

BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal of
LARRY and BARBARA DELANEY, PAT LEE, JIM PHILLIOU)
and LARRY MAK,)
Appellant(s))

Appeal No. **21-024**

vs.)

DEPARTMENT OF BUILDING INSPECTION,)
PLANNING DEPARTMENT APPROVAL Respondent)

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT on March 23, 2021, 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 ISSUANCE on March 8, 2021 to IRV LLC, of a Site Permit (vertical addition; add 4th floor; Expansion of 4 existing units on 3rd floor; add new roof deck; change VB construction type to VA; refer to #2018/1116/6157 for approved ADU; Add 5 new dwelling units on ground level in place of existing carport) at 4326 Irving Street.

APPLICATION NO. 2019/09/11/1353

FOR HEARING ON May 19, 2021

Address of Appellant(s):

Address of Other Parties:

Larry and Barbara Delaney, Pat Lee, Jim Philliou and
Larry Mak, Appellant(s)
1279 44th Avenue
San Francisco, CA 94122

IRV LLC, Determination Holder(s)
c/o Dawn Ma, Agent for Determination Holder(s)
4243 25th Street
San Francisco, CA 94114
c/o Brian Veit, Agent for Determination Holder(s)
c/o John Garrett, Agent for Determination Holder(s)



Date Filed: March 23, 2021

**CITY & COUNTY OF SAN FRANCISCO
BOARD OF APPEALS**

PRELIMINARY STATEMENT FOR APPEAL NO. 21-024

I / We, **Larry Delaney**, hereby appeal the following departmental action: **ISSUANCE** of **Alteration Permit No. 2019/09/11/1353** by the **Department of Building Inspection** which was issued or became effective on: **March 8, 2021**, to: **IRV LLC**, for the property located at: **4326 Irving 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: 4:30 p.m. on **April 29, 2021, (no later than three Thursdays prior to the hearing date)**. The brief may be up to 12 pages in length with unlimited exhibits. It shall be double-spaced with a minimum 12-point font. An electronic copy should be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org, scott.sanchez@sfgov.org and dma@que-arch.com.

Respondent's and Other Parties' Briefs are due on or before: 4:30 p.m. on **May 13, 2021, (no later than one Thursday prior to hearing date)**. The brief may be up to 12 pages in length with unlimited exhibits. It shall be double-spaced with a minimum 12-point font. An electronic copy should be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org, scott.sanchez@sfgov.org and larrydelaney1@aol.com.

The Board's physical office is closed to the public and hard copies of the brief do NOT need to be submitted.

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

Hearing Date: **Wednesday, May 19, 2021, 5:00 p.m.**, via Zoom. Information for access to the hearing will be provided before the hearing date.

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 email all documents of support/opposition no later than one Thursday prior to hearing date by 4:30 p.m. to boardofappeals@sfgov.org. 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 on the Board's website at www.sfgov.org/boa. 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.

The reasons for this appeal are as follows:

See attachment to the preliminary Statement of Appeal.

Appellant or Agent (Circle One):

Signature: Via Email

Print Name: Larry Delaney

Statement about our concerns on issued permit #201909111353 for a structural addition to the building located at 4326 - 4336 Irving St

Exacerbation of existing parking problems.

Loss of air, sun, privacy and views.

Increased noise from new 4th floor decks.

The adjacent neighbors agreement with the developers was that they would not build ANYTHING on the 4th floor if we neighbors did not oppose their proposed layout on the 2nd and 3rd floors. We neighbors kept our part of the agreement but then, after they got approval for the 2nd and 3rd floors, the developers went ahead and proceeded with a plan for adding 4th floor bedrooms and bathrooms to 3rd floor units in order to create multilevel luxury two story units with decks.



								email - 1/28/21 jw approved - 3/1/2021 jw
7	DPW-BSM	2/1/21	2/8/21	2/8/21	3/2/21	3/2/21	ZHOU ANDY	Approved. 3/2/2021: BSM sign off on Job Card required prior to DBI final. Subject to all conditions of BSM: #19IE-00249, 20MSE-00202, and BUF. 02/08/21 ON HOLD. Approve after BLDG. Pending recommendation for release from plan reviewer of associated BSM Permit No. 19IE-00249 & 20MSE-00202 & BUF New Tree Planting. -JG
8	SFPUC	2/9/21	2/18/21			2/18/21	TOM BILL	NA - Not enough changes for charges. Route to PPC 2/18/21.
9	PAD-STR	3/4/21	3/5/21			3/5/21	GE MING	The cover sheet has be restamped and the drawing routed to PPC.
10	CP-ZOC	3/5/21	3/5/21			3/5/21	WEISSGLASS DAVID	Restamped - DNW 3/5/21
11	PPC	3/5/21	3/5/21			3/5/21	EAKIN MIGUEL	03/05/21: TO CPB;ME 03/05/21: TO Planning to review revised drawings & stamp and sign cover page Cover Page Missing Engineers signature;me 3/4/21: to PAD-STR to stamp and sign the cover page, then to Planning to review and stamp the revised drawings; Cover page is missing Engineer's signature;EC. 03/01/21: TO Bsm;ME 2/26/21: To SFFD (then to BSM); NL 2/24/21: in hold bin pending approval from MECH, SFFD and BSM; NL 02/23/21: TO hold bin pending approval from BLDG,MECH,SFFD,BSM;ME 2/18/21: In hold bin pending approval from BLDG, PAD-STR, MECH, SFFD, and BSM; NL 2/9/21: To SFPUC; NL 02/01/2021: To BSM;ME 01/13/2021: To SFFD; NL 12/9/20: to MECH;EC. 9/28/20: to BLDG; mml 2/25/20: R1 to DCP; am 9/12/19: To DCP; HP
12	CPB	3/5/21	3/6/21			3/8/21	CHEUNG WAI FONG	3/06/21: SFUSD REQUIRED, APPROVED, ADD ADDRESS? WF

This permit has been issued. For information pertaining to this permit, please call 628-652-3450.

Appointments:

Appointment Date	Appointment AM/PM	Appointment Code	Appointment Type	Description	Time Slots
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Inspections:

Activity Date	Inspector	Inspection Description	Inspection Status
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Special Inspections:

Addenda No.	Completed Date	Inspected By	Inspection Code	Description	Remarks
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For information, or to schedule an inspection, call 628-652-3400 between 8:30 am and 3:00 pm.

[Online Permit and Complaint Tracking](#) home page.

Technical Support for Online Services

If you need help or have a question about this service, please visit our [FAQ area](#).

BRIEF SUBMITTED BY THE APPELLANT(S)

Appeal 21-024 regarding 4326 Irving Street

Who we are: The five appellants are a diverse group who live in three houses on Irving St, 44th Ave and 45th Ave that are all adjacent to 4326 Irving St. Our neighborhood is a welcoming and stable community. Block 1706, of which 4326 Irving is a part, is an economically, socially, and culturally diverse mix of age, race and gender. Some of the properties are Section 8 eligible, some are recently renovated and updated to modern standards, some are historical. There are single family homes and multi-family homes.

The previous owners of this Irving Street building, Delancey Street, operated it as a halfway house for individuals leaving prison. We never complained or raised an issue concerning this usage of the building. We did, however, have grave concerns about the density and height of this Irving Street Project and the effect these would have on parking in the neighborhood and on the air and privacy of the surrounding properties. Since much construction was already ongoing without any permits posted, we were glad when, on March 2, a notice finally appeared on the building regarding an upcoming Discretionary Review. At the time, we didn't exactly even know what this was but it seemed like it would be an opportunity to voice our concerns about the density of units in the building and the proposed fourth story. Because we didn't know anything about a DR, we had many email conversations and a few phone calls with the planner in charge, David Weissglass (sometimes referred to as DW in this brief), to ascertain what we should do. Some of these are attached.

What we want: We are asking the Board of Appeals to deny the permit to build on the 4th floor. The developers had agreed not to do so and then broke their agreement **after** we neighbors had fulfilled our side of the agreement to not oppose any other part of the project.

History, leading up to the Agreement and the Discretionary Review

1. March 2 – the neighbors of this project received plans and a notice regarding a Discretionary Review hearing for the property at 4326-4336 Irving.
2. March 17. Barbara Delaney contacts David Weissglass (DW) about the multiple, and varied sets of plans, dates and revisions in the package. **He replies that there had been plans approved that should have gone to the planning department but did not. The included plans were revisions to the original plans and new plans that were not yet approved.(email)**
3. March 23, 24. David Weissglass tells me **the planning department is extremely concerned with the layouts of the 2nd and 3rd floors.**
4. March 23. DW suggests to Barbara Delaney that it would be beneficial to try to work out a compromise with the developers.
5. April 1 - Barbara sends an email to Brian Veit proposing the compromise of no 4th story in exchange for no opposition to anything else.
6. April 2 – Brian Veit contacts us and says he will not build the 4th story if we will support his 2nd and 3rd story proposal. We agree.

7. April 30. Brian Veit calls and says he's going to build the 4th story after all. On May 11, David Weissglass tells us the same thing (email in "Supporting Materials", attachment 3)
8. May 18. Barbara Delaney speaks to David Weissglass who says **the planning department is no longer extremely concerned about the reorganization of the ADUs or the 2nd and 3rd stories. The DR will be about the 4th story and only the 4th story.** We (all of us who were opposed to the project) decide we cannot get our own DR together by the deadline of 5:00 pm on May 22, 4 days later. Barbara Delaney also asked DW at this time what were the new plans on the website (I think posted on May 16) and he told me there were just minor changes.
9. There were more than 118 letters with some 140 signatures from neighbors of 4326 Irving sent to the Planning Commission opposing this 4th floor project. There were 2 continuations of the original June 4 DR hearing. In the second hearing, on June 25, Gordon Mar, the district supervisor, sent a letter opposing the fourth story which he had previously supported (see attached). The Planning Commission on July 9 approved a reduced fourth story.
10. In September 16, 2020, the Zoning Administrator did not approve the request for the variance required for the 4th story (see "Variance Final Decision" attachment), and the plans were revised so that a variance was no longer required.

Neighbors agreement with the developers (See “Supporting Materials”, Attachment 1)

On 3/23/20 the City Planning Dept (DW) encouraged us to try to work out a compromise with the developers (See “Supporting Materials”, Attachment 2). We neighbors, in good faith, reached out to the developers and they agreed to the compromise we proposed - no fourth story in exchange for no opposition to the rest of the project. This agreement in texts between April 2nd and April 14th of last year show a *bona fide* agreement between the developers and us neighbors that if we did not oppose what the developers wanted to do on the 2nd and 3rd floors, and informed City Planning of this, that they would not build anything on the 4th floor.

We had thought everything had been resolved and were no longer monitoring activities related to the Irving St property. It wasn't until April 30th when Brian Veit called that we heard they were going ahead with the fourth story and it wasn't until May 11 (“Supporting Materials”, Attachment 2) that David Weissglass confirmed this (email, “Supporting Materials”, attachment 3). We were out of town and our neighbors were out of state at the time but we had all returned by the weekend of May 15.

With the extreme challenges presented by COVID-19, and with our own nonexistent expertise or experience in these matters, we had no time to submit our own Discretionary Review (which would have been due on May 22nd) and we decided the best we could do was to support the Planning Dept's objections to the developer's 4th floor plans and to add our own arguments as to why there should be no 4th floor at all.

But because we did not have our own DR we did not get a chance to properly present our case.

The adjacent neighbors' agreement with the developers was that the developers would not build ANYTHING on the 4th floor if we neighbors did not oppose their proposed layout on the 2nd and 3rd floors. We neighbors kept our part of the agreement but then, after the 2nd and 3rd floors were approved, the developers went ahead and proceeded with a plan for adding a 4th floor that would turn 4 units into two story luxury apartments with decks,

It was **not** an informal agreement. It was a documented and clear agreement that was negotiated to be a win/win for both sides. As Brian Veit said in a text, *"If we can avoid going to planning commission I'll gladly skip the pop-up. Let's make it happen!"*. And with our support they did indeed avoid going to the Planning Commission for their increased density changes on the 2nd and 3rd floors. They instead went to the Planning Commission for a 4th floor which was exactly what they said they would not do. We were totally played by someone with vast real estate development and ownership experience who knew the game inside and out.

Other reasons for appeal:

As currently envisioned, the addition of a 4th floor would create three two-story luxury units with ocean views and roof decks and a large, approximately 400 sq ft, party deck. It will add nothing to the neighborhood or to the city housing supply. It is not, contrary to the developers' statements, affordable housing. The **ONLY** purpose of the fourth story

is to increase the developers' profits. . However, it will have several negative effects, which include:

1. Increased noise and litter from the decks.
2. Loss of air, sun, privacy and views for the neighboring properties..
3. Emergency egress issues related to the use of interior spiral staircases.
4. Increased massing of an already over massed building that comes to within 10 feet of the rear property line and is completely out of character with the neighborhood.

Even without a 4th floor this building will already have gone from 12 units to 17 units, from 20 bedrooms and 12 baths to 43 bedrooms and 33.5 baths. This is less than proposed in the original plans (because of Planning Commission and Zoning Administrator decisions) which were for a building with 48 bedrooms and 44 baths but it is still a huge increase in occupancy which will affect parking in the neighborhood.

Summary: We want the developers to honor the agreement they made with us neighbors to not build the 4th floor and roof decks. After we upheld our part of the agreement to support their densification plans for the 2nd and 3rd floors, and after those plans were then approved, they went ahead with their proposal for a 4th floor almost without telling us. We feel that we were played to prevent opposition to their project. None of us had any experience with the Planning Department, with discretionary reviews. with building permits or with property developers The developers took

advantage of our naivety and made an agreement with us which we took at face value and which they used as a way to keep us from opposing their project.

In April 2020, they were more than willing to give up their fourth floor "popup" (their word), even when the fourth floor was to be much larger than now, to try to keep their 2nd and 3rd floor plans. They were OK with not building the fourth floor and this trade-off was worth making an agreement with us so that we would not oppose the other part of their project. They seemed happy with this compromise. Not allowing them to build this now will bring them right back to almost this same time last year when they traded the fourth floor for the 2nd and 3rd. There is already a lot of money to be made from those 17 units with 43 bedrooms, 33.5 bathrooms and a washer/dryer in each unit. They will still make money because, after all, there are 17 fully market rate units that are only rent controlled until they are vacant when the rent can go to whatever market rate is at that time. No housing will be removed from the housing stock, affordable or otherwise.

ATTACHMENTS

ATTACHMENT 1

AGREEMENT BETWEEN NEIGHBORS AND PROPERTY DEVELOPERS

On 3/23/20 the City Planning Dept (DW) encouraged us to try to work out a compromise with the developers.

Excerpt from DW email suggesting we try to compromise with the developers.

You have no *obligation* to meet with the applicants again. However, please remember that the Planning Commissioners are real people, so from my experience they are typically more likely to look upon folks more favorably if they have shown that they have made a lot of efforts to at least try to compromise. "Efforts" is the key word here – we are well aware things often come to an impasse, and additional communication may not actually solve anything, but you don't want to look stubborn to Commissioners. I'm not saying you're being stubborn here at all – I think it's clear you made an effort. But I'm simply letting you know from my experience you want to put yourself in that light. Take that suggestion however you'd like. I told the applicant the exact same thing, for what it's worth.

So Barbara Delaney suggested on 4/1/20 via email with Brian Veit that the developers not build anything on the fourth floor in exchange for us not opposing the developer's plans for the 2nd and 3rd floor which, at the time, they were having major difficulties getting approved.

"I have read all the plans carefully and have talked with David Weissglass, the planner in charge, about them. It was difficult to know what was going on with the various revisions and dates but it seems the revisions were related to the ADUs, not the 2nd, 3rd and 4th stories. I am very opposed to the 4th story and to the density of the 2nd and 3rd floors. In addition, there is neighborhood opposition to your project already and I suspect there will

be a lot more as other neighbors are apprised of the exact nature of your plan.

However, Mr. Weissglass suggested we should talk and see if there might be a compromise. In this spirit, I will offer to not oppose the rest of your building plan if you do not build that fourth story. After all, the city needs housing. It does not, however, need two story, luxury penthouse units with ocean views and roof decks that are out of character with the neighborhood and have serious negative impacts on the light, air and privacy of the neighboring properties." (See Attachment 2 for original email).

Brian Veit responded via text message on April 2 that he was open to the compromise. The text message chain regarding the details of the agreement is transcribed below as the screen shots from the phone (Separate Attachment) are difficult to read.

4/2/20 at 8:20 AM: Brian Veit to Barbara Delaney: "Barbara, Brian Veit here. I'm open to your suggestion with a couple of caveats:

1) I don't know if David actually will do what you suggest. I have actually already asked him and he said no. You'll have to help change his mind which brings me to point two:

2) it will take you and all your opponents supporting the "internal" project to ensure the "pop up" doesn't happen.

If we can avoid going to planning commission I'll gladly skip the pop-up. Let's make it happen!

I can talk this morning before 9am and after 2pm.

4/2/20: Barbara Delaney to Brian Veit: "Hi Brian, well we missed before 9 but I'm not sure about after 2. Have to check with Larry as we have a tentative plan to go biking with our grandchildren this afternoon (keeping distance, of course). Larry is out walking now. Will get back to you when he's back. B"

4/2/20: Brian Veit to Barbara Delaney: "Thank you. Would love to have Larry involved as also. Thanks."

4/2/20: Barbara Delaney to Brian Veit: "One thing, who is David?"

4/2/20: Barbara Delaney to Brian Veit: "Sorry, I guess you mean David the planner"

4/2/20: Brian Veit to Barbara Delaney: "Yes david the planner"

4/3/20 at 11:02 AM: Brian Veit to Barbara Delaney: "Barbara - good time to chat?"

4/3/20 Barbara to Brian: "30 minutes? Video chatting with 2 year old"

4/3/20 Brian to Barbara: "Great Thank you."

4/3/20 Barbara to Brian: "Now?"

At this point a conference call took place between Barbara and Larry Delaney and Brian Veit and his partner John where it was agreed that if we did not oppose what the developers wanted to do on the 2nd and 3rd floor they in exchange would not build a 4th floor. Our neighbors supported this compromise agreement with the developers.

4/3/20 at 8 pm: Barbara to Brian Veit: "Have talked to neighbor who has been organizing other neighbors. If there is no 4th story and no roof deck, they will not oppose anything else. Have you sent plans?"

4/3/20: Barbara to Brian Veit: "Great. I'll let him know"

4/3/20: Barbara to Brian Veit: "Sorry. That wasn't meant for you but for another person who will not oppose 2 and 3 story if no 4+roof."

4/3/20: Brian Veit to Barbara: "No worries"

4/3/20: Brian Veit to Barbara: "I don't think we need a massive effort. I think if you just email david that will be sufficient."

4/3/20: Barbara to Brian. "I just want to make sure it's what everyone wants which it seems to be. They wont be writing to David."

4/4/20 at 6:32 pm: Brian to Barbara. "Dear Barbara, I just realized I forgot to send you the pdf. It turns out the plans you already received show the project - specifically sheets A-104, 106, and 108. That's it in a nutshell. Since we are not expanding the building envelope at all, we would NOT be building sheet A110. If this isn't clear please feel free to call or email. Thank you."

4/4/20 7:35 PM: Barbara to Brian: "Great. I'll look at them but basically they still have the area in them for the stairs to go up. How will that change?"

4/4/20: Barbara to Brian: "Also, I already wrote to David to say we had agreed that you would not build the 4th storey and roof decks and I would not oppose the rest of the plan. I also said most of the other neighbors would be fine with this too"

4/10/20 at 8:54 AM from Brian to Barbara: "Barbara, we are abandoning the 4th floor. We are simply abandoning that permit application and reverting to what was already issued. DBI is letting us continue with the life-safety fire sprinkler work for now. This is a godsend to the two brothers who are doing that work so they can continue to make a living in these tough times. Thank you."

4/14/20 at 9:47 AM: Barbara to Brian: "Hi Brian, we are all very glad to hear this news. Thank you. As I said, I have already told David we would not object to the rest of the plan if there was no fourth floor. (sorry this response is so late - just discovered I forgot to push send :-)"

4/14/20 at 9:49 AM: Brian to Barbara: "Great Barbara Thank you"

Having been assured we had an agreement, and having fulfilled our part of the agreement, and having shared our agreement with the Planning Dept, we neighbors had stopped worrying about this project and planned no further involvement.

Then on April 30th while Barbara Delaney was away on a family holiday, she received this text from Brian Veit:

4/30/20: Brian to Barbara: "Barbara can you and Larry please call me at your earliest convenience?"

4/30/20: Barbara to Brian: "Hi Brian, I'm having trouble with my internet and cell phone service not good where I am. We'll call within 30 minutes (maybe less). Is that ok?"

4/30/20: Brian to Barbara: "Sure Thank you"

The call from Brian Veit to Barbara Delaney on April 30th, referenced in the last screenshot, was to say they were proceeding with their 4th floor plans. We had already fulfilled our side of the agreement and with our help they had received approval for their 2nd and 3rd floor increased density proposal.

ORIGINAL SCREENSHOTS OF TEXT MESSAGES TRANSCRIBED ABOVE.

Regretfully, these screenshots are coming as a separate attachment because it is too difficult to embed them in this document.

ATTACHMENT 2

Email from Barbara Delaney to Brian Veit proposing a compromise

From: **Barbara Delaney** <barbarabdelaney@gmail.com>

Date: Wed, Apr 1, 2020 at 6:14 PM

To: OceanRenter <oceanrenter@gmail.com>

Cc: Barbara Delaney <barbarabdelaney@gmail.com>, Michelle Delaney <michelle@111minnagallery.com>

Dear Brian,

How nice of you to write and to clarify Davie's role in your project. I understand you have a permit to build the ADUs even though it is hard to know this since it is not posted, or at least not posted where anyone can see it. However, as I also understand, you do not have a permit to work on the 2nd and 3rd floors. None of that plan has been approved and so you are not supposed to be working there. And yet, Davie and his crew were doing exactly that - working away up there building walls for the units. The "revised" plans for those floors, dated 2/3/20, don't show any new walls and the other plans for the 2nd and 3rd floors have not yet been approved.

As for the fourth story, which creates four, 2 story, luxury penthouse units with ocean views and roof decks, you know why I am opposed to that. I actually thought you would reconsider it after seeing how it would affect my property and knowing how opposed I was to it. Your plans show a property with 17 units, 48 bedrooms and 40 full baths plus 2 half baths. If you did not build that fourth story and you made the third floor like the second, you would still have a property of 17 units with a total of 40 bedrooms and 34 full baths. This would be quite a lot of extra density for the neighborhood in itself even without additional beds and baths in a fourth story. After all, the original 12 units only had 20 bedrooms, 12 baths and parking among them.

I have read all the plans carefully and have talked with David Weissglass, the planner in charge, about them. It was difficult to know what was going on with the various revisions and dates but it seems the revisions were related to the

ADUs, not the 2nd, 3rd and 4th stories. I am very opposed to the 4th story and to the density of the 2nd and 3rd floors. In addition, there is neighborhood opposition to your project already and I suspect there will be a lot more as other neighbors are apprised of the exact nature of your plan.

However, Mr. Weissglass suggested we should talk and see if there might be a compromise. In this spirit, I will offer to not oppose the the rest of your building plan if you do not build that fourth story. After all, the city needs housing. It does not, however, need two story, luxury penthouse units with ocean views and roof decks that are out of character with the neighborhood and have serious negative impacts on the light, air and privacy of the neighboring properties.

Larry and I hope you and Jane and your family are well and will be safe during this time of uncertainty and fear. If you want to talk, my cell is 415-412-2367.

Namaste, Barbara

--

Barbara Delaney

ATTACHMENT 3

Email between Barbara Delaney and David Weissglass on 5-1--20

Barbara Delaney
<barbarabdelaney@gmail.com>

May 7, 2020, Reply
12:27 PM

to David

Hi David,

I hope you are still well. I am still out of town and not receiving any mail or anything so am hoping nothing has yet been decided about the planning commission hearing for this property. I hear they are still working on it which I feel augurs ill for the objections of myself and the other neighbors.

Anyway, any news? Best, B

--

Barbara Delaney



May 11, 2020,
5:03 PM

Reply

Weissglass, David (CPC)
<david.weissglass@sfgov.org>

to Barbara

Hi Barbara,

I'm sorry for the late reply but a lot of things have been in flux. Brian has confirmed that he **will indeed** move forward with the addition of the 4th story as originally proposed. The upshot of all of this is that the hearing for this case will now be on **June 4th**. This hearing will be held remotely, and you will have your time-allotted opportunity to voice your concern on the matter by calling in. I can promise you this call-in system has been working quite smoothly for a while. We can discuss it more soon.

Further, because you and other neighbors were informed that the project was not moving forward and it now is, we are going to extend the neighborhood notification period until **May 22nd, 2020**. Again, a reminder that the hearing *will occur whether or not you or anybody else files for Discretionary Review*. If you would like to have your 3 minutes to speak at the Planning Commission, you have the opportunity to do so even if you do not file your own DR application. However, if you would like to formally be "party" to the hearing and have more time to speak, then you must file your own DR application by **5pm on May 22nd**. Instructions on how to file your own DR are here:

To file any other application (e.g. applications for Discretionary Review; applications for Project Review Meetings) you must first create an account (or be an existing registered user) on the Department's [Public Portal](#). Then, download [the](#)

[application](#) and email the completed PDF document to CPC.Intake@sfgov.org. You will receive follow-up instructions for fee payment via email.

Please contact me if you have any questions. Regardless of whether you file a DR of your own, you will very soon be receiving mailed notification of the DR hearing. I hope this makes sense.

Thank you and please stay safe.

David Weissglass, Planner

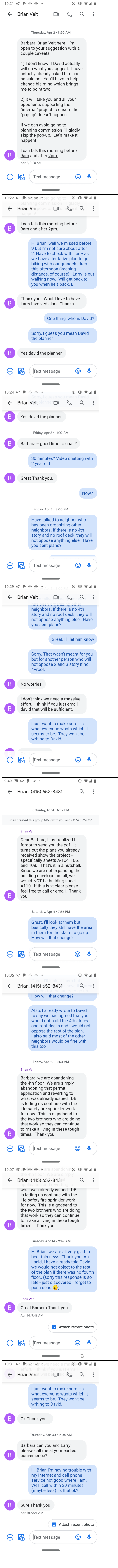
Flex Team, Current Planning Division

San Francisco Planning Department

1650 Mission Street, Suite 400, San Francisco, CA 94103

Direct: 415.575.9177 | www.sfplanning.org

[San Francisco Property Information Map](#)





Member, Board of Supervisors
District 4

City and County of San Francisco

GORDON MAR

June 24, 2020

TO: San Francisco Planning Commission
RE: **4326-4336 Irving Street Proposal (File 2019-016969)**

Dear Commissioners,

As the District Supervisor where the project is being proposed, I would like to thank you for taking the time to consider the item and to share my position on the matter.

I urge you to reject the fourth floor, as proposed by the project sponsors, and as recommended by planning staff, for the following reasons:

- The developers have not demonstrated an exceptional circumstance to justify the City granting a zoning variance
- The lot is already very dense and the non-conforming units below would be negatively impacted, which is not desirable housing that should be promoted
- The proposal does not address affordable housing needs, and instead developers are increasing their profit margins while negatively impacting the immediate neighbors

I would like to have supported this proposal, and believe that a set-back fourth floor on its exterior would be esthetically appropriate for the Sunset. When we grant developers exceptions, however, it should be for the public benefit and meet affordable housing or community needs. For me to support the proposal, the community benefits must outweigh the negative impacts on the neighborhood so as to gain community support. Without benefits to outweigh the reasons I highlighted above, and without community support, I cannot endorse it.

A group of neighbors led a dialogue with the developers on a community benefits agreement to request affordability assurances and neighborhood concessions to ensure that moderate-income people, such as teachers, healthcare workers, and workers in the Sunset, and their families, could afford these units. Our office helped facilitate discussions and regretfully, the neighbors and the developers were unable to reach an agreement.

This project is a unique opportunity to expand our rent-controlled housing stock. I support the developer's decision and commitment to rehabilitate and upgrade the vacant building and add (5) Accessory Dwelling Units on the first floor. Put in perspective, the entitled additional rent-controlled housing on the three floors is already a major win for our neighborhood.

Regards,

Gordon Mar
Supervisor, District Four



VARIANCE DECISION

Date: September 16, 2020
Case No.: 2019-016969VAR
Project Address: 4326-4336 Irving Street
Block/Lots: 1706/071
Zoning: RH-2 (Residential – House, Two Family)
Height/Bulk: 40-X Height and Bulk District
Applicant: Dawn Ma
Q-Architecture
4243 25th Street
San Francisco, CA 94114
Owner: IRV LLC
1798 Great Highway Apt. 5
San Francisco, CA 94122
Staff Contact: David Weissglass – (415) 575-9177
david.weissglass@sfgov.org

Description of Variance – Exposure Variance Sought:

The proposal is a one-story vertical addition to the existing three-story residential building. The vertical addition would include expanded living space for four of the six existing units on the 3rd floor as well as small private roof decks for two of the units. No additional dwelling units are proposed as a part of this project.

Planning Code Section 140 requires all dwellings to face onto a public street or an open area not less than 25 feet in every horizontal dimension for the floor at which the Dwelling Unit is located and the floor immediately above it, with an increase of five feet in every horizontal dimension at each subsequent floor. Two of the existing 3rd Floor dwelling units face only an open area less than 25 feet in every horizontal dimension and are therefore legally nonconforming in terms of exposure. The proposed vertical addition will intensify noncompliance for these two units. Therefore, a variance 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. 2019-016969VAR on June 25, 2020.
3. Planning Code Section 311 notification was performed for Building Permit Application No. 201909111353.

The notification period began on March 2, 2020. As a result of the City's Shelter-in-Place order, all building permit notifications were placed on hold starting March 17, 2020, resuming April 7, 2020 when the City launched a digital platform for filing Discretionary Reviews. For this project, this tolling resulted in a new notification expiration date of April 23, 2020. In early April, the Sponsor informed neighbors and City staff that the fourth-floor scope of work in this permit was likely no longer going to be pursued. On April 23, 2020, the sponsor informed the City that they were still moving forward with the fourth-floor scope of work. The Department wanted to make sure all neighbors were informed that the project was moving forward and that they had opportunity to file for DR. Thus, an additional 10-day notice was provided to neighbors from May 11, 2020 through May 22, 2020.

4. Revised plans including reduced massing at the proposed 4th story were submitted on June 25, 2020. These revised plans did not negate the necessity of a variance.
5. The Planning Department initiated a Discretionary Review (DR) for the associated building permit. The Planning Commission and Zoning Administrator conducted a duly-noticed joint public hearing on June 4, 2020 and continued the hearing to June 25, 2020. On June 25, 2020 the DR and variance cases were continued to July 9, 2020 with a Motion of Intent to Approve the building permit with Staff Modifications. On July 9, 2020, the Planning Commission approved the building permit with staff recommendations, and the Zoning Administrator closed the public hearing for the variance.

Decision:

DENIED, in general conformity with the plans on file with this application, shown as EXHIBIT A, to construct a one-story vertical addition to the existing three-story residential building. The vertical addition is to include expanded living space for four of the six existing units on the 3rd floor as well as small private roof decks for two of the units. No additional dwelling units are proposed as a part of this project.

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. The subject property, developed circa 1960, is a flat double-lot that 100 feet deep and 60 feet wide. The property has no natural development constraints and the existing building extends much further into the required rear yard than any other buildings on the subject block facing Irving Street.
- B. The subject property is located in the RH-2 Zoning District, which principally permits 2 dwelling units. However, the property contains 12 existing units. Additionally, Five (5) Accessory Dwelling Units (ADUs)

were approved for the property in 2019 per Building Permit Application No. 201811166157, resulting in 17 approved dwelling units on the property.

- C. As referenced above, the property has no development constraints and is already developed far beyond what is currently permitted by the Planning Code. As such, there are no exceptional or extraordinary circumstances applying to the subject property that do not apply to other properties in the same class 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. The literal enforcement of the exposure requirements of the Planning Code would prohibit the owner from expanding the units to the 4th story to the extent proposed. This will not result in a practical difficulty or unnecessary hardship for the property owner, as the existing building already extends into the required rear yard and there are already 17 approved dwelling units of adequate size on the property.
- B. Five of the seventeen approved dwelling units were approved via the ADU program, which offers waivers from the Planning Code Section 140. Of those five ADUs, four received administrative waivers from the Zoning Administrator for inadequate exposure. Considering the amount of development already approved for the subject property, the literal enforcement of exposure requirements would not result in a practical difficulty or unnecessary hardship.

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. The variance is not necessary for preservation and enjoyment of a substantial property right of the subject property possessed by other properties in the same class of district. Properties in the RH-2 Zoning District are principally permitted to add two dwelling units and the subject property has 17 approved dwelling units on the property.

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. Construction of a fourth floor as proposed would be materially injurious to the occupants of the residents of the building as it would result in the intensification of two of the existing units' noncompliance with respect to exposure, decreasing their access to light and air.

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.

- 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 **would not** be in keeping with the existing housing and neighborhood character. The project would fail to preserve neighborhood character by adding additional height and massing to a structure that is already larger than typical buildings in the area, and in such a way that would reduce the access to light and air for some existing units.
 - 3. The proposed project will have no effect on the City's supply of affordable housing.
 - 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 used, all specifications and conditions of the variance authorization

become immediately operative.

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.

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 49 South Van Ness Ave, Suite 1475 (14th Floor), call 628-652-1150, or visit www.sfgov.org/bdappeal.

Very truly yours,



Corey A. Teague, AICP
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.