



Categorical Exemption Appeal

1846 Grove Street

DATE: July 27, 2020
TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Lisa Gibson, Environmental Review Officer – (415) 575-9032
Matthew Dito – (415) 575-9164
RE: Board File No. 200746, Planning Record No. 2018-011441APL-02
Appeal of Categorical Exemption for 1846 Grove Street
HEARING DATE: July 28, 2020

PROJECT SPONSOR: Troy Kashanipour, Troy Kashanipour Architecture, 2325 3rd Street, Suite 401,
San Francisco, CA 94107

APPELLANT(S): Brian Kingan, 627 Masonic Avenue, San Francisco, CA 94117

DEPARTMENT'S RECOMMENDATION: Uphold the exemption and deny the appeal.

INTRODUCTION

This memorandum and the attached documents are a response to the letter of appeal to the Board of Supervisors (the board) regarding the Planning Department's (the department) issuance of an exemption under the California Environmental Quality Act (CEQA determination) for the proposed 1846 Grove Street project.

The department, pursuant to Article 19 of the CEQA Guidelines, issued an exemption for the project on November 21, 2019 finding that the proposed project is exempt from the California Environmental Quality Act (CEQA) as a Class 3 (New Construction) categorical exemption and a common sense exemption.

The decision before the board is whether to uphold the department's decision to issue an exemption and deny the appeal, or to overturn the department's decision to issue an exemption and return the project to the department staff for additional environmental review.

SITE DESCRIPTION AND EXISTING USE

The project site is located on the block surrounded by Fulton Street to the north, Masonic Avenue to the east, Grove Street to the south, and Ashbury Street to the west in the Haight Ashbury neighborhood. The lot is an undeveloped "flag lot". It includes a 3.5-foot-wide opening along Fulton Street (despite its Grove Street address) and widens at the rear to between approximately 90 and 100 feet and shares a property line with 16 adjacent lots. The 3.5-foot-wide opening along Fulton Street is the sole access point to the lot from the public right-of-way, and there is no access from the adjacent lots. The lot slopes upward approximately 10 percent from the east to the west.

PROJECT DESCRIPTION

The project proposes construction of four two-story, 18-feet 5-inch-tall buildings including four dwelling units (two two-bedroom dwellings and two three-bedroom dwellings) in the rear yard of the vacant lot. The units range from 1,026 to 1,407 square feet in size. The project proposes no off-street parking. Project residents and emergency providers would access the property through the 3.5-foot-wide access path on Fulton Street. The project sponsor may be required to apply to the SFMTA for a red color curb along Fulton Street for emergency provider use. The new color curb would not interfere with the existing bus stop along Fulton Street.

BACKGROUND

On August 20, 2018, Troy Kashanipour (hereinafter project sponsor) filed an application with the department for Conditional Use Authorization to allow four dwelling units to be constructed at the subject property.

On November 21, 2019, the department determined that the project, which then included construction of five buildings including five dwelling units, was categorically exempt under CEQA Class 3 – New Construction and a common sense exemption and that no further environmental review was required.

On April 9, 2020, the Planning Commission held a duly noticed public hearing and approval the Conditional Use Authorization application for the proposed project which reduced the project to the construction of four buildings including four dwelling units.

In accordance with Chapter 31 of the San Francisco Administrative Code, approval of the Conditional Use Authorization by the Planning Commission on April 9, 2020 was considered the approval action for the project.

On May 11, 2020, Brian Kingan filed an appeal with the Office of the Clerk of the Board of Supervisors of the categorical exemption determination for 1846 Grove Street.

On July 13, 2020, the department determined that the appeal of the CEQA determination was filed in a timely manner.

CEQA GUIDELINES

Categorical Exemptions

In accordance with CEQA section 21084 CEQA Guidelines sections 15301 through 15333 list classes of projects that have been determined not to have a significant effect on the environment and are exempt from further environmental review.

CEQA Guidelines section 15303 (New Construction or Conversion of Small Structures), or Class 3, consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another when only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel.

Additionally, CEQA Guidelines section 15061(b)(3) states a project is exempt if the activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

In determining the significance of environmental effects caused by a project, CEQA Guidelines section 15064(f) states that the decision as to whether a project may have one or more significant effects shall be based on substantial evidence in the record of the lead agency. CEQA Guidelines section 15064(f)(5) offers the following guidance: "Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumption predicated upon facts, and expert opinion supported by facts."

PLANNING DEPARTMENT RESPONSES

The concerns raised in the appeal letter are addressed in the responses below.

Response 1: The project meets the conditions outlined in CEQA Guidelines 15061(b)(3), qualifying it as exempt from further CEQA review. The exemption is the appropriate level of environmental review for the proposed project.

Background: Class 3 Categorical Exemption and Common Sense Exemption

CEQA Guidelines section 15303 (New Construction or Conversion of Small Structures), or Class 3, consists of construction and location of limited numbers of new, small facilities or structures. The class lists of examples of this exemption including "[i]n urbanized areas, up to three single-family residences...[and] apartments, duplexes, and similar structures designed for not more than six dwelling units."

CEQA requires public agencies to list those specific activities which fall within each of the categorical exemption classes within the CEQA Guidelines (CEQA Guidelines section 15300.4). On August 17, 2000, the Planning Commission adopted such a list as part of resolution number 14952. The 2000 resolution states in its introduction that projects "may be excluded from the application of CEQA under Section 15061 [Review for Exemptions] of the CEQA Guidelines." The 2000 resolution states that the Class 3 categorical exemption "is limited to dwelling units and to no more than one building even when the number of units in two or more buildings totals less than six."

The proposed project consists of four buildings including four dwelling units. The project meets the definition of Class 3 categorical exemption for dwelling unit size, but does not meet the definition of the Class 3 categorical exemption for number of structures. However, as demonstrated below and consistent with CEQA Guidelines section 15061(b)(3), the project meets the definition of a common sense exemption that it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. The appellant has not demonstrated otherwise.

Background: 1997 Certificate of Determination

In 1997, based on CEQA Guidelines section 15061(b)(3), the department issued a common sense exemption (then known as a general rule exclusion) for case file number 1997.304E, Small Projects in an Urban Context. The department determined in that exemption that six dwelling units would have essentially the same impact whether they are provided in one structure or six.

1846 Grove Street is Appropriately Exempt

The department exemption determination checked the box that indicated the project was categorically exempt under the Class 3 categorical exemption and also cited the 1997 certificate of determination. The department intended to rely on the logic in the 1997 certificate of determination and the common sense exemption, not the 1997 certification of determination itself. As demonstrated below, the project would not have significant effects on environment, despite the project including four buildings instead of one building.

- **Transportation.** The appellant incorrectly states that the department did not assess the project's impact on a major transit stop. The exemption process requires a determination that no adverse impacts to transit, or the adequacy of nearby transit, would occur. The project site is near numerous Muni transit lines, including the 5 Fulton. The project includes four dwelling units without any vehicular parking that, if provided, could delay public transit but likely not to a significant level. Thus, the project would not have a significant effect on transportation.
- **Geology and Soils.** The appellant incorrectly states that a geotechnical report is required due to the amount of excavation included in the project. A geotechnical report is required when 50 cubic yards of soil are removed and the project is located in a landslide zone, a liquefaction zone, or the lot has a slope greater than or equal to 25 percent¹. The project includes approximately 310 cubic yards of soil excavation. 1846 Grove Street is not located in a landslide zone or a liquefaction zone, and the lot does not have a slope greater than or equal to 25 percent². Therefore, although the project includes excavation of greater than 50 cubic yards of soil, a geotechnical report is not required and the project would not have a significant effect on geology and soils.
- **Other environmental topics.** The appellant does not state any other environmental topics that the project would have a significant effect on the environment. Nonetheless, the department assessed if the project would have environmental impacts on the impact topics included in the exemption determination, including hazardous materials, archeological resources, and air quality. The department determined that the project would not have significant effects in these topics.

Since the department determined the project was exempt from CEQA in November 2019, the San Francisco Department of Public Health updated the air pollutant exposure zone on March 30, 2020. It was the public health's first update of the zone since 2014 and in compliance with San Francisco Health Code, article 38. The 2014 air pollutant exposure zone mapping did not identify the project

¹ As stated in the San Francisco Planning Department's "CEQA Categorical Exemption Determination" checklist.

² Property-specific environmental information can be found on the San Francisco Planning Department's "Property Information Map" (PIM).

site or surrounding areas as in the zone. The 2020 air pollutant exposure zone mapping identifies the project site and surrounding areas in the zone due to update methodologies and data.

The updated 2020 zone does not change the determination that the project would not have significant air quality effects. This project would require limited off-road construction equipment and limited excavation. The project site is also constrained in the size of equipment that would be able to access it due to the 3.5-foot-wide opening along Fulton Street, and thus this equipment would be smaller and produces less emission than for larger construction projects. Project construction is anticipated to last 12 months.

CONCLUSION

The department has determined that the proposed project is exempt from environmental review under CEQA on the basis that the project would have no possibility of resulting in a significant effect on the environment (CEQA Guidelines section 15061(b)(3)). The appellant has not demonstrated that the department's determination is not supported by substantial evidence in the record.

For the reasons stated above and in the November 21, 2019 CEQA exemption determination, the CEQA determination complies with the requirements of CEQA and the project is appropriately exempt from environmental review pursuant to the cited exemption. The department therefore respectfully recommends that the board uphold the CEQA exemption determination and deny the appeal of the CEQA determination.