



# SAN FRANCISCO PLANNING DEPARTMENT

**MEMO**

## Categorical Exemption Appeal 2417 Green Street

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**DATE:** December 29, 2017  
**TO:** Angela Calvillo, Clerk of the Board of Supervisors  
**FROM:** Lisa Gibson, Environmental Review Officer – (415) 575-9032  
Jeanie Poling – (415) 575-9072  
**RE:** Planning Case No. 2017-002545ENV  
Appeal of Categorical Exemption for 2417 Green Street  
**HEARING DATE:** January 9, 2018  
**ATTACHMENT:** A – Waiver from San Francisco Health Code Article 22A (Maher Ordinance)

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**PROJECT SPONSOR:** Eric Dumican of Dumican Mosey Architects on behalf of Chris Dunkin of 2417 Green Street, LLC

**APPELLANT:** Richard Drury and Rebecca Davis of Lozeau Drury, LLP, on behalf of Philip Kaufman

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### INTRODUCTION

This memorandum and attachment are a response to the November 22, 2017, letter of appeal to the Board of Supervisors (the “Board”) regarding the Planning Department’s issuance of a categorical exemption under the California Environmental Quality Act (“CEQA determination”) for the proposed project at 2417 Green Street (the “project”).

The Planning Department, pursuant to Title 14 of the CEQA Guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3, Sections 15300–15387), issued a categorical exemption for the project on May 16, 2017, finding that the proposed project is exempt from the California Environmental Quality Act (CEQA) as a Class 1 categorical exemption. The Class 1 exemption applies to minor alterations of existing facilities, including additions to existing structures provided that the addition will not result in an increase of more than 10,000 square feet if the project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan, and the area in which the project is located is not environmentally sensitive (CEQA Guidelines Section 15301(e)).

The decision before the Board is whether to uphold the Planning Department’s decision to issue a categorical exemption and deny the appeal, or to overturn the Planning Department’s decision to issue a categorical exemption and return the project to Planning Department staff for additional environmental review.

## **SITE DESCRIPTION AND EXISTING USE**

The project site is on the south side of Green Street on the block bound by Green, Pierce, Scott, and Vallejo Streets in the Pacific Heights neighborhood. The 2,500-square-foot project site contains a four-story, 4,502-square-foot single-family residence building constructed circa 1905. The project site and block is within the RH-1 (Residential-House, One Family) District and a 40-X Height and Bulk District. The neighborhood contains primarily large, three- to four-story single-family homes. The property is on an approximately 24 percent lateral slope. To the immediate west and uphill from the project site is the appellant's property at 2421 Green Street.

## **PROJECT DESCRIPTION**

The project would involve alterations to the existing building. As analyzed in the CEQA document the project would include excavating approximately 400 cubic yards of soil to a depth of 13 feet below grade to expand the existing one-vehicle garage by 658 sf to add two additional vehicle parking spaces; constructing a three-story 943 sf rear addition; altering the facade; replacing the foundation; and lowering the building. The project would increase the 4,502 sf building by 1,481 sf resulting in a 6,103 sf building. (During review for consistency with the Planning Code and Residential Design Guidelines, the project was reduced in scope such that the total expansion would result in a 5,115 sf building and the addition of one and not two vehicle parking spaces.)

## **BACKGROUND**

On October 15, 2016, Eric Dumican of Dumican Mosey Architects on behalf of 2417 Green Street, LLC, (hereinafter the "project sponsor") filed an environmental evaluation application with the Planning Department for CEQA determination for the project described above.

On May 16, 2017, the Planning Department determined that the project was categorically exempt under CEQA Class 1 – alteration of existing facilities, and that no further environmental review was required.

On May 18, 2017, the Department of Building Inspection (DBI) approved permit application #201705116316 for "partial deteriorated basement wall and foundation replacement with new landscaping retaining walls in the rear yard" without review by the Planning Department. The Planning Department determined that one of the proposed retaining walls in the rear yard aligned with the proposed foundation of a proposed horizontal rear addition subject to Planning Code Section 311 neighborhood notification, which had not yet been completed. In response to a public complaint that the work was going beyond the scope of the permit to include a horizontal addition, DBI suspended permit application #201705116316; the Planning Department also requested suspension of the permit.

On October 23, 2017, the Planning Department issued neighborhood notification pursuant to Planning Code Section 311 for the proposed horizontal rear expansion under permit application #201704285244.

On October 2, 2017, the property owner submitted permit application #201710020114 to revise the previous permit by removing the aforementioned retaining wall, which the Planning Department reviewed and approved. On November 3, 2017, DBI issued permit application #201710020114.

On November 22 2017, Richard Drury and Rebecca Davis of Lozeau Drury, LLP, on behalf of Philip Kaufman, filed an appeal of the categorical exemption. The Planning Department determined that the issuance of permit application #201710020114 is the Approval Action under CEQA and that the CEQA appeal is timely.

Between November 28–30, 2017, three requests for discretionary review of the permit subject to Planning Code Section 311 neighborhood notification were filed by neighborhood residents. The discretionary review hearing is tentatively scheduled to be heard by the Planning Commission on February 8, 2018.

The Planning Department subsequently received complaints that the property owner exceeded the scope of permit application #201710020114 by removing chimneys on the subject property. DBI suspended all work under permit applications #201705116316 and #201710020114 to allow work to be properly documented, for the Board of Supervisors to hear the CEQA appeal, and for the Planning Commission to hear the requests for discretionary review.

## **CEQA GUIDELINES**

Section 21084 of the California Public Resources Code requires that the CEQA Guidelines identify a list of classes of projects that have been determined not to have a significant effect on the environment and are exempt from further environmental review. In response to that mandate, the State Secretary of Resources found that certain classes of projects, which are listed in CEQA Guidelines Sections 15301 through 15333, do not have a significant impact on the environment and therefore are categorically exempt from the requirement for the preparation of further environmental review.

CEQA State Guidelines Section 15301, or Class 1, provides an exemption from environmental review for the operation, repair, or minor alteration of existing public or private structures and facilities. The Class 1 exemption applies to minor alterations of existing facilities, including additions to existing structures provided that the addition will not result in an increase of more than 10,000 square feet if the project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan, and the area in which the project is located is not environmentally sensitive (CEQA Guidelines Section 15301(e)). The project involves the alteration and addition of approximately 1,500 square feet to an existing single-family residence and thus is exempt under Class 1.

In determining the significance of environmental effects caused by a project, CEQA State Guidelines Section 15064(f) states that the decision as to whether a project may have one or more significant effects shall be based on substantial evidence in the record of the lead agency. CEQA State Guidelines 15064(f)(5) offers the following guidance: “Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial

evidence. Substantial evidence shall include facts, reasonable assumption predicated upon facts, and expert opinion supported by facts.”

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

The concerns raised in the November 22, 2017, appeal letter are cited below and are followed by the Planning Department’s responses.

**Concern 1: The appellant contends that the project may cause significant impacts on an adjacent historical resource.**

**Response 1: The evaluation appropriately evaluated impacts on adjacent historic resources.**

The Planning Department’s CEQA review of age-eligible properties begins with a determination as to whether (1) the property is individually eligible for listing on a local, state or national register, and (2) whether the property is located within an eligible historic district. Staff duly conducted this analysis for 2417 Green Street (the subject property) and found that the subject property is not historically significant in its own right, in concurrence with findings of preservation consultant Tim Kelley, nor is it located within an area eligible for listing as a district on the state or national registers. Therefore, the subject property is not a historic resource for the purposes of CEQA review by the Planning Department.

As the subject property is not a historic resource and is not located within an eligible historic district, the environmental analysis did not proceed to part two of the historic review: evaluation of whether the proposed action or project would cause a substantial adverse change to the historical resource. Thus, because the project would not result in physical alteration to the adjacent property at 2421 Green Street, no analysis of potential historic resource impacts on the adjacent historic resource is necessary.

The historic resource status of 2421 Green Street, the Coxhead Brothers’ House, is not in dispute. It is, as stated in the appellant letter, considered a Category A.1 (known historic resource) based upon its inclusion in the Here Today survey and its eligibility for listing in the California Register of Historical Resources. The appellant argues that the project would materially impair the significance of 2421 Green Street.

CEQA defines a "substantial adverse change" as the physical demolition, destruction, relocation, or alteration of the historical resource or its immediate surroundings such that the significance of the historical resource would be materially impaired. CEQA goes on to define "materially impaired" as work that materially alters, in an adverse manner, those physical characteristics that convey the resource’s historical significance and justify its eligibility. The proposed project at 2417 Green Street project does not have the potential to materially impair the adjacent historic resource at 2421 Green Street, as the proposed work would not physically alter the adjacent property. Furthermore, the proposed project would not significantly alter the setting of the adjacent historic resource at 2421 Green Street. Integrity of a historic resource is defined by the Secretary of the Interior through seven aspects: location, design, setting, materials, workmanship, feeling, and association. The loss of light, air, and views, noted by the appellant,

are not discussed under these aspects. The proposed project would not significantly affect any of the above noted aspects of integrity of the adjacent historic property.

The proposed project's excavation and foundation work must comply with all applicable Building Code requirements, which are managed by the Department of Building Inspection. Staff appropriately relied on the provided engineering reports to address the stability of the surrounding properties, including the historic original foundation of 2421 Green Street. Also see the response to concern 3, below, which addresses structural risk to the adjacent property.

In conclusion, the project would not have a significant effect on adjacent historic resources, and no further analysis is required.

**Concern 2: The appellant contends that the project could present potentially significant impacts concerning hazardous materials and that the sponsor must submit investigation and mitigation plans to the San Francisco Department of Public Health (DPH).**

**Response 2: The project complies with DPH regulations concerning hazardous materials and would present no unusual circumstances related to the release of hazardous materials.**

The proposed project would disturb over 50 cubic yards of soil in an area that DPH has identified as likely containing hazardous substances in the soil or groundwater. Therefore, before the project sponsor may obtain a building permit, it must comply with the requirements of Article 22A of the Health Code, which DPH administers.

Per Health Code Section 22A.4, DPH may waive the requirements imposed by Article 22A if the applicant demonstrates that the property has been continuously zoned as residential under the City Planning Code since 1921, has been in residential use since that time, and no evidence has been presented to create a reasonable belief that the soil and/or groundwater may contain hazardous substances. In these circumstances, DPH provides written notification that the requirements of Article 22A have been waived.

On March 28, 2018, DPH issued a waiver from Article 22A, determining that the project property has been continuously zoned as residential since at least 1921 and that the available information does not indicate the potential for soil and/or groundwater contamination (Attachment A). Thus, the project complies with Article 22A and would not result in significant impacts related to the release of hazardous materials.

The appellant cites a legal case to support the claim that any project on the Cortese list (State of California compiled lists of hazardous sites) is precluded from the issuance of a categorical exemption. The project site is not on any State of California list of hazardous sites; and even if the project site were on the Cortese list, a site's inclusion on this list does not necessarily preclude the issuance of a categorical exemption when a closure letter from the appropriate state agency, or its designee, has been issued.

In conclusion, the project complies with San Francisco Health Code Article 22A, and there are no unusual circumstances related to hazardous materials that would disqualify the project from being eligible for categorical exemption.

**Concern 3: The appellant contends that the project poses a structural risk to the uphill adjacent property at 2421 Green Street.**

**Response 3: The project would comply with the Building Code and would not present any unusual circumstances regarding excavation and the protection of the adjoining property.**

The appellant is incorrect in stating that under the City's CEQA exemption procedures, a project may not be exempted from CEQA if it is built on a property with greater than 20 percent slope and involves more than 50 cubic yards of soil removal. Instead, under such circumstances, the Planning Department requires the project sponsor to submit with the environmental application a preliminary geotechnical study prepared by a qualified consultant that meets DBI submittal requirements. The report must demonstrate that the proposed project could be implemented on the project site and must provide recommendations that make such construction structurally feasible.

If a preliminary geotechnical report is required for environmental review, the Planning Department reviews the report to understand geotechnical issues and recommendations, and in the environmental document confirms that the sponsor would incorporate such recommendations into the project. DBI, during its review of site and building permits, reviews construction documents for conformance with the geotechnical report.

DBI also ensures protection of adjoining properties through compliance with Sections 3307 and 3307.1 of the San Francisco Building Code. Section 3307 of the San Francisco Building Code, Protection of Adjoining Property, specifies requirements for safeguards at work sites to ensure the protection of adjacent properties. Compliance with the State and local building codes avoids the potential for significant impacts related to structural damage.

Section 3307.1 states, "Adjoining public and private property shall be protected from damage during construction, remodeling and demolition work. Protection must be provided for footings, foundations, party walls, chimneys, skylights, and roofs. Provisions shall be made to control water runoff and erosion during construction or demolition activities. The person making or causing an excavation to be made shall provide written notice to the owners of adjoining buildings advising them that the excavation is to be made and that the adjoining buildings should be protected. Said notification shall be delivered not less than 10 days prior to the scheduled starting date of the excavation." Section 832 of the Building Code provides other requirements for protection of adjacent property, including giving reasonable notice to adjacent owners, using reasonable precautions to protect adjacent structures, and protecting adjoining buildings from any damage excavation.

A preliminary geotechnical report was prepared for the proposed project at 2417 Green Street (Divis Consulting, Inc., January 12, 2017). The report correctly states that the remodeling plans include

expansion of the existing basement. The report notes that excavation deeper than 5 feet should be shored or sloped in accordance with the Occupational Safety and Health Administration (OSHA) standards, and that the contractor should be responsible for the construction and safety of temporary slopes and shoring. The report makes specific recommendations for temporary slopes, shoring, underpinning, construction monitoring, permanent slopes, surface drainage, foundations, permanent retaining walls, concrete slab-on-grade floors, and seismic design.

Excavation and development on steep slopes is common in San Francisco, and such projects are routinely reviewed in accordance with applicable City and State regulations. The appellant has not demonstrated how the project site's topography and project excavation would result in significant effects on the environment due to unusual circumstances. Therefore, the CEQA determination properly relied on the qualified geotechnical consultant's report and compliance with City and State regulations, and no further analysis is necessary.

**Concern 4: The appellant states that the project is inconsistent with the Cow Hollow Neighborhood Design Guidelines, which protect historic resources.**

**Response 4: Compliance with design guidelines is an aesthetic impact not subject to CEQA.**

Per CEQA Section 21099(d)(1), "Aesthetic and parking impacts of a residential, mixed-use residential, or employment center project on an infill site within a transit priority area shall not be considered significant impacts on the environment." The proposed project meets the criteria as a residential project in an urban area with nearby transit. Consistency with the Cow Hollow Design Guidelines is addressed during the Planning Department's review process, and aesthetics is not to be considered as a topic of environmental review. Also see the response to concern 1, above, which addresses impacts on adjacent historic resources.

**Concern 5: The appellant contends the project has been piecemealed (divided into smaller projects to qualify for one or more exemptions).**

**Response 5: The CEQA document covers the whole of the project and the environmental review has not been piecemealed.**

The appellant is correct in that under CEQA state statute Section 21159.27 a project may not be divided into smaller projects to qualify for one or more exemptions. The project description in the CEQA determination states, "Alterations to an existing four-story-over-basement single-family residence with one vehicle parking space. Excavate to add two vehicle parking spaces. Three-story rear addition. Facade alterations and foundation replacement. Lower existing building." Thus, the CEQA determination analyzed the whole of the action.

It is not uncommon for the City to issue multiple permits that rely on one CEQA determination. As discussed under "Background" above, DBI issued a permit for the foundation portion of the work after the CEQA determination for the whole of the project was issued, and all permits have subsequently been

suspended pending resolution of the CEQA appeal and discretionary review by the Planning Commission. The issuance of building permits is a separate matter from CEQA piecemealing. The appellant provides no substantial evidence of CEQA piecemealing.

## **CONCLUSION**

The appellant has not presented substantial evidence to the Planning Department that would support the conclusion that (1) there are unusual circumstances that justify removing the project from the exempt class, and (2) there is a reasonable possibility of significant environmental impacts due to those unusual circumstances. For the reasons stated above, the CEQA determination complies with the requirements of CEQA and the project is appropriately exempt from environmental review. The Planning Department therefore recommends that the Board uphold the CEQA determination and deny the appeal.





City and County of San Francisco  
**DEPARTMENT OF PUBLIC HEALTH**  
**ENVIRONMENTAL HEALTH**

Edwin M. Lee, Mayor  
 Barbara A. Garcia, MPA, Director of Health  
 Stephanie K. J. Cushing, MSPH, CHMM, REHS  
 Environmental Health Director

## WAIVER FROM SAN FRANCISCO HEALTH CODE ARTICLE 22A (MAHER ORDINANCE)

Compliance with Article 22A of the San Francisco Health Code is required for all sites that require a permit from the Department of Building Inspection, will move or excavate at least 50 cubic yards (38.23 m<sup>3</sup>) of soil and/or that have the potential to contain hazardous materials in soil and/or groundwater or are within the mapped Article 22A (Maher) area. Sites subject to Article 22A may be granted a waiver by the San Francisco Department of Public Health per Section A.4. of Article 22A which states, "The Director may waive the requirements imposed by this Article if the applicant demonstrates that the property has been continuously zoned as residential under the City Planning Code since 1921, has been in residential use since that time, and no evidence has been presented to create a reasonable belief that the soil and/or groundwater may contain hazardous substances. In these circumstances, the Director shall provide the applicant and the Director of Building Inspection with written notification that the requirements of this Article have been waived."

The following information and documents were submitted in support of the Waiver:

- Site history information and/or environmental/geotechnical documents
- Project plans and elevation Drawings AND excavation, trenching grading plans
- Current or former underground storage tank operation and removal documents, as applicable

### PROPERTY/PROJECT INFORMATION

Address: 2417 Green Street Block/Lot: 0560 / 028 SMED No.: 1534

Owner/Proponent name: Chris Durkin (Chris@durkinincorporated.com) Contact Name/ phone: Eric Dumican (415) 495-9322 (edumican@dumicanmosey.com)

Proponent Address: 474 EUCILD AVENUE, SAN FRANCISCO, CA. 94118

Current Site Use: Single Family Residence Proposed Site Use: Single Family Residence

If residential use only, approximate year residential only use began: 1907

### COMMENTS:

The San Francisco Department of Public Health has determined that:


- The project Property has been continuously zoned as residential since at least 1921 AND the available information does not indicate potential or known the soil and/or groundwater contamination by contain hazardous substances or materials. AND The site use will remain as residential or a less sensitive land use.

- Less than 50 Cubic Yards of soil will be disturbed by the proposed project AND the available information does not indicate potential or known the soil and/or groundwater contamination by contain hazardous substances or materials.
- A former underground storage tank removed from the residential site or nearby residential site, does not present a significant health or environmental risk to the project property based on the information available from publically available state databases and SF DPH files.

**SFDPH Recommendations:**

- Site Soils are known to, or may, contain fill material. Fill material associated with the 1906 Earthquake and Fire or other fill materials in San Francisco may contain elevated lead concentrations among other potential contaminants. SF DPH recommends that excavated fill soils be segregated, stored on plastic sheeting and chemically analyzed for contaminants prior to soil reuse or as required by the disposal facility prior to disposal. The analyses considered may include the analytes listed in the Maher Ordinance, which include: Metals, volatile and semi volatile organic compounds, cyanide and petroleum hydrocarbons. Any remaining soils with elevated contaminants should be capped by the building, hardscape or at least one foot of clean soil over a visual physical barrier such as expanded plastic geogrid, or similar material.
- Construction activities should follow a work health and safety plan and dust control measures.

San Francisco Department of Public Health **GRANTS A WAIVER FROM THE REQUIREMENTS OF THE SF HEALTH CODE ARTICLE 22A FOR THE SPECIFIED PROJECT ONLY BASED ON THE SITE CRITERIA AND CHARACTERISTICS LISTED ABOVE.** Should you have any questions please contact the San Francisco Department of Public Health, Site Assessment and Mitigation Program (DPH SAM) at (415) 252-3800.



Stephanie K. J. Cushing, MSPH, CHMM, REHS  
Director of Environmental Health  
San Francisco Department of Public Health

Date: 28 March 2017

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