

BOARD OF APPEALS

CITY & COUNTY OF SAN FRANCISCO

MEETING MINUTES – WEDNESDAY APRIL 11, 2018

5:00 P.M., CITY HALL, ROOM 416, ONE DR. CARLTON B. GOODLETT PLACE

PRESENT: President Frank Fung, Vice President Rick Swig, Commissioner Darryl Honda, Commissioner Ann Lazarus and Commissioner Bobbie Wilson.

Brad Russi, Deputy City Attorney, Office of the City Attorney (OCA); Corey Teague, Acting Zoning Administrator (ZA); Ashley Lindsay, Planner, San Francisco Planning Department (PD); Joseph Duffy, Senior Building Inspector, Department of Building Inspection (DBI); Patrick Fosdahl, Assistant Director of Environmental Health, Department of Public Health (DPH); Sojeatta Khim, Senior Environmental Health Inspector, DPH; Amanda Higgins, San Francisco Public Works Bureau of Street Use and Mapping (SFPW); Julie Rosenberg, Executive Director; Gary Cantara, Legal Assistant.

(1) PUBLIC COMMENT

At this time, members of the public may address the Board on items of interest to the public that are within the subject matter jurisdiction of the Board except agenda items. With respect to agenda items, your opportunity to address the Board will be afforded when the item is reached in the meeting with one exception. When the agenda item has already been reviewed in a public hearing at which members of the public were allowed to testify and the Board has closed the public hearing, your opportunity to address the Board must be exercised during the Public Comment portion of the calendar. Each member of the public may address the Board for up to three minutes. If it is demonstrated that comments by the public will exceed 15 minutes, the President may continue Public Comment to another time during the meeting.

PUBLIC COMMENT: Ellen Tsang spoke about the State regulations governing the make-up of members of Appeal Board in California. Referencing her own appeal of a Site Permit in February 2018, she argued that the Board Commissioners should be more knowledgeable about Building Codes and should not rely solely on the City’s Building Inspector’s advice on making their decisions.

(2) COMMISSIONER COMMENTS & QUESTIONS

SPEAKERS: Commissioner Honda and Commissioner Lazarus welcomed Julie Rosenberg as the new Executive Director of the Board.

PUBLIC COMMENT: None

(3) ADOPTION OF MINUTES

Discussion and possible adoption of the March 21, 2018 minutes.

ACTION: Upon motion by Commissioner Lazarus, the Board voted 5-0 to adopt the March 21, 2018 minutes.

SPEAKERS: None.

PUBLIC COMMENT: None.

(4) REHEARING REQUEST

Subject property at 518 Taylor Street. 520 Taylor Street LP, appellant, is requesting a rehearing of Appeal No. 17-199, 520 Taylor Street LP vs. ZA, decided February 28, 2018. At that time, the Board voted 1-4 (Vice President Swig, Commissioner Honda, Commissioner Lazarus and Commissioner Wilson dissented) to grant the appeal and overturn the Letter of Determination on the basis that the Zoning Administrator erred by relying on a violation issued by the Department of Public Health that was faulty due to a lack of notice to the property owner. Lacking the four votes needed to pass, the motion failed. With no further motion made, the determination was upheld by operation of law. **Determination Holder:** 520 Taylor Street LP. **Appeal:** Protesting the issuance of a Letter of Determination regarding a request to abate the existing Planning Code violation preventing the operation of a Massage Establishment at this location for three years, based upon the assertion that the property owner was not notified by the Department of Public Health that violations to Article 29 of the Health Code existed and thus did not have the opportunity to cure any existing violations on the property. **Case No.:** 2017-008524ZAD

ACTION: Upon motion by Commissioner Honda, the Board voted 5-0 to grant the request, and rehear the appeal on the basis that new evidence was presented and that the Department of Public Health has had a change in policy in terms of providing notice to the property owner.

SPEAKERS: William Klein, attorney for requestor; Mary Tran, agent for requestor; Geoffrey Polk, agent for requestor; Corey Teague, ZA; Patrick Fosdahl, DPH; Sojeatta Khim, DPH.

PUBLIC COMMENT: None.

ITEMS (5A) and (5B) SHALL BE HEARD TOGETHER:

(5A) CONSIDERATION OF WHETHER TO DIRECT THE PREPARATION OF WRITTEN FINDINGS

<p>LIDIA WOYTAK, Appellant(s) vs. DEPT. OF BUILDING INSPECTION, Respondent PLANNING DEPT. APPROVAL</p>	<p>1033-1037 Washington Street. Protesting the ISSUANCE on December 15, 2017, to 1033-1037 Washington Street LLC, of a Site Permit (fourth floor residential unit addition to building; renovation of third floor unit entry; renovation of basement; repair of existing egress stair at rear of property; seismic and foundation upgrade). APPLICATION NO. 2016/02/01/8496S. Note: the public hearing was held and closed on March 7, 2018. At that time, the Board voted 4-1 (Commissioner Lazarus dissented) to grant the appeal and deny the permit on the basis that the building is nonconforming and out of character with the neighborhood. At the direction of the President, this matter is returning to consider whether to direct the preparation of written findings to support the Board's March 7, 2018 decision in accordance with Section 8 of the Board's rules.</p>
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ACTION: Upon motion by Vice President Swig, the Board voted 3-2 (Commissioner Lazarus and Commissioner Honda dissented) to direct the preparation of written findings to support the Board's decision from the March 7, 2018 hearing.

SPEAKERS: Lidia Woytak, appellant; Todd Mavis, agent for permit holder; Corey Teague, ZA; Joseph Duffy, DBI.

PUBLIC COMMENT: None.

(5B) REHEARING REQUEST TO BE CONSIDERED IF ITEM (5A) IS DENIED

Subject property at 1033-1037 Washington Street. 1033-1037 Washington Street LLC, permit holder, is requesting a rehearing of Appeal No. 18-002, 1033-1037 Washington Street LLC vs. DBI, PDA, decided March 07, 2018. At that time, the Board voted 2-3 (President Fung, Vice President Swig and Commissioner Wilson dissented) to deny the appeal and uphold the permit on the basis that it was properly issued. Lacking the three votes needed to pass, the motion failed. Upon motion by Vice President Swig, the Board voted 4-1 (Commissioner Lazarus dissented) to grant the appeal and deny the permit on the basis that the building is nonconforming and out of character with the neighborhood. **Appellant:** Lidia Woytak. **Project:** fourth floor residential unit addition to building; renovation of third floor unit entry; renovation of basement; repair of existing egress stair at rear of property; seismic and foundation upgrade. **Application No.:** 2016/02/01/8496S.

ACTION: This matter was not heard as item 5A was granted.

(6) APPEAL NO. 17-193

<p>ANTHONY TAM, Appellant(s) vs. DEPT. OF BUILDING INSPECTION, Respondent PLANNING DEPT. APPROVAL</p>	<p>566 29th Avenue. Protesting the ISSUANCE on November 27, 2017, to Steve Huang, of a Site Permit (two-story horizontal addition to existing rear side of building; total addition area is 689sf; interior remodel at second floor and third floor; add second unit to existing building). APPLICATION NO. 2013/08/23/5160S. FOR FURTHER CONSIDERATION TODAY. Note: on February 21, 2018, the Board voted 4-0-1 (Commissioner Wilson absent) to continue the appeal to March 07, 2018 to allow time for the Planning Department to verify what plans were sent to the neighbors as part of the neighborhood notification mailing. On March 07, 2018, the Board voted 5-0 to continue this appeal to April 11, 2018 to allow time for the permit holder to submit revised plans reflecting the elimination of the fourth floor.</p>
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ACTION: Upon motion by President Fung, the Board voted 5-0 to grant the appeal and adopt the revised plans dated April 4, 2018 showing the removal of the fourth-floor, on the basis that the reduced volume of the building is in greater context with the existing neighborhood.

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SPEAKERS: John Lum, agent for permit holder; Vincent Tam, agent for appellant; Corey Teague, ZA.

PUBLIC COMMENT: None.

(7) APPEAL NO. 18-008

ZAVEN DAIGIAN, Appellant(s) vs. SAN FRANCISCO PUBLIC WORKS BUREAU OF STREET USE AND MAPPING, Respondent	765 2nd Avenue. Appealing the ISSUANCE on January 03, 2018, to Crown Castle NG West LLC, of a Personal Wireless Service Facility Site Permit (construction of a personal wireless service facility in a Zoning Protected Location). PERMIT NO. 17WR-0222. FOR HEARING TODAY.
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ACTION: Upon motion by Commissioner Lazarus, the Board voted 5-0 to continue this matter to May 23, 2018 to allow the San Francisco Recreation and Parks Department to be involved in the proceedings.

SPEAKERS: Zaven Daigan, appellant; Haig Baghdassarian, attorney for appellant; Martin Fineman, attorney for permit holder; Sharon James, agent for permit holder; Amanda Higgins, SFPW; Rahul Shah, SFPW; Ashley Lindsay, PD; Corey Teague, ZA.

PUBLIC COMMENT: Anil Bhushdon, Jason Anderson, Alexander Daigian and Areni Daigian spoke in support of the appellant. Mike Sizemore, Ben Libbey, Nick Capniero, Milo Trauss and Jane Natoli spoke in support of the permit holder.

(8) APPEAL NO. 17-196

ROYA & RAY RASSAI, Appellant(s) vs. ZONING ADMINISTRATOR, Respondent ARCEIL JURANTY & STEVEN FAIG, Subject Property Owners (100 Rivoli Street)	122 Rivoli Street. Protesting the ISSUANCE on December 12, 2017, of a Revised Letter of Determination regarding the clarification of certain conditions of a Variance Decision, Case No. 92.307V, issued on September 28, 1992 in connection with the subdivision of a single parcel into two lots at 100 Rivoli Street and 122 Rivoli Street. CASE NO. 2017-009243ZAD. FOR HEARING TODAY. Note: on February 28, 2018, the Board voted 5-0 to continue this matter at the request of the parties.
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ACTION: Withdrawn.

(9) APPEAL NO. 18-012

ALBERT TOM, Appellant(s) vs. DEPT. OF BUILDING INSPECTION, Respondent PLANNING DEPT. APPROVAL	245 11 th Avenue. Protesting the ISSUANCE on January 12, 2018, to James Shegoian, of a Site Permit (infill of existing light court at ground floor for laundry and common half bathroom). APPLICATION NO. 2016/06/03/9132S. FOR HEARING TODAY.
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ACTION: Upon motion by Commissioner Honda, the Board voted 5-0 to grant the appeal and issue the permit on the condition that a Notice of Special Restrictions be placed on the property prohibiting additional stories over the infill.

SPEAKERS: Albert Tom, appellant; James Shegoian, permit holder; Val Rabichev, agent for permit holder; Corey Teague, ZA; Joseph Duffy, DBI.

PUBLIC COMMENT: None.

(10) APPEAL NO. 17-184

REALLY WHY, LLC, Appellant(s) vs. ZONING ADMINISTRATOR, Respondent LUCY REYNALES & ARVIND MOHAN, Subject Property Owners, 1472 McAllister Street JASON SPARKS & ALYSSA MERWIN, Subject Property Owners, 1474 McAllister Street	1470-1474 McAllister Street. Appealing the ISSUANCE on November 21, 2017, of a Suspension Request (requesting that BPA Nos. 2017/09/01/6795 and 2016/08/11/4813 be suspended for the reason that the three-unit condominium constructed on the subject property in 2016 was not completed in accordance with the final approved plans for the building, permitted under BPA No. 2013/02/15/0317). FOR HEARING TODAY.
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ACTION: Upon motion by Commissioner Lazarus, the Board voted 5-0 to reschedule this matter to April 18, 2018 at the request of the parties.

SPEAKERS: None.

PUBLIC COMMENT: None.

(11) APPEAL NO. 18-014

SWEET INSPIRATION, Appellant(s) vs. ZONING ADMINISTRATOR, Respondent	2239 Market Street. Protesting the ISSUANCE on January 22, 2018, of a Notice of Violation (alleging violation of Planning Code Section 303.1(e) for operating a Formula Retail use at the subject property without a Conditional Use Authorization). COMPLAINT NO. 2016-008485ENF. FOR HEARING TODAY.
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ACTION: Withdrawn.

(12) APPEAL NO. 18-013

PHILIP ACHILLES, Appellant(s) vs. ZONING ADMINISTRATOR, Respondent	819 Ellis Street. Appealing the ISSUANCE on January 31, 2018, of a Notice of Violation & Penalty (alleging violation of Planning Code Sections 171 and 712 for the unauthorized operation of a Light Manufacturing use (furniture and fixtures) in the basement level of the subject property). COMPLAINT NO. 2017-013154ENF FOR HEARING TODAY.
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ACTION: Withdrawn.

(13) APPEAL NO. 17-183

RICH MENENDEZ, Appellant(s) vs. ZONING ADMINISTRATOR, Respondent SIDRA MONTGOMERY LLC, Subject Property Owner	180 Montgomery Street. Appealing the ISSUANCE on November 15, 2017, of a Letter of Determination regarding whether an existing use on the subject property (dba Workshop Café) is a Restaurant Use under the Planning Code. RECORD NO. 2017-008528ZAD FOR HEARING TODAY.
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ACTION: Upon motion by President Fung, the Board voted 4-0-1 (Vice President Swig recused) to grant the appeal and overturn the Letter of Determination on the basis that the Zoning Administrator erred in his determination that the use of the subject property was not fully a restaurant use, and based on the fact that the gross receipts for food and beverage exceed 60% and the business is open 100% to the public.

SPEAKERS: Alexis Pelosi, attorney for appellant; Rich Menendez, appellant; Corey Teague, ZA.

PUBLIC COMMENT: Kevin Garrett, Gabrielle Katsnelson, Mike Julian, Allison Perrusso and Kristie Arevalo spoke in support of the appellant.

ADJOURNMENT.

There being no further business, President Fung adjourned the meeting at 9:00 p.m.