

BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal of
NANCY RUIZ.

Appeal No. 16-103

Appellant(s)

vs.

ZONING ADMINISTRATOR.

Respondent

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT on May 27, 2016, the above named appellant(s) filed an appeal with the Board of Appeals of the City and County of San Francisco from the decision or order of the above named department(s), commission, or officer.

The substance or effect of the decision or order appealed from is the DENIAL on May 19, 2016, of Minimum Lot Frontage, Area and Width Variances (to subdivide an existing, substandard lot into two substandard lots) at 440-442 Vallejo Street.

CASE NO. 2015-000732VAR

FOR HEARING ON August 10, 2016

Address of Appellant(s):

Address of Other Parties:

| | |
|---|-----|
| Nancy Ruiz, Appellant 1156 Filbert Street San Francisco, CA 94127 | N/A |
|---|-----|



Date Filed:

BOARD OF APPEALS

MAY 27 2016

CITY & COUNTY OF SAN FRANCISCO
BOARD OF APPEALS

APPEAL # 16-103

PRELIMINARY STATEMENT OF APPEAL

I / We, Nancy Ruiz, hereby appeal the following departmental action: **DENIAL** of **Variance Case No. 2015-000732VAR** by the **Zoning Administrator** which was issued or became effective on: **May 19, 2016**, for the property located at: **440-442 Vallejo Street**.

BRIEFING SCHEDULE:

The Appellant may, but is not required to, submit a one page (double-spaced) supplementary statement with this Preliminary Statement of Appeal. No exhibits or other submissions are allowed at this time.

Appellant's Brief is due on or before: **July 21, 2016, (no later than three Thursdays prior to the hearing date)**, up to 12 pages in length, double-spaced, with unlimited exhibits, with eleven (11) copies delivered to the Board office by 4:30 p.m., and with additional copies delivered to the other parties the same day. In addition, an electronic copy should be emailed to: boardofappeals@sfgov.org if possible. 4/22

Respondent's and Other Parties' Briefs are due on or before: **August 04, 2016, (no later than one Thursday prior to hearing date)**, up to 12 pages in length, doubled-spaced, with unlimited exhibits, with eleven (11) copies delivered to the Board office by 4:30 p.m., and with additional copies delivered to the other parties the same day. In addition, an electronic copy should be emailed to: boardofappeals@sfgov.org if possible.

Only photographs and drawings may be submitted by the parties at hearing.

Hearing Date: **Wednesday, August 10, 2016, 5:00 p.m., City Hall, Room 416**, One Dr. Carlton B. Goodlett Place.

All parties to this appeal must adhere to the briefing schedule above, however if the hearing date is changed, the briefing schedule MAY also be changed. Written notice will be provided of any change to the briefing schedule.

In order to have their documents sent to the Board members prior to hearing, **members of the public** should submit eleven (11) copies of all documents of support/opposition no later than one Thursday prior to hearing date by 4:30 p.m. Please note that names and contact information included in submittals from members of the public will become part of the public record. Submittals from members of the public may be made anonymously.

Please note that in addition to the parties' briefs, any materials that the Board receives relevant to this appeal, including letters of support/opposition from members of the public, are distributed to Board members prior to hearing. All such materials are available for inspection at the Board's office. You may also request a copy of the packet of materials that are provided to Board members at a cost of 10 cents per page, per S.F. Admin. Code Ch. 67.28.

If you have any questions please call the Board of Appeals at 415-575-6880

The reasons for this appeal are as follows:

See attached statement.

Appellant or Agent (Circle One):

Signature: Nancy Ruiz

Print Name: Nancy L. Ruiz

MAY 27 2016

APPEAL # 16-103

05/27/2016

Appeal of Variance Decision

Case No: 2015-000732VAR
440-442 Vallejo St.
Block/ lot 0133/016

To Whom It May Concern:

On May 19th, 2016 my request to the split of lot 016 was denied however I would like to insist on this matter and be heard by the Board of the Appeals for the following main reasons:

- 1) Several others lot splitting in the district/neighborhood were granted via variance. Such right was given to other properties in the area.
- 2) The granting of such variance will not be materially detrimental to the public welfare or other property in the vicinity.

A brief document with evidences and detailed explanation will be submitted before the hearing day and I will address all the concerns stated in the Variance Decision letter.

Cordially,


Nancy Ruiz

(415) 297-0577



SAN FRANCISCO PLANNING DEPARTMENT

BOARD OF APPEALS

MAY 27 2016

APPEAL # 16-103

Variance Decision

Date: May 19, 2016
Case No.: 2015-000732VAR
Project Address: 440-442 Vallejo Street
Permit Application: N/A
Zoning: RH-3 [Residential—House, Three Family] District
40-X Height and Bulk District
Block/Lot: 0133/016
Project Sponsor: Nancy Ruiz
1156 Filbert Street
San Francisco, CA 94109
Staff Contact: Nicholas Foster – (415) 575-9167
nicholas.foster@sfgov.org

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

Reception:
415.558.6378

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415.558.6409

Planning
Information:
415.558.6377

DESCRIPTION OF VARIANCES – MINIMUM LOT FRONTAGE, AREA AND WIDTH VARIANCE SOUGHT:

The proposal ("Project") proposes a lot subdivision of the existing, substandard lot into two substandard lots. The subject property contains two structures, each with two dwelling units, on a substandard lot of record measuring 20 feet wide by 137.5 feet deep (with a total lot area of 2,750 square feet). The Project seeks relief from strict application of Planning Code requirements for minimum lot frontage, area and width (Section 121).

PER SECTION 121 OF THE PLANNING CODE, each lot shall front on a public street or alley and that each lot shall have a minimum lot width of 25 feet and a minimum lot area of 2,500 square feet. The proposed subdivision will create two lots, each with a minimum lot width of 20 feet and a lot size of 1,375 square feet that do not meet the minimum lot frontage and area dimensions, as required by Code. Additionally, the proposed rear lot would not front on a public street or alley as required by Code; therefore, the Project requires a variance.

PROCEDURAL BACKGROUND:

1. The Project is exempt from the California Environmental Quality Act ("CEQA") as a Class 1 categorical exemption.
2. The Zoning Administrator held a public hearing on Variance Application No. 2015-000732VAR on April 27, 2016.
3. Neighborhood notification pursuant to Planning Code Section 311 is not required for the project.

DECISION:

DENIED, in general conformity with the plans on file with this application, shown as EXHIBIT A, to subdivide the existing, substandard lot into two substandard lots.

FINDINGS:

Section 305(c) of the Planning Code states that in order to grant a variance, the Zoning Administrator must determine that the facts of the case are sufficient to establish the following five findings:

FINDING 1.

That there are exceptional or extraordinary circumstances applying to the property involved or to the intended use of the property that do not apply generally to other properties or uses in the same class of district.

Requirement Not Met.

- A. There are no exceptional or extraordinary circumstances that apply to the subject property that do not apply to other properties in the area. The subject property contains two structures, each with two dwelling units, on a substandard lot of record measuring 20 feet wide by 137.5 feet deep (with a total lot area of 2,750 square feet). On the subject block (Block 0133), the immediately adjacent lots (Lots 015; 017; 018; and 019) share the same lot dimensions as the subject property and also contain two (or more) residential structures on each, respective lot. Further, none of these lots have been subdivided, and more generally, subdivided lots are not commonplace on the subject block.
- B. The project sponsor did not provide sufficient evidence to establish an extraordinary circumstance related to the physical characteristics of the property or its intended use that do not apply generally to other property or uses in the same classes of district.

FINDING 2.

That owing to such exceptional and extraordinary circumstances the literal enforcement of specified provisions of this Code would result in a practical difficulty or unnecessary hardship not created by or attributed to the applicant or the owner of the property.

Requirement Not Met.

- A. Literal enforcement of specified provisions of the Planning Code would prohibit subdivision of the lot; however, such prohibition does not impose a practical difficulty or unnecessary hardship on property owner. The property owner recently purchased the subject property in its current state and will be able to maintain the property in the state and manner it was acquired.
- B. The property owner states that the variance is necessary to allow them greater flexibility in ownership of the property; however, such hardship self-created.
- C. The property owner did not provide sufficient evidence to the Planning Department to adequately substantiate a hardship or practical difficulty not of their own doing.

FINDING 3.

That such variance is necessary for preservation and enjoyment of a substantial property right of the subject property, possessed by other property in the same class of district.

Requirement Not Met.

- A. There are numerous properties on the subject block that have more than one residential structure on a single lot, and the granting of this variance would afford the subject property owners a substantial property right not possessed by other property in the same class of district.

FINDING 4.

That the granting of such variance will not be materially detrimental to the public welfare or materially injurious to the property or improvements in the vicinity.

Requirement Not Met.

- A. The granting of this variance could prove materially detrimental to adjacent properties because the subdivision could result in two, two-unit residential structures that are each eligible for the Two-Unit Condominium Conversion Bypass. In turn, the Condominium Conversion process could eliminate two rental dwelling units from the existing housing stock, thereby reducing the number of affordable dwelling units on the subject block (and citywide).

FINDING 5.

The granting of such variance will be in harmony with the general purpose and intent of this Code and will not adversely affect the General Plan.

Requirement Not Met.

This development is partially consistent with the generally stated intent and purpose of the Planning Code to promote orderly and beneficial development. Planning Code Section 101.1 establishes eight priority-planning policies and requires review of variance applications for consistency with said policies.

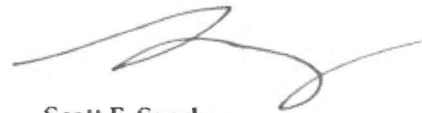
1. The proposed Project does not contain, nor will it affect, neighborhood-serving uses.
2. The proposed Project would not be consistent with the existing housing and neighborhood character. The Project would create two, substandard lots of record that is not a commonplace on the subject block.
3. The proposed Project could have an adverse effect on the City's supply of affordable housing. The Project could result in two, two-unit residential structures that are each eligible for the Two-Unit Condominium Conversion Bypass, which, could potentially eliminate two, affordable rental units from the existing housing stock.
4. The proposed Project will have no effect on MUNI transit service or overburden the streets or neighborhood parking.

5. The proposed Project will have no effect on the City's industrial and service sectors.
6. The proposed Project will have no negative effect on the City's preparedness to protect against injury and loss of life in an earthquake.
7. The proposed Project will have no effect on the City's landmarks or historic buildings.
8. The proposed Project would not affect any existing or planned public parks or open spaces.

The effective date of this decision shall be either the date of this decision letter if not appealed or the date of the Notice of Decision and Order if appealed to the Board of Appeals.

APPEAL: Any aggrieved person may appeal this variance decision to the Board of Appeals within ten (10) days after the date of the issuance of this Variance Decision. For further information, please contact the Board of Appeals in person at 1650 Mission Street, 3rd Floor (Room 304) or call 575-6880.

Very truly yours,



Scott F. Sanchez
Zoning Administrator

THIS IS NOT A PERMIT TO COMMENCE ANY WORK OR CHANGE OCCUPANCY. PERMITS FROM APPROPRIATE DEPARTMENTS MUST BE SECURED BEFORE WORK IS STARTED OR OCCUPANCY IS CHANGED.

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6 Mr. Darryl Honda
7 President
8 Board of Appeals
9 City and County of San Francisco
10 1650 Mission Street, Room 304
11 San Francisco, CA 94103

12 RE: Appeal No. 16-103
13 440-442 Vallejo Street, San Francisco
14 Appeal of Denial of Application for Subdivision Variance
15 Hearing Date: August 10, 2016

16 Dear Commissioner Honda:

17 I represent Ms. Nancy Ruiz, Mr. Leonardo Branco, Ms. Veronika Zasimczuk, Mr.
18 Oscar Guzman and Nikolas R. Zasimczuk ("Appellants"). On August 10, 2016, this Board
19 will hold a hearing on the appeal of the denial of Variance for dividing 440-442 Vallejo
20 Street ("Subject Property" or "property"), into two equal size lots measuring 20 feet wide
21 and 68.75 feet long.

22 The Appellants respectfully disagree with the Planning Department's findings that
23 Appellant's property did not meet any of the requirements of the five-part test set forth
24 under Section 305(c) of the Planning Code and therefore were denied a variance. A review
25 of the denial of the variance application by the City and County of San Francisco's ("City")
26 show that the findings made by the Planning Department are inherently inconsistent with
27 other decisions for lot subdivisions made by the City.
28

1 **Background - Appellant's Application was Complete**

2 Subject Property was created in the early 1900s¹, prior to minimum lot width and
3 minimum lot area requirements that are set forth in the current Planning Code Section
4 121(a) for frontage, 121(d)(2) for lot width, Section 121(e)(2) for minimum lot area and
5 Section 134 for minimum rear yard. Appellants submitted the attached application for a
6 variance to the Planning Department. See **Exhibit A**. The eight-part questionnaire that is
7 part of the application mandates that variance decisions be based on General Plan Policies
8 that are a priority to the voters in San Francisco. Appellant's responses to these questions
9 satisfy the General Planning Policies approved by the voters. Therefore, Appellant's
10 variance should have been granted.

11 **Findings made by the Planning Department are Inconsistent with the San Francisco**
12 **Subdivision Code and Prior Decisions made by Planning Department**

13 In denying Appellant's application for variance, the Planning Department stated that
14 none of the findings required under Section 305(c) of the Planning Code had been met.

15 Upon receiving the denial, Appellants conducted a review of all variances granted by
16 the Planning Department in the same district of the Subject Property. A list of all properties
17 that have been granted Subdivision Variances in the past twenty-four years is attached
18 hereto as **Exhibit B**. A review of each of the decisions reveals that the findings in support
19 of the denial of Appellant's application are vague and inconsistent with findings made in the
20 decisions where the variance was granted. In the interest of time, the discussion below
21 compares the findings made in the two most recent variance decisions granted by the
22 Planning Department with those made for Subject Property:

23 **Finding No. 1.** That there are exceptional or extraordinary circumstances applying to the
24 property involved or to the intended use of the property that do not apply generally to other
25 properties or uses in the same class of district. *Planning Code Section 305(c)*.

26
27 ¹ Appellants know that one of the buildings on subject property was built in 1912. Based on this, Appellants
28 assume that the lot was created in the early 1900s.

1 The Planning Department stated in its denial, attached hereto as **Exhibit C**, that there
2 are “no exceptional or extraordinary circumstances that apply to the subject property that do
3 not apply to other properties in the area.”

4 This finding is inconsistent with the decisions made in Case #No. 2013.0149V at
5 1327-29 Kearny Street (“1327 Kearny”), see **Exhibit D**, and Case No. 2004.1144V at
6 1347-49 Kearny Street (“1347 Kearny”), see **Exhibit E**, both of which are located in
7 Telegraph Hill, less than 2 blocks from the subject property and therefore the same class of
8 district.

9 1327 Kearny: In granting the variance to 1327 Kearny the Planning Department found
10 “exceptional or extraordinary circumstances” applied to it for the following reasons:

- 11 A. “The subject lot, developed circa 1906, was created prior to minimum lot width and
12 area requirement. The property is 20 feet wide and 80 feet deep...”
13 B. “The subject buildings were constructed prior to current rear yard requirements and
14 cover the majority of the lot” and “ The two new lots that would be created...would
15 also be deficient in terms of rear yard..., requirements.”

16 1347 Kearny: In granting the variance to 1347 Kearny the Planning Department found
17 “exceptional or extraordinary circumstances” applied to it for the following reasons:

- 18 A. “The subject property is a through lot that is 20 feet wide by 80 feet deep. It was
19 developed with two structures..., separated by an interior yard...20 feet wide and 19
20 feet deep,... It is already noncomplying with respect to the minimum lot width,
21 area...”
22 B. “Given the dimensions of the lot, the configuration of the existing structures, and the
23 45 percent rear yard requirement, the subject lot cannot be subdivided into two
24 smaller lots..., in a manner in which both lots would comply with the minimum lot
25 width, area,...requirements.”

26 In denying the variance, the Planning Department found that no exceptional and
27 extraordinary circumstances applied to Subject Property because “the immediately adjacent
28

1 lots share the same lot dimensions as the subject property..., and more generally, subdivided
2 lots are not commonplace on the subject block.” and “That Appellant did not provide
3 sufficient evidence to establish an extraordinary circumstance.”

4 Appellants undertook a review of variance decisions by the Planning Department,
5 and based on this review Appellants submit that the Planning Department did not follow the
6 “same class of district” requirement set forth in Section 305 in limiting its review of
7 Appellant’s lot against only the four lots that are adjacent to Appellant’s property.

8 Appellant’s lot was developed circa early 1900s, the approximate time frame the
9 Kearny lots were developed, has a street frontage of 20 feet, the same footage as the Kearny
10 lots, and at 2,750 square feet in area is almost 72 percent larger in comparison to the pre-
11 subdivision 1,600 square feet occupied by the Kearny lots. In comparison, Subject property
12 is a better candidate for lot subdivision than the Kearny lots because Subject Property is
13 larger than the Kearny lots, hence said subdivision would result in larger lots, and the
14 resulting lots would better satisfy the rear yard requirement set forth by the Planning Code.
15 Moreover, there are several lots in Appellant’s block that have been subdivided because
16 those buildings have become condominiums, see **Exhibit F**. By conditioning the grant of a
17 variance only if there already exist other subdivided lots immediately adjacent to the subject
18 property, the Planning Department is disregarding its own precedent and the San Francisco
19 Subdivision code.

20 Furthermore, the Planning Department’s finding did not take into consideration the
21 fact that Subject Property has existed in its present state for over 100 years. Had its owners
22 applied for a lot split with the proposed configuration at the time of construction of the two
23 dwellings, the lot split would have been approved and the houses would now be legal,
24 noncomplying structures. The present proposal does not alter the existing use of this
25 property.

26 Therefore, the City should revise this finding because it goes against the spirit of the
27 law and City policy and grant the variance.

1 **Finding No. 2:** That owing to such exceptional or extraordinary circumstances the literal
2 enforcement of specified provisions of this Code would result in practical difficulty or
3 unnecessary hardship not created by or attributable to the applicant or the owner of the
4 property. *Planning Code Section 305(c).*

5 The Planning Department stated in its denial that the denial in itself “does not impose
6 a practical difficulty or unnecessary hardship on the property owner,” or that the variance is
7 not necessary to allow greater flexibility in ownership of the property.

8 In contrast, the Planning Department’s finding for the Kearny lots state that “there is
9 a precedent on the block for noncomplying lots, and prohibiting the subdivision, which
10 allow one building per lot, would result in an unnecessary hardship not created by or
11 attributed to the owner,” and approved the subdivision even though the resulting lots did not
12 possess the 15 foot rear-yards mandated by Code because the partial demolition of the
13 existing buildings would result in “unnecessary hardship with no compensating public
14 benefit.”

15 The City’s findings regarding the Subject Property completely ignores the fact that
16 there are precedents for non-compliant lots within Telegraph Hill and the City, and the
17 circumstance of the Subject Property as a single lot with multiple dwelling units is an
18 “unnecessary hardship not created by or attributed to” the Appellants. Moreover, the
19 Planning Department certainly did not extend to Appellants the consideration of evaluating
20 the “unnecessary hardship” to them that it extended to the owners of properties where the
21 variance was granted.

22 Granting the variance as proposed will allow further flexibility and independence in
23 the development, transfer, maintenance, finance and insurance of the Subject Property.
24 Property ownership for most people is a lifelong goal which requires them to obtain loans at
25 interest rates that are dependent on the ownership structure of the property in question.
26 Financing at a lower interest rate because of an ownership structure that is more acceptable
27

1 to a lending institution will result in savings to the Appellants and more resources to care for
2 their families, to maintain and make improvements to the buildings.

3 Therefore, the City should revise this finding because it is inconsistent with the
4 precedent set by the City and the variance granted.

5 **Finding No. 3:** That such variance is necessary for the preservation and enjoyment of a
6 substantial property right of the subject property, possessed by other property in the same
7 class of district. *Planning Code Section 305(c)*.

8 The Planning Department stated in its denial that “there are numerous properties on
9 the Subject Block with more than one residential structure on a single lot, and the grant of
10 variance would grant Appellants a substantial property right not possessed by other property
11 in the same class of districts.”

12 In contrast, the 1327 Kearny decision states that the grant of “such variance is
13 necessary for preservation and enjoyment of a substantial property right possessed by other
14 property...” And the 1347 Kearny decision states that “of the 52 lots on the subject block,
15 40 are non-complying with respect to both the minimum width and area requirements,” and
16 “the eight surrounding blocks of the [subject block] have numerous substandard lots...the
17 grant of the variance would not create new lots that are out of character with other
18 properties...”

19 It is clear that the City did not extend to Appellants the same level of consideration it
20 extended to the owners of 1327 and 1347 Kearny. A survey of the District reveals that
21 several larger lots with multiple dwelling units have undergone condo conversions which
22 have broken up larger parcels into smaller properties that are owned by individual owners.
23 Regardless of whether the smaller lot resulted from a lot split or a condo conversion, the
24 result is the same – a smaller non-complying lot and “enhanced substantial property right
25 not possessed by other properties in the same class of the district.”

26 Furthermore, as stated above, the literal enforcement of City Planning Code
27 requirements for lot area and rear yard imposes undue hardship to the Appellants without

1 any compensating public benefit since there are many other parcels on this block that are
2 either smaller or similar in size to the proposed lots and some are developed in a similar
3 manner as the subject project. Denying the variance would deny the owner parity of
4 treatment.

5 Therefore, the City should revise this finding and grant the variance.

6 **Finding Nos. 4:** That the granting of such variance will not be materially detrimental to the
7 public welfare or materially injurious to the property or improvements in the vicinity.

8 *Planning Code Section 305(c).*

9 The Planning Department stated in his denial that this requirement was not met
10 because the resulting lots could become eligible for the two-unit Condominium Conversion
11 Bypass, which, could potentially eliminate two, affordable rental units from the existing
12 housing stock.

13 This finding by the Planning Department is inconsistent with the statutory
14 requirements imposed on properties that apply for conversion through the two-unit
15 Condominium Conversion Bypass program. The two-unit Condominium Conversion
16 Bypass is available to two-unit buildings with a clean eviction history where each unit is
17 occupied for one year by separate parties who each own at least a 25 percent interest during
18 the entire occupancy period. *San Francisco Subdivision Code Sections 1380 et. seq.* One of
19 the buildings on the Subject Property has had an owner move-in eviction recorded and the
20 other is occupied by a tenant. Therefore, the Subject Property is currently not eligible for
21 the two-unit Condominium Conversion Bypass program and the City's findings are not
22 supported by the law.

23 In contrast, the 1327 Kearny subdivision, which created two lots with two dwelling
24 units each, was granted in December 2013, after the City made changes to the San Francisco
25 Subdivision Code. That decision makes no mention of the possibility of that property
26 becoming eligible for the two-unit Condominium Conversion Bypass. Moreover, with the
27 increase in property values in San Francisco, a smaller unit of real property affords residents

1 a viable means of residential ownership. The City's actions in denying subdivisions in
2 deserving cases would only make larger properties available to the wealthy to the detriment
3 of residents of lesser financial means.

4 Therefore, the City should revise this finding and grant the variance.

5 **Finding Nos. 5:** That the granting of such variance will be in harmony with the general
6 purpose and intent of this Code and will not adversely affect the General Plan. *Planning*
7 *Code Section 305(c).*

8 The Planning Department stated in its denial that the Subject Property did not meet
9 two of the eight priority-planning policies set forth in Planning Code Section 101.1.

10 **Priority 2.** The Planning Department stated that "The proposed Project would not be
11 consistent with the existing housing and neighborhood character. The project would create
12 two, substandard lots of record that is not a commonplace on the subject block" *Planning*
13 *Code Section 101.1.*

14 Appellant points out that the buildings on the subject lot have existed in their current
15 noncomplying configuration for over one 100 years with no apparent adverse effect on
16 surrounding properties. The proposed subdivision, subject to the conditions of this variance
17 approval, will be an insignificant change, to the neighborhood character.

18 **Priority 3.** The Planning Department stated that "The proposed Project could have an
19 adverse effect on the City's supply of affordable housing. The project could result in two-
20 unit residential structures that are each eligible for the Two-Unit Condominium Conversion
21 Bypass, which, could potentially eliminate two, affordable rental units from the existing
22 housing stock." *Planning Code Section 101.1.*

23 As mentioned above San Francisco Subdivision Code Sections 1380 et. seq. ensures
24 that the Appellant's Subject Property is currently not eligible for the two-unit Condominium
25 Conversion Bypass program.

26 Therefore, the City should revise this finding and grant the variance.
27

1 **Conclusion**

2 Appellants have shown that all the findings by the Planning Department in support of
3 the City's denial of the subdivision variance are inconsistent with precedent and
4 unsupported by the San Francisco Subdivision Code. Therefore, the Planning Department's
5 decision should be overturned and the variance granted.

6
7
8 Dated: 7/13/2016

By: Sangeetha Rao

9 SANGEETHA RAO
10 Attorney for Appellants
11 MS. NANCY RUIZ, MR. LEONARDO
12 BRANCO, MS. VERONIKA
13 ZASIMCZUK, MR. OSCAR GUZMAN
14 AND NIKOLAS R. ZASIMCZUK
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26
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Exhibit A

APPLICATION FOR Variance from the Planning Code

1. Owner/Applicant Information

PROPERTY OWNER'S NAME
NANCY L. RUIZ
 Leonardo Castello Branco; Veronika Castello Branco; Nikolas R. Zastucuk; Oscar Guzman

PROPERTY OWNER'S ADDRESS
 1154 Filbert St. San Francisco, Ca 94109
 440 Vallejo St. San Francisco, Ca 94133
 25-55 33rd St. Astoria, New York 11102
 200 2nd St. #307. Oakland, Ca 94607

TELEPHONE
 (517) 214-4314

EMAIL
 440442vallejo@gmail.com

APPLICANT'S NAME
 Nancy L. Ruiz; Leonardo Castello Branco; Oscar Guzman; Nikolas Zastucuk
 Same as Above

APPLICANT'S ADDRESS
 1154 Filbert St, San Francisco, Ca 94109
 440 Vallejo St, San Francisco, Ca 94133
 200 2nd St #307 Oakland, Ca 94607

TELEPHONE
 (415) 297-0577

EMAIL
 nancy.ruiz@cbnorcal.com

CONTACT FOR PROJECT INFORMATION
 SAME AS ABOVE

ADDRESS
 SAME AS ABOVE

TELEPHONE:
 ()

EMAIL

Same as Above

2. Location and Classification

STREET ADDRESS OF PROJECT
 440-442 VALLEJO ST. S.F. Ca

ZIP CODE
 94133

CROSS STREETS
 Kearny

| ASSESSOR'S BLOCK/LOT | LOT DIMENSIONS | LOT AREA (SQ FT) | ZONING DISTRICT | HEIGHT BLOCK DISTRICT |
|----------------------|----------------|------------------|-----------------|-----------------------|
| 0133 | 1016 20x137.5 | 2,750 | RH3 | |

3. Project Description

(Please check all that apply)

ADDITIONS TO BUILDING:

Change of Use
 Change of Hours
 New Construction
 Alterations
 Demolition
 Other Please clarify: Lot split

Rear
 Front
 Height
 Side Yard

PRESENT OR PREVIOUS USE
 ONE LOT 4 UNITS

PROPOSED USE
 Two Lots 2 UNITS each

BUILDING APPLICATION PERMIT NO
 CASE # 2015-000732 S&B

DATE FILED
 10/16/2013

4. Project Summary Table

If you are not sure of the eventual size of the project, provide the maximum estimates.

| | EXISTING USE | EXISTING USES TO BE RETAINED | NET NEW CONSTRUCTION AND/OR ADDITION | PROJECT TOTALS: |
|---|--------------|------------------------------|--------------------------------------|-----------------|
| PROJECT FEATURES | | | | |
| Dwelling Units | 4 | 4 | | |
| Hotel Rooms | NO | | | |
| Parking Spaces | NONE | | | |
| Loading Spaces | NONE | | | |
| Number of Buildings | 2 | 2 | | |
| Height of Building(s) | | | | |
| Number of Stories | 3 each | 3 each | | |
| Bicycle Spaces | NONE | | | |
| GROSS SQUARE FOOTAGE (GSF) | | | | |
| Residential | YES | | | |
| Retail | NO | | | |
| Office | NO | | | |
| Industrial/PDR <small>Production, Distribution, & Repair</small> | NO | | | |
| Parking | NONE | | | |
| Other (Specify Use) | NONE | | | |
| TOTAL GSF | | | | |

Please describe what the variance is for and include any additional project features that are not included in this table. Please state which section(s) of the Planning Code from which you are requesting a variance.
(Attach a separate sheet if more space is needed)

Variance Findings

Pursuant to Planning Code Section 305(c), before approving a variance application, the Zoning Administrator needs to find that the facts presented are such to establish the findings stated below. In the space below and on separate paper, if necessary, please present facts sufficient to establish each finding.

- 1. That there are exceptional or extraordinary circumstances applying to the property involved or to the intended use of the property that do not apply generally to other property or uses in the same class of district;
- 2. That owing to such exceptional or extraordinary circumstances the literal enforcement of specified provisions of this Code would result in practical difficulty or unnecessary hardship not created by or attributable to the applicant or the owner of the property;
- 3. That such variance is necessary for the preservation and enjoyment of a substantial property right of the subject property, possessed by other property in the same class of district;
- 4. That the granting of such variance will not be materially detrimental to the public welfare or materially injurious to the property or improvements in the vicinity; and
- 5. That the granting of such variance will be in harmony with the general purpose and intent of this Code and will not adversely affect the Master Plan.

See Attached letter

San Francisco, November 5th, 2015

To Whom It May Concern

The purpose of this letter is to inform you that our application for variance (lot splitting located at 440-442 Vallejo St., Telegraph Hill) is in harmony with the general purpose and intent of Code 305 and will not adversely effect the Master Plan.

We are a family five people holding ownership in the property with 2 buildings on the same lot. The front building has 2 units, Leonardo Castello Branco and his wife Veronika Zasimczuk occupy the top unit (owners) and the lower unit is tenant occupied.

The back building has 2 units, as well. The top occupied by a tenant and the lower by Nancy L Ruiz (owner).

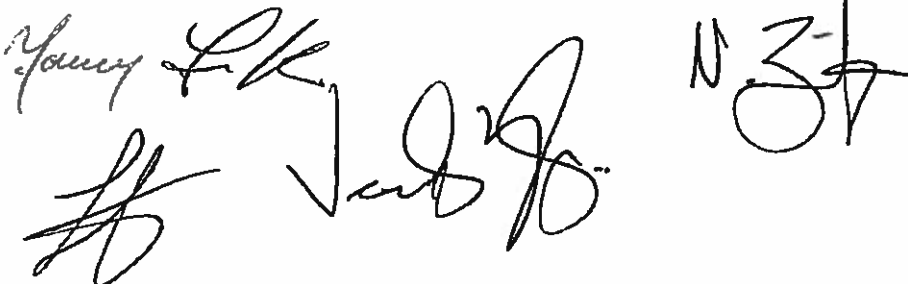
There are also two more owners, Nikolas R. Zasimczuk, currently living in New York and Oscar Guzman, who lives in Oakland.

Between the 2 buildings there is a long courtyard, which provides privacy and in the back of the rear building there is a parking lot and it is open all the way to Green Street providing full light to the rear windows/bedrooms and a view of Green St. and Coit Tower.

Telegraph Hill is recognized by being one the oldest district in San Francisco, specially the area where our building is located and one of the character of this area is the narrow lots (20 feet wide) which the property in question falls under this circumstance, but with longer depth (137.50 feet).

Since there were several subdivision variance granted in this area, we look forward for the opportunity to split our lot as well so the owners of our property can become less interdependent of each other and with separate mortgages they will have more freedom to manage their own financial and the building itself.

Sincerely,



Appeal No 16-103
440-442 Vallejo st.

Priority General Plan Policies Findings

Proposition M was adopted by the voters on November 4, 1986. It requires that the City shall find that proposed projects and demolitions are consistent with eight priority policies set forth in Section 101.1 of the City Planning Code. These eight policies are listed below. Please state how the project is consistent or inconsistent with each policy. Each statement should refer to specific circumstances or conditions applicable to the property. Each policy must have a response. IF A GIVEN POLICY DOES NOT APPLY TO YOUR PROJECT, EXPLAIN WHY IT DOES NOT.

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

N/A - this is a residential block

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

yes

3. That the City's supply of affordable housing be preserved and enhanced;

N/A - on this block

4. That commuter traffic not impede Muni transit service or overburden our streets or neighborhood parking;

N/A - this application is for splitting the lot

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;

N/A

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

yes

7. That landmarks and historic buildings be preserved; and

N/A - not a landmark

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

yes + N/A - this is not a development

Estimated Construction Costs

| | |
|--|------------------|
| TYPE OF APPLICATION <i>Subdivision Application (2 Lots)</i> | |
| OCCUPANCY CLASSIFICATION | |
| BUILDING TYPE <i>2 structures in one lot</i> | |
| TOTAL GROSS SQUARE FEET OF CONSTRUCTION <i>N/A</i> | BY PROPOSED USES |
| ESTIMATED CONSTRUCTION COST <i>N/A</i> | |
| ESTIMATE PREPARED BY <i>N/A</i> | |
| FEE ESTABLISHED <i>N/A</i> | |

Applicant's Affidavit

Under penalty of perjury the following declarations are made:

- a: The undersigned is the owner or authorized agent of the owner of this property.
- b: The information presented is true and correct to the best of my knowledge.
- c: The other information or applications may be required.

Signature: *[Handwritten Signatures]* Date: 11/10/15

Print name, and indicate whether owner, or authorized agent:

OWNERS
Owner / Authorized Agent (circle one)
Nikolas Zasiczok - Nancy L. Ruiz
VERONIKA Z. CASTELLO BRANCO - Leonardo Castello Branco
OSCAR GUZMAN

Application Submittal Checklist

Applications listed below submitted to the Planning Department must be accompanied by this checklist and all required materials. The checklist is to be completed and signed by the applicant or authorized agent and a department staff person.

| APPLICATION MATERIALS | CHECKLIST |
|--|---|
| Application, with all blanks completed | <input checked="" type="checkbox"/> |
| 300-foot radius map, if applicable | <input type="checkbox"/> See tentative map attached |
| Address labels (original), if applicable | <input type="checkbox"/> " |
| Address labels (copy of the above), if applicable | <input type="checkbox"/> " |
| Site Plan | <input type="checkbox"/> N/A |
| Floor Plan | <input type="checkbox"/> N/A |
| Elevations | <input type="checkbox"/> N/A |
| Section 303 Requirements | <input checked="" type="checkbox"/> |
| Prop. M Findings | <input type="checkbox"/> N/A |
| Historic photographs (if possible), and current photographs | <input type="checkbox"/> N/A |
| Check payable to Planning Dept. | <input checked="" type="checkbox"/> |
| Original Application signed by owner or agent | <input checked="" type="checkbox"/> |
| Letter of authorization for agent | <input type="checkbox"/> N/A |
| Other: Section Plan, Detail drawings (i.e. windows, door entries, trim), Specifications (for cleaning, repair, etc.) and/or Product cut sheets for new elements (i.e. windows, doors) | <input type="checkbox"/> N/A |

NOTES:

- Required Material. Write "N/A" if you believe the item is not applicable, (e.g. letter of authorization is not required if application is signed by property owner.)
- Typically would not apply. Nevertheless, in a specific case, staff may require the item.
- Two sets of original labels and one copy of addresses of adjacent property owners and owners of property across street.

After your case is assigned to a planner, you will be contacted and asked to provide an electronic version of this application including associated photos and drawings.

Some applications will require additional materials not listed above. The above checklist does not include material needed for Planning review of a building permit. The "Application Packet" for Building Permit Applications lists those materials.

No application will be accepted by the Department unless the appropriate column on this form is completed. Receipt of this checklist, the accompanying application, and required materials by the Department serves to open a Planning file for the proposed project. After the file is established it will be assigned to a planner. At that time, the planner assigned will review the application to determine whether it is complete or whether additional information is required in order for the Department to make a decision on the proposal.

For Department Use Only

Application received by Planning Department

By: _____

Date: _____

Aerial view of the block



Aerial view of the lot



Parking lot open space
facing Kohler PI (alley)

Small rear yard before
the property line

Back building:
Units 440A & 442B

Courtyard in between
both buildings

Front building:
Units 440 & 442

Front: Vallejo st.

**Front of the building
facing Vallejo st.**



**Access to front
units**

**Appeal No 16-103
440-442 Vallejo st.**

**Front of the building
facing Vallejo st.**



**Access to back
building thru a
breezeway**

Appeal No 16-103
440-442 Vallejo st.

**Breezeway leading to courtyard and
back building**



Appeal No 16-103
440-442 Vallejo st.

Part of the court yard and entrance to back building



Appeal No 16-103
440-442 Vallejo st.

**View of the back building from
corner of Green st. & Kohler Pl.**

Back building



Appeal No 16-103
440-442 Vallejo st.

Exhibit B

Appeal No 16-103
440-442 Vallejo st.

Granted Subdivision Variances in DISTRICT 3

| RECORD_ID | RECORD_STATUS | DATE_CLOSED | ADDRESS |
|------------|-------------------|-------------|--|
| 2013.0149V | Closed - Approved | 12/6/13 | 1327 KEARNY ST, SAN FRANCISCO, CA 94133 |
| 2008.1401V | Closed - Approved | 5/21/09 | 995 SUTTER ST, SAN FRANCISCO, CA 94109 |
| 2004.1144V | Closed - Approved | 7/21/05 | 1347 KEARNY ST, SAN FRANCISCO, CA 94133 |
| 2004.0016V | Closed - Approved | 3/25/05 | 1460 MONTGOMERY ST, SAN FRANCISCO, CA 94133 |
| 98.644V | Closed - Approved | 12/29/98 | 3 MONTAGUE PL. SAN FRANCISCO, CA 94133 |
| 1997.896V | Closed - Approved | 1/30/98 | 667 GREENWICH ST, SAN FRANCISCO, CA 94133 |
| 1993.172V | Closed - Approved | 6/11/93 | 2123 TRUETT ST, SAN FRANCISCO, CA 94103 |
| 1992.416V | Closed - Approved | 11/18/92 | 370 LOMBARD ST, SAN FRANCISCO, CA 94133 |
| 1991.260V | Closed - Approved | 11/12/91 | 221 GREENWICH ST, SAN FRANCISCO, CA 94133 |

Exhibit B appeal No 16-103

Appeal No 16-103
440-442 Vallejo st.

Exhibit C



SAN FRANCISCO PLANNING DEPARTMENT

Variance Decision

Date: May 19, 2016
Case No.: 2015-000732VAR
Project Address: 440-442 Vallejo Street
Permit Application: N/A
Zoning: RH-3 [Residential – I-house, Three Family] District
40-X Height and Bulk District
Block/Lot: 0133/016
Project Sponsor: Nancy Ruiz
1156 Filbert Street
San Francisco, CA 94109
Staff Contact: Nicholas Foster – (415) 575-9167
nicholas.foster@sfgov.org

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

DESCRIPTION OF VARIANCES – MINIMUM LOT FRONTAGE, AREA AND WIDTH VARIANCE SOUGHT:

The proposal ("Project") proposes a lot subdivision of the existing, substandard lot into two substandard lots. The subject property contains two structures, each with two dwelling units, on a substandard lot of record measuring 20 feet wide by 137.5 feet deep (with a total lot area of 2,750 square feet). The Project seeks relief from strict application of Planning Code requirements for minimum lot frontage, area and width (Section 121).

PER SECTION 121 OF THE PLANNING CODE, each lot shall front on a public street or alley and that each lot shall have a minimum lot width of 25 feet and a minimum lot area of 2,500 square feet. The proposed subdivision will create two lots, each with a minimum lot width of 20 feet and a lot size of 1,375 square feet that do not meet the minimum lot frontage and area dimensions, as required by Code. Additionally, the proposed rear lot would not front on a public street or alley as required by Code; therefore, the Project requires a variance.

PROCEDURAL BACKGROUND:

1. The Project is exempt from the California Environmental Quality Act ("CEQA") as a Class 1 categorical exemption.
2. The Zoning Administrator held a public hearing on Variance Application No. 2015-000732VAR on April 27, 2016.
3. Neighborhood notification pursuant to Planning Code Section 311 is not required for the project.

Appeal No 16-103
440-442 Vallejo st.

DECISION:

DENIED, in general conformity with the plans on file with this application, shown as EXHIBIT A, to subdivide the existing, substandard lot into two substandard lots.

FINDINGS:

Section 305(c) of the Planning Code states that in order to grant a variance, the Zoning Administrator must determine that the facts of the case are sufficient to establish the following five findings:

FINDING 1.

That there are exceptional or extraordinary circumstances applying to the property involved or to the intended use of the property that do not apply generally to other properties or uses in the same class of district.

Requirement Not Met.

- A. There are no exceptional or extraordinary circumstances that apply to the subject property that do not apply to other properties in the area. The subject property contains two structures, each with two dwelling units, on a substandard lot of record measuring 20 feet wide by 137.5 feet deep (with a total lot area of 2,750 square feet). On the subject block (Block 0133), the immediately adjacent lots (Lots 015; 017; 018; and 019) share the same lot dimensions as the subject property and also contain two (or more) residential structures on each, respective lot. Further, none of these lots have been subdivided, and more generally, subdivided lots are not commonplace on the subject block.
- B. The project sponsor did not provide sufficient evidence to establish an extraordinary circumstance related to the physical characteristics of the property or its intended use that do not apply generally to other property or uses in the same classes of district.

FINDING 2.

That owing to such exceptional and extraordinary circumstances the literal enforcement of specified provisions of this Code would result in a practical difficulty or unnecessary hardship not created by or attributed to the applicant or the owner of the property.

Requirement Not Met.

- A. Literal enforcement of specified provisions of the Planning Code would prohibit subdivision of the lot; however, such prohibition does not impose a practical difficulty or unnecessary hardship on property owner. The property owner recently purchased the subject property in its current state and will be able to maintain the property in the state and manner it was acquired.
- B. The property owner states that the variance is necessary to allow them greater flexibility in ownership of the property; however, such hardship self-created.
- C. The property owner did not provide sufficient evidence to the Planning Department to adequately substantiate a hardship or practical difficulty not of their own doing.

FINDING 3.

That such variance is necessary for preservation and enjoyment of a substantial property right of the subject property, possessed by other property in the same class of district.

Requirement Not Met.

- A. There are numerous properties on the subject block that have more than one residential structure on a single lot, and the granting of this variance would afford the subject property owners a substantial property right not possessed by other property in the same class of district.

FINDING 4.

That the granting of such variance will not be materially detrimental to the public welfare or materially injurious to the property or improvements in the vicinity.

Requirement Not Met.

- A. The granting of this variance could prove materially detrimental to adjacent properties because the subdivision could result in two, two-unit residential structures that are each eligible for the Two-Unit Condominium Conversion Bypass. In turn, the Condominium Conversion process could eliminate two rental dwelling units from the existing housing stock, thereby reducing the number of affordable dwelling units on the subject block (and citywide).

FINDING 5.

The granting of such variance will be in harmony with the general purpose and intent of this Code and will not adversely affect the General Plan.

Requirement Not Met.

This development is partially consistent with the generally stated intent and purpose of the Planning Code to promote orderly and beneficial development. Planning Code Section 101.1 establishes eight priority-planning policies and requires review of variance applications for consistency with said policies.

1. The proposed Project does not contain, nor will it affect, neighborhood-serving uses.
2. The proposed Project would not be consistent with the existing housing and neighborhood character. The Project would create two, substandard lots of record that is not a commonplace on the subject block.
3. The proposed Project could have an adverse effect on the City's supply of affordable housing. The Project could result in two, two-unit residential structures that are each eligible for the Two-Unit Condominium Conversion Bypass, which, could potentially eliminate two, affordable rental units from the existing housing stock.
4. The proposed Project will have no effect on MUNI transit service or overburden the streets or neighborhood parking.

5. The proposed Project will have no effect on the City's industrial and service sectors.
6. The proposed Project will have no negative effect on the City's preparedness to protect against injury and loss of life in an earthquake.
7. The proposed Project will have no effect on the City's landmarks or historic buildings.
8. The proposed Project would not affect any existing or planned public parks or open spaces.

The effective date of this decision shall be either the date of this decision letter if not appealed or the date of the Notice of Decision and Order if appealed to the Board of Appeals.

APPEAL: Any aggrieved person may appeal this variance decision to the Board of Appeals within ten (10) days after the date of the issuance of this Variance Decision. For further information, please contact the Board of Appeals in person at 1650 Mission Street, 3rd Floor (Room 304) or call 575-6880.

Very truly yours,



Scott F. Sanchez
Zoning Administrator

THIS IS NOT A PERMIT TO COMMENCE ANY WORK OR CHANGE OCCUPANCY. PERMITS FROM APPROPRIATE DEPARTMENTS MUST BE SECURED BEFORE WORK IS STARTED OR OCCUPANCY IS CHANGED.

Exhibit D



SAN FRANCISCO PLANNING DEPARTMENT

Variance Decision

Date: December 6, 2013
Case No.: 2013.0149V
Project Address: 1327-1329 KEARNY STREET AND 28-30 SONOMA STREET
Zoning: RH-3 [Residential House, Three-Family]
40-X Height and Bulk District
Block/Lots: 0115/006
Applicant: Jeanne Liem
139 Mitchell Avenue #110
South San Francisco, CA 94080
Owner: San Francisco Affordable Housing, LLC
139 Mitchell Avenue #110
South San Francisco, CA 94080
Staff Contact: Kate Conner – (415) 575-6914
kate.conner@sfgov.org

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

DESCRIPTION OF VARIANCES – MINIMUM LOT WIDTH, MINIMUM LOT AREA, REAR YARD AND OPEN SPACE VARIANCES SOUGHT:

The proposal is to subdivide one lot containing two, two-unit buildings into two lots, each with one two-unit building. The existing rear staircase connecting the two buildings would be removed as part of the proposal.

Planning Code Section 121(d)(2) requires a minimum lot width of 25 feet for all lots in zoning districts other than RH-1 (D) Districts. The existing lot is 20 feet wide. The proposed subdivision will create an additional lot that will be 20 feet wide; therefore, the project requires a variance from the minimum lot width requirement.

Planning Code Section 121(e)(2) required a minimum lot area of 2,500 square feet for all lots in zoning districts other than RH-1(D) Districts. The proposed subdivision will create two new lots: the lot fronting Kearny Street is 851 square feet and the lot fronting Sonoma Street is 748 square feet. Therefore, the project requires a variance from the minimum lot area requirement.

Planning Code Section 134 requires a minimum rear yard of 15 feet. A Code-complying rear yard is not currently provided and the proposed subdivision would result in each lot maintaining a three-foot rear yard; therefore, the project requires a variance from the rear yard requirement.

Planning Code Section 135 requires that each lot provide 200 square feet of private open space or 266 square feet of common open space. The proposal provides the required amount of open space for the lot that fronts on Sonoma Street; however, the Kearny Street lot does not provide any open space that meets the minimum dimensions or square footage required by the Planning Code. Therefore, a variance from the open space requirement is required.

PROCEDURAL BACKGROUND:

1. The project is exempt from the California Environmental Quality Act ("CEQA") as a Class 1 categorical exemption.
2. The Zoning Administrator held a public hearing on Variance Application No. 2013.0149V on October 23, 2013.

DECISION:

GRANTED, in general conformity with the plans on file with this application, shown as EXHIBIT A, to subdivide one lot containing two, two-unit buildings into two lots, each with one two-unit building.

1. Any future physical expansion, even in the buildable area, shall be reviewed by the Zoning Administrator to determine if the expansion is compatible with existing neighborhood character and scale. If the Zoning Administrator determines that there would be a significant or extraordinary impact, the Zoning Administrator shall require either notice to adjacent and/or affected property owners or a new Variance application be sought and justified.
2. The proposed project must meet these conditions and all applicable City Codes. In case of conflict, the more restrictive controls apply.
3. The two newly created lots resulting from this variance and subsequent subdivision are restricted to development of no more than two dwelling units each.
4. Minor modifications as determined by the Zoning Administrator may be permitted.
5. The owner of the subject property shall record on the land records of the City and County of San Francisco the conditions attached to this Variance decision as a Notice of Special Restrictions in a form approved by the Zoning Administrator.
6. This Variance Decision and the recorded Notice of Special Restrictions shall be reproduced on the Index Sheet of the construction plans submitted with the Site or Building Permit Application for the Project. This Index Sheet of the construction plans shall reference the Variance Case Number.

FINDINGS:

Section 305(c) of the Planning Code states that in order to grant a variance, the Zoning Administrator must determine that the facts of the case are sufficient to establish the following five findings:

FINDING 1.

That there are exceptional or extraordinary circumstances applying to the property involved or to the intended use of the property that do not apply generally to other properties or uses in the same class of district.

Requirement Met.

- A. The subject lot, developed circa 1906, was created prior to minimum lot width and minimum lot area requirements. The property is 20 feet wide and maintains a depth of 80 feet and is currently noncomplying with regard to lot width and lot area. Planning Code Section 121(d)(2) requires a minimum lot width of 25 feet for all lots in zoning districts other than RH-1 (D) Districts. The existing lot is 20 feet wide. Planning Code Section 121(e)(2) required a minimum lot area of 2,500 square feet for all lots in zoning districts other than RH-1(D) Districts. The current lot area is 1,600 square feet.
- B. The subject buildings were constructed prior to current rear yard requirements and cover the majority of the lot. The subject property is smaller than the conventional 25-foot by 100-foot lots within San Francisco and is a through lot. The current configuration of existing buildings is noncomplying in terms of the rear yard requirement. The existing building fronting on Sonoma Street is located completely within the required rear yard. The two new lots that would be created by the proposed subdivision would also be deficient in terms of rear yard; however, stairs located within the proposed rear yard will be removed as part of the project.

FINDING 2.

That owing to such exceptional and extraordinary circumstances the literal enforcement of specified provisions of this Code would result in a practical difficulty or unnecessary hardship not created by or attributed to the applicant or the owner of the property.

Requirement Met.

- A. Literal enforcement of the Planning Code would prohibit the proposed subdivision of the subject lot, which is already noncomplying with respect to the minimum lot width, minimum lot area, rear yard, and open space requirements. There is a precedent on the block for noncomplying lots, and prohibiting the subdivision, which allows one building per lot, would result in an unnecessary hardship not created by or attributed to the owner.
- B. In order to provide Code-complying rear yards of 15 feet on each of the newly-created lots, both of the existing potentially historic buildings would have to be partially demolished, resulting in unnecessary hardship with no compensating public benefit.

FINDING 3.

That such variance is necessary for preservation and enjoyment of a substantial property right of the subject property, possessed by other property in the same class of district.

Requirement Met.

- A. Of the 53 lots on the subject block (Assessor's Block 0115 bounded by Kearny, Green, Grant, and Union Streets), 41 (71 percent) are noncomplying with respect to minimum lot width and minimum lot area requirements. There is a precedent on the subject block for noncomplying lots, and the granting of this variance is necessary for the enjoyment of a substantial property right possessed by other properties in this district.

- B. On the same portion of Assessor's Block 0115 (bounded by Sonoma, Kearny, Union, and Green Streets), there have been two other similar subdivisions, including the granting of Variance Case No. 2004.1144V at 1347-1349 Kearny Street in 2005. The granting of the variances would not create new lots that are out of character with other properties throughout the neighborhood.

FINDING 4.

That the granting of such variance will not be materially detrimental to the public welfare or materially injurious to the property or improvements in the vicinity.

Requirement Met.

- A. The granting of the variances would not result in the physical expansion of the existing structures, a change in the number of dwelling units, or any other physical modifications that could adversely affect to adjacent properties or other properties in the vicinity.
- B. Although the subdivision does not reduce the deficiency, the proposed lot configuration is consistent with numerous subdivisions in the surrounding area.
- C. As a condition of approval of this variance, the residential density is limited on each newly created lot to two units per lot.
- D. The proposed subdivision does not create conforming rear yards. However, it does create a more typical lot pattern where the rear yard is located mid-block. In addition, each proposed lot maintains a three-foot rear yard, which although noncomplying, reduces the deficiency. Granting the variance allows development of the subject property consistent with existing pattern and development in the area.

FINDING 5.

The granting of such variance will be in harmony with the general purpose and intent of this Code and will not adversely affect the General Plan.

Requirement Met.

- A. This development is consistent with the generally stated intent and purpose of the Planning Code to promote orderly and beneficial development. Planning Code Section 101.1 establishes eight priority-planning policies and requires review of variance applications for consistency with said policies. The project meets all relevant policies, including conserving neighborhood character, and maintaining housing stock.
1. Existing neighborhood retail uses will not be adversely affected by the proposed project.
 2. The proposed project will be in keeping with the existing housing and neighborhood character. The proposal will preserve two two-family residences on the property.
 3. The proposed project will have no effect on the City's supply of affordable housing.

Variance Decision
December 6, 2013

CASE NO. 2013.0149V
1327-1329 Kearny Street and 28-30 Sonoma Street

4. The proposed project does not adversely affect neighborhood parking or public transit.
5. The project will have no effect on the City's industrial and service sectors.
6. The proposed project will have no effect on the City's preparedness to protect against injury and loss of life in an earthquake.
7. The project will have no effect on the City's landmarks or historic buildings.
8. The project would not affect any existing or planned public parks or open spaces.

The effective date of this decision shall be either the date of this decision letter if not appealed or the date of the Notice of Decision and Order if appealed to the Board of Appeals.

Once any portion of the granted variance is utilized, all specifications and conditions of the variance authorization became immediately operative.

The authorization and rights vested by virtue of this decision letter shall be deemed void and cancelled if (1) a Building Permit has not been issued within three years from the effective date of this decision; or (2) a Tentative Map has not been approved within three years from the effective date of this decision for Subdivision cases; or (3) neither a Building Permit or Tentative Map is involved but another required City action has not been approved within three years from the effective date of this decision. However, this authorization may be extended by the Zoning Administrator when the issuance of a necessary Building Permit or approval of a Tentative Map or other City action is delayed by a City agency or by appeal of the issuance of such a permit or map or other City action.

APPEAL: Any aggrieved person may appeal this variance decision to the Board of Appeals within ten (10) days after the date of the issuance of this Variance Decision. For further information, please contact the Board of Appeals in person at 1650 Mission Street, 3rd Floor (Room 304) or call 575-6880.

Very truly yours,



Corey A. Teague
Acting Zoning Administrator

THIS IS NOT A PERMIT TO COMMENCE ANY WORK OR CHANGE OCCUPANCY. PERMITS FROM APPROPRIATE DEPARTMENTS MUST BE SECURED BEFORE WORK IS STARTED OR OCCUPANCY IS CHANGED.

Copy to I:\Decision Documents\Variance Decision Letters\2013\2013.0149V - 1327-1329 Kearny Street - Granted

Exhibit E



PLANNING DEPARTMENT

City and County of San Francisco • 1660 Mission Street, Suite 500 • San Francisco, California • 94103-2414

MAIN NUMBER
(415) 558-6378

DIRECTOR'S OFFICE
PHONE: 558-6411
4TH FLOOR
FAX: 558-6426

ZONING ADMINISTRATOR
PHONE: 558-6350
5TH FLOOR
FAX: 558-6409

PLANNING INFORMATION
PHONE: 558-6377
MAJOR ENVIRONMENTAL
FAX: 558-5991

COMMISSION CALENDAR
INFO: 558-6422
INTERNET WEB SITE
WWW.SFGOV.ORG/PLANNING

July 21, 2005

VARIANCE DECISION

UNDER THE PLANNING CODE

CASE NO. 2004.1144V

APPLICANT: Daniel Parks
52 Sonoma Street
San Francisco, CA 94133

CASE PLANNER: Craig Nikitas – (415) 558-6306

PROPERTY IDENTIFICATION – 1347-1349 KEARNY STREET

West side of Kearny Street through to Sonoma Street between Union and Green Streets; Lot 003 in Assessor's Block 0115 within an RH-3 (Residential, House, Three-Family) District and a 40-X Height and Bulk District.

DESCRIPTION OF VARIANCE SOUGHT – MINIMUM LOT WIDTH, MINIMUM LOT AREA, AND REAR YARD

The lot, 20 feet in width by 80 feet in depth, is developed with a four-story, two-family dwelling fronting on Kearny Street and a three-story, two-family dwelling with frontage on Sonoma Street. Various noncomplying structures (garage, porch, decks, and stairs) obstruct the rear yard. The proposal is to divide the lot into two new equal lots, each 20 feet wide by 40 feet deep. No construction or expansion of the existing buildings is proposed.

Section 121(d)(2) of the Planning Code requires a minimum lot width of 25 feet for all lots in zoning districts other than RH-1(D) Districts. The existing lot is 20 feet wide. The proposed subdivision will create an additional lot that will be 20 feet wide.

Section 121(e)(2) of the Planning Code requires a minimum lot area of 2,500 square feet for all lots in zoning districts other than RH-1(D) Districts. The proposed subdivision will create two new lots, both of which will be 800 square feet in area (20 feet wide by 40 feet deep).

Section 134 of the Planning Code requires a minimum rear yard depth of approximately 18' 0" for each of the two proposed lots, measured from the rear property line. The proposed subdivision will create two new lots, neither of which will provide a Code-complying rear yard.

Appeal No 16-103
440-442 Vallejo st.

PROCEDURAL BACKGROUND:

1. This proposal was determined to be categorically exempt from environmental review under CEQA Guidelines Section 15301.
2. Notices were mailed to all property owners within 300 feet of the project site in accordance with Section 306.3 of the Planning Code.
3. The Zoning Administrator held a public hearing on **Variance Application No. 2004.1144V on Wednesday, March 23, 2005.**

DECISION:

GRANTED, to allow the subdivision of the subject lot, resulting in two 20-foot-wide by 40-foot-deep lots, each containing a two-unit residential building, in general conformity with the plans on file with this application, shown as Exhibit A and dated December 7, 2004, subject to the following conditions:

1. No fence shall be erected between the two lots.
2. Any further physical expansion, even within the buildable area, shall be reviewed by the Zoning Administrator to determine if the expansion is compatible with existing neighborhood character, scale, and parking. If the Zoning Administrator determines that there would be a significant or extraordinary impact, the Zoning Administrator shall require either notice to adjacent and/or affected property owners or a new variance application be sought and justified.
3. The proposed project must meet these conditions and all applicable City Codes. In case of conflict, the more restrictive controls shall apply.
4. Minor modifications as determined by the Zoning Administrator may be permitted.
5. The owners of the subject property shall record on the land records of the City and County of San Francisco the conditions attached to this variance decision as a Notice of Special Restrictions in a form approved by the Zoning Administrator.

FINDINGS:

Section 305(c) of the Planning Code states that in order to grant a variance, the Zoning Administrator must determine that the facts of the case are sufficient to establish the following five findings:

FINDING 1.

That there are exceptional or extraordinary circumstances applying to the property involved or to the intended use of the property that do not apply generally to other property or uses in the same class of district.

REQUIREMENT MET.

- A. The subject property is a through lot that is 20 feet wide by 80 feet deep. It was developed with two structures, one at either end of the lot, separated by an interior yard approximately 20 feet wide by 19 feet deep, excluding decks/porches and garages that encroach into that area. It is already noncomplying with respect to the minimum lot width, minimum lot area, and rear yard requirements.
- B. Given the dimensions of the lot, the configuration of the existing structures, and the 45 percent rear yard requirement, the subject lot cannot be subdivided into two smaller lots, each containing one structure, in a manner in which both lots would comply with the minimum lot width, minimum lot area, and rear yard requirements.

FINDING 2.

That owing to such exceptional and extraordinary circumstances, the literal enforcement of specified provisions of this Code would result in practical difficulty or unnecessary hardship not created by or attributable to the applicant or the owner of the property.

REQUIREMENT MET.

- A. Literal enforcement of the Planning Code would prohibit the proposed subdivision of the subject lot, which is already noncomplying with respect to the minimum lot width, minimum lot area, and rear yard requirements.
- B. In order to provide Code-complying rear yards of 18' 0" on each of the newly-created lots, both of the existing buildings would have to be partially demolished, resulting in unnecessary hardship with no compensating public benefit.

FINDING 3.

That such variance is necessary for preservation and enjoyment of a substantial property right of the subject property possessed by other property in the same class of district.

REQUIREMENT MET.

- A. Of the 52 lots on the subject block (Assessor's Block 0115 bounded by Kearny, Green, Grant, and Union), 40 are noncomplying with respect to both the minimum lot width and minimum lot area requirements.
- B. The eight surrounding blocks to the north, south, east, and west of the subject block have numerous substandard lots. The granting of the variances would not create new lots that are out of character with other properties throughout the neighborhood.

FINDING 4.

That the granting of such variance shall not be materially detrimental to the public welfare or materially injurious to the property or improvements in the vicinity.

REQUIREMENT MET.

- A. The granting of the variances would not result in the physical expansion of the existing structures, a change in the number of dwelling units, or any other physical modifications that could adversely impact the adjacent properties or other properties in the vicinity.
- B. The Department has not received any correspondence or other input from the public expressing opposition to the proposed lot split.

FINDING 5.

The granting of such variance shall be in harmony with the general purpose and intent of this Code and will not adversely affect the General Plan.

REQUIREMENT MET.

- A. Granting this variance will help increase the supply of housing. This project is consistent with the generally stated intent and purpose of the Planning Code to promote orderly and beneficial development.
- B. Section 101.1(b) of the Planning Code establishes eight priority-planning policies and requires review of variance applications for consistency with said policies. The project complies with these policies, including enhancing the supply of affordable housing.

The effective date of this decision shall be either the date of this decision letter if not appealed, or the date of the Notice of Decision and Order if appealed to the Board of Appeals.

Once any portion of the granted variance is utilized, all specifications and conditions of the variance authorization became immediately operative.

The authorization and rights vested by virtue of this decision letter shall be deemed void and cancelled if (1) a Building Permit has not been issued within three years from the effective date of this decision; or (2) a Tentative Map has not been approved within three years from the effective date of this decision for Subdivision cases; or (3) neither a Building Permit or Tentative Map is involved but another required City action has not been approved within three years from the effective date of this decision. However, this authorization may be extended by the Zoning Administrator when the issuance of a necessary Building Permit or approval of a Tentative Map or other City action is delayed by a City agency or by appeal of the issuance of such a permit or map or other City action.

APPEAL: Any aggrieved person may appeal this variance decision to the Board of Appeals within ten (10) days after the date of the issuance of this Variance Decision. For further information, please contact the Board of Appeals in person at 1660 Mission Street, Room 3036 or call (415) 575-6880.

Sincerely,

Lawrence B. Badiner
Zoning Administrator

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THIS IS NOT A PERMIT TO COMMENCE ANY WORK OR CHANGE OCCUPANCY. PERMITS FROM APPROPRIATE DEPARTMENTS MUST BE SECURED BEFORE WORK IS STARTED OR OCCUPANCY IS CHANGED.

N:\VARIANCE\Decletter\2004\2004.1144V - 1347-1349 Kearny Street.doc

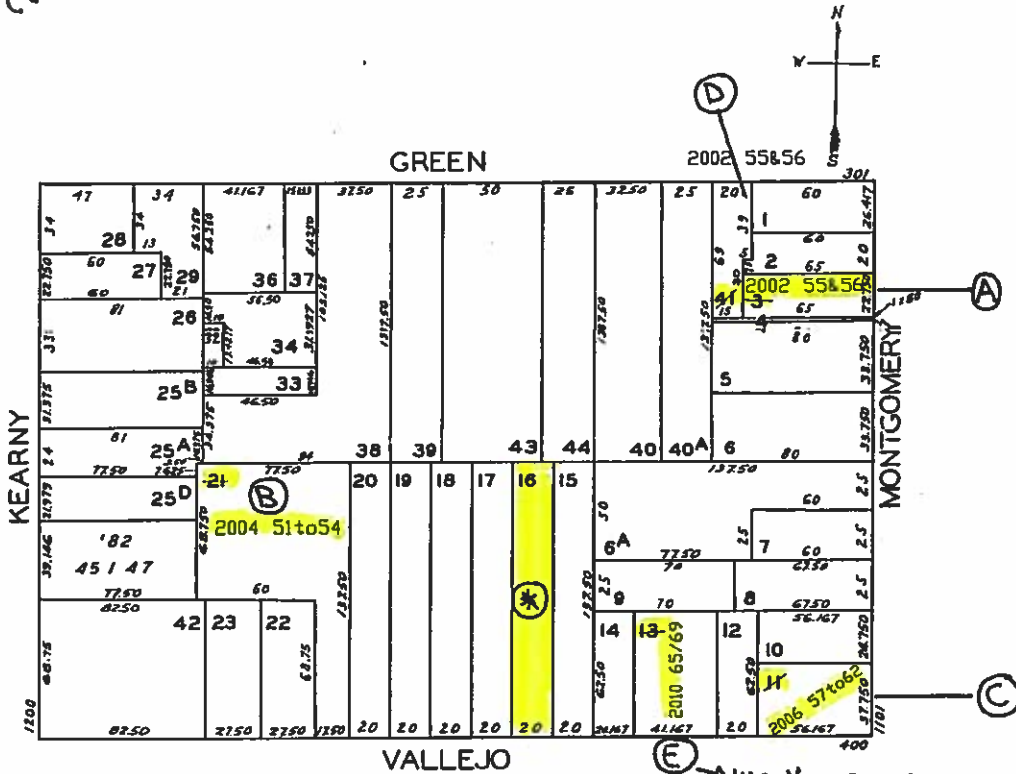
Exhibit F

REVISED 1959
 REVISED '64
 " '82
 Revised 2002
 Revised 2004
 Revised 2006
 Revised 2007
 Revised 2010

© COPYRIGHT SAN FRANCISCO
 CITY & COUNTY ASSESSOR 1996

LOTS MERGED
 Lot 30 into Lot #1 '1922'
 25' - - 25' 1943'
 35 - - 36 1954'

SPLITS {
 A lot 3 into lots 55 & 56 for 2002 roll
 lot 21 into lots 51 & 54 for 2004 roll
 lot 11 into lots 57 to 62 for 2006 roll
 lot 41 into lots 63 & 64 for 2007 roll
 lot 13 into lots 65 & 69 for 2010 roll



1212-18-20 KEARNY
 A CONDOMINIUM

| LOT NO. | UNIT NO. | % COMMON AREA |
|---------|----------|---------------|
| 45 | 1212 | 42 |
| 46 | 1218 | 30 |
| 47 | 1220 | 28 |

A 1151-1153 MONTGOMERY ST.
 A CONDOMINIUM

| LOT | UNIT | % COMM. AREA |
|-----|------|--------------|
| 55 | 1151 | 47.40 |
| 56 | 1153 | 52.60 |

B 464-468 VALLEJO ST.
 A CONDOMINIUM

| LOT | UNIT | % COMM. AREA |
|-----|------|--------------|
| 51 | 464 | 10.25 |
| 52 | 466 | 53.72 |
| 53 | 466A | 25.76 |
| 54 | 468 | 10.27 |

C 400-410 VALLEJO ST.
 A CONDOMINIUM

| LOT | UNIT | % COMM. AREA |
|-----|------|--------------|
| 57 | 400 | 18.61 |
| 58 | 402 | 14.69 |
| 59 | 404 | 19.93 |
| 60 | 406 | 17.10 |
| 61 | 408 | 16.98 |
| 62 | 410 | 12.69 |

D 315-317 GREEN ST.
 A CONDOMINIUM

| LOT | UNIT | % COMM. AREA |
|-----|------|--------------|
| 63 | 315 | 40.3 |
| 64 | 317 | 59.7 |

(* SUBJECT PROPERTY
 440-442 VALLEJO ST.

Appeal No 16-103
 440-442 Vallejo st.

ASSESSED 113,358
 TAX DEEDED 80
 BLK. TOTAL 113,438 SQ. FT.

BOARD OF APPEALS

AUG 04 2016

APPEAL # 16-103

Arndt Voges and Kristi Coronado
448 Vallejo St.
San Francisco, CA-94133

City and County of San Francisco
Board of Appeals
1650 Mission St Suite 304
San Francisco, CA-94013

Re: Appeal No. 16-103 at 440-442 Vallejo Street, CA-94133 San Francisco

08/01/2016

To whom it may concern –

We are Arndt Voges and Kristi Coronado, and live next to 440-442, the property in question, with our daughter Ameesia Marold.

We have lived next to the subject party for about three years and are active members of the neighborhood community and enjoy the strong community on the 400 block of Vallejo St.

We are both in support of the lot split at 440-442 Vallejo St. We do not believe that the split will have any impact on the character of the neighborhood and specifically the block we all share. We also don't have any concerns that the change could be of disadvantage to anyone.

Furthermore, the Brancos have brought a great sense of community to our block. We are happy to call such a wonderful and engaged family with kids our neighbors and fully support appeal to split the lot.

Sincerely,



Arndt Voges
415-793-2605



Kristi Coronado
415-757-7065

Appeal No 16-103
440-442 Vallejo st.

City and County of San Francisco
Board of Appeals
1650 Mission St Suite 304
San Francisco CA 94013

BOARD OF APPEALS

July 26, 2016

AUG 04 2016

APPEAL # 16-103

To Whom It May Concern,

It has come to my attention that my neighbors at 440 Vallejo St. are asking for a variance to split their lot into two.

I own Lot 014 and Lot 009 on the same block, Block 0133.

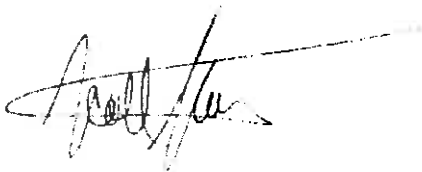
As a local property owner and tax payer I support Veronika and Leo's goal of splitting their lot. Their intentions serve to improve the neighborhood, not impact it in a negative way. Building community in neighborhoods like ours serves to make San Francisco stronger through the actions of families or local individuals.

The alternative, which is happening extensively in our neighborhood, is for larger builder/developer corporations to come in and buy up property and renovate. Through experience and power they have more clout. I have witnessed this first hand through my own attempts at a renovation project for which I currently have permits on Lot 009.

Since the beginning of San Francisco this particular area has had a strong neighborhood feel. Reading books and perusing historical documents show consistently that families or individuals have owned and cared for and developed their houses, buildings and lots in this particular area.

As a local property owner and tax payer I ask that the Board of Appeals reconsider it's decision. Neighbors like me support local, neighborhood improvement such as what Veronika and Leo are trying to accomplish.

Thank you for your consideration.



Scott Steiner
Neighbor
430 Vallejo St.
San Francisco, CA 94133
847-477-3780
scott@bigsoundinc.com

Appeal No 16-103
440-442 Vallejo st.

BOARD OF APPEALS

AUG 04 2016

APPEAL # 16-103

07/26/2016

Dennis Wishnie
438 Vallejo st.
San Francisco CA 94133

City and County of San Francisco
Board of Appeals
1650 Mission St Suite 304
San Francisco CA 94013

Appeal No. 16-103 at 440-442 Vallejo st.

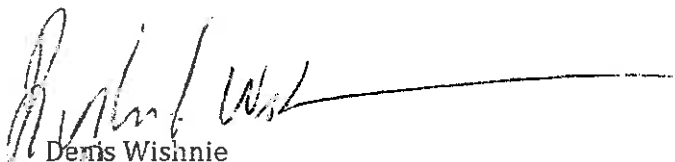
To Whom It May Concern:

My name is Dennis Wishnie. I'm a retired lawyer, next door neighbor of the Subject Property, and have lived on Vallejo St. for the past 38 years.

I'm in support of the lot split at 440-442 Vallejo St. as I believe it will not bring any significant impact or change to the neighborhood's character and will not be detrimental to others.

Furthermore, I have the understanding that there are other properties in the area that have gone through lot splits in the past and, therefore, I believe that this same privilege should be extended to the property owners of 440-442 Vallejo St.

Sincerely,



Dennis Wishnie

(415)637-8204

Appeal No 16-103
440-442 Vallejo st.