

BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal No. 11-142

Appeal of
SANJAY DANI,)
Appellant(s))
vs.)
DEPT. OF BUILDING INSPECTION,)
PLANNING DEPARTMENT DISAPPROVAL Respondent)

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT on Dec. 19, 2011 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 Dec. 02, 2011, of Permit to Erect a Building (garage structure with 440sf of ground floor area) at 45 Priest Street.

APPLICATION NO. 2006/12/05/9210

FOR HEARING ON Feb. 08, 2012

Address & Tel. of Appellant(s):	Address of Other Party:
Sanjay Dani, Appellant 45 Priest Street S.F., CA 94109	N/A

BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal No. 11-143

Appeal of
SANJAY DANI,)
Appellant(s))
vs.)
DEPT. OF BUILDING INSPECTION,)
PLANNING DEPARTMENT DISAPPROVAL Respondent)

NOTICE OF APPEAL

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The substance or effect of the decision or order appealed from is the denial on Dec. 02, 2011, of Permit to Alter a Building (construct stairs to second level of existing building in backyard; based on Planning variance approval 2005.0607V) at 45 Priest Street.

APPLICATION NO. 2007/04/05/8127

FOR HEARING ON Feb. 08, 2012

Address & Tel. of Appellant(s):	Address of Other Party:
Sanjay Dani, Appellant 45 Priest Street S.F., CA 94109	N/A



City & County of San Francisco
BOARD OF APPEALS

Date Filed:

BOARD OF APPEALS

DEC 19 2011

APPEAL # 11-142/143

PRELIMINARY STATEMENT OF APPEAL

I / We, Sanjay Dani, hereby appeal the following departmental action: denial of BPA #'s 2006/12/05/9210 & 2007/09/05
(Building Permit Application No.; ZA determination or variance decision; Dept. of Public Works Order No. etc.)
which was issued / became effective on: 12/02/11, to: 8/27
for the property located at: 45 Priest Street

BRIEFING SCHEDULE:

The Appellant may, but is not required to, submit a one page 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: Jan. 19, 2012, (no later than three (3) Thursdays prior to the hearing date), up to 12 pages in length, double-spaced, with unlimited exhibits, with an original and 10 copies delivered to the Board office by 4:30 p.m., and with additional copies delivered to the other parties the same day.

Respondent's / Other Parties' Brief is due on or before: Feb. 02, 2012, (no later than one (1) Thursday prior to the hearing date), up to 12 pages in length, double-spaced, with unlimited exhibits, with an original and 10 copies delivered to the Board office by 4:30 p.m., and with additional copies delivered to the other parties the same day.

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

Hearing: Wednesday, Feb. 08, 2012, 5:00 p.m., City Hall, Room 416, One Dr. Carlton B. Goodlett Place (formerly 301 Polk Street).

All parties to this appeal must adhere to the briefing schedule above; however, if the hearing date is changed, the briefing schedule is automatically changed to allow briefs on the same three Thursdays / one Thursday schedule.

Members of the public may submit letters of support/opposition no later than one (1) Thursday prior to hearing date by 4:00 p.m., with an original and 10 copies required of all documents submitted. Please note that names and home addresses 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:

Owner did not abandon the project. It was never fully approved, despite a full active variance approval at time of application, nor was it rejected. Owner wishes to revise permits to not require a variance and appeal the expiry of application without rejection.

[Signature]
Signature of Appellant or Agent



December 2, 2011

NOTICE OF DISAPPROVAL

Building Permit Application No: 2006.1205.9210
2007.0405.8127

Job Address: 45 Priest Street

Cancellation Date: December 23, 2011

BOARD OF APPEALS

Sanjay Dani
45 Priest Street
San Francisco, CA 94109

DEC 19 2011
APPEAL # 11-142/143

Dear Applicant(s):

The above-referenced building permit application has been cancelled by the San Francisco Planning Department for the following reasons:

- *De facto* abandonment of project.

You may appeal the disapproval of this building permit application to the Board of Appeals within fifteen (15) days of the date of this letter. To file an appeal, bring a copy of this letter to the Board of Appeals, 3rd Floor, and 1650 Mission Street, San Francisco. If you have any questions regarding the appeal process, please call the Board of Appeals at (415) 575-6880.

If you have further questions, please call the Department of Building Inspection, Permit Processing Center at (415) 558-6677.

Very truly yours,

A handwritten signature in black ink, appearing to read "Giles Samarasinghe".

Giles Samarasinghe
Permit Processing Center

cc: John Winder
351 9th Street
San Francisco, CA 94103

CERTIFIED MAIL RETURN RECEIPT ON FILE

Permit Processing Center
1660 Mission Street – San Francisco CA 94103
Office (415) 558-6133 – FAX (415) 558-6686 – www.sfdbi.org

CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT OF BUILDING INSPECTION
APPLICATION FOR BUILDING PERMIT

RECEIVED
DEC 05 2006
DEPT OF BUILDING INSPECTION
THIS PLAN MEETS THE QUALITY
STANDARD FOR MICROFILMING
ACCEPT

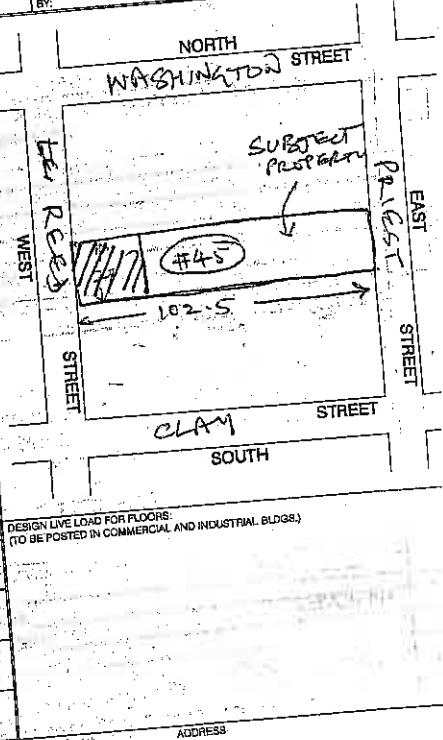
FORM 1 TYPE I - II - III - IV Building
FORM 2 Story TYPE V Building
APPLICATION IS HEREBY MADE FOR PERMISSION TO BUILD IN
ACCORDANCE WITH THE PLANS AND SPECIFICATIONS SUBMITTED
HEREWITH AND FOR THE PURPOSE SET FORTH HEREIN:

112
2006/12/05/10:10
C.P. ZACC
APPLICATION NUMBER
CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT OF BUILDING INSPECTION
APPROVAL NUMBER:

BOARD OF APPEALS
DEC 19 2011
APPEAL # 11-142/
143

DATE FILED: 12/5/06
FILING FEE: 354.00
PERMIT NO.:
ISSUED: 12/5/06
ESTIMATED COST: 15,000
TYPE OF CONSTRUCTION: I
ASSESSOR'S BLOCK & LOT NO.: 215-28
REVISED COST:
BY: DATE:

BUILDING DESCRIPTION
SIZE OF LOT: FRONT 2.0 FT. REAR 2.0 FT. AVE. DEPTH 102.5 FT.
IS ANY OTHER BUILDING ON LOT? YES NO
BLDG. CODE OCCUP. CLASS. U-1
USE OF BUILDING: Residential garage/private residence
IS AUTO RUN-WAY TO BE CONSTRUCTED? YES NO
DOES BUILDING EXTEND BEYOND PROPERTY LINE? YES NO
HEIGHT AT CENTER LINE OF FRONT OF BUILDING: 12-10
WILL STREET SPACE BE USED DURING CONSTRUCTION? YES NO
NUMBER OF DWELLING UNITS: 0
NUMBER OF STORES OF OCCUPANCY: 0
GENERAL CONTRACTOR: TBD
ARCHITECT OR ENGINEER (DESIGN): NUMBER ARCHITECTS 351 9th Stl #301
CALIFORNIA CERTIFICATE NUMBER: C13305
ARCHITECT OR ENGINEER (FOR CONSTRUCTION): LARRY SWAN
CALIFORNIA CERTIFICATE NUMBER: 1536
OWNERS NAME: SANJAY DANI
ADDRESS: 45 PRIEST ST
TELEPHONE: 217-9400



NOTICE TO APPLICANT
HOLD HARMLESS CLAUSE: The permittee(s) by acceptance of the permit, agree(s) to and hold harmless the City and County of San Francisco from and against any and all demands and actions for damages resulting from operations under this permit, re negligence of the City and County of San Francisco, and to assume the defense of the County of San Francisco against all such claims, demands or actions.
In conformity with the provisions of Section 3800 of the Labor Code of the State of Ca applicant shall have coverage under (i), or (ii) designated below or shall indicate item (i) or (ii), whichever is applicable. If however item (M) is checked item (IV) must be checked. Mark the appropriate method of compliance below:
I hereby affirm under penalty of perjury one of the following declarations:
() I. I have and will maintain a certificate of consent to self-insure + compensation, as provided by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued.
() II. I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. My workers' compensation insurance carrier and policy number are:

IMPORTANT NOTICES
No change shall be made in the character of the occupancy or use without first obtaining a Building Permit authorizing such change. See San Francisco Building Code and San Francisco Housing Code.
No portion of building or structure or scaffolding used during construction, to be closer than 60" to Code.
Any wire containing more than 750 volts. See Sec. 385, California Penal Code.
Pursuant to the San Francisco Building Code, the building permit shall be posted on the job. The owner is responsible for approved plans and application being kept at building site.
Grade lines as shown on drawings accompanying this application are assumed to be correct. If actual grade lines are not the same as shown revised drawings showing correct grade lines, cuts and fills together with complete details of retaining walls and well footings required must be submitted to this department for approval.
ANY STIPULATION REQUIRED HEREIN OR BY CODE MAY BE APPEALED.
BUILDING NOT TO BE OCCUPIED UNTIL CERTIFICATE OF FINAL COMPLETION IS POSTED ON THE BUILDING OR OCCUPANCY GRANTED, WHEN REQUIRED.

APPROVAL OF THIS ELECTRICAL WIRING AND PLUMBING THIS IS NOT A BUILDING PERMIT IS ISSUED.
In dwellings all inside electrical wires or equipment shall be installed in accordance with the applicable provisions of the applicable codes.
CHECK APPROVED BY:
 OWNER
 LESSEE
 CONTRACTOR

CPB PROCESSING FEE	20.00	SURCHARGE	0	TOTAL	1,834.53
CITY AND COUNTY OF SAN FRANCISCO DEPARTMENT OF BUILDING INSPECTION CENTRAL PERMIT BUREAU					
BY: [Signature]					

**APPLICATION FOR BUILDING PERMIT
ADDITIONS, ALTERATIONS OR REPAIRS**

FORM 3 OTHER AGENCIES REVIEW REQUIRED
FORM 8 OVER-THE-COUNTER ISSUANCE

2 NUMBER OF PLAN SETS

DO NOT WRITE ABOVE THIS LINE

**CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT OF BUILDING INSPECTION**

APPLICATION IS HEREBY MADE TO THE DEPARTMENT OF BUILDING INSPECTION OF SAN FRANCISCO FOR PERMISSION TO BUILD IN ACCORDANCE WITH THE PLANS AND SPECIFICATIONS SUBMITTED HERewith AND ACCORDING TO THE DESCRIPTION AND FOR THE PURPOSE HEREINAFTER SET FORTH.

APPROVED FOR ISSUANCE

PERM 318

CP-2007-04-05-812

APPLICANT NUMBER

APPROVAL NUMBER

BOARD OF APPEALS

DEC 19 2011

APPEAL # 11-142/

143

INFORMATION TO BE FURNISHED BY ALL APPLICANTS

DATE FILED 415107		FILING FEE RECEIPT NO. 355007		(1) STREET ADDRESS OF JOB 45 PRIEST ST 215 - 28		BLOCK & LOT	
PERMIT NO.		ISSUED		(2A) ESTIMATED COST OF JOB 10,000		(2B) REVISED COST	

LEGAL DESCRIPTION OF EXISTING BUILDING

(4A) TYPE OF CONSTR. I	(5A) NO. OF STORIES OF OCCUPANCY 3	(6A) NO. OF BASEMENTS AND CELLARS 1	(7A) PRESENT USE single private residential	(8A) OCCUP. CLASS R3	(9A) NO. OF DWELLING UNITS 2
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DESCRIPTION OF BUILDING AFTER PROPOSED ALTERATION

(4) TYPE OF CONSTR. II	(5) NO. OF STORIES OF OCCUPANCY 3	(6) NO. OF BASEMENTS AND CELLARS 1	(7) PROPOSED USE (LEGAL USE) private residential	(8) OCCUP. CLASS R3	(9) NO. OF DWELLING UNITS 2
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(10) IS AUTO HIGHWAY TO BE CONSTRUCTED OR ALTERED? YES NO

(11) WILL STREET SPACE BE USED DURING CONSTRUCTION? YES NO

(12) ELECTRICAL WORK TO BE PERFORMED? YES NO

(13) PLUMBING WORK TO BE PERFORMED? YES NO

(14) GENERAL CONTRACTOR: T.B.D. ADDRESS: 45 PRIEST ST. ZIP: 94109. PHONE (FOR CONTACT BY DEPT.): 415-217-9400

(15) OWNER - LESSEE (CROSS OUT ONE): SANJAY DANI

(16) WRITE IN DESCRIPTION OF ALL WORK TO BE PERFORMED UNDER THIS APPLICATION (REFERENCE TO PLANS IS NOT SUFFICIENT):
Construct STAIRS TO SECOND LEVEL OF EXISTING BUILDING IN BACKYARD BASED ON PLANNING VARIANCE APPROVAL 2005.0607V

ADDITIONAL INFORMATION

(17) DOES THIS ALTERATION CREATE ADDITIONAL HEIGHT OR STORY TO BUILDING? YES NO

(18) IF (17) IS YES, STATE NEW HEIGHT AT CENTER LINE OF FRONT: FT.

(19) DOES THE ALTERATION CREATE DECK OR HORIZ. EXTENSION TO BUILDING? YES NO

(20) IF (19) IS YES, STATE NEW GROUND FLOOR AREA: UNCHANGED

(21) WILL SIDEWALK OVER SUB-SIDEWALK SPACE BE REPAIRED OR ALTERED? YES NO

(22) WILL BUILDING EXTEND BEYOND PROPERTY LINE: YES NO

(23) ANY OTHER EXISTING BLDG. ON LOT? IF YES, SHOW ON LOT (IF YES, SHOW ON PLOT PLAN): YES NO

(24) DOES THIS ALTERATION CONSTITUTE A CHANGE OF OCCUPANCY? YES NO

(25) ARCHITECT OR ENGINEER (DESIGN OR CONSTRUCTION): WINDER ARCHITECTS 351 9th STREET #301 SF CA 94103

(26) CONSTRUCTION LENDER (ENTER NAME AND BRANCH DESIGNATION IF ANY, IF THERE IS NO KNOWN CONSTRUCTION LENDER, ENTER "UNKNOWN"): UNKNOWN

IMPORTANT NOTICES

No change shall be made in the character of the occupancy or use without first obtaining a Building Permit authorizing such change. See San Francisco Building Code and San Francisco Housing Code.

No portion of building or structure or scaffolding used during construction, to be closer than 6'0" to any wire containing more than 750 volts See Sec 385, California Penal Code.

Pursuant to San Francisco Building Code, the building permit shall be posted on the job. The owner is responsible for this.

NOTICE TO APPLICANT

HOLD HARMLESS CLAUSE. The permittee(s) by acceptance of the permit, agree(s) to indemnify and hold harmless the City and County of San Francisco from and against any and all claim, demand or damages resulting from operations under this permit, regardless of negligence of the permittee(s), and to assume the defense of the City and County of San Francisco, and to assume the defense of the City and County of San Francisco, and to assume the defense of the City and County of San Francisco, and to assume the defense of the City and County of San Francisco.

In conformity with the provisions of Section 3800 of the Labor Code of the State of California, the applicant shall have coverage under (i), or (ii) designated below or shall indicate item (ii), or (iii) designated below.

No che Permit Code. No part any wir Pursuer owner is Grade in actual g and fills submitte ANY ST BUILDIN ON THE APPROV ELECTR WIRING, ANSWER THIS IS N PERMIT I In dwelling electrical v CHECK AL ET OWN LESS CON

APPLICATION FILING FEE- PLAN CHECKING RECEIPT

355

DATE 4-5-07 RECEIVED OF Sanjay Dani BUILDING APPLICATION NUMBER 2007-04-05-812

ESTIMATED COST OF JOB 10,000		EXPEDITER REVENUE 7899		PLAN CHECK FEE REVENUE 7229		FILING FEE 7223 26.65	DEMOLITION NOTICE FEE 1212
NEW CONST.		ALTERATION		SIGNS			
		107.90					
FIRE FEE 7299	DCP FEE 7081	CPB PROCESSING FEE 20	SURCHARGE	TOTAL 154.55	CITY AND COUNTY OF SAN FRANCISCO DEPARTMENT OF BUILDING INSPECT CENTRAL PERMIT BUREAU		

BUREAU APPLICATION

HEREBY DESCRIBE AND ORDER 9003-03 (REV)

ARTIFY AT THIS A S TR



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
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May 5, 2006

VARIANCE DECISION
UNDER THE PLANNING CODE
CASE NO. 2005.0607V

BOARD OF APPEALS

JAN 05 2012

APPEAL # 11-142/143

APPLICANT: Ms. Heidi Liebes
Winder Liebes Architects
351 Ninth Street, #301
San Francisco, CA 94103

CASE PLANNER: Jim Miller – 558-6344

PROPERTY IDENTIFICATION – 45 PRIEST STREET, west side between Clay and Washington Streets, a through-lot to Reed Street, Lot 28 in Assessor's Block 215, in an RH-2 (House, Two-Family) District and a 50-X Height and Bulk District. It is improved with a two-unit residential building.

DESCRIPTION OF VARIANCE SOUGHT – REAR-YARD VARIANCE

The proposal is to construct a new two-car garage on the Reed Street frontage of the subject property within the required rear yard of the lot. In addition, the applicant proposes to construct rear exit stairs from the subject building providing access to the existing yard area as well as to the proposed new garage. This stairway would project two feet two inches into the required rear-yard open area.

Section 134 of the Planning Code sets forth standards for rear yard areas. It requires, in an RH-2 District, a rear-yard area, open and clear from the ground up, equal to 45 percent of the depth of the lot (and in no case less than 15 feet). The subject lot is 102.5 feet deep therefore its required rear yard area would be approximately 46 feet in depth. All of the proposed new garage would be in this area plus approximately two feet two inches of the rear exit stairs proposed to be constructed at the south property line at the rear of the subject two-family building (and projecting 12 feet to the rear of the building).

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. 2005.0607V on Wednesday, October 26, 2005.**

DECISION:

GRANTED, to allow the construction of a two-car garage along the Reed Street frontage of the subject property and to permit construction of rear exit stairs at the back of the existing building which stairs would project approximately two feet two inches into the otherwise-required rear-yard area, in general conformity with the plans on file with this application, shown as "Exhibit A" and dated February 11, 2004, subject to the following conditions:

1. This approval is dependant upon granting by the Département of Public Works of a Major Encroachment Permit for the improvement of the portion of Reed Street that would be necessary to access the herein-authorized new garage structure.
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.

The subject property has frontage on both Priest Street and Reed Street but has no vehicular access. Priest Street, at the front of the lot, is improved with a stairway and walkway. Reed

Street, which extends to the south from Washington Street, is improved only as far as the northerly lot line of the subject property. Southerly of that point, Reed Street extends to its intersection with Clay Street. In this portion of its run, it is a "paper street" in that it is dedicated but unimproved. Reed Street is, however, a public street to which abutting owners have right of access. At present, only one garage, that of the next-door property to the north at 44 Reed Street, is accessed from Reed Street. The applicant seeks to extend the pavement by the width of his lot so that he may have access to the garage that he proposes as part of the subject Variance request. It is an extraordinary circumstance that the subject lot has frontage on two streets but no possibility of vehicular access at present. In addition, the only way (at present) to gain access to the rear yard area on the subject lot from the building at 45 Priest Street is through an easement on the adjoining lot to the south at 37 - 39 Priest Street. Such access requires exiting the subject building on Priest Street, passing under the building at 37 - 39 Priest Street its rear yard, and then crossing into the rear yard of 45 Priest Street. This situation would be rectified by the construction of a stairway from the subject building (45 Priest Street) down to its rear yard area, a portion of which stairway would project into the otherwise-required open rear-yard area.

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.

Due to the land-locked nature of the subject lot, Variance relief would be necessary to allow the property owner to create off-street parking (as otherwise required by the Planning Code) on his lot. Reed Street, a public right-of-way, could be extended as necessary to accommodate the requested rear-yard garage. The only feasible way to create off-street parking on the subject property is at the rear of the lot as proposed by the applicant. He is aware that such an act would require a Major Encroachment Permit from the Department of Public Works to improve the necessary portion of the Reed Street right-of-way. In addition, the applicant has proposed to extend the planted and landscaped area of his down-sloping rear yard out over the roof of the proposed new garage structure. Such an action would create flat, usable open space in an area where none now exists and it would minimize the visual intrusion of the garage into the rear yard. The rear stairway, as proposed, would give access from the proposed new garage directly to the interior of the subject two-unit building. It would eliminate the need for the pedestrian easement through the neighboring property to the south thereby increasing the privacy and security of the next-door owner/occupant. Literal enforcement of the Planning Code would preclude the owner from developing his property in the manner proposed and result in an 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.

The granting of this Variance is the best and most feasible manner by which the owner can enjoy his right to develop his property to its full potential, as enjoyed by similarly-situated property owners (particularly the next-door property at 44 Reed Street that uses Reed Street, essentially, as a private driveway at present). The extension of the landscaped portion of the yard on the subject lot out over the new garage would have the effect of retaining greenness and openness in the mid-block area and would, therefore, be beneficial to owners and users of nearby properties.

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.

The granting of this variance will not be materially detrimental to the public welfare or materially injurious to other properties in the vicinity. The proposed new garage would take two cars off the street in this parking-impacted area. The extension of landscaping over the proposed garage would enhance the openness of the mid-block area and cause this new structure to recede from view. The proposed new exit stairs would be minimally intrusive and would solve a long-standing access problem for the applicant as well as the owner of the adjoining lot. The adjoining neighbors to the north, who enjoy the only existing garage space that is accessed by the (public) paved portion of Reed Street, expressed opposition to the proposed new garage. They opposed the granting of the requested Variance due to loss of a small garden (in the Reed Street right-of-way), their expressed desire that this action should be deferred until vehicular access to other properties abutting Reed Street can be coordinated, and that, if approved, the new garage be limited in height and intrusion into the existing open space.

As stated above, proposed landscaping (over the new garage) would have the effect of minimizing its intrusion into the mid-block area. Street rights-of-way are reserved, generally, for vehicular access to private property. Denying the requested Variance would have the effect of continuing the exclusive private use of the public Reed Street right-of-way by one user and denying the applicant any vehicular access to his property. If other property owners wish to access the Reed Street right of way, they have the ability to request such access and / or their own Variances. It is inappropriate to deny the applicant consideration because others are unwilling or not ready to join in his request. The proposed garage would have a low profile and would be generally unobtrusive as shown on plans on file with the application.

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. Granting this Variance will help retain and enhance the existing supply of housing by providing parking in conjunction with dwelling units. It will remove two cars from the street in this parking-impacted area of the City without eliminating any on-street parking through curb cuts. The new garage, as designed, would be minimally intrusive to the mid-block area. The proposed new exit stairs would solve both an access problem for the owner of the subject property as well as a privacy and security problem for the owner of the next-door property to the south. 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 conserving existing housing and neighborhood character and maintaining and protecting open space from development.

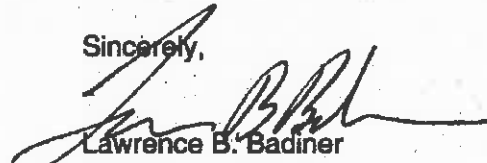
The effective date of this decision shall be either the date of this decision letter if not appealed, or the date of the Notice of Decision and Order if appealed to the Board of Appeals.

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

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.

APPELLANT'S BRIEF (Appeal No 11-142/143)

Dear Board of Appeals

City and County of San Francisco

BOARD OF APPEALS

JUL 05 2012

APPEAL # 11-142

Appellant: Sanjay Dani, 45 Priest Street, San Francisco CA 94109

Subject: Appeal Against Dec 2, 2011 Cancellation of Building Permit Application by Planning Department (Exhibit 1) for reasons of "*De Facto Abandonment of Project*"

REQUEST

I request the Board of Appeals to overturn the said cancellation of permit application on following grounds:

1. Planning Department grossly abused its authority of reviewing the said DBI Building Permit and has failed to perform its duties by sitting on Appellant's fully completed application since Spring 2007 without as much as a simple "yea" or "nay" action and without a single attempt to contact Appellant in the intervening years before and long after expiry of the underlying Variance Decision of May 2006.
2. As such, Planning Department deprived appellant of any recourse or a corrective course of action, should that have furthered the cause of approval of the permit, while the Department's employees willfully rebuffed Appellant's numerous follow ups on application status by way of emails and

phone calls to the assigned and reassigned Planners and their acting managers, and also visits in person to the Planning Department.

3. After Appellant filed a preliminary appeal to the Board of Appeals on December 19, 2011, and subsequently on advise of a very helpful Board of Appeals staff, approached the Zoning Administrator to assess whether the underlying Variance Approval, now long expired, can be brought back to life on grounds of delay by his department and alternatively whether the Zoning Administrator would reconsider revised permit drawings that may obviate the need for another Variance in light of changed ground conditions, the Zoning Administrator stated (Exhibit 2) a grossly false and erroneous reason that the Planning Department could not process the permit application because the Appellant "*never obtained the required Major Encroachment Permit*" from the Department of Public Works. This is blatant lie in light of the fact that DPW approved exactly such Major Encroachment Permit on November 1, 2006 (Exhibit 3). Adding insult to injury, the Zoning Administrator putatively raised a whole list of post-facto grounds that *would have warranted* disapproval of the permit application. All such grounds have been sufficiently debunked. He also ventured into a selective reading from the Variance Decision Order of May 5, 2006 (Exhibit 4), which clearly gives the ZA the discretion to extend the variance authorization when "*issuance of the Building Permit is delayed by a City agency*". As evidence in this appeal amply demonstrates, delay by the Planning Department is the cause here for the Planning Department not acting on a completed application until well

after the variance expired. This amounts to manifest injustice to the Appellant due to the ZA's arbitrary refusal to exercise his discretionary powers for it would amount to exposing and accepting the clear dereliction of duty by his Planning Department colleagues who sat on a fully completed permit application for years. Worse, it may very well be a cover up of Planner's attempts to extract favors which were rebuffed by the Appellant in Spring 2007, which is exactly when the Planning Department turned hostile to the Appellant. The Department had earlier espoused the cause of this Variance, affirmed it upheld the General Plan guidelines and the then ZA gave it a resounding approval in a public approval despite strenuous opposition from one neighbor. The current ZA's stubborn, autocratic dismissal of Appellant's reconsideration request also makes a mockery of Planning Department Director's publicly stated position to promote green roofs. That position, taken alongside the then Mayor, was what inspired the Appellant in 2006 to design a "sunken" garage in this steep, Nob Hill rear yard with a green roof that is also compliant, as found in the Variance Decision, with Eight Priority Policies of Planning Code Section 101.1.

PROJECT BACKGROUND

In 2005, the Appellant undertook a long, arduous and due process of seeking approval for a detached garage in the subject property's rear yard by opening consultations with the Department of Public Works, the Planning Department and the neighbors. These consultations and extensive ground work by Appellant's

architects, structural engineers and geological engineers led to a public hearing in October 2005. Appellant received enthusiastic written (Exhibit 5) and in-hearing support from neighbors and one strenuous objection from a neighbor who had monopolized the use of Reed Street until then. The then ZA approved the Variance to construct a two-car garage on the property's Reed Street frontage and also rear-exit stairs from the building with Priest Street frontage to access the garage.

During this process, the remainder of 2006, and well into early Spring 2007, the Appellant received cooperation and on-going consultations from the assigned Planner, as also evidenced in the enclosed invoice (Exhibit 6) by the Planning Department. Appellant submitted the last set of application documents in order for the Department to send Planning Code Section 311 notifications to neighbors, which included the requisite labels provided by RADIUS Services as evidenced in the affidavit (Exhibit 7). At this April 2007 meeting, the Planner categorically told the Appellant that the permit application file was complete and there was no need to continue the extensive meetings and preparations with him anymore. That he would send the notifications out and as a public hearing has already taken place, including an opportunity to one dissenting neighbor to state their case in the public hearing, he would in due time send the Planning Department's approval back to DBI to continue with issuance of the permit.

At this time, Appellant was convinced that all of Planning Department's requirements for issuance of the Building Permit were met and ended the on-going

retainer contract with Winder Architects. All of a sudden, the same planner stopped taking calls and returning emails/voicemails that were made to ascertain whether the notifications were mailed. Appellant kept hearing of reassignment to new planners due to some turbulence in the department. Often times, Appellant's calls were forwarded to an acting manager who had no knowledge of the case. This left the Appellant with no recourse but to keep hoping that some one, some day will act on our file again. Unfortunately, that never happened.

The Appellant was shocked and baffled by this 180-degree turn from the planner and the department on the permit application. It left the Appellant in a limbo, without much recourse. There was a human limit to how much the Appellant could continue to follow up without a fulltime staff of "facilitators" and "architects" that the Planning Department now expects such applicants to hire and thus grease the appropriate wheels. Appellant continued monthly, quarterly and eventually annual follow up calls through a fulltime job and then a fulltime school assignment until the trail dried up. New managers would come up with all sort of bizarre reasons but never asked to submit any specific document nor outright rejected the application, thus depriving the Appellant correction options. Finally, in December 2011, Planning Department finally woke up from its slumber and realized that it had sat on a file too long. So it did what derelict bureaucrat caught napping do everywhere. They threw the file back in DBI's lap under the ridiculous reasons that I had abandoned the project.

In hindsight, my guess is that ending our retainer with the architect was an act frowned upon by the planning department as they were potentially a conduit of continued favors to a section of the Planning Department that expected favors in exchange for not exercising their highly-discretionary powers of sitting on our file.

WRITTEN REASONS GIVEN BY ZA

As described on the first page of this appeal under our reason #3, the Zoning administrator replied to my email of December 2011 stating that absence of Encroachment Permit Approval by DPW was the reason for the disapproval of the permit application.

In this email communication, just to control the damage was much as he could for the department, the ZA went on to proffer a whole bunch of potential reasons for the disapproval. One was that the underlying variance had expired. However, it raises a question. If the department is supposed to reject an application on expiry of its own variance approval, shouldn't it reject the application on three-year anniversary of the variance approval, i.e. in May 2009? Did the department's right hand know what the left hand was doing? What actions did the department take in the intervening two and a half years? Why did it wait until December 2011, possibly on prodding by the Department of Building Permit, and started scampering with a whole host of reasons starting with "abandonment", proceeding with the lie of "lack of DPW encroachment permit" and then moving on to a few others?

These actions are as clear proof as one can have against an inscrutable bureaucracy that was *asleep at the wheel* when it was supposed to process this application from Spring 2007 to May 2009 to until 2011. This has harmed Appellant's interests and caused him manifest injustice.

In order to continue to cover its tracks, the ZA not only refused Appellant's request for a meeting in person in December 2011 or January 2012 but as the email thread indicates he also launched a long diatribe insinuating at unearthing every possible, mostly imagined, infraction of building code by the subject property.

HIGHANDEDNESS AND CONTINUED ABUSE OF DISCRETIONARY POWERS BY PLANNING DEPARTMENT

Should this appeal be denied, it would fall into the highly irresponsible and insulting suggestion the ZA made to the Appellant to undertake the entire Variance application process all over again. As any citizen who has gone through the wrenching, drawn-out, expensive and time consuming Variance process can affirm, the enormous discretionary powers they have been vested with by the City can either be put to good use for the benefit of homeowners, neighborhoods and the City in general or they can be easily misused by the unscrupulous and autocratic elements in the Planning Department. This is in stark contrast to the workings of the Department of Public Works, which follows a matter-of-fact code and has consistently given the Appellant clarity of expectations, diligent application of mind,

and timely responses since 2004, the first time the Appellant approached the department to seek clarity on DPW policies with regards to access to the public right of way, i.e. Reed Street.

Further, the discretionary powers of Planning Department leaves no recourse to a wronged citizen once a Planner decides to stall a project for reasons of ego, hubris, corruption or because they are simply taking instructions from elsewhere. It is no secret that corrupt elements do exist among a small section of the Planning Department. The modus operandi under which they thrive is by hiding behind the smallest administrative lacuna they can find when an applicant is no longer in the "good books". As the Planner encouraged the Appellant at a 2006 holiday party of builders and facilitators he invited the Appellant to, hiring the right architects and building connections at the right parties is the key to seeing a project to successful completion or seeing bad luck befall on it. Unfortunately, that is exactly the fate the Planning Department has conspired to inflict on the Appellant.

This Appellant failed to get a response from the Planning Department Spring 2007 onwards and had no recourse to any correction action or to an appeal until this process became available to him in December 2011.

SUMMARY OF REQUEST

In light of the above stated facts, Appellant requests the Board of Appeals to overturn cancellation of the permit application because

- Appellant has amply demonstrated respect for the due process to seek building permit approval by investing several years, going through two full blown public hearings at the Zoning Administrator and at DPW, which both were approved, has incurred enormous expenses and went through an emotionally wrenching process to gain the approval of the Variance and submit a full, duly completed permit application.
- Planning Department grossly misused its authority to review building permit by sitting on Appellant's application until well after the expiry of the underlying variance.
- Deprived appellant of any corrective course of action during the time it sat on a fully completed application.
- When appealed, ZA gave a whole list of erroneous grounds as potential reasons for why it *should have cancelled* the permit (all of which have been debunked above).
- Rebuffed all phone call, email requests by Appellant from Spring 2007 until the filing of this appeal, which forced Planning to respond.

I submit that rejecting this appeal will be tantamount to condoning the festering corruption and derelict bureaucracy inside Planning Department that can ride

roughshod with impunity over a law-abiding citizen who suddenly "goes out of favor" with the powers that be. While the citizen loses years of time and money, by not holding the department accountable for their omissions and commissions, the Board of Appeals will send the signal that they can continue the arbitrary ways of conaucton business as usual.

I submit that rejecting this appeal will send a wrong signal that there is no value to following a several years due process that both fully conformed to all General Plan guidelines and promoted the City planners and elected officials' green objectives. For, all of it can amount to nothing if one employee in the deep recesses of the bureaucracy decides to not let it happen.

I submit that rejecting this appeal will forever subject the mid-block community of this top-of-Nob Hill neighborhood living in beautiful buildings with world-class views from the Twin Peaks, Golden Gate Bride to the Marin Headlands to the Alcatraz to looking at an unfinished garage potentially forever, as in Exhibit 8 (BEFORE) which shows permitted retaining walls built on the Reed frontage of subject property. All of use will be subjected to that specter while all neighbors continue to use the unfinished Reed street for parking, emergency fire crews access it when needed and I use it for vehicular access to my own.

On the other hand, approving this appeal and forcing the Department of Planning to undo its arbitrary cancellation of Appellant's permit application, will allow the

Appellant to build a beautiful green roof that will enhance views for all neighbors by blending it with the subject and neighboring properties existing mid-block gardens, increase green coverage and underground water replenishment of this rare, mid-block neighborhood on a hill top, and create a beautiful Reed street frontage for enjoyment by residents as well as tourists who venture into this gem of a tucked-away alley in the middle of a humming city (Exhibit 8- PROPOSED).



December 2, 2011

NOTICE OF DISAPPROVAL
Building Permit Application No: 2006.1205.9210
2007.0405.8127
Job Address: 45 Priest Street
Cancellation Date: December 23, 2011

BOARD OF APPEALS

Sanjay Dani
45 Priest Street
San Francisco, CA 94109

DEC 19 2011
APPEAL # 11-142/143

Dear Applicant(s):

The above-referenced building permit application has been cancelled by the San Francisco Planning Department for the following reasons:

- *De facto* abandonment of project.

You may appeal the disapproval of this building permit application to the Board of Appeals within fifteen (15) days of the date of this letter. To file an appeal, bring a copy of this letter to the Board of Appeals, 3rd Floor, and 1650 Mission Street, San Francisco. If you have any questions regarding the appeal process, please call the Board of Appeals at (415) 575-6880.

If you have further questions, please call the Department of Building Inspection, Permit Processing Center at (415) 558-6677.

Very truly yours,


Giles Samarasinghe
Permit Processing Center

cc: John Winder
351 9th Street
San Francisco, CA 94103

CERTIFIED MAIL RETURN RECEIPT ON FILE

Permit Processing Center
1660 Mission Street – San Francisco CA 94103
Office (415) 558-6133 – FAX (415) 558-6686 – www.sfdbi.org

EAH 2

Subject: 45 Priest Street
From: Scott.Sanchez@sfgov.org
Date: 12/21/11 02:17 PM
To: Sanjay Dani <sanjay.dani@me.com>
CC: "Cynthia.Goldstein@sfgov.microsoftonline.com"
<Cynthia.Goldstein@sfgov.microsoftonline.com>, "Mark.Luellen@sfgov.org"
<Mark.Luellen@sfgov.org>, Nick.Elsner@sfdpw.org, Joseph.Duffy@sfgov.microsoftonline.com

Dear Mr. Dani,

Thank you again for your email. On May 5, 2006, the Zoning Administrator issued the aforementioned variance decision for your Case No. 2005.0607V (see attached). The decision granted the variance, subject to conditions including a requirement that "this approval is dependent upon granting by the Department of Public Works of a Major Encroachment Permit for the improvement of the portion of Reed Street that would be necessary to access the herein-authorized new garage structure." The decision letter also required that any necessary building permits be obtained within three years of the decision letter or the decision would be deemed void and cancelled.

It's my understanding (after speaking with Nick Elsner at DPW) that while you submitted a Major Encroachment Permit, it was never issued by DPW. The Major Encroachment Permit sought to extend the existing roadway on Reed Street by approximately 20 feet and allow construction of a concrete driveway ramp from the edge of an existing garage at 44 Reed Street to provide access to a proposed new garage at the Reed Street rear of 45 Priest Street.

Since you never obtained the required Major Encroachment Permit, the subject building permit applications (200612059210 to erect a new detached garage; and 200704058127 to construct stairs to 2nd level of existing building in balcony area pursuant to the variance) could not be processed by our Department (processing includes issuance of required neighborhood notification). As such, the underlying variance decision (Case No. 2005.0607V) is deemed void and cancelled. You will need to submit new variance and building permit applications to pursue the project. I would suggest that you contact Nick Elsner at DPW to discuss the Major Encroachment Permit issue (Nick can be reached at 554-6186 and is copied on this email).

(See attached file: 2005.0607V (45 Priest Street).pdf)

As stated previously, I do not see any issued permits for the "carport" at the rear of the property (only a series of expired permits for retaining walls). Can you provide evidence that you obtained a Major Encroachment Permit to provide vehicular access to the rear of your property and building permits to allow parking at the rear of your property? Did you ever receive final inspections for the retaining walls?

Regards,
Scott F. Sanchez
Zoning Administrator
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103

EXH 3

**CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT OF PUBLIC WORKS
ORDER NO. 176,524**

APPROVAL OF MAJOR (STREET) ENCROACHMENT PERMIT AT THE REED STREET
REAR OF 45 PRIEST STREET (BLOCK 5618. LOT 020).

APPLICANT: Sanjay Dani
c/o Winder Architects
351 Ninth Street, Suite 301
San Francisco, CA 94103

PROPERTY IDENTIFICATION: Lot 028 in Assessor's Block 0215
(45 Priest St.)
San Francisco, CA 94109

DESCRIPTION OF REQUEST: Major (Street) Encroachment Permit

BACKGROUND:

1. The applicant filed a request with the Department of Public Works (DPW) to consider approval of a Major (Street) Encroachment Permit to extend the existing roadway on Reed Street by approximately 20 feet and constructing a concrete driveway ramp from the edge of an existing garage at 44 Reed Street to provide access to a proposed new garage at the Reed Street rear of 45 Priest Street.
2. The proposed new garage project was the subject of the Planning Department's Variance Case No. 2005.0607V for which a rear yard Variance was granted by the Zoning Administrator on October 28, 2005; subsequently, the Planning department by letter dated June 30, 2006 determined that the proposed roadway extension is in conformity with the General Plan.
3. On February 23, 2006, the Interdepartmental Staff Committee on Traffic & Transportation (ISCOTT) reviewed the request to extend the paved portion of Reed Street southerly to provide access to a new garage for 45 Priest Street, and recommended approval of this encroachment.
4. DPW scheduled a public hearing for October 4, 2006 to consider the proposed encroachment. On September 22, 2006, DPW mailed notices for the hearing to property owners and posted said notices within a 300-foot radius of the subject location.
5. Hearing Officer Balmore Hernandez inspected the subject site and conducted a hearing on the merits of the Major (Street) Encroachment Permit on October 4, 2006.
6. DPW staff presented testimony with regard to the proposed encroachment being in conformity with the General Plan and recommended for approval by ISCOTT. DPW staff also presented testimony that two letters each were received via e-mail in support of, and in opposition to the proposed Major Encroachment. Based on this information, DPW staff recommended that the proposed encroachment be transmitted to the Board of Supervisors with DPW's recommendation for approval.

DPW Order No. 176,524

November 1, 2006

Page 2

7. The owner of the subject property attended the public hearing and presented testimony in support of the proposed encroachment, stating that the Zoning Administrator had granted a Variance for the proposed new garage project. The neighbor at 37 Priest Street also attended the hearing and presented testimony supporting the request to extend Reed Street.
8. The attorney and an Architect representing the property owner of 44 Reed Street attended the public hearing and presented their concerns with regard to the proposed driveway encroachment, including drainage, utilities, loss of the neighborhood garden space, etc.
9. The Hearing Officer considered and reviewed the testimony of DPW staff and the permit application file, considered testimony of the property owner and the neighbors with regard to the proposed encroachment, and made a decision to recommend the proposed encroachment for approval to the Board of Supervisors.

HEARING OFFICER RECOMMENDATION: APPROVAL of the request for a Major (Street) Encroachment Permit conditioned upon the adjoining neighbors working together and coordinating the design of the proposed driveway to potentially accommodate driveway access to other properties along Reed Street, based on the following findings:

FINDING 1. Recommendation for approval by ISCOTT and Planning Department's determination that the subject encroachment is in conformity with the General Plan.

FINDING 2. Said encroachment would provide off-street parking at the rear of the existing building. Existing on-street parking in this area is extremely limited and is prohibited along Reed and Priest Streets.

FINDING 3. Said encroachment is convenient in conjunction with the owner's use and enjoyment of his property.



Fred V. Abadi, Ph.D.
Director of Public Works

APPROVED: NOVEMBER 1, 2006

Cc: File
BSM
Baltimore Hernandez
Applicant



PLANNING DEPARTMENT

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

ETH 4

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

May 5, 2006

VARIANCE DECISION

UNDER THE PLANNING CODE

CASE NO. 2005.0607M

APPLICANT: Ms. Heidi Liebes
Winder Liebes Architects
351 Ninth Street, #301
San Francisco, CA 94103

CASE PLANNER: Jim Miller – 558-6344

RECEIVED

DEC 05 2006

DEPT OF BUILDING INSPECTION
THIS PLAN MEETS THE QUALITY
STANDARD FOR MICROFILMING
ACCEPT

PROPERTY IDENTIFICATION – 45 PRIEST STREET, west side between Clay and Washington Streets, a through-lot to Reed Street, Lot 28 in Assessor's Block 215, in an RH-2 (House, Two-Family) District and a 50-X Height and Bulk District. It is improved with a two-unit residential building.

DESCRIPTION OF VARIANCE SOUGHT – REAR-YARD VARIANCE

The proposal is to construct a new two-car garage on the Reed Street frontage of the subject property within the required rear yard of the lot. In addition, the applicant proposes to construct rear exit stairs from the subject building providing access to the existing yard area as well as to the proposed new garage. This stairway would project two feet two inches into the required rear-yard open area.

Section 134 of the Planning Code sets forth standards for rear yard areas. It requires, in an RH-2 District, a rear-yard area, open and clear from the ground up, equal to 45 percent of the depth of the lot (and in no case less than 15 feet). The subject lot is 102.5 feet deep therefore its required rear yard area would be approximately 46 feet in depth. All of the proposed new garage would be in this area plus approximately two feet two inches of the rear exit stairs proposed to be constructed at the south property line at the rear of the subject two-family building (and projecting 12 feet to the rear of the building).

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. 2005.0607V** on **Wednesday, October 26, 2005**.

DECISION:

GRANTED, to allow the construction of a two-car garage along the Reed Street frontage of the subject property and to permit construction of rear exit stairs at the back of the existing building which stairs would project approximately two feet two inches into the otherwise-required rear-yard area, in general conformity with the plans on file with this application, shown as "Exhibit A" and dated February 11, 2004, subject to the following conditions:

1. This approval is dependant upon granting by the Department of Public Works of a Major Encroachment Permit for the improvement of the portion of Reed Street that would be necessary to access the herein-authorized new garage structure.
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.

The subject property has frontage on both Priest Street and Reed Street but has no vehicular access. Priest Street, at the front of the lot, is improved with a stairway and walkway. Reed

Street, which extends to the south from Washington Street, is improved only as far as the northerly lot line of the subject property. Southerly of that point, Reed Street extends to its intersection with Clay Street. In this portion of its run, it is a "paper street" in that it is dedicated but unimproved. Reed Street is, however, a public street to which abutting owners have right of access. At present, only one garage, that of the next-door property to the north at 44 Reed Street, is accessed from Reed Street. The applicant seeks to extend the pavement by the width of his lot so that he may have access to the garage that he proposes as part of the subject Variance request. It is an extraordinary circumstance that the subject lot has frontage on two streets but no possibility of vehicular access at present. In addition, the only way (at present) to gain access to the rear yard area on the subject lot from the building at 45 Priest Street is through an easement on the adjoining lot to the south at 37 - 39 Priest Street. Such access requires exiting the subject building on Priest Street, passing under the building at 37 -39 Priest Street its rear yard, and then crossing into the rear yard of 45 Priest Street. This situation would be rectified by the construction of a stairway from the subject building (45 Priest Street) down to its rear yard area, a portion of which stairway would project into the otherwise-required open rear-yard area.

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.

Due to the land-locked nature of the subject lot, Variance relief would be necessary to allow the property owner to create off-street parking (as otherwise required by the Planning Code) on his lot. Reed Street, a public right-of-way, could be extended as necessary to accommodate the requested rear-yard garage. The only feasible way to create off-street parking on the subject property is at the rear of the lot as proposed by the applicant. He is aware that such an act would require a Major Encroachment Permit from the Department of Public Works to improve the necessary portion of the Reed Street right-of-way. In addition, the applicant has proposed to extend the planted and landscaped area of his down-sloping rear yard out over the roof of the proposed new garage structure. Such an action would create flat, usable open space in an area where none now exists and it would minimize the visual intrusion of the garage into the rear yard. The rear stairway, as proposed, would give access from the proposed new garage directly to the interior of the subject two-unit building. It would eliminate the need for the pedestrian easement through the neighboring property to the south thereby increasing the privacy and security of the next-door owner/occupant. Literal enforcement of the Planning Code would preclude the owner from developing his property in the manner proposed and result in an 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.

The granting of this Variance is the best and most feasible manner by which the owner can enjoy his right to develop his property to its full potential, as enjoyed by similarly-situated property owners (particularly the next-door property at 44 Reed Street that uses Reed Street, essentially, as a private driveway at present). The extension of the landscaped portion of the yard on the subject lot out over the new garage would have the effect of retaining greenness and openness in the mid-block area and would, therefore, be beneficial to owners and users of nearby properties.

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.

The granting of this variance will not be materially detrimental to the public welfare or materially injurious to other properties in the vicinity. The proposed new garage would take two cars off the street in this parking-impacted area. The extension of landscaping over the proposed garage would enhance the openness of the mid-block area and cause this new structure to recede from view. The proposed new exit stairs would be minimally intrusive and would solve a long-standing access problem for the applicant as well as the owner of the adjoining lot. The adjoining neighbors to the north, who enjoy the only existing garage space that is accessed by the (public) paved portion of Reed Street, expressed opposition to the proposed new garage. They opposed the granting of the requested Variance due to loss of a small garden (in the Reed Street right-of-way), their expressed desire that this action should be deferred until vehicular access to other properties abutting Reed Street can be coordinated, and that, if approved, the new garage be limited in height and intrusion into the existing open space.

As stated above, proposed landscaping (over the new garage) would have the effect of minimizing its intrusion into the mid-block area. Street rights-of-way are reserved, generally, for vehicular access to private property. Denying the requested Variance would have the effect of continuing the exclusive private use of the public Reed Street right-of-way by one user and denying the applicant any vehicular access to his property. If other property owners wish to access the Reed Street right of way, they have the ability to request such access and / or their own Variances. It is inappropriate to deny the applicant consideration because others are unwilling or not ready to join in his request. The proposed garage would have a low profile and would be generally unobtrusive as shown on plans on file with the application.

FINDING 5

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

REQUIREMENT MET.

- A. Granting this Variance will help retain and enhance the existing supply of housing by providing parking in conjunction with dwelling units. It will remove two cars from the street in this parking-impacted area of the City without eliminating any on-street parking through curb cuts. The new garage, as designed, would be minimally intrusive to the mid-block area. The proposed new exit stairs would solve both an access problem for the owner of the subject property as well as a privacy and security problem for the owner of the next-door property to the south. 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 conserving existing housing and neighborhood character and maintaining and protecting open space from development.

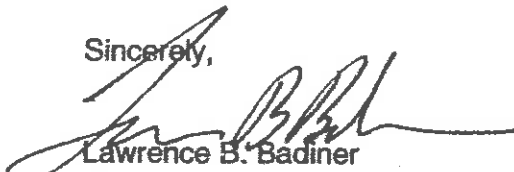
The effective date of this decision shall be either the date of this decision letter if not appealed, or the date of the Notice of Decision and Order if appealed to the Board of Appeals.

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

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.



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

ZONING ADMINISTRATOR
PHONE: 558-6350

PLANNING INFORMATION
PHONE: 558-6377

AUTHOR'S PHONE
558-6344

AUTHOR'S FAX
558-6409

MAJOR ENVIRONMENTAL
PHONE: 558-5990

INTERNET WEB SITE
WWW.SFGOV.ORG/PLANNING

June 30, 2006

Mr. Nick Elsner
Senior Plan Checker
Bureau of Street-Use and Mapping
Department of Public Works
875 Stevenson Street, Room 460
San Francisco, CA 94103-0942

Re: General Plan Referral – Major Encroachment Permit for extending Reed Street roadway

Case Nos. 2005.0607VR
Property Address: 45 Priest Street
Block/Lot: 0215 / 010, 012A, 017, 020, 028 and 029
Zoning District: RM-3 (Mixed Residential, Medium Density) District

Dear Mr. Elsner:

As required by Section 786 of the Public Works Code, you have sought our recommendations with regard to conformity with the General Plan of the above-referenced project.

As noted, the project would be a Major Encroachment Permit for "extending improved portion of Reed Street by approximately 20 feet". The project involves the proposal by Mr. Sanjay Dani, the owner of the property at 45 Priest Street, to extend the existing Reed Street roadway by constructing a driveway ramp from the edge of the existing garage at 44 Reed Street to a proposed new garage structure at the rear property line of his property. The subject lot has its frontage on a pedestrian walkway known as Priest Street and its rear on the unimproved Reed Street right-of-way. At present, there is no vehicular access to this lot. The new garage project was the subject of Variance Case No. 2005.0607V for which a rear-yard Variance was granted by the Zoning Administrator on October 28, 2005.

The proposed roadway extension is in conformity with the General Plan as described in the text of the aforementioned Variance Decision Letter, and in the attached General Plan Referral case review findings.

Mr. Nick Elsner
June 30, 2006
Page 2

The Planning Department has found that the project is exempt from Environmental Review under Class 1(c) of the California Environmental Review guidelines which exempts minor roadway work.

The project has been reviewed for consistency with the Eight Priority Policies of Planning Code Section 101.1 and the findings are attached.

Sincerely,

A handwritten signature in black ink that reads "Dean Macris". The signature is written in a cursive, slightly slanted style.

Dean L. Macris
Director of Planning

GENERAL PLAN REFERRAL – Case Review

Case Number: 2005.0607VR Date Referred: January 10, 2006

Location, Description: Major Encroachment Permit for extending Reed Street roadway

Staff Reviewer: Adam Light Date: June 30, 2006

GENERAL PLAN POLICIES

RESIDENCE ELEMENT

OBJECTIVE 12
TO PROVIDE A QUALITY LIVING ENVIRONMENT.

Policy 1

Assure housing is provided with adequate public improvements, services and amenities.

On October 28, 2005, a Variance was granted for the construction of a garage in the rear of the subject property. This property is developed with a two-family dwelling that fronts on a pedestrian pathway (Priest Street). At present, Reed Street is a "paper street" (dedicated but unimproved) behind the subject building. The construction of this garage requires a modest extension of the improved roadway of Reed Street. Such a public improvement would allow the project sponsor vehicular access to his property, something that he does not now enjoy. In that the primary purpose of the street system is circulation of vehicles and pedestrians, it is appropriate that the proposed roadway extension be authorized.

TRANSPORTATION ELEMENT

OBJECTIVE 34
RELATE THE AMOUNT OF PARKING IN RESIDENTIAL AREAS AND
NEIGHBORHOOD COMMERCIAL DISTRICTS TO THE CAPACITY OF THE CITY'S
STREET SYSTEM AND LAND USE PATTERNS.

Policy 34.1

Regulate off-street parking in new housing so as to guarantee needed spaces without requiring excesses and to encourage low auto ownership in neighborhoods that are well served by transit and are convenient to neighborhood shopping.

Policy 34.2

Use existing street space to increase residential parking where off-street facilities are inadequate.

GENERAL PLAN POLICIES

Case No. 2005.0607R

June 30, 2006

Page 2 of 2

In the subject case, no vehicular access to the project sponsor's property exists. On-street parking space in this dense, older portion of the City is very difficult to find. The steep topography of the subject area renders it difficult to access neighborhood shopping. The Planning Code requires one off-street parking space per dwelling unit (of which there are two on the subject lot). The rear of the project sponsor's property abuts the Reed Street roadway however the paved portion of this street ends at the next-door property. The request is to continue the roadway improvement over the dedicated (but unimproved) portion of Reed Street approximately 20 more feet in order to give access to a proposed rear-yard garage authorized by the granting of Variance request No. 2005.0607V. Such a garage construction would reduce the competition for scarce on-street parking spaces and would result in two automobiles being taken off the street.

URBAN DESIGN ELEMENT

OBJECTIVE 1

EMPHASIS OF THE CHARACTERISTIC PATTERN WHICH GIVES TO THE CITY AND ITS NEIGHBORHOODS AN IMAGE, A SENSE OF PURPOSE, AND A MEANS OF ORIENTATION.

Policy 2

Recognize, protect and reinforce the existing street pattern, especially as it is related to topography.

The requested roadway extension would be on an existing dedicated street right-of-way. It would not result in the relinquishing of any street rights-of-way. Such a street improvement represents the only way that the project sponsor can bring vehicular access to his lot in this area of steep topography and mid-block dwellings.

OBJECTIVE 4

IMPROVEMENT OF THE NEIGHBORHOOD ENVIRONMENT TO INCREASE PERSONAL SAFETY, COMFORT, PRIDE AND OPPORTUNITY.

Policy 4

Design walkways and parking facilities to minimize danger to pedestrians.

The proposed roadway extension would be very minor in nature and only long and wide enough to permit vehicular access to the subject property. Pedestrian access to the rear of the properties with frontage on Leavenworth Street as well as the adjoining dwelling on Reed Street would be provided by an existing pedestrian walkway along the west side of the Reed Street right-of-way. This walkway would be retained and improved as part of the proposed project. Appropriate landscaping would be installed.

The proposal is therefore in **conformity** with the General Plan.

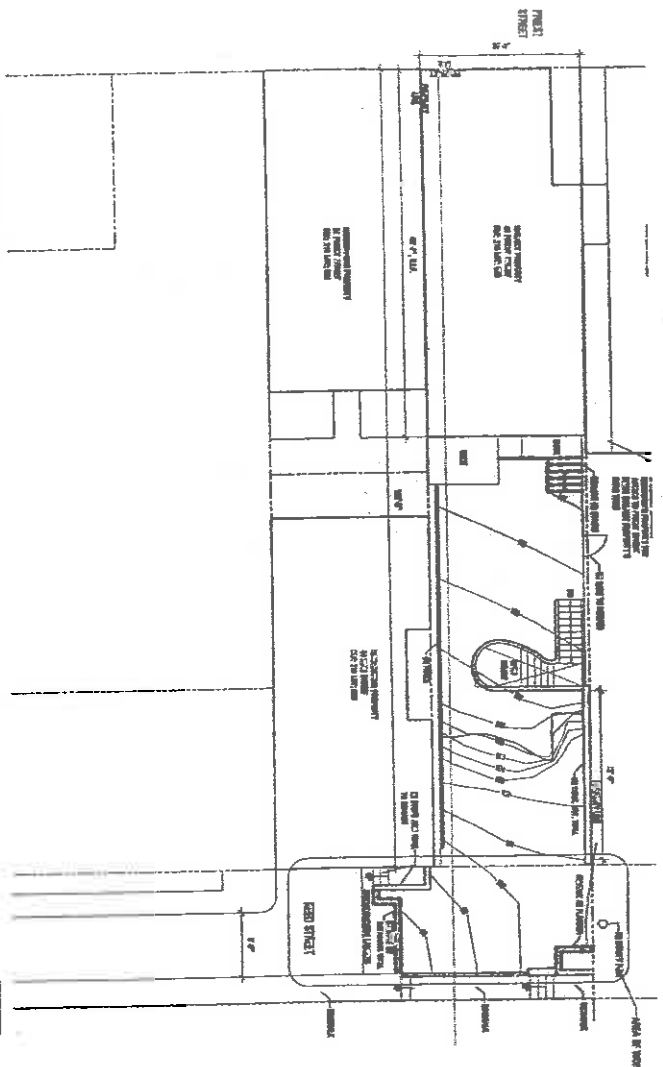
EIGHT PRORITY GENERAL PLAN POLICIES

Re: 2005.0607VR
Major Encroachment Permit to extend the Reed Street roadway
Assessor's Block 215, Lots 010, 012A, 017, 020, 028 and 029

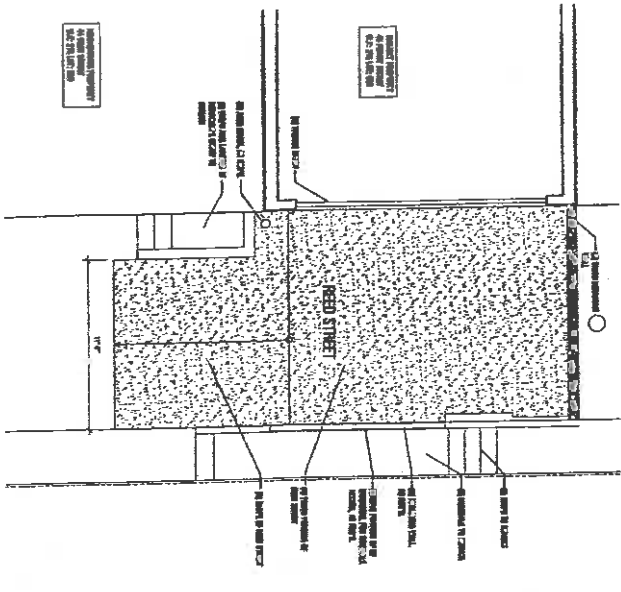
The subject project is found to be consistent with the Eight Priority Policies of Planning Code Section 101.1 in that:

1. In that the project involves a 20-foot extension of an existing roadway over dedicated (but unimproved) street space to access a proposed rear-yard garage for a two-unit residential building, it would have no adverse effect on neighborhood-serving retail uses or opportunities for employment or ownership of such businesses.
2. The project would enhance the project sponsor's enjoyment of his property while having no adverse effect on the City's housing stock or on neighborhood character.
3. The project would have no adverse effect on the City's supply of affordable housing.
4. The project would not result in commuter traffic impeding Muni transit or overburden City streets or neighborhood parking. On the contrary, it would allow two neighborhood cars to park off the street thereby lessening the competition for scarce on-street spaces in the vicinity.
5. The project is entirely residential in nature. Therefore, it would not adversely affect the industrial or service sectors or future opportunities for resident employment or ownership in these sectors.
6. In that it would enhance access for emergency vehicles to the mid-block area nearby the subject property, it would allow the City to achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.
7. The project would have no effect on landmarks or historic buildings.
8. The project would have no adverse effect on parks and open space or their access to sunlight and vistas.

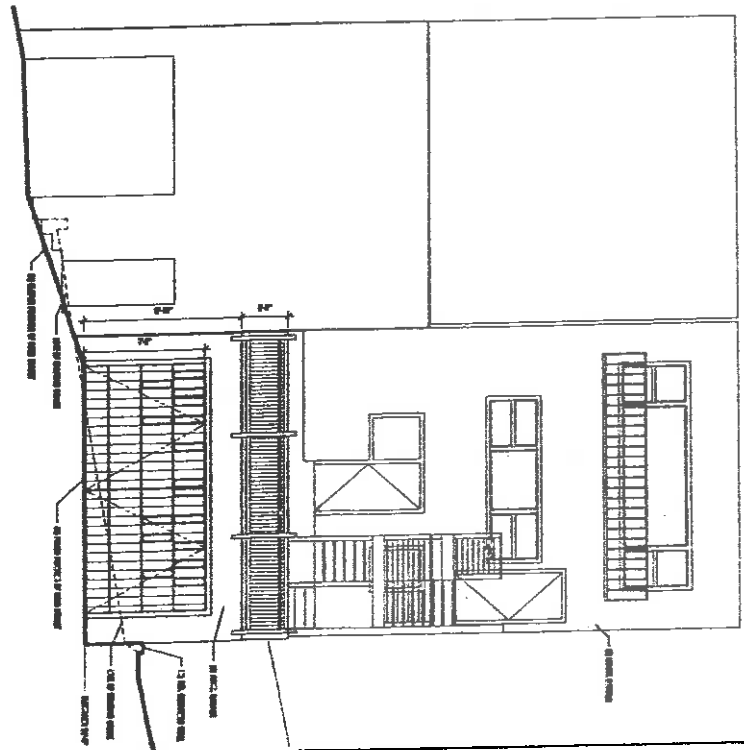
EXISTING SITE PLAN
 1/8" = 1'-0"



PROPOSED SITE PLAN
 1/8" = 1'-0"



PROPOSED REED STREET SECTION
 1/8" = 1'-0"



NO.	DATE	DESCRIPTION
1	1/10/10	ISSUED FOR PERMIT
2	1/10/10	ISSUED FOR PERMIT
3	1/10/10	ISSUED FOR PERMIT

A1.0

DANI RESIDENCE
 45 PRIEST STREET, SAN FRANCISCO, CA

WINNOR architects

1000 CALIFORNIA STREET, SUITE 100
 SAN FRANCISCO, CA 94109
 TEL: 415.774.1000
 WWW.WINNORARCHITECTS.COM

WINNOR ARCHITECTS
 1000 CALIFORNIA STREET, SUITE 100
 SAN FRANCISCO, CA 94109
 TEL: 415.774.1000
 WWW.WINNORARCHITECTS.COM

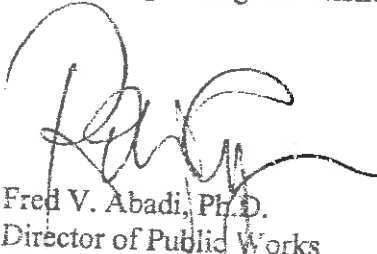
**CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT OF PUBLIC WORKS
ORDER NO. 176,327**

PUBLIC HEARING TO CONSIDER A REQUEST FROM SANJAY DANI FOR A MAJOR (STREET) ENCROACHMENT PERMIT TO EXTEND THE EXISTING ROADWAY ON REED STREET BY APPROXIMATELY 20 FEET AND CONSTRUCTING A CONCRETE DRIVEWAY RAMP FROM THE EDGE OF AN EXISTING GARAGE AT 44 REED STREET TO PROVIDE ACCESS TO A PROPOSED NEW GARAGE AT THE REED STREET REAR OF 45 PRIEST STREET (BLOCK 0215, LOT 028).

The Department of Public Works will consider the request for the above mentioned Major Encroachment Permit. Any interested person may attend the Department of Public Works hearing on this matter at City Hall, 1 Dr. Carlton B. Goodlett Place, Room 400 at 9:00 AM, Wednesday, October 4, 2006.

Persons unable to attend the public hearing may submit written comments regarding the subject matter to the Bureau of Street-Use & Mapping, 875 Stevenson Street, Room 460, San Francisco, CA 94103, Attention: Nick Elsner. These comments will be brought to the attention of the hearing officer and made a part of the official public record.

Information on this matter may be obtained prior to the hearing at 875 Stevenson Street, Room 460, or by phoning Mr. Elsner at (415) 554-6199.


Fred V. Abadi, Ph.D.
Director of Public Works

DPW/BSM/NE/ne

APPROVED: AUGUST 30, 2006

FRED V. ABADI, Ph.D., DIRECTOR

EXH 5

Roy S. Latka, AIA
1328 Leavenworth St.
San Francisco, CA 94109

October 20, 2005

To: The Zoning Administrator
San Francisco Planning Department
1660 Mission St, 5th Floor
San Francisco, CA

Attn: Jim Miller (415-558-6344)

Re: **Written Comments for the October 26th Public Hearing for Case No.2005.0607V, 45
Priest Street Garage**

Dear Zoning Administrator,

I am the owner of 1320 - 1328 Leavenworth Street that also fronts on Reed Street. Mr. Dani has shown me the drawings for his proposed garage addition and discussed the project with me.

I whole heartedly support granting Mr. Dani's variance application for the following reasons:

1. An extension of Reed Street by another 20 feet will improve emergency vehicle access to the rear of my property, thus enhancing public health and safety. The extension will also bring vehicular loading/unloading access much closer to my entrance on Reed for me and my tenants. As we do not have drop off access at the front of my property on Leavenworth, and double parking is illegal and dangerous due to the fire station across the street, we often must use Reed for service, maintenance and loading.
2. Mr. Dani's immediate neighbor to the north has a two car garage that utilizes Reed Street for its access and it only seems fair that the Dani's be entitled to add one to their property. This neighbor, Mr. Stolz has done a wonderful job of rehabilitating his two properties on either side of Reed, at great inconvenience to all us immediate neighbors, but it has enhanced the beauty of our little block immensely. I am confident from seeing the plans and listening to Mr. Dani that his improvements will further enhance the beauty as it improves the access.
3. Extending Reed Street the additional twenty feet or so will reduce the overgrown and under maintained area that is often the scene for the homeless and vagrants looking for a place to hide or campout. The street extension should improve the safety for all of us using that as a pedestrian way.

The Zoning Administrator
October 20, 2005
Page 2

4. The garage will increase off-street parking, thus relieving congestion in the neighborhood.
5. As the proposal includes a rooftop garden, I expect the green cover in this mid-block area to remain unchanged.

I am concerned that for the last several years the steps along the western edge of Reed Street are often flooded by sewer water that appears to come from a leak under the main sewer lateral on Reed Street. This is especially nasty in the morning from the high volume of bath and toilet activities and I believe it is a serious health hazard. I expect the City to address this problem as part of the enhancements to Reed.

Sincerely:



Roy S. Latka

Therese F. Alvillar
P.O. Box 1197
Occidental, CA 95465
707-874-2424, fax 707-874-2462
terrialvillar@comcast.net

October 25, 2005

VIA FACSIMILE & HAND DELIVERY

Mr. Larry Badiner, Zoning Administrator
City & County of San Francisco
1660 Mission Street, 5th Floor
San Francisco, CA 94103

Re: Additional Written Comments for Case No. 2005.0607V, 45 Priest Street
In Response to October 24, 2005 letter from Steve Atkinson, Esq.

Dear Mr. Badiner:

45 Priest Street was owned by my family prior to Mr. Dani for over 80 years. I am very familiar with the history of the neighborhood, and I understand that Mr. Atkinson is not aware of certain facts.

1) My father applied for a garage designed by architect Don Atkinson some years ago. Because two neighbors were opposed to increased traffic on Reed Street, my father voluntarily withdrew his application because he was an extraordinarily kind and generous man. His garage application was never denied.

2) The planted area of Reed Street was originally installed many years ago by the owner of the 3-story apartment building just South of 17 Reed Street. When Mr. Dani's garage is constructed, there will still be a garden area on Reed Street, behind 37 Priest Street and adjacent to the Montaire for a full half block. The most significant feature of the garden is the tall Cottonwood(?) tree. That tree would not have to be removed to build a garage at 45 Priest Street. Should the owner of 37 Priest Street also apply for a garage permit that will be her prerogative.

3) The Stolzes have no vested interest in any garden situated in the middle of Reed Street, and therefore, have no standing to oppose construction of Mr. Dani's garage. It was planted by others and maintained by others, all of whom are either deceased or live elsewhere.

4) The Stolzes have several areas on their own properties where gardens can flourish. At 44 Reed, there is a large, sunny patio downstairs and there is an enormous deck upstairs that benefits from all-day sun. Because the Stolzes have chosen to place an artificial tree on the downstairs patio and use a good deal of the upstairs deck space for a hot tub and outdoor fireplace instead of a garden, that is no reason to shift the burden to Mr. Dani to provide a garden for them by relinquishing his right to vehicular access to his property such as the Stolzes already enjoy. The Stolzes also own 17 Reed Street which has a huge, sunny rear garden. In fact the Stolzes removed the entire front garden of 17 Reed Street during remodeling and did not replace it.

Several Chinese Laurels were planted along the existing driveway portion of Reed Street by Betty Nicholas, with a permit from the City. When the Stolzes purchased 44 Reed Street, they wanted to cut down all those trees. It was only because of Betty's protest that the trees remained.

5) Mr. Atkinson is incorrect when he states the lower rear yard of 45 Priest Street was not steep. The upper part sloped gently; the lower part steeply so that the end of the rear yard had a common curb height with Reed Street.

6) Mr. Atkinson says guests of Mr. Dani can be dropped off at the top of Reed Street. There are two problems with that. First, the level area at the top of Reed Street is not a full car-length. Second, the Stolzes and their guests/employees have a history of parking on Reed Street, blocking it for others' use. I've had to call the Department of Parking and Traffic dozens of times to report illegally parked cars that blocked my access to the rear yard of 45 Priest. The Stolzes virtually blocked Reed Street for the past five years. In fact, on the day Betty Nicholas died, the ambulance could not reach her house (17 Reed) for that reason.

7) Nothing prevents any other neighbors fronting Reed Street from applying for increasing vehicular access so there is no need to delay approval of this variance application.

8) Most of the time the Stolzes have owned 44 Reed Street, they not only did not maintain the small portion of the garden fronting their property, they destroyed plants by not watering them and by placing construction materials on top of them. I know this because I brought most of the plants from nurseries in Marin County and planted them myself.

9) Mr. Atkinson's statement that during the construction period of 17 Reed Street "Stolz continued to maintain the plants in the garden area immediately adjacent to 44 Reed Street and began to maintain the garden area adjacent to 17 Reed Street...The plantings were maintained throughout construction at 17 Reed." is a flat-out lie.

10) Extending Reed Street 20' would absolutely improve fire, ambulance, and delivery/removal access.

The Stolzes don't want Mr. Dani to enjoy reasonable access for his construction equipment even though they themselves brought in a back-hoe for several weeks while excavating their own garage expansion. Stolz doesn't want Mr. Dani to develop his rear yard when his own building has no rear yard at all due to a kitchen expansion built without permits by a previous owner.

The Stolzes have shown a complete disregard for their neighbors since purchasing 44 Reed Street, especially to the late Betty Nicholas who at 80 years old was kept a prisoner in her home for 3 years while the Stolzes kept Reed Street blocked with their construction vehicles so a taxi could not reach Betty's door (she used a walker and could not navigate the Reed Street stairs). Now they claim to be interested in the public welfare. All the property owners adjacent to Reed Street have equal rights to access. Stolz wants more-than-equal rights, he wants to take rights from his neighbors to enhance his own lifestyle.

Mr. Larry Badiner, Zoning Administrator
Case No. 2005.0607V

October 25, 2005

Where the Comstock Apartments now stand (1333 Jones) used to be a Cedar forest. We then had a 360 degree view. Where the Montaire now stands (1340 Clay) used to be an expansive field bordered by trees. Times change.

Again, I hope you will support Mr. Dani's application. Thank you for considering my additional comments.

Very truly yours,

Therese F. Alvillar



SAN FRANCISCO PLANNING DEPARTMENT

EXH 6

June 15, 2007

Sanjay Dani
45 - 45A Priest Street
San Francisco, CA 94109

Subject: **45 Priest Street**
File No.2005.0607RV (Master Plan Referral, Variance)

1650 Mission Street
Suite 400
San Francisco,
CA 94103-247

Reception:
415.558.637

Fax:
415.558.640

Planning
Information:
415.558.637

Dear Mr. Sanjay Dani:

Our records indicate that the above-referenced application was filed on 3/1/06. A total amount of \$1,045.00 was collected in association with this application at our initial intake.

Per Planning Code Section 350(c), the above application fee totaled to an amount of \$3,986.98. There is an outstanding balance of **\$2,941.98** due and payable to the Planning Department. Please refer to the attached Time Accounting Cost Report.

This letter is to inform you that the above outstanding fee is due on or before 7/15/07, 30 days from today. Please make a check payable to "San Francisco Planning Department" and address it to 1650 Mission Street, Suite 400, San Francisco, CA 94103 (Attn: Karen Zhu). Thank you for your prompt attention to this matter.

If there are any questions in regards to this billing please do not hesitate to contact Karen Zhu at (415) 558-6408.

Sincerely,

A handwritten signature in black ink, appearing to read "Elaine Forbes".

Elaine Forbes
Finance Director
San Francisco Planning Department

cc: Jim Miller, Planner, NE Quadrant
Heidi Liebes

File number	2005.0607R	2005.0607V
Application Fee	\$ 1,286.31	\$ 136.76
		\$ 2,563.91
Total Application Fee	\$ 1,286.31	\$ 2,700.67
Initial fee paid	\$ (300.00)	\$ (745.00)
Outstanding balance	\$ 986.31	\$ 1,955.67
Total Outstanding balance		<u>\$ 2,941.98</u>

Time Accounting Cost Report
03/01/2006 - 06/11/2007

Date	Hours	Cost	Remarks
Account: 20060646 45 PRIEST ST			
		2005.0607R	
<i>JIM MILLER</i>			
03/28/2006	0.25	\$22.59	
03/30/2006	0.25	\$22.59	
04/03/2006	0.25	\$22.59	
04/18/2006	0.25	\$22.59	
04/24/2006	0.25	\$22.59	
05/22/2006	0.75	\$69.12	
06/06/2006	0.50	\$46.08	
06/12/2006	0.25	\$23.04	
06/13/2006	1.00	\$92.17	
06/16/2006	2.50	\$230.41	
06/20/2006	3.00	\$276.50	
06/21/2006	0.25	\$23.04	
06/22/2006	0.50	\$46.08	
06/23/2006	0.50	\$46.08	
06/26/2006	0.25	\$23.04	
06/27/2006	0.25	\$23.04	
06/28/2006	0.25	\$23.04	
06/30/2006	0.50	\$46.08	
09/28/2006	0.25	\$25.15	
01/25/2007	0.50	\$51.56	
02/06/2007	0.25	\$25.78	
03/15/2007	0.25	\$25.78	
03/16/2007	0.50	\$51.56	
03/19/2007	0.25	\$25.78	
Staff Subtotals	13.75	\$1,286.31	
Account Subtotals	13.75	\$1,286.31	
			1,286.31+
			300.00-
Totals:	13.75	\$1,286.31	986.31*
			986.31+
			136.76+
			2,563.91+
			745.00-
			2,941.98*

6/11/2007

Time Accounting Cost Report
06/22/2005 - 06/30/2005

Page 1

	<i>Date</i>	<i>Hours</i>	<i>Cost</i>	<i>Remarks</i>
Account: 20051654 45 PRIEST ST				2005.0607V
JIM MILLER				
	06/22/2005	1.00	\$91.17	
	06/28/2005	0.50	\$45.59	
	Staff Subtotals	1.50	\$136.76	
	Account Subtotals	1.50	\$136.76	
	Totals:	1.50	\$136.76	

Time Accounting Cost Report
07/01/2005 - 06/11/2007

<i>Date</i>	<i>Hours</i>	<i>Cost</i>	<i>Remarks</i>
Account: 20051654 45 PRIEST ST			2005.0607V

ADAM LIGHT

04/19/2006	1.50	\$142.34
05/04/2006	0.50	\$47.45
Staff Subtotals	2.00	\$189.79

JIM MILLER

09/14/2005	0.50	\$44.32
09/19/2005	0.50	\$44.32
09/28/2005	0.25	\$22.16
10/03/2005	3.25	\$288.08
10/04/2005	0.75	\$66.48
10/05/2005	1.00	\$88.64
10/06/2005	0.75	\$66.48
10/07/2005	0.25	\$22.16
10/10/2005	1.00	\$88.64
10/11/2005	1.00	\$88.64
10/12/2005	0.75	\$66.48
10/13/2005	0.75	\$66.48
10/14/2005	1.00	\$88.64
10/19/2005	0.25	\$22.16
10/20/2005	0.50	\$44.32
10/21/2005	1.00	\$88.64
10/24/2005	0.50	\$44.32
10/25/2005	1.50	\$132.96
10/26/2005	0.25	\$22.16
11/29/2005	0.25	\$22.59
12/01/2005	2.50	\$225.94
12/02/2005	0.25	\$22.59
12/05/2005	0.25	\$22.59
12/06/2005	0.25	\$22.59
12/15/2005	0.25	\$22.59
12/16/2005	0.25	\$22.59
03/08/2006	0.25	\$22.59
03/09/2006	0.25	\$22.59
03/28/2006	0.25	\$22.59
03/29/2006	0.25	\$22.59
03/30/2006	0.25	\$22.59
04/03/2006	0.25	\$22.59
04/06/2006	0.75	\$67.78

Time Accounting Cost Report
07/01/2005 - 06/11/2007

<i>Date</i>	<i>Hours</i>	<i>Cost</i>	<i>Remarks</i>
04/19/2006	0.25	\$22.59	
04/21/2006	0.25	\$22.59	
05/04/2006	1.25	\$112.97	
05/08/2006	0.25	\$23.04	
01/25/2007	0.50	\$51.56	
02/07/2007	0.25	\$25.78	
04/04/2007	0.25	\$25.78	
04/05/2007	1.00	\$103.11	
04/13/2007	0.25	\$25.78	
Staff Subtotals	26.25	\$2,374.12	
Account Subtotals	28.25	\$2,563.91	
Totals:	28.25	\$2,563.91	



445 Grant Avenue Suite 400
San Francisco, CA 94108 3208

EM 7

415-391-4775
FAX 391-4777

**AFFIDAVIT OF PREPARATION
OF NOTIFICATION MAP, MAILING LIST, & MAILING LABELS
FOR PUBLIC NOTIFICATION**

RADIUS SERVICES hereby declares as follows:

1. We have prepared the Notification Map, Mailing List and Mailing Labels for the purpose of Public Notification in accordance with requirements and instructions stipulated by San Francisco City Planning Code / San Francisco Building Code:

- Section 311
- Section 312
- Section 106.3.2.3 (Demolition)
- Conditional Use Permit for Wireless Antenna Installation
- Other _____

2. We understand that we are responsible for the accuracy of this information, and that erroneous information may require re-mailing or lead to suspension or revocation of the permit.

3. We have prepared these materials in good faith and to the best of our ability.

We declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

EXECUTED IN SAN FRANCISCO, ON THIS DAY, 3/23/07

RADIUS SERVICES
Professional Service Provider

Douglas Chuck
Douglas Chuck
Radius Services

0215028N
Radius Services Job Number

45 Priest St
Project Address

EM 8
BLOKE

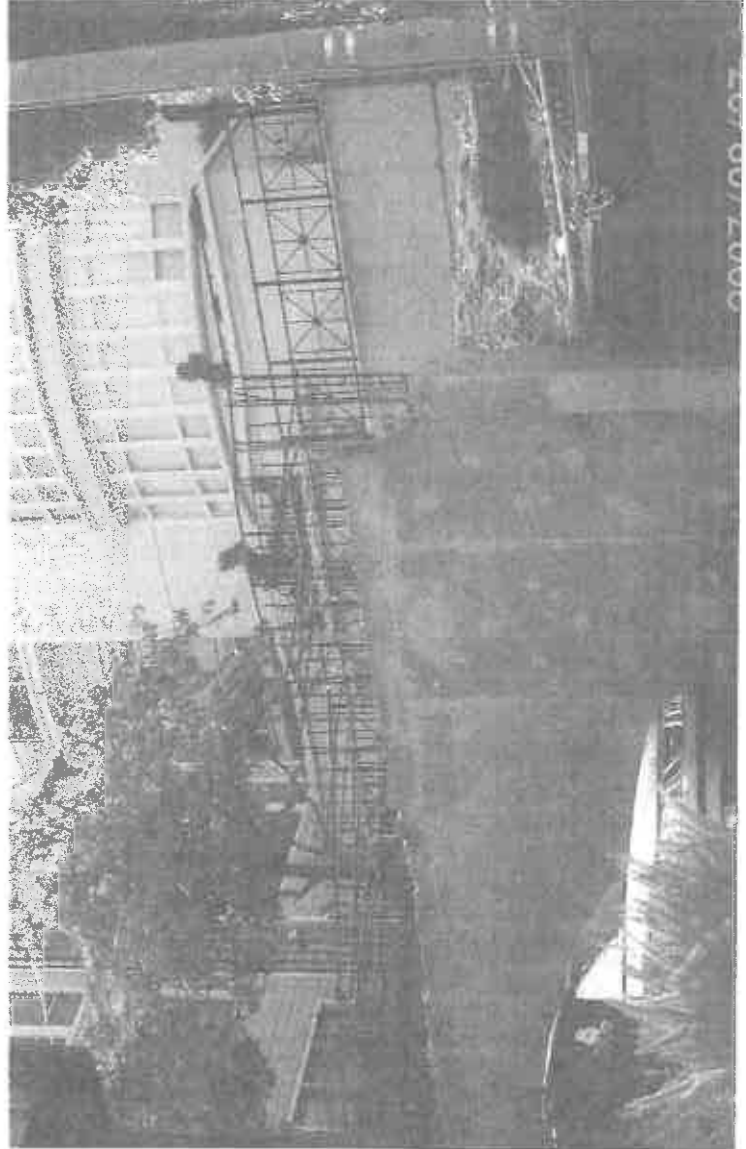
Victor e Board of Appeal:

Letter of Determination:

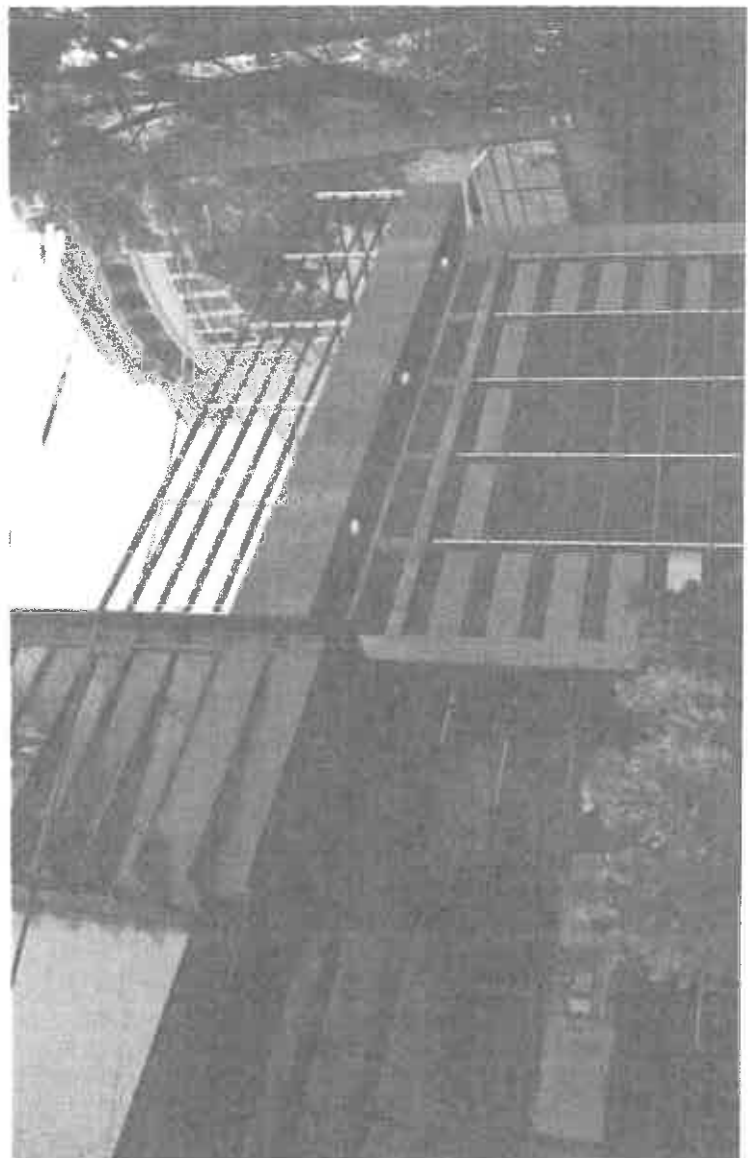
Mr. Sanchez:

- ① - expired variance can be brought back to life.
 - extension of exec. period.
- ② - Can we revise plans to not require variance

20050607V

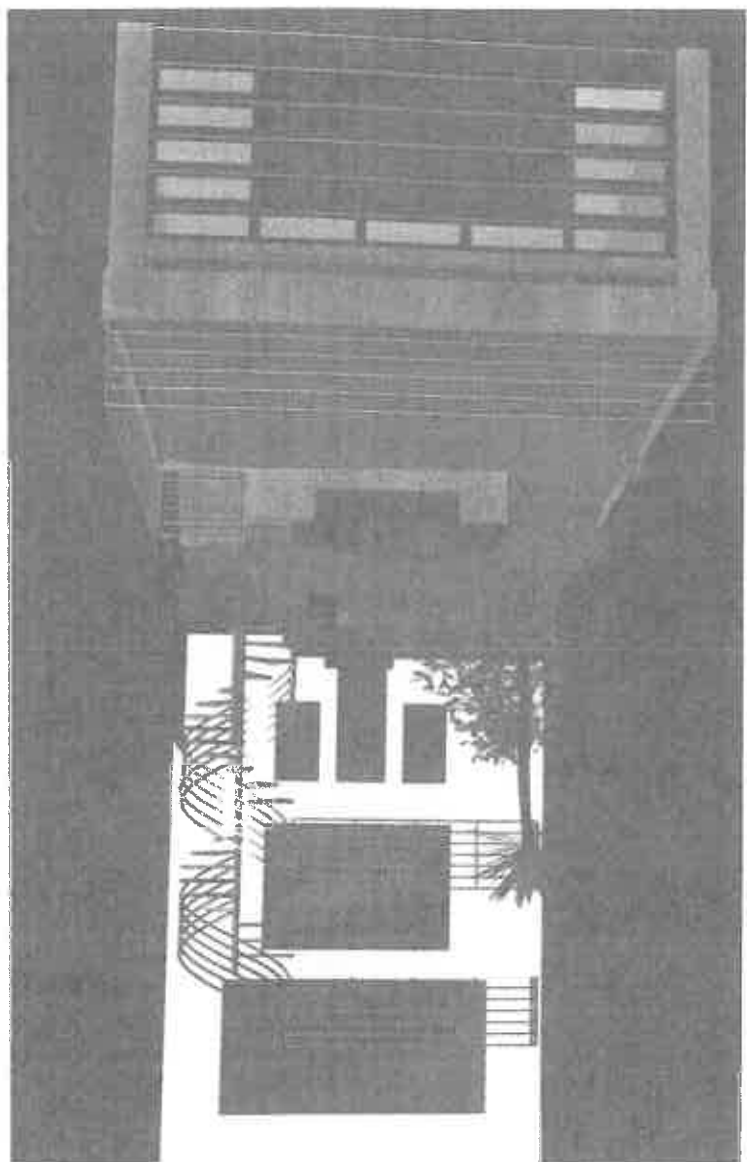


EXH 9
PROVIDED.



8 11/13

Proposed





SAN FRANCISCO PLANNING DEPARTMENT

BOARD OF APPEALS
JUL 19 2012
APPEAL # 11-142/143

Board of Appeals Brief

Date: July 19, 2012
Hearing Date: July 25, 2012
Appeal No.: 11-142 & 11-143
Project Address: 45 Priest Street
Block/Lot: 0215/028
Zoning: RH-2 (Residential, House, Two-Family)
50-X Height and Bulk District
Staff Contact: Scott Sanchez – (415) 558-6350
scott.sanchez@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

INTRODUCTION

On December 19, 2011, Appeal Nos. 11-142 & 11-143 were filed by Sanjay Dani ("Appellant") to protest the cancellation of Building Permit Application Nos. 200612059210 (to erect a new residential detached private garage at the rear of the subject property) and 200704058127 (to construct stairs to the 2nd level at the rear of subject building) pursuant to a variance granted under Case No. 2005.0607V for the property at 45 Priest Street ("Property").

PROPERTY INFORMATION

The subject property is located at 45 Priest Street (a small alley accessed from Washington Street between Leavenworth and Jones Streets) in an RH-2 (Residential House Two-Family) Zoning District and 50-X Height and Bulk District. The subject property is approximately 20 feet wide by 102.5 feet deep (2,050 square feet) and is a through lot with frontages on both Priest Street (front) and an unimproved portion of Reed Street (rear). Priest Street is approximately 25 feet wide and Reed Street is approximately 17 feet wide.

BACKGROUND

The following chronology details past review/approval actions of the City related to the subject property:

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November 1, 2004, the Department of Building Inspection (DBI) received Complaint No. 200454901 stating that excavation work was occurring at the rear of the subject property without permit and a portion of a "rod iron" fence collapsed into the public right of way.

On November 29, 2004, Building Permit Application No. 200411290198 was issued to address Complaint No. 200454901 and permit a retaining wall at the rear of the subject property. Work was not completed on this permit and it subsequently expired on June 13, 2008.

On June 10, 2005, Building Permit Application No. 200506104850 was issued to renew Building Permit Application No. 200411290198 for the retaining wall. Work was not completed under this permit and it subsequently expired on May 13, 2011.

On June 15, 2005, Building Permit Application No. 200506155182 was issued to revise Building Permit Application No. 200411290198 to erect two concrete retaining walls, rather than one wood retaining wall. Work was not completed under this permit and it subsequently expired on June 13, 2008.

On June 22, 2005, the Appellant submitted an application for a variance from the rear yard requirement of the Planning Code (Case No. 2005.0607V) to allow the addition of a garage at the rear of 45 Priest Street, facing the unimproved portion of Reed Street. The subject property requires a rear yard of approximately 46 feet and the proposed garage would be located entirely within the required rear yard. Additionally, the project included the addition of exit stairs at the rear of the building which projected approximately 2 feet – 2 inches into the required rear yard.

On October 26, 2005, the Zoning Administrator held a public hearing on the variance application and indicated an intent to grant the variance subject to conditions. The Zoning

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Administrator noted that the project would require the approval of a Major Encroachment Permit to improve the necessary portion of the Reed Street right-of-way.

In November 2005, the Appellant submitted a Major Encroachment Permit to the Department of Public Works – Bureau of Street Use and Mapping (DPW-BSM). The permit sought to extend the existing roadway on Reed Street by approximately 20 feet and allow construction of a concrete driveway ramp from the edge of an existing garage at 44 Reed Street to provide access to a proposed new garage at the Reed Street rear of 45 Priest Street. A Major Encroachment Permit requires referrals to the Interdepartmental Staff Committee on Traffic and Transportation (ISCOTT) and Planning Department for General Plan Referral before final review and approval by the Board of Supervisors.

On February 23, 2006, ISCOTT reviewed the Major Encroachment Permit request and recommended approval of the encroachment.

On March 1, 2006, the Planning Department received a General Plan Referral from DPW-BSM for the Major Encroachment Permit.

On June 30, 2006, the Planning Department issued a General Plan Referral recommending approval of the proposed Major Encroachment Permit.

On May 5, 2006, the Zoning Administrator issued a Variance Decision Letter for the project (see attached). The decision granted a variance "to allow construction of a two-car garage along the Reed Street frontage of the subject property and to permit construction of rear exit stairs at the back of the existing building which stairs would project approximately two feet-two inches into the otherwise required rear yard." The decision was subject to conditions including a requirement that "this approval is dependent upon granting by the Department of Public Works of a Major Encroachment Permit for the improvement of the portion of Reed Street that would be necessary to access the herein-authorized new garage

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structure.” The decision also stated that “the authorization and rights vested by virtue of this decision letter shall be deemed void and cancelled if...a Building Permit has not been issued within three years from the effective date of this decision.” The Variance Decision Letter was not appealed within 10 days of issuance; therefore, the decision became effective on May 5, 2006.

On August 29, 2006, Building Permit Application No. 200608290867 was issued to revise Building Permit Application No. 200506155182 to provide drainage for the previously approved rear yard retaining wall. Work was not completed under this permit and it subsequently expired on June 13, 2008.

On October 4, 2006, DPW held a public hearing on the Major Encroachment Permit, with notifications sent to all property owners within 300 feet of the subject property. DPW received comments in support of, and opposition to, the project.

On November 1, 2006, DPW issued Order No. 176,524 recommending “approval of the Major (Street) Encroachment Permit conditioned upon the adjoining neighbors working together and coordinating the design of the proposed driveway to potentially accommodate driveway access to other properties along Reed Street” (see attached). In a letter dated July 6, 2012 (see attached), Nick Elsner, Senior Plan Checker at DPW-BSM, indicated that the Appellant did not provide “any additional information or revised plans to satisfy this requirement.” Furthermore, “in order to proceed with this application, DPW would require submittal of revised plans and upon review, if it is determined that the plans satisfy the above conditions of approval, DPW would then prepare legislation recommending the subject major encroachment to the Board of Supervisors for final approval and issuance.”

On December 5, 2006, Building Permit Application No. 200612059210 was submitted to erect a new residential detached private garage, pursuant to the Variance Decision Letter

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issued under Case No. 2005.0607V. The Appellant did not obtain the Major Encroachment Permit from DPW as required as a condition of approval in the Variance Decision Letter; therefore, the Planning Department could not process the subject application (including issuance of Section 311 notification).

On April 5, 2007, Building Permit Application No. 200704058127 was filed to construct stairs at the rear of the existing building, pursuant to the Variance Decision Letter issued under Case No. 2005.0607V. The Appellant did not obtain the Major Encroachment Permit from DPW as required as a condition of approval in the Variance Decision Letter; therefore, the Planning Department could not process the subject application (including issuance of Section 311 notification).

On November 29, 2011, the Planning Department sent Building Permit Application Nos. 200612059210 and 200704058127 to DBI for cancellation due to inactivity.

ISSUES ON APPEAL

On July 5, 2012, the Appellant submitted a brief for Appeal Nos. 11-142 & 11-143; however, the Appellant failed to demonstrate that the permits are active or approvable. The Department provides the following responses to issues raised by the Appellant:

The Appellant argues that the Planning Department failed to act on the subject building permit applications. **This is incorrect.** The Planning Department cannot take any action to approve the subject permits because the Appellant failed to comply with the condition to obtain a Major Encroachment Permit, as required under the Variance Decision Letter. Furthermore, the Variance Decision Letter (issued May 5, 2006) must be deemed void and cancelled because the Appellant failed to comply with the condition to obtain a building permit within three years of the decision date, as outlined in the Variance Decision Letter.

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The Appellant claims that they received a Major Encroachment Permit from DPW. **This is incorrect.** DPW issued a *recommendation* to approve the Major Encroachment Permit with the condition that the Appellant work with the adjoining neighbors to coordinate the design of the proposed driveway to potentially accommodate driveway access to other properties along Reed Street. As noted in a letter dated July 6, 2012 from DPW-BSM, the Appellant has not provided any materials to DPW that demonstrate they have satisfied this condition. Furthermore, a Major Encroachment Permit requires approval from the Board of Supervisors, which has not yet been obtained.

CONCLUSION

In light of the foregoing, the Department respectfully requests that the Board of Appeals deny the appeal and uphold the cancellation of Building Permit Application Nos. 200612059210 and 200704058127 because the Appellant failed to comply with the condition of approval to obtain the required Major Encroachment, as outlined in the Variance Decision Letter. As such, the underlying Variance Decision Letter (which was issued six years ago) is deemed void and cancelled.

Attachments:

Variance Decision Letter (Case No. 2005.0607V) – May 5, 2006
Letter from Nick Elsner, Senior Plan Checker at DPW-BSM - July 6, 2012
DPW Order No. 176,524 – November 1, 2006

Cc:

Sanjay Dani, Appellant



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
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May 5, 2006

VARIANCE DECISION

UNDER THE PLANNING CODE CASE NO. 2005.0607V

APPLICANT: **Ms. Heidi Liebes
Winder Liebes Architects
351 Ninth Street, #301
San Francisco, CA 94103**

CASE PLANNER: **Jim Miller – 558-6344**

PROPERTY IDENTIFICATION – **45 PRIEST STREET**, west side between Clay and Washington Streets, a through-lot to Reed Street, Lot 28 in Assessor's Block 215, in an RH-2 (House, Two-Family) District and a 50-X Height and Bulk District. It is improved with a two-unit residential building.

DESCRIPTION OF VARIANCE SOUGHT – REAR-YARD VARIANCE

The proposal is to construct a new two-car garage on the Reed Street frontage of the subject property within the required rear yard of the lot. In addition, the applicant proposes to construct rear exit stairs from the subject building providing access to the existing yard area as well as to the proposed new garage. This stairway would project two feet two inches into the required rear-yard open area.

Section 134 of the Planning Code sets forth standards for rear yard areas. It requires, in an RH-2 District, a rear-yard area, open and clear from the ground up, equal to 45 percent of the depth of the lot (and in no case less than 15 feet). The subject lot is 102.5 feet deep therefore its required rear yard area would be approximately 46 feet in depth. All of the proposed new garage would be in this area plus approximately two feet two inches of the rear exit stairs proposed to be constructed at the south property line at the rear of the subject two-family building (and projecting 12 feet to the rear of the building).

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. 2005.0607V on Wednesday, October 26, 2005.**

DECISION:

GRANTED, to allow the construction of a two-car garage along the Reed Street frontage of the subject property and to permit construction of rear exit stairs at the back of the existing building which stairs would project approximately two feet two inches into the otherwise-required rear-yard area, in general conformity with the plans on file with this application, shown as "Exhibit A" and dated February 11, 2004, subject to the following conditions:

1. This approval is dependant upon granting by the Department of Public Works of a Major Encroachment Permit for the improvement of the portion of Reed Street that would be necessary to access the herein-authorized new garage structure.
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.

The subject property has frontage on both Priest Street and Reed Street but has no vehicular access. Priest Street, at the front of the lot, is improved with a stairway and walkway. Reed

Street, which extends to the south from Washington Street, is improved only as far as the northerly lot line of the subject property. Southerly of that point, Reed Street extends to its intersection with Clay Street. In this portion of its run, it is a "paper street" in that it is dedicated but unimproved. Reed Street is, however, a public street to which abutting owners have right of access. At present, only one garage, that of the next-door property to the north at 44 Reed Street, is accessed from Reed Street. The applicant seeks to extend the pavement by the width of his lot so that he may have access to the garage that he proposes as part of the subject Variance request. It is an extraordinary circumstance that the subject lot has frontage on two streets but no possibility of vehicular access at present. In addition, the only way (at present) to gain access to the rear yard area on the subject lot from the building at 45 Priest Street is through an easement on the adjoining lot to the south at 37 – 39 Priest Street. Such access requires exiting the subject building on Priest Street, passing under the building at 37 – 39 Priest Street its rear yard, and then crossing into the rear yard of 45 Priest Street. This situation would be rectified by the construction of a stairway from the subject building (45 Priest Street) down to its rear yard area, a portion of which stairway would project into the otherwise-required open rear-yard area.

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.

Due to the land-locked nature of the subject lot, Variance relief would be necessary to allow the property owner to create off-street parking (as otherwise required by the Planning Code) on his lot. Reed Street, a public right-of-way, could be extended as necessary to accommodate the requested rear-yard garage. The only feasible way to create off-street parking on the subject property is at the rear of the lot as proposed by the applicant. He is aware that such an act would require a Major Encroachment Permit from the Department of Public Works to improve the necessary portion of the Reed Street right-of-way. In addition, the applicant has proposed to extend the planted and landscaped area of his down-sloping rear yard out over the roof of the proposed new garage structure. Such an action would create flat, usable open space in an area where none now exists and it would minimize the visual intrusion of the garage into the rear yard. The rear stairway, as proposed, would give access from the proposed new garage directly to the interior of the subject two-unit building. It would eliminate the need for the pedestrian easement through the neighboring property to the south thereby increasing the privacy and security of the next-door owner/occupant. Literal enforcement of the Planning Code would preclude the owner from developing his property in the manner proposed and result in an 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.

The granting of this Variance is the best and most feasible manner by which the owner can enjoy his right to develop his property to its full potential, as enjoyed by similarly-situated property owners (particularly the next-door property at 44 Reed Street that uses Reed Street, essentially, as a private driveway at present). The extension of the landscaped portion of the yard on the subject lot out over the new garage would have the effect of retaining greenness and openness in the mid-block area and would, therefore, be beneficial to owners and users of nearby properties.

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.

The granting of this variance will not be materially detrimental to the public welfare or materially injurious to other properties in the vicinity. The proposed new garage would take two cars off the street in this parking-impacted area. The extension of landscaping over the proposed garage would enhance the openness of the mid-block area and cause this new structure to recede from view. The proposed new exit stairs would be minimally intrusive and would solve a long-standing access problem for the applicant as well as the owner of the adjoining lot. The adjoining neighbors to the north, who enjoy the only existing garage space that is accessed by the (public) paved portion of Reed Street, expressed opposition to the proposed new garage. They opposed the granting of the requested Variance due to loss of a small garden (in the Reed Street right-of-way), their expressed desire that this action should be deferred until vehicular access to other properties abutting Reed Street can be coordinated, and that, if approved, the new garage be limited in height and intrusion into the existing open space.

As stated above, proposed landscaping (over the new garage) would have the effect of minimizing its intrusion into the mid-block area. Street rights-of-way are reserved, generally, for vehicular access to private property. Denying the requested Variance would have the effect of continuing the exclusive private use of the public Reed Street right-of-way by one user and denying the applicant any vehicular access to his property. If other property owners wish to access the Reed Street right of way, they have the ability to request such access and / or their own Variances. It is inappropriate to deny the applicant consideration because others are unwilling or not ready to join in his request. The proposed garage would have a low profile and would be generally unobtrusive as shown on plans on file with the application.

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. Granting this Variance will help retain and enhance the existing supply of housing by providing parking in conjunction with dwelling units. It will remove two cars from the street in this parking-impacted area of the City without eliminating any on-street parking through curb cuts. The new garage, as designed, would be minimally intrusive to the mid-block area. The proposed new exit stairs would solve both an access problem for the owner of the subject property as well as a privacy and security problem for the owner of the next-door property to the south. 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 conserving existing housing and neighborhood character and maintaining and protecting open space from development.

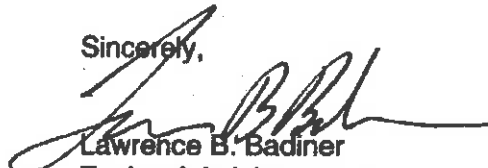
The effective date of this decision shall be either the date of this decision letter if not appealed, or the date of the Notice of Decision and Order if appealed to the Board of Appeals.

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

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.



Edwin M. Lee, Mayor
Mohammed Nuru, Director



Jerry Sanguinetti, Bureau Manager

July 6, 2012

Mr. Scott F. Sanchez
Zoning Administrator
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103

RE: 45 Priest Street
Major Encroachment Status

Dear Mr. ^{Scott} Sanchez:

This is in response to your request, and a follow-up on our correspondence regarding the proposed Major Encroachment Permit submitted by Mr. Sanjay Dani to extend the existing roadway on Reed Street to provide access to a proposed new garage at the Reed Street rear frontage of 45 Priest Street.

The request for the Major Encroachment was received by DPW in November 2005 subsequent to the Planning Department's Variance Case No. 2005.0607V for which a rear yard variance was granted on October 28, 2005. Following initial review of the proposed plans, DPW sent referrals to MTA for review by the Interdepartmental Staff Committee on Traffic and Transportation (ISCOTT), which recommended approval of the proposed encroachment on February 23, 2006, and the Planning Department which determined by letter dated June 30, 2006 that the proposed encroachment was in conformity with General Plan.

DPW scheduled and held a public hearing on October 4, 2006, with notifications sent to all property owners within 300-foot radius of the subject property to consider the proposed encroachment. Two (2) letters each were received in support and in opposition to the proposed encroachment. At the hearing, Mr. Dani testified related to the earlier Variance Decision; testimony was also presented in support of the proposed encroachment by the property owner at 37 Reed Street. An attorney and architect representing the adjacent property owner at 44 Reed Street also testified that there are concerns regarding the proposed design for the extension of Reed Street including drainage, utilities, loss of neighborhood garden space and eliminating potential vehicular access to said adjacent property.

Upon considering and reviewing the testimony presented, as well as the information in DPW's file, DPW Hearing Officer Balmore Hernandez recommended approval of the proposed Major Encroachment Permit conditioned upon the adjoining neighbors working together and coordinating the design of the proposed driveway to potentially accommodate driveway access to



other properties along Reed Street. Attached for your information is a copy of DPW Order No. 176,524, approved November 1, 2006 outlining the above information and the Director of Public Works' final decision.

Following the approval of this Order, Mr. Dani was instructed to work with the adjacent property owners and submit a revised plan to satisfy the requirements of the above Order. Aside from a few follow-up conversations with Mr. Dani; as of this date, we have not received any additional information or revised plans to satisfy this requirement.

In order to proceed with this application, DPW would require submittal of revised plans and upon review, if it is determined that the plans satisfy the above conditions of approval, DPW would then prepare legislation recommending the subject major encroachment to the Board of Supervisors for final approval and issuance.

As a follow-up, and per your request, Inspection Supervisor Nancy Lynch and I inspected the subject site on May 22, 2012 and determined that aside from some minor grading within the public right-of-way, no additional work had taken place.

Please let me know if you have any further questions.

Best regards,



Nick Elsner
Senior Plan Checker
DPW-BSM

Attachment: As Noted

**CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT OF PUBLIC WORKS
ORDER NO. 176,524**

APPROVAL OF MAJOR (STREET) ENCROACHMENT PERMIT AT THE REED STREET REAR OF 45 PRIEST STREET (BLOCK 5618, LOT 020).

APPLICANT: Sanjay Dani
c/o Winder Architects
351 Ninth Street, Suite 301
San Francisco, CA 94103

PROPERTY IDENTIFICATION: Lot 028 in Assessor's Block 0215
(45 Priest St.)
San Francisco, CA 94109

DESCRIPTION OF REQUEST: Major (Street) Encroachment Permit

BACKGROUND:

1. The applicant filed a request with the Department of Public Works (DPW) to consider approval of a Major (Street) Encroachment Permit to extend the existing roadway on Reed Street by approximately 20 feet and constructing a concrete driveway ramp from the edge of an existing garage at 44 Reed Street to provide access to a proposed new garage at the Reed Street rear of 45 Priest Street.
2. The proposed new garage project was the subject of the Planning Department's Variance Case No. 2005.0607V for which a rear yard Variance was granted by the Zoning Administrator on October 28, 2005; subsequently, the Planning department by letter dated June 30, 2006 determined that the proposed roadway extension is in conformity with the General Plan.
3. On February 23, 2006, the Interdepartmental Staff Committee on Traffic & Transportation (ISCOTT) reviewed the request to extend the paved portion of Reed Street southerly to provide access to a new garage for 45 Priest Street, and recommended approval of this encroachment.
4. DPW scheduled a public hearing for October 4, 2006 to consider the proposed encroachment. On September 22, 2006, DPW mailed notices for the hearing to property owners and posted said notices within a 300-foot radius of the subject location.
5. Hearing Officer Baltimore Hernandez inspected the subject site and conducted a hearing on the merits of the Major (Street) Encroachment Permit on October 4, 2006.
6. DPW staff presented testimony with regard to the proposed encroachment being in conformity with the General Plan and recommended for approval by ISCOTT. DPW staff also presented testimony that two letters each were received via e-mail in support of, and in opposition to the proposed Major Encroachment. Based on this information, DPW staff recommended that the proposed encroachment be transmitted to the Board of Supervisors with DPW's recommendation for approval.

DPW Order No. 176,524

November 1, 2006

Page 2

7. The owner of the subject property attended the public hearing and presented testimony in support of the proposed encroachment, stating that the Zoning Administrator had granted a Variance for the proposed new garage project. The neighbor at 37 Priest Street also attended the hearing and presented testimony supporting the request to extend Reed Street.
8. The attorney and an Architect representing the property owner of 44 Reed Street attended the public hearing and presented their concerns with regard to the proposed driveway encroachment, including drainage, utilities, loss of the neighborhood garden space, etc.
9. The Hearing Officer considered and reviewed the testimony of DPW staff and the permit application file, considered testimony of the property owner and the neighbors with regard to the proposed encroachment, and made a decision to recommend the proposed encroachment for approval to the Board of Supervisors.

HEARING OFFICER RECOMMENDATION: APPROVAL of the request for a Major (Street) Encroachment Permit conditioned upon the adjoining neighbors working together and coordinating the design of the proposed driveway to potentially accommodate driveway access to other properties along Reed Street, based on the following findings:

FINDING 1. Recommendation for approval by ISCOTT and Planning Department's determination that the subject encroachment is in conformity with the General Plan.

FINDING 2. Said encroachment would provide off-street parking at the rear of the existing building. Existing on-street parking in this area is extremely limited and is prohibited along Reed and Priest Streets.

FINDING 3. Said encroachment is convenient in conjunction with the owner's use and enjoyment of his property.



Fred V. Abadi, Ph.D.
Director of Public Works

APPROVED: NOVEMBER 1, 2006

Cc: File
BSM
Baltimore Hernandez
Applicant

Charles Jordy
51 Priest Street
San Francisco, CA 94109
(303) 419-8141

BOARD OF APPEALS

JUL 19 2012

APPEAL # 11-142/143

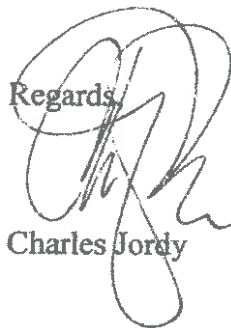
July 19, 2012

To: San Francisco Board of Appeals

I am the owner of 51 Priest Street and a direct neighbor of the Appellant. As such, we can see the the subject property's rear yard, including the location for the planned garage and garden from our house.

I STRONGLY SUPPORT the Appellant on Appeal Nos. 11-142 and 11-143 45 Priest Street. The fact that despite the Variance approval this improvement has not been completed is an eyesore for our little neighborhood. Given the situation is what it is, it would appear to us that it is in everyone's best interest to see the garage completed and an attractive garden be cultivated on top the garage's roof.

Please approve the appeal of Sanjay Dani of 45 Priest Street so he may complete this project as soon as possible.

Regards,

Charles Jordy

Mr. & Mrs. George J. Fesus
1340 Clay Street-31P
San Francisco, Ca 94109

BOARD OF APPEALS
JUL 19 2012
APPEAL # 11-142/143

July 19, 2012


Board of Appeals

Supporting the Appellant on Appeal Nos. 11-42 and 11-143 45 Priest Street.

Our house is on Priest Street, not Reed Street, and we are not direct neighbors of the Appellant, although, we can see the planned garage and garden from our house. Furthermore, we were not involved in the original application process of Mr. Dani and we have no idea why the original approval was subsequently withdrawn. However, since the situation is what it is, it would appear to us that it is everyone's best interest to see the garage completed and an attractive garden be cultivated on top the garage's roof.

If the direct neighbors on Reed St. and the abutters to Mr. Dani's property support his appeal, we would urge the Board of Appeals to approve Mr. Dani's plan to complete the garage project and create his garden.

Sincerely,


George & Susan Fesus

Roy S. Latka
1328 Leavenworth St
San Francisco, CA 94109

BOARD OF APPEALS

JUL 19 2012

APPEAL # 11-142/143

July 18, 2012

To: San Francisco Board of Appeals:

I am an owner of 1320 – 1328A Leavenworth Street and resident of 1328 Leavenworth St. My units face on both Leavenworth and Reed St. Reed Street is the main entrance for the up hill units and the approach we use most consistently to enter our apartments.

I STRONGLY SUPPORT the Appellant on Appeal Nos. 11-142 and 11-143 45 Priest Street. The fact that this improvement hasn't been completed is a visual disaster for our little neighborhood and has become a "homeless shelter" on many occasions as it can not be secured in it unfinished condition.

Please approve the appeal Sanjay Dani of 45 Priest St so he may complete this project as soon as possible.

Regards:


Roy S. Latka