

20 Nobles Alley Appeal – November 16~~th~~ 2017

**RESPONSE TO MARC BRUNO’S LETTER OF APPEAL OF CATEGORICAL EXEMPTION**

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**Re: Per San Francisco Administrative Code §31.16(e)(l) an Appeal of a CEQA Categorical Exemption, #2016-014104ENV, regarding 20 Nobles Alley (Block Lot 0104 / 025), consequent to D.B.I. Notice of Violation# 20160916, Permit Application # 201608094528, a D.B.I. Directors Hearing (January 17, 2017), a Notice of Planning Department Disapproval (May 8, 2017), and an appeal of that Disapproval before the San Francisco Board of Appeals July 12 and September 13, 2017 (# 17-088)**

My name is Eustace de Saint Phalle. My wife, Dudley de Saint Phalle, and I purchased 18-20 Nobles Alley in August of 2016, and live in the front unit, 20 Nobles Alley, S.F. Below is my response to the Letter of Appeal submitted by Marc Bruno September 27, 2017.

**1. The issue presented by this appeal to be decided by the Board of Supervisors:**

*Issue:* Is there a rational basis and evidentiary support for the San Francisco Planning Department’s decision that 20 Nobles Alley, San Francisco is not a designated historic building for the purpose of the Upper Grant Avenue Historic District and therefore categorically exempt from CEQA review as it relates to certain restrictions within the district.

*Answer:* The Planning department rationally determined that the building façade was legally altered from its original construction in 1959 to place a stucco façade on the exterior facing the street prior to the Historic District being created; that the building was not considered historic by the 1982 North Beach Survey, adopted by the Board of Supervisors, establishing the buildings

designated as historic resources for the Upper Grant Avenue Historic District. Thus, there is substantial evidence to support the Planning Departments decision that 20 Nobles Alley is Categorically Exempt from the CEQA review.

**\*\*\*It is important to note that this is not an appeal of the Board of Appeals decision related to the determination that one garage door is deemed legal and one is determined must be removed. Unfortunately, neither Mr. Bruno nor myself can appeal this decision which is now final.**

## **2. Summary of our situation/Introduction:**

Typically when the Board of Supervisors is faced with an appeal from a Planning Department decision that a building is exempt from the North Beach –Upper Grant Avenue Historic District designation under CEQA, it would be dealing with a property owner that has proposed a large new construction project that is potentially changing the character of the building and possibly the feel of the neighborhood. It is usually the desire of a neighbor not to have new construction in the neighborhood and that results in an appeal in an effort to stop the new construction.

I want to be clear – this is not our situation. We recently purchased the property on May 31, 2016. We had no intention of doing any construction work or changing the building. We did not propose a project. But due to complaints by our neighbor, we are now being forced to do work which necessitated a planning department CEQA review. Because the neighbor does not like the result of the CEQA review that he necessitated, he is now appealing the Planning Department’s decision.

Our neighbor has decided that if he can force us to remove the 57-year-old stucco façade, then an original historic facade can be placed on the building thus making it match the historic look of other buildings in the neighborhood. His motive for doing this is multifaceted:

- First, he wants to force us to remove the garages (He has ulterior motives for this);
- Second, he wants to force us to renovate our garages into an additional rental unit in order to add additional affordable units in the neighborhood (He is a professed advocate on this issue); and
- Third, he wants to punish us financially because of some perceived slight that he suffered during the sale of the building (His asserted reason for continuing with this process).

Clearly, the system within the City of San Francisco was not intended to be abused in this way by a neighbor for petty grievances or desires to force homeowners to meet someone else’s aesthetic notions for how a building should look in the neighborhood. We purchased the building so we could live in peace in a neighborhood where my family has generations of roots, not to be continually harassed by a neighbor who constantly makes false statements about us in order to create controversy.

**3. Repeated false statements made by Marc Bruno that are irrelevant to the issue before the Board of Supervisors:**

To be abundantly clear, the below statements we believe to be falsely stated about us by Marc Bruno as a way of trying to stir up emotions against us. None of these alleged claims by him against us are true and none have any bearing on whether the Planning Department's decision under CEQA is sound.

-We allegedly do not live in the building. He has told this to a number of neighbors in order to whip up anger towards us so that they would write letters against us. **(This is false and done to try and make us look like outsiders. We live at this address. I was baptized at Saints Peter and Paul Church, my family has lived in this general area of San Francisco for many generations, my grandfather Alfonso Zirpoli was on the S.F. Board of Supervisors, and I am a registered voter at this address.)**

-We allegedly run a hotel out of the Apartment. He has told this to a number of neighbors in order to whip up anger towards us so that they would write letters against us. **(It is true that we attempted to rent our house on three weekends, but we did so to try to supplement our income in order to pay for the costs our neighbor has caused us through his constant complaints and appeals. All I can say is we live there.)**

-We allegedly are attempting to do new construction to create illegal structures. **(This is false. He has told this to a number of neighbors in order to whip up anger towards us so that they would write letters against us. We did not want to do any work to the building.)**

-We allegedly knew that the garages were put in illegally before we purchased the property. **(This is false. There was nothing on the 3R report. The first couple of times Mr. Bruno complained or spoke to us he did not complain about the garages being without permits. Once he made the complaint, we looked into it and were told that the DBI file was somewhat messed up and seemed to be missing documents. We were told that there were permits for various work that listed the garages as pre-existing; there were plans for at least one of the garages in the file; there was a permit to take down a dividing brick wall and calculations approved for changes to the structure for the garages. As a result, we were told by more than one expediter that it should be ok and that we would need to close out a permit that was not finalized related to different work. This is what we knew when we purchased the building.)**

-We have allegedly misrepresented things in our applications and are trying to do new work. **(This is false. After we purchased the property and there was a question about if there was a permit for both garage doors, Mr. Bruno asked us to change the doors from two doors to one center door to reduce noise from when cars are backing into the garage. Since we were told we may have to do some work and believed at least one garage was fine, we attempted to accommodate his request and did inquire if one door was possible. Little did we know this was a trick by him to then use it against us as a way of saying we are trying to do new construction. We now realize he clearly did not care about the request but was just trying to set us up to argue against us.)**

\*\*\* An important thing to remember, Marc Bruno has lived here for 30 years and knew the history of the building, each of the previous owners of the building, all of the prior construction work done to the building and chose to only make complaints against us after he perceived he was disrespected by the Real Estate agents that were selling us the building. This has weirdly become a personal crusade by him against us to the point that he has shouted at my wife on the street and made derogatory comments.

**4. The procedural history of how we got here.**

On or about May 17, 2016, Marc Bruno complained that work was currently being done on the property without a permit. This was cleared as a false claim by DBI on June 6, 2016 date.

On May 31, 2016, we purchased the property.

On or about June 2, 2016, Marc Bruno complained that the garage doors (which had existed for approximately 20 years) were put in without a permit. We received notice of this sometime thereafter.

During the month of July 2016, we conferred with various people and were led to believe that at least one of the pre-existing garage doors was permitted and we would need to file a permit to clear up the other one since it was built before any restrictions; and thus should be grandfathered in.

From approximately September of 2016 to May of 2017, we attempted to work with DBI and the Planning Department to clean up all aspects of the file with both departments. Everyone at both DBI and Planning was very professional and supportive. Ultimately, we were left with the impression that they felt that due to the current rules there was not a clear way to fix the issue and they would have to deny us the permit at this stage and have us go to the Board of Appeals to address the issue. As one person put it, our situation falls in between the cracks and there are no specific regulations to deal with our situation. During this time, Mr. Bruno was attempting to make things as difficult and as expensive as possible.

On May 8, 2017, the Planning Department denied the permit to clear up the garage issue and said there was no direct evidence of a permit for either garage; that the current rules do not permit a garage and that we would have to go to the Board of Appeals because they were the only body that could decide how to deal with the issue since it was all preexisting and would have been approved at the time it was done along with the other permits that were obtained for the work done at the same time.

On July 12, 2017, we had our first hearing before the Board of Appeals where we were told that because of the confusion in the permitting for the work at the time and the appearance of permits that show plans for at least one garage that we would be able to keep one garage door and would have to seal up the other garage door. However, this was conditioned on the building being exempt in the historic review under CEQA. At that time, Planning explained that they had already done a preliminary review and believed it was exempt.

On September 13, 2017, we had our second hearing before the Board of Appeals. The Planning Department confirmed that the building was not designated as historic under the Upper Grant Avenue Historic District designation and was Categorical Exempt under CEQA, so the board voted to allow us one garage door because of the confusion in the file and that there were plans and other permits that were connected to the garage which showed at the time one was believed to be legal and that was the intent. The board required us to close up the other garage door so that there is only one garage door.

On September 27, 2017, Mark Bruno filed an appeal of the CEQA exemption, i.e., did the Planning Department have proper evidence to support their decision that the building is exempt from the Upper Grant Avenue Historic District designation which is the specific matter that is now before the Board of Supervisors.

**5. The Planning department during their CEQA review properly determined that the building was not designated as a historic building and therefore exempt.**

Contrary to Mr. Bruno's assertions that the Planning Department has ignored basic concepts of review for the determination of whether a Categorical Exemption to CEQA applies in this case, the Planning Department has explained its rationale and basis for its determination. Mr. Bruno chooses to ignore certain aspects to try and craft an argument that is not supported by the facts.

First, Mr. Bruno is aware that on May 8, 2017, the Planning Department determined that 20 Nobles Alley was not part of the historic designation for the North Beach neighborhood. As stated by the Planning Department reviewer:

**“CEQA – Historical Review**

The North Beach Neighborhood was surveyed in 1982 to identify cultural resources of significance in the area. The findings of the North Beach survey, which was adopted by the Board of Supervisors in 1999, included areas within the neighborhood that qualified for designation in the California Register of Historic Resources. The subject property at 20 Nobles Alley is located within the boundaries of the Upper Grant Avenue Historic District, but was not found to be a contributing building to the district at the time of the survey due to its extensive alterations.”

By Mr. Bruno's own admission, the most significant alteration that occurred to this building occurred in 1959. Someone who Mr. Bruno knows and has encouraged to object to our situation is the former owner of the building Mr. Yee. It is Mr. Yee's family who applied stucco to the front of the building at 20 Nobles Alley in July of 1959. The work was permitted and completed with the approval of the Department of Public Works. (As verified on the 3R report). This significant change to the building's exterior completely altered the façade of the building so that it no longer matched that of the historic buildings in North Beach. This fact is not denied by Mr. Bruno and is in fact confirmed by him. This evidence alone confirms that the Planning Department is correct that this building is not a historic building and explains why 20 Nobles

Alley was never designated as historic in the 1982 North Beach Neighborhood Survey that was adopted by the Board of Supervisors in 1999 for the very purpose of this type of CEQA review.

Second, as the Planning Department explained we are not trying to do any work. The proposal, as approved by the Board of Appeals, is to remove some features, a garage door and a window, that were changes done prior to the historic designation in the neighborhood and apparently after various permits were obtained to do work on the building. We do not want to do any work and are not proposing doing any new work. The work that is currently at issue is necessitated by Mr. Bruno and necessitated to meet the requirements of the Board of Appeals. Mr. Bruno wants to argue that we should be deemed as doing new construction work so he can try and craft an argument for greater restrictions to be placed on us and use this as a justification for forcing more changes to our building. This is contrary to the very rational behind the regulations. The regulations are to be used to make sure there are no new changes to buildings after the Historic District designations went into effect, not before the City established the Historic District designation. All the changes done to our building at issue here, were changes that existed prior to the North Beach Historic Designation adopted by the Board of Supervisors in 1999.

Under Mr. Bruno's logic, we should be forced to make all changes that would put the building back in an original historic state so that it can have a designation of Historic and then prevent any changes to the building that might have occurred in the past. The problem is that many legal changes occurred to the building long before any effort was made to create a historic district in North Beach which necessarily means the building would never have been designated as historic. The only way for the building to match the look and feel of the historic building in the neighborhood is if the entire façade of the three story building were to be altered from a stucco façade. This was a legal change to the front of the building that occurred over 50 years ago. This would be completely unfair and mean that the board would be forcing us to spend thousands of dollars to undue legal changes to the building that are over 50 years old.

Third, Mr. Bruno assertion that having a garage door on the alley is contrary to the historic look of the alley is false. Mr. Bruno knows that the current decision of the Board of Appeals to permit the one garage door to the side of the building that is less than 1/3 of the front of the building matches the façade of the building next to 20 Nobles Alley and directly across from his front door. This is the same basic size and configuration of what the Board of Appeals has determined is permissible at 20 Nobles Alley. It is important to note that Mr. Bruno has not objected to this garage because it is/or has been used by his friend. This is in fact believed to be a building that is part of the historic designation. See the attached photo. This demonstrates that Mr. Bruno's argument in this matter is not based on his concern for the neighborhood but selectively pursued for his own personal vindictive reasons.

The planning department's determination of Categorical Exemption and its application of the facts and standards were appropriate and rationally based. The legal changes of the building's exterior to stucco in 1959 and other subsequent changes forever changed the building so that it would not meet the historic designation. This fact was confirmed by the 1982 North Beach Neighborhood Survey that was adopted by the Board of Supervisors in 1999. To agree

with Mr. Bruno's requests would go against the Board's decision on how these issues were to be addressed when it made the decision to adopt the North Beach Neighborhood Survey. It would be an arbitrary application of the law that contradicts a prior determination by the Board of Supervisors.

**6. The neighbor, Marc Bruno, cannot meet the legal standard in this matter.**

When looking to determine if an appeal can even be granted, there is a high burden the appellant must meet. The general standard to be applied when reviewing an agency decision - is does the agency have substantial evidence to support its decision? Thus, the person appealing, Mr. Bruno, must demonstrate there is "no substantial evidence" to support the Planning Department's decision. This standard cannot be met here, since there is both evidence and a clear rational basis for the Planning Department's decision.

As explained above, the Planning Department clearly explained during the process of review and at the hearing that there were significant changes to the front façade of the building – turning it into a stucco façade rather than the historic horizontal wood board look, as well as other changes, which occurred long before the North Beach Historic District designation occurred. These changes meant the 20 Nobles Alley building would not satisfy the general requirements for a historic designation. The department does not look retrospectively at what changes can we make someone do to "become historic" and then retroactively force those changes onto a property owner. Thus, when reviewing this building the department rationally looked at when the changes were made and if they pre-existed the designation. To support these conclusions, the Planning Department as part of its process reviewed the 1982 North Beach Neighborhood Survey that was adopted by the Board of Supervisors in 1999 for the very purpose of determining if a North Beach building was considered to be of historic significance to be designated by the City as having a historic designation for the purpose of this type of CEQA review. In this case, 20 Nobles Alley building was not considered to be of historic significance. As a result of the Board approving this survey in 1999, it has necessarily determined that the 1982 Survey acts as a rational basis and substantial evidence to support a Planning Department's decision. Thus, to grant Mr. Bruno's appeal would be to contradict the specific determination of the Board of Supervisors in 1999 that this survey would act as substantial evidence for the Planning Department when determining whether a building in North Beach would receive a Categorical Exemption under CEQA.

Further, the appellant in this situation cannot satisfy a "fair argument" challenge, since such a challenge requires a showing that there is "substantial evidence" to contradict the agencies determination. Under some circumstances, that do not exist here, an appellant can argue that there is such a significant change proposed by new construction that it alters a property's designation as Categorically Exempt. Under these circumstances, a complaining party can argue that an agency that does no independent analysis can have a designation of Exemption attacked.

Here, this would require the Board to determine that the 1982 survey approved by the Board in 1999, somehow ignored relevant evidence, when making its determination. This does

not exist here, since the Planning Department also determined that the façade on the front of the building has had substantial alterations changing it so that it no longer has a historic look.

In addition, the guidelines for when a “fair argument” attack can be made is premised on the idea that the proposed changes or alteration to the property present a “new condition” that so alters the property that a categorical exemption must be independently reviewed. We do not have that situation here, since there is no change being proposed. Since all changes to the building 20 Nobles Alley existed before the designation of the North Beach Historic District and the subsequent changes to the building codes in this district, there is no new condition that can be raised to support a “fair argument” attack. Rather, the only changes that are requested by the Board of Appeals are to remove one garage door and a window which is returning it to the same look as existed on plans that were previously approved and maintained by the City in the file for this building from 1997.

Lastly, Mr. Bruno has made many miss-statements and inappropriate attacks on the Planning Department staff. To accuse the Planning Department staff of doing no review and then intentionally leaving out their analysis in assessing the application of the Categorical Exemption that contradicts his myopic view should not be permitted. This is another example of how Mr. Bruno attempts to manipulate the system.

**7. Conclusion**

While Mr. Bruno attempts to describe complicated nefarious actions by everyone involved, this is really a very simple issue before this body. Is there substantial evidence to support the Planning Department’s decision that 20 Nobles Alley is not a designated historic building as part of the North Beach Historic District and thus Categorically Exempt for the purpose of a CEQA review? As demonstrated above, the Planning Department did its own independent review and determined that there were significant changes to the front façade of the building that would contradict an historic designation and also relied on the Board of Supervisors designation of historic buildings in North Beach pursuant to the 1982 Survey. Both of these facts demonstrate that there is substantial evidence to support their determination that the building at 20 Nobles Alley should have a Categorical Exemption for the purpose of CEQA review and this Appeal should be denied.

Thank you for your consideration,



Eustace de Saint Phalle



