immediately following the Commission's adoption. The Policy includes:

- A more robust Pre-Application process;
- An improved internal design review process;
- Better access to public information through information on the Pre-Application notice, documented and publically-accessible design review comments, and a Discretionary Review website;
- A definition for "exceptional and extraordinary circumstances"¹;
- A 90-day timeline for the processing of Discretionary Review applications;
- Identification of policy issues for the Commission's consideration;
- Using Commission decisions as policy guidance for review of future projects;
- A trial period of two-years, with an evaluation beginning 18-months into the trial period;
- Weekly updates on the disposition of that week's Discretionary Review cases under the Director's Report;
- Quarterly reports on the disposition of all Discretionary Reviews for the quarter as well as emerging policy topics.

These reforms ensure early communication among neighbors and improve the Department's design review process by bringing consistency and professionalism into the review of residential projects. It also provides some certainty to the process by limiting the timeframe for the processing of Discretionary Reviews, while adding a substantial amount of transparency to the Reform. The Policy alone, however, does not achieve all of the goals of Discretionary Review Reform; allowing any project to be "DRd" for any reason is not in alignment with the City Attorney's 1954 opinion, nor does it result in a predictable, fair, or consistent process.

Discretionary Review Reform Legislation

The Planning Commission's pending Discretionary Review legislation makes for a complete and comprehensive package of reforms. This legislation includes:

- A requirement that Discretionary Review applications demonstrate "exceptional and extraordinary circumstances" in order to advance a project to a Planning Commission hearing;
- The elimination of the option for project sponsors to file Discretionary Review on their own projects to advance out-of-scale and inappropriate projects;
- A name change for the Residential Design Guidelines to the Residential Design Standards to reinforce their required application to residential projects;

¹ "Exceptional and extraordinary circumstances" occur where the common-place application of adopted Design Standards to a project does not enhance or conserve neighborhood character, or balance the right to develop the property with impacts on nearby properties or occupants. These circumstances may arise due to complex topography, irregular lot configuration, unusual context or other conditions not addressed in the Design Standards.

- The option of “Reconsideration”, which allows for a secondary review by the Department and a full fee refund if the Department made an error in reviewing a project or if inaccurate information was submitted by the Project Sponsor.

The Planning Commission has the authority to delegate its review powers to the Department, which currently occurs for many projects, such as those routinely approved over-the-counter. By adopting this legislation, it *enables* the Commission to delegate its review of some Discretionary Review Applications to the Department. It also allows the Commission to end its delegation of Discretionary Review Applications at any time for any reason. This legislation gives the Planning Commission greater authority to manage the scope of projects it reviews so that DR cases the Commission reviews are about exceptional and extraordinary projects or ask a policy question that the Commission should resolve.

Based on the community feedback, the Commission’s direction, and the Discretionary Review reform proposals submitted by members of the community, the Department asks the Land Use Committee to forward the Commission’s proposed Discretionary Review Reform Legislation to the full Board of Supervisors with a recommendation to adopt.

PUBLIC COMMENT

The Department conducted extensive public outreach prior to the Planning Commission’s adoption of the Discretionary Review Reform package. The outreach included four community outreach meetings, which were held at the Department on October 29, November 5, 12 and 19, 2008. Eighty-five individuals attended these meetings, providing staff with valuable feedback. Additionally, staff shared the proposal with the Action Plan’s Advisory Committee on October 13 and November 21, 2008, with the Coalition for San Francisco Neighborhoods on October 13, 2008, with the larger Stakeholders group on November 5, 2008, and with the Neighborhood Network on February 6, 2009.

Public comments submitted to the Department made evident a general desire to broaden the scope of Discretionary Review reform to include a more holistic analysis of the Department’s permit review process. Since Discretionary Review is often a symptom of problems in the review process, a broader approach is sensible. However, the Department believed there was a need to establish a proposal that could be adopted by the Commission and implemented by the Department in the near term. With this understanding, the Department crafted a proposal that responded to the shortcomings in the review process that could be address in the near term, while identifying specific issues that would require longer-term review. The Department recommended phased implementation for the Discretionary Review reform effort, recognizing that other identified issues – such as Universal Planning Notification and Design Review improvements – would be address under separate reform efforts in the Department’s Action Plan.

RESPONSES TO LAND USE COMMITTEE REQUESTS

Discretionary Review Reform was heard at four Board of Supervisor’s Land Use Committee hearings. At the November 23, 2009 hearing the Land Use Committee requested that the Department conduct additional public outreach with the goal of reaching greater consensus on the proposal, and provide the Committee with more detailed statistics on the disposition of Discretionary Review cases since April 9, 2009.

Examples of recent building permits or discretionary review cases

Following the November 23, 2009, Land Use hearing, the Department sought examples of recent projects – noticed in calendar year 2009 – where the public felt that the new design review procedures did not adequately balance the right to develop one’s property with impacts on the neighborhood character. The Department’s goal of this request was to determine whether the recent internal design review controls were improving the quality of projects leaving our Department, or whether there were any clear “holes” in the new review process. Staff sought these examples in preparation of the outreach meetings so that the findings could be discussed as possible modifications to the Commission’s proposal.

Staff received 9 examples in response to this request, which can be placed into four general categories:

- Discretionary Reviews that pre-date the 2009 internal design review controls;
- Use-related Discretionary Reviews;
- Discretionary Reviews where the Commission and Department are in complete alignment; and
- Discretionary Reviews that highlight an important land use decision.

This exercise provided the Department with two important categories on which to focus our attention since the last Land Use hearing: (1) Discretionary Reviews filed on new construction projects; and (2) Discretionary Reviews filed on expansions to structures located at the rear of the lot. The first four projects in the table above represent one of these two categories. The Department thinks that these two project types warrant Planning Commission input if a Discretionary Review is filed.

Currently, most projects that include demolition and new construction are subject to either a mandatory Discretionary Review or a Conditional Use. However, if new construction is proposed on a vacant lot or on the vacant portion of a lot, the project is not subject to a mandatory Discretionary Review since there is no loss of existing housing. Nonetheless, the new construction can often be a substantial change to the neighborhood fabric. In the Department’s opinion, if a Discretionary Review is filed, this type of project should always be forwarded to the Commission, even if the Department finds the new building to be appropriate.

Similarly, when there is an existing noncomplying building at the rear of a lot that is the subject of an expansion, there is the potential for impacts on the midblock open space and on the rear yards of adjacent properties. The Residential Design Guidelines do not speak to alterations of existing noncomplying buildings in required yards. Since there is not an adequate reference to support review of such projects, the Department does not feel that they should use administrative review if a Discretionary Review is filed; rather, the Department proposes to continue referring all such projects to the Commission until the Residential Design Guidelines adequately address modifications to noncomplying buildings.

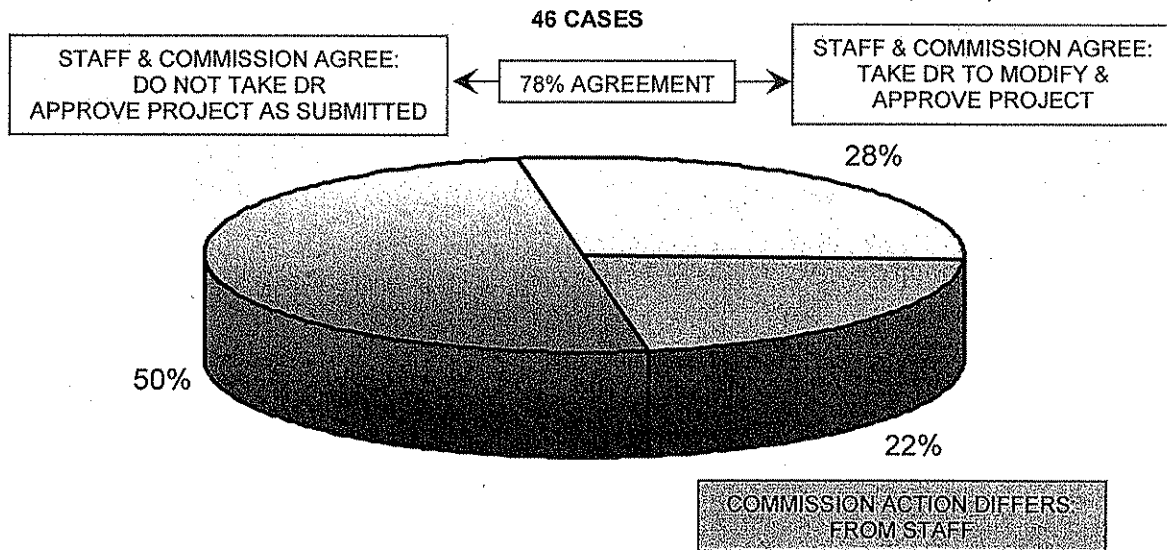
Discretionary Review data requests

On November 23, 2009, the Land Use Committee requested more detailed statistics on the disposition of Discretionary Reviews both prior to and after the Department implemented its improved internal design review procedures.

Data have collected on all publicly filed and staff-initiated Discretionary Reviews that deal with physical building alterations (excluding all mandatory DRs, and those filed because of objections to a proposed use) from 2007. There were 74 such cases. Twenty-eight (38%) of those cases were closed without a public hearing, either because the DR Requestor withdrew the DR request, or the project sponsor withdrew the permit application, or staff cancelled the application due to unresponsiveness of the applicant.

The remaining 62% of the 2007 DRs, comprising 46 cases, were brought to public hearing at the Planning Commission. Regarding project outcomes of those cases heard, staff's recommendations and the Commission's actions were in accord 78% of the time, either 1) in not taking DR, where the project is approved as submitted indicating that staff & the Commission found the DR unnecessary, (50% of cases heard), or 2) in taking DR and modifying the project, indicating that while project modifications were appropriate, staff was recommending those modifications without the need for a hearing (28% of cases heard). In the remaining ten cases (22%), the project outcome determined by the Commission differed from staff recommendations. These results are summarized in the chart below.

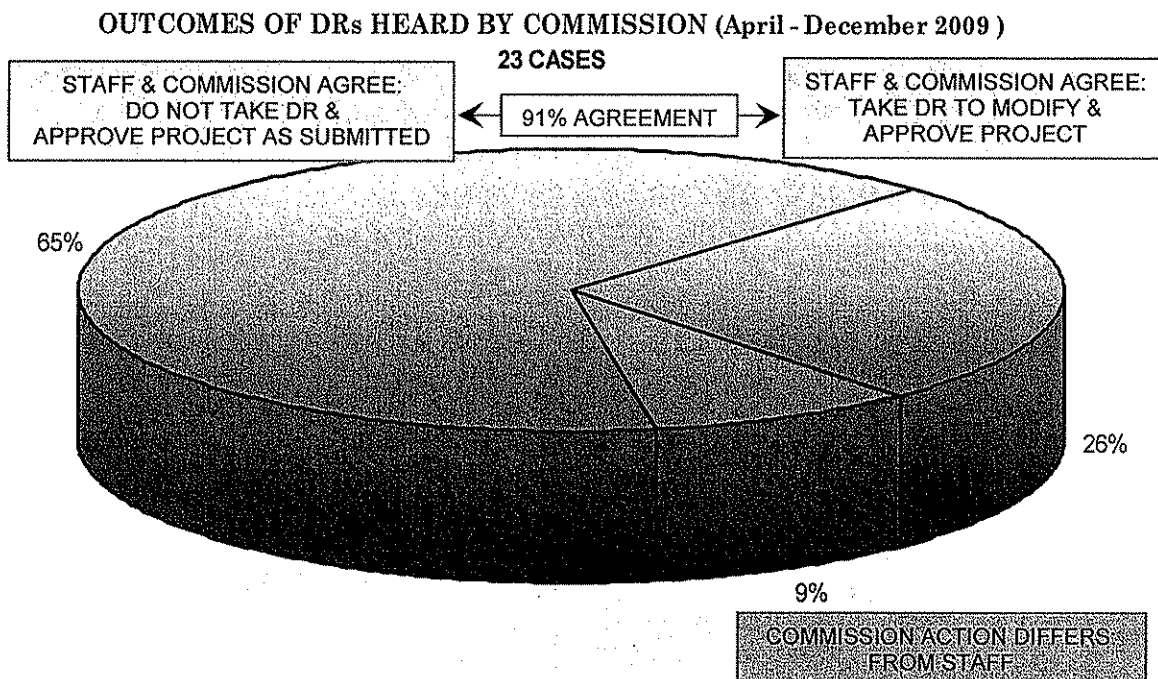
OUTCOMES OF DRs HEARD BY COMMISSION (2007)



The Department has also tracked its alignment with the Commission's hearing actions on all publicly filed and staff-initiated Discretionary Reviews that deal with physical building alterations (excluding mandatory DRs and those filed because of objections to a proposed use) from April 9, 2009, through December 17, 2009. The data shows concurrence and disagreement between staff and the Commission on two issues relating to DR Reform: 1) *hearing delegation* (did the Commission and staff agree whether the case should be referred to a public hearing?) and 2) *project outcome* (did the Commission implement staff's recommendation on the physical aspects of the project?). The statistics for both of those categories are described below for those 23 cases out of 26 filed that went to a public hearing (three, or about 12% of filed cases, were withdrawn prior to hearing).

- **Hearing delegation.** There were 19 of 23 cases presented to the Commission that enable a clear comparison of staff and Commission determinations of whether the DR request should have a hearing, or be delegated to staff. The Department was in agreement with Commission on 18 out of 19 of those cases, or 95% of the time.
- **Project outcome.** All 23 cases presented to the Commission enabled a clear comparison between staff recommendation and Commission decision on Project outcomes. The Department was in agreement with the Commission on 21 out of 23 of those cases on substantive issues, or 91% of the time. (The Commission did take DR in two of those cases, making minor changes such as moving a window and altering a facade detail. If those minor changes are considered, then the Department-

Commission agreement was 83%, with the Department in absolute concert with the Commission on 19 out of 23 cases.)



These analyses demonstrate that in those cases where DR reform would have an impact, i.e., on permit applications that physically alter a structure, the Department's strengthened internal design review has improved concurrence between staff's recommendations and the Commission's determinations on project outcomes. The second data set also shows an extremely strong concurrence (95%) on those DR requests that raise a policy issue or for which the Design Standards do not adequately prescribe a solution, where hearings should be held, and those requests that do not rise to that level.

Additional Public Outreach

In response to the Land Use Committee's request that the Department further engage the community about the Discretionary Review Reform Package, the Department undertook four additional community outreach meetings. The Department held two outreach meetings at the Department, and attended two neighborhood organizations' meetings (Upper Noe Neighbors and District 11 Council). At all of these meetings the Department presented the Commission's Policy and proposed legislation, and sought recommendations from the public about ways to improve or modify the reform package such that it would be more widely supported.

As a result of these community outreach efforts, the Department gained the support and endorsement for a DR Reform trial period from the District 11 Council, the Upper Noe Neighbors, the St. Francis Homes Association. At the two meetings held at the Department, the Department heard concerns from the architectural community about the Department's Residential Design Team's more stringent application of the Residential Design Guidelines, noting that they had seen a clear shift in the rigor and consistency of the Department's review, but expressing concern that architects' stylistic freedom was being hampered. The Coalition of San Francisco Neighborhoods reiterated their formal position that they are in

support of pre-application and improved internal design controls, but are not – and likely would never be – in support of the Commission delegating administrative review discretion to the Department.

The Department's additional community outreach efforts resulted in four possible amendments to the Commission's Discretionary Review Reform Package, as indicated below. These possible amendments are outlined below for your consideration:

- Provide a 3-year trial period in order to gain a larger data pool for analysis;
- Provide an exemption for neighborhood organizations so that they do not have to show that a project demonstrates exceptional or extraordinary circumstances in order to advance to a Planning Commission hearing;
- Projects proposing new construction on a vacant lot or vacant portion of a lot that are "DRd" would not be subject to Administrative Review – all such Discretionary Reviews would be forwarded to the Planning Commission;
- Projects proposing expansions to noncomplying buildings located (entirely or partially) within the required rear yard would not be subject to Administrative Review – all such Discretionary Reviews would be forwarded to the Planning Commission.

Attachment A is a summary of all proposal recommendations received in the past year and 8 months, and whether these recommendations are incorporated into the DR reform package.

FINANCIAL CONSIDERATIONS

Reflecting initial comments from the public, the Department is working to ensure that the new proposal will be less time- and cost-intensive than the current process to the public and project sponsors. The cost to the Department will be neutral because the proposal requires more internal review, but Discretionary Review applications should decline due to better community engagement, information, and setting realistic expectations. However, based on the initial proposal, the Department believes that for Discretionary Review requests that do not demonstrate "exceptional and extraordinary circumstances" and are therefore administratively rejected, the cost to the project sponsor, the Discretionary Review requestor and the Department will be substantially reduced. For requests that are "exceptional and extraordinary", the cost to the project sponsor and the requestor will be about the same. Staff believes it is appropriate to shift costs away from Discretionary Review requests that are not "exceptional and extraordinary" to those cases that are.

CONCLUSION

The Discretionary Review Reform Package maintains all of the benefits of the current practice, which includes an open process where the public has the opportunity to vet their concerns, an ability for the Department to mandate design improvements to a project, a third party review of the Department's professional determinations, and an opportunity for the Planning Commission to review emerging planning issues. In addition, the Discretionary Review Reform Package offers more transparency and information to the public and project sponsors about project applications and the Department's decision-making in project evaluation and ensures that outcomes of the Discretionary Review process are fair and predictable in order to create a more consistent and equitable entitlement process for project sponsors and the public. Based on the community feedback, the Commission's direction, and the Discretionary Review reform proposals submittals by members of the community, the Department asks the Land Use Committee to forward the Commission's proposed Discretionary Review Reform Legislation to the full Board of Supervisors with a recommendation to adopt.

DR Reform - Commission and Public Comments and Responses

	Recommendation	Source	Response
1	<p>"Phase 1" approved as 18-month trial program with date-specific expiration, at which point Commission will have prerogative to re-authorize the program/policies. At 12-month mark, a robust review will begin of the trial program results, with at least one Commission informational hearing prior to the 18-month expiration date.</p>	<p>Neighborhood Network</p>	<p>Agree but with 18-month starting point for evaluation, and 24-month (2 year) end of trial period. The Commission would have the ability to re-authorize (or not) in 2 years. This provides sufficient time to see results.</p>
2	<p>Commission resolution directing staff to bring "Universal Planning Notification" proposal to Commission within 60 days, as complementary reform related to DR Reform.</p>	<p>Neighborhood Network</p>	<p>In Progress - expected to be presented to the Planning Commission by Fall '09. For specific timeline, contact Scott Sanchez (558.6326)</p>
3	<p>Commission directive to staff to pursue an aggressive schedule for preparing "Neighborhood Commercial District Standards" proposal to bring to Commission, as another complementary improvement related to DR Reform.</p>	<p>Neighborhood Network</p>	<p>Department is supportive of this work program effort, and has secured \$50K of funding which is on reserve at the Finance Committee. The cost would be approximately \$124K, or 1 FTE Planner III.</p>
4	<p>Pre-application requirement extended to Conditional Uses for use-allowances whether or not related to a building permit.</p>	<p>Neighborhood Network</p>	<p>Department will recommend this change to the Planning Commission at the first quarterly report.</p>
5	<p>Commission directive that Planning staff provide pre-calendared quarterly reports to the Commission during the 18-month trial period on policy issues that are identified through application of the Residential Design Standards</p>	<p>Neighborhood Network</p>	<p>Agree - the Department is planning on having quarterly policy hearings throughout the trial period (18-month evaluation initiated, 24-month (2 years) trial period).</p>

DR Reform - Commission and Public Comments and Responses

Recommendation	Source	Response
<p>Clarify that the DR "intake meeting" will be offered as a first step upon filing a DR case, and that both the DR applicant and the project sponsor will be encouraged to attend, providing a dispute resolution opportunity.</p> <p>6</p>	<p>Neighborhood Network</p>	<p>Yes, DR "intake meeting" will be offered to the DR Requestor and the sponsor will be encouraged to attend. The Department cannot act as mediators on issues that are not related to the Code and relevant design standards.</p>
<p>Planning Department require a current site survey to be included when project plans are submitted for review (to ensure accurate dimensions on project plans).</p> <p>7</p>	<p>Neighborhood Network</p>	<p>A site survey is required with all new construction and requested by the Dept. on a case-by-case basis if there is disputed info. Staff will consider with design professionals and the public changes to submission requirements and make recommendations to the Planning Commission at a quarterly update report if changes are desired (see items 7 & 8). Requiring a current site survey for all projects may unnecessarily increase the cost of development since only a small number of projects are disputed for accuracy.</p>
<p>Planning Department require 3-D renderings be included with project plans when submitted for review (exact specifications TBD through department consultation)</p> <p>8</p>	<p>Neighborhood Network</p>	<p>Currently considered for Phase 2 Discussion. However, staff will consider with design professionals and the public changes to submission requirements and make recommendations to the Planning Commission at a quarterly update report if changes are desired (see items 7 & 8).</p>

DR Reform - Commission and Public Comments and Responses

Recommendation	Source	Response
<p>9 Planning Department establish standards for tracking plans for project changes through project review process (e.g., date indications, plan text notations, drawing labels, etc).</p>	<p>Neighborhood Network</p>	<p>Agree - all revisions are kept during Planning review process; 311/312 plans kept for 3 years; all 311 plans scanned (recent). Department will look at a policy for docket maintenance and record keeping.</p>
<p>10 Planning Code ordinance for delegation of DR authority to staff will be approved as 24-month trial program, with date-specific expiration in the ordinance. At 18-month mark, a robust review will begin of the trial program results, with at least one Commission informational hearing prior to the 24-month expiration date. Continuation of the delegation of DR authority to staff will require re-authorization by the Board of Supervisors.</p>	<p>Neighborhood Network</p>	<p>The Commission has authorized the policy for 24-months, with complete evaluation beginning on the 18-month mark. The Commission will report results of evaluation to the BOS and will continue, amendment or discontinue the policy. The legislation does not current include a sunset which would require re-authorization by the BOS.</p>
<p>11 Proposed language for code revision acknowledging the evaluation period: A) Add to either the Commission Resolution recommending the Planning Code Amendments, or in Section 1, Findings for the proposed amendment, add : "It is the policy of the Planning Commission that this program be implemented on a trial basis, not to exceed 24 months" or words to that effect</p>	<p>Neighborhood Network</p>	<p>Yes, exact language was included in the policy.</p>
<p>12 Specific "metrics" to be used for the trial program evaluation should include sufficient detail for the Commission and the public to clearly understand how decisions are being made.</p>	<p>Neighborhood Network</p>	<p>Yes, the Department has proposed metrics to the Planning Commission which will be set at the first quarterly report.</p>

DR Reform - Commission and Public Comments and Responses

Recommendation	Source	Response
<p>Change trigger for pre-application requirement from 10-foot horizontal extension to: "any horizontal extension of a building beyond the rear wall of an adjacent building and/or the horizontal extension of a building beyond the standard maximum lot coverage allowance of 55%, including rear yard permitted obstructions." (Rear horizontal extensions are the types of potentially controversial projects, irrespective of how many feet they extend, that would be very well served by a pre-application process for benefit of both neighbors and 13 sponsors).</p>	<p>Neighborhood Network</p>	<p>The Department will evaluate whether any projects under the 10/7 foot triggers are the subject of DR or RDT project modification and will recommend changes to the triggers following a careful evaluation. The Department is not ready to recommend this change at this time.</p>
<p>Clarify that the pre-application requirement is applicable to 14 Garage Addition projects.</p>	<p>Neighborhood Network</p>	<p>The Department suggests requiring public notice for garage insertions, but not requiring pre-application.</p>
<p>Include all residential, NC and mixed-residential zoning districts in requirement for pre-application. (There are many different types of zoning designations beyond the R zones 15 where residential development occurs)</p>	<p>Neighborhood Network</p>	<p>Yes. Agreed.</p>
<p>Commission directive to staff to begin process towards establishing standards for pre-application requirement on Conditional Use applications for formula retail uses, extension of operating hours, or CUs that are likely to increase use intensity (e.g. increased private school enrollment, or cases such as the proposed Masonic Auditorium CU), whether or 16 not related to a building permit.</p>	<p>Neighborhood Network</p>	<p>Yes, agreed. Will be recommendation to Commission at first quarterly report.</p>

DR Reform - Commission and Public Comments and Responses

Recommendation	Source	Response
<p>Commission resolution directing staff to bring "Universal Planning Notification" draft proposal to Commission within 60 days, and upon Commission direction proceed to initiate corresponding Planning Code amendments ordinance for introduction within subsequent 90 days. (Planning notification reforms are critically complementary to DR Reform).</p>	<p>Neighborhood Network</p>	<p>Done.</p>
<p>Clarify the process and timeline for issue-based modifications to the Residential Design Standards. Commission directive that at minimum policy issues and recommended RDS modification proposals should be brought to Commission by Planning staff at six month intervals during the 24-month trial period and at least annually thereafter.</p>	<p>Neighborhood Network</p>	<p>Done.</p>
<p>Commission directive that Planning staff provide pre-calendared quarterly reports to the Commission on policy issues that are identified through application of the Residential Design Standards on all project reviews (not just for DR cases)</p>	<p>Neighborhood Network</p>	<p>Done.</p>
<p>Commission directive to staff to establish a clear 1-year schedule for preparing "Neighborhood Commercial District Standards" proposal to bring to Commission, as another complementary improvement related to DR Reform.</p>	<p>Neighborhood Network</p>	<p>In process, and dependant of release of funds from the Finance Committee.</p>
<p>Clarify that the DR "intake meeting" will be offered as a first step upon filing a DR case, and that both the DR applicant and the project sponsor will be encouraged to attend, providing a problem-solving/mitigation opportunity.</p>	<p>Neighborhood Network</p>	<p>Done.</p>

DR Reform - Commission and Public Comments and Responses

Recommendation	Source	Response
<p>Something that has bothered me is that when a 311 notice is to legalize ILLEGAL CONSTRUCTION (one recently was for a 3-story illegal addition), why does an objecting neighbor have to pay the DR fee? Shouldn't the fee be shifted onto/paid by the ILLEGAL CONSTRUCTOR? It seems a bit much to have to pay \$400 to object to ILLEGAL construction.</p>	<p>Sue Hestor</p>	<p>Agreed. As part of DR Reform Internal Design Review Improvements, RDT looks at merit of project, regardless of whether it's already been constructed. If appropriate, then standard 311 and DR process; if not appropriate and project sponsor is unwilling to modify proposal, Dept. will file staff initiated Discretionary Review. Public can speak at DR hearing or file their own in addition for a standard fee.</p>
<p>Field inspection to verify conditions at site AT START. In discussions with DBI and Planning, convened by Sup. McGoldrick a couple years ago, DBI had agreed to have field inspectors verify the accuracy of existing conditions shown on plans (including relation to adjacent properties, slopes, etc). This field inspection could be covered by a fee paid to DBI as part of the permit application. Such verification can head off problems where conditions are not shown accurately on plans and allow correction BEFORE 311 notice is sent out.</p>	<p>Sue Hestor</p>	<p>At this time, neither Planning nor DBI have sufficient resources (including staffing) to conduct site visits at the onset of every building permit submittal. The Department has proposed a "Reconsideration" option, which provides a venue in which to address inaccuracies in plans (as well as poor application of the Design Standards).</p>
<p>Notes of staff review meetings (at bare minimum dates, attendees, instructions given to sponsor) must be attached to plans, and put in case file if one is opened.</p>	<p>Sue Hestor</p>	<p>Agreed. All formal correspondence from staff to Project Sponsor will be stored on internal shared drive, and also put in a file if one exists. RDT comments will be on the website if PC adopts Policy as proposed.</p>

DR Reform - Commission and Public Comments and Responses

Recommendation	Source	Response
<p>Story pole requirement. Additions at sloping sites or where conditions make it difficult for lay person to understand relationship of proposal to neighbors shall erect story poles NO LATER at least 3 weeks before 30 day notice period expires. The existence of the story poles shall be EXPLICITLY described in 311 notice. To be done at sponsor's cost. To be done for all NEW construction.</p> <p>25</p>	<p>Sue Hestor</p>	<p>Currently considered for Phase 2 Discussion. However, if time permits, staff will consider with design professionals and the public story poles and 3-d renderings and make recommendations to the Planning Commission at a quarterly update report if changes are desired (see items 7 & 8).</p>
<p>Staff to require compliance with Residential Design Guidelines PARTICULARLY re setbacks BEFORE the 311 notice goes out. This includes showing all side windows facing project on abutting sites. No longer optional, depending on individual planner.</p> <p>26</p>	<p>Sue Hestor</p>	<p>Agree - As part of DR Reform's Internal Improvements, staff will not send a project out for 311 if it does not comply with RDS's (unless Staff initiated DR is filed).</p>
<p>BEFORE the 311 notice is issued, Planning staff shall discuss issues with DBI staff, such as whether a project will require structural upgrades that will result in a de facto demolition. When questions arise after 311 notice, or while DR is pending, Planning shall seek that information and not defer issues until AFTER the plans have been approved by Planning.</p> <p>27</p>	<p>Sue Hestor</p>	<p>Agreed. Under Section 317, Project Sponsor's are required to show their demo calculations graphically if a project appears to be close to tantamount to demo. Those that are closed will be reviewed with CN or LBB to determine if DBI review is needed.</p>
<p>This shall also include issues re exiting requirements and other matters that could affect the building envelope.</p> <p>28</p>	<p>Sue Hestor</p>	<p>With the new Building Code, this is less of an issue. Staff often recommends pre-application meetings with DBI if they foresee this as an issue.</p>
<p>There is a perception that some staff persons value "numbers," i.e. getting cases off their desk, rather than doing a thorough analysis of major alterations. That their client is the developer, not the public. Adjust staff attitudes.</p> <p>29</p>	<p>Sue Hestor</p>	<p>DR Reform is seeking consistency among staff. The quality of projects is being stressed by management.</p>

DR Reform - Commission and Public Comments and Responses

Recommendation	Source	Response
30 Establish a feedback system that solicits written input from the public on how they are being served to help the Department see where it is doing well and what could be improved. DBI and the Board of Appeals already solicit that input.	Sue Hestor	Agreed. Although not within the scope of DR Reform. Sr. Management is looking into this and researching DBI, Bd. of Sups., and Bd. of Appeals processes.
31 Quarterly reports to the Commission	Testimony - Jim Meko	Agreed and is included in Phase One Discretionary Review Reform
32 Date specific sunset date	Testimony - Peter Cohen	Agreed. A 2-year re-consideration is being proposed, with the evaluated date of 18 months after the effective date of the Code changes. Commission will at that time have the ability to re-consider the DR Reform effort and vote to continue it, modify it, or discontinue the changes.
33 Send drawings to neighbors	Testimony - Peter Wilkerstein	This is already done under Section 311 notification. Under the DR Reform Pre-App improvements, neighbors attending the pre-app meeting can request reduced plans to be mailed.
34 Too much cost burden on the home owner, especially with more pre-application, 3d drawings, etc	Testimony - Property Owner who underwent the DR process.	Costs may be slightly higher at the beginning, with the goal of reducing cost and time associated with DRs.
35 Consent calendar of rejected DR	testimony - Alan Martinez	Weekly report provided through "Director's Report"; copy of DR Decision Letters (those DR Applications that failed to present exceptional & extraordinary circumstances) in Commission Packets for transparency.
36 Story poles are a good idea	Testimony - Bob Passmore	Proposed for Phase 2 Discussion

DR Reform - Commission and Public Comments and Responses

Recommendation	Source	Response
37 First 12 months, all rejected DR go to Commission for review	Looking for Cow Hollow Association Letter, Jeff Wood	Weekly report provided through "Director's Report"; copy of DR Letters in Commission Packets for transparency.
38 Need to understand the standards the RDT uses	Testimony - Hiroshi Fekuda	All decisions are based on Residential Design Standards and past Commission decisions.
39 RDGs are qualitative, designed to be guidelines	Testimony - Martinez/Passmore	Agreed. The Department developed baseline metrics as a way to "trigger" RDT review, with the goal of achieving more consistent review throughout the Department. The RDT, however, looks at every project on its individual merits and context. The Guidelines have evolved over the years and were codified under Section 311.
40 Consent calendar of rejected DR to calibrate staff	Commissioner Antonini	We are providing a feedback loop via the Director's Report, copies of the DR letters in Commission packets, quarterly reports, and the trial period evaluate in 2 years. The PC can direct us to change our approach if they disagree with how we are analyzing projects.
41 RDS subjective - facades more in the eye of the beholder	Commissioner Antonini	We agree that design is subjective; however, we base design decisions on the adopted Residential Design Standards.
42 Quarterly discussions important	Commissioner Borden	Agreed. Included in Phase One

DR Reform - Commission and Public Comments and Responses

Recommendation	Source	Response
43 What is the process of how the guidelines become standards; need more specific standards	Commissioner Moore	The change is just nomenclature at this time, in order to underscore their required application for residential projects. The RDS's will evolve via Commission Policy. Weekly reports on the disposition of DR under Director's report, Commissioner decisions on public DR cases that demonstrate exceptional and extraordinary circumstances and staff initiated DR, and quarterly policy updates will result in the evolution of the Standards. Further, staff will host brownbag discussions with the Commission, design professionals and the public on aspects of the standards that reflect emerging issues and/or areas that require refinement.
44 Story poles are a good idea	Commissioner Olague	Phase 2 Discussion
45 RDS are a work in progress	Commissioner Olague	Agreed. They will evolve via Commission Policy.
46 Would like to be aware of rationale behind rejecting DR	Commissioner Olague	Agree - Decisions will be clearly documented in writing. Copies will be provided to the Commission in their packets weekly. The Director will also go through decisions weekly under "Director's Report".
47 Staff's improvement and strengthening of the pre-application process and better community notification to resolve many issues that normally trigger DR	Cow Hollow Association, Inc.	Agreed. Pre-application should help minimize the number of DRs filed.

DR Reform - Commission and Public Comments and Responses

Recommendation	Source	Response
<p>Expanding the Pre-App notice are to 150 feet to be consistent with Building Permit Application 311 notices so that there is 48 more consistency</p>	<p>Cow Hollow Association, Inc.</p>	<p>Preapplication requirement will include neighborhood organizations and all abutting property owners and tenants including properties across the street. We disagree will expanding this to 150 feet since pre-App is intended to discuss impacts from the proposal on most immediately affected people and the 150 foot radius would include too many individuals, many of whom are not immediately affected by the proposal.</p>
<p>Including in both the Pre-App materials and the 311 notice the change in square footage and an existing /proposed 49 photo/rendering of the subject property</p>	<p>Cow Hollow Association, Inc.</p>	<p>Agree (in part) - Improved pre-application will include (E) and (P) square footage. Renderings are expensive to create at the pre-application phase when the project is very likely to change. Rendering discussion and possible policy changes may be included under Phase Two, or prior to Phase Two if time permits.</p>

DR Reform - Commission and Public Comments and Responses

Recommendation	Source	Response
<p>Starting with the Pre-Application meeting, the project architect, neighborhood association, and Planning staff completion of a "neighborhood character" checklist based on the Residential Design Standards or individual neighborhood design guidelines. If the checklist is the same for every project in a specific neighborhood, a standardized information flow will result. (CHA Checklist is attached)</p>	<p>Cow Hollow Association, Inc.</p>	<p>Disagree - The RDS's are general enough to cover all residential districts; the Department does not believe that individual "neighborhood character" districts are necessary throughout the entire City. Projects are looked at individually, and neighborhood context will be evaluated during RDT review. There are only a handful of districts that are either neighborhood character districts or have their own adopted Design Guidelines. Projects in those areas are analyzed with the specific design criteria.</p>
<p>Providing online access to 311 notices, historic/environmental review, demolition calculations, and plan revisions for each proposed project</p>	<p>Cow Hollow Association, Inc.</p>	<p>Agreed. This is in progress through the UPN and permit tracking processes. These items are under separate Action Plan Items. Demolition calculations are required by staff when a project is close to being determined "tantamount to demolition".</p>
<p>Review by the Planning Commission during the first 12 months of the new program any staff rejected DR applications that fail to meet "exceptional and extraordinary circumstances"</p>	<p>Cow Hollow Association, Inc.</p>	<p>Agreed. During the 2 year trial period for Phase One Implementation, staff will include weekly reports under the "Director's Report", and DR Letters will be included in the Commissioner's weekly packets.</p>
<p>Conduction a 12-month up to 18-month trial period of Phase I and generating a report at the end of that period to be presented to the Commission and the same organizations that participated in the study</p>	<p>Cow Hollow Association, Inc.</p>	<p>Agreed - The Department proposes an 24-month trial period, with the evaluation to be initiated at the 18-month point.</p>

DR Reform - Commission and Public Comments and Responses

Recommendation	Source	Response
<p>Carrying forward DR case histories, beginning with the implementation of the Residential Design Team (Dec. 17, 2008), including information on DR's that were withdrawn by DR 54 applicants.</p>	<p>Cow Hollow Association, Inc.</p>	<p>Agreed. All RDT comments are memorialized and available as public records. If the Planning Commission adopts the proposed Policy, the RDT comments will be posted on the Department's website.</p>

FILE NO.

ORDINANCE NO.

Non-Physical per CEQA Guidelines
Section 15060(a)(3).

Brett Bollinger 5/5/09 20090327E
~~Approved Planning Dept. Brett Bollinger~~

1 [Discretionary Review; Fees.]

2
3 Ordinance amending the San Francisco Planning Code by amending Section 311 and
4 312 to provide that a request for discretionary review will be heard by the Planning
5 Commission or its designee if the application demonstrates exceptional and ordinary
6 circumstances as defined, to replace the term Residential Design Guidelines with the
7 term Residential Design Standards, and to repeal the ability of a project sponsor to
8 request discretionary review; amending Sections 352 and 355 to allow for collection
9 and refund of fees associated with Planning Department Reconsideration; adopting
10 environmental and Section 302 findings.

11 NOTE: Additions are single-underline italics Times New Roman;
12 deletions are ~~strike-through italics Times New Roman~~.
13 Board amendment additions are double-underlined;
Board amendment deletions are ~~strikethrough-normal~~.

14 Be it ordained by the People of the City and County of San Francisco:

15 Section 1. Findings.

16 (a) Environmental Finding. The Planning Department has determined that the
17 actions contemplated in this ordinance comply with the California Environmental Quality Act
18 (California Public Resources Code Section 21000 et seq.). Said determination is on file with
19 the Clerk of the Board of Supervisors in File No. _____ and is incorporated
20 herein by reference.

21 (b) Section 302 Findings. This ordinance will serve the public necessity,
22 convenience, and welfare for the reasons set forth in Planning Commission Resolution No.
23 _____, and said reasons are incorporated herein by reference. A copy of
24 Planning Commission Resolution No. _____ is on file with the Clerk of the Board of
25 Supervisors in File No. _____.

Planning Commission
BOARD OF SUPERVISORS

2009.0227E



SAN FRANCISCO PLANNING DEPARTMENT

August 10, 2009

Ms. Angela Calvillo, Clerk
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

**Re: Transmittal of Planning Department Case Number 2009.0227T to the Board of Supervisors: Adoption of Planning Code Amendments to Sections 311, 312, 353, and 355 to implement Discretionary Review Reform for a two year trial period.
Planning Commission Recommendation: Approval**

Dear Ms. Calvillo,

On June 18th, 2009, the San Francisco Planning Commission (hereinafter "Commission") conducted duly noticed public hearings at a regularly scheduled meeting to consider the proposed Ordinance which the Commission initiated on April 2, 2009. The proposed ordinance would allow the Commission to implement reforms to the Discretionary Review process during a two-year trial period, which the Commission and Board of Supervisors would evaluate at the end of the trial period.

The Planning Department's Action Plan, which was endorsed by the Planning Commission on July 17, 2008, includes "reform[ing] the Discretionary Review process, with the public, the Planning Commission, and staff as intended beneficiaries". Discretionary Review is the Planning Commission's authority to review Code-complying projects and take action if the Commission finds the case demonstrates "exceptional and extraordinary circumstances". The Planning Commission's discretionary review authority is in Article 1, Section 26 of the Business and Tax Regulations Code, which the City Attorney first interpreted in 1954. The opinion notes that this is "*a sensitive discretion and one which must be exercised with the utmost restraint*". Several independent audits and reports have suggested that the current Discretionary Review process does not produce consistent or fair results, creates conflict in neighborhoods, has created unrealistic expectations on the part of filers and project sponsors, makes the development process more lengthy and costly for all involved, and takes time away from the Commission to address larger planning issues.

The Commission requested that Planning staff develop a discretionary review reform proposal. Staff relied on extensive public participation, reviewed the Board of Supervisor's Budget Analyst audit (June 2002), the Matrix Consulting report (February 2008), and the SPUR/AIA report (September 2007); and also researched other

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

jurisdictions processes, reviewed case trends, and used professional experience in order to develop a discretionary review reform proposal.

The Commission seeks to improve substantially the discretionary review process, while recognizing that the public relies heavily upon this process as a way to be engaged in the development process. Consequently, the Commission's policy is a phased implementation of staff recommendations so that the Commission, the public, and the Board of Supervisors are able to evaluate the results from a series of intended positive improvements before initiating additional reforms.

The proposed Ordinance would allow the Commission to implement and evaluate changes to the discretionary review process. Specifically, the proposed Ordinance would revise planning code sections 311(d) and 312(e) to (1) define "exceptional and extraordinary circumstances"; (2) state that a request for discretionary review will be heard by the Planning Commission or its designee if the application demonstrates exceptional and extraordinary circumstances; (3) remove the option for project sponsors to request discretionary review and rely instead on staff initiated discretionary review for unsupported projects; and (4) change all references in the planning code to the "residential design guidelines" to mean the "Residential Design Standards". The proposed Ordinance would also modify the fee schedule in planning code sections 352 and 355 to (1) clarify that the mandatory discretionary review fee schedule applies to Planning Department initiated discretionary review; (2) allow for the collection and refund of fees associated with a request for Planning Department reconsideration; and (3) provide a fee waiver for neighborhood organizations that request reconsideration and meet established criteria. Finally, the proposed Ordinance would establish reporting requirements to the Board of Supervisors.


The Commission adopted policy to improve the discretionary review process includes other aspects which do not require Code changes to implement and are as follows:

- Strengthen pre-application meeting requirements, broaden the project types that require Pre-application, and make consistent the scope and type of information exchanged at those meetings to improve communication between project sponsors and their neighbors;
- Improve the Department's internal design review process to provide balanced, transparent, and consistent application of the Code and Design Standards;
- Improve public information about the discretionary review process in general, and provide access to project-specific information on-line;
- Ensure that cases heard by the Commission are identified either as one-of-a-kind, or a representative of a policy issue that should be incorporated into Design Standards; and
- Adopt timelines for review, response and hearing of discretionary review applications.

At the June 18th hearing, the Commission voted to recommend approval of the proposed Ordinance.

Please find attached documents relating to the Commission's action. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,



John Rahaim
Director of Planning

Attachments (one copy of the following):

Planning Commission Resolution No. 17908

Draft Ordinance (signed to form)

Planning Commission Executive Summary for Case No. 2009.0227T



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 17908

HEARING DATE: JUNE 18, 2009

Case No.: 2009.0227TU
Project Sponsor: Planning Commission
Staff Contact: Elaine Forbes, (415) 558-6417
Elaine.forbes@sfgov.org
Elizabeth Watty, (415) 558-6620
elizabeth.watty@sfgov.org
Craig Nikitas (415)558-6306
Craig.Nikitas@sfgov.org
Aaron Starr, (415) 558-6362
Aaron.starr@sfgov.org

Recommendation: Recommend Adoption of the Planning Code Amendments to Sections 311, 312, 353, and 355 to implement a two-year trial of Phase One Discretionary Review Reform to the Board of Supervisors.

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

ADOPTING PLANNING CODE AMENDMENTS TO REVISE PLANNING CODE SECTIONS 311(d) AND 312(e) TO STATE THAT A REQUEST FOR DISCRETIONARY REVIEW WILL BE HEARD BY THE PLANNING COMMISSION OR ITS DESIGNEE IF THE APPLICATION DEMONSTRATES EXCEPTIONAL AND EXTRAORDINARY CIRCUMSTANCES, TO REMOVE THE OPTION FOR PROJECT SPONSORS TO REQUEST DISCRETIONARY REVIEW AND RELY INSTEAD ON STAFF INITIATED DISCRETIONARY REVIEW FOR UNSUPPORTED PROJECTS, TO CHANGE ALL REFERENCES IN THE PLANNING CODE TO THE "RESIDENTIAL DESIGN GUIDELINES" TO MEAN THE "RESIDENTIAL DESIGN STANDARDS", AND TO MAKE CHANGES TO THE FEE SCHEDULE IN PLANNING CODE SECTIONS 352 AND 355 TO CLARIFY THAT THE MANDATORY DISCRETIONARY REVIEW FEE SCHEDULE APPLIES TO PLANNING DEPARTMENT INITIATED DISCRETIONARY REVIEW AND TO ALLOW FOR THE COLLECTION AND REFUND OF FEES ASSOCIATED WITH PLANNING DEPARTMENT RECONSIDERATION.

WHEREAS, the Planning Commission derives its discretionary review (DR) authority from San Francisco's Municipal Code under the Business & Tax Regulations Code, Article 1 Permit Procedures, Section 26 (a):

"Subject to Subsection (b) below, in the granting or denying of any permit, or the revoking or the refusing to revoke any permit, the granting or revoking power may take into consideration the effect of the proposed business or calling upon surrounding property and upon its residents, and inhabitants thereof; and in granting or denying said permit, or revoking or refusing to revoke a permit, may exercise its sound discretion as to whether said permit should be granted, transferred, denied or revoked" (emphasis added); and

WHEREAS, the Planning Commission's discretionary powers were first interpreted on May 26, 1954 by Dion R. Holm in City Attorney Opinion No. 845, where Holm cautioned that the authority granted to the Commission by Section 26 of the Business & Tax Regulations Code should be reserved for "exceptional cases":

"I think it is entirely plain, on the authority of the above enunciated general principles, that the reservation of authority in the present ordinances to deal in a special manner with exceptional cases is unassailable upon constitutional grounds. The possibility of abuse of the power granted does not disprove its existence; that possibility exists even in reference to powers that are conceded to exist. An occasional wrong decision by the granting authority is of less importance to the community than the unrelieved arbitrariness of an iron-clad ordinance. This is, however, a sensitive discretion and one which must be exercised with the utmost restraint" (emphasis in original); and

WHEREAS, this Opinion was reaffirmed on April 30, 1979 by City Attorney George Agnost in Opinion No. 79-29, where he cited the importance of discretion in the land-use decision making process:

"The chief difficulty in establishing a zoning plan is to make it effective and at the same time avoid arbitrariness. Human wisdom cannot foresee the exceptional cases that can arise in its administration. With the great increase and concentration of population problems have developed, and constantly are developing, which require and will continue to require, additional restrictions in respect to the use and occupation of private lands in urban communities. (Village of Euclid v. Ambler Realty Co., 272 U.S. 365; Bassett on Zoning, New York Russell Sage Foundation (1940))...Sound administration requires that some person or agency be invested with discretion to determine whether the erection of a building of a particular kind or for a particular use, when considered in the context of circumstance and locality, constitutes a subversion of the general purposes of the ordinance."

WHEREAS, on November 4, 1986, the voters of San Francisco passed Proposition M, which requires the City to find that all proposed projects and demolitions are consistent with the eight priority policies set forth in Planning Code Section 101.1; and

WHEREAS, on November 2, 1989, the Commission adopted the first guidelines for residential design, which were revised and incorporated into Planning Code Section 311(c)(1) on December 4, 2003. These Guidelines eliminated the arbitrariness of an iron-clad ordinance, and allowed for projects to be approved, modified, or denied by the Department based on consistency with these Guidelines. The Commission has the authority to delegate their approval function to the Planning Department under the San Francisco Charter, Section 4.105; and

WHEREAS, the "Residential Design Guidelines" are considered by many Project Sponsors to be a "guide" rather than a required set of design standards that must be applied to all new construction and alterations of residential properties in R Districts. In an effort to underscore the mandatory application of these Codified design principles in the review of every residential building permit in R Districts, the Department seeks to modify the Planning Code to change all references of the "Residential Design Guidelines" to "Residential Design Standards"; and

WHEREAS, the Discretionary Review process is intended to take a second look at projects that meet the applicable Design Standards, unsupported projects shall follow the staff-initiated Discretionary Review process and shall pay the full cost-recovery fee.

WHEREAS, on July 17, 2008, the Planning Commission endorsed the Planning Department's Action Plan, with one of its six objectives to "enable the Planning Commission to focus on higher-level policy issues", and suggesting "reform [of] the Discretionary Review Process, with the public, the Planning Commission, and staff as intended beneficiaries" as a means of achieving this objective. In response to the endorsement of this item of the Department's Action Plan, the Department formed an internal working group with the goal of developing a draft proposal to reform the Discretionary Review process; and

WHEREAS, the Department's internal working group reviewed the Board of Supervisor's Budget Analyst's audit, the Matrix Consulting report, and the SPUR/AIA report, all of which recommended reforms to the Discretionary Review process. All three reports concluded that the current Discretionary Review process often resulted in arbitrary and inconsistent outcomes, and took time away from the Commission that could be used for addressing projects with greater City-wide impacts as well as policy-related matters; and

WHEREAS, the Commission may wish to delegate its review authority of Discretionary Review applications that demonstrate "exceptional and extraordinary circumstances" to a designee of its choice in Phase Two implementation; and

WHEREAS, a change in the Code to allow for the Planning Commission to delegate its authority over Discretionary Review applications does not eliminate the public's right to a hearing by the Board of Appeals; and

WHEREAS, currently Sections 311 and 312 of the Planning Code mandate a hearing before the Planning Commission if a Discretionary Review application is filed by 5:00 p.m. of the last day of the notification period. In order for the Commission to hold a public hearing only for those projects that could meet the exceptional and extraordinary standards, and to delegate review of applications for this determination to staff, Planning Code Sections 311 and 312 will need to be amended; and

WHEREAS, Section 352(d) of the Planning Code does not currently clarify that the fee for Planning Department-Initiated Discretionary Reviews is the Mandatory Discretionary Review fee; and

WHEREAS, Section 355 of the Planning Code does not include a clause for reimbursement if a request for Reconsideration shows that the Planning Department applied the Planning Code or Design Standards inappropriately; and

MOVED, that the Planning Commission hereby adopts this Resolution to amend the Planning Code Sections 311, 312, 352, and 355, in accordance with the requirements of Planning Code Section 302, to state that a request for discretionary review will be heard by the Planning Commission or its designee if the application demonstrates exceptional and extraordinary circumstances, to allow the Planning Commission the flexibility to delegate their authority to review Discretionary Review applications that

show "exceptional and extraordinary circumstances" – as defined under the Commission's Policy as potential Phase Two implementation– to a designee of its choice, to change all Planning Code references of the "Residential Design Guidelines" to "Residential Design Standards", and to make changes to the fee schedule, as submitted and attached hereto as Attachment III and approved as to form by the City Attorney.

I hereby certify that the foregoing Motion was ADOPTED by the Commission at its meeting on June 18, 2009.



Linda D. Avery

Commission Secretary

AYES: Miguel, Antonini, Borden, Sugaya

NOES: Moore

ABSENT: Olague, Lee

ADOPTED: June 18, 2009



SAN FRANCISCO PLANNING DEPARTMENT

Memo to the Planning Commission

HEARING DATE: JUNE 18, 2009

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Date: June 11, 2009
Case No.: 2009.0227TU
Project Sponsor: Planning Commission
Staff Contacts: Elaine Forbes, (415) 558-6417
Elaine.forbes@sfgov.org
Craig Nikitas; (415) 558-6306
Craig.nikitas@sfgov.org
Elizabeth Watty, (415) 558-6620
elizabeth.watty@sfgov.org

Re: Discretionary Review Reform

BACKGROUND

Following public outreach described in detail in the April 2, 2009 Case Report, the Planning Department presented a Motion seeking adoption of the Intent to Initiate Planning Code Text Changes and a Resolution seeking adoption of a Planning Commission Policy for Discretionary Review Reform. On April 2, 2009, the Planning Commission adopted the Intent to Initiate the Planning Code Text Changes, and moved the Policy Resolution to the call of the chair.

CURRENT PROPOSAL

The Planning Department recommends phased implementation to reform the Discretionary Review process, with Phase One being the subject of this hearing, and Phase Two being initiated by the Commission no sooner than twenty four months (2 years) after the implementation of Phase One.

Phase One will:

- Strengthen pre-application meeting requirements, broaden the project types that require Pre-application, and make consistent the scope and type of information exchanged at those meetings to improve communication between project sponsors and their neighbors;
- Improve the Department's internal design review process to provide balanced, transparent, and consistent application of the Code and Design Standards;
- Improve public information about the Discretionary Review process in general, and provide access to project-specific information on-line;
- Define "exceptional and extraordinary circumstances" in the context of Discretionary Review;

- Use the definition to allow only those projects that could meet exceptional and extraordinary standards to proceed to a Commission hearing (applications where the standard was not met could be appealed to the Board of Appeals);
- Ensure that cases heard by the Commission are identified either as one-of-a-kind, or a representative of a policy issue that should be incorporated into Design Standards;
- Offer interested parties the option of "Reconsideration" whereby they can request that the Department re-examine the project without having to find exceptional and extraordinary circumstances, because they believe the Department made an error. If the Department misapplied the Code or Design Standards, the project would be modified and the fee of \$300 would be refunded to the requestor;
- Adopt timelines for review, response and hearing of Discretionary Review applications; and
- Specify a 24-month (2-year) trial period; and at the 18-month point initiate a public evaluation of the efficacy and effectiveness of Phase One reforms, and at the two year mark, the Commission would continue, modify, or discontinue the policy.

Phase One would become effective in its entirety upon adoption of the Planning Code Text Amendments by the Board of Supervisors, with an approximate effective date in September of 2009. Following Commission adoption of the proposed policy resolution (see Attachment I), staff will formalize and initiate Phase One changes that do not require legislative change, which are to implement the improved pre-application process, internal design review process, provide better DR information, adhere to the timeline policy for DR requests, identify policy issues for the Commission's consideration, and use Commission decisions intended as precedent-setting as policy guidance for review of future projects.

During this interim period between Commission policy endorsement and legislative change (approximately 4 to 5 months), all Discretionary Review Requests will be brought to the Planning Commission with a section in each report outlining whether the request could meet the exceptional and extraordinary standard to proceed to a DR hearing. This allows the Residential Design Team (RDT) and the Commission to ensure that staff's application of the proposed definition of "exceptional and extraordinary circumstances" reflects the desire of the Commission.

Phase Two. The Planning Commission may or may not choose to proceed with Phase Two options after reviewing and weighing the results of Phase One through a public process.

Phase Two may include the following:

- Story Pole policy;
- Hearing Officer or other delegation of Discretionary Review requests;
- Codification of the DR process; and
- Changes to the cost burden between the DR requestor, the project sponsor and the building permit surcharge.

CHANGES FROM THE APRIL 2, 2009 PROPOSAL

Attachment IV to this report includes Commission and public recommendations staff received on or after the April 2, 2009 Commission hearing, and staff responses to these recommendations. The resulting changes do not significantly modify Phase One recommendations (see April 2, 2009 Case Report). However, staff has clarified several issues as a result of Commission and public feedback as shown in Attachment IV. The most notable clarifications relate to (1) the trial period timeline for Phase One Implementation (evaluation to begin 18-months after the effective date of the Text Changes, with a 24-month trial period), (2) mechanisms for communication with the Commission to keep the Commission apprised throughout the trial period and identify and resolve policy issues related to Design Standards, (3) the pre-application requirements, and (4) recommendations for a sunset provision.

PROCEDURES DURING THE "INTERIM PERIOD" (APPROXIMATELY 4 TO 5 MONTHS)

During the Interim Period (following adoption of the DR Reform Policy, but prior to the effective date of the legislation) staff will implement the following procedures:

Formalizing Communication with the Commission for Oversight and to Resolve Policy Issues and Improve Design Standards

- All Discretionary Review requests will be brought to the Planning Commission with a section in each report outlining whether the request could meet the "exceptional and extraordinary circumstances" standard to proceed to a DR hearing. This allows the Residential Design Team (RDT) and the Commission to ensure that staff's application of the proposed definition of "exceptional and extraordinary circumstances" reflects the desire of the Commission.

Staff has already begun to track the decisions of the RDT and those of the Commission to ensure that staff is applying standards supported by the Commission. The Chart on the following page is an excerpt of the tracking spreadsheet, and shows that of nine recent public DR cases heard by the Commission, there has been strong agreement between the RDT and the Planning Commission both whether to approve or modify a project, and whether the case exhibits exceptional and extraordinary circumstances. (Two of the cases were withdrawn, and two were old enough to predate the requirement for RDT review with respect to DR reform.)

In addition to analyzing publically-requested DR outcomes, the Department will track the disposition of staff-initiated DRs. Both will provide guidance for application of the Design Standards, and can identify either emerging issues, or point to elements of the Standards that are lacking or that need updating.

DISPOSITION OF PUBLIC DR CASES APRIL – JUNE 2009

CASE #	ADDRESS	DEPT. RECOMMENDATIONS			COMMISSION				ACTION	POLICY	
		STAFF	RDT	DR POLICY	ACTION	VOTE	DATE	DR POLICY	ACCORD?	ACCORD?	
1	2009.0158D	66 ELLSWORTH ST	no DR & approve	no DR & approve	no hearing	no DR & approve	*+6-0	04/09/09	no hearing	TRUE	TRUE
2	2008.1383D	3944 21ST ST	no DR & approve	no DR & approve	no hearing	no DR & approve	*+6-0	04/23/09	no hearing	TRUE	TRUE
3	2008.0388D	2608 POST ST	no DR & approve			WITHDRAWN		05/07/09		no decision	no decision
4	2008.1065D	145 BUENAVISTA TR	no DR & approve			WITHDRAWN		05/14/09		no decision	no decision
5	2008.0327D	2012 14TH AV	no DR & approve	no DR & approve	no hearing	no DR & approve	*+6-0	05/14/09	no hearing	TRUE	TRUE
6	2006.0401D	395 ATHENS ST	no DR & approve	no DR & approve	no hearing	no DR & approve	*+6-0	05/21/09	no hearing	TRUE	TRUE
7	2009.0256D	1760-70 FILBERT ST	DR & modify	n/a	n/a	DR & modify	*+6-0	05/28/09	n/a	TRUE	no decision
8	2007.0129Dx3	100 32ND AV	no DR & approve	n/a	n/a	DR & modify	*+4-2	06/04/09		no decision	no decision
9	2008.0285D	109 ALPINE TE	no DR & approve	no DR & approve	no hearing	no DR & approve	*+4-0	06/04/09	no hearing	TRUE	TRUE
PENDING											
10	2009.0230D	138-25th AV	no DR & approve					06/18/09			
11	2009.0337D	574 NATOMA ST	no DR & approve					06/18/09			
12											

PROCEDURES DURING THE “TRIAL PERIOD” (24 MONTHS AFTER EFFECTIVE DATE, WITH PUBLIC HEARINGS BEGINNING ABOUT 18 MONTHS AFTER EFFECTIVE DATE)

Specific reporting procedures and oversight during trial period are as follows:

- o DR Decisions included in Commission packets
- o Weekly updates about DR under the Director’s Report
- o Quarterly hearings on policy-related topics
 - ZA bulletins
 - Brown bag discussions
- o Commission review of Phase One results to be initiated 18-months after the effective date of the Ordinance. The Commission would continue, modify, or discontinue the policy following the evaluation.

The reporting procedures and oversight listed above will provide the Commission and staff the opportunity to engage and improve the Design Standards. Specifically, staff will:

- Use Commission’s decisions on DR, including staff initiated DRs, that the Commission designates as precedent setting, as policy guidance for review of future projects.
- Recommend amendments to Design Standards in ZA bulletins as applicable to reflect the Commission’s policy guidance which will be reviewed during quarterly hearings. Staff also will prepare global amendments to the Design Standards every two years to incorporate bulletins.

- Identify emerging planning issues and/or areas in the Design Standards that require clarification and work with the Commission for appropriate responses during quarterly hearings.
- Track outcomes of cases appealed to the Board of Appeals and Board of Supervisors for relevant policy and procedural feedback.

The Planning Department has also included language in the Policy Resolution to clarify that when a project already requires an entitlement that will be heard by the Planning Commission, one may not file a Discretionary Review Application. If a project is already before the Commission, the Project Sponsor already has a greater burden of proof. By clarifying this in the Policy, it reduces the burden of proof for these cases from the DR Requestor to the Project Sponsor who is already requesting an entitlement.

CLARIFICATION OF PRE-APPLICATION REQUIREMENTS

The Department received a recommendation to include all residential, NC and mixed-residential zoning districts in requirements for pre-application since there are many different types of zoning designations as a result of Eastern Neighborhoods Area Plan. The Department agrees and has modified the Draft Pre-Application Packet (Attachment VIII) to indicate that pre-application is required for all projects that meet the pre-application triggers (10-foot horizontal addition, 7-foot vertical addition, or new construction) and require Section 311 or 312 Notification. A pre-application meeting is required to be conducted in advance of submitting a building permit, conditional use, variance, or other entitlement applications. This change to the pre-application requirement ensures that neighbors are provided the opportunity to discuss their concerns about the physical implications of projects located in residential, neighborhood commercial, or mixed-used districts prior to public notification.

The Department also received a recommendation to change the triggers for pre-application requirement and believes further discussion required. The rationale for the re-application triggers are as follows: the 7' ht. increase was intended to capture vertical additions that would add a floor of occupancy to an existing building; and the 10' horizontal addition was intended to capture all additions that may have a significant negative impact to adjacent properties. This was extrapolated from the Code standard for permitted obstructions Section 136(c)25 which principally permits a 12' horizontal addition into the required rear yard for districts that require a 45% rear yard. More analysis is required before a proposal for change is made. There was general consensus on these triggers from the 2004 DR Reform effort. The DR Reform group will continue discussions and review if any DRs are filed on projects that did not trigger the pre-application requirement, and will report back to the Commission at the first quarterly report.

OPTIONS FOR SUNSET OF THE 2-YEAR TRIAL PERIOD

Staff strongly supports the concept of a 24 month (2 years) trial period for DR reforms so that the Commission can evaluate with the public whether the reforms are successful. Department

staff has amended the Commission Resolution adopting the DR Reform policy with suggested language from the Neighborhood Network as follows:

"It is the policy of the Planning Commission that this program be implemented on a trial basis, not to exceed 24 months, without the Commission's evaluation of the program and decision to continue, modify or discontinue the program"

The Department has received suggestions to include a legislative sunset in the proposed amendments to Planning Code Sections 311 and 312. The Department suggests that the DR Reform legislation should not be subject to a legislated sunset provision since the Commission and the public (neighborhood organizations, design professionals, and project sponsors) should decide the success of the program and a legislative sunset requires the Board of Supervisors to make that determination. DR Reform will be brought before the Commission for formal evaluation 18 months from the effective date of the proposed legislation. At that time, the Commission may introduce policy or legislative changes to modify or discontinue the program. We feel that the decision to retain or delegate the Planning Commission's authority to hear Discretionary Review Applications should remain with the Planning Commission, not with the Board of Supervisors.

However, as an option to the request for a legislative sunset in Sections 311 and 312, the Department recommends the following amendment:

Within 24 months after the effective date of the DR Reform legislation, the Planning Department shall present a report to the Board of Supervisors about the results of the DR Reform trial period. At that time, the Board may choose to introduce legislation to repeal or change the DR Reform legislation, or take no action should they feel that the Reform has been successful during the 24 month trial period. This Report shall be subsequent to and shall include a summary of a hearing before the Planning Commission on the same topic.

This amendment would provide the Board of Supervisors the information needed to decide if Sections 311 and 312 require amendments to modify or discontinue the program. However, if the program is working, the suggested amendment allows the Board of Supervisors to take no action, whereas a legislative sunset would require Board of Supervisor action to continue the program.

ENVIRONMENTAL REVIEW

The proposal to amend Planning Code Sections 311, 312, 352, and 355 would result in no physical impact on the environment. The proposed amendment is exempt from environmental review under Section 15060(c)(2) of the CEQA Guidelines.

REQUIRED COMMISSION ACTION

In order for Discretionary Review Reform to proceed as proposed, the Commission must adopt the Policy Resolution and recommend adoption of the Planning Code Text Changes to the Board of Supervisors.

BASIS FOR RECOMMENDATION

The Department feels that the proposal, as outlined in the Policy Resolution and Planning Code Text Changes, (Attachment I & II, respectively) maintains the benefits of the existing process while advancing the key goals to improve the Discretionary Review process. The proposal provides for more community engagement in the development process, improves communication and the quality of customer service provided to the general public and project sponsors, and creates a more systematic, transparent, predictable development process. Design throughout the residential neighborhoods will be improved by the heightened level of scrutiny applied to projects and by the renaming of the "Residential Design Guidelines" to the "Residential Design Standards". Overall, the Department's Discretionary Review Reform proposal should provide improvements for all interested parties, which is the goal of the Department's Action Plan.

<p>RECOMMENDATIONS: Adopt the Commission's Policy on Discretionary Review</p> <p> Recommend Adoption of the Planning Code Text Changes related to Discretionary Review to the Board of Supervisors.</p>
--

Attachments:

Attachment I – Resolution to Establish Commission Policy for Discretionary Review Reform

Attachment II – Resolution to Recommend Adoption of Planning Code Amendments to Sections 311, 312, 352 and 355 to Implement Phase One Discretionary Review Reform

Attachment III – Proposed Amendments to Sections 311, 312, 352 and 355

Attachment IV – Commission and Public Comments Received on or after April 2, 2009, and Department Responses

Attachment V – Quantitative Metrics for the Residential Design Standards to Trigger Residential Design Team Review

Attachment VI – Policy topics for the Commission’s Consideration

Attachment VII – Executive Summary from April 2, 2009 Case Report

Attachment VIII – Draft Pre-application Packet



SAN FRANCISCO PLANNING DEPARTMENT

Discretionary Review Reform

October 2009

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

1. *What is DR*

- Discretionary Review is the Planning Commission's authority to review code-complying projects and take action if the Commission finds the case demonstrates exceptional and extraordinary circumstances. It derives from Article 1, Section 26 of the Business and Tax Regulations Code. The City Attorney's interpretation in 1954 noted that this is "*a sensitive discretion and one which must be exercised with the utmost restraint*" (emphasis added).
- **Volume and Cost.** Department receives approximately 200 applications a year, which costs approximately \$300K in direct staff time. However, the majority of the cost of the process is borne by the project sponsor in project delays and cost, the requestor, and the Commission in terms of an opportunity loss from instead focusing on higher-level policy issues.

2. *The current DR Reform Effort*

- **Background:** all recent audits recommend changes to DR (Budget Analyst, 2003; Matrix Report, 2006; and SPUR AIA, 2007), the practice is outside of best practices in other jurisdictions, and prior efforts, most notably in 2004, did not meaningfully improve the process.
- **Public Outreach:** Department team created proposal and conducted extensive public outreach among organized neighborhood groups, coalitions of groups, land use professionals, parties who had undergone DR, and other interested individuals.
 - 123 individuals at 5 outreach meetings
 - 48 plus written comments
 - Various other outreach efforts
- **Current status:** Three Planning Commission hearings were held on the Department's recommended DR reform proposal. At the latest (June 18, 2009), the Commission initiated legislation to amend the Planning Code and adopted a policy which implements those aspects of the DR reform that do not require legislation. The Land Use Committee of the Board of Supervisors will review this legislation on October 19, 2009.

Elements of the Proposal

- A primary goal of the reform is to minimize the negative impacts of DR (misuse of Commission time, impacts on staff resources, costly delays to code-complying projects [largely residential], land use decisions that can be arbitrary, inconsistent, or political), while retaining the benefits of the current process (public input, identification of policy issues, improved projects). The reforms are designed to:
 1. Strengthen the pre-application meeting requirements, broaden the project types that require pre-application, and make consistent the scope and type of information exchanged at those meetings to improve communication between project sponsors and their neighbors.
 2. Improve the Department's internal design review process to provide balanced, transparent, and consistent application of the Code and design standards.
 3. Improve public information about the DR process in general, and provide access to project-specific information.
 4. Define "exceptional and extraordinary" in the context of DR as follows:

Exceptional and extraordinary circumstances occur when the standard application of adopted Design Standards to a project does not enhance or conserve neighborhood character, or balance the right to develop the property with impacts on near-by properties or occupants.

These circumstances may arise due to complex topography, irregular lot configuration, unusual context or other conditions not addressed in the Design Standards.
 5. Use the definition above to allow only those projects that could meet the exceptional and extraordinary standard to proceed to DR hearings (applications where the standard was not met could be appealed to the Board of Appeals).
 6. Ensure that exceptional and extraordinary cases heard by the Commission are identified either as one-of-a-kind, or as representative of a policy issue that should be incorporated into Design Standards.
 7. Offer interested parties the option of "Reconsideration", whereby, the public can request that the Department re-examine a project without having to find exceptional and extraordinary circumstances, because they believe the Department made an error. If the Department misapplied the Code or Design Standards, the project would be modified, and the fee would be refunded to the requestor.
 8. Adopt timelines for review of DR policy, and hearing of DR applications.
 - The Commission's policy requires a public hearing and evaluation eighteen months after implementation to review its efficacy, and at the two-year mark, the Commission will continue, modify, or discontinue the policy. All DR applications will be reviewed internally within 30 day. Those applications that cannot meet the exceptional and extraordinary definition will receive a written determination with two weeks, and those that require a Commission hearing, will be heard within 90 days of the filing.



DR Reform

ACTION PLAN 2008-2010 | OCTOBER 2009

TOPIC	ISSUES WITH CURRENT PROCESS	GOALS FOR REFORM	PROPOSAL: Phase 1 (Adopted June 10, 2009)	PROPOSAL: Phase 2 (to be considered after evaluation of Phase 1)	OTHER DEPARTMENT EFFORTS
-------	-----------------------------	------------------	---	--	--------------------------

Community engagement and improved communication	Community is often not engaged in the proposal at the early stages when the cost to the project sponsor of modifications is lower	Provide for early community engagement in order to create a dialogue about potential adverse impacts to surrounding properties and neighborhood character	Strengthen pre-application process in terms of meeting requirements, and broaden the project types that require Pre-Application		
	Poor communication in the development process can result in Discretionary Review requests as a measure of last resort	Offer more transparency and information to the public and project sponsors about project applications and the Department's decision-making in project evaluation	Document RDT's decisions prior to 311/312 and for DR requests	Story poles	Universal Planning Notification
Need for realistic expectation setting	Parties to the DR application often know very little about the process and have unrealistic expectations about the likely results of the process	Provide more information and education to the public and project sponsors about the Discretionary Review process, including policies and procedures for its appropriate implementation	Updated website, applications and maps to provide more user friendly information, and provide access to project-specific information		
	Creates potential for inappropriate financial exchanges between project sponsor and neighbors	Provide more information and education to the public and project sponsors about the Discretionary Review process, including policies and procedures for its appropriate implementation	Optional DR Intake meeting for applicant		
Strong internal review procedures	Creates expectation of project change based on mediation which may or may not be required by the Residential Design Standards	Provide more information and education to the public and project sponsors about the Discretionary Review process, including policies and procedures for its appropriate implementation	Optional meeting for Project Sponsor when RDT recommends project change		
	Project sponsors may use the DR process as a way to advance out of scale and inappropriate projects to the Planning Commission	Improve internal review process so that only projects that comply with all rules are sent out for public notification, or sent out as unsupported with a staff initiated DR	Definition of Exceptional and Extraordinary circumstances		
Review and resolution of policy issues	Public relies on Discretionary Review process to compel quality and appropriate projects	Identify policy issues for Commission review and resolution so that rules are clarified and improved to respond to neighborhood specific issues, changes in the built environment, and in policy priorities.	Quantitative metrics for Planners that trigger RDT review		
	DR is driven by the temperament of the neighbor, level of community involvement, and developer instead of sound planning principles and land use objectives which may result in uneven protections across neighborhoods	Ensure that outcomes of the Discretionary Review process are fair and reliable to create a more consistent entitlement process for project sponsors and the public.	Internal review procedures prior to public notification (311/312)	Hearing Officer to refer policy matters to the Commission based on third party review of cases	Urban Design Action Plan Group: Creation of Neighborhood Commercial Standards and Urban Design Element
Consistent and predictable permit process	Decisions for individual Discretionary Review cases do not necessarily get applied to future review or serve to clarify appropriate application of Design Standards	Ensure that outcomes of the Discretionary Review process are fair and reliable to create a more consistent entitlement process for project sponsors and the public.	Written RDT decisions to encourage internal consistency	Hearing Officer to refer third-party review of the Planning Department's decision-making as an employee of the Commission	
	Commission does not see representative sample of projects that are approved and therefore cannot easily dispense fair and standard treatment	Significantly reduce time and cost of the process for Discretionary Review requests that do not demonstrate exceptional or extraordinary circumstances	Offer Request for Reconsideration	Hearing Officer to provide third-party review of the Planning Department's decision-making as an employee of the Commission	
	Project sponsors with projects that comply with all the rules can spend a great deal of time and money in the DR process. These projects often result in no project modification or modifications for negotiations, not for conformance with the Residential Design Standards.	Reduce the time and cost of the process	Ensure that exceptional and extraordinary cases heard by the Commission are identified either as one-of-a-kind, or as representative of a policy issue that should be incorporated into design standards	Legislation to codify DR process	
	DR process can take too much time to resolve, both for the project sponsor and the applicant and can create conflict between neighbors	Reduce the time and cost of the process	RDT to generate a list of policy issues for the Commission to consider and resolve during quarterly reports	Option to modify fee structure	

Black Bolded items are pending legislative action | Italicized items are already implemented

CITY AND COUNTY OF SAN FRANCISCO

GEORGE AGNOST
CITY ATTORNEY
CITY HALL

April 30, 1979

OPINION NO. 79-29

SUBJECT: Discretionary Review Powers of the City Planning Commission.

REQUESTED BY: Robert Passmore
Acting Zoning Administrator.

PREPARED BY: Burk E. Delventhal
Diane L. Hermann
Deputy City Attorneys

QUESTION PRESENTED

In passing on the merits of a particular use specified in a permit application, is the City Planning Commission's jurisdiction restricted to determining whether the proposed building or use is permitted under the zoning and set-back ordinances?

CONCLUSION

No.

ANALYSIS

Your request for an opinion makes reference to City Attorney Opinion No. 845, dated May 26, 1954. The question answered in that opinion was whether

" . . . the City Planning Commission has authority pursuant to the Charter and Ordinances to disapprove an application for a building permit in a district which, insofar as the general zoning regulations are concerned, is zoned for such purpose or structure."

The City Planning Commission was advised in Opinion No. 845 that Section 24 of the 1932 Charter empowered it to exercise discretionary review powers over permits that are ". . . dependent on or affected by the zoning, set-back, other ordinances of the City and County of San Francisco administered by the City Planning Commission." The language of former Charter Section 24 is now embodied in Charter Section 7.400 which provides:

OPINION NO. 79-29

Robert W. Passmore

2

April 30, 1979

"No permit or license that is dependent on or affected by the zoning, set-back or other ordinances of the city and county administered by the city planning commission shall be issued except on the prior approval of the city planning commission."

I have reviewed the relevant law and have concluded that the principles and conclusions set forth in Opinion No. 845 are still valid and accurately state the law governing the City Planning Commission's power of discretionary review. Accordingly, you are advised that the City Planning Commission may exercise discretionary review powers with regard to permit applications which come within its jurisdiction.

The importance of discretionary review to the effective implementation of the City's scheme of land use regulation was cogently articulated in Opinion No. 845, at pages 5 and 6, where the distinguished City Attorney Dion Holm wrote,

"The chief difficulty in establishing a zoning plan is to make it effective and at the same time avoid arbitrariness. Human wisdom cannot foresee the exceptional cases that can arise in its administration. With the great increase and concentration of population problems have developed, and constantly are developing, which require, and will continue to require, additional restrictions in respect to the use and occupation of private lands in urban communities. (Village of Euclid v. Ambler Realty Co., 272 U.S. 365; Bassett on Zoning, New York Russell Sage Foundation (1940)) . . . Sound administration requires that some person or agency be invested with discretion to determine whether the erection of a building of a particular kind or for a particular use, when considered in the context of circumstance and locality, constitutes a subversion of the general purposes of the ordinance."

Apart from the opinions expressed in Opinion No. 845, I have further concluded discretionary review is also a proper administrative tool to be used in the implementation of the principles and guidelines of the San Francisco Master Plan. See Charter Sections 3.524 and 3.527 which empower, and impose duties on, the City Planning Commission related to drafting,

OPINION NO. 79-29

Robert W. Passmore

3

April 30, 1979

implementing and securing compliance with the City's Master Plan. See also City Planning Code Section 101 which sets forth as a guiding purpose of the City Planning Code itself, the objective of guiding, controlling and regulating "future growth and development in the City in accordance with the Master Plan of the City and County of San Francisco." (Emphasis added.)

Indeed, a conclusion contrary to that expressed herein would appear to defeat both the letter and the spirit of San Francisco's scheme of land use regulation and permit processing procedures. As City Attorney Holm opined:

"If these [Charter and Municipal Code] provisions were exclusive it is clear that the Planning Commission's consideration would necessarily be limited to a mechanical measuring of [permit] application against prescribed standards, in this case the zoning ordinance. As a practical matter, a clerk in the Central Permit Bureau could more expeditiously perform the routine. The ordinances contemplate no such pro forma consideration. Opinion 845, supra, at page 5. (Emphasis added.)

In view of the foregoing, it should require no argument that the discretionary review powers about which you inquire not only are contemplated by the San Francisco Charter and Municipal Code but also are essential to the rational, comprehensive application of land-use regulations in the modern, densely populated urban setting of San Francisco.

Respectfully submitted,

GEORGE AGNOST
City Attorney

By 
BURK E. DELVENTHAL
Deputy City Attorney


DIANE L. HERMANN
Deputy City Attorney

Approved:

City Attorney

BED/DLH:ry

May 26, 1954

SUBJECT: POWERS OF CITY PLANNING COMMISSION
IN RE BUILDING PERMIT APPLICATION;
APPLICATION TO CONSTRUCT HOTEL
OPPOSITE SHRINERS' HOSPITAL AFTER
DENIAL OF MOTEL APPLICATION.

Gentlemen:

We are in receipt of your request for opinion as follows:

R E Q U E S T

"Following is a brief outline of the events leading up to a situation concerning which your counsel is desired by the City Planning Commission.

"1. An application for a building permit to erect a 'motel' on a second residential lot in the block north of the Shriners' Hospital for Crippled Children was recently approved as to zoning by the Department of City Planning. Later the permit sought was issued by the Central Permit Bureau.

"2. An appeal was taken to the Board of Permit Appeals, and after the hearing the Board ordered the permit revoked.

"3. Almost immediately thereafter, a building permit application #163850 for a 'hotel' on the same site was referred to the Department of City Planning for approval as to zoning. This called for a building only slightly different, and equally satisfying the ordinance definition of a hotel, but approval was withheld pending a hearing before the Planning Commission, upon written request of the attorney for the Shriners' Hospital.

"4. At the regular meeting of the Planning Commission on April 1, this attorney and the attorney for the applicant were heard fully by the Commission. At the end, the Commission, being in some doubt as to the degree of its jurisdiction and the extent of its powers and duties in the matter, directed me to request your opinion as to the following:

"When a building application has been accepted by the Central Permit Bureau and is thereafter forwarded to the Department of City Planning for approval as provided in Article 4, Section 100 of the City Planning Code,

"a) Has the City Planning Commission the right or the duty to consider and pass upon the merits of the particular use in the location specified?

"b) Is the Planning Commission's jurisdiction in the matter restricted to a determination as to whether the proposed building or use is permitted under the City Planning Code, i.e. zoning ordinance?

"c) Is the Commission prevented by Article 1, Section 31 of Part III of the Municipal Code from approving as to zoning an application for a building permit referred to it, where a previous permit has just been ordered to be revoked by the Board of Permit Appeals?

"d) Whose duty is it to determine whether or not the new application is in fact the same as the one so rejected?

"The City Planning Commission will appreciate receiving your advice on these points at your earliest convenience, as the application is now pending your reply.

"Because of the controversy which has arisen in the matter of motels or tourist courts, the City Planning Commission has requested that your advice be sought as to whether or not they are a permitted use in Second Residential Districts under the City Planning Code.

"e) Hotels are clearly permitted, and there is a definition of 'hotel' in the ordinance. Shall a building or group of buildings designed so as to be identifiable to the ordinary observer as a 'motel' or automobile tourist court, in the generally accepted meaning of those words, be approved as a permitted use, if it satisfies the definition of 'hotel' as the latter appears in the ordinance?

"It has been our practice to so interpret the ordinance. The claim has been made that, since a tourist court is not listed among the uses specified as permitted in a Second Residential District, the Department has the right or duty to rule that such a use is prohibited, even though it satisfies the definition, on the grounds that it is in reality a different use.

"Your opinion on this matter will be very helpful."

O P I N I O N

Questions (a) and (b) of your request pose the issue whether the City Planning Commission has authority pursuant to the Charter and ordinances to disapprove an application for a building permit in a district which, insofar as the general zoning regulations are concerned, is zoned for such purpose or structure.

A cognate question was before the Supreme Court in Lindell Co. v. Board of Permit Appeals (1943), 23 C. 2d 303. In that case, a San Francisco contractor who owned a tract of land in the Miraloma Park area (a First Residential District) applied for permission to build 31 single family dwellings (a First Residential use) imperatively needed to relieve the war housing shortage. Full compliance was had with the procedural requirements of the building laws and, insofar as the emergency situation required minor deviations from building specifications, authorized waivers were granted by the responsible city officials. The Central Permit Bureau issued the permits. Thereafter, timely protests were filed with the Board of Permit Appeals by certain home owners and residents of the tract. After full hearing, the Board approved the issuance and then, on rehearing, reversed its order. Petitioner applied directly to the Supreme Court for a writ of mandate commanding the Board to reinstate the permits. In a unanimous decision the Court denied the petition holding that the comprehensive language of the permit provisions extended to the issuance of all permits, and in plain terms vested the granting power with a "sound discretion" generally. The Court held that the granting authority was entitled to take into consideration the effect of the proposed use on the public health, safety and general welfare: the probability of low-cost defense housing developing into a slum area, its effect upon the value of surrounding property, the materiality of the necessary variance in building standards from tract restrictions, and added strain upon the existent transportation facilities, as well as upon the police and fire service furnished the district. On petition for rehearing the petitioner extensively argued that the discretionary powers accorded the granting authority in Sec. 26, Part III of the Municipal Code, did not apply to building permits and that they were regulated solely by the Building Code and related ordinances. This argument was rejected.

While this decision appears to be determinative of the immediate issue, it is true that the Court did not specifically consider the fact that the effect of the denial was to prohibit a first residential use in a first residential district. Secondly, there was the factual distinction that due to war time material shortages the building plans deviated in some minor particulars from Building Code requirements. Emergency ordinances authorized a waiver under such circumstances, but they were merely permissive in character and vested the granting authority with discretion to consider the

effect of such deviation upon "the public health, safety or welfare." After reaching the conclusion that the Charter and ordinance provisions "in plain terms vests the granting power with a 'sound discretion' generally" the Court went on to point out that "the situation is not altered as the result of the enactment of the two aforementioned emergency measures." To the extent that these grounds were intended to be coequal, neither can be considered dictum; however, since the factual differences may engender some doubt as to that intention, an independent review of the subject Charter and ordinance provisions, as considered in the light of governing constitutional restrictions, is indicated.

The police power of San Francisco, as a Charter City, is as broad as that possessed by the Legislature itself, subject only to the control of general laws.

Jardine v. City of Pasadena, 199 Cal. 64;
Calif. Constitution, Art. 11, Secs 6 and 8;
Butterworth v. Boyd, 12 C. 2d 140.

In exercise of this autonomy it is provided in Section 24 of the Charter that "The Board of Supervisors shall regulate, by ordinance, the issuance and revocation of licenses and permits . . . for the operation of businesses or privileges which affect the health, fire-prevention, fire-fighting, crime, policing, welfare or zoning conditions of or in the city and county, . . . Permits and licenses shall be issued by the departments as designated by ordinance, only after formal application for such permit or license. No such permit or license that is dependent on or affected by the zoning, set-back or other ordinances of the city and county administered by the city planning commission shall be issued except on the prior approval of the city planning commission. If any application for a permit or license is denied by the department authorized to issue same, the applicant may appeal to the board of permit appeals." (Emphasis added.)

In line with this provision, the Charter and ordinances set up comprehensive procedures regulating the issuance of building permits -- undeniably a "municipal affair" over which the City has supreme control. (Brougher v. Board of Public Works, 107 C.A. 15; Lindell Co. v. Board of Permit Appeals, supra.) The Central Permit Bureau is designated as the issuing authority and has the ministerial obligation to receive applications, arrange for their consideration by such departments and bureaus as are concerned and, on approval by the interested departments and the Superintendent of the Bureau, issue the permit and collect the fee. (Public Works Code, Sec. 1; Planning Code, Sec. 100; Building Code, Sec. 304; Part III, Municipal Code, Sec. 2)

The City Planning Code specifies as a prerequisite to issuance, the approval of the City Planning Commission, as well as the Bureau of Building Inspection and the Division of Fire Prevention and Investigation. (City Planning Code, Sec. 100; see also Public Works Code, Sec. 2(a); Building Code, Sec. 304) Each application for a building permit must be accompanied by a statement as to the use of the building. It is further provided that these various department heads shall hold regular meetings for conference with applicants for permits as to any details of plans and specifications requiring alteration or modification before the application may be approved. (Public Works Code, Sec. 3) When issued the permit is required to be posted on the property until the 10-day period provided for appeal from the issuance has elapsed. (S.F. Municipal Code, Part III, Art. 1, Sec. 5) The Charter provides for a Board of Appeals to consider de novo the propriety of granting, denying or revoking a permit. (Charter Sec. 39)

If these provisions were exclusive it is clear that the Planning Commission's consideration would necessarily be limited to a mechanical measuring of application against prescribed standards, in this case the zoning ordinances. As a practical matter, a clerk in the Central Permit Bureau could more expeditiously perform the routine. The ordinances contemplate no such pro forma consideration. Section 26 of the permit procedure regulation defines the scope of action as follows: "In the granting or denying of any permit, or the revoking or refusing to revoke any permit, the granting or revoking power may take into consideration the effect of the proposed business or calling upon surrounding property and upon its residents and inhabitants thereof; and in granting or denying said permit, or revoking or refusing to revoke a permit, may exercise its sound discretion as to whether said permit should be granted, transferred, denied or revoked." (S.F. Municipal Code, Part III, Art. 1, Sec. 26) As stated in the Lindell case, "This comprehensive language affecting the issuance of all permits sought under authority of the relevant San Francisco Charter and ordinance provisions in plain terms vests the granting power with a 'sound discretion' generally." (Emphasis the Court's.) With particular reference to the Planning Commission, section 101 of the City Planning Code, under the heading "Interpretation--Purpose," requires that "In interpreting and applying the provisions of sections 1 to 14, inclusive, of Article 1 of this Chapter the general zoning regulations . . . they shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare." Consistent with this discretionary power, the permit which is posted on the affected property is required to contain notice that "any person who may deem that his interests or property or that the general public interest will be adversely affected as the result of operations authorized by or under such permit shall have the right to appeal to

the Board of Permit Appeals . . . " (Id. sec. 6) This same language is found in section 39 of the Charter, where the Board of Permit Appeals is created, and in section 30, Article 1, Part III of the Municipal Code. It is further provided in the appellate provisions that the Board shall hear the applicant, the permit-holder, or other interested parties, as well as the head or representative of the department issuing or refusing to issue the license or permit. After such hearing and such further investigation as the Board may deem necessary, it may concur in the action of the department authorized to issue such license or permit, or, by the vote of four members, may overrule the action of such department. "As so constituted the Board of Permit Appeals in its appellate jurisdiction, like the Central Permit Bureau in its original consideration of the case, is an administrative tribunal empowered to exercise full discretion in passing upon the matter as submitted for decision." (Lindell Co. v. Board of Permit Appeals, supra.) When the Court thus speaks of the Central Permit Bureau it is referring collectively to the departments and bureaus upon whose prior approval or rejection, in the exercise of their sound discretion, issuance depends.

The ambit of consideration perforce must depend upon the nature of the department. Where the establishment of the subject business, enterprise or activity is not clearly permitted by the zoning ordinances, the issuing authority must first secure the approval of the City Planning Commission. (S.F. Municipal Code, Part III, Art. 1, Sec. 2) Where it is clearly permitted, the department and the Board of Appeals are granted the discretionary power delineated above to consider its effect upon the surrounding property, its residents and inhabitants so that the general welfare may be subserved.

Ordered society presupposes a right in the sovereign to regulate the conduct of its citizens toward each other, and, when necessary for the public good, the manner in which each one shall use his own property. (House v. Mayes, 219 U.S. 270; Munn v. Illinois, 94 U.S. 113; Reed v. Collins, 5 C.A. 494) The rights of property are safeguarded by constitutional guaranties to the same extent as, but not more so than, the other individual rights contemplated by the 14th Amendment. They are equally subject to reasonable regulation. (Miller v. Board of Public Works, 195 Cal. 477.)

The chief difficulty in establishing a zoning plan is to make it effective and at the same time avoid arbitrariness. Human wisdom cannot foresee the exceptional cases that can arise in its administration. With the great increase and concentration of population problems have developed, and constantly are developing, which require, and will continue to require, additional restrictions in

respect to the use and occupation of private lands in urban communities. (Village of Euclid v. Ambler Realty Co., 272 U.S. 365; Bassett on Zoning, New York Russell Sage Foundation (1940)) The strict letter of the law may sometimes be the height of injustice. No zoning ordinance standing by itself can provide for the proper adaptation of the spirit of the law to each exceptional case. Yet the mechanical inclusion or exclusion of such cases may well result in great and needless hardship, entirely disproportionate to the good which will result from a literal enforcement of the general rule. (Gorieb v. Fox, 274 U.S. 603) Sound administration requires that some person or agency be invested with discretion to determine whether the erection of a building of a particular kind or for a particular use, when considered in the context of circumstance and locality, constitutes a subversion of the general purposes of the ordinance. While the legislative body cannot delegate its power to make a law, it can make a law to delegate a power to determine some fact or state of things upon which the law makes or intends to make its own action depend. There is no more delegation of legislative authority in this case than is normally involved in vesting administrative officers with authority to grant or deny a permit pursuant to a local ordinance.

Gorieb v. Fox, *supra*;
People of State of New York v. Van De Carr, 199 U.S. 552;
Wilson v. Eureka City, 173 U.S. 32;
Wheeler v. Gregg, 90 CA 2d 348;
Johnston v. Board of Supervisors of Marin County,
187 P. 2d 686;
Parker v. Colburn, 196 C. 169;
Nishkian v. City of Long Beach, 103 C.A. 2d 749;
Grief v. Dullea, 66 C.A. 2d 986.

It must not be assumed in advance that the power thus delegated will be exercised capriciously, arbitrarily or with inequality. If it is, full protection may be accorded the aggrieved person by appeal to the appropriate administrative board and from there to the courts -- thus satisfying the requirements of procedural due process.

Gorieb v. Fox, *supra*;
Ex Parte Fiske, 13 P. 310;
Village of Euclid v. Ambler, 272 U.S. 365.

Such a construction of the regulations is subject to the further constitutional limitation of equal protection, but as Frey says, "For the purpose of further analysis the idea of equality may be expressed by saying that it excludes in principle both particular burdens and special privileges, but admits of reasonable classification." Reasonable classification means simply that there must be

a fair relationship between the public good to be secured and the private injury suffered.

Ernest Freund, The Police Power, sec. 611;
The Constitutionality of Zoning Regulations, Werner --
Univ. of Illinois Studies in the Social Sciences,
vol. XII No. 4.

I think it is entirely plain, on the authority of the above enunciated general principles, that the reservation of authority in the present ordinances to deal in a special manner with exceptional cases is unassailable upon constitutional grounds. The possibility of abuse of the power granted does not disprove its existence; that possibility exists even in reference to powers that are conceded to exist. An occasional wrong decision by the granting authority is of less importance to the community than the unrelieved arbitrariness of an iron-clad ordinance. This is, however, a sensitive discretion and one which must be exercised with the utmost restraint.

Furthermore, I recognize that to vest such discretion in the City Planning Commission is to introduce an incalculable into the ownership of property which, although socially and legally justifiable, may cause grave concern to individual landowners. This is an inevitable consequence of reading Section 26 of the general licensing provisions as applicable to "all" permits, rather than confining it to "businesses" and "callings" as those terms are used in Section 1, Part III of the Municipal Code. If the Lindell case was in error on this point it is for the Supreme Court to say. If it is an undesirable result from a policy standpoint the legislative authority must provide a remedy.

In reaching this conclusion I am not unaware of those decisions which hold that provisions for varying the application of zoning regulations do not empower a zoning board to broaden or extend the restrictions imposed by the zoning regulations so as to prevent the use of particular premises for a purpose or structure which is not prohibited thereunder.

168 A.L.R. 100;
Leonard Inv. Co. v. Board of Adjustment of City of Trenton, 4 A. 2d 768 (N.J.);
Lutz v. Kaltenbach, 131 A. 899 (N.J.)
Teglund v. Dodge, 25 N.E. 2d 161 (Mich.);
Goelet v. Moss, 290 N.Y.S. 573 (N.Y.).

They are not apposite where the granting authority is expressly authorized by statute to exercise its discretion.

For the foregoing reasons the following response is made to parts (a) and (b) of your request:

- (a) The City Planning Commission has the right to pass upon the merits of the particular use in the location specified.
- (b) The Planning Commission's jurisdiction in the matter is not restricted to a determination as to whether the proposed building or use is permitted under the zoning ordinance.

In answer to part (c) of your request you are advised that Section 31, Art. 1, Part III of the Municipal Code is not a bar to reapplication for a building permit within a one-year period. By its express provisions the section is made applicable to the permits enumerated in Article I. This determination renders unnecessary any discussion of part (d) of your request.

Finally, part (e) poses the question whether a building or group of buildings designed so as to be identifiable to the ordinary observer as a "motel" or automobile tourist court, in the generally accepted meaning of those words, should be approved as a permitted use if it satisfies the definition of "hotel" as the latter appears in Section 1(g), Article 1, Chapter II of the City Planning Code. You are hereby advised that conformance to the standards therein set out is determinative of a "permitted use." The question whether it should be "approved" is a matter for your sound discretion in accordance with the principles enunciated with reference to parts (a) and (b) above.

Respectfully submitted,

DION R. HOLM,
City Attorney.

EFH/BJW

TO: DEPARTMENT OF CITY PLANNING
100 Larkin Street
San Francisco 2

Attention: Paul Oppermann, Director.