



Apr 23, 2024

**San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689**

Re: 72 Harper Street

**By email: Board.of.Supervisors@sfgov.org; ChanStaff@sfgov.org;
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Catherine.Stefani@sfgov.org**

CC: cityattorney@sfcityatty.org; rich.hillis@sfgov.org

Dear San Francisco Board of Supervisors,

The California Housing Defense Fund (“CalHDF”) submits this letter to inform the Board of Appeals of its obligation to abide by SB 9 (Gov. Code, § 65852.21) and the Housing Accountability Act (Gov. Code, § 65589.5, the “HAA”) when considering the requested Appeal of Determination of Exemption From Environmental Review of the proposed housing development project at 72 Harper Street. Specifically, SB 9 obliges the City to approve the project ministerially, and the HAA only allows for disapproval if certain health and safety findings are made.

The proposed housing development project at 72 Harper Street meets the criteria for ministerial approval pursuant to SB 9 (Gov. Code, § 65852.21, subd. (a)), which specifies that “A proposed housing development containing no more than two residential units within a single-family residential zone shall be considered ministerially ...” if the development meets certain criteria - all of which are met by the proposed development at 72 Harper Street. Regarding the historic preservation argument, an exception is only allowed if the project is located within a historic district or list listed on the state historic resources inventory, neither of which applies to the project. Gov. Code, § 65852.21, subd. (a)(6):

The development is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public

Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

While SB 9 allows for local governments to “impose objective zoning standards, objective subdivision standards, and objective design review standards” to proposed housing developments, the City here has already determined that all applicable standards have been met. The City is therefore under a ministerial duty to approve of the proposed housing development. The allowance of discretionary review and appeal for this project is a violation of state housing law, the Board should dismiss this appeal and approve of the project as required.

As outlined above, the proposed project is subject to ministerial approval under state housing law, therefore CEQA does not apply and the appeal of the CEQA determination was improperly allowed. Even if CEQA did apply to this project, pursuant to CEQA Guidelines § 15301, the project is entitled to an exemption from CEQA, which exempts interior and exterior alterations and additions under 10,000 sq. ft. Recent caselaw from the California Court of Appeal affirms that local governments err, and may be sued, when they improperly refuse to grant a project a CEQA exemption or streamlined CEQA review to which it is entitled. (*Hilltop Group, Inc. v. County of San Diego* (2024) 99 Cal.App.5th 890, 911.)

The HAA, furthermore, mandates approval of all housing development projects that comply with applicable zoning and general plan provisions. (Gov. Code, § 65589.5, subd. (j).) As the application here constitutes a “housing development project” (*see id.* at subd. (h)(2)) complying with the relevant zoning and general plan rules, it receives this protection under the HAA. The Board of Supervisors may disapprove the application only if it makes written findings, based on a preponderance of the evidence in the record, that the project would have a specific, adverse impact upon the public health and safety. (*Id.* at subd. (j)(1).) Such an impact must be identified pursuant to a written public health or safety standard or policy in effect when the application was deemed complete. (*Ibid.*) Since no extant written standard or policy would justify such a finding, and since the preponderance of the evidence in the record does not support such a finding in any case, the Board of Supervisors may not legally disapprove the application.

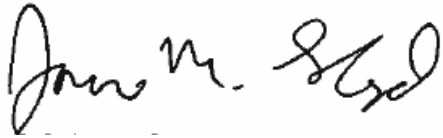
As you are well aware, California remains in the throes of a statewide crisis-level housing shortage. New housing such as this in urban settings is a public benefit; it will bring increased tax revenue; it will reduce displacement of existing residents; and it will help the state achieve its climate goals by providing additional housing in a walkable urban center, as opposed to in far-flung, car-dependent regions of the state. Most importantly, it will allow for an intergenerational household, especially important so that our seniors can age with their families. While no one project will solve the statewide housing crisis, the proposed development is a step in the right direction. CalHDF urges the Commission to approve the project, consistent with its obligations under state law.

CalHDF is a 501(c)3 non-profit corporation whose mission includes advocating for increased access to housing for Californians at all income levels, including low-income households. You may learn more about CalHDF at www.calhdf.org.

Sincerely,



Dylan Casey
CalHDF Executive Director



James M. Lloyd
CalHDF Director of Planning and Investigations