# Letter of Determination 

1650 Mission St. Suite 400 San Francisco, CA 94103-2479

Reception:
415.558 .6378

Thomas J. Madill and Lizbeth R. Gordon
50 Clifford Terrace
San Francisco, CA 94117

Site Address:
Assessor's Block/Lot:
Zoning District:
Staff Contact:
Record No.:

60 Clifford Terrace
2618A / 021
RH-2 (Residential-House, Two Family)
Jeff Horn, (415) 575-6925 or jeffrey.horn@sfgov.org
2017-003421ZAD

Dear Mr. Madill and Ms. Gordon:

This letter is in response to your request for a Letter of Determination regarding the property at 60 Clifford Terrace. This parcel is located in the RH-2 (Residential-House, Two Family) Zoning District and 40-X Height and Bulk District. The request is to determine the following: 1) would a building permit have been required to build the existing walkway at the rear the property located at 60 Clifford Terrace between 1960 and 1990; 2) would a variance have been required to build the existing walkway between 1960 and 1990; 3) does the Planning Department have any record of building permit and/or variance to build the existing walkway between 1960 and $1990 ; 4$ ) under the $1960 / 1961$ permit, would the existing walkway have been approved without a variance; and 5) if no permit or variance exists to build the current walkway, and the owners seek to legalize the current walkway, do they have to comply with the current Planning Code.

The responses to these five items are as follows:

1) The Planning Department is not the issuing agency for Building Permits and the Department does not maintain Building Permit records.
2) At the time of the City Planning Code in 1960, with amendments through the year 1962, the subject property (2618A/021) was within a Two-Family Residential (R-2) District.

Per Section 134, Rear Yards, Table 3, Minimum Depth of Rear Yard Buildings, for buildings in the R-2 District the minimum depth of the rear yard was 25 feet. Provided, that the required depth shall be reduced by one (1) foot for every four (4) feet or major fraction thereof by which the lot is less than one hundred (100) feet in depth, but in no case shall it be thus reduced to less than fifteen (15) feet. The irregular shaped subject property has an average depth of approximately 85 feet, and therefore would have had a required setback of approximately 21 feet, 4 inches under the 1960/62 Planning Code.

Section 132, Yard Requirements, subsection (a) stated, "A required rear yard shall be open and unobstructed, except as herein provided, from the ground upward." However, subsection (f) of Section 132 stated that "Fences, walls, hedges, walks, driveways or necessary retaining walls may occupy any yard area." No controls of the location or height of these features within a required rear yard was included in the Code.

Although the walkway was located within the required rear yard, there is no certainty that the interpretation at the time would have been that a Variance (as described in then-Section 302) for rear yad encroachment would had been required for the walk to have been built per the 1960/62 Planning Code.

In the 1964 Planning Code, Section 132(f), which contained the reference to "walks" was removed from the Code. Section 126, Permitted Obstructions in Lot Coverage, Required Yards and Usable Open Space was expanded to include:

- Subsection (g), a control on steps that limited the height of steps to not more than 3 feet above grade and stairways and landings to not exceed above the floor level of the adjacent first floor of occupancy and to project no more than 6 feet into the required open area for any portion that is more than 3 feet above grade, and provided that such stairways and landing shall occupy no more than $2 / 3$ the buildable width of the lot; and
- Subsection (n), a control on decks that limited the floor of a deck (on a slope of less than 15\%) to not exceed a height 3 feet above grade at any point in a required yard.

Therefore, although the walkway does not exceed the first floor of occupancy, it does exceed 3 feet in height above grade and projects more than 6 feet into the required open area, therefore the walkway would have required a Variance per the 1964 Planning Code.

In the 1969 and 1972 Code, no pertinent changes were made in regards to rear yard requirements or permitted obstructions within Sections 126, 132 or 134 and therefore the walkway would have required a Variance for rear yard encroachment per the 1969 or 1972 Planning Code.

In 1978, Citywide Residential Rezoning established more and slightly different residential districts, remapped many areas to less intense districts, established front setback requirements and new rear yard requirements. As a result, the subject property was rezoned to the Residential, House Districts, Two-Family (RH-2).

Section 134 was retitled as Rear Yards, R, C, and M Districts, and the basic rear yard requirement was increased for the Two-Family (RH-2) District to a minimum depth equal to forty-five percent ( $45 \%$ ) of the total depth of the lot. Section $134(c)(1)$ allowed for the rear yard depth to be reduced to the average depths of the rear building walls of the two adjacent buildings."

Controls of permitted obstructions were moved to Section 136, Obstructions Over Streets and Alleys and In Required Set-Backs, Yards and Usable Open Space, and the subsections (g) and ( n ) that existed in the previous versions of the Planning Code were changed to subsections 136(c)(14) and $136(c)(24)(A)$. There was no substantive change to the controls of steps and decks within these sections, therefore the walkway would have required a Variance per the 1978 Planning Code.

No changes to the Planning Code in regards to rear yard requirements or permitted obstructions occurred after 1978.
3) A review of historic files maintained by the Planning Department found no Variances or other Planning Department applications or approvals for the subject property between 1960 and 1990. The Planning Department is not the issuing agency for Building Permits and the Department does not maintain Building Permit records. However, the two permits that are known to have been issued within this time were Permit No. 244363 in 1960 and Permit No. 8900073 in 1989, which was appealed (Appeal No. 89-144) and upheld by the Board of Appeals. Permit No. 24463 did not mention the walkway within the project description or plans. Permit No. 8900073 did not mention the walkway within the project description but the plans did include the walkway as an existing structure.
4) As mentioned above in Response No. 2, Section 132(f) of the 1960 Planning Code stated that "Fences, walls, hedges, walks, driveways or necessary retaining walls may occupy any yard area." However, no controls of the location or height of these features within a required rear yard is included in the Code. Therefore, there is no certainty that the interpretation at the time would be that a Variance for rear yard encroachment would have been required for the current walk to have been built per the 1960 Planning Code.
5) The Subject Property and the two adjacent properties, 50 Clifford Terrace (2618A/022) to the west and 66 Clifford Terrace (2618A/022) to the east, are located in the RH-2 Zoning District. In the RH-2 District, Planning Code Section 134(a)(2) provides that a property's "minimum rear yard depth shall be equal to 45 percent of the total depth of the lot on which the building is situated." Planning Code Section $134(c)(1)$ allows for this rear yard depth to be reduced as follows: "the forward edge of the required rear yard shall be reduced to a line on the subject lot, parallel to the rear lot line of such lot, which is an average between the depths of the rear building walls of the two adjacent buildings." Therefore, through rear yard averaging, the property at 60 Clifford Terrace has a required rear yard of approximately 21 feet. Planning Code Section 134(a)(2)(b) states that "Only those obstructions specified in Planning Code Section 136 of this Code shall be permitted in a required rear yard, and no other obstruction shall be constructed, placed or maintained within any such yard."

As provided in Planning Code Section $136(\mathrm{c})(24)(\mathrm{A})$ the floor of any deck shall not exceed a height of three feet above grade at any point within a required open area (rear yard) and per Planning Code Section $136(c)(14)$ and stairs of any type shall not exceed a height of three feet above grade at any point within a required open area (rear yard).

July 17, 2017

The walkway at the rear of 60 Clifford Terrace is located within the 21 foot required and at a height of approximately five feet above grade. Therefore, if the walkway and any other structures greater than three feet in height require legalization under current Planning Code requirements, a Variance from Planning Code Section 134 for a rear yard encroachment would be required. Public notification of a Building Permit would be required per Section 311.

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: Jeff Horn, Planner
Property Owner - 60 Clifford Terrace
Applicant (Thomas J. Madill and Lizbeth R. Gordon)
Neighborhood Groups
BBN Requestor (if any)

Thomas J. Mail \& Lizbeth R. Gordon<br>50 Clifford Terrace<br>San Francisco, CA 94117<br>(415) 505-9468 / liz@lizbethgordon.com

March 16, 2017

Scott F. Sanchez, Zoning Administrator
coo: San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103
Re: Subject Address:
Assessor's Block / Lot:
Zoning District:

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## 60 Clifford Terrace

2618 A / 021
RH-2
Dear Mr. Sanchez:

## REQUEST

We own 50 Clifford Terrace (50 CT), immediately adjacent to the east of 60 Clifford Terrace ( 60 CT ).

We respectfully request a Letter of Determination (LOD) relating to the legality of an elevated walkway in the rear yard of 60 CT . That walkway is parallel to and at 60 CT 's eastern property line (PL), or 50 CT's western PL, and connects the back of the $2^{\text {nd }}$ floor of 60 CT's main house (Lot 21) to 60 CT's roof deck above a rear garage on a separate lot (Lot 31). The walkway landing is approximately $5^{\prime}$ above grade, about $18^{\prime}$ long, and is over $3^{\prime}$ wide. The walkway has no fire-rated construction, and is open support with an unrated guard. The walkway is believed to have been built sometime between approximately 1961 and 1989.

## BACKGROUND

The owners of 60 CT (Owners) have a proposed project pending with the Planning Department (Planning), Application No. 2014-04-30-4544, which consists of $4^{\text {th }}$ story verticaland side yard horizontal-additions, as well as interior remodel ("Underlying Project").

On 7/1/15, we filed a Discretionary Review Application, which Application was amended on $9 / 2 / 15$. Therein, we advised Planning that the walkway and roof deck were unpermitted, and as such, illegal. Planning subsequently advised us that, absent a determination by the Building Inspection Department (DBI) to that effect (illegality), a Planning Commission hearing would proceed on the Underlying Project.

On 3/1/16, DBI issued a Notice of Violation (NOV) as it concerns the walkway (Lot 21). The DBI then-senior inspector who issued that NOV was Donal Duffy.

On or about $5 / 12 / 16$, in response to the DBI NOV, Owners applied for a Variance from the Planning Code (Application No. 2015-000-737-VAR) with respect to the existing walkway
(Lot 21), as well as garage roof deck (Lot 31) and stairs (Lot 21) that service both the walkway and roof deck (Variance Application).

On or about $9 / 30 / 16$, Owners submitted to Planning two proposed site plans (Options A and B), in furtherance of their Variance Application. Both options proposed removing the walkway at the eastern PL, but retaining the roof deck on the back garage. Option A proposed to build a new and $2^{\text {nd }}$ deck some $4^{\prime}-5.25$ " from the eastern PL. Option B proposed to build a new and $2^{\text {nd }}$ deck (some $4^{\prime}-5.25$ " in from the eastern PL) at the back of the main house (this was a suggestion we made to Planning and Owners in 2015, premised on the removal of the current walkway and back garage roof deck, both of which very significantly violate our privacy and quiet enjoyment, and that of other neighbors). Planning's Residential Design Team reviewed Owners' proposed options and supported Option B, but with the direction that one of the two decks (either the existing rear garage roof deck on Lot 31 , or the proposed new and $2^{\text {nd }}$ deck at the back of the main home on Lot 21), be eliminated from the project scope.

About 10/25/16, Owners, seemingly not agreeable to the direction of the RDT, requested that the Planning Commission hearing then scheduled for 11/17/16 be taken off calendar.

On or about $12 / 5 / 16$, Owners' representative visited DBI in an effort to challenge the NOV (concerning the walkway); and, on $1 / 18 / 17$, Owners' representative succeeded in having the then-new senior DBI inspector Mauricio Hernandez overrule Donal Duffy with respect to the NOV.

On 2/7/17, Planning planner Jeff Horn advised us that DBI had abated the NOV, and as such, Planning was looking to reschedule a Planning Commission hearing on the Underlying Project.

On $3 / 3 / 17$, a meeting took place, which we requested, in an effort to reconcile the inconsistency that existed in DBI's (Donal Duffy's) issuance of an NOV as to the walkway, and then DBI's (Mauricio Hernandez) abatement of that NOV. At that time, Donal Duffy stood by his issuance of the NOV (and the research and site visit he did prior to that issuance), while Mauricio Hernandez took the positions that there might have been a lost building permit, and the legality of the walkway was an issue for Planning - not DBI. Chief Building Inspector Patrick O'Riordan decided at that time to reactivate the NOV and requested that we next pursue the legality of the walkway with Planning (as we had already sought to do with Planning in 2015 to no avail; see above). Specifically, O'Riordan directed us to pose the question to Planning of whether the Planning Code from 1960 to 1990 would have even allowed the elevated walkway in the rear yard.

As a result, we are hereby filing a Complaint and this request for a LOD with Planning.
If consideration of the Underlying Project goes forward to the Planning Commission, with or without the Variance Application, and is approved, it could arguably legalize the current walkway with the issuance of a Certificate of Final Completion (CFC). As such, we again respectfully request that the legality of the walkway be resolved, prior to any new construction, including a Planning Commission hearing.

Permit Application No. 244336, filed on $12 / 29 / 60$, issued on $1 / 24 / 61$, and completed on $4 / 27 / 61$, concerned a "room \& bath addition to rear of dwelling", and then detailed two rooms and an "uncovered deck area on post \& pier" - all "as per drawings" (1960/1961 Permit). The drawings show only an uncovered deck area on post \& pier starting at the back of the then- (and
still-) current kitchen and family room on the $2^{\text {nd }}$ floor of the home and continuing only to the back of the then- (and still-) current family room of the main house. That deck/walkway was not and is not the deck/walkway that is there today and reaches across Lot 21 and to the back garage roof deck on Lot 31 (with stairs to the roof deck on Lot 21).

Permit Application No. 8900073, filed on $1 / 3 / 89$, issued on $6 / 21 / 89$, and completed on $3 / 7 / 90$, was for a "horizontal addition - addition of master bedroom above the existing family room" and conversion of the existing bedroom to a master bath. The related plans show the current walkway and current back garage roof deck as having existed as of 1989/1990. No CFC was issued in connection with this permit.

## QUESTIONS FOR LETTER OF DETERMINATION

1. Would a building permit have been required to build the current walkway between 1960 and 1990?
2. Would a variance have been required to build the current walkway between 1960 and 1990 ?
3. Does the Planning Department have any record of building permit and/or variance to build the current walkway between 1960 and 1990?
4. Under the $1960 / 1961$ permit, would this current walkway have been approved without a variance?
5. If no permit or variance exists to build the current walkway, and Owners seek to legalize the current walkway, do they have to comply with the current Planning Code?

## DIRECLTY RELEVANT SUPPORTING DOCUMENTATION

While there are many documents that could be provided at this time, given the background of this matter, we are attaching just those that we believe you will find most pertinent to the questions posed for the requested LOD - namely:
A. Report of Residential Building Record (3R) dated 5/31/12 (Exhibit A).
B. 1960/1961 Permit No. 244336, with drawings (Exhibit B).
C. 1989/1990 Permit No. 8900073, with drawings (Exhibit C).
D. Photo of Walkway as of $3 / 14 / 17$ (Exhibit D).

Thank you, in advance, for your analysis and determination in this matter.


Enclosures (as described above)

<br>Yivian 3. Bay, 气. B.O., Director

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C. Does this building contain any Residential Hotel Guest Rooms as cefined in Chap. 41, S.F. Admin. Cocie? Yes No y


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No $x^{\prime}$ B. Ifyes, has a proof of compliance been isswed? Yes No
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EXHIBIT "D"

