



**CITY & COUNTY OF SAN FRANCISCO
BOARD OF APPEALS**

Date Filed:

BOARD OF APPEALS

MAY 12 2014

APPEAL # 14-093

PRELIMINARY STATEMENT OF APPEAL

I / We, **Academy of Art University**, hereby appeal the following departmental action: **ISSUANCE of Notice of Violation & Penalty** by the **Zoning Administrator** which was issued or became effective on: **April 25, 2014**, for the property located at: **2295 Taylor Street aka 701 Chestnut Street**.

BRIEFING SCHEDULE:

The Appellant may, but is not required to, submit a one page (double-spaced) supplementary statement with this Preliminary Statement of Appeal. No exhibits or other submissions are allowed at this time.

Appellant's Brief is due on or before: **June 12, 2014, (no later than three (3) Thursdays prior to the hearing date)**, up to 12 pages in length, double-spaced, with unlimited exhibits, with an original and 10 copies delivered to the Board office by 4:30 p.m., and with additional copies delivered to the other parties the same day.

Respondent's and Other Parties' Briefs are due on or before: **June 26, 2014, (no later than one (1) Thursday prior to hearing date)**, up to 12 pages in length, doubled-spaced, with unlimited exhibits, with an original and 10 copies delivered to the Board office by 4:30 p.m., and with additional copies delivered to the other parties the same day.

Only photographs and drawings may be submitted by the parties at hearing.

Hearing Date: **Wednesday, July 02, 2014, 5:00 p.m., City Hall, Room 416, One Dr. Carlton B. Goodlett Place.**

All parties to this appeal must adhere to the briefing schedule above, however if the hearing date is changed, the briefing schedule MAY also be changed. Written notice will be provided of any change to the briefing schedule.

In order to have their documents sent to the Board members prior to hearing, **members of the public** should submit an original and 10 copies of all documents of support/opposition no later than one (1) Thursday prior to hearing date by 4:30 p.m. Please note that names and contact information included in submittals from members of the public will become part of the public record. Submittals from members of the public may be made anonymously.

Please note that in addition to the parties' briefs, any materials that the Board receives relevant to this appeal, including letters of support/opposition from members of the public, are distributed to Board members prior to hearing. All such materials are available for inspection at the Board's office. You may also request a copy of the packet of materials that are provided to Board members at a cost of 10 cents per page, per S.F. Admin. Code Ch. 67.28.

If you have any questions please call the Board of Appeals at 415-575-6880

The reasons for this appeal are as follows:

See attachment to the Preliminary Statement of Appeal.

Appellant or Agent (Circle One):

Signature: Marne S. Sussman

Print Name: Marne S. Sussman

Statement of Appeal for 2295 Taylor Street

On April 25, 2014, the Zoning Administrator (ZA) issued a "Notice of Violation and Penalty Decision" upholding a NOVP issued June 22, 2010 for the Academy of Art University (AAU) property at 2295 Taylor Street (aka 701 Chestnut Street). The ZA determined that the site is in violation for non-residential uses greater than 4,000 square feet, for changing a use that exceeds the 4,000 square foot use size provision without a conditional use (CU) authorization, and for establishing a Large Institutional Educational Service on the second floor without a CU authorization.

The AAU believes that a prior CU (Case No. 92.400IECV) granted in 1993 to allow conversion and expansion of the building by the San Francisco Art Institute (SFAI) authorized conversion of the building for use by the AAU. This CU authorized the establishment of a Large Institutional/Educational Service use to occupy the second floor, the enlarging of the building in excess of 5,000 square feet in area with the addition of a third floor, and allowed a single-use greater than 2,500 square feet.

BOARD OF APPEALS

MAY 12 2014

APPEAL # 14-093



SAN FRANCISCO PLANNING DEPARTMENT

Notice of Violation and Penalty Decision

Date: April 25, 2014

Property Owner: 701 Chestnut Street LLC
Academy of Art University
79 New Montgomery Street
San Francisco, CA 94105

BOARD OF APPEALS

MAY 12 2014

APPEAL # 14-093

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Site Address: 2295 Taylor Street (A.K.A. 701 Chestnut Street)
Block/Lot: 0066/001
Zoning District: North Beach Neighborhood Commercial District (NCD)
Complaint Number: 8610
Code Violations: 121.2; Exceeding Use Size Limits in the North Beach NCD; 178(e)(5),
Unauthorized Change of Use without a Conditional Use Authorization in
North Beach NCD; 722.22, Off-Street Parking; 722.81, Establishing a Large
Institutional/Educational Service Use on the Second Story.

Administrative Penalty: \$250 Each Day of Violation
Appeal Date: Within 15 days from the Date of this Letter
Staff Contact: Dario Jones, (415) 558-6477 or dario.jones@sfgov.org
DECISION: NOTICE OF VIOLATION AND PENALTY UPHELD

DESCRIPTION OF VIOLATION

The Zoning Administrator has determined that the above referenced property is in violation of the Planning Code Sections listed below:

- 1. Violation of Planning Code Sections 722.21 and 121.2:** The Planning Code prohibits non-residential uses greater than 4,000 sq. ft. in the North Beach Neighborhood Commercial District ("NCD"). The Academy of Art University ("AAU") is in violation for exceeding the 4,000 sq. ft. non-residential use size limit of the North Beach NCD by establishing a 20,880 sq. ft. Large Institutional Educational Service¹ use. AAU expanded the last known legal use of the building (a retail use on the ground floor and parking garage on the second story) beyond the 4,000 sq. ft. use size limit by converting both floors to a Large Institutional/Educational Service use without obtaining the appropriate permits. The proposed use size cannot be legalized under the current zoning and would require a legislative amendment to allow legalization.

¹ Per Planning Code Section 790.50(c), a Large Institutional Use is defined as "a public or private, nonprofit or profit-making use, excluding hospitals and medical centers, which provides services to the community and meets the applicable provisions of Section 304.5 of this Code concerning institutional master plans, including but not limited to the following: Educational Service. A use certified by the Western Association of Schools and Colleges which provides educational services, such as a school, college or university. It may include, on the same premises, employee or student dormitories and other housing operated by and affiliated with the institution".

2. **Violation of Planning Code Section 178(e)(5):** AAU is in violation for changing a use that already exceeds the 4,000 sq. ft. use size provisions of Section 121.2 without a required Conditional Use Authorization ("CU") as required per the Planning Code.
3. **Violation of Planning Code Section 722.22:** The Academy of Art University is in violation for not providing off-street parking spaces. In this case, a post-secondary educational institution use requires one off-street parking space for every two classrooms per Planning Code Section 151.
4. **Violation of Planning Code Section 722.81:** AAU is in violation for the establishment of a Large Institutional Educational Service use on the second story of the subject property without receiving CU authorization as required per Planning Code Section 722.81 for the North Beach NCD.

TIMELINE OF INVESTIGATION

In 2007, the Department provided AAU notice that most of its properties feature violations of the Planning Code, typically for changes of use and signage without benefit of permit including for the property located at 2295 Taylor Street (AKA 701 Chestnut Street). Although a CU application was submitted for the subject property in 2007 (Case No. 2007.1079C), the Planning Department informed AAU that an Environmental Impact Report ("EIR") and Transportation Study would be required to process any permits to legalize unauthorized changes of use.

On May 19, 2008, AAU submitted an EIR application, and on August 13, 2008, AAU submitted a Transportation Study Application (Case No. 2008.0586E!). The Department allowed existing violations to be placed "on hold" pending completion of the EIR and Transportation Study. The Department informed the AAU that it could not acquire and convert or otherwise use any new properties in San Francisco until after the Department completed the EIR, including the Transportation Study, the Commission approved AAU's IMP and the City processed necessary entitlements based on the final certified EIR.

In April 2010, as part of a Joint Task Force inspection for AAU properties, the Department performed a site visit to the subject property and found that AAU had illegally established a 20,880 sq. ft. Large Institutional/Educational Service use on both floors of the two-story building.

Further review of permit history for the property found that in 1992, Large Institutional/Educational Service use, The San Francisco Art Institute ("SFAI"), was granted a Conditional Use (Case No. 92.400C – Motion No. 13457) by the Planning Commission for the conversion and expansion within the subject property. Further it was found that although the SFAI did occupy the property, SFAI failed to submit a building permit application to authorize the change of use and as a result the previous Conditional Use Authorization had expired. Therefore, the last known legal use of the building was a retail use (dba "The GAP").

On December 3, 2010, prior to a scheduled CU hearing, to modify the previous CU for the property to remove the off-street parking requirement, before the Planning Commission, AAU withdrew its CU application.

On June 6, 2011, an Enforcement Notice was issued with the information regarding the Planning Code requirements pertaining to the unauthorized Large Institutional/Educational Service use and requested that AAU either demonstrate that AAU was legally authorized to occupy and operate a Large Institutional Educational Service at the subject property or to cease all operations within the subject property.

On June 21, 2011, AAU responded to the June 6, 2011 Enforcement Notice and submitted arguments regarding the legality of the subject building. In this letter, AAU requested that this matter "be first heard by the Zoning Administrator." The Enforcement Notice included a description of the appeals processes for enforcement cases, including the requirement for filing a Request for Zoning Administrator Hearing or appeal to the Board of Appeals within 15 days of the issuance of the Notice of Violation and Penalty.

On September 17, 2011, the Department learned that, despite the admonition not to acquire, convert or otherwise use new properties, AAU had acquired additional properties. This action further delayed the processing of the EIR.

On October 28, 2011, the Zoning Administrator determined that AAU had not demonstrated that it had occupied the subject property legally and issued a Notice of Violation and Penalties (NOVP).

On November 4, 2011, the Department notified AAU in writing that the Department could no longer keep other existing violations "on hold" because "[e]very subsequent purchase of property necessitates analysis and possible revision of the EIR project description which necessarily delays the completion of that document. Without an EIR, neither the AAU nor the City can move forward with the appropriate permits to bring the pre-EIR properties into compliance with City codes, not to mention the post-EIR properties." On the same date, the Department initiated enforcement proceedings against the AAU for other properties that were in violation of the Planning Code.

On January 22, 2013, a Zoning Administrator's hearing was held at the Planning Department to hear evidence regarding the legal use of the property (see below). This hearing was continued to February 12, 2013, to allow additional time for Mr. Bob Passmore, Project Sponsor for AAU, to demonstrate additional evidence that AAU had legally occupied both floors of the subject property.

EVIDENCE PRESENTED AT THE ZONING ADMINISTRATOR'S HEARING

Public hearings for the matter were held on January 22, 2013 and February 12, 2013. At the January 22, 2013 hearing, AAU was represented by Robert Passmore, Patrice Fambrini, and Marne Sussman, and interested members of the public included Greg Scott, Patricia Vaughey and Sue Hestor. At the February 12, 2013 hearing, AAU was represented by Robert Passmore and Patrice Fambrini, and interested members of the public included Sue Hestor and John Sanger.

At these hearings, AAU argued that a 1993 CU Authorization (Case No. 92.400IECV) to allow conversion and expansion of the building by the San Francisco Art Institute (SFAI) authorized conversion of the building for use by AAU.

April 25, 2014

At the February 12, 2013 hearing, John Sanger, Attorney, submitted an affidavit (executed January 31, 2013) and testimony regarding the prior permitting and use of the subject property. Mr. Sanger testified that he provided pro bono legal assistance to SFAI at the time it sought the 1993 CU Authorization and served on SFAI's Board of Trustees. Mr. Sanger stated that while SFAI obtained the CU Authorization in 1993, it did not pursue the project. He also testified that SFAI investigated conversion of the second floor parking garage into a Large Institutional/Educational Service use; but, determined that it was not feasible because "such occupancy would require substantial structural retrofitting to meet the demands for human occupancy" and subsequently sold the property.

DECISION

NOTICE OF VIOLATION AND PENALTY UPHOLD. Pursuant to Planning Code Section 176 the Zoning Administrator upholds the Notice of Violation and Penalty issued on October 28, 2011, for the following reasons:

- In 1993, the subject property received a CU Authorization for the establishment of a Large Institutional/Educational Service use (San Francisco Art Institute, or SFAI) to occupy the 2nd story, enlarge the building in excess of 5000 square feet in area with the addition of a third story, allow a single-use greater than 2500 square feet, and provide required off-site parking for the use at 800 Chestnut Street (SFAI Campus).

Although the subject property was authorized for the above entitlements, evidence presented during the February 12, 2013 hearing indicates that the authorizations were not pursued by SFAI. Below is the information presented during the hearing that supports this decision:

1. A building permit was required to establish the uses outlined in the CU Authorization; however research of Planning Department and Department of Building Inspection records could not locate any building permits to document a change of use from retail to a Large Institutional/Educational Service use, to increase the square footage of the subject property, or to relocate the required parking from the subject property to 800 Chestnut Street.
2. Although it appears that SFAI may have occupied the ground floor of the subject property, at no time was substantial evidence, including a building permit, provided by Mr. Passmore that would demonstrate that SFAI exercised the CU Authorization.
3. In addition, an affidavit provided by Mr. John M. Sanger, Attorney, indicates that the SFAI never exercised its entitlements and abandoned all proposed changes granted for the subject property after it was discovered that it was not feasible to develop the second floor for human occupancy due to building code requirements.

PENALTIES

Pursuant to Planning Code Section 176, the administrative penalties of **\$250 per day** have been assessed to the responsible party for each day the violation continues unabated, excluding the period of time the

Notice of Violation and Penalty has been pending before the Zoning Administrator. The Notice of Violation and Penalty was issued on October 28, 2011 and Zoning Administrator Hearings were held on January 22, 2013 and February 12, 2013. No penalties are due at this time, however, failure to take the compliance actions as noted above or appeal to the Board of Appeals **within fifteen (15) days** will result in accrual of penalties thereafter.

ENFORCEMENT TIME AND MATERIALS FEE

Pursuant to Planning Code Section 350(c)(1), the Planning Department shall charge for 'Time and Materials' to recover the cost of correcting Planning Code violations. Additional fees will continue to accrue until the violation is abated. This fee is separate from the administrative penalties as noted above and is not appealable.

APPEALS

This decision letter and any assessed penalties may be appealed to the Board of Appeals **within the 15-day time limit** from the date of this decision. Again, the time and materials fees are not appealable. The Board of Appeals may not reduce the amount of penalty below \$100 per day for each day that the violation exists, excluding the period of time that the matter has been pending either before the Zoning Administrator or before the Board of Appeals. **For further information, please contact the Board of Appeals in person at 1650 Mission Street, (Room 304) or call (415) 575-6880.**

Sincerely,



Scott F. Sanchez
Zoning Administrator

Attachment:

Notice of Violation and Penalty, dated October 28, 2011
Affidavit from John M. Sanger (executed January 31, 2013)

Cc:

Planning Commission

John Rahaim, Director of Planning

Christine Haw, Code Enforcement Manager

Yvonne R. Meré, Deputy City Attorney, City Attorney's Office

Susan Cleveland-Knowles, Deputy City Attorney, Office of the City Attorney

Tom Hui, Director, Department of Building Inspection

Dan Lowrey, Deputy Director, Department of Building Inspection

Ronald E. Van Buskirk, Attorney, Pillsbury Winthrop Shaw Pittman LLP, Four Embarcadero Center, 22nd Floor, San Francisco, CA 94111 (P.O. Box 2824, San Francisco, CA 94126)

Ralph Marchese, 1388 Sutter Street, Suite 805, San Francisco, CA 94109

Patrice Fambrini, (via email)

2295 Taylor Street (AKA 701 Chestnut Street)

Notice of Violation and Penalty Decision

April 25, 2014

Sue Hestor, Interested Party, 870 Market Street #1128, San Francisco 94102

Brad Paul, Interested Party (via email)

John Sanger, Interested Party (via email)

中文詢問請電: 558.6378

Para información en Español llamar al: 558.6378



SAN FRANCISCO PLANNING DEPARTMENT

NOTICE OF VIOLATION AND PENALTY

October 28, 2011

Property Owner
Dr. Elisa Stephens, President
Academy of Art University
79 New Montgomery Street
San Francisco, CA 94105

BOARD OF APPEALS

MAY 12 2014

APPEAL # 14-093

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Site Address:	2295 Taylor Street (A.K.A 701 Chestnut Street)
Assessor's Block/Lot:	0066/001
Zoning District:	North Beach Neighborhood Commercial District
Complaint Number:	8610
Code Violation:	Unauthorized Large Institutional Educational Service Use
Administrative Penalty:	Up to \$250.00 for each day of violation
Respond By:	Within 15 Days from the Date of this Letter
Staff Contact:	Dario Jones, (415) 558-6477 or dario.jones@sfgov.org

The Planning Department has determined that the above referenced property is in violation of Planning Code for not using the property in the manner it is authorized. As the owner or leaseholder of the subject property, you are a 'responsible' party to bring the above property in compliance with Planning Code. The details of the violation are discussed below:

DESCRIPTION OF VIOLATION

The subject property is currently in violation of the following Planning Code sections:

- 1. Violation of Planning Code Section 722.21 and 121.2:** The Planning Code prohibits non-residential uses greater than 4,000 sq. ft. in the North Beach Neighborhood Commercial District ("NCD"). The Academy of Art University ("AAU") is in violation for exceeding the 4,000 sq. ft. non-residential use size limit of the North Beach NCD by establishing a 20,880 sq. ft. Large Institutional Educational Service¹ use. AAU expanded the last known legal use of the building (a retail use on the ground floor and parking garage on the second story) beyond the 4,000 sq. ft. use size limit by converting both floors to a large Institutional Educational Service use.

¹ Per Planning Code Section 790.50 a Large Institutional Use is defined as "a public or private, nonprofit or profit-making use, excluding hospitals and medical centers, which provides services to the community and meets the applicable provisions of Section 304.5 of this Code concerning institutional master plans, including but not limited to the following: Educational Service. A use certified by the Western Association of Schools and Colleges which provides educational services, such as a school, college or university. It may include, on the same premises, employee or student dormitories and other housing operated by and affiliated with the institution."

2. **Violation of Planning Code Section 178(e)(5):** AAU is in violation for changing a use that already exceeds the 4,000 sq. ft. use size provisions of Section 121.2 without a required Conditional Use Authorization ("CU") as required per the Planning Code.
3. **Violation of Planning Code Section 722.22:** The Academy of Art University is in violation for not providing off-street parking spaces. In this case, a post-secondary educational institution use requires one off-street parking space for every two classrooms per Planning Code Section 151.
4. **Violation of Planning Code Section 722.81:** AAU is in violation for the establishment of a Large Institutional Educational Service use on the second story of the subject property without receiving CU authorization as required per Planning Code Section 722.81 for the North Beach NCD.
5. **Violation of Planning Code Section 304.5:** AAU is in violation for the establishment of a Large Institutional Educational Service Use prior to a required Institutional Master Plan ("IMP") hearing before the Planning Commission. Until an IMP has been heard and closed by the Planning Commission, the Large Institutional Educational Service use is not authorized to operate.

BACKGROUND AND TIMELINE

In 2006, the Planning Department's Code Enforcement Division ("Department") issued a Notice of Violation to the AAU for failure to submit an IMP per Planning Code Section 304.5. AAU responded by submitting a draft IMP (Case No. 2006.0737I). In 2007, the Department presented AAU's IMP to the Planning Commission ("Commission"); however, the Commission deemed it to be incomplete because 1) AAU had not addressed outstanding enforcement issues (see below), and 2) the Commission requested additional information, including a transportation study. In 2008, the Department presented a revised and updated version of AAU's IMP to the Commission; however, the Commission still found it to be incomplete because AAU had not addressed outstanding enforcement issues or provided the requested transportation study.

In 2007, the Department provided AAU notice that most of its properties feature violations of the Planning Code, typically for changes of use and signage without benefit of permit including for the property located at 2295 Taylor Street.

Although a CU application was submitted for the subject property in 2007 (Case No. 2007.1079C), the Planning Department informed AAU that an Environmental Impact Report ("EIR") and Transportation Study would be required to process any permits to legalize unauthorized changes of use.

On May 19, 2008, AAU submitted an EIR application, and on August 13, 2008, AAU submitted a Transportation Study Application (Case No. 2008.0586E!). Based on the apparent good faith efforts then made by AAU, the Department allowed existing violations to be placed "on hold" pending completion of the EIR and Transportation Study. AAU was informed that it could not acquire, convert or otherwise utilize any new properties until completion of the EIR, Transportation Study, IMP and processing of necessary entitlements.

In April 2010, as part of a Joint Task Force inspection for AAU properties, the Department performed a site visit to the subject property and found that AAU had illegally established a 20,880 sq. ft. Large Institutional Educational Service Use.

Further review of permit history for the property found that in 1992, an educational service use, The San Francisco Art Institute ("SFAI"), was granted a Conditional Use (Case No. 92.400C – Motion No. 13457) by the Planning Commission for the conversion and expansion within the subject property. Further it was found that although the SFAI did occupy the property, SFAI failed to submit a building permit application to authorize the change of use and as a result the previous Conditional Use Authorization had expired. Therefore, the last known legal use of the building was a retail use (GAP).

On December 2, 2010, prior to a scheduled CU hearing before the Planning Commission, AAU withdrew its 2007 CU application.

On June 6, 2011, an Enforcement Notice was issued to you with the information regarding the Planning Code requirements pertaining to the unauthorized educational use along with steps describing how to bring the subject property into compliance. To date, AAU's large institutional educational use at 2295 Taylor Street continues to remain out of compliance with the Planning Code.

HOW TO CORRECT THE VIOLATION

- 1) Demonstrate that AAU is legally authorized to occupy and operate a Large Institutional Educational Service on both the ground floor and second story of the subject property; or,
- 2) Cease all operations within the subject property.

To prevent further enforcement action and avoid accrual of penalties, the responsible party will need to provide adequate evidence to demonstrate that either no violation exists or that the violation(s) has been abated. Evidence may include the following: issuance of a building permit to correct the violation, site visit by planning staff or photographs demonstrating compliance or abatement. Please contact staff planner noted at the top of this notice to submit evidence.

TIMELINE TO RESPOND

The responsible party has fifteen (15) days from the date of this notice to either;

- 1) Correct the violation as noted above; or
- 2) Appeal this Notice of Violation and Penalty as noted below.

APPEAL PROCESSES

If the responsible party believes that this order to remove a violation of Planning Code is an abuse of discretion by the Zoning Administrator, the following appeal processes are available within fifteen (15) days from the date of this notice:

- 1) The responsible party may request a Zoning Administrator Hearing under Planning Code Section 176 to show cause why this Notice of Violation and Penalty is issued in error and should be rescinded by filing the Request for Zoning Administrator Hearing Form and supporting evidence to the Planning Department. The Zoning Administrator shall render a decision within 30 days of such hearing and the responsible party may appeal the Zoning Administrator's decision to the Board of Appeals within 15 days from the date of the decision.
- 2) The responsible or any interested party may waive the right to a Zoning Administrator Hearing and proceed directly to appeal the Notice of Violation and Penalty to the Board of Appeals located at 1650

Notice of Violation and Penalty
2295 Taylor Street
Academy of Art University

October 28, 2011
Complaint Identification Number: 8610

Mission Street, Room 304, San Francisco, CA 94103, telephone: (415) 575-6880, website: www.sfgov.org/bdappeal. The Board of Appeals may not reduce the amount of penalty below \$100 per day for each day the violation exists, excluding the period of time the matter has been pending either before the Zoning Administrator or before the Board of Appeals.

- 3) The responsible party may also file a written request to the Zoning Administrator to terminate abatement proceedings under Section 176 and refer the matter to the Planning Director for enforcement action under the process set forth in Code Section 176.1. If the Zoning Administrator determines that the enforcement case will continue under Code Section 176, this determination is not appealable separate from the merits of the case. The Zoning Administrator shall render a decision on the case within 30 days of the referral request and the responsible party may appeal the Zoning Administrator's decision to the Board of Appeals within 15 days of such decision.

ADMINISTRATIVE PENALTIES

If any responsible party does not request any appeal process and does not take corrective action to abate the violation within the 15-day time limit as noted above, this Notice of Violation and Penalty will become final. Beginning on the following day, administrative penalties of up to **\$250 per day** to the each responsible party will start to accrue for each day the violation continues unabated. If the accruing penalty amount is not received within 30 days from the final date of the Notice of Violation and Penalty, the Planning Department will forward the matter to the Bureau of Delinquent Revenue for collection as authorized by Article V, Section 10.39 of the San Francisco Administrative Code. Please be advised that payment of the penalty does not excuse failure to correct the violation or bar further enforcement action. Additional penalties will continue to accrue until a corrective action is taken to abate the violation.

ENFORCEMENT TIME AND MATERIALS FEE

Pursuant to Planning Code Section 350(c)(1), the Planning Department shall charge for 'Time and Materials' to recover the cost of correcting Planning Code violations. Accordingly, the responsible party is currently subject to a fee of \$1130 for 'Time and Materials' cost associated with the Code Enforcement investigation. Please submit a check payable to 'Planning Department Code Enforcement Fund' within 15 days from the date of this notice. Additional fees will continue to accrue until the violation is abated. This fee is separate from the administrative penalties as noted above and is not appealable.

Notice of Violation and Penalty
2295 Taylor Street
Academy of Art University

October 28, 2011
Complaint Identification Number: 8610

OTHER APPLICATIONS UNDER PLANNING DEPARTMENT CONSIDERATION

The Planning Department requires that any pending violations be resolved prior to the approval and issuance of any new applications that you may wish to pursue in the future. Therefore, any applications not related to the abatement of violation will be placed on hold until corrective actions are taken to abate the violation. We want to assist you in ensuring that the subject property is in full compliance with Planning Code. You may contact the enforcement planner as noted above with any questions.

Sincerely,



Scott F. Sanchez
Zoning Administrator

cc: John Rahaim, Director of Planning
Christine Haw, Code Enforcement Manager
Alex Tse, Deputy City Attorney, San Francisco City Attorney's Office
David Cincotta, JMBM LLP, 2 Embarcadero Center, 5th Floor, San Francisco, CA 94111
Ralph Marchese-1388 Sutter Street, Suite 805-San Francisco, CA 94109

中文詢問請電: 558.6378
Para información en Español llamar al: 558.6378

SANGER & OLSON

576 SACRAMENTO STREET
SEVENTH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-3023
TEL 415.693.9300 + FAX 415.693.9322
real.estate@sanger-olson.com

Transmittal Memorandum

February 6, 2013, 2013

To: Mr. Scott Sanchez
Zoning Administrator
San Francisco Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94013

From: John M. Sanger

Re: Hearing on 2295 Taylor Street (aka 701 Chestnut Street)

Herewith the following:

- Executed Affidavit with Regard to Prior Permitting and Use of Referenced Property by the San Francisco Art Institute

Affidavit Given in Connection with Zoning Administrator's Hearing on Use and Occupancy of 2295 Taylor Street (aka 701 Chestnut Street), San Francisco, California

I, John M. Sanger, say:

1. I am a resident of San Francisco and work in the City, having my office at 576 Sacramento Street, 7th Floor. I am and have been for over 40 years a member of the California bar and my practice area is real estate, with a specialty in land use and zoning laws. I have represented clients in complying with the zoning and building and other laws of the City and County of San Francisco for many years.
2. In 1991 and 1992 I provided pro bono legal assistance to the San Francisco Art Institute (SFAI) with respect to negotiating and concluding the purchase of the property at 2295 Taylor Street (known to SFAI and me as 701 Chestnut Street) for purposes of serving as a potential site for the SFAI graduate school after substantial required redevelopment. At that time and thereafter, after becoming a member of the Board of Trustees, I continued to assist SFAI in complying with the Planning Code's requirement for an institutional master plan (IMP) and for a conditional use authorization and variance for use of the property for SFAI purposes and with regard to the use, occupancy and potential development of the same property..
3. In that role I was principally responsible for assuring compliance with City codes. Accordingly, after submission of the IMP and consultation with the Department of Planning and its Zoning Administrator, I caused to be submitted a conditional use application and variance application for use of

the property for SFAI purposes and ultimately for the planned graduate school, which was foreseen to require expansion to the maximum possible height allowed under the Planning Code by the addition of another story, conversion of the second floor from parking to studio use and replacement of the lost parking at 800 Chestnut. The conditional use application was submitted and approved by the Planning Commission subject to certain conditions, among which I believe the most significant was the replacement of parking which would be lost by conversion of the second story.

However, none of the conditions were ever triggered by reason of an ultimate determination that it was not feasible to redevelop the property as planned and, as discussed below, because it was not feasible to convert the second floor from parking to other purposes even for interim more limited uses. Consequently conditions involving the need to expand parking at 800 Chestnut Street were never triggered and no other work at 800 Chestnut was required in order to occupy 701 Chestnut as it was occupied by SFAI.

4. Potential redevelopment of the site as then planned for the graduate school would have required substantial expansion and involved an architectural competition and selection of an architect. Pending that possibility SFAI wished to make interim use of the property for studio and related purposes involving teaching and exhibition of work by students. Accordingly, I assisted SFAI in investigating the possibility of obtaining a building permit for a change of use and occupancy of the second story from parking to studio and related uses. The second story had been designed and was then in use only for parking, the use it served in connection with the GAP store which had been there for many years prior to its acquisition by SFAI. To SFAI's disappointment, we discovered that occupancy of the second floor for studio, teaching, office or other purposes involving human occupancy, rather than the parking of vehicles, was not going to be possible by reason

of the fact that such occupancy would require substantial structural retrofitting to meet the demands for human occupancy. Due to the expense involved, such work was determined to be prohibitive for interim use purposes and the use of the second floor was confined to parking thereafter while the first floor was used for studio and teaching and gallery space as required by the conditional use approval pursuant to appropriate permits. Some partitioning occurred and probably some electrical and plumbing work but nothing very substantial to the best of my memory since the long-term plan was for something quite different.

5. During the same period a master plan was developed for 800 Chestnut and some improvements were made to add a digital arts center, an elevator, accessible restrooms and some other small improvements primarily to enhance accessibility and accommodate some expansion of program. None of these changes had anything to do with 701 Chestnut and none of the requirements to be implemented at 800 Chestnut were ever triggered due to lack of proceeding with the work at 701 Chestnut.
6. To the best of my memory before I left the Board of Trustees in 2000 it had generally been determined that the site was not large enough to accommodate the needs of SFAI for its graduate school, especially given the limits on and expense of redevelopment for such purposes. The plan at that time was simply to retain the property for general purposes, including exhibition and gallery space as required by the conditional use authorization in order to maintain a transparent or retail-like frontage.
7. Thereafter I heard about the decision to sell the property and to locate the expanded graduate program elsewhere from the subsequent Chair of the Board of Trustees and interim President whom I knew quite well. He also informed me that the property had been acquired by a foreign corporation acting on behalf of the Academy of Art in order to disguise the fact that it

was acquiring the property, presumably in order to have a presence and signage just a block away from SFAI on the main access street to SFAI which, I was informed caused substantial confusion as to which school occupied what property.

8. I personally observed for many years thereafter, including the period after 2006 when I rejoined the SFAI Board of Trustees, the fact that the second floor had been converted to a different occupancy than parking. From what I did observe, the form of occupancy was that of offices or studios although I never entered to determine whether that was true or not. The entry to the second floor which in the past had generally been open to allow vehicle entry appeared always closed. I assumed that such occupancy was without permit since I never observed any substantial structural work being undertaken at the property and knew that significant structural changes would have been required to comply with the Building Code.

I have personal knowledge of the foregoing and could competently testify to the foregoing if called as a witness.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct except as to those matters stated on my information or belief and as to those matters I believe them to be true and that this Declaration was executed on January 31, 2013.



JOHN M. SANGER

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Attorneys for Appellant
Academy of Art University

BOARD OF APPEALS
SEP 25 2014
APPEAL # 14-093

BOARD OF APPEALS
CITY AND COUNTY OF SAN FRANCISCO

Academy of Art University,
Appellant,

v.

Zoning Administrator,
Respondent.

Case No. 14-093
Subject Property: 2295 Taylor Street aka 701
Chestnut Street

**APPELLANT ACADEMY OF ART
UNIVERSITY'S BRIEF**

Hearing Date: October 15, 2014
Time: 5:00 p.m.
Place: City Hall, Room 416

I. INTRODUCTION

Appellant Academy of Art University appeals from the Planning Department's issuance on April 25, 2014 of a Notice of Violation and Penalty (NOVP) Decision for 2295 Taylor Street aka 701 Chestnut Street (the "Property"). The University does not contest the merits of the NOVP Decision or the underlying NOVP. Instead, the University simply requests that the Board of Appeals direct the Zoning Administrator to treat the Property in like fashion as all other University sites subject to NOVPs by linking the imposition of penalties to the environmental review process.

II. BACKGROUND

In October 2011, the Planning Department issued an NOVP against the Property. Following a Zoning Administrator's Hearing, the Department issued an NOVP Decision on April 25, 2014 upholding the NOVP and providing that penalties would begin accruing within 15 days unless the University appealed to the Board of Appeals or took compliance actions.¹ The NOVP had identified the following compliance actions: demonstrating the University's legal authorization for its uses or ceasing all operations on the Property.

The Planning Department has treated differently all 21 other NOVPs to which the University is subject for violations on separate University properties. For each of these properties, the Department has provided that penalties under the respective NOVP would begin accruing on November 2, 2014, if the Draft Environmental Impact Report (EIR) for University properties is not published by November 1. In recognition of the University's withdrawal of its challenge to 20 of these 21 NOVPs, the Zoning Administrator agreed at a hearing on June 18, 2014 to make a determination in conjunction with the Planning Department regarding whether and when penalties would begin accruing should publication of the Draft EIR not occur by November 1.

The University, City staff members, and the environmental consultants have worked cooperatively to meet the November 1 deadline. Moreover, the University has made a priority of bringing all its properties into full compliance with the Planning Code.

III. ARGUMENT AND RELIEF REQUESTED

The NOVP for the Property should be treated just like the other 21 University NOVPs. As with other properties subject to NOVPs, the University has indicated its willingness to cure

¹ The University timely appealed on May 12, 2014.

all violations at the Property by obtaining the appropriate planning approvals. And, as with other University properties subject to NOVPs, the Planning Department has placed applications for all such approvals on hold until the EIR has been completed. The University, therefore, is powerless to cure its violations until the EIR is issued. The Planning Department tacitly has acknowledged, and partially has addressed, this circumstance by deferring the accrual of penalties under the other University NOVPs until November 1, 2014, the deadline for publication of the Draft EIR. Yet the Department has refused to do so for the NOVP for the Property. Given that the University is caught in the same holding pattern for approvals related to all its NOVPs, it asks for comparable treatment, with deferral of the accrual of penalties, for the NOVP for the Property.

Although legislation is required to cure violations at the Property, unlike violations at other University properties, this is a distinction without a difference. In both cases, whether the cure is legislative or administrative, the Planning Department has refused to process University planning applications until the EIR is complete. Since the Department's position does not hinge on whether legislation is required, it makes little sense to draw such a distinction in the treatment of the NOVPs. Distinguishing between the NOVPs on this ground only serves to penalize the University unfairly for failing to cure a violation at the Property it has not been given the opportunity to cure.

In addition to asking that the accrual of any penalties under this NOVP be deferred, the University also requests, as it has for the other 21 NOVPs, to retain the ability to raise equitable arguments to this Board regarding the amount and timing of accrual of penalties should penalties be imposed at a future date. While the University, the Planning Department, and environmental consultants have made excellent progress toward completing the Draft EIR, the University does

not—and under CEQA cannot—control the Draft EIR’s release date. Further, the University’s actions in attempting to bring the relevant sites into compliance with the Planning Code should be considered in determining whether or when to assess penalties, and the amount of any such penalties. Accordingly, in the unexpected event there is future disagreement over the equities of imposing penalties on the University, the Board should be able to hear and resolve such claims.

To address the issues raised above, the University respectfully requests that the Board direct the Zoning Administrator to include the following, or comparable, language in the Final NOVP for the Property:

If the AAU Draft EIR is not published by November 1, 2014, the Zoning Administrator in his discretion (a) may issue a subsequent determination that modifies the penalty accrual terms for the NOVP to ensure timely completion of the EIR or (b) may issue, on or after November 2, 2014, an order of abatement and assess penalties of up to \$250 per day. Such penalties may be imposed for each day the violation continues unabated. If the AAU Draft EIR is published by November 1, 2014, the Zoning Administrator in his discretion may issue a subsequent determination that modifies the penalty accrual terms for the NOVP to ensure timely completion of the EIR. Under either circumstance, the Zoning Administrator, no later than December 31, 2014, (a) shall issue a subsequent determination that modifies the penalty accrual terms for the NOVP or (b) shall issue an order of abatement and assess penalties of up to \$250 per day. Any such determination or order shall be appealable to the Board of Appeals with regard to whether and when penalties should be imposed, and the amount of any such penalties.

With the addition of such language to the Final NOVP, the NOVP for the 2295 Taylor Street Property will be treated comparably to other University NOVPs, and an adequate process will be in place to address the equities of any penalties that may be imposed.

Dated: September 25, 2014

PERKINS COIE LLP

By:  _____
Alan Murphy

Attorneys for Appellant
Academy of Art University

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PROOF OF SERVICE BY PERSONAL DELIVERY

I am a citizen of the United States and employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is Four Embarcadero Center, Suite 2400, San Francisco, California 94111-4131. On September 25, 2014, I served a copy of the within document:

Appellant Academy of Art University's Brief
Academy of Art University v. Zoning Administrator
Appeal No.: 14-093

by handing the document to Nationwide Legal LLC for personal delivery to the person(s) at the address(es) set forth below:

Scott Sanchez
Zoning Administrator
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco CA 94103

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 25, 2014, at San Francisco, California.



Kathleen Chang



SAN FRANCISCO PLANNING DEPARTMENT

Board of Appeals Brief

Date: October 9, 2014
Hearing Date: October 15, 2014
Appeal No.: 14-093
Project Address: 2295 Taylor Street
Block/Lot: 0066/001
Zoning: North Beach Neighborhood Commercial District (NCD)
North Beach Special Use District (SUD)
40-X Height and Bulk District
Staff Contact: Scott Sanchez – (415) 558-6350
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INTRODUCTION

The Planning Department respectfully submits this brief to respond to points raised in the Appeal Brief submitted by the Academy of Art University (“AAU”) for Appeal No. 14-093 (2295 Taylor Street).

BACKGROUND

On April 25, 2014, the Planning Department issued a Notice of Violation and Penalty Decision (NOVPD) for the property at 2295 Taylor Street. The NOVPD found that the use of the property as a Large Institutional/Educational Service violated the requirements of the Planning Code and could not be legalized in its current form. On May 12, 2014, AAU appealed the issuance of the NOVPD (Appeal No. 14-093) arguing that a previous CU for the site authorized the current use (an argument which was refuted in the NOVPD).

On September 25, 2014, AAU submitted an Appeal Brief stating that “the University does not contest the merits of the NOV Decision or the underlying NOV.” Instead, AAU has requested that the Board of Appeals direct the Zoning Administrator to defer any penalties to a future date, tied to progress of a related Environmental Impact Report (EIR).

Board of Appeals Brief
Appeal No. 14-093
2295 Taylor Street
Hearing Date: October 15, 2014

While the Planning Department appreciates that AAU acknowledges the outstanding violation on this property and does not contest the merits of the NOVPD, we respectfully disagree that penalties should be deferred to a later date for the following reasons:

- 1) The subject use cannot be legalized without a legislative change to the requirements of the North Beach NCD.
- 2) At present, no legislative changes have been proposed to allow legalization of the subject use.
- 3) While significant progress has been made on the Draft EIR, the current version does not contemplate legislative changes to allow legalization of the subject use.

CONCLUSION

The Planning Department respectfully requests that the Board of Appeals deny the appeal and uphold the subject Notice of Violation and Penalty Decision.

Cc:
Alan Murphy, Perkins Coie LLP

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October 9, 2014

President Ann Lazarus
Board of Appeals
1650 Mission Street
San Francisco CA 94103

Appeal 14-093 - Notice of Violation and Penalty Decision - 2295 Taylor/701 Chestnut Street
Hearing October 15, 2014

Dear President Lazarus:

San Franciscans for Reasonable Growth and Paul Wermer support the April 25, 2014 Zoning Administrator's Notice decision on 2295 Taylor/701 Chestnut. We urge this Board of act to uphold that the Zoning Administrator's decision and deny the appeal. 2295 Taylor/701 Chestnut was formerly owned by the San Francisco Art Institute and is located close to and downhill of the Institute's campus at 800 Chestnut.

2295 Taylor was acquired by in 2003 in an indirect manner by the one of the LLCs that is the Academy of Art University. Since that time the AAU has operated part of its academic program here, occupying both floors of this building - well over 4,000 sq ft. The building is in the North Beach NCD which established a 4,000 sq ft commercial size limit to protect the neighborhood character of North Beach.

For decades the AAU has been acquiring properties that are spread throughout the City. They have repeatedly failed to comply with the SF Planning Code, file an Institutional Master Plan as required by sec. 304.5 or comply with CEQA. As a result the Planning Commission and the public were deprived of the opportunity to be informed about and raise concerns about the proposed acquisitions of the Academy of Art.

Purpose of Institutional Master Plan (Planning Code sec. 304.5(a) –

- (1) to provide notice and information to Planning Commission, community and neighborhood organizations ...and the general public as to the plans of each affected institution at an early stage, and to give an opportunity for early and meaningful involvement of these groups in such plans prior to substantial investment in property acquisition or building design by the institution.
- (2) To enable the institution to make modifications to its master plan in response to comments made in public hearings prior to its more detailed planning and prior to any request for authorization by the City of new development proposed in the master plan.
- (3) To provide the Planning Commission, community and neighborhood organizations, ...the general public...with information that may help guide their decisions with regard to use of, and investment in, land in the vicinity of the institution, provision of public services...

On 3/31/03, 4/16/04 and again in March 2006 the Planning Department sent letters to the AAU citing the requirement that they file an IMP. The AAU ignored them. For over 8 years there has been public insistence that the AAU provide a list of all their landholdings to Planning, comply with the IMP ordinance and CEQA, and subject themselves to a public hearing on the entirety of their operations.

The issues raised by the public include the AAU failure to build housing for their students, the chaos the AAU was creating by establishing a private bus system to their facilities, and the 40+ AAU facilities spread throughout the City. Community pressure started in 2006 with residents of Pacific Heights and Polk Gulch (around St Brigid's Church). It spread to the South of Market, North Beach, lower Nob Hill - all areas where AAU had acquired buildings INCLUDING HOUSING. The Community and Planning kept raising issues about how AAU was ignoring the requirements of the Planning and Building Codes, and other Codes.

After 8 years of public pressure, and 3 separate Planning Department demands that the AAU file an IMP, the AAU started to provide SOME information to Planning. They started work on the EIR for the IMP in **2008**. And they kept acquiring buildings making that EIR impossible to write. The AAU has stretched out the EIR process so that the current projection is that the **DRAFT EIR** will be issued in **December 2014**.

The AAU asks that you delay making a decision until after the environmental review process is complete. That request should NOT be granted.

The project for which the EIR is being written does NOT include any change in the zoning for this site. It is the EIR for the Institutional Master Plan. Separate environmental review would be required for a change in the North Beach NCD so that the AAU use of over 4,000 sq ft would be allowed.

The AAU operations on this site are ILLEGAL under the Planning Code. The Zoning Administrator should have the opportunity to complete the administrative proceedings on this site. The Board's action is a necessary requirement in those proceedings.

The AAU has no right to operate this building pending a change in the North Beach NCD - which will be vigorously opposed by the public and those in North Beach.

The AAU is asking that they be able to operate for even more YEARS in blatant violation of the Planning Code - both the North Beach zoning, the Institutional Master Plan Ordinance and CEQA. They should be told to comply with the law.

The Board must uphold the Zoning Administrator and deny the appeal.

Respectfully submitted,

Sue C. Hestor

cc: Members of the Board of Appeals
Scott Sanchez
Barbara Schussman, Perkins Coie for AAU
Paul Wermer
Brad Paul
San Franciscans for Reasonable Growth