

# **BOARD OF APPEALS**

## **CITY & COUNTY OF SAN FRANCISCO**

### **MEETING MINUTES - WEDNESDAY, FEBRUARY 26, 2014**

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

PRESENT: President Ann Lazarus, Vice President Arcelia Hurtado, Commissioner Frank Fung and Commissioner Darryl Honda.

Robert Bryan, Deputy City Attorney, Office of the City Attorney (OCA); Scott Sanchez, Zoning Administrator (ZA); Joseph Duffy, Senior Building Inspector, Department of Building Inspection (DBI); Carla Short, Urban Forester, Department of Public Works, Bureau of Urban Forestry (DPW BUF); Cynthia Goldstein, Executive Director; Victor Pacheco, Legal Assistant.

ABSENT: Commissioner Chris Hwang.

#### (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: None.

#### (2) **ELECTION OF OFFICERS:**

ACTION: Upon motion by Commissioner Honda, the Board voted 4-0-1 (Commissioner Hwang absent) to elevate Commissioner Hurtado to the office of Vice President. Upon further motion by Commissioner Honda the Board voted 4-0-1 (Commissioner Hwang absent) to elevate Vice President Lazarus to the office of President.

SPEAKERS: None.

PUBLIC COMMENT: None.

**(3) COMMISSIONER COMMENTS & QUESTIONS:**

SPEAKERS: Vice President Hurtado announced that she will need to leave the March 12, 2014 Board meeting by 9:00 p.m.

PUBLIC COMMENT: None.

**(4) ADOPTION OF MINUTES:**

Discussion and possible adoption of the February 19, 2014 minutes.

ACTION: Upon motion by Vice President Hurtado, the Board voted 4-0-1 (Commissioner Hwang absent) to adopt the February 19, 2014 minutes.

SPEAKERS: None.

PUBLIC COMMENT: None.

**(5) CLOSED SESSION:**

a. Public Comment on all matters related to Closed Session.

b. Vote on whether to hold Closed Session.

A Closed Session has been calendared to discuss the following matter:

Conference with legal counsel regarding anticipated litigation pursuant to California Government Code Section 54956.9(d) (2) and San Francisco Administrative Code Section 67.10(d):

  X   As defendant      \_\_\_\_\_ As plaintiff

The following appeals have been filed with the Board of Appeals: The Marsh v. Department of Building Inspection, Planning Department Approval (Appeal No. 13-095), The Marsh v. Department of Building Inspection, Planning Department Approval (Appeal No. 13-096), Alicia Gamez v. Department of Building Inspection, Planning Department Approval (Appeal No. 13-097), Alicia Gamez v. Department of Building Inspection, Planning Department Approval (Appeal No. 13-098). The Project sponsor has argued that the Housing Accountability Act prevents the removal of the fifth floor of the proposed project, which is a condition to a permit tentatively approved by the Board at is December 11, 2013 for the aforementioned appeals. The Board will confer with legal counsel on this matter.

c. Reconvene in Open Session.

i. Possible report on actions taken in closed session pursuant to Government Code Section 54957.1 and San Francisco Administrative Code Section 67.12.

ii. Vote in open session on whether to disclose any or all executive session discussions pursuant to Government Code Section 54957.1 and San Francisco Administrative Code Section 67.12.

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ACTION: Upon motion by Vice President Hurtado, the Board voted 4-0-1 (Commissioner Hwang absent) to enter into closed session. The Board held a closed session. The Board reconvened in open session. The Executive Director stated that no action was taken in the closed session. Upon further motion by Vice President Hurtado the Board voted 4-0-1 (Commissioner Hwang absent) to not disclose what was discussed during the closed session on the basis of attorney-client privilege.

SPEAKERS: None.

PUBLIC COMMENT: Stephen Williams and Peter Heinecke urged the Board to not hold a closed session.

**(6) APPEAL NO. 14-009**

CURTIS SPECK, Appellant(s) vs.  DEPT. OF PUBLIC WORKS BUREAU OF URBAN FORESTRY, Respondent	2701 Turk Street. Protesting the ISSUANCE on January 06, 2014, to Kiki Theodorides, Tree Removal Permit (approval to remove three trees with three replacement trees, and denial of removal of one tree). ORDER NO. 182076. FOR HEARING TODAY.
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ACTION: Upon motion by Vice President Hurtado, the Board voted 4-0-1 (Commissioner Hwang absent) to reschedule this matter to April 30, 2014 at the request of the parties.

SPEAKERS: None.

PUBLIC COMMENT: None.

**ITEMS (7A), (7B), (7C), & (7D) SHALL BE HEARD TOGETHER:**

**(7A) APPEAL NO. 13-095**

THE MARSH, Appellant(s) vs.  DEPT. OF BUILDING INSPECTION, Respondent PLANNING DEPT. APPROVAL	1050 Valencia Street. Protesting the ISSUANCE on July 17, 2013, to M. Rutherford Trust / Shizuo Holdings, Demolition Permit (demolish one-story restaurant building with 2,000sf of ground floor area). APPLICATION NO. 2010/12/27/7436. PUBLIC HEARING HELD DEC. 11, 2013. FOR FURTHER CONSIDERATION TODAY AND FOR THE ADOPTION OF TENTATIVE FINDINGS AND CONDITIONS.
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**(7B) APPEAL NO. 13-096**

<p>THE MARSH, Appellant(s) vs.  DEPT. OF BUILDING INSPECTION, Respondent PLANNING DEPT. APPROVAL</p>	<p>1050-1058 Valencia Street. Protesting the ISSUANCE on July 17, 2013, to M. Rutherford Trust / Shizuo Holdings, Permit to Erect a Building (erect a five-story, 12-unit apartment/retail/parking building with 3000sf of ground floor area) APPLICATION NO. 2010/12/27/7437"S". PUBLIC HEARING HELD DEC. 11, 2013. FOR FURTHER CONSIDERATION TODAY AND FOR THE ADOPTION OF TENTATIVE FINDINGS AND CONDITIONS.</p>
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**(7C) APPEAL NO. 13-097**

<p>ALICIA GAMEZ, Appellant(s) vs.  DEPT. OF BUILDING INSPECTION, Respondent PLANNING DEPT. APPROVAL</p>	<p>1050 Valencia Street. Protesting the ISSUANCE on July 17, 2013, to M. Rutherford Trust / Shizuo Holdings, Demolition Permit (demolish one-story restaurant building with 2,000sf of ground floor area). APPLICATION NO. 2010/12/27/7436. PUBLIC HEARING HELD DEC. 11, 2013. FOR FURTHER CONSIDERATION TODAY AND FOR THE ADOPTION OF TENTATIVE FINDINGS AND CONDITIONS.</p>
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**(7D) APPEAL NO. 13-098**

<p>ALICIA GAMEZ, Appellant(s) vs.  DEPT. OF BUILDING INSPECTION, Respondent PLANNING DEPT. APPROVAL</p>	<p>1050-1058 Valencia Street. Protesting the ISSUANCE on July 17, 2013, to M. Rutherford Trust / Shizuo Holdings, Permit to Erect a Building (erect a five-story, 12-unit apartment/retail/parking building with 3000sf of ground floor area) APPLICATION NO. 2010/12/27/7437"S". PUBLIC HEARING HELD DEC. 11, 2013. FOR FURTHER CONSIDERATION TODAY AND FOR THE ADOPTION OF TENTATIVE FINDINGS AND CONDITIONS.</p>
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**ACTION:** Upon motion by Commissioner Fung, the Board voted 4-0-1 (Commissioner Hwang absent) to uphold the permits and adopt the findings with revisions as stated, on the following conditions: (1) the ground floor commercial space be limited to neighborhood serving uses as defined by the San Francisco Planning Code; (2) the original entitlement as authorized by the Planning Commission as to density be maintained; and (3) there be setbacks at the front and back of the fifth floor of 10 to 12 feet depending upon the structural design as articulated by the project sponsor.

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SPEAKERS: Mary Gallagher, agent for appellant The Marsh; Stephen Williams, attorney for appellant Alicia Gamez; Mark Rutherford, agent for permit holder; Scott Sanchez, ZA.

PUBLIC COMMENT: Tim Colen and Amandeep Jawa spoke in support of the permit holder. Mike Maier, Peter Heinecke, Risa Teitelbaum, Erick Arguello, Barbara Russell, John Barbey, Kenny Yun, Elizabeth Zitrin, Sue Lebeck, Elizabeth Valenzualla, Ron Jones, Alice LaRocca, Gabriel Medina, Shari Steiner, John Levin, Rafael Mandelman, Isabel Barraza, Marga Gomez, Lynne Lombardo, Blair Moser, Emily Klion, Adriane Abbot, Peter Heinecke, Joy Kent, Clarence Isaac, Alicia Gamez and Gene Gore spoke in support of the appellants.

**(8) APPEAL NO. 13-175**

FRANKLIN BOWLES, Appellant(s) vs.  DEPT. OF BUILDING INSPECTION, Respondent PLANNING DEPT. APPROVAL	30 Edith Street. Protesting the ISSUANCE on December 09, 2013, to Telegraph Hill Housing, LLC, Alteration Permit (alter/remodel existing building; add one new story; make a single-family dwelling; add new stair and elevator connecting 1st to 3rd floor; provide light well at 3rd floor to match existing light well at adjacent building; roof deck at 3rd floor). APPLICATION NO. 200812319407S. FOR HEARING TODAY.
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ACTION: Upon motion by Vice President Hurtado, the Board voted 3-0-2 (Commissioner Hwang absent and Commissioner Fung recused) to rescheduled this matter May 14, 2014, at the request of the parties.

SPEAKERS: None.

PUBLIC COMMENT: None.

**(9) APPEAL NO. 14-008**

TY BASH, Appellant(s) vs.  DEPT. OF BUILDING INSPECTION, Respondent PLANNING DEPT. APPROVAL	1100 Ashbury Street. Protesting the ISSUANCE on December 31, 2013, to Michelle Meyer, Alteration Permit (replace windows; work done in 2000; found out permit not issued at time; rectifying situation; in response to Notice of Violation #201342841). APPLICATION NO. 2013/12/31/5419. FOR HEARING TODAY.
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ACTION: Upon motion by Vice President Hurtado, the Board voted 3-1-1 (President Lazarus dissented and Commissioner Hwang absent) to uphold the permit on the basis that it was issued

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properly and Planning Department staff properly exercised its discretion under the Planning Department guidelines.

SPEAKERS: Ty Bash, appellant; Mary Gallagher, agent for permit holder; Michelle Meyer, permit holder; Scott Sanchez, ZA; Joseph Duffy, DBI.

PUBLIC COMMENT: None.

**(10) APPEAL NO. V14-010**

HENRY KARNILOWICZ, Appellant(s) vs. ZONING ADMINISTRATOR, Respondent	2001 - 17th Street. Appealing the DENIAL on January 16, 2014, of Rear Yard, Open Space & Parking Variances (to legalize five existing group housing rooms on 2nd floor of existing structure and legalize a separate building in the required rear yard). CASE NO. 2013.0674V. FOR HEARING TODAY.
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ACTION: This matter was withdrawn by the appellant prior to hearing.

**ADJOURNMENT.**

There being no further business, President Lazarus adjourned the meeting at 8:15 p.m.