

BOARD OF APPEALS

CITY & COUNTY OF SAN FRANCISCO

MEETING MINUTES – WEDNESDAY, FEBRUARY 22, 2023

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

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

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

Jon Givner, Deputy City Attorney, Office of the City Attorney (CAT); Tina Tam, Deputy Zoning Administrator, Planning Department (PD); Dan Sider, Chief of Staff, PD; Matthew Greene, Chief Building Inspector, Department of Building Inspection (DBI); Chris Buck, Urban Forester, San Francisco Public Works, Bureau of Urban Forestry (SFPW-BUF); Beronica Slattengren, Department of Public Health (DPH); Ryan Casey, DPH; Julie Rosenberg, Executive Director; Alec Longaway, Legal Assistant.

(1) **SPECIAL ITEM**

Consideration and possible adoption of a resolution which makes findings to allow teleconferenced meetings under California Government Code Section 54953(e).

ACTION: Upon motion by Commissioner Lemberg, the Board voted 5-0 to adopt the resolution.

PUBLIC COMMENT: None.

(2) **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 may be limited to two 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: None.

(3) COMMISSIONER COMMENTS & QUESTIONS

SPEAKERS: None.

(4) ADOPTION OF MINUTES

Discussion and possible adoption of the February 8, 2023 minutes.

ACTION: Upon motion by Commissioner Trasviña, the Board voted 5-0 to adopt the February 8, 2023, meeting minutes.

PUBLIC COMMENT: None.

(5) APPEAL NO. 21-116

<p>PRITAM SUBHARWAL, Appellant(s)</p> <p>vs.</p> <p>PLANNING DEPT., Respondent</p>	<p>245 Marina Blvd. Appealing the ISSUANCE on December 15, 2021, to Pritam Subharwal, of a Notice of Cancellation (Two building permits have been cancelled by DBI at the request of the Planning Department due to the failure to submit requested or required revisions. Description of permits: Demolition Permit: Demolish three-story Type V construction single family dwelling; Site Permit: First Floor: enlarge existing garage, new front entry, new playroom; Second Floor: enlarge existing living, dining, and kitchen; Third Floor: enlarge existing bedrooms & bathrooms; 4th Floor: new passive collector area). PERMIT NOS. 2011/11/01/8065 (site permit) and 2019/02/11/2585 (demolition permit). FOR FURTHER CONSIDERATION. Note: On December 7, 2022, upon motion by President Swig, the Board voted 5-0 to continue this matter to February 22, 2023, so that the parties could submit briefs and the Planning Department could review the revised plans that were submitted to the Planning Department.</p>
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ACTION: Upon motion by President Swig, the Board voted 5-0 to deny the appeal and uphold the Notice of Cancellation on the basis that the proposed project is incompatible with the neighborhood and not compliant with the Code.

SPEAKERS: Dr. Pritam Subharwal, appellant; Tina Tam, PD.

PUBLIC COMMENT: None.

(6) APPEAL NO. 23-002

<p>ATHANASSIOS DIACAKIS, Appellant(s)</p> <p>vs.</p> <p>SAN FRANCISCO PUBLIC WORKS, BUREAU OF URBAN FORESTRY, Respondent</p>	<p>3832 18th Street. Appealing the ISSUANCE on January 4, 2023, to M-J SF Investments LLC, of a Public Works Order (APPROVAL to remove one significant tree with replacement with a 24" box tree; the tree was evaluated in good condition with leaning, codominant stems, and poor location placement; the existing tree will conflict with a new building's footprint and bay windows, removal and replacement will allow construction of a group housing building). ORDER NO. 207502. FOR HEARING TODAY.</p>
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ACTION: Upon motion by President Swig, the Board voted 5-0 to grant the appeal and issue the order on the condition it be revised to require: (1) that the tree shall not be removed until after a site or demolition permit is issued for the project, and (2) the determination holder shall pay \$3,000 to the City's Adopt-A-Tree Fund based on the appraised value of the tree. This motion was made based on the recommendation of the Bureau of Urban Forestry.

SPEAKERS: Commissioner Lemberg disclosed that the appellant contacted them in 2021, in their role as President of the Eureka Valley Neighborhood Association. The appellant asked them if the Association would take a position on this matter. Neither the Association nor Commissioner Lemberg took a position.

Thanos Diacakis, appellant; Brian O'Neill, attorney for determination holder; Chris Buck, BUF.

PUBLIC COMMENT: Robert Fruchtman stated that the appeal should be denied. He further stated that the hearing should not be taking place because SB 330 prohibited cities from holding more than five hearings, and five hearings had already taken place for this project.

John Nulty agreed with President Swig's suggestion that the permit be tied to construction of the site, more specifically, the tree would not be removed until a building permit was issued.

Michael Nulty stated he would approve the appeal with the conditions mentioned by President Swig. He further stated that this was a tree permit hearing, not a hearing about housing.

Lou Porter spoke in support of the appellant.

(7) APPEAL NO. 22-092

MID-SUNSET NEIGHBORHOOD
ASSOCIATION, INC, Appellant(s)

vs.

DEPT. OF BUILDING INSPECTION, Respondent
PLANNING DEPT. APPROVAL

2550 Irving Street.

Appealing the ISSUANCE on November 18, 2022, to the Tenderloin Neighborhood Development Corporation, of a Demolition Permit (demolish a two-story, two-basement, office building). PERMIT NO. 2022/06/27/7192.

FOR FURTHER CONSIDERATION

Note: On February 8, 2023, upon motion by President Swig, the Board voted 3-2 (Vice President Lopez and Commissioner Eppler dissented) to grant the appeal and issue the permit on the condition it be revised to require that the two environmental specialists for the appellant and permit holder work together to ensure that the public is protected by testing and sampling the subject property in the same manner that took place at 2511 Irving Street. This motion was made on the basis that: (1) there is precedent for doing this, (2) there is great concern for the protection and health of the neighborhood, and (3) were any other project, including non-SB-35 projects, presented before the Board, with similar environmental concerns that had not been sufficiently addressed by the appropriate governmental agencies, the Board would end up with the same outcome. Lacking the four votes needed to pass, the motion failed. Upon motion by Commissioner Trasviña, the Board voted 5-0 to continue this Item to the earliest possible date, in this case February 22, 2023, so that the representative from the Department of Toxic Substance Control (DTSC) can be prepared to answer the questions that came up during the hearing. This motion was made on the basis that DTSC and the city agencies did not provide the commissioners with sufficient information to enable them to make a decision for this case.

ACTION: Upon motion by Vice President Lopez, the Board voted 3-2 (Commissioner Trasviña and Commissioner Lemberg dissented) to deny the appeal and uphold the permit on the basis that it was properly issued.

SPEAKERS: President Swig disclosed that he has been involved with the law firm of Farella Braun and Martel on various actions, but that his association with the firm would not have any impact on his decision for the matter currently before the Board.

Whitney Smith, DTSC; Dr. Vivek Mathrani, DTSC; Nelline Kowbel, DTSC; Lenny Siegel, agent for appellant; Enoch Wang, attorney for appellant; CJ Higley, attorney for permit holder; David Grunat, agent for permit holder; Jackson Rabinowitsh, agent for permit holder; Dan Sider, PD; Ryan Casey, DPH; Matthew Greene, DBI.

PUBLIC COMMENT: Philip Dancel, John Barkan, Joan Klau, Michael Weiss, Robert Ho, Joan Barkan, Marsha Grandchamp, Kathleen Kelly, Nancy Lee, Thomas Soper, Dr. Nida Degesys, Adam, Celeste Marty, Rumesha Ahmed, Deborah Murphy, Yi-Kuan Lee, Christy Tam, Sunset Mom, Karen Chang, Patrick Wolf, Winnie Fung, Jean Barish, Eileen Boekken, Richard, and Phoebe Kuong spoke in support of the appellant.

Ralph Lane, Andrew Devine, Weng Tam, Rigo Gallardo, Steven Shargato, Timothy Reyff, Mr. Wong, Jake Price, Pedro Mendez, Lily Wong, Frank, Paul, Joseph Smith, Jenny Huang, Jonathan Bunemann, Michael Quinn, and Charles A. spoke in support of the permit holder.

(8) APPEAL NO. 23-003

<p>DIANA MEISTRELL, Appellant(s)</p> <p>vs.</p> <p>DEPT. OF BUILDING INSPECTION, Respondent PLANNING DEPT. APPROVAL</p>	<p>2322 North Point Street. Appealing the ISSUANCE on January 11, 2023, to Dorian Mckelvy, of an Alteration Permit (Second floor only: remove and replace in kind according to plan bathroom/hall and 1/2 bath; infill hall bath window; replace nine interior doors; remove & replace 14 windows (not at the front street)). PERMIT NO. 2022/04/07/1806. FOR HEARING TODAY.</p>
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ACTION: Upon motion by Commissioner Eppler, the Board voted 5-0 to grant the appeal and issue the permit on the condition it be revised to require that a start work inspection be performed by DBI on the basis that it will allow DBI to verify compliance with the terms of the permit.

SPEAKERS: Diana Meistrell, appellant; Max Mckelvy, permit holder; Evan Sprague, agent for permit holder; Tina Tam, PD; Matthew Greene, DBI.

PUBLIC COMMENT: None.

ADJOURNMENT.

There being no further business, President Swig adjourned the meeting at 10:13 p.m.

The supporting documents for this meeting can be found at the following link:

<https://sf.gov/meeting/february-22-2023/board-appeals-hearing-february-22-2023>

A video of this meeting, can be found at the following link:

https://sanfrancisco.granicus.com/player/clip/43059?view_id=6&redirect=true&h=d5ba2ce86f2ad6352b5b626d2d12f1b5

DRAFT