

Discretionary Review Reform

Planning Commission Policy for
Two-Year Trial and Public Evaluation

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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.



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



Formulation of DR Reform Policy

- A staff DR Reform team was formed comprising Senior Planners, Neighborhood Planners, support staff and Administration staff.
- The team developed an evolving proposal using audits, jurisdictional comparisons, professional experience, and an array of public input.
- Extensive public outreach included
 - 123 individuals and representative from neighborhood organizations at 5 outreach meetings
 - 3 meetings with coalitions
 - 50 plus written comments
- 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
 - Many desire improvements to pre-application and the Department's review, without change to the DR process



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 projects that comply with all the rules can spend a great deal of time and money in the process
- Process takes too much time to resolve, both for the project sponsor and the applicant



Commission's Goals for Reform

- Provide for early community engagement in projects
- Provide more information and education about the DR process
- Improve the internal application review process
- Offer more transparency and information about Department's decision-making in project evaluation
- Ensure that outcomes of the DR process are fair and predictable
- Significantly reduce the time and cost of the DR review process
- Identify policy issues for the Commission's consideration and resolution
- Maintain the benefits of the current process
- Phased implementation to allow Commission and public to review results before pursuing additional changes



Strategies to Achieve Goals for Reform (2-year experiment)

- 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 on-line;
- Define “exceptional and extraordinary circumstances;”
- Use the definition to allow only those projects that could meet *exceptional and extraordinary standards* to proceed to a Commission hearing;



Strategies to Achieve Goals for Reform (2-year experiment) *continued*

- 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;
- Offer interested parties the option of “Reconsideration”;
- Adopt timelines for review; and
- Specify a 24-month trial period for Phase One Reforms
 - Commission and public to evaluate reforms beginning 18 months after the effective date, and recommend amendments to Code and policy if desired.



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.



Many New Procedures in Place

Following policy adoption on June 18, 2009, the Department has initiated those changes that do not require legislation

- DRs brought to Commission will be identified whether the exceptional and extraordinary standard is met
- Standardized pre-application procedures will be required
- Internal review procedures strengthened
- DR information on website
- Adhere to timeline policy
- Identify policy issues for the Commission's consideration, and Commission decisions used as policy guidance for review of future projects
- Initiate brown-bag discussions



Early Results

- Positive feedback from neighborhood groups on pre-application forms and requirements
- Commission is in agreement with staff over 90 percent of the time
- Strong review procedures have resulted in more required changes and consistent application of Standards
- Brown-bag discussion regarding pre-application triggers



Next Steps

Review and consideration of amendments to the Planning Code to initiate the remainder of the Commission's policy:

- Provide for administrative review of Discretionary Review requests; Commission Hearings for requests that demonstrate exceptional and extraordinary circumstances; requests for Reconsideration, including fee refund; and remove option for Project Sponsors to request Discretionary Review, and instead rely on Staff-Initiated DR
- Report back to Commission weekly, schedule quarterly policy discussions, and provide formal review starting 18 months after effective date of legislation



Questions or Comments?

