



Date: November 8, 2016

Attn: Clerk of the Board
San Francisco Board of Supervisors
San Francisco City Hall
1 Dr Carlton B Goodlett Pl #244
San Francisco, CA 94102

**Re: Tentative Map # 9131 Approval Appeal at 162-164 Alhambra Street
San Francisco, California**

Subdivision Application Summary:

- August 5th, 2016 Public Works received Subdivision Tentative Map application for a Three Condominium Unit - New Construction Subdivision.
- August 17th Public Works Circulated to the Department of City Planning.
- October 5th Department of City Planning approved the application as consistent with the General Plan and CEQA.
- October 18th Public Works approved the Subdivision Tentative Map and sent out the notices.

Public Works approved Tentative Subdivision Map 9131, being a three unit new construction condominium project. This project qualified as new construction because the parcel consists of an existing two dwelling residential building (reference 3-R Report 20160729 issued July 29, 2016) and was previously mapped as a two unit condominium according to the Parcel Map recorded April 10, 1981 in Parcel Map Book 19 at Pages 98-99.

Appellants have raised two primary claims in their appeal: (1) the new dwelling unit in the building is an accessory dwelling unit and (2) the subdivision is a condominium conversion. We disagree with both these claims as set forth below.

1. The building does not contain an accessory dwelling unit.

The Planning Department, in a letter attached to this document, discusses why the added unit in this building is a new dwelling unit and not an accessory dwelling unit. Public Works incorporates the Planning Department letter herein by reference.

2. The subdivision is not a condominium conversion under the SF Subdivision Code.

Appellants claim that this application should in fact have been treated as a condominium conversion. The department disagrees with this contention for the following reason. Subdivision Code Sec. 1308(d) defines a conversion to condominium as, "a subdivision which changes the type of ownership of real property to that defined as a Condominium project...and in which two or more condominiums, ...are newly created wholly or in substantial part within an existing residential structure or structures, regardless of the present or prior use of such structures and of whether substantial improvements have been made to such structures. A conversion also shall include a subdivision that: (1) is created wholly or in substantial part within an existing residential structure or structures, regardless of the present or prior use of such structures and of whether substantial improvements have been made to such structures and (2) divides one or more of the existing residential dwelling units into separate lots, parcels, or units."

Edwin M. Lee
Mayor

Mohammed Nuru
Director

Jerry Sanguinetti
Bureau of Street Use & Mapping
Manager

Bruce R. Storrs P.L.S.
City and County Surveyor

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Applying this definition to the facts, the department did not treat this application as a “conversion” for two reasons:

a) Public Works previously mapped and recorded the building as a 2-unit condominium subdivision in 1981. Consequently, the subdivision would not result in “two or more condominiums being *newly* created” in this building. In addition, it is immaterial how the SF Tax Assessor characterizes the property for tax purposes as the Assessor has no role in the regulatory process of approving condominium subdivision maps and the Assessor’s lot designations may not always track approved subdivisions.

b) Under the second half of the definition of a “conversion”, the project also fails to qualify as a conversion. In this two prong test, a project must both be “created wholly or in substantial part within an existing residential structure or structures”, and “divide one or more of the existing residential dwelling units into separate lots, parcels, or units.” In the present application, the applicants created a new ground floor unit wholly within the garage portion of an existing residential structure, but they did not divide one or more of the existing second floor units into separate units because the second floor units were previously divided in conformance with the Subdivision Code in 1981, as discussed above. Consequently, for both of these reasons, the department’s position is that this subdivision is not a “conversion” and recommends that the Board of Supervisors uphold Public Works’ decision.

The appellants also raised claims that the notice required under the Subdivision Code was not proper. All noticing requirements were satisfied and Public Works sent notices of its tentative subdivision map to the tenants currently residing in the building. Finally, while Public Works does take tenants’ rights very seriously, under the circumstances of this particular tentative subdivision map approval, the Subdivision Code does not provide for any particular tenant occupancy rights, as this project is not a condominium conversion.

Sincerely,

Bruce R. Storrs,
City and County Surveyor
City and County of San Francisco

By: James Ryan,
Chief Surveyor

cc: John Malamut
Tina Chang
Charles Cross
Jeb Barrett
Kassie Eckhart
Maurice Franco



SAN FRANCISCO PLANNING DEPARTMENT

MEMO

APPEAL OF TENTATIVE MAP 162-164 Alhambra Street

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DATE: November 4, 2016
TO: Bruce Storrs, Department of Public Works
FROM: Tina Chang, Subdivision Coordinator for the Planning Department
Wayne Farrens, Case Planner – Planning Department (415) 575-9172
RE: Board of Supervisors File No. 161174 - Appeal of the approval of Tentative Map for
162-164 Alhambra Street.
HEARING DATE: November 15, 2016
ATTACHMENTS: None

PROJECT SPONSOR: Michelle Petty, Frederick T. Seher & Associates, Inc.

APPELLANT: John Barrett, tenant of 162 Alhambra Street
Kathleen Eckhart, tenant of 162 Alhambra Street
Mauricio Franco, owner of 219-221 Mallorca Way

INTRODUCTION:

On October 27, 2016, an appeal of the Tentative Approval of the 3 unit New Construction Condominium Subdivision Application at 162-164 Alhambra Street was filed. In reviewing the appeal, the Planning Department has found that the majority of issues raised by the appellants are not issues related to the Planning Code or General Plan. Below, we have addressed the appellant issues found to fall under the purview of the Planning Department.

PROJECT DESCRIPTION:

The proposal is a request for a 3-unit subdivision, pursuant to the California Subdivision Map Act and the San Francisco Subdivision Code, of a new dwelling unit within an existing two-unit residential condominium building at 162-164 Alhambra Street. Requests for divisions of land are under the jurisdiction of the Department of Public Works but are referred to the Planning Department to ensure that the request complies with all applicable requirements of the Planning Code and the goals and objectives of the General Plan.

APPELLANT ISSUES AND PLANNING DEPARTMENT CLARIFICATIONS:

The Appeal centers on concerns relating to Subdivision Code 1396.5, 1386, 1387 and CA Government Code 66427.1, 66451.3, and 66427.1. That said, the Department would like to clarify a couple of points raised in the Appeal Letter.

ISSUE #1: The appellant challenges the qualification of the third unit as a condominium.

RESPONSE #1: While this is a matter under the jurisdiction of the Department of Public Works, the Planning Department would like to clarify that the third unit is not an Accessory Dwelling Unit as defined by the Planning Code. The Citywide Accessory Dwelling Units legislation (Board File 160657), which took effect on September 3, 2016, is intended to allow for additional dwelling units in cases where a property is already reaching or exceeding density limits for its respective zoning district and/or unable to meet certain development standards for the new unit, such as exposure or usable open space requirements. The subject property, however, is located within the RH-3 (Residential, House, Three-Family) Zoning District which allows up to three dwelling units per lot and the project meets all applicable development standards for new units pursuant to Planning Code Section 209.1. Therefore, although the project resembles those often seen under the Citywide Accessory Dwelling Units program, it does not require any special exemptions or waivers and should therefore be viewed as a Planning Code-compliant dwelling unit, not an Accessory Dwelling Unit.

The Project Sponsor filed Building Permit Application No. 201509177273 with the Department of Building Inspection on September 17, 2015 for the purpose of adding a third dwelling unit on the ground floor of the existing two-unit residential building. The proposal was reviewed over-the-counter at the Planning Information Center and was approved as a Planning Code compliant Dwelling Unit by Planning Department staff on September 17, 2015.

ISSUE #2: The appellant challenges the tentative map approval on the basis that Building Permit #201509177273 was violated when construction commenced without any notification to tenants or neighbors – and without proper posting of building permits.

RESPONSE #2: Again, here the appellant may be concerned about notification related to either the Building Code or the Subdivision Code, both of which are under the jurisdiction of other city departments, the Planning Department can clarify that no notice was needed under the Planning Code. Planning Code Section 311 governs residential permit review procedures for projects in residential districts, within which this project falls. Notification pursuant to Section 311 is required when the project results in an increase to exterior dimensions, except for those permitted per Section 136, the removal of more than 75 percent of a residential building's existing interior wall framing, and/or the removal of more than 75 percent of the area of the existing framing. Since none of these criteria were met, the Planning Department did not require notification and approved the permit over-the-counter. The Planning Department cannot speak to compliance of notification procedures pursuant to either the Building Code or the Subdivision Code.