



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

**ACCESS APPEALS COMMISSION**

**MINUTES**

**Wednesday, June 26, 2002**

**1:00 P.M.**

**City Hall**

**1 Dr. Carlton B. Goodlett Way, Room 416**

**1. CALL TO ORDER AND ROLL CALL**

The meeting of the Access Appeals Commission was called to order by Vice-President Brown at 1:05 PM.

**COMMISSION MEMBERS PRESENT:** Mr. Francis K. Chatillon, President  
Ms. Alyce G. Brown, Vice-President  
Ms. Roslyn Baltimore  
Ms. Enid Lim

**COMMISSION MEMBERS ABSENT:** Mr. Linton Stables III

**CITY REPRESENTATIVES:** Mr. Rafael Torres-Gil, DBI, Acting Secretary  
Ms. Susan Pangilinan, DBI, Recording Secretary  
Ms. Doris M. Levine, Reporter

**2. PUBLIC COMMENT:** There was no public comment.

**3. APPROVAL OF MINUTES:**

Vice-President Brown indicated several changes. It was moved to hold-over the approval of the March 27, 2002 minutes until the next hearing in order to clarify the extent of Commissioner Stables comments in the first paragraph of page 4.

**4. REVIEW OF COMMUNICATION ITEMS:**

The Commission discussed Mr. Skaff's unavailability until the end of July and the scope of the training topics he and DPW would present. Discussion ensued on the correlation of training and site visits in relation to future appeals.

Vice –President Brown requested the status/progress report on Howard Street - The Shoe Pavilion

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(a past appeal).

**5. HEARING OF NEW APPEAL:****a). Appeal No. 01-05, 201 Turk St - Up & Away Café (Order of Abatement # 7535-A)**

Presentation of the Summary of the Appeal, by R. Torres-Gil

Preliminary comments by R. Allman, representing A. F. Evans Company, owner and operator of the café. Mr. Allman asked about the powers and ability of the AAC and staff to respond to questions of law and the case record, in the absence of the City Attorney.

Commissioner Baltimore recommended postponing the hearing until the City Attorney returns.

Mr. Allman indicated he would probably take that advice, but wanted to make some comments concerning matters of law and the case record. He has had discussions with the complainant and they believe they have reached a reasonable compliance agreement that they would like to present to the commission as a compliance agreement and thinks it would be wise to have the CA present for that. It is his understanding that the complainant would be willing to withdraw the complaint based on the compliance agreement. He acknowledged the staff comment in recognizing the intent that the corner door be 'exit-only', he believes that in "performance as well as intent" the door is 'exit-only'.

General discussion ensued regarding the scheduling of the hearing 'sooner rather than later'. The appellant will be contacted about the next available date considering the summer holidays and the ability to have a quorum.

Vice President Brown enquired about the ownership/developer role of A. F. Evans.

Mr. Allman indicated that A. F. Evans Co. is the owner/developer of the project.

Mr. Tom Lakritz, Deputy City Attorney, arrived at the meeting and indicated that he did not have authority to represent the Commission in the absence of Ms. Boyajian.

**b). Appeal No. 02-06, 760 2<sup>nd</sup> Street, Momo's Restaurant.**

Presentation of the Summary of the Appeal, by R. Torres-Gil.

Presentation by Tom Pflueger, MBH Architects, the designers of Momo's.

Mr. Tom Lakritz returned and indicated that he now had authority to serve as the legal counsel for the AAC.

Continuation of the presentation by Mr. Pflueger. In summation, he requested approval of the existing 53" width of the ramp and approval of the existing countertop.

Ms. Baltimore requested a picture of the ramp, which was unavailable.

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Presentation by Mr. Peter Osborne, owner of the restaurant. He emphasized that DBI has granted the necessary approvals and that the restaurant accommodates all patrons. The seven inch discrepancy (of the ramp) has not deterred anyone in a wheelchair from coming in and enjoying the restaurant. Regarding the counter, he recalls clearly making sure, with the architect and the building department, that it was an acceptable solution for equivalent facilitation. The restaurant prides itself in the level of service provided to all customers.

Commissioner Lim indicated that she has been a customer of Momo's and recalls commenting on the 'counter', to her grand-daughter. She has seen the counter used and she considers it fine. She did not use the ramp because the stairs are easy enough to traverse. She agrees that the restaurant itself is quite accessible.

Vice-President Brown asked Mr. Osborne if he relied on the expertise of the Architect to draw plans that were accessible -that he knew the laws.

Mr. Osborne said that he was involved in the process of the restaurant design. Mr. Pflueger is representing the Architect and was not the Architect of Record.

Vice-President Brown asked if he knew that the bar and ramp were not in compliance.

Mr. Osborne said that based on DBI approval of the plans and field inspection, he was under the impression that they were 100% compliant.

Vice-President Brown said that a permit does not read what the law says or mean that... (*comment not completed*)...the onus is on Mr. Osborne or the Architect. She has been a small business owner and has had to rely on the Architect of Record to oversee the construction. He had to have relied on the architect to comply with the codes. Was it ok with him that the ramp was 51" and that the counter only had the lowered shelf, which is fine, but if there is a wheelchair and a table, you cannot get through there. She does not understand why the bar was not made accessible and wanted to know how much/what part he played in the actual code requirements.

Mr. Osborne said that for someone who submits plans for a public meeting place, his impression is that, there is a gap that needs to be bridged between the inspectors and the adherence to ADA issues. Currently, he feels he is being punished for that gap. He feels, amongst other things, that he is a victim and he is frustrated because a lot of money and time was expended and now he is before the commission asking for consideration of the expenditure of a lot of money that is not available. He feels that the DBI process needs to be slowed down to allow for study of the plans thoroughly, to avoid this type of situation from occurring again.

Vice-President Brown said she feels it is not the inspectors who are in question here, but his architect.

Mr. Pflueger said that it was not the intent to do something that did not meet code. An example was the meeting notes from the design portion of the project regarding accessibility issues at Momo's, - Jim Whipple, Ron Tom, and Richard Skaff (were noted). This related to a particular item from Momo's and to their intent to conform to the code. He elaborated on the scope of the plan details regarding the handrails and the code.

Commissioner Baltimore asked how many spaces are at the bar.

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Mr. Osborne said approximately twenty.

Commissioner Baltimore asked if when there is a large crowd if there was any way of providing extra accommodations for the disabled.

Mr. Osborne said yes. He keeps the open space area at the top of the ramp clear so wheelchair patrons can utilize it, especially on game days. Once at that elevation the entire restaurant is accessible.

Commissioner Baltimore asked, in terms of the bar, if someone wanted to sit at the bar and they could not, are tables accessible to augment the bar?

Mr. Osborne said yes.

Commissioner Baltimore asked if he had looked at any other alternatives for the ramp such as a lift?

Mr. Osborne said no because the width of the ramp from cement wall to wall is 60”.

Vice-President Brown said that they don't need anything, the ramp it is just short nine inches, but it is not clear at the top of the ramp. There is a service bar at the top, a champagne bucket, and it is narrow, not empty.

Mr. Osborne acknowledged the obstructions and indicated that the equipment is portable and that he would have it corrected.

Vice-President Brown asked if the handrail posts could be removed and handrails attached to the sides increasing the width close to 60”. The ramp is fine, in her opinion.

Mr. Osborne indicated retrofitting the handrails would cost \$20,000, which he does not have. The restaurant has been severely impacted by the demise of the dot-com industry. Staffing has been reduced, the restaurant does well on game days, and has survived the worst of times, but is not flush with cash. Correction of the two items would cost \$50,000, which he does not have. He does want to make it right because it is his business, but in summary, he does feel he did it right from the beginning, he had no intention to deceive anyone and received the proper approvals from proper channels. They are right, a permit is not a license. He feels he is being punished for a good deed.

Commissioner Baltimore said that her question was whether they had considered the alternatives, not that they demolish the ramp because she thinks that it impractical. **It is her opinion, regarding the bar, they have made reasonable accommodation with the tables, she, for one, would be willing to grant that one and she would make a motion to that effect.**

**President Chatillon asked if the motion was just for the bar and Commissioner Baltimore said yes.**

President Chatillon asked if there was public comment.

August Longo, an advocate for people with disabilities, said that he is listening to a story of a businessman who built \$1.9 million business, who did not spend the money to get reliable access information. He has been to the restaurant many times and says he does not think the ramp is a

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major issue. It is pretty wide. The only problem with the ramp is the operation of the restaurant. He has been there on game days when he could not get up the ramp because people are there drinking their beer and sometimes there is equipment to store things at the top of the ramp. He does not think this is a major issue. He thinks the bar is a major issue. Behind the bar there are tables that are very high. A person in a wheelchair cannot use them. There is only this small space at the bar that is not code compliant or equivalent facilitation. He urges the commission to deny that and to work with them on the ramp. The only problem with the ramp is on game days. On many days when Momo's is not packed with people from the ballpark, the ramp is not an issue. The bar is an issue and it is a disservice to people with disabilities to be discriminated against by being forced into that situation with tables stacked immediately behind it that are high. So if they, at least, had lower tables that could also be used, that might work.

Edward Evans, with the Community Resources Action Project, Senior and Disabled Concerns Committee, indicated he is here, speaking for them, today. The problem is that people do not seek out the proper information prior to installing these items. He sees it happening all the time and you cannot blame it on the City, you have to do the investigation for yourself. If the IRS says you did not pay enough taxes, you cannot say that it was not your intent to not pay the taxes - you still have to pay the taxes. You still have to make accommodation for people with disabilities. As August Longo pointed out, high table tops and equipment around the area are problems. Looking at the picture you can see right next to the top table, where the service bar is. What you want to do is have it so abled-bodied and disabled people can join together in a social time at a bar. This prohibits people from full accommodation. He hopes they will consider and make the restaurant comply fully.

Commissioner Baltimore said she wishes to be very clear when she said a table as a reasonable accommodation, she was talking about, obviously, a table that is accessible, that is not too high, as the people mentioned. She just wanted to clarify that. **That is her motion. The table should be at a height where the wheelchairs can use it and also the aisle widths have to be consistent with what they indicated, so a wheelchair can pass.**

R. Torres-Gil asked Commissioner Baltimore if she wanted to specify a 28-34" maximum height and she said yes.

Vice-President Brown asked if Commissioner Baltimore was just talking about the bar or the bar and the tables. She thought they were just talking about the bar.

**Commissioner Baltimore was saying that the issue of the bar, in her opinion can be accommodated with tables in the bar area that are accessible.**

Vice-President Brown said that her feeling was that some people like to hang at the bar, if you want to sit at a table there are plenty of tables on the patio that are accessible and wonderful. There are a lot of people that like to hang at the bar. If you are in a group and some people need accessibility and there is only a table there, and if she wants to stand at the bar, that is not a social situation. She thinks the bar is small. There are very few tables in the bar area and there are more tables on the patio. It is a bar issue now, it is not accessible. The little ledge, accessible for one, is kind of stuck in there like a hinge thing. She thinks it is not appropriate, it's very discriminating and it would be very embarrassing to her if she brought one of her friends who was in a wheelchair and he or she would have to be there while she is standing someplace else. We are talking about the bar - it is not up to code and it has nothing to do with tables.

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**Commissioner Baltimore said that she feels her motion is a reasonable accommodation and she does not feel comfortable sitting on a bar stool and she has said to people that she will not sit on a bar stool and they have said ‘we’ll just take a table’. She thinks people in a company are reasonably amenable. She thinks that if there are tables near the bar that are low enough that is a reasonable accommodation. That is her motion.**

Mr. Evans said that in regards to the tables, the problem is that he may be well-intentioned but if later on he decides to sell the place, the change in occupant can bring in high top tables and everything else. The commission is giving the owner a leave not to accommodate at the bar and later on a new owner can put in new tables and so forth and would violate the whole concept of having access at the bar.

Mr. Osborne said that during the application process to build Momo’s, and the scrutiny that the project was subjected to, he consented to conditions of operation that included limiting TV’s, no live entertainment outside, etc. As a point of good fate he is willing to draft, with the help of the City Attorney, if possible, some measure of conditional operation that, if Momo’s is sold and the permit for operation is transferred, the conditions of operation are transferred with it. That’s just to demonstrate his good faith.

Commissioner Baltimore asked if that was enforceable.

Tom Lakritz, Deputy City Attorney, said that the property owner could record a Notice of Special Restrictions against the title of the property.

Commissioner Lim said that facilitation is to provide ‘some’ (accessibility) and he has done that. She believes that if they can get the tables that are of proper height in there that would be further facilitation. She is like Ms Baltimore, she cannot sit on barstools because she is too short to get on them. She always asks for a table even if she just wants a drink and her friends are the same way. Sidling up to the bar is not her form of entertainment. She feels they have asked for facilitation and they do have at least that one spot. She has seen two wheelchairs sitting there comfortably. Facilitation is there, it is not like it has been ignored and not put in. She thinks they have done what they could.

Vice-President Brownsaid she could not see two wheelchairs there and asked what the width of the shelf was.

Mr. Pflueger said 36” inches, as required by the’93-’94 code.

Vice- President Brown said that there is facility for one place there. The code reads one in five and there is one for twenty.

Mr. Pflueger said the code is one seat for twenty occupants of the bar.

R. Torres-Gil stated that the code only requires one lowered section 36” wide by 34” high and that the decision of the commission rests with the permit and is enforceable for a very long term.

President Chatillon requested a roll call on the motion by Commissioner Baltimore.

**Vote on the motion by Commissioner Baltimore:**

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|                               |                           |
|-------------------------------|---------------------------|
| <b>Vice President Brown</b>   | <b>Allows the motion</b>  |
| <b>Commissioner Baltimore</b> | <b>For the Motion</b>     |
| <b>Commissioner Lim</b>       | <b>For the Motion</b>     |
| <b>President Chatillon</b>    | <b>Against the motion</b> |

**The motion to allow the existing bar with lowered tables at a height of 28” to 34”, as reasonable accommodation, was passed on a vote of 3 - 1.**

**Commissioner Lim made a motion to allow the ramp to stay as it is with one condition that there be signs posted concerning - not standing on the ramp anytime and making sure that is enforced and that equipment not be in the way.**

Mr. Osborne asked if it was acceptable to have a portable sign that he could post at high traffic times.

Commissioner Lim said yes.

Vice-President Brown requested an addendum to that motion – that no service items block the ramp.

President Chatillon requested a roll call on the motion by Vice –President Lim.

**Vote on the motion by Commissioner Lim:**

|                               |            |
|-------------------------------|------------|
| <b>Vice President Brown</b>   | <b>Yes</b> |
| <b>Commissioner Baltimore</b> | <b>Aye</b> |
| <b>Commissioner Lim</b>       | <b>Aye</b> |
| <b>President Chatillon</b>    | <b>No</b>  |

**The motion to allow the existing ramp width with the conditions that a portable sign be provided requesting that the ramp not be blocked, and that no service items or equipment block the ramp area, was passed on a vote of 3 - 1.**

Mr. Osborne thanked the commission and said he will provide the signage, keep the equipment away from the top of the ramp and will continue to his best to provide whatever necessary facilities for all patrons.

**6. COMMISSIONER AND STAFF COMMENTS AND QUESTIONS:**

President Chatillon said he would like to move Turk St (appeal) up, if possible. Commissioner Lim will not be here on July 10<sup>th</sup> and is ok with a meeting in her absence. He asked if Ms. Boyajian would be available and Mr. Latritz said yes. He asked about Commissioner Stables availability and was advised by Mr. Torres-Gil that Commissioner Stables did not indicate whether or not he would be available.

Mr. Torres-Gil outlined the status of the forthcoming cases. Emphasizing that three upcoming cases were only tentative for the July 10<sup>th</sup> hearing. 201 Turk St is the predominate issue for that day and given that it is an appeal of an Order of Abatement he was not sure if four votes were required.

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Mr. Lakritz indicated he would research that point.

Commissioner Baltimore suggested that visiting the hotel might provide the opportunity that Commissioner Brown asked for in terms of the scattering of accessible rooms throughout the hotel.

President Chatillon asked if Commissioner Baltimore was speaking about Appeal # 02-07.

Commissioner Baltimore said she was and said that even if an agreement was reached this might be a case where they could look at different options and it may be worthwhile scheduling it, not for the 10<sup>th</sup>, but the subsequent meeting.

President Chatillon asked whether Commissioner Baltimore was asking for training.

Commissioner Baltimore said she was suggesting that they have a site visit and, as they have done in the past on a case before the commission, they have been able to vote at the site.

President Chatillon asked if they wanted to do that on July 10<sup>th</sup>. After affirmation from several commissioners, he indicated that he would not have a problem with a site meeting for the hearing of July 24<sup>th</sup>.

**7. PUBLIC COMMENT:**

There was no public comment.

**8. ADJOURNMENT:**

The meeting was adjourned at 2:44 PM

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**Marvin Ruiz, Chief Building Inspector**  
Department of Building Inspection  
Secretary to the Access Appeals Commission