



# SAN FRANCISCO PLANNING DEPARTMENT

## Rear Yard Modification Decision

*Date:* May 2, 2014  
*Case No:* 2012.0990CEU  
*Project Address:* **3032 - 3038 CLEMENT STREET**  
*Zoning:* NC-1 (Neighborhood Commercial Cluster) District and  
40-X Height and Bulk District  
*Block/Lots:* 1402/022 and 023  
*Applicant:* John Kevlin  
Reuben, Junius & Rose, LLP  
One Bush Street, Suite 600  
San Francisco, CA 94104  
*Property Owner:* 3038 Clement, LLC  
c/o Reza Khoshnevisan  
SIA Consulting Corp.  
1256 Howard Street  
San Francisco, CA 94103  
*Staff Contact:* Mary Woods – (415) 558-6315  
[mary.woods@sfgov.org](mailto:mary.woods@sfgov.org)

1650 Mission St  
Suite 400  
San Francisco  
CA 94103-2479

Reception  
415.558.6378

Fax  
415.558.6409

Planning  
Information  
415.558.6377

### REAR YARD MODIFICATION SOUGHT:

The proposal is to demolish an existing one-story commercial building and construct a new four-story mixed use building containing approximately 900 square feet of retail space, six residential parking spaces and 10 bicycle spaces on the ground floor, and six dwelling units on the upper floors, including three two-bedroom units, and three three-bedroom units. The proposed ground floor level occupies the entire lot, resulting in the need for a rear yard modification per the Variance process. The development would total approximately 15,500 square feet.

**Planning Code Section 134(a)(1)** requires the project to provide a rear yard equal to 25 percent of the lot depth. Section 134(a)(1)(A) requires that in NC-1 Districts, rear yards must be provided at the ground level and at each succeeding story of the building. The proposed project provides no rear yard at the ground floor level. Therefore, the project requires a modification from the rear yard requirement of the Planning Code.

**Planning Code Section 134(e)(1)** allows modification of the required rear yard in Neighborhood Commercial Districts when three alternative findings are made: (1) that residential uses are included in the new development and a comparable amount of usable open space is provided elsewhere on the lot where it is more accessible to the residents of the development; (2) the proposed new structure will not significantly impede the access of light and air to and views from adjacent properties, and (3) the proposed new structure will not adversely affect the interior block open space formed by rear yards of adjacent properties.

**PROCEDURAL BACKGROUND:**

1. The Planning Department issued a Categorical Exemption, Class One and Class Three from the California Environmental Quality Act ("CEQA") for the project on **November 6, 2013**.
2. The Zoning Administrator held a joint public hearing on **Variance Application No. 2012.0990CEUV** with the Planning Commission on **February 27, 2014**. At this hearing, the Planning Commission unanimously approved the requested Conditional Use Authorization (Motion No. 19096).
3. Planning Code Section 312 Notification was covered under the 20 day Conditional Use authorization notice for Case No. 2012.0990CEUV, mailed on February 7, 2014.

**DECISION:**

**GRANTED**, in general conformity with the plans on file with this application, shown as EXHIBIT A, to demolish an existing one-story commercial building and construct a new four-story, mixed use building with six dwelling units where the entire ground floor level is located within the required rear yard, 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 Rear Yard Modification or 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 Rear Yard Modification Decision as a Notice of Special Restrictions in a form approved by the Zoning Administrator.
5. This Rear Yard Modification 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)(1) of the Planning Code states that in order to grant a rear yard modification, and in accordance with Section 307, 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; and

**Requirement Met.**

- A. The proposed project is located in an NC-1 zoning district, which requires that a 25 percent rear yard (equivalent to approximately 1,250 square feet) be provided at grade level and above in a new building. The project proposes a 25 percent rear yard at the second story and above.
- B. The granting of the rear yard modification will allow for the construction of six family-sized dwelling units above a ground floor with retail space, six required off-street parking spaces for the dwelling units, and 10 Class I bicycle spaces. An equal amount of open space that would otherwise be provided by a ground level rear yard is being provided on the second level. In addition, a roof deck totaling approximately 2,000 square feet will provide additional open space. The open space provided at the second level will be directly accessible by the two units on the second floor, allowing these residents to access open space at the same floor as their unit, rather than having to travel down a floor. The open space provided at the roof deck will serve the units on the third and fourth floor levels, provided closer to the fourth floor than if provided at the ground level, and just as close to the third floor than if provided at the ground level.

**CRITERIA 2.**

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

**Requirement Met.**

- A. The existing site is currently improved with a one-story retail building occupying almost the entire depth of both lots (except for the last 2.9 feet). As a result, within the 25 percent rear yard area, there will be no additional mass than what exists today. The new building's height at the front of the lot is approximately seven feet taller than the adjacent building to the east. The lot to the west is an auto service center.

**CRITERIA 3.**

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

**Requirement Met.**

- A. The new building will not encroach any further into the mid-block open space than the existing structure. The existing one-story structure occupies almost the entirety of the lots. The proposed building would occupy the entirety of the lot at the ground floor level only. As a result, it will have no additional impact on the mid-block open space.

**FINDINGS PER PLANNING CODE SECTION 101.1**

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. The proposed project does not adversely affect neighborhood parking or public transit.
2. The proposed project will be in keeping with the existing housing and neighborhood character.
3. The project will have no effect on the City's industrial and service sectors.
4. The proposed project will add six dwelling units to the City's housing supply.
5. The proposed project will have no effect on the City's preparedness to protect against injury and loss of life in an earthquake.
6. The project will have no adverse effect on the City's landmarks or historic buildings.
7. The project would not affect any existing or planned public parks or open spaces.
8. Existing neighborhood retail uses will not be adversely affected by the proposed project.

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.

**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, 3<sup>rd</sup> Floor (Room 304) or call 575-6880.

**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

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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.

Very truly yours,



Scott Sanchez  
Zoning Administrator

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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.

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