



# SAN FRANCISCO PLANNING DEPARTMENT

## Rear Yard Modification and Variance Decision

*Date:* November 29, 2018  
*Case No.:* 2017-001816VAR  
*Project Address:* 1801 HAIGHT STREET  
*Zoning:* Haight Street Neighborhood Commercial District  
 40-X Height and Bulk District  
*Block/Lots:* 1249/023  
*Applicant:* Michael Harris, Architect  
 135 South Park  
 San Francisco, CA 94107  
[mgarrus@mbh-arch.com](mailto:mgarrus@mbh-arch.com)  
*Owner:* Philip Belber  
 234 Carl Street  
 San Francisco, CA 94117  
*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**

### DESCRIPTION – REAR YARD MODIFICATION AND DWELLING UNIT EXPOSURE VARIANCE SOUGHT:

The proposal is to construct a four-story, 8,000 square-foot building at the rear of the existing two-story commercial building (d.b.a. Cha Cha Cha Restaurant). The existing building would remain in place. The new building would contain ground floor retail space fronting on Shrader Street, seven dwelling units in the upper floors, a roof deck, and basement storage space.

**Planning Code Section 134** requires properties in the Haight Street NCD (Neighborhood Commercial District) to maintain a rear yard equivalent to 25 percent of the total lot depth, but in no case less than 15 feet, at grade level and at each succeeding story of the building. The required rear yard for the subject property is 25 feet. The proposed building will be built entirely within the required rear yard, except for a 15-foot by 40-foot side yard along the west property line. **Planning Code Section 134(e)(2)** allows a rear yard modification for corner lots in NC Districts for open space equivalencies for the construction of the new structure.

**Planning Code Section 140** requires all dwelling units to have windows of each unit face directly onto a 25-foot deep open space. Four units facing a side courtyard do not meet the 25-foot dimensional requirement for unit exposure.

### 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 a public hearing on Variance Application No. 2017-001816VAR on October 24, 2018.
3. Planning Code Section 312 notification will be mailed following submittal of an associated Building Permit Application.

**DECISION:**

**GRANTED FOR REAR YARD MODIFICATION AND DWELLING UNIT EXPOSURE VARIANCE**, in general conformity with the plans on file with this application, shown as EXHIBIT A, to construct a four-story, 8,000 square-foot building, containing ground floor retail space fronting on Shrader Street, seven dwelling units in the upper floors, a roof deck, and basement storage space in the required rear yard of the existing two-story commercial building, subject to the following conditions:

1. The authorization and rights vested by virtue of this decision letter shall be deemed void and cancelled if (1) a Site or 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 Site or 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.
2. 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.
3. The proposed project must meet these conditions and all applicable City Codes. In case of conflict, the more restrictive controls apply.
4. Minor modifications as determined by the Zoning Administrator may be permitted.
5. 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 decision as a Notice of Special Restrictions in a form approved by the Zoning Administrator.
6. 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 Case Number.

**REAR YARD MODIFICATION CRITERIA:**

Planning Code Section 134(e)(1) states that in order to grant a Rear Yard Modification in a NC District, the Zoning Administrator must determine that the facts of the case are sufficient to establish the following four criteria:

**CRITERION 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.

**Requirement Met.**

- A. The Planning Code requires a rear yard of approximately 1,388 sf for the subject lot. The subject project includes the addition of a four-story building containing seven dwelling units with approximately 1,090 sf of common usable open space (610 sf of common usable open space at the ground level and 480 square feet of common usable open space on a roof deck). Given the configuration of the subject lot, with existing two-story commercial development at the front of the lot and proposed development footprint of only 1,620 sf, the proposal has been found to provide a comparable amount of usable open space elsewhere on the lot where it is more accessible to the residents of the development.

**CRITERION 2.**

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

**Requirement Met.**

- A. The proposed project will provide an interior courtyard open space, approximately 15 feet deep by 40 feet wide, which will provide light and air to adjacent buildings on Haight and Shrader Streets.

**CRITERION 3.**

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

**Requirement Met.**

- A. The proposed courtyard open space at the west side property line is contiguous with the open space of the adjacent buildings on Haight Street and is oriented to accentuate the existing mid-block open space.

**VARIANCE 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 currently developed with a two-story commercial building, circa 1914. The existing building occupies approximately 60 percent of the lot on a large corner lot with a width of 55.5 feet and depth of 100 feet.
- B. The proposed building with seven new dwelling units is being built on an approximately 40-foot by 40-foot footprint at the rear of the subject lot. Such a layout creates a circumstance where there is limited exposure for the new dwelling units. Four of the proposed dwelling units face a side courtyard (measuring 15 feet deep) do not meet the 25-foot dimensional requirement for unit exposure, while the remaining three dwelling units would meet the exposure requirement.
- C. While exposure could potentially be met for upper units on the third- and fourth-floor levels by orienting units over the existing two-story commercial building, the project sponsor stated that such design could compromise unit layout and also complicate potential development at the front of the lot in the future.

**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 circumstances described above result in little to no opportunity for Code-complying dwelling unit exposure for the 4 new dwelling units facing the western side property line. Literal enforcement of the Code in this situation would result in an unnecessary hardship and practical difficulty toward creating new housing units. A 25-foot open space on the west side would decrease the number of apartments from 7 to either 4 apartments and no commercial space or 3 apartments and a ground floor commercial space.

**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. Granting this variance will allow the subject property to create seven new housing units where none exist. This represents a substantial property right possessed by other properties in the

same class of district, which is primarily characterized with ground floor commercial over residential uses.

**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 will create housing on the subject property and will not be materially detrimental to the public welfare or materially injurious to the neighboring properties. While some of the units will not meet exposure requirements, the proposed 15-foot side courtyard is consistent with the minimum rear yard dimensional requirement permitted by Code.
- B. The Planning Department received no opposition to the proposed project.

**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.**

- A. 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 existing commercial use (d.b.a. Cha Cha Cha Restaurant) at 1801 Haight Street will remain and a new commercial space will be added along Shrader Street.
  - 2. The proposed project will be in keeping with the existing housing and neighborhood character. The design of the new addition with ground floor commercial and residential units in the upper floors will be compatible with the existing neighborhood character.
  - 3. The proposed project will have no effect on the City's supply of affordable housing. The project will add six two-bedroom units and one one-bedroom unit.
  - 4. The proposed project does not adversely affect neighborhood parking or public transit. The project will provide seven Class 1 bicycle parking spaces on-site.
  - 5. The project will have no effect on the City's industrial and service sectors.

6. The proposed project will have no effect on the City's preparedness to protect against injury and loss of life in an earthquake. The proposed construction will be subject to all current Building and Fire Code requirements.
7. The project will have no effect on the City's landmarks, historic buildings or historic districts.
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 decision is used, all specifications and conditions of the authorization become immediately operative.

**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 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 decision to the Board of Appeals within ten (10) days after the date of the issuance of this 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.

Very truly yours,



Scott F. Sanchez  
Acting 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.