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February 6, 2009

Mark Topetcher
Topetcher Architecture
828 Divisadero Street
San Francisco, CA 94117

Dear Mr. Topetcher,

RE: Zoning Administrator Letter of Determination for 2887 Bush Street
Block: 1054 Lots: 026
Zoning: RH-2 (Residential, House, Two Family) District and 40-X Height and Bulk District

This letter is in response to your letter dated January 8, 2009 requesting determination on a nonconforming deck and stairs located within the required rear yard of the above referenced property. The property is located in an RH-2 (Residential, House, Two Family) District and 40-X Height and Bulk District and the authorized use of the property is a 4-unit building.

Your letter indicates that a noncomplying rear deck and stairs were demolished and subsequently rebuilt in-kind without a proper permit, and that the Department of Building Inspections (DBI) considers the rear stairs to be a required means of egress. Your question is whether or not a variance from the Planning Code's rear yard requirements is required for the reconstruction of the noncomplying deck and stairs since DBI considers the stairs to be a required means of egress.

Planning Code Section 188(B) states that "no noncomplying structure that is voluntarily razed or required by law to be razed by the owner thereof may thereafter be restored except in full conformity with the requirements of this Code." However, an interpretation of Section 188 that dates from July 1985 states that "noncomplying stairs which are required egress under the Building Code may be completely removed and replaced within the same footprint if there is no increase in the discrepancy between the features and the Code."

It is my determination that the Department of Building Inspections decision to require a permit for removing and rebuilding the entire deck and rear stairs thus requires a variance; while the interpretation of the Planning Code allows non-complying stairs which are required means of egress to be rebuilt without a variance, it does not allow noncomplying decks to be rebuilt without a variance. Were only the stairs removed and rebuilt, or the entire structure removed and only the stairs rebuilt without the deck, a variance would not be required. However, because the entire structure exceeds what is required by the Building Code for a required means of egress, a variance

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from the Planning Code's rear yard requirements is required. If DBI had not determined that a rebuild permit was required, a variance would be required.

If you have any questions regarding this letter please contact Aaron Starr at (415) 558-6362.

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 Permit Appeals within 15 days of the date of this letter. For information regarding the appeals process, please contact the Board of Permit Appeals located at 1650 Mission Street, Room 304, San Francisco, or call (415) 575-6880.

Sincerely,

Lawrence B. Badiner
Zoning Administrator

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