

POTRERO BOOSTERS
NEIGHBORHOOD ASSOCIATION
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February 23, 2016

Rodney Fong, Commission President
Dennis Richards, Commission Vice President
Michael J. Antonini, Commissioner
Rich Hillis, Commissioner
Christine D. Johnson, Commissioner
Kathrin Moore, Commissioner
Cindy Wu, Commissioner
San Francisco Planning Commission
1650 Mission Street, Suite 400
San Francisco, CA 94103

Re: 88 Arkansas Street

Via Email

Dear Commissioners:

The following is a lightly revised version of the letter sent to you on February 23; the only changes have been to update the letter for new information.

The Planning Commission is scheduled to consider the approval of a 127 dwelling unit development at 88 Arkansas on March 3, 2016. It is our understanding that the project sponsor (Martin Building) is seeking an exception to the unit mix requirements set forth in the Eastern Neighborhoods Plan for Urban Mixed Use Districts, specifically, an exception to the Planning Code Section 207.6(c)(2) requirement that at least 40% of the units have two or more bedrooms. Because there exists no extraordinary hardships or circumstances related to this property that would require such an exception to allow the development of the property, the Potrero Boosters Neighborhood Association requests that the Commission deny this exception.

Martin Building's Plans Violate the Unit Mix Requirements, Giving Rise to the Need for an Exception.

Martin Building is asking that units with rooms failing to meet the Planning definition of a bedroom be allowed to count towards the unit mix requirement. Section 102.29 of the Planning Code defines a bedroom as a "sleeping room" under the Building Code. As the Planning Department recognized in Zoning Administrator Bulletin No. 7 (the "Bulletin"), the Building Code does not contain a single definition of a "sleeping room;" what constitutes a sleeping room relates to a variety of technical factors specified in both the Building and Housing Codes. In the Bulletin, the Planning Department determined that there were three necessary elements for a bedroom: (1) at least 70 square feet of floor area, exclusive of closets,

bathrooms, or similar spaces; (2) one window opening leading to either a street or rear yard space; and (3) clear designation as a bedroom on submitted plans.

The unit design for 88 Arkansas violates the second of these elements. Martin Building has designated 51 units as multi-bedroom units (or, a bare 40% of the total units). Of those 51 units, 10 are designated as three bedroom units and 41 are designated as two bedroom units. Of the 41 two bedroom units, all but three (i.e. 38 of the units) include interior bedrooms. As a result, only 13 of the units have two code-compliant bedrooms—the 3 designated as two bedroom units and the 10 with two code-compliant bedrooms designated as three bedroom units. Only 10% of the units, and not the mandated 40%, meet the unit mix requirements.

There Are No Grounds for the Commission to Grant an Exception.

The Commission should deny the requested exception because Martin Building cannot make the showings necessary for the Commission to grant an exemption. Planning Code Section 329(d)(6) permits the Commission to grant an exception to the Section 207.6 unit mix requirements if the Commission is able to make the findings normally required for a variance under Section 305 of the Planning Code. The Commission must make five separate findings to grant the exception. This is a high standard, as the Commission must make *all* five findings. Each necessary finding is analyzed below:

1. The Commission must find that there are exceptional or extraordinary circumstances applying to the Urban Mixed Use development of 88 Arkansas that do not apply generally to other property in the Eastern Neighborhoods Plan. As the Commission has seen in the approval of other Eastern Neighborhoods Plan projects, 88 Arkansas is not unique. The property is a regularly shaped corner lot. Its neighbors are of the regular type and uses for the district, and with the exception of Jackson Park across the street, all are zoned for Urban Mixed Use. There are no facts present that the 88 Arkansas site presents any hardships different from any other in the neighborhood that requires an exception to the unit mix requirement.
2. The Commission must find that, because of the extraordinary circumstances found on the 88 Arkansas site, literal enforcement of the unit mix requirement would result in practical difficulty or unnecessary hardships to Martin Building. Certainly, because there are no extraordinary circumstances, no such finding can be made. However, it is difficult to understand how a unique site could give rise this finding. Any residential unit will have access to light and air at some point in the unit. The Planning Code simply requires that the bedrooms counting to the unit-mix requirement be at those points. While one may argue that such a requirement is not optimal from a profitability or design standpoint, the requirement does not cause an unnecessary hardship.

3. The Commission must find that the exception is necessary for the preservation of a substantial property right possessed by other Urban Mixed Use parcels in the Eastern Neighborhoods. Over the last several months, the Commission has reviewed in detail the pipeline of projects in the Showplace Square/Potrero Hill and Central Waterfront. To our knowledge, Martin Building is the only developer under the Eastern Neighborhoods Plan to have requested an exception to the unit mix requirement. No other developer has the right to violate the requirements and none has sought to do so. Martin Building is seeking to gain, and not preserve, a right via their request for an exception to the unit mix requirements.
4. The Planning Commission must find that the granting of the exception will not be materially detrimental to the public welfare. The process that resulted in the Eastern Neighborhoods Plan determined that the public welfare was served when the residential development of formerly industrial sites would include a variety of housing unit types, including housing for both families and individuals. The Building and Housing Codes have determined that the public welfare is best served when a room specifically intended for sleeping has direct access to light and air and a point of external egress. Granting the exception would be materially detrimental to both goals. The likelihood that an interior bedroom is used as such goes down; it is likely such a space will be used as a den, office or other accessory use. Granting an exception to the unit mix requirement would mean a reduction in the availability of family friendly units. In addition, when it is used for a bedroom, an interior bedroom lacks a second point of egress for its occupant in the event of an emergency. This violates the public safety driven policy leading to the requirement that bedrooms open to the street or rear-yard. Taken together, the violations of policies protecting the public welfare should be deemed material.
5. Last, the Planning Commission must find that the granting of the exception will be in harmony with the general purpose and intent of the Planning Code and will not adversely affect the General Plan. This finding is an overall balancing of the facts. The general purpose of the Code in this instance is to provide a variety of housing types in the Eastern Neighborhoods; as argued in the discussion of welfare, counting interior bedrooms (or, more accurately, den or office space) towards the unit mix violates of that purpose.

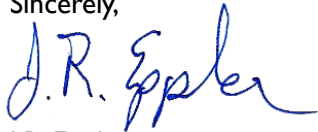
Even If Interior Bedrooms Were a Desirable Part of Minimum Unit Mix, the Legislature is the Appropriate Venue for Change.

The Eastern Neighborhoods Plan was legislated after a lengthy public process. As the Boosters have argued, it is not perfect. Even if Martin Building were to successfully argue that interior bedrooms are a desirable design feature and should be counted towards unit mix, granting an exception in this case, when the exception not tied to any overwhelming rationale and is simply in the interest of Martin Building, would be a significant change of policy taken via an

end-run of the legislative process. Any change in the unit mix requirements deserves a full public hearing, including consideration of the concerns that led to the current Planning Code requirement. The appropriate venue for such a process is with the Board of Supervisors.

I am available to discuss this further with each of you at your convenience, and may be reached at president@potreroboosters.org or at 415-574-0775. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "J.R. Eppler". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

J.R. Eppler
President

Cc: Supervisor Malia Cohen
John Rahaim, Director of Planning
Jonas P. Ionin, Commission Secretary
Kate Conner, Planner
Yoyo Chan, Legislative Aide to Supervisor Cohen