



PLANNING DEPARTMENT

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May 5, 2006

VARIANCE DECISION

UNDER THE PLANNING CODE
CASE NO. 2005.0607V

APPLICANT: Ms. Heidi Liebes
Winder Liebes Architects
351 Ninth Street, #301
San Francisco, CA 94103



CASE PLANNER: Jim Miller – 558-6344

PROPERTY IDENTIFICATION – 45 PRIEST STREET, west side between Clay and Washington Streets, a through-lot to Reed Street, Lot 28 in Assessor's Block 215, in an RH-2 (House, Two-Family) District and a 50-X Height and Bulk District. It is improved with a two-unit residential building.

DESCRIPTION OF VARIANCE SOUGHT – REAR-YARD VARIANCE

The proposal is to construct a new two-car garage on the Reed Street frontage of the subject property within the required rear yard of the lot. In addition, the applicant proposes to construct rear exit stairs from the subject building providing access to the existing yard area as well as to the proposed new garage. This stairway would project two feet two inches into the required rear-yard open area.

Section 134 of the Planning Code sets forth standards for rear yard areas. It requires, in an RH-2 District, a rear-yard area, open and clear from the ground up, equal to 45 percent of the depth of the lot (and in no case less than 15 feet). The subject lot is 102.5 feet deep therefore its required rear yard area would be approximately 46 feet in depth. All of the proposed new garage would be in this area plus approximately two feet two inches of the rear exit stairs proposed to be constructed at the south property line at the rear of the subject two-family building (and projecting 12 feet to the rear of the building).

PROCEDURAL BACKGROUND:

1. This proposal was determined to be Categorically Exempt from Environmental Review under CEQA Guidelines Section 15301.
2. Notices were mailed to all property owners within 300 feet of the project site in accordance with Section 306.3 of the Planning Code.

3. The Zoning Administrator held a public hearing on **Variance Application No. 2005.0607V on Wednesday, October 26, 2005.**

DECISION:

GRANTED, to allow the construction of a two-car garage along the Reed Street frontage of the subject property and to permit construction of rear exit stairs at the back of the existing building which stairs would project approximately two feet two inches into the otherwise-required rear-yard area, in general conformity with the plans on file with this application, shown as "Exhibit A" and dated February 11, 2004, subject to the following conditions:

1. This approval is dependant upon granting by the Department of Public Works of a Major Encroachment Permit for the improvement of the portion of Reed Street that would be necessary to access the herein-authorized new garage structure.
2. Any further physical expansion, even within the buildable area, shall be reviewed by the Zoning Administrator to determine if the expansion is compatible with existing neighborhood character, scale, and parking. 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.
3. The proposed project must meet these conditions and all applicable City Codes. In case of conflict, the more restrictive controls shall apply.
4. Minor modifications as determined by the Zoning Administrator may be permitted.
5. The owners 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.

FINDINGS:

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 property or uses in the same class of district.

REQUIREMENT MET.

The subject property has frontage on both Priest Street and Reed Street but has no vehicular access. Priest Street, at the front of the lot, is improved with a stairway and walkway. Reed

Street, which extends to the south from Washington Street, is improved only as far as the northerly lot line of the subject property. Southerly of that point, Reed Street extends to its intersection with Clay Street. In this portion of its run, it is a "paper street" in that it is dedicated but unimproved. Reed Street is, however, a public street to which abutting owners have right of access. At present, only one garage, that of the next-door property to the north at 44 Reed Street, is accessed from Reed Street. The applicant seeks to extend the pavement by the width of his lot so that he may have access to the garage that he proposes as part of the subject Variance request. It is an extraordinary circumstance that the subject lot has frontage on two streets but no possibility of vehicular access at present. In addition, the only way (at present) to gain access to the rear yard area on the subject lot from the building at 45 Priest Street is through an easement on the adjoining lot to the south at 37 - 39 Priest Street. Such access requires exiting the subject building on Priest Street, passing under the building at 37 -39 Priest Street its rear yard, and then crossing into the rear yard of 45 Priest Street. This situation would be rectified by the construction of a stairway from the subject building (45 Priest Street) down to its rear yard area, a portion of which stairway would project into the otherwise-required open rear-yard area.

FINDING 2

That owing to such exceptional and extraordinary circumstances the literal enforcement of specified provisions of this Code would result in practical difficulty or unnecessary hardship not created by or attributable to the applicant or the owner of the property.

REQUIREMENT MET.

Due to the land-locked nature of the subject lot, Variance relief would be necessary to allow the property owner to create off-street parking (as otherwise required by the Planning Code) on his lot. Reed Street, a public right-of-way, could be extended as necessary to accommodate the requested rear-yard garage. The only feasible way to create off-street parking on the subject property is at the rear of the lot as proposed by the applicant. He is aware that such an act would require a Major Encroachment Permit from the Department of Public Works to improve the necessary portion of the Reed Street right-of-way. In addition, the applicant has proposed to extend the planted and landscaped area of his down-sloping rear yard out over the roof of the proposed new garage structure. Such an action would create flat, usable open space in an area where none now exists and it would minimize the visual intrusion of the garage into the rear yard. The rear stairway, as proposed, would give access from the proposed new garage directly to the interior of the subject two-unit building. It would eliminate the need for the pedestrian easement through the neighboring property to the south thereby increasing the privacy and security of the next-door owner/occupant. Literal enforcement of the Planning Code would preclude the owner from developing his property in the manner proposed and result in an unnecessary hardship with no compensating public benefit.

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.

The granting of this Variance is the best and most feasible manner by which the owner can enjoy his right to develop his property to its full potential, as enjoyed by similarly-situated property owners (particularly the next-door property at 44 Reed Street that uses Reed Street, essentially, as a private driveway at present). The extension of the landscaped portion of the yard on the subject lot out over the new garage would have the effect of retaining greenness and openness in the mid-block area and would, therefore, be beneficial to owners and users of nearby properties.

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.

The granting of this variance will not be materially detrimental to the public welfare or materially injurious to other properties in the vicinity. The proposed new garage would take two cars off the street in this parking-impacted area. The extension of landscaping over the proposed garage would enhance the openness of the mid-block area and cause this new structure to recede from view. The proposed new exit stairs would be minimally intrusive and would solve a long-standing access problem for the applicant as well as the owner of the adjoining lot. The adjoining neighbors to the north, who enjoy the only existing garage space that is accessed by the (public) paved portion of Reed Street, expressed opposition to the proposed new garage. They opposed the granting of the requested Variance due to loss of a small garden (in the Reed Street right-of-way), their expressed desire that this action should be deferred until vehicular access to other properties abutting Reed Street can be coordinated, and that, if approved, the new garage be limited in height and intrusion into the existing open space.

As stated above, proposed landscaping (over the new garage) would have the effect of minimizing its intrusion into the mid-block area. Street rights-of-way are reserved, generally, for vehicular access to private property. Denying the requested Variance would have the effect of continuing the exclusive private use of the public Reed Street right-of-way by one user and denying the applicant any vehicular access to his property. If other property owners wish to access the Reed Street right of way, they have the ability to request such access and / or their own Variances. It is inappropriate to deny the applicant consideration because others are unwilling or not ready to join in his request. The proposed garage would have a low profile and would be generally unobtrusive as shown on plans on file with the application.

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. Granting this Variance will help retain and enhance the existing supply of housing by providing parking in conjunction with dwelling units. It will remove two cars from the street in this parking-impacted area of the City without eliminating any on-street parking through curb cuts. The new garage, as designed, would be minimally intrusive to the mid-block area. The proposed new exit stairs would solve both an access problem for the owner of the subject property as well as a privacy and security problem for the owner of the next-door property to the south. This project is consistent with the generally stated intent and purpose of the Planning Code to promote orderly and beneficial development.
- B. Section 101.1(b) of the Planning Code establishes eight priority-planning policies and requires review of variance applications for consistency with said policies. The project complies with these policies, including conserving existing housing and neighborhood character and maintaining and protecting open space from development.

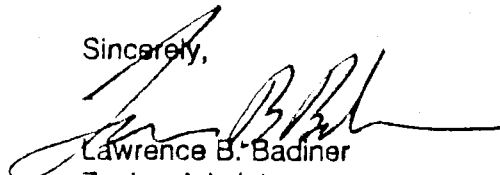
The effective date of this decision shall be either the date of this decision letter if not appealed, or the date of the Notice of Decision and Order if appealed to the Board of Appeals.

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.

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 1660 Mission Street, Room 3036 or call (415) 575-6880.

Sincerely,



Lawrence B. Badiner
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.