



SAN FRANCISCO PLANNING DEPARTMENT

Memo to the Planning Commission

HEARING DATE: JUNE 2, 2016
Continued from the March 12, 2016 Hearing

Date: May 26, 2016
Case No.: **2015-007396CUA**
Permit Application: 201506239654 (Dwelling Unit Merger)
Project Address: **1750 Taylor Street, Units 804 & 805**
Zoning: RM-2 (Residential, Mixed, Moderate Density)
40-X Height and Bulk District
Block/Lot: 0128/021
Project Sponsor: Alice Barkley
One Market Plaza, Suite 2200
San Francisco, CA 94105
Staff Contact: Claudine Asbagh – (415) 575-9165
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BACKGROUND

The Planning Commission heard the case at its May 12, 2016 hearing. At that time, the Commission made a motion of intent to disapprove the project and continued the item to the June 2, 2016 hearing.

REQUIRED COMMISSION ACTION

The Commission must adopt the attached Draft Motion to disapprove case No. 2015-007396CUA.

Attachments:
Draft Motion.



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- Affordable Housing (Sec. 415)
- Jobs Housing Linkage Program (Sec. 413)
- Downtown Park Fee (Sec. 412)
- First Source Hiring (Admin. Code)
- Child Care Requirement (Sec. 414)
- Other

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Planning Commission Draft Motion

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ADOPTING FINDINGS RELATING TO THE DISAPPROVAL OF A CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303 AND 317 OF THE PLANNING CODE TO ALLOW A DWELLING UNIT MERGER. THE PROJECT WOULD MERGE A 935 SQUARE FOOT, TWO-BEDROOM, TWO-BATH DWELLING UNIT (#804) WITH A 2,330 SQUARE FOOT, TWO-BEDROOM, TWO AND A HALF-BATH DWELLING UNIT (#805) TO CREATE ONE 3,265 SQUARE FOOT, FOUR-BEDROOM DWELLING WITHIN THE RM-2 (RESIDENTIAL, MIXED, MODERATE DENSITY) ZONING DISTRICT AND THE 40-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On October 23, 2015 Alice Barkley (hereinafter “Project Sponsor”) filed an application with the Planning Department (hereinafter “Department”) for a Conditional Use Authorization under Planning Code Section(s) 303 and 317 to merge two dwelling units within the RM-2 (Residential, Mixed, Moderate Density) District and a 40-X Height and Bulk District.

On May 12, 2016, the San Francisco Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2015-

007396CUA and adopted a motion of intent to disapprove Conditional Use Authorization for Application No. 2015-007396CUA.

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

MOVED, that the Commission hereby disapproves the Conditional Use Authorization pursuant to Planning Code Sections 303 and 317 to allow a dwelling unit merger that would merge a 935 square foot, two-bedroom, two-bath dwelling unit (#804) with a 2,330 square foot, two-bedroom, two and a half-bath dwelling unit (#805) to create one 3,265 square foot, four-bedroom dwelling under case No. 2015-007396CUA, based on the following findings:

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** The project is located on the east side of Taylor Street, between Green and Vallejo Streets, Block 0128, Lot 021. The irregular lot measures 35,612 square feet. The Project Site is occupied by a 27-story residential building containing 72 dwelling units owned by Royal Towers Apartment Corporation, the Co-op.
3. **Surrounding Properties and Neighborhood.** The property is located within the Moderate Density Mixed Residential District (RM-2), and a 40-X height and bulk District. Uses in the immediate vicinity are primarily residential with structures that range from as little as two stories to multi-story residential towers. The site is immediately adjacent to Ina Coolrith Park.
4. **Project Description.** The project sponsor seeks a Conditional Use Authorization, pursuant to Planning Code Sections 303 and 317 to merge two dwelling units within a 72 unit building. The project would merge a 935 square foot, two-bedroom, two-bath unit (#804) with a 2,330 square foot, two-bedroom, two and a half-bath unit (#805). The Project would reconfigure and merge the two units and the common area hallway to create one four-bedroom unit.
5. **Public Comment/Community Outreach.** To date, the Department has received one letter of support related to the project.
6. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:
 - A. **Residential Merger – Section 317:** Pursuant to Planning Code Section 317, Conditional Use Authorization is required for applications proposing to merge dwelling units. This Code

Section establishes a checklist of criteria that delineate the relevant General Plan Policies and Objectives.

As the project requires Conditional Use Authorization per the requirements of the Section 317, the additional criteria specified under Section 317 have been incorporated as findings a part of this Motion. See Item 8, "Additional Findings pursuant to Section 317" below.

7. **Planning Code Section 303** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use Authorization. On balance, the project does not comply with all said criteria in that:

- A. The proposed new uses and building, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

The Project would merge two existing dwellings that are of ample size to serve as individual dwelling units. The creation of one 3,625 square foot dwelling that is unaffordable to the majority of the population is not necessary or desirable for the community.

- B. The proposed project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:

- i. Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

The Project would merge two existing dwellings that are of ample size to serve as individual dwelling units. The creation of one 3,625 square foot dwelling that is unaffordable to the majority of the population was found to be detrimental to the community.

- ii. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;

The Project does not trigger additional parking and would not increase the amount of traffic because the project would merge two dwelling units.

- iii. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

The Project would merge two existing dwelling units and not create any additional noise, glare, dust or odor.

- iv. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;

The Project does not require any additional landscaping, screening, or open space and does not propose any exterior changes.

- C. That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

The proposed project does not comply with all applicable requirements and standards of the Planning Code and is not consistent with the Objectives and Policies of the General Plan as documented under item 10 below.

- D. That the use as proposed would provide development that is in conformity with the purpose of the applicable Use District.

The Building is located in an RM-2 zoning district, where residential uses are principally permitted. The project proposes to merge two existing uses that are principally permitted and conforms to the purposes of the Use District.

8. **Planning Code Section 317(g)(2)** establishes criteria for the Planning Commission to consider when reviewing applications requesting to merge residential units. On balance, the project does not comply with said criteria in that:

- A. Whether removal of the unit(s) would eliminate only owner occupied housing, and if so, for how long the unit(s) proposed to be removed have been owner occupied;

The project proposes to merge units 804 and 805 within a residential co-op. Royal Towers Corporation is the owner of all the units within the building and manages the building through its Board of Directors. Residents within the building are considered shareholders, as opposed to owners of real estate.

The unit to be eliminated has been owner occupied since the building's construction in 1964. The Project Sponsor has resided in both units since January, 2014, having had joint ownership of the shares representing both units since January 31, 2014, and individual ownership since March 13, 2015.

While the applicant's family would occupy the merged unit, there is no compelling reason as to why the family could not continue to occupy both units as currently configured. Once the units are merged, there is little chance that the City would recoup the loss of the unit. As per Mayor Lee's December 18, 2013 Executive Directive, all housing, including owner occupied, should be preserved when possible.

- B. Whether removal of the unit(s) and the merger with another is intended for owner occupancy;

While the applicant's family would occupy the merged unit, there is no compelling reason as to why the family could not continue to occupy both units as currently configured. Once the units are merged, there is little chance that the City would recoup the loss of the unit. As per Mayor Lee's December 18, 2013 Executive Directive, all housing, including owner occupied, should be preserved when possible.

- C. That the removal of the unit will remove an affordable housing unit as defined in Section 401 of this Code or housing subject to the Residential Rent Stabilization and Arbitration Ordinance;

The Proposed Project will not eliminate any affordable housing units. Neither of the units proposed to be merged is subject to the Residential Rent Stabilization and Arbitration Ordinance.

Pursuant to the City's Periodic Adjustment to Numerical Criteria, a single family home valued at or above \$1,630,000 is considered to be unaffordable. An appraisal prepared by Miller and Perotti Real Estate, dated April 29, 2015, valued unit 804 at \$1,695,000 and unit 805 at \$3,500,000. Although the smaller unit exceeds the Numerical Criteria, the merging of two unaffordable units into one unit that would approach or exceed \$5,000,000 and be unaffordable to a larger percentage of the population than the two individual units considered separately would not be in the best interest of the community.

- D. If removal of the unit removes an affordable housing unit as defined in Section 401 of this Code or units subject to the Residential Rent Stabilization and Arbitration Ordinance, whether replacement housing will be provided which is equal or greater in size, number of bedrooms, affordability, and suitability to households with children to the units being removed;

As discussed above, neither units are subject to the City's Residential Rent Stabilization and Arbitration Ordinance.

- E. How recently the unit being removed was occupied by a tenant or tenants;

Neither of the units proposed to be merged have been rental units and have been occupied by the shareholder of the units since the building was completed in 1964.

- F. Whether the number of bedrooms provided in the merged unit will be equal to or greater than the number of bedrooms in the separate units;

The project would merge a 935 square foot, two-bedroom, two-bath unit (#804) with a 2,330 square foot, two-bedroom, two and a half-bath unit (#805). The Project Applicant proposes to reconfigure and merge the two units and the common area hallway to create one four-bedroom unit. The new unit will have four bedrooms which is equal to the sum of the bedrooms in Units 804 and 805.

- G. Whether removal of the unit is necessary to correct design or functional deficiencies that cannot be corrected through interior alterations;

The reconfiguration and merger of the units is not necessary. While the applicant's family would occupy the merged unit, there is no compelling reason as to why the family could not continue to occupy both units as currently configured. Once the units are merged, there is little chance that the City would recoup the loss of the unit. As per Mayor Lee's December 18, 2013 Executive Directive, all housing, including owner occupied, should be preserved when possible.

- H. The appraised value of the least expensive Residential Unit proposed for merger only when the merger does not involve an Unauthorized Unit.

As noted in Section C above, an appraisal prepared by Miller and Perotti Real Estate, dated April 29, 2015, valued unit 804 at \$1,695,000. Although the smaller unit exceeds the Numerical Criteria, the merging of two unaffordable units into one unit that would approach or exceed \$5,000,000 and be unaffordable to a larger percentage of the population than the two individual units considered separately would not be in the best interest of the community.

9. **General Plan Compliance.** The Project is, on balance, inconsistent with the following Objectives and Policies of the General Plan:

HOUSING ELEMENT

Objectives and Policies

OBJECTIVE 2:

Retain existing housing units, and promote safety and maintenance standards, without jeopardizing affordability.

Policy 2.2:

Retain existing housing by controlling the merger of residential units, except where a merger clearly creates new family housing.

While the applicant's family would occupy the merged unit, there is no compelling reason as to why the family could not continue to occupy both units as currently configured. Once the units are merged, there is little chance that the City would recoup the loss of the unit. As per Mayor Lee's December 18, 2013 Executive Directive, all housing, including owner occupied, should be preserved when possible.

10. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project does comply with said policies in that:

- 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 dwelling unit merger would not remove or cause the removal of neighborhood serving retail uses. Therefore, the policies of Section 101.1(b)(1) are not applicable to the Proposed Project.

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

The merging of two unaffordable units into one unit that would approach or exceed \$5,000,000 and be unaffordable to a larger percentage of the population than the two individual units considered separately would affect the cultural and economic diversity of the neighborhood. The Proposed Project, therefore, is inconsistent with the policies of Section 101.1(b)(2).

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

Although both units are considered unaffordable, the merging of two unaffordable units into one unit that would approach or exceed \$5,000,000 and be unaffordable to a larger percentage of the population than the two individual units considered separately would not promote the welfare of the city or the city's middle income residents; therefore, the proposed merger is inconsistent with the policies of Section 101.1(b)(3).

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

The project would merge two existing units into one larger unit and is not expected to create additional traffic or parking demand as there is no building expansion of gross floor area or increase in number of units. The Proposed Project, therefore, is consistent with the policies of Section 101.1(b)(4).

- 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 project would merge two existing residential units and does not propose new office space. Therefore, the policies of Section 101.1(b)(5) are not applicable to this Proposed Project.

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

The Proposed Project will not change the seismic and fire safety standards of the Building. Therefore, the Proposed Project is consistent with the policies of Section 101.1(b)(6).

- G. That landmarks and historic buildings be preserved.

The Building is not a landmark building or an historic resource, and is not located in an historic district. Merger of the two units will not affect the exterior of the building and is consistent with the policies of Section 101.1(b)(7).

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

The project does not propose any exterior changes. Therefore, the merger will have no effect on the sunlight access of any parks or open space or impair the view from any public vistas. Accordingly, the Proposed Project is consistent with the policies of Section 101(b)(8).

11. The Project is not consistent with and would not promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would not contribute to the character and stability of the neighborhood and would not constitute a beneficial development.

12. The Commission hereby finds that approval of the Conditional Use authorization would not promote the health, safety and welfare of the City.

DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **DISAPPROVES Conditional Use Application No. 2015-007396CUA** disapproves the Conditional Use Authorization pursuant to Planning Code Sections 303 and 317 to allow a dwelling unit merger that would merge a 935 square foot, two-bedroom, two-bath dwelling unit (#804) with a 2,330 square foot, two-bedroom, two and a half-bath dwelling unit (#805) to create one 3,265 square foot, four-bedroom dwelling. The property is located within the Moderate Density Mixed Residential District (RM-2), and a 40-X height and bulk District

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. XXXXX. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

Protest of Fee or Exaction: You may protest any fee or exaction subject to Government Code Section 66000 that is imposed as a condition of approval by following the procedures set forth in Government Code Section 66020. The protest must satisfy the requirements of Government Code Section 66020(a) and must be filed within 90 days of the date of the first approval or conditional approval of the development referencing the challenged fee or exaction. For purposes of Government Code Section 66020, the date of imposition of the fee shall be the date of the earliest discretionary approval by the City of the subject development.

If the City has not previously given Notice of an earlier discretionary approval of the project, the Planning Commission's adoption of this Motion, Resolution, Discretionary Review Action or the Zoning Administrator's Variance Decision Letter constitutes the approval or conditional approval of the development and the City hereby gives **NOTICE** that the 90-day protest period under Government Code Section 66020 has begun. If the City has already given Notice that the 90-day approval period has begun for the subject development, then this document does not re-commence the 90-day approval period.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on June 2, 2016.

Jonas P. Ionin
Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: