



## BOARD OF APPEALS

Date Filed: October 7, 2024

City & County of San Francisco

# REHEARING REQUEST FOR APPEAL NO. 24-046

---

**Peter Holoyda, Appellant(s)** seeks a rehearing of **Appeal No. 24-046** which was decided on **September 25, 2024**. This request for rehearing will be considered by the Board of Appeals on Wednesday, **October 23, 2024**, at 5:00 p.m. and will be held in **Room 416 of San Francisco City Hall**. The parties may also attend via the **Zoom video platform**.

Pursuant to Article V, § 9 of the Rules of the Board of Appeals, the **response** to the written request for rehearing must be submitted by the opposing party and/or Department no later than **10 days from the date of filing, on or before 4:30 p.m. on October 17, 2024**, and must not exceed six (6) double-spaced pages in length, with unlimited exhibits. The brief shall be double-spaced with a minimum 12-point font size. An electronic copy should be e-mailed to: [boardofappeals@sfgov.org](mailto:boardofappeals@sfgov.org) [julie.rosenberg@sfgov.org](mailto:julie.rosenberg@sfgov.org) [kevin.birmingham@sfgov.org](mailto:kevin.birmingham@sfgov.org), [corey.teague@sfgov.org](mailto:corey.teague@sfgov.org), [natalia.fossi@sfgov.org](mailto:natalia.fossi@sfgov.org) and [phowareu@gmail.com](mailto:phowareu@gmail.com)

You or your representative **MUST** be present at the hearing. It is the general practice of the Board that only up to three minutes of testimony from each side will be allowed. Except in extraordinary cases, and to prevent manifest injustice, the Board may grant a Rehearing Request only upon a showing that new or different material facts or circumstances have arisen, where such facts or circumstances, if known at the time, could have affected the outcome of the original hearing.

Based on the evidence and testimony submitted, the Board will make a decision to either grant or deny your request. Given that there is a vacancy on the Board, three votes are necessary to grant a rehearing. If your request is denied, a rehearing will not be scheduled and the decision of the Board will become final. If your request is granted, a rehearing will be scheduled, the original decision of the Board will be set aside, and after the rehearing, a second decision will be made. Only one request for rehearing and one rehearing are permitted under the Rules of the Board.

**Requestor**

**Signature: Via Email**

**Print Name: Peter Holoyda, requestor**

# Appeal Rehearing Case for 763 Lakeview Av.

Submitted October 7, 2024

The written request should state: the nature and character of the new facts or circumstances;

1. Per original hearing, neighbors were to get together for a meeting to find solution.

Despite requesting a meeting with suggested time and place, 763 refused to meet in a timely manner (within rehearing ten calendar days) any compromise.

Clearly 763 Lakeview did not adhere to Board's request for constructive compromise.

Therefore, 763 requests that the Board resolve this impasse by canceling deck permit.

Board did declare that "they were the enforcement" at the original hearing, please do so.

2. City must reconcile use of any open flame heating or cooking device (bbq) less than 10 feet from building flammable building material (side of house at 765 Lakeview) with intent of SF Fire code.

Is SF Building department going to insure no dangerous activity be allowed in such close and closed proximity to 765 house?

Though this "ten foot" rule may not be honored by the building department, it is clear that all across cities in the US (Boston)and Canada(3 meters), the 10 foot rule is the standard

for safety, especially in high density communities. This application for this deck is in a dense population area and should therefore be considered in a multi-family environment. With present design within 5 feet of 765 flammable wall, etc, this is an important consideration.

Without this 10 foot setback from 765 dripline being implemented, then it must be acknowledged that the City of San Francisco is taking on the liability for whatever harm might befall resident or property at 765 due to fire, carbon monoxide, smoke and further.

Building Department representative's suggestion that the "Fire Department be called if a fire breaks out" as an alternative to fire prevention is irresponsible. The logic that because this design "fits the neighborhood" may work for aesthetics, should not be confused with needed fire safety in these days of Climate Change. Fire risks by this factor are significantly increased due to record high temperatures as well as deeper drought conditions expected in the future. Unusually high winds from the south swirl against 765 adjacent wall and over deck area due to "boxed in" location.

Note: 763 Lakeview deck project plan was not 'signed off" by San Francisco Fire Department. Does the SF Building Department not require it?

1. SF Building department has not yet confirmed that setback between 763 and 765 is substantially smaller than 4 ft. (approximately 20% error) therefore, building is positioned improperly and not to code. Therefore, proposed deck cannot be

properly constructed as submitted to building department. If this is allowed, please identify specific tolerances used in this measurement.

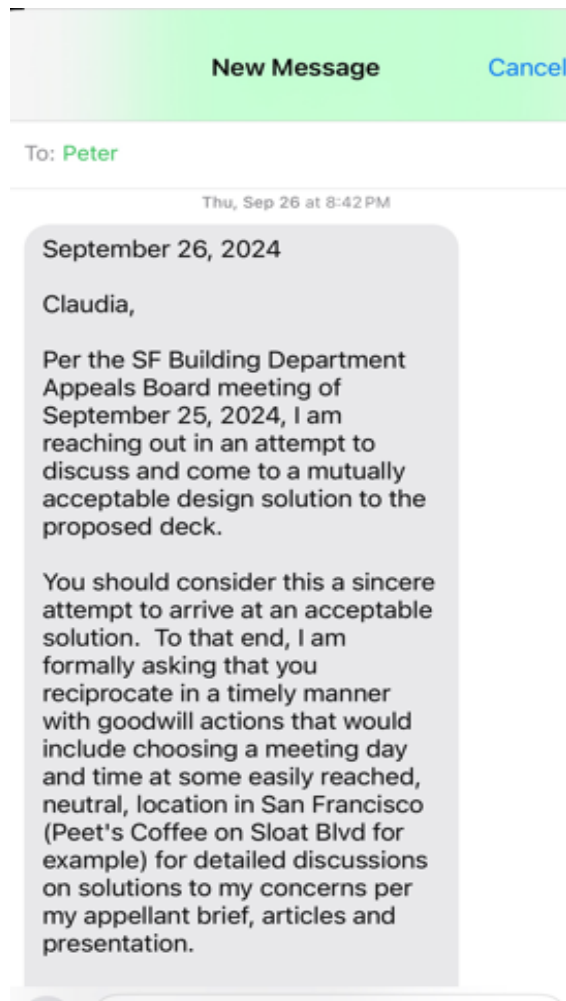
What other kind of “deviations” from plan can be expected from this builder?

2. Contractor for 763 project (ADK), testified at September 25<sup>th</sup> hearing that due to “sun not coming out til Noon in that neighborhood, light is not a factor”. Any architect or human behavioralist would contradict such a statement. Light is essential for the well being of the human form. Contractor should be informed that because light is scarce in this neighborhood, it is more precious here than that of his Union City office. It is my submission that contractor is trying to skirt light, noise and privacy issue in this proposed design and is not compelled to come to the compromise table. Due to his poor construction practices, and disregard of senior, disabled neighbor and now this Board, the further action of barring AKD from doing business in San Francisco should be seriously considered.
3. Lastly, per Board’s request for compromise between neighbors, I submit that if, and only if, the 10 foot distance between 765 Lakeview’s dripline and nearest 763 project deck material is honored and appropriate screening for light, privacy and noise is agreed to prior to construction, I will allow this project to go forward. This is my compromise position. I do this in good faith and in hopes that it will be reciprocated.

**BRIEF SUBMITTED BY THE PERMIT HOLDER(S)**

**763 LAKEVIEW AVE - PERMIT NUMBER 202308255349  
Respondents Brief to Rehearing Request | Appeal No. 24-046**

We spoke to Mr. Holoyda right outside the hearing room on Sept. 25 to let him know that we don't want to fight with him and would like to come to a compromise. It was clear that he was upset by the outcome of the hearing, and we agreed that it would be best to talk another time after we had had a chance to process everything that had happened. The following evening, on September 26th, Claudia received a very formal and demanding text message from Mr. Holoyda; please see below:



Further, your response with possible meeting times/places before or on October 3, 2024 is mandatory. At such meeting, your contractors' design team/person should be present with solutions to my concerns per my Appellant brief and articles. They should bring drawings and blank paper to capture our thoughts from our discussions. The aim of this and subsequent discussions are detailed construction drawings to include dimensions, materials, locations of features etc.

In addition a formal written commitment to use behavior and design maintenance of the proposed deck (hours, noise, cooking, etc). The beginning of this document is in your response to my appeal.

Your response with a meeting dates/times/places is required within 48 hours (10PM September 28, 2024). No written response

To: Peter

commitment to use behavior and design maintenance of the proposed deck (hours, noise, cooking, etc). The beginning of this document is in your response to my appeal.

Your response with a meeting dates/times/places is required within 48 hours (10PM September 28, 2024). No written response will be interpreted as disinterest (texts are ok) in coming to some sort of mutual agreement per appeals board directive and promised enforcement. If this is the case, the appeals board will be contacted to report your disposition and further action will take place within and outside that authority.

Regards,

Peter Holoyda  
765 Lakeview Ave.  
SF, CA 94112  
[415.794.8280](tel:415.794.8280)

This text seemed unreasonably hostile and demanding, and we felt as though Peter was trying to intimidate us. The following morning, Friday, September 27th, at 8:18 AM, Claudia responded with the text below:

Fri, Sep 27 at 8:18 AM

Hi Peter,

Thank you for reaching out and for wanting to have a conversation about this. Carlos and I would be happy to meet with you to talk about the ideas that the design team has already suggested. There are a few simple solutions they gave us that we can show you and it would help if you came with some suggestions also. To be clear, this is not something that the contractor will build, it's something we will add on, it will not be a complex design.

In terms of when and where to meet I suggest we just meet outside our houses and talk like neighbors. Meeting in another place requires us to get childcare and is unnecessarily complicated. If we meet here my dad can watch the kids. We can bring you a chair so you don't have to stand.

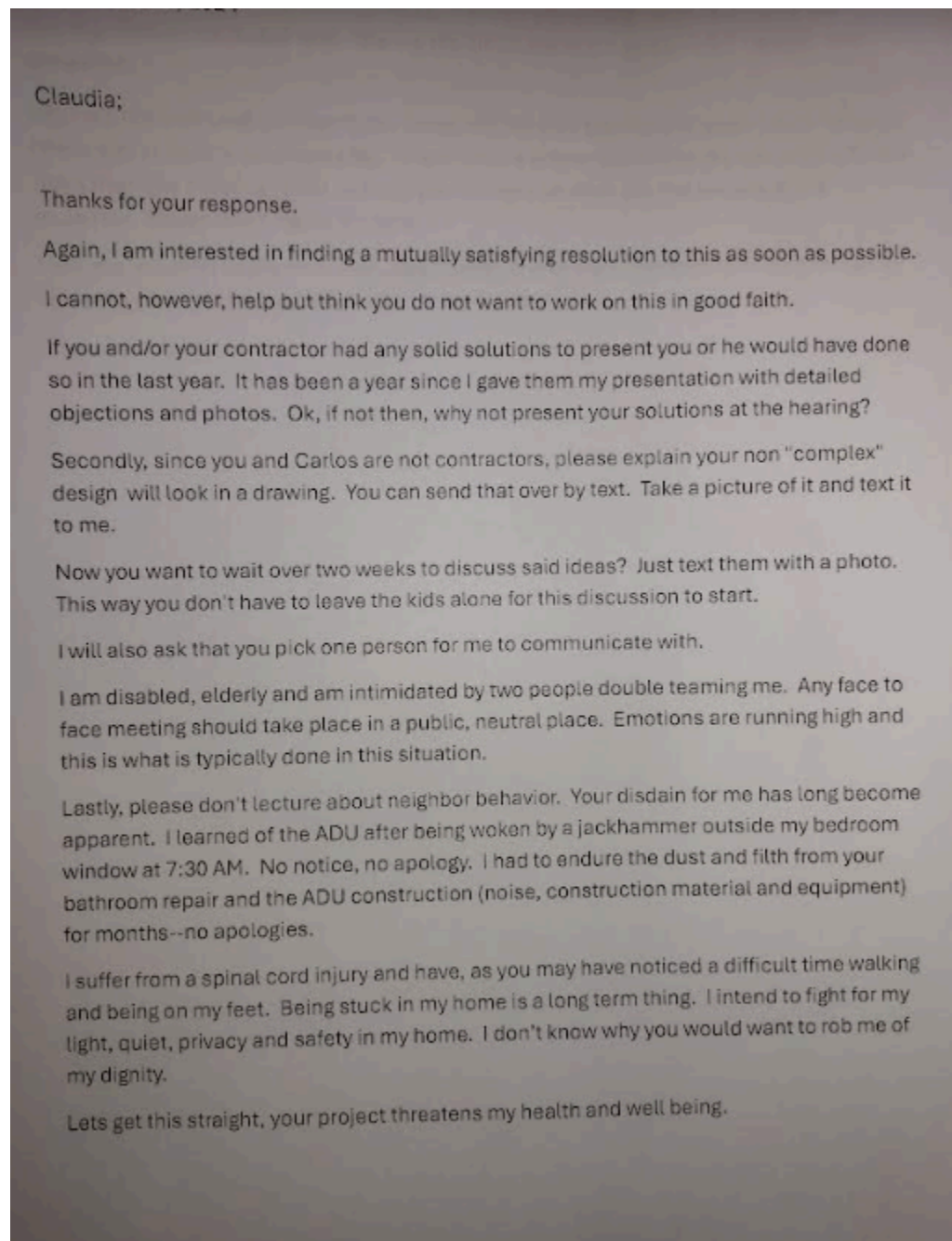
To: Carlos , Peter

In terms of time and date, Sunday the 13th at 1:30 would work for us. Luca is down for his nap at that time so it will be easier for us to manage the kids. Let me know if this would work for you.

I want to point out that the appeal board did not add a requirement that we add this barrier. They strongly suggested we compromise as neighbors, and that's what we intend to do. You threatening to go back to the appeal board for enforcement has absolutely no merit. I hope that moving forward we can talk to each other like neighbors without the formalities and threats.

Peter then responded on the same day, Friday, September 27th, at 10:26 PM.

Here is the close-up of Peter's picture of the documents he had written that night.

A photograph of a printed document with text. The text is as follows:

Claudia;

Thanks for your response.

Again, I am interested in finding a mutually satisfying resolution to this as soon as possible.

I cannot, however, help but think you do not want to work on this in good faith.

If you and/or your contractor had any solid solutions to present you or he would have done so in the last year. It has been a year since I gave them my presentation with detailed objections and photos. Ok, if not then, why not present your solutions at the hearing?

Secondly, since you and Carlos are not contractors, please explain your non "complex" design will look in a drawing. You can send that over by text. Take a picture of it and text it to me.

Now you want to wait over two weeks to discuss said ideas? Just text them with a photo. This way you don't have to leave the kids alone for this discussion to start.

I will also ask that you pick one person for me to communicate with.

I am disabled, elderly and am intimidated by two people double teaming me. Any face to face meeting should take place in a public, neutral place. Emotions are running high and this is what is typically done in this situation.

Lastly, please don't lecture about neighbor behavior. Your disdain for me has long become apparent. I learned of the ADU after being woken by a jackhammer outside my bedroom window at 7:30 AM. No notice, no apology. I had to endure the dust and filth from your bathroom repair and the ADU construction (noise, construction material and equipment) for months--no apologies.

I suffer from a spinal cord injury and have, as you may have noticed a difficult time walking and being on my feet. Being stuck in my home is a long term thing. I intend to fight for my light, quiet, privacy and safety in my home. I don't know why you would want to rob me of my dignity.

Lets get this straight, your project threatens my health and well being.



I plan to take action on this without delay. Perhaps you should view the video of the hearing. One of the Board said, "We are the enforcers of the agreement". I asked, they answered.

No, I will not wait until October 13th. I also, will not take promises of proper deck behavior. I have lost all trust in your sincerity. I expect that a proper solution to my concerns will take more than one meeting. I will know by your actions whether you are sincere in this endeavor. Please don't waste my time.

I will give you until September 29th, this Sunday end of day to respond with something like concrete plan that you honestly will to move forward on.

Here is the brief exchange that happened on the same night, Friday, September 27th, as I no longer felt that meeting in person would be productive and electronic communication would be best moving forward:

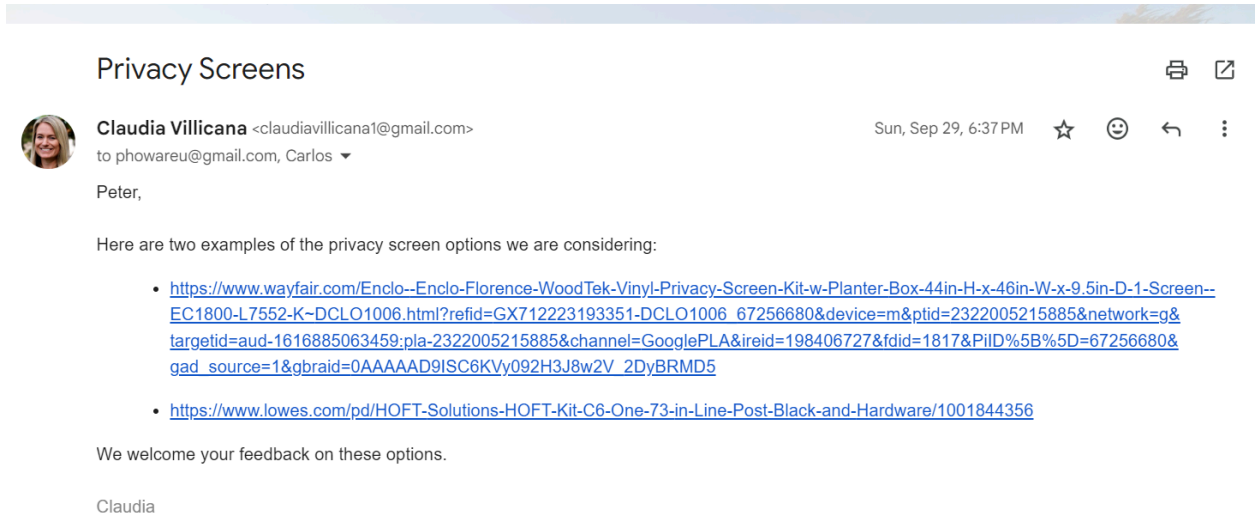
Please send me your email address I will email you the options and we can keep our communication electronic. I don't think an in person meeting would be productive at this point.

Peter

P

[Phowareu@gmail.com](mailto:Phowareu@gmail.com)

I then sent him the following email on Sunday, September 29th, which never received a response:



Here are the two options that we sent to Mr. Holyoya:





At this point, we have done all we can to compromise with Mr. Holoyda as the appeals board suggested (but did not mandate). We plan to proceed with a privacy screen with or without Mr. Holoyda's input. The privacy screen will not be complex and will be something we can easily add to the deck ourselves.

As for the Fire safety issues, the primary purpose of the proposed deck is not for BBQ-ing. It is for our children and a few family members, who will be over occasionally. However, like Mr. Holoyda and anyone else with a deck, we may BBQ occasionally, weather permitting. All standard fire hazard safety precautions will be taken to keep our house and surrounding neighbors' properties out of harm's way. As was made clear by the city's building inspectors during our hearing, our deck does not pose any fire safety hazards and is up to code in every way. Our deck is so standard that the city approves hundreds of similar decks over the counter

every year without special review. We request that Mr. Holyda's request for a rehearing be denied and that we be able to build our deck, which is a standard staple in most houses in our neighborhood.

Thank you.

[End of brief]