



SAN FRANCISCO PLANNING DEPARTMENT

Variance Decision

Date: March 31, 2016
Case No.: **2012.1445V**
Project Address: **824 Hyde Street**
Zoning: RC-4 (Residential-Commercial, High Density) District
80-A Height and Bulk District
Block/Lot: 0280/017
Project Sponsor: Ilene Dick
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DESCRIPTION OF VARIANCE – ACTIVE USE VARIANCE SOUGHT:

The proposal (“Project”) is to construct a five-story-over-basement residential building containing fourteen dwelling units on a vacant lot. The Project site was previously occupied by a four-story-over-basement, eight-unit residential building that was destroyed by fire in 2010.

PER SECTION 145.1 OF THE PLANNING CODE, residential uses on the ground floor are considered active uses only if more than 50% of the linear residential street frontage at the ground level features walk-up dwelling units which provide direct, individual pedestrian access to a public sidewalk, and are consistent with the Ground Floor Residential Design Guidelines. The Project provides a residential unit on the ground floor, which does not qualify as an active use because it lacks of individual pedestrian access; therefore, a variance is required.

PROCEDURAL BACKGROUND:

1. The Project is exempt from the California Environmental Quality Act (“CEQA”) as a Class 32 categorical exemption.
2. The Zoning Administrator held public hearings on Variance Application No. 2012.1445V on January 14, 2016 and March 3, 2016.
3. The Planning Commission held public hearings on a related Conditional Use Authorization Application (Case No. 2012.1445C) on January 14, 2016 and March 3, 2016. On March 3, 2016, the Planning Commission approved the Conditional Use Authorization with a condition that the project include “chamfered” bay windows (Motion No. 19582).
4. The Project was initially noticed with a variance from the permitted obstruction requirement (Planning Code Section 136) for bay windows that did not comply with the Planning Code. As

approved by the Planning Commission with "chamfered" bay windows, the project provides Code-complying bay windows and a variance is no longer required.

DECISION:

GRANTED, in general conformity with the plans on file with this application, shown as EXHIBIT A, to construct a five-story-over-basement residential building containing fourteen dwelling units, 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 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 property is vacant due to a fire that destroyed the previously existing apartment building in 2010. The Project will have the same footprint as the former building, however, the new building will contain one more floor than the former building due to an increase in height limits since the fire. The current vacant condition of the narrow lot configuration maximizes density resulting in fourteen dwelling units.

- B. The relative narrowness of the subject lot, combined with a lateral slope, is an exceptional and extraordinary circumstance applying to the property. The property is 25 feet wide and 112'-6" feet deep. However, of the 23 lots on the block, approximately 74% have a width greater than the Property. Only three properties have a lot area equal to or smaller than the subject Property: 830 Hyde Street, 974 Sutter Street, and 827 Leavenworth Street.
- C. In terms of street frontages, given the narrowness of the subject lot and lateral slope, it is impractical to provide an active residential use on the ground floor as required by Code. Additionally, walk-up dwelling units that provide direct, individual pedestrian access to a public sidewalk are not commonplace in the neighborhood. Instead, access to the dwelling units is provided from the interior core of buildings, consistent with the circulation system found in adjacent residential properties.

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. The Project's ground floor consists of two dwelling units: one street-facing studio and one 1-bedroom unit facing the rear yard. While these units are accessible from Hyde Street, strict application of the active street frontage requirement would greatly compromise the overall size of the studio which measures only 490 square feet in size. Moreover, the slope of the site, coupled with the narrowness of the lot, makes it impractical to provide direct access to the studio unit from the street, since it would require widening the entryway to provide a stoop or stairway to that unit.
- B. Given the building's location in the Lower Nob Hill Apartment Hotel Historic District, requiring a stoop or other element that would satisfy Code would not be compatible with the surrounding historic district as such features are not common within the District.

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. A Variance from the active street frontage requirement is necessary for the preservation and enjoyment of a property right possessed by other properties on the subject block. In fact, the majority of residential buildings on the subject block do not contain active street uses as defined by the Code. Of the few buildings that do contain active uses at the ground floor, those spaces are being used for commercial uses, not residential uses. The building located immediately east of the subject property at 816 Hyde Street and the property located at 897 Hyde Street both

contain small commercial spaces that appear to pre-date current Code requirements with regard to required minimum ground floor heights for commercial spaces. Because the street is dominated with single-entry access points to residential buildings underscores that the Project's design is consistent with the existing urban streetscape in regards to street frontage and active uses.

- B. The previous residential building on the subject site that was damaged by fire in 2010 did not provide direct, individual pedestrian access to a public sidewalk, meaning that the building is considered existing, non-conforming by current Planning Code. Therefore, the granting of the Variance would do no more than allow the previous footprint of the former building to be restored.

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. Granting the Variance would improve the livability of the subject property and would not be materially detrimental to the public welfare or materially injurious to the neighboring properties. The site is currently vacant, which, has created a gap in the streetwall, disrupting the rhythm of the block-face. The proposed Project replaces a residential building that existed in the same location, until it was destroyed by a fire in 2010. The proposed Project has a nearly identical footprint as the original building. While the building is not an in-kind replacement of the existing building, the replacement building will benefit from modern building technologies and, as such, boasts a contemporary design that is intended to complement and not compete with the historic character of the neighborhood. Replacing the site with an exact building as the one destroyed does not reflect the necessary changes in terms of program and functionality of contemporary buildings, nor would it make it consistent with the current requirements of current Planning Code.
- B. The Planning Department is aware of concerns from an adjacent neighbor regarding light air impacts on their property due to existing property line windows that will be blocked by the proposed building. These concerns are not within the scope of the variance, which is for lack of an active ground floor residential use.

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.

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. The Project will add fourteen residential units, thereby increasing the demand for services and good provided by existing retail uses.
2. The proposed Project will be in keeping with the existing neighborhood character. The proposed Project has been carefully designed to fit within the surrounding neighborhood character by relating the height and bulk to be at or below that of the adjacent buildings.
3. The proposed Project will have no adverse effect on the City's supply of affordable housing. The Project is required to comply with Planning Code Section 415 Affordable Housing and the Project Sponsor has elected to satisfy the requirements of the Inclusionary Affordable Housing Program through payment of the Fee, in an amount to be established by the Mayor's Office of Housing and Community Development at a rate equivalent to an off-site requirement of 20%.
4. The proposed Project does not adversely affect neighborhood parking or public transit. The Project creates new residential units within a transit-rich area and encourages public transportation use by not providing on-site parking.
5. The proposed Project will have no effect on the City's industrial and service sectors.
6. The proposed Project will have no negative effect on the City's preparedness to protect against injury and loss of life in an earthquake. The Project will be built according to building code standards including seismic requirements if needed.
7. The Project will have no effect on the City's landmarks or historic buildings. The property is located within the Lower Nob Hill Apartment Hotel Historic District, and the Project Sponsor has taken careful consideration to design the new residential building to fit within the District's context.
8. The Project would not affect any existing or planned public parks or open spaces.

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.