



SAN FRANCISCO PLANNING DEPARTMENT

Memo to the Planning Commission

HEARING DATE: OCTOBER 1, 2015
Continued from the September 17, 2015 Hearing

Date: September 24, 2015
Case No.: **2014-001083CUA, VAR**
Project Address: **1042-1044 JACKSON STREET**
Zoning: RH-3 (Residential – House, Three Family) District
65-A Height and Bulk District
Block/Lot: 0181/013
Project Sponsor: Ritu Vohra
Arcus Housing, LLC
2200 22nd Street
San Francisco, CA 94107
Staff Contact: Carly Grob – (415) 575-9138
carly.grob@sfgov.org
Recommendation: **Approve with Conditions**

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BACKGROUND

On July 23, 2015, the Planning Commission continued the proposed project at 1042-1044 Jackson Street (Case No. 2014-001083CUA, VAR), which included a request for a Conditional Use Authorization to exceed the height of 40 feet in a RH District, as well as a request for a Variance from Section 134 (Rear Yard) from the Zoning Administrator.

The Planning Commission continued these items to the public hearing on September 17, 2015, and requested additional graphics to better review the proposed two-story vertical addition.

Planning staff had initially recommend approval of the Conditional Use Authorization. At the hearing on September 17, 2015, 16 neighbors spoke opposition and nine speakers spoke in support of the project. After reviewing the proposal and considering the public comment, the Commissioners determined that the massing of the proposed addition may inhibit light and air to neighboring properties, and that the upper story of the proposed addition was neither necessary nor desirable for the neighborhood. The proposed third story would not exceed 40 feet, and therefore no Conditional Use Authorization would be required. At that time, the Commissioners indicated intent to disapprove the Conditional Use Authorization, and continued the item to the regularly scheduled hearing on October 1.

PROJECT DESCRIPTION

The project sponsor proposes a two-story vertical addition and interior renovation to add one dwelling unit to an existing two-unit, two-story over garage building. The resulting four-bedroom unit would be 2,040 square feet in area, and the resulting height of the building would be 50 feet. The project also includes interior reconfiguration of the existing two units, the addition of two off-street parking spaces

for a total of three spaces, renovation of the entryway, and structural upgrades to the building. The existing two-bedroom unit on the first floor would lose approximately 50 square feet in area and would retain both bedrooms. The existing three-bedroom unit on the second floor would lose approximately 151 square feet in area and would be converted to a two-bedroom unit.

REQUIRED COMMISSION ACTION

The Commission must disapprove the request for Conditional Use Authorization to permit an addition exceeding a height of 40 feet within an RH Zoning District pursuant to Planning Code Section 253.

BASIS FOR RECOMMENDATION

- The massing and bulk of the proposed addition would not be consistent with existing neighborhood character, and could block light and air to surrounding properties on Auburn Street and Jackson Street.
- The Commission has determined that the Conditional Use Authorization to permit a project which would exceed 40 feet in height is neither necessary nor desirable to the neighborhood.

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| RECOMMENDATION: Disapprove |
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Attachments:
Draft Motion



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Draft Motion

HEARING DATE: OCTOBER 1, 2015

Date: September 28, 2015
Case No.: **2014-001083CUA, VAR**
Project Address: **1042-1044 Jackson Street**
Zoning: RH-3 (Residential – House, Three Family) District
65-A Height and Bulk District
Block/Lot: 0181/013
Project Sponsor: Ritu Vohra
Arcus Housing, LLC
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ADOPTING FINDINGS RELATING TO THE DISAPPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303 AND 253 OF THE PLANNING CODE TO PERMIT AN ADDITION WHICH EXCEEDS A HEIGHT OF 40 FEET WITHIN THE RESIDENTIAL – HOUSE, THREE-FAMILY (RH-3) DISTRICT AND A 65-A HEIGHT AND BULK DISTRICT.

PREAMBLE

On December 14, 2014 Ritu Vohra (hereinafter “Project Sponsor”) filed an application with the Planning Department (hereinafter “Department”) for Conditional Use Authorization under Planning Code Section 253 to allow a building height exceeding 40 feet within the RH-3 (Residential-House, Three-Family) District and a 65-A Height and Bulk District.

On July 23, 2015, the San Francisco Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2014-001083CUA. The Commission required additional information and graphics to review the project, and requested to continue the item to a regularly scheduled hearing on September 17, 2015.

On September 17, 2015, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2014-001083CUA. Staff recommended approval of the Conditional Use Authorization. Following testimony, the Commission indicated the intent to disapprove the proposal and continued the item to a regularly scheduled hearing on October 1, 2015.

This Project is exempt from the California Environmental Quality Act (“CEQA”) as a Class 1 categorical exemption.

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 does not authorize the Conditional Use requested in Application No. 2014-001083CUA, 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 northeast corner of the intersection of Jackson and Auburn Streets, Block 0181, Lot 013. The subject lot has 25' of street frontage and a depth of 53' 4", resulting in a 1,344 square foot lot area. The existing building occupies the entire lot. The property was constructed in 1920 and is developed with a two-story over garage building with two existing residential units and one parking space. The subject property is located within the Residential-House, Three-Family District ("RH-3") and the 65-A Height and Bulk District.
3. **Surrounding Properties and Neighborhood.** The subject property is located in the northeast portion of Nob Hill, which contains a variety of residential and mixed use buildings featuring residential uses above neighborhood-serving commercial establishments on the ground floor. The neighborhood is well-served by the MUNI bus system and the Powell/Mason Cable Car Line. The buildings surrounding the subject property on the north side of Jackson street are primarily comprised of three to four story multifamily residences, all but one of which were constructed between 1908 and 1912. The buildings behind the subject property along the east side of Auburn Street are primarily two to three story single family homes or duplexes. Auburn Street is 17'6" wide. A four-story, six-unit residential building is adjacent to the subject property to the east, and a two-story, single family residence is adjacent to the north. The subject property is across Jackson Street from the Cable Car Museum and garage.
4. **Project Description.** The project sponsor proposes a two-story vertical addition and interior renovation to add one dwelling unit to an existing two-unit, two-story over garage building. The resulting four-bedroom unit would be 2,040 square feet in area, and the resulting height of the building would be 50 feet. The project also includes interior reconfiguration of the existing two units, the addition of two parking spaces for a total of three spaces, renovation of the entryway, and structural upgrades to the building. The existing two-bedroom unit on the first floor would lose approximately 50 square feet in area and would retain both bedrooms. The existing three-bedroom unit on the second floor would lose approximately 151 square feet in area and would be converted to a two-bedroom unit.

Disapproval of the Conditional Use Authorization would result in a modification of the original project description, as the project sponsor would not be able to build above 40 feet in height, and therefore would not be able to construct the fourth story.

5. **Public Comment.** To date, the Department has one call, 12 letters and 75 signatures in support of the project, and seven letters and 50 signatures from neighbors in opposition to the project.
6. **Planning Code Compliance:** The Commission finds that the Project is not consistent with the relevant provisions of the Planning Code in the following manner:

- A. **Height.** Planning Code Section 253 states that wherever a height limit of more than 40 feet in a RH District is prescribed by the height and bulk district in which the property is located, any building exceeding 40 feet in height in a RH District shall be permitted only upon approval by the Planning Commission according to the procedures for Conditional Use Approval.

The subject lot is located within the RH-3 Zoning District and 65-A Height and Bulk District. The project sponsor is seeking Conditional Use Authorization to construct a two-story addition resulting in a building height of 50 feet. The Commission has made findings that the project as currently proposed is neither necessary nor desirable for the neighborhood. Disapproval of the Conditional Use Authorization would result in a modification of the original project description, as the project sponsor would not be able to build above 40 feet in height, and therefore would not be able to construct the proposed fourth story.

- B. **Rear Yard.** Planning Code Section 134 states that the minimum rear yard depth shall be equal to 45 percent of the total depth of a lot in which it is situated. The rear yard requirement may be reduced based on the conditions of adjacent lots, but in no case shall be reduced to less than a depth equal to 25 percent of total lot depth or 15 feet, whichever is greater. Where the rear yard requirement is reduced due to averaging, the last 10 feet of building depth shall be limited to a height of 30 feet.

Based on the depth of the adjacent lot to the north of the subject property, the rear yard could be reduced from the required 45 percent of lot depth, or approximately 24 feet, to 15 feet. The existing building occupies the entire lot and is considered a noncomplying structure. Disapproval of the Conditional Use Authorization would result in a modification of the original project description, as the project sponsor would not be able to build above 40 feet in height, and therefore would not be able to construct proposed the fourth story.

The remainder of the proposed addition would extend to the rear property line at the third floor. The project also includes infill of the northeast corner of the property at the basement level as well as the construction of decks at the first residential levels within the required rear yard. The proposed construction would create a greater nonconformity in the rear yard. The project sponsor is seeking a Variance from the requirements of Planning Code Section 134.

- C. **Usable Open Space.** Planning Code Section 135 states 100 square feet of Usable Open Space is required per unit if such space is private, and each square foot of private open space may be substituted with 1.33 square foot of common open space. Planning Code Section 135(f)(2)(B) requires that the open space must face a street, face or be within a rear yard, or face some over space which meets the minimum dimension and area requirements of Planning Code Section 135(f)(1), or six feet in every horizontal direction and at least 36 feet in area on a deck.

Currently, there is no usable open space on the property and there is an existing deficit of usable open space for the existing units. The proposal includes two privately accessible decks for the proposed unit, one at the rear which is 145 square feet in area and one at the front which is 150 square feet in area. The project also includes the construction of a private deck for the unit on the first floor measuring approximately 46.5 square feet. Although the private deck on the first floor unit does not meet the minimum area requirements of Section 135, the addition of the deck brings the building closer to compliance with the Usable Open Space standards in the Planning Code.

At the hearing on September 17, the Planning Commission indicated the intent to disapprove the Conditional Use Authorization to exceed 40 feet in height. The addition of one story would be possible, but the decks at the fourth story would no longer satisfy the Usable Open Space requirement. The project sponsor has indicated their intent to provide a roof deck to satisfy the Usable Open Space requirement. Department staff will review the revised project and will verify compliance with Section 135 of the Planning Code.

7. **Planning Code Section 303** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the project does comply with 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.

Members of the Planning Commission have indicated that the massing of the building which exceeds 40 feet, or the proposed fourth story, is not keeping in scale with the surrounding neighborhood context. Furthermore, there was strong neighborhood opposition to the project. Many neighbors indicated that the addition of one dwelling unit was desirable, but the bulk of the proposed fourth story would inhibit light and air to surrounding neighbors, and was neither necessary to create a viable project, nor desirable for the community. The Commission was unable to make findings that granting Conditional Use Authorization would provide a development which was necessary or desirable for the project to exceed 40 feet in the RH-3 district.

- 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 proposed addition would result in a building massing which is not compatible with the block face along Jackson Street or Auburn Street. The proposed two-story vertical addition could inhibit light and air to neighboring properties.

- 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 sponsor would provide a total of three off-street parking spaces within the basement of the building without expanding the existing curb cut. The provision of two additional off-street parking spaces in addition to one existing space would improve congested street parking.

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

No noxious or offensive emissions would result from the proposed or reduced addition. All construction would be completed in compliance with the San Francisco building code and would adhere to guidelines which control for noise, glare, dust and odor.

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

The proposed off-street parking would be screened by a garage door. The project requires the addition of four street trees. The feasibility of planting street trees will be determined by the Department of Public Works. No additional streetscape improvements are required as part of the project. Staff has determined that the addition will not result in any shadow on open space under the jurisdiction of the Recreation and Park Commission.

- 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 Project generally complies with all relevant requirements and standards of the Planning Code; however, the project does not meet the findings that it is necessary and desirable for the Commission to grant Conditional Use Authorization to exceed 40 feet in height. The project is inconsistent with objectives and policies of the General Plan as detailed below.

8. **General Plan Compliance.** The Project is, on balance, not consistent with the following Objectives and Policies of the General Plan:

HOUSING ELEMENT

Objectives and Policies

OBJECTIVE 11:

SUPPORT AND RESPECT THE DIVERSE AND DISTINCT CHARACTER OF SAN FRANCISCO'S NEIGHBORHOODS.

POLICY 11.3

Ensure growth is accommodated without substantially and adversely impacting existing residential neighborhood character.

The project would increase density by providing a new unit to the existing housing stock. However, the expansion beyond 40 feet in height would be inconsistent with the surrounding neighborhood context, and may inhibit light and air for surrounding properties.

POLICY 11.5

Ensure densities in established residential areas promote compatibility with prevailing neighborhood character.

Disapproval of the Conditional Use Authorization would result in a modification of the original project description, as the project sponsor would not be able to build above 40 feet in height, and therefore would not be able to construct the proposed fourth story. However, the sponsor may add one unit to an existing two-unit building for a total of three units by constructing the proposed third story. The project is located within an RH-3 Zoning District, and the addition of one dwelling unit would be consistent with the density prescribed by the Zoning controls as well as the existing neighborhood character.

9. **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 proposed project would enhance the neighborhood-serving retail base by providing one additional household to patronize existing businesses.

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

Although disapproval of the Conditional Use Authorization would result in the addition of one story instead of two, the proposed project is compatible with existing multifamily housing and character of the neighborhood.

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

The city's supply of affordable housing will not be adversely affected by the proposal to add one market rate unit to an existing duplex.

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

The subject property is well-served by transit. The project site is located along the Powell-Mason Cable Car Line, and is within two blocks of the Powell/Hyde Cable Car and MUNI lines 1, 10 and 12.

- 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 will not displace any service or industry establishment. The project will not affect industrial or service sector uses or related employment opportunities. Ownership of industrial or service sector businesses will not be affected by this project.

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

The project will improve the existing structure of the building. The addition of a third unit and interior remodel require significant seismic work to comply with Department of Building Inspection requirements, including a full foundation replacement which will bring the structure into compliance with the current Building Code.

- G. That landmarks and historic buildings be preserved.

The proposed project will not impact any historic properties.

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

The project will have no negative impact on existing parks and open spaces. Department staff have analyzed a supplemental shadow analysis prepared by Althorp Westfield LLC and have determined that the proposed addition will not cast shadow on Who Hei Yuen Park (Case No. 2014-001083SHD).

10. The Project is inconsistent 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 constitute a beneficial development.
11. The Commission hereby finds that approval of the Conditional Use authorization would not promote the health, safety and welfare of the City.
12. In disapproving the Conditional Use Authorization, the Commission understand that the project sponsor may modify the project to add a third unit which would comply with the 40 foot height restriction.

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. 2014-001083CUA** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated May 28, 2015 and stamped "EXHIBIT B", which is incorporated herein by reference as though fully set forth.

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 October 1, 2015.

Jonas P. Ionin
Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: