



Memorandum

To: Planning Commission Secretary (commissions.secretary@sfgov.org)
Mr. Jeffrey Horn, Senior Planner (jeffrey.horn@sfgov.org)

Re: September 2 Hearing; 4300 17th St. (2019-013808UA/VAR)

From: Corbett Heights Neighbors¹ (info@corbettneighbors.com)
Paul Allen, CHN Secretary (sfcapaul@mac.com)

Date: August 24, 2021

Executive Summary

More than two years after the initial Application, 9 months from the last Commission hearing on this matter, and with most neighborhood and Staff objections dismissed, this Project continues to carry the same fatal flaw as it always has: contrary to Code Sections 134 and 249.77, proposed “full lot coverage”² of two new 1458 square foot lots created from the splitting of the extant 2916 square foot lot. As early as March 2020 the Residential Design Team concluded that the elimination of the property’s rear yard “would have significant negative impacts to neighboring properties,” and the Department recommended that the Project be redesigned “at a less intense scale that respects the mid-block open space and maintains adjacent properties’ access to light and air by providing adequate setbacks and yards.”³ This was not done; the Project before the

¹ CHN is an 18 year old neighborhood association in the Corona Heights Neighborhood. The Project is within CHN’s boundaries. CHN was a proponent of, and indeed spearheaded, the adoption of the Corona Heights Large Residence Special Use District code provision that is implicated in this Project.

² Executive Summary Conditional Use/Variance, Hearing Date November 19, 2020 at p. 3, hereafter “2020 Executive Summary.” Of course, we are not privy to the Staff Executive Summary that will attend this latest Project iteration in 2021 because it will be posted after public Comments are due.

³ 2020 Executive Summary, p. 3.

Commissioners has precisely the same full lot footprints and attendant effects as it did 9 months ago. For this reason, the CUAs and variances should be rejected.

As we did almost 10 months ago, we see no reasoned, principled basis — and certainly none is set forth in Sec. 303(c) or Sec. 249.77(e)(1) — to relieve the Project from the rear yard/set back requirement. This was the Department’s opinion 9 months ago; there are no new facts that support a contrary conclusion. In this respect, the Project is the same. Worse, if permission is granted, a terrible precedent will have been set, to the detriment of neighbors and neighborhoods alike, city wide.

Almost ten months ago, in response to Sponsor’s marketing of the prior iteration of the Project as one of “mixed, affordable housing,” we observed: “This 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.” Although this Project would add three units - one 592 square foot ADU in the extant building, two units (one for the Sponsor) in the new building - and although Sponsor sometimes touts the units as “affordable,”⁴ there is no evidence that this will be the case unless that is a condition of Commission approval or these promises are deed-restricted; nor is there any assurance that one or more of these units will not be offered as holiday short term rentals rather than residences for San Franciscans. Of course, marketing appeals have no place in a principled review of these applications.⁵

The central issue here is not the number of CUAs or variances — lot size, lot area, open space, etc — and not who will live in the units. Rather, the issue is that the Project has precisely the same fatal flaw as it did 9 months ago - utter destruction of the back yard and open space contrary to Code. As we file these Comments with the Commission prior to the scheduled September 2, 2121 date of the hearing (we seek a Continuance) and before the scheduled release of the 2021 Staff Executive Summary a few days before that hearing, we can conceive of no basis for a change to the Department’s position from what it was 9 months ago because nothing in the Project has changed relevant to this conclusion: “The Department also finds the project not to be necessary, desirable, and compatible with the surrounding neighborhood, and to be detrimental to persons or adjacent properties in the vicinity.” 2020 Executive Summary, p. 4.

⁴ Project Application, May 21, 2021 at p. 3

⁵ The addition of new or even affordable housing does not trump Code provisions, though we acknowledge the existence of relevant state law. If Sponsor’s argument is that “affordable” housing trumps the Code, then let us address this notion systematically, city wide, across all zoning districts with new Code provisions rather than on an ad hoc, standard free basis as is so evidently the case here.

Discussion

A Brief History of a 2 Year Project.

In the November 2019 Application, Sponsor wrote that the purpose was two fold: (1) build the applicant's home and permanent residence and (2) develop affordable housing. A year ago, one year from the original application and leading up to the November 2020 Commission hearing, the sponsor mostly deleted the first point for reasons that remain obscure. But the size of the project remained the same as did its numerous violations of the Planning Code (without the grant of CUAs and variances). CHN's November 10, 2020 Memorandum in Opposition to the Project pointed out the threadbare link to affordable housing.

Even now, the shifting motivations leave us a bit confused, although perhaps we will hear more about this at the hearing. The sponsor's May 2021 application declares that "The purpose of this project is to build mixed-affordable housing..." and even states that two units would be "deed restricted Below Market Rate." But there is no verification or further evidence that this Project, if consummated, has anything to do with affordable housing; or that those pronouncements will be carried out; or that the units would be declared "off limits" for short term rentals to tourists rather than made available to San Franciscans as residences. As we wrote in our two Memoranda almost 10 months ago, we do not oppose affordable housing or greater residential density *per se*. Regardless of motivation, generally a development must be evaluated for what it is and for what it does as a structure, or in this case structures; and for what it does to the neighborhood, neighbors, and the Code.

Staff's November 19, 2020 Executive Summary issued on the eve of the hearing opposed the grant of CUAs and variances; recommended that the Project be revised to be code conforming; and declared that the Project did not comply with the Residential Design Guidelines because, among other things, it "...would have significant negative impacts to neighboring properties." For these reasons and many more set forth in that document, Staff recommended that the Project be redesigned. The Commission agreed with that recommendation.

In the intervening months, the Project has been somewhat redesigned — although, oddly, not in any manner that ameliorates the central flaw of "full lot coverage" of two lots — and the Sponsor apparently has had meetings with Planning Staff. However, as far as we can determine, there has been little to no outreach to Project opponents, certainly, not to CHN (designated as "organized opposition" in November 2020); and immediate neighbors have told us they have not been consulted or briefed either. At the November 2020 hearing on this matter, numerous Project supporters from outside San Francisco phoned in their support; so it seems "outreach" extends to remote supporters, not neighbors.

The Latest Version of the Project Has the Same Central Flaw.

Staff's 2020 Executive Summary on the prior version of this Project said this:

"The Department recommends that the proposal at this site be redesigned at a less intense scale that respects the mid-block open space and maintains adjacent properties' access to light and air by providing adequate setbacks and yard." p. 3.

What has changed? With respect to this central conclusion - nothing:

- The 2020 proposal would split a 2916 square foot lot into two 1458 square foot lots, necessitating a variance from the 1750 minimum square foot requirement. Sec. 121(e)(2). The 2021 proposal? Same.
- The 2020 proposal called for both structures, the old 4382 square foot structure and the new 5042 square foot structure, to "...be developed to a depth equal to their respective property lines, resulting in full lot coverage, therefore both lots would require a variance for rear yard," implicating the Corona Heights Special Use District provisions as well as Sec.134. (2020 Executive Summary at p. 3, emphasis supplied.) This utter destruction of the back yard caused the Residential Design Advisory Team to decry the "...significant negative impacts to neighboring properties..." In so far as the green space is concerned, this version of the Project has precisely the same effect.

Of course, we acknowledge that the scale of the new building has been reduced by 38% to 3128 square feet. Although several variances and/or CUAs will be required (e.g. lot size, usable open space, etc.) the essential flaw of this project remains unaddressed, two years later, in defiance of code, common sense, the Staff, the Commission, and respect for neighbors and neighborhood alike: "full coverage" of the yard.

There is No Legal or Principled Basis to Grant a CUA/Variance.

With respect, it seems to us that the central question remains as it was 9 months ago: What is the reasoned, principled basis to permit, quite literally, such wholesale destruction of the rear yard and open space contrary to Code? We can conceive of none, and we have yet to see one articulated.

Of course, the applications must be measured against the enumerations of both Sec. 303(c) and the Corona Heights Large Residence Special Use District (Sec. 249.77), yet there is nothing there that warrants approval. Regarding the latter, in the 2020 Executive Summary (beginning at p. 6) Staff went through, *seriatim*, the terms for review of a CUA and concluded, not surprisingly, that the Project is "not compatible with the existing development of the District." p. 7. And there is certainly nothing in 303(c) that would support the grant of a CUA. Further, adding the adjective "affordable" to the new housing component — particularly without any evidence of or binding commitment from the Sponsor that this will be so — does nothing to advance that argument.

Of course, we do understand that the second and third floors of the new building have been scaled back. But the “full lot” footprint remains.

Finally, we wish to reiterate what we wrote in prior memoranda on this Project: CHN does not oppose affordable housing, ADUs, or even greater density consistent with Code. We do oppose the applications here because, if granted, the Project would have serious, adverse consequences to neighbors and neighborhood alike; there is no legal or policy basis for approval; and a terrible precedent will have been set with adverse consequences city wide. The Project should be rejected or returned for modifications consistent with Code.