

DEPARTMENT OF BUILDING INSPECTION
City & County of San Francisco
1660 Mission Street, San Francisco, California 94103-2414

ACCESS APPEALS COMMISSION

MINUTES

Wednesday, April 12, 2000

1:00 P.M.

City Hall

1 Dr. Carlton B. Goodlett Way, Room 416

1. CALL TO ORDER AND ROLL CALL

The regular meeting of the Access Appeals Commission was called to order at 1:21 p.m. by President Stables.

COMMISSION MEMBERS PRESENT: Mr. Linton Stables, III, President
Ms. Enid Lim, Vice President
Ms. Roslyn Baltimore, Commissioner

COMMISSION MEMBERS ABSENT: Ms. Terry Hogan, Commissioner
Seat vacant due to resignation

CITY REPRESENTATIVES: Mr. Todd Jackson, DBI
Mr. Rafael Torres-Gil, DBI
Ms. Susan Pangilinan, DBI
Ms. Miriam Stompler, Deputy City Attorney
Ms. Doris M. Levine, Reporter

The meeting was called to order, roll call was taken and a quorum of three members was present, President Stables informed appellants of the rule allowing appeals to be automatically continued at the request of the appellants when there are only three members present. Appellant would be granted an opportunity to decide when their item is called. Individuals would also have an opportunity during public comment if they would not have an opportunity to attend a future meeting.

2. APPROVAL OF MINUTES:

Commissioner Baltimore moved that the minutes for Wednesday, February 23, 2000 and Wednesday, March 8, 2000 be accepted.

These minutes were approved without objection.

3. PUBLIC COMMENT: No public comment

4. CONTINUED APPEALS:

Commissioner Staples: Item 4a. Appellant for appeal # 00-01, Ms. Sotelo, was asked whether they wanted to continue their case. They indicated they wished to be heard today. They were advised if their case was heard today the decision would have to be unanimous in their favor.

Item 4b: Appeal # 00-03. Appellant indicated they wished to be heard today.

Item 4c: Appeal # 99-16. Appellant indicated they wished to be heard today.

Item 5a: Appeal #00-04. Appellant requested a continuance. President Stables stated that the hearing will be scheduled for a future meeting.

The Court Reporter swore in all people who will be testifying.

Appellants were advised of the two part process concerning the agenda.. Part one to decide whether to have a rehearing. Part two is to have a rehearing.

Item # 4a: Hayes Valley Apartments. Appeal No. 00-01. Rehearing request.

Staff comments were requested regarding item # 4A.

Todd Jackson indicated that the department does not have any new information. Commissioner Baltimore requested a briefing and Todd Jackson restated the details of the appeal and indicated that the commissioners did not choose to allow the appeal to be granted at the prior hearing.

Dalila Sotelo, representing the general partner in the Hayes Valley partnership, indicated that the property is publicly-owned by the Housing Authority and a private partner is leasing it but indicated that they are privately funded. They wish to present new information. Testimony will be made by Mr. Kim Blackseth, Mr. John Thomas and Ms. Hasmai Ahmid.

Sotelo: Of one hundred and ten units, sixty-six are for prior public housing residents. The seven units in question have seniors living in them and it would be an extreme hardship for them to move out and the bathrooms to be reconstructed.

The new information is basically the oral testimony and a narrative of the economic hardship they have endured due to not having the Certificate of Final Occupancy since March of last year. They are willing to set up a reserve for compliance for each of the seven units into what the Building Department is saying is a fully accessible unit and that they have twenty-five other units on the site that are fully accessible in which to move the disabled.

Ms Sotelo indicated a desire to have the rehearing today after inquiry by President Stables. Ms. Sotelo reiterated what the new testimony would be about including details of the economic hardship indicating that the partnership has endured \$150,000 of economic hardship due to delays.

Todd Jackson responded that the project is entirely new with a new street and that it is important that the code be met without hardship.

President Stables inquired if there was public comment. There being none he placed the matter before the commission.

Commissioner Baltimore made a motion to open it for rehearing. The commission voted 3-0 to rehear this appeal.

Ms. Sotelo presented eight copies of information to the commissioners.

John Thomas, Architect, presented testimony that the bathroom space was accessible and in compliance with the 48 x 36 space requirement due to use of the space under the lavatory and that in light of Mr Blackseth's testimony that there is accessibility. Also, that the additional space under the lavatory is indicative of equivalency.

Mr. Blackseth, consultant and ex Plan Checker for the City of San Rafael, City of Sausalito, Mill Valley and other Marin Cities, made the same determination that Mr. Thomas made that the spacing question is compliant with the code section. The interpretation that is used is that as long as there is 27" and when 27" ceases, that you cannot go any further. He was in only one of the units, but that unit was the most restrictive. He acknowledged that local code interpretation would prevail. Also, from a practical standpoint that transferring is difficult but that if he can transfer he considers the space usable. He was in the bathroom, which was without grab bars. After twenty-one years in a wheelchair he would say that it would have to be a pretty substantial disability that could not use the space, from a special standpoint. In terms of whether there was space provided to get a wheelchair up and to make a transfer: there in fact was.

Ms. Hasinah Rahim, manager and resident of the Hayes Valley Apartments, indicated that it would be a great hardship on the residents to move out and move back in again because they have already gone through a relocation period.

Ms. Sotelo indicated that if the tenants have to move out, the commission must consider that they have a point of turnover.

Commissioner Baltimore inquired if this is a thing that can be done from the City Attorney's office?

Ms. Stompler indicated that she had limited experience in this matter. That she does know that we have entered into settlement agreements with property owners in the context of abatement. She does not know if that has been done in the case of Certificates of Occupancy. She would like an opportunity to meet with the Department to create the necessary paperwork that will be binding on the owners and partnership and would request direction from the Commission to consider what is meant by turnover. She asked whether the Department had any experience with this agreement.

Mr. Jackson stated that the Department does not track the vacating of units until there is remodeling. He agrees with Ms. Stompler that some sort of recorded document on the deed or title is probably the only way and that we would be taking it out of the Department's hand at that point for enforcement.

Commissioner Baltimore stated that first; she did not hear anything that changes the initial facts as presented to us, secondly; that a tenant is moved out and then allowed to move back in. Looking at the numbers, it would probably be cheaper to bring it up to code that it would be to go ahead and leave the money and not receive the Certificate of Occupancy. The amount being \$160,000.

Ms Sotelo stated that the cost of redoing it would be about \$70,000 as of six months ago. The \$150,000 represents the money that has already been lost. So that would be in addition - \$150,000 plus \$70,000.

From a partnership level, they would respect and honor a memorandum of understanding, especially if it is recorded. The economic hardship has already been lost because they have not received their Certificate of Occupancy. She would anticipate that if they do get a memorandum of understanding recorded that they would get a Certificate of Occupancy and that it would be cheaper than having to spend another \$70,000 to remodel the units and pay the cost of relocation of the tenants.

Commissioner Baltimore expressed concern of the agreement becoming lost and costs of construction escalating in the future.

In public comment Mr. Behan, of the Mayor's Disability Council, asked why, if the units were built for wheelchair accessibility, they are not being used for that purpose.

No further public comment. Public comment was closed.

In rebuttal: Mr. Jackson indicated that the code does not allow for equivalent facilitation for this section. An exception would be to switch the 36" and 48" dimensions. The commission has very broad authority.

No comment from commissioners.

Commissioner Baltimore and Vice President Lim expressed concern for the time limitations for compliance and Vice President Lim thought it will be cheaper now and that she wants these units in conformance now and available for wheelchair people.

President Stables stated that he was glad to see that they all are in agreement, that the appellants are not in compliance and he has not seen one agreement that allows the dimensions to intrude on the lavatory space. He is opposed to having outside agreements, extended bonds, and things like that.

Mr. Jackson indicated that DBI cannot signoff the permit unless the conditions are accepted.

Commissioner Baltimore stated that they could not approve it and that they do not have the authority due to it being new construction.

Motion by Vice-President Lim: ...to deny on the basis that what has been presented is inadequate for us to accept.

The motion passed unanimously. 3-0

Item 4b. 353 Sacramento St. Rehearing request. Appeal # 00-03

Summary by Mr. Jackson

Ms. Parker stated in response to inquiry by President Stables that she would not be requesting to be heard today.

President Stables asked what new information would be presented today.

Ms. Parker stated that one of the issues was the speed of the elevators and the other was Appeal # 00-04 and its continuance and the quantity of bathrooms being required for that property. Most importantly, she thinks, is the precedent setting ruling concerning the Embarcadero Center in 1998 in which six floors were required to have four compliant bathrooms and the other bathrooms considered substantially complying. She feels that, proportionally, 353 Sacramento is required to provide many fully complying restrooms. At a minimum she is looking for clarification as to whether or not the determination really requires every other floor to be upgraded, or whether or not the intention is to not have it, more than one floor to get to a restroom because that would leave significantly less restrooms that would have to be upgraded than the literal written determination or every other floor.

There was no public comment.

Mr. Jackson stated that front and side transfer are considered equivalent facilitation and that he could not comment on usability.

Commissioner Baltimore moved to grant a rehearing. There was no discussion.

A unanimous vote of 3-0 approved the rehearing for a future date, to be determined by the department.

Commissioner Baltimore requested that packets of these cases be pulled for the next meeting.

President Stables and Mr. Jackson discussed the notification to appellants to provide updated summaries and also to prepare packets of prior summaries.

Item # 4c: 1765 California St. Appeal NO. 99-16. Rehearing request.

Mr. John Peterson stated that he was asking for a decision on the rehearing request but was not asking for the actual hearing today.

Mr. Jackson presented a summary of the complaint history. He indicated that he had also contacted the complainant, that the complainant was unable to attend but was interested in being a part of the solution.

Mr. Peterson stated that the new information he had was the fact that they came into the last hearing relying on the direction that they had from a Chief Building Inspector and the then Secretary to the AAC, suggesting that one particular issue did not require addressing and that he signed off a letter on it. He thinks now that they should go back and accept the services of their structural engineer and come up with a solution that might more closely achieve full accessibility. He has discussed the matter with the complainant and they agreed to sit down with him and seek his advice, as well as his concerns. He requested more time to do this.

There was no public comment on this matter.

Commissioner Baltimore made a motion to rehear this case at a future date.

The motion to rehear this case was unanimous and passed 3-0.

5. CONTINUED APPEALS:

Item #5a: 601 California St Appeal No. 00-04. Continued earlier.

6. PROPOSED RULE CHANGE:

Mr. Jackson stated that the proposed language was open to discussion and modification.

President Stables stated that he personally thought it was unnecessary, that by the charter and the law these appeals are basically arguments appellants have with the Building Department. There are always two parties. There may be an 'instigator', but then the complaint becomes a Notice of Violation... this Department has taken action and the appeal is by the building owner or a tenant. To give the third party as much testimony as the two parties is sort of weighing this very strongly in one direction or another. Commissioner Baltimore and Mr. Jackson discussed the complaint action and the need for definitive action in order for an appeal to be considered.

Commissioner Baltimore further stated that complainants should be heard and that they are knowledgeable about the issue.

Vice President Lim stated that complainants are not informed and having them as part of the process give them an opportunity to determine for themselves whether they should be here and also offers balance.

No public comment.

Motion to adopt the rule changes by Commissioner Baltimore.

Mr. Jackson read the proposed language.

No further comments from the Commissioners.

The vote on the motion to adopt the rule change was taken.

President Stables: No

Vice President Lim: Aye

Commissioner Baltimore: Aye

President Stables inquired of Counselor Stomblor if the rule change required three votes to pass and she answered in the affirmative.

Commissioner Baltimore then requested that it be put back on the agenda when we have a full board.

President Stables requested staff to make note of that request.

Commissioner Baltimore also asked how she can contact the Secretary if she is stuck in traffic and whether a cell phone could be issued for commission meetings.

Mr. Torres-Gil indicated that he carries a pager and will have a cell phone number and that he will inquire of her request.

7. COMMISSIONERS AND STAFFS QUESTIONS AND COMMENTS:

Vice President Lim and Commissioner Baltimore expressed concern regarding the materials from prior hearings and requested information on prior determinations.

Commissioner Baltimore asked if there is anything known of the health of Commissioner Hogan and when the commission would receive a full compliment of commissioners.

Vice President Lim stated that she had talked to Commissioner Hogan and that she had indicated that her health was not well and that if her health continued the way it has, she will resign.

Vice President Lim also expressed concern over the need to get the BIC to act on getting another more commissioner and that she had discussed the matter with Director Chiu. She is very concerned that the AAC is such a low agenda item and is unable to function in a way it should as a commission.

Mr. Jackson indicated that a past letter regarding this matter had been sent and that announcements for the position had been sent.

Mr. Torres-Gil stated that he had discussed the matter with Ms. Ahern, Secretary to the BIC, and she had indicated that the BIC was reviewing applications for the current vacancy and the BIC is appointing a committee to review applications. Three applications have been submitted to date. The committee consists of President Fillon, Commissioner Hood and Commissioner Walker. He said he would inquire of a timeline for review of the applicants and inform the Secretary of the BIC of the possibility of another vacancy.

Commissioner Baltimore said she would ask Commissioner Lim to convey any information concerning a possible resignation to Commissioner Hogan and to let Commissioner Hogan make that determination.

Vice President Lim mentioned that at the last meeting the BIC requested that the commissioners put in their applications for their positions.

Mr. Torres-Gil mentioned that Ms Ahern indicated that anyone who wishes to keep serving on the Commission, will be reappointed.

Mr. Jackson introduced Mr. Torres-Gil, the new Secretary to the AAC.

President Stables wished Mr. Jackson the best.

8. PUBLIC COMMENT:

There was no public comment.

There being no further business the Access Appeals Commission adjourned at 2:23 p.m.

Rafael Torres-Gil, Senior Building Inspector
Department of Building Inspection
Secretary to the Access Appeals Commission