

# ZACKS, FREEDMAN & PATTERSON

A PROFESSIONAL CORPORATION

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September 26, 2022

## VIA ELECTRONIC SUBMISSION

President Shamann Walton and Supervisors  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102

Re: Appeal of Exemption Determination  
45 Bernard Street (Case No. 2020-005176ENV)

Dear President Walton and Supervisors:

Our office represents the Upper Chinatown Neighborhood Association, a community group dedicated to protecting the heritage and culture of the Upper Chinatown community since 2013. We submit this letter pursuant to Administrative Code § 31.16(e) to appeal the Exemption Determination for the project at 45 Bernard Street (Case No. 2020-005176ENV). The Exemption Determination violates the California Environmental Quality Act (“CEQA”) because the project description is not accurate, stable, or finite, and the proposed project that was approved by the Planning Commission differs significantly from the project that was described in the Exemption Determination. Additionally, the Planning Department failed to adequately study whether the project will have a significant adverse impact on the cultural and historic resources of Upper Chinatown. Due to these deficiencies, the appellants respectfully request the Board reverse the Exemption Determination; and direct the Planning Department to conduct further review.

The Project Sponsors purchased 45 Bernard in September 2019. Within months the owners started the process to evict eleven Chinese immigrants, eight of whom are elders and/or disabled. Less than a week after the eviction of the families was complete, an application for a residential expansion project was submitted. The project application initially described the project as a renovation of a three-story, four-unit apartment building with a horizontal addition that will significantly encroach into the existing rear yard. After the Exemption Determination was published and the 311 Notice was distributed, the Sponsors submitted revised project plans. The revised plans that were approved by the Planning Commission only show a three-unit building, and the existing basement unit disappeared entirely from the project.

## 2. The Project Description is Not Accurate, Stable, or Finite

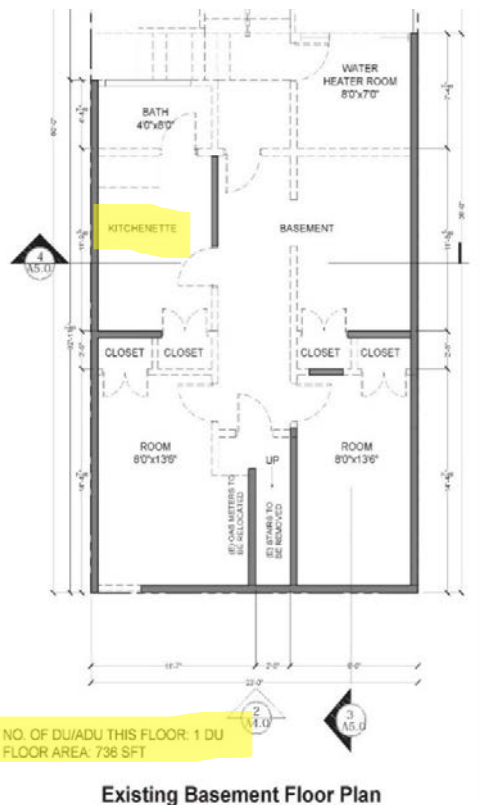
Courts have consistently stated that “an accurate, stable and finite project description” is an essential component of an informative and legally sufficient environmental document. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-193; CEQA Guidelines § 15378.) On the other hand, “a project description that gives conflicting signals to decision makers and the public about the nature and scope of the project is fundamentally inadequate and misleading. (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 84.)

The project description in the Exemption Determination states the project proposes “renovation of a 3-story, **4-unit** apartment building.” The original project plans similarly showed four units, and labeled the building “BERNARD ST. 4-UNITS APARTMENT.” The project plans showed a basement level with a bathroom, kitchenette, two bedrooms, and clearly stated that 1 dwelling unit was located on the basement level. The project plans proposed to legalize the basement unit as a two-bedroom ADU. The 311 Notice also stated the project proposed to legalize an existing residential unit, and described the property as containing four existing units.

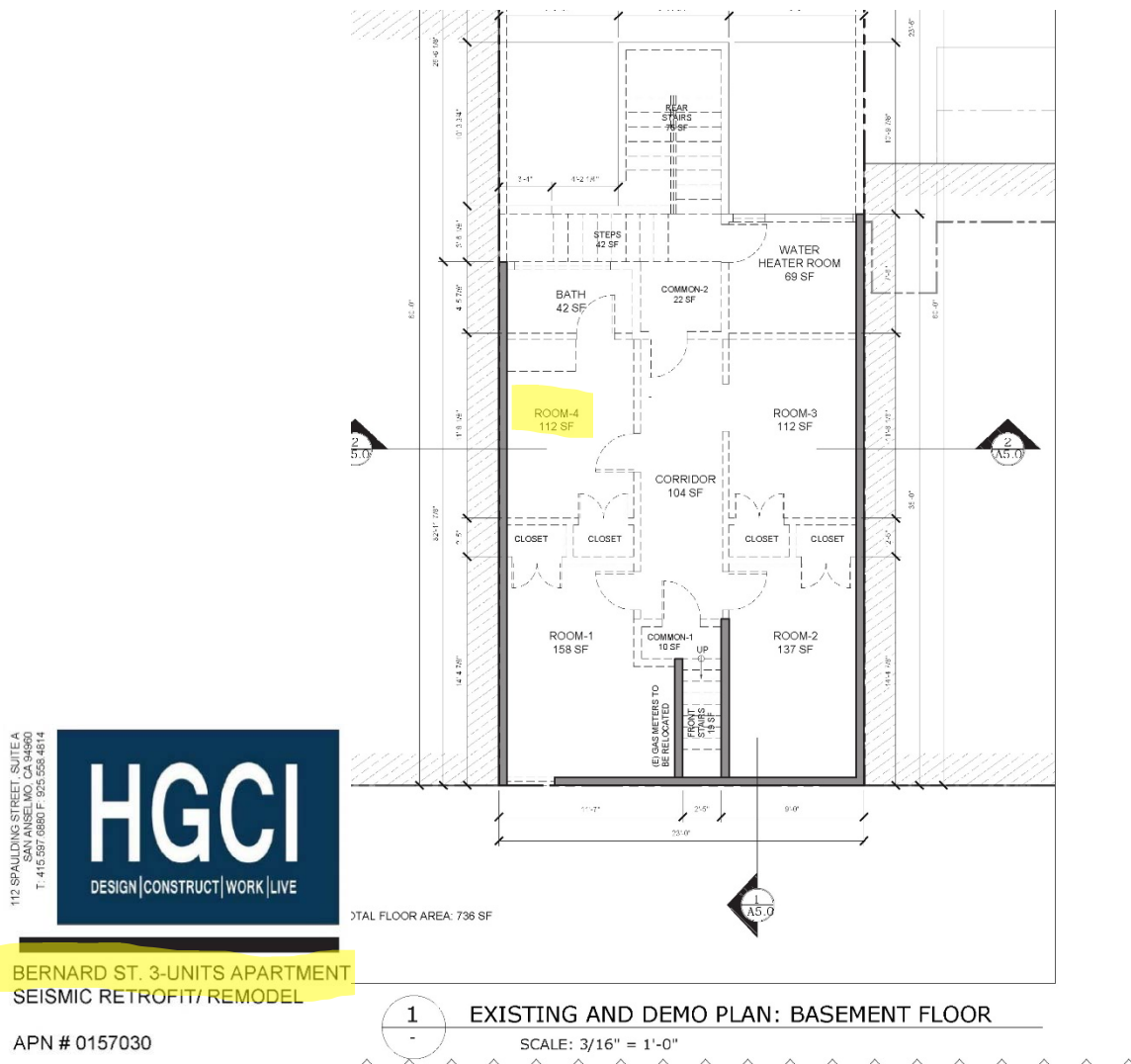
112 SPAULDING STREET, SUITE A  
SAN ANSELMO, CA 94960  
T: 415.597.6880 F: 925.558.4814



BERNARD ST. 4-UNITS APARTMENT  
SEISMIC RETROFIT/REMODEL  
APN # 0157030



However, the Project Sponsor subsequently revised the project, and submitted revised plans three months after the Exemption Determination was issued. The revised plans only show **three** dwelling units, with the building relabeled “BERNARD ST. 3-UNITS APARTMENT.” The basement unit vanished, with the kitchenette now simply labeled a “room” and the floor plan no longer showing a dwelling unit. The proposal to legalize the basement unit into a two-bedroom ADU also disappeared from the project plans. The revised plans show the demolition of the basement walls and the addition of a garbage room, utilities room, and storage room. The rest of the basement is now labeled a “future ADU.”



As noted above, a project description that gives conflicting signals to decision makers and the public is fundamentally inadequate. The project description in the Exemption Determination clearly stated that the project was for the renovation of a four unit building, but the plans that were approved by the Planning Commission only included three units. The project description gave the Planning Commission and the public conflicting signals regarding the nature and scope of the project, which makes the exemption determination fundamentally inadequate.

## **2. The Project May Have a Significant Effect on Historic Resources**

CEQA guidelines state that an Exemption “shall not be used for a project which *may* cause a substantial adverse change in the significance of a historical resource.” (*See* CEQA Guidelines § 15300.2(f).) Courts are clear that the failure to adequately discuss potential impacts is a procedural error, and the “omission of required information constitutes a failure to proceed in the manner required by law.” (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502.) Procedural failures must be overturned in order to “scrupulously enforce all legislatively mandated CEQA requirements.” (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.)

The Exemption Determination in this case is not legally adequate because the Planning Department failed to adequately analyze the potential impacts to historic resources, and there is a fair argument that the project may cause a substantial adverse change to a historic resource. The Planning Department’s Historic Resource Evaluation Response determined the project would not have an impact on any potential eligible historic district yet noted that the “subject property is outside the boundary of the Expanded North Beach Survey . . . and *there is no justification to expand the survey area.*” In other words, no historic district survey has ever been completed for the Upper Chinatown area. The Planning Department concluded, without conducting a survey and without evidence, that the project would not impact a potentially eligible historic district. The Planning Department’s omission of any information on the potential impacts to a historic district was a procedural error, and therefore the Exemption Determination must be overturned.

Moreover, the “foremost principle under CEQA is that the Legislature intended the act to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (*Laurel Heights Improvement Assn. v.*

*Regents of University of California* (1988) 47 Cal.3d 376, 390.) To that end, an exemption shall not be used if there is a “fair argument” that the proposed project may cause a substantial adverse change in the significance of an historical resource. (See *Valley Advocates v. City of Fresno* (2008) 160 Cal.App.4th 1039, 1072.)

Here, there is a fair argument that the project may cause a substantial adverse change in a historic resource. CEQA defines a historic resource as “any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, *or cultural annals of California.*” (CEQA Guidelines § 15064.5.)

Asian Americans have acquired affordable homes in Upper Chinatown since the 1940s, and specifically sought homes with more open space. The rear courtyard was especially valued and the dimensions of rear yard spaces in Upper Chinatown have been relatively unchanged for over a hundred years. The concept of the traditional courtyard space followed Chinese immigrants, and they have inherently adopted this way of maintaining stability and unity and strengthening the family structure. Especially in densely populated neighborhoods like this one, family members gather outdoors to share meals while telling stories and supporting one another. This family system is the bedrock of the culture and maintains the social sustainability of the neighborhood. The pattern of mid-block open space is significant to the history and culture of the Chinese immigrant experience and must be protected. The courtyard at 45 Bernard, like other rear yards, is a character-defining feature that contributes to the uniqueness of the Upper Chinatown area.

Over a thousand individuals signed a petition supporting the protection of the traditional courtyard space, and dozens of Asian Americans testified at the Planning Commission hearing to explain the cultural significance of the rear courtyard to the families who depend on this sacred courtyard space for their spiritual wellbeing. The project at 45 Bernard significantly expands into the rear courtyard, and there is a fair argument that the project will cause a substantial adverse change in this character-defining feature of the Upper Chinatown area. Moreover, none of these potential impacts was identified or analyzed by the Planning Department before it issued the Exemption Determination. As a result, and there is a fair argument that the Exemption Determination must be overturned.

**6. Conclusion**

The Exemption Determination for this project violates CEQA. The project description is inaccurate and sent conflicting signals to the Planning Commission and the public on the project that was actually being approved. Moreover, the project's potential impacts were not adequately identified or evaluated, which constitutes a failure to proceed in the manner required by law.

This project, which is the result of the eviction of 11 Asian immigrants, involves the destruction of a sacred traditional courtyard space that is vital to the character, culture, and history of Upper Chinatown. The Board should therefore reverse the Exemption Determination and direct the Planning Department to conduct further review of potential impacts to historic resources and issue an environmental document that accurately describes the project.

Very truly yours,

ZACKS, FREEDMAN & PATTERSON, PC

A handwritten signature in blue ink, appearing to read "B. O'Neill", is written over a horizontal line.

Brian O'Neill

cc: Lisa Gibson, Environmental Review Officer



## CEQA Exemption Determination

### PROPERTY INFORMATION/PROJECT DESCRIPTION

<b>Project Address</b>		<b>Block/Lot(s)</b>
45 BERNARD ST		0157030
<b>Case No.</b>		<b>Permit No.</b>
2020-005176ENV		202008222415
<input checked="" type="checkbox"/> <b>Addition/ Alteration</b>	<input type="checkbox"/> <b>Demolition (requires HRE for Category B Building)</b>	<input type="checkbox"/> <b>New Construction</b>
<p><b>Project description for Planning Department approval.</b></p> <p>The project proposes renovation of a 3-story, 4-unit apartment building and includes a seismic/soft-story foundation upgrade with a rear-yard addition. The project includes façade alterations, and the proposed addition would add approximately 996 square feet.</p>		

### STEP 1: EXEMPTION TYPE

<b>The project has been determined to be exempt under the California Environmental Quality Act (CEQA).</b>	
<input checked="" type="checkbox"/>	<b>Class 1 - Existing Facilities.</b> Interior and exterior alterations; additions under 10,000 sq. ft.
<input type="checkbox"/>	<b>Class 3 - New Construction.</b> Up to three new single-family residences or six dwelling units in one building; commercial/office structures; utility extensions; change of use under 10,000 sq. ft. if principally permitted or with a CU.
<input type="checkbox"/>	<p><b>Class 32 - In-Fill Development.</b> New Construction of seven or more units or additions greater than 10,000 sq. ft. and meets the conditions described below:</p> <p>(a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.</p> <p>(b) The proposed development occurs within city limits on a project site of no more than 5 acres substantially surrounded by urban uses.</p> <p>(c) The project site has no value as habitat for endangered rare or threatened species.</p> <p>(d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.</p> <p>(e) The site can be adequately served by all required utilities and public services.</p> <p><b>FOR ENVIRONMENTAL PLANNING USE ONLY</b></p>
<input type="checkbox"/>	<b>Other</b> ____

☐

**Common Sense Exemption (CEQA Guidelines section 15061(b)(3)).** It can be seen with certainty that there is no possibility of a significant effect on the environment . **FOR ENVIRONMENTAL PLANNING USE ONLY**



## STEP 2: ENVIRONMENTAL SCREENING ASSESSMENT

### TO BE COMPLETED BY PROJECT PLANNER

<input type="checkbox"/>	<p><b>Air Quality:</b> Would the project add new sensitive receptors (specifically, schools, day care facilities, hospitals, residential dwellings, and senior-care facilities within an Air Pollution Exposure Zone? Does the project have the potential to emit substantial pollutant concentrations (e.g. use of diesel construction equipment, backup diesel generators, heavy industry, diesel trucks, etc.)? <i>(refer to The Environmental Information tab on the San Francisco Property Information Map)</i></p>
<input type="checkbox"/>	<p><b>Hazardous Materials:</b> If the project site is located on the Maher map or is suspected of containing hazardous materials (based on a previous use such as gas station, auto repair, dry cleaners, or heavy manufacturing, or a site with underground storage tanks): Would the project involve 50 cubic yards or more of soil disturbance - or a change of use from industrial to residential?</p> <p><b>Note that a categorical exemption shall not be issued for a project located on the Cortese List if box is checked, note below whether the applicant has enrolled in or received a waiver from the San Francisco Department of Public Health (DPH) Maher program, or if Environmental Planning staff has determined that hazardous material effects would be less than significant. (refer to The Environmental Information tab on the San Francisco Property Information Map)</b></p>
<input type="checkbox"/>	<p><b>Transportation:</b> Does the project involve a child care facility or school with 30 or more students, or a location 1,500 sq. ft. or greater? Does the project have the potential to adversely affect transit, pedestrian and/or bicycle safety (hazards) or the adequacy of nearby transit, pedestrian and/or bicycle facilities?</p>
<input type="checkbox"/>	<p><b>Archeological Resources:</b> Would the project result in soil disturbance/modification greater than two (2) feet below grade in an archeological sensitive area or eight (8) feet in a non-archeological sensitive area? If yes, archeology review is required.</p>
<input type="checkbox"/>	<p><b>Subdivision/Lot Line Adjustment:</b> Does the project site involve a subdivision or lot line adjustment on a lot with a slope average of 20% or more? <i>(refer to The Environmental Information tab on the San Francisco Property Information Map)</i> <b>If box is checked, Environmental Planning must issue the exemption.</b></p>
<input type="checkbox"/>	<p><b>Average Slope of Parcel = or &gt; 25%, or site is in Edgehill Slope Protection Area or Northwest Mt. Sutro Slope Protection Area:</b> Does the project involve any of the following: (1) New building construction, except one-story storage or utility occupancy, (2) horizontal additions, if the footprint area increases more than 50%, or (3) horizontal and vertical additions increase more than 500 square feet of new projected roof area? <i>(refer to The Environmental Planning tab on the San Francisco Property Information Map)</i> <b>If box is checked, a geotechnical report is likely required and Environmental Planning must issue the exemption.</b></p>
<input type="checkbox"/>	<p><b>Seismic Hazard:</b> <input type="checkbox"/> <b>Landslide or</b> <input type="checkbox"/> <b>Liquefaction Hazard Zone:</b></p> <p>Does the project involve any of the following: (1) New building construction, except one-story storage or utility occupancy, (2) horizontal additions, if the footprint area increases more than 50%, (3) horizontal and vertical additions increase more than 500 square feet of new projected roof area, or (4) grading performed at a site in the landslide hazard zone? <i>(refer to The Environmental tab on the San Francisco Property Information Map)</i> <b>If box is checked, a geotechnical report is required and Environmental Planning must issue the exemption.</b></p>
<p><b>Comments and Planner Signature (optional):</b> Don Lewis</p>	

**STEP 3: PROPERTY STATUS - HISTORIC RESOURCE**  
**TO BE COMPLETED BY PROJECT PLANNER**

<b>PROPERTY IS ONE OF THE FOLLOWING:</b> <i>(refer to Property Information Map)</i>	
<input type="checkbox"/>	<b>Category A:</b> Known Historical Resource. <b>GO TO STEP 5.</b>
<input checked="" type="checkbox"/>	<b>Category B:</b> Potential Historical Resource (over 45 years of age). <b>GO TO STEP 4.</b>
<input type="checkbox"/>	<b>Category C:</b> Not a Historical Resource or Not Age Eligible (under 45 years of age). <b>GO TO STEP 6.</b>

**STEP 4: PROPOSED WORK CHECKLIST**  
**TO BE COMPLETED BY PROJECT PLANNER**

<b>Check all that apply to the project.</b>	
<input type="checkbox"/>	1. <b>Change of use and new construction.</b> Tenant improvements not included.
<input type="checkbox"/>	2. <b>Regular maintenance or repair</b> to correct or repair deterioration, decay, or damage to building.
<input type="checkbox"/>	3. <b>Window replacement</b> that meets the Department's <i>Window Replacement Standards</i> . Does not include storefront window alterations.
<input type="checkbox"/>	4. <b>Garage work.</b> A new opening that meets the <i>Guidelines for Adding Garages and Curb Cuts</i> , and/or replacement of a garage door in an existing opening that meets the Residential Design Guidelines.
<input type="checkbox"/>	5. <b>Deck, terrace construction, or fences</b> not visible from any immediately adjacent public right-of-way.
<input type="checkbox"/>	6. <b>Mechanical equipment installation</b> that is not visible from any immediately adjacent public right-of-way.
<input type="checkbox"/>	7. <b>Dormer installation</b> that meets the requirements for exemption from public notification under <i>Zoning Administrator Bulletin No. 3: Dormer Windows</i> .
<input type="checkbox"/>	8. <b>Addition(s)</b> that are not visible from any immediately adjacent public right-of-way for 150 feet in each direction; does not extend vertically beyond the floor level of the top story of the structure or is only a single story in height; does not have a footprint that is more than 50% larger than that of the original building; and does not cause the removal of architectural significant roofing features.
<b>Note: Project Planner must check box below before proceeding.</b>	
<input checked="" type="checkbox"/>	Project is not listed. <b>GO TO STEP 5.</b>
<input type="checkbox"/>	Project <b>does not conform</b> to the scopes of work. <b>GO TO STEP 5.</b>
<input type="checkbox"/>	Project involves <b>four or more</b> work descriptions. <b>GO TO STEP 5.</b>
<input type="checkbox"/>	Project involves <b>less than four</b> work descriptions. <b>GO TO STEP 6.</b>

**STEP 5: ADVANCED HISTORICAL REVIEW**  
**TO BE COMPLETED BY PRESERVATION PLANNER**

<b>Check all that apply to the project.</b>	
<input checked="" type="checkbox"/>	1. <b>Reclassification of property status.</b> <i>(Attach HRER Part I)</i> <div style="display: flex; justify-content: space-between; align-items: flex-start; margin-top: 10px;"> <div style="width: 45%;"> <input type="checkbox"/> Reclassify to Category A  a. Per HRER 04/13/2021  b. Other <i>(specify)</i>: </div> <div style="width: 45%; text-align: right;"> <input checked="" type="checkbox"/> Reclassify to Category C  <i>(No further historic review)</i> </div> </div>
<input type="checkbox"/>	2. Project involves a <b>known historical resource (CEQA Category A)</b> as determined by Step 3 and conforms entirely to proposed work checklist in Step 4.
<input type="checkbox"/>	3. <b>Interior alterations to publicly accessible spaces that do not</b> remove, alter, or obscure <b>character defining features.</b>
<input type="checkbox"/>	4. <b>Window replacement</b> of original/historic windows that are not "in-kind" but are consistent with existing historic character.
<input type="checkbox"/>	5. <b>Façade/storefront alterations</b> that do not remove, alter, or obscure character-defining features.

<input type="checkbox"/>	6. <b>Raising the building</b> in a manner that does not remove, alter, or obscure character-defining features.
<input type="checkbox"/>	7. <b>Restoration</b> based upon documented evidence of a building's historic condition, such as historic photographs, plans, physical evidence, or similar buildings.
<input type="checkbox"/>	8. <b>Work consistent</b> with the <i>Secretary of the Interior Standards for the Treatment of Historic Properties</i> (Analysis required):
<input type="checkbox"/>	9. <b>Work compatible</b> with a historic district (Analysis required):
<input type="checkbox"/>	10. <b>Work that would not materially impair</b> a historic resource (Attach HRER Part II).
<b>Note: If ANY box in STEP 5 above is checked, a Preservation Planner MUST sign below.</b>	
<input type="checkbox"/>	<b>Project can proceed with exemption review.</b> The project has been reviewed by the Preservation Planner and can proceed with exemption review. <b>GO TO STEP 6.</b>
<b>Comments (optional):</b>	
<b>Preservation Planner Signature:</b> Elizabeth Gordon Jonckheer	

**STEP 6: EXEMPTION DETERMINATION**  
**TO BE COMPLETED BY PROJECT PLANNER**

<input checked="" type="checkbox"/>	<b>No further environmental review is required. The project is exempt under CEQA. There are no unusual circumstances that would result in a reasonable possibility of a significant effect.</b>	
	<b>Project Approval Action:</b>	<b>Signature:</b>
	Building Permit	Elizabeth Gordon Jonckheer
	If Discretionary Review before the Planning Commission is requested, the Discretionary Review hearing is the Approval Action for the project.	04/13/2021
<p>Once signed or stamped and dated, this document constitutes an exemption pursuant to CEQA Guidelines and Chapter 31 of the Administrative Code.</p> <p>In accordance with Chapter 31 of the San Francisco Administrative Code, an appeal of an exemption determination to the Board of Supervisors can only be filed within 30 days of the project receiving the approval action.</p> <p>Please note that other approval actions may be required for the project. Please contact the assigned planner for these approvals.</p>		

## STEP 7: MODIFICATION OF A CEQA EXEMPT PROJECT

### TO BE COMPLETED BY PROJECT PLANNER

In accordance with Chapter 31 of the San Francisco Administrative Code, when a California Environmental Quality Act (CEQA) exempt project changes after the Approval Action and requires a subsequent approval, the Environmental Review Officer (or his or her designee) must determine whether the proposed change constitutes a substantial modification of that project. This checklist shall be used to determine whether the proposed changes to the approved project would constitute a "substantial modification" and, therefore, be subject to additional environmental review pursuant to CEQA.

### MODIFIED PROJECT DESCRIPTION

Modified Project Description:

### DETERMINATION IF PROJECT CONSTITUTES SUBSTANTIAL MODIFICATION

Compared to the approved project, would the modified project:

- |                          |  |
|--------------------------|--|
| <input type="checkbox"/> | Result in expansion of the building envelope, as defined in the Planning Code;   |
| <input type="checkbox"/> | Result in the change of use that would require public notice under Planning Code Sections 311 or 312;  |
| <input type="checkbox"/> | Result in demolition as defined under Planning Code Section 317 or 19005(f)?   |
| <input type="checkbox"/> | Is any information being presented that was not known and could not have been known at the time of the original determination, that shows the originally approved project may no longer qualify for the exemption? |

**If at least one of the above boxes is checked, further environmental review is required.**

### DETERMINATION OF NO SUBSTANTIAL MODIFICATION

- |                          |   |
|--------------------------|---|
| <input type="checkbox"/> | The proposed modification would not result in any of the above changes. |
|--------------------------|---|

If this box is checked, the proposed modifications are exempt under CEQA, in accordance with prior project approval and no additional environmental review is required. This determination shall be posted on the Planning Department website and office and mailed to the applicant, City approving entities, and anyone requesting written notice. In accordance with Chapter 31, Sec 31.08j of the San Francisco Administrative Code, an appeal of this determination can be filed to the Environmental Review Officer within 10 days of posting of this determination.

**Planner Name:**

**Date:**



## PART I HISTORIC RESOURCE EVALUATION RESPONSE

*Record No.:* 2020-005176PRJ/ENV  
*Project Address:* **45-49 Bernard Street**  
*Zoning:* RH-3 RESIDENTIAL- HOUSE, THREE FAMILY Zoning District  
65-A Height and Bulk District  
*Block/Lot:* 0157/030  
*Staff Contact:* Elizabeth Gordon Jonckheer 628-652-7365  
elizabeth.gordon-jonckheer@sfgov.org

### PART I: Historic Resource Evaluation

#### PROJECT SPONSOR SUBMITTAL

To assist in the evaluation of the proposed project, the Project Sponsor has submitted a:

- ☒ Supplemental Information for Historic Resource Determination Form (HRD)
- ☐ Consultant-prepared Historic Resource Evaluation (HRE)

#### BUILDINGS AND PROPERTY DESCRIPTION

**Neighborhood:** Nob Hill  
**Date of Construction:** 1906  
**Construction Type:** Wood-Frame  
**Architect:** Unknown  
**Builder:** Unknown

**Stories:** 3-over-basement  
**Roof Form:** Flat  
**Cladding:** Horizontal Wood Siding & Stucco  
**Primary Façade:** Bernard Street (North)  
**Visible Facades:** North

#### EXISTING PROPERTY PHOTOS / CURRENT CONDITIONS



Sources: Google Maps, 2021

**PRE-EXISTING HISTORIC RATING / SURVEY**

- ☐ Category A – Known Historic Resource, per: \_\_\_\_\_
- ☒ Category B – Age Eligible/Historic Status Unknown
- ☐ Category C – Not Age Eligible / No Historic Resource Present, per: \_\_\_\_\_

Adjacent or Nearby Historic Resources: ☒ No ☐ Yes: \_\_\_\_\_

**CEQA HISTORICAL RESOURCE(S) EVALUATION****Step A: Significance**

Individual Significance	Historic District / Context Significance
<p>Property is individually eligible for inclusion in a California Register under one or more of the following Criteria:</p> <p><b>Criterion 1</b> - Event: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Criterion 2</b> - Persons: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Criterion 3</b> - Architecture: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Criterion 4</b> - Info. Potential: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Period of Significance: _____</p>	<p>Property is eligible for inclusion in a California Register Historic District/Context under one or more of the following Criteria:</p> <p><b>Criterion 1</b> - Event: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Criterion 2</b> - Persons: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Criterion 3</b> - Architecture: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Criterion 4</b> - Info. Potential: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Period of Significance: _____</p> <p><input type="checkbox"/> Contributor <input type="checkbox"/> Non-Contributor <input checked="" type="checkbox"/> N/A</p>

**Analysis:**

Per the supplemental information provided by the project sponsor and information assessed in the Planning Department's files, 45-49 Bernard Street was constructed in 1906 as a three-flat, three story-over-basement, wood frame residence clad in horizontal clapboard siding.

To be eligible under Criterion 1 (Events), the building cannot merely be associated with historic events or trends but must have a specific association to be considered significant. No known historic events occurred at the subject property that would support a finding of individual eligibility under Criterion 1. None of the known occupants or owners appear to be of historic significance to the local, regional or national past to justify a finding of individual eligibility under Criterion 2. Therefore, 45-49 Bernard Street is not eligible under Criterion 2 (Persons).

As noted in the supplemental report, the building's front façade consists of painted wood horizontal clapboard siding at the first two stories and the third story has been covered with a stucco finish. The front façade also contains six double hung wood windows with wood trim and ogee lugs, as well as a central recessed stairwell providing access to the apartments. The roofline exhibits a corbeled cornice. The rear of the property has four levels and is defined by stucco walls and horizontal painted wood clapboard siding. At this façade, the windows are aluminum sliders with no trim. There is also a wood exit stair which was added at some point to provide emergency exiting for the apartment units. The building permit records indicate that the following alterations have taken place: underpinning of the east wall in 1928, repairs and upgrades (1926), reroofing (2008), and repair in-kind in 2016.

The building is not architecturally distinct such that would qualify it for listing in the California Register under Criterion 3. Based the permit record, 45-49 Bernard Street retains moderate integrity (alterations include but are not limited to window modifications to the rear façade and the stucco alteration at the third story of the front façade). This structure does not appear to be eligible for listing on the California Register as an individual resource under Criterion 3. The buildings that are eligible under the architecture Criterion must represent distinctive characteristics

of its style and period and possess high artistic value. The subject property is a residence reflective of its era on its block but does not rise to the level of artistic expression that would render it eligible for Individual eligibility. Additionally, staff finds that the subject building is not located within a historic district. As noted in the HRER for adjacent neighbor 51 Bernard Street (Case No. 2013.1452E), the surrounding area exhibits a broad range of construction dates from 1900 to 1988 and no clear period of development is evident and many of the surrounding properties have experienced facade alterations that have compromised historic integrity. Additionally, the subject property is outside the boundary of the Expanded North Beach Survey, and while it shares characteristics of the Romeo Alley Flats within North Beach, it does not exemplify them and there is no justification to expand the survey area.

Based upon a review of information in the Departments records, the subject property is not significant under Criterion 4 since this significance criterion typically applies to rare construction types when involving the built environment. The subject property is not an example of a rare construction type.

### CEQA HISTORIC RESOURCE DETERMINATION

- ☐ Individually-eligible Historical Resource Present
- ☐ Contributor to an eligible Historical District / Contextual Resource Present
- ☐ Non-contributor to an eligible Historic District / Context / Cultural District
- ☒ No Historical Resource Present

### NEXT STEPS

- ☐ HRER Part II Review Required
- ☐ Historic Design Review Comments provided
- ☒ No further historic resource review, consult:
  - ☒ Current Planner
  - ☐ Environmental Planner

### PART I: Approval

Signature: Elizabeth Jonckheer

Date: 4/23/2021

Elizabeth Gordon Jonckheer, *Principal Preservation Planner*  
Current Planning Division

September 26, 2022

*Re: 45 Bernard Street  
Letter of Authorization for Agent*

To Whom It May Concern:

I hereby authorize the attorneys of Zacks, Freedman & Patterson, PC to file a California Environmental Quality Act appeal to the Board of Supervisors for 45 Bernard Street, San Francisco (Case No. 2020-005176ENV) on the behalf of Upper Chinatown Neighborhood Association.

Very truly yours,

Upper Chinatown Neighborhood Association

A handwritten signature in black ink on a light-colored background. The signature is stylized, starting with a large 'L' and ending with a long horizontal stroke.

---

By: Hanmin Liu

Its: Co-Team Leader



# ZACKS, FREEDMAN & PATTERSON

A PROFESSIONAL CORPORATION

September 26, 2022

Office of the Clerk of the Board  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102

Re: Appeal of Exemption Determination  
45 Bernard Street (Case No. 2020-005176ENV)

Dear Clerk,

Please find enclosed a check in the amount of \$698.00 for the appeal filing fee in the above referenced matter.

Please be advised that the filing will be submitted electronically by emailing the appeal filing with supporting documents to [bos.legislation@sfgov.org](mailto:bos.legislation@sfgov.org) and this payment is being sent prior to the filing.

Sincerely,



Tiffany Stamper  
Legal Administrative Assistant

Encl.

- Check No. 23858 in the amount of \$698.00 made payable to San Francisco Planning Department

**ZACKS, FREEDMAN & PATTERSON**  
**A PROFESSIONAL CORPORATION**  
601 MONTGOMERY STREET, SUITE 400  
SAN FRANCISCO, CA 94111

FIRST REPUBLIC BANK  
SAN FRANCISCO, CA 94111  
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23858

**PAY**

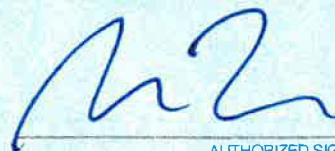
\*\*\* SIX HUNDRED NINETY-EIGHT & 00/100 DOLLARS

TO THE  
ORDER  
OF: San Francisco Planning Department  
49 South Van Ness Avenue  
Suite 1400  
San Francisco CA 94103

DATE  
09/26/2022

AMOUNT  
\*\*\*\*\$698.00

MEMO: Appeal Filing Fee (43547.001)



AUTHORIZED SIGNATURE

Photo Safe Deposit®

Details on Back.