



PLANNING DEPARTMENT

City and County of San Francisco . 1660 Mission Street, Suite 500 . San Francisco, California . 94103-2414

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January 28, 2005

Curtis Hollenbeck, Architect
575 Columbus Avenue, #2
San Francisco, CA 94133

RE: Letter of Determination

Street Address: 228 Day Street
Assessor's Block/Lot: 6632/056
Zoning: RH-2 (Residential, House, Two-Family) District &
40X Height and Bulk District

Dear Mr. Hollenbeck:

This letter is in response to your request for a determination on the proposed reconstruction of a previously existing deck at the rear of the property. Because this deck has already been removed and there is no permit on record for the original construction, there is no evidence to demonstrate the existence of a deck of the same size and configuration referenced in your letter.

In your letter, you wrote that the previous deck on the property was constructed within the buildable area of the lot prior to a lot line adjustment. After the lot line adjustment, the deck ended up in a location now considered the required rear yard. While there are no planning records to show an approval for any lot line adjustment on the subject property, as the variance to allow for the lot size reduction in 1976 was denied (Case No. 76.54V), for the purposes of answering the question posed in your letter about reconstruction of a rear deck, the assumption is that the lot line adjustment was recorded by the Department of Public Works and the lot size of 25 feet wide by 75 feet deep is deemed final.

Notice of Violation

On August 16, 2002, the Department of Building Inspection issued a Notice of Violation for the construction of a new deck and stairway without the benefits of permit. According to the Notice of Violation, the deck measures approximately eight feet above grade and extends to the side and rear property lines.

Required Rear Yard

Planning Code Section 136 allow decks of no more than three feet above grade in the required rear yard. The required rear yard based upon the depth of your 75-foot lot is 18 feet 9 inches. As mentioned in the above, the proposed new deck measures approximately eight feet above grade and extends to the side and rear property lines.

Noncomplying Structure

Planning Code Section 188 does not permit the enlargement, alteration, relocation, or intensification of a legal noncomplying structure that will result in an increase in any discrepancy, or any new discrepancy. The subject building is considered a legal noncomplying structure because a portion of the existing building already encroaches into the required rear yard. The existing building is setback only 7 feet from the rear property line.

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Conclusion

Your proposal to legalize the deck and stairs already constructed in the required rear yard requires a variance in addition to a building permit. Please note both applications can be jointly filed, reviewed and noticed by the Planning Department at the same time.

While irrelevant to the above response, but important to make clear, there is no evidence (either on record or provided by you) to show that the previously existing deck that was removed and as drawn in Sheet EC1.1b (pre- and post-lot-line-adjustment) extended to the full width and depth of the lot or built with the benefits of permit. Based upon research and examination of old historic photographs taken in the late 1970's (pre-lot-line-adjustment) and in the 1990's (post-lot-line-adjustment), the deck and stairs are much smaller in size and did not cover the entire rear yard as you have claimed in your letter. In addition, the deck and stairs shown in the 1990's photograph do not meet the Building Code requirements for building on the property lines thereby, confirming no building permit was ever issued for its construction.

If you have any questions about this determination, please contact **Tina Tam**, Planner, at **(415) 558-6325**.

If you have any substantial reason to believe that there is an error in the interpretation of the provisions of the Planning Code or abuse of discretion on the part of the Zoning Administrator in this determination, you have fifteen (15) days from the date of this letter to appeal this determination to the Board of Appeals. For information regarding the appeals process, please contact the Board of Appeals, located at 1660 Mission Street, or call 415-575-6880.

Sincerely,

Lawrence B. Badiner
Zoning Administrator

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cc: Tina Tam, Planner