

Discretionary Review Reform

*Planning Commission Policy for
Two-Year Trial and Public Evaluation*

OCTOBER 19, 2009

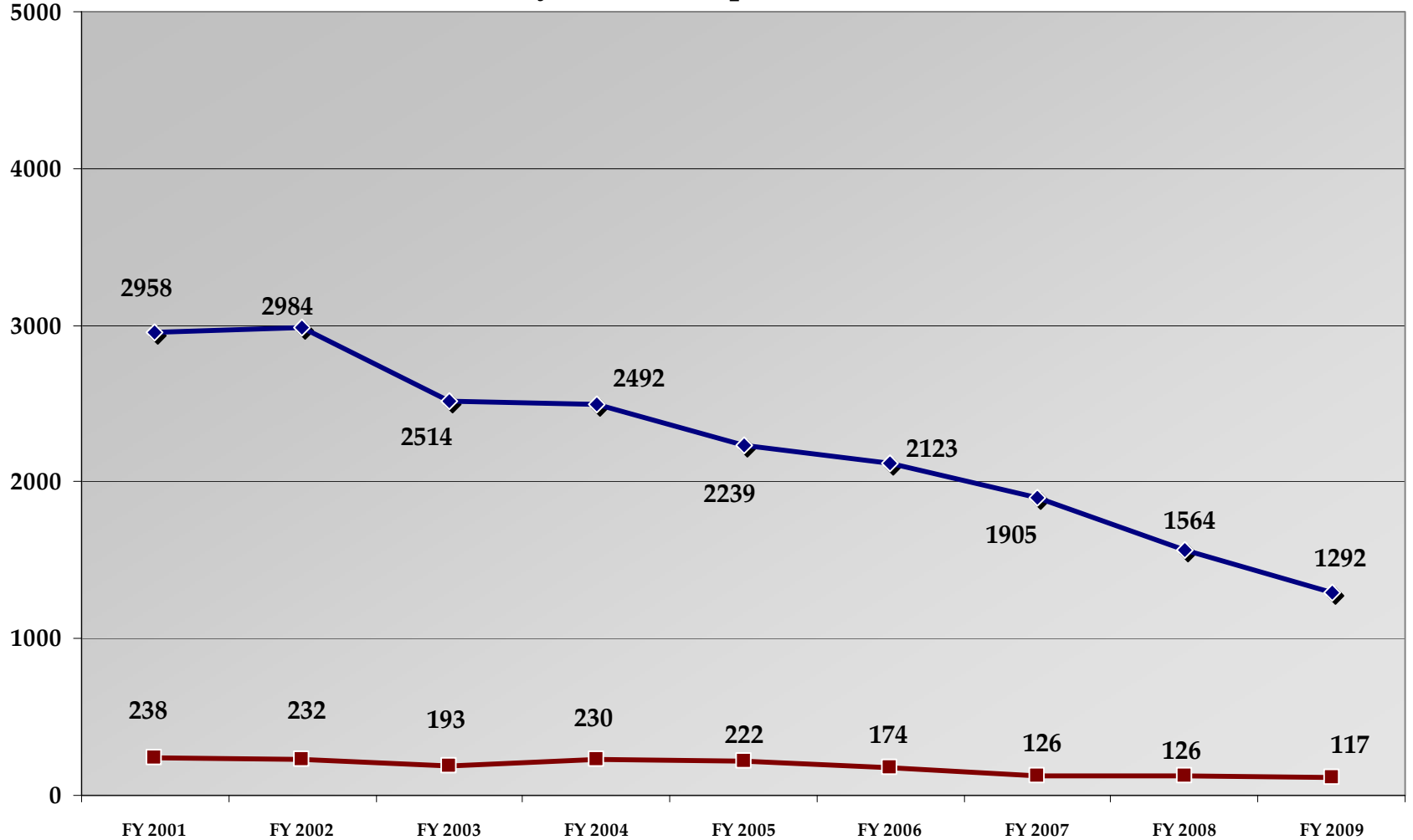
SAN FRANCISCO
PLANNING DEPARTMENT



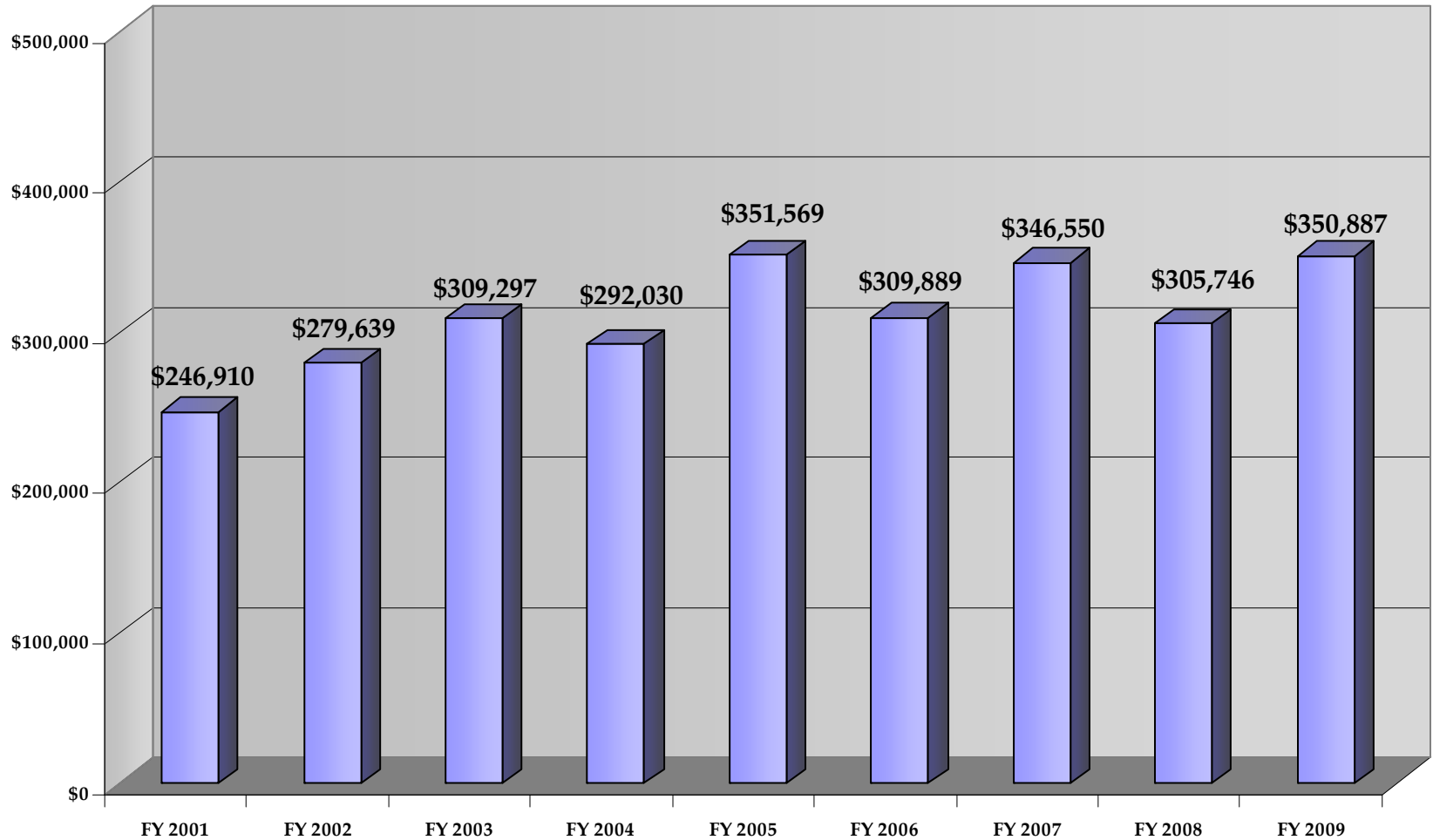
What is Discretionary Review?

Discretionary Review (“DR”) is the Planning Commission’s authority to review code-complying projects and take action if the Commission finds the case demonstrates exceptional and extraordinary circumstances.

Number of Major Alteration Permit Applications Compared to Discretionary Review Requests, FY2001 - FY2009

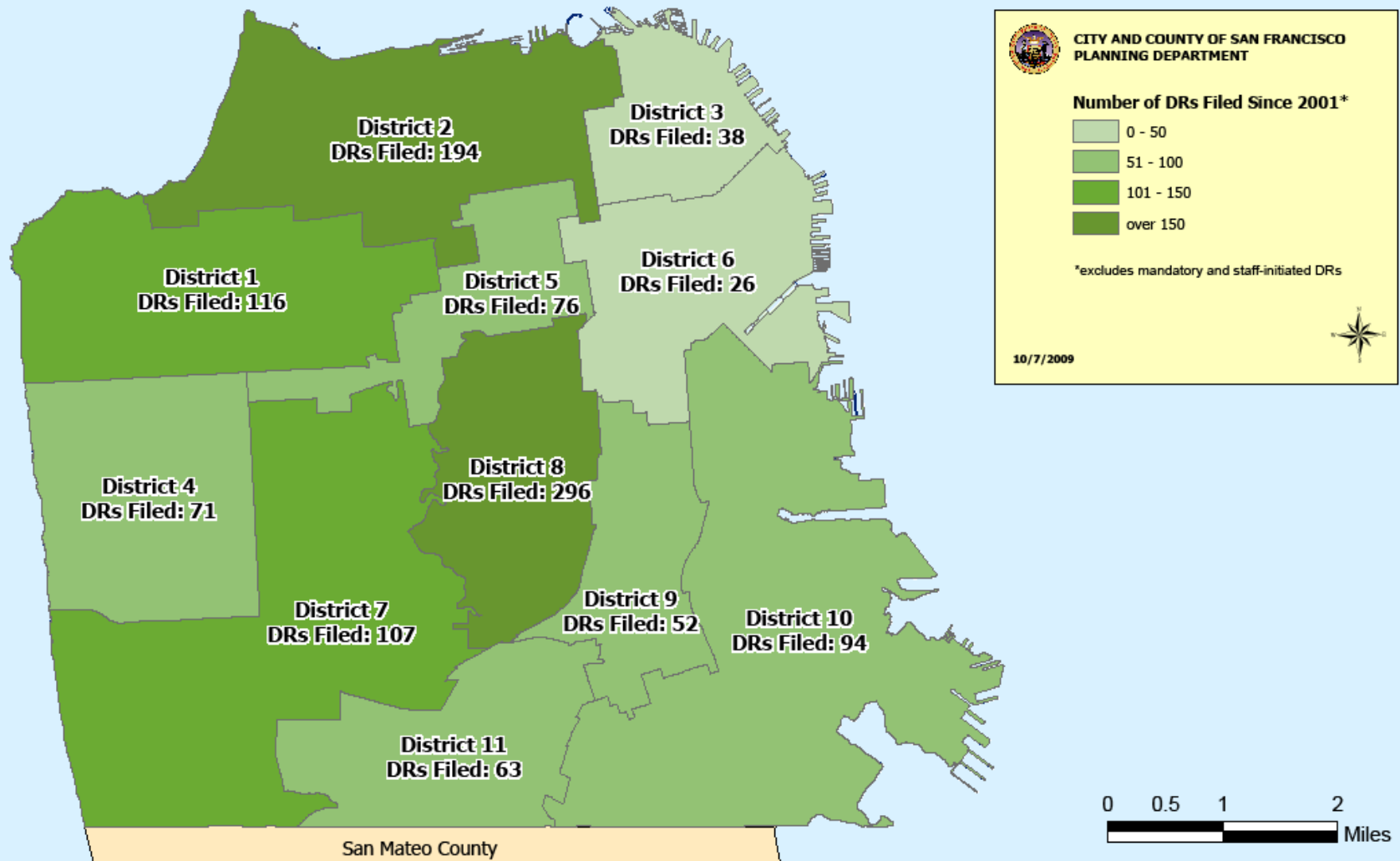


Annual Cost of Direct Staff Hours for Discretionary Review: FY2001 - FY2009



Where DR Occurs

Discretionary Review is largely requested on small scale projects in the City's residential neighborhoods.



All recent audits and reviews recommend changes to the DR process

- Budget Analyst Audit, 2003
- Matrix Report, 2006
- SPUR AIA Report, 2007

Issues: *Arbitrary and political approval process that takes too much time away from the Commission's ability to focus on policy*

Remedies: *Delegation to ZA, Hearing Officer or separate DR Committee, and separation of "simple versus complex"*

- Action Plan includes objective "Allow the Commission to Focus on Higher-Level Policy Issues" which specifies DR reform

Issues & Concerns with the Current Process

Need for Community Engagement, Improved Communication, and Setting Realistic Expectations

- Poor communication in the early stages of the development process can result in DR applications as measure of last resort
- Parties to the DR application often know very little about the process and have unrealistic expectations about the likely results, including
 - An expectation of project modification regardless of the merits of the DR issues
 - Project sponsors using self-generated DR requests to advance out-of-scale and inappropriate projects to the Commission
 - Inappropriate financial exchanges

Issues & Concerns with the Current Process (cont'd.)

Need for Stronger Internal Review, Identification and Resolution of Policy Issues

- Public relies on DR process to compel quality and appropriate projects
- DR is driven by the temperament of the neighbor, level of community involvement, and developer instead of sound planning principles and land use objectives which may result in uneven protections across neighborhoods
- Decisions for DR cases do not necessarily get applied to future review or serve to clarify appropriate project review standards

Issues & Concerns with the Current Process (cont'd.)

Need for Consistent and Predictable Process

- Commission does not see representative range of approved projects and therefore cannot easily dispense fair and standard treatment
- Project sponsors with appropriate proposals (comply with all the rules and Design Standards) can spend a great deal of time and money in the process with the eventual result of project approval
- Process takes too much time to resolve, both for the project sponsor and the DR requestor

Formulation of DR Reform Policy

- Starting in August of 2008, a staff DR Reform team developed an evolving proposal using audits, jurisdictional comparisons, professional experience, and an array of public input.
- Extensive public outreach resulted in:
 - Significant changes to the first draft proposal
 - Improved recommendations
- Three Planning Commission hearings held

Public Outreach Overview

- General consensus that improvements need to be made to the Discretionary Review process
- General desire for a fair, consistent, and transparent process that engages members of the community
- Desire to expand Discretionary Review reform to solve many issues in the review process
- No public consensus on remedies
 - Many desire significant changes to the process as recommended in the Department's first draft proposal (i.e. delegation to a Hearing Officer)
 - Many desire improvements to pre-application and the Department's review, without change to the DR process



Commission's Response

- Adopted policy and initiated legislation to significantly improve the DR process **and** review process, while deferring the more aggressive options which staff presented to future consideration;
- Initiated the policy as a two-year trial period with a full public evaluation at the end of the trial period; and
- Established strong feedback loop between Department, Commission and the public through ire weekly and quarterly updates, brown-bag discussion and complete evaluation initiated 18 months into the trial period.

Strategies to Achieve Goals for Reform

(Implemented following Commission Policy Adoption)

- Improve the pre-application process through a standardized pre-application packet;
- Improve the internal design review process through mandatory Residential Design Team review and written documentation;
- Improve public information through Discretionary Review website and provide public access to project-specific information;
- Define “exceptional and extraordinary circumstances”;
- Ensure that cases heard by the Commission are identified by them either as one-of-a kind, or a representative of a policy issue that should be incorporated into Design Standards;
- Adopt a process for updating Design Standards; and
- Adopt timeline for review.



Exceptional and Extraordinary Circumstances Defined

Since the 1950s, when a City Attorney opinion identified “exceptional and extraordinary” circumstances as a DR threshold, there has been no definition of these terms.

Here’s the definition the Commission adopted:

Exceptional and extraordinary circumstances occur when the common-place application of adopted Design Standards to a project does not enhance or conserve neighborhood character, or balance the right to develop the property with impacts on near-by properties or occupants.

These circumstances may arise due to complex topography, irregular lot configuration, unusual context or other conditions not addressed in the Design Standards.



Reporting Procedures

Interim period review: time between Planning Commission adoption & effective date of legislation

- Ensure that staff's application of "exceptional and extraordinary circumstances" is aligned with the Commission's past decisions.
- Inform the Commission, for each Public DR heard, if the case meets the "exceptional and extraordinary" threshold.

24-month trial period: time after effective date of legislation

- DR Decisions included in Commission packets
- Weekly updates about DR under Director's Report
- Quarterly update hearings on policy-related topics

Revisions to the Design Standards

- Identify emerging planning issues and elements of the Design Standards that require clarification (quarterly reports),
- Use precedent-setting Commission decisions on DR as policy guidance for review of future projects (ongoing),
- Have brown-bag discussions with Commissioners, neighborhood groups, and design professionals to shape amendments to Design Standards (two or more during trial period),
- Amend the Design Standards via ZA bulletins, to reflect the Commission's policy guidance as individual policies are identified (as needed), and
- Prepare global amendments to Design Standards (every two years).

Strategies to Achieve Goals for Reform *(Pending Code Changes)*

- Use the definition to allow only those projects that could meet *exceptional and extraordinary standards* to proceed to a Commission hearing;
- Eliminate option for project sponsors to file DR;
- Offer interested parties the option of “Reconsideration”;
- Change name of Design Guidelines to Design Standards; and
- Initiate 24-month trial period for reforms.

Community Concerns

Concern: Too much, too soon

Response: Commission desires to advance meaningful changes to the DR process itself since prior reform efforts, notably in 2004, did not result in direct improvements to the process

Concern: Department should not serve as “gate keepers”

Response: Staff sees all applications so it can best advise Commission on a fair and consistent application of the exceptional and extraordinary circumstances definition. Hearing officer concept, or third party “gate keeper”, received strong opposition

Concern: Department staff is not consistent

Response: New internal design procedures ensure consistency. The Residential Design Team is comprised of eight professional planners and its decisions are documented for increased transparency



New Procedures in Place with Early Results

Following policy adoption on June 18, 2009, the Department has initiated several changes with the following results:

- Positive response from neighborhood groups on pre-application forms and requirements
- Commission is in agreement with staff over 83 percent (15 out of 18 cases from 4/9/09 to 9/10/09) of the time regarding application of the exceptional and extraordinary definition
- Strong review procedures have resulted in more required changes and increased consistency in application of Standards
- Brown-bag discussion regarding pre-application triggers will result in recommendations



Intended Benefits of DR Reform

- Early community engagement and improved communication
- Realistic expectation setting
- Stronger internal review procedures resulting in higher quality development
- Commission review and resolution of policy issues resulting in improved Design Standards
- A more consistent and predictable permit process

Proposal is for a two-year trial with a strong structured feedback loop between the Department, the Commission and the public

Discretionary Review Reform

**Planning Commission's Definition of
Exceptional and Extraordinary**

**Land Use and Economic Development
Hearing**

October 19, 2009

SAN FRANCISCO
PLANNING DEPARTMENT



Exceptional and Extraordinary Circumstances Defined

Since the 1950s, when a City Attorney opinion identified “exceptional and extraordinary” circumstances as a DR threshold, there has been no definition of the term. Here’s what we propose:

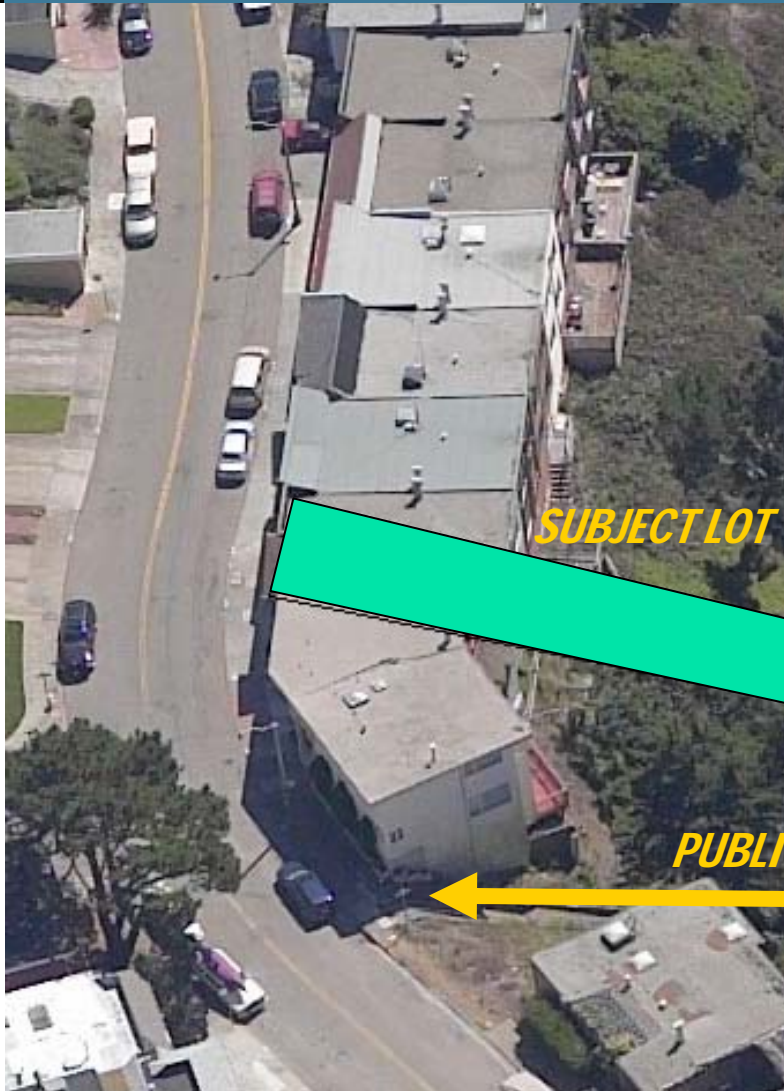
***Exceptional and extraordinary circumstances** occur when the common-place application of adopted Design Standards to a project does not enhance or conserve neighborhood character, or balance the right to develop the property with impacts on near-by properties or occupants.*

These circumstances may arise due to complex topography, irregular lot configuration, unusual context or other conditions not addressed in the Design Standards.

Here are examples of DR cases heard by the Commission, which exhibit exceptional and extraordinary circumstances, under the proposed definition.



Exceptional and Extraordinary Circumstances



1911 Funston Avenue

The Planning Code allows an inappropriately large addition for this site, and the RDS do not address this context with adequate specificity. Other houses are aligned at an angle. Therefore, the judgment of the Planning Commission is needed, because common-place application of the rules doesn't balance the owners' right to develop with possible impacts on the neighborhood, including the public stairs.



Exceptional and Extraordinary Circumstances



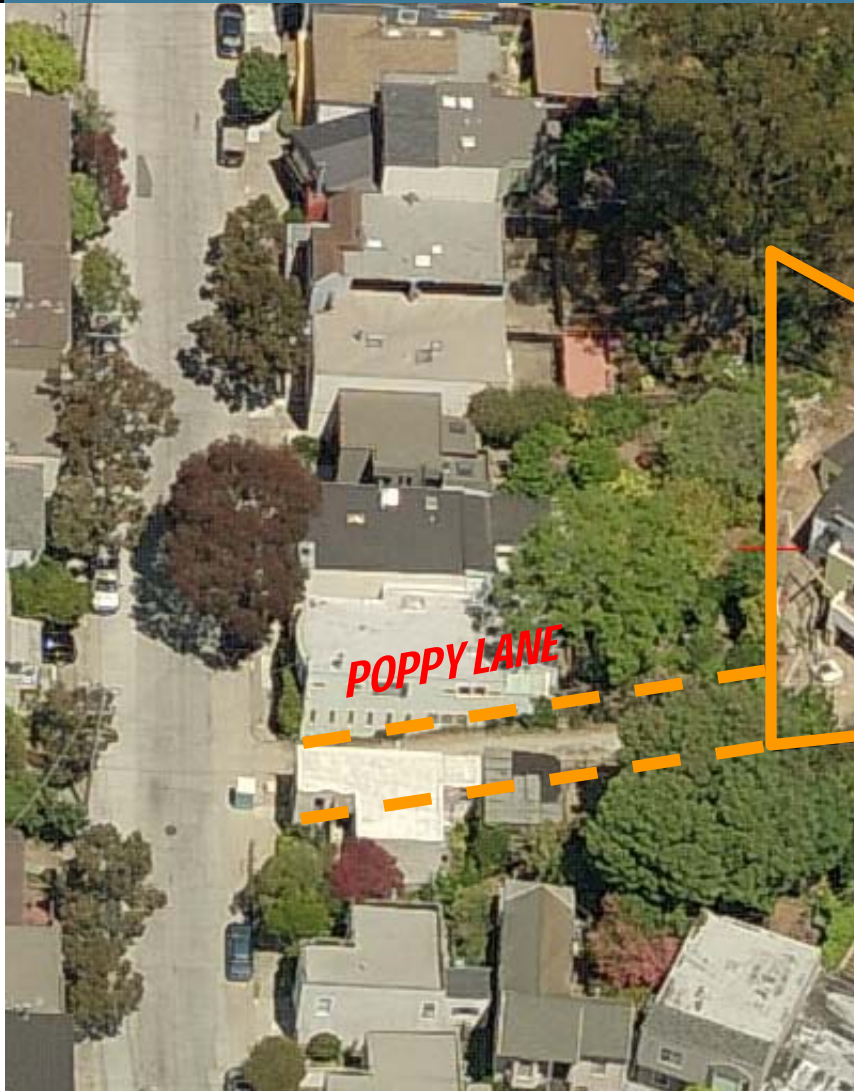
subject lot

2 Kronquist Court

The Planning Code's rear yard rules are not apt for this site, and the RDS do not address the context of the block pattern adequately.

Again, the judgment of the Planning Commission should shape the project, because common-place application of the rules doesn't allow a reasonable addition nor enhance neighborhood character. These are exceptional circumstances.

Exceptional and Extraordinary Circumstances



101 Poppy Lane

The Planning Code and the RDS do not address the context of this development pattern at all.

The Planning Commission needs to augment the RDS with its judgment in this particular case, where there are clearly exceptional and circumstances.

block open space.

Exceptional and Extraordinary Circumstances (NOT)

The following hypothetical examples of permit applications would NOT be exceptional and extraordinary, under the proposed definition, and requests for DR hearings at the Planning Commission would be denied.

Interested parties who believe that the Planning Code was misapplied, or that the Department abused its discretion, could apply to this Board for an appeal of the Building Permit Application.



Not Exceptional and Extraordinary Circumstances

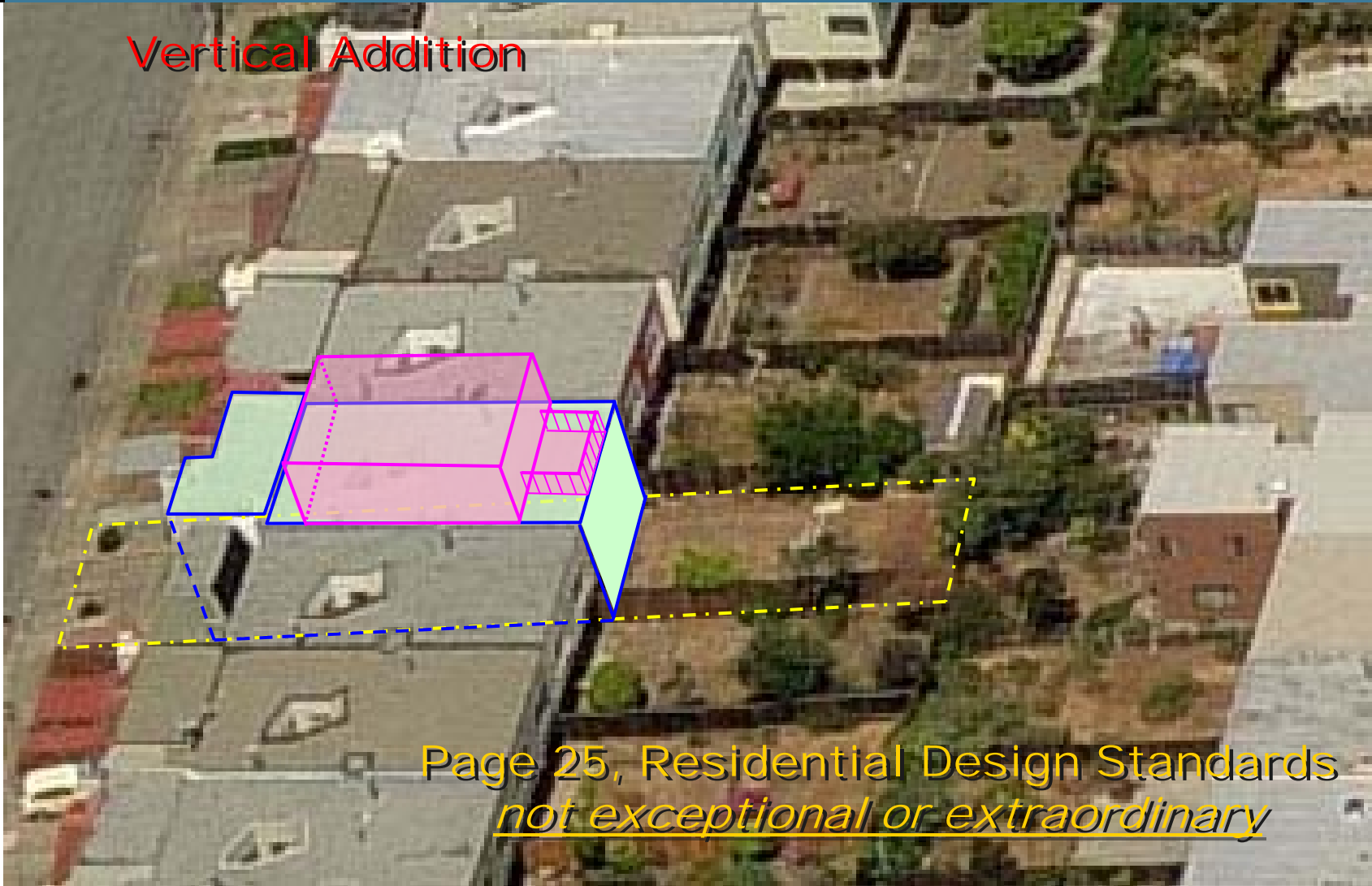
Horizontal Addition



Page 27, Residential Design Standards
not exceptional or extraordinary

Not Exceptional and Extraordinary Circumstances

Vertical Addition



Page 25, Residential Design Standards
not exceptional or extraordinary

Not Exceptional and Extraordinary Circumstances



Contemporary Façade

SUBJECT BUILDING

Pages 23-44, Residential Design Standards
not exceptional or extraordinary

Revisions to the Residential Design Standards

- Use precedent-setting Commission decisions on DR as policy guidance for review of future projects.
- Recommend amendments to Design Standards in ZA bulletins as applicable to reflect the Commission's policy guidance.
- Identify emerging planning issues and/or areas in the Design Standards that require clarification, have brown-bag discussions with design professionals, neighborhood groups and other stakeholders, and work with the Commission for appropriate guideline revisions during quarterly hearings.
- Prepare global amendments to Design Standards every two years to incorporate bulletins.



Requests for Reconsideration

The public (including affected neighbors) has the opportunity to request a reconsideration of the project by the RDT. All decisions will be in writing and available to the public.

If there is Department error, the permit applicant must then revise the project, and the Department will provide a refund of the filing fee to the requestor of the reconsideration.



Salient Elements of the Reform Proposal

- Standardize and broaden the requirements for Pre-Application meetings with neighbors and neighborhood groups
- Strengthen and formalize internal Department design review of applications
- Use design standards as a tool to allow DR hearings only for those projects that could exhibit exceptional and extraordinary circumstances
- Employ Commission decisions to shape application of the standards and identify needed revisions or policies
- Allow “Requests for Reconsideration” in those instances where there aren’t exceptional and extraordinary circumstance, but interested parties believe errors have occurred in review of applications

