

Coalition for San Francisco

RECEIVED AT CPC HEARING 12/4/08

DR



December 4, 2008

**Re: Proposed Discretionary Review (DR) Reform
Item 10 on December 11 Planning Commission Agenda**

President Olague, Commissioners,

Until this most recent Discretionary Review reform proposal, CSFN had a deeply involved and relatively long history of active participation in various proposed Discretionary Review reforms over the years. Please see the attached documents for an overview of our contributions to the effort, as well as to expand on the six points we list here below.

The proposed reforms which you find before you today are in many ways the same proposal which have the same drawbacks and pitfalls of the original 2003 proposal of Administrative Review; reforms which you did *not* adopt at that time. The only part you adopted in 2004 was a Pre-Application (Pre-App) process which had been weakened to the point of having been made essentially ineffectual.

In brief, our stated policies for DR reform are as follows:

1. Strengthen and enforce the Pre-Application process that CSFN originally proposed, with reporting to the Planning Department from both project sponsor and attendees. (Please see attachments for details.)
2. Design Review Committee (DRC) is a good addition especially since *Residential Design Guidelines* are mandatory.
3. Have a 2-year trial period with the strengthened *and enforced* Pre-Application process and the Design Review Committee.
4. Re-name *Residential Design Guidelines* to reflect their mandatory nature: they could be called *Rules for Residential Design* or *Residential Design Mandates* or *Design Rules for Residential Building*, etc.
5. Continue to hear DRs at public hearings before the Planning Commission.
6. The implementation of a DR administrative hearing officer presents more problems than it solves. There is an inherent conflict of interest in a DR hearing officer judging staff's approval of a permit; the greater number of DRs passed on would reflect poorly on the work of Department personnel. There would likely be an effort by the hearing officer to avoid such embarrassment.

Further, the principle concerning Cæsar's wife is absolutely vital in the case of someone in the position of an administrative hearing officer. Like Cæsar's wife, a hearing officer must be above suspicion, which will be impossible. Distrust and skepticism would remain in everyone's mind which would necessitate, as in Julius Cæsar's case, a divorce.

(Please see attachments for details.)

A complete discussion can be found in all of CSFN's documents from the original 2003 proposed DR reform, as well as accompanying letters from Community Boards, PAR, MPIC and EMIA.


We have enclosed a few representational historical documents for your review since this proposal so closely resembles the 2003 proposed DR administrative review reform. If Commissioners do not find the full set of documents pertaining to DR from December 2003–May 2004 in their files and would like to examine them we will be pleased to oblige.


We urge the Planning Commissioners to refuse to abrogate their Charter-derived power; but rather to retain the powers vested in the Planning Commission as set forth in City law.

We urge the Commissioners to direct the Planning Department to revise their recommendations for DR reform to reflect the strongly-held principles of the citizens of San Francisco.

We further strongly urge the Planning Commissioners to move to sever the proposed DR reforms from the *Planning Department Action Plan 2008–2010, Item III.1.*

Sincerely,


Gary Noguera
President


Hiroshi Fukuda
Chair, Land Use & Housing Committee

Encl: 15 Jan 2004 CSFN letter to Planning Commission
23 Jan 2004 CSFN letter to Planning Commission
13 Sept 2006 CSFN letter to Planning Commission
30 Dec 2003 Community Boards letter to Planning Commission
04 Feb 2004 PAR letter to Planning Commission

Cc: Planning Commissioners Mike Antonini, Gwyneth Borden, Bill Lee, Ron Miguel, Kathrin Moore, Bill Sugaya; Commission Secretary Linda Avery, Director of City Planning John Rahaim, Elaine Forbes, Craig Nikitas

Letter from CSFN

23 January 2004

To: Planning Commissioners, Acting Director of Planning Larry Badiner, Planner Jonas Ionin, Linda Avery, Board of Supervisors, Clerk BoS

Re: DR Proposal

The 40 member organizations of the Coalition for San Francisco Neighborhoods have reached a consensus regarding the December 18, 2003 DR proposal from Planner Jonas Ionin and offer the following comments.

- We strongly support the Pre-Application process.
- We oppose delegation of Planning Commission power of Discretionary Review in the act of Administrative Review to Planning Administration.
- We request that the question of DR process change be severed from the question of establishment of a Pre-Application process, so that the Pre-App process may be immediately implemented after Public Hearing.

CSFN recommends:

- 1.) Implement the Pre-Application process at once after Public Hearing for a period of 12 months.**
- 2.) Defer the consideration of the Administrative Review protocol.**
- 3.) Evaluate the results of the Pre-Application process after the 12-month trial. If it is a success, the Administrative Review process will be unnecessary.**

Administrative Review: Reasons for Opposition

- Again, we state CSFN opposition to Administrative Review for reasons following (but not limited to):
 - 1.) These powers are vested in the Planning Commission alone, as set forth in City Law (see City Attorney's Opinions in case file prepared by Mr Ionin)
 - 2.) Planning Commissioners represent the people of San Francisco, whereas the Planning Department has a bias in weighing facts presented to them. DRs occur when interested parties contest Planning's determination, for instance the Starbucks at 45th and Judah on January 8. After listening to the neighbors, Commissioners voted not to approve, going against Planning's recommendation. That would not have happened if Administrative Review had been in place.
 - 3.) The citizens' right to DR is a very important due-process right. It must not be given away to "streamline" the process, or for any other reason.

CSFN opposes the Administrative Review process because there will not be a need for “Administrative Review” if there is a Pre-App procedure and if the inconsistencies in the Planning Code and Residential Design Guidelines are clarified. There is an inherent conflict of interest in having the Department Administrative Officer judging his own staff’s approval of the permit because the greater the number of DRs passed on would reflect poorly on the work of the department personnel. There is likely to be an effort by the Administrator to avoid such embarrassment; and that would work to the detriment of the interested parties. All in all, we feel that Administrative Review is a flawed concept.

Pre-Application Process: Support and Suggestions

- We strongly support the Pre-Application process with the following changes.

We suggest the following items be considered in the Pre-App Process:

- 1.) The Pre-Application process should be broadened from the proposed RH and RM only to include all residential alteration and permit applications that would trigger 311 and/or 312 notice consistent with General Rule 4/96 (p.855, Planning Code).
- 2.) A standard Pre-Application process should be developed, including a mechanism whereby the neighbors submit their comments directly to the Department subsequent to the Pre-Application meeting between the project sponsor and affected parties. This could be accomplished by providing a form with the Pre-App notification packet. It would eliminate the possibility of the project sponsor misinterpreting or misrepresenting neighborhood concerns to the planner. That form should become a part of the project file.
- 3.) The number of requests for DR can be further reduced if the Commission commits to clarifying contradictions between the Planning Code and the new Residential Design Guidelines. Types of concerns that come up repeatedly over time should be dealt with consistently with standards which have been set forth. Those already noted in the draft Residential Design Guidelines (page 5, paragraph 2) should be clarified so staff and the public understand how those conflicts will be resolved in all similar situations in the light of Code and established standards. Any problem that cannot be solved in light of standards already set forth is by definition extraordinary — that is, not resolved with established standards and guidelines. It is this type of problem that will potentially come before the Commission. If clear standards and guidelines are set forth, then Planning’s actions will not be seen or thought to be arbitrary.
- 4.) The Department needs to devise a method of assuring that the plan accurately reflects the details and the footprint location of the permitted project.
- 5.) A Pre-App notification process is pro-active, raising issues up front so they can be addressed early on. As, and if, plans are modified, interested parties should be kept abreast of changes.
- 6.) Before the Permit Application leaves Planning, standard issues should be resolved. A Planner who needs assistance can and should go to administration for help with issue resolution before the application leaves Planning’s jurisdiction.

The Coalition believes that the Pre-Application procedures and the above-referenced suggestions will dramatically reduce the DR caseload. We believe that if consideration of the Pre-App process is severed from the Administrative Review process and implemented immediately, a dramatic decrease in DRs will result.

Therefore, CSFN recommends:

- 1.) Implement the above Pre-Application process at once after Public Hearing for a period of 12 months.**
- 2.) Defer the consideration of the Administrative Review protocol.**
- 3.) Evaluate the results of the Pre-Application process after the 12-month trial. If it is a success, the Administrative Review process will be unnecessary.**

We feel that with implementation of a comprehensive Pre-App Process the number of DRs will undoubtedly be very few, as has proved to be the case in San Mateo. We doubt that there will be many requests for Discretionary Review if you establish a Pre-App procedure, taking into consideration our concerns expressed above.

To reiterate, CSFN requests that hearing on the matter of Pre-App be severed from hearing on proposed DR change, and that the question of DR change be given as much time for public hearing as is required to allow all affected members of the public the opportunity to weigh in on it. Preservation of a most important due-process right is at stake.

Because up to this date no duly noticed public hearing has been held on the matter, February 5th will be the first public hearing on this matter.

We look forward to participating with you as you move the Pre-Application process forward for hearing.

Thank you for your consideration.

Sincerely,

Judith Berkowitz
Chair, Land Use & Housing Committee

Letter from CSFN

15 January 2004

To: Planning Commissioners, Linda Avery, Larry Badiner, Jonas Ionin
From: Judy Berkowitz Chair, Land Use and Planning Committee, Coalition for San Francisco Neighborhoods

Re: DR Proposal

The delegates to the Coalition for San Francisco Neighborhoods have reached a consensus on the following comments regarding the December 18, 2003 proposal.

- We strongly support the Pre-Application process.
- We oppose delegation of Planning Commission power of Discretionary Review to Planning Administration.
- We request that the question of DR process change be severed from the question of establishment of a Pre-Application process

Pre-Application Process.

We suggest the following items be considered:

- 1.) The Pre-Application process should be broadened from the proposed RH and RM only to include all residential alteration and permit applications that would trigger 311 and/or 312 notice consistent with General Rule 4196 (p855, Planning Code).
- 2.) A standard Pre-Application process should be developed, including a mechanism whereby the neighbors submit their comments directly to the Department subsequent to the Pre-Application meeting between the project sponsor and affected parties. This could be accomplished by providing a form with the Pre-App notification packet. It would eliminate the possibility of the project sponsor misinterpreting or misrepresenting neighborhood concerns to the planner. That form should become a part of the project file.
- 3.) The number of requests for DR can be further reduced if the Commission commits to clarifying contradictions between the Planning Code and the new Residential Guidelines. Types of concerns that come up repeatedly over time should be dealt with consistently with standards set. Those already noted in the draft Residential Guidelines (page 5, paragraph 2) should be clarified so staff and the public understand how those conflicts are to be resolved in the light of Code and established standards.
- 4.) The Department also needs to devise a method of assuring that the plan accurately reflects details and the footprint location of the permitted project.

The Coalition believes that the Pre-Application procedures and the above referenced suggestions will dramatically reduce the DR caseload. We believe that if consideration of the Pre-App process is severed from the Administrative Review process and implemented immediately, a dramatic decrease in DRs will result.

We strongly suggest that you implement a Pre-Application process at once, with the suggested considerations listed above.

At the end of a specified amount of time, one year perhaps, the Commission can review how the Pre-App process is faring. We feel that with implementation of a comprehensive Pre-App Process the number of DRs will undoubtedly be very few, as proved to be the case in San Mateo.

- We oppose dekegation of Planning Commission power of Discretionary Review to Planning Administration for reasons

We doubt that there will be many requests for Discretionary Review if you establish a Pre-App procedure taking into consideration our concerns expressed above.

Again we state CSFN oppositon to Administrative Review: a flawed concept.

There is an inherent conflict of interest in having the department Administrative Officer judging his own staff's approval of the permit because the greater the number of DRs passed on would reflect poorly on the work of the department personnel. There is likely to be an effort by the Administrator to avoid such embarrassment and that will work to the detriment of the interested parties.

However, if the Commission chooses to proceed with Administrative Review, the following items warrant consideration and clarification:

- 1.) Are the items listed on pages 7 and 8 of Jonas Ionin's DR policy document of December 18, 2003 those that will be used, other than in very unusual circumstances, to disqualify DRs from being forwarded to the Commission for consideration?
- 2.) We would suggest that at the Administrative Review, both parties: a representative from the project as well as the DR initiator be present.
- 3.) Is it your intention that project sponsors and DR initiators be notified of the reasons behind the administrative action. Such information would be appreciated and helpful in educating the community as to the way staff is choosing to implement the revised permitting protocol. Over time, it may also bring to the attention of everyone further adjustments, necessary to improve the process still further.

In conclusion, however you choose to proceed, we believe that it is essential that there be a Commission review at the end of 12 months as to whether the results of your actions have met the expectations of the Commission, staff, applicants and neighborhood parties of interest. If not, can we be assured that modifications will be made to attempt to adjust the protocol to minimize unintended consequences?

Thank you for your consideration. We look forward to participating as you move these changes forward.

Letter from CSFN

September 13, 2006

TO: Planning Commission, Office of the Mayor, Board of Supervisors, Clerk of the Board

RE: DISCRETIONARY REVIEW POLICY

At its August meeting, the Coalition for San Francisco Neighborhoods passed the following resolution:

RESOLVED the Coalition for San Francisco Neighborhoods urges the Planning Commission uphold and continue the present Pre-Application Discretionary Review Policy and urges the Planning Commission to strengthen its present Pre-Application Discretionary Review Policy with the following proposed amendments:

Project sponsors are required to have a Pre-Application meeting with following criteria

1. The notice must include a factual description of the proposed modification, and reduced copies 11"x 17" or 11"x 8.5" of the proposed site plan and building elevations. The notice must be mailed out at least 10 calendar days before the meeting date. The notice shall include information about the time and place for viewing such full size plans and meeting with the applicant. The applicant or representative's name, return address and phone number shall be included in the information.
2. Owners and occupants of properties within 300-foot radius to be noticed. The labeled, stamped, stuffed envelopes with the notice and site plans delivered to the Planning Department by noon 20 days prior to meeting.
3. The meeting must be held at a convenient location to the neighborhood.
4. The meeting time should be held between 6 PM to 8 PM on weekdays or noon to 6 PM on weekends.
5. The proposed project architectural non-reduced drawing, including site plan, floor plans, exterior elevations and sections, along with landscaping concept plans shall be provided at the Pre-Application meeting.

All pre-Application Neighborhood Meetings are required to comply with the criteria noted in items #1-5. A Statement of Completion form must be completed, signed, and received by the Planning Department within 7 days after the meeting.

For accountability purposes, a sign-in sheet will verify who attended and an affidavit signed by the project sponsor will confirm that a Community Outreach meeting was held and the opportunity to review a preliminary proposal provided to all interested parties.

These items will be submitted with the 311 Notification Packet at the time of filing their building permit application. In addition, a list of issues raised at the Community Outreach Meeting(s) and the sponsor's response to those issues shall be included in the 311 Notification Packet as part of the Pre-Application process. Any deviations from these criteria will require the Pre-Application Neighborhood Meeting to be conducted again in accordance with the above noted criteria.

The CSFN is an umbrella organization representing more than forty groups from throughout the city. The CSFN urges your strong support and action on this resolution.

Thanking you in advance for your support and action.

Sincerely,

Judith Berkowitz,
President

Coalition for San Francisco

RECEIVED AT CFC HEARING 12/11/08
DR



December 11, 2008

San Francisco Planning Commission
1650 Mission St., S.F. Suite 400
San Francisco, CA 94103

Subject: Discretionary Review Policy

Dear Commissioners,

At its November 16, 2008 General Assembly meeting the Coalition for San Francisco Neighborhoods passed a resolution strongly opposing the hearing of Discretionary Reviews by any entity other than the Commission, and strongly recommending an effective pre-application process in order to identify issues early-on, and recommending the concept of a Design Review Committee.

Respectfully submitted,

Gary Noguera

Gary Noguera, President CSFN