

# BOARD OF APPEALS

## CITY & COUNTY OF SAN FRANCISCO

### MEETING MINUTES – WEDNESDAY JULY 31, 2019

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

PRESENT: President Rick Swig, Vice President Ann Lazarus, Commissioner Darryl Honda, Commissioner Rachael Tanner and Commissioner Eduardo Santacana

Brad Russi, Deputy City Attorney, Office of the City Attorney (OCA); Scott Sanchez, Acting Deputy Zoning Administrator, Planning Department (PD); Joseph Duffy, Senior Building Inspector, Department of Building Inspection (DBI); Gregory Slocum, Commercial Permit Manager, Department of Public Works, Bureau of Street Use & Mapping (SFPW-BSM); 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. At the discretion of the Board President, public comment may be limited to two 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.

SPEAKERS: Sudi Scull related to the Board what she called a “fruitful discussion” with Dr. Tomás Argón, the Director of the Department of Public Health’s Population Health Division, regarding his evaluation of Joel Moskowitz’s studies concerning the health effects of wireless technology. Ms. Scull suggested a timeline of one month for Dr. Argón’s review and further proposed that there should be a moratorium for all denials of 5G residential appeals until the department’s Public Health study is complete.

Michael Levesque spoke about the July 17, 2019 Board hearing in which Cheryl Hogan’s rehearing request, for an appeal of the issuance of a personal wireless facility site permit, was denied, as well as the Board’s subsequent request to Department of Public Health (DPH) to update the 2010 document on the health effects of wireless technologies. Mr. Levesque stated that there was no response from DPH by the July 17<sup>th</sup> Board hearing, adding that this appears to him to be new evidence that warrants a postponement to await the response. He further stated that this issue has a great impact on the life of Cheryl Hogan who suffers from electric sensitivity, which is legally recognized by the federal government. Mr. Levesque claimed that the impact would be so great that Cheryl Hogan would not be able to live at her residence, which would be wrong and unjust and could produce a legal battle that puts everyone at risk. He asked if the Board could reconsider their determination made on behalf of Cheryl Hogan.

**(2) COMMISSIONER COMMENTS & QUESTIONS**

SPEAKERS: The Commissioners welcomed the Board's newest member, Eduardo Santacana. President Swig followed up on the Board's earlier formal request to DPH that they update their 2010 position on the safety of current technologies associated with wireless facilities, asking Director Rosenberg if she had received a response as to if and when the Department will respond to the request. Director Rosenberg stated that DPH has not yet provided a definite date and that she will work on getting a firm date this week. President Swig further asked that DPH be informed, as a matter of public record, that another formal request for a response had been made.

PUBLIC COMMENT: None.

**(3) ADOPTION OF MINUTES**

Discussion and possible adoption of the July 17, 2019 minutes.

ACTION: Upon motion by Vice President Lazarus, the Board voted 5-0 to adopt the July 17, 2019 minutes.

PUBLIC COMMENT: None.

**(4) JURISDICTION REQUEST**

**Subject property at 610 Clipper Street.** Dave Cunningham, requestor, is asking that the Board take jurisdiction over Site Permit No. 2016/12/22/5671S, which was issued on November 08, 2018 by the Department of Building Inspection. The appeal period ended on November 23, 2018, and the jurisdiction request was filed at the Board office on July 08, 2019. **Permit Holder:** 610 Clipper LLC. **Project Description:** Addition of six new dwelling units to be built within the existing envelope of the building per Ordinance No. 162-16; fire alarm and sprinkler to NFPA-13 on deferred submittal.

ACTION: Upon motion by Commissioner Santacana, the Board voted 5-0 to deny the request on the basis that the City did not intentionally or inadvertently cause the requestor to be late in filing an appeal.

SPEAKERS: Commissioner Honda disclosed the following: (1) that the requestor works for the same real estate brokerage firm where he works, Zephyr Real Estate, and that they had not worked on any transactions together, and (2) that he is a partner in a group that is represented by the law firm of Reuben, Junius & Rose and that the firm's appearance before the Board of Appeals would have no effect on his decision; John Kevlin, attorney for permit holder; Scott Sanchez, PD.

PUBLIC COMMENT: None.

**(5) REHEARING REQUEST**

**Subject property at 440 Molimo Drive.** Heba Soliman, Appellant, is requesting a rehearing of Appeal No. 19-023, Soliman v. DBI, PDA, decided May 15, 2019. At that time, the Board voted 4-0 to deny the appeal and uphold the permit on the basis that it was properly issued. **Determination Holder:** Charmaine Curtis & Kurt McCulloch. **Project Description:** remove fireplace in second floor living room; add new powder room; horizontal addition at the third floor to create new master bedroom, bathroom and home office. **Permit No.:** 2018/06/19/2350.

ACTION: Upon motion by Commissioner Tanner, the Board voted 5-0 to deny the request on the basis that there is no new evidence or manifest injustice.

SPEAKERS: Heba Soliman, requestor; W.H. Yang, agent for requestor; Troy Kashanipour, agent for permit holder; Derek Roorda, agent for permit holder; Joseph Duffy, DBI.

PUBLIC COMMENT: None.

**(6) APPEAL NO. 18-127**

<p>CAROLYN DUFFY, Appellant(s) vs. DEPT. OF BUILDING INSPECTION, Respondent</p>	<p>50 Alta Street #5. Protesting the ISSUANCE on September 25, 2018, to Union Group Properties, of an Alteration Permit (Unit 5: renovation of kitchen and bathroom; replacement of two partition walls). APPLICATION NO. 2018/09/24/1235. FOR FURTHER CONSIDERATION TODAY. <b>Note: On November 14, 2018, the Board voted 5-0 to continue this matter to allow time for the Board to review the approved plans for this permit, and for the Department of Building Inspection to conduct a site visit and perform a review of the relevant documents to determine how the scope of work on-site correlates with the plans. On April 17, 2019, the Board voted 4-0-1 (Commissioner Lazarus absent) to continue this matter to June 19, 2019 to allow time for the permit holder to provide a brief which includes copies of all permit applications and drawings for 40 and 50 Alta Street and which addresses the full scope of work at the property and the schedule for the work.</b></p>
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ACTION: Upon motion by Commissioner Honda, the Board voted 5-0 to deny the appeal and uphold the permit on the basis that it was properly issued.

SPEAKERS: G. Ryan Patrick, attorney for permit holder; Carolyn Duffy, appellant; Scott Sanchez, PD; Joseph Duffy, DBI.

PUBLIC COMMENT: Theresa Flandrich, John Sims, Diane English, Brian Raffi and Allison Pobrislo spoke in support of the appellant.

**(7) APPEAL NO. 19-059**

<p>PHILLIP LAURENT, Appellant(s) vs. SAN FRANCISCO PUBLIC WORKS, BUREAU OF STREET USE AND MAPPING, Respondent</p>	<p>661 Divisadero Street. Protesting the ISSUANCE on May 29, 2019, to Barvale, of a Sidewalk Table and Chairs Permit (Four tables and sixteen chairs occupying approximately 114 sq. feet in the public right-of-way on Monday, Tuesday, Wednesday, Thursday and Friday between the hours of 5:00 pm and 10:00 pm and Saturday and Sunday between the hours of 11:00 am and 3:00 pm.). PERMIT NO. 18TC-0652. FOR HEARING TODAY.</p>
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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 it be revised to require that the operating hours for the sidewalk patio end at 9:00 P.M. on Monday through Friday, with the last seating at 8:00 P.M., and that the table closest to the residences on Grove Street be removed so that the permit is limited to three tables and twelve chairs, on the basis that this will address the neighborhood concerns regarding noise.

SPEAKERS: Phillip Laurent, appellant; Anoop Mathew, agent for permit holder; Stefano Cassolato, agent for permit holder; Richard Warren, attorney for permit holder; Gregory Slocum, SFPW-BSM; Ana Diaz, agent for SFPW-BSM; Scott Sanchez, PD.

PUBLIC COMMENT: Yan Xue Li, Greta Gahl and Jean-Paul Torres spoke in support of the appellant.

**(8) APPEAL NO. 19-061**

BEN LEWIS, Appellant(s) vs.  DEPT. OF BUILDING INSPECTION, Respondent PLANNING DEPARTMENT APPROVAL	208 Noe Street. Protesting the ISSUANCE on May 24, 2019, to Anton Kalafati, of a Site Permit (vertical addition, roof deck, new master bedroom, bathroom; no change to occupancy or parking). APPLICATION NO. 2018/0111/8370. FOR HEARING TODAY.
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ACTION: Upon motion by Commissioner Honda, the Board voted 5-0 to continue this matter to August 7, 2019 to allow time for the permit holder to get revised plans approved by the Planning Department.

SPEAKERS: Ben Lewis, appellant; David Marlatt, agent for permit holder; Jessica Hunt, agent for permit holder; Anton Kalafati, permit holder; Scott Sanchez, PD; Joseph Duffy, DBI.

PUBLIC COMMENT: None.

**(9) APPEAL NO. 19-058**

SHING KIT LEE, Appellant(s) vs.  ZONING ADMINISTRATOR, Respondent	2027 20 <sup>th</sup> Avenue. Appealing the ISSUANCE on May 14, 2019, of a Notice of Violation (alleging violations of Planning Code Section 174 for an unpermitted alteration and exceeding the approved scope of work, Section 317 for the unauthorized demolition and removal of a single-family dwelling without a Conditional Use Authorization, and Section 209.1 for the unauthorized construction of a dwelling unit within the required rear yard without a Variance). COMPLAINT NO. 2019-004623ENF FOR HEARING TODAY.
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ACTION: Upon motion by President Swig, the Board voted 5-0 to deny the appeal and uphold Notice of Violation on the basis that the Zoning Administrator did not err or abuse its discretion, and the determination was properly issued.

SPEAKERS: Commissioner Honda disclosed that he is a partner in a group that is represented by the law firm of Reuben, Junius & Rose and that the firm's appearance before the Board of Appeals would have no effect on his decision; Tom Tunny, attorney for appellant; Andrew Lee, agent for the appellant; Scott Sanchez, PD; Joseph Duffy, DBI.

PUBLIC COMMENT: None.

**ADJOURNMENT.**

There being no further business, President Swig adjourned the meeting at 10:13 p.m.

DRAFT