

## Memorandum

**To: Mr. Jeffrey Horn, Senior Planner, San Francisco Planning Commission**

**From: Corbett Heights Neighbors, a Neighborhood Association**

**Re: November 19 Hearing on 4300 17th St.; Record No. 2019-013808CUAVAR**

**Date: November 10, 2020**

### Executive Summary

Corbett Heights Neighbors (“CHN”) is a 17 year old neighborhood association with more than 110 paid household members representing scores more individuals resident in those homes. The proposed Project is within CHN’s boundaries. CHN strongly opposes Sponsor’s extraordinary pursuit of a basket of zoning variances and conditional use authorizations at the Commission without, as far as we can tell, deigning to acknowledge or act upon any of Staff’s objections first memorialized in its Plan Check Letter of April 27, 2020. (“Check Letter”). CHN endorses Staff’s disapproval of the Project as first articulated in that letter.

Perhaps seeking to sharpen the public’s focus on a trivial (by square feet) aspect of the project in order to distract us from seeing its true nature, the Project is touted as one of “mixed, affordable housing.” That is a bit like saying the Flood Building on Market street towered majestically on the afternoon of April 18, 1906; there may be some truth to that statement but it conceals far more than it reveals. So it is with this Project: an attempt to subdivide in an RH-2 zone an existing 2,916 square foot lot with an extant building of 2,544 square feet in order to create two 1,458 square foot lots on the newer of which the Sponsor would construct a four story, three unit 4,196 square foot apartment building. In short: split the lot, build a four story apartment building, and incidentally include two small ADUs, perhaps rent controlled. A label of “affordable housing” should not blind us from seeing the enormity of the Project and its utter disregard for the Planning Code.

Planning Department Staff in its Check Letter rejected the proposed Project because of the “intensity of non-compliance” and urged that it be redesigned to accommodate the two ADUs on the current, undivided lot and building. We endorse this April Staff conclusion and, accordingly, urge the Commission to deny the requested variances and conditional use authorizations.

To be clear: we do not oppose the construction of Code compliant affordable housing in our neighborhood. We do oppose, for this Project and any like it, an ad hoc, case by case, variance by variance, CUA by CUA, block by block approach that would brush aside a host of Code provisions. The Sponsor promotes the Project — and presumably this overall approach to modern zoning and land use control — as a

“model” and a “blueprint” for adding affordable housing in the city. Quite the blueprint: Ignore the Planning Code. SB 50 redux.<sup>1</sup>

Should policy makers deem it appropriate to encourage the construction of more affordable housing in an RH-2 District there is a better way to plan for it: following professional analysis and public input, develop conditions precedent, standards, and criteria that would apply uniformly within a District and city wide, then promulgate same in advance. That is the proper way to develop a “blueprint.”

Finally, we note our dismay that a Sponsor can so blithely design a project disregarding so many Code sections, ignore Planning Staff conclusions and recommendations, and then a few months later march directly to this Commission for permission. It is as if the rules that apply to the rest of us simply do not apply to this Project.

## Discussion

### **A. CHN Has a Direct Community Interest in the Project**

Corbett Heights Neighbors (“CHN”; <https://www.corbettneighbors.com>) is a 17 year old neighborhood association with more than 110 paid household members and scores more resident in those households. Our neighborhood boundaries are Douglas to Clayton; Market to Lower Terrace and Ord Ct. Over the years we have assisted in maintaining and improving our handful of very small parks (titled in the name of the Department of Public Works); sponsoring quarterly membership meetings with prominent guests;<sup>2</sup> working with adjacent neighborhood organizations; and assisting in the drafting and passage of the Corona Heights Special Use District Code provision, Sec. 249.77. The board of directors of CHN is elected annually in a confidential electronic vote of its paid household members. The current board, most recently elected in September, has nine members, two of whom have a conflict of interest and therefore were not involved in determining CHN’s position on this matter.<sup>3</sup>

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<sup>1</sup> SB 50, of course, was a 2018 proposal (itself progeny of SB 827) that would override local zoning in order to permit the construction of new housing.

<sup>2</sup> Our most recent, virtual, September 14 meeting included Supervisor Mandelman; Dr. Susan Philip from the Department of Public Health; and Dylan Rose Schneider from the Department of Homelessness and Supportive Services.

<sup>3</sup> The Board members are: Bill Holtzman, President; Maryann Dresner, Vice President; Leslie Koelsch, Treasurer; Paul Allen, Secretary. Additional members are: Josh Baskin, Maria Hutchins Chambers, Mark Ryser, Casey Rando, and Scott Pluta. Mr. Pluta is the Project Sponsor and Mr. Rando is an adjacent neighbor to Mr. Pluta. As such, neither participated in the deliberations or vote on this matter, nor in the preparation of this Memorandum.

## **B. The Project Calls for the Construction of a Four Story Apartment Building on a Severed Lot, Contrary to Code, to the Detriment of Neighbors and the Neighborhood, Under the Guise of Affordable Housing.**

Let us deal first with what the Project is not. On its promotional website, Sponsor touts the Project as a “First of its Kind.. Small-scale mixed-affordable housing project in San Francisco.”<sup>4</sup> While the Project is certainly in San Francisco, the other claims are a bit misleading.

### **1. This Project is not Mainly About Affordable Housing.**

The Sponsor’s website and memorandum to the Planning Department extolls the Project as a model for how affordable housing can be built in the City. This is a new pitch; or at least a change in emphasis. In November 2019 Sponsor described the Project this way:

The purpose of the Project is twofold: (1) build the Applicant’s home and permanent residence and (2) develop affordable housing to help address San Francisco’s current housing crisis.<sup>5</sup> (emphasis added)

Sponsor later changed that purpose, deleting point number One, but the Project itself seems not to have changed in the interim.<sup>6</sup> To be sure, Sponsor’s purpose — perhaps the word motivation is more accurate — is not particularly relevant to the legal or policy issues at hand, although the change in articulation might be revealing. No matter. The Project is this: in this RH-2 zone, to divide a single 2,916 square foot lot currently holding a single building with 2,544 feet of living space, into two 1,458 lots. On the new lot, Sponsor would construct a 4,196 square foot, four story, three unit apartment building.

Turning to the affordable housing elements of the Project, in the new four story, three unit building on the newly created lot Sponsor would put a 473 square foot<sup>7</sup>, ground floor ADU, variously described as “Below Market Rate” or “Affordable Housing” on Sponsor’s website; or “rent controlled” in some submissions to the Planning Department. In the existing building on the original lot, a 607 square foot ADU would be constructed; this would be rent controlled as well. However, upon completion of the Project, the Sponsor himself would relocate from his current abode in the existing

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<sup>4</sup><https://430017th.com>

<sup>5</sup> San Francisco Planning, Pre-Application Meeting Packet, November 2, 2019, Attachment to Notice of Pre-Application Meeting - 4300 17th Street/PLUTA. The same statement is made, inter alia, in Sponsor’s Variance from the Planning Code Application.

<sup>6</sup> The Attachment in Support of Preliminary Use Application - 4300 17th Street / Pluta Project. In this document, purpose one — building Applicant’s permanent residence - is omitted.

<sup>7</sup> The 473 square feet consists of: ADU (376), Bath (57), and Mud (40). See Pluta 8-20-20 Final Plant to City PDF, at A3.

building to the new building, apparently the new building would be entirely market rate, and a second ADU would be added to the current building.<sup>8</sup>

In short, while the Project would add 2 ADUs it seems to us rather generous to characterize the entire project as “affordable housing” when only 16% of the building(s)’ project square footage would be “affordable” or rent controlled. It is, instead, the construction of a four story, three unit market rate apartment building on a newly severed lot, ostensibly to subsidize two ADUs.

## **2. CHN Supports Affordable Housing Sensibly Planned with Uniform Criteria.**

We acknowledge the obvious: affordable housing, new rent controlled units — call them what you will — when built by private investors necessarily involve some sort of subsidy, be it from government or from other homeowners or renters in the building at issue. To the extent this can be done in our RH-2 zone consistent with Code we support and indeed encourage that sort of development. That is impossible with this Project that could only proceed with numerous variances and authorizations from Code, the granting of which would be detrimental to immediate neighbors and the integrity of the Planning Code, as we describe on the next page.

The Project Sponsor declares on page one of his website that:

This is a first-of-its-kind approach to building affordable housing in San Francisco and could be a blueprint for hundreds of additional units of affordable housing throughout the City.<sup>9</sup> (emphasis added.)

His blueprint is simple: Ignore the Planning Code, or honor it only insofar as variances and authorizations are granted on an ad hoc basis. That is hardly a sensible “model” for adding affordable housing. No, if we are to have a blueprint for adding hundreds of additional affordable housing units in RH-2 Districts — and perhaps we should — let us draft that blueprint after professional analysis and guidance as well as public input; develop criteria, standards, and conditions precedent; and apply the blueprint city wide, or at least uniformly across a particular zoning district.<sup>10</sup>

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<sup>8</sup> Attachment in Support of Variance Application - 4300 17th Street / Pluta, page 2.

<sup>9</sup><https://430017th.com> Project Summary

<sup>10</sup> We are not yet at the point where, as originally proposed by Sen. Weiner in S.B. 902 (introduced January 30, 2020) a neighborhood multifamily project is a use by right in residential zones; nor the presently amended version granting local governments greater authority to similarly zone for up to 10 units of residential density per parcel. [http://www.leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200SB902](http://www.leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB902)

### **3. The Project Requires Numerous Concessions, None Warranted and All Ill Advised**

We will not belabor all the Planning Code sections at issue, nor the particulars of the variances and conditional use authorizations requested. We leave that mostly to those most directly affected — the neighbors. However, we will note that the “price” for adding two modest ADUs — one 473 square feet, the other 607 — seems very high indeed: variances needed for the lot area, front set back, rear yard, open space, and permitted obstructions. Together with the issues posed by Conditional Use Authorizations, as well as non compliance with the Residential Design Guidelines cited by Staff (see immediately below), if permitted this extraordinary density would be tantamount to “...an effect substantially equivalent to a reclassification of the property...” contrary to Sec. 305(a).

The Project would need a Conditional Use Authorization in connection with the Corona Heights Special Use District (Sec. 249.77), a code provision that became effective in August of 2017 after considerable input and support from CHN. We do not believe the Sponsor meets the tests posed in Sec. 303(c), a conclusion apparently shared by Staff in its Check Letter; and we conclude that the Sponsor has not established a record sufficient to meet the threshold set forth in subsection (e) of that Code provision.

Again, we leave to others, the nearby property owners, a full description of the obviously detrimental effects should the Commission approve this Project. Suffice to say that they are material, consequential, and vastly outweigh whatever benefit might transiently accrue from the modest and not clearly permanent increase in affordable housing stock.<sup>11</sup>

#### **C. We Endorse Staff's Initial April 27, 2020 Conclusions.**

On April 27, 2020 Planning Staff issued its Check Letter in which it opposed the Project as then conceived, urging the Sponsor to modify it according to recommendations made therein. On August 20, 2020 Sponsor submitted its Final Plans to the Department. There is nothing in that document, nor have we been able to find any Sponsor document on the Planning Department’s website, that suggests that the Project has been modified in any way to take account of Staff’s April conclusions. Hence, this extraordinary Commission hearing.

Pursuant to Commission hearing procedures, we do not expect to see Staff’s final recommendation in advance of our submission of this memorandum. But we would

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<sup>11</sup> It is not at all clear from public documents available at the time of this submission, more than a week before the scheduled November 19, 2020 hearing, how and for how long, the two ADUs will be considered “affordable” or subject to rent control. As noted above, p. 3, the ADU in the new building will become market rate.

hope that Staff's position would be the same as memorialized on April 27, and we call out the most salient conclusions therein:

...the Department's Senior Management has reviewed the proposed project and does not support the intensity of non-compliance the proposal seeks to achieve higher density [sic] at the site (a lot split and new construction with variances.) The Department recommends the project be revised to be code conforming within the existing lot, and if the Sponsor seeks density greater than that allowed in the RH-2 District please continue to pursue accessory dwelling units within the existing structure and within an [sic] detached auxiliary structure (Section 207(c) (6), if feasible. <sup>12</sup> (emphasis added)

Staff further noted in April that the Project does not conform to the Residential Design Guidelines because, among other things, the Project “...would have significant negative impacts to neighboring properties.” Accordingly, the RDAT (Residential Design Guidelines Team) opposed the project, including the lot split and variance request, and urged the Sponsor to re-design the proposal to be Code compliant. Notably, the RDAT urged the Sponsor, again, to consider options for an ADU in the rear yard, as well as in the current building.<sup>13</sup>

#### **D. Conclusion**

Procedurally, this is an egregious attempt to leap frog Planning Staff that had the temerity — we would say courage — to disapprove the Project because it is so obviously impermissible as proposed. Substantively, the variance and conditional use authorization requests should be denied for the reasons stated herein. CHN supports the addition of affordable housing units in our neighborhood consistent with the Code. Should there be a need to relax the current rules in order to more easily accommodate such units, whether in RH-2 districts or otherwise, there should be a proper fact finding, analytic, and deliberative process leading to the development of appropriate criteria and standards and then the application of same in a uniform manner, not as proposed here on an ad hoc basis. That is the proper blueprint or model for adding such units.

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<sup>12</sup> Check Letter, page 2, Project Review Comments, number 1.

<sup>13</sup> Check Letter, page 2, Project Review Comments, number 2.