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August 30, 2021

VIA E-MAIL

President Shamann Walton and Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, Ca. 94102-4689

Re: 35 Ventura Avenue
Case No. 2016-013505ENV
California Environmental Quality Act (CEQA) Categorical Exemption Appeal

Dear President Walton and Supervisors:

Our office represents Tom and Kari Rocca, 15-year residents of the California Register-Eligible Forest Hill Historic District. We submit this letter pursuant to Administrative Code Section 31.16(e) to appeal the Categorical Exemption (CatEx) determination for the proposed project at 35 Ventura Avenue (Case No. 2016-013505ENV). The proposed project includes a new vertical addition that will double the massing and destroy the character defining features of a 1938 single-story Mediterranean cottage that was identified as a contributor to the Forest Hill Historic District by the project sponsor's own consultant. Even though the building is listed as a "Category A" historic resource and was identified as a contributor, the Planning Department concluded, without evidence, that the property was not a contributor. As a result, the Department did not adequately evaluate the project impacts on historic resources as required by law. Moreover, the Department's determination that the property is not a contributor is partially based on unpermitted alterations by the project sponsor that should have been reversed and the property restored before the permit was approved.

CEQA guidelines state that a CatEx "shall not be used for a project which *may* cause a substantial adverse change in the significance of a historical resource." (See CEQA Guidelines § 15300.2(f).) A CatEx is not legally adequate in this case because there is a fair argument that the project may cause a substantial adverse change to a historic resource. The Appellants therefore

respectfully request that the Board of Supervisors revoke the CatEx and require further environmental review.

1. There is Substantial Evidence that the Property is a Historic Resource and a Contributor to the Forest Hills Historic District

The dwelling at 35 Ventura was constructed in 1938, which was during the period of significance for the Forest Hill Historic District, and remained largely unchanged until the project sponsor completed several remodeling projects starting in the 1990s. Much of the permitted renovations were interior improvements and additions at the rear of the house that are not visible to the public. The façade alterations that are visible to the public were largely unpermitted, including the application of flagstones to the original stucco chimney, construction of a nonhistorical portico at the front entrance, removal of decorative window grilles, replacement of original windows, and replacement of a wood casement window with French doors. The Historic Resource Evaluation (HRE) for the project explained that although the alterations appeared to make the property individually ineligible for listing in the California Register, the property still is “generally in keeping with the cottage’s original Mediterranean styling and the character of Forest Hill, *meaning that it is still a contributor.*” (Emphasis added.)

The property is also listed as a “Category A” Historic Resource, and Preservation Bulletin 16 states that Category A properties shall be presumed to be a historic resource unless there is a preponderance of evidence demonstrating otherwise. All available evidence, including the property’s location within the core of the California Register-eligible Forest Hill Historic District, the structure’s construction during the District’s period of significance, and the HRE that was completed for the project establish the presumption that the project site is a historic resource. There is no evidence in the record demonstrating otherwise.

The Department, however, reached the opposite conclusion. The Department’s HRE Response (HRER) concluded, without any corroborating evidence, that the project was not individually eligible and not a contributor to the Forest Hill Historic District. The HRER simply states that the project is not individually eligible or a contributor because the property underwent “extensive alterations.” However, the project sponsor’s own historic consultant studied the property and determined that the project is a contributor, even accounting for these past

alterations. There is simply no evidence to support a conclusion that the property is not a historic resource.

Additionally, the façade alterations that actually convey the historicity of the structure and are visible to the public were completed without permits. The HRER recognized that the application of flagstones to the original stucco chimney, construction of a portico at the front entrance, removal of some decorative window grilles, replacement of original windows with wood casement and hung sash windows, and replacement of a primary elevation wood casement window with French doors all occurred without permits. The Department concluded that the project was not individually eligible as a historic structure based on these unpermitted alterations.

These non-historic unpermitted alterations are all easily reversible, and the property restored to its original design, which is typically required by the City when unpermitted work to a historic structure is discovered. The complete opposite approach was taken here. Rather than requiring the unpermitted work to be reversed and the historic elements restored, the Department instead deemed the property non-historic because of these unpermitted alterations. This sets a dangerous precedent of essentially rewarding a project sponsor who completes unpermitted work that destroys the historicity of their property. At a minimum, the Department should have reviewed the cumulative historic impacts of the unpermitted work in addition to the proposed project, rather than simply accepting that the unpermitted alteration had already caused the property to no longer qualify as historic.

In sum, the record is clear that the property is a historic resource as a contributor to the Forest Hill Historic District and may be individually eligible if the unpermitted work were removed and the structure restores. Because the property is a historic resource, the City must ensure that the project will not cause a substantial adverse change in the significance of the resource.

2. The Review of the Project's Impacts to Historic Resources was Not Adequate and Constitutes a Failure to Proceed in the Manner Required by Law

The CEQA guidelines state that a CatEx “shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.” (See CEQA Guidelines § 15300.2(f).) To determine whether a project may have a substantial adverse impact to a historic

resource, an agency must necessarily at least identify and discuss the potential impacts. Courts are clear that the failure to adequately discuss potential impacts is a procedural error and the “omission of required information constitutes a failure to proceed in the manner required by law.” (See *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502.) Procedural failures must be overturned in order to “scrupulously enforce all legislatively mandated CEQA requirements.” (See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.)

Here, the Department did not evaluate or discuss the potential impacts of the project to historic resources because the Department failed to even recognize the presence of a historic resource at all. The Preservation Team Review Form noted that the Secretary of the Interior’s Standards for Rehabilitating Historic Buildings were “not applicable” to the project. As a result, the Department did not review, discuss, or evaluate whether the project was consistent with the Secretary of Interior’s Standards. The Department’s complete lack of discussion and evaluation of the historic impacts of the project is simply inadequate, and this omission constitutes a failure to proceed in the manner required by law.

In addition, neither the HRE nor the Department adequately analyzed the surrounding context and impact to the Forst Hill Historic District. While the HRE did provide a cursory discussion of the history of the District, the document failed to analyze the number of remaining historic properties and how this specific project will impact the continuity of the neighborhood and the context of the surrounding properties. The HRER similarly gave little discussion to the impacts to the Forest Hill Historic District, including because the Department failed to even identify the property as a contributor.

The Department failed to discuss or analyze the potential impacts of the project on historic resources, despite substantial evidence that the property is a historic resource and a contributor to the Forest Hill Historic District. The failure to adequately discuss potential impacts constitutes a failure to proceed in the manner required by law, and therefore the CatEx must be revoked.

3. There is a Fair Argument that the Project May Cause a Substantial Adverse Change in the Significance of a Historical Resource

“The foremost principle under CEQA is that the Legislature intended the act to be interpreted in such manner as to afford the fullest possible protection to the environment within

the reasonable scope of the statutory language.” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390.) With narrow exceptions, CEQA requires an Environmental Impact Report whenever a public agency proposes to approve or to carry out a project that “may have a significant effect on the environment.” (See CEQA Guidelines § 15002(f).) To that end, a CatEx shall not be used if there is a “fair argument” that the proposed project may cause a substantial adverse change in the significance of an historical resource. (See *Valley Advocates v. City of Fresno*, (2008) 160 Cal.App.4th 1039, 1072.)

As discussed above, the HRE found that the existing building is a contributor and is consistent with the character of the Forest Hill Historic District. According to the HRE, the character defining features of 35 Ventura are “its 15-foot setback from Ventura Avenue, *its height*, and a portion of its fenestration pattern on Ventura Avenue.”

Secretary of the Interior Standard 2 states that the “alteration of features, spaces and spatial relationships that characterize the property will be avoided.” In addition, Secretary of the Interior Standard 9 requires that projects “shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property.”

The proposed project would increase the building height by ten feet and increase living space by approximately 80%. The 350 square feet of new covered decks around the vertical addition doubles the massing of the historic cottage. The HRE states that the proposed project “would certainly make *substantial changes* to the dwelling by adding a second floor onto what was originally a one-story-over-basement cottage.” (Emphasis added.) In other words, this project would **completely eliminate** one of the remaining character-defining features of this contributor building: its height. Doubling the building’s mass is wholly inconsistent with Secretary of the Interior Standard 9, which requires a building’s massing, size, and scale to be protected. The HRE also found that “[t]he construction of a vertical addition will *undeniably alter the subject property’s spatial relationships*,” which is inconsistent with the Secretary of the Interior Standard 2, which protects a building’s spatial relationships.

Moreover, the property is located in the heart of the Forest Hill Historic District and was built during the District’s period of significance. The Forest Hill Historic District was designed with a curvilinear street and block arrangement that responds to the hilly topography in order to distinguish it from the typical grid pattern found elsewhere in the City. Development in the

Forest Hill Historic District is deliberately more varied, as most houses were custom designed in a variety of styles and heights. However, certain character-defining features are present throughout the neighborhood. The HRE describes one of the character-defining features of the district as “picturesquely sited single-family homes that rarely exceed two stories in height.”

This project would significantly and adversely impact the California Register-eligible Forest Hill Historic District by constructing a vertical addition that appears larger than a typical two story home due to the unique slope of the site. The project is located at the top of a hill, which already causes the home to appear larger than its listed height. The proposed project would bring the house up to almost 30 feet tall from street level to the top of the roof, already large for a “two-story” home, which appears even larger due to its location on the top of the hill. Not only does the project destroy the character-defining height of this specific structure, but it is out of scale with Forest Hill Historic District’s pattern of “picturesquely sited single-family homes that rarely exceed two stories in height.”

The project sponsor has previously argued that the project is not out of scale with the Forest Hill Historic District because the project will “bring the home to the same height” as many other homes in the area. First, even if this statement were true, the project would still appear out of scale with the neighborhood due its location on the top of a hill. Moreover, one of the character defining features of the Forest Hill Historic District is the varied pattern of building designs and heights, meaning that bringing the existing home into line with other homes would eliminate one of the character-defining features of the neighborhood. The project sponsor admits as much, remarking on the neighborhood’s “undulating levels of homes, which is part of its unique charm and beauty.” This project destroys the varied pattern of development that makes the Forest Hill Historic District special.

The HRE identified the building height as a character defining feature of the structure and explained that the project would cause “substantial changes” to this feature. The HRE also admits the project would “undeniably alter” the property’s spatial relationship, which is a character defining feature of the Forest Hill Historic District. In sum, there is substantial evidence to support a “fair argument” that the proposed project may cause a substantial adverse change in the significance of a historic resource. Therefore, the CatEx must be revoked.

Conclusion

For unknown reasons and without supporting evidence, the existing cottage was not identified as a contributor to the Forest Hill Historic District – despite the HRE identifying it as a contributor. Therefore, the project’s adverse impacts to historic resources were not adequately identified or evaluated, which constitutes a failure to proceed in the manner required by law. The project completely eliminates one of the character-defining features of the property and is inconsistent with the Secretary of the Interior’s Standards for Rehabilitating Historic Buildings, which will cause substantial adverse impacts to the Forest Hill Historic District. There is substantial evidence in the record to support a fair argument that the project may cause a substantial adverse change in the significance of a historical resource, and therefore the CatEx must be revoked.

Very truly yours,

ZACKS, FREEDMAN & PATTERSON, PC



Ryan J. Patterson


August 23, 2021

*Re: 35 Ventura Avenue (Case No. 2016-013505ENV)
Letter of Authorization for Agent*

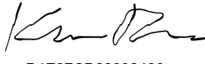
To Whom It May Concern:

We hereby authorize the attorneys of Zacks, Freedman & Patterson, PC to file a California Environmental Quality Act Exemption Determination Appeal to the Board of Supervisors for 35 Ventura Avenue (Case No. 2016-013505ENV) on our behalf.

Very truly yours,

DocuSigned by:

57A9E8FE803A448

Tom Rocca

DocuSigned by:

D4E27CD80908426...

Kari Rocca

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35 VENTURA CEQA APPEAL

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