

# Discretionary Review Reform

**Proposed Policy Adoption, and  
Intent to Initiate Amendments to Planning  
Code Sections 311 and 312**

April 2, 2009

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
- Clarify **roles and expectations** and improve **communication** and the working relationship among the Planning Commission, the Historic Preservation Commission (formerly Landmarks Preservation Advisory Board), and staff, including senior staff



# Discretionary Review

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



# Three Types of Discretionary Review

- **Mandatory Discretionary Review**
  - Commission policy or Code requirement, much like Conditional Use
- **Staff-Initiated Discretionary Review**
  - For unsupported projects that do not comply with Design Standards, and therefore the Code
- **Public-Initiated Discretionary Review**
  - Second look at Code complying projects



# Public Outreach for DR Reform

- Four public outreach meetings, October 29<sup>th</sup>, November 5<sup>th</sup>, 12<sup>th</sup> and 19<sup>th</sup> to review draft proposal
  - 85 individuals in attendance
- December 11, 2008, Planning Commission hearing on revised draft proposal
- February 10, 2009, Public Outreach meeting
  - 38 individuals in attendance
  - 11 formal proposal
- Staff has received 48 written comments



# Public Outreach Overview

- General consensus that improvements need to be made to the Discretionary Review process
- General desire for a fair, consistent, and transparent process that engages members of the community
- Desire to expand Discretionary Review reform to solve many issues in the review process
- No public consensus on remedies
  - Many desire significant changes to the process as recommended in the Department's first draft proposal
  - Many desire improvements to pre-application and the Department's review, without change to the DR process



# Issues & Concerns with the Current Process

## *Need for Community Engagement, Improved Communication, and Setting Realistic Expectations*

- Poor communication in the early stages of the development process can result in DR applications as measure of last resort
- Parties to the DR application often know very little about the process and have unrealistic expectations about the likely results, including
  - An expectation of project modification regardless of the merits of the DR issues
  - Project sponsors using self-generated DR requests to advance out-of-scale and inappropriate projects to the Commission
  - Inappropriate financial exchanges



## Issues & Concerns with the Current Process (cont'd.)

### *Need for Stronger Internal Review, Identification and Resolution of Policy Issues*

- Public relies on DR process to compel quality and appropriate projects
- DR is driven by the 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
- Decisions for DR cases do not necessarily get applied to future review or serve to clarify appropriate project review standards



## Issues & Concerns with the Current Process (cont'd.)

### *Need for Consistent and Predictable Process*

- Commission does not see representative range of approved projects and therefore cannot easily dispense fair and standard treatment
- Project sponsors with projects that comply with all the rules can spend a great deal of time and money in the process
- Process takes too much time to resolve, both for the project sponsor and the applicant



# Goals of New Process

- Provide for early community engagement
- Provide more information and education about the DR process
- Improve the internal application review process
- Offer more transparency and information about Department's decision-making in project evaluation
- Ensure that outcomes of the DR process are fair and predictable
- Significantly reduce the time and cost of the DR review process
- Identify policy issues for the Commission's consideration and resolution
- Maintain the benefits of the current process



# Department's Revised Proposal

- Phased implementation to allow Commission and public to review results before pursuing additional changes
  - Phase One to include reforms that directly address several of the shortcomings of the current DR process
  - Phase Two to include more controversial options, notably delegation to a Hearing Officer



## Phase One (a Two-Year Experiment)

*Potential effective date of September 2009*

- Strengthen the pre-application process;
- Provide better public information;
- Improve the internal design review process;
- Define and apply criteria of “exceptional and extraordinary circumstances”;
- Establish a timeline for the processing of DR applications;
- Identify policy issues regarding project review and Design Standards for the Commission’s consideration;
- Use Commission decisions on DR that are designated as precedent-setting for policy guidance in the review of future projects;
- Staff to report to Commission on disposition of all DR requests;
- Commission and public will review reforms within 18 months, and recommend amendments to Code and policy if desired.



## Phase Two (no earlier than September 2011)

- Require story poles or 3-D renderings or models for certain project types to better inform neighbors and the community of the size and location of a proposed project;
- Delegate review of DR applications to an independent professional Hearing Officer, who is an employee of the Commission;
- Codify the DR process.



## Stronger Pre-Application Process

- Defined expectations of the pre-application process
- Increased scope of projects required to conduct pre-application meetings
- Standardized invitation with project information, meeting location and time requirements
- Standardized advance notice of the pre-application meeting
- Standardized sign-in sheet, with a check box to indicate a request for reduced plans
- Standardized issues & response form
- Documentation required to be submitted with application (Attendees can request copy of pre-application plans)



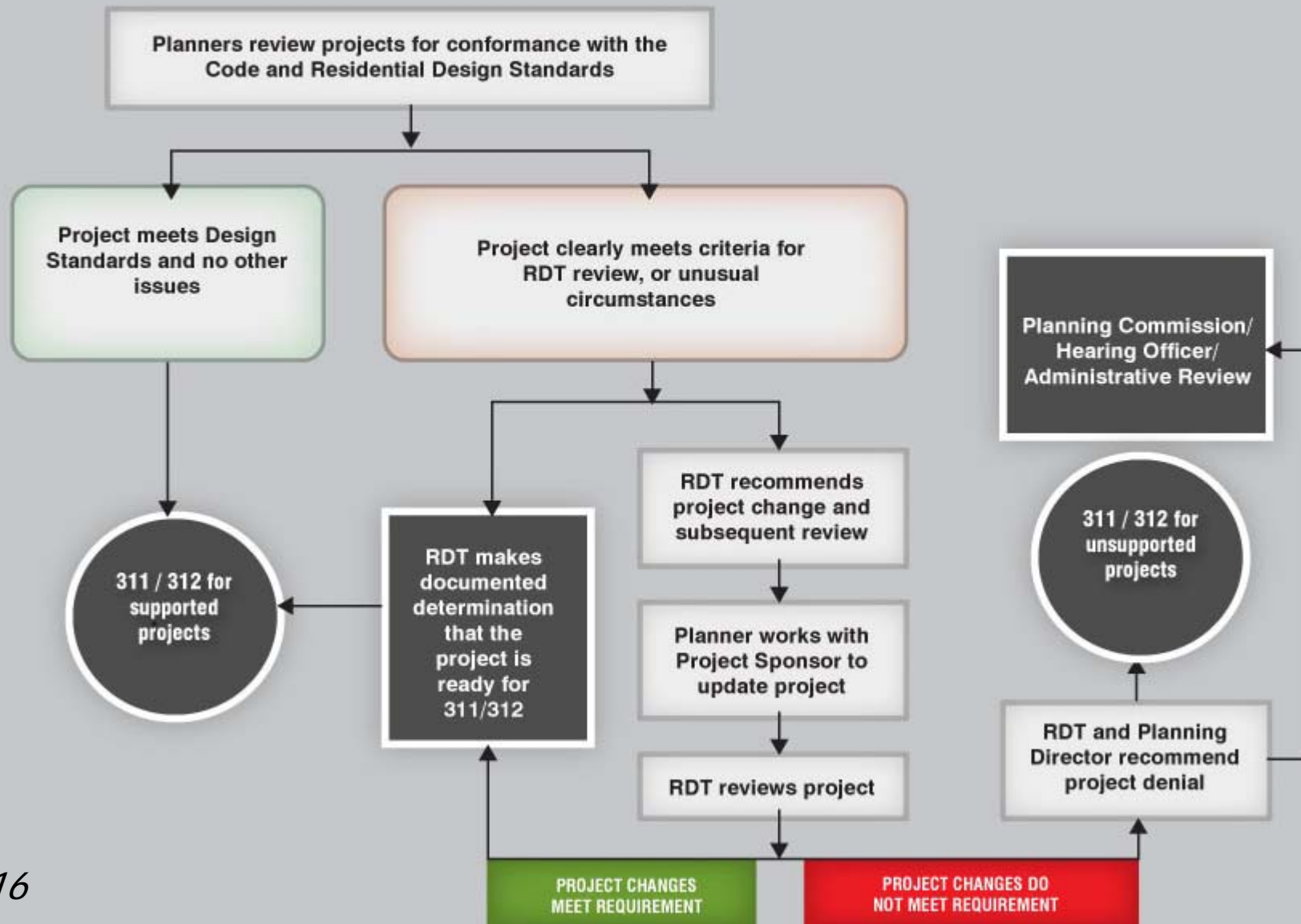
## Better Public Information

- Web page to act as a repository of information about the DR process and the Department's policies related to DR
- A new on-line map of San Francisco neighborhoods, including active links to every neighborhood's organization list (*now available*)





## Proposed Internal Review Procedures



## Residential Design Team

- Comprises eight Planners, who meet weekly to analyze projects based on mandatory standards that trigger review, or are brought voluntarily by planning staff
- Current membership includes: Craig Nikitas (*Director's Office*), Tina Tam (*Preservation Coordinator*), David Lindsay (*Northwest Team Leader*), Glenn Cabreros (*Northwest Team*), Tim Frye (*Northeast Team, Preservation Planner*), Ben Fu (*Southeast Team*), Michael Smith (*Southwest Team*), and Elizabeth Watty (*Southwest Team*)
- Membership will always include:
  - Senior Planners
  - Neighborhood Planners from each of the four quadrants
  - Preservation Planners



# Exceptional and Extraordinary Circumstances

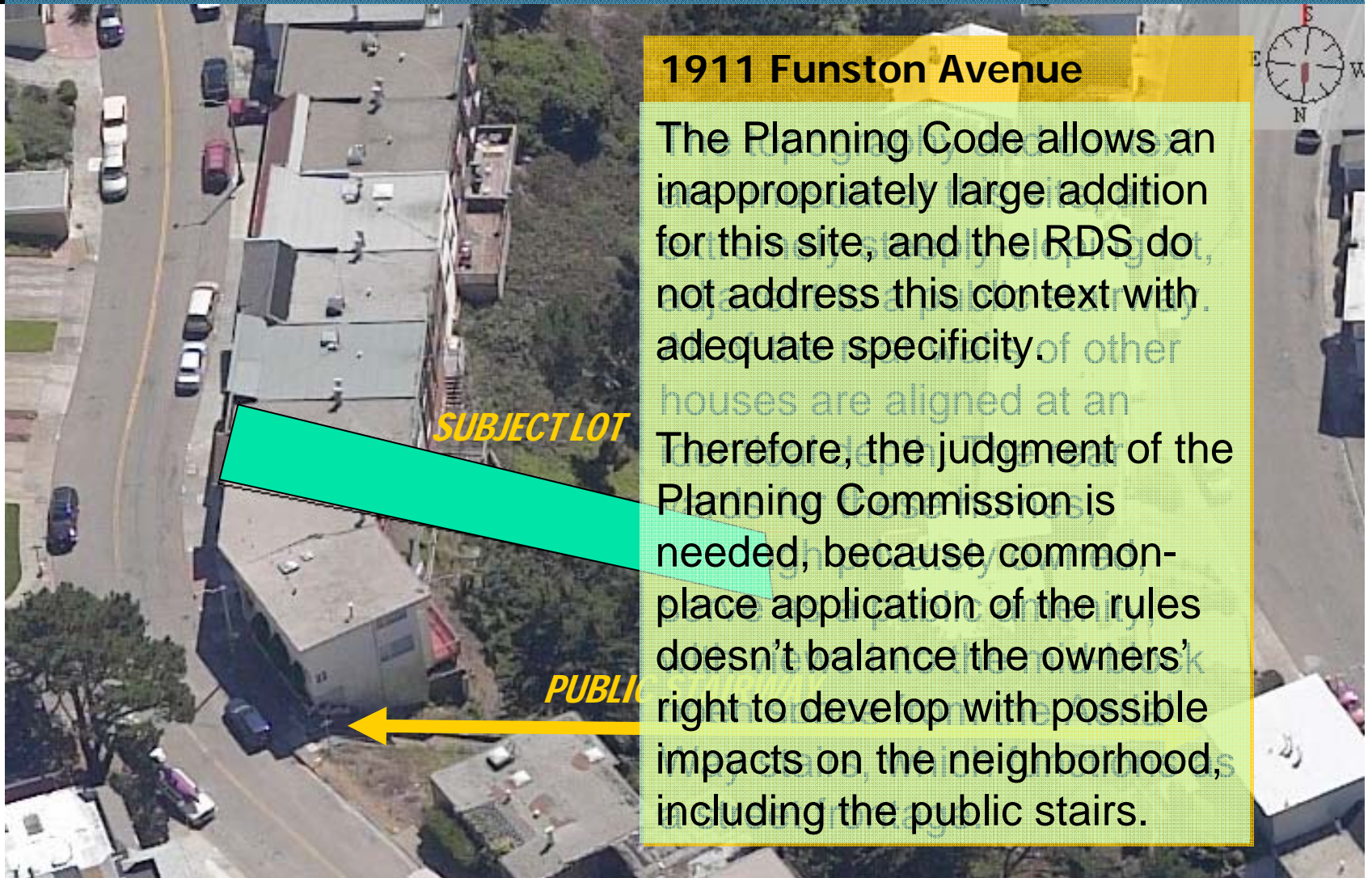
***Exceptional and extraordinary circumstances*** occur when the common-place application of adopted Design Standards to a project does not enhance or conserve neighborhood character, or balance the right to develop the property with impacts on nearby properties or occupants.

*These circumstances may arise due to complex topography, irregular lot configuration, unusual context or other conditions not addressed in the Design Standards*

*Here are three examples of recent DR cases heard by the Commission, which exhibit exceptional and extraordinary circumstances:*



# Exceptional and Extraordinary Circumstances



## 1911 Funston Avenue

The Planning Code allows an inappropriately large addition for this site, and the RDS do not address this context with adequate specificity of other houses are aligned at an Therefore, the judgment of the Planning Commission is needed, because common-place application of the rules doesn't balance the owners' right to develop with possible impacts on the neighborhood, including the public stairs.

**SUBJECT LOT**

**PUBLIC**

# Exceptional and Extraordinary Circumstances

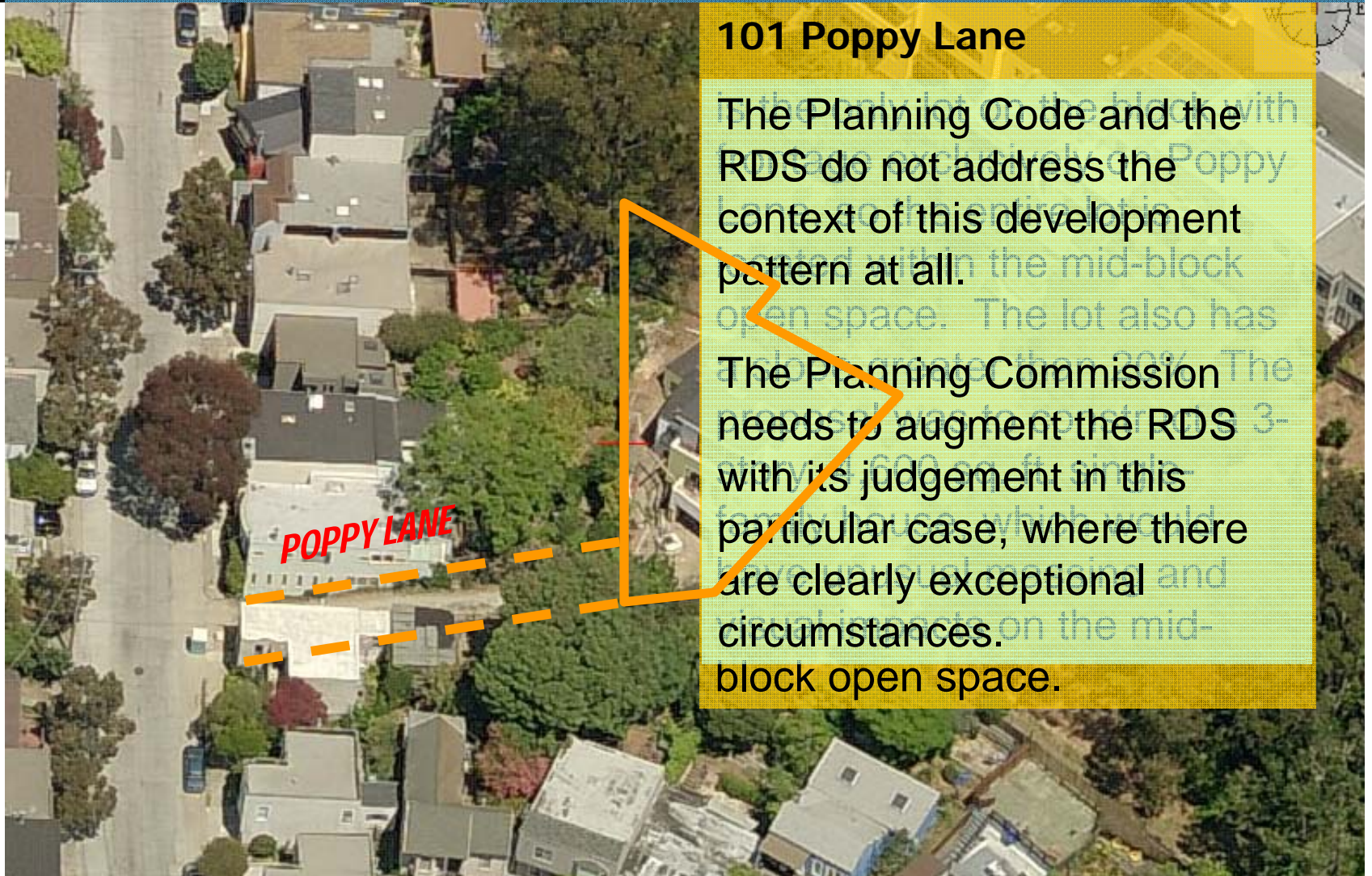


## 2 Kronquist Court

The Planning Code's rear yard rules are not apt for this site, and the RDS do not address the context of the block pattern adequately.

Again, the judgment of the Planning Commission should shape the project, because common-place application of the rules doesn't allow a reasonable addition nor enhance neighborhood character. These are exceptional circumstances.

# Exceptional and Extraordinary Circumstances



## 101 Poppy Lane

The Planning Code and the RDS do not address the context of this development pattern at all.

The Planning Commission needs to augment the RDS with its judgement in this particular case, where there are clearly exceptional and circumstances on the mid-block open space.

# Not Exceptional and Extraordinary Circumstances

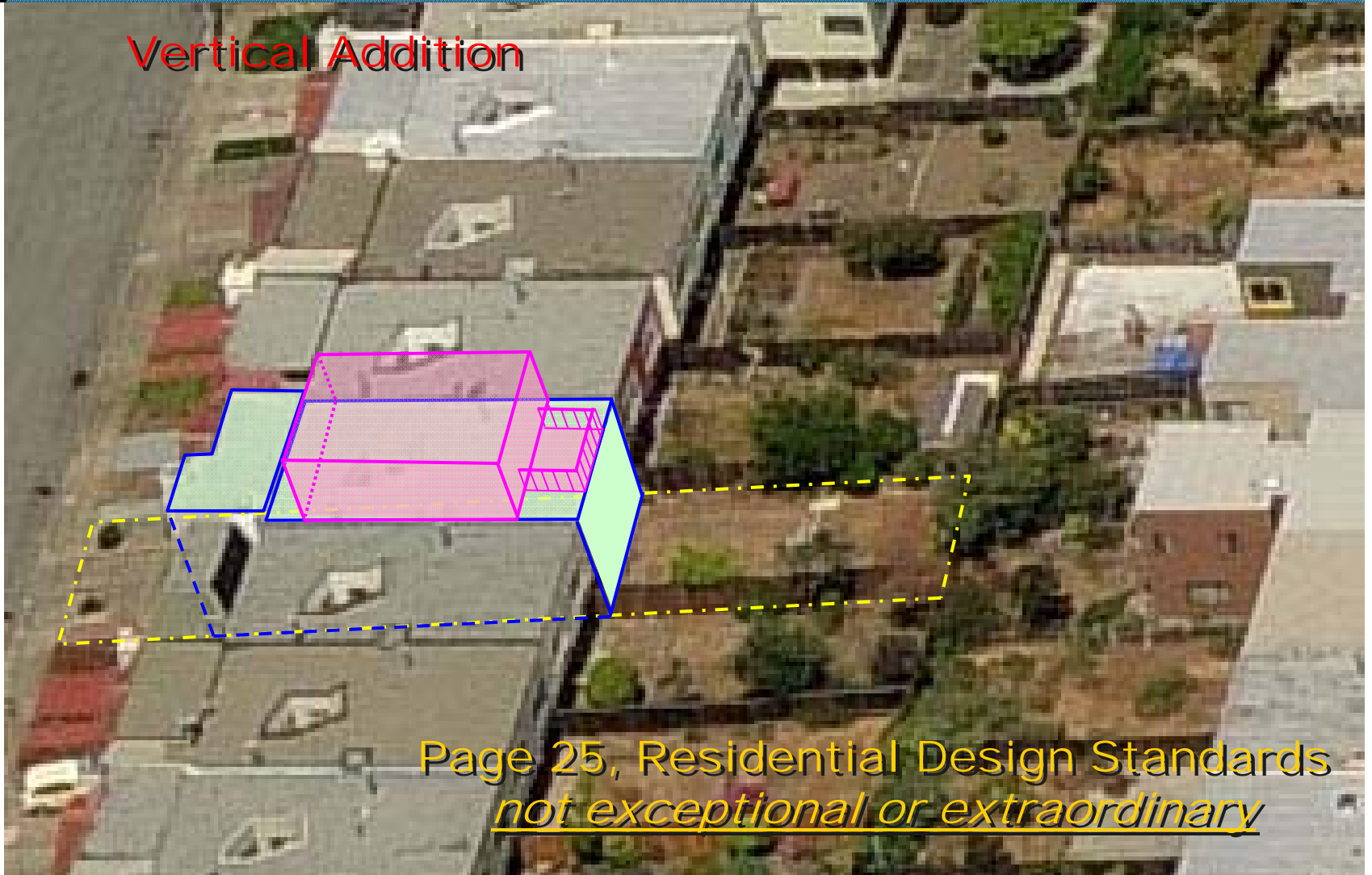
Horizontal Addition



Page 27, Residential Design Standards  
not exceptional or extraordinary

# Not Exceptional and Extraordinary Circumstances

Vertical Addition



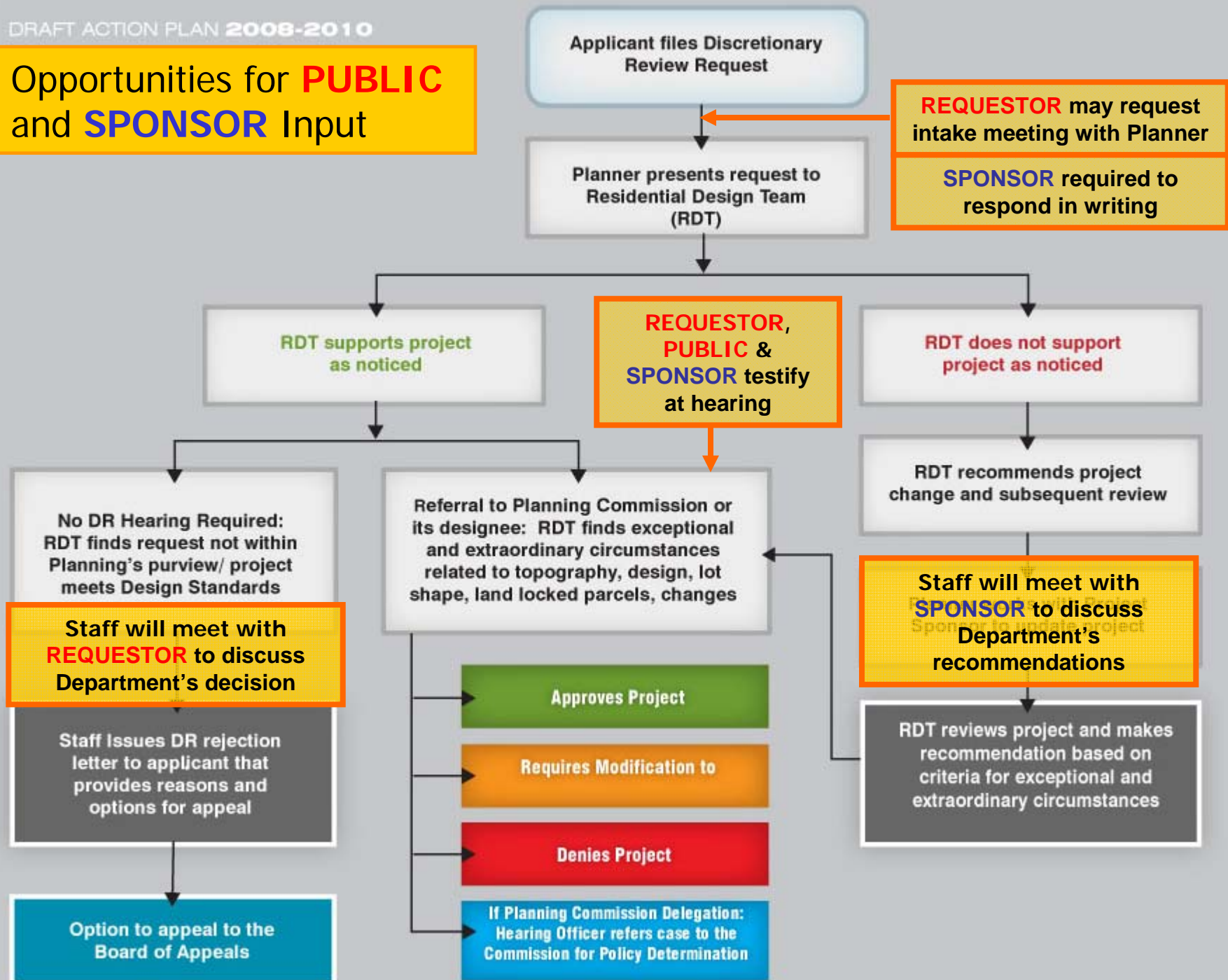
Page 25, Residential Design Standards  
*not exceptional or extraordinary*

# Not Exceptional and Extraordinary Circumstances





## Opportunities for **PUBLIC** and **SPONSOR** Input



# Requests for Reconsideration

The public (including affected neighbors) has the opportunity to request a reconsideration of the project by the RDT. All decisions will be in writing and available to the public.

If there is Department error, the permit applicant must then revise the project, and the Department will provide a refund of the filing fee to the requestor of the reconsideration.



## Timeline for DR Applications

- All DRs will be reviewed and acted on by the Residential Design Team within 30 days of filing.
- Projects that do not demonstrate exceptional or extraordinary circumstances will receive a written letter from the RDT within two week of the RDT's determination.
- Projects that do demonstrate exceptional or extraordinary circumstances must be heard by the Commission or hearing officer within 90 days of the application date, including any proposed continuances by the DR Applicant or the Project Sponsor.



## Policy Issues for the Commission's Consideration

- Staff to identify policy issues for the Commission's consideration related to project review and Design Standards
- Staff to use Commission's decisions on DRs, including staff-initiated DRs, that the Commission designates as precedent setting, as policy guidance for review of future projects
- Staff to recommend amendments to Design Standards as applicable to reflect Commission's policy guidance
- Staff to identify emerging planning issues and work with Commission for appropriate responses



# Resolutions for Policy Adoption and Intent to Initiate Code Amendments

- Policy resolution to endorse Phase One of the Discretionary Review Reform
- Resolution adopting intent to initiate Amendments to Sections 311(d) and 312(e) to:
  - Change “Residential Design Guidelines” to “Residential Design Standards”
  - Provide for administrative review of Discretionary Review requests
  - Provide for Commission Hearings for requests that demonstrate exceptional and extraordinary circumstances
  - Remove option for Project Sponsors to request Discretionary Review, and instead rely on Staff-Initiated DR



# Proposal Timeline

- Legislative changes no sooner than September 2009
  - Change “Residential Design Guidelines” to “Residential Design Standards”
  - Provide for administrative review of Discretionary Review applications
  - Provide for Commission Hearing for applications that demonstrate exceptional and extraordinary circumstances
  - Remove options for Project Sponsors to request Discretionary Review, and instead rely on Staff Initiated DR
- Reconsideration process, including fee refund
- Codified timelines



# Proposal Timeline

- Several elements can be implemented with policy adoption:
  - Strengthen the pre-application process
  - Improved internal design review process
  - Provide better information
  - Policy on timelines
  - Identify policy issues for the Commission's consideration
  - Use Commission decisions as policy guidance for review of future projects



# Today's Steps

- Commission may adopt Policy Resolution
- Commission may adopt Resolution of Intent to Initiate Code Amendments



## Next Steps

- At Commission's direction, hold public workshop prior to consideration of Adoption of Code Amendments
- Consider Adoption of Code Amendments in May of 2009
- Referral to Land Use Committee and Board of Supervisors following Commission actions
- Report back to Commission weekly and provide formal review 18 months following effective date

