



# Conditional Use Authorization Appeal

## 1151 WASHINGTON STREET

**DATE:** June 8, 2023  
**TO:** Angela Calvillo, Clerk of the Board of Supervisors  
**FROM:** Rich Hillis, Planning Director – Planning Department (628) 652-7600  
Christopher May, Case Planner – Planning Department (628) 652-7359  
**RE:** Board File No. 230592, Planning Case No. 2022-010833APL  
Appeal of Conditional Use Authorization for 1151 Washington Street  
**HEARING DATE:** June 27, 2023  
**PROJECT SPONSOR:** Dana Manea, MACY Architecture, 315 Linden Street, San Francisco, CA 94102  
**APPELLANTS:** Deborah Holley, 220 Montgomery Street, Suite 2100, San Francisco, CA 94104

---

### INTRODUCTION

This memorandum and the attached documents are a response to the letters of appeal to the Board of Supervisors (“Board”) regarding the Planning Commission’s (“Commission”) approval of the application for Conditional Use Authorization under Planning Department Case Number 2022-010833CUA pursuant to Planning Code Sections 206.6 (State Density Bonus), 209.2 (Residential-Mixed, Medium-Density Zoning District), 303 (Conditional Use Authorization), and 317 (Loss of Residential and Unauthorized Units Through Demolition, Merger, and Conversion) for a Project which proposes the demolition of a single-family dwelling and the construction of a four-story, 40-foot tall building containing 10 dwelling units.

This memorandum addresses the appeal to the Board, filed on May 19, 2023, by Deborah Holley, representing the adjacent neighbors at 1155 Washington Street (Alex Baum and Leigh Silkunas).

The decision before the Board is whether to uphold, overturn, or amend the Planning Commission’s approval of an application for Conditional Use Authorization to allow the proposed Project at the subject property.

### PROJECT DESCRIPTION

The Project proposes to utilize the State Density Bonus Program to demolish the existing single-family dwelling on the subject property and construct a four-story, 40-foot tall building containing 10 dwelling units (1 three-bedroom unit and 9 two-bedroom units), one off-street parking space and 10 Class 1 bicycle parking spaces. The larger three-bedroom unit would front directly onto Washington Street while the remaining nine units would be located behind, each with pedestrian access via a shared pathway along the east side lot line. The Project includes approximately 1,961 square feet of private open space on individual roof decks.

## **SITE DESCRIPTION & PRESENT USE**

The Project is located on the south side of Washington Street between Taylor and Mason Streets, on lot with an area of approximately 3,575 square feet, with approximately 26 feet of frontage along Washington Street. The Project Site contains an existing three-story single-family residence measuring approximately 3,050 square feet.

## **SURROUNDING PROPERTIES AND NEIGHBORHOOD**

The Project Site is located within the RM-3 Zoning District in the Nob Hill neighborhood and to the west of the Chinatown neighborhood. The immediate context is primarily developed with multi-family residential uses measuring three to four stories in height. The subject block also contains larger civic uses, including the Cable Car Barn and Museum and the Betty Ann Ong Recreation Center, which abuts the subject property on the east. Scattered ground-floor commercial uses are located along Mason Street to the east. Other zoning districts in the vicinity of the Project Site include: RC-3 (Residential-Commercial, Medium-Density), RH-3 (Residential, House – Three Family), and P (Public).

## **BACKGROUND**

- On November 18, 2021, the Commission disapproved Conditional Use Authorization application No. 2019-005907CUA proposing the expansion of the existing single-family dwelling on the subject property, as the proposal would not maximize the principally permitted residential density and would increase the size of an existing dwelling unit greater than 2,000 square feet. At the time, Resolution 10-21 imposed interim zoning controls requiring a Conditional Use Authorization for projects that did not maximize the density of projects.
- On November 7, 2022, the Project Sponsor filed the Application with the Department.
- On April 20, 2023, the Commission considered the Application and voted 4-2 to approve the Project.

## **CONDITIONAL USE AUTHORIZATION REQUIREMENTS**

Planning Code Section 303 establishes criteria for the Commission to consider when reviewing all applications for Conditional Use approval. To approve the Project, the Commission must find that these criteria have been met:

1. That the proposed use or feature, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community; and
2. That such use or feature as proposed will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity, or injurious to property, improvements or potential development in the vicinity, with respect to aspects including but not limited to the following:
  - a. The nature of the proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;
  - b. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;
  - c. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

- d. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs; and
3. That such use or feature as proposed will comply with the applicable provisions of this Code and will not adversely affect the General Plan.
4. That such use or feature as proposed will provide development that is in conformity with the stated purpose of the applicable Use District.

Planning Code Section 317 establishes criteria for the Planning Commission to consider when reviewing applications to demolish or convert residential buildings. In addition to the criteria of Section 303(c) of this Code, the Commission shall consider the extent to which the following criteria are met pursuant to Section 317(g)(6):

1. Whether the property is free of a history of serious, continuing code violations;
2. Whether the housing has been maintained in a decent, safe, and sanitary condition;
3. Whether the property is a "historical resource" under CEQA;
4. Whether the removal of the resource will have a substantial adverse impact under CEQA;
5. Whether the Project converts rental housing to other forms of tenure or occupancy;
6. Whether the Project removes rental units subject to the Rent Stabilization and Arbitration Ordinance;
7. Whether the Project conserves existing housing to preserve cultural and economic neighborhood diversity;
8. Whether the Project conserves neighborhood character to preserve neighborhood cultural and economic diversity;
9. Whether the Project protects the relative affordability of existing housing;
10. Whether the Project increases the number of permanently affordable units as governed by Section 415;
11. Whether the Project locates in-fill housing on appropriate sites in established neighborhoods;
12. Whether the project increases the number of family-sized units on-site;
13. Whether the Project creates new supportive housing;
14. Whether the Project is of superb architectural and urban design, meeting all relevant design guidelines, to enhance existing neighborhood character;
15. Whether the Project increases the number of on-site dwelling units;
16. Whether the Project increases the number of on-site bedrooms;
17. Whether or not the replacement project would maximize density on the subject lot; and,
18. If replacing a building not subject to the Residential Rent Stabilization and Arbitration Ordinance, whether the new project replaces all the existing units with new dwelling units of a similar size and with the same number of bedrooms.

## **APPELLANT ISSUES AND PLANNING DEPARTMENT RESPONSES**

**ISSUE 1:** The proposed building would cast significant shadow in the late afternoon over the adjacent outdoor play areas when these areas are the most heavily used.

**RESPONSE 1:** The City does not regulate shadows cast by projects that are less than 40-feet in height. While developments that exceed 40-feet in height are regulated by Planning Code Section 295, that section

explicitly does not apply to “structures which do not exceed 40 feet in height.” Therefore, the City did not require an analysis of the Project’s shadow on parks and public open spaces. Although findings pursuant to Section 295 were not required, the Commission determined that on balance, and in the context of the State Density Bonus law, although some shadow would be cast on the adjoining playground, the project was necessary and desirable for, and compatible with, the neighborhood or the community, and not detrimental to the health, safety, convenience or general welfare. At 40 feet in height, the proposed building is well below the 65-foot height limit and was designed as such to minimize shadow on the adjacent outdoor play area to the east.

**ISSUE 2:** Adjacent residents and children, seniors, and families are at risk of being exposed to contaminated soils during project demolition, site preparation, and construction.

**RESPONSE 2:** The City has adopted an Ordinance to address sites with known or suspected soil and/or groundwater contamination (San Francisco Health Code (SFHC) Article 22A and San Francisco Building Code Section 106.3.2.4) The San Francisco Department of Public Health administers this program and has reviewed and approved a Site Mitigation Plan (SMP) submitted by the project sponsor, which outlines measures to address potential risks to the environment and to protect construction workers, nearby residents, future occupants, and the public associated with exposure to hazardous substances and underground structures that may be encountered during the proposed development activities. The measures described within the SMP include entry/exit restrictions; soil and stockpile management protocols; material segregation and disposal; noise and dust controls; contingency procedures when encountering unexpected conditions; and general worker health and safety procedures.

**ISSUE 3:** The Project would create excessive glare impacts on the outdoor play areas due to the high percentage of glazing on the east façade.

**RESPONSE 3:** The Planning Code does not regulate the percentage of glazing on the sides of buildings. In accordance with Section 139(c)(2) of the Planning Code, all glazed segments will be less than 24 square feet in size, in order to meet the City’s Standards for Bird-Safe Buildings.

**ISSUE 4:** The Project does not meet the following three demolition findings required under Planning Code Section 317:

1. Section 317(g)(6)(h) “Whether the Project conserves neighborhood character to preserve neighborhood cultural and economic diversity;”
2. 317(g)(6)(k) “Whether the Project locates infill housing on appropriate sites in established neighborhoods;” and
3. 317(g)(6)(n) “Whether the Project is of superb architectural and urban design, meeting all relevant design guidelines, to enhance existing neighborhood character;”

**RESPONSE 4:** The Project will preserve cultural and economic diversity by constructing ten new dwelling units, one being family-sized and one being affordable, in a neighborhood defined by a mix of architectural styles and densities, thereby allowing for a variety of housing options for residents with diverse socioeconomic backgrounds. The Project represents the redevelopment of a parcel within an established

neighborhood at a dwelling unit density consistent with the requirements of the RM-3 Zoning District and State Density Bonus Law. This Project Sponsor previously sought to expand the existing single-family home and was denied that application because the site is more appropriate for infill housing site and should maximize density. On balance, the overall scale, design, and materials of the proposed building is consistent with the block face and will complement the neighborhood character. The façade treatment and materials of the building have been appropriately selected to be compatible with the surrounding neighborhood. The Project is compliant with the Ground Floor Residential Design Guidelines, Residential Design Guidelines and contributes to the mixed visual character of the neighborhood.

**ISSUE 5:** The Project would result in significant health and safety impacts and does not meet code required life safety impacts.

**RESPONSE 5:** The Planning Commission did not find that the project would result in significant health and safety impacts. The San Francisco Fire Marshall confirmed that while minor adjustments may be required to improve emergency access, the project as a whole does not appear to present any unresolvable life and safety concerns, which would be identified during the building permit review process.

**ISSUE 6:** The Planning Commission should have denied one or more waivers requested by the developer based on Planning Code Section 206.6(4).

**RESPONSE 6:** In accordance with State Law, if a project qualifies for the State Density Bonus law, the City must grant a concession or waiver, unless the City finds that the requested waiver would have a specific, adverse impact upon health or safety; would have an adverse impact on any property listed in the California Register of Historical Resources that cannot be mitigated; or is contrary to State or Federal law. The Planning Commission found that none of the requested waivers have a specific, adverse impact upon health or safety; have an adverse impact on any property listed in the California Register of Historical Resources; or are contrary to State or Federal law. The City may not modify the project, or apply any development standards that would preclude the construction of the Project with the bonus density or incentives.

**ISSUE 7:** The Project has been designed with no consideration for the three adjacent neighbors to the west, the recreation center, the Cable Car Museum, or other buildings in the neighborhood.

**RESPONSE 7:** On balance, the overall scale, design, and materials of the proposed building is consistent with the block face and dense surrounding development pattern, and complements the neighborhood character. The proposed building would occupy the full lot depth, as the Cable Car Museum does, and is similar in massing to the three existing single-family dwellings located on the adjacent lot to the west, at least two of which appear to be noncompliant as they relate to the rear yard and dwelling unit exposure requirements of the Planning Code. At 40 feet in height, the proposed building is well below the 65-foot height limit and was designed as such to minimize shadow on the adjacent outdoor play area to the east.

**ISSUE 8:** The Project would cover nine existing property line windows at 1155 Washington Street.

**RESPONSE 8:** The adjacent property to the west at 1155 Washington Street contains a four-bedroom single-family dwelling at the far rear of the property and abuts the west side property line of 1151 Washington

Street. The adjacent property at 1155 Washington Street contains nine windows which face onto 1151 Washington Street as property line windows. Additional windows for the unit face the interior of the lot.

Property line windows are not protected under the Planning Code or Building Code. When feasible, the Department encourages Projects to incorporate design modifications to avoid impacting adjacent property line windows particularly for historic buildings that have property line windows that serve sleeping rooms and pre-date DBI's current regulations on property line windows; however, this is not a required objective standard of the Planning Code or Building Code. Maintaining the property line windows, which are not protected under the Planning or Building Codes, would require the proposed new building at 1151 Washington Street to be set back a minimum of three feet from the west property line, which would cause a substantial loss of floor area. Such a modification would likely result in a decrease in the number of bedrooms and an increase in the construction cost of the project. As the Project adds nine net units of housing in accordance with State Law, including the Housing Accountability Act and the State Density Bonus law, the Department did not find a basis to require protection of the adjacent property line windows.

**ISSUE 9:** The developer did not submit the required CUA request required for Large Projects under the Interim Zoning Controls, as the project includes a unit over the 2,000 square foot threshold and no action was taken by the Planning Commission to approve or deny this required CUA.

**RESPONSE 9:** The Interim Zoning Controls for Large Residential Projects in RC, RM and RTO Districts (Board File No. 201370) required a mandatory Conditional Use Authorization for any residential development that did not maximize the allowable density. These controls, which went into effect on January 22, 2021, were to be effective for 18 months, or until permanent controls became effective, whichever occurred first. They were extended for another 6 months by the Board of Supervisors and expired on January 22nd, 2023. As such, the Project is not subject to the conditions imposed under the interim controls.

On Tuesday May 23, 2023, Supervisor Peskin introduced legislation (Board File No. 230596) that, consistent with the expired interim controls, would permanently amend the Planning Code to require Conditional Use Authorization for residential housing developments that do not maximize residential density, as defined, in Residential-Mixed (RM), Residential Commercial (RC), and Residential Transit Oriented (RTO) Districts except for Residential-Transit Oriented - Mixed (RTO-M) Districts. This ordinance is intended to encourage the construction of multi-family housing developments, rather than single-family "monster homes," in zoning districts that allow multifamily housing developments. The proposed project would maximize the permitted density and is consistent with the density maximizing objectives of Supervisor Peskin's proposed legislation.

**ISSUE 10:** The 7-foot tall privacy walls proposed atop the roof decks were improperly exempted from Planning Code Section 295 regulating projects that may have an adverse impact on parks and open space within the jurisdiction of the Recreation & Park Commission.

**RESPONSE 10:** Planning Code Section 260(b)(2)(D) exempts "unenclosed seating areas limited to tables, chairs and benches, and related windscreens, lattices and sunshades with a maximum height of 10 feet"

from the height limit. As such, the project does not exceed 40 feet in height, as measured under the Planning Code, and is therefore not subject to the requirements of Planning Code Section 295. See also Response 1 related to shadow on the adjacent playground.

**ISSUE 11:** The developer has not explained why the many requested waivers from standard Code requirements are required to construct a ten-unit project on the site.

**RESPONSE 11:** The plans submitted to, and approved by, the Planning Commission were reviewed by Planning Department staff for accuracy, and demonstrate that the requested waivers to the Planning Code requirements for front setback, rear yard, dwelling unit exposure, and access to Class 1 bicycle parking spaces are necessary to construct the proposed project.

**ISSUE 12:** The provision of one more unit of housing than allowed does not outweigh the significant impacts that would result.

**RESPONSE 12:** On balance, the Project is consistent with the Objectives and Policies of the General Plan, including the recently adopted Housing Element. The Project will replace an existing three-story single-family dwelling with a 10-unit building well below the height limit of 65 feet. One on-site affordable housing unit will be provided, which will assist in meeting the City's affordable housing goals. Were the building to be built maximizing density under the RM-3 Zoning District provisions and without the use of State Density Bonus Law, only nine units would be built with no on-site affordable housing.

**ISSUE 13:** The project application materials state that three cranes will be required for construction. It appears that these cranes will need to overswing adjacent homes and the recreation center. We are concerned about how public safety will be ensured.

**RESPONSE 13:** Per [Administrative Bulletin 023](#) of Chapter 36 the San Francisco Building Code, crane safety remains under the jurisdiction of the California Occupational Safety and Health Administration (Cal/OSHA), which requires an erection permit prior to the construction of foundation, anchorage and the erection of a tower crane. A Cal/OSHA operational permit is also required prior to the crane operation.

**ISSUE 14:** The Project does not comply with the following Residential Design Guidelines:

1. "In areas with a defined visual character, design buildings to be compatible with the patterns and architectural features of surrounding buildings."
2. "Design building facades to enhance and complement adjacent public spaces."
3. "Design the scale of the building to be compatible with the height and depth of surrounding buildings."

**RESPONSE 14:** On balance, the overall scale, design, and materials of the proposed building is consistent with the block face and complement the neighborhood character. The Project utilizes a contemporary architectural style that is sensitive to the site's topography, scale and surrounding neighborhood fabric; the surrounding neighborhood is defined by a dense development pattern with many buildings extending into

their rear yards. The Project provides for a high-quality designed exterior, which, in the context of State Density Bonus law, will compliment features elements and materials found in the immediate vicinity and broader neighborhood, and features walk-up residential units consistent with the Guidelines for Ground Floor Frontage Design.

**ISSUE 15:** The developer did not engage in meaningful neighborhood outreach and dialogue.

**RESPONSE 15:** Prior to the submittal of the Conditional Use Authorization Application, the project sponsor hosted the requisite pre-application meeting with adjacent neighbors and registered neighborhood groups on October 11, 2022.

### **SUMMARY RESPONSE**

The Appellant claims that the Project has been designed with no consideration for the adjacent properties and that the Project Sponsor has not adequately demonstrated that the requested waivers to the Planning Code requirements for front setback, rear yard, dwelling unit exposure, and access to Class 1 bicycle parking spaces are necessary to facilitate the Project. Projects utilizing the State Density Bonus law are inherently larger and denser than Code-complying projects, as they are provided relief from local development standards in exchange for the provision of on-site affordable housing units. Under State Density Bonus law, projects are not required to meet all local Planning Code requirements in exchange for building greater density and on-site affordable housing. The Project is consistent with this expectation in that it will replace a single-family dwelling with 10 dwelling units, including one on-site affordable housing unit, which will assist in meeting the City's affordable housing goals. The Project is consistent with policies in the City's recently-adopted Housing Element which encourage "increasing mid-rise and small multi-family housing types by adopting zoning changes or density bonus programs in Well-resourced Neighborhoods and adjacent lower-density areas near transit." The proposed project is a direct response to the Commission's November 18, 2021 disapproval of Conditional Use Authorization application No. 2019-005907CUA, which proposed the expansion of the existing single-family dwelling on the subject property, as that proposal would increase the size of an existing dwelling unit by more than 2,000 square feet but would not maximize the principally permitted residential density.

The Appellant also claims that the Project would result in significant health and safety impacts and does not meet code requirements for life safety. To this point, at the April 20, 2023, Planning Commission hearing, the Commission specifically asked Department Staff to confirm that the Project was designed so that the Fire Department had adequate access to the rear units in the event of a fire. Planning staff confirmed with the Fire Marshall that while minor adjustments may be required during the building permit review process to improve emergency access – which is typical – the Project as a whole does not appear to present any unresolvable life and safety concerns. After this discussion and considering all the facts in the case as well as public comment, the Commission found the Project to be necessary, desirable for, and compatible with the surrounding neighborhood. Further, the Commission determined that on balance, the Project is consistent with State Law, the General Plan and Zoning District and ultimately voted to approve the Project.



Lastly, this Project is the response to the disapproval of an expansion of a single-family home at this site in 2021. The findings for that disapproval noted that a project on this site should maximize density. The Project Sponsor took that direction and submitted a project that maximizes density.

## **CONCLUSION**

For the reasons stated in this document, in the attached Motion, and in the Planning Department case file, the Planning Department recommends that the Board uphold the Planning Commission's decision in approving the Conditional Use authorization for the Project.