

# BOARD OF APPEALS

## CITY & COUNTY OF SAN FRANCISCO

### MEETING MINUTES - WEDNESDAY, DEC. 08, 2010

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

PRESENT: President Tanya Peterson, Vice President Kendall Goh, Commissioner Frank Fung, Commissioner Michael Garcia and Commissioner Chris Hwang.

Francesca Gessner, Deputy City Attorney, Office of the City Attorney (OCA); Laurence Kornfield, Deputy Director, Department of Building Inspection (DBI); Scott Sanchez, Zoning Administrator (ZA); Jarvis Murray, San Francisco Municipal Transportation Agency, Division of Taxis and Accessible Services (SFMTA, DTAS); Carla Short, Urban Forester, Department of Public Works, Bureau of Urban Forestry (DPW, BUF); Cynthia Goldstein, Executive Director; Victor Pacheco, 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.

SPEAKERS: Anonymous Speaker spoke about the State Department of Housing and Community Development and its oversight powers with respect to certain local authorities. He also spoke about the qualifications of Board members.

#### (2) COMMISSIONER COMMENTS & QUESTIONS:

SPEAKERS: None.

#### (3) ADOPTION OF MINUTES:

Discussion and possible adoption of the November 17, 2010 minutes.

ACTION: Upon motion by President Peterson, the Board voted 5-0 to adopt the November 17, 2010 minutes.

SPEAKERS: None.

PUBLIC COMMENT: None.

**MEETING MINUTES, DEC. 08, 2010 - PAGE 2**

(4) **SPECIAL ITEM:**

**Appeal No. 10-073, Housing Corps Inc. vs. DBI, PDA**; subject property at 281 Turk Street. Consideration and possible action on the request of Permit Holder Bay Drugs, LLC, to allow the submittal of supplemental briefing and evidence in response to the Board's draft findings.

**ACTION:** Upon motion by President Peterson, the Board voted 5-0 to designate the court reporter's transcript as the official record of the hearing on this matter. Upon further motion by Commissioner Fung, the Board voted 3-2 (Vice President Goh and Commissioner Garcia dissented) to grant the permit holder's request to allow the submittal of additional documents addressing the draft findings in this matter.

**SPEAKERS:** Diana Sam, attorney for permit holder; Shaughn Morgan, appellant.

**PUBLIC COMMENT:** None.

(5) **ADDENDUM ITEMS:**

(5a) **JURISDICTION REQUESTS:**

**Subject property at 171 Lee Avenue.** Letter from John Chow, attorney for Siu Ping Yu, requestor, asking that the Board take jurisdiction over BPA Nos. 2009/11/12/1083 and 2009/12/24/3869, which were issued on Nov. 16, 2009 and Dec. 30, 2009, respectively. The appeal periods ended Dec. 01, 2009 and Jan. 14, 2010, respectively. Permit Holder: Chio Leng Cheong. **Project, 1<sup>st</sup> permit:** 2<sup>nd</sup> floor remodel; add one bathroom; remodel existing bathroom; alterations per plan. **Project, 2<sup>nd</sup> permit:** add four bedrooms, one study room, and four bathrooms on 1<sup>st</sup> floor.

**ACTION:** Upon motion by President Peterson, the Board voted 5-0 to continue this matter to March 9, 2011.

**SPEAKERS:** Laurence Kornfield, DBI; John Chow, attorney for requestor; Jeffrey Chen, attorney for permit holder.

**PUBLIC COMMENT:** None.

(5b) **REHEARING REQUEST:**

**Subject property at 460 Townsend Street.** Appeal No. 10-099, Academy of Art University vs. ZA, decided Nov. 03, 2010. At that time, the Board voted 4-0-1 to uphold the subject Notice of Violation and Penalty on the basis that the Zoning Administrator did not err or abuse his discretion. Notice of Violation and Penalty: regarding the operation of an unauthorized educational use at the subject property.

**ACTION:** Upon motion by Commissioner Garcia, the Board voted 4-1 (President Peterson dissented) to deny the request for rehearing.

**MEETING MINUTES, DEC. 08, 2010 - PAGE 3**

SPEAKERS: David Cincotta, attorney for requestor; Scott Sanchez, ZA.

PUBLIC COMMENT: Sue Hestor spoke in support of the Zoning Administrator.

(5c) **REHEARING REQUEST:**

**Subject property at 10 Lundys Lane.** Appeal No. 10-101, Soto vs. DBI, decided Nov. 03, 2010. At that time, the Board voted 3-1-1 to uphold the subject permit on the basis that the construction pre-dates the 1978 Planning Code change, and is a legal non-complying structure. Permit Holder: Sam Ball. Project: revision to BPA No. 2010/03/17/8393; cost savings; revise plans to show rear walls demolished and rebuilt in kind; upon exposing structure the walls were found to be unsalvageable; comply with NOV's; BPA No. 2010/08/27/9763.

ACTION: Upon motion by Commissioner Fung, the Board voted 5-0 to continue this matter to January 19, 2011.

SPEAKERS: None.

PUBLIC COMMENT: None.

(5d) **REHEARING REQUEST:**

**Subject property at 1321 DeHaro Street.** Appeal No. V10-084, Potrero Boosters N.A. vs. ZA, decided Nov. 03, 2010. At that time, the Board voted 2-2-1 to uphold the granting of the variance. Four votes being required under the City Charter to overrule a departmental action, the granting of the said variance was upheld. Variance Holder: Bedrock Structures LLC. Project: erect a three-family dwelling that encroaches into the required rear yard; variance case no. 2008.0505V.

ACTION: Upon motion by Commissioner Hwang, the Board voted 5-0 to deny the request for rehearing.

SPEAKERS: Chris Cole, attorney for requestor; Albert Costa, agent for permit holder; Scott Sanchez, ZA.

PUBLIC COMMENT: Abigail Sawyer, Webb Green, Tony Kelly and Caroline Bird spoke in support of the requestor.

(5e) **JURISDICTION REQUEST:**

**Subject property at 3175 – 24<sup>th</sup> Street.** Letter from Jana Farrell, agent for Virginia Ramos, requestor, asking that the Board take jurisdiction over BPA No. 2009/11/12/1004, which was issued on Dec. 14, 2009. The appeal period ended on Dec. 29, 2009, and the jurisdiction request was received at the Board office on Nov. 18, 2010. Requestor of Permit: CBS Outdoor. Project: voluntary removal of 6' X 12' freestanding advertising sign; property owner consent attached.

MEETING MINUTES, DEC. 08, 2010 - PAGE 4

ACTION: Upon motion by President Peterson, the Board voted 5-0 to grant the request for jurisdiction.

SPEAKERS: Jana Farrell, agent for requestor; Brian Fleisher, agent for permit holder; Scott Sanchez, ZA.

PUBLIC COMMENT: None.

**(6) APPEAL NO. 10-082**

|  |   |
|--|---|
| TED BARTLETT, Appellant(s)<br>vs.<br><br>DEPT. OF PUBLIC WORKS<br>BUREAU OF URBAN FORESTRY, Respondent | 800 Block of Steiner Street and 940 Grove Street.<br>Appealing the denial on July 22, 2010 of Tree Removal Permit (8 trees), and the conditions placed on a Tree Removal Permit (1 tree).<br>ORDER NO. 178,772.<br>PUBLIC HEARING HELD AND CLOSED ON SEPT. 08, 2010. FOR FURTHER CONSIDERATION TODAY. <b>Note: matter continued to allow time for DPW BUF and appellant to submit additional info pursuant to the Board's comments; additional briefing is allowed.</b> |
|--|---|

ACTION: Upon motion by Commissioner Garcia, the Board voted 5-0 to grant the appeal and overrule the department on the condition that: a) the replacement trees be of the species and size referenced in Exhibit A to appellant's submittal date-stamped December 2, 2010, with the exception of the palm trees, which are to be of the size specified by DPW; b) expanded tree basins be installed in the sidewalk; c) the subject property owners shall take responsibility for maintenance of the new trees and sidewalk after DPW finishes the agreed upon sidewalk repairs; and d) individual tree removal permits to be issued to each subject property owner.

SPEAKERS: Ted Bartlett, appellant; Carla Short, DPW BUF.

PUBLIC COMMENT: None.

**(7) APPEAL NO. 10-026**

|   |  |
|---|--|
| KALESILASSIE GEBRESILASSIE, Appellant(s)<br>vs.<br><br>MUNICIPAL TRANSPORTATION AGENCY,<br>DIVISION OF TAXIS AND ACCESSIBLE<br>SERVICES, Respondent | Appealing the denial on Sept. 30, 2009, of Taxicab Medallion.<br>JURISDICTION GRANTED MAR. 03, 2010.<br>FOR HEARING TODAY. |
|---|--|

ACTION: Upon motion by Commissioner Garcia, the Board voted 3-2 (Vice President Goh and Commissioner Hwang dissented) to continue this matter to March 9, 2011 to allow the submittal of additional documentation as specified by the Board.

**MEETING MINUTES, DEC. 08, 2010 - PAGE 5**

SPEAKERS: Jarvis Murray, SFMTA DTAS; Ray Alexander, attorney for appellant; Kalesilasse Gebresilassie, appellant.

PUBLIC COMMENT: Mark Gruberg, Yared Ephrem, Samuel Sinaole, Miseker Tekejte, Elias Demissie and Mark Friedman spoke in support of the appellant.

**(8) APPEAL NO. 10-091**

|  |   |
|--|---|
| DONALD SNYDER, Appellant(s)<br>vs.<br>DEPT. OF BUILDING INSPECTION, Respondent | 30 Santa Rita Avenue.<br>Appealing the imposition of penalty on Aug. 04, 2010, for construction work done without a permit.<br>APPLICATION NO. 2010/08/04/8098.<br>FOR HEARING TODAY. |
|--|---|

ACTION: Upon motion by President Peterson, the Board voted 5-0 to reduce the penalty to two times the regular fee.

SPEAKERS: Laurence Kornfield, DBI

PUBLIC COMMENT: None.

**(9) APPEAL NO. 10-109**

|  |   |
|--|---|
| WAYNE ALLEN<br>& THERESA FULKS Appellant(s)<br>vs.<br>ZONING ADMINISTRATOR, Respondent | 1966 Great Highway.<br>Protesting the granting on Sept. 21, 2010, to Carmen Roman Murray, Front and Rear Yard Variances (construct new, four-story, two family structure on vacant lot).<br>VARIANCE CASE NO. 2009.0102VDP.<br>FOR HEARING TODAY. |
|--|---|

ACTION: Upon motion by Commissioner Fung, the Board voted 3-2 (President Peterson and Commissioner Garcia dissented) to grant the appeal and overturn the ZA on the basis that the variance does not meet required findings #1 and #2. With four votes needed to pass, the motion failed. With no further action taken by the Board, the variance is upheld as a matter of law.

SPEAKERS: Theresa Fulks, appellant; Carmen Roman-Murray, variance holder; Edward Murray, variance holder; Scott Sanchez, ZA.

PUBLIC COMMENT: Ray Louie spoke in support of the appellants.

**(10) SPECIAL ITEM:**

|   |
|---|
| Discussion and possible adoption of the departmental annual report for fiscal year 2009-2010. |
|---|

**MEETING MINUTES, DEC. 08, 2010 - PAGE 6**

ACTION: Upon motion by President Peterson, the Board voted 5-0 to adopt the annual report for Fiscal Year 2009-2010.

PUBLIC COMMENT: None.

**ADJOURNMENT.**

There being no further business, President Peterson adjourned the meeting at 10:20 p.m.