

BOARD OF APPEALS

CITY & COUNTY OF SAN FRANCISCO

MEETING MINUTES - WEDNESDAY, JULY 17, 2013

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

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

Francesca Gessner, Deputy City Attorney, Office of the City Attorney (OCA); Virginia Elizondo, Deputy City Attorney, OCA; Scott Sanchez, Zoning Administrator (ZA); Paul Chasan, Parklet Project Manager, Planning Department (PD); Joseph Duffy, Senior Building Inspector, Department of Building Inspection (DBI); John Kwong, Manager, Department of Public Works Bureau of Street Use and Mapping (DPW BSM); Nick Elsner, Senior Plan Checker, DPW BSM; Allan Pera, Environmental Health Technician, Department of Public Health (DPH); Ed Walsh, Senior Inspector (DPH); Will Tabajonda, Livable Streets Subdivision, Municipal Transportation Agency (MTA); 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.

PUBLIC COMMENT: Paula Datesh thanked the Board for reinstating her permit. She stated she had hoped the rehearing would have gone forward so she could address statements made by the Arts Commission. Diane Carpio spoke about the San Francisco Street Artists program and that more isn't done for the artists or to improve the program.

(2) COMMISSIONER COMMENTS & QUESTIONS:

SPEAKERS: President Hwang announced she will be absent from the July 31, 2013 meeting.

PUBLIC COMMENT: None.

REGULAR MEETING, BOARD OF APPEALS, JULY 17, 2013 - PAGE 2

(3) **ADOPTION OF MINUTES:**

Discussion and possible adoption of the July 10, 2013 minutes.

ACTION: Upon motion by President Hwang, the Board voted 5-0 to adopt the July 10, 2013 minutes.

PUBLIC COMMENT: None.

(4) **ADDENDUM ITEMS:**

(4a) **REHEARING REQUEST:**

Street Artist Certificate denial / non-renewal. Letter from Tom DeCaigny, Director, Arts Commission, requesting rehearing of Appeal No. 13-033, Datesh vs. AC, decided June 19, 2013. At that time, the Board voted 4-0-1 (Commissioner Hurtado absent) to overrule the denial and issue the Street Artist Certificate with a finding that there was insufficient evidence to support the denial.

ACTION: Withdrawn prior to hearing.

(5) **APPEAL NO. 13-052**

GERALD & DALE SULLIVAN, Appellant(s) vs. DEPT. OF PUBLIC WORKS BUREAU OF URBAN FORESTRY, Respondent	Eugenia Street frontage of property at 201 Bonview Street. Protesting the issuance on April 19, 2013 of an Order to approve removal of one smaller tree, and deny removal of one larger tree. ORDER NO. 181206. PUBLIC HEARING HELD JUNE 19, 2013. FOR FURTHER CONSIDERATION TODAY. Note: matter continued to July 17, 2013 to allow Commissioner Hurtado to participate in the final vote.
--	---

ACTION: Upon motion by Commissioner Hurtado, the Board voted 4-1 (President Hwang dissented) to grant the appeal and modify the Departmental Order to grant removal of the larger tree.

SPEAKERS: None.

PUBLIC COMMENT: None.

REGULAR MEETING, BOARD OF APPEALS, JULY 17, 2013 - PAGE 3

(6) APPEAL NO. 13-051

NGA TU LAM, Appellant(s) vs. DEPT. OF PUBLIC HEALTH, Respondent	Appealing the sixty (60) day suspension on April 15, 2013, of Massage Practitioner Permit. DIRECTOR'S CASE NO. MSG-13-19. FOR HEARING TODAY.
---	--

ACTION: Upon motion by President Hwang, the Board voted 5-0 to grant the appeal and overturn the suspension on the basis that it is excessive, the fine is sufficient, and there is insufficient evidence in the record of illegal conduct.

SPEAKERS: Christopher Hall, attorney for appellant; Virginia Elizondo, attorney for DPH; Ed Walsh, DPH; Allan Pera, DPH.

PUBLIC COMMENT: None.

(7) APPEAL NO. 13-061

NANCY LUO dba "CLEMENT SERVICE CENTER", Appellant(s) vs. DEPT. OF PUBLIC HEALTH, Respondent	Appealing the revocation on May 13, 2013, of Massage Establishment Permit. DIRECTOR'S CASE NO. MSG-13-23. FOR HEARING TODAY.
--	--

ACTION: Upon motion by President Hwang, the Board voted 5-0 to continue the matter to August 21, 2013.

SPEAKERS: Fred Baker, attorney for appellant; Virginia Elizondo, attorney for DPH.

PUBLIC COMMENT: None.

(8) APPEAL NO. 13-060

MARTIN DEAN, Appellant(s) vs. DEPT. OF PUBLIC WORKS BUREAU OF STREET-USE & MAPPING, Respondent	75 Mars Street. Protesting the issuance on May 14, 2013, to David Maxfield Otto Living Trust, Minor Sidewalk Encroachment Permit. PERMIT NO. 11MSE-0436. FOR HEARING TODAY.
--	--

ACTION: Upon motion by Commissioner Hurtado, the Board voted 4-1 (President Hwang dissented) to deny the appeal and uphold the permit on the basis that it was properly issued for the reasons stated in the DPW brief and DPW Order.

REGULAR MEETING, BOARD OF APPEALS, JULY 17, 2013 - PAGE 4

SPEAKERS: Martin Dean, appellant; David Otto, permit holder; Nick Elsner, DPW BSM; John Kwong, DPW BSM.

PUBLIC COMMENT: Tom Murphy spoke in support of the appellant.

ITEMS (9A) AND (9B) SHALL BE HEARD TOGETHER:

(9A) APPEAL NO. 13-064

JAMES KELLIHER, Appellant(s) vs. DEPT. OF PUBLIC WORKS BUREAU OF STREET-USE & MAPPING, Respondent	3930-3940 Judah Street. Protesting the issuance on May 16, 2013, to Other Avenues Food Store, Parklet Permit (50' long parklet consisting of slip resistant and accessible reclaimed wood deck with planter boxes, bike racks, wooden benches and tables for use by general public). PERMIT NO. 13PKT-0044. FOR HEARING TODAY.
---	---

(9B) APPEAL NO. 13-065

JAMES KELLIHER, Appellant(s) vs. DEPT. OF PUBLIC WORKS BUREAU OF STREET-USE & MAPPING, Respondent	3930-3940 Judah Street. Protesting the issuance on May 16, 2013, to Other Avenues Food Store, Street Improvement Permit (construct one parklet). PERMIT NO. 13IE-0298. FOR HEARING TODAY.
---	--

ACTION: Upon motion by Commissioner Hurtado, the Board voted 4-1 (Commissioner Fung dissented) to deny the appeals and uphold the permits on the basis that they comply with DPW Order No. 180921.

SPEAKERS: James Kelliher, appellant; Wayne Landers, agent for permit holder; JB Rumburg, agent for permit holder; Jonathan Odom, agent for permit holder; Jacob Feldman, agent for permit holder; Nick Elsner, DPW BSM; Will Tabajonda, SFMTA; Paul Chasan, PD.

PUBLIC COMMENT: Alvin Sered, Andrew Maxwell, David Catalano and Terry Fong spoke in support of the appellant. Terry Rolleri, Nancy Buffum, Joseph Zielinski, Kendon Anderson, Arnie Davis, Angelina Calderan, Ben Sheldon and Henry Karnilowicz spoke in support of the permit holder.

REGULAR MEETING, BOARD OF APPEALS, JULY 17, 2013 - PAGE 5

(10) APPEAL NO. 13-055

HUI WONG, Appellant(s) vs. DEPT. OF BUILDING INSPECTION, Respondent	400 Avalon Avenue. Appealing the imposition of penalty on April 25, 2013, for construction work done without a permit. APPLICATION NO. 2013/04/24/5350. FOR HEARING TODAY.
---	---

ACTION: Upon motion by President Hwang, the Board voted 5-0 to grant the appeal and reduced the penalty to two (2) times the regular fee on the basis of Inspector Duffy's testimony.

SPEAKERS: Hui Wong, appellant; Joseph Duffy, DBI.

PUBLIC COMMENT: None.

(11) APPEAL NO. 13-038

SLOVENIAN PROGRESSIVE HOME INCORPORATED, Appellant(s) vs. ZONING ADMINISTRATOR, Respondent	2101 Mariposa Street. Appealing a Letter of Determination dated March 22, 2013, addressed to Robin Talmadge / Slovenian Progressive Home Inc., regarding whether the Slovenian Hall is a legal non-conforming entertainment use and commercial kitchen under the Planning Code. FOR HEARING TODAY.
--	--

ACTION: Upon motion by Vice President Lazarus, the Board voted 5-0 to deny the appeal and uphold the Letter of Determination on the basis that the Zoning Administrator did not err or abuse his discretion.

SPEAKERS: Robin Talmadge, agent for appellant; Scott Sanchez, ZA.

PUBLIC COMMENT: Bob Passmore spoke in support of the Zoning Administrator.

(12) APPEAL NO. 13-050

ANTHONY FERRI & PATRICK BEURTON, Appellant(s) vs. DEPT. OF BUILDING INSPECTION, Respondent PLANNING DEPT. APPROVAL	720 Carolina Street. Protesting the issuance on April 19, 2013, to William Wiebe, Permit to Alter a Building (remove cooking facilities for unpermitted dwelling unit [free standing gas stove/oven] to re-establish building as single-family dwelling as authorized by DBI). APPLICATION NO. 2013/04/19/5009. FOR HEARING TODAY.
---	---

REGULAR MEETING, BOARD OF APPEALS, JULY 17, 2013 - PAGE 6

ACTION: Upon motion by President Hwang, the Board voted 5-0 to reschedule this matter to July 31, 2013 at the request of the parties.

SPEAKERS: None.

PUBLIC COMMENT: None.

(13) APPEAL NO. 13-062

<p>TWIN PEAKS EASTSIDE NEIGHBORHOOD ALLIANCE, Appellant(s) vs. DEPT. OF BUILDING INSPECTION, Respondent PLANNING DEPT. APPROVAL</p>	<p>70 Crestline Drive. Protesting the issuance on May 15, 2013, to Shamus Naughten / Dolmen Property Group LLC, Permit to Erect a Building (4-story, 4-unit residential building with 1,420sf of ground floor area). APPLICATION NO. 2009/08/25/5545S. FOR HEARING TODAY.</p>
---	---

ACTION: Upon motion by Commissioner Hurtado, the Board voted 4-1 (Commissioner Fung dissented) to grant the appeal and overturn the permit on the following basis: (1) the project does create exceptional and extraordinary circumstances because it will not preserve and protect the character and stability of the Vista Francisco Development and it will not be an orderly and beneficial in-fill project in the Vista Francisco Development; (2) the project, if approved, will result in an inappropriate precedent or expectation for a similar in-fill project elsewhere in the Vista Francisco Development; and (3) the Board's authority pursuant to Article 1, Section 26 of the San Francisco Business and Tax Regulations Code to consider the project's effect on surrounding properties and residents.

SPEAKERS: Donald Batemen, agent for appellant; Leonardo Zylberberg, agent for permit holder; Rodrigo Santos, agent for permit holder; Scott Sanchez, ZA; Joseph Duffy, DBI.

PUBLIC COMMENT: Robert Passmore, Lloyd Smith, Sheila Amiry, Kristen Kiley, Nancy O'Brien, Frank Pietronigro, Don Burman, John Hiykel, Grant Wilson, Karla Bravo, Adrian Bravo, Michael Streby and Martha Gorzycki spoke in support of the appellant. Henry Karnilowicz spoke in support of the permit holder.

ADJOURNMENT.

There being no further business, President Hwang adjourned the meeting at 10:40 p.m.