



ABATEMENT APPEALS BOARD
Wednesday, September 19, 2012 at 9:10 a.m.
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416
ADOPTED November 21, 2012

MINUTES

A. CALL TO ORDER and ROLL CALL.

The meeting of the Abatement Appeals Board for Wednesday, September 19, 2012 was called to order at 9:10 a.m. and roll call was taken by Commission Secretary Sonya Harris, and a quorum was certified.

BOARD MEMBERS PRESENT:

Kevin Clinch President
Myrna Melgar Vice-President (Excused)
Frank Lee, Commissioner
Warren Mar, Commissioner
Angus McCarthy, Commissioner
Dr. James McCray, Jr., Commissioner
Debra Walker, Commissioner

Sonya Harris, Building Inspection Commission Secretary

D.B.I. REPRESENTATIVES PRESENT:

Edward Sweeney, Deputy Director of Permit Services and Secretary to the Board
Rosemary Bosque, Chief Housing Inspector
Andrew Karcs, Senior Housing Inspector
John Hinchion, Acting Senior Building Inspector, Code Enforcement Division
Teresita Sulit, Secretary

Jana Clark, Deputy City Attorney

B. OATH: Commission Secretary Harris administered an oath to those who would be giving testimony.

C. APPROVAL OF MINUTES: Discussion and possible action to adopt the minutes for the meeting held on June 20, 2012.

President Clinch made a motion, seconded by Commissioner Walker, to approve the June 20, 2012 minutes.

Secretary Harris called for public comment, and there was none.

The motion carried unanimously.

D. CONTINUED APPEALS: Order(s) of Abatement

In the beginning of the proceeding, the Department and the Appellant each had 7 minutes to present their case and 3 minutes each for rebuttal and public comment.

1. CASE NO. 6752: 1743 – 12th Avenue

Owner of Record and Appellant: Alla Dubrovsky, 1743 – 12th Avenue, San Francisco, CA 94122

Attorney for the Owner: Heather Wolnick, Tour-Sarkissian Law Offices, 211 Gough Street, 3rd Floor, San Francisco, CA 94102

ACTION REQUESTED BY APPELLANT: To reverse the Order of Abatement.

On **November 16, 2011**, the AAB voted to continue the case for 90 days to allow parties additional time to resolve the matter.

On **February 15, 2012**, the AAB voted to continue the case for three months to allow additional time for resolution of Appellant’s forthcoming scheduled binding arbitration proceeding.

On **May 16, 2012**, the AAB continued the matter for sixty days.

On **July 18, 2012**, the AAB voted to continue the case for 60 days.

Christine Tour-Sarkissian, for Appellant, Alla Dubrovsky, owner of the property, requested a continuance for 6 months. Since the last meeting, they did a survey on the assessment of topography with changes at the neighbor’s (Mr. Wong’s) property. The survey was done and the new plans were prepared to reflect the neighboring property’s new topography.

Javier Chavareia, their engineer, prepared and processed the plans according to the survey he conducted. The plans were expected to be complete within the next week or two and they would process through the Building Department and their judge, the arbitrator in the case, and ready to fine tune the last details. Prior to that, she and the opposing counsel had scheduled a meeting for next week with no specific date and the project was moving forward.

Ms Sarkissian asked for a further continuance of additional months to allow them to have the plans completed and the details worked out with either the attorneys or their arbitrator and hopefully avoid returning to the Board. She wanted their engineer, Mr. Chavareia to report to the Board also, and the Counsel for Mr. Wong to report to the Commission to confirm the status.

Commissioner Walker asked if the plans were approved, what was the estimate of time for execution and the completion of the project? Ms. Sarkissian said there was a significant amount of money involved and the insurance as part of it and she anticipated about three weeks for completion. She referred to her engineer, Mr. Chavareia, to address the execution from an engineering point of view. Commissioner Walker said the question was the time to get the permit, assuming there were movements to go forward, and then execution.

Javier Chavareia from JC Engineering said Ms. Sarkissian expressed they had completed a topography survey to establish the current condition of the site and a few small changes that had occurred. When they went to the property to implement, they required modifications to the plans and noticed the topographic conditions had changed and recommended a survey done so their plans reflected exactly what needed to be done.

They completed the survey and prepared the revised graded plan, and their drawings will be done by early next week. The permit process should be fairly simple, as all the drawings had been previously approved under the previous schemes and the modifications that were not substantial from the structural or civil engineering standpoint.

Up to date, they did not foresee any problems obtaining the permit. When it came to execution of the program, the rainy season was approaching, the construction of the retaining wall involved a substantial amount of excavation and modification and the two property owners should discuss this because it would create a great impact in winter. It was important to have the geotechnical engineer's advisement for removal of the retaining wall during the winter season.

The whole process, if done efficiently, can be completed in a matter of six to eight weeks. It may not be feasible to implement it immediately depending on the conditions of the weather and the season. Inspector Hinchion for the Department said the survey clearly was a new development and left it entirely to the Board as the Appellant had a number of continuances.

Commissioner McCarthy asked if the structural soundness was safe and inhibited hazardous conditions or changes. Inspector Hinchion said a survey was done so they had more information as they hired a geotech. It would not take long to review their submittals before a permit would be issued. The Department would not delay this matter but the process with the arbitrator will take time. Commissioner Walker said this case had continued numerous times and wanted a permanent time frame, and also to hear from the public first before they discussed this.

Andreas Becker, representative for James T. Wong, owner of the downhill residence at 1737 - 12th Avenue, confirmed what Ms. Sarkissian said and joined her request for a continuance. He agreed a permanent timeline needed to be established, but the two parties were in agreement that they made progress and he supported her request.

There was no further public comment.

Commissioner Walker made a motion to uphold the Order of Abatement, hold the Order in abeyance to move forward, with 90 days for the permit and six months for completion and allow the consideration of the expected rain. She said it was unusual to extend this over and over again and it would be helpful if there was a reasonable deadline for the permit.

President Clinch agreed that six months seemed reasonable for the permit and the Assessment of Costs can be effective immediately. There was a motion to uphold the Order of Abatement to allow completion of the work within six months. Commissioner Lee felt that six months was too long: It would take six to eight weeks to correct the problem and possibly three months, at most.

Ms. Sarkissian worried about the rainy season and if the plans were completed, they could meet and confer with the arbitrator. They need plan approval before the rainy season and she was unsure if this was possible. The question was whether they can realistically finish the project within the allowed three months given this timetable.

Commissioner Lee felt that three months was essentially 12-13 weeks and if the construction was estimated 6 to 8 weeks, the Board doubled the time and he believes the rainy season would not double the time allowed and should be completed in three months.

Ms. Sarkissian said she did not know if the construction was six weeks but they needed to demolish the existing structure, and she hoped this matter was taken into consideration and perhaps Mr. Chavareia could address that. She believed the demolition would take some time because they needed to coincide with the calendar schedule of the adjoining owners, the Wong's. They are dealing with JAMs and unfortunately they had no control over their calendar schedules.

Commissioner McCarthy suggested they request the arbitrator for an advance decision to expedite this matter and asked if they discussed the time frame with both parties in an agreement, not just the construction time but the whole package.

Commissioner Walker said their agreement was important, but it was not relevant to the decision they had before them, which was the permit. They needed the work completed and it was a safety issue on the retaining walls that had been the issue in the past.

Mr. Beck said Mr. Chavareia knew more than he did with regard to the time frame for the construction. This case was continued several times and taking into account the risk and the Board's interest to expedite completion, he agreed that six months was very fair in terms of the rainy season which can affect that time frame and whatever construction delays if any.

Ms. Sarkissian discussed with Mr. Wong's counsel about the survey that was done, and plans to meet and confer next week on the details as to the timing. She was informed by counsel that he had checked with JAMs about the judge's availability with several dates in October.

Commissioner McCarthy was concerned that since the last time they were here about the survey and from the construction industry who knew the time it took to get service, there had been a lot

of down time. He considered the fact that they needed the time frame and the rainy season and all that, and needed to understand their position. It was very clear that the last time Ms. Sarkissian had time to accomplish the work but returned to the Board with only a survey report, which should have been done in a week-and-a-half.

Ms. Sarkissian understood that but unfortunately it took some time before they could schedule the survey with the Wong's. In order for the attorneys to meet and confer, they needed the results of the survey to be done.

When the judge made his award, he had not anticipated that a survey was needed. In essence, it was not that they had not met and conferred but they waited for that survey to be done in order to meet and confer because the plans required changes according to the survey by Mr. Chavareia.

Inspector Hinchion said the neighboring property had an abatement issue related to the retaining wall and did not appeal it in good faith to facilitate a solution. If the abatement were issued and the Order held for three or six months with immediate assessment of costs, more property owners would be more attentive and it may even help the solution. The property owner had it easy and had affected the neighboring property owner who was not at fault through another Order of Abatement and he would support the Board's decision.

Commissioner Walker wanted to defer the time frame.

Commissioner Lee made a motion, seconded by President Clinch, to defer the time frame for three months to obtain the permit and three months to complete the work.

Commissioner Lee clarified the motion to uphold the Department's recommendation for abatement and gave the Appellant three months to obtain the permit and an additional three months to complete the work when the permit had been received.

There was no public comment on this item and the assessment of costs was included, and Secretary Harris called a roll call vote.

President Clinch	Yes
Commissioner Lee	Yes
Commissioner Mar	Yes
Commissioner McCarthy	Yes
Commissioner McCray, Jr.	Yes
Commissioner Walker	Yes

The motion carried unanimously.

2. CASE NO. 6760: 1654 Haight Street

Owner of Record and Appellant: Ronald B. Romine, P. O. Box 22933, San Francisco, CA 94129

Agent for the Appellant: Leo McFadden, 1459 – 32nd Avenue, San Francisco, CA 94122

ACTION REQUESTED BY APPELLANT: Appellant had requested additional time to complete the work.

On **July 18, 2012**, the AAB voted to continue the case for 60 days.

Inspector Hinchion said 1654 Haight Street, Complaint #201152853, the violation related to an issued permit for compliance with the Notice of Violation on accessibility issues, that permit expired and there was no final inspection. They recently renewed the permit and the work was not completed. He recommended that the Board uphold the Order of Abatement and impose an assessment of costs.

Inspector Hinchion received a call from the Appellant’s representative that there was an illness in the family and he was unable to attend the Board hearing. The representative stated they would comply with the Board’s decision. The estimated time for them to complete the work for the permit was unclear. When they originally filed the appeal, they assumed the work would be completed in a matter of weeks but because of an illness in the family, it had affected their timeline but expected it soon.

Commissioner McCarthy asked if the accessibility issues were on the ground floor in the commercial space. Inspector Hinchion said the violation was related to the issued permit. The language on the permit was to comply with the Notice of Violations on handicap bathrooms, new ramp in the door entry and wheelchair lift, relocated water heater, removed restroom at basement and non-permitted deck at rear. A lot of the work had been done, but not completed and they were not ready for a final inspection and the permit was renewed January 23rd of this year. They had not request a continuance and had no issue with the decision from the Board. They will follow through with that to the best of their ability.

President Clinch said it seemed like the straightforward option was to uphold the abatement and perhaps allow them an extension of time. Commissioner Walker suggested the Board should uphold the order but hold it in abeyance until 30 or 60 days whichever is reasonable.

President Clinch made a motion, seconded by Commissioner Walker, to uphold the Order of Abatement and hold it in abeyance for 30 days and to include the assessment of costs of \$1,208.

There was no public comment and Secretary Harris called for a roll call vote.

President Clinch	Yes
Commissioner Lee	Yes
Commissioner Mar	Yes
Commissioner McCarthy	Yes
Commissioner McCray, Jr.	Yes
Commissioner Walker	Yes

The motion carried unanimously.

E. NEW APPEALS: Order(s) of Abatement

1. CASE NO. 6762: 3333 -26th Street

Owner of Record and Appellant: Lucero LLC, c/o Henry and Mary Elba, 21 Lakewood Circle, San Mateo, CA 94402.

ACTION REQUESTED BY APPELLANT: Appellant had requested additional time to complete the work to abate the outstanding code violations.

Andrew Karcs, Senior Building Inspector, Housing Division, said this case dealt with replacement of rear stairways for a three-unit building that was presently unoccupied. Actually, the staff granted the property owner more time to complete the work as of September 7th. They were able to submit plans which were approved and they were able to obtain the building permit to start construction, which they started a week ago. The staff felt that by the end of this month the property owner would satisfy the Notice of Violation and complete the work within 30 days. The contractor had already started the work as of last week.

Commissioner Walker made a motion, seconded by Commissioner Mar, to uphold the Order of Abatement and hold it for 30 days and the assessment of costs.

There was no public comment on this item and Secretary Harris called for a roll call vote.

President Clinch	Yes
Commissioner Lee	Yes
Commissioner Mar	Yes
Commissioner McCarthy	Yes
Commissioner McCray, Jr.	Yes
Commissioner Walker	Yes

The motion carried unanimously.

F. RE-HEARING REQUEST:

1. CASE NO. 6757: 130 Beulah Street, aka 130-132 Beulah Street

Owner of Record and Appellant: Katherine Rogers, 132 Beulah Street, San Francisco, CA 94117.

ACTION REQUESTED BY APPELLANT: To rehear Appeal #6757 previously addressed by the Abatement Appeals Board on June 20, 2012.

Note: On June 20, 2012, the AAB modified the Order of Abatement (“OOA”) (1) to allow Appellant 30 days to apply for permits to correct all code violations identified in the May 27, 2008 Notice of Violation (“NOV”) that constitute a serious and imminent life, health and safety hazard and 90 days to complete all work regarding the same; (2) to allow Appellant four and one-half months to apply for permits to correct the remaining code violations identified in the NOV and one year to complete all work regarding the same; and (3) to reduce the assessment of costs by 30% if the deadlines set forth in (1) and (2) above are met. The AAB further directed Appellant to consult with the Department of Building Inspection for purposes of determining what code violations identified in the NOV constitute a serious and imminent life safety hazard. Finally, the AAB ordered that the OOA be held in abeyance for one year and recorded only in the event that the violations were not corrected in accordance with the OOA within that year.

Inspector Karcs reminded the Board that this case was previously heard and the Board granted the Order of Abatement and gave the property owner a timeframe to complete the work. The property owner now requested to rehear the abatement appeal again but in the meantime had requested a delay of the hearing due to the holiday and it was in writing and approved by Mr. Sweeney. To date she has not applied for any permits.

Commissioner Walker asked if the rehearing request stated their action and a deadline for requesting a rehearing. Attorney Clark said that the Appellant complied with the time frame for requesting a rehearing and her understanding was that on Sept.7th she requested a continuance based on the fact that it was High Holy Day.

Commissioner Walker was concerned about allowing a continuance request but her concern was how it affected them in implementing their decision. Do they have to grant a continuance? Attorney Clark said that the Building Department had agreed to it given the reasons. The Board can do what they want but it might be problematic.

Commissioner Lee asked if there was a reason why she asked for a rehearing or discussed that when they continued the matter? Attorney Clark said her grounds for rehearing were stated in the Board’s packet.

Commissioner Lee said he did not see any ground for opening to rehear the item and tended to say no to a continuance as well but he would defer to the rest of Commissioners and as a courtesy to continue the matter.

Commissioner Walker said they made a decision with the timeframe, should they shift back to the original time frame when they have a rehearing? She thought it was 6 months of the date of hearing. Attorney Clark said she was unsure. Before the Board was not the rehearing it was the request for a rehearing. They are a couple steps away unfortunately because the Board had to decide to grant the rehearing and it would not be instantaneously set for rehearing.

Commissioner Lee agreed to grant one continuance. Commissioner Walker wanted to do 30 days and would like to do so with the understanding that the clock started with the original hearing. Attorney Clark said she would look into that.

President Lee made a motion, seconded by President Clinch, to continue for 30 days.

There was no public comment on this item and all were in favor of granting a continuance for 30 days.

The motion carried unanimously.

G. GENERAL PUBLIC COMMENT

There was no General Public Comment.

ADJOURNMENT

President Clinch made a motion, seconded by Commissioner Mar that the meeting be adjourned.

The motion carried unanimously.

The meeting was adjourned at 9:50 a.m.

Respectfully submitted,

Serena Fung, Secretary

Edited by: Sonya Harris, BIC Secretary