



SAN FRANCISCO PLANNING DEPARTMENT

Memo to the Planning Commission

HEARING DATE: FEBRUARY 8, 2018

Continued from: January 25, 2018

Case No.: 2017-013406CUA
Project Address: 1177 California Street, Units 1014 & 1015
Zoning: RM-4 (Residential, Mixed, High Density)
65-A Height and Bulk District
Block/Lot: 0253A/096
Project Sponsor: Dera-Jill Pozner, Pozner Architecture and Design
1634 Hayes Street
San Francisco, CA 94117
Staff Contact: Seema Adina – (415) 575-8722
seema.adina@sfgov.org

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BACKGROUND

The Planning Commission heard the case at its January 25, 2018 hearing. At the time, the Commission made a motion of intent to approve the project and continued the item to February 8, 2018.

The project as currently proposed would condition approval on a restriction that the Merged Unit remains owner-occupied. Conditions one through four ensure that if, in the future, the two units are no longer owner-occupied, those units would be returned to two units in their approximate current configurations.

REQUIRED COMMISSION ACTION

The Commission must adopt the attached Draft Motion to approve case No. 2017-013406CUA.

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

HEARING DATE: FEBRUARY 8, 2018

Case No.: **2017-013406CUA**
 Project Address: **1177 California Street, Units 1014 & 1015**
 Zoning: **RM-4 (Residential, Mixed, High Density)**
65-A Height and Bulk District
 Block/Lot: **0253/096 + 097**
 Project Sponsor: **Dera-Jill Pozner, Pozner Architecture and Design**
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San Francisco, CA 94117
 Staff Contact: **Seema Adina – (415) 575-8722**
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ADOPTING FINDINGS RELATING TO THE APPROVAL OF A CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303 AND 317 OF THE PLANNING CODE TO ALLOW A DWELLING UNIT MERGER FOR THE PROJECT INVOLVING THE MERGER OF A 1,399 SQUARE FOOT, TWO-BEDROOM, TWO AND A HALF-BATH DWELLING UNIT (#1014) WITH A 795 SQUARE FOOT, ONE-BEDROOM, ONE BATH DWELLING UNIT (#1015) TO CREATE ONE 2,194 SQUARE FOOT, THREE-BEDROOM DWELLING WITHIN THE RM-4 (RESIDENTIAL, MIXED, HIGH DENSITY) ZONING DISTRICT AND THE 65-A HEIGHT AND BULK DISTRICT.

PREAMBLE

On October 18, 2017 Dera-Jill Pozner (hereinafter “Project Sponsor”) filed an application with the Planning Department (hereinafter “Department”) for a Conditional Use Authorization under Planning Code Sections 303 and 317 to merge two dwelling units within the RM-4 (Residential, Mixed, High Density) District and a 65-A Height and Bulk District.

On February 8, 2018, the San Francisco Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2017-013406CUA and heard public testimony.

ENVIRONMENTAL REVIEW

The 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 approves the Conditional Use Authorization pursuant to Planning Code Sections 303 and 317 to allow a dwelling unit merger that would merge a 1,399 square foot, two-bedroom, two and a half-bath dwelling unit (#1014) with a 795 square foot, one-bedroom, one-bath dwelling unit (#1015) to create one 2,194 square foot, three-bedroom dwelling unit under Case No. 2017-013406CUA, based on the following finds:

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 proposed project (Project) is located on the southeast corner of California and Jones Street, Block 0253A and Lots 096 and 097. The condominium building’s entire parcel measures approximately 15,000 square feet, with the lots under consideration measuring 1,399 and 795 square feet respectively. The Project Site is occupied by an 18-story mixed-used building containing 254 condominium units, 248 of which are residential.
3. **Surrounding Properties and Neighborhood.** The Project includes a dwelling unit merger of two dwelling units within an 18-story building with 248 dwelling units. The project would merge a 1,399 square foot, two-bedroom, two and a half-bath dwelling unit (#1014) with a 795 square foot, one-bedroom, one-bath dwelling unit (#1015). The Project would remove a wall between the units to create one three-bedroom unit.
4. **Project Description.** The Project includes a dwelling unit merger of two dwelling units within an 18-story building with 248 dwelling units. The project would merge a 1,399 square foot, two-bedroom, two and a half-bath dwelling unit (#1014) with a 795 square foot, one-bedroom, one bath dwelling unit (#1015). The Project would remove a wall between the two units to create one three-bedroom unit.
5. **Public Comment/Community Outreach.** To date, the Department has received six letters in support of the project, and two letters against.
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. **Rear Yard Requirement.** Planning Code Section 134 requires a rear yard measuring 25 percent of the total lot depth in the RM-4 District.

The Project will merge two existing dwelling units within the building and does not propose any exterior changes to the building or rear yard configuration.

- B. **Parking.** Planning Code Section 151 requires one parking space for each dwelling unit.

The Project proposes to merge two dwelling units; no additional parking is required.

- C. **Residential Density.** Planning Code Section 209.2 allows dwelling units as principally permitted at a density of one unit per 200 square feet of lot area in the RM-4 Zoning District.

The project site measures 15,000 square feet which would permit up to 75 dwelling units. The site currently has 248 dwelling units, and with the merger, will have 247. Therefore, the Project complies with residential density.

- D. **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 not increase the size or intensity of the existing residential use, and there would be no exterior alterations to the building. The Project would merge two existing dwelling units and would bring the property into greater conformity with density limits of the Planning Code.

- 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 does not involve any alterations to the exterior of the subject building and will not affect the building envelope.

- 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 Project complies with all relevant requirements and standards of the Planning Code and is consistent with the Objectives and Policies of the General Plan as documented under item 9 below.

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

The existing building is located in an RM-4 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 1014 and 1015 within a 254-unit building. The owner of the building resides in Unit 1014, a 1,399 square foot building. The owner has been residing in Unit 1015 since September 2016 when a buy-out agreement was completed with the tenant. The Project as currently proposed would condition approval on a restriction that the Merged Unit remains owner-

occupied. If, in the future, the two units are no longer owner-occupied, those units would be returned to two units in their approximate current configurations.

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

The Project applicant's family currently occupies both units and the merge would allow both units to function as one. The newly created three-bedroom unit will continue to be occupied by the same family. If, in the future, the two units are no longer owner-occupied, those units would be returned to two units in their current configurations.

- 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 Project will not eliminate any affordable housing units.

- 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 of the units are considered affordable because they are condominiums and not subject to the Residential Rent Stabilization and Arbitration Ordinance.

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

Unit 1015 was occupied until September 2016, when the owner completed a buy-out agreement with the tenants.

- 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 the two-bedroom unit with the one-bedroom unit to create a 3-bedroom, 3.5-bath unit. The new unit will have three bedrooms which is equal to the sum of the bedrooms in Units 1014 and 1015.

- 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 necessary to provide a practical and function unit for Mr. Landfair's family.

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

An appraisal prepared by Churton & Associates dated May 18, 2017, valued unit 1015 at \$910,000.

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.

The Project would merge a two-bedroom unit with a smaller one-bedroom unit. The newly created three-bedroom unit would provide common areas for the household and retain the same number of bedrooms. The proposed merger will create one three-bedroom unit that will provide sufficient space for a large and/or extended family.

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:

- 1) 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.

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

The Project would merge two existing units that are owner-occupied. The Project proposes to restrict the use of the Merged Unit to owner-occupancy, and therefore the cultural and economic diversity of the neighborhood will not be affected.

- 3) That the City's supply of affordable housing be preserved and enhanced,

The Project does not include affordable housing as defined by the Residential Rent Stabilization and Arbitration Ordinance.

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

The Project is not expected to create additional traffic or parking demand and would not overburden the streets or neighborhood parking.

- 5) 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 does not involve commercial office development and would not impact the industrial or service sector economies.

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

The Project will not change the seismic and fire safety standards of the Building.

- 7) That landmarks and historic buildings be preserved.

The existing building is not considered to be a City Landmark or a historic resource.

- 8) 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 Project would not impact any nearby park or open space.

11. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.
12. The Commission hereby finds that approval of the Conditional Use authorization would 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 **APPROVES Conditional Use Application No. 2017-007430CUA** pursuant to Planning Code Sections 303 and 317 to allow a dwelling unit merger that would merge a 1,399 square foot, two-bedroom, two and a half-bath dwelling unit (#1014) with a 795 square foot, one-bedroom, one-bath dwelling unit (#1015). The subject property is located within the RM-4 (Residential, Mixed, High Density) Zoning District, and a 65-A 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 February 8, 2018

Jonas P. Ionin
Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: February 8, 2018

EXHIBIT A

AUTHORIZATION

This authorization is for conditional use to merge a 1,399 square foot, two-bedroom, two and a half-bath dwelling unit (#1014) with a 795 square foot, one bedroom, one bath dwelling unit (#1015) located at 1177 California Street, Lot 096 and 097, in Assessor's block 0253A pursuant to Planning Code Section(s) **303 and 317** within the RM-4 (Residential, Mixed, High Density) Zoning District and 65-A Height and Bulk District; in general conformance with plans, dated **October 16, 2017** and stamped "Exhibit B" included in the docket for Case No. **2017-013406CUA** and subject to conditions of approval reviewed and approved by the Commission on **February 8, 2018** under **Motion No. XXXX**. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, owner, business, or operator.

RECORDATION OF CONDITIONS OF APPROVAL

Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on **February 8, 2018** under Motion No **XXXX**.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. **XXXX** shall be reproduced on the Index Sheet of construction plans submitted with the Site or Building permit application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

SEVERABILITY

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a building permit. "Project Sponsor" shall include any subsequent responsible party.

CHANGES AND MODIFICATIONS

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.

Conditions of Approval, Compliance, Monitoring, and Reporting

OWNER-OCCUPANCY

1. The Merged Unit shall remain “Owner-Occupied” (as defined below) now and in the future. At the time that such owner occupancy ceases, the previous units must be restored to the same square footage as prior to the approved unit merger.
2. “Owner-Occupied” or “Owner Occupant” shall refer to occupancy by the current individual or individuals who own the Property, including the spouse, registered domestic partner, child or parent of an owner of the Property, or by a limited liability company whose membership includes an individual who occupies the unit (or has a spouse, registered domestic partner or parent who occupies the unit), provided that such individual is the sole member (or managing member) of a limited liability company which holds title to the Property at the time of occupancy.
3. In the event that the current Owner Occupant no longer occupies the Merged Unit, the then owner of the Property at that time shall, within three (3) months of vacation of the Merged Unit, file an alteration permit with the City to restore Unit 1014 and Unit 1015 as separate units in the same size and configuration as shown in the plans attached to the conditional use application approved by the Planning Commission.
4. The current Owner Occupant shall submit an affidavit under penalty of perjury, in the form attached as Exhibit B, to the City’s Zoning Administrator on an annual basis starting on the sixth month after the Owner Occupant receives a job card or certificate of occupancy as to the construction work authorized by the conditional use permit, and again each year on the one year anniversary of the receipt of such job card or certificate of occupancy. Failure to timely submit the required affidavit so shall be a violation of this condition of approval. If such certification is not timely filed within two months of the date due, the City shall have the right to initiate revocation of the conditional use authorization and/or issue a notice of violation and pursue abatement.

PERFORMANCE

5. **Validity.** The authorization and right vested by virtue of this action is valid for three (3) years from the effective date of the Motion. The Department of Building Inspection shall have issued a Building Permit or Site Permit to construct the project and/or commence the approved use within this three-year period.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-8722, www.sf-planning.org
6. **Expiration and Renewal.** Should a Building or Site Permit be sought after the three (3) year period has lapsed, the project sponsor must seek a renewal of this Authorization by filing an

application for an amendment to the original Authorization or a new application for Authorization. Should the project sponsor decline to so file, and decline to withdraw the permit application, the Commission shall conduct a public hearing in order to consider the revocation of the Authorization. Should the Commission not revoke the Authorization following the closure of the public hearing, the Commission shall determine the extension of time for the continued validity of the Authorization.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-8722, www.sf-planning.org

7. **Diligent Pursuit.** Once a site or Building Permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. Failure to do so shall be grounds for the Commission to consider revoking the approval if more than three (3) years have passed since this Authorization was approved.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-8722, www.sf-planning.org

8. **Extension.** All time limits in the preceding three paragraphs may be extended at the discretion of the Zoning Administrator where implementation of the project is delayed by a public agency, an appeal or a legal challenge and only by the length of time for which such public agency, appeal or challenge has caused delay.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-8722, www.sf-planning.org

9. **Conformity with Current Law.** No application for Building Permit, Site Permit, or other entitlement shall be approved unless it complies with all applicable provisions of City Codes in effect at the time of such approval.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-8722, www.sf-planning.org

DESIGN - COMPLIANCE AT PLAN STAGE

10. **Interior Layout.** The Project Sponsor shall maintain three bedrooms, three and a half-bathrooms, and two kitchens within the final merged unit design. The architectural addenda shall be reviewed and approved by the Planning Department prior to issuance.

For information about compliance, contact the Case Planner, Planning Department at 415-558-8722, www.sf-planning.org

11. **Non-Load Bearing Wall.** The Project Sponsor shall replace the non-load bearing wall upon the sale of one or both of the units. This merged dwelling unit shall revert back to two separate units, measuring 1,399 square feet, 2 bedrooms, 2.5 baths (Unit #1014) and 795 square feet, 1 bedroom, 1 bath (Unit #1015).

For information about compliance, contact the Case Planner, Planning Department at 415-558-8722, www.sf-planning.org

MONITORING

12. **Enforcement.** Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-8722, www.sf-planning.org

13. **Revocation due to Violation of Conditions.** Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and found to be in violation of the Planning Code and/or the specific conditions of approval for the Project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter to consider revocation of this authorization.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-8722, www.sf-planning.org

EXHIBIT B

Affidavit of Compliance To Be Filed Yearly

TO THE ZONING ADMINISTRATOR OF THE CITY AND COUNTY OF SAN FRANCISCO:

The undersigned individual or individuals hereby certify, under penalty of perjury, that he/she currently owns and occupies units #1014 & #1015 at 1177 California Street.

The undersigned further certifies that he/she currently occupies the unit at 1177 California Street that was created as part of a unit merger in Planning Department Case No. 2017-013406CUA.

Dated: _____

Signed: _____