



APPEAL OF TENTATIVE MAP

424-434 FRANCISCO STREET

January 5, 2021

To: Bruce Storrs, Department of Public Works
From: Aaron Starr, Manager of Legislative Affairs – Planning Department (628) 652-7533
RE: Board of Supervisors file 201379 - Appeal of the disapproval of Tentative Map for 424-434 Francisco Street.
Hearing Date: January 12, 2021
Attachments: Planning Department Memorandum RE: Planning Commission disapproval of a condominium Tentative Map Subdivision
Project Sponsor: Sirkin Law
c/o Kim Rohrbach
50 California Street, Suite 3400
San Francisco, CA 94111
Appellant: Project Sponsor

On October 1, 2020, the Planning Commission heard and considered the testimony presented to it at the public hearing and further considered written materials and oral testimony presented on behalf of the applicant, Department Staff, and other interested parties.

A motion by Commissioner Fung, seconded by Commissioner Diamond, to approve the Condominium Subdivision Conversion request failed, by a vote of 3-3 (Commissioners Imperial, Moore, and Chan voting against).

A motion by Commissioner Fung, seconded by Commissioner Koppel, to continue the item two months pending the appointment of the 7th Commissioner failed, by a vote of 3-3 (Commissioners Imperial, Moore, and Chan voting against).

Neither motion carried; therefore, the Project was de facto disapproved by the Commission.

Attached, please find the Planning Department's memorandum dated October 28, 2020 detailing the action by the Planning Commission and staff's analysis of the proposed subdivision.



City and County of San Francisco
 San Francisco Public Works · Bureau of Street-Use and Mapping
 1155 Market Street, 3rd Floor · San Francisco, CA 94103
 sfpww.org · tel 415-554-5810 · fax 415-554-6161



TENTATIVE MAP DECISION

Date: August 28, 2019

Department of City Planning
 1650 Mission Street, Suite 400
 San Francisco, CA 94103

Project ID: 10119			
Project Type: 6 Units Condo Conversion			
Address#	StreetName	Block	Lot
424 - 434	FRANCISCO ST	0041	010
Tentative Map Referral			

Attention: Mr. Corey Teague.

Please review* and respond to this referral within 30 days in accordance with the Subdivision Map Act.

(*In the course of review by City agencies, any discovered items of concern should be brought to the attention of Public Works for consideration.)

Sincerely,

ADRIAN VERHAGEN
Digitally signed by ADRIAN VERHAGEN
 DN: cn=ADRIAN VERHAGEN, o=DPW-BSM,
 email=adrian.verhagen@sfdpw.org, c=US
 Date: 2019.08.28 13:16:37 -0700

for, Bruce R. Storrs, P.L.S.
 City and County Surveyor

The subject Tentative Map has been reviewed by the Planning Department and does comply with applicable provisions of the Planning Code. On balance, the Tentative Map is consistent with the General Plan and the Priority Policies of Planning Code Section 101.1 based on the attached findings. The subject referral is exempt from California Environmental Quality Act (CEQA) environmental review as categorically exempt Class , CEQA Determination Date , based on the attached checklist.

The subject Tentative Map has been reviewed by the Planning Department and does comply with applicable provisions of the Planning Code subject to the attached conditions.

The subject Tentative Map has been reviewed by the Planning Department and does not comply with applicable provisions of the Planning Code due to the following reason(s):

PLANNING DEPARTMENT

Signed

Date

Planner's Name
 for, Corey Teague, Zoning Administrator



PLANNING DEPARTMENT MEMORANDUM

HEARING DATE: October 1, 2020

CONTINUED FROM: September 3, 2020

TO: San Francisco Public Works Bureau of Street Use and Mapping
FROM: Carolyn Fahey, Case Manager
DATE: October 28, 2020
SUBJECT: Planning Commission disapproval of a condominium subdivision conversion of a three-story, six-unit building into residential condominiums, within the North Beach Neighborhood Commercial Zoning District (NCD) and a 40-X Height and Bulk District.

Public Works No.: 10119

Record No.: 2019-016420CND

Project Address: 424-434 FRANCISCO STREET

Zoning: NCD (Neighborhood Commercial District) Zoning District
40-X Height and Bulk District
North Beach Special Use District
Telegraph Hill North Beach Residential Special Use District

Block/Lot: 0041/010

Project Sponsor: Sirkin Law
c/o Kim Rohrbach
50 California Street, Suite 3400
San Francisco, CA 94111

Property Owner: Brian Michael Barnard and Sara Michelle Plummer
Adam A. Smith
Johnny Vu
Manoj Marathe and Zofia Beczek-Marathe
Sherlyn Chew, Trustee of the Sherlyn Chew Revocable Trust
Larry D. Lionetti and Lena Q. Lionetti
424-426-428-432-434 Francisco Street
San Francisco, CA 94133

Staff Contact: Carolyn Fahey – (628) 652.7367
Carolyn.Fahey@sfgov.org

BACKGROUND

On August 28, 2019, Sirkin Law, (hereinafter “Project Sponsor”) filed Application No. 10119 (hereinafter “Project”) with the Department of Public Works, Bureau of Street Use and Mapping for Planning Department (hereinafter “Department”) review to allow the Condominium Conversion Subdivision of a three-story, six-unit building into residential condominiums at 424-434 Francisco Street (hereinafter “Project Site”), Lot 010 in Assessor’s Block 0041, within an NCD (North Beach Neighborhood Commercial) Zoning District and a 40-X Height and Bulk District. The subject building is considered a legal use as the Report of Residential Building Record indicates that the legal authorized occupancy and use is a six-unit dwelling.

The project was determined not to be a project under CEQA Guidelines Sections 15060(c) and 15378 because there is no direct or indirect physical change in the environment.

On September 3, 2020, the San Francisco Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting on Condominium Conversion Application No. 2019-016420CND and continued the hearing to October 1, 2020. On October 1, 2020, the Commission conducted another duly noticed public hearing at a regularly scheduled meeting on Condominium Conversion Application No. 2019-016420CND and failed to approve the Project. The Planning Commission consisted of six Commissioners. In order to approve the condominium conversion, 4 affirmative votes are required. The Commission failed to approve the condominium because the Commission was deadlocked on a 3-3 tie vote.

The Planning Department Commission Secretary is the custodian of records; the File for Record No. 2019-016420CND is located at 49 South Van Ness Avenue, Suite 1400, San Francisco, California.

The Commission heard and considered the testimony presented to it at the public hearings and written materials presented on behalf of the applicant, Department staff, and other interested parties.

COMMISSION ACTION

The Commission heard and considered the testimony presented to it at the public hearing and further considered written materials and oral testimony presented on behalf of the applicant, Department Staff, and other interested parties.

A motion by Commissioner Fung, seconded by Commissioner Diamond, to approve the Condominium Subdivision Conversion request failed, by a vote of 3-3 (Commissioners Imperial, Moore, and Chan voting against).

A motion by Commissioner Fung, seconded by Commissioner Koppel, to continue the item two months pending the appointment of the 7th Commissioner failed, by a vote of 3-3 (Commissioners Imperial, Moore, and Chan voting against).

Neither motion carried; therefore the Project was de facto disapproved by the Commission.

Commissioner Chan stated that the project proposal failed to meet the requirements of the General Plan, as summarized in the General Plan's Housing Element findings below. Commissioners Imperial and Moore concurred with Commissioner Chan's analysis.

CODE & PLAN COMPLIANCE

1. Subdivision Code Compliance. Article 9 of the Subdivision Code of the City and County of San Francisco sets forth the following rules and regulations for condominium conversions:

A. Planning Code Compliance. *Subdivision Code Section 1383 requires that the Tentative Map is found compliant with the Planning Code.*

Use. Planning Code Section 722 states that the residential use, as defined by Planning Code Section 102, is principally permitted in the NCD Zone District on the 2nd stories and above, and the residential use is not permitted at the ground floor.

The proposed condominium conversion does not alter, reconfigure, or expand the existing residential use at the ground floor. As such, the residential use at the ground floor is considered nonconforming, and therefore legal.

Density. Planning Code Section 722 states that dwelling unit density is permitted at the rate of 1 unit per 400 square foot lot area or the density permitted in the nearest Residential Zone District, whichever is greater.

At an approximately 2,748 square foot parcel size, the maximum permitted by-right density is seven (7) units, where six (6) dwelling units currently exist. The proposed condominium conversion does not alter, reconfigure, or expand the existing dwelling unit density. As such, the dwelling unit density is compliant.

Residential Open Space. Planning Code Section 722 states that a 60 square feet per dwelling unit if private, or 80 square feet per unit if common, as defined by Planning Code Section 102.

The property provides approximately 265 square feet of common open space at the rear yard and 135 square feet of common open space at the front yard, where six (6) dwellings units require a minimum of 480 square feet. The proposed condominium conversion does not include alteration, reconfiguration, or expansion of the existing common open space. As such, the residential open space is non-standard, and therefore legal.

Exposure. Planning Code Section 140 states that a dwelling unit must have an opening overlooking an open area of with minimum size requirements, as defined by Planning Code Section 140 and 102.

The six (6) existing dwelling units face onto a public street, public alley at least 20 feet in width. The dwelling unit exposure is compliant, and therefore legal.

- B. Denial of Tentative Map. Subdivision Code Section 1386 requires that a Tentative Map proposal shall be disapproved by the Planning Commission if any of the following findings are made:

1. Vacancies in the project have been increased.

In 2004, existing rental tenants were lawfully evicted from the property under the Ellis Act. The tenants filed suit with Tenderloin Housing Clinic as counsel. The units were later sold as part of a Tenancy in Common ownership structure in 2012. The units appear to have been majority owner-occupied since 2007

In 2016, a Molinari report was filed with the Rent Board by the Unit 428 owner for the breach of a lease agreement; the tenant violated the terms of the lease by having two (2) un-named persons residing in the unit and for multiple short term rental offenses. Additionally, the Project Sponsor has provided rental history for the unit for the period between 2014 and the present. Currently, four (4) of the six (6) dwelling units are owner occupied, one (1) is vacant, and one (1) is rented for \$0.00 to a family member of the unit owner, as reported by the Project Sponsor. Rental units are reported to have been voluntarily vacated; no contradictory evidence has been found.

Review of available voter records show unit owners have been consistently registered in their units, which is consistent with the Project Sponsor's report of residency. The voter records show additional registrations of nine (9) individuals since 2012, with three (3) of these registrations in 2020; one (1) voter registration is also declared as a tenant in the Project Sponsor's report. No title transfer or lease agreement in the individuals name was found, so whether these persons were/are co-habitants with the unit owner, a renter under lease with the unit owner, or on what terms they ceased to occupy the unit are unknown.

2. Elderly or permanently disabled tenants displaced or discriminated against in leasing units.

In 2008, renters filed requests with the Rent Board to re-occupy the dwelling units. Only elderly persons are eligible to reoccupy units under the Ellis Act. No evidence was found to support that the requests to re-occupy were approved.

In the past six (6) years, two (2) units had rental tenants vacate; the Department has discovered no evidence that the tenants vacating the property were either elderly or disabled.

No evidence of unlawful displacement or discrimination in the leasing of units at this property has been found at this property.

3. Evictions for the purpose of preparing the building for conversion.

On April 13, 2004 Ellis Act eviction notices were issued to tenants. Tenants filed suit, represented by the Tenderloin Housing Clinic.

4. Increases in rents over the 18 months preceding the date of filing the application.

Over the past 18 months the Project Sponsor has reported that one (1) unit has been rented at the rate of \$0.00/month and one (1) unit has been vacant; rental at the subject property overall has increased zero dollars (\$0.00) or zero (0) percent, which remains below the permitted rate of increase.

5. Incorrect information (to mislead or misdirect efforts by agencies of the City and County of San Francisco in the administration of this Code) Submitted by Subdivider.

No evidence has been found of incorrect or misleading information submitted to the Planning Department, Department of Public Works, the Mayor's Office of Housing and Community Development (MOHCD), or other city agency.

C. Eligibility. Subdivision Code Section 1396.2 requires that, with limited exceptions (not applicable here), no evictions be found on or after May 1, 2005.

The issuance of an eviction notice is considered the eviction date, as opposed to the date of tenant vacation. In this case, eviction notices were issued on April 13, 2004. Tenants vacated sometime in 2007 after the Superior Court upheld the evictions as lawful under the Ellis Act. As such, no evictions were found after May 1, 2005.

2. General Plan Compliance. The Planning Commission did not find that the Project is consistent with the following Objectives and Policies of the General Plan. Commissioners Chan, Imperial and Moore stated that they did not approve the conversion for the following reasons:

HOUSING ELEMENT

Objectives and Policies

OBJECTIVE 3

PROTECT THE AFFORDABILITY OF THE EXISTING HOUSING STOCK, ESPECIALLY RENTAL UNITS.

Policy 3.3

Maintain balance in affordability of existing housing stock by supporting affordable moderate ownership opportunities.

The tenancy in common (TIC) dwelling unit is a more affordable housing type than a condominium in the City. It is typically valued 10-20% lower than the equivalent condominium dwelling unit. As such, it is an identifiable step on the housing ladder, and provides somewhat increased housing accessibility to middle-income residents. Removal of these TIC units reduces the diversity of unit types, and therefore is not consistent with this policy, In particular, the North Beach area needs diverse housing and affordable home ownership for first time buyers. Housing is in high demand in North Beach, given its location near downtown and its access to

urban amenities and services. It is thus important to preserve TICs in this neighborhood as a lower cost housing opportunity.

OBJECTIVE 5

ENSURE THAT ALL RESIDENTS HAVE EQUAL ACCESS TO AVAILABLE UNITS.

Policy 5.4

Provide a range of unit types for all segments of need, and work to move residents between unit types as their needs change.

The tenancy in common dwelling unit is a unique housing type in the City. It is typically valued 10-20% lower than the equivalent condominium dwelling unit. As such, it is an identifiable step on the housing ladder, and provides somewhat increased housing accessibility to middle-income residents. The North Beach area is in particular need of a wide variety of housing opportunities at all income levels, and the TIC home ownership is a more affordable ownership opportunity than a condominium project would be. Removal of these TIC units reduces the diversity of unit types, and therefore is not consistent with this policy.

3. Planning Code Section 101.1(b) establishes eight priority-planning policies and requires review of permits for consistency with said policies.

- A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

The proposal would have no adverse effect upon existing neighborhood-serving retail uses as it is a change in form of residential tenure.

- B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

The proposed change from tenancy in common units to condominium units increases the value of six (6) dwellings units by 10-20% thereby exacerbating the inaccessibility of homeownership in the North Beach neighborhood; a neighborhood with many urban amenities but where cultural and economic diversity is currently challenged.

- C. That the City's supply of affordable housing be preserved and enhanced,

The proposed change from tenancy in common units to condominium units increases the value of six (6) dwellings units by 10-20% thereby exacerbating the inaccessibility of homeownership in the North Beach neighborhood; a neighborhood with many urban amenities but where an affordable housing balance is currently challenged.

- D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

The proposal is a change in form of residential ownership and would not affect public transit or neighborhood parking.

- E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

The proposal is a change in form of residential ownership and would not involve the industrial or service sectors of the City.

- F. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

The proposal is a change in form of residential ownership and would not affect the preparedness to protect against injury and loss of life in an earthquake.

- G. That landmarks and historic buildings be preserved.

The proposal is a change in form of residential ownership and would not affect landmarks or historic buildings.

- H. That our parks and open space and their access to sunlight and vistas be protected from development.

The proposal is a change in form of residential tenure and would not affect public parks or open space.

The Commissioners who voted against approval of the condominium conversion found that approval of the Condominium Subdivision Conversion thus would not promote the health, safety and welfare of the City.