



# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary

### Discretionary Review Reform Informational Hearing

HEARING DATE: DECEMBER 11, 2008

*Name:* **Proposal to Reform the Discretionary Review Process**  
*Initiated by:* Planning Commission as part of the Action Plan  
*Staff Contact:* Elaine Forbes, Finance Director  
elaine.forbes@sfgov.org, 415-558-6417  
*Reviewed by:* Lawrence Badiner, Zoning Administrator  
larry.badiner@sfgov.org, 415-558-6350

*Recommendation:* **No Action Required**

### DISCRETIONARY REVIEW REFORM

The Action Plan, which the Commission endorsed on July 17, 2008, includes as one of six objectives, "enable the Planning Commission to focus on higher-level policy issues". This objective contains "reform the Discretionary Review Process, with the public, the Planning Commission, and staff as intended beneficiaries". An internal working group – consisting of Glenn Cabrerros, Lisa Chau, Kate Connor, Elaine Forbes, Jonas Ionin, Cecilia Jaroslowsky, David Lindsay, Craig Nikitas, Scott Sanchez, Aaron Starr, Tina Tam and Elizabeth Watty - began meeting weekly starting on August 5, 2008 to develop a draft proposal to improve the Discretionary Review Process. The internal working group reviewed prior audits from the Board of Supervisor's Budget Analyst, Matrix Consulting, and the SPUR AIA report, conducted jurisdictional comparisons, reviewed case trends and used professional experience to develop a draft proposal.

#### The Way It Is Now:

*What is Discretionary Review?* Discretionary Review is the Planning Commission's authority to review code-complying projects and take action if the Commission finds the case demonstrates exceptional and extraordinary circumstance. The Planning Commission's discretionary review authority is in Article 1, Section 26 of the Business and Tax Regulations Code, which the City Attorney first interpreted in 1954. The opinion noted that this is "*a sensitive discretion and one which must be exercised with the utmost restraint*" (emphasis added). The courts have upheld the Commission's discretionary review authority in several cases. Section 4.105 of the San Francisco Charter provides that the Planning Commission shall approve "all permits and licenses dependant on, or affected by, the City Planning Code." The Charter provides that the

Commission may delegate this approval function to staff. This is a very unusual power of the Commission as no other jurisdictions that we are aware of allow discretionary powers over zoning matters that are permitted as-of-right.

Conceptually, Discretionary Review is a second look – with the opportunity for public participation – at building permit application that have already been determined to comply with the minimum Planning Code standards and applicable design guidelines. The idea is that additional scrutiny might be necessary in some cases to judge whether the Design Guidelines were interpreted correctly or whether there are circumstances unique to a case that warrant further modifications of the proposed project, beyond the minimum standards of the Code and applicable design guidelines.

*How the Discretionary Review Process Works Now.* Currently, anyone can file a Discretionary Review request on any building permit application. If the project requires notification pursuant to Planning Code Sections 311 or 312, the Discretionary Review request must be filed within the 30-day public notification period. If the building permit does not require Section 311 or 312 notification, then a Discretionary Review request can be filed as long as the building permit is undergoing review in the Planning Department. The Discretionary Review request is scheduled for a hearing before the Planning Commission based on the Planner's workload and the next available date on the Commission calendar. The project sponsor may request a one-time 90 day extension at any time prior to the hearing. The Discretionary Review requestor can request a continuance at any time prior to the hearing with the agreement of the project sponsor. If they do not have the agreement of the project sponsor, they may request a continuance from the Commission at the scheduled hearing date. All discretionary review requests are considered by the Commission at a public hearing unless they are withdrawn by the requestor. The Commission's decision in approving or disapproving the permit can be appealed to the Board of Appeals within 15 days after DBI issues or denies the permit. Attachment I outlines the current appeal process and timing for building permits.

## STATISTICS: NUMBER, LOCATION, INITIATOR, COST, ISSUES, CASE DISPOSITION

Attachment II, the December 11 presentation to the Commission, provides graphical representation of the information below. The number of Discretionary Review requests initiated by members of the public ranged from 281 in 2001 to 126 in 2008. The relationship between Discretionary Review requests and building permit applications (as a percentage of total permits filed) has been relatively constant with a recent high of 9% in 2005 and low of 6% in 2007.

Year	Number of New and Alteration Permits	Public Initiated DR	Ratio
FY2001	3329	238	7.10%
FY2002	3205	232	7.20%
FY2003	2772	193	7.00%
FY2004	2729	230	8.40%
FY2005	2464	222	9.00%
FY2006	2345	174	7.40%
FY2007	2118	126	5.90%
FY2008	1692	126	7.40%

The geographic distribution of Discretionary Review requests by planning quadrant has been constant between 2001 and 2008, with the leader being the Southwest, followed by the Northwest, Southeast, with the lowest number in the Northeast. Staff concludes that this pattern reflects the residential character of the western quadrants, compared to the mixed-use character of the eastern quadrants.

The annual cost to the Department for Discretionary Review request is approximately \$300K and has grown over time. In FY2001 the cost was \$247K and in FY2007 the cost was \$347K. In FY2008, this resulted in an average cost of \$2,427 (\$305,746/126) per Discretionary Review request. This cost includes direct staff time, including fringe benefits and Citywide overhead costs, but not does include a recovery for the Long Range Planning program or the cost of appeals which is built into our fee schedule and is reflected in the cost for mandatory Discretionary Review which is \$3,223. Furthermore, the cost shown above does not reflect the true cost of the process because it excludes the opportunity cost to the Commission, and the requestor and project sponsor's costs.

The Department places a small burden on the requestor with a \$300 filing fee and has the majority of the cost borne through the Discretionary Review building permit surcharge which is

\$81 and is charged to all new construction and alteration building permits with a construction value over \$50,000.

	Cost	Percent of Total
Requestor Fee	\$ 300	12.4%
DR Surcharge Revenue	2,127	87.6%
<i>Total</i>	\$ 2,427	100.0%

## DISCRETIONARY REVIEW REFORM PROPOSAL

### PUBLIC OUTREACH

Staff sought comments and feedback about the draft proposal from members of the public in four community outreach meetings which were held at the Department on October 29<sup>th</sup>, and November 5<sup>th</sup>, 12<sup>th</sup> and 19<sup>th</sup> from 6:00 to 7:30 pm. Eighty five individuals attended these meetings and provided staff with valuable comments. Attachment III to this report is a list of the attendees. Additionally, staff shared the proposal with the Action Plan's Advisory Committee (October 13<sup>th</sup> and November 21<sup>st</sup>), with the larger Stakeholders group (November 5<sup>th</sup>) and with the Coalition for San Francisco Neighborhoods (October 13<sup>th</sup>). We also received written comments from the law firm of Reuben and Junius; Cow Hollow Association; Frederick Clifford Gibson Architect and Associates; John Schlesinger, AIA, Architect; Occidental Express; Louis H. Felthouse Architects; Peter Cohen, Nancy Wuerfel, Joe Acayan, Marada De Ley, Sandra and Fred Herrera, Kimberlee Stryker, and letters in support (1 copy included) from Michael Cole, John Walker, Troy Cole, Bill DiFranceco, Ruccetti, Bernice Cole, Frank Ruccetti, Gus Cole, Patricia and William Magee; Jazmine Cole, and Gary Bell which are included in Attachment IV to this report.

The intention of the draft proposal presented below is to improve the Discretionary Review process for the public, project sponsors, the Commission and the Department. The draft proposal incorporates changes based on comments received through the public outreach process, but leaves as policy options for the Commission issues that could not be reconciled. Attachment V is the minutes from the four outreach meetings and Attachment VI is the Department's response to several of the major points that the community raised.

*Reasons to Reform Discretionary Review Process.* The internal working group concluded, as did previous independent analyses, that the current Discretionary Review process does not produce consistent or fair results, makes the development process more lengthy and costly for all involved, and takes time away from the Commission to address larger planning issues.

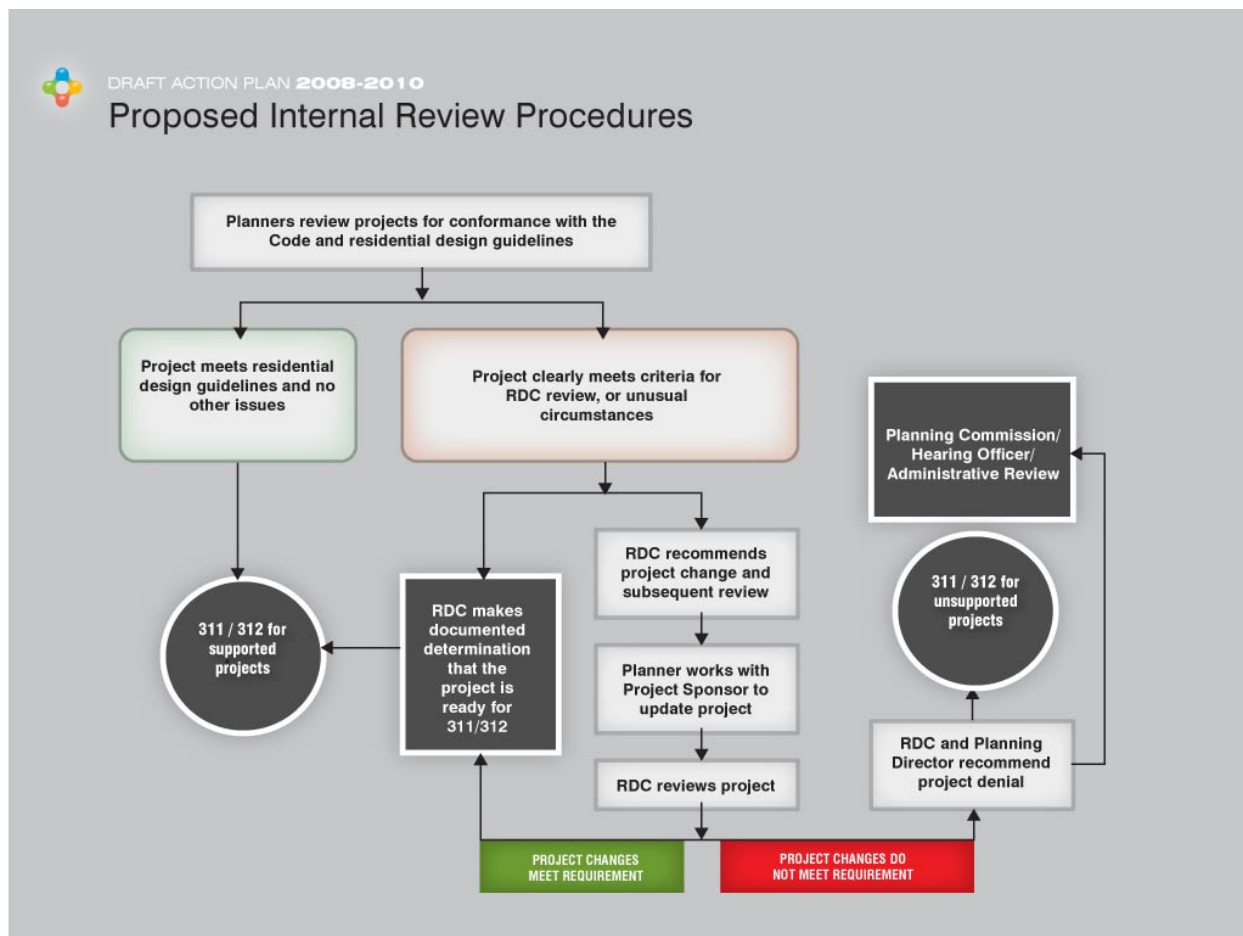
**Goals of the New Process are to:**

1. Significantly reduce time and cost of the process for Discretionary Review requests that do not demonstrate exceptional or extraordinary circumstances.
2. Improve the internal review process and application of design guidelines so that members of the public do not have to use Discretionary Review as a last resort.
3. Provide more transparency to the public and project sponsors about planned projects and the Department's decision-making in project evaluation.
4. Ensure that outcomes of the Discretionary Review process are fair and reliable to create a more consistent entitlement process for project sponsors and the public.
5. Through delegation to the Hearing Officer and Design Review Committee, better identify issues that require policy decisions for resolution, and free-up the Commission's calendar so that Commissioners can focus on these more substantive issues.
6. Maintain all of the benefits of the current process, which include an open process where the public have concerns vetted; the ability to improve projects; third party review of the Planning Department's professional determinations; and, opportunity for the Planning Commission to review emerging planning issues.

**The Proposal**

*Internal Review Standards.* Staff recommends improving internal review procedures to heighten consistency and public confidence. First, working with the Commission, the Department will define quantitative metrics for each aspect of the Residential Design Guidelines under which projects would be supported unless some aspect of the site, such as topography and lot shape, or issues of design, requires project modification. Project proposals outside of these metrics will require a team of professional planners (the Residential Design Committee), skilled in applying the Department's design guidelines to review the project. The Department has purposely proposed conservative triggers for these quantitative metrics so that the Residential Design Committee (RDC) will likely provide secondary review of any project that may require modification. Attachment VII is a draft of the quantitative metrics that would trigger RDC review.

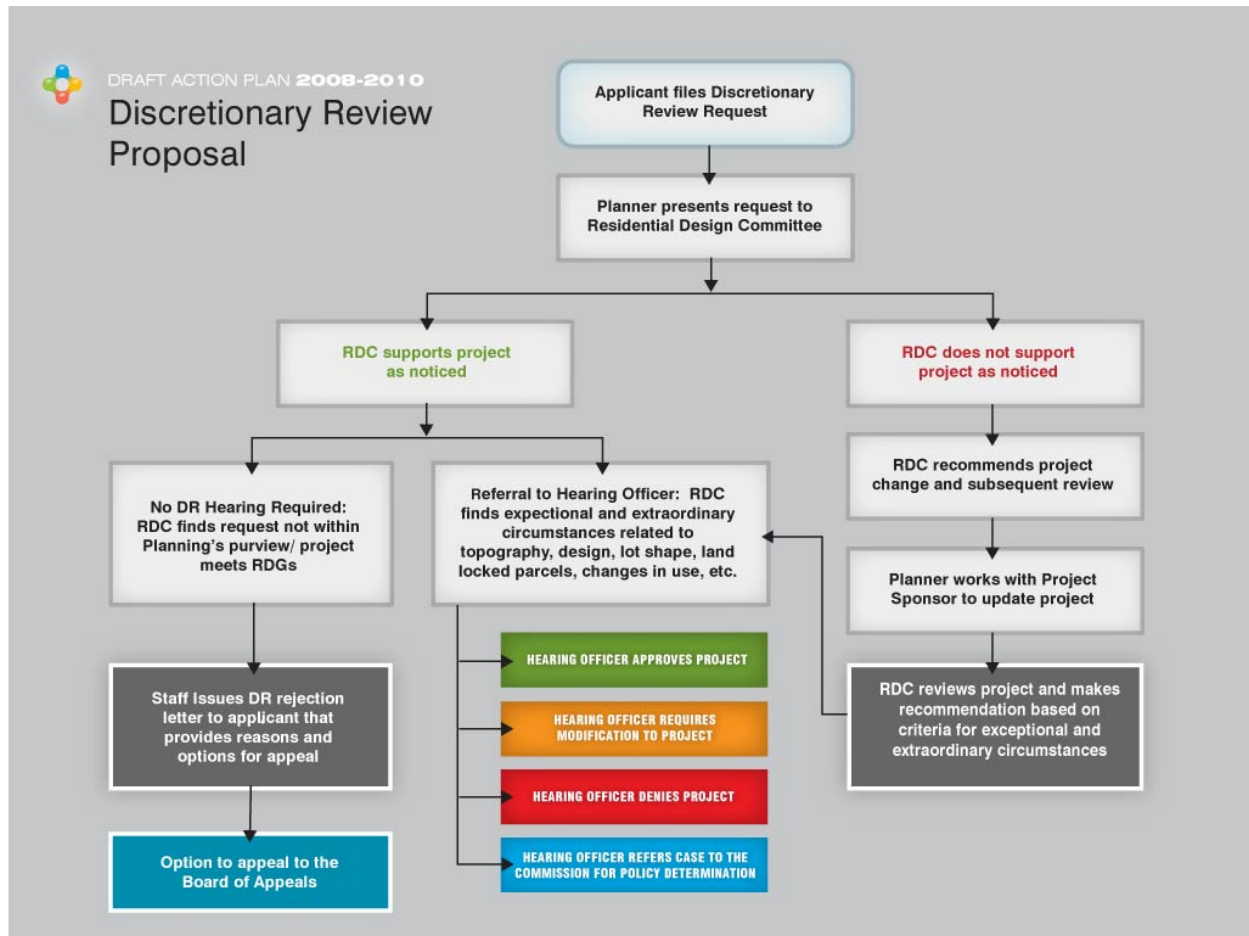
For projects that trigger RDC review, the decision and reason(s) to support or not support the project will be documented prior to public notification. This documentation will be maintained at the Department and available for public review.



Formalizing the RDC's role in project review will improve the Department's consistency in application of guidelines and in project review. As currently practiced, the RDC may also be used when there is an impasse with project sponsors during permit review. Because the RDC will review all projects that trigger review based on the quantification of the Residential Design Guidelines, the RDC will be well suited to identify if further clarification or changes need to be made to the Residential Design Guidelines, including establishing new neighborhood character districts.

The requirement for documentation prior to public notification is also repeated once a Discretionary Review request is filed. The Residential Design Committee will review the request with the case planner and document its decision-making in a letter to the requestor that explains why exceptional and extraordinary circumstances have not been met, or alternatively, in its referral to the Hearing Officer, for technical review, or the Planning Commission for policy interpretation and guidance. If the RDC agrees the DR requestor that changes are necessary to

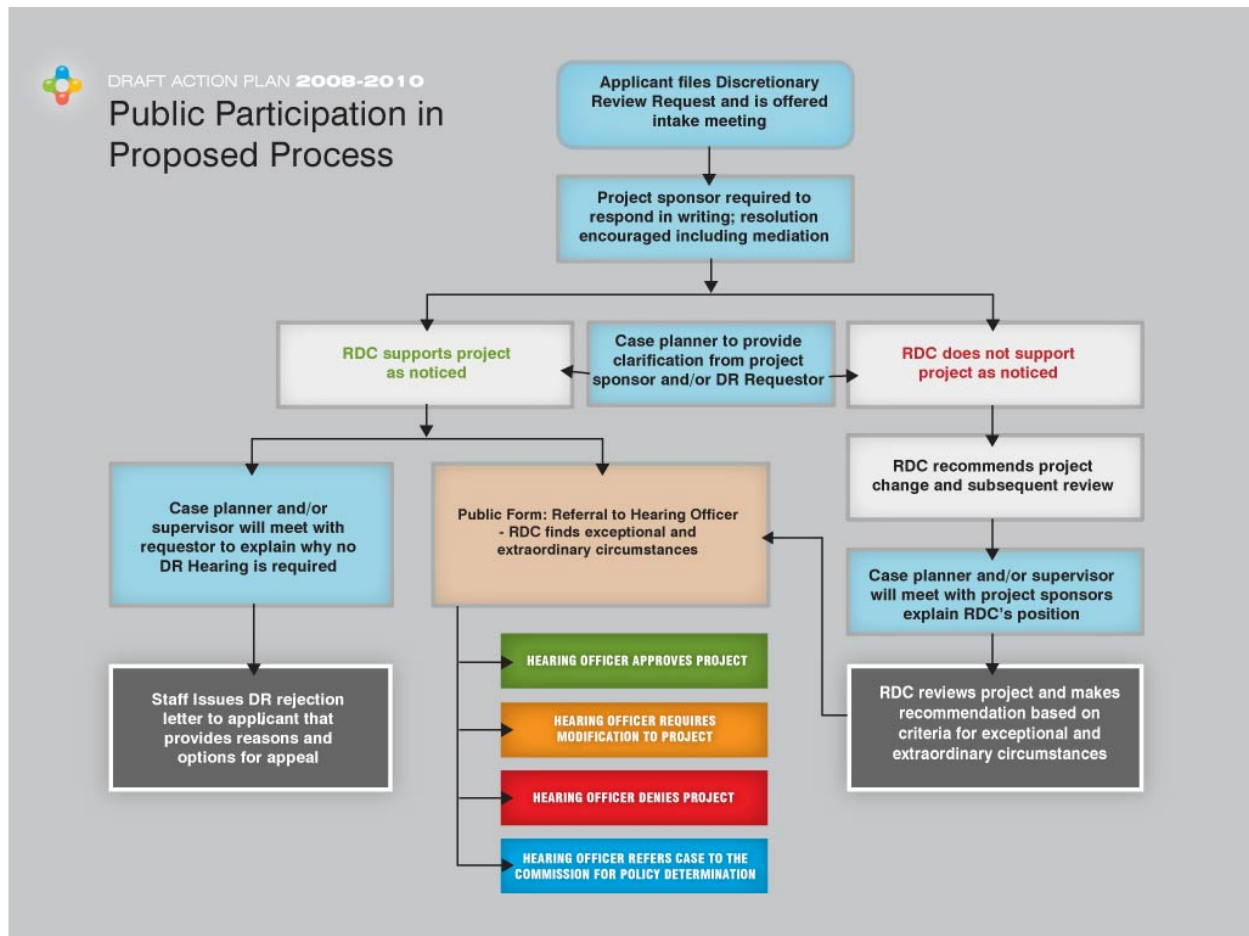
the proposed project, the case planner will work with the project sponsor to make necessary changes. The RDC will document for the Hearing Officer whether the RDC supports the project as modified.



Under the proposal, the RDC will evaluate the request for Discretionary Review. If the requestor demonstrates the potential for exceptional and extraordinary circumstances, an independent Hearing Officer skilled in land use matters will review the case; if the request requires policy guidance in order to be resolved, the Hearing Officer will refer the request to the Planning Commission. Minor issues, such as changing window type to allow more privacy or minor side setbacks could be addressed at this level. DR requests based on issues that are not within the Department's purview and requests for projects that clearly meet the Residential Design Guidelines would be rejected and the requestor informed of their appeal rights to the Board of Appeals.

The Advisory Committee and other members of the public recommend that we increase public input into the proposed process. As such, the Department will include an intake meeting or post intake meeting at the option of the Discretionary Review requestor so that the Planner can walk through the criteria of exceptional and extraordinary circumstances and understand the applicant's issue(s) with the project. This intake meeting will offer benefit both the Department and the applicant. Should the Residential Design Committee ultimately find that the application does not require a hearing because the issues are not in the Department's purview and the project meets the design guidelines, the Planner and his/her supervisor would meet with the applicant to explain the decision. Additionally, the decision would be fully documented so that the Discretionary Review requestor and, if applicable, the Board of Appeals, understands the reason(s) for the decision.

For the project sponsors, the assigned planner and the supervisor will sit down with the project sponsors if the Residential Design Committee recommends project modifications before public notification or after a Discretionary Review request is filed.





Finally, the Department will recommend to the Commission improvements to the pre-application community outreach meeting process, including a standardized format for meeting notifications and requirement for meetings to be held at or proximate to the project site. If adopted, the Department would not accept applications that did not provide evidence of proper notification and meeting location in addition to the invite list and sign-in sheet for the pre-application community outreach meeting.

## **HOW PROPOSAL ADVANCES KEY GOALS**

**Significantly reduce the time and cost of the process for Discretionary Review requests that do not demonstrate exceptional or extraordinary circumstances.**

- Define exceptional and extraordinary circumstances;
- Improve Discretionary Review request form so requestor is better able to outline their concerns more effectively and demonstrate exceptional and extraordinary circumstances; and,
- Residential Design Committee to evaluate application; if request is not within the Planning Department's purview and project meets design guidelines, no hearing will be required.

**Improve the internal review process and application of design guidelines so that members of the public do not have to use Discretionary Review as a last resort and only appropriate and quality projects are approved.**

- Internal Design Committee to review all projects that trigger review; and
- Internal Design Committee to review all Discretionary Review requests to determine if the Department continues to support the project or requires modifications based on new information.

**Provide more transparency to the public and planned projects and the Department's decision-making in project evaluation.**

- Improve and standardize pre-application community outreach meeting requirements;
- Provide explanation and documentation about the application of the Residential Design guidelines and other guidelines, including triggers for review and documentation about why projects are or are not appropriate;
- Design Committee to document findings for public review; and,
- Provide optional Discretionary Review intake or post intake meeting and meeting with Planner and his/her supervisor if application does not demonstrate exceptional and extraordinary circumstances.

**Ensure that outcomes of the Discretionary Review process are fair and reliable to create a more consistent entitlement process**

- Strengthened internal review process with quantitative standards for each aspect of the Residential Design Guidelines that trigger mandatory review by the Residential Design Committee;
- Enhanced ability to identify nascent planning issues through consolidated review of projects and DR request by the RDC and Hearing Officer;
- Commission defines exceptional and extraordinary circumstances and develops criteria about which cases it would like to review;
- An independent Hearing Officer skilled in land use matters serving as staff to the Planning Commission to review DR requests;
- To maintain an open public process for land use decisions, and,
- To provide the Commission with more time to deliberate and act on important Planning issues.

**POLICY CONSIDERATIONS FOR THE COMMISSION**

Staff seeks general feedback and direction on the draft proposal and asks the Commission to consider specific areas the Commission must weigh-in on, including defining exceptional and extraordinary circumstances and the Hearing Office delegation and oversight.

**Defining Exceptional and Extraordinary Circumstances**

The public has commented that “exceptional and extraordinary circumstances” need to be clearly defined in order for the new proposal to work. Staff agrees. We propose to work closely with the Commission to define “exceptional and extraordinary circumstances” and further to have the Commission adopt criteria to guide staff. The Commission may need to revisit these criteria from time to time as issues arise, and as the community becomes more comfortable with the process as its success is demonstrated. As a starting point, staff recommends that issues not related to the Planning Code be rejected, such as constructability and noise and dust during the construction process. Further, staff recommends that projects that do not trigger Residential Design Committee review because they are under the metrics for each aspect of the Residential Design Guidelines and have no other issues related to topography and lot shape or design, shall not be eligible for Discretionary Review.

**Hearing Officer Delegation and Oversight**

The delegation from the Commission to the Hearing Officer and the Hearing Officer process itself need to be clearly defined. Staff will work with the Planning Commission to structure how authority is delegated from the Commission to the Hearing Officer and how best to get information back to the Planning Commission. As a starting point, staff recommends that the Commission be referred all Discretionary Review cases that require policy interpretation for resolution. Staff recommends that this referral be through the Director, the Zoning Administrator or the Hearing Officer so that all have an opportunity to refer such cases to the Commission. Staff also recommends that the Commission be briefed regularly, whether

weekly, monthly or quarterly on the disposition of Discretionary Review requests and be made aware of technical clarifications on the design guidelines. Further, staff recommends that through the Residential Design Committee and Hearing Officer processes, the Department improve identification of issues that require Commission guidance and schedule hearings to address these issues on an as-needed basis. These issues may include discussions about the applicability of the general residential design guidelines to a specific neighborhood context and/or the need to develop additional neighborhood character districts.

Ultimately, the Commission will need to decide the best method to maintain oversight of its Hearing Officer. Options range from reporting requirements, administrative “consent” agendas, and decision ratification. Staff recommends robust reporting requirements over options that reopen Discretionary Review requests since one of the goals of this process is to reduce impacts on the Commission’s calendar. Further, the process by which the Commission opts to review cases needs to be defined. Staff recommends establishing consistent criteria through a mandatory Discretionary Review policy as preferable to a case by case evaluation, again to free up the Commission’s calendar to focus on higher level policy issues.

#### **Cost and Time of the New Process**

Reflecting initial comments from the public, the Department is working to ensure that the new proposal will not be more time and cost intensive than the current process to the public and project sponsors. The cost to the Department will increase under the proposal because the proposal requires more internal review and a Hearing Officer. However, based on the initial proposal, the Department believes that for Discretionary Review requests that do not demonstrate exceptional and extraordinary circumstances, the cost to the project sponsor, the requestor and the Department will be substantially reduced. For requests that are exceptional and extraordinary, the cost to the project sponsor and the requestor will be about the same, but the cost to the Department will increase due to a heightened level of review, additional required documentation, and the cost of the Hearing Officer. At this point, staff believes it is appropriate to shift costs away from Discretionary Review requests that are not exceptional and extraordinary to those cases that are.

Other comments suggest that staff should review cost sharing options with the Commission to determine the appropriate source mix (i.e. Discretionary Review requestor, project sponsor and building permit surcharge) for the program. Currently, the Department’s approach places a small burden on the requestor and has the majority of the cost borne through the Discretionary Review building permit surcharge. The Commission may wish to reconsider this.

<b>RECOMMENDATION:</b>	<b>Not Action Required</b>
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#### **Attachments:**

Attachment I: Current Notification and Appeal Process for Building Permits

Attachment II: Commission Presentation , December 11

Attachment III: List of Attendees at Outreach Meetings

**Executive Summary**

**Hearing Date: December 11, 2008**

**Consideration of Discretionary Review Reform Proposal**

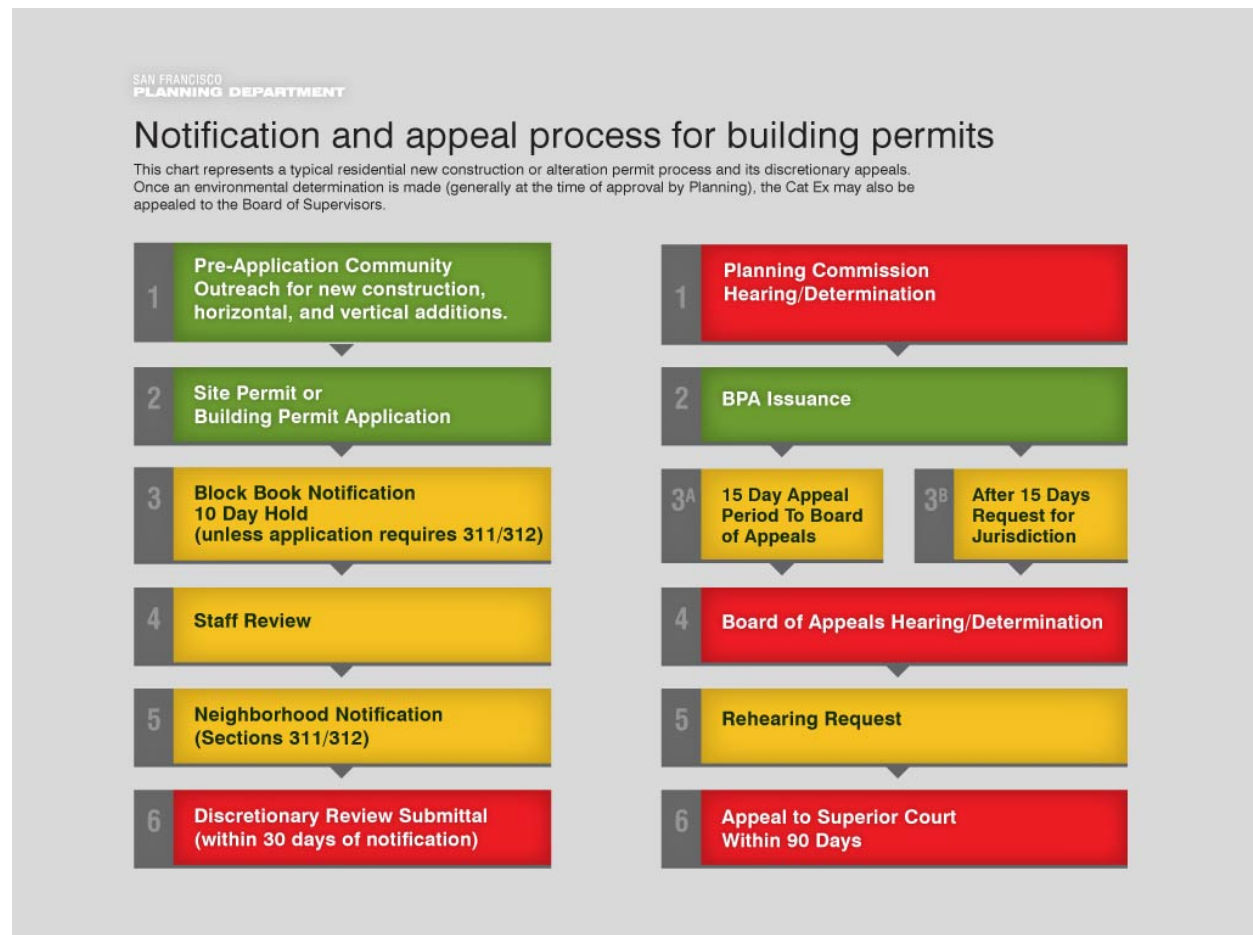
Attachment IV: Written comments

Attachment V: Minutes from the Outreach Meetings

Attachment VI: Department response to major issues from public comment

Attachment VII: Draft quantitative metrics that trigger RDC review

## ATTACHMENT I - CURRENT NOTIFICATION AND APPEAL PROCESS FOR BUILDING PERMITS



Attachment II: Commission Presentation

# Discretionary Review Reform

## Informational Hearing

December 11, 2008

SAN FRANCISCO  
PLANNING DEPARTMENT



## Action Plan Objective: Enable the Planning Commission to focus on higher-level policy issues

- Reform the **Discretionary Review Process**, with public, the Planning Commission and staff as intended beneficiaries  
*Underway, to be completed Spring 2009*
- Clarify **roles and expectations** and improve **communication** and the working relationship between the Planning Commission, the Landmarks Preservation Advisory Board, and staff, including senior staff  
*To be completed Spring 2009*



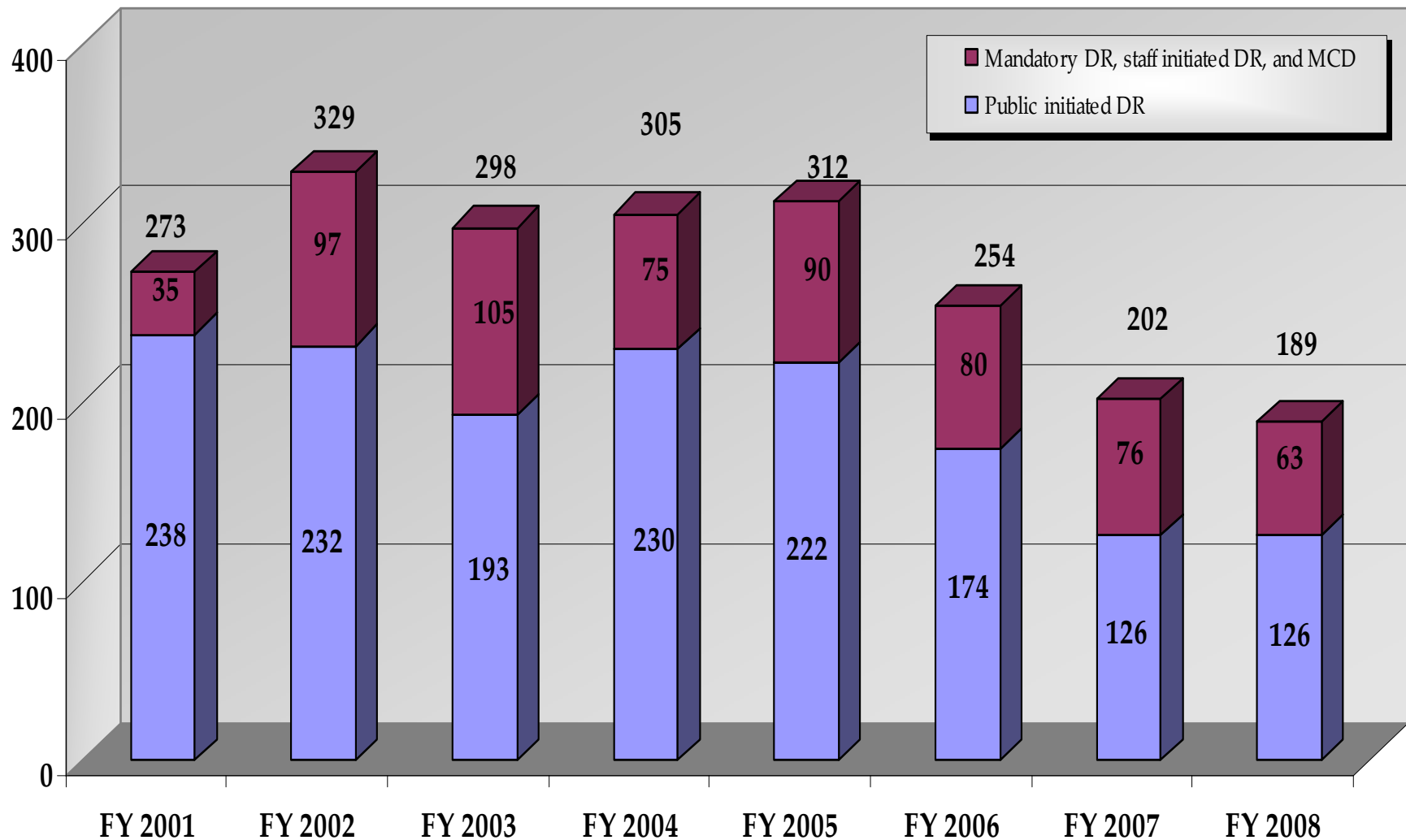
# Discretionary Review

*Discretionary Review is the Planning Commission's authority to review code complying projects and take action if the Commission finds the case demonstrates exceptional and extraordinary circumstances*

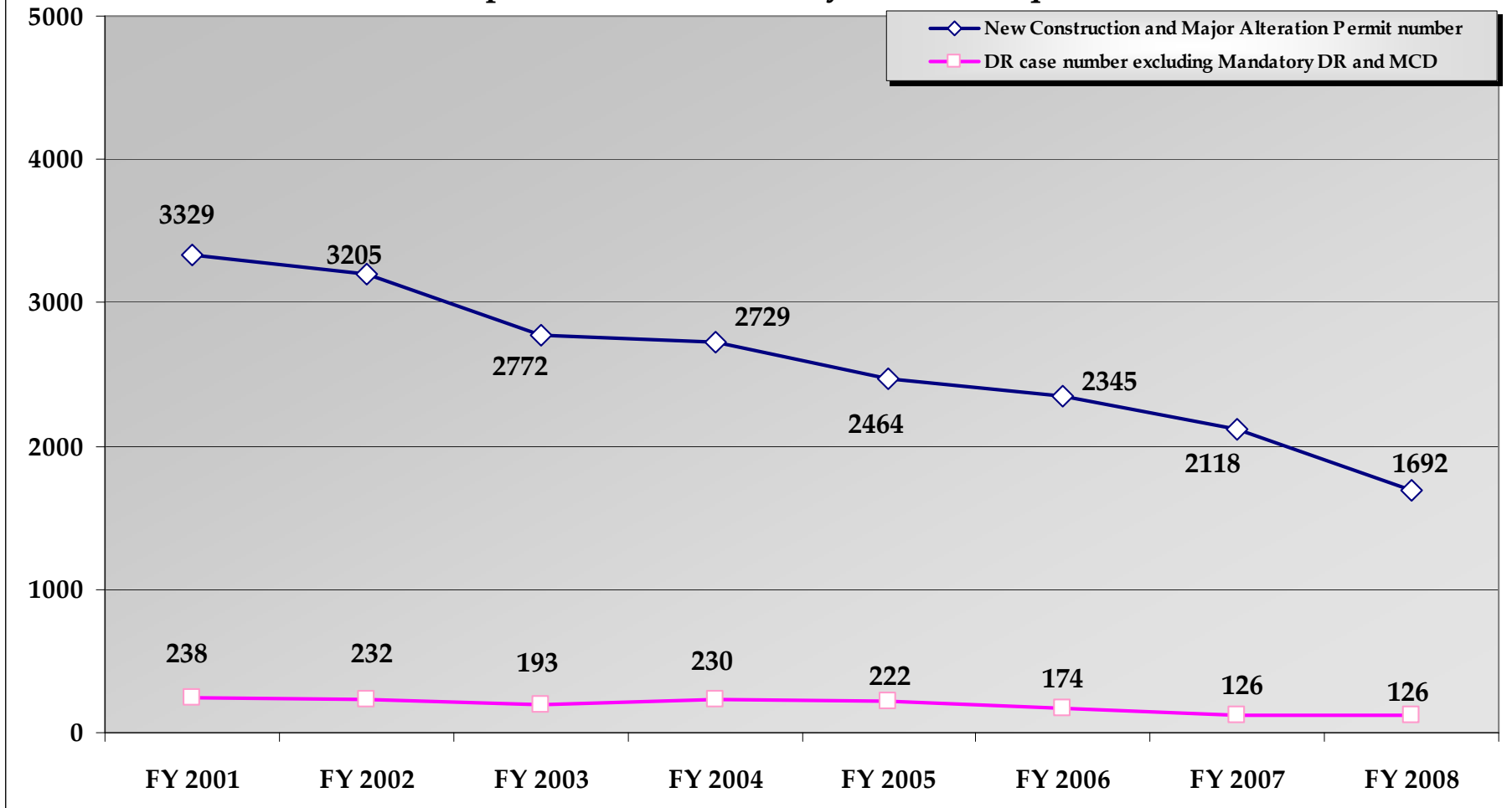




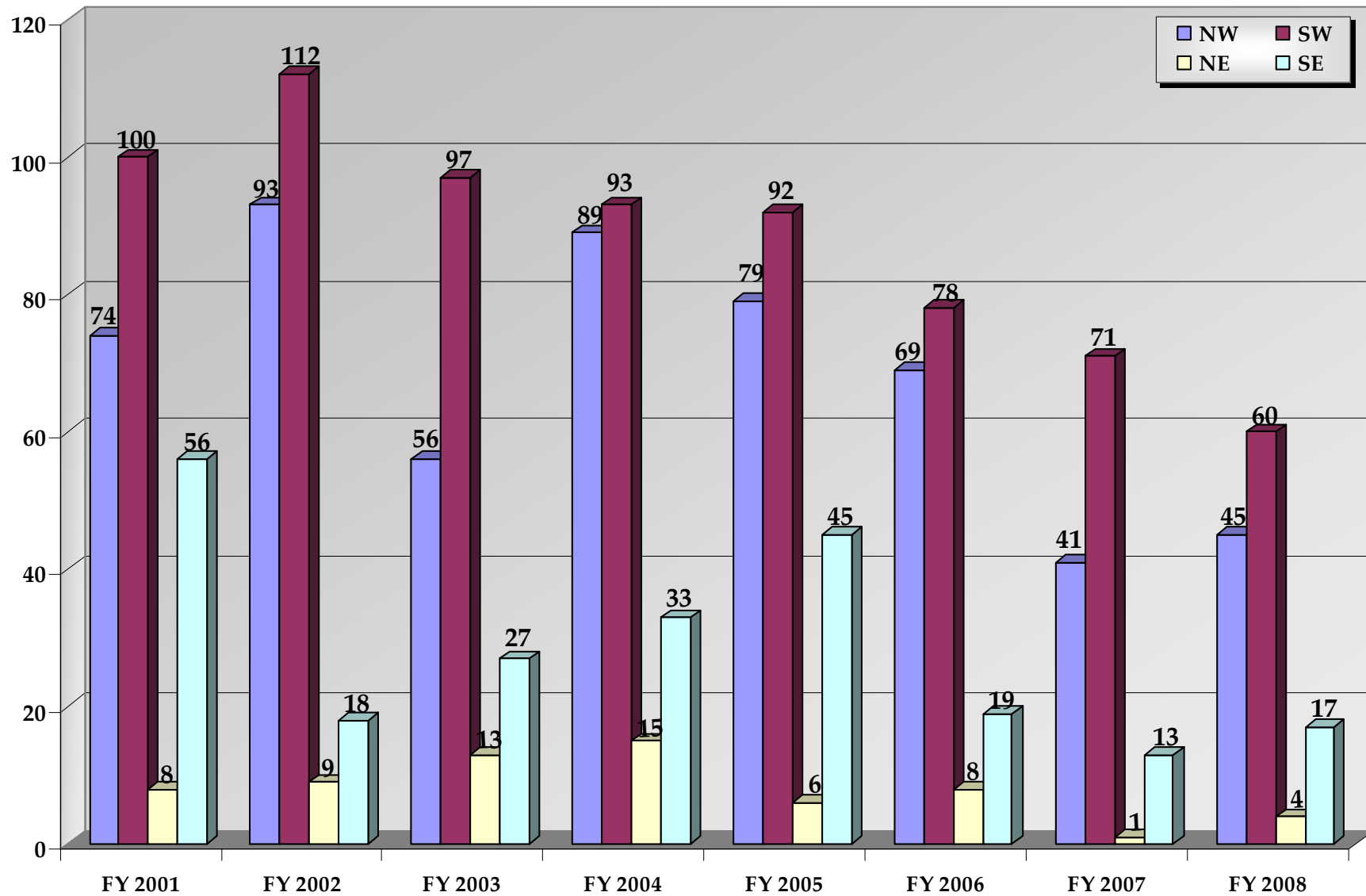
## Number of Discretionary Review Cases filed from FY 2001 to FY 2008



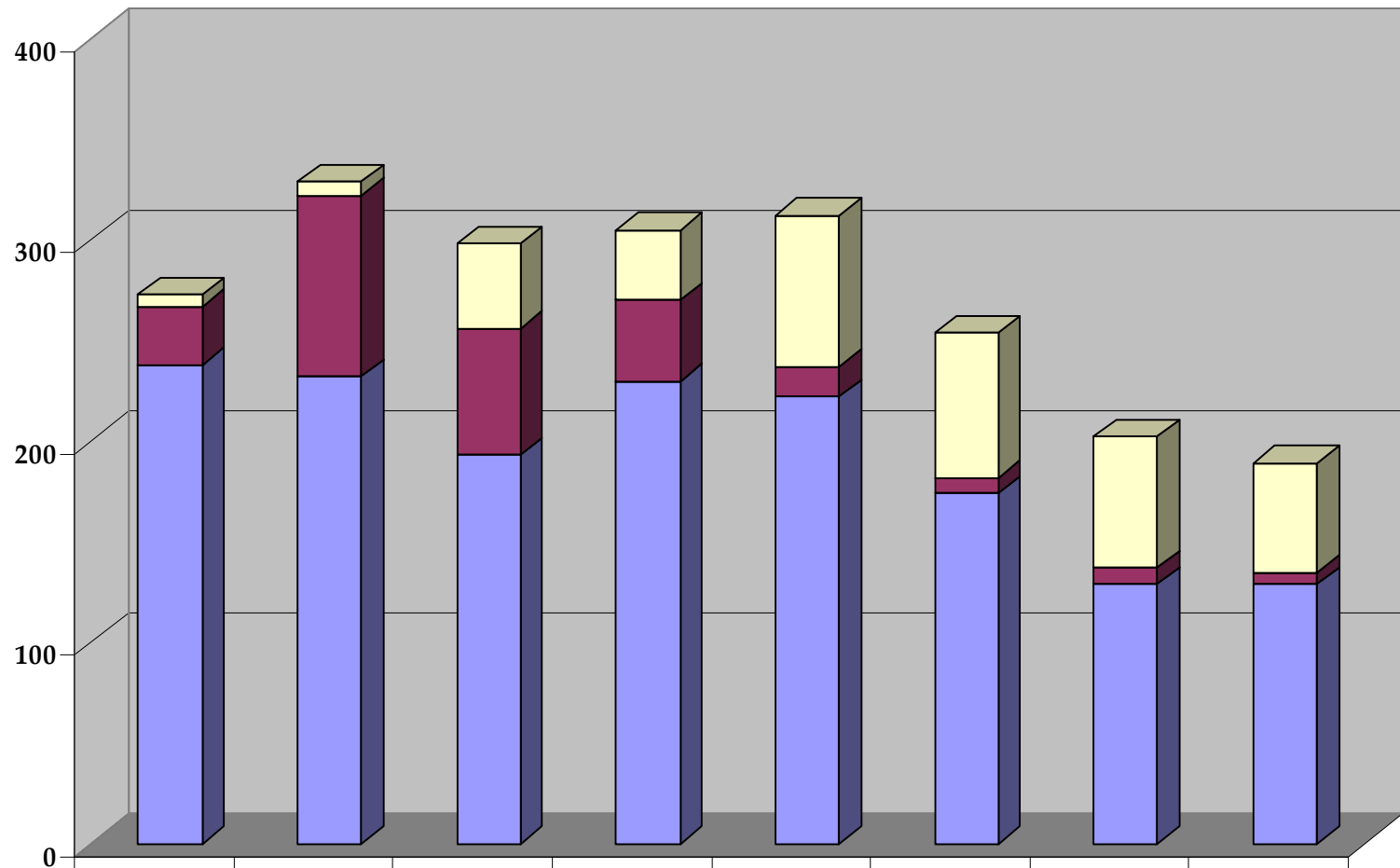
## Number of New Construction and Major Alteration Permit Applications Compared to Discretionary Review Requests



## Discretionary Review filed by Quadrant



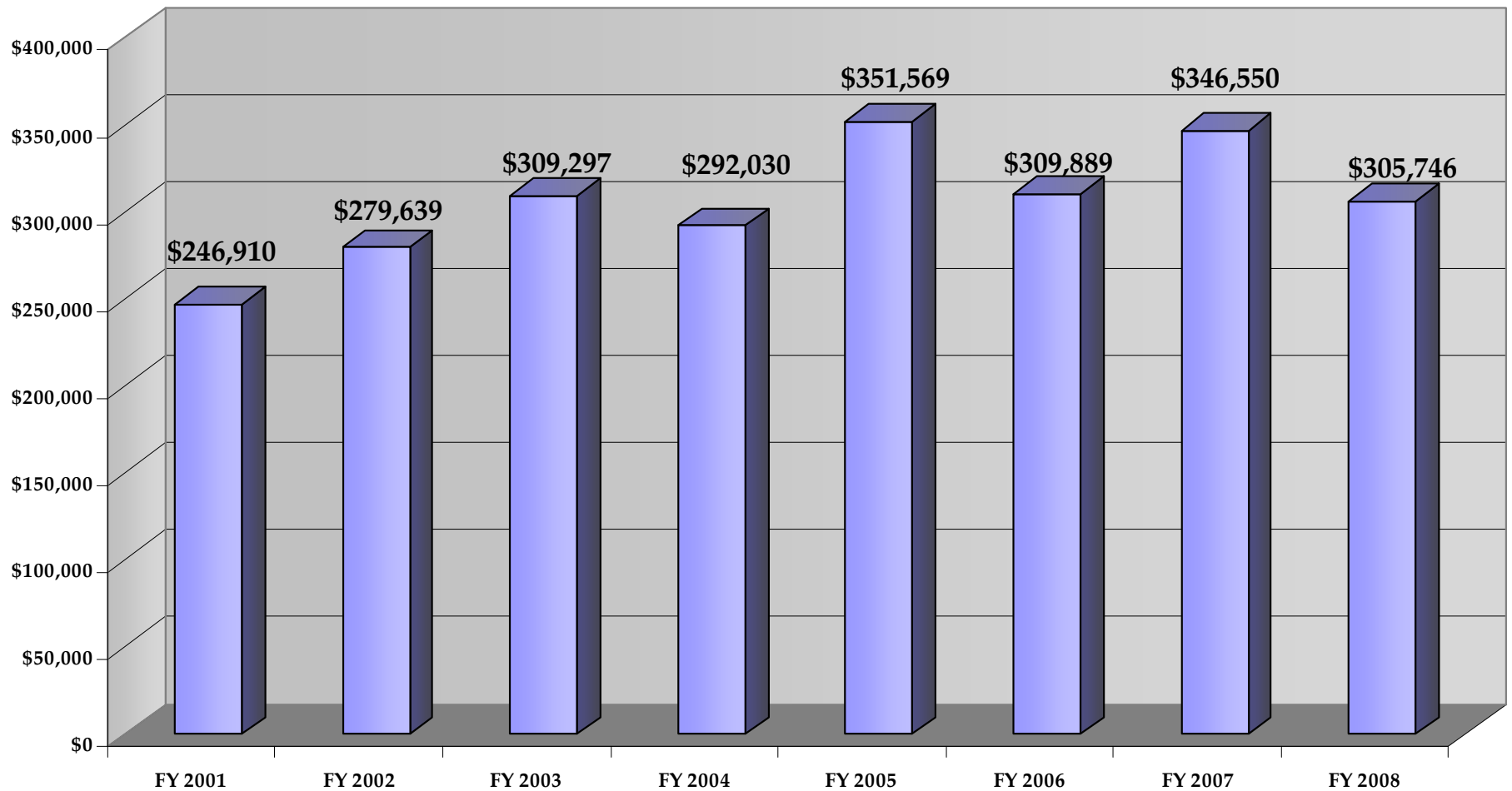
## Discretionary Review Cases Initiators



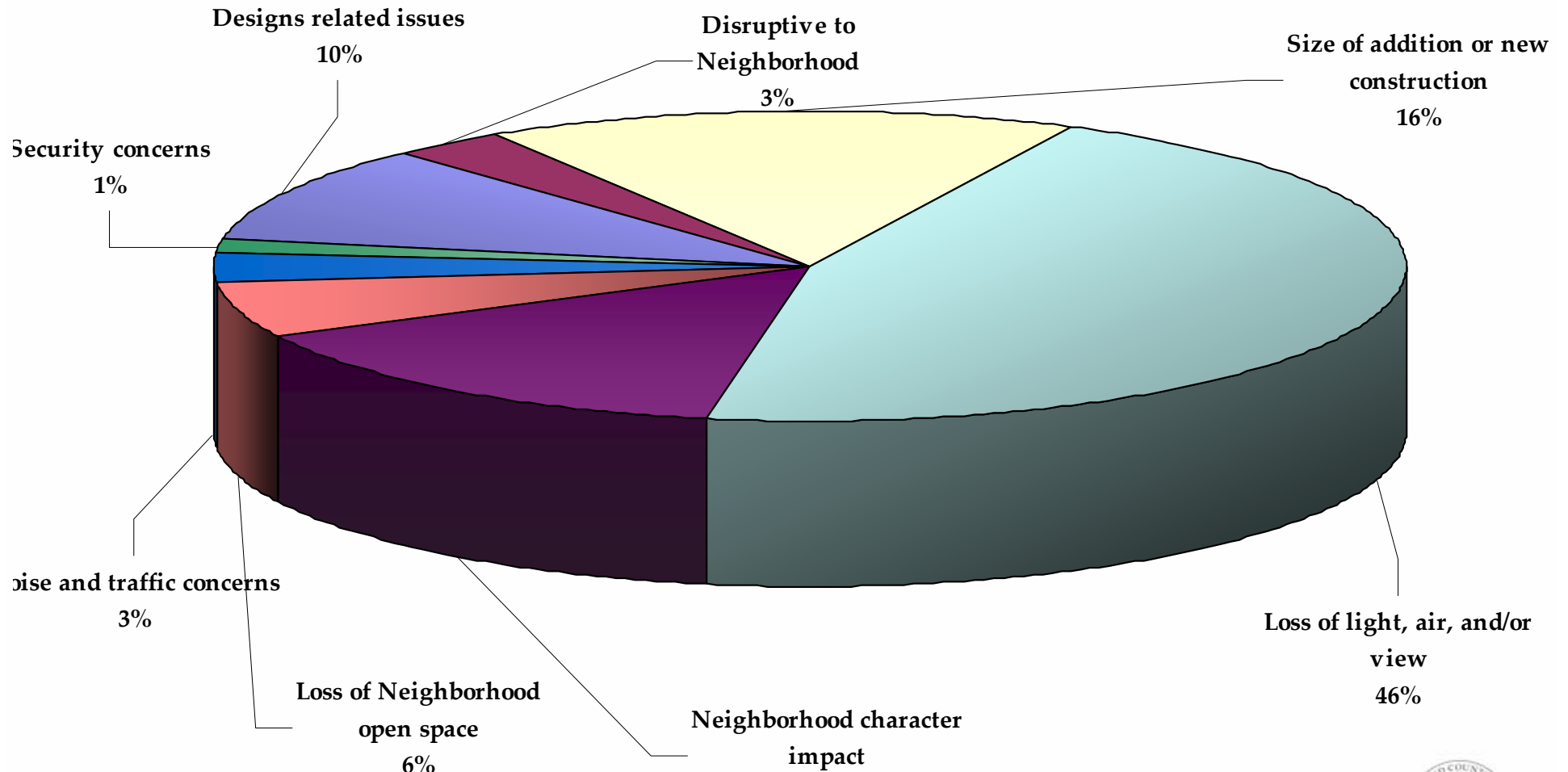
Planning Commission	6	7	42	35	75	72	65	54
Planning Department	29	90	63	40	15	8	8	6
Public / Neighborhood Group	238	232	193	230	222	174	129	129

*\*Planning Commission number includes Board of Supervisor and the Landmark board*

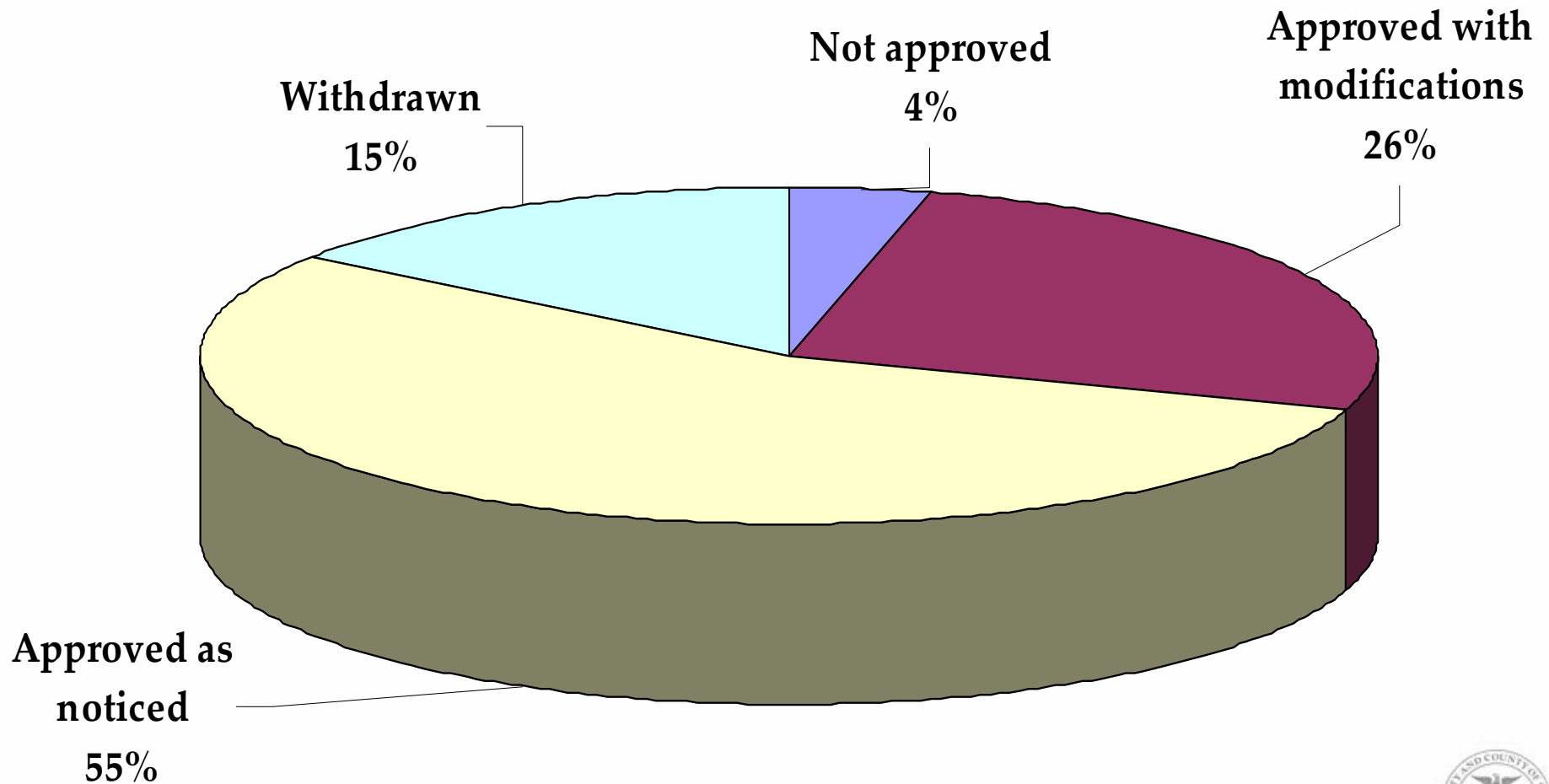
## Annual Cost of Direct Staff Hours for Discretionary Review



## Discretionary Review Issues Calendar Year 2007



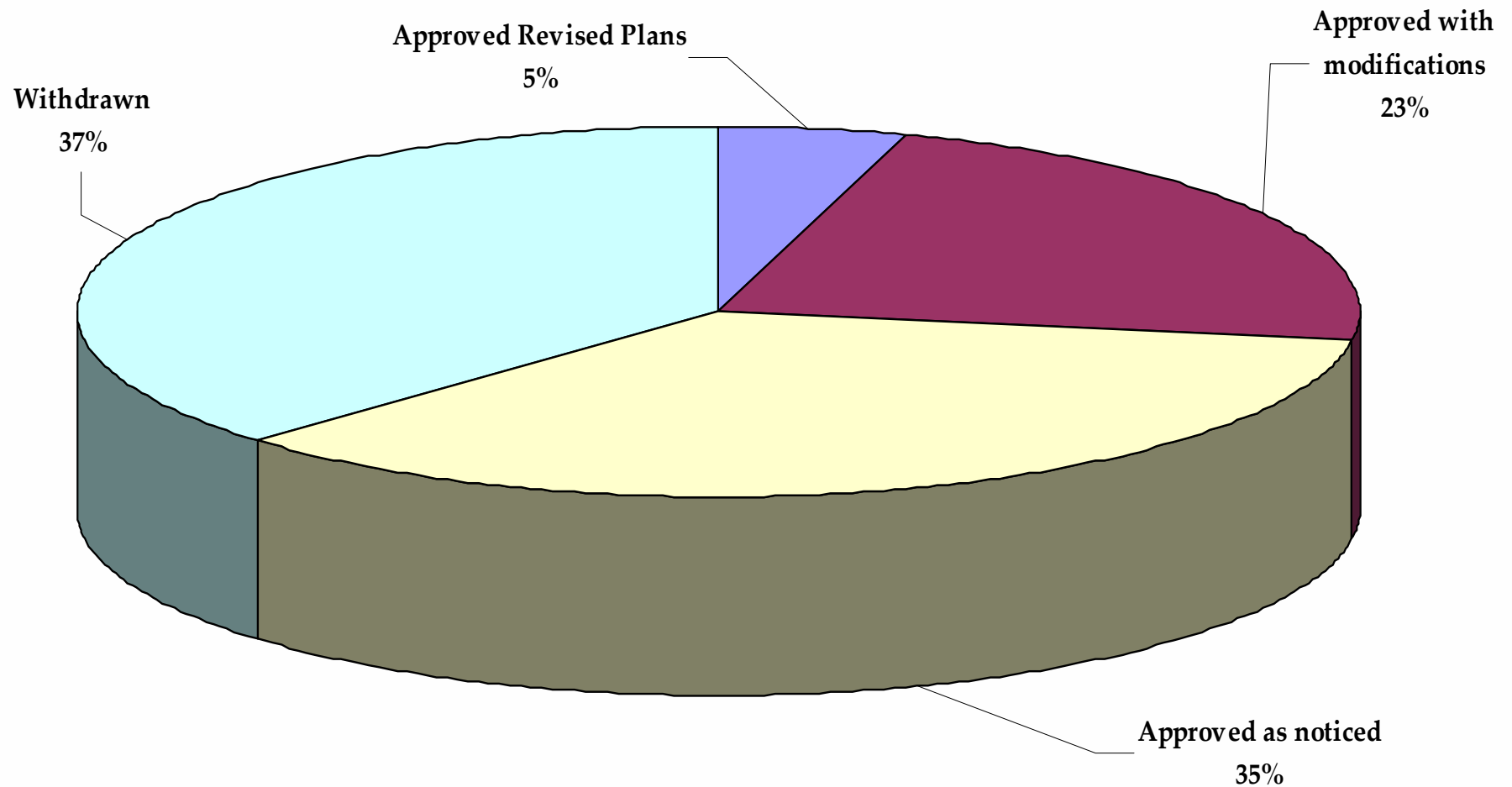
## Disposition of Discretionary Review Cases Calendar Year 2007



*Includes all Discretionary Review cases*



## Disposition of Discretionary Review Projects in Calendar Year 2007



*Excludes mandatory, staff initiated and MCDs*





## Prior Reform Effort – 2004 Commission Policy

- Pre-application process for projects of a certain size
- Simple Versus Complex applications



## All Recent Reviews Recommend Revisions to the Discretionary Review Process

- Budget Analyst Audit, 2003
- Matrix Report, 2006
- SPUR AIA Report, 2007

Issues: Arbitrary and political approval process that takes too much time away from the Commission's ability to focus on policy

Remedies: Delegation to ZA, Hearing Officer or separate DR Committee

Better separation of "simple versus complex"



## Benefits of Current Process

- Open process and provides opportunity for residents to have public hearing where concerns are vetted
- Opportunity for greater public involvement and community participation
- Gives planners more leverage to seek project revisions
- May improve projects
- Provides for third party review of Planning Department's professional determination
- May provide Planning Commission the opportunity to review emerging planning issues



## Issue/Concerns

- Driven by temperament of the neighbor, level of community involvement, and developer instead of sound planning principles and land use objectives which may result in uneven protections across neighborhoods
- Commission does not see representative sample of projects that are approved and therefore cannot easily dispense fair and standard treatment
- Decisions for individual cases do not necessary get applied to future review or serve to clarify appropriate project review
- Increases the cost and time of the process for all involved
- Residents may file DR as last resort because they do not have sufficient information which can create conflict between neighbors
- Creates potential for inappropriate financial exchanges between project sponsor and neighbors
- Inconsistent with best practices in other jurisdictions



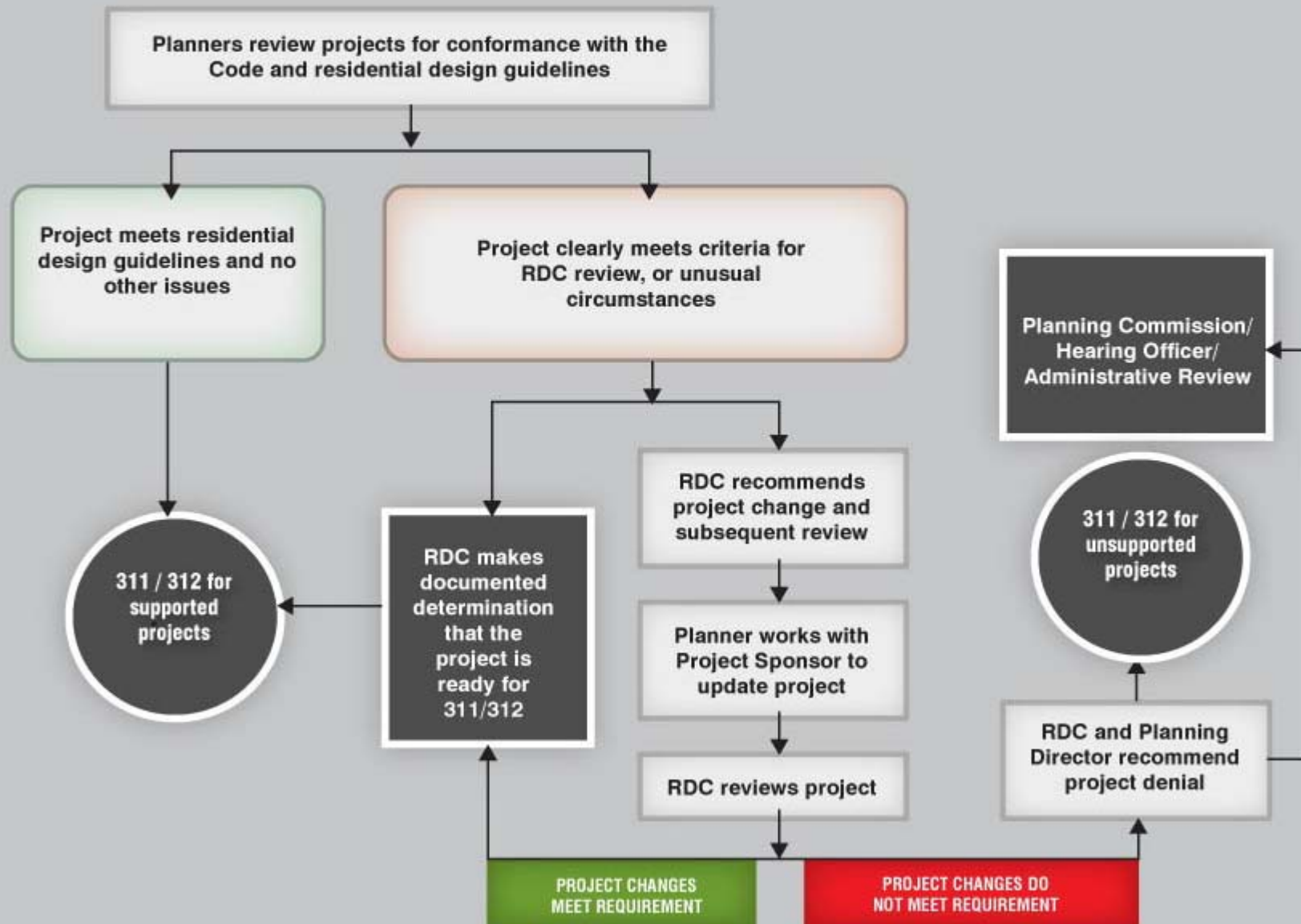
# Goals of New Process

- Significantly reduce time and cost of the process for Discretionary Review requests that do not demonstrate exceptional or extraordinary circumstances
- Improve the internal review process and application of design guidelines for heightened consistency
- Provide more transparency to the public about planned projects and the Department's decision-making in project evaluation
- Ensure that outcomes of the Discretionary Review process are fair and reliable to create a more consistent entitlement process for project sponsors and the public
- Better identify issues that require policy decisions for resolution, and free-up the Commission's calendar so that they can focus on these more substantive issues
- Maintain all of the benefits of the current Discretionary Review process





## Proposed Internal Review Procedures



# Delegation to a Hearing Officer

- Commission to select a Hearing Officer with qualifications to review DR requests
- Hearing Officer would be required to maintain high ethical standards and avoid all conflicts of interest
- Commission to review only mandatory DR, cases referred from the Director or the Hearing Officer to seek policy guidance
- Commission would maintain oversight of its delegation to the Hearing Officer

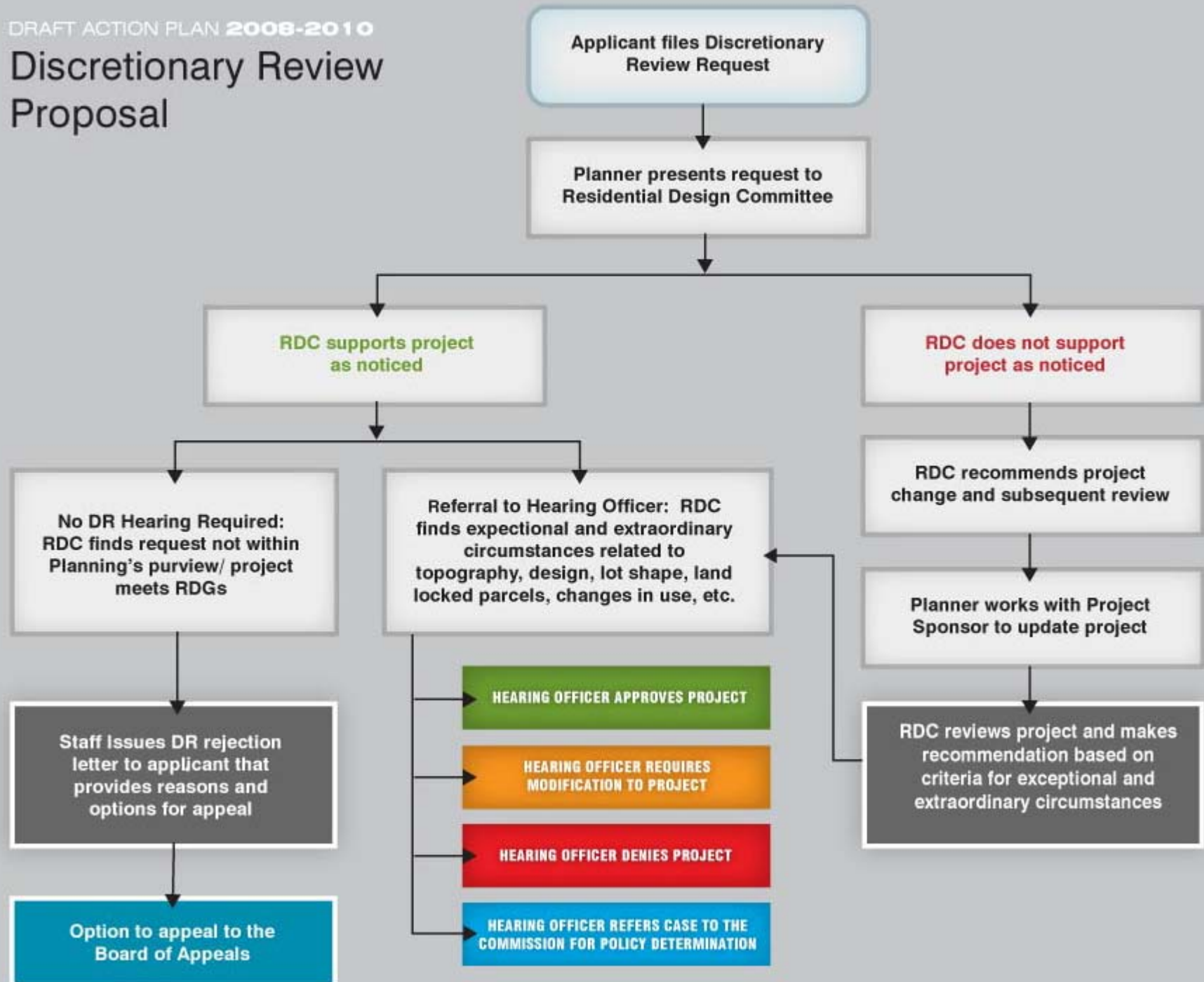






DRAFT ACTION PLAN 2008-2010

## Discretionary Review Proposal

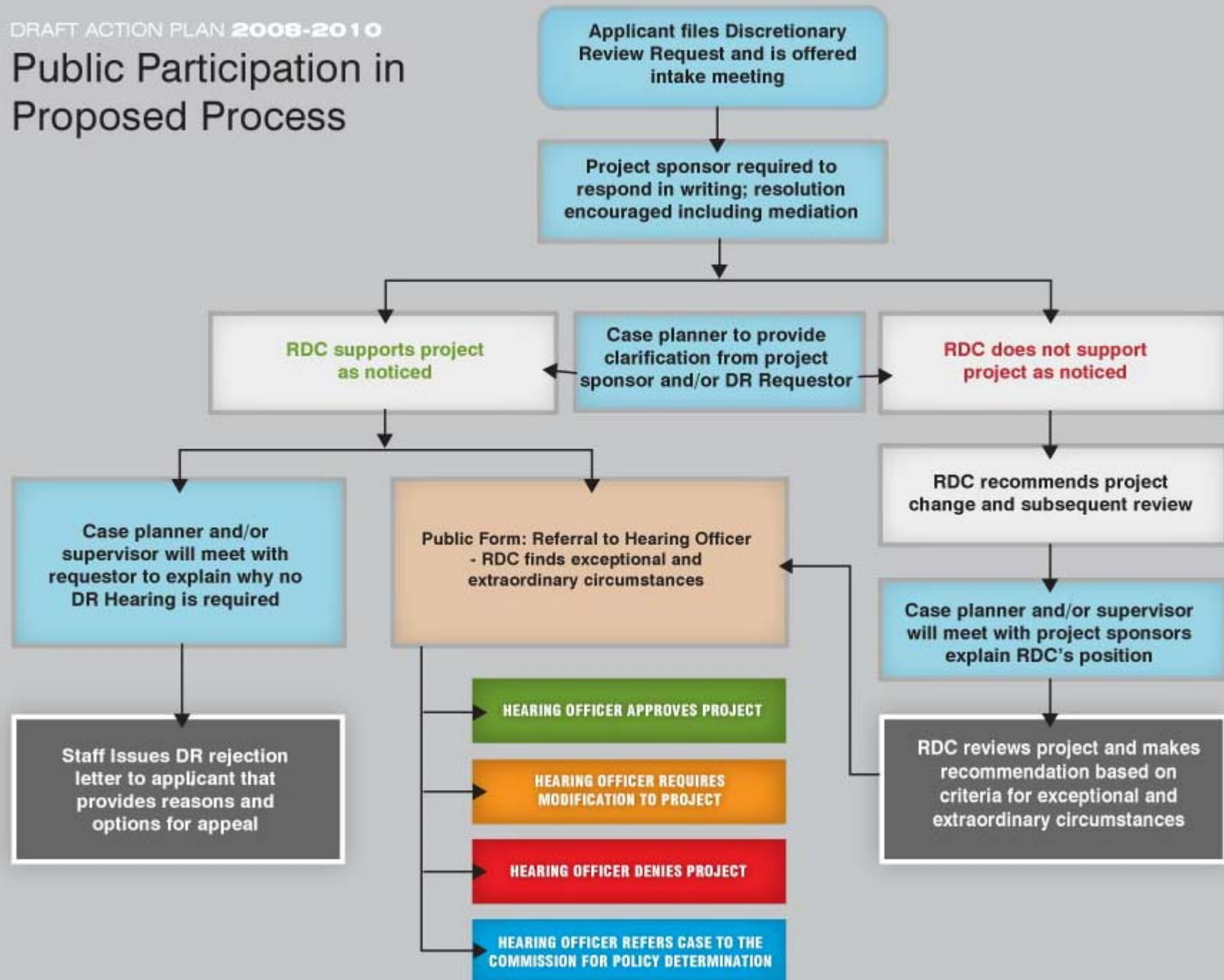






DRAFT ACTION PLAN 2008-2010

## Public Participation in Proposed Process



# Proposed DR Procedures

- Residential Design Committee formalized and decisions documented
- Criteria for Residential Design Committee review prior to public notification
- Complete DR application so requestor outlines concerns more effectively to demonstrate exceptional and extraordinary circumstances
- Staff returns DR applications that do not rise to a substantive planning level, i.e. views and construction issues
- Commission to delegate to Hearing Office DR cases that demonstrate exceptional and extraordinary circumstances
- Commission to review DR cases that require policy advice



# Benefits of Proposed DR Procedures

- Strengthen application of “exceptional and extraordinary” circumstances
- Enhanced internal review process that improves projects prior to public notification
- Increased level of transparency through pre-application process, option for meetings, and documentation that explains reasons for decisions
- Professional Hearing Officer to provide secondary review of Department decisions
- Identification of and referral to the Commission of issues that require policy decisions for resolution



# Public Outreach

85 people at four community meetings

Advisory Committee to the Action Plan review

Stakeholder review

Coalition for San Francisco Neighborhoods

Written comments from: Reuben and Junius; Cow Hollow Association; Frederick Clifford Gibson Architect and Associates; John Schlesinger, AIA, Architect; Occidental Express; Louis H. Felthouse Architects; Peter Cohen, Nancy Wuerfel, Joe Acayan, Marada De Ley, Sandra and Fred Herrera, and letters in support (1 copy included) from Michael Cole, John Walker, Troy Cole, Bill DiFranceco, Ruccetti, Bernice, Cole, Frank Riccetti, Gus Cole, Patricia and William Magee, Jazmine Cole



# Public Outreach

Major issues include:

- Opportunity for a Planning Commission Hearing
- Transparency in Decision-Making
- Inclusion in the Process
  - Optional intake meeting for DR requestor
  - Optional meeting for project sponsor with case planner and supervisor if RDC recommends project revision
  - Stronger pre-application requirements
- Defining Exceptional and Extraordinary Circumstances
- Hearing Officer Appointment and Process
- Cost and Time of the New Process



## Next steps

Direction from the Commission regarding:

- Definition of exceptional and extraordinary circumstances
- Hearing officer delegation and oversight
- Cost and time of the new process

Staff to work with the City Attorney to draft a Discretionary Review process to be codified in the Planning Code

Commission to review and take action on proposal in early part of 2009



**Attachment III: List of Attendees at Outreach Meetings****Overview of Outreach Efforts****DR Outreach Meetings conducted at the Planning Department**

<b>Name</b>	<b>ORGANIZATION NAME</b>
<b>DR meeting Date: 10/29/2008</b>	
1. Sue Hestor	Enhood Working Group
2. Anthony Chau	Threlkeld & Chau Architects & Engineers
3. Jan Threlkeld	Threlkeld & Chau Architects & Engineers
4. Tony Pantaleoni	Kotas/Pantaleoni Architects
5. Ahmad Larizadeh	BANA Inc.
6. Harvey Hacker	harvey hacker architecture
7. Suheil Shatara	Shatara Architecture
8. Simon Kwan	Ko Architects
9. Michael Schoolnik	Middle Polk Neighborhood Association (MPNA)
10. Paul Wermer	Pacific Heights Residents Association
<b>DR meeting Date: 11/5/2008</b>	
11. Alfred Martinez	
12. Jean Seto	Homeowner
13. Popley Crosby	Monterey Heights Homes Association
14. Matt Chamberlain	Neighbors of Ardenwood
15. Sanford Garfinekel	Charter Inc
16. Dan Weaver	OMI

<b>Name</b>	<b>ORGANIZATION NAME</b>
17. Mary Jane Mikariya	Homeowner
18. Henry Karnilowicz	Occidental Express
19. Penelope Clark	RHN
20. Judith Berkowitz	CSFN, EMIA
21. Arnie Lerner	Lerner + Associate Architects
22. Christian Ard	OMI – NIA
23. Hiroshi Fukuda	REA
24. Kelley Waters	YA Studio
25. Simon Kwan	Ko Architects
26. Norman Kondy	Lincoln Park Homeowners Association
<b>DR meeting Date: 11/12/2008</b>	
27. Joe Acayan	Homeowner
28. Jim Westover	Westover Architecture
29. Alan Burradell	Homeowner
30. Lou Felthouse	Louis H. Felthouse Architect, Inc
31. Alison Heath	
32. Ted Pratt	Huntsman Architectural
33. Julie Denny	Homeowner
34. Joram Altman	Joram Altman Architect
35. Rosina Tong	Homeowner
36. Jean Neblet	
37. Victor Tam	Homeowner
38. Luke O'Brien	
39. Steven Currier	OMMRA
40. Henry Karnilowicz	Occidental Express
41. Edward Gama	Developer
42. V. Labiaro Abello	Architect
43. Albert Costa	T Brown + Partners



<b>Name</b>	<b>ORGANIZATION NAME</b>
44. Xiaoliang Han	Project applicant
45. David Pilpel	
46. Michael Schulte	
47. Cristy Johnston	Excelsior Action Group
48. Fred Gibson	Ford Gibson Architecture
49. Anita Theoharis	Westwood Park Association
50. John Lum	John Lum Architects
<b>DR meeting Date: 11/19/2008</b>	
51. Bill Sugaya	Planning Commissioner
52. Henry Karnilowicz	Occidental Express
53. Rose Hillson	Jordan Park Association
54. Tad Sekino	HKIT
55. Joe Acayan	Homeowner
56. Bob Noelke	Prague St. Property Management
57. Judith Hoyem	EVPT
58. Jed lane	M&IC
59. Martina Ehlers	Cow Hollow Association
60. Elaine Larkin	Cow Hollow Association
61. Myrta Matula	TPIA
62. Geoff Wood	Cow Hollow Association
63. Marc Brennan	
64. Sean Cleymaet	SF-Architecture
65. Patricia Vaughey	Cow Hollow Neighborhood & Merchants
66. Nancy Wuerfel	SPEAK
67. Mike Satulte	Schulte Architecture
68. Allen Gee	AG Architects
69. Dorice Murphy	Eurek Valley Architecture
70. George Matula	TPIA

<b>Name</b>	<b>ORGANIZATION NAME</b>
71. Mary Anne Miller	SPEAK
72. Kevin Wallace	Wallace Remolding
73. Malana Moberg	APN
74. Roland Salvato	APN
75. Helen Scully	
76. Matt Williams	John Maniscalco. <b>Architecture</b>
77. Brooke Sampson	CHA
78. Robert Scully	
79. M.J. Gaines	East Mission Improvement
80. Colleen Kavcrugh	
81. Robert Colyer	The Colyer Freeman Group
82. Steven Williams	
83. Jeremy Paul	QPC
84. Kristin Jansen	
85. Hiroshi Fukuda	REA



November 26, 2008

Via E-Mail [john.rahaim@sfgov.org](mailto:john.rahaim@sfgov.org) and U.S. Mail

James A. Reuben

Andrew J. Junius

Kevin H. Rose

Joel Yodowitz

\*Sheryl S. Reuben

David Silverman

Twija I. Catalano

Jay F. Drake

Tracy R. Boxer Zill

Daniel A. Frattin

Stephen R. Miller

Lindsay M. Petrone

Shannon S. Lindsay

John E. McInerney III  
of counsel

Mr. John Rahaim, Director  
San Francisco Planning Department  
1650 Mission Street, Suite 400  
San Francisco, CA 94103-2479

**Re: Discretionary Review Reform**

Dear Director Rahaim:

We are excited to hear that the Planning Department is continuing to fulfill its Action Plan by initiating a discretionary review ("DR") reform process. While DR plays an integral role in San Francisco's planning structure, it is clear that there is room for improvement of the DR process. We are writing you now to express our strong support for effective DR reform as well as our suggestions on how the process should be improved. Our firm has developed extensive collective knowledge of DR through years of serving clients in their entitlement and permitting needs, and at countless DR hearings, and we hope our input will be helpful.

We believe that the current process wastes the time and budgets of the Planning Commission, the Planning Department and property owners and neighbors by inefficiently evaluating every DR application that is submitted. The Planning Commission will have more time to focus on larger projects and policy issues if those DR applications that do not warrant its time and consideration are dispensed with through other means. We are optimistic about the establishment of a new Residential Design Committee ("RDC") and Hearing Officer, as has been recently proposed by the Planning Department, but believe the following should be considered for these reforms to be effective:

**1. Design professionals should be permitted to meet with the RDC during their review of a project.** Having the project architect or engineer present with the RDC would allow them to explain their design choices, provide background information relating to the plans or answering any questions committee members may have. Currently, the review of plans by planning staff for their compatibility with residential design guidelines can be unnecessarily extended for months, as emails, faxes and phone calls are exchanged during the process. A design professional could answer all questions and concerns at one meeting, saving immeasurable time. Limiting attendance to a design professional will ensure a project sponsor's personal feelings will not impede the review.

Mr. John Rahaim, Director  
San Francisco Planning Department  
November 26, 2008  
Page 2

2. **There should be two to three rotating Hearing Officers, with random assignments to each DR application as it is filed.** We strongly support the creation of a Hearing Officer position that would review DR applications and handle those that do not require Planning Commission review. We recommend that at least two or three Hearing Officer positions are created to avoid a backlog of cases, and that the Hearing Officers are assigned to applications on a rotating basis. This is a system routinely used by courts in assigning cases to judges. In this case, you would have Hearing Officer A and B. As cases come in, they are assigned alternately and by chronological order to each of these officers (Case No. 1 would be assigned to Hearing Officer A; Case No. 2 Hearing Officer B; Case No. 3 back to Hearing Officer A; and so on).

3. **The Hearing Officer should not consider Code compliance issues.** Whether a project is in compliance with the Planning Code is a technical matter best left to the expertise of Planning staff and Zoning Administrator. Allowing the Hearing Officer to consider such issues would unnecessarily slow the process. It is clear under the DR process that once a project has been checked for Code compliance and a Section 311 Notice goes out, both the project sponsor and the staff are satisfied that the project meets the minimum standards of the Planning Code. Occasionally, whether this is in fact the case becomes an issue during the Planning Commission's DR hearing. This typically does not result in significant delay, because at the DR hearing, both staff and the Zoning Administrator are typically present. Therefore, any Code questions that come up are quickly answered by the staff. However, we assume that the Hearing Officer would be operating alone, without the assistance of staff during the actual hearing. It must be absolutely clear to all parties, including the Hearing Officer, that these hearings should not be delayed or continued because of Code questions asked during the hearing. It must be assumed that the staff has properly checked the plans and the project is Code-complying.

4. **It should be clear when the Hearing Officer has the discretion to refer a DR application to the Planning Commission.** The purpose of DR reform is to limit the applications that the Planning Commission hears to those that involve a policy determination. If the Hearing Officer's authority to send a DR application to the Planning Commission is not clearly enumerated, the entire reform effort could potentially be subverted by a Hearing Officer who refers ineligible DR applications to the Planning Commission. The Hearing Officer should only be able to refer an application to the Planning Commission under clear and narrow circumstances. Under no circumstances should a referral be made to the Planning Commission because of "neighborhood opposition" or "public interest in the project". Referral to the Commission should be strictly limited to policy cases of first impression where an unusual fact pattern gives rise to questions that the Planning Commission should be addressing.

Mr. John Rahaim, Director  
San Francisco Planning Department  
November 26, 2008  
Page 3

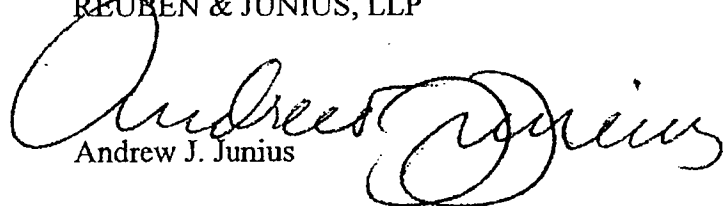
**5. The briefing schedule for submissions to the Hearing Officer should be adopted.** A clear briefing schedule should be established for applications that are referred to the Hearing Officer from the RDC, based on the hearing date. We think that the Board of Appeals briefing schedule is a good example to follow, although it may not be necessary to allow a reply brief to be submitted.

**6. Please clarify the Planning Department's internal review procedure for projects that are ultimately referred to the Hearing Officer.** In the Proposed Internal Review Procedures slide of your DR reform presentation, the prongs that follow the RDC and Planning Director project denial recommendation are confusing. We are unsure if it is the intent of the staff to signal that even unsupported projects will have Section 311 Notices issued (which is required per the Planning Code), and that irrespective of and parallel to that Notice, a hearing will be set before the Hearing Officer? The arrows in this slide are confusing and what appears to be intended is that there will be an automatic Hearing Officer review following the 311 Notice, whether a DR is filed or not, because the staff is not supporting the project and in fact recommending denial. We would also assume that, like the existing system at the Planning Commission, the Planning Commission (and in this new case, the Hearing Officer), could disagree with the staff and approve the project notwithstanding the staff's recommendation of denial.

We believe that implementing these recommendations will make the DR reform successful in reducing unnecessary time and money spent by all parties and thereby make DR more effective in ensuring projects are substantially in compliance with design guidelines and in allowing the Planning Commission to make timely, informed decisions on questions of Planning policy. Thank you for the opportunity to provide these comments and please let me know if you have any questions or would like to discuss DR reform more. We look forward to working with you in the future to make DR reform a success.

Very truly yours,

REUBEN & JUNIUS, LLP



Andrew J. Junius

cc: Larry Badiner – Zoning Administrator  
Lisa Chau  
Elaine Forbes

**Cow Hollow Association Recommendations  
Discretionary Review Workshop  
11/19/08**

**Introductory Comments:**

- CHA would consider supporting the newly proposed administrative procedures, provided that the Pre-Application process is strengthened as outlined below, and, a form checklist (to be provided) is used by both Planning and the project sponsor in the Pre-App process, which will provide notice to immediate neighbors and related Neighborhood Associations. We would also recommend that the Hearing Officer is selected from a current or past Commission member.
- Cow Hollow Association is supportive of Planning's desire to improve and streamline the DR process. However, we would be concerned if the role of the Residential Design Committee and proposed Hearing Officer served to deprive citizens of their right to learn about and comment on projects that slip through and are approved without adequate notice.
- Finally, there should be a method to appeal the decision of the Hearing Officer to the Planning Commission.

**Pre-Application Meeting between the Project Sponsor and Affected Parties.**

1. Standard invitation/envelope mailed 10 days prior to Pre-App Meeting - provide proof of mailing
2. Mechanism for neighbors to directly submit their comments and/or concerns to the Planning Department
  - a. Form/checklist included in the Pre-App notification
  - b. Key neighbors (adjacent/across/behind-min 150 feet) receive in addition a stamped envelope addressed to the Department
3. Planning Staff member present
4. Meeting at subject property

**Neighborhood Association Review**

1. Each neighborhood would use either a Department prepared form/checklist that follows the RDG, or if neighborhood design guidelines have been developed, a form/checklist that follows the specific elements of design – i.e. CHNDG
2. Neighborhood Association to complete the checklist, mails it into the Department, Department attaches it to the project submittal, and Planning responds to the specific points

**Plan Modifications**

If requested by a neighbor or Neighborhood Association, when plans are modified, interested parties are notified that revised plans are available at 1650 Mission, 4<sup>th</sup> Floor and at subject property. Interested parties are given 10 days to review plans at Planning and respond using an available form

311 Notice

Prepared in a standard format, showing measurements, square footage, and plans, and including a photo

Before Filing a DR

DR Applicant must demonstrate one of the following has been accomplished:

1. Attend Pre-App Meeting and or submitted checklist form
2. Set-up an appointment with the project sponsor
3. Set-up an appointment with the project's architect
4. Discuss project with the neighborhood association

DR Applicant Meeting with Planner

1. Planner familiar with the Planning Code, RDG, and neighborhood design guidelines and understands how to assess the DR Applicant's concerns
2. Planner has a strong familiarity with the project and understands how to assess the DR Applicant's concerns
3. Planner can discuss the DR Applicant's concerns with the project sponsor and architect

DR Application

1. Review by Planning Staff of the completeness of the application and its content
2. DR Applicant to demonstrate extraordinary and exceptional circumstances
  - a. Checklist of extraordinary and exceptional circumstances with explanation including:
    - historic resource
    - violates RDG
    - violates neighborhood design guidelines

Project Sponsor

Demonstrate Project Sponsor has accomplished one of the following:

1. Reach out to DR Applicant to discuss concerns and attempt to reach a compromise, thus drop the DR
2. Initiate Community Boards
3. Meet with neighborhood association to develop list of action items and demonstrate their accomplishment

ATTACHMENT iv WRITTEN COMMENTS

**"Frederick Gibson,  
Architect"**  
<frederick@gibson-  
design.com>

11/14/2008 09:59 AM

To delvin.washington@sfgov.org, "Kate Conner"  
<kate.conner@sfgov.org>, elaine.forbes@sfgov.org,  
elizabeth.watty@sfgov.org

cc

Subject Discretionary Review Reform - Well Done

I attended the Nov. 12th presentation on DR reform, and just wanted to commend the Department on a plan that looks like it will improve the current system. I am currently facing my third DR in the City for a spurious claim as were the other two, and both sides had to hire lawyers and we've now spent over a year trying to get through (1527 Beach Street). The incredible costs to the home owners and to my firm are almost unbearable, and the only result in this DR will be the delay and financial damage to the homeowner and my firm.

I think the only ones who will oppose the DR reform will be those who want to wield the power of spurious DR claims to extract value or simply cause damage to home owners.

Please enact the reform as soon as possible to prevent home-owners from giving up on the City and small firm architects such as myself from going out of business in these very difficult times.

Regards,

Frederick C. Gibson, Architect

Frederick@gibson-design.com  
Architecture Designed With Integrity  
Frederick Clifford Gibson Architect & Associates

360 Upper Terrace  
San Francisco, CA 94117  
415.227.1684 |tel| 888 671-4958 |fax|

(c)2008 <http://www.gibson-design.com>



"John Schlesinger" <john@jschlesinger.com> 10/29/2008 04:56 PM

To "John Rahaim" <john.rahaim@sfgov.org>, "Alicia John-Baptiste"  
<alicia.johnbaptiste@sfgov.org>, "Larry Badiner" <Larry.Badiner@sfgov.org>,  
elaine.forbes@sfgov.org

cc

Subject Planning Department Action Plan

All:

Excellent presentation yesterday. You really captured most of the important points for the action plan in general and the issues surrounding DR in particular. As mentioned in an earlier email to John, when the time is appropriate, you should make sure there is senior staff participation from DBI, so issues surrounding permit tracking, recommendations from the BPR report, and other issues having to do with the MOU you have with DBI are addressed. When senior planning staff participated in the BPR workshops, greater clarity was brought to a lot of the conflicting issues between the two departments.

Attached is a mark up of your proposed discretionary review visio style chart, for your consideration.

A few observations:

1. I have added the clarification (or meeting, if there is a demand to include this) box, which would allow the RDC to consult with the DR requestor and/or project sponsor. This would prevent any misunderstanding of either the project sponsor's documents and information or the DR requestor's complaint. As you know, so often material gets to the commission that then has to be deciphered, since it has not been properly vetted. If you are relying on staff to deal with these materials in a more administrative manner, this intermediate step is necessary. Also, it gives greater transparency to the process for both the project sponsor and the DR requestor with their consultants (we know there are several people who do this either for project sponsors or DR requestors and will demand to be heard).

I feel strongly that however this intermediate step develops, this should not be advertised as a mediation session or settlement conference. Having led the architectural mediation services for DR requestors and project sponsors under the auspices of the AIA during those overly dysfunctional days of the late 1980's and early 1990's, before the enforcement of the residential design guidelines, I recognize that there are separate skill sets required to conduct these sessions properly. When not done properly, it only hardens the positions on each side and further burdens the time spent by the project planner and the Department. When done properly, it is used as an information gathering session, with observations made by the Planning Staff, so each side knows what the issues really are. Very often this can be done via email, rather than having to have a meeting. Let's keep the burden on parties meeting with each other on the shoulders of the project sponsor and DR requestor, rather than dragging the Planning Department into this mix unnecessarily.

2. There were some conversations regarding the left hand side of the chart, where the Department is recommending that some cases do not meet the standard of extraordinary or

exceptional circumstances and should be approved. Others felt that there would be significant political push back on a process that does not automatically replace the planning commission hearing process with a public hearing before a hearing officer for any case that has issues within the purview of the Department. The complaint will be their only avenue to a hearing process would be the Board of Appeals. I feel that only allowing the RDC to approve projects without a hearing officer for those that are beyond the purview of the Department is too timid. The RDC should be given the authority to approve projects that are not exceptional or extraordinary. The Board of Appeals is the proper venue for appealing the Department's (or in this case the RDC's) administrative decision. You will notice that I have added the box for the Board of Appeals, so it is clear that this may be part of the DR process.

3. There needs to be a "loop back" for those projects that have been revised by the project sponsor and becomes an approvable project. This prevents the chart from showing that the only path for projects that have been changed must be sent to the hearing officer. Failing to do this would put an undue burden on the hearing officer for projects that he/she should not have to see, once it meets the threshold set by the Department and the RDC. This is why I am showing an arrow from the box that shows the planner working with the project sponsor back to the clarification box.

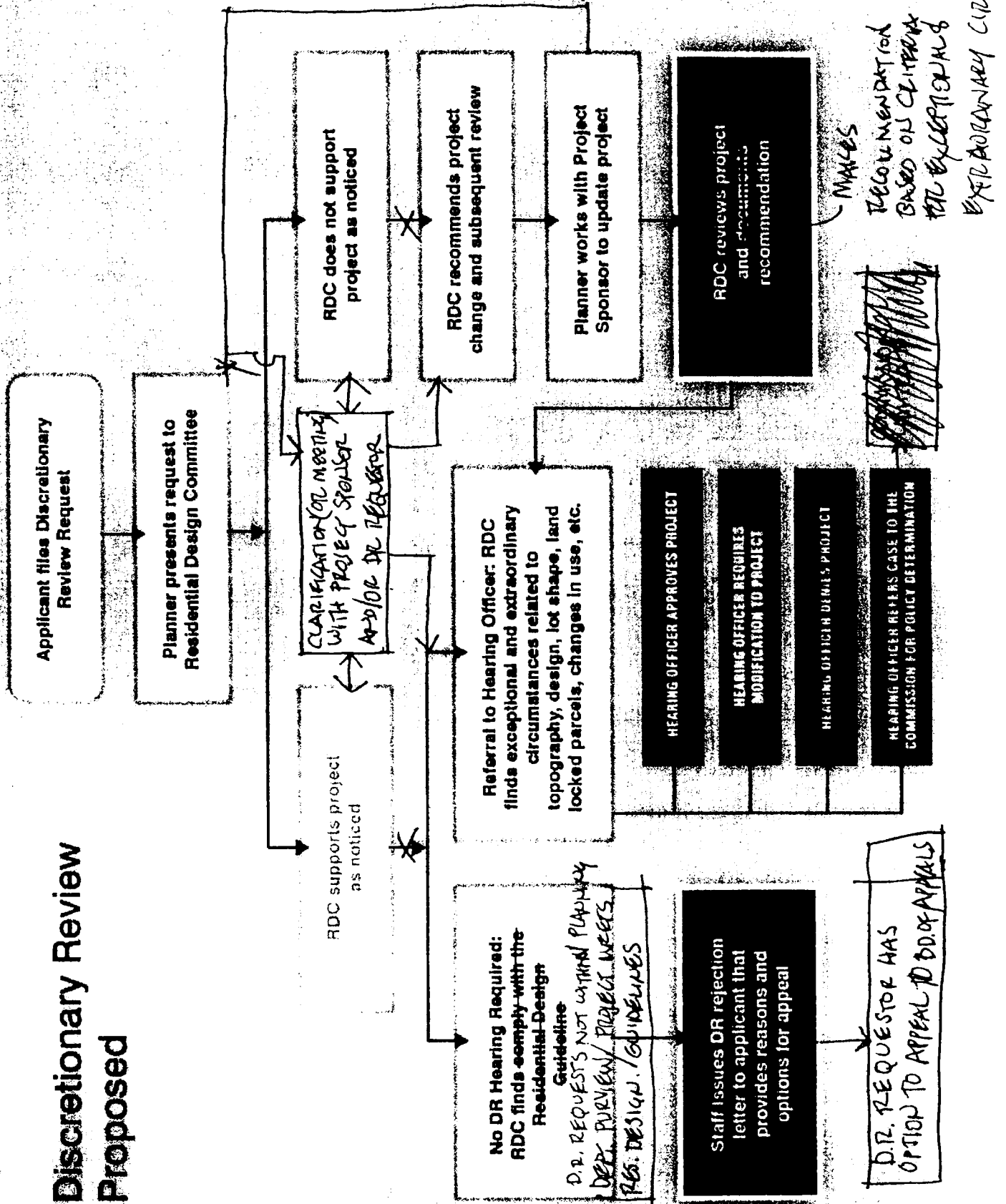
4. There is a potential for the project sponsor to have to revise the project 3 times; First for the RDC, second for the Hearing Officer and third for the Planning Commission. This could result in a process that requires more revisions based on instructions by different parties (who may give mixed signals) than what we currently have, where a planner requests revisions and the project is forwarded to the Planning Commission for final determination. There was a recommendation that the commission be limited to the choices already explored by the project planner or the hearing officer. On paper it may be a good idea, but I can't see the commissioners relinquishing their right to modify a project beyond what has already been recommended, particularly those with architectural training. To avoid this three step design process, where there is even less certainty for the project sponsor, there has to be a working relationship established between the Hearing Officer and the RDC, to ensure that certain criteria are met. Much like what happens when Planning Commissioners weigh in on projects prior to a commission hearing, the Hearing Officer should be able to consult with the RDC and make sure certain principles have been met, without jeopardizing any Brown Act or Sunshine Law issues. Hopefully this would result in less cases requiring significant revisions by the Hearing Officer and focusing the substantive changes occurring at the RDC phase. I have also added language to the box where the RDC "makes" recommendations, rather than documents recommendations, based on criteria for exceptional and extraordinary circumstances. This is stronger than the way current staff reports are delivered to the commission, with more specific benchmarks.

Regards,

John

John Schlesinger, AIA, Architect  
351 Valley Street  
San Francisco, CA. 94131-2322  
415-826-3553  
[john@jschlesinger.com](mailto:john@jschlesinger.com)

# Discretionary Review Proposed



**From:** OCCEXP

**Sent:** 11/29/2008 06:41 PM EST

**To:** c\_olague@yahoo.com; rm@well.com; Wordweaver21@aol.com; plangsf@gmail.com; Bill Lee; hs.comnish@yahoo.com

**Cc:** John Rahaim

**Subject:** Discretionary Review reform

Dear Planning Commission:

I strongly support the Planning Commission and Planning Department's efforts to reform the Discretionary Review process. Under the current DR process, there are too many opportunities for abuses such as frivolous DR hearings that squander time and resources of not only homeowners wanting to improve their homes but also the Planning Commission and Planning Department.

The proposed improvements are well-designed, comprehensive, and will be a benefit to all. The proposed improvements to the Planning Department's internal review will provide a more predictable and consistent process for permitting and will minimize the current arbitrary and political nature of the current DR process.

I have seen the DR process abused many times, such as neighbors who oppose projects in their neighborhood and then proceed and do exactly what they oppose on their buildings and then again oppose other neighbors who wish to do the same. I have also seen where a non-resident neighbor has opposed a third story addition even though she had an ILLEGAL third story on her building!

Enough of the abuse and frivolous DR's.

I urge you to please endorse the Planning Departments recommendation. There is though one change in the proposed reform and that is that staff initiated DR's also be heard by a hearing officer.

Thank you.

Sincerely,

Henry Karnilowicz

Occidental Express

Consulting • Design • Construction • Management

1019 Howard Street

San Francisco, CA 94103-2806

415.420.8113 cell

415.621.7583 fax

ATTACHMENT IV. WRITTEN COMMENTS

**Louis H. Felthouse**

<lfelthouse@lhfarch.com>

11/17/2008 01:32 PM

To "John Rahaim" <John.Rahaim@sfgov.org>

cc "Larry Badiner" <Larry.Badiner@sfgov.org>, <elaine.forbes@sfgov.org>

Subject DR process

Director Rahaim:

I was very pleased to attend the Planning Department's Southwest Quadrant presentation of the proposed Discretionary Review process modifications last Wednesday. It was clear that staff has worked very hard to develop the proposed modifications and I am delighted that they include both features to reduce frivolous DR Requests that do not substantiate the extraordinary circumstances require to justify a DR, establish a more consistent method of interpreting and applying the Residential Design Guidelines to proposed projects and reducing the valuable time of the Planning Commission currently wasted on frivolous DR requests so they can focus more on policy issues. Thank you and your staff for the tremendous effort developing the proposed modifications and for devising modifications that will vastly improve the process in a fair and just fashion.

I hope that you will be able to find a candidate for the position of DR Hearing Officer with the poise, experience and knowledge level of Larry Badiner. I am not nominating Mr. Badiner as he has too much on his plate as Zoning Administrator to be burdened with yet another Herculean task but perhaps someone like Bob Passmore, the former Zoning Administrator.

I have one additional comment regarding the DR process that was not included in the proposed modifications. The fee for requesting Discretionary Review is too low and facilitates frivolous DR requestors ability to delay a project and cause economic hardship to project sponsors by protracting the process, adding costs to the sponsor for the professional services from architects and land use attorneys to provide the services necessary to support a project thru the DR process. The cost to the Planning Department to administer the DR process is in excess of \$3,200.00. DR requestors with the means to pay the full cost should be charged the full cost just as a project sponsor who's project requires a mandatory DR like for a dwelling unit merger. Community groups and DR requestors whose income and property holdings under an amount where the full fee would be a hardship as determined by the Planning Department should be allowed a reduced fee to make the process available to everyone in San Francisco. I have seen too many projects unfairly disrupted or completely derailed by the nimbys, (not in my back yard), of the world who pursue personal agendas inconsistent with the Planning Code and Zoning regulations and know the current system well enough to use Block Book Notations to be noticed on all projects, DR to slow project approval or extort cash from project sponsors to withdraw DR request, Board of Permit Appeals to add further delays and cost to project sponsors and finally the Board of Supervisors to challenge exemptions from environmental review and continue delays and costs to project sponsors. I truly believe that if the fee was raised to the full cost it would deter some of this type of outrageous abuse of the system.

I applaud your efforts to reform the DR process and hope that you will consider the fee issue.

Sincerely:

Louis Felthouse  
**Louis H. Felthouse Architects Inc.**  
1663 Mission Street, Suite 520  
San Francisco, CA 94103-2484  
Phone: (415) 922-5668  
Fax: (415) 864-6755

Email: lfelthouse@lhfarch.com

**Peter Cohen**  
<pcohen\_sf@yahoo.com>  
11/24/2008 12:13 PM

To Elaine Forbes <Elaine.Forbes@sfgov.org>  
cc  
Subject Re: DR Reform

Elaine

Here are crib notes following up on our meeting last week. I hope you found our conversation useful. Feel free to pull me in again as needed.

And perhaps you can schedule a meet with John Rahaim for us to discuss the first item on the list since that's something we are already interested in.

Regards,

Peter



Objectives = high quality development through an effective development review process

Package of reforms in addition to potential DR modifications:

- 1) tightened rear yard controls in the Planning Code and in the Residential Design Guidelines--either citywide or at neighborhood-level specifics
- 2) a "gold standard" process established and strongly enforced for required neighborhood outreach/pre-app meetings by project sponsors
- 3) improved project notification standards consistent for all types of projects
- 4) internal administrative policies for routine proactive contact with neighbors by Planning Department case planners



nancenumber1@aol.com  
12/03/2008 07:34 AM

To elaine.forbes@sfgov.org

cc

bcc

Subject DR letter for 12-11-08 Planning Comm. Mtg.

History: This email has been copied to and forwarded to the following recipients:

NANCY WUERFEL, 2516 23RD AVENUE, SAN FRANCISCO, CA 94116

December 2, 2008

## SAN FRANCISCO PLANNING COMMISSION

RE: Discretionary Review Reform

Dear Commissioners:

The proposed broad sweeping changes for the Discretionary Review process are premature at this time, and some are ill advised.

1. The use of the Residential Design Committee (RDC) in effecting positive changes in the design stages of a project has yet to be evaluated. Resolving potential problems before the 311/312 even goes out could avert the need for a DR. Strengthening the preapplication process between project sponsor and neighbors also starts a needed dialogue. Please give the RDC a chance to work before making radical changes. To this end, I support transparency of the actions of the RDC by making their recommendations available online and part of the project file.
2. Installing a single person Hearing Officer to rule on DR applications, where the 7 person Commission used to rule, is not an improvement in the public process. It is likely to be a disservice to all concerned. It will be impossible to convince everyone that the person is immune from bribes in one form or another, uncorruptible, totally knowledgeable and objective. This position "creates the potential for inappropriate financial exchanges" that was a concern of the present system between sponsor and neighbor.
3. If the planner is not involved in mediating between conflicting parties, who will do this? How will compromise between sponsor and opponents be achieved without the planner educating all concerned, and backed by the weight of the Planning Commission to arbitrate disputes? Who will foster development that is reasonable?
4. Our practices are "inconsistent with best practices in other jurisdictions." How similar are these other jurisdictions with San Francisco? Are they bounded by water on three sides with no place to grow? Are these places both a city and a county? Are their "development - antidevelopment forces" as active as this city has? San Francisco IS

unique. We need to preserve the right to debate planning issues before the Planning Commission, not be sidetracked to another bureaucratic process. This would not be a good practice for SF.

5. It is suggested that there are cost savings to be achieved with this DR reform. There is no detailed information available on the proposed savings the reform would achieve. I would like to review these data before accepting the statement that there will be a financial benefit to the Planning Department, especially since there will be new administrative costs to create the Hearing Officer's office.

Sincerely,

Nancy Wuerfel



December 2, 2008

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

**Re: Discretionary Review Reform — Support Letter**

Dear Planning Commission:

**Please support a more fair permitting process.** My family and I suffered through the DR process. For a mere \$300 DR application fee, my neighbor triggered a process that delayed our residential project over 2 years and cost us well over \$40,000 to defend a code-compliant project that the Planning Department and the Residential Design Committee deemed to meet the Residential Design Guidelines. These costs do not even include redesign costs and opportunity costs such as lost wages from not working in order to defend our permit.

**Please end frivolous DR claims.** My neighbor used the DR process to protect his view of my back yard. In the DR application, however, he stated a laundry list of irrelevant objections—without supporting facts. In other words, a nominal fee and a few buzz words trigger a process that costs tens of thousands of dollars not only to the permit applicant but also to the Planning Department—our tax dollars.

**Please fix the abused DR process.** After we prevailed at the DR hearing, our neighbor's agent sent us a letter threatening appeals of both permits for our home, even though only permit one was being disputed. The last paragraph of the attached letter states: "Not revising your plans, will leave neighbors no alternative but to appeal the issuance of all permits to the Board of Appeals" (emphasis added). In other words, the DR process itself is used to intimidate and coerce homeowners. People know the financial and emotional burdens of the current DR process.

Someone even suggested to me that if I wrote a big enough check to the opposition, the DR claim might just go away. I did not take the suggestion seriously, but I later learned that neighbors do use the DR process to obtain all sorts of perks: money, free landscaping, new skylights, a new sidewalk, etc.

**The proposed improvements are well-designed and comprehensive.** They address these problems and many others. For example, the improved internal review process will provide a more predictable and consistent permitting process, where homeowners will know up front what they can and cannot do. Better utilizing the Residential Design Committee and introducing a Hearing Officer enables the Planning Commission to better focus on big projects and policy issues instead of individual neighbor disputes.

Please approve the Planning Department's proposed improvements.

Sincerely,



Joe Acayan  
76 Laidley Street  
San Francisco, CA 94131

Cc: Elaine Forbes

**LUCIAN ROBERT BLAZEJ**

**50 LAIDLEY STREET**

**SAN FRANCISCO, CA 94131-2733**

**Voice 415.695.1111 ■ FAX 415.641.5409 ■ Cell 415.505.3707**

**E-Mail: lrblazej@pacbell.net**

February 6, 2008

Mr. & Mrs. Joseph Lee Acayan  
76 Laidley Street  
San Francisco, CA 94131

Re: 76 Laidley Street -BPA Nos. 2006 1010 4591 and 2006 1016 5080

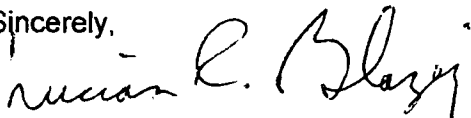
Dear Mr. & Mrs. Acayan:

As you know neighbors strongly oppose your project to build a 735-square foot two-story pool-house and office in the rear portion of your property. The reason we oppose this intrusion into the mid-block open space is because what you propose is a precedent that would be most unfortunate and disruptive to the entire block, if other neighbors decided to do the same. Clearly, the office you propose, looking toward the back of existing homes would be intrusive and result in great loss of privacy. Also, constructing a two story structure in what is now mid-block open space, will diminish the quality, quantity and esthetic appeal of what we all now enjoy, a naturally peaceful and lovely park-like setting at the rear of our homes.

We hope you will consider revising your plans along the lines that were supported when you met with the "Community Board." Building a pool in the rear yard is acceptable. However, building a second story office is unacceptable, particularly since such a structure could easily morph into a guest house or second dwelling unit. The office and downtown view you desire could well be accommodated and included as part of the remodel and expansion of your home.

We make this request that you consider revising your plans because, with such revisions, neighbors will be in support of the issuance of building permits. Not revising your plans, will leave neighbors no alternative but to appeal the issuance of all permits to the Board of Appeals. Please give this request your serious consideration. We would be pleased to meet with you to discuss this further and come to a mutually satisfactory solution. We look forward to hearing from you.

Sincerely,



Lucian Robert Blazej  
Representing Laidley Street Neighbors

Copies: Tergis, Clark

December 2, 2008

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

Re: Discretionary Review Reform — Support Letter

Dear Planning Commission:

Throughout the 2-year process of defending our 665 sq. ft. residential project, the DR applicant and his hired consultant consistently and deliberately misrepresented almost every aspect of our project. We ultimately got our permit, but the DR process was grueling and horrible. There is currently no accountability in a DR application. The DR applicant simply listed every possible objection to our project with no supporting evidence. It is no wonder that there are so many frivolous DR claims that squander time and money. I like how the proposed improvements require stronger DR applications.


It was awful to spend so much time and tens of thousands of dollars on defending our code-compliant project against someone with clear disregard for the permitting process and ethical standards. Even in the appeal hearing, they knowingly and consistently lied under oath. The DR requestor's hired consultant even sent us a letter threatening appeals of both permits for our home if we did not agree to his terms (even though only one of the permits was being disputed). Currently, any neighbor has the power to threaten the permit applicant with this burdensome process if the permit applicant does not comply with his or her terms.

The current DR process is a nightmare that no one with an approved code-compliant, residential guideline-compliant project should have to endure.

I greatly appreciate the many proposed improvements to the DR process, especially the assignment of a Hearing Officer to cases, providing clear guidelines, and clarifying the definition of "exceptional and extraordinary circumstances."

Please approve the Planning Department's well-researched solutions to the many problems of the current DR process.

Sincerely,

  
Marada De Ley  
76 Laidley Street  
San Francisco, CA 94131

Cc: Elaine Forbes

Planning Commissioners  
San Francisco Planning Department  
1650 Mission Street Suite 400  
San Francisco CA 94103

December 1, 2008

Re: Letter in Support of Discretionary Review Reform

We are writing this letter in total support for the DR Reform, which we were thankfully made aware of.

Being a Project Sponsor we know the pain and agony of having friendly neighbors turn ugly with verbal abuse to us and even to our guests who came to our home. Police and Environmental Protection Agency called for invented reasons during our construction. Or to have the audacity to tell us prior to filing the DR, "We're going to make this hurt. It's going to cost you." Well they were right. The expense of defending the already approved remodel plans is in excess of \$8,000. Now put that next to the \$300 the DR requestor had to pay, where is the equality there? The above expense doesn't include the man hours and stress we had to endure in preparation of the hearing. We the Project Sponsor have our hands tied. We have to see it through so we spend the money even though we have no recourse. Because of this we are so happy that the Planning Commission and the Planning Department on being proactive in improving the DR process.

Being a business person in the city of San Francisco for over 30 years we have invested in properties not only in this city but other Bay area locations as well. We have found working with the Building and Planning Departments in all counties to be very thorough in their own process of making sure everything complies to code for the area. That is their job. It seems the Planning Commission should be available for the bigger picture, or for those higher level policy issues that is mentioned in the Action Plan Objectives. Not to micromanage the Planning Department.

In these uncertain economic times it seems to be the perfect time to shed this extra weight and cost from the Planning Commission and us the tax payers of the this fine City. The Planning Department should be allowed to review and if they choose not accept a submitted DR that does not demonstrate exceptional and extraordinary circumstances. Operative words here are "exceptional" and "extraordinary".

We have seen the Discretionary Review Reform Public Outreach information, dated November 19, 2008, and we agree that the proposed improvements are

well designed, comprehensive, and would benefit all parties. Let's minimize the current arbitrary and political nature of the current DR process.

We appreciate you taking the time to listen and please consider approving the Planning Department's proposed improvements.

Sincerely,

A handwritten signature in black ink, appearing to read "Sandra & Fred Herrera". The signature is fluid and cursive, with the first names being more prominent.

Sandra and Fred Herrera  
763 University St  
San Francisco CA 94134

***Kimberlee Stryker Design, Landscape Architecture***  
LANDSCAPE HISTORIC GARDENS PLANNING

Dec. 2, 2008

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

Subject: Support of Discretionary Review Reform

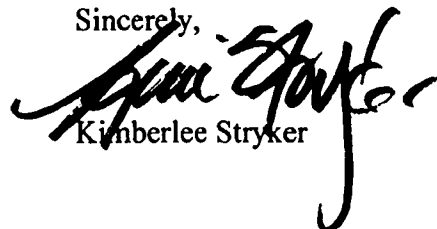
Dear Commissioners,

I strongly support the Planning Commission and Planning Department's efforts to reform the current process for Discretionary Review (DR). I have seen numerous abuses of the DR process over the years which have delayed good projects from being built in a timely way. The cost has been high for clients and for neighbors who want improvements in their neighborhoods. Under the current DR process too many opportunities for frivolous hearings waste time of the Planning Commission and Planning Department staff, as well as the time and money of the majority of responsible homeowners and their architects/designers who follow San Francisco codes. As the Design Review process currently stands, often rules are arbitrarily enforced based on how organized the opposition is rather than the merit of a project. That is unfair to the majority of the public and unduly burdensome to the Planning Staff and Planning Commission.

The proposed reforms are well-designed, comprehensive and will benefit everyone by offering a more predictable and consistent process for permits and will minimize the current arbitrary and political nature of the current DR process. These proposed reforms will also help minimize conflict and animosity in our neighborhoods and between neighbors.

Your efforts to help de-politicize the Design Review and bring more fairness to the process would be much appreciated. I ask you to please support these reforms. Thank you for your interest.

Sincerely,



Kimberlee Stryker

1736 Stockton Street  
San Francisco, California 94133  
Telephone: 415.433.3136  
E-mail: [kstrykerdesign@yahoo.com](mailto:kstrykerdesign@yahoo.com)

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

Re: Letter in Support of Discretionary Review Reform

Dear Planning Commission:

I strongly support the Planning Commission and Planning Department's efforts to reform the Discretionary Review process. Under the current DR process, there are too many opportunities for abuses such as frivolous DR hearings that squander time and resources of not only homeowners wanting to improve their homes but also the Planning Commission and Planning Department.

The proposed improvements are well-designed, comprehensive, and will be a benefit to all. The proposed improvements to the Planning Department's internal review will provide a more predictable and consistent process for permitting and will minimize the arbitrary and political nature of the current DR process.

I greatly appreciate the Planning Commission and Planning Department being proactive in improving the DR process.

Please approve the Planning Department's proposed improvements.

Sincerely,

Patricia and William Magee  
2425 Wawona Street  
San Francisco, CA 94116

⑤ In addition to the above, I recently went through a DR Process which was a waste of the commission's time. The DR sponsor hired a lawyer who used the hearing as a means to lobby against single family dwellings becoming rental properties. As this has merit, it was not the place to make this challenge given our plans had met code entirely. As a result of this, our plan approval has now been delayed by 6 months. We are born and raised San Franciscans who just wanted to expand our home for our growing family. It is a shame that well intentioned people have to suffer as a result of flimsy DR complaints.

John  
Rahaim/CTYPLN/SFGOV  
12/04/2008 09:24 AM

To Elaine Forbes/CTYPLN/SFGOV@SFGOV, Lisa  
Chau/CTYPLN/SFGOV@SFGOV  
cc Larry Badiner/CTYPLN/SFGOV@SFGOV  
bcc  
Subject Fw: Reform the DR Process

John Rahaim  
Planning Director  
San Francisco Planning Department  
1650 Mission Street  
San Francisco CA 94103

415-558-6411  
fax 415-558-6409

----- Forwarded by John Rahaim/CTYPLN/SFGOV on 12/04/2008 09:23 AM -----



Gary Bell  
<bellgary@pacbell.net>

12/03/2008 11:44 PM

Please respond to  
Gary Bell  
<bellgary@pacbell.net>

To John.Rahaim@sfgov.org  
cc  
Subject Fw: Reform the DR Process

John Rahaim  
San Francisco Planning Department  
1650 Mission Street, Suite 400  
San Francisco, CA 94103

**RE: Letter in Support of Discretionary Review Reform**

Dear Director Rahaim:

I strongly support the Planning Commission and Planning Department's efforts to reform the Discretionary Review process. Under the current DR process, there are too many opportunities for abuses such as frivolous DR hearings that squander the time and resources of homeowners wanting to improve their homes as well as the Planning Commission and Planning Department.

The proposed improvements are well-designed and comprehensive. They will benefit the public and the Commission. Additionally, the proposed improvements



to the Planning Department's internal review will provide a more predictable and consistent process for permitting and will minimize the current arbitrary and political nature of the current DR process.

I encourage the Planning Commission to reform the DR process. Please approve the Planning Department's proposed improvements.

Sincerely,

*Gary Bell*  
*862 26th Avenue*  
*San Francisco, CA 94121*

[REDACTED]  
[REDACTED]  
[REDACTED]



Elaine  
Forbes/CTYPLN/SFGOV  
12/05/2008 01:56 PM

To  
cc  
bcc

Subject Fw: Support Letter for DR Reform

Attachment iv Written Comments, received after case report was issued on 12/4/2008

Dear Planning Commissioners:

I am strongly in favor of the Planning Commission and Planning Department's efforts to reform the Discretionary Review process. I have seen too many people take advantage of this process to intimidate and slow down home remodel projects and now am facing it first hand for ourselves.

We have been going through the procedures to do a home addition and have reached out far in advance to our neighbors to work through all potential concerns with everyone close to us. Unfortunately, there are a very small but very vocal group that have formed and refuse to cooperate with us in earnest because they know they have the upper hand on us by the threat of the DR process. Our architect today was warned by one of the neighbor's fathers that they have set aside \$100,000 for attorneys to fight our project and are ready to use the system to their advantage. We have been willing to negotiate and have successfully come to an agreement with one of our neighbors who was willing to compromise sincerely. Unfortunately, the lax rules of the current DR process gives no motivation for the other neighbors to try to resolve this in sincerity since they know they will be able to tie us up in the DR process and in appeals.

The DR process was set up as a process to appeal projects only when there are exceptional and extraordinary circumstances and the Commission has been advised by the City Attorney that discretion "must be exercised with utmost constraint." Unfortunately, the current DR process has strayed from this and any neighbor can file a DR without supporting facts. They know that by the threat of starting the process that many owners will back down, give in or abandon their projects through intimidation. We need to restore some balance to the system and only allow DR projects when there are "exceptional and extraordinary circumstances".

We don't have the financial resources to fight a long and drawn out battle. These few other neighbors are being backed by deep pockets which puts us at a unfair advantage. Please help end this frivolous waste of our time and the City's money.

We have also seen another couple that we are friends with go through a long battle with their neighbors due to this process in Noe Valley. In the end, they were so beaten down and disgusted with San Francisco that they ended up moving to Seattle. Additionally, we have been watching another couple on our block go through the same ordeal ahead of us with other surrounding neighbors and they have been intimidated and basically black-mailed to give in to their surrounding neighbor's demands.

We are even more vulnerable since we have to apply for a variance to take our home back a few more feet to add a internal staircase. The DHIC Design Review Board commented at our neighbor meeting that our plan was incredibly sensitive to light, air and the preservation of open green space. But, as they brought up, none of this matters because there are a few vocal individuals who don't agree and can hold us up and shoot our project down through the DR process.

I greatly appreciate the Planning Commission and Planning Department being proactive in improving the DR process. Please do initiate these changes as they are long over due and greatly needed.

Please approve the Planning Department's proposed improvements.

Sincerely,

Steve Kopff and Pete Lenox  
3987 20th Street  
[REDACTED]



Elaine  
Forbes/CTYPLN/SFGOV  
12/05/2008 01:57 PM

To  
cc  
bcc  
Subject Fw: I am in Support of Discretionary Review Reform

Attachment iv Written Comments, received after case report was issued on 12/4/2008

Dear Planning Commission,

In February 2007 I purchased a home in Dolores Heights and planned to improve it following the strict guidelines of this special use district. With the help of our architect we worked with our neighbors, the Dolores Heights Improvement Club, the SF Historical resource planners, and the planning department to create plans for the home I wanted to raise a family in. The threat of a DR was used by a small but vocal set of neighbors during this planning process and made this a one way negotiation: them demanding and us giving in. During the 5-month process we saw the gamut from unreasonable requests to create our additional living space underground to barely disguised "offers" to extort money from us in return for being agreeable.

I will most likely never benefit from the planned DR reform as I suspect it will come too late for us, but I am witnessing first-hand how broken the process is and I would like to save future generation of homeowners the misery of DR-terror.

I strongly support the Planning Commission and Planning Department's efforts to reform the Discretionary Review process. Under the current DR process, there are too many opportunities for abuses such as frivolous DR hearings that squander time and resources of not only homeowners wanting to improve their homes but also the Planning Commission and Planning Department.

The proposed improvements are well-designed, comprehensive, and will be a benefit to all. The proposed improvements to the Planning Department's internal review will provide a more predictable and consistent process for permitting and will minimize the current arbitrary and political nature of the current DR process.

I greatly appreciate the Planning Commission and Planning Department being proactive in improving the DR process.

Please approve the Planning Department's proposed improvements.

Sincerely,  
Cedric Dupont  
3962 20th Street



Elaine  
Forbes/CTYPLN/SFGOV  
12/05/2008 01:58 PM

To  
cc  
bcc  
Subject Fw: DR Reform Support Letter

, Attachment iv Written Comments, received after case report was issued on 12/4/2008

Dear Planning Commission:

My wife and I added 300 square feet to our previously 800 square foot house two years ago. We weren't looking to build an extra unit, nor were we looking to radically transform the structure of our house. We just wanted more space for our family. While the Planning Dept granted our permits, we came to understand how difficult the process could have been. Two neighbors were initially against the project. Fortunately for us, they lacked the motivation (what little was required) to make our life miserable by appealing the department's decision via Discretionary Review. We were fortunate, but other people like us--who simply want to change the design of their house, or who want to add more space for a growing family--are not. I'm glad to hear that you folks are considering proposals to reform the Discretionary Review process.

I strongly urge you to approve the Planning Department's proposed improvements. The changes won't deny anyone the right to a reasonable and thoughtful appeal of a decision; they will, however, restore a sense of order and predictability to the process, allowing our Planning Dept to focus on more pressing concerns. Trust me, I stand to gain absolutely nothing if you approve the changes. I'm just a lowly teacher who was lucky enough to buy a place 10 years ago. I'm not making any more changes, and I'm not going anywhere. I just want to ensure people such as I have the same opportunities. Thanks in advance for your consideration.

With humility,

Joshua Gnass  
2930 22nd Street  
SF



Elaine  
Forbes/CTYPLN/SFGOV  
12/05/2008 02:00 PM

To  
cc  
bcc

Subject Fw: Letter in Support of DR Reform

Attachment iv Written Comments, received after case report was issued on 12/4/2008

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**

Attorney at Law

Finnegan, Henderson, Farabow, Garrett & Dunner, LLP

3300 Hillview Avenue, Palo Alto, CA 94304-1203

650.849.6644 | fax 650.849.6666 | [erik.puknys@finnegan.com](mailto:erik.puknys@finnegan.com) | [www.finnegan.com](http://www.finnegan.com)

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Letter in Support of DR Reform.pdf

Attachment IV Written Comments, *received after case report was issued on 12/4/2008*

Dear Commissioner Olague:

I strongly support the Planning Department's efforts to reform the Discretionary Review process. The proposed improvements are well-designed, comprehensive, and will be a benefit to all. The proposed improvements to the Planning Department's internal review will provide a more predictable and consistent process for permitting and will minimize the arbitrary and political nature of the current DR process.

Commissioner, to the extent that you can influence the timing of agenda items on December 11th, please place the review of proposed DR reforms at around 6 pm or 7 pm rather than earlier or later in the agenda. This issue affects a lot of working families with small children; if the item is too early, working people will not be able to come; if it's too late, families with small children will have to leave before the issue is heard.

Let me put a more personal angle on the issue. As a San Francisco homeowner whose planned renovation was subjected to discretionary review, I have very strong opinions and feelings about how detrimental and destructive the current process is to families, neighborhood, and taxpayers in San Francisco.

First of all, I want to clarify that I have no objection to the general concept of discretionary review. My specific objections to the current process are as follows:

P The adverse impacts (time, cost, emotional strain) of discretionary review fall disproportionately to the homeowner who is attempting to remodel, while the DR applicant experiences minimal adverse impacts from participating in the process. The current system is skewed strongly in favor of the DR applicant, and in favor of lawyers who advise these applicants on how to exploit every delay and loophole in the system.

P The discretionary review is only the first step in what can become a much longer, protracted, and extremely costly appeals process. By letting indefensible cases in through the DR window, those cases are also being allowed to exploit the entire appeals process, which can include the Board of Appeals and the Board of Supervisors. Once a DR applicant is in the process, even if the case is completely indefensible, the applicant can launch a multi-stage appeal process, adding significant incremental time and cost burden to homeowners who are trying to remodel.

P The current process creates several negative "externalities" that impact not only the homeowner, but also the DR applicants, the affected neighborhood, and all SF taxpayers.

Here's how our case unfolded. Our neighbors paid a nominal fee to launch the DR process. To do this, they did not have to prove that our remodel potentially violated any aspect of the residential design guidelines. In fact, they probably did not think they had a winning case, but they knew that they could at least delay us. Thus began the "war of attrition" between us and our neighbors that became increasingly ugly. At every step, even without a defensible case, it was a trivial exercise for our neighbors and their lawyer to trigger the next appeal, the next round of delays. For us, however, each strategy they employed cost us dearly. My opinion of the city's review and appeals process soured



over time as I calculated how little the fight was costing them, and how much it was costing us. It felt increasingly unfair and arbitrary.

By exploiting the DR process and all of the subsequent appeal steps, our neighbors were able to delay our project by 2.5 years and impose over \$120,000 in legal fees upon my family. Yes, a family. Not developers. That \$120,000 comes directly out of our son's college education and our retirement savings. In a sense, then, by making the whole ordeal so painful and costly for us, our neighbors might be able to declare "victory," even though our project was ultimately supported by the Planning Department, Planning Commission, Board of Appeals, and Board of Supervisors (yes, we were forced to go the whole way).

But here's why the process is costly not only for the families who are trying to remodel their homes in accordance with residential design guidelines and constitutional property rights. The "externalities" imposed on our neighborhood and the city at large by our case included the following:

P Our local supervisor, Bevan Dufty, and his legislative aide spent hours and hours on our case – conservatively a total of 20-30 man hours. Even worse, those of us on both sides of this process have been left feeling very disillusioned by our local political representation. I don't want my supervisor counting votes and picking sides in a neighborhood brawl – I want him representing all of us on broader, more important issues. On this, I think my neighbors and I can agree.

P The Planning Commission and the Board of Appeals were forced to hear our case (5-2 in our favor at Planning Commission, 4-1 at Board of Appeals). Both hearings were extremely lengthy because both we and the DR applicants brought out numerous speakers; we were all advised that the outcome of the hearings would have less to do with the merits of the case than with the number of speakers we were respectively able to bring out.

P The Board of Supervisors was forced to hear our case – and it took up two hours of their meeting plus several hours of preliminary meeting time with those of us who were lobbying them on both sides.

P Our neighborhood has been through a protracted, ugly process that has damaged the tone of the neighborhood for an unforeseeable amount of time. Some of our neighbors have treated us so badly that I have actually feared for my one-year-old son's safety. And some neighbors who support us have been fearful of retribution if they dare to speak out on our behalf. Everyone has been drawn into this, and it has lasted two and a half years. No one should have to spend so much time going through such an ugly episode. There has to be an easier way than this.

Here's a final thought for you as a Commissioner – and for opponents of reform – to consider. My husband and I would have preferred an immediate "no" from the Planning Department rather than an eventual "yes," 2.5 years and \$100,000 later. A quick "no" decision would have led us to abandon our remodel and buy another house. The problematic math for us was that, as each lengthy round of the process unfolded and as we incurred the high associated legal, architectural, and consulting fees, at each step it

was more logical from a cost and risk perspective to continue the fight than to give up. Pretty early on, we realized that the only possible way to mitigate the costs of the process was by winning the right to remodel. Even though we'd never get back the \$120,000, at least we wouldn't lose even more by also abandoning the remodel and having to go buy a more expensive house. Economically, we were badly wounded by the fight, but are still better off today because we stuck it out and won instead of walking away.

And that concludes my personal perspective on the proposed reforms. I greatly appreciate the Planning Commission and Planning Department being proactive in improving the DR process. Please approve the Planning Department's proposed improvements.

Sincerely,  
Kristin Hansen

Attachment iv Written Comments, received after case report was issued on 12/4/2008

**Alan Burradell**

**<alanburradell@hotmail.com>**

12/06/2008 07:13 AM

To <c\_olague@yahoo.com>, <rm@well.com>,  
<wordweaver21@aol.com>, <plangsf@gmail.com>,  
<bill.lee@flysfo.com>,  
<mooreurban@speakeasy.net>,  
<hs.commish@yahoo.com>

cc <john.rahaim@sfgov.org>

Subject Ripley project

Hello Commissioners. I am a citizen who watched the Ripley case live last night on SFGTV.

As I listened to this case, it was clear to me why it's so important to revise the DR process.

My comment may at first seem like a criticism of the Planning Commissioners, but actually it's complimentary of all of you and critical of the DR process.

My view and my point is simply this: each of you commissioners is valuable to us the citizens because of the policy making role you perform. You each bring your policy perspectives to the cases you hear. For example, President Olague last night commented on the Ripley project from a policy perspective.

But what she did not do, is comment on what makes elements of the project "exceptional and extraordinary".

Now, again, I'm not providing criticism here for President Ologue or the rest of you Commissioners - quite the contrary. I applaud you for the passion you have for your policy positions.

I think it's unfortunate, however, that these cases are brought to you because the vast majority of these DR cases are simply not related to policy matters, of which I believe should be your focus as a Planning Commission.

Next Thursday please take action to improve the DR process and vote yes on the Planning Departments proposal.

Alan Burradell

Attachment iv Written Comments, received after case report was issued on 12/4/2008

Alexander Schroeder  
4534 19<sup>th</sup> Street  
San Francisco, Ca. 94114

Dear Planning Commission:

As a San Francisco homeowner whose house needs extensive and expensive upgrades, I strongly support the Planning Commission and Planning Department's efforts to reform the Discretionary Review process.

Under the current DR process a Project Sponsor whose project has already been determined to comply with the Planning Code and Residential Design Guidelines can be held up unfairly for an excessive amount of time and at great expense.

It is very unfortunate that homeowners, who brave the complexities and expenses of remodeling their home to update *their property* and make it more livable, can be held hostage by very subjective and self-serving notions of neighbors.

It is especially troubling that projects which have been determined to meet the Planning Code and the Residential Design Guidelines and that have already given up otherwise allowable square footage of buildable and much needed interior space to appease neighbor concerns, sometimes in several iterative compromises, then still find themselves faced with the same neighbor opposing the project by filing for a DR and then the appeal(s!).

If and when the project does go before the Planning Commission, I have seen the Commission wrongly appease the DR Requestor by "hacking away" additional square footage, so that ultimately the new addition becomes worthless as the equally important interior space it was supposed to provide.

In many cases I have seen, the DR Requestor's demands are clearly unjust to the Project Sponsor, and these cases should never have been allowed to progress to the level of Discretionary Review.

The process, as it currently stands has the potential to be highly abusive to the Project Sponsors. To me it appears to have serious legal questions and in effect amounts to a form of extortion. It appears as an unjust exercise of something equivalent to Eminent Domain but without any compensation for the sacrifices in time, money, professional services required, and most of all the actual amount and usability of the intended additional space a homeowner is entitled to create on *their own property* by Code and by Planning Guidelines.

I can only hope the proposed improvements are well-designed, comprehensive, and will be a benefit to all. The proposed improvements to the Planning Department's internal review must provide a more predictable and consistent process for permitting and must minimize the current arbitrary and divisive nature of the current DR process.

I greatly appreciate the Planning Commission and Planning Department being proactive in improving the DR process.

Please approve the Planning Department's proposed improvements.

Sincerely, Alexander Schroeder

November 12, 2008

Dear Distinguished Panel Members,

I am a homeowner living at 1581 Masonic Ave in San Francisco. I have lived in the neighborhood for 28 years. We lived directly across the street from our current residence for 23 years, where my husband and I raised our two daughters. San Francisco has long been our home, as you can well see. I feel truthfully disheartened and possibly ready to move from an area that has a long been considered home for me. We have experienced incredible strife and hardship that has resulted from our desire to improve and create a new vision of home at our current residence.

The reason for our hardship has to do with our next door neighbor and their connection to a past contractor that we are presently in litigation against. The last significant hardship that we have had to deal with is the city's allowance of the issuance of complaint for matters that are directly allowed by the city per their code and permit process.

Let me begin by giving you a brief history. We began construction in May 2006 with a contractor who never took an exam to receive his contractor's license, and was instead grandfathered in by the state through the inheritance of his father's license. We did not discover this until we were involved in the litigation process. We terminated association with them in December 2006, as we began to have numerous concerns.

We are presently in litigation with this contractor. **Please see attached letter from our attorney.** This substantiates our present litigation with said contractor, who has provided information that has assisted our neighbor to register complaints.

Through much email correspondence and on-site contact, it was our understanding that the contractor and his on-site project manager were handling all matters related to the permit process needed to assure compliance with the city. How scary to discover, and with great consequence to us now, that the majority of permits needed were never rightfully secured. We have worked hard with the city to correct all these matters.

I would like to begin by saying that we have had nothing but positive experiences in dealing with the city officials in both your building and planning departments. Kate Connor, Dennis Carlin, Joe Duff, Kevin Brusatori, and Tim Frye. All these individuals are professional, and take the responsibility of their jobs seriously and with the utmost integrity.

You will notice that the first complaint issued by our neighbor was on 3.1.07, related to work beyond scope and they have since issued seven (7) complaints against us. Please be aware that these complaints are also for work matters allowed by the city under their permit and code process. The reason proper permitting was not done is because of our contractor and not because of us. These seven complaints have taken us to appeals court, various hearings, to Planning and DBI many times; not to mention everything needing to

be re-drawn, re-done, and re-submitted. This has caused such hardship, both emotionally and financially, to such a degree, that we have not been unable to finish our home. The financial amount related to attorneys, architects, engineers and time spent by our project manager, not to mention loss of sleep, feelings of oppression, revenge and harassment. This has all filled our lives for over two years now. The financial costs are estimated to be in excess of \$80,000. We have not been unable to finish the front of our home, to landscape, to finish lighting, painting, or interior fixtures. We have not been unable to secure a final on our project which means we could not even sell our home to be able to stop this insanity.

This one neighbor has been able to cripple us, in our building process by using your departments with his one single voice when everything that we are doing is allowable without a variance per city code. Obviously, the appeals process and discretionary review process needs to be revised.

\* I recommend that a form be created, under penalty of perjury, which has questions with limited allowable responses to not exceed 50 words. Then a site visit would be made by someone in planning to see if the criteria met the "exceptional and extraordinary circumstances that justify further consideration". It seems that during the on-site visit that your officials should be able to uphold your building codes and permit process. These codes and permits allowed were written for a reason. Leaving out personal biases, individuals of this city should be able to remodel, construct and otherwise create a more livable environment that thus limits unnecessary expenses and undo hardship because a neighbor doesn't like what your doing or they just don't like you; and now they have a venue to use to create hardship.

Please note that at the appeals hearing untruths were presented in a power point presentation that we could not refute because we had five minutes immediately following their presentation to present our information. This particular hardship, for a completely allowable fence, cost in excess of \$20,000.00 dollars, just for legal fees. We had 60 household petitions signed by neighbors in support of us.

Please do whatever you can to change the policies of your department so others do not have to experience these same hardships.

Yours Truly,



Candace Barnes  
1581 Masonic Avenue  
San Francisco, CA 94117

## SUMMARY OF COMPLAINTS FOR 1581 MASONIC AVE 11.12.08

### **1.31.2007 COMPLAINT # 200790576:**

Complaint regarding installation of a beam in the back exterior of property without a permit.

Complaint filled by previous contractor who was fired 12.2006; this contractor installed this beam. Currently in a law suit with said contractor.

Permit to correct issued 2.02.2007

### **3.01.2007 Side walk**

Complaint related to replacement of sidewalk with pavers. This is Neighbors 1<sup>st</sup> complaint.

Permit issued.

### **4.10.2007 COMPLAINT # 200798796:**

Complaint regarding possible Plumbing work being done under another's permit.

Complaint made by previous Plumber who was fired 12.2006.

Amended 7.12.2007

### **5.29.2007 COMPLAINT #200705872:**

Complaint Work Beyond Scope

Complaint filed by neighbor. This is neighbors 2nd complaint 5.28.2007, and 3rd complaint 6.04.2007; all made to Dennis Carlin our DBI Inspector. This information came to the neighbors from the previous Project Manager for 1581 Masonic... Inside information. Again we are in a lawsuit against this person.

### **6.19.07 COMPLAINT #301397570**

Complaint issuance related to Cal/Osha matters (General) Injury and illness prevention program, etc.

This is neighbor's 4<sup>th</sup> complaint.  
Fine Paid

**1.03.2008 COMPLAINT #200837632:**

Complaint for Stop Work on Fence Permit #200712069826...going to Appeals Board. This is neighbor's 5<sup>th</sup> complaint.

Complaint made by neighbor on 12.26.2007. Dennis Carlin made a sit visit 12.12.2006, after receiving numerous complaints from the neighbor. We showed him our valid permit, number above, all was well. There was a mistake from the city regarding a BBN and thus we went to The Board of Appeals on 1.16.2008 to assess if our case warranted a full appeal. An appeal was warranted and we went back to the Board of Appeals on 4.9.2008 for our Hearing. A revised Fence plan was resubmitted and approved on 5.16.2008 (9826).

**4.18.2008 ORDER #177,763 Issued from Director of Public Works**

Complaint was for Removal of Palm Trees from front of property.

Complaint filed by neighbors, this is their 6<sup>th</sup> complaint. Trees were removed in 11.2006. We went to hearing on 8.20.2008. Decision made 8.27.2008. We are still protesting this decision.

**7.17.2008 COMPLIANT # 2008865053:**

Complaint was for Not Following Plans Regarding Windows and Doors.

Complaint filed by Neighbors who have information from the previous Project Manager.... Inside information. This is their 7<sup>th</sup> complaint.

Resolved 10.2008... lots of time and \$\$\$\$

**8.12.2008 BBN ISSUED AGAINST BALCONY PERMIT #**

Permit submitted 5.2008 delayed due to Windows and Doors complaint above. This is their 7<sup>th</sup> complaint



Attachment iv Written Comments, received after case report was issued on 12/4/2008

**dipak31@aol.com**

12/06/2008 08:14 AM

To John.Rahaim@sfgov.org

cc OCCEXP@aol.com

Subject DR Reform

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 Commission:

I strongly support the Planning Commission and Planning Department's efforts to reform the Discretionary Review process. Under the current DR process, there are too many opportunities for abuses such as frivolous DR hearings that squander time and resources of not only homeowners wanting to improve their homes but also the Planning Commission and Planning Department.

The proposed improvements are well-designed, comprehensive, and will be a benefit to all. The proposed improvements to the Planning Department's internal review will provide a more predictable and consistent process for permitting and will minimize the current arbitrary and political nature of the current DR process. I greatly appreciate the Planning Commission and Planning Department being proactive in improving the DR process.

Please approve the Planning Department's proposed improvements.

Regards,

Dipak R. Patel

A black rectangular redaction box covering the signature area.

**William Pattengill**  
**415 Bella Vista Way**  
**San Francisco CA 94127**

December 7, 2008

To: Planning Dept.

Re: Discretionary Review Reform

Dear Commissioners:

There seems to be a growing awareness among the public that the DR process as originally conceived has outlived its original purposes. Where once it was a much-needed bastion against abuses by developers against the neighborhoods, the pendulum has swung too far in the opposite direction. It is apparent that the process can be used as a weapon by NIMBY neighbors and their associations to hijack the permit process for otherwise deserving low-impact projects.

The abuse of the current DR process can wear down applicants with costly delays and expenses, and burden the Planning commission with frivolous or politicized DR requests.

The proposed improvements seem to re-balance the process with a hope of fairness for both applicants and their neighbors. Please consider the proposal for reform.

Sincerely,

William Pattengill



**Attachment IV Written Comments, received after case report was issued on 12/4/2008**

----- Forwarded by Elaine Forbes/CTYPLN/SFGOV on 12/10/2008 05:59 PM -----

"Tam,Victor"  
<TamV@sfsd.edu>

12/10/2008 05:59 PM

To <c\_olague@yahoo.com>, <rm@well.com>,  
<wordweaver21@aol.com>, <plangsf@gmail.com>,  
<bill.lee@flysfo.com>, <mooreurban@speakeasy.net>,  
<hs.commish@yahoo.com>, <elaine.forbes@sfgov.org>

cc

Subject: SUSPECT: Writing in support of the new DR process  
t

45 Alviso Street  
San Francisco, CA 94127  
10 December 2008

San Francisco Planning Department  
1650 Mission Street, Suite 400  
San Francisco, CA 94103-2414

Dear Commissioners,

I am writing as the owner of a home in the Ingleside Terraces. My wife and I went through the DR process after over a year of negotiations with our neighbors and the Ingleside Terraces Homeowners' Association. We tried unsuccessfully to avoid going to DR by trying to meet the on-going demands of one of our neighbors. The City planner can attest to the fact of how many numerous revisions we went through, widdling our project down to the point where my wife and I decided to go to DR having no other options.

My experience was that the DR process was unfair and unnecessary. It pits neighbor against neighbor. I can't help but to wonder how many successful negotiations have actually resulted from this process. Even though our project, which originally was designed to comply with the City's planning guidelines, nonetheless had to be reduced only to comply with the demands of two neighbors in the process to try to avoid DR. I believe it would have been a much more fair and uniform process had we been able to follow a process such as this new one being proposed with the Residential Design Committee and the hearing judge. I believe it would help to avoid some of the unfair and arbitrary demands that project sponsors must contend with to have their projects approved in this City.

I urge you to support the proposal for this new process.

Sincerely,

Victor Tam  
owner

Victor Tam

\*\*\*\*\*

Victor Tam

**Attachment IV Written Comments, received after case report as issued on 12/4/2008**

----- Forwarded by John Rahaim/CTYPLN/SFGOV on 12/11/2008 09:37 AM -----

**Steven Aiello**  
<pstevenaiello@sbcglobe.net>

12/11/2008 09:08 AM

To c\_olague@yahoo.com, rm@well.com,  
wordweaver21@aol.com, plangsf@gmail.com,  
bill.lee@flysf.com, mooreurban@speakeasy.net,  
hs.commish@yahoo.com  
cc john.rahaim@sfgov.org

Subject SUPPORT PlanDept DR Reform proposal

Good Morning President Olague and Commissioners,

I strongly support the Planning Department's pending proposal for DR Reform, and look forward to testifying in favor of it later today.

I participated in the last round of DR reform back in 2004, and submitted to the Commission a suggestion for policy changes (attached for reference). Most of what I wrote back then is now moot due to the Commission's adoption of pre-application, simple v. complex, and fee reduction. However, one section discussing possible threshold definitions for "exceptional & extraordinary" may hold some relevance for your upcoming review, and I have copied it below for easy reference.

Thank you for considering this important reform to the SF planning approval process, and please approve the Department's proposed DR reforms.

Very Truly Yours,  
Steven Aiello

**Steven Aiello**

  
www.stevenaiello.com

**ATTACHMENT 3**

1. **DEFINITION OF "EXCEPTIONAL & EXTRAORDINARY" CIRCUMSTANCES:** The goal is to eliminate confusion in the definition of "exceptional & extraordinary". Currently, the policy definition shifts with each project reviewed.

a. Clearly define and consistently enforce a standard definition of “exceptional & extraordinary”. A major issue driving the number of DRs filed, and their attendant costs, is the lack of a clear definition of the threshold issue, “exceptional & extraordinary”, required for access to the Commission’s discretionary power over Planning Code compliant projects. Defining this threshold will have benefits:

i. Eliminates confusion on the part of the individual considering a DR filing. The lack of a clear definition allows an excessive range of individual interpretation as to what is “exceptional & extraordinary” and encourages Voluntary DR initiators to proceed even though they have little chance of ultimate success before the Commission;

ii. Provides clear direction to Staff planners in preparing and supporting their determinations. For those DR initiators who proceed according to their individual interpretation, a clear standard will assist staff in analyzing the merits of the case, and provide clear precedents for the Commission in deciding the case, in light of past cases.

b. Possibly define “exceptional & extraordinary” as projects outside of the AIA criteria for “Simple” DR. In its letter of April 27, 2004, the San Francisco Chapter of the American Institute of Architects proposes that if a “simple v. complex” method of rating DRs is adopted, then the “simple” category be clearly defined to include ordinary items and issues, such as principally permitted uses, private views, and new construction or additions that do not exceed the height and depth limits of adjacent buildings. The “complex” category would include all other projects not subject to the “simple” criteria.

If the Commission decides to go the route of “simple v. complex” policy reform, then the criteria developed to define the respective categories can also be used to define “exceptional & extraordinary.”

By definition, if a project falls under the “simple” category, then it is not likely to be “exceptional & extraordinary”. Conversely, a “complex” project is more likely to fit within “exceptional & extraordinary”.

c. Consider an alternate definition: the *Ordinary* standard. The Residential Design Guidelines are based on an architectural concept known as *pattern language*, first developed by Christopher Alexander (et al), Emeritus Professor of Architecture at UC Berkeley, in his book “A Pattern Language”, published in 1977. The general thesis is that the physical patterns of our built environment can and do affect how we perceive and utilize the constructions therein, and that the art of design is to promote positive patterns and discourage negative ones.

Instead of wrestling with how to define “exceptional & extraordinary”, perhaps an *Ordinary* definition would be easier to achieve. An *Ordinary* definition would include those positive design patterns, both traditional and contemporary, already established in the new Residential Design Guidelines, effective January 1, 2004. Projects determined by Staff to be compliant with the RDG, would fit within the *Ordinary* definition, and thus not rise to the level of “exceptional & extraordinary”. Too often, DR disputes center on overly rigid individual interpretations of the RDG, and devolve into an aesthetic battle over which beholder’s eye sees more beauty.

Similarly, the *Ordinary* definition could be used to define recurrent patterns of contention, not directly related to the building itself, but indirectly affected by the building. These could include: private views not protected by easement, issues of residents not located on the block in question, construction noise, and light and air to rear yards. Typical DR cases falling under an *Ordinary* standard would unlikely be “exceptional & extraordinary”.

# **ZERO DESIGN COMPANY**

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324 Park Street / San Francisco / CA 94110 / 415-401-6056  
P. Steven Aiello, Owner

The San Francisco Planning Commission  
1660 Mission Street, 5<sup>th</sup> Floor  
San Francisco, CA 94103-2414

## **RE: DISCRETIONARY REVIEW POLICY & FEE RECOVERY REFORM**

May 17, 2004

Dear Commissioners:

As a concerned citizen, homeowner, and professional designer whose work is subject to the permit approval system and discretionary review, I offer the following policy suggestions, in an effort to support you in making effective and fair reforms to a broken process and system.

My primary focus in this policy proposal is the reform of the DR fee recovery system. I recognize, however, that fee recovery is inevitably tied to the policy side of DR, and the other policy reform issues currently under discussion. I have therefore also included suggestions for reforming the policy side of DR, and possible methods for implementation.

Striking the right balance between both sides of DR is vital to improving the health of the Planning Department, the morale of the Staff, the integrity of the Planning Code, and the pressures on the Commission. The right balance is also especially vital for protecting both the public interest and the private participants in the DR process.

In essence, I urge that the Commission return to its September 25, 2003 directive to the Department to fully enforce existing Planning Code Sections 352(b) and 350(c), and, as provided in those sections, charge Voluntary DR initiators the full time and material costs for staff planners to process the private DR application.

Combined with other prudent changes to the policy side of DR, derived from and based on the new Residential Design Guidelines, I believe that the overall cost of processing privately-initiated, Voluntary DR applications will be lower than current costs for the Department, and thus the DR initiator, if full cost recovery is implemented.

As the Commission knows well, the reform of discretionary review is highly contentious, very complex, and involves many legitimate competing interests to be considered, and, ultimately balanced for effective reform. Please refer to the attached pages for my detailed suggestions for improving the entire process. They cover:

- Attachment 1: Positions on the Current Reform Proposals for Policy and Fee Recovery
- Attachment 2: Suggestions for Trial Period, DR-master, Mandatory Benchmark Review
- Attachment 3: Suggestions for Definition of "Exceptional & Extraordinary" circumstances
- Attachment 4: Position on Fee Recovery Reform

My proposal has three main parts designed to reinforce one another. However, they can be independently implemented and still bring meaningful reform to the current system. I hope this information is of service to you in your difficult task ahead. Please call with any questions, comments, and clarifications you might have. Thank you for your time and attention!

Sincerely,

Steven Aiello, Owner  
Zero Design Company

# **ZERO DESIGN COMPANY**

324 Park Street / San Francisco / CA 94110 / [REDACTED]  
P. Steven Aiello, Owner

## **ATTACHMENT 1**

### **CURRENT FEE RECOVERY PROPOSAL FOR DISCRETIONARY REVIEW COSTS:**

I know that the Department needs funds to invest in long range planning and a modern computer infrastructure, and I support the proposal to allow a reasonable application surcharge on all building permits reviewed by Planning for these items. Proper funding of these items will allow the Department to fulfill its mission of planning for the City's future, and serving the public. These are true public interests.

A similar surcharge is also proposed to fund the Department costs for privately-initiated Voluntary DR applications. I strongly oppose this "DR surcharge" for the following reasons:

1. All project sponsors will be charged for a process, frequently political in nature, that they often do not control, most are not subjected to, and all wish to avoid;
2. Project sponsors will, in effect, be funding the opposition to their permit application;
3. Non-contentious projects will, in effect, be subsidizing contentious projects;
4. It is based on the faulty idea and political myth that only project sponsors create the "DR-problem";
5. The sections allowing full DR fee recovery from the DR initiator were designed to protect the Commission's sensitive discretionary powers from abuse;
6. It creates for the public the impression that DR is a normal situation of negligible cost.

### **CURRENT POLICY REFORM PROPOSAL: COMMUNITY OUTREACH & PRE-APPLICATION MEETINGS:**

I generally support the idea of a Pre-Process if it serves to reduce the number of DRs and the amount of staff time required to process them. However, I note that the following issues need attention:

1. An already difficult permit approval process becomes longer. Mandatory Community Outreach and Planning Pre-Application meetings will delay the official beginning of the permit process: filing an application with DBI;
2. The contentious atmosphere surrounding projects that end up in DR is often the result of unrealistic expectations or differences in personal philosophy by one or more participants regarding the others: the project sponsor or neighbor or planner;
3. DR cases often involve allegations of all sorts and highly personal disputes between neighbors;
4. The Community Outreach Meeting places a burden on the Project Sponsor, with additional cost, without providing a recognizable, measurable process benefit.

Regardless of the above issues, I have found that a Pre-Application Meeting with an experienced staff planner can provide me with valuable information regarding planning issues that can affect my proposal and complicate the approval process.

If the Commission decides to implement the Pre-Application and Community Outreach Meeting requirements, then it should adopt the recommendations offered by the AIA SF chapter for simplifying the current staff proposal.

### **CURRENT POLICY REFORM PROPOSAL: SIMPLE V. COMPLEX DISCRETIONARY REVIEW:**

I am supportive of standardizing the DR process, so that all applicants are treated fairly and equally according to clearly defined standards. However, I note that the following issue needs attention:

1. Difference of interpretation is a driving force behind DR filings. The same arguments over "exceptional & extraordinary" will be easy to transfer to what is "simple v. complex" without clear and fair standards.

If the Commission decides to implement the "simple v. complex" requirements, then it should adopt the recommendations offered by the AIA SF chapter for simplifying the current staff proposal.



# ZERO DESIGN COMPANY

324 Park Street / San Francisco / CA 94110 / [REDACTED]  
P. Steven Aiello, Owner

## ATTACHMENT 2

1. **TRIAL PERIOD / "DR-MASTER" / MANDATORY BENCHMARK REVIEW:** The goal is to create objective DR data, a single staff source for DR data management, and a firm period against which the DR data may be measured.
  - a. Select a firm trial-period for simultaneous implementation of all DR policy changes, from one to three years. This will allow the Commission to establish a clearly defined baseline to measure the effectiveness of any and all policy changes and monitor progress along the way. It will also create certainty for all process participants during the trial period.
  - b. Align the trial period to the fiscal budget cycle. This will produce the most accurate data and avoid the traps of averaging, interpolation, and/or extrapolation between calendar years and fiscal years. Perhaps the most appropriate period to start implementation of a new policy would be the fiscal year 2005-2006.
  - c. Appoint or hire a "DR-Master". Select a single staff-person, who as a regular part of their duties would be responsible for: collecting DR data in a standardized format and preparing benchmark reports. Now that the Housing Element is settled, the Planning Director, Zoning Administrator, or other Senior Planner could serve this function until the funds are available to fill open positions or expand the duties for an existing position.
  - d. Implement mandatory data collection in a simple, standardized checklist format. The staff planner assigned to a case shall input DR status data with the DR-Master at each stage of the project process. Items to include:
    - i. Total number of DR filings, divided into specific categories and sub-categories:
      - (1) Mandatory: demo, merger, special planning areas (Ballpark, IPZs, East. Neigh., et al.);
      - (2) Voluntary: Staff, Permit applicant, Neighbor applicant, Multiple filings against single project.
    - ii. Resolution of case tracked by category:
      - (1) Withdrawn or Settled prior to Commission hearing;
      - (2) Commission Action: Deny DR, Take DR with minor project modifications, Take DR with major project modifications, Take DR and deny project.
    - iii. Time required for each DR case:
      - (1) Track total amount of staff time required processing each DR case;
      - (2) Track total amount of calendar time for each DR case from filing to resolution.
    - iv. Coordinate with Board of Appeals, if possible:
      - (1) Track number of DR cases appealed to the Board of Appeals;
      - (2) Track Board of Appeals final resolution: same categories as Commission Action.
  - e. Perform review and analysis of policy changes at defined benchmarks. DR-Master shall prepare a report and deliver it to the Commission at each benchmark interval (6 months or 1 year suggested). Report shall contain a summary of the checklist data for the current interval period, summary of previous data periods for comparison, and summary analysis of data trends. With these regular reports, the Commission, the staff, project sponsors, and concerned neighbors will have a consistent, objective and reliable information source, based upon actual DR filings and resolutions, to form the basis for any policy adjustments the Commission and the public feel are required.

# ZERO DESIGN COMPANY

324 Park Street / San Francisco / CA 94110 / [REDACTED]  
P. Steven Aiello, Owner

## ATTACHMENT 3

2. **DEFINITION OF "EXCEPTIONAL & EXTRAORDINARY" CIRCUMSTANCES:** The goal is to eliminate confusion in the definition of "exceptional & extraordinary". Currently, the policy definition shifts with each project reviewed.
- a. Clearly define and consistently enforce a standard definition of "exceptional & extraordinary". A major issue driving the number of DRs filed, and their attendant costs, is the lack of a clear definition of the threshold issue, "exceptional & extraordinary", required for access to the Commission's discretionary power over Planning Code compliant projects. Defining this threshold will have benefits:
    - i. Eliminates confusion on the part of the individual considering a DR filing. The lack of a clear definition allows an excessive range of individual interpretation as to what is "exceptional & extraordinary" and encourages Voluntary DR initiators to proceed even though they have little chance of ultimate success before the Commission;
    - ii. Provides clear direction to Staff planners in preparing and supporting their determinations. For those DR initiators who proceed according to their individual interpretation, a clear standard will assist staff in analyzing the merits of the case, and provide clear precedents for the Commission in deciding the case, in light of past cases.
  - b. Possibly define "exceptional & extraordinary" as projects outside of the AIA criteria for "Simple" DR. In its letter of April 27, 2004, the San Francisco Chapter of the American Institute of Architects proposes that if a "simple v. complex" method of rating DRs is adopted, then the "simple" category be clearly defined to include ordinary items and issues, such as principally permitted uses, private views, and new construction or additions that do not exceed the height and depth limits of adjacent buildings. The "complex" category would include all other projects not subject to the "simple" criteria.

If the Commission decides to go the route of "simple v. complex" policy reform, then the criteria developed to define the respective categories can also be used to define "exceptional & extraordinary." By definition, if a project falls under the "simple" category, then it is not likely to be "exceptional & extraordinary". Conversely, a "complex" project is more likely to fit within "exceptional & extraordinary".
  - c. Consider an alternate definition: the *Ordinary* standard. The Residential Design Guidelines are based on an architectural concept known as *pattern language*, first developed by Christopher Alexander (et al), Emeritus Professor of Architecture at UC Berkeley, in his book "A Pattern Language", published in 1977. The general thesis is that the physical patterns of our built environment can and do affect how we perceive and utilize the constructions therein, and that the art of design is to promote positive patterns and discourage negative ones.

Instead of wrestling with how to define "exceptional & extraordinary", perhaps an *Ordinary* definition would be easier to achieve. An *Ordinary* definition would include those positive design patterns, both traditional and contemporary, already established in the new Residential Design Guidelines, effective January 1, 2004. Projects determined by Staff to be compliant with the RDG, would fit within the *Ordinary* definition, and thus not rise to the level of "exceptional & extraordinary". Too often, DR disputes center on overly rigid individual interpretations of the RDG, and devolve into an aesthetic battle over which beholder's eye sees more beauty.

Similarly, the *Ordinary* definition could be used to define recurrent patterns of contention, not directly related to the building itself, but indirectly affected by the building. These could include: private views not protected by easement, issues of residents not located on the block in question, construction noise, and light and air to rear yards. Typical DR cases falling under an *Ordinary* standard would unlikely be "exceptional & extraordinary".

## **ZERO DESIGN COMPANY**

324 Park Street / San Francisco / CA 94110 / [REDACTED]  
P. Steven Aiello, Owner

### **ATTACHMENT 4**

3. **DISCRETIONARY REVIEW FULL FEE RECOVERY:** The goal is to ensure that those who initiate DR pay the full value for the service of DR. With other policy changes that set clear standards for DR, more certainty will be created for the DR applicant as to the merit of their claims.
- a. Fully enforce existing Planning Code Sections 352(b) and 350(c) for Voluntary DR filings. The mechanism for full fee recovery from Voluntary DR initiators already exists in the Planning Code, but is not enforced. No changes to the Planning Code are required to implement full fee recovery. The benefits of enforcing the existing Code sections are:
- i. Conserves Department financial and staff resources for Planning's most important missions. If current trends continue for fiscal year 2003-2004, about 267 DR filings will cost the Department approximately \$433,000 according to Senior Planner Jonas Ionin's DR Policy Report dated April 1, 2004. This averages approximately \$1622 per DR case. These numbers represent only the staff planner's time spent on each case, and are exclusive of time resources spent by the Commission, Planning Director, Zoning Administrator, and Administrative Staff. The actual cost is probably closer to the \$2500 per case estimate given by Director Green in response to Commissioner Bill Lee's question at the December 10, 2002, Planning Commission meeting. If so, the actual DR cost for fiscal year 2003-2004 is closer to \$667,000.
- The public resources consumed by private DR filings present a significant opportunity cost for the Department's other, more important citywide missions, such as the Better Neighborhoods community planning process, Program EIRs, and the update of the General Plan. It also diverts resources from needed investment in the Department's computer infrastructure and Long Range Planning Division.
- ii. Collection mechanisms are already established. Effective June 1, 2004, the Department will begin charging project sponsors for cases subject to Mandatory DR (demos, mergers, et al) for the full time and materials required for staff analysis. The notice of this is already on the Department's website. The same collection mechanisms for Mandatory DR should be used for Voluntary DR, with necessary modifications adapted to the Voluntary process.
  - iii. Equally applies to whoever files for DR and preserves access to the Commission. Whether it is neighborhood opposition or project sponsor opposition to a staff determination, both sides will be equally treated by the fee structure. Charging the full cost of DR does not deny access to DR. Instead, it places the proper value in proportion to the exercise of the Commission's highest power: the discretion to modify citywide policy, as enshrined in the Planning Code, on a case-by-case basis to the benefit of private interests.
  - iv. Discourages frivolous and/or "spite" DR filings. Too often neighborhood opposition or project sponsor opposition to a staff determination is the result of "hard feelings" and an inability of the parties at hand to achieve a compromise and avoid protracted conflict. "Complex" DR cases will still consume plenty of staff time and Department resources. A filing fee of \$300 will be insufficient to discourage frivolity and spite for the more "complex" cases.
  - v. Properly places high value on professional planning and project review services. Commission minutes show that Commissioners regularly praise the Department staff for their hard work and dedication in the face of difficult and contentious circumstances. Staff morale is very low and gets lower with each DR filing. The Commission can raise morale by charging full fees to the DR initiator. This will send the direct message to Department staff that their time and dedication have real value, that they are appreciated, and that their professional determinations have merit. The DR initiator must pay the public freight for their private interests.

**Attachment IV Written Comments, received after case report as issued on 12/4/2008**

**John Lum**

**<john@johnlumarchitect  
ure.com>**

12/10/2008 11:11 PM

To c\_olague@yahoo.com, rm@well.com,  
wordweaver21@aol.com, plangsf@gmail.com,  
bill.lee@flysfo.com, mooreurban@speakeasy.net,  
hs.commish@yahoo.com, john.rahaim@sfgov.org  
cc ellemow@yahoo.com, tedbolivar@yahoo.com,  
mark.a.silva@comcast.net  
Subject Discretionary Review Reform

Dear President Olague and Commissioners Miguel, Antonini, Borde, Lee, Moore and Sugaya:

I am writing a quick note to express my strong support of DR reform. Over the 14 years that I have had my architectural practice, we have had to deal with at least seven Discretionary Reviews, a majority of which were filed due to personal vendettas against clients, misunderstanding of the planning code by the DR applicant, or just plain obstructionism....in essence, DRs that clearly had no merit.

Meanwhile my clients have been held hostage to the process, spending countless hours (as well as dollars) in negotiations and modifications to appease neighbors without any recourse. The current DR process is patently unfair, in that it allows for someone to file a DR without any justification and suffer no recourse. The delays add at least 3-6 months to the process of getting approvals. as well as increase costs substantially.

I believe the concept of a DR hearing officer, similar to a Variance officer, shows that the proposed DR reform can work.

Thanks for your consideration,

John Lum, Architect

**Attachment IV Written Comments, received after case report as issued on 12/4/2008**

"Linda Frey"  
<lindalfrey@gmail.com>  
12/11/2008 10:09 AM  
To c\_olague@yahoo.com  
cc elaine.forbes@sfgov.org  
Subject support for reform of Discretionary Review Process

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

Re: Letter in Support of Discretionary Review Reform

Dear Commission President Christina Olague:

We are writing to indicate our support for the Planning Commission and Planning Department's efforts to reform the Discretionary Review process. Under the current DR process, there are too many opportunities for abuses, such as frivolous DR hearings that squander time and resources of not only homeowners wanting to improve their homes but also the Planning Commission and Planning Department.

In July of 2008, our uphill neighbors requested a discretionary review of our plans to add a small, one-story addition (250 square feet) to the back of our home in Glen Park. In preparing these plans, we had carefully followed all of the Planning Department requirements, and had worked closely with an architect to ensure that what we were proposing was covered by the code and well within our rights as homeowners. We were not requesting any exceptions or variances to complete the remodeling project, and Planning Department staff indicated both to us and to our architect that the neighbors' request did not in fact constitute "exceptional or extraordinary circumstances." Nonetheless, we were informed that the request would necessarily result in a discretionary review process that would have significantly delayed our project, and would have resulted in significant expense for additional drawings and analysis by our architect. As a result, we were forced to accept an unfortunate modification to our plans that requires us to lower the ceiling in part of our new kitchen (resulting in three different ceiling heights in one room!) as well as a significant reduction in our cabinet space. All of this to cut an 18 inch by 18 inch chunk out of the ceiling of our addition, which our neighbors seem to think will increase the light they get through a small window at the back of their house (!)

Of course, it is completely fair that neighbors should be notified of projects such as this and should have the right to raise concerns. However, in our view, a case like ours

should have been decided quickly – and at almost no cost – based on the judgment of the Planning Department that this particular request did not constitute "exceptional or extraordinary circumstances."

The proposed improvements to the Discretionary Review process are well-designed, comprehensive, and will be a benefit to all. The proposed improvements to the Planning Department's internal review will provide a more predictable and consistent process for permitting and will minimize the arbitrary and political nature of the current DR process.

We greatly appreciate the Planning Commission and Planning Department being proactive in improving the DR process. Please approve the Planning Department's proposed improvements.

Sincerely,

Linda Frey and Noah Goldberg, 86 Whitney Street, San Francisco

**Attachment IV Written Comments, received after case report as issued on 12/4/2008**

San Francisco Planning Commission  
1650 Mission Street  
Suite 400  
San Francisco, CA 94103-2414

By Hand

**SUBJECT: DISCRETIONARY REVIEW REFORM**

Dear Commissioners:

The Pacific Heights Residents Association (PHRA) represents 500 member households living within the area bounded by Van Ness Avenue, Presidio Avenue, Union Street and Bush Street. PHRA's mission is to maintain the quality of life and the residential character within these boundaries.

Discretionary Review is an essential tool that helps us in this mission, and the DR process is highly valued by our members.

PHRA agrees that the DR process, as currently implemented, is not the best possible solution, and that improvements to the process are needed. Unfortunately, the proposal ([DRoutreachmaterials.pdf](#)) fails to progress the goal of good planning leading to good projects in a timely manner.

In particular, PHRA strongly opposes the proposal to replace most DR hearings by the Planning Commission with hearings by a Hearing Officer. This attempts to treat a symptom while failing to address a number of the underlying causes that lead people to file DRs.

We are convinced that the Planning Commission hearing process adds significant value. The collective insight and experience of the Commission has repeatedly proven its value.

Expecting a Hearing Officer to provide this group wisdom is unrealistic. In particular, there would be no debate/question by neutral parties with different perspectives on the problems. The range of expertise required by the Hearing Officer would be enormous, probably beyond the ken of ordinary mortals. The evidence is clear: decisions on complex matters by an individual are not as good as decisions by a small group. Furthermore, the stated expectation that the Hearing Officer will not be affected by political considerations is naïve and unrealistic.

That said, several of the proposed measures make a good start towards an improved process, and with additional improvements should reduce the overall DR load at Planning Commission meetings. In particular, we support improving the review process prior to 311/312 notice, with a Residential Design Committee (RDC) made up of senior staff reviewing proposals against Residential Design Guidelines, and recommending changes, approval or rejection. The proposed process needs to be expanded to clearly identify means of incorporating neighborhood feedback early in the process; the current pre-application process unfortunately falls short of expectations and needs.

PHRA also believes that Planning support in resolving disputes over designs will reduce the number of DRs, as well as reduce the time needed in Commission Hearings to deal with DRs. Mediation does not detract from the planner's professional expertise. Rather, the planner's professional expertise and experience make them ideally suited to help neighbors understand how best to resolve conflicts related to planning matters.

Similarly, updating the Residential Design Guidelines, with more attention to neighborhood specific criteria, will improve the planning process.

The public outreach meetings were very helpful at telling us what Planning was proposing, and soliciting an answer to the simple question "Do you like it?" Unfortunately the meetings did not permit the level of dialogue needed to identify complex concerns and identify possible solutions.

PHRA urges the Planning Commission to direct Planning staff to work with neighborhood groups to continue to refine this proposal, understanding how best to incorporate neighborhood input into the overall planning process in a way that minimizes the need for DRs. Until this is completed, the proposal is not ready for a decision on implementation.

Sincerely yours,

PHW/Copy

Paul H Wermer  
For PHRA



## Attachment V: Minutes from the Outreach Meetings

### Discretionary Review Outreach Meeting

October 29, 2008

6:00 AM – 7:30 PM

Location: 1650 Mission Street, Room 431

Chair: Elaine Forbes

Attendees: John Rahaim, Kelley Amdur, Scott Sanchez, Lisa Chau

Sue Hestor, Anthony Chau, Jan Threlkeld, Paul Wermer, Tony Pantaleoni, Ahmad Larizadeh, Harvey Hacker, Suheil Shatara, Simon Kwan, Michael Schoolnik

Name	Organization name	Comments
Sue Hestor  Elaine Forbes	Enhood Working Group	Sue Hestor expressed that the public would like to see the Planning staff input and what provokes the filing of DR. She said that if the Department does not know what the problem really is, then there is no way to fix it. Elaine explained that one of the slides on the presentation would answer Sue's questions since we believe the improved internal review will reduce DR.
Sue Hestor	Enhood Working Group	On page 22, Proposed DR procedures, of the slide of the presentation, Sue Hestor suggested defining "construction issue" of point number four that says: "Staff returns DR applications that do not rise to a substantive planning level, i.e. views and construction issues" Sue Hestor expressed that "construction issue" is too broad and should be defined.
Sue Hestor Paul Wermer  Sue Hestor	Enhood Working Group Pacific Heights Residents Association  Enhood Working Group	Sue Hestor expressed that 99% of the public do not understand the DR process and how does the Planning and DBI work. Paul Wermer agreed with Sue Hestor and said the Department should help educate the residents about the DR process. For example, a residents in his neighborhood had serious damage in his/her house due to his/her neighbor's construction. He claimed that there was no study of the project about how this construct would affect the nearby neighbors. Elaine explained this is a DBI issue and that the Planning Department could work with DBI to better educate the public about the process. Sue Hestor said that Supervisor McGoldrick had the Planning Department and DBI

Name	Organization name	Comments
		<p>worked on Section 311 before. She felt that the Department is missing two basic points for the DR reform:</p> <ol style="list-style-type: none"> <li>1. San Francisco has zero log lines</li> <li>2. Re-engineering process</li> </ol>
Tony Pantaleoni	Pantaleoni Architects	Tony Pantaleoni said that years ago, the Department had a building envelop guideline in three different tiers. As long as the project is built within the buildable envelope, then this project cannot be DRed by other parties. Tony Pantaleoni felt that it would be beneficial to the public since thousands of dollars were spent on DR for lawyers, packets for the Planning Commission, and redesign under the current DR process.
Sue Hestor	Enhood Working Group	Sue Hestor suggested having mandated story pole for certain type of projects during the pre-application process.
Suheil Shatara	Shatara Architecture	Suheil Sharara expressed that 40% of the projects should be approved without going to the Planning Commission hearing under the DR process. He also expressed that the pre-application meetings are useful, but some of the neighborhood groups were hard to be reached.
Ahmad Larizadeh	BANA Inc.	Ahmad Larizdeh expressed that the current DR process if driving up the price of housing in San Francisco
Sue Hestor	Enhood Working Group	Sue Hestor said that the Section 311 process came out in the end of the whole application and planners did not know that they were empowered to have the project sponsors modify the project.
Harvey Hacker	Harvey Hacker Architects	<p>Elaine answered Sue Hestor's questions by showing her the DR cases initiators' chart of the presentation; some of the DRs were filed by Planning Staff.</p> <p>Harvey Hacker agreed with Elaine and said that he rarely had projects that were approved without planners recommending changes during design review.</p>
Sue Hestor	Enhood Working Group	Sue Hestor suggested having planners go to site visit or drive-by more often to ensure consistency of plans
Scott Sanchez		Scott stated that the Department has been working with DBI with to ensure that the plans that submitted by the applicants were correct ones. Besides, planners are using new tools to verify the plans were correct.
Tony Pantaleoni	Pantaleoni Architects	Tony Pantaleoni expressed that project sponsors should be involved in RDC before the Section 311 notices were sent out. He thought that the project sponsor should be joining the RDC meeting to present and answer questions for their projects.
Harvey Hacker	Harvey Hacker Architects	Harvey Hacker said he couldn't agree more with Tony's suggestions. He felt the project sponsors should know more about the projects than everyone.

Name	Organization name	Comments
Suheil Shatara	Shatara Architecture	Suheil Shatara agreed with Tony and Harvey and said he had experience of planner misunderstood his project at the RDC level before.
Sue Hestor	Enhood Working Group	Sue Hestor suggested documenting all the RDC meeting and put them in the project dockets.
Suheil Shatara	Shatara Architecture	Suheil Shatara asked if this new DR process would address the historical issues and Category Exception issues?
Sue Hestor	Enhood Working Group	Elaine explained that the DR process does not deal with CatEX HRER issues, but that the Department has recently streamlined that process. Sue Hestor added that under the current process, there was no rules of when the CatEx should come into the picture. She felt that as long as the Section 311 is ready, CatEx should be ready to go out too.
Simon Kwan	Ko Architects	Simon Kwan asked who is eligible to file DR? Can the Department nail it in the 150 radius?
Sue Hestor	Enhood Working Group	Sue Hestor said that was illegal and she filed DR on projects that are not in her neighborhood at all.
Paul Wermer	Pacific Heights Residents Association	Paul Wermer asked if there is a list to define the Hearing officer's role? He felt a little uneasy to have just one person to replace the whole Planning Commission.
Scott Sanchez		Scott suggested having everyone write comments on what they expect and want in a hearing officer and email it back to the Planning staff.
Suheil Shantara	Enhood Working Group	Suheil added one person may get jaded in a long run.
Harvey Hecker	Harvey Hacker Architects	Harvey Hacker expressed that there were two components in the Planning Commission decision. One is the technical component and the other is the political component. He felt that when it gets to the political component, there is no difference between the current and proposed DR process.

## **Discretionary Review Outreach Meeting**

**November 5, 2008**

**6:00 AM – 7:30 PM**

**Location: 1650 Mission Street, Room 431**

**Chair: Elaine Forbes**

**Attendees: Craig Nikitas, Tina Tam, Lisa Chau**

**Alfred Martinez, Jean Seto, Popley Crosby, Matt Chamberlain, Sanford Garfinekel, Dan Weaver, Mary Jane Mikariya, Henry Karnilowicz, Penelope Clark, Judith Berkowitz, Arnie Lerner, Christian Ard, Hiroshi Fukuda, Kelley Waters, Simon Kwan, Norman Kondy**

<b>Name</b>	<b>Organization name</b>	<b>Comments</b>
Penelope Clark	Coalition of SF Neighborhoods	Penelope Clark requested to see not only the Major alteration permit number, but also the new construction permit number in the “number of alteration permit applications compared to DR requests” chart.
Hiroshi Fukuda  Elaine Forbes	Coalition of SF Neighborhoods	Hiroshi Fukuda asked based on the Department’s budget, what percentage of money was spent on DR. Elaine said approximately, it was about 5 percent. However, the “annual cost of Direct Staff Hours of DR” only shows the time that Department’s staff put in for DR, it does not include the Commissioners time reading the packets and holding the hearing for DRs.
Popley Crosby	Monterey Height Home Association	Popley Crosby asked why most DRs were filed in the SW quadrant Craig explained the SW quadrant is the largest residential quadrant, and that may result in most DRs were filed in this quadrant.
Hiroshi Fukuda	Coalition of SF Neighborhoods	Hiroshi Fukuda commented on the “Disposition of DR case in 2007” chart that one of the DR cases got overturned at the Board of Appeal in 2007. He also said that the BPA favored developers and projects approved at the Planning Commission unanimously got overturned at the BPA.
Judith Berkowitz  Penelope Clark	Coalition of SF Neighborhoods  Coalition of SF Neighborhoods	Judith Berkowitz would like to see the break down of single and complex DR by number and she also wanted to know the definition of them. Penelope Clark echoed Judith Berkowitz and she added that the complex DR would impact more people
Judith Berkowitz  Elaine Forbes	Coalition of SF Neighborhoods	Judith Berkowitz asked who is in the DR reform team. Elaine answered: herself and representative from different quadrants, Craig Nikitas, Jonas Ionin, Tina Tam, David Lindsay, Aaron Starr, Glenn Cabrerros, Kate Conner,

Name	Organization name	Comments
		Elizabeth Watty, Cecilia Jaroslowsky, Scott Sanchez, and Lisa Chau
Hiroshi Fukuda	Coalition of SF Neighborhoods	Hiroshi Fukuda commented on the jurisdiction slide and said San Mateo does not have 3-4 stories buildings and most cities in California do not have 3-4 stories buildings.
Elaine Forbes		Elaine explained that the jurisdiction comparison chart includes Boston and New York city which are denser than San Francisco.
Mary Jane Mikariya	Servas International	Mary Jane Mikariya commented that PIC staff do not go over the height limit with the public and she expressed that different planners treat the Residential Design Guideline differently, one planner said it was important, but the other said it was a suggestion only. Henry Karnilowicz disagreed and said planners at PIC always let people know what the maximum height is and they always follow the Residential Design Guideline. Craig added that since 2003, the Department has spent a lot of effort to make the Residential Design Guideline clearer and tried to make everything consistent.
Henry Karnilowicz	Occidental Express	
Craig Nikitas		
Penelope Clark	Coalition of SF Neighborhoods	Penelope Clark commented that the Department is pushing a lot of guidelines covering lower density residential area, but not the mixed used areas. Craig explained that the Department has been working on several design guidelines and is working on consolidating them. Penelop Clark then said lots of mixed use area impact the residential areas. Elaine said that the Department recognizes that the application of the design guidelines need clarification.
Craig Nikitas		
Penelope Clark Elaine Forbes	Coalition of SF Neighborhoods	
Matt Chamberlain	Neighbors of Ardenwood	Matt Chanberlain asked why could Section 311 notifications be sent out for denied projects in the proposed internal review procedures flowchart?
Elaine Forbes		Elaine answered this is to give the sponsor the right to appeal our decision to BPA and to make our case to the public.
Hiroshi Fukuda	Coalition of SF Neighborhoods	Hiroshi Fukuda asked what is the definition of "Policy issues" in the DR proposed flowchart?
Elaine Forbes	OMI	Elaine said that it can be a grey area in the application of the RDG, present setting change, and something that involves a priority of the commission.
Dan Weaver		Dan Weaver expressed that the Department and the Planning Commission are weak in defining policy issues.
Penelope Clark Elaine Forbes	Coalition of SF Neighborhoods	Penelope Clark asked if the DR proposed flowchart is a proposal? Elaine said yes

Name	Organization name	Comments
Mary Jane Mikariya Elaine Forbes	Servas International	Mary Jane Mikariya wanted to know what was the difference between a hearing officer and a planner? Elaine explained that the hearing officer reports to the Planning Commissioners and a planner is staff of the Planning Department who report to the Planning Director through the management structure.
Alfred Martinez Arnie Lerner Elaine Forbes	Lerner + Associates Architects	Alfred Martinez asked if the hearing officer can be a panel of three people instead of one person. Arnie Lerner said that back in the 1990's, the AIA had panels for different purposes and lots of architects volunteered to be in the panels. It may work for the hearing officer recruitment.
Penelope Clark Elaine Forbes	Coalition of SF Neighborhoods	Penelope Clark asked what is the percentage of DR being withdrawn and does planner still needs time to deal with the project after the withdrawal? Elaine said that the bottom line is that the Department does not want planners to mediate issues that do not involve planning since planners do not have training and to do so this cannot be done consistently.
Mary Jane Mikariya Arnie Lerner	Servas International Lerner + Associates Architects	Mary Jane Mikariya asked can story poles be mandatory for each project? Arnie Lerner agreed and most of the general public cannot read plans. It would be helpful to make story poles mandatory for certain projects.
Jean Seto Elaine Forbes		Jean Seto asked if the proposed DR process would streamline the process? Elaine said that the proposed DR process may not streamline the current DR process, but it will separate DRs with and without merit and improve our internal review process.
Penelope Clark  Craig Nikitas Henry Karnilowicz	Coalition of SF Neighborhoods  Occidental Express	Penelope Clark commented that the Planning Commission should have limited the time and have more control on how much time the public can speak for a project during a hearing. If the Planning Commission has more control over the crowd in the hearing, then the Department does not even have to hire a hearing officer. She prefers the Planning Commission to hear the DR cases since the Commissioners know where people come from, and she was afraid that the hearing officer would play God. Craig added that the BPA has more control of who can speak during the hearing. Henry Karnilowicz disagreed and said he preferred the proposed DR process, having an "in-between" person to do the DR hearing.
Penelope Clark Elaine Forbes	Coalition of SF Neighborhood	Penelope Clark suggested that if the Commissioners unanimously denied a project, then this project should not be appealable. Elaine said this was a good idea, but would require a change to the Charter.

Name	Organization name	Comments
Matt Chamberlain	Neighbors of Ardenwood	Matt Chamberlain expressed that he liked the proposed DR process especially the documentation part. He would even like it more if the DR hearing could be broadcasted.
Judith Berkowitz	Coalition of SF Neighborhoods	Judith Berkowitz said in the past the Planning Commission only heard CU and DR, she could not understand why the Planning Commission felt that they are spending too much time on DRs now.
Craig Nikitas		Craig said that time was a factor, but not the only factor.
Alfred Martinez Elaine Forbes Henry Karnilowicz	Occidental Express	Alfred Martinez suggested raising the DR fee to eliminate DRs. Elaine said the Department has twice tried to raise fees unsuccessfully. Henry Karnilowicz said that bad DRs should be penalized.
Penelope Clark	Coalition of SF Neighborhoods	Penelope Clark said the proposed DR process would cost the Department more money.
Elaine Forbes		Elaine said that the proposed process would cost the good projects less money.
Hiroshi Fukuda	Coalition of SF Neighborhoods	Hiroshi Fukuda commented that he liked the proposed DR process, giving some teeth to the RDC and Residential Design Guidelines should be taken seriously, not a recommendation, then less DR would be filed and hearing officer is not necessary.
Elaine Forbes		Elaine said that the Planning Commission will be dealing with the political issues, yet the hearing officer will be dealing with the technical review under the proposed DR process. Ultimately, it is up to the Planning Commission to decide if a hearing officer is necessary or not.
Judith Berkowitz	Coalition of SF Neighborhoods	Judith Berkowitz said she helped write the DR reform process four years ago and she wanted to let everyone know that the pre-application meeting plays a very important role in the DR process. During the pre-application meeting, neighbors or neighborhood groups could give a “green light” or “red light” to projects proposed.
Penelope Clark	Coalition of SF Neighborhoods	Penelope Clark said if everything was done right in the beginning of the process, then DR hearing officer is not even needed.
Elaine Forbes		Elaine said that during the DR reform meetings some planners expressed that people may file DR no matter what.
Matt Chamberlain	Neighbors of Ardenwood	Matt Chamberlain expressed that everyone in the meeting seemed to agree that the current DR process was not working at all. He felt comfortable having a DR hearing officer to deal with the technical review.



## Discretionary Review Outreach Meeting

November 12, 2008

6:00 AM – 7:30 PM

Location: 1650 Mission Street, Room 431

Chair: Elaine Forbes

Attendees: Delvin Washington, Elizabeth Watty, Kate Conner, Lisa Chau

Joe Acayan, Jim Westover, Alan Burradell, Lou Felthouse, Alison Heath, Ted Pratt, Julie Denny, Joram Altman, Rosina Tong, Jean Neblet, Victor Tam, Luke O'Brien, Steven Currier, Henry Karnilowicz, Edward Gama, V. Labiaro Abello, Albert Costa, Xiaoliang Han, David Pilpel, Michael Schulte, Cristy Johnston, Fred Gibson, Anita Theoharis, John Lum

Name	Organization name	Comments
		An architect expressed that the DR reform was a great effort and he was impressed with the DR proposal.
		Another architect commented the pre-application meeting does not work.
Elaine Forbes		An architect stated that he liked the idea of Section 311 notification would be sent out even for projects not supported by the Department. Elaine said that by sending out Section 311 notification, the sponsor can appeal the decision.
Henry Karnilowicz	Occidental Express	Henry expressed that he really liked the proposed DR process. It will give people a chance to develop their houses and live better lives. Also, he'd like to see all DRs, including the staff initiated ones, go to the hearing officer.
		An architect stated that some people use the current DR process as a threat. People would file a DR for losing 5% of their view in their bedroom. He said that most architects are rational and they would not submit a project that does not comply with the Residential Design Guidelines.
Anita Theoharis  Elizabeth Watty	Westwood Park Association	Anita expressed the new DR process will take away the most valuable asset from the public and Planning Commission. She said that the current DR process would not get in the morale of the Planning staff since they are professional. She recommended any DR filed in special use district should be heard by the Planning Commission. Also, she wanted to have a couple hearing officers, not just one. Elizabeth agreed with Anita and said policy issues, DRs in special use district or landmark districts, should go to Planning Commission.
Anita Theoharis	Westwood Park Association	Anita expressed that City agencies do not enforce CC&R (The covenants, conditions and restrictions) and she had experience that planners at PIC didn't tell the public



Name	Organization name	Comments
		that Westwood is a special use district.
John Lum  Elaine Forbes  Elizabeth Watty	John Lum Architects	John expressed that it is frustrating to deal with the current DR filers, ones who do not understand Planning codes. Planners are in an awkward position and can't tell DR filers that their DRs are not legitimate. Besides, it is frustrating for him to explain projects to irrational people. For example, people would file DR only because the building was old and they wanted to "preserve" that old building. Elaine said the Department will revise the DR application form and have applicants explain why they think the project doesn't comply with the Residential design guidelines. Liz added that the proposed DR process would improve the internal review of projects.
Elaine Forbes		Another architect said that he was encouraged by the hearing officer option in the proposed DR process. He said that the current DR process basically allows DR filers to slow down other people's projects. He said that bad DR filers should be paying part of the DR cost. Elaine said it is possible to raise the DR application fee from \$300 to \$500, or to make the DR filers pay 50% of the DR cost, but this would require Commission endorsement and BOS approval.
Elaine Forbes		A gentleman asked how to select a hearing officer. Elaine answered that he/she could be a retired senior planner or someone skilled and impartial, appointed by the Planning Commission.
		Another gentleman said that the current DR process shows that the Planning code has problems, he suggested revising the Planning codes. He said the Department should give some muscles to the Planning codes and not have the neighborhood group design what the future of a neighborhood should be.
Elaine Forbes Elizabeth Watty		An architect asked what is the definition of Exceptional and Extraordinary circumstances and would the definition be documented? Elaine said that it would be defined by the Planning Commission. Liz added that the consistency of what is NOT the exceptional and extraordinary circumstances is very important, for example, security issue would not be considered as exceptional and extraordinary circumstances.
Victor Tam	Homeowner	Victor expressed that increasing the consistency of the DR process is very important. His project was DRed a couple years ago. He felt that every time he gave into the DR filer, something else would come up; DR filer would have a new request. He also felt

Name	Organization name	Comments
		that the pre-application meeting does not work; people are having the pre-application meetings just to go through the motions. He also suggested that the Department should investigate what is the percentage of owners in the neighborhood represented by the homeowner associations.
David Pilpel Elaine Forbes		David asked if the RDC would end up being a policy body? Elaine said that the RDC is an internal advisory review group that would identify and bring policy issues to the Commission.
Delvin Washington  David Pilpel Delvin Washignton  Elizabeth Watty		A gentleman asked what are the current roles of quadrant team leaders and planners? Delvin said that every problem case would be brought to the attention and be reviewed by quadrant team leaders and the planners. David said that he would like to see that all projects go to the team leaders. Delvin said right now, all projects go to the team leaders and team leaders assign them to planners. Liz reminded everyone that the RDC would review all the projects under the new DR process.
Steven R Currier	OMMRA	A homeowner expressed that DR filers can say whatever they like during the hearing. She asked if the Planning Commissioners review all the packets so that they fully understand the background of each project? Steven said that City Hall used to have people take an oath before they speak at a hearing. Steven said that as a representative from a neighborhood group, he would always ask for an extension for a project, then filing a DR. He felt that it is very important to educate the public on DR.

## **Discretionary Review Outreach Meeting**

**November 19, 2008**

**6:00 AM – 7:30 PM**

**Location: 1650 Mission Street, Room 431**

**Chair: Elaine Forbes**

**Attendees: David Lindsay, Glenn Cabrerros Lisa Chau**

**Bill Sugaya, Henry Karnilowicz, Rose Hillson, Tad Sekino, Joe Acayan, Bob Noelke, Judith Hoyem, Jed lane, Martina Ehlers, Elaine Larkin, Myrta Matula, Geoff Wood, Marc Brennan, Sean Cleymaet, Patricia Vaughey, Nancy Wuerfel, Mike Satulte, Allen Gee, Dorice Murphy, Charles Ferguson, George Matula, Mary Anne Miller, Kevin Wallace, Malana Moberg, Roland Salvato, Helen Scully, Matt Williams, Brooke Sampson, Robert Scully, M.J. Gaines, Colleen Kavcrugh, Robert Colyer, Steven Williams, Jeremy Paul, Kristin Jansen, Hiroshi Fukuda**

<b>Name</b>	<b>Organization name</b>	<b>Comments</b>
Patricia Vaughey	Cow Hollow Neighborhood & Merchants	Patricia would like to know the percentage of DR cases being withdrawn and approved in 2007 as one of the charts in the presentation. Besides, she would like to know the number of projects being modified in 2007 which did not go to the BPA.
Patricia Vaughey  Elaine Forbes	Cow Hollow Neighborhood & Merchants  Planning Department	Patricia expressed that she does not get notice for pre-application meetings. Besides, some of the pre-application meetings were held in downtown offices, not within the neighborhood of subject properties. Elaine explained that the Department does not send out notice for pre-application meetings. However, it would be a good idea to establish a rule that the meeting is at or very near to the project site.
Patricia Vaughey  Elaine Forbes	Cow Hollow Neighborhood & Merchants  Planning Department	Patricia asked if the Department was going to revisit the DR reform process back in 2003. Also, she wanted to know if there was any input from the Neighborhood regarding the proposed DR process. Elaine answered that today's meeting is the fourth DR outreach meeting and we have been taking careful notes from all of the participants.
Mary Anne Miller  Elaine Forbes	SPEAK  Planning Department	Mary Anne asked when would the notification be sent out to the public during the proposed internal process. She commented that the proposed internal review process would work exactly the same as the current internal review process. Elaine said that under the proposed internal review process, notices would not be sent out until projects comply with the Residential Design Guidelines.

Name	Organization name	Comments
George Matula	Twin Peaks Improvement Association	George commented that the internal review process is one-sided between planners and project sponsors. He felt that neighborhood organizations should be involved in the RDC review process.
Elaine Forbes	Planning Department	Elaine explained that this is the processed internal review process and the Department planned to strengthen the internal project review process and keep it consistent.
Allen Gee	AGArchitects	Allen agreed with Elaine and said the internal review slide of the presentation showed how the Department was going to improve the interview review process.
Patricia Vaughey	Cow Hollow Neighborhood & Merchants	Patricia asked who appoint the RDC members? If the public does not agree with the RDC's decision, what would be the next step? Also, she felt that 30 days notice was too short. Besides, what is the qualification of the hearing officer?
Elaine Forbes	Planning Department	Elaine answered that the RDC members would be appointed by the Planning Director. The public can appeal the case if they did not agree with the Department's decision. The hearing officer could be a retired senior planner or architect, or someone skilled without conflicts or interest.
Patricia Vaughey	Cow Hollow Neighborhood & Merchants	Patricia suggested having two to three hearing officers instead of one. Or the commissioners could rotate as the hearing officer.
Jeremy Paul	OPC	Jeremy asked Commissioner Sugaya how would the proposed DR process affect the BPA?
Bill Sugaya	Planning Commissioner	Commissioner Sugaya said that under the current DR process, all DR cases are appealable. Under the proposed DR process, he would assume that number of DR cases taken to the BPA would be the same or less.
Jeremy Paul	OPC	Jeremy was concerned that under the proposed DR process, DR cases would be going to the BPA without action memos.
Elaine Forbes	Planning Department	Elaine explained that everything would be documented under the proposed DR process. The DR action memo would be replaced by the RDC decision letter.
Elaine Larkin	Cow Hollow Association	Elaine commented that the pre-application meetings were very important; they were the eyes and ears and she thought that planners should be at the pre-application meeting too. Also when plans were modified, planners should email all the parties for the updated plans and pass the information along. She felt that all the control should be done through the front end.
		An architect in the group felt that 30 days of the 311/312 notice was too short. He had a couple of pre-application meetings that nobody showed up. He felt that longer notice time can replace the pre-application meeting. Another architect in the group said that the current DR process showed the failure of

Name	Organization name	Comments
		the Planning code. The public needs a Planning code that can be applied instead of negotiation on block by block basis. Ultimately, the single family home owners get hurt under the current DR process.
Kristin Hansen	Homeowner	Kristin commented that the term, exceptional extraordinary circumstance should be defined to filter the baseless DR. Besides she felt that the proposed DR process did not say if the DR process would be compressed. For her going through a three year DR process was very painful.
Elaine Forbes	Planning Department	Elaine said the proposed DR process has not yet address the DR process time, but the department's goal was to eliminate the baseless DRs.
Rose Hillson	Jordan Park Association	Rose commented that the pre-application should be checkable and filed in the DR dockets. She found that the DR notice has no picture and one of the notices arrived to her nine days before the hearing; it left her minimal time to respond to the DR and go to the hearing. She was not sure if planners check the plans thoroughly before the Section 311 notifications were sent out. She found that notifications of projects with violations were sent out.
Patricia Vaughey	Cow Hollow Neighborhood & Merchants	Patricia said that more thorough plans should be sent out with the Section 311 notification: floor plans of each floor, rear yard, and the elevations. Moreover, accurate plans should be sent to the Planning Commission, not drawings. She also found that only a few cases follow the Residential Design Guidelines and there were inconsistency between planners.
Hiroshi Fukuda	Coalition of SF Neighborhoods	Hiroshi asked if the hearing officer would get a set of instruction for the DR hearing. Is so, he would like the instruction to go out for public review. He was concerned that the hearing officer would not compromise at all. He liked the idea of strengthening the interview review process though.
Allen Gee Elaine Forbes	AGArchitects Planning Department	Allen asked if other jurisdictions have DR process and hearing officers? Elaine answered that San Francisco is alone on our process. No other cities have DR process like San Francisco.
Martina Ehlers	Cow Hollow Association	Martina said that 99% of the reduced plans sent out with the Section 311 were different from the real plans in the dockets. She suggested everyone to go to look at the real plans in the dockets for any Section 311 notifications that he/she received.



# SAN FRANCISCO PLANNING DEPARTMENT

**MEMO**

**DATE:** December 4, 2008  
**TO:** Members, Planning Commission  
**FROM:** Elaine Forbes, Planning Department Staff  
**RE:** Discretionary Review Reform: Response to Public Comments

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Staff sought comments and feedback about the draft proposal to reform the Discretionary Review process from members of the public in four community outreach meetings which were held at the Department on October 29, and November 5, 12 and 19<sup>th</sup> from 6:00 to 7:30 pm. Eighty five individuals attended these meetings and provided staff with valuable comments. Additionally, staff shared the proposal with the Advisory Committee to the Action Plan on October 13 and again on November 21, with the larger Stakeholders group on November 5 and with the Coalition for San Francisco Neighborhoods on October 13<sup>th</sup>.

The issues raised fall into the following categories: 1) public right to a Planning Commission Hearing, 2) transparency in decision-making, 3) discretionary review requestor and project sponsor inclusion in the process, 4) exceptional and extraordinary circumstances, 5) Hearing Officer process, and 6) the cost and time of the proposal.

The internal working group reviewed these issues in coordination with Senior Management and responds as follows:

## **Opportunity for a Planning Commission Hearing**

The current Discretionary Review process has created a public expectation of a right to be heard by the Planning Commission. All Discretionary Review requestors receive a Commission Hearing regardless of the merits of the application. The proposal offers an administrative hearing with a Hearing Officer if the application demonstrates exceptional and extraordinary circumstances and a Commission Hearing only if the Discretionary Review request requires policy guidance to be resolved. Further, under the proposal, the evaluation of the Discretionary Review application and determination if it is given a hearing is an internal process.

The Department acknowledges that the current process, as based on Planning Code Sections Section 311 and 312, have provided the public a Planning Commission Hearing if a Discretionary Review request is timely filed. However, the opportunity for the Discretionary Review requestor to be heard at the Commission must be balanced with

the City's need for the Planning Commission to address substantive planning issues to guide responsible growth in the City as a whole. This also must be balanced with the need for property owners and the public to have in place a predictable and consistent entitlement process. The current process does not balance the above listed goals, but instead provides a right to a Commission Hearing, regardless of the merits of the Discretionary Review application.

In San Francisco, all building permits reviewed under the Planning Code, except for sign permits as outlined in Planning Code Section 604(a), are discretionary. This is unique to San Francisco because many of our "discretionary" permits are considered "as-of-right" in other jurisdictions. Additionally, the public has the right to appeal most building permits to the Board of Appeals (a notable exception to this is a building permit issued pursuant to a Conditional Use Authorization). While nearly all building permits are discretionary, there is no Charter requirement that the public be provided a Commission hearing if a Discretionary Review request is timely filed. Section 22 of the Business and Tax Code is the basis for the discretionary review authority of the Commission. The opinion noted that this is a "sensitive discretion and one which must be exercised with the utmost restraint." Discretionary review is the Planning Commission's authority to review Code-complying projects and take action if the Commission finds exceptional and extraordinary circumstances. Discretionary review is not a requirement for a code-complying project to be brought before the Commission based solely on the timely filing of a Discretionary Review application by a member of the public.

Given that the public has the right to appeal most Building Permit Applications to the Board of Appeals, and the public has the right to appeal CEQA determinations and Conditional Use Authorizations to the Planning Commission and Board of Supervisors, offering an administrative hearing with a Hearing Officer if the Discretionary Review application demonstrates exceptional and extraordinary circumstances and a Commission Hearing only if the Discretionary Review request requires policy guidance and interpretation to be resolved is reasonable. Under the proposal, a committee of professional planners (the Residential Design Committee), skilled in applying the Department's design guidelines will evaluate the request for Discretionary Review. If the requestor demonstrates exceptional and extraordinary circumstances, a skilled and independent Hearing Officer will review the case; if the request requires policy guidance in order to be resolved, the Hearing Officer will refer the request to the Planning Commission. This proposal provides a forum to be heard and ensures that projects comply with the design guidelines and respect neighborhood character.

## **Transparency in Decision-Making**

The proposed process improves transparency in our application of the residential design guidelines for several reasons. First, working with the Commission, the Department will define quantitative metrics for each aspect of the Residential Design Guidelines under which projects would be supported unless some aspect of the site, such as topography and lot shape, or issues of design, require project modification. Project proposals outside of these metrics will require Residential Design Committee review. The Department has purposely proposed conservative triggers for these quantitative metrics so that the Residential Design Committee will likely provide secondary review of any project that may require modification. These metrics will provide guidance and educate the project sponsors, the public, and the Department about the application of the design guidelines.

For projects that trigger Residential Design Committee review, if the Committee supports or does not support the project, the reason(s) will be documented prior to public notification. This documentation will be maintained at the Department and available for public review. Combined, this documentation provides for better understanding of our decision-making to support or oppose project applications than is presently offered.

The requirement for documentation prior to public notification is also repeated once a Discretionary Review request is filed. The Residential Design Committee will review the request with the case planner and document its decision-making in a letter to the requestor that explains why exceptional and extraordinary circumstances have not been met, or alternatively, in its referral to the Hearing Officer, for technical review, or the Planning Commission for policy interpretation and guidance.

Members of the public have recommended that the Department require story poles for projects of a certain size as a way to better educate the neighborhood about project impacts. The Department is exploring this concept as well as 3D renderings and other tools that make project plans easier to read and understand. Further, the current process whereby the Department encourages the Discretionary Review requestor and the project sponsor to discuss the issues and work out solutions will be maintained, as will the requirement that the project sponsor respond to the Discretionary Review request in writing. This allows time for the Discretionary Review requestor and the project sponsor to educate one another about their perceptions of the project.



### **Discretionary Review Requestor and Project Sponsor Inclusion in the Process**

The Advisory Committee and other members of the public recommend that we increase public input into the proposed process. As such, the Department will include an intake meeting at the option of the Discretionary Review requestor so that the Planner can walk through the criteria of exceptional and extraordinary circumstances and understand the applicant's issue(s) with the project. This intake meeting will offer benefit both the Department and the applicant. Should the Residential Design Committee ultimately find that the application does not demonstrate exceptional and extraordinary circumstances, the Planner and his/her supervisor would meet with the applicant to explain the decision. Additionally, the decision would be fully documented so that the Discretionary Review requestor understands the reason(s) for the decision and incorporate these findings into any appeal to the Board of Appeals.

For the project sponsors, the assigned planner and the supervisor will sit down with the project sponsors if the Residential Design Committee recommends project modification before public notification or after a Discretionary Review request is filed.

Finally, the Department will recommend to the Commission improvements in the pre-application process to require a standardized template for notification and that pre-application meeting be held at or very proximate to the project site. If adopted, the Department would not intake applications without a copy of the notification, location, invite list and sign-in sheet for the pre-application meeting.

### **Defining Exceptional and Extraordinary Circumstances**

The public has commented that "exceptional and extraordinary circumstances" need to be clearly defined in order for the new proposal to work. Staff agrees. We propose to work closely with the Commission to define "exceptional and extraordinary circumstances" and further to have the Commission adopt criteria to guide staff. The Commission may need to revisit these criteria from time to time. As a starting point, staff recommends that issues not related to the Planning Code be rejected, such as constructability and noise and dust during the construction process. Further, staff recommends that projects that do not trigger Residential Design Committee review because they are under the metrics for each aspect of the Residential Design Guidelines and have no other issues related to topography and lot shape or design, shall not be eligible for Discretionary Review.

Members of the public recommend that exceptional and extraordinary circumstances should only be possible if the requestor lives very near to the project proposal. After

consideration, staff recommends that we not limit requestors to a radius around the project since the whole community can be harmed by approval of precedent-setting projects that do not balance the needs of the adjoining neighbors and neighborhood character with the rights of the property owner to develop the property.

### **Hearing Officer Process**

The delegation from the Commission to the Hearing Officer and the Hearing Officer process itself need to be clearly defined. Staff will work with the Planning Commission to structure how authority is delegated from the Commission to the Hearing Officer and how best to get information back to the Planning Commission. As a starting point, staff recommends that the Commission be referred all Discretionary Review cases that require policy interpretation for resolution. Staff recommends that this referral be through the Director or the Hearing Officer so that both have an opportunity to refer such cases to the Commission. Staff also recommends that the Commission be briefed regularly, whether weekly, monthly or quarterly on the disposition of Discretionary Review requests and be made aware of technical clarifications on the design guidelines. Further, staff recommends that through the Residential Design Committee and Hearing Officer processes, the Department improve identification of issues that require Commission guidance and schedule hearings to address these issues on an as-needed basis. These issues may include discussions about the applicability of the general residential design guidelines to a specific neighborhood context and/or the need to develop additional neighborhood character districts.

Ultimately, the Commission will decide the best method to maintain oversight of its Hearing Officer. Options range from reporting requirements, administrative “consent” agendas, and decision ratification. Staff recommends robust reporting requirements over options that reopen Discretionary Review requests since one of the goals of this process is to reduce impacts on the Commission’s calendar. Further, the process by which the Commission opts to review cases needs to be defined. Staff recommends establishing consistent criteria through a mandatory Discretionary Review policy as preferable to a case by case evaluation, again to free up the Commission’s calendar to focus on higher level policy issues.

Some members of the public are skeptical that a Hearing Officer will provide the same level of review that the Commission provides and favor decision by Committee over the decision of one. The proposal does include the Residential Design Committee, which consists of skilled planners representing a diversity of opinion reviewing the Discretionary Review request. The Hearing Officer would have stringent requirements for education and experience in architecture, planning and applying the San Francisco Planning Code, and would be required to maintain high ethical standards and avoid all

conflicts of interest, and would be selected and evaluated by the Commission. Staff needs to work with the Commission to assess whether reviewing Discretionary Review requests that are exceptional and extraordinary but do not require policy guidance for resolution are best performed by a Hearing Officer, a Hearing Officer Committee, or a sub-Committee of the Commission. The cost of these processes will obviously be a factor to consider.

### **Cost and Time of the New Process**

Reflecting initial comments from the public, the Department is working to ensure that the new proposal will not be more time and cost intensive than the current process. Based on the initial proposal, the Department believes that for Discretionary Review requests that do not demonstrate exceptional and extraordinary circumstances, the cost to the project sponsor, the requestor and the Department will be substantially reduced. For requests that are exceptional and extraordinary, the cost to the project sponsor and the requestor will be about the same, but the cost to the Department will increase due to a heightened level of review, additional required documentation, and the cost of the Hearing Officer. At this point, staff believes it is appropriate to shift costs away from Discretionary Review requests that are not exceptional and extraordinary to those cases that are.

Other comments suggest that staff should review cost sharing options with the Commission to determine the appropriate source mix (i.e. Discretionary Review requestor, project sponsor and building permit surcharge) for the program. Currently, the Department's approach places a small burden on the requestor and has the majority of the cost born through the Discretionary Review building permit surcharge. The Commission may wish to reconsider this.



# SAN FRANCISCO PLANNING DEPARTMENT

## Design Review Checklist

### NEIGHBORHOOD CHARACTER (PAGES 7-10)

QUESTION	
The visual character is: (check one)	
Defined	
Mixed	X

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### SITE DESIGN (PAGES 11 - 21)

QUESTION	YES	NO	N/A
<b>Topography (page 11)</b>			
Does the building respect the topography of the site and the surrounding area?			
<b>Lateral Slopes along block-face</b>			
1. If 50-percent of the buildings along the block-face create a pattern that steps down with the lateral slope AND the project is between buildings that make up the stepped pattern, does the project maintain the stepped pattern along the block-face for at least the first 15' of the subject building? (If yes, meets minimum standard. If no, consult RDC/potentially exceptional.)			X
Is the building placed on its site so it responds to its position on the block and to the placement of surrounding buildings?			X
<b>Front Setback (pages 12 - 15)</b>			
Does the front setback provide a pedestrian scale and enhance the street?			X
In areas with varied front setbacks, is the building designed to act as transition between adjacent buildings and to unify the overall streetscape?			
<b>Side Setback at Front</b>			
1. If an adjacent building has a side setback, does the project provide a side setback of at least 3 feet wide and of a matching depth or 10 feet, whichever is less? (If yes, meets minimum standard. If no, consult RDC/potentially exceptional.)			X
Does the building provide landscaping in the front setback?			X
<b>Side Spacing (page 15)</b>			
Does the building respect the existing pattern of side spacing?			
<b>Note: this guideline is for side spacing not side setbacks.</b>			
1. (Quantify "pattern".) Does the project exist within a grouping of four structures that have similar side spacing? At minimum, two adjacent structures to one side of the project and one adjacent structure to the opposite side with similar side spacing must exist. (If no, no pattern. If yes, see #2 below.)			X

Discretionary Review Reform – Minimum standards

<p>2. (Quantify side setback measurements.) Does the project provide a side space at the same width as the pattern? <i>(If yes, meets minimum standard. If no, continue to #3.)</i></p> <p>3. If the side spacing pattern is not uniform, is the side setback at least 3 feet wide or of an average width of the two adjacent side spacings, whichever is greater? <i>(If yes, meets minimum standard. If no, consult RDC/potentially exceptional.)</i></p>			
<p>Rear Yard (pages 16 - 17)</p>			
<p>Is the building articulated to minimize impacts on light to adjacent properties?</p> <p><b>Lightwells</b></p> <p>1. When providing a matching lightwell, does the proposed lightwell have a width of 3 feet from the side property line AND a length equivalent to the matched lightwell (if the adjacent light well is 10 feet or greater in length, the proposed lightwell must be at least 10 feet long or 75-percent of the adjacent lightwell's length whichever is greater.) AND begin at the floor above the basement/ground floor? <i>(If yes, meets minimum standard. If no, consult RDC/potentially exceptional. NOTE: If project is a vertical addition, the lightwell shall be matched per #1 above only at the level(s) of the addition.)</i></p> <p><b>Depth of Addition</b></p> <p>1. Is the rear addition the average of the two adjacent buildings? <i>(If yes, meets minimum standard. If no, see next question.)</i></p> <p>2. If the rear addition is greater than the average of the adjacent buildings AND does not exceed the depth of the longer building, is a minimum 5-foot side setback provided at the second floor and above for the entire length for the rear addition that faces the open area of the adjacent lot which contains the shorter building? <i>(If yes, meets minimum standard. If no, consult RDC/exceptional.)</i></p> <p>3. For adjacent buildings of uniform depth and height at the rear wall: if the rear addition is greater than the average of the two adjacent buildings is the addition equal to or less than 12 feet deep and 1-story tall OR equal to or less than 12 feet deep, 2-stories tall with 5 foot setbacks on either side? <i>(If yes, meets standard. If no, consult RDC/potentially exceptional.)</i></p> <p><b>Height of Addition</b></p> <p>1. If the depth of the rear addition projects beyond one adjacent building, is the addition more than two stories tall? <i>(If no, meets minimum standard. If yes, consult RDC/potentially exceptional.)</i></p> <p><b>Side Setback at Rear</b></p> <p>1. If the project abuts a side setback of an adjacent building, is a side setback provided at a minimum depth of 5 feet at the second level or higher (as measured from the level of the rear yard)? <i>(If yes, meets minimum standard. If no, consult RDC/potentially exceptional.)</i></p> <p>2. If the project abuts an adjacent rear yard area that is fully open from</p>			<p>X</p>

## Discretionary Review Reform – Minimum standards

both side property lines, is a side setback provided at a minimum depth of 5 feet at the second level or higher (as measured from the level of the rear yard)? <i>(If yes, meets minimum standard. If no, consult RDC/potentially exceptional.)</i>			
Is the building articulated to minimize impacts on privacy to adjacent properties? 1. Do all of the windows of the proposal face onto an adjacent deck or an adjacent rear yard? <i>(If yes, meets minimum standard. If no, see #2 below.)</i> 2. (Quantify “privacy.”) If a window faces a building along the side property line or is located within a lightwell, is the proposed window at least 3 feet from the shared side property line AND not directly aligned with the transparent glazing of an adjacent window that is also 3 feet from the shared property line? <i>(If yes, meets standard, if no, consult RDC.)</i>			X
<b>Views (page 18)</b>			
Does the project protect major public views from public spaces? 1. Reference the maps in the General Plan for “Street Areas Important to Urban Design and Views”, “Quality of Street Views”.			X
<b>Special Building Locations (pages 19 - 21)</b>			
Is greater visual emphasis provided for corner buildings? 1. Does the proposed corner building exceed the height of either adjacent building by more than one story? <i>(If yes, exceptional/RDC. If no, project meets minimum standards but may need setbacks depending on immediate context. The thought is encourage appropriate development of anchor buildings at corner lots, particularly if multi-unit housing.)</i>			X
Is the building facade designed to enhance and complement adjacent public spaces? 1. Does the front façade finish material wrap around to the side façade for at least 15 feet or to the first change in plane at the side façade? <i>(If yes, meets standard. If no, consult RDC.)</i> 2. Are finished exterior materials proposed along the exposed side façade? <i>(If yes, meets standard. If no, consult RDC.)</i>			X
Is the building articulated to minimize impacts on light to adjacent cottages? 1. Is a 3-foot wide minimum setback provided from all facades of the adjacent cottage? <i>(If yes, meets standard. If no, consult RDC.)</i>			X

## BUILDING SCALE AND FORM (PAGES 23 - 30)

QUESTION	YES	NO	N/A
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## Discretionary Review Reform – Minimum standards

<b>Building Scale (pages 23 - 27)</b>			
Is the building's height and depth compatible with the existing building scale at the street?			
<ol style="list-style-type: none"> <li>1. If the vertical addition is at least one story greater than both adjacent buildings, is the addition setback at least 15 feet from the front façade? <i>(If yes, meets minimum standard. If no, consult RDC.)</i></li> <li>2. If the vertical addition is at the same height as 50% of the block-face without a front setback, is the vertical addition at least two stories taller than the adjacent buildings on either side? If yes, does the vertical addition provide a front setback of at least 15 feet beginning at the second level of the vertical addition? <i>(If yes, meets minimum standard. If no, consult RDC.)</i></li> </ol>			X
Is the building's height and depth compatible with the existing building scale at the mid-block open space?			X
<b>(Same as directly above but with a setback of 5 feet (instead of 15 feet).)</b>			
<b>Building Form (pages 28 - 30)</b>			
Is the building's form compatible with that of surrounding buildings?			X
Is the building's facade width compatible with those found on surrounding buildings?			X
Are the building's proportions compatible with those found on surrounding buildings?			X
Is the building's roofline compatible with those found on surrounding buildings?			X

## ARCHITECTURAL FEATURES (PAGES 31 - 41)

QUESTION	YES	NO	N/A
<b>Building Entrances (pages 31 - 33)</b>			
Does the building entrance enhance the connection between the public realm of the street and sidewalk and the private realm of the building?			X
Does the location of the building entrance respect the existing pattern (see below) of building entrances? <i>(If yes, meets minimum standard. If no, consult RDC.)</i>			X
<ol style="list-style-type: none"> <li>1. Pattern defined as 50% of the block-face AND the pattern existing at the adjacent buildings on either side of the project.</li> </ol>			
Is the building's front porch compatible with existing porches of surrounding buildings?			X
Are utility panels located so they are not visible on the front building wall or on the sidewalk?			X
<b>Bay Windows (page 34)</b>			
Are the length, height and type of bay windows compatible with those found on surrounding buildings?			X
<b>Garages (pages 34 - 37)</b>			
Is the garage structure detailed to create a visually interesting street frontage?			X

## Discretionary Review Reform – Minimum standards

Are the design and placement of the garage entrance and door compatible with the building and the surrounding area?			X
Is the width of the garage entrance minimized? 1. Is the garage door greater than 12 feet wide? (If yes, require the width of the garage door to be reduced to 12 feet per the Residential Design Guidelines or consult RDC if a unique situation exists.)			X
Is the placement of the curb cut coordinated to maximize on-street parking? 1. Is the curb cut greater than 10 feet wide including curb returns? (If yes, require the width of the curb cut be reduced to 10 feet per the Zoning Administrator's Guidelines or consult RDC if a unique situation exists.)			X
<b>Rooftop Architectural Features (pages 38 - 41)</b>			
Is the stair penthouse designed to minimize its visibility from the street? 1. Is the stair penthouse required by Building Code? 2. If yes, is the stair penthouse of minimum size and setback 15 feet from any exposed façade or lightwell and only one story above the main roof of the residence? (If yes, meets minimum standard. If no, consult RDC.)			X
Are the parapets compatible with the overall building proportions and other building elements?			X
Are the dormers compatible with the architectural character of surrounding buildings?			X
Are the windscreens designed to minimize impacts on the building's design and on light to adjacent buildings? 1. Are open railings or transparent material proposed at the windscreens? (If yes, meets minimum standard. If no, consult RDC.)			X

## BUILDING DETAILS (PAGES 43 - 48)

QUESTION	YES	NO	N/A
<b>Architectural Details (pages 43 - 44)</b>			
Are the placement and scale of architectural details compatible with the building and the surrounding area?			X
<b>Windows (pages 44 - 46)</b>			
Do the windows contribute to the architectural character of the building and the neighborhood? (Refer to pending Window Standards. In the interim, below shall be applicable.) 1. Is a window detail provided that illustrates the glazing of the window to be setback 3 inches from the face of façade exclusive of trim? 2. If an alteration, are the proposed windows compatible with the presumed original windows of existing building and each adjacent structure?			X



## Discretionary Review Reform – Minimum standards

<b>3. If new construction, are the proposed windows of high quality and compatible with the character of the block-face?</b>			
Are the proportion and size of the windows related to that of existing buildings in the neighborhood?			X
Are the window features designed to be compatible with the building's architectural character, as well as other buildings in the neighborhood?			X
Are the window materials compatible with those found on surrounding buildings, especially on facades visible from the street?			X
<b>Exterior Materials (pages 47 - 48)</b>			
Are the type, finish and quality of the building's materials compatible with those used in the surrounding area?			X
Are the building's exposed walls covered and finished with quality materials that are compatible with the front facade and adjacent buildings?			X
Are the building's materials properly detailed and appropriately applied?			X