

December 4, 2008

PLANNING COMMISSIONERS  
San Francisco Planning Department  
1650 Mission Street, Suite 400  
San Francisco, CA 94103

Subject: Letter in Support of Discretionary Review Reform

Dear Planning Commissioners:

We reside at 30 Woodland Avenue in San Francisco and have recently gone through the discretionary review ("DR") process. While we are pleased that the Commission declined to take discretionary review and, accordingly, approved our project, we are nevertheless writing to support reform. The process as it exists now encourages meritless challenges to projects and often is responsible for poisoning relationships among neighbors.

When we began planning our addition, we asked our architect to work closely with the Planning Department's staff to get approval. Where the staff suggested revisions to the plans that reduced the size of our addition, we accepted them even though our architect told us some of them were not required. We had thought that these compromises would build good will and help ensure that, even if we could not get everything we wanted, we could at least meet our most urgent needs.

What we did not know, however, was that our neighbors could block plans that met the code and had been approved by the staff. From the beginning, one of our next-door neighbors told us that they opposed *any* construction on our house and that they wanted our plans to "just go away." In our first formal negotiation, they showed up with an architect and another person who claimed to be a DR expert. Despite acknowledging that our plans were entirely consistent with the code, they threatened to use the DR process if we intended to go forward. We responded that we were confident a DR would not succeed. We explained that even though the process is called a "*discretionary* review," we were sure the Commissioners would exercise their discretion only by following written guidelines or established precedent.

At that point, our neighbors' DR expert practically laughed at us. He said something to the effect that the Commissioners could do whatever they felt like doing and that there were no written rules. He continued, saying that if we caught the Commission on a bad night, our plans could be rejected or substantially revised for any reason or none at all. These comments were similar to comments we heard elsewhere, and, fearing an arbitrary decision, we hired our own DR expert to help us through the process. So far, our neighbors' unsuccessful attempt to block our code-compliant, staff-approved plans has cost us about \$10,000.

Making matters worse, the DR process also encouraged our neighbors to portray us as bad people to the neighborhood. An advisor apparently told our neighbors that the Commission would be more likely to grant DR if more people from the neighborhood objected to our plans. We do not know everything that our neighbors said, but they sent at least one letter around the neighborhood alleging that our project will harm the environment and ecology of the neighborhood and they told other neighbors that we are planning to convert our home to a boarding house after construction is done.

As our experience illustrates, the uncertainty of the DR process is exploited by those seeking to block plans and the professionals they hire to do that. It also provides perverse incentives for DR participants to lie about the homeowners and their plans to gain the support of other neighbors who otherwise would (and should) support (or at least be indifferent to) the homeowners' attempts to improve their home.

We are convinced that if there were written, consistently enforced guidelines regarding what constitutes an "exceptional and extraordinary circumstance," our neighbors would not have been able to threaten us with a baseless DR petition, nor would they have lied about us to convince our other neighbors to join them.

The DR system must change.

Sincerely,

/s/

Colleen M. Kavanagh  
Erik R. Puknys

**Erik R. Puknys**