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**APPEAL OF FINAL MITIGATED NEGATIVE DECLARATION
248-252 9th Street Project**

DATE: May 12, 2014

TO: Angela Calvillo, Clerk of the Board of Supervisors

FROM: Sarah B. Jones, Environmental Review Officer – (415) 575-9034
Kei Zushi, Case Planner – (415) 575-9036 *K. Z*

RE: File No. 131168, Planning Case No. 2010.0222E
Appeal of Final Mitigated Negative Declaration for 248-252 9th Street Project

HEARING DATE: May 20, 2014

PROJECT SPONSOR: Stanley Chia
Project Contact: Dominic Maionchi, (415) 385-8278

APPELLANT: Jakkee Bryson

INTRODUCTION:

This memorandum is a response (“Appeal Response”) to the letter of appeal (“Appeal Letter”) to the Board of Supervisors (the “Board”) regarding the Planning Department’s (the “Department”) issuance of a Final Mitigated Negative Declaration (“FMND”) under the California Environmental Quality Act (“CEQA Determination”) for a project at 248-252 9th Street (the “project”).

The Preliminary Mitigated Negative Declaration (“PMND”) for the project was published on March 6, 2013. At the appeal hearing, held on October 24, 2013, the Planning Commission (the “Commission”) affirmed the Department’s decision to issue an MND for the project. The FMND has now been appealed to the Board by the same Appellant that appealed the PMND to the Commission.

The decision before the Board is whether to uphold the Department’s decision to issue an MND and deny the appeal, or to overturn the Department’s decision to issue an MND and return the project to the Department staff for further environmental review.

SITE DESCRIPTION:

The project site is located midblock on the west side of 9th Street between Howard and Folsom streets in the South of Market (SoMa) area of San Francisco, approximately two- and one-half blocks south of Market Street, and approximately two blocks northeast of U.S. 101.¹ The project site is located within the Regional Commercial District (RCD), the Western SoMa Special Use District (SUD), the Western SoMa Light Industrial and Residential Historic District, and a 55-X (no bulk controls) Height and Bulk District. The floor area ratio (FAR) limit in RCD is 2.5:1 for commercial uses. There are no residential density limits in RCD.

PROJECT DESCRIPTION:

An environmental evaluation application (2010.0222E) for the project at 248-252 9th Street (Assessor's Block 3518, Lots 006 and 007) was filed by the project sponsor, Stanley Chia, on March 26, 2010. The project sponsor proposes: 1) merger of the two lots, totaling 5,000 square feet (sf), on the project site; 2) demolition of two existing one-story, approximately 15-foot-tall buildings currently used for storage; and 3) construction of a five-story, 55-foot-tall, 18,697-sf, mixed-use building containing 15 dwelling units and approximately 2,858 sf of ground-floor commercial space. The building would also contain an approximately 1,200-sf roof-top deck (common open space), an approximately 750-sf common deck on the fifth floor, and a 1,130-sf common deck on the second floor. The residential use (8 one-bedroom units and 7 two-bedroom units) would be approximately 11,406 sf in size. The proposed development would include no off-street parking spaces. Access for the commercial space would be located in the middle of the 9th Street frontage. Primary pedestrian access for the residential portion of the project would be on the south end of the proposed building's 9th Street facade.

The project would require the following project approvals:

- 1) Lot merger approval from the Department of Public Works (DPW);
- 2) Street tree permit, grading permit, and right-of-way permit from DPW; and
- 3) Building permit from the Department of Building Inspection (DBI).

In addition, prior to commencement of any excavation work, the Department of Public Health (DPH) would determine whether a Site Mitigation Plan (SMP) is required for this project based on the results of a Phase II soil investigation that has been submitted to DPH. If required, the SMP shall be submitted for review and approval by DPH prior to the commencement of any excavation work.

After the PMND for this project was published on March 6, 2013, the Western SoMa Community Plan, which includes new zoning controls, was adopted on March 19, 2013. The Western SoMa Community Plan became effective April 27, 2013. The project as described in the March 6, 2013 PMND did not fully comply with the new zoning controls included in the Western SoMa Community Plan. The project has since been modified to comply with the new zoning controls in the Western SoMa Community Plan and the FMND prepared for the project reflects the modified plans.

¹ For ease of reference throughout this document, the northwest/southeast alignment of 9th Street is assumed to run in a north/south direction, and all other compass reference points are adjusted accordingly. Thus, while the project is located on the southwest side of 9th Street, it is described as being on the west side of 9th Street. All other reference points have been similarly adjusted.

APPELLANT ISSUES AND PLANNING DEPARTMENT RESPONSES:

Appellant's concerns regarding the project, as set forth in the Appeal Letter, are that: 1) the proposed project will cause impacts to parking and traffic due to a short-fall of on-street parking in the project site vicinity; and 2) her due process rights were violated during the Planning Commission's October 24, 2013 hearing on her appeal of the preliminary negative declaration.

PARKING

Issue 1: The Appellant asserts that the project's negative impacts with respect to parking have not been adequately analyzed in the FMND and raises concerns about a lack of availability of on-street parking in the project site vicinity.

Response 1: As discussed in the FMND, a potential parking shortfall that may result from a project is generally considered to be a social effect, rather than an impact on the physical environment under CEQA. Here, the proposed project's unmet parking demand could be accommodated within existing on-street and off-street parking spaces within a reasonable distance of the project vicinity, and the site is well served by public transit and bicycle facilities. Any unmet parking would not materially affect the overall traffic or parking conditions in the project vicinity such that hazardous conditions or significant delays would be created.

The Appellant asserts that the project's negative impacts with respect to parking have not been adequately analyzed in the FMND and raises concerns about the availability of on-street parking in the project site vicinity.

As discussed on page 47 of the FMND, the project is estimated to generate a short-term parking demand (visitors for the commercial use) of 8 spaces and a long-term parking demand (employees for the commercial use and residents for the residential use) of 16 spaces based on the methodology presented in the Planning Department's Transportation Impact Analysis Guidelines for Environmental Review, October 2002 (*Transportation Guidelines*). The project would not include off-street parking spaces, thus falling short of demand.

As noted on page 47 of the FMND, San Francisco generally considers the direct effects of parking shortfalls to be social effects, rather than impacts on the physical environment as defined by CEQA. Social effects are not required to be analyzed under CEQA. Therefore, the direct impacts associated with a potential parking shortfall that may result from the project are not required to be analyzed as part of the environmental review for the project. Consistent with CEQA, indirect physical impacts associated with unmet parking demand are analyzed.

Parking conditions are not static, as parking supply and demand varies from day to day, from day to night, from month to month, etc. Hence, the availability of parking spaces (or lack thereof) is not a permanent physical condition, but changes over time as people change their modes and patterns of travel. While parking conditions change over time, a substantial shortfall in parking caused by a project that creates hazardous conditions or significant delays to traffic, transit, bicycles or pedestrians could adversely affect the physical environment. Whether a shortfall in parking creates such conditions will depend on the magnitude of the shortfall and the ability of drivers to change travel patterns or switch to

other travel modes. If a substantial shortfall in parking caused by a project creates hazardous conditions or significant delays in travel, such a condition could also result in secondary physical environmental impacts (e.g., air quality or noise impacts caused by congestion), depending on the project and its setting.

The absence of a ready supply of parking spaces, combined with available alternatives to auto travel (e.g., transit service, taxis, bicycles or travel by foot) and a relatively dense pattern of urban development, induces many drivers to seek and find alternative parking facilities, shift to other modes of travel, or change their overall travel habits. Any such resulting shifts to transit service or other modes (walking and biking), would be in keeping with the City's "Transit First" policy and numerous San Francisco General Plan Policies, including those in the Transportation Element. The City's Transit First Policy, established in the City's Charter Article 8A, Section 8A.115, provides that "parking policies for areas well served by public transit shall be designed to encourage travel by public transportation and alternative transportation."

The transportation analysis accounts for potential secondary effects, such as cars circling and looking for a parking space in areas of limited parking supply, by assuming that all drivers would attempt to find parking at or near the project site and then seek parking farther away if convenient parking is unavailable.² The secondary effects of drivers searching for parking is typically offset by a reduction in vehicle trips due to others who are aware of constrained parking conditions in a given area, and thus choose to reach their destination by other modes (i.e., walking, biking, transit, taxi). If this occurs, any secondary environmental impacts that may result from a shortfall in parking in the vicinity of the project would be minor, and the traffic assignments used in the transportation analysis, as well as in the associated air quality, noise and pedestrian safety analyses, would reasonably address potential secondary effects.

At this location, the unmet parking demand could be accommodated within existing on-street and off-street parking spaces within a reasonable distance of the project vicinity, if not in the right-of-way immediately adjacent to the project site. Additionally, the project site is well served by public transit and bicycle facilities. Therefore, any unmet parking demand associated with the project would not materially affect the overall parking conditions in the project vicinity such that hazardous conditions or significant delays would be created.³ Further, the project site is located in the RCD zoning district, where under Section 151.1 of the *Planning Code*, the project would not be required to provide any off-street parking spaces.

In summary, the project would not result in a substantial parking shortfall that would create hazardous conditions or significant delays affecting traffic, transit, bicycles or pedestrians.

Even if an EIR were to be prepared for the project at this time, the EIR would not provide any further information about the project's impacts relative to parking. Since the FMND was published on November 7, 2013, changes have been made to state law so that aesthetics and parking are no longer to be

² San Francisco Planning Department, *Final Mitigated Negative Declaration (FMND)*, 248-252 9th Street, October 17, 2013. Available online at: http://sfmea.sfplanning.org/2010.0222E_FMND.pdf. Accessed May 9, 2014.

³ Ibid.

considered in determining if a project has the potential to result in significant environmental effects for projects that meet all of the following three criteria (SB 743):⁴

- a) The project is in a transit priority area;
- b) The project is on an infill site; and
- c) The project is residential, mixed-use residential, or an employment center.

The project meets each of the above three criteria, and thus an EIR, if prepared for the project, would not consider the adequacy of parking in determining the significance of project impacts under CEQA.⁵

DUE PROCESS RIGHTS

Issue 2: The Appellant asserts that her due process rights were violated because she was not given the opportunity to rebut staff planner testimony at the October 24, 2013 Planning Commission hearing, at which the Planning Commission heard the appeal of the PMND for the project.

Response 2: The Appellant's due process rights were not violated. The Appellant was appropriately afforded the opportunity to state her concerns regarding the project during the October 24, 2013 Planning Commission hearing.

The Appellant asserts that her due process rights were violated because she was not called back to the podium after the staff planner responded to questions from a member of the Planning Commission during the October 24, 2013 Planning Commission appeal hearing for the project.

During the October 24, 2013 Planning Commission hearing the Appellant was appropriately afforded the opportunity to address her concerns regarding the PMND prepared for the project. Under the Planning Commission Rules and Regulations,⁶ the Appellant was provided with 10 minutes before the Planning Commission to present her concerns about the PMND. The Planning Commission Rules & Regulations do not provide for a rebuttal. Commissioners may occasionally request clarification from appellants and/or sponsors; however, rebuttals are not included as part of the hearing process. The Planning Department's records show that the Appellant did not specifically request to rebut before or during the hearing.

Therefore, the Appellant's due process rights were not violated.

⁴ Public Resources Code Section 21099(d) became effective January 1, 2014, provides that, "aesthetics and parking impacts of a residential, mixed-use residential, or employment center project on an infill site located within a transit priority area shall not be considered significant impacts on the environment."

⁵ San Francisco Planning Department. *Transit-Oriented Infill Project Eligibility Checklist for 248-252 9th Street*, April 10, 2014. This document is available for review as part of Case File No. 2010.0222E at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California 94103.

⁶ San Francisco Planning Department. *San Francisco Planning Commission Rules and Regulations*. Available online at: <http://www.sf-planning.org/index.aspx?page=1460>. Accessed April 8, 2014.

CONCLUSION

The Department conducted an in-depth and thorough analysis of the project at 248-252 9th Street, pursuant to CEQA Guidelines. The Appellant has not submitted any evidence that the project would result in any significant impacts under CEQA that cannot be reduced to a less-than-significant level. For the reasons stated in this Appeal Response and the FMND, the Department finds that the FMND fully complies with the requirements of CEQA and that the FMND was appropriately prepared.