



# SAN FRANCISCO PLANNING DEPARTMENT

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## Memo to the Planning Commission

HEARING DATE: FEBRUARY 17, 2011  
Continued from the January 13, 2011 Hearing

*Date:* February 10, 2011  
*Case No.:* **2010.0003CV**  
*Project Address:* **519 ELLIS STREET and  
430 EDDY STREET**  
*Zoning:* RC-4 (Residential-Commercial Combined, High Density)  
80-T Height and Bulk District  
North of Market Residential Special Use District #2  
*Block/Lot:* 0334/028 (519 Ellis Street); 0334/008 (430 Eddy Street)  
*Project Sponsor:* Eric Tang  
PO Box 26516  
San Francisco, CA 94126  
*Staff Contact:* Kevin Guy – (415) 558-6163  
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### BACKGROUND

On January 13, 2011, the Planning Commission considered a request for amendments to the conditions of approval for two previously approved companion projects in order to extend the performance period for three years (to January 13, 2014). The Conditional Use authorizations for the projects were originally approved by the Planning Commission on December 9, 2004. The project at 430 Eddy Street would demolish an existing surface parking lot and construct a five-story building reaching approximately 47 feet in height, containing 24 senior affordable dwelling units and one parking space. The project at 519 Ellis Street would demolish an existing surface parking lot and construct a five-story building reaching approximately 47 feet in height, containing 22 senior affordable dwelling units and one parking space. The latter project incorporates a 15-foot front setback at the fifth floor of the building to avoid casting new shadows on the Tenderloin Children's Park and Recreation Center. No modifications are proposed to the design or intensity of the projects as originally approved. As part of the original entitlements, both projects also received Variances from the requirements of the Planning Code for rear yard and dwelling-unit exposure.

At the hearing on January 13, 2011, three members of the public spoke in opposition to the requested extension. These speakers emphasized the importance of providing affordable housing to the Tenderloin community, but questioned the economic viability of the currently-entitled project. The speakers also allege that the existing lots have been poorly maintained and have attracted criminal activity. The Commission expressed many of these same concerns, and noted that the lack of experience of the project sponsor in developing affordable housing projects. The Commission passed a motion of intent to disapprove the requested extensions of the Conditional Use authorizations, and revoke these entitlements, by a vote of 6 to 1. The Commission continued the item to allow staff time to prepare

findings for disapproval. In addition, the Zoning Administrator indicated an intent to disapprove the requested extensions of the performance period associated with the previously-granted Variances.

### **REQUIRED COMMISSION ACTION**

In order to deny the requested extension and revoke the previously-approved Conditional Use authorizations, the Commission must adopt the attached motion for disapproval.

In addition, the Zoning Administrator will need to consider whether to grant the requested extensions of the performance periods for the two previously-granted Variances associated with the projects.

### **BASIS FOR RECOMMENDATION**

- The project sponsor has not made diligent, good-faith efforts to date to proceed with the development of the Projects.
- The subject properties have not been well-maintained by the project sponsor, and may have become an attractive nuisance.
- The subject properties are important sites for the delivery of needed housing to serve the Tenderloin neighborhood, however, it appears unlikely that the presently-entitled projects will come to fruition.

<b>RECOMMENDATION:</b> <b>Adopt Motion to Disapprove</b>
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**Attachments:**

Draft Motion for Disapproval



# SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- Inclusionary Housing (Sec. 315)
- Jobs Housing Linkage Program (Sec. 313)
- Downtown Park Fee (Sec. 139)
- First Source Hiring (Admin. Code)
- Child Care Requirement (Sec. 314)
- Other

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## Planning Commission Draft Motion

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**ADOPTING FINDINGS TO DISAPPROVE A REQUEST TO AMEND THE CONDITIONS OF APPROVAL FOR CONDITIONAL USE AUTHORIZATIONS, PURSUANT TO SECTION 303 OF THE PLANNING CODE, TO EXTEND THE PERFORMANCE PERIOD FOR THREE YEARS FOR TWO PREVIOUSLY APPROVED PROJECTS, TO ALLOW CONSTRUCTION OF TWO FIVE-STORY BUILDINGS CONTAINING A TOTAL OF 46 AFFORDABLE DWELLING UNITS FOR SENIOR CITIZENS, AT 519 ELLIS STREET, WITHIN ASSESSOR'S BLOCK 0334, LOT 028, AND AT 430 EDDY STREET, LOCATED WITHIN ASSESSOR'S BLOCK 0334, LOT 008, LOCATED WITHIN THE RC-4 ZONING DISTRICT, THE 80-T HEIGHT AND BULK DISTRICT, AND THE NORTH OF MARKET SPECIAL USE DISTRICT #2, AND ADOPTING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.**

### PREAMBLE

On December 2, 2009, Eric Tang ("Project Sponsor") submitted a request (Case No. 2010.0003C) with the Planning Department ("Department") for amendments to the conditions of approval for two previously projects in order to extend the performance period for three years. On December 9, 2004, the San Francisco Planning Commission ("Commission") granted Conditional Use Authorization for development exceeding 40 feet in height within in "R" District, pursuant to Planning Code Sections ("Section") 253 and 303, for a project at 430 Eddy Street (Case No.

2003.0145C, Motion No. 16915) which would demolish an existing surface parking lot and construct a five-story building reaching approximately 47 feet in height, containing 24 senior affordable dwelling units and one parking space. At that hearing, the Commission also granted Conditional Use Authorization for development exceeding 40 feet in height within in "R" District, pursuant to Sections 253 and 303, for a project at 519 Ellis Street (Case No. 2003.0151C, Motion No. 16913) which would demolish an existing surface parking lot and construct a five-story building reaching approximately 47 feet in height, containing 22 senior affordable dwelling units and one parking space, designed with the fifth floor of the building set back from the front property line by 15 feet to avoid casting new shadows on the Tenderloin Children's Park and Recreation Center (collectively, "Projects"). Both Projects are located within the RC-4 Zoning District, the 80-T Height and Bulk District, and the North of Market Residential Special Use District #2. No modifications are proposed to the design or intensity of the Projects as originally approved.

On March 7, 2005, the Zoning Administrator issued Variance Decision Letters granting Variances for both Projects from the requirements of the Planning Code for rear yard and dwelling-unit exposure, pursuant to Sections 134, 140, and 305.

On October 16, 2004, the Draft Initial Study/Mitigated Negative Declaration (IS/MND) for the Project was prepared and published for public review; and

On October 28, 2004, an appeal of the Mitigated Negative Declaration was filed with the Department.

On December 9, 2004, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application Nos. 2003.0145C and 2003.0151C, and the Appeal of the Mitigated Negative Declaration, 2003.0228E.

On December 9, 2004, the Commission upheld the PMND and approved the issuance of the Final Mitigated Negative Declaration (FMND) as prepared by the Planning Department in compliance with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) (CEQA), 14 California Code of Regulations Sections 15000 et seq. (the "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code ("Chapter 31"): and

On December 9, 2004 the Commission reviewed and considered the FMND and found that the contents of said report and the procedures through which the FMND was prepared, publicized, and reviewed complied with the CEQA, the State CEQA Guidelines and Chapter 31: and

The Commission found the FMND was adequate, accurate and objective, reflected the independent analysis and judgment of the Department and the Commission, and approved the FMND for the Project in compliance with CEQA, the CEQA Guidelines and Chapter 31.

The Planning Department, Linda Avery, is the custodian of records, located in the File for Case No. 2003.0228E, at 1650 Mission Street, Fourth Floor, San Francisco, California.

Department staff prepared a Mitigation Monitoring and Reporting program (MMRP), which material was made available to the public and this Commission for this Commission's review, consideration and action.

Since the MND was finalized, there have been no substantial project changes and no substantial changes in project circumstances that would require major revisions to the MND due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the MND.

On March 7, 2008, the Project Sponsor submitted a written request to the Zoning Administrator to extend the performance period for the original entitlements. This request was submitted after the expiration of the entitlements on December 9, 2007. In addition, the conditions of approval for the entitlements did not include language giving the Zoning Administrator the discretion to the extend the performance period. Based on these factors, the Zoning Administrator denied the request. On August 13, 2008, the Board of Appeals overruled the determination, allowing the Project Sponsor to seek an extension of the performance period through a public hearing before the Planning Commission and the Zoning Administrator.

On January 13, 2011, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2010.0003C. At that hearing, the Commission adopted a motion of intent to disapprove the requested extension of entitlements, and to revoke the Conditional Use Authorizations associated with the previously-approved projects.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties.

**MOVED**, that the Commission hereby disapproves the three-year extension of the performance period requested in Application No. 2010.0003C, and revokes the Conditional Use Authorizations associated with the previously-approved projects at 519 Ellis Street (Case No. 2003.0151C, Motion No. 16913) and 430 Eddy Street (Case No. 2003.0145C, Motion No. 16915), based on the following findings:

## FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** The property at 519 Ellis Street is located on the south side of Ellis Street, between Hyde and Leavenworth Streets, Assessor's Block 0034, Lot 028. The property at 430 Eddy Street is located on the north side of Eddy Street,

between Hyde and Leavenworth Streets, Assessor's Block 0034, Lot 008. The two lots are situated diagonally from each other within the block, and are currently developed with surface parking lots. Both properties are located within the RC-4 Zoning District, the 80-T Height and Bulk District, and the North of Market Residential Special Use District No. 2.

3. **Surrounding Properties and Neighborhood.** The subject properties are located within the Tenderloin neighborhood, an area characterized by high-density residential development, including a substantial number of residential hotels. Retail uses are typically found on the ground floors of residential buildings.

The scale of development varies greatly in the vicinity of the project sites. Older buildings in the immediate area are generally six stories or less in height. Tall residential towers, typically of more recent construction, are interspersed among the older mid-rise structures. The Tenderloin Children's Playground and Recreation Center is located across Ellis Street to the north, Turk and Hyde Mini-Park is located one block to the south, and Boedekker Park is located two blocks to the east.

4. **Project Description.** The Project Sponsor requests amendments to the conditions of approval for two previously approved companion projects in order to extend the performance period for three years (to January 13, 2014). The Projects were originally approved by the Planning Commission on December 9, 2004. The project at 430 Eddy Street would demolish an existing surface parking lot and construct a five-story building reaching approximately 47 feet in height, containing 24 senior affordable dwelling units and one parking space. The project at 519 Ellis Street would demolish an existing surface parking lot and construct a five-story building reaching approximately 47 feet in height, containing 22 senior affordable dwelling units and one parking space. The latter project incorporates a 15-foot front setback at the fifth floor of the building to avoid casting new shadows on the Tenderloin Children's Park and Recreation Center. No modifications are proposed to the design or intensity of the Projects as originally approved.

As part of the original entitlements, both Projects also received Variances from the requirements of the Planning Code for rear yard and dwelling-unit exposure. At the Planning Commission hearing on January 13, 2011, the Zoning Administrator indicated an intent to not grant extensions of the performance period for these. The Zoning Administrator will make a formal determination on the extensions at the Planning Commission hearing on February 17, 2011.

5. **Public Comment.** On January 11, 2011, staff received a letter in opposition to the requested extension from Randy Shaw, representing the Tenderloin Housing Clinic. The letter questioned the viability of the project, and raised concerns that the Project Sponsor may be holding the entitlement simply to inflate the value of the property. At the hearing on January 13, 2011, Mr. Shaw and two other individuals spoke against the extension, again questioning the viability of the project and expressing concerns about the current maintenance of the properties.

6. Generally, the purpose of conditions, like the one in this case, providing for the expiration of a conditional use permit within a certain amount of time is to prevent the reservation of land for future purposes when the permit holder has no good faith intent to presently commence upon the proposed use. Here, the Commission wishes to limit the potential for the subject properties to be held with existing entitlements if the development associated with these entitlements is unlikely to occur. Based on the testimony presented at the public hearing on January 13, 2011, as well as review of the records of the City and County of San Francisco, the Commission finds that the Project Sponsor has not made diligent, good-faith efforts to date to proceed with the development of the Projects. Specifically, the Project Sponsor has not filed for site or building permits with the Department of Building Inspection. In addition, the Project Sponsor has not secured public or private financing for the Project, and has not entered into a partnership with an experienced affordable housing developer to facilitate development of the Projects. The Commission finds that such steps or similar actions are necessary to move the Project forward, specifically the provision of senior, affordable housing units that generally require public subsidies and experienced developers of affordable housing. At the hearing, the Project Sponsor presented no evidence of meaningful, good faith efforts it had taken to diligently pursue its entitlements from 2004 to the present.
7. The Commission finds that, based on testimony presented at the public hearing on January 13, 2011, the subject properties have not been well-maintained by the Project Sponsor, who is also the owner of the properties. The properties may have become an attractive nuisance, and have not been maintained in a safe and secure manner.
8. The Commission finds that the subject properties are important sites for the delivery of needed housing to serve the Tenderloin neighborhood. Due to the lack of due diligence on the part of the Project Sponsor (as discussed in Item #6 above), it appears unlikely that the presently-entitled Projects will come to fruition.
9. The request to extend the performance periods for the Projects is not consistent with and would not promote the general and specific purposes of the Code provided under Section 101.1(b).
10. The Commission finds that it is not appropriate to amend condition of approval No. 3. of Planning Commission Motion No. 16913, and condition of approval No. 3. of Planning Commission Motion No. 16915 to extend the performance period of the Projects.
11. On balance, the Commission hereby finds that approval of the proposed amendment to condition of approval No. 3. of Planning Commission Motion No. 16913, and condition of approval No. 3. of Planning Commission Motion No. 16915 in this case would not promote the health, safety, and welfare of the City.

DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **DISAPPROVES Application No. 2010.0003C**, and **REVOKES** the Conditional Use Authorizations associated with the previously-approved projects at 519 Ellis Street (Case No. 2003.0151C, Motion No. 16913) and 430 Eddy Street (Case No. 2003.0145C, Motion No. 16915).

**APPEAL AND EFFECTIVE DATE OF MOTION:** Any aggrieved person may appeal this disapproval of a Conditional Use Authorization application to the Board of Supervisors within thirty (30) days after the date of this Motion No. XXXXX. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94012.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on February 17,2011.

Linda Avery  
Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: February 17,2011