



SAN FRANCISCO PLANNING DEPARTMENT

Rear Yard Modification and Variance Decision

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Date: April 6, 2016
Case No.: **2014-003157VAR**
Project Address: **1598 BAY STREET**
Zoning: NC-2 (Small-Scale Neighborhood Commercial)
40-X Height and Bulk District
Block/Lot: 0459/007
Project Sponsor: Mark Conroe
Presidio Development Partners
1390 Market Street, Suite 303
San Francisco, CA 94102
Staff Contact: Brittany Bendix – (415) 575-9114
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DESCRIPTION – REAR YARD MODIFICATION AND USABLE OPEN SPACE AND EXPOSURE

VARIANCES SOUGHT:

The project is the demolition of a closed automotive service station and the construction of a new 40-foot tall residential building of approximately 50,900 square feet with 28 dwelling units, 2,875 square-feet of common open space, 42 off-street parking spaces, and 40 bicycle parking spaces.

Section 134 of the Planning Code requires that the property provide a minimum rear yard at grade of 25% of lot depth, which is equal to an area of 3,135.31 square feet. The proposed rear yard at grade is less than 25% of lot depth with an area of 2,489.25 square feet; therefore, a Rear Yard Modification is required.

Section 135 of the Planning Code requires that the project provide a minimum of 100 square feet of open space per unit, if private, or 133 square feet of open space per unit if within a common area. The project provides code-complying open space for 22 of the 28 units through a combination of private and common open space; therefore, an Open Space Variance is required.

Section 140 of the Planning Code requires that every dwelling unit face onto an open area such as a public street or code-complying inner court that is unobstructed and no less than 25 feet in every horizontal dimension, with an increase in five feet in every horizontal dimension at each subsequent floor. The depth of the rear inner court area does not exceed 25 feet 5 inches. Therefore, an Exposure Variance is required for the three units on the ground floor and the three units on the second floor that only face the rear inner court (the remaining units face Buchanan and Bay Streets and are code-complying).

PROCEDURAL BACKGROUND:

1. The Project is exempt from the California Environmental Quality Act ("CEQA") as a Class 32 Categorical Exemption and a General Rule Exclusion under CEQA.
2. The Zoning Administrator held a public hearing on **Variance Application No. 2014-003157VAR** on **January 27, 2016**.
3. The Planning Commission held a public hearing on **December 17, 2015**, and approved **Conditional Use Authorization Application No. 2014-003157CUA (Motion No. 19537)**.
4. Planning Code Section 312 notification was conducted in conjunction with the Conditional Use Authorization notification process.

DECISION:

GRANTED, in general conformity with the plans on file with this application, shown as EXHIBIT A, to construct a new 40-foot tall residential building of approximately 50,900 square feet with 28 dwelling units, 2,875 square-feet of common open space, 42 off-street parking spaces, and 40 bicycle parking spaces; subject to the following conditions:

1. Any future physical expansion, even in the buildable area, shall be reviewed by the Zoning Administrator to determine if the expansion is compatible with existing neighborhood character and scale. If the Zoning Administrator determines that there would be a significant or extraordinary impact, the Zoning Administrator shall require either notice to adjacent and/or affected property owners or a new Variance application be sought and justified.
2. The proposed project must meet these conditions and all applicable City Codes. In case of conflict, the more restrictive controls apply.
3. Minor modifications as determined by the Zoning Administrator may be permitted.
4. The owner of the subject property shall record on the land records of the City and County of San Francisco the conditions attached to this Variance decision as a Notice of Special Restrictions in a form approved by the Zoning Administrator.
5. This Variance Decision and the recorded Notice of Special Restrictions shall be reproduced on the Index Sheet of the construction plans submitted with the Site or Building Permit Application for the Project. This Index Sheet of the construction plans shall reference the Variance Case Number.

FINDINGS:

Section 134(e) of the Planning Code states that in order to grant a rear yard modification, the Zoning Administrator must determine that the facts of the case are sufficient to establish each of the following criteria:

CRITERIA 1.

Residential uses are included in the new or expanding development and a comparable amount of usable open space is provided elsewhere on the lot or within the development where it is more accessible to the residents of the development.

Requirement Met.

- A. Per Planning Code Section 134 the subject property must provide a rear yard equal to 3,135.31, Although the proposal only includes a rear yard area equal to 2,489.25 square feet, the total project provides approximately 5,049 square feet of open areas through a combination of common open areas in the rear yard and on the roof deck, as well as private patios, decks, and balconies. This comparable useable open space will serve residents of the 28 proposed dwelling units.

CRITERIA 2.

The proposed new or expanding structure will not significantly impede the access of light and air to and views from adjacent properties.

Requirement Met.

- A. The proposed development is situated on a corner lot and does not significantly impede the access of light and air to, and views from, adjacent properties. The proposed four story massing is setback 15 feet from the northern property line and 5 feet from the eastern property line, which is adjacent to a 25.5-foot wide private alley. Additionally, a shadow study demonstrated that the building would not cast shadows on any property under the jurisdiction of, or designated for acquisition by the Recreation and Park Commission.

CRITERIA 3.

The proposed new or expanding structure will not adversely affect the interior block open space formed by the rear yard of adjacent properties.

Requirement Met.

- A. The subject block does not have a well-defined mid-block open space. Half of the block is occupied by the Marina Cove Apartments, a 200+ unit residential development, which has an interior courtyard. With the exception of the subject property, the remainder of the block is developed with San Francisco Landmark No. 58, the former Gaslight Company building, as well as additional buildings that serve primary or accessory functions to the Pacific Gas and Electric Company (PG&E). By placing the proposed rear yard open area in the northeast corner of the subject property, the project helps to facilitate a mid-block open space pattern that future developments can follow if the block's industrial uses transition to residential or commercial uses.

Section 305(c) of the Planning Code states that in order to grant a variance, the Zoning Administrator must determine that the facts of the case are sufficient to establish the following five findings:

FINDING 1.

That there are exceptional or extraordinary circumstances applying to the property involved or to the intended use of the property that do not apply generally to other properties or uses in the same class of district.

Requirement Met.

- A. The subject block contains the San Francisco Gas Light Company building, an apartment complex of 200+ units, a 25.5-foot wide private alley, and a former PG&E substation. This unique combination of adjacent uses and building types, as well as the subject property's corner lot configuration, are exceptional and extraordinary circumstances.
- B. In response to the improvements on adjacent properties, the proposal locates the rear yard in the northeast corner as a means to establish a midblock open space pattern. The proposal thereby concentrates massing at the intersection of Bay and Buchanan Streets, providing additional setbacks from both the northern and eastern property lines. Because of this chosen configuration the rear yard requires a modification from the requirements of Planning Code Section 134. Additionally, the resulting open area is an inner court for the purposes of satisfying the minimum dimension requirements for Planning Code Section 135 (Open Space) and Planning Code Section 140 (Dwelling Unit Exposure).

FINDING 2.

That owing to such exceptional and extraordinary circumstances the literal enforcement of specified provisions of this Code would result in a practical difficulty or unnecessary hardship not created by or attributed to the applicant or the owner of the property.

Requirement Met.

- A. In total, the project provides approximately 5,049 square feet of open space through a combination of common open areas in the rear yard and on the roof deck, as well as private patios, decks, and balconies. However, not all of the areas provided meet the minimum requirements for either private or common open space. This is because the rear yard area, which is considered an inner court, does not comply with the vertical dimensional requirements of the Planning Code at the third story where the building does not step back. As a result, the 1,300 square feet of common area at grade does not count towards code complying open space. Neither do the private ground floor patios for Units 106 and 107, or the private decks for Units 206, 306, and 405, all which must face a code-complying inner court in order to qualify.
- B. Similarly, the project organizes the proposed dwelling units to face Buchanan Street, Bay Street, or the rear inner court area. However, the inner court does not meet the dimensional requirements of the Planning Code because it does not increase in horizontal dimension on the upper floors. As a result, the units on the first and second stories that have exposure only to the rear yard do not meet the requirements of Planning Code Section 140.
- C. Literal enforcement of the Open Space and Dwelling Unit Exposure requirements would require the applicant to provide either a code complying rear yard or reduce the number of

proposed dwelling units. Again, the existing corner lot configuration and the placement of adjacent buildings generate exceptional and extraordinary circumstances that are not attributed to the property owner.

FINDING 3.

That such variance is necessary for preservation and enjoyment of a substantial property right of the subject property, possessed by other property in the same class of district.

Requirement Met.

- A. Granting this variance will allow the subject property owner to develop the site in a manner consistent with other corner lots in Neighborhood Commercial districts and facilitate the proposal's gestures in massing to promote a midblock open space pattern while respecting adjacent neighbors.

FINDING 4.

That the granting of such variance will not be materially detrimental to the public welfare or materially injurious to the property or improvements in the vicinity.

Requirement Met.

- A. The project is ideal in that it in-fills a vacant automotive service site that is discouraged by the Neighborhood Commerce Element of the General Plan. Furthermore, the design of the proposed development is compatible with the prevailing neighborhood character and will help to establish a midblock open space pattern.
- B. The Planning Department received one letter indicating concerns that the proposed project would restrict development plans on the adjacent northern property. However, the proposed massing is consistent with other corner lot developments in Neighborhood Commercial districts and establishes a development pattern on the block that maintains design flexibility for developments on adjacent properties.

FINDING 5.

The granting of such variance will be in harmony with the general purpose and intent of this Code and will not adversely affect the General Plan.

Requirement Met.

- A. This development is consistent with the generally stated intent and purpose of the Planning Code to promote orderly and beneficial development. Planning Code Section 101.1 establishes eight priority-planning policies and requires review of variance applications for consistency with said policies. The project meets all relevant policies, including conserving neighborhood character, and maintaining housing stock.
 1. Existing neighborhood retail uses will not be adversely affected by the proposed project as the automotive service station was abandoned in 2009 and the tanks were removed in 2010.

2. The proposed project will be in keeping with the existing housing and neighborhood character. The project will provide up to 28 new dwelling units, resulting in a significant increase in the neighborhood housing stock. The Project is simple in design, and relates to the scale and form of the surrounding neighborhood by providing relationships to the other buildings.
3. The proposed project will not displace any affordable housing because there is currently no housing on the site. The Project will comply with the City's Inclusionary Housing Program by paying the in-lieu fee, therefore increasing the available funding dedicated to construction of affordable housing units in the City.
4. The proposed project does not adversely affect neighborhood parking or public transit. The project is well served by MUNI bus routes. It is also situated on Bay Street, which is part of the City's growing bicycle network and which will become safer because of the elimination of the Bay Street curb cut. The Neighborhood Commerce element specifically discourages automotive oriented uses at the subject property, as they are considered to cause conflict with alternative transit methods and be heavy trip generators. Therefore, the proposed residential use will be more compatible with the Zoning District requirements.
5. The Project does replace a former automotive service station which is part of the City's industrial and service sectors; however, that use was displaced nearly six years ago and has since sat vacant. Furthermore, the automotive service use is less compatible with the zoning district than the proposed residential use.
6. The proposed project will have no effect on the City's preparedness to protect against injury and loss of life in an earthquake.
7. The project will have no effect on the City's landmarks or historic buildings.
8. The project would not affect any existing or planned public parks or open spaces. A shadow study was completed and concluded that the Project will not cast shadows on any property under the jurisdiction of, or designated for acquisition by, the Recreation and Park Commission.

The effective date of this decision shall be either the date of this decision letter if not appealed or the date of the Notice of Decision and Order if appealed to the Board of Appeals.

Once any portion of the granted variance is utilized, all specifications and conditions of the variance authorization became immediately operative.

The authorization and rights vested by virtue of this decision letter shall be deemed void and cancelled if (1) a Building Permit has not been issued within three years from the effective date of this decision; or (2) a Tentative Map has not been approved within three years from the effective date of this decision for Subdivision cases; or (3) neither a Building Permit or Tentative Map is involved but another required

City action has not been approved within three years from the effective date of this decision. However, this authorization may be extended by the Zoning Administrator when the issuance of a necessary Building Permit or approval of a Tentative Map or other City action is delayed by a City agency or by appeal of the issuance of such a permit or map or other City action.

Protest of Fee or Exaction: You may protest any fee or exaction subject to Government Code Section 66000 that is imposed as a condition of approval by following the procedures set forth in Government Code Section 66020. The protest must satisfy the requirements of Government Code Section 66020(a) and must be filed within 90 days of the date of the first approval or conditional approval of the development referencing the challenged fee or exaction. For purposes of Government Code Section 66020, the date of imposition of the fee shall be the date of the earliest discretionary approval by the City of the subject development.

If the City has not previously given Notice of an earlier discretionary approval of the project, the Planning Commission's adoption of this Motion, Resolution, Discretionary Review Action or the Zoning Administrator's Variance Decision Letter constitutes the approval or conditional approval of the development and the City hereby gives NOTICE that the 90-day protest period under Government Code Section 66020 has begun. If the City has already given Notice that the 90-day approval period has begun for the subject development, then this document does not re-commence the 90-day approval period.

APPEAL: Any aggrieved person may appeal this variance decision to the Board of Appeals within ten (10) days after the date of the issuance of this Variance Decision. For further information, please contact the Board of Appeals in person at 1650 Mission Street, 3rd Floor (Room 304) or call 575-6880.

Very truly yours,



Scott F. Sanchez
Zoning Administrator

THIS IS NOT A PERMIT TO COMMENCE ANY WORK OR CHANGE OCCUPANCY. PERMITS FROM APPROPRIATE DEPARTMENTS MUST BE SECURED BEFORE WORK IS STARTED OR OCCUPANCY IS CHANGED.