



# SAN FRANCISCO PLANNING DEPARTMENT

---

June 29, 2018

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

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

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

**Re: Transmittal of Planning Department Case Number 2018.004194PCA:  
Amendments to Accessory Dwelling Units Requirements  
Board File No. 180268  
Planning Commission Recommendation: Approval with Modifications**

Dear Ms. Calvillo and Supervisor Tang,

On June 21, the San Francisco Planning Commission (hereinafter: Commission) conducted duly noticed public hearings at regularly scheduled meetings to consider the proposed amendments introduced by Supervisor Tang to the Accessory Dwelling Unit program. At the hearing, the Planning Commission recommended approval with modifications for the Ordinance.

The proposed Ordinance is under the Addendum 4 to the Housing Element EIR issued June 15, 2016.

Supervisor, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Commission.

Please find attached document relating to the actions of the Commission. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron Starr", with a long horizontal flourish extending to the right.

Aaron Starr  
Manager of Legislative Affairs

cc:  
Menaka Mohan, Supervisor Tang's Legislative Aide  
Jon Givner, City Attorney  
Judy Boyajian, City Attorney

Alisa Somera, Legislative Deputy Director

Attachments (two hard copies of the following):

Planning Commission Resolution No. 20213

Planning Department Executive Summary



# SAN FRANCISCO PLANNING DEPARTMENT

---

## Planning Commission Resolution No. 20213

HEARING DATE: JUNE 21, 2018

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

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6378**

*Project Name:* Amendments to Accessory Dwelling Units Requirements  
*Case Number:* 2018-004194PCA, [Board File No. 180268]  
*Initiated by:* Supervisor Tang / Introduced March 20, 2018  
*Staff Contact:* Kimia Haddadan, Legislative Affairs  
[Kimia.haddadan@sfgov.org](mailto:Kimia.haddadan@sfgov.org), 415-575-9068  
*Reviewed by:* Aaron Starr, Manager of Legislative Affairs  
[aaron.starr@sfgov.org](mailto:aaron.starr@sfgov.org), 415-558-6362

**RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO AUTHORIZE THE ZONING ADMINISTRATOR TO WAIVE OR MODIFY BICYCLE PARKING REQUIREMENTS FOR AN ACCESSORY DWELLING UNIT (ADU), ALLOW MORE THAN ONE UNAUTHORIZED UNIT CONSTRUCTED WITHOUT A PERMIT TO BE LEGALIZED, EXEMPT FROM THE PERMIT NOTIFICATION REQUIREMENT ADUS CONSTRUCTED WITHIN THE DEFINED EXISTING BUILT ENVELOPE, ALLOW CONVERSION OF AN EXISTING STAND-ALONE GARAGE OR STORAGE STRUCTURE TO AN ADU AND EXPANSION OF THE EXISTING BUILDING ENVELOPE TO ADD DORMERS, ELIMINATE THE STREET TREE REQUIREMENT FOR AN ADU, AND ALLOW ONE ADU TO BE ADDED TO A NEW RESIDENTIAL BUILDING OF THREE UNITS OR LESS AS A COMPONENT OF THE NEW CONSTRUCTION; AMENDING THE BUILDING CODE TO PROVIDE FOR A PREAPPLICATION PLAN REVIEW FOR ADUS; AFFIRMING THE PLANNING DEPARTMENT'S DETERMINATION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; MAKING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1**

WHEREAS, on March 20, 2018, Supervisor Tang introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 180268, which would amend the Planning and Building Codes to provide some amendments to the Accessory Dwelling Unit Program; and,

WHEREAS, the Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinances on June 7, 2018; and,

WHEREAS, the proposed Ordinance is covered under the Addendum 4 to the Housing Element EIR issued June 15, 2016; and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Planning Commission **approves with modifications** the proposed ordinance.

- 1) Allow expansion of ADUs within the buildable envelope.
- 2) Allow expansion for ADUs under cantilevered rooms and decks in required rear yard without neighborhood notification, as drafted in the Ordinance, but amend Section 136 (c) to list filling under those spaces as permitted obstructions when adding ADUs.
- 3) On a corner lot, allow one story expansion of existing standalone garage structures limited to its existing footprint.
- 4) Clarify that the provision to allow dormers when converting existing standalone garages/structures to ADUs would allow such expansion even if those structures are in the required rear yard.
- 5) Allow ADUs to pay into an in-lieu fee for street tree requirements. Apply the same provision to unauthorized units undergoing legalization.
- 6) Consider size thresholds for ADUs so that the units remain accessory.
- 7) Remove the prohibition to use the legalization program where no-fault evictions have occurred and amend the Planning Code and the Rent Ordinance to:
  - i. clarify that the existing five year price control applies to no-fault evictions in unauthorized units (Section 37.3(f) of the Administrative Code)
  - ii. require the unit be offered to the previous tenant evicted similar to provisions for capital improvement (37.9a(11)), Ellis Act (37.9A), and owner move-in evictions (37.9(B)).

## FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The Commission supports the overall goals of this Ordinance as it would provide more flexibility to build ADUs while maintaining quality of these units.
2. Allowing ADUs to expand within the buildable envelope is consistent with recent changes to the ADU program per State Law. Those changes allowed ADUs in single-family homes to expand within the buildable envelope. In addition, the City allows enlarging an existing unit within the buildable envelope. Applying same provisions to ADUs would be consistent with the City's policy to produce more housing.

3. The Commission supports allowing infill under cantilevered rooms and decks even when they are in the required rear yard. This would improve light access for the unit and would help with meeting the exposure requirements. Infill under these spaces has minimal impact on the mid-block open space as they would fill under already existing and legal projection into the rear yard. For Code consistency and clarity, the Commission recommends amending Section 136 (c) of the Code to reflect this change as well. This section of the Code includes all permitted obstructions allowed in the required rear yard. Similarly allowing filling in under decks and cantilevered rooms in the required rear yard for ADUs would be a permitted obstruction in the required rear yard.
4. Standalone garages on corner lots can already be converted to ADUs but only within their existing built footprint. These garages face the street and as a one-story structure create a gap in the street wall. Allowing one-story expansion of legal non-conforming garages/structures for ADUs would create a consistent street wall and improve the continuity of the buildings in the block. Such expansion would not affect the quality of mid-block open space. Lastly, these ADUs would likely have direct access to the street, better access to light, and are therefore higher quality units.
5. The Ordinance as drafted would allow expansion of standalone garages/structures to add dormers. Many of such standalone garages/structures are currently in the required rear yard. However the language as drafted is not clear that dormers could be added to structures even when they are in the required rear yard. The Commission recommends clarifying the language to reflect such provision. Adding dormers when converting a one-story garage would provide opportunities for additional light and ventilation, and would increase occupiable floor area by raising the vertical clearance of a room.
6. The Commission acknowledges how meeting the street tree requirements add to the complexities of permit processes for ADUs. Instead of exempting ADUs from this requirement, the Commission recommends allowing ADUs to pay into an in lieu fee to satisfy this requirement. This would shorten the review period from the Department of Public Works for ADUs while still implementing the City's Better Street Plan by creating more trees and greenery on streets. Similarly same issues apply to unauthorized units that are undergoing the legalization program. To maintain consistent provision, the Commission recommends offering the same flexibility to those permits so that those applicants can pay into an in-lieu fee in order to satisfy the street tree requirement.
7. The Commission identified a need to address the eviction loophole currently existing in the legalization program. Through this loophole, property owners inclined to remove an unauthorized unit can evict their tenants, and then remove the unit without a CU permit. The eviction prohibition in the legalization program was originally placed to protect tenants but no longer serves this goal. To address this loophole, the Commission's recommendations would maintain the goal of tenant protection but change how the legalization program serves this goal. The Commission recommends removing the eviction prohibition in the legalization program; this would eliminate using tenant evictions as an excuse to remove the unauthorized unit. It would also help the City to preserve its existing rent control housing stock.

In addition, already existing price control laws now address the goal of tenant protections. This means that property owners no longer have the opportunity to evict a tenant, legalize their unit, and then increase the rental price. Instead, to re-rent a newly legalized unit within five years subsequent



to an eligible<sup>1</sup> no-fault eviction, the owner can only ask for the rental rates at the time of eviction (plus allowable annual increases). The Commission recommends simply making a reference in the legalization program that those price controls apply. Second, to fully discourage evictions prior to legalization, the Commission recommends using the right to return model currently in practice for Capital Improvement, Ellis Act, and Owner Move-in evictions. In these models, property owners are required to offer the unit to tenants previously evicted, if the unit is being re-rented for a period of time after eviction occurred. Together with price control, this would mean that if an owner legalizes a unit subsequent to a no-fault eviction and then re-rents the unit, the unit would have to be first offered to the same tenant and at the same rate as the time of eviction (plus allowable annual increases). This would further prevent using the legalization program as a means for evicting tenants.

8. The proposed Ordinance will correct the Planning Code so that it is in line with the City's current practices and adopted budget.
9. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are consistent with the Objectives and Policies of the General Plan:

**OBJECTIVE 1**

**IDENTIFY AND MAKE AVAILABLE FOR DEVELOPMENT ADEQUATE SITES TO MEET THE CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING.**

**POLICY 1.5**

**Consider secondary units in community plans where there is neighborhood support and when other neighborhood goals can be achieved, especially if that housing is made permanently affordable to lower-income households.**

*The proposed Ordinance would provide further flexibility for Accessory Dwelling unit program in pursuit of goals to increase housing opportunities. It would also provide more opportunities to preserve existing unauthorized units.*

**OBJECTIVE 7**

**SECURE FUNDING AND RESOURCES FOR PERMANENTLY AFFORDABLE HOUSING, INCLUDING INNOVATIVE PROGRAMS THAT ARE NOT SOLELY RELIANT ON TRADITIONAL MECHANISMS OR CAPITAL.**

**POLICY 7.7**

**Support housing for middle income households, especially through programs that do not require a direct public subsidy.**

*ADUs are subordinate to the original unit due to their size, location of the entrance, lower ceiling heights, etc. ADUs are anticipated to provide a lower rent compared to the residential units developed in newly constructed buildings and therefore the proposed Ordinance would support housing for middle income households.*

---

<sup>1</sup> Eligible evictions for five year price control are: Owner move-in, condo conversion, demolitions and removal from housing, capital improvements, and lead abatement.

*Similarly existing unauthorized units generally offer lower rents compared to other units on the market. The proposed Ordinance would expand the legalization program and therefore maintain more housing for low and middle income households.*

10. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

*The proposed Ordinance would not have a negative impact on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.*

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

*The proposed Ordinance would not have a negative effect on housing or neighborhood character.*

3. That the City's supply of affordable housing be preserved and enhanced;

*The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing.*

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

*The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.*

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

*The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.*

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

*The proposed Ordinance would not have an impact on City's preparedness against injury and loss of life in an earthquake.*

7. That the landmarks and historic buildings be preserved;

*The proposed Ordinance would not have a negative impact on the City's Landmarks and historic buildings.*

8. That our parks and open space and their access to sunlight and vistas be protected from development;

*The proposed Ordinance would not have an adverse impact on the City's parks and open space and their access to sunlight and vistas.*

11. **Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board ADOPT the proposed Ordinance with modifications as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on June 21, 2018.



Jonas P. Ionin  
Commission Secretary

AYES: Hillis, Johnson, Koppel, Richards, Moore

NOES: None

ABSENT: Fong, Melgar

ADOPTED: June 21, 2018





# SAN FRANCISCO PLANNING DEPARTMENT

---

## Executive Summary Planning Code Text Change

HEARING DATE: JUNE 7, 2018  
90 DAY DEADLINE: JUNE 26, 2018

*Date:* June 7, 2018  
*Project Name:* **Amendments to Accessory Dwelling Units Requirements**  
*Case Number:* 2018-004194PCA, [Board File No. 180268]  
*Initiated by:* Supervisor Tang / Introduced March 20, 2018  
*Staff Contact:* Kimia Haddadan, Legislative Affairs  
[Kimia.haddadan@sfgov.org](mailto:Kimia.haddadan@sfgov.org), 415-575-9068  
*Reviewed by:* Aaron Starr, Manager of Legislative Affairs  
[aaron.starr@sfgov.org](mailto:aaron.starr@sfgov.org), 415-558-6362  
*Recommendation:* **Recommend Approval with Modification**

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

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

### PLANNING & ADMINISTRATIVE CODE AMENDMENTS

The proposed Ordinance would amend the Planning Code to authorize the Zoning Administrator to waive or modify bicycle parking requirements for an Accessory Dwelling Unit (ADU), allow more than one unauthorized unit constructed without a permit to be legalized, exempt from the permit notification requirement ADUs constructed within the defined existing built envelope, allow conversion of an existing stand-alone garage or storage structure to an ADU and expansion of the existing building envelope to add dormers, eliminate the street tree requirement for an ADU, and allow one ADU to be added to a new residential building of three units or less as a component of the new construction. It would also amend the Building Code to provide for a preapplication plan review for ADUs.

In addition, Supervisor Tang asked the Planning Department (not currently part of the Ordinance) to propose recommendations for allowing vertical expansion when adding ADUs to stand alone garages on corner lots. This concept is referred to as "ADU infill".

#### **The Way It Is Now:**

##### ADUs in new construction

1. ADUs can only be added to existing buildings. If an application proposes demolition and reconstruction, ADUs are not permitted.

##### The existing built envelope limiting the ADU & neighborhood notification

2. ADUs are required to be built within the existing built envelope of a building as it existed three years prior to the application. The built envelope is defined to include filling under the following spaces as long as they are not in the required rear yard: a cantilevered room, room built on columns, decks that are only supported by the building wall (not by

columns or other walls), as well as filling in lightwells if against a blank neighboring wall at the property line. Per the Zoning Administrator (ZA) Bulletin No. 4 filling in under spaces listed above, whether for an ADU or other types of permits, are exempt from neighborhood notifications of Section 311 of the Planning Code (as long as such spaces are not in the required rear yard).

3. When converting a standalone garage or structure to an ADU, the unit can be added only within the existing built envelope of the structure.

#### Street tree requirement

4. ADUs are currently subject to the street tree requirements of the Public Works Code<sup>1</sup>. When adding a dwelling unit, the sponsor is required to plant a street tree in front of the subject property or pay an in-lieu fee if the tree cannot be planted.

#### Bicycle parking requirements

5. Corridors that provide access to bicycle parking are currently required to be five feet wide. Vertical bicycle parking is only allowed to satisfy up to one-third of the requirements. There are no ZA waivers available for such requirements for ADUs.

#### Exposure requirements

6. The ADU program allows the ZA to waive exposure requirements if windows are facing an open area that is 15' by 15' in dimensions without needing to expand vertically. This is a reduction from the standard exposure requirement where the open area should be at least 25' by 25' expanding 5' in every dimension at each floor.

#### Pre-application meetings with DBI

7. Applicants can choose to schedule a pre-application meeting with DBI to go over preliminary concerns about the project. These meetings are usually staffed by DBI and the Fire Department.

#### Legalization of Unauthorized Units

8. Only one unauthorized unit per lot can take advantage of the legalization program.
9. The Zoning Administrator has interpreted the Code to clarify situations where unauthorized units can be removed without a conditional use hearing. Per this interpretation, if the unit cannot be legalized through *any path* available in the Code, the unit can be removed without a CU permit.

---

<sup>1</sup> Article 16, Sections 805(a) and (d)

## The Way It Would Be:

### ADUs in new construction

1. New construction projects with three units or less would be allowed to include one ADU.

### The existing built envelope limiting the ADU & neighborhood notification

2. The proposed Ordinance would allow ADUs to fill in under the following type of spaces, even if such spaces encroach into the required rear yard. These spaces include: a cantilevered room, or room built on columns, or decks that are only supported by the building wall (not by columns or other walls), as well as filling in lightwells if against a blank neighboring wall at the property line. In other words, filling in under such spaces would be a permitted obstruction in the required rear yard. The proposed Ordinance would exempt such permitted obstructions from neighborhood notification.
3. When converting a standalone garage or structure to an ADU, the structure can be expanded to add dormers and such expansion would be exempt from neighborhood notification requirements.

### Street Tree Requirement

4. ADUs would not be subject to the street tree requirements of the Public Works Code.

### Bicycle Parking Requirements

5. The ZA would be able to provide waivers for bicycle parking requirements for ADUs so that: a) in existing buildings where no new corridors are being built, a three foot corridor could provide access to the bicycle parking space ; b) vertical bicycle parking can satisfy up to 100% of required bicycle parking.

### Exposure Requirements

6. The ZA would be able to waive the exposure requirement so long as windows are facing an open area that is 225 sq. ft. with no dimension smaller than nine feet.

### Pre-application Meetings with DBI

7. Staff from the Planning Department would be required to attend pre-application meetings if such meeting is requested by applicant.

### Legalization of Unauthorized Units

8. All unauthorized units on a lot could take advantage of the legalization program.
9. The Planning Code would be clarified to reflect the existing Zoning Administrator interpretation; if the unit cannot be legalized through *any path* available in the Code (legalization, ADUs, or unit addition within allowable density), the unit could be removed without a CU permit.

## **BACKGROUND**

San Francisco's ADU program has been in effect since 2014 starting as a pilot program in a small area and expanded citywide in 2016. As of the first quarter of 2018, there are 1243 units in the pipeline in 691 permits. A detailed review of ADU permits is provided in the ADU Tracking Report also published on May 30, 2018. Since its inception, the ADU program has been modified multiple times to strike a balance between improving flexibility of adding units and maintaining standard quality of life in those units. The proposed Ordinance includes further modifications to improve this program.

## **ISSUES AND CONCERNS**

### **Exposure and bicycle parking requirements**

After reviewing over 700 ADU permits, which includes a wide cross-section of building types, staff has identified two Planning Code requirements that persistently create challenges for adding ADUs, or significantly delay their approval; exposure requirements and bike parking standards.

The current ZA waiver for exposure requirements in ADUs allows windows to face an open area of at least 15' by 15'; however, even with this waiver, the Department has received several variance applications for exposure. These variances have represented as much as 25% of all requests on the monthly variance hearing calendar. The ZA is inclined to grant such variances when the unit quality is retained through other design measures, but the proposed open space does not meet the strict 15' by 15' dimensions while still containing a total of 225 sq. ft. (15x15). Yet, these variance applications can cause the project to be delayed anywhere between six to nine months. In addition, to meet this 15'x15' requirement, sponsors often propose substantial modifications to components of other units. This usually affects existing tenants or the building and increases the overall project cost. Further, staff has observed that the unit quality is maintained with the open area of 225 sq. ft., and when at least one dimension is no less than nine feet.

Bicycle parking requirements are triggered when adding dwelling units to an existing residential building with required off-street parking, or when required off-street parking is removed. ADUs often meet one or both of these triggers because they are typically built in garage spaces and removing parking. Staff has observed two challenges in meeting the bicycle parking requirements. The first challenge is meeting the five foot width for the corridors required to access the bicycle parking facility. The second is finding sufficient space on the ground floor to accommodate the required racks and spacing between the racks. To address these challenges, applicants often need to re-design the proposed units or the overall building, typically to the detriment of the unit configuration and often causing significant time delays. The proposed ordinance addresses this issue by providing greater flexibility to meet bike parking requirements, while still ensuring that these units have safe and secure bike parking. This Ordinance would provide such flexibility through ZA waivers in two ways: a) where no new corridors are being installed, an existing corridor as narrow as 3' would be sufficient to access the bicycle parking



facility; b) allow use of vertical bicycle parking to satisfy all required racks (currently only one-third of racks can be vertical).

### **Pre-application meeting**

Currently, sponsors can schedule a pre-Application meeting with DBI (includes Building, and Fire, if applicable), or they can also schedule a Project Review meeting with just the Planning Department. These meetings are currently held separately. The proposed Ordinance would amend the Building Code to require that DBI's Pre-application meetings include Planning Department staff. A combined Pre-app meeting would enhance inter-Departmental coordination between Planning, DBI, and Fire Department. Conflicting input from different Departments can be resolved at one meeting, potentially eliminating or reducing the iterative revision process. Further, in February of this year, President of the Building Inspection Commission directed DBI and Planning Department to assess and coordinate a combined Pre-app meeting.

### **ADUs in new construction**

Currently, ADUs are only allowed to be added into existing buildings, but cannot be added to new construction. One way around this rule is for the applicant to design their project in anticipation of adding an ADU, and in three years apply to add an ADU under a separate permit. The three year time period comes from the Planning Code, which stipulates that ADUs can only be added to an existing built envelope as it existed three years prior to the application. This creates inefficiencies in terms of construction and likely discourages owners from adding an ADU. Meanwhile, the City is in a housing crisis and generally encourages opportunities to add ADUs. The proposed Ordinance would create such opportunity by allowing ADUs to be added as a part of new construction permits for buildings of three units or less. Further, ADUs in new construction would benefit from better quality of life standards than traditional ADUs (lower ceiling height, smaller windows, non-standard entry, etc.) because the building would be designed from the beginning with the ADU in mind. At the same time, this may create confusion on how to distinguish ADUs from regular residential units in a new building. While ADUs are always different from residential units in that they cannot be subdivided and sold separately, and that they cannot be rented as Short Term Rentals, physical controls to distinguish ADUs in new construction from a regular unit may be needed.

### **Built vs. buildable envelope to limit ADUs**

In recent years, the City has intensified efforts to provide more housing and has streamlined housing production, especially ADUs. One focus of these streamlining efforts has been on providing more flexibility on the definition of built envelope and the area within which ADUs are limited to be built on any lot. This is because limiting ADUs to the built footprint often affects the quality of ADU. Specifically, decks or cantilevered rooms on the upper stories impose limitations on meeting light exposure requirements. In 2016, the ADU program was amended to allow filling in under those spaces as long as they are not encroaching into the required rear yard. Filling in under such spaces are not generally subject to neighborhood notifications and the same principle applied to ADUs.

The proposed Ordinance would advance this flexibility and allow filling in under such spaces, even if they encroach into the rear yard. This proposal both help improve quality of ADUs with minimum impact to the visible mass of the building (See Exhibit B). In addition, this change would incentivize production of ADUs over expanding an existing unit; it would allow such expansion only for ADUs while expanding an existing unit under such spaces in the required rear yard would still require a variance hearing subject to neighborhood notification.

The Ordinance also proposes another minor change with regards to adding dormers to standalone garages/structures. Currently when an standalone garage is being converted to an ADU, only the existing built envelope can be used. Many of these structures have short ceiling height and a simple change of adding dormers would improve light and ventilation. Dormers would also allow for additional vertical space and therefore a higher quality and more spacious unit.

Finally, a more comprehensive way to improve flexibility for ADUs would be to allow all ADUs to expand within the buildable envelope. The Department has proposed this amendment in the past and still maintains the benefit of such amendment. It would be consistent with the Ordinance's proposal to allow ADUs in new construction, as those ADUs would also be allowed within the buildable envelope. Similarly, it would also be consistent with changes to the ADU program in 2017 to comply with the State Law updates. Those changes applied to single-family homes only and allowed ADUs within the existing buildable envelope. Lastly, these expansions are available for enlarging an existing unit and it would be reasonable to allow same provisions when adding to the City's housing stock.

### **Street tree requirement**

Staff has heard that the process to satisfy the street tree requirement of the Public Works Code can prove lengthy and complicated. The permit for street tree requires review of site conditions, and a determination on whether a street tree can be planted, and finally an approval of street tree permit. The proposed Ordinance exempts ADUs from meeting this requirement to help address this issue. A sponsor may also need additional permits from Public Works; for example, if removing off-street parking, a permit to reinstall the curb is required.

Staff also realized that the same limitations of the street tree requirement apply to unauthorized units undergoing legalization and those permits can also benefit from some flexibility for meeting the street tree requirements.

### **Vertical expansion in the required rear yard of corner lots**

Per a request by the sponsoring Supervisor, staff looked into vertical expansion of a standalone garage on a corner lot to add ADUs (not part of the draft Ordinance). Standalone garages in corner lots are often legal non-forming structures within the required rear yard. They also create a gap in the street wall as a one story structure, while most buildings are two stories and more. Currently such a garage/structure can be converted to an ADU without expansions. Allowing a one story expansion above the existing footprint would provide opportunities for either a higher quality ADU, or more than one ADU. It would also allow filling the street wall gap and improve the physical continuity of the block (See Exhibit C).

### **Legalization Program: Cap on number of units & eviction loophole**

In a memo to the Commission dated April 20, 2017, staff highlighted two policy concerns with the legalization program. The first was the cap of one unit per lot that can be legalized. The proposed Ordinance addresses that concern by allowing more than one unit to be legalized per lot. The second concern was the limitations related to eviction history. The proposed Ordinance does not address this concern.

Currently, unauthorized units cannot be legalized if there has been a no-fault eviction associated with the unit. The policy goal for this provision is to protect tenants from potential evictions; the opportunity to legalize a unit could incentivize the owner to evict the tenant, legalize the unit, and put the unit back on the market for higher rent. However, subsequent legislative changes conflict with the eviction prohibition in the legalization program and create a loophole. The City now requires Conditional Use (CU) authorization to remove unauthorized units unless the unit is not eligible for legalization. This change has incentivized property owners who wish to remove the unit to evict their tenant, making the unit ineligible for the legalization program. The property owner is then allowed to remove the unit without a CU authorization. In this way, the eviction prohibition in the legalization program is no longer serving its original goal to protect tenants.

In addition, the original concerns driving the eviction prohibition have been addressed through another piece of legislation, commonly known as Eviction Protection 2.0. This legislation incorporated a five year price control into five types of no-fault evictions: owner move-in, condo conversions, capital improvements, lead abatement, and demolition/removal from housing. The latter is the most common type of eviction used for tenants in unauthorized units. The price control removes the incentive to evict a tenant prior to legalization, since higher rents would not be allowed for five years; therefore, the need for an eviction prohibition in the legalization program is no longer necessary. In addition, a right to return provision can further protect the tenants in the unauthorized units. The right to return already exists for three types of no-fault evictions for five years: Ellis Act, owner move-in, and Capital Improvements.

### **General Plan Compliance**

#### **Objective 1**

Identify and make available for development adequate sites to meet the city's housing needs, especially permanently affordable housing.

#### **Policy 1.5**

Consider secondary units in community plans where there is neighborhood support and when other neighborhood goals can be achieved, especially if that housing is made permanently affordable to lower-income households.

*The proposed Ordinance would provide further flexibility for Accessory Dwelling unit program in pursuit of goals to increase housing opportunities. It would also provide more opportunities to preserve existing unauthorized units.*

#### **Objective 7**

Secure funding and resources for permanently affordable housing, including innovative programs that are not solely reliant on traditional mechanisms or capital.

#### Policy 7.7

Support housing for middle income households, especially through programs that do not require a direct public subsidy.

*ADUs are subordinate to the original unit due to their size, location of the entrance, lower ceiling heights, etc. ADUs are anticipated to provide a lower rent compared to the residential units developed in newly constructed buildings and therefore the proposed Ordinance would support housing for middle income households. Similarly existing unauthorized units generally offer lower rents compared to other units on the market. The proposed Ordinance would expand the legalization program and therefore maintain more housing for low and middle income households.*

#### Implementation

The Department determined that this ordinance will impact our current implementation procedures in the following ways:

- The proposed Ordinance would update some of the current controls for ADUs. Department's ADU fact sheets and webpage would need to be updated for the public. The Department would also need to hold training sessions for staff for these updates.

#### RECOMMENDATION

The Department recommends that the Commission recommend *approval with modifications* of the proposed Ordinance and adopt the attached Draft Resolution to that effect.

The Department recommends the following modifications:

- 1) **Restrict the size of the ADUs added as a part of new construction to 1,200 sq. ft. in order to differentiate them from a regular unit.**
- 2) **Allow expansion of ADUs within the buildable envelope.**
- 3) **Allow expansion of ADUs under cantilevered rooms and decks in required rear yard without neighborhood notification, as drafted in the Ordinance, but amend Section 136 (c) to list filling under those spaces as permitted obstructions when adding ADUs.**
- 4) **On a corner lot, allow one story expansion of existing standalone garage structures limited to its existing footprint.**
- 5) **Clarify that the provision to allow dormers when converting existing standalone garages/structures to ADUs would allow such expansion even if those structures are in the required rear yard.**
- 6) **Allow ADUs to pay into an in-lieu fee for street tree requirements. Apply the same provision to unauthorized units undergoing legalization.**
- 7) **Remove the prohibition to use the legalization program where no-fault evictions have occurred and amend the Planning and Rent Ordinance to:**
  - i. clarify that the existing five year price control applies to no-fault evictions in unauthorized units (Section 37.3(f) of the Administrative Code)
  - ii. require the unit be offered to the previous tenant evicted similar to provisions for capital improvement (37.9a(11)), Ellis Act (37.9A), and owner move-in evictions (37.9(B)).



## BASIS FOR RECOMMENDATION

The Department supports the overall goals of this Ordinance as it would provide more flexibility to build ADUs while maintaining quality of these units. The following is the basis for the Department's recommended modifications:

**1) Restrict the size of the ADUs added as a part of new construction to 1,200 sq. ft. in order to differentiate them from a regular unit:**

As discussed earlier, traditional ADUs added to existing buildings generally have low ceiling heights, indirect entry, smaller windows, etc. ADUs in new construction would likely not have such limitations and may physically look similar to regular residential units. To distinguish an ADU in new construction from a regular residential unit, staff recommends using a unit size limit already identified for ADUs in State Law, which is a maximum of 1,200 sq. ft.

**2) Allow expansion of ADUs within the buildable envelope.**

As discussed earlier, allowing ADUs to expand within the buildable envelope is consistent with recent changes to the ADU program per State Law. Those changes allowed ADUs in single-family homes to expand within the buildable envelope. In addition, the City allows enlarging an existing unit within the buildable envelope. Applying same provisions to ADUs would be consistent with the City's policy to produce more housing.

**3) Allow expansion for ADUs under cantilevered rooms and decks in required rear yard without neighborhood notification, as drafted in the Ordinance, but amend Section 136 (c) to list filling under those spaces as permitted obstructions when adding ADUs.**

Staff supports this amendment as drafted in the Ordinance which would provide property owners with flexibility to expand the ADU under decks and cantilevered room even if they are in the required rear yard. This would improve light access for the unit and would help with meeting the exposure requirements. Infill under these spaces has minimal impact on the mid-block open space as they would fill under already existing and legal projection into the rear yard. For Code consistency and clarity, Staff recommends amending Section 136 (c) of the Code to reflect this change as well. This section of the Code includes all permitted obstructions allowed in the required rear yard. Similarly allowing filling in under decks and cantilevered rooms in the required rear yard for ADUs would be a permitted obstruction in the required rear yard.

**4) On a corner lot, allow up to one story expansion of existing standalone garage structures limited to its existing footprint.**

As discussed earlier, standalone garages on corner lots can already be converted to ADUs but only within their existing built footprint. These garages face the street and as a one-story structure create a gap in the street wall. Allowing one-story expansion of legal non-conforming garages/structures for ADUs would create a consistent street wall and improve the continuity of the buildings in the block. Such expansion would not affect the quality of mid-block open space. Lastly, these ADUs would likely have direct access to the street, better access to light, and are therefore generally higher quality units.

- 5) **Clarify that the provision to allow dormers when converting existing standalone garages/structures to ADUs would allow such expansion even if those structures are in the required rear yard.**

The Ordinance as drafted would allow expansion of standalone garages/structures to add dormers. Many of such standalone garages/structures are currently in the required rear yard. However the language as drafted is not clear that dormers could be added to structures even when they are in the required rear yard. Staff recommends clarifying the language to reflect such provision. Adding dormers when converting a one story garage would provide opportunities for additional light and ventilation, and would increase occupiable floor area by raising the vertical clearance of a room.

- 6) **Allow ADUs to pay into an in-lieu fee for street tree requirements. Apply the same provision to unauthorized units undergoing legalization.**

Staff acknowledges how meeting the street tree requirements can prove lengthy and complicated for ADUs. Instead of exempting ADUs from this requirement, staff recommends allowing ADUs to pay into an in lieu fee to satisfy this requirement. This would shorten the review period from the Department of Public Works for ADUs while still implementing the City's Better Street Plan by creating more trees and greenery on streets. Similarly same issues apply to unauthorized units that are undergoing the legalization program. To maintain consistency, staff recommends offering the same flexibility to those permits so that those applicants can pay into an in-lieu fee in order to satisfy the street tree requirement.

- 7) **Remove the prohibition to use the legalization program where no-fault evictions have occurred and amend the Planning Code and the Rent Ordinance to:**

- i. **clarify that the existing five year price control applies to no-fault evictions in unauthorized units (Section 37.3(f) of the Administrative Code)**
- ii. **require the unit be offered to the previous tenant evicted similar to provisions for capital improvement (37.9a(11)), Ellis Act (37.9A), and owner move-in evictions (37.9(B)).**

Staff identified a need to address the eviction loophole currently existing in the legalization program. Through this loophole, property owners inclined to remove an unauthorized unit can evict their tenants, and then remove the unit without a CU permit. The eviction prohibition in the legalization program was originally placed to protect tenants but no longer serves this goal (see page 6-7 for more details). To address this loophole, staff's recommendations would maintain the goal of tenant protection but change how the legalization program serves this goal. Staff recommends removing the eviction prohibition in the legalization program; this would eliminate using tenant evictions as an excuse to remove the unauthorized unit. It would also help the City to preserve its existing rent control housing stock.

In addition, already existing price control laws now address the goal of tenant protections. This means that property owners no longer have the opportunity to evict a tenant, legalize their unit, and then increase the rental price. Instead, to re-rent a newly

legalized unit within five years subsequent to an eligible<sup>2</sup> no-fault eviction, the owner can only ask for the rental rates at the time of eviction (plus allowable annual increases). Staff recommends simply making a reference in the legalization program that those price controls apply. Second, to fully discourage evictions prior to legalization, staff recommends using the right to return model currently in practice for Capital Improvement, Ellis Act, and Owner Move-in evictions. In these models, property owners are required to offer the unit to tenants previously evicted, if the unit is being re-rented for a period of time after eviction occurred. Together with price control, this would mean that if an owner legalizes a unit subsequent to a no-fault eviction and then re-rents the unit, the unit would have to be first offered to the same tenant and at the same rate as the time of eviction (plus allowable annual increases). This would further prevent using the legalization program as a means for evicting tenants.

## **REQUIRED COMMISSION ACTION**

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

## **ENVIRONMENTAL REVIEW**

The Environmental review for this Ordinance is pending and will be available for the Commission Hearing. Staff anticipates the proposed Ordinance is covered under the Addendum 4 to the Housing Element EIR issued June 15, 2016.

## **PUBLIC COMMENT**

As of the date of this report, the Planning Department has not received any comments about this Ordinance.

<b>RECOMMENDATION:</b> <b>Recommendation of Approval with Modification</b>
--

---

<sup>2</sup> Eligible evictions for five year price control are: Owner move-in, condo conversion, demolitions and removal from housing, capital improvements, and lead abatement.

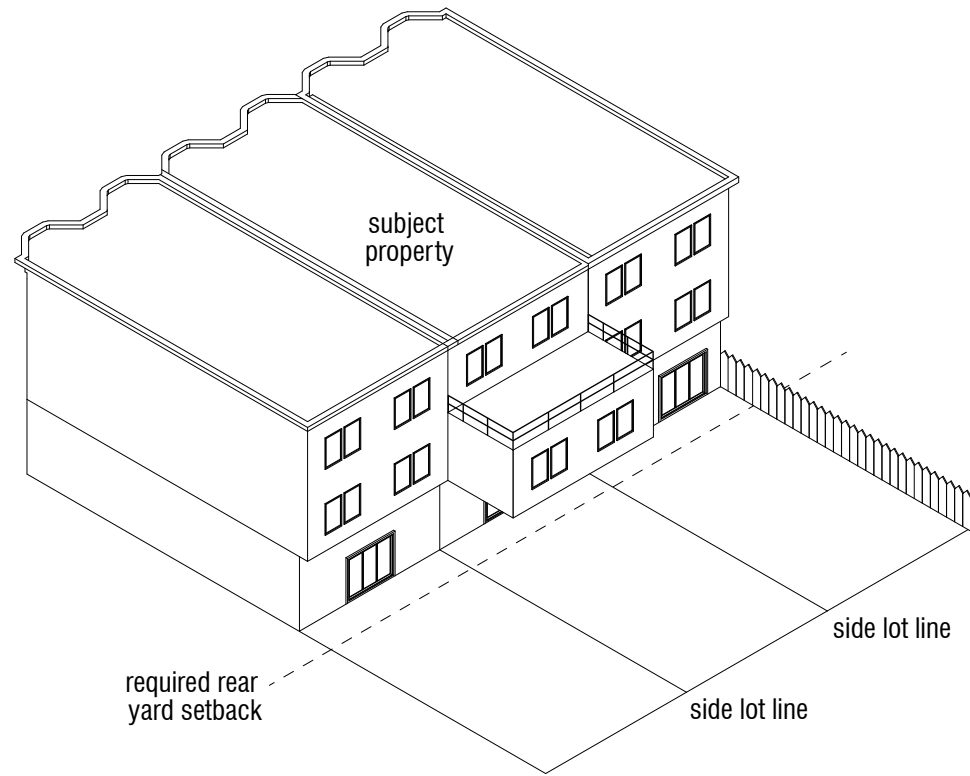
**Attachments:**

- Exhibit A: Draft Planning Commission Resolution for BF No. 180268
- Exhibit B: Three-Dimensional Graphics Showing the Proposed Changes To Allow Filling In Under Cantilevered Rooms And Decks That Are In The Required Rear Yard
- Exhibit C: Three-Dimensional Graphics Showing the Proposed Changes To Allow Vertical Expansions of Standalone Garages on Corner Lots
- Exhibit D: Draft Ordinance

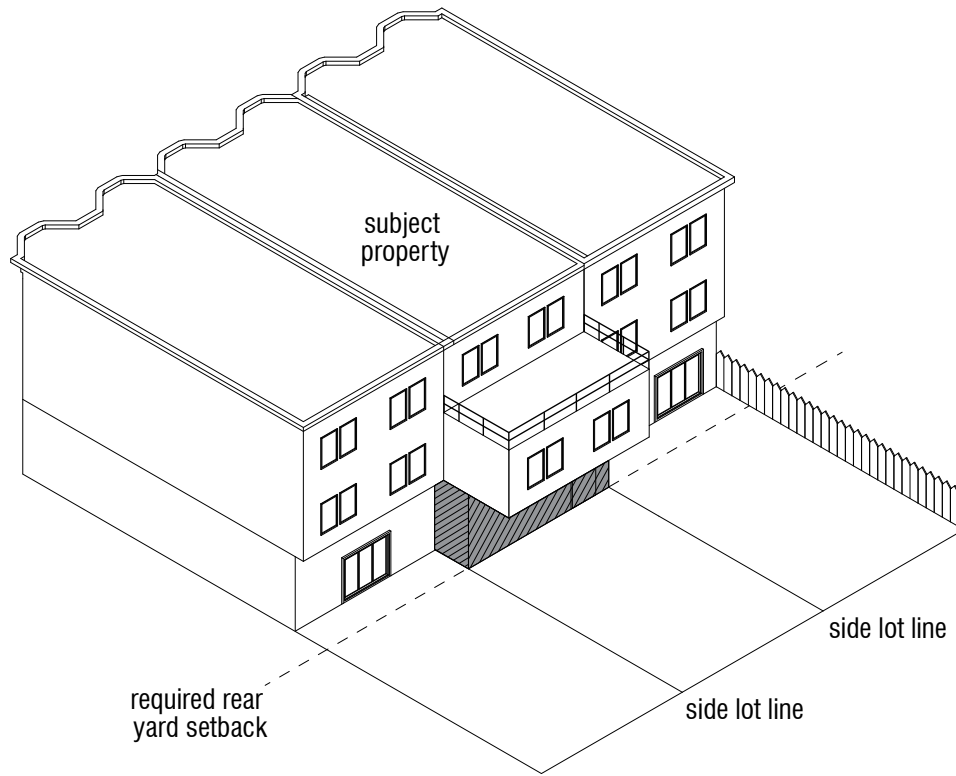


*Exhibit B- Proposed Amendment to Allow  
Filling in Under:  
a) Cantilevered Rooms That Are In the  
Required Rear Yard*

EXISTING



ALLOWED  
TODAY



PROPOSED

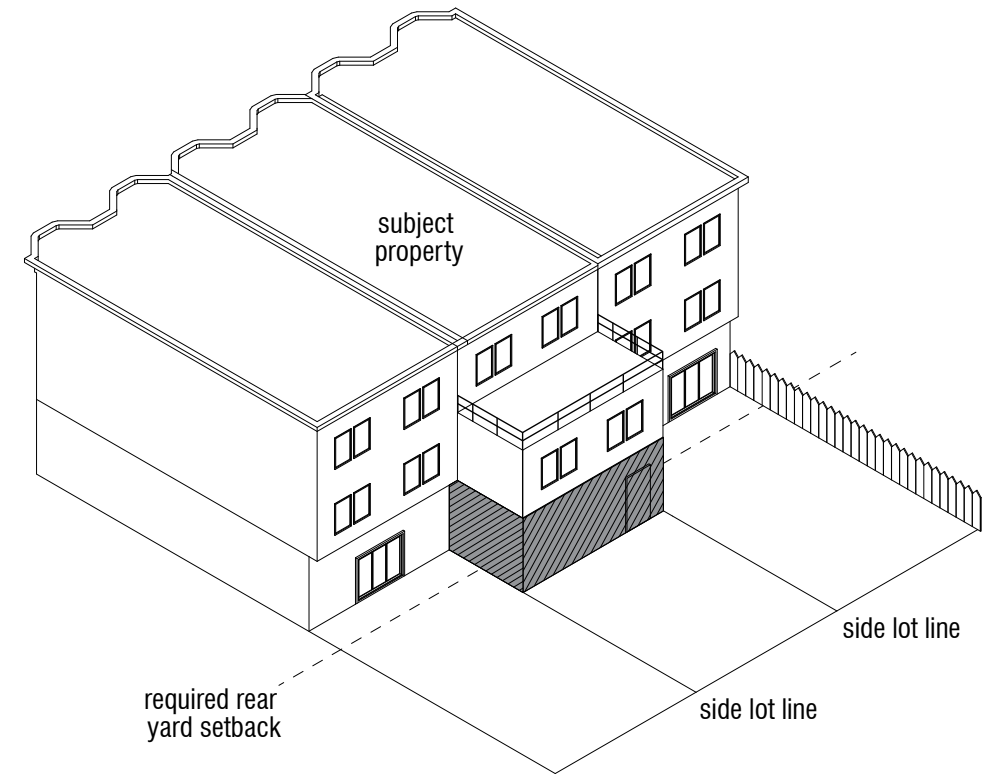
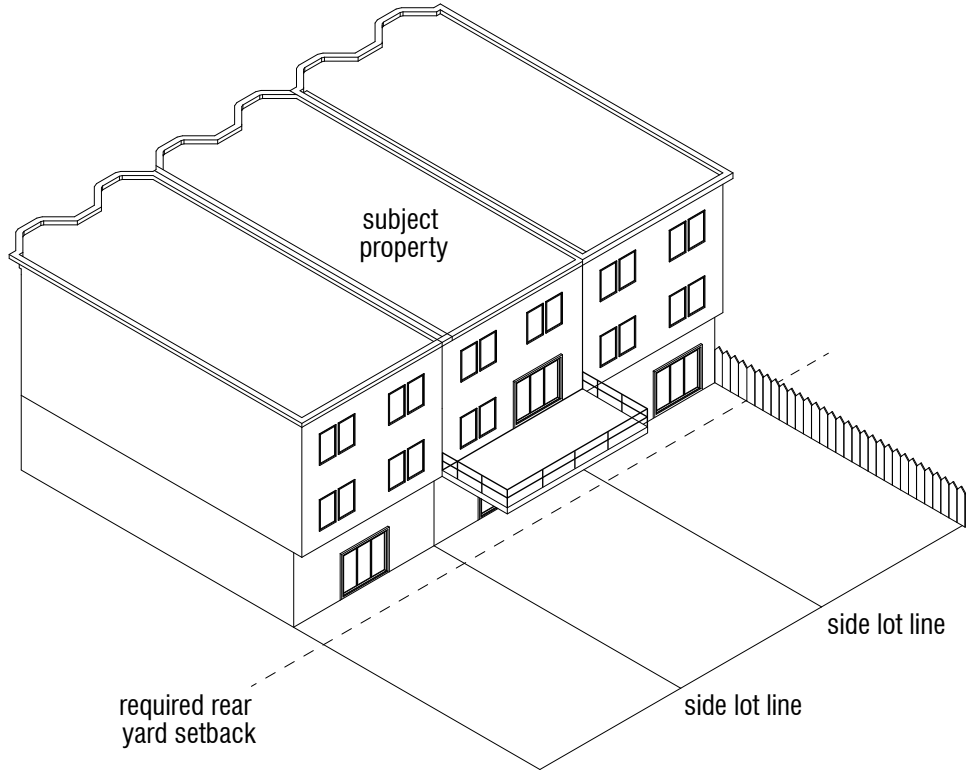
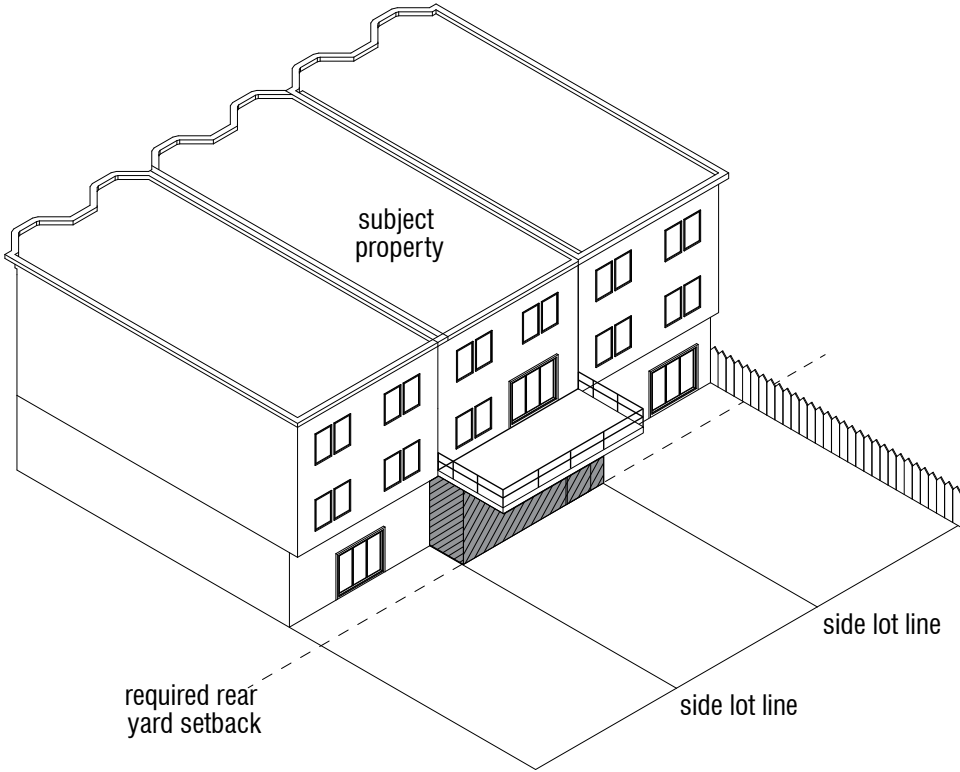


Exhibit B- Proposed Amendment to Allow  
Filling in Under:  
*b) Decks That Are In the Required Rear Yard*

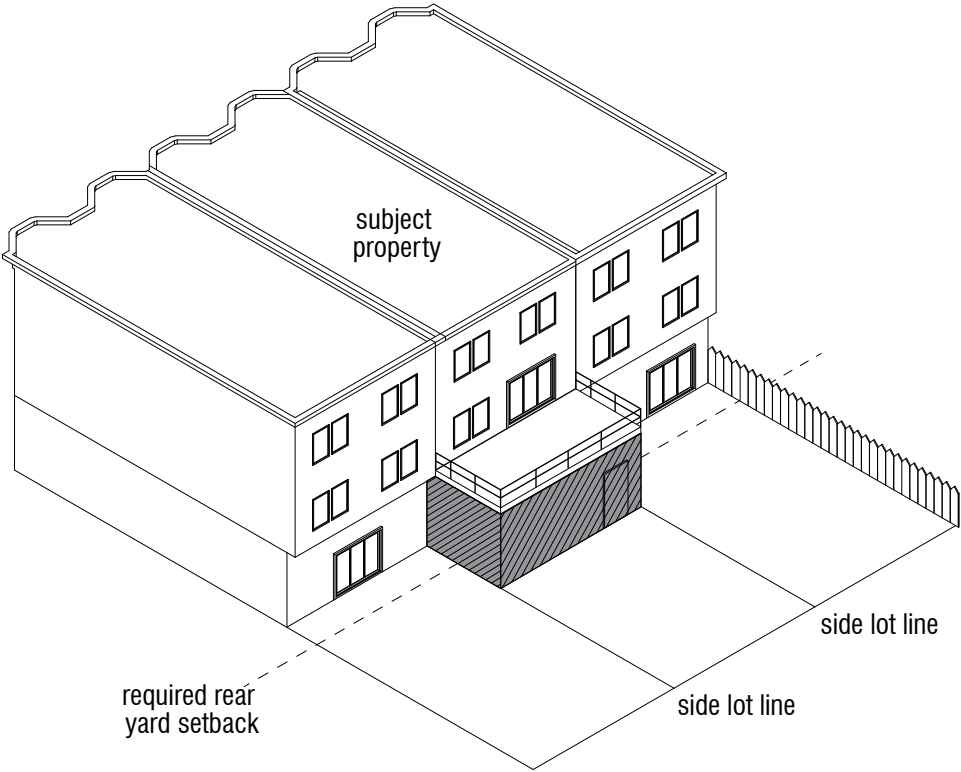
EXISTING



ALLOWED TODAY

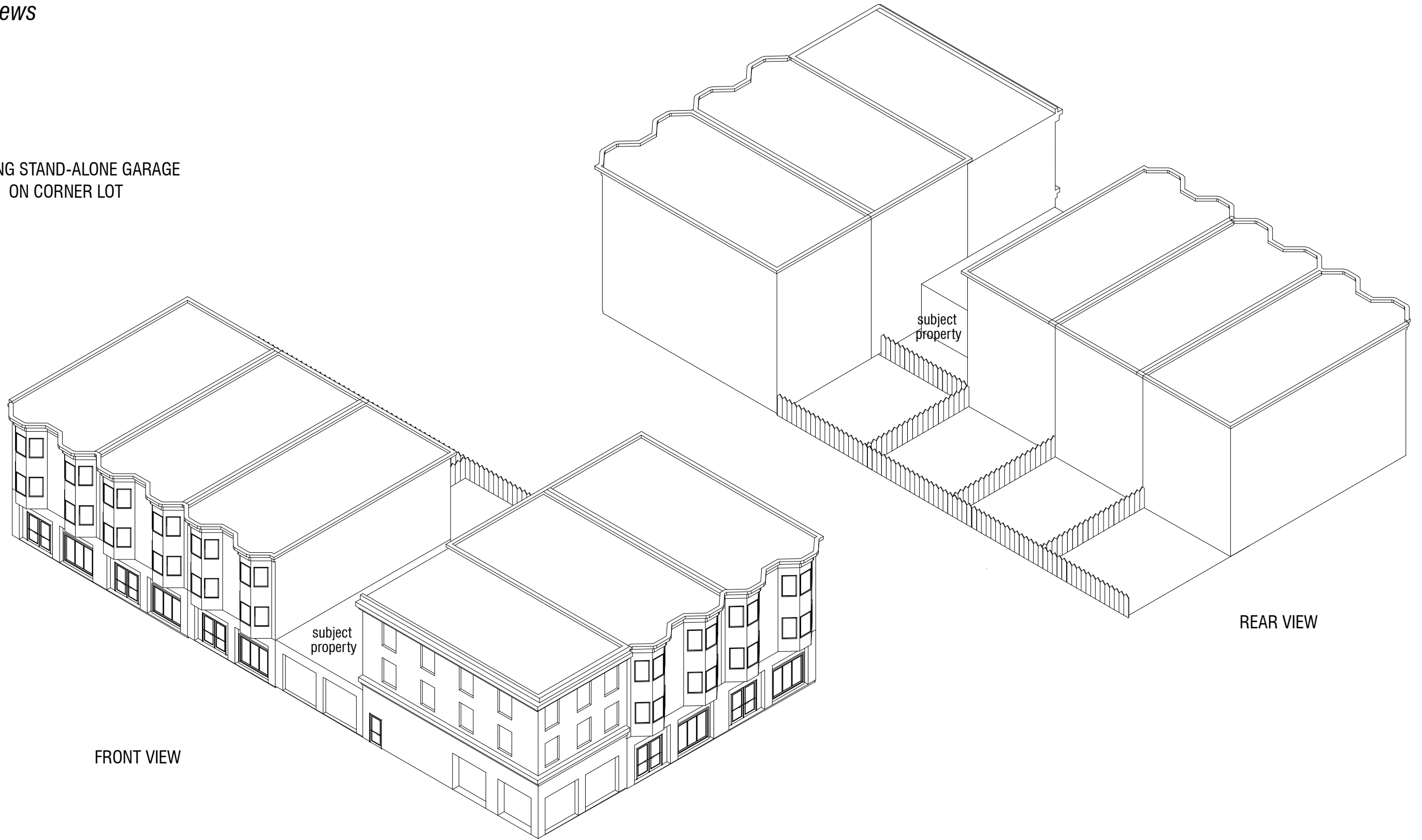


PROPOSED



*Exhibit C- Proposal to Allow Vertical Expansion of of A Standalone Garage on a Corner Lot (Within the Required Rear Yard)*  
*a) Existing Views*

EXISTING STAND-ALONE GARAGE  
ON CORNER LOT



*Exhibit C- Proposal to Allow Vertical  
Expansion of of A Standalone Garage on a  
Corner Lot (Within the Required Rear Yard)  
b) Proposed View*

