



SAN FRANCISCO PLANNING DEPARTMENT

Letter of Determination

September 22, 2017

Robia S. Crisp
Senior Counsel
Hanson Bridgett, LLP
425 Market Street, 26th Floor
San Francisco, CA 94105

Site Address:	122 Rivoli Street
Assessor's Block/Lot:	1284/038 (formerly a portion of Lot 008)
Zoning District:	RH-2 (Residential, House, Two-Family)
Staff Contact:	Mary Woods, (415) 558-6315 or mary.woods@sfgov.org
Record No.:	2017-009243ZAD

Dear Ms. Crisp:

This letter is in response to your request for a Letter of Determination to clarify certain conditions of a Variance Decision (Case No. 92.307V) issued on September 28, 1992 in connection with the subdivision of a single parcel (Lot 008) into two lots: Lot 038 (122 Rivoli Street) and Lot 037 (100 Rivoli Street). Your letter requested determinations on the following:

1. Whether the 1992 Variance Decision would be considered invalid since no building permit was issued within three years of the effective date of the Variance Decision.
2. Whether a side yard fence may be constructed to separate the two properties (100 and 122 Rivoli) for safety purposes or to prevent cross-over between the two properties
3. Whether the existing sloped roof may be replaced with an elevated flat roof that is no taller than the current permitted height of the existing structure.
4. If the answer to Question 3 is yes, can the proposed vertical expansion be approved administratively?

Background

The 1992 Variance Decision involved the subdivision of a single lot into two parcels, resulting in the need to seek and justify Variances from Planning Code requirements for minimum lot area, rear yard, usable open space and off-street parking. A Variance Decision was issued on September 28, 1992 granting these Variances. Two conditions were imposed as part of the Variance approval and these conditions were to be recorded with the City Recorder's Office as a Notice of Special Restrictions (NSR). The first condition stated that future vertical or horizontal expansion may require a new Variance, at the discretion of the Zoning Administrator. The second condition stated that the conditions attached to the Variance Decision be recorded on the land records of the City and County of San Francisco. You state that the previous owners did not record the conditions of approval related to this Variance Decision.

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Based on City records, the new parcel map for the subdivision of a single lot (formerly Lot 008) into two lots (Lots 037 and 038) was recorded with the City Recorder's Office on February 26, 1993 under document number F30310300.

In the 1992 Variance Decision, under Finding #1, one of the findings supporting that there are exceptional or extraordinary circumstances for the Variance, states that "As a condition of approval for this variance no fence or barrier shall be built on the newly created property line between the houses, in order to preserve the existing usable open space." However, this finding was neither included in the Variance Decision as a condition of approval nor recorded as a part of the NSR.

In your letter, you note that the Variance Decision contained (as an attachment) an NSR for the subject decision. In this NSR (which is likely the NSR prepared by the Planning Department), no reference to an additional condition limiting fences/barriers on the newly created property line. Further, you reference a second NSR prepared by the attorney (James T. Johnson) for the previous owners, dated October 1, 1992. In this NSR (which was not prepared by the Planning Department), a condition of approval is included which states: "no fence or barrier shall be built on the newly created property line between the two houses, in order to preserve the existing usable open space." Based upon available information, neither NSR was ever recorded on the property.

Determinations

Based on City records and information provided in your letter, it is my determination that the 1992 Variance Decision is valid because the lot subdivision was approved and recorded with the City Recorder's Office, and that a side yard fence may be constructed in compliance with the requirements of the Planning Code.

Responses to your questions are as follows:

1. Whether the 1992 Variance Decision would be considered invalid since no building permit was issued within three years of the effective date of the Variance Decision.

The September 28, 1992 Variance Decision is valid because the lot subdivision was approved and recorded with the City Recorder's Office on February 26, 1993.

2. Whether a side yard fence may be constructed to separate the two properties (100 and 122 Rivoli) for safety purposes or to prevent cross-over between the two properties.

While the finding of the 1992 Variance Decision reference a limitation on fences between the properties, it does not contain this as a condition of approval. As such, a side yard fence may be constructed in accordance with relevant Planning Code provisions. Given the location of the building on the lot, portions of any proposed fence may be located within the front setback and rear yard. Any such portions of the fence must comply with the requirements of Planning Code Section 136(c)(16-19), which limits fences within the front setback to no more than 3 feet in height (solid) or 6 feet in height (75% open to perpendicular view) and fences within the rear yard to no more than 10 feet in height (solid).

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3. Whether the existing sloped roof may be replaced with an elevated flat roof that is no taller than the current permitted height of the existing structure.

A building permit application and Variance would be required for the vertical expansion because portions of the building proposed for expansion appear to be within the required front setback and rear yard.

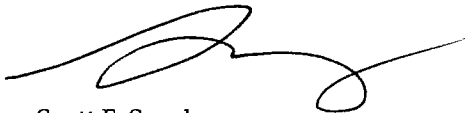
4. If the answer to Question 3 is yes, can the proposed vertical expansion be approved administratively?

No, the proposed vertical expansion would require neighborhood notification pursuant to Planning Code Section 311 for the building permit application and public hearing for the Variance.

Please note that a Letter of Determination is a determination regarding the classification of uses and interpretation and applicability of the provisions of the Planning Code. This Letter of Determination is not a permit to commence any work or change occupancy. Permits from appropriate Departments must be secured before work is started or occupancy is changed.

APPEAL: If you believe this determination represents an error in interpretation of the Planning Code or abuse in discretion by the Zoning Administrator, an appeal may be filed with the Board of Appeals within 15 days of the date of this letter. For information regarding the appeals process, please contact the Board of Appeals located at 1650 Mission Street, Room 304, San Francisco, or call (415) 575-6880.

Sincerely,



Scott F. Sanchez
Zoning Administrator

cc: Property Owners:

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Steven Faig Trust
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BBN Requestor: Patrick Buscovich, 235 Montgomery Street, SF, CA 94104
Neighborhood Groups
Mary Woods, Planning Department