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PLANNING DEPARTMENT

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MEMO

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1650 Mission St.
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Categorical Exemption Appeal
218 27th Avenue

BY *AB*
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(Note: Pursuant to California Government Code, Section 65009(b)(2), information received at, or prior to, the public hearing will be included as part of the official file.)
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DATE: December 6, 2017
TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Lisa Gibson, Environmental Review Officer – (415) 575-9032
Jeanie Poling – (415) 575-9072
RE: Planning Case No. 2016-003258ENV
Appeal of Categorical Exemption for 218 27th Avenue
HEARING DATE: December 12, 2017
ATTACHMENT: C - Notice of public hearing for Conditional Use authorization

PROJECT SPONSOR: Michael Leavitt, Leavitt Architecture Inc., on behalf of Joe Toboni, 218 27th Ave, LLC
APPELLANT: Robin S. Crisp, Hanson Bridgett LLP, on behalf of Alex Bernstein and Sonia Daccarett

INTRODUCTION

This memorandum and attachment are a response to a second letter of appeal (“supplemental appeal letter”) submitted to the Board of Supervisors (the “Board”) on December 1, 2017, regarding the Planning Department’s issuance of a categorical exemption under the California Environmental Quality Act (“CEQA determination”) for the project at 218 27th Avenue (the “project”).

The Planning Department, pursuant to Title 14 of the CEQA Guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3, Sections 15300–15387), issued a categorical exemption for the project on June 29, 2016, finding that the project is exempt from the California Environmental Quality Act (CEQA) as a Class 1 and Class 3 categorical exemption. The Class 1 exemption applies to existing facilities, including demolition of up to three single-family residences in urban areas, and the Class 3 exemption applies to new construction of small structures, including multi-family residential structures in urban areas designed for not more than six dwelling units.

The decision before the Board is whether to uphold the Planning Department’s decision to issue a categorical exemption and deny the appeal, or to overturn the Planning Department’s decision to issue a categorical exemption and return the project to Planning Department staff for additional environmental review.

PROJECT DESCRIPTION

Please refer to the Planning Department’s December 4, 2017 appeal response.

APPELLANT ISSUES AND PLANNING DEPARTMENT RESPONSES

The new concerns raised in the December 4, 2017 supplemental appeal letter are cited below and followed by the Planning Department's responses. The new concerns are identified as Concerns 4 through 7 to continue the numbering of the issues addressed in the Planning Department's December 4, 2017 appeal response, which ended with Concern 3.

Concern 4: The appellant contends that the City failed to comply with procedural requirements of Administrative Code Chapter 31 by not identifying and posting additional discretionary approvals.

The supplemental appeal letter states:

For projects that involve the issuance of multiple discretionary permits or other project approvals, the Environmental Review Officer must identify any additional discretionary approvals required other than the Approval Action that are known to the Environmental Review Officer at the time of the issuance of the exemption determination, and post this information on the Planning Department website. (SFAC Sec. 31.08(e)(1)(B)).

Response 4: The City complied with the posting requirements of Administrative Code Chapter 31 regarding subsequent discretionary approvals.

As discussed in Response 1 in the original appeal response memo, the CEQA determination incorrectly states that the Approval Action for the project is a building permit; however, the correct approval action was posted on the Planning Department's website in the agenda for the Conditional Use hearing. The executive summary for the Conditional Use, which was also posted to the Planning website six days prior to the hearing, cites subsequent discretionary approvals as demolition, site, and building permits. Thus, the Planning Department complied with the posting requirements of Administrative Code Chapter 31.

Concern 5: The appellant contends that the notice of public hearing on the Conditional Use authorization does not inform the public of the exemption determination.

The supplemental appeal letter states:

[T]he Notice of Public Hearing on the Conditional Use Authorization held on October 12, 2017 does not inform the public of the exemption determination but instead suggests that an exemption determination may have been made by stating, "[i]f, as part of this process, the Department's Environmental Review Officer has deemed this project to be exempt from further environmental review, an exemption determination has been prepared and can be obtained through the Exemption Map..." The requirement that the public be informed that the exemption determination was made was not met.

Response 5: The notice of public hearing for Conditional Use authorization appropriately states that CEQA clearance has been issued and provides the necessary appeal information.

The appellant cites the standard language concerning environmental review from the “General Information about Procedures” on page 2 of the Conditional Use hearing notice (Attachment C). The ‘if exempt’ standard language acknowledges that some projects are not exempt from CEQA. Page 1 of the Conditional Use hearing notice states, “A Planning Commission approval at the public hearing would constitute the Approval Action for the project for the purposes of CEQA, pursuant to San Francisco Administrative Code Section 31.04(h).” The project’s exemption determination was available through the exemptions web page and elsewhere on Planning Department’s website. The appellant was clearly aware of the CEQA exemption and the procedure for CEQA appeal, as the appellant Mr. Bernstein spoke at the October 12th hearing, and the appeal was filed in a timely manner.

Concern 6: The appellant states that the Planning Department should have posted a determination regarding project modification and that this was not done.

The supplemental appeal letter states:

Where a project that the Environmental Review Officer has determined to be exempt is changed prior to any subsequent approval actions, the Environmental Review Officer must determine whether the change is a substantial modification. (SFAC Sec. 31.08(i).)

Response 6: The cited section of the Administrative Code does not apply to a first discretionary decision; therefore posting of a determination regarding project modification is not required.

Administrative Code Section 31.08(i), “Modification of Exempt Project,” states, “Where a change occurs to a project that the Environmental Review Officer has determined to be exempt, prior to any subsequent approval actions, the Environmental Review Officer shall determine whether the change is a substantial modification that requires reevaluation...” Section 31.08(i) applies to changes in a project after the Approval Action under CEQA has already occurred. For the 218 27th Avenue project, the Conditional Use authorization is the first Approval Action under CEQA; thus Section 31.08(i) is not applicable. See Response 2 in the original appeal response regarding project modifications prior to the Approval Action under CEQA.

Concern 7: The applicant states that there are unusual circumstances such that the project would result in shadow, aesthetics, and land use impacts.

The supplemental appeal letter states:

[T]he Project presents unusual circumstances because it is a key lot and the horizontal expansion of the building will directly impact the rear property line of abutting lots by essentially creating a four-story wall along those lot lines. There is a reasonable possibility that significant environmental impacts would result from these unusual circumstances. The shadow study provides relevant evidence to support a fair argument that a significant impact on the environment may occur in the area of aesthetics by degrading the existing visual character of the site and its surroundings, and in the area of

land use and planning, by conflicting with applicable land use policies and regulations adopted for the purpose of avoiding or mitigating an environmental effect.

Response 7: The project presents no substantial evidence of any unusual circumstances related to shadow, aesthetics or land use impacts.

The project involves demolition of an existing single-family home and construction of a four-story building containing three dwelling units. The fact that the property is a key lot is not an unusual circumstance, nor is shadow from a 40-foot-tall building. Significant shadow impacts occur when a proposed project creates new shadow in a manner that would substantially affect outdoor recreation facilities or other public areas. Per CEQA Section 21099 – Modernization of Transportation Analysis for Transit Oriented Projects, aesthetics shall not be considered in determining if a project has the potential to result in significant environmental effects if the project is in a transit priority area, on an infill site, and is residential. The project meets these three criteria. Furthermore, the project complies with the planning code and land use on the subject lot, and the request for a conditional use permit is not unusual. The appellant has not presented substantial evidence to the Planning Department that would support the conclusion that there are unusual circumstances related to shadow, aesthetics, or land use.

CONCLUSION

The Appellant has not presented substantial evidence to the Planning Department that would support the conclusion that (1) there are unusual circumstances that justify removing the project from the exempt class, and (2) there is a reasonable possibility of significant environmental impacts due to those unusual circumstances.

For the reasons stated above and in the Planning Department's December 1, 2017 appeal response, the CEQA determination complies with the requirements of CEQA and the project is appropriately exempt from environmental review. The Planning Department therefore recommends that the Board uphold the CEQA determination and deny the appeal.

Attachment C

Notice of public hearing for Conditional Use authorization



**SAN FRANCISCO
PLANNING DEPARTMENT**

1650 Mission Street, Suite 400 • San Francisco, CA 94103 • Fax (415) 558-6409

NOTICE OF PUBLIC HEARING

Hearing Date: **Thursday, October 12, 2017**
 Time: **Not before 1:00 PM (noon)**
 Location: **City Hall, 1 Dr. Carlton B. Goodlett Place, Room 400**
 Case Type: **Conditional Use**
 Hearing Body: **Planning Commission**

PROPERTY INFORMATION	APPLICATION INFORMATION
Project Address: 218 27th Avenue Cross Streets: California & Lake Streets Block /Lot No.: 1386 / 038 Zoning District(s): RM-1 / 40-X Area Plan: N/A	Case No.: 2016-003258CUA Building Permits: 2016.07.05.1544 & 1548 Applicant: Michael Leavitt Telephone: (415) 674-9100 E-Mail: michael@leavittarchitecture.com

PROJECT DESCRIPTION

The proposal is for Conditional Use authorization to demolish a two-story, single-family dwelling and construct a new four-story, 3-unit residential building. Each unit will have one off-street parking space.

A Planning Commission approval at the public hearing would constitute the Approval Action for the project for the purposes of CEQA, pursuant to San Francisco Administrative Code Section 31.04(h).

ADDITIONAL INFORMATION

ARCHITECTURAL PLANS: If you are interested in viewing the plans for the proposed project please contact the planner listed below. The plans and Department recommendation of the proposed project will be available prior to the hearing through the Planning Commission agenda at: <http://www.sf-planning.org> or by request at the Planning Department office located at 1650 Mission Street, 4th Floor.

Members of the public are not required to provide personal identifying information when they communicate with the Commission or the Department. All written or oral communications, including submitted personal contact information, may be made available to the public for inspection and copying upon request and may appear on the Department’s website or in other public documents.

FOR MORE INFORMATION, PLEASE CONTACT PLANNING DEPARTMENT STAFF:

Planner: **Laura Ajello** Telephone: **(415) 575-9142** E-Mail: laura.ajello@sfgov.org

GENERAL INFORMATION ABOUT PROCEDURES

HEARING INFORMATION

You are receiving this notice because you are either a property owner or resident that is adjacent to the proposed project or are an interested party on record with the Planning Department. **You are not required to take any action. For more information regarding the proposed work, or to express concerns about the project, please contact the Applicant or Planner listed on this notice as soon as possible.** Additionally, you may wish to discuss the project with your neighbors and/or neighborhood association as they may already be aware of the project.

Persons who are unable to attend the public hearing may submit written comments regarding this application to the Planner listed on the front of this notice, Planning Department, 1650 Mission Street, Suite 400, San Francisco, CA 94103, by 5:00 pm the day before the hearing. These comments will be made a part of the official public record and will be brought to the attention of the person or persons conducting the public hearing.

Comments that cannot be delivered by 5:00 pm the day before the hearing may be taken directly to the hearing at the location listed on the front of this notice. Comments received at 1650 Mission Street after the deadline will be placed in the project file, but may not be brought to the attention of the Planning Commission at the public hearing.

BUILDING PERMIT APPLICATION INFORMATION

Pursuant to Planning Code Section 311 or 312, the Building Permit Application for this proposal may also be subject to a 30-day notification of property owners and residents within 150-feet of the subject property. **This notice covers the Section 311 or 312 notification requirements, if required.**

APPEAL INFORMATION

An appeal of the approval (or denial) of a **Conditional Use application** and/or building permit application associated with the Conditional Use application may be made to the **Board of Supervisors within 30 calendar days** after the date of action by the Planning Commission pursuant to the provisions of Section 308.1(b). Appeals must be submitted in person at the Board's office at 1 Dr. Carlton B. Goodlett Place, Room 244. For further information about appeals to the Board of Supervisors, including current fees, contact the Clerk of the Board of Supervisors at (415) 554-5184.

An appeal of the approval (or denial) of a **building permit application** by the Planning Commission may be made to the **Board of Appeals within 15 calendar days** after the building permit is issued (or denied) by the Director of the Department of Building Inspection. Appeals must be submitted in person at the Board's office at 1650 Mission Street, 3rd Floor, Room 304. For further information about appeals to the Board of Appeals, including current fees, contact the Board of Appeals at (415) 575-6880.

Pursuant to California Government Code Section 65009, if you challenge, in court, the decision of an entitlement or permit, the issues raised shall be limited to those raised in the public hearing or in written correspondence delivered to the Planning Commission prior to, or at, the public hearing.

ENVIRONMENTAL REVIEW

This project has undergone preliminary review pursuant to California Environmental Quality Act (CEQA). If, as part of this process, the Department's Environmental Review Officer has deemed this project to be exempt from further environmental review, an exemption determination has been prepared and can be obtained through the Exemption Map, on-line, at www.sfplanning.org. An appeal of the decision **to exempt the proposed project from CEQA may be made to the Board of Supervisors within 30 calendar days** after the project approval action identified on the determination. The procedures for filing an appeal of an exemption determination are available from the Clerk of the Board at City Hall, Room 244, or by calling (415) 554-5184.

Under CEQA, in a later court challenge, a litigant may be limited to raising only those issues previously raised at a hearing on the project or in written correspondence delivered to the Board of Supervisors, Planning Commission, Planning Department or other City board, commission or department at, or prior to, such hearing, or as part of the appeal hearing process on the CEQA decision.