

BOARD OF APPEALS

CITY & COUNTY OF SAN FRANCISCO

DRAFT MEETING MINUTES – WEDNESDAY, JUNE 12, 2024

REGULAR MEETING (IN-PERSON AND REMOTE ACCESS VIA ZOOM)

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

PRESENT: President Jose Lopez, Commissioner Rick Swig, Commissioner John Trasviña, and Commissioner J.R. Eppler.

Jen Huber, Deputy City Attorney, Office of the City Attorney (CAT); Tina Tam, Deputy Zoning Administrator, Planning Department (PD); Kevin Birmingham, Acting Chief Building Inspector, Department of Building Inspection (DBI); Matthew Luton, Senior Housing Inspector, DBI; Julie Rosenberg, Executive Director; Alec Longaway, Legal Assistant.

ABSENT: Vice President Alex Lemberg.

(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 and remote public participation may be limited to two minutes per person. If it is demonstrated that public comment and remote public participation will cumulatively exceed 15 minutes, the President may continue Public Comment and/or remote public participation to another time during the meeting.

SPEAKERS: None.

(2) **COMMISSIONER COMMENTS & QUESTIONS**

SPEAKERS: None.

(3) **ADOPTION OF MINUTES**

Discussion and possible adoption of the May 29, 2024 minutes.

ACTION: Upon motion by Commissioner Trasviña, the Board voted 3-0-2 (Vice President Lemberg and Commissioner Eppler absent) to adopt the May 29, 2024, hearing minutes.

PUBLIC COMMENT: None.

(4) REHEARING REQUEST FOR APPEAL NO. 23-051

Subject property at 617 Sanchez Street. Joerg Rathenberg, Appellant, is requesting a rehearing of Appeal No. 23-051, JOERG RATHENBERG vs. DEPT. OF BUILDING INSPECTION, PLANNING DEPT. APPROVAL, decided May 8, 2024. At that time, Upon motion by Commissioner Swig, the Board voted 5-0 to grant the appeal and issue the permit on the condition it be revised to require third-party peer review by a licensed geotechnical engineer. This motion was made on the basis that this condition provides a thorough review for the safety and security of the neighbor. **Permit Holder:** JW Sanchez LLC. **Permit Description:** To erect four stories, no basement, Type V-A, single-family residence. **Permit No.:** 2019/01/15/0391.

ACTION: Upon motion by Commissioner Swig, the Board voted 4-0-1 (Vice President Lemberg absent) to deny the rehearing request on the basis that there was neither new evidence nor manifest injustice.

SPEAKERS: Sue Hestor, attorney for requestor; Albert Urrutia, agent for requestor; Justin Zucker, attorney for permit holder; Robert Edmonds, agent for permit holder; Kevin Birmingham, DBI.

PUBLIC COMMENT: Georgia Schuttish spoke in support of the requestor.

(5) APPEAL NO. 24-033

<p>SCOTT GUERIN, Appellant(s)</p> <p>vs.</p> <p>DEPT. OF BUILDING INSPECTION, Respondent PLANNING DEPT. APPROVAL</p>	<p>46 Eagle Street. Appealing the CANCELLATION on April 15, 2024, of an Alteration Permit (the permit was cancelled, at the request of the Planning Department, because there was no response from the applicant (6/23/23 and 1/8/24); description of permit: comply with Notice of Violation No. 202172279; replace existing substandard retaining walls at rear yard adjacent to downhill properties (4757 19th Street & 30 Eagle Street); new reinforced concrete retaining wall with drilled piers; structural foundation system to be shared with neighbors). PERMIT NO. 2022/11/15/6523. FOR HEARING TODAY.</p>
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ACTION: Upon motion by President Lopez, the Board voted 4-0-1 (Vice President Lemberg absent) to grant the appeal, overturn the Notice of Cancellation, and reinstate review of the permit. This motion was made on the basis that the Notice of Cancellation was improperly issued.

SPEAKERS: Scott Guerin, appellant; George Wolff, attorney for appellant; Kevin Birmingham, DBI.

PUBLIC COMMENT: Mark Crosley, a downhill neighbor, acknowledged that the wall is a serious problem but believed that it was built to benefit 46 Eagle Street so that it could have a flat yard. He stated that both surveys misrepresent the shape of the wall.

Kevin Liebig, a downhill neighbor, stated that Scott Guerin refused to sign the agreement they had reached. He further stated that he did not deny Mr. Guerin access to his property. He acknowledged that the wall is significant and has a serious crack. He urged the Board to reinstate the permit.

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Darice, a downhill neighbor and wife of Mark Crosley, stated that they had been cooperative with Mr. Guerin. She stated that the wall was there so that Mr. Guerin could retain his flat yard. She further stated that if he returned his property to a downhill slope, it would not need an expensive retaining wall.

Jim Conte stated that his property abutted Mr. Guerin's property and that they were at the same level. He noted that the retaining wall was getting worse, and it could affect his property.

(6) APPEAL NO. 24-031

<p>CIVIC CENTER COMMUNITY BENEFIT DISTRICT, Appellant(s)</p> <p>vs.</p> <p>DEPT. OF BUILDING INSPECTION, Respondent PLANNING DEPT. APPROVAL</p>	<p>77 McAllister Street. Appealing the ISSUANCE on March 29, 2024, to 77 McAllister LLC, of an Alteration Permit (change of use from religious institution to retail sales and services; less than 1% of tobacco and paraphernalia sales are proposed; 1,996 gross feet, two spaces, ten feet two, tobacco and paraphernalia display area to comply with Notice of Violation No. 202317032 and Notice of Violation No. 202317032). PERMIT NO. 2024/03/05/7168. FOR HEARING TODAY.</p>
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ACTION: None. The appeal was withdrawn prior to the hearing.

(7) APPEAL NO. 24-026

<p>1449 POWELL STREET LLC, Appellant(s)</p> <p>vs.</p> <p>ZONING ADMINISTRATOR, Respondent</p>	<p>1449 Powell Street.</p> <p>Appealing the ISSUANCE on March 8, 2024, to 1449 Powell Street LLC, of a Notice of Violation (The record for the property's authorized use is inconsistent; the subject property is currently authorized for eight family dwelling units and commercial uses according to the Report of Residential Building Record (3R Report); the Assessor's Record lists the authorized use as 35 units; according to the Department of Building Inspection (DBI), the subject property is listed as a private, for-profit residential hotel under Chapter 41 of the San Francisco Administrative Code and contains 17 residential guestrooms per the Certificate of Use (14 occupied and 3 vacant as of October 15, 2020); further, its Chapter 41 Annual Usage Report, dated February 25, 2021, lists the property as having an incomplete Annual Unit Usage Report (AUUR). Planning Code Section 722 prohibits Residential Uses on the first floor of the subject property. A Task Force Inspection shows that there is an Unauthorized Dwelling Unit with a full bathroom, three unauthorized guestrooms, and an unauthorized shared central kitchen with stove on the first floor. There is no path to legalize the Residential Uses on the ground floor).</p> <p>COMPLAINT NO.: 2023-000920ENF. FOR HEARING TODAY.</p>
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ACTION: Upon motion by Commissioner Swig, the Board voted 4-0-1 (Vice President Lemberg absent) to deny the appeal and uphold the Notice of Violation on the basis that the Zoning Administrator did not err or abuse his discretion.

SPEAKERS: Commissioner Eppler disclosed that he had prior business dealings with Mr. Karnilowicz, the appellant's representative. He stated that he previously hired him to perform work on behalf of a client and also served as legal counsel for an organization on which Mr. Karnilowicz was a member of the Board. He stated that this would not affect his ability to judge this case on the merits.

Commissioner Swig disclosed that he had previously worked with Mr. Karnilowicz a long time ago and that his prior relationship would not have any bearing on his decision for this case.

Henry Karnilowicz, agent for appellant; Tina Tam, PD; Matthew Luton, DBI.

PUBLIC COMMENT: None.

ADJOURNMENT.

There being no further business, President Lopez adjourned the meeting at 7:06 p.m.

The supporting documents for this meeting can be found at the following link:
<https://www.sf.gov/meeting/june-12-2024/board-appeals-hearing-june-12-2024>

A video of this meeting, can be found at the following link:
https://sanfrancisco.granicus.com/player/clip/46353?view_id=6&redirect=true

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