

**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Cc:** [Calvillo, Angela \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [BOS Legislation, \(BOS\)](#)  
**Subject:** FW: 424-434 Francisco Condominium Conversion Application  
**Date:** Wednesday, February 24, 2021 4:59:45 PM  
**Attachments:** [2021 02 24 Letter to Board.pdf](#)  
[Francisco Exhibit A.pdf](#)

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**From:** Scott Emblidge <emblidge@mosconelaw.com>  
**Sent:** Wednesday, February 24, 2021 3:35 PM  
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**Subject:** 424-434 Francisco Condominium Conversion Application

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Dear President Shamann and Members of the Board of Supervisors:

Please see the attached information relating to this matter scheduled to come before the Board on Tuesday, March 2. Please let me know if you have any questions or concerns that I can address.

Scott Emblidge

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February 24, 2021

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*Via Email ([waltonstaff@sfgov.org](mailto:waltonstaff@sfgov.org))*

Shamann Walton, President  
Board of Supervisors  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102-4689

Re: 424-434 Francisco Condominium Conversion Application

Dear President Shamann and Members of the Board of Supervisors:

Our firm represents the individuals and families that reside at 424-434 Francisco. These residents applied to convert their six-unit tenancy-in-common building to condominiums pursuant to the established City process. Typically, this conversion process is routine and handled primarily by the Department of Public Works. However, as part of the process, the Planning Commission is required to find that the project is consistent with the Planning Code and General Plan. The Planning Commission regularly grants such approval through its consent calendar.

This project was derailed from this standard approval process for one reason: a prior owner of the entire building used the Ellis Act to evict tenants 17 years ago. From what we have learned, that eviction process was brutal, leading to great hardship for many of the tenants. *But the applicants here had nothing to do with that dark history:* They purchased their units eight to twelve years *after* the evictions and after the building was completely renovated by a prior owner or owners, which whom the applicants have no connection.

The Planning Commission split three-three on this application, meaning it was deemed not to have been approved. But the Commissioners never met (virtually or in person) the San Franciscans who are applying of this chance at home ownership, nor was it fully explained to the Commission that these residents had nothing to do with any sins of prior owners. We hope that when this Board realizes that denying this application does nothing to punish the prior owner, does nothing to help the prior tenants, and simply harms innocent San Franciscans, that it will reverse the denial of the application and authorize this fully compliant project to move forward.

**The Past.** The Planning Department thoroughly researched the history of this property and prepared an exhibit for the Commission, attached hereto as Exhibit A.<sup>1</sup> As that document

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<sup>1</sup> Note that Exhibit A contains a couple of inaccuracies. First, as to all the units, it implies that WB Coyle sold them to the current owners in 2012. In fact, Phoenix Rabbit LLC sold the units to the current residents. *None of the current residents know Mr. Coyle or dealt with him.* Second, Exhibit A says

shows, this building was purchased by a group of investors in 2003 and those owners utilized the Ellis Act to evict all tenants in 2004. The tenants fought the evictions in court with the help of the Tenderloin Housing Clinic but ultimately lost.

The property changed hands again in 2009 (although the purchasers in 2003 and 2009 may have some sort of business relationship) and it was acquired by another LLC called Phoenix Rabbit. After the units were completely renovated, Phoenix Rabbit LLC put them up for sale in 2012.

Five buyers bought the six units in 2012. One buyer, the Lionetti family, bought two units intending to have two adult children eventually occupy the two units. When that plan did not work out, the Lionetti family sold one of the units in 2016, but their daughter occupies unit 434. This chart shows the ownership of the six units:

| Unit | Current Owners                 | Purchase Date | Purchased From     |
|------|--------------------------------|---------------|--------------------|
| 424  | Brian Barnard and Sara Plummer | July 2016     | Lena Lionetti      |
| 426  | Adam Smith                     | February 2012 | Phoenix Rabbit LLC |
| 428  | Johnny Vu                      | February 2012 | Phoenix Rabbit LLC |
| 430  | Manoj Marathe                  | February 2012 | Phoenix Rabbit LLC |
| 432  | Sherlyn Chew                   | February 2012 | Phoenix Rabbit LLC |
| 434  | Larry and Lena Lionetti        | February 2012 | Phoenix Rabbit LLC |

**The Current Owners and Residents.** Here are the backgrounds of the current owners and residents seeking to have their units converted to condominiums:

**Brian Barnard and Sarah Plummer** reside in unit 424. They moved to San Francisco in 2011 and rented a one-bedroom apartment in Cow Hollow for six years. Brian is a Bay Area native, originally from Los Gatos. Brian currently works for a small, mission driven, software company in SF called Fluxx Labs that provides solutions for philanthropic, private, and public organizations looking to help those in need. Their clients include the San Francisco Foundation, David and Lucile Packard Foundation, ACLU, Dr. Seuss Foundation, Climate and Land Use Alliance, and Bay Area Air Quality Management. Sara works as an

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that unite 424 was purchased by a “renter” in 2015 and then sold. In fact, it was purchased by applicants Brian and Sara Barnard in 2016 and there was no prior purchase by a “renter.”

independent Health and Wellness consultant to individuals and small businesses. She also is drawn to philanthropic work. Sara was a founding member of Hack Cancer in San Francisco. She has also supported a number of other organizations, including hosting a local event on behalf of Planned Parenthood.



Their love of San Francisco and North Beach drove Brian and Sara to 424 Francisco Street when they decided to purchase their first home. Since they moved there in 2016 they have enjoyed being part of the community and have no plans to leave. As renters in multiple locations, Sara and Brian are proponents of tenant's rights and in no way support the actions of the previous owners. For them the condo conversion process is simply an important step in trying to secure true ownership of their own home, try to lower interest rates, and plan for their future.

**Adam Smith** and Tracy Casem-Smith reside in 426. Bay Area natives, Adam moved to San Francisco upon purchasing his first home in 2012 and later met and married Tracy. Tracy works in consulting as a business systems analyst and is an active member of the Citizens Climate Lobby, Climate Reality Project, and SFFD NERT. Adam works in the video game industry. He is a medical first responder for Bear Valley Ski Patrol, an SFFD NERT, and SFPD ALERT.



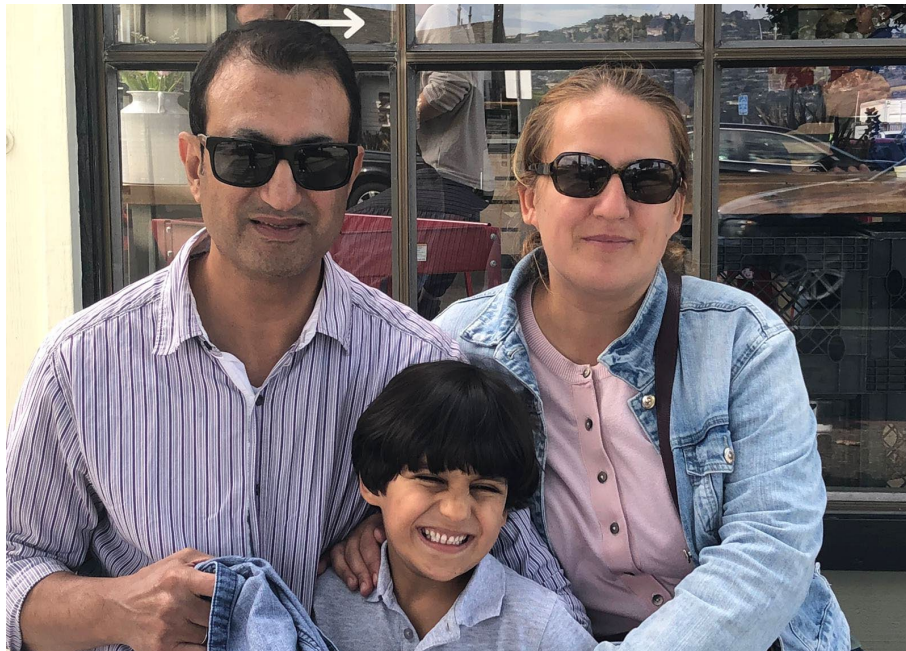
Adam and Tracy both love San Francisco and look forward to returning to the many arts resources that the City has to offer after the COVID-19 pandemic, including BroadwaySF and California Academy of Sciences where they are both members. Their goal for TIC-to-condominium conversion is simple - rather than further enriching banks with higher interest rates associated with TICs, Adam and Tracy would like to put those funds towards starting a family in San Francisco.

**Johnny Vu** owns unit 428. Johnny moved to San Francisco in 2011 and lived and worked in the North Beach area for Williams Sonoma (located in Fisherman's Wharf) for many years. He has deep roots in the Bay Area with his home church based in Alameda County.



He currently works for ZineOne, a startup software company based in Milpitas. As such, unlike the other five unit owners, he does not currently reside in his unit. The unit is vacant; the last tenant moved out voluntarily in June 2019.

**Manoj Marathe and Zofia Beczek Marathe** reside in unit 430. Manoj moved to San Francisco in 1995 and has only lived in North Beach, which he considers his home. Manoj and Zofia met in 2008 and got married in 2010 and, when they decided to have a family, they wanted to buy and move into a bigger place. When they started looking, they were ecstatic to find a place they could afford in North Beach. Both Manoj and Zofia are immigrants and 430 Francisco Street is the first property they have ever owned.





Their son was born in 2014 and 430 Francisco is the only home he has known. He also attends a public school in the neighborhood and has friends who live nearby. They hope that someday the property will belong to their son when it is his turn to start a family.

**Sherlyn Chew** lives in unit 432. She has lived in the Bay Area for 72 years. She attended Francisco Middle School in 1960-1963. She was thrilled to find a property that could bring her back to that neighborhood. Sherlyn likes being able to walk to Chinatown and North beach.



Professionally, Sherlyn is the artistic director of music program serving youth and adults. She has been teaching for 43 years and has impacted over 15,000 students. She has been to the White House twice with her students for performances. Her brother Dennis Chew was the long-time principal at what is now known as Gordon J. Lau school in San Francisco.

**Angela Lionetti** lives in unit 434, which is owned by her mother Lena and father Larry, who met in San Francisco 38 years ago. As mentioned above, Larry and Lena purchased two units (424 and 434) with the hopes that two of their children could occupy the units. One daughter lived in unit 424 until she got married at which time the family sold unit 424 to Brian and Sarah (see above). Angela (second from left on bottom in the photo below) lives at 434 along with her brother (bottom right in the photo) when her brother is in town.



The Lionetti family has deep roots in San Francisco and North Beach. Angela worked in San Francisco for the last eight years at her parents' business of 30 years in Union Square which was a performing arts school for kids. Unfortunately, they had to close the school due to COVID. Angela now works for a local medical company providing preventative healthcare and COVID testing services. Her brother Lawrence is a fisherman out of Fisherman's Wharf. Larry and his two sons have been active members in the SF Bay Area fishing community for over 30 years.

**The Application.** The residents applied for a "tentative map" – the technical process by which condominium conversions take place – in August 2019. DPW reviewed the eviction history by prior owners and correctly concluded that, under the City's Subdivision Code, the 15-year-old evictions, were not a basis for denying the application.

The Planning Department thoroughly reviewed the application. Planning staff concluded:



The Department finds that the Project is, on balance, consistent with the Objectives and Policies of the General Plan. Although the Project results in a loss of two rental units, the Project does provide additional homeownership opportunities, which is a goal for the City's. The Department also finds the project to be necessary, desirable, and compatible with the surrounding neighborhood, and not to be detrimental to persons or adjacent properties in the vicinity. The Department also finds the project consistent with applicable provisions of the Planning Code.

Staff drafted proposed findings for the Commission. Those findings acknowledged that "concerns have been expressed that the proposed conversion is ineligible for conversion due to suspected tenant eviction and displacement events." The draft findings included:

- "In 2004, existing rental tenants were lawfully evicted from the property under the Ellis Act. The tenants filed suit with Tenderloin Housing Clinic as counsel. The units were later sold as part of a Tenancy in Common ownership structure in 2012. The units appear to have been majority owner-occupied since 2007."
- "In the past six (6) years, two (2) units had rental tenants vacate; the Department has discovered no evidence that the tenants vacating the property were either elderly or disabled. No evidence of unlawful displacement or discrimination in the leasing of units at this property has been found at this property."
- "No evidence has been found of incorrect or misleading information submitted to the Planning Department, Department of Public Works, the Mayor's Office of Housing and Community Development (MOHCD), or other city agency."
- "The Project is, on balance, consistent with the following Objectives and Policies of the General Plan."
- "Conversions of rental stock to condominiums help achieve affordable homeownership, providing a category of housing stock for moderate income housing needs. Through the Expedited Conversion Program, properties are eligible to convert from rental units to ownership status so long as owner-occupancy requirements are met."

**The Planning Commission's Action.** When this matter came before the Planning Commission several people spoke out about the history of evictions by the prior owners in 2005. Three members of the Commission expressed concern about this history and voted not to approve the application. Because there were only six Commissioners present, the 3-3 vote meant the application was disapproved.

President Shamann

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Even though the eviction history and use of the Ellis Act by the former owners was obviously the issue that spurred disapproval, the City Attorney cautioned the Commission not to base its decision on that grounds.<sup>2</sup> So, the Commission's findings instead state that "The proposed change from tenancy in common units to condominium units increases the value of six (6) dwellings units by 10-20% thereby exacerbating the inaccessibility of homeownership in the North Beach neighborhood; a neighborhood with many urban amenities but where cultural and economic diversity is currently challenged." This makes no sense. The City's Subdivision Code specifically authorizes conversions of TIC units to condominiums and these units meet all the criteria in that Code. While condominium units may be considered more valuable than TIC units, if that were a basis for denying an application then no condominium conversion applications would ever be approved. In addition, there is no evidence that North Beach suffers from a glut of condominiums or a shortage of TICs.

In fact, these applications are routinely approved, throughout the City including in North Beach. In recent history we can find only one other application that was disapproved and appealed to this Board, an application relating to a building where an elderly tenant was allegedly evicted by the existing building occupants. But here, *none of the building owners have evicted anyone or have any connection to those who evicted tenants in the distant past.*

Denying this application will not punish the prior owners who evicted tenants well over a decade ago. Nor will denying this application help those who suffered from the prior owners' mistreatment. But it will punish this group of innocent San Franciscans who have complied with the law and the City's policies and whose only "sin," is that they reside in a building where unrelated, unconnected, prior owners caused harm. These applicants are not real estate speculators. Rather, they are San Franciscans trying to pursue a secure home ownership opportunity.

Please uphold this appeal, reverse the Planning Commission's decision and allow this project to move forward.

Sincerely,

*G. Scott Emblidge*

G. Scott Emblidge

cc: Supervisor Chan ([ChanStaff@sfgov.org](mailto:ChanStaff@sfgov.org))  
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<sup>2</sup> The City Attorney pointed out that "disapproval based on Ellis Act evictions is not permitted under very clear case law."

President Shamann

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- 1906 ● 3 story, 6 unit building constructed
- 1985 ● Ellis Act becomes law
- October 24, 2003 ● Above Water, North Beach Partners, Cydonia Partners, and WBG T purchases (Eichler, Daro, and Schultz)
- April 13, 2004 ● Eviction Notices served to tenants
- August 12, 2004 ● Ellis Act submitted to Rent Board
- May 1, 2005 ● Eligibility cut-off date for the issuance of eviction notice pursuant to Subdivision Code Section 1396.2
- April 12, 2007 ● Power of sale granted to Above Water, et. al.
- August 29, 2007 ● Superior Court Rules against tenants (Tenderloin Housing Clinic represents tenants as respondents)
- July 9, 2009 ● W.B. Coyle as Servious ADD, LLC purchases property
- August 2019 ● Condominium conversion request submitted to the Department of Public Works
- September 2, 2020 ● Tenderloin Housing Clinic claims proposal fails to meet Subdivision Code Section 1386
- September 3, 2020 ● CPC Hearing
- September 17, 2020 ● CPC Hearing

#### REGULATION SUMMARY

"The 'Ellis Act' is a state law which says that landlords have the unconditional right to evict tenants to go out of business.' For an Ellis eviction, the landlord must remove all of the units in the building from the rental market, i.e., the landlord must evict all the tenants and cannot single out one tenant (for example, with low rent) and/or remove just one unit out of several from the rental market. The Ellis Act is included in the just causes for eviction under the Rent Ordinance as Section 37.9(a)13)" (Accessed September 8, 2020: <https://sftu.org/ellis/>).

#### COURT FINDINGS

"The tenants' threatened loss of property interest resulted from the owners' invocation of their right under the Ellis Act to recover possession of the Francisco Street property. As the trial court recognized, the Ellis Act evictions in and of themselves were lawful based on the evidence presented thus far. Nevertheless, the court went on to find that the Ellis Act evictions were 'part and parcel' and 'in furtherance' of the 'unfair business practice.' This finding, however, does not compel the conclusion the Ellis Act evictions were unlawful" (Accessed September 8, 2020: <https://casetext.com>).

1906 • 3 story, 6 unit building constructed

October 24, 2003 • Above Water, North Beach Partners, Cydonia Partners, and WBG T purchases (Eichler, Daro, and Schultz)

July 9, 2009 • W.B. Coyle as Servious ADD, LLC purchases property

