



SAN FRANCISCO PLANNING DEPARTMENT

Variance Decision

Date: December 30, 2015
Case No.: 2005.0911V
Project Address: 616 Divisadero Street & 1282 Hayes Street
Zoning: Divisadero Street NCT (Neighborhood Commercial Transit)
65-A Height and Bulk District
Block/Lots: 1202/002J
Applicant: Mark Topetcher
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Owner: Divisadero Hayes, LLC
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DESCRIPTION OF VARIANCES – REAR YARD MODIFICATION, AND PARKING AND LOADING

VARIANCES SOUGHT:

The project proposes to repurpose the former Harding Theater building for use as a bar, amusement game arcade, other entertainment uses and movie uses (d.b.a. Emporium), while retaining and restoring the Divisadero Street facade. Two small general retail sales spaces, totaling approximately 875 square feet, are proposed along the Divisadero Street façade, flanking the main entrance to the Emporium, which would occupy approximately 14,618 square feet of the existing building. Commercial loading is proposed to occur off-site on Divisadero Street.

The project also includes the construction of a new 5-story residential building on the vacant portion of the lot fronting Hayes Street. The new residential building will contain seven dwelling units with five one-bedroom units that range in size from 705 square feet to 755 square feet, and two three-bedroom units of approximately 1,784 square feet each. Seven resident bicycle parking spaces will be provided in the basement with ramp access to Hayes Street. Two stacked automobile parking spaces are proposed on the ground floor of the residential building.

Section 134 of the Planning Code requires that the project provide a rear yard equal to 25 percent of the total lot depth, but in no case less than 15 feet, at the lowest level containing a residential unit, and at each succeeding level or story of the building. In Neighborhood Commercial (NC) Districts, the rear yard requirement may be modified or waived by the Zoning Administrator provided that residential uses are included in the new development and a comparable amount of usable open space is provided elsewhere within the development where it is more accessible to the residents of the development, and that the proposed new structure will not significantly impede the access of light and air to and views or adversely affect the interior block open space formed by the rear yards of from adjacent properties. The

proposed residential building falls within the require rear yard for the subject property. Therefore, the project requires a rear yard modification from the rear yard requirement.

Section 152 of the Planning Code requires one (1) off-street loading space for non-residential uses with a gross floor area between 10,001 square feet and 60,000 square feet. The proposed bar, amusement game arcade, other entertainment uses and retail sales uses will occupy approximately 15,493 square feet, and therefore trigger the requirement for one (1) off-street loading space. The project includes no off-street loading spaces. Therefore, the project requires a variance from the off-street loading requirement.

Section 145.1 of the Planning Code requires that within NC Districts space for active uses shall be provided within the first 25 feet of building depth on the ground floor. Off-street parking at street must be set back at least 25 feet on the ground floor from any facade facing a street at least 30 feet in width. The location of the two proposed off-street parking spaces on the ground floor of the residential building is located within 25 feet of the main front wall. Therefore, the project requires a variance from the parking setback requirement.

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. 2005.0911V** on **November 19, 2015**.
3. The Planning Commission held a public hearing on **November 19, 2015** and approved **Conditional Use Authorization Application No. 2005.0911C**.
4. Planning Code Section 312 notification was conducted in conjunction with the Conditional Use Authorization notification process.

DECISION:

GRANTED, in general conformity with the plans on file with this application, shown as EXHIBIT A, to permit no off-street loading space in association with the bar and amusement game arcade use at 616 Divisadero Street, and to construct a 5-story residential building at 1282 Hayes Street that will extend into the required rear yard and provide two stacked parking space within 25 feet of the main front wall, 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 134(e) of the Planning Code states that in order to grant a rear yard modification, 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.

Requirement Met.

- A. The proposed project will provide 7 new dwelling units. As the L-shaped lot has its primary frontage along Divisadero Street, the rear lot line is the lot line that would separate the proposed residential building from the adjacent elderly care facility at 1250 Hayes Street. The depth of the vacant portion of the subject property in this location is 45 feet, and therefore the minimum required rear yard setback would be 15 feet, leaving only 30 feet of developable area. Such a rear yard would have an area of 675 square feet. The proposed roof deck to offset the rear yard encroachment is designed to be common usable open space and will be accessible to all dwelling units. The proposed size and configuration of the roof deck is considered more usable than the otherwise required rear setback for this portion of the lot, as it is larger in all horizontal dimensions, and totals 931 square feet. Additionally, locating the open space on the roof removes any privacy or usability conflicts that could result from at-grade rear yard open space directly adjacent to ground floor dwelling units.

CRITERIA 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 subject lot surrounded by the theater to the north, a 3-story apartment building to the west, and the Hayes Convalescent Hospital to the east. The proposal would not significantly impede

the access to light, air, or views for the adjacent properties, as these properties have structures that are essentially full-lot coverage and abut the shared property lines.

CRITERIA 3.

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

Requirement Met.

- A. The subject lot is disconnected from the mid-block open space by the theater to the north and the Hayes Convalescent Hospital to the east, which extends almost the full depth of its property, obstructing into the mid-block open space. Due to the short depth of the relevant portion of the subject property, and due to being surrounding by other buildings that are full lot coverage, the proposed residential building will have no connection to the existing mid-block open space, and therefore will have no adverse impact on that space.

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 a large L-shaped lot of more than 13,000 square feet with frontages on both Hayes and Divisadero Streets. The Divisadero Street frontage is considered to be the front lot line, with a majority of the vacant portion of the lot fronting Hayes Street falling within the required rear yard. The shape and size of the subject lot is unusual for this block, neighborhood, and the city in general. Therefore, it qualifies as an exceptional and extraordinary circumstance.
- B. The parking setback requirement of 25 feet from the main front wall is intended to promote active uses at the street frontage, and to discourage higher amounts of parking from being provided as tandem if only one space is permitted. The Planning Code permits this project to have up to four off-street parking spaces. Due to the unusual shape and size of the overall property, and the minimal 45 feet of depth for the vacant portion of the property that fronts onto Hayes Street, providing only one parking space within the first 25 feet of depth would leave minimal space behind for other uses.
- C. The existing theater building, which has never had an enclosed off-street loading space, is an historic resource that nearly covers the entire portion of the lot fronting Divisadero Street. A loading space for the theater building cannot be provided on Divisadero Street without significant impacts to the historic resource's primary façade and interior programming. Providing such loading on the Hayes Street frontage would have a major impact on the ability

to develop residential uses on that portion of the property, while also being out of context with the primarily residential nature of that block.

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 parking setback requirement of 25 feet from the main front wall is intended to promote active uses at the street frontage, and to discourage higher amounts of parking from being provided as tandem if only one space is permitted. The Planning Code permits this project to have up to four off-street parking spaces. It is not possible to set back the proposed car stacker any further in order to meet the 25-foot setback requirement.

As proposed, the parking is well within Planning Code requirements, and does not displace any area that would otherwise be able to be used for active uses. Therefore, would be an unnecessary hardship to reduce the parking to one parking space in order to meet the literal standards of the Planning Code.

- B. The existing theater building, which has never had an enclosed off-street loading space, is an historic resource that nearly covers the entire portion of the lot fronting Divisadero Street. Providing a loading space for the theater building on Divisadero Street would be a practical difficulty because it would significantly impact to the historic resource's primary façade and interior programming. Providing such loading on the Hayes Street frontage would have a major impact on the ability to develop residential uses on that portion of the property, while also being out of context with the primarily residential nature of that block.

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 the parking setback variance will allow the project to provide only half the number of spaces permitted by the Planning Code, while still meeting the intent of the setback requirement. Providing a small amount of Code-complying off-street parking, while meeting the full intent of the Planning Code, is a substantial property right of the subject property, possessed by other property in the Divisadero Street NCT Zoning District.
- B. Granting the off-street loading variance will preserve the primary façade and interior programming of the former Harding Theater, which is an historic resource, while also reducing a potentially major impact on the proposed residential development on the Hayes Street frontage. Preserving historic resource buildings and developing residential structures are substantial

property rights of the subject property, possessed by other property in the Divisadero Street NCT Zoning District.

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. The garage door screening the two stacked parking spaces would remain the same regardless of where the parking spaces are located behind it. Providing two spaces instead of one does not displace any area that could otherwise be able to be used for active uses. Therefore, the granting of the variance for a parking setback of less than 25 feet will have no effect on the public welfare or improvements in the vicinity.
- B. The former theater never had an enclosed off-street loading space. Proposed and future uses of the theater will have lesser demands for loading than the prior large-scale theater use. Similar to the adjacent Independent concert venue, the new use within the theater building may work with other City agencies to find on-street loading accommodations. Providing such loading along the Hayes Street frontage would be out of character with the primarily residential block, and may have major negative impacts on residential uses constructed on that portion of the subject property.

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.
 - 2. The proposed project will be in keeping with the existing housing and neighborhood character. The proposal will preserve the existing historic Harding Theater building and construct seven new residential units on the property.
 - 3. The proposed project will have no effect on the City's supply of affordable housing.
 - 4. The proposed project does not adversely affect neighborhood parking or public transit.
 - 5. The 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 rehabilitate and repurpose the historic Harding Theater building, and the residential building will be constructed to meet all current seismic standards.
7. The project will have a positive effect on the City's landmarks or historic buildings because it will preserve the historic Harding Theater.
8. The project will 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.

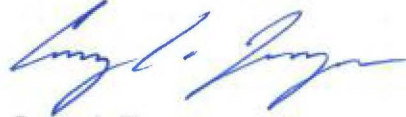
If the City has not previously given Notice of an earlier discretionary approval of the project, the Planning Commission's adoption of this Motion, Resolution, Discretionary Review Action or the Zoning Administrator's Variance Decision Letter constitutes the approval or conditional approval of the development 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.

Variance Decision
December 30, 2015

CASE NO. 2005.0911V
616 Divisadero Street & 1282 Hayes Street

Very truly yours,



Corey A. Teague
Assistant 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.

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