

SAN FRANCISCO PLANNING DEPARTMENT

Discretionary Review Abbreviated Analysis

HEARING DATE: FEBRUARY 9, 2012

Date:	February 2, 2012
Case No.:	2011.0251 <u>D</u> V
Project Address:	780-784 Green Street
Permit Application:	2010.1123.5588
Zoning:	RM-2 (Residential, Mixed, Moderate-Density)
	40-X Height and Bulk District
Block/Lot:	0118/024
Project Sponsor:	Don David
	72 Otis Street
	San Francisco, CA 94103
Staff Contact:	Aaron Hollister – (415) 575-9078
	aaron.hollister@sfgov.org
Recommendation:	Do not take DR and approve as proposed

1650 Mission St. Suite 400 San Francisco, CA 94103-2479

Reception: 415.558.6378

Fax: 415.558.6409

Planning Information: 415.558.6377

PROJECT DESCRIPTION

The proposal is to expand an existing egress stair structure located at the rear of the residential structure found at the subject site. The stair structure would extend approximately 7.5 feet further into the rear yard area of the subject property than the existing egress stair structure and would expand in width by approximately one foot. No other work is proposed under the subject permit.

The expansion of the stair structure is being voluntarily pursued by the applicant to bring the structure into conformity with Building Code standards for egress stairs. The expanded footprint is necessary to allow the stairs to meet rise-over-run standards outlined in the Building Code and represents the minimal footprint that is required to meet rise-over-run standards. A letter from the Senior Building Inspector for the District has been included that states the proposed stairs can be built to meet current Building Code standards.

Additionally, the stair expansion is subject to a Variance that was heard in May 2011 by the Zoning Administrator. A Variance was determined to be necessary as the proposed stair structure projects into the already non-conforming rear yard area. At the hearing, the Zoning Administrator took matters under advisement and instructed the property owners to confirm that the stair configuration represents the minimal required dimensions with the Department of Building Inspection (DBI). DBI's conclusions regarding the stair replacement have been summarized in the aforementioned letter. The Variance Decision Letter will be drafted after the Commission's decision regarding the DR request.

SITE DESCRIPTION AND PRESENT USE

The subject site is an interior lot that measures approximately 25 feet wide by 97.5 feet deep and is located on the north side of Green Street between Mason and Powell Streets. The site currently contains a three-story, three-dwelling unit modified Edwardian residential structure that was constructed in 1907.

SURROUNDING PROPERTIES AND NEIGHBORHOOD

The subject property is located on a block that features many similarly developed and situated residential structures. Most of the structures on the subject block are three-story, multi-dwelling unit structures from the Edwardian era that feature equal or greater lot coverage as compared to the subject site. The North Beach Neighborhood Commercial District is located approximately one block to the north and east of the project site. The immediate neighborhood is residential in nature and primarily zoned RM-2.

BUILDING PERMIT NOTIFICATION

TYPE	REQUIRED PERIOD	NOTIFICATION DATES	DR FILE DATE	DR HEARING DATE	FILING TO HEARING TIME
311 Notice	30 days	October 27, 2011 – November 28, 2011*	November 28, 2011	February 9, 2012	74 days

* The notification period was extended to November 28th as November 25th fell on a City-observed holiday.

HEARING NOTIFICATION

ТҮРЕ	REQUIRED PERIOD	REQUIRED NOTICE DATE	ACTUAL NOTICE DATE	ACTUAL PERIOD
Posted Notice	10 days	January 30, 2012	January 30, 2012	10 days
Mailed Notice	10 days	January 30, 2012	January 30, 2012	10 days

PUBLIC COMMENT

	SUPPORT	OPPOSED	NO POSITION
Adjacent neighbor(s)	-	Х	-
Other neighbors on the			
block or directly across	-	-	-
the street			
Neighborhood groups	-	-	-

Other than the DR Requestor, the Department is not aware of any additional opposition to the project.

DR REQUESTOR

Stephen M. Williams, on behalf of the 774-778 Green Street Home Owners Association 1934 Divisadero Street San Francisco, CA 94115 (adjacent neighbors to the east)

DR REQUESTOR'S CONCERNS AND PROPOSED ALTERNATIVES

See attached Discretionary Review Application, dated November 28, 2011

PROJECT SPONSOR'S RESPONSE TO DR APPLICATION

See attached Response to Discretionary Review, dated January 30, 2012

ENVIRONMENTAL REVIEW

The Department has determined that the proposed project is exempt/excluded from environmental review, pursuant to CEQA Guideline Section 15301 (Class One - Minor Alteration of Existing Facility, (e) Additions to existing structures provided that the addition will not result in an increase of more than 10,000 square feet).

RESIDENTIAL DESIGN TEAM REVIEW

The DR Requestors have raised several concerns regarding exceptional and extraordinary findings, as well as hardship findings as they relate to the granting of a potential Variance for the project. The exceptional, extraordinary and hardship findings will be addressed in the pending Zoning Administrator Letter of Determination for the Variance. The Commission may only consider issues raised by the DR Requestors as they relate to compliance with the Residential Design Guidelines (RDG).

The Residential Design Team (RDT) conducted a review of the project after the filing of this DR Application and found that DR Requestors' concerns regarding light reception of property line windows are not exceptional or extraordinary. The stair structure is located nine feet from the DR Requestors' property line windows and utilizes an open design and minimal configuration that is typical of egress stair structures (RDG, pg. 16, 25-26).

The RDT found that exceptional or extraordinary conditions do not exist surrounding the loss of privacy. The stair structure utilizes a minimal configuration that does not allow for the establishment of permanent, enclosed areas that would create line-of-sight issues with interior spaces in the DR Requestors' building (RDG, pg. 17).

The RDT also found that the DR Requestors' concerns regarding mid-block open space are not exception or extraordinary. The proposed stairs are shallower than building depth of both adjacent properties, and therefore, do not encroach into mid-block open space (RDG, pgs. 25-26)

Under the Commission's pending DR Reform Legislation, this project would not be referred to the Commission as this project does not contain or create any exceptional or extraordinary circumstances.

RECOMMENDATION: Do not take DR and approve project as proposed

Attachments: Block Book Map Sanborn Map Zoning Map Aerial Photographs Context Photographs Letter from Senior Building Inspector Section 311 Notice DR Application Response to DR Application dated January 30, 2012 Reduced Plans

AJH: G:\DOCUMENTS\Projects\DR\780-784 Green Street\780-784 Green Street DR - Abbreviated Analysis.doc

Parcel Map



Sanborn Map*



*The Sanborn Maps in San Francisco have not been updated since 1998, and this map may not accurately reflect existing conditions.



Zoning Map





SUBJECT PROPERTY

DR REQUESTOR



North-Facing



SUBJECT PROPERTY

Ð

South-Facing



SUBJECT PROPERTY



East-Facing



SUBJECT PROPERTY



West-Facing



SUBJECT PROPERTY





Joseph Duffy/DBI/SFGOV 08/31/2011 09:59 AM To "Don David" <don@doubledengineering.com>

cc Edward Donnelly/DBI/SFGOV@SFGOV, Aaron J Hollister/CTYPLN/SFGOV@SFGOV

bcc

Subject Re: 780-84 Green Street 2010 1123 5588

History: 🖙 This message has been forwarded.

Dear Me David

Thank you for your letter .Typically we have no objections when a property owner wishes to replace old stairs with new stairs which will meet current building codes and obviously be safer .The only time replacement stairs cannot be fully built to current codes is when the area is restricted by property lines or by existing walls .The San Francisco Building Code allows for this condition .I believe in this case that the stairs can be built to current code as they could project into the rear yard.

If you have any questions please do not hesitate to contact me.

Joseph Duffy Senior Building Inspector 415 558-6656

"Don David" ---08/30/2011 05:26:10 PM---Mr. Duffy, Please find attached report per your request.

From:	"Don David" <don@doubledengineering.com></don@doubledengineering.com>
To:	<joseph.duffy@sfgov.org></joseph.duffy@sfgov.org>
Cc:	"Edward Wagner" <entwai@speakeasy.org></entwai@speakeasy.org>
Date:	08/30/2011 05:26 PM
Subject:	780-84 Green Street 2010 1123 5588

Mr. Duffy,

Please find attached report per your request. Don David

[attachment "780-84 Green stair letter.pdf" deleted by Joseph Duffy/DBI/SFGOV]



SAN FRANCISCO PLANNING DEPARTMENT

San Francisco, CA 94103 1650 Mission Street Suite 400

CE OF BUILDING PERMIT APPLICATION (SECTION 311

On November 23, 2010, the Applicant named below filed Building Permit Application No. 2010.1123.5588 (Alteration) with the City and County of San Francisco.

	CONTACT INFORMATION	PROJECT	SITE INFORMATION
Applicant:		Project Address:	780-784 Green Street
Address:		Cross Streets:	Mason/Powell
City, State:		Assessor's Block /Lot No.:	0118/024
Telephone:		Zoning Districts:	RM-2/40-X

Under San Francisco Planning Code Section 311, you, as a property owner or resident within 150 feet of this proposed project, are being notified of this Building Permit Application. You are not obligated to take any action. For more information regarding the proposed work, or to express concerns about the project, please contact the Applicant above or the Planner named below as soon as possible. If you believe that there are exceptional or extraordinary circumstances associated with the project, you may request the Planning Commission to use its discretionary powers to review this application at a public hearing. Applications requesting a Discretionary Review hearing must be filed during the 30-day review period, prior to the close of business on the Expiration Date shown below, or the next business day if that date is on a week-end or a legal holiday. If no Requests for Discretionary Review are filed, this project will be approved by the Planning Department after the Expiration Date.

PROJECT SCOPE

- [] DEMOLITION and/or
- [] VERTICAL EXTENSION [] HORIZ. EXTENSION (FRONT)
- [] NEW CONSTRUCTION or [] CHANGE # OF DWELLING UNITS

[] HORIZ. EXTENSION (SIDE)

- [] ALTERATION
- [] FACADE ALTERATION(S)
- [X] HORIZ. EXTENSION (REAR)

EXISTING CONDITION	PROPOSED CONDITION
Residential	Residential
None	No Change
	26 feet, 2 inches
see plan	No Change
3	No Change
s stair.	
	Residential None See plan 33 feet, 8 inches See plan 3 N/A

The proposal is to expand an existing egress stair structure located at the rear of the residential structure found at the subject site. The stair structure expansion would bring the stair structure into compliance with current Building Code standards for emergency egress. The expansion of the stair structure is also subject to a rear yard variance request, Case No. 2011.0251V, that is being considered by the Zoning Administrator.

Aaron Hollister PLANNER'S NAME: PHONE NUMBER: EMAIL:

(415)-575-9078

aaron.hollister@sfgov.org

DATE OF THIS NOTICE: **EXPIRATION DATE:**

10-27-11

RE	CEIVED		
NO	128 204	Application for Discretionary Review CASE NUMBER: 2011.0251V	
APPLICATION FOR	DUNTY OF S.F.	For Staff Use only	
Discretionary I		v Application	
1. Owner/Applicant Information			
DR APPLICANT'S NAME: Stephen M. Williams, on behalf of the 774	- 778 Green Stre	eet Home Owners Association	
DR APPLICANT'S ADDRESS: 1934 Divisadero St. San Francisco, CA	ZIP CODE: 94115	TELEPHONE: (415) 292 - 3656	
PROPERTY OWNER WHO IS DOING THE PROJ REVIEW NAME: Ottoboni 2002 Revo		DU ARE REQUESTING DISCRETIONARY	
ADDRESS: 15253 Via Pinto Monte Sereno, CA	ZIP CODE: 95030	TELEPHONE: (408) 554 - 5355	
CONTACT FOR DR APPLICATION: Stephen M. Williams			
ADDRESS: Same as above	ZIP CODE:	TELEPHONE:	
E-MAIL ADDRESS: smw@stevewilliamslaw.com			
2. Location and Classification			
STREET ADDRESS OF PROJECT: 780 - 784 Green Street San Francisco, C	CA	ZIP CODE: 94133	
CROSS STREETS: Green Street betwee	en Powell and Ma	ason Streets	
ASSESSORS BLOCK/LOT: LOT DIMENSIONS: 118/024 25 x 97.5	LOT AREA: ZON 2437.5 sq ft		
3. Project Description <i>Please check all that apply</i>			
Change of Use Change of Hours New	Construction	AlterationsX Demolition Other	
Additions to Building: Rear X Front Height Side Yard			
Present or Previous Use: Residential			
Proposed Use: Residential			
Building Permit App. No.: 2010 1123 5588 & 2011.0251V Date Filed: 11/23/2010 & 03/31/11			

11.0251D



5. Changes Made to the Project as a Result of Mediation

If you have discussed the project with the applicant, planning staff or gone through mediation, please summarize the result, including any changes there were made to the proposed project.

The Neighbors requested that the owners of the Subject Property, who are absentee property owners, meet with them to discuss the proposed project and to come to the site to review the impacts so that a DR filing might be avoided and that the parties might reach a mutually agreeable solution. The Owners refused and stated they could not defer the project and preferred to go ahead without meeting with the neighbors.

Discretionary Review Request

In the space below and on separate paper, if necessary, please present facts sufficient to answer each question.

1. What are the reasons for requesting Discretionary Review? The project meets the minimum standards of the Planning Code. What are the exceptional and extraordinary circumstances that justify Discretionary Review of the project? How does the project conflict with the City's General Plan or the Planning Code's Priority Policies or Residential Design Guidelines? Please be specific and site specific sections of the Residential Design Guidelines.

No portion of the Project may be constructed without a variance. Accordingly, by definition, the project *does not* meet the minimum standards of the Planning Code. There must, by definition, be present exceptional and extraordinary circumstances that justify the project - not the converse: a finding of exceptional and extraordinary circumstances to *deny* the project. Because of this situation, the standard Discretionary Review analysis may not be applied to this Project.

In these instances, the Commission - in conjunction with the Zoning Administrator should provide a detailed and careful explanation to the public regarding the use of the terms "exceptional and extraordinary." Statistically the Department finds a circumstance "exceptional and extraordinary" justifying a Discretionary Review in only 1% of all cases filed. However, in review of variance applications such as in the present case, "exceptional and extraordinary" circumstances are found to justify granting a variance approximately 90% of the time, often in the same case.

I. No City Agency is Requiring that the Subject Stairs be Replaced

Approval of the stair structure expansion at 780-784 Green Street, (hereinafter "Subject Property") as proposed would adversely and dramatically affect neighboring homes. The proposed expansion of the Subject Property's rear stair structure threatens the quality of life of the DR Requestors' neighboring homes and other neighbors. The Subject Property has long been a "troubled" building in the neighborhood. Although the building has been in the same family for a

long period of time, it was passed by inheritance to out-of-town owners several years ago. As a result, the up-keep and maintenance of the building has suffered, as have the neighboring buildings due to the Subject Property's lack of up-keep. Additionally, because the building is comprised of three rental units, residents have come and gone with little connection or concern for the neighborhood. There have been a number of complaints, as well as building and housing code violations found at the Subject Property including a particularly nasty raw sewage leak. Lack of maintenance at the subject site should not be used as a self-inflicted "hardship" to justify a variance that in turn negatively impacts the neighbors.

It should also be noted that the Department of Building Inspection has not "red-tagged" these stairs. This proposed stair structure expansion is a voluntary project, and the owners could instead simply repair and/or replace the stairs in-kind. This repair and/or replacement would not require a variance, nor would the new structure protrude further into the minimum rear yard. Claims that a new stair configuration is needed for "safety," are simply not true. In fact, as set forth below, a new stair may be less safe under the building code.

The Subject Property's rear stair structure is a pre-existing non-conforming structure that currently stands at approximately 7.6ft long and 5.6ft wide and is built into the structure itself as the arrow on the photo indicates. This existing structure is generally aligned with the adjoining rear yard building walls which all extend into the required minimum rear yard. As can be seen in the photo and on the original Sanborn maps, the building to the west has no exterior rear stair at all, and the building to the east has its originally configured, tightly wound stairs of approximately the same size as the Subject Property.



II. The Proposed Project May be Less "Safe" Than the Existing Stair Configuration

The existing Subject Property has a rear yard of approximately 33.6ft, in violation of Section 134 of the Planning Code that requires the Subject Property maintain a 45% rear yard of

approximately 43 ft. With averaging, the required rear yard is reduced to 34.6 feet. The proposed expansion of the stair structure will significantly increase both the length and width of the existing stair to 15.1ft by 6.7ft. The Subject Property will extend an additional 7.5 feet *farther* into the rear yard beyond the rear building wall already encroaching into the required yard. In addition to expanding the stairs' run and rise, the expansion also includes a 3.5ft railing running the entire length of the stairway and large landings on each level. The result will be to construct a structure 7.6ft beyond the average line for rear set back leaving a rear yard of only 26.1ft. The variance application and other materials submitted by the Project Sponsor as well as the testimony given to the Zoning Administrator all centered on "safety," although DBI has not proclaimed the stair a hazard and is not requiring that the stair be replaced. The Applicant states that "(t)he existing winding stair does not lend itself to a quick exit of the property." This statement implies that because the stair does not have the expansive rise and run and landings required of new stairs, it is less safe and more difficult to navigate.

However, what the Project Sponsor is missing is that the new stair would create new building code violations that may be even more unsafe than the existing condition at the Subject Property. The present condition at the Subject Property merely violates the relative size required for the rise and run of an exterior stair. The new stair configuration will violate Building Code provisions for Means of Egress, Exit Discharge Location, and will reduce the size of the safe dispersal area required under the Code when, as in this instance, exit cannot be provided to a Public Way. The new stair can never be "code compliant" as claimed over and over by the Applicant in that (1) it requires variances and (2) it creates new building code violations that may threaten the life and safety of the inhabitants of the subject building as well as the surrounding neighbors more than the present situation. It makes little sense to trade one set of violations for another and to impose greater fire and life safety threats to the neighboring buildings.

III. The Proposed Project Also Violates the Residential Design Guidelines

The effect of building into the rear yard in violation of the Code and beyond the average line for rear set back, as well as for constructing the expanded run, rise, landing, and railing components of the stair structure, is to create an incompatible design with respect to the immediate neighborhood and also in the broader context of buildings in the general vicinity. Specifically, the Subject Property's proposed stair structure significantly negatively affects the light, privacy, and mid-block open space previously enjoyed by Applicants and other neighboring properties. The Subject Property's plan (i) obstructs west-facing rear windows on all four floors of the DR Applicants' property, (ii) creates a direct line-of-sight from Subject Property into all four residential levels of Applicants' property, and (iii) encroaches into the mid-block open space.

These significant negative impacts on the Applicants' neighboring property conflict with the following provisions of the Residential Design Guidelines which require that the building:

- (A) maintains light to adjacent properties. (Design Principles, pg. 5; Rear Yard Guideline, pg. 16)
- (B) minimizes impacts on privacy to neighboring interior living spaces. (Design Principles, Rear Yard Guideline, pg. 17)
- (C) respects the mid-block open space. The building must be compatible with the existing building scale at the mid-block open space. (Design Principles, pg. 5; Building Scale at the Mid-Block Open Space Guideline, pg. 25)

2. The Residential Design Guidelines assume some impacts to be reasonable and expected as part of construction. Please explain how this project would cause unreasonable impacts. If you believe your property, the property of others or the neighborhood would be adversely affected, please state who would be affected, and how:

Again, because the Proposed Project is entirely dependent on variances, this analysis is not applicable. Negative impacts on adjacent properties and those in the vicinity by variance are not permitted by state law. The application for the variances needed in this case falls far short of providing ANY justification or compelling facts which would satisfy the code requirements for "exceptional and extraordinary" circumstances or "hardship," or "difficulty" or "loss of a property right" that "do not apply generally to other property or uses in the same class or district."

The variance application is not legally sufficient and makes no sense. It does not even bother to articulate the code sections from which a variance is requested or to state any circumstance that might justify a variance. The variance application states that the "exceptional and extraordinary circumstance" applying to the property that "does not apply to other properties" is that, "(t)he existing winding stair does not lend itself to a quick exit of the property. In addition with its tight setting to the building, it continually rots and requires repair. Keep in mind that the neighbor to the east already projects at least 6 feet further into the rear yard with an exits(sic) stairs than the subject property." This assertion of exceptional and extraordinary circumstances is not sufficient. Applicant fails to mention that the property to the west has no stair at all and the property to the east has the same "winding exit stair" configuration that is similarly "tight" to the building. Approval of the proposed stair structure expansion on the Subject Property will significantly and negatively affect the light, privacy, and mid-block open space previously enjoyed by Applicants property, located immediately east of the Subject Property, and other neighboring properties.

Specifically, the Subject Property's plan (i) obstructs west-facing rear windows located on all four floors of Applicants' property greatly impacting Applicants' enjoyment of light in violation of Guiding Design Principles and Rear Yard Guidelines, (ii) creates a direct line-of-sight from Subject Property into the interior living space of all three residential levels of Applicants' property causing loss of privacy in violation of Guiding Design Principles and Rear Yard Guidelines, and (iii) encroaches into the mid-block open space thereby "boxing in" Applicants' and neighboring properties in violation of Guiding Design Principles and Building Scale at the Mid-Block Open Space Guidelines. Mid-block open space is at a real premium on this block as it is densely configured with two alleys in the mid-block that also are lined with buildings.

3. What alternatives or changes to the proposed project, beyond the changes (if any) already made would respond to the exceptional and extraordinary circumstances and reduce the adverse effects noted above in question #1?

No changes or alternatives have been considered and the Applicants refused to meet or discuss alternatives. All adverse effects of the Subject Property's proposed stair expansion can be avoided by repairing or replacing the stair in kind, in order to spare the rear yard and to thereby replace what is claimed to be unsafe without impacting the neighbors.

Some adverse effects of the Subject Property's proposed stair structure may be alleviated by constructing the stairs so as to (a) extend no further than approximately 6.9ft to the required rear yard line as stated in Planning Code Section 134, or (b) extend no further than 7.6ft to the rear building wall in a similar configuration to the existing structure. These alternatives would make the new construction align evenly with the average line for rear set back among neighboring homes and retain the compatibility of the design between Applicants' property and the Subject Property.

- LAW OFFICES OF -GREGORY J. RYKEN

January 30, 2012

Mr. Aaron Hollister San Francisco Planning Department Neighborhood Planning, Northeast Team 1650 Mission Street, Suite 400 San Francisco, California 94103

Re: 780-784 Green Street, San Francisco, California
Case No. 2011.0251V
Building Permit No. 2010.1123.5588
Discretionary Review Application Hearing Date: February 9, 2012

Dear Mr. Hollister

This office represents the owners of 780-784 Green Street, San Francisco, California (the "Property"). In this letter I will respond to the claims in the Discretionary Review Application submitted by 774-778 Green Street Home Owners Association, dated November 28, 2011.

HISTORY OF THE DISPUTE AND SUMMARY

In June 2010, the property manager for the Property received a call from a tenant about severe damage to the back stairs. The property manager contacted a contractor who reported that the stairs needed major repairs. A structural engineer was employed to determine the extent of the necessary repairs. The structural engineer, Double-D Engineering, concluded that the stairs must be replaced because more than 50% had to be repaired. The engineer prepared sheets A-1 through A-5, dated November 23, 2010, (the "Plans") to replace the damaged stairs with new stairs that would be more code compliant and safer. In November 2010, the engineer applied for a building permit for the Plans (a copy of which are attached) but was advised that a variance was needed because the new stairs would extend about 7½ feet into the rear yard. Consequently, he applied for a variance from the rear yard set-back requirements of Section 134 of the Planning Code. On May 25, 2011, there was a variance hearing before the Zoning Administrator.

The owners who filed the Discretionary Review Application (the "Applicants") appeared at the hearing and made the arguments set forth in the Application. However, the Applicants' principal complaint was that the new stairs would block their views. Terrence Ponsford, one of the Applicants, was particularly vocal on this point, describing the wonderful views that he now enjoys. At the conclusion of the hearing, the Zoning Administrator directed Double-D

> 580 CALIFORNIA STREET, SUITE 1600 · SAN FRANCISCO, CALIFORNIA 94104 TELEPHONE: (415) 439-4825 · FACSIMILE: (415) 439-4845

Mr. Aaron Hollister January 30, 2012 Page Two

Engineering to contact the Building Department to make sure that the Department agreed that it was necessary to replace the stairs and that the stairs were no bigger than required to meet the minimum building code requirements. The Zoning Administrator stated that he would grant the variance if the Building Department so agreed.

Double-D Engineering discussed the Plans with the plan checker who concurred that the stairs were no larger than necessary to meet minimum building code requirements. Double-D Engineering wrote a letter to the Department of Building Inspection (a copy of which is enclosed) stating that the stairs needed to be replaced. The Department agreed.

In October 2011, the notice required by Section 311 of the Planning Code was posted and mailed; and on November 28, 2011, the Discretionary Review Application was submitted. Since it is likely that the Applicants are aware that they cannot seek Discretionary Review on the ground that their views may be obstructed, Applicants seek Discretionary Review on other grounds: it is not necessary to replace the existing stairs; the new stairs may not be as safe; and the proposed new stairs violate the Residential Design Guidelines. This Application should be denied because the existing stairs must be replaced; the new stairs will be significantly safer for the tenants; the violations of the Residential Design Guidelines asserted in the Application either already exist or are not violations; and there are no practical alternatives to the Plans.

INTRODUCTION

A. THE PROPERTY AND THE SURROUNDING BUILDINGS

The Property is located on the north side of Green Street, just below Mason. Green Street slopes steeply at this location.

Applicants occupy the down-hill building (the "Applicants' Building") on the east side of the Property. The Applicants' Building, including the rear stairs, extends approximately 23 feet to the north beyond the rear of the building on the Property which is nearest to the Applicants' Building. (Sheet A-1) The rear yard of the Applicants' Building is about 20 feet in length, when measured from the rear stairs of the Applicants' Building.

The Applicants' Building has operable windows on three levels that look upon the rear yard of the Property. (Photo 1) Those windows are on the property line with no set back. From

Mr. Aaron Hollister January 30, 2012 Page Three

the current back stairs of the Property, one can see into the each level of the Applicants' Building. (Photos 2, 3, 4)

The rear stairs of the building on the east side of the Applicants' Building (Photo 5) extends approximately another 7 feet to the north of the Applicants' Building.

The building immediately to the north of the Property (Photo 6) is approximately 4 feet from fence separating the Property from the building to the north.

The building to the west is up-hill from the Property. The building to the west extends almost 7 feet beyond the building on the Property, and there are no windows on the side of this building facing the Property. (Photos 7, 8) The rear yard of the building to the west is approximately 26 feet in length.

B. <u>OWNERSHIP OF THE PROPERTY</u>

The Discretionary Review Application pejoratively refers to the owners of the Property as "absentee" and "out-of-town owners." The implication is that the owners live in Mobile, Alabama and could not care less about the Property. That is not the case.

The Property is not owned by the Ottoboni 2002 Revocable Trust. The Property is owned by three families, all of whom are relatives and many of whom are native San Franciscans or were raised in San Francisco: the Ottoboni family, the Gemmet family, and the Siri family. For the last two years, John Ottoboni, who is a part owner, has taken the lead in managing the Property. Between 1996 and 2009, Lin (Gemmet) Payne, who is a part owner and a resident of San Francisco, was the principal liaison between the tenants and the family who owned the Property. At that time there were 10 first cousins who were the beneficial owners. The Property was originally purchased by their grandparents who immigrated from Italy in the 1920's. The family would authorize repairs whenever they were required.

For a period of time, three of Gene and Lin Payne's children and one of John and Nancy Ottoboni's children lived in the Property. Contrary to the claims in the Discretionary Review Application, the ownership is not "absentee." Mr. Aaron Hollister January 30, 2012 Page Four

C. DAMAGE TO THE EXISTING STAIRS

The combination of dryrot and previous substandard repairs require removing more than 50% of the stair-landing-roof support structure to make proper repairs. Photos 9, 10, 11, and 12 illustrate some of these conditions.

Dryrot was found in the stringers where the railing siding attaches to the side of the stringers, at the bottoms of stringers where they attach to posts, at the riser to tread intersection on winders, post base to mudsill connections, post to post connections, between the ledger stringer and the siding of the building, in the vertical joints of the railing siding, fastener cavities where rusted fasteners have drawn in water through capillary action, and in many other locations.

Substandard repairs include areas where the stringers were notched to less than a 2x4 height and post bases which are attached directly to a mudsill or bracketed into a mudsill. The riser to tread connection is substandard and is prone to sudden failure of the tread when the fasteners rust or the riser splits. The connections of the stair structure to the walls are substandard. The mudsills are cracking and decaying and not well fastened to the concrete foundation below them.

D. IT'S MY WAY OR THE HIGHWAY

In mid-November 2011, Peter Gallagher, one of the Applicants, called John Ottoboni to ask him to call the Zoning Administrator to postpone the deadline for filing an application for Discretionary Review. Mr. Ottoboni said that he would talk with the other family members who owned the Property but said that he did not think that they could agree to extend the deadline because a year had passed since they had applied for a building permit.

Another Applicant is Terrence Ponsford who is a well known and respected attorney. On November 17, 2011, Mr. Ponsford, who was obviously angry, sent Mr. Ottoboni an e-mail complaining that Mr. Ottoboni would not agree to extend the deadline. Mr. Ponsford threatened: "If we cannot arrive at a mutually agreeable resolution of this matter, I can assure you that it will [be] much longer than another year before you get to build what you want if ever, and the cost will be much greater." (A copy of this e-mail is attached.) In other words, if you don't give me what I want, I will use the City's processes to strangle your project – regardless of the merits. Mr. Aaron Hollister January 30, 2012 Page Five

OBJECTIONS RAISED IN THE DISCRETIONARY REVIEW APPLICATION

A. NO CITY AGENCY IS REQUIRING THE STAIRS TO BE REPLACED

The Discretionary Review Application claims that the Property has long been "troubled" – a pejorative term which is too ambiguous to take seriously. The Application asserts that there have been building and housing code violations – without describing them. It is possible that the Application refers to phone calls that Applicants made to Lin Payne because tenants in the Property did not retrieve their garbage cans from the sidewalk quickly enough after garbage was collected. I expect that this subject will not interest the Planning Commission very much.

It is, of course, true that the owners of the Property did not wait for the City to issue a notice of violation before attempting to remedy a problem that posed a danger to the tenants in the Property. Normally such proactive concern would be considered praiseworthy. Applicants condemn it.

The stairs need to be replaced, rather than repaired, because, as Double-D Engineering has advised the owners, more than 50% of the stairs need to be replaced. Applicants did not offer the opinion of any structural engineer that would contradict the opinion of Double-D Engineering; they only offered the opinion of their attorney.

B. <u>THE PROPOSED PROJECT MAY BE LESS "SAFE" THAN THE EXISTING STAIR</u> CONFIGURATION

Applicants should be applauded for the novelty of this argument. It is preposterous, but novel.

As an initial matter, Applicants complain that the building on the Property now encroaches by 1 foot into the rear yard set-back while ignoring that all of the buildings surrounding the Property encroach to a far greater extent – especially the Applicants' Building. The proposed new rear stair will be approximately 6 feet less of an encroachment than the rear stairs of the Applicants' Building.

The Discretionary Review Application correctly states that, in the opinion of Double-D Engineering, the existing winding stairs do not lend themselves to a quick exit of the Property.

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The Application also correctly implied that Double-D Engineering believes the existing stairs are less safe and more difficult to navigate because they do not have the rise and run required of new stairs.

The Discretionary Review Application claims that the proposed new stairs will violate Building Code provisions for Means of Egress and Exit Discharge Location and will reduce the size of the safe disbursal area required under the Building Code. It would have been helpful if the Application had been more precise about the violations that it is talking about. It would have been be particularly helpful if the Application described how the proposed new stairs will violate provisions of the Building Code that the current stairs do not. However, the Application chose obscurity, rather than clarity, as better fitting the argument that it was making.

The argument in the Application apparently is that the new stairs cannot be completely compliant with the Building Code; consequently, the significant safety improvements that the new stairs will provide over the existing stairs should be disregarded. The Application offers no reason why that argument is reasonable.

C. THE PROPOSED PROJECT VIOLATES THE RESIDENTIAL DESIGN GUIDELINES

First, the Application claims that the new stairs will interfere with light to the adjacent properties because the stairs will obstruct all four floors of the west-facing windows of the Applicants' Building. (Photos 1 and 8) As an initial matter, there are only three floors of west-facing windows.

The Design Principles in the Residential Design Guidelines state: "Maintain light to adjacent properties by providing adequate setbacks." (p. 5) One of the modifications suggested to minimize impacts on light is "incorporate open railings on decks and stairs." (p. 16)

The proposed new stairs will be set back approximately 9½ feet from the Applicants' Building; will not extend beyond the rear elevation of the Applicants' Building; and the rear stairs of the Applicants' Building will extend more than 6 feet beyond the new stairs to be constructed. (Sheet A-1) The Application does not explain why this is not a sufficient set back. In addition, Sheet A-5 shows a profile of the new stairs to be constructed, which will include open railings, as recommended by the Residential Design Guidelines. Mr. Aaron Hollister January 30, 2012 Page Seven

Second, the Application claims that the new stairs will impact the privacy of neighborhood interior living spaces by creating direct line of sight from the Property into the residential levels of Applicants' Building. The Residential Design Guidelines recognize there will inevitably be some loss of privacy with building expansion. The Guidelines also recognize that any increase in privacy may result in loss of light. (p. 17)

Because the Property and the Applicants' Building are so close together and because the west-facing windows on the Applicants' Building are on the property line, there is already a significant loss of privacy. (Photos 2, 3, 4) The construction of the new stairs may marginally affect Applicants' privacy, but the difference would be one of degree, not of kind.

Third, the Application claims that the new stairs will encroach into the mid-block open space. The Residential Design Guidelines provide two examples of mid-block open space patterns: one is an example of a strong mid-block open space pattern; the other is an example of an irregular mid-block open space pattern. (p. 26) If the open space for the mid-block behind the Property were an example in the Guidelines, it would be an example of virtually no open space pattern. The Guidelines note: "an out-of-scale rear yard addition can leave surrounding residents feeling 'boxed-in' and cut off from the mid-block open space." (p. 26)

The Applicants' Building extends 23 feet beyond the Property on the east side. (Sheet A-1) The building on the east side of the Applicants' Building extends another 7 feet into the open space beyond the Applicants' Building. (Photo 5) The building to the north of the Property is almost built to the property line. (Photo 6) The building to the west of the Property extends about 7 feet beyond the building on the Property. (Sheet A-1, Photo 8) The description in the Guidelines is an apt description of the fate of the Property which is boxed-in and cut off by the buildings surrounding it. It takes chutzpah for the Applicants, whose building extends 23 feet beyond the building on the Property to complain that a 7½ foot addition to an exterior stairway deprives them of open space.

ALTERNATIVES

The Discretionary Review Application states that no changes or alternatives have been considered because the owners of the Property have refused to meet or discuss alternatives. That is not correct.

Mr. Aaron Hollister January 30, 2012 Page Eight

During the variance hearing before the Zoning Administrator on May 25, 2011, the Zoning Administrator discussed alternatives to the Plans with Double-D Engineering, representing the owners of the Property, and the Applicants. The only alternative that seemed like a possibility was turning the new stairs so they ran in an East-West direction, parallel to the building on the Property, rather than in a North-South direction, out to the rear yard.

As was discussed during the hearing, the problem with that alternative is that the stairs would be within 5 feet of the side property line dividing the Property from the Applicants' Building. If this alternative were chosen, all of the west-facing windows of the Applicants' Building would have to be removed and replaced with siding or a fire wall would have to be constructed. Not only would this alternative be considerably more expensive, it would be a worse result for the Applicants, given their stated goals and the objections that they raised to the Plans.

The alternative proposed in the Discretionary Review Application is to do nothing: Keep the stairs in place with only minor changes. The Applicants do not pretend that this alternative would comply with the Building Code or make the stairs safer for the tenants. However, from the standpoint of the Applicants, their views are more important that the safety of the tenants on the Property.

CONCLUSION

It is respectfully submitted that the Discretionary Review Application should be denied and that a permit should be issued that would permit the owners of the Property to replace the existing stairs with the new stairs described in the Plans.

Very truly yours, GREGORY J. RY

GJR/cyc Enclosures
























DOUBLE-D ENGINEERING, INC. 72 OTIS STREET SAN FRANCISCO, CA 94103

STRUCTURAL ENGINEERING & INSPECTION SERVICES (415) 551-5150 OFFICE (415) 551-5151 FAX

Joseph Duffy Department of Building Inspection 1660 Mission Street. 3rd Floor San Francisco, CA 94103

August 30, 2011

Subject: Inspection Report Project Address: 780-84 Green Street, San Francisco, CA Job. No. 3547 Application No. 2010 1123 5588

Based upon inspections performed, it is my professional judgment that the rear stairs at the rear of the property at 780 Green Street requires full replacement. This primarily because

- 1) more that 50% of the stairs will require repair due to dry rot
- 2) the poor design of the stairs does not lend itself easily to a repair, where certain pieces would be removed and reinstalled

Please feel free to call if you have any questions. Sincerely,

Don David Structural Engineer SE 3972

(11/18/2011) John Ottoboni - Re: 780-774 Green St., San Francisco

From: To:	John Ottoboni Terrence Ponsford	
CC:	Deborah Matthews; VRaffetto@aol.com; peter gallagher; willode@sbcglob	
Date:	11/18/2011 4:18 PM	
Subject:	Re: 780-784 Green St., San Francisco	

Terry: Thank you again for your e-mail. Various family-owners have consulted in a review of your request that we reconsider our refusal to delay the deadline as asked by Peter Gallagher. Like our Uncles Ray and Mario, we wish to be good neighbors and have reviewed your concerns in light of our circumstances.

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We also understand that you have assured us that it will be "much longer than another year""if ever" before we can fix the stairs as proposed and "that the cost will be much greater" to us if we do not agree to a change acceptable to you and Peter. The implications of your statement are clear.

Unfortunately, we are not in a position to defer the deadline as requested, given the circumstances, concerns for our tenants, and family-owner matters (including the health issue I explained to Peter). John

>>> Terrence Ponsford <<u>tponsford@yahoo.com</u>> 11/17/2011 8:36 AM >>> Dear Mr. Ottoboni

I live at 778 Green St which is the flat on 3d floor of the building to the east of your building. Peter Gallagher forwarded your email response to his request for you to delay the hearing on your permit so we could sit down and talk to you about your proposed plan to build a staircase which will extend into your backyard and discuss possible alternatives.

I purchased my flat in 1981 at a time that Ray and Mario occupied the first floor of your building. I assume that they were your relatives or those of your wife. At the time, Mr. Antonini lived on the corner, a Chinese gentleman owned the property between yours and Antonini, Vic D'Acquisto was downhill from us and Carlo whose last name I cannot remember was on the other side of him. I cannot remember the name of the family just to east of him. It was a great neighborhood. Everyone liked everyone else and looked after each other. I spent many an afternoon or part of a weekend day on the stoop of your building having a glass of red wine with Ray and Mario and Vic.

Some time in the late 80's or early 90's the guy who owns the building and property that faces on Mason, but is immediately to your north, decided that he wanted to extend his building back and add a story as was his right under the zoning in our neighborhood. He has a very large lot that extends back behind the first 6 or 7 lots on Green from Mason down the hill. What he planned would have completely blocked the view of Mr. Antonini, the Chinese gentleman to your west and every floor of your building. It would have been a distraction to me and others in our building but did not have the effect that it would have had on yours. It would have no effect on the people to the east of my building. I am not sure who raised the cry but we all met, discussed it and decided that we should try to meet with the applicant and if he would not modify his plans, we would fight it. We tried to discuss this with the person who owned the property but, like you, he pointed out that he already had plans and wanted to go forward. At that point the neighborhood joined together which included everyone named above plus a couple families that lived on Mason St. Although the plans would not have much of an adverse effect on me, I knew that given my experience as a lawyer that I could help and I did. We organized with some of group contributing money to hire a planning consultant and others their time. I do not recall anyone from your family contributing either. We met with the Planning Commission, wrote letters to the Planning Commission, met with our Supervisor, talked to the Mayor's office and let everyone who would listen that we were opposed to the plans. Again, his plans conformed to the zoning of this area. Ultimately, after spending a lot of time and money, he withdrew his request and they have never been resubmitted. If the those plans would have been approved and he would have built what he wanted, there would have a very narrow, if any, view of the bay from any floor of your building and the value of it would be significantly less now than it is.

I now find it unbelievable after spending so much time and working so hard to protect the neighborhood

(11/18/2011) John Ottoboni - Re: 780-77 Green St., San Francisco

and your family's property at that time that your family "is not in a position to defer the deadline" that Mr. Gallagher requested on our behalf. If we cannot arrive at a mutually agreeable resolution of this matter, I can assure that it will much longer than another year before you get to build what you want, if ever, and the cost will be much greater. In my years of practice, I have found that settling a matter at this early point is almost always the better way to go.

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I am sorry and find it hard to believe that I have to write this note. But then, I find it hard to believe that someone from Ray and Mario's family would have responded to what I believe to have been a reasonable request in the manner that you did. I am requesting that you reconsider your decision and meet with us to see if we can arrive at a mutually agreeable solution.

Terrence V. Ponsford 778 Green St San Francisco, CA 94133

C 415 902-4925









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LEGEND

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POST BELOW

EXISTING SECOND FLOOR PLAN









PROPOSED GROUND LEVEL PLAN

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i/4"∎l'-Ø"

$\overleftarrow{}$	WALL TO REMAIN
	POST BELOW

POST ABOVE (OR ABOVE & BELOW) \boxtimes





EXISTING REAR ELEVATION

1/4"=1'-0"



ì/4"=¦'-Ø"





EXISTING EAST ELEVATION

1/4"=1'-@"



PROPOSED EAST ELEVATION

1/4"=1'-Ø"

