



# SAN FRANCISCO PLANNING DEPARTMENT

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## Letter of Determination

September 5, 2008

Steven K. Suzuki, Senior Associate  
Gensler Associates  
Hills Plaza  
2 Harrison Street, Suite 400  
San Francisco, CA 94105

**RE: Letter of Determination**  
**Charles Schwab Executive Floor, 211 Main Street**  
**Section 188, Non-Complying Structures: Enlargements, Alterations and Reconstruction**  
**Assessor's Block 3740, Lot 033**  
**Zoning District: C-3-O (SD)**  
**Height and Bulk District; 200-S**  
**(Your) Project Number: 01.7258.000**  
**(Your) File Code: 3PD**

Dear Mr. Suzuki:

This letter is in response to your request for a zoning letter of determination for the above-referenced property. In your request, you seek a determination, under the Planning Code ("Code") that the expansion of the 18<sup>th</sup>-floor penthouse, as described in your letter, is consistent with the written interpretation of Code Section 188(a), effective 7/92, having to do with the expansion of noncomplying buildings already above the applicable height limit. Additionally, you seek determination as to the permissibility of proposed skylights and a roof deck on the subject building. As you state in your letter, the effective language of the interpretation regarding expansion(s) of a structure over the height limit is:

"This Section says that noncomplying structures can be expanded or intensified but not if such expansion creates any new discrepancy or exacerbates an existing discrepancy. Expansions of features over the height limit may be allowed on a case by-case basis if the added floor area is under an existing roof or balcony overhang and backdropped by existing walls of the subject building and if a field trip verifies that the expansion could not add significant shadow to or block views from surrounding properties. This ruling should not be taken to allow expansion into the rear yards or other required open areas. The Board of Appeals has been more liberal in some cases." (emphasis added)

Your supporting documents show that the roof of the subject building is at 240 feet six inches above the adjoining street. Therefore, this structure is noncomplying as to height. It appears from the plans and photographs attached to your letter that the enclosed area proposed is approximately three feet six inches wide over the width of the two rooftop conference rooms and one foot three inches alongside the existing stair hall in between these two rooms. Apparently, it totals approximately 300 square feet in area and

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under an existing overhang on the building's penthouse (which is set back substantially from the perimeter of the building). Accordingly, this proposed addition is both backdropped by existing walls of the subject building and under an existing roof. It can be seen with clarity that there could be no significant shadowing or view blockage resulting from the proposed enclosure. Additionally, in the C-3-O (SD) District, there is no required rear-yard or other open area.

It is also noted, from your letter, that you are proposing to demolish approximately 3,000 square feet of floor area on a mezzanine level of the building. Ostensibly, this will more than off-set the addition of the proposed 300 square feet of floor area. According to the statement in your letter, your existing Floor Area Ratio is at 18:1. Therefore, I hereby rule that your proposed rooftop addition is within the terms of the applicable Code Sections and Code interpretation and may be carried out as set forth herein..

In your letter, you have also quoted a published Code interpretation involving rooftop skylights. That interpretation, effective 9/91, is as follows:

"This Section states that a noncomplying structure may not be altered or enlarged except in accordance with the current standards (i.e., The portion of such structure in the buildable area could be expanded while that portion in a required open area could not be expanded.) An exception was made to allow the addition of skylights which would protrude less than one foot above a portion of a roof existing in the required rear yard. It was noted that it is not the intent of the Planning Code to eliminate noncomplying structures or features. They are allowed to remain and retain and enhance their utility within current standards. It was also noted that the "bubble" skylight which minimally protrudes is a common weather tight design. Because of its minimal dimension, such will be allowed.

The drawings accompanying the request for a letter of determination show a proposed new peaked-roof skylight over the existing stairway leading to the penthouse floor. This skylight would measure approximately ten feet eight inches by 27 feet two inches and would rise, at its maximum height, (along its ridge line) approximately three feet above the existing roof, but would be will below the existing parapet of approximately four feet two inches around the roof of the penthouse level. Accordingly, from these drawings, the proposed skylight would not be visible to lateral view.

In that the skylight in question is protruding above a roof that is already some 40 feet above the applicable height limit, and this skylight would rise, along the ridge line of its peaked roof, some three feet above the existing roof level, it is larger and higher than provided for in the published Code Exception that is quoted herein. Nevertheless, in that it would be below the existing parapet at the penthouse level, and therefore, would not be subject to lateral view, it would be a permitted addition if constructed as shown in the attached drawings.

A recently published interpretation to the Code, effective 2/08, states "under previous interpretations of Planning Code Section 188, a deck is permitted to be constructed upon the flat roof surface of a non-complying structure provided its open railing is no higher and no more enclosed than required by the Building Code. Previous interpretations of Section 311 exempt the addition of such decks from the notification requirements. Non-complying structures are, by definition located within portions of lots

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that would normally not be developable and, decks are generally constructed to provide space for outdoor activities, some of which may have associated impacts, such as noise, on neighboring properties. Since the site is not subject to Section 311 notification procedure, no ten-day letter is required.

Consequently, even though the exception language anticipates a residential setting, and the subject building is non-complying as to height (as opposed to rear yard as in the example), a "ten-day" letter would still be appropriate. Accordingly, if the proposed deck is built to the specifications shown, it would be within the intent of the Planning Code, and buildable as proposed.

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

Sincerely,



Lawrence B. Badiner  
Zoning Administrator

cc: Jim Miller, Planner  
Jackie Crivinar / BCCI

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