

Russian Hill Community Association

1166 Green St. San Francisco, CA 94109 510-928-8243 rhcasf.com

November 22, 2017

President London Breed and
Members of the Board of Supervisors
City and County of San Francisco
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: 948-950 Lombard/841 Chestnut Streets
BOS File No. 171062 Planning Department Case No. 2017-002430CUA
Hearing Date: December 5, 2017
Brief in Support of Appeal

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BOARD OF SUPERVISORS
SAN FRANCISCO
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Dear President Breed and Members of the Board of Supervisors:

The only reason the tragic loss of the historic Willis Polk residence at 841 Chestnut is before the Board of Supervisors is because the Project Sponsor requested that two lots be merged.

There is no question that without this request to merge lots 0067/010 and 017, triggering a Conditional Use subject to public comment, the Community would not have an opportunity to call the Board's attention to flaws in the Department of Building Inspection and Planning Department procedures that put this and other historic resources in jeopardy, as well as gross oversights in the Planning and Building Codes that allowed the demolition of this and other properties.

If not for this lot merger request, the destruction of a Willis Polk building would have "flown under the radar."

As the attorney for the Project Sponsor notes "The CU Appeal is about the merger of the two existing parcels at the Property allowing two existing units to remain on the merged lot and it cannot be extended to anything else beyond that."¹

The Russian Hill Community Association agrees. However, we contend that if the Planning Commission had reviewed the lot merger request within the full context of the Project's history, particularly since the purchase by the Project Sponsor in 2012, the request for a lot merger would have been denied or, at a minimum, appropriate conditions would have been imposed. So for the reasons stipulated below, the Russian Hill Community Association respectfully requests that the Board of Supervisors disapprove the Conditional Use Authorization approving the merger of the two lots.

This Project exemplifies many of the wrongs in the City's Planning process, particularly in the area of demolitions and alterations. This Project is a poster child for the failure of the City as stewards for historic and significant resources.

¹ Brief in Opposition October 20, 2017 p. 4

We ask the Board to recognize that granting a lot merger completes this Project's process of ongoing Planning Code violations, from the time the Project Sponsor purchased the property in 2012. And of all the violations, the intentional and illegal demolition of a significant historic resource is the worst.

What emerges from a review of the Project at 948-950 Lombard/841 Chestnut are certain factors that are endemic in today's Planning Process.

- 1) Illegal demolition or significant illegal alteration. Work done without a permit or beyond the scope of the permit with planned after-the-fact legalization.
 - a. When gain exceeds the pain, illegal demolition is increasingly part of a developer's playbook.
 - b. 841 Chestnut was purchased on September 12, 2012 for \$4.5 Million and appraised on November 16, 2016 at \$30.2 Million.
- 2) Lack of common definitions and approaches in Planning Code and Building Code. Lack of coordination between Planning and DBI.
 - a. Building Code and Planning Code have different definitions of "demolition". Building Code Section 103 A.3.1 prohibits replacement construction on a site of an illegally demolished structure for 5 years, and also calls for a fine against the contractor. BUT only if the demolition fits the Building Code definition. This demolition used the Planning Code's definition.
 - b. Add 5 year Moratorium to Planning Code. No exemptions for historic resource.
- 3) Lack of comprehensive, transparent and publicly accessible procedures.
 - a. Demolitions under Section 317 require 311 Notice to the public.
 - b. With almost jesuitical precision, the Code Sections treating "demolitions" and "public notice" (Section 317 and Section 311) are aligned with the result that "Building permit notification, exemptions" was used to justify lack of public notice.
 - c. Public deprived of right to receive a 311 Notice and file a DR request with opportunity to comment at public hearing and for Planning Commission to determine permit's disposition.
- 4) Lack of transparent procedures, protocol, policies puts Zoning Administrator in potentially compromising position
 - a. Combining the Settlement with the approval of a demolition permit in the same document as the penalty is tantamount to legitimatizing pay for play and a quid pro quo at the public's expense.
 - b. No stipulation as to the approval chain for the Settlement puts all responsibility on the ZA.
- 5) Lack of protection for historic resources.
 - a. Of the \$400,000 penalty, \$80,000 went to the City Attorney's Prop 64 Special Fund, \$20,000 to the Department of Building Inspection and \$300,000 to the Planning Department's Code Enforcement Fund.
 - b. The Code Enforcement Fund's use is currently restricted to sign regulations.
 - c. A better use of the funds is the Historic Preservation Fund Committee, established by the settlement of the Emporium demolition. Here there is a clear nexus between the harm done and how the funds are used.

In the Introduction of the Complaint for Injunctive and Other Relief [EXHIBIT A] filed with the Superior Court of California, the San Francisco City Attorney states "This action arises out of Defendant's

unlawful and unfair business practices in the ownership and maintenance of a historic single family home. Defendant is a real-estate holding company. Defendant purchased the home in 2012 to renovate it and then sell it for profit.” The Introduction continues “Defendant’s illegal removal of the home’s exteriors violates San Francisco’s Planning Code and constitutes an unlawful and unfair business practice...Defendant’s illegal removal has also permanently destroyed a historic resource.”²

Under General Allegations, the Complaint continues:

“Historical resources represent ‘the contributions and collective human experiences of a diversified population’ and ‘provide continuity with our past and enhance our quality of life.’ The City and County of San Francisco is committed to the preservation of significant and cultural properties in San Francisco...The property in question is a single family home located at 841 Chestnut Street...the PROPERTY is one of the few single family homes designed by preeminent San Francisco architect Willis Polk...Based on its provenance, the PROPERTY is eligible for listing on the California Register of Historic Places and any work done on the exterior of the PROPERTY is subject to review under the California Environmental Quality Act (“CEQA”).”³

In her “Historical Report Response Memo” [EXHIBIT B] the Preservation Planner notes “The proposed project can no longer be evaluated for CEQA compliance, as the excavation and demolition of the historic resource have been completed.” The Preservation Planner also challenges the report by Carey & Company dated March 23, 2017 evaluating the property for compliance with the *Secretary of the Interior’s Standards for Reconstruction*. She states unequivocally “The [Planning] Department finds that this is not an appropriate application of the *Standards*...Applying the *Reconstruction Standards* negates the importance of the CEQA procedure and the *Standards*, which always prioritize preservation and restoration of original historic materials over reconstruction.”⁴

The Preservation Planner goes on to say “No evidence of significant deterioration was ever provided by the project sponsor for review by the Planning Department.”⁵

The Conditional Use Authorization for the lot mergers was NOT part of the Settlement.

Approval of a Conditional Use request depends on findings that the proposed use is necessary or desirable to the neighborhood, whether it may potentially have a negative impact on the surrounding neighborhood, and whether the use complies with the San Francisco General Plan.

The Russian Hill Community Association contends that the lot merger may have a potential negative impact on the surrounding neighborhood:

- Since no conditions were put on the merger and since the Project Sponsor is a real-estate holding company which purchased the property in 2012 with the intention of renovating 841 Chestnut and then selling it for a profit, nothing prevents the Project Sponsor from sub-dividing the merged lot in the future to add an additional residence, resulting in three homes on land zoned for just two.
- Sub-dividing lots does not generally require public notice so this or similar actions could be done with no public notice.

² Complaint for Injunctive and Other Relief Superior Court of California CGC-17-559412 Introduction p. 2

³ Complaint for Injunctive and Other Relief Superior Court of California CGC-17-559412 General Allegations p. 3

⁴ Historical Report Response Memo Case No 2017-001787PR June 19, 2019 p. 5

⁵ Historical Report Response Memo Case No 2017-001787PR June 19, 2019 p. 6

- There are alternatives to achieve the stated goal of access, i.e., an easement.

The question remains – Why the lot merger? Rather than protecting the remaining historic cottage as the Planning Commission thought possible, the lot merger will only provide the Project Sponsor with additional ways to extract additional profit from his investment.

Until such time as the Project Sponsor can demonstrate that the lot merger will not adversely affect the surrounding neighbors and will not be a jumping off point for further illegal activities, than the public and the existing historic cottage are at risk. The Project Sponsor has demonstrated that he is NOT a capable steward of a historic resource. This is reason enough to believe that this proposed lot merger will further damage the remaining historic resource.

Therefore, the Russian Hill Community Association urges the Board of Supervisors to consider all aspects of this Appeal and disapprove the Conditional Use Authorization allowing the merger of two lots and approve the Appeal before you now.

Sincerely,


Kathleen Courtney
Chair, Housing & Zoning Committee
kcourtney@rhcasf.com

cc: Jamie Cherry, Jeff Cheney, John Borruso, RHCA; San Francisco Heritage,
The Little House Committee

EXHIBIT A

COPY

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7

ENDORSED
FILED
San Francisco County Superior Court

JUN 07 2017

CLERK OF THE COURT
NEYL WEBB
BY: Deputy Clerk

8 Attorneys for Plaintiffs
CITY AND COUNTY OF SAN FRANCISCO and
9 PEOPLE OF THE STATE OF CALIFORNIA

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO
12 UNLIMITED JURISDICTION
13

14 CITY AND COUNTY OF SAN
FRANCISCO, a Municipal Corporation, and
15 the PEOPLE OF THE STATE OF
CALIFORNIA, by and through Dennis J.
16 Herrera, City Attorney for the City and County
of San Francisco,

17 Plaintiffs,

18 vs.

19 EIGHT FORTY ONE LLC, DOE 1 through
20 DOE 50,

21 Defendants.
22
23

Case No.

CGC-17-559412

COMPLAINT FOR INJUNCTIVE AND OTHER
RELIEF

Type of Case: (42) Other Complaint

24 The CITY AND COUNTY OF SAN FRANCISCO and PEOPLE OF THE STATE OF
25 CALIFORNIA, by and through San Francisco City Attorney DENNIS J. HERRERA file their
26 Complaint against Defendant EIGHT FORTY ONE LLC, and DOE ONE through DOE FIFTY.
27 Plaintiffs hereby allege as set forth below:
28

INTRODUCTION

1. This action arises out of Defendant's unlawful and unfair business practices in the ownership and maintenance of a historic single family home. Defendant is a real-estate holding company. Defendant purchased the home in 2012 to renovate it and then sell it for profit.

2. Because the home in question had previously been designated as a historic resource, permits for renovation went through a lengthy and extensive review process. The permits were ultimately issued on the condition that Defendant retain the majority of the home's exteriors. In the spring of 2016, however, Defendant removed all of the home's exteriors resulting in a de facto demolition.

3. Defendant's illegal removal of the home's exteriors violates San Francisco's Planning Code and constitutes an unlawful and unfair business practice in violation of the Unfair Competition Law, as codified in California Business and Professions Code Sections 17200-17210 ("UCL"). Defendant's illegal removal has also permanently destroyed a historic resource.

PARTIES

4. Plaintiff CITY AND COUNTY OF SAN FRANCISCO is a consolidated charter city and county under the laws of the State of California. The City brings this action under San Francisco Planning Code section 176, and California Civil Code section 3494.

5. Plaintiff PEOPLE OF THE STATE OF CALIFORNIA, by and through Dennis J. Herrera, City Attorney of the City and County of San Francisco, brings this action pursuant to California Business and Professions Code sections 17200 and 17204, California Civil Code section 3494, and California Code of Civil Procedure section 731.

6. Defendant EIGHT FORTY ONE LLC ("DEFENDANT") is a limited liability, real-estate investment company and the owner of property located at 841 Chestnut Street, San Francisco, California and at 950 Lombard Street, San Francisco, California.

7. Defendants DOE ONE through DOE FIFTY are sued herein under fictitious names. Plaintiffs do not at this time know the true names or capacities of said defendants, but pray that the same may be alleged herein when ascertained.

8. At all times herein mentioned, each DEFENDANT was an agent, servant, employee, partner, franchisee and joint venturer of each other DEFENDANT and at all times was acting within the course and scope of said agency, service, employment, partnership, franchise and joint venture. Actions taken, or omissions made, by DEFENDANT's employees, members or agents in the course of their employment, membership or agency for DEFENDANT are considered to be actions or omissions of DEFENDANT for the purposes of this Complaint.

GENERAL ALLEGATIONS

9. Historical resources represent “the contributions and collective human experiences of a diversified population” and “provide continuity with our past and enhance our quality of life.”¹ The City and County of San Francisco is committed to the preservation of significant and cultural properties in San Francisco.

10. The property in question is a single family home located at 841 Chestnut Street, in San Francisco, California ("PROPERTY") and more particularly described in Exhibit A, which is attached hereto and incorporated as part of this Complaint.

11. Built in 1908, the PROPERTY is one of the few single family homes designed by pre-eminent San Francisco architect Willis Polk. Polk is renowned for designing numerous San Francisco landmarks such as the Flood Mansion, the Merchants Exchange Building, Kezar Stadium, and the Hallidie Building. Based on its provenance, the PROPERTY is eligible for listing on the California Register of Historic Places, and any work done on the exterior of the PROPERTY is subject to review under the California Environmental Quality Act ("CEQA"). CEQA provides the legal framework by which historical resources are identified and given consideration should a party desire to alter or remove the resource.

12. In October 2011, the prior owners of the PROPERTY obtained a permit to renovate the PROPERTY. Because of the PROPERTY's historic nature, the prior owners agreed to retain the PROPERTY's exteriors, including the windows.

¹ California Office of Historic Preservation.

1 13. In 2012, DEFENDANT purchased the property for \$4.5 million dollars. In 2014,
2 DEFENDANT obtained a revision to the 2011 permit to renovate the PROPERTY. The 2014 permit
3 still contained a specific provision that the facades on the northeast and west exteriors, including the
4 windows, would be preserved.

5 14. Sometime between April 2016 and June 2016, DEFENDANT removed all of the
6 PROPERTY's exterior walls and windows, resulting in a de facto demolition.

7 15. The San Francisco Department of Building Inspection ("DBI") discovered the
8 demolition of the exterior in June 2016 and issued a Notice of Violation ("NOV") for work exceeding
9 the scope of the permit on June 9, 2016. In the NOV, DBI noted that, "demolition has been done that
10 was not authorized by previous permits." A true and correct copy of the June 9, 2016 NOV is attached
11 as Exhibit B and incorporated as part of this Complaint.

12 16. On June 9, 2016, and then again on June 15, 2016, DEFENDANT applied for a permit
13 from DBI to remove dry rot and compromised framing from the exterior of the PROPERTY, in effect
14 seeking to acquire a permit for unauthorized destruction of the exterior that DEFENDANT had already
15 accomplished. Buried in tiny lettering in the drawing attached to the permit application was language
16 contemplating the replacement of the exterior. The permit application should have been referred to the
17 San Francisco Planning Department ("PLANNING DEPARTMENT") for review. It was not, and
18 DBI issued the permit for the already-completed destruction of the exterior, in error.

19 17. In July 2016, the PLANNING DEPARTMENT discovered the unauthorized
20 destruction of the exterior when it received a complaint from the public about the demolition of the
21 PROPERTY. In response, the PLANNING DEPARTMENT contacted DEFENDANT concerning the
22 illegal demolition. Between July 2016 and November 2016, the PLANNING DEPARTMENT
23 communicated with DEFENDANT and its counsel related to the illegal demolition. On November 22,
24 2016, the PLANNING DEPARTMENT sent a letter to DBI requesting that the June 2016 permits be
25 suspended. Both DEFENDANT and their counsel also received this letter. A true and correct copy of
26 the November 22, 2016 letter is attached as Exhibit C and incorporated as part of this Complaint.

1 18. On November 30, 2016, the PLANNING DEPARTMENT issued a "Notice of
2 Enforcement" against DEFENDANT. In the Notice, the PLANNING DEPARTMENT required
3 DEFENDANT to submit a revised permit, demolition calculations, and a historic resource report.

4 19. Despite the suspension request, DEFENDANT continued rebuilding the demolished
5 exteriors of the PROPERTY. On February 9, 2017, DBI issued a NOV against DEFENDANT for
6 continuing construction at the PROPERTY despite the PLANNING DEPARTMENT's suspension
7 request. In the NOV, DBI ordered all work to be stopped until reinstated by the PLANNING
8 DEPARTMENT. A true and correct copy of the February 9, 2017 NOV is attached as Exhibit D and
9 incorporated as part of this Complaint.

10 20. Had DEFENDANT attempted to legally remove the exteriors of the PROPERTY,
11 DEFENDANT would have been required to file a permit, pay for an Environmental Impact Report,
12 and undergo rigorous review by the PLANNING DEPARTMENT *prior* to any actual demolition. By
13 illegally destroying the PROPERTY, DEFENDANT avoided additional fees and costs, as well as
14 delays associated with permit review.

15 **FIRST CAUSE OF ACTION**
16 **FOR VIOLATIONS OF THE SAN FRANCISCO PLANNING CODE BROUGHT BY**
17 **PLAINTIFF CITY AND COUNTY OF SAN FRANCISCO AGAINST DEFENDANT**
18 **(SAN FRANCISCO PLANNING CODE SECTIONS 174, 176)**

19 21. Plaintiff City and County of San Francisco (the "CITY") hereby incorporates by
20 reference paragraphs 1 through 20 above, as though fully set forth herein.

21 22. The permit to renovate the PROPERTY was conditioned on, *inter alia*, the exterior
22 walls and windows remaining intact.

23 23. Planning Code section 174 mandates that every "condition, stipulation, special
24 restriction and other limitation imposed by administrative actions pursuant to this Code . . . shall be
25 complied with in the development and use of land and structures." Failure to comply with any such
26 condition "shall constitute a violation of the provisions of this Code."

27 24. By demolishing the PROPERTY's exterior walls and windows, DEFENDANT failed to
28 comply with the conditional uses and restrictions imposed on the PROPERTY under the 2014 permit.

1 prohibited by the UCL. Specifically, by demolishing the PROPERTY without permit and the
2 PLANNING DEPARTMENT's oversight, DEFENDANT avoided the costs, fees and delays
3 associated with this process which they would not have avoided if they had complied with the law.

4 31. As a direct and proximate result of the foregoing acts and practices, DEFENDANT has
5 obtained an unfair advantage over similarly-situated individuals who have not engaged in such
6 practices.

7 32. The PEOPLE have no adequate remedy at law in that damages are insufficient to
8 protect the public from the harm caused by the conditions described in this Complaint.

9 33. Unless injunctive relief is granted to enjoin the unfair and unlawful business practices
10 of DEFENDANT, the People will suffer irreparable injury and damage. Accordingly, the PEOPLE
11 seek to enjoin DEFENDANT from further expanding the footprint of the buildings already located on
12 the PROPERTY, enjoin DEFENDANT from exceeding the scope of permits already issued to
13 DEFENDANT, require that all construction at the PROPERTY going forward be done with permits,
14 and require DEFENDANT to obtain approval from the PLANNING DEPARTMENT before obtaining
15 any additional permits or modifying, amending, altering or changing any aspect of an already-issued
16 permit.

17 34. By engaging in unfair and unlawful business practices described herein, DEFENDANT
18 is subject to civil penalties in the amount of up to \$2,500.00 per violation, pursuant to California
19 Business and Professions Code Section 17206.

20 **THIRD CAUSE OF ACTION**
21 **FOR PUBLIC NUISANCE BROUGHT BY PLAINTIFF CITY AND COUNTY OF SAN**
22 **FRANCISCO AGAINST DEFENDANT**

23 35. The CITY incorporates by reference paragraphs 1 through 34, above, as though fully
24 set forth herein.

25 36. The CITY brings this cause of action under California Civil Code section 3494,
26 California Code of Civil Procedure section 731, and Planning Code section 176.
27
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37. As described above, DEFENDANT is now, and for a considerable period of time has been, using or maintaining the PROPERTY in violation of the San Francisco Building and Planning Codes, by illegally demolishing the exteriors of this historic resource.

39. Pursuant to San Francisco Planning Code section 176, any use, structure, lot, feature, or condition in violation of the Planning Code is unlawful and a per se public nuisance.

41. Unless said nuisance is abated, the citizens of the City and County of San Francisco will suffer irreparable injury.

PRA YER

Declaratory Relief

2. DEFENDANT be declared to have violated San Francisco Planning Code section 174;

1 3. The PROPERTY be declared a public nuisance to be permanently abated in accordance
2 with Planning Code section 176, and Civil Code section 3479.

3 **Injunctive Relief**

4 4. DEFENDANT be enjoined and restrained from continuing to own and maintain the
5 PROPERTY in violation of the law;

6 5. DEFENDANT be enjoined from committing unlawful and unfair business practices in
7 the use and maintenance of the PROPERTY;

8 6. DEFENDANT be enjoined from spending, transferring, encumbering, or removing
9 from California any money received for the unfair and unlawful acts alleged in the Complaint;

10 7. DEFENDANT be enjoined from further expanding the footprint of the buildings
11 already located on the PROPERTY;

12 8. DEFENDANT be enjoined from exceeding the scope of permits already issued to
13 DEFENDANT;

14 9. DEFENDANT be required to obtain approval from the PLANNING DEPARTMENT
15 before obtaining any additional permits or modifying, amending, altering or changing any aspect of an
16 already-issued permit.

17 10. DEFENDANT be ordered to restore to any person in interest any money or property,
18 real or personal, which may have been acquired by means of unfair competition, including the City
19 and County of San Francisco, pursuant to California Business and Professions Code Section 17203
20 and *People v. Beaumont Investment, Ltd., et al.* (2003) 111 Cal.App.4th 102, 134-136;

21 **Penalties**

22 11. Pursuant to Business and Professions Code Section 17206, DEFENDANT be ordered
23 to pay a civil penalty of up to \$2,500.00 for each act of unfair and unlawful competition in violation of
24 Business and Professions Code Sections 17200-17210;

25 12. Pursuant to Planning Code section 176(c)(2) and 176(f), DEFENDANT be ordered to
26 pay daily penalties of at least \$200 for violations of Planning Code section 174;

27 ///

28 ///

1 **Fees and Costs**

2 13. PLAINTIFFS be awarded reasonable attorney's fees and costs, including expert witness
3 fees, incurred in bringing this Action, pursuant to San Francisco Planning Code section 176;

4 14. PLAINTIFFS be awarded their costs incurred herein pursuant to Code of Civil
5 Procedure Section 1032 and San Francisco Planning Code section 176; and

6 15. Other and further relief as this Court should find just and proper.

7 Dated: June 8, 2017

8 DENNIS J. HERRERA
9 City Attorney
10 PETER J. KEITH
11 Chief Attorney
12 JENNIFER E. CHOI
13 Deputy City Attorney

14 By: 
15 JENNIFER E. CHOI

16 Attorneys for Plaintiffs
17 CITY AND COUNTY OF SAN FRANCISCO and
18 PEOPLE OF THE STATE OF CALIFORNIA
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INDEX TO EXHIBITS

Exhibit Description

- A Property Description for Parcel One: 950 Lombard Street, San Francisco, California, and Parcel Two: 841 Chestnut Street, San Francisco, California
- B June 9, 2016, NOV – Complaint No. 201612474
- C November 22, 2016, Planning Department Suspension Request re: Building Application No.: 201606159992, 201606099584
- D February 9, 2017, NOV – Complaint No. 201761801

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EXHIBIT B



SAN FRANCISCO PLANNING DEPARTMENT

MEMO

Historical Report Response Memo

Preservation Planner: Alexandra Kirby
(415) 575-9133
alexandra.kirby@sfgov.org
Project Address: 841 Chestnut Street (950 Lombard Street)
Block/Lot: 0067/010 (017)
Case No.: 2017-001787PRJ
Related Cases: 2009.0801E, 2002.0929E
Date of Review: June 19, 2017

PROJECT EVALUATION, POST DEMOLITION

Per Drawings Dated: May 22, 2017

Project Description:

The current proposal is to address all completed work that has proceeded without the benefit of Planning Department-approved plans or entitlements. The project shall address the demolition of a historically significant single-family dwelling designed by Willis Polk and constructed circa 1908, and its reconstruction, which was not submitted to the Planning Department for CEQA review per standard procedure. This report shall serve to memorialize the project history and the completed scope of work prior to the current Building Permit Application (2017.01.26.8001). This includes wholesale reconstruction of the historic structure within its original footprint in all new materials.

Project History:

The original proposed project under Case No. 2002.0929E involved the relocation of the rear dwelling ("cottage") unit at 950 Lombard Street; excavation and construction of a new garage into the hillside on the Chestnut Street frontage; removal of the non-original addition and minor alterations on the south elevation of the house; and other alterations such as window replacement and a new terrace and railings.

Under this review it was determined by Department staff that the subject building at 841 Chestnut was historically significant under Criterion 3 (Architecture) as a notable work by a master architect, Willis Polk, while he served as head of the San Francisco Office of D.H. Burnham & Co. The property was exemplary of the First Bay Tradition architectural style, and one of two known examples of Polk's "rustic city house" designs in San Francisco, also demonstrated at 1013 Vallejo, where the architect resided in the late 19th century.

The project at 841 Chestnut Street was later revised under Case No. 2009.0801E, proposing to construct the same sub-grade garage and elevator shaft on the Chestnut Street frontage; replace the brick foundation; remove the existing non-historic addition to the south; construct a new rear horizontal

addition; infill a non-historic exterior door and a non-historic window opening; and create a new exterior door opening on the east elevation. Under this review the historic cottage was proposed to remain in place. This work was permitted under Building Permit Application Number 2002.05.23.7379, which was approved by the Planning Department on March 9, 2011, and issued by the Department of Building Inspection on October 11, 2011.

On February 12, 2014, the project scope was revised under Building Permit Application ("BPA") Number 2014.02.05.7897 to "retain the north, east, and west facades"; complete an extensive interior renovation; relocate the below-grade garage and entrance; and expand the proposed basement from 1,114 square feet to 3,495 square feet. This project was determined to be exempt from further CEQA review as a revision to the prior evaluations. The structural permit for this proposal was inconsistent with the site permit, noting that all framing would be new.

On May 13, 2015, the Department of Building Inspection ("DBI") issued a Notice of Violation (201547651), citing that the extensive excavation would require a shoring permit, as noted in BPA 2014.02.05.7897. BPA 2015.05.26.7119 was submitted to address the shoring plans and BPA 2015.07.23.2229 was issued without Planning Department review to show removal of all interior walls as "a clarification of extent of demolition" from the previously approved plans. Three additional complaints were filed with DBI in October of 2015 regarding rockslides, compromised excavation work, life safety and trespassing.

On May 12, 2016, a new permit was filed to install new skylights in the historic roof under BPA 2016.05.05.6707. This scope was determined to be exempt from CEQA review.

On April 21, 2016, an additional complaint was filed on the property regarding work beyond scope of permit. On May 19, 2016, DBI issued a Notice of Violation in response to the concern regarding exceeding the permitted scope of demolition at the site. June 9, 2016, BPA 2016.06.09.9584 was issued with an engineer's notice and no plans; the scope of work reads: "remove additional dryrotted (sic.) & compromised framing necessary to execute approved plans. No changes to approved design proposed." On June 15, 2016, revision permit number 2016.06.15.9992 was submitted with one sheet of plans illustrating the full removal of all historic material including floor plates and framing. The plans were approved by DBI without Planning review or approval. All plans stated, erroneously, "No changes to approved design." At the time all plans were submitted, the property had been effectively demolished, all permits were filed to correct the record.

On July 6, 2016, a complaint was filed with the Planning Department (case no. 2016-008722ENF) citing the possible demolition of a historic resource without Planning Department approval. Staff conducted a site visit on November 8, 2016, where it was determined that the building was composed of all new framing and sheathing. On December 30, 2017, a revised set of plans were provided via email to the Department clarifying the completed scope of demolition. A formal set of the subject Building Permit Application (2017.01.26.8001) was filed on January 26, 2017. At this time it was determined that the sponsor had exceeded the scope of work approved by Planning at the site as well as the approved scope of work reviewed under CEQA. Further, two additional CEQA Categorical Exemptions were filed on the additional permits at the site. The potential cumulative impacts for the project have never been assessed.

BUILDING AND PROPERTY DESCRIPTION

The entire project site at 841 Chestnut Street and 950 Lombard (Assessor's Block 0067, Lots 010 and 017) is approximately 9,480 square feet and located about mid-block on the block bounded by Lombard, Jones, Chestnut, and Leavenworth Streets in the Russian Hill neighborhood. The two parcels were historically one lot under one ownership. The project site is zoned RH-1 (Residential, House, One-Family) and is within a 40-X height and bulk district. The project site contains two residences: (1) 950 Lombard Street - a small one-story cottage on Lot 10 of Assessor's Block 0067 facing Lombard Street, constructed in 1907 and (2) 841 Chestnut Street - a larger two-story, single-family dwelling on Lot 17 facing Chestnut Street.

PRE-EXISTING HISTORIC RATING / SURVEY

Constructed in 1908, the subject building at 841 Chestnut Street is within an RH-1 (Single-Family, Residential) Zoning District. The subject building is listed in *Here Today* (page 279), a cultural resource survey and subsequent book of historic resources in San Francisco. *Here Today* identified this building as "an interesting shingle residence" designed by Willis Polk in 1908, while he headed up the San Francisco office of D.H. Burnham & Co. The primary residence at 841 Chestnut Street was evaluated as individually eligible for listing on the California Register of Historic Places under Criterion 3 (Architecture) by Planning Department Preservation staff under Case no. 2002.0929E and 2009.0801E, with a Period of Significance of 1908. The subject building is defined by the Planning Department as a "Category A" building, a known historic resource, for the purposes of CEQA review.

The cottage at 950 Lombard has never been formally evaluated for significance, nor was the landscaped setting in which the properties were set. According to the Historical Report provided by Carey & Company on April 25, 2017, the cottage was constructed in 1907 for owner Joanna Wright, widow of Selden S. Wright, after the original residence at 841 Lombard Street burned down in the 1906 fire. No permit history exists, and therefore the architect is not known; however, the reconstruction of 841 Chestnut Street by Willis Polk presumes that he may have been responsible for the design, which related to the aesthetic of the residence. A river rock chimney was added circa 1926, and a rear sauna area was added circa 1978. The 1926 chimney appears to have gained significance in its own right as a character-defining feature of the property.

Integrity is the ability of a property to convey its significance. To be a resource for the purposes of CEQA, a property must not only be shown to be significant under the California Register criteria, but it also must have integrity. To retain historic integrity a property will always possess several, and usually most, of the aspects. The subject property has retained integrity from the period of significance noted above:

Location:	<input checked="" type="checkbox"/> Retains	<input type="checkbox"/> Lacks
Association:	<input type="checkbox"/> Retains	<input checked="" type="checkbox"/> Lacks
Design:	<input type="checkbox"/> Retains	<input checked="" type="checkbox"/> Lacks
Workmanship:	<input type="checkbox"/> Retains	<input checked="" type="checkbox"/> Lacks

Setting:	<input type="checkbox"/> Retains	<input checked="" type="checkbox"/> Lacks
Feeling:	<input type="checkbox"/> Retains	<input checked="" type="checkbox"/> Lacks
Materials:	<input type="checkbox"/> Retains	<input checked="" type="checkbox"/> Lacks

The residence at 841 Chestnut Street no longer retains any integrity due to the demolition of the property. The property has lost the following aspects of integrity:

- **Design:** Design is the composition of elements that constitute the form, plan, space, structure, and style of a property. Although the final design of the reconstructed residence will strive to match the historic design of the property, the interiors will be entirely contemporary, the structure has radically changed due to the extensive excavation and modern code requirements for new construction and the style will read as a modern replica of the original Polk design.
- **Setting:** Setting is the physical environment of a historic property that illustrates the character of the place. Historically this property was set in a bucolic hillside that overlooked the San Francisco Bay with mature trees and an elevated garden area. In 1978 a pool was added in the middle of the lot, although it was later filled in, creating the terraced garden on the west half of the property. At the time of the most recent sale (2012), the mid-lot area was landscaped and features a greenhouse set to the west property line. All of the mid-lot area has been extensively excavated under the subject project, all mature trees and shrubs have been removed, and new non-native mature olive trees have been installed. Willis Polk designed residences in the "First Bay Tradition," characterized by their shingled exteriors and suburban settings. The new setting will clearly read as contemporary.
- **Materials:** Materials are the physical elements combined in a particular pattern or configuration to form the aid during a period in the past. All historic materials have been removed without adequate documentation or intent to retain. One notable loss is the removal of all of the original leaded windows.
- **Workmanship:** Workmanship is the physical evidence of the crafts of a particular culture or people during any given period of history. Willis Polk was known to be as much of an artist as an architect, and his buildings typically feature a high degree of workmanship by local craftsmen. This was demonstrated in the wood timber detailing such as the cornice and brackets on 841 Chestnut Street. It is unknown if the lost elements may have provided any evidence of the technologies and craft of the time of construction.
- **Feeling:** Feeling is the quality that a historic property has in evoking the aesthetic or historic sense of a past period of time. While the reconstructed residence will match the historic house in exterior design, all new materials and finishes will read as contemporary
- **Association:** the historic building was designed by Master architect Willis Polk and constructed in 1908. The proposed project would be a reconstruction of the residence effectively designed by Ken Lindsteadt Architects. No Historic American Building Survey (HABS) documentation was completed prior to the extensive excavation, below grade addition or demolition took place, so there is no high-quality record of the subject building other than early existing plans from the proposal, which do not appear to meet HABS standards. Due to the loss of all aspects noted above, this property no longer retains its integrity of association.

The property at 841 Chestnut Street does retain the integrity of location, as it is located at the same site. The cottage structure at 950 Lombard retains integrity of location, design and materials to some degree, feeling, and therefore association. The Period of Significance for the cottage (950 Lombard Street) is 1907 – 1926, its approximate date of construction to the completion of the chimney.

The character-defining features of 950 Lombard cottage include:

- One-story height;
- Rectangular massing;
- Shingle siding;
- Raised open porch;
- Hipped roof;
- Wood-framed double-hung and multi-lite windows;
- The chimney at the west façade was constructed circa 1926 and has gained significance in its own right as an age-eligible and character-defining feature.

The proposed project can no longer be evaluated for CEQA compliance, as the excavation and demolition of the historic resource have been completed. The below analysis reviews the partially completed project for compliance with the *Secretary of the Interior's Standards for Rehabilitation*, under which the project was previously reviewed in 2002 and 2009.

A report was submitted on March 23, 2017, by Carey & Company evaluating the property for compliance with the *Secretary of the Interior's Standards for Reconstruction*. The Department finds that this is not an appropriate application of the *Standards*, as the National Park Service states that Reconstruction may be considered as a treatment when "a contemporary depiction is required to understand and interpret a property's historic value; when no other property with the same associative value has survived; and when sufficient historical documentation exists to ensure an accurate reproduction." Reconstruction is predominantly applied as a standard for structures and properties that no longer exist at the commencement of a project, and should not be applied as a justification for the demolition of a resource unless clear evidence is provided to demonstrate that rehabilitation is not feasible. At that stage comprehensive documentation is typically required, including HABS photographs and scaled archival drawings as well as an in-depth preservation plan for any salvageable details and an interpretation plan to verify that the new structure is not misinterpreted as historic in the future. Applying the *Reconstruction Standards* negates the importance of the CEQA procedure and the *Standards*, which always prioritize preservation and restoration of original historic materials over reconstruction.

The Department finds that the project is not consistent with five of seven applicable aspects of the *Secretary of the Interior Standards for Rehabilitation (Standards)* and that it has caused a substantial adverse change in the resource such that the significance of the building would be materially impaired. The following is an analysis of the project per the applicable Standards. The Department's analysis was guided by a letter submitted by Carey & Company on March 23, 2017.

Standard 1.

A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.

While the historic residential use of the property is to be retained, the project significantly and adversely affected the significance of the property by removing and/or demolishing the distinctive materials and features such as siding, windows, brackets, and other finishes, as well as the spatial

relationships by completely altering the landscape in which the property was historically set due to extensive excavation, the addition of a below-grade carport and removal of the greenhouse. Therefore the project does not meet Standard 1.

Standard 2.

The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.

All distinctive materials and features have been removed and distinctive spatial relationships were significantly altered. The final structure will match the historic design in massing and finish, although all materials will be new. Therefore the project does not meet Standard 2.

Standard 3.

Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.

All exterior features are based on photographic documentation and/or retained historic features; therefore no conjectural elements are proposed.

Standard 5.

Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

All distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property and features have been removed. Therefore the project does not meet Standard 5.

Standard 6

Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.

No evidence of significant deterioration was ever provided by the project sponsor for review by the Planning Department. All proposed features will match the original historic features in design, texture and color to the greatest extent possible. Due to the complete removal of all historic materials, all replacement materials will be based on documentary and physical evidence. Therefore the project does not meet Standard 6.

Standard 9.

New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

F. Joseph Butler, AIA
324 Chestnut Street
San Francisco, CA 94133

22 November 2017

The Honorable London Breed, President
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett
San Francisco, CA 94103

Re: 948-950 Lombard/841 Chestnut Streets BOS File No. 171062
Planning Department Case No. 2017-002430CUA
Hearing Date: December 5, 2017 Brief in Support of Appeal

Dear President Breed:

Planning Code Section 303.(c) (1) requires that Conditional Use authorization be "necessary or desirable for, and compatible with, the neighborhood or the community". The loss of a Category A, known historic resource by Master Architect Willis Polk is neither necessary nor desirable. The resulting lot merger would paper over the City Agencies' mistakes, and increase handsomely the value of the property in question.

There is however no mention in the Planning Code of the Conditional Use process to paper over mistakes made by the Building and Planning Departments, let alone to reward and hush up their negligent Code enforcement issues arising from ever present scurrilous developers. How did this happen, what can we learn from these mistakes, and will we simply shelve the results as so often has happened in the recent past?

We are Here Today to once again decry the lack of response to the public's Building Department and Planning Department complaints, and a lack of interdepartmental coordination that could prevent recurrences of such demolitions. In spite of 50 years of identifying historic resources, and creating City Landmarks, there remains a strain of negligence on the City's part in enforcing our preservation ordinances, and protecting historic structures.

Planning Department

A decade ago, the Planning Department retained the Matrix Consulting Group to undertake an assessment of its existing business processes and staff capacity to implement **a rapid change management plan** to improve its overall operational effectiveness. (emphasis added)

The resulting Management Study of the Planning Department was made for the CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA (hereinafter "Report"). The

February 7, 2008 Draft of the Report was prepared by the Matrix Consulting Group, 2470 El Camino Real, Palo Alto, CA 94306 v. (650) 858 0507.

The Report identified a “Six Point Agenda for Change”, with Point #5:

“(5) Enhance the Management of the Code Enforcement Process”, and noted that: “The level of service provided by the Code Enforcement Section needs significant improvement.”

One of their findings and one of their recommendations in the February 7, 2008 Draft Report says it all:

“• 112 calendar days were required, at the average, to assign a case to a (Planning) Code Enforcement Officer. This is a lengthy amount of calendar days when compared to other cities with a population in excess of 100,000 provided by the International City/County Management Association Center for Performance Measurement. The Center for Performance Measurement reports that the average number of calendar days required from case initiation to the first non-inspection response (phone calls, postcards, door hangers, drive-by / windshield visual survey) for local governments with a population 100,000 and above ranged from 1 calendar day for nuisance complaints to 2.5 calendar days for housing complaints. Both of these results are significantly shorter than the amount of time required to assign a case to a Code Enforcement Officer in the Planning Department.

3.10

The Planning Department should develop and install a procedure for the first site visit of new cases by a Planner in the Code Enforcement Unit within five workdays of receipt of the new case by the Planner. The policy should include a requirement that the Notice of Alleged Violation is issued within two workdays following the site visit or that the case is closed if no violation was found.”

When a member of the public complained directly to Planning in 2016, it took Planning Staff 125 days to drive across 2 miles of San Francisco to see this site. Due to the fact that the 2015 complaint was made only to DBI, Planning never knew that “Front wall of building has no supports”. The lack of coordination with DBI, to protect this Historic Resource, meant that it took 545 days to make a site visit, from May 13th 2015 to November 8, 2016!, while the Contractor/Developer demolished the house in spite of Stop Work orders. What happened to the Report?

The text of the complaint 2015 47651 made on 5/13/15:

“Show on drawings amount of demo that is to be performed. A shoring permit is required for building. Front wall of building has no supports. Note on drawings indicates that a shoring permit is required before work is to start.”

Point #6 further illustrates the lack of emphasis on preserving historic resources:

(6) Improve the Management of Advanced Planning Projects within the Citywide Planning and Analysis Division.

The Citywide Policy and Analysis Division merited its own Chapter. On page 102 the Report notes that while 16% of the work hours of 30 FTE Staff were involved in interdepartmental agency coordination, there were apparently zero hours spent coordinating with DBI. Rather, the hours were spent working with a variety of other City agencies involved in producing the Neighborhood Plans.

While the Neighborhood Planning process requires the identification by survey of Historic Resources as defined by CEQA, like 841 Chestnut Street once was, there were no line items or mentions for such surveys. The interdepartmental coordination with DBI is not mentioned, as if there was no need for it to exist?

Building Department

- Permit Application # 2014 02 05 7897 was submitted to revise the 2002 permit application. While the Scope of work described “PRESERVING SIGNIFICANT FACADES ON N. E. &W.”, apparently the structural drawings however noted that “all framing would be new.” Here was the initial deception by the Contractor/Developer, saying one thing while intending another, to avoid Planning Department scrutiny. Senior Structural Plan Checker Rudy Pada however noted “not approved, issued marked up comments on plans”. But another plan checker approved the application the next day.

- It took a member of the public, in a 2015 complaint to DBI (shown above), to ask the DBI for two items: clarification of extent of demolition, and the shoring plans. This was the DBI’s second chance, when something could have been done to prevent this demolition, but the clarification of the extent of the demolition was ignored (by DBI) and only the shoring portion of the complaint was addressed. These ‘oversights’ by DBI made them complicit in the demolition, for which it was rewarded with \$20,000.00 in the settlement. This is unacceptable.

As a result of the demolition and shoring complaint, a Notice of Violation # 2015 47651 was issued to the Contractor/Developer/Attorney. Their team was quick to strike, they had a new permit application ready in 13 days, PA# 2015 0526 7119 with a description of the scope of work:

TO COMPLY WITH NOV #201547651: TEMPORARY SHORING. CONSTRUCTION OF NEW HOME. TO OBTAIN TEMP SHORING REF TO APP#201402057897

According to the records, this Form 3 Alteration Permit Application, to resolve a Notice of Violation, clearly stated “CONSTRUCTION OF NEW HOME”. Joseph Duffy, a long tenured senior manager of the Building Inspection Division routed the application for a NEW HOME, under an alteration application, only to other staff at DBI. The

inconsistency of the statement of the scope of work and the Form on which it was presented to his Department raised no eyebrows at DBI.

New Construction Permit Applications are applied for on Form 1, and need an accompanying demolition permit application if there is a building already on the lot. By definition, a NEW HOME is not an alteration. To compound the error however, and seal the fate of this historic resource, no less than the Current Director of DBI, Ron Tom, signed off for this application without referral to the Planning Department for their review and approval. The Contractor picked it up the same day.

There is apparently impunity for mis-statements of import on permit applications, both by individuals licensed by the State, and inattentive senior managers at DBI. When will this stop? So much of this happens over and over, it is no longer plausible that innocent mistakes were made.

Lessons

- Fines in this case should not be distributed to Planning and Building Departments those who have allowed these loopholes and problems to recur through time. Rewarding those who caused the problem is no short or long term solution. \$320,000 of the settlement funds should be clawed back for the Preservation Fund Committee earmarked for the inventory of the historic resources on Russian Hill.
- Planning and DBI should share a complaint and permit database, that the public can see. Complaints need to be signed in by both Departments, as too often they are placed in the 'round file' by one Department or the other, like at 550 Jersey Street. Had Planning seen the 2015 complaint, red flags like "NEW HOME" would have saved this historic resource from demolition.
- The Structural Engineer noted all new framing, but Planners don't plan check, or even sign Structural Drawings. This constitutes a HUGE LOOPHOLE for the dishonest. All permit applications for Category A and Category B buildings should require a preservation plan checkers' signature, especially on the structural sheets. Planning should hire historic preservation engineers if their staff lacks the expertise required.
- The 2002 permit had 11 revisions, at least two after the permit had been cancelled or expired, but they were not required to restart the permit process again, thanks first to Larry Badiner reinstating the permit 3 months after it had been cancelled in 2010.

Holding open permits forever is a speculative developers dream, they can wait out slumps in the market, attend to other projects, and avoid registering vacant buildings such as this, as there is a permit outstanding for the building. Permits applications should not be held open without activity.

- Like 1268 Lombard Street, an open vacant building deteriorates over time and in the case of a historic building (1268 Lombard was constructed in 1861), the intention is

obvious. New construction is more valuable in the San Francisco market than an updated older building, and providing automobile parking can be more difficult, if not impossible, like at 1268 Lombard Street.

Known historic buildings are hard to demolish, they are public amenities protected by the California Environmental Quality Act. Without a structural reason, too easily purchased from any number of consulting engineers, an Environmental Impact Report is required for a demolition; meaning an expenditure of time and tens of thousands of dollars.

- The Contractor mis-stated on PA# 2016 06 093584 "per attached Engineer's letter and photos remove additional dry rotted and compromised framing necessary to execute approved plans. No changes to approved design proposed." Though already too late to rectify in 2016, it was due in part to DBI that failed to address both portions of the 2015 complaint, and share it with Planning.
- While DBI and Planning are two vastly different cultures, they need to work together. DBI routinely covers for applicants in avoiding Planning Department review, like at 550 Jersey, 841 Chestnut, and 2650-52 Hyde.

Conclusion

President Breed, if your Board were to adopt the reforms suggested by these 'lessons', you would only be halfway to justifying the Conditional Use requirement of this merger as being "necessary or desirable for, and compatible with, the neighborhood or the community". The other half of the way unfortunately, can no longer be justified. The other half was a 'First Bay Tradition' home, the only one produced Willis Polk when he led the D. H. Burnham & Co., now moldering in a Bay Area landfill.

Sincerely,

F. Joseph Butler, AIA

cc. Clerk of the Board

encl. Photos before and after



841 Chestnut Street D.H. Burnham & Co. 1907



841 Chestnut Street Historic Failure