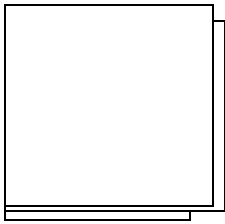


Access Appeals Commission Hearing: July 24, 2002



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

ACCESS APPEALS COMMISSION

MINUTES

Wednesday, July 24, 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 1:10 PM.

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

COMMISSION MEMBERS ABSENT: None

CITY REPRESENTATIVES: Mr. Marvin Ruiz, DBI, Secretary
Judy Boyajian, Deputy City Attorney
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 made a motion to accept the March 27, 2002 minutes. Vice-President Brown noted several changes to the June 26, 2002 minutes and made a motion to approve the minutes. Both minutes approved.

4. REVIEW OF COMMUNICATION ITEMS:

President Chatillon asked Mr. Ruiz if there was a status report on the Shoe Pavilion. Mr. Ruiz gave a status report based on a site inspection and permit research. The lift in not installed to date. All violations are still outstanding. The option remains to refer the case to the City Attorney's Office.

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Mr. Ruiz referenced receipt of a letter from the Charity Cultural Center dated July 3, 2002 withdrawing the appeal concerning 731 Commercial Street.

Mr. Ruiz made note of distribution of the latest code supplement dated June 25, 2002.

Commissioner Lim indicated that the Commercial street property was going through the process of being 'land marked' or the process of historical restoration.

Commissioner Baltimore asked if an appeal could be withdrawn without appearing before the commission. Ms. Boyajian indicated that once the appeal is withdrawn the Commission no longer has jurisdiction.

President Chattillon asked if there was any information on 1142 Van Ness Avenue or 516 O'Farrell Street.

Mr. Ruiz referenced the Outstanding Items attachment to the Agenda which discussed 516 O'Farrell Street and 1142 Van Ness Avenue.

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

Commissioner Stables requested that he allowed to recuse himself because his firm was the architectural firm for the building when it was first built. He was allowed to do that at a prior hearing of this case. **Commissioner Baltimore made a motion to grant the request. This motion was approved unanimously**

Mr. Ruiz presented the Summary of the Appeal.

Presentation by Mr. Allman.

President Chatillon asked if a site visit was necessary. Mr. Allman indicated it was up to the Commission.

Mr. Allman continued with his presentation on the history of the case and related issues.

Presentation by Art Evans, Owner of the Up & Away Café.

Commissioner Baltimore asked if the reason the door was left open is to try and generate more business? Is that the sole reason or is ventilation a reason?

Mr. Evans elaborated on the ventilation concerns. And indicated that the primary reason is a business/economic reason.

Commissioner Baltimore asked if there are signage solutions?

Mr. Evans said that they have done signage and are willing to do a lot more as one of their proposals and elaborated on signage solutions.

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Mr. Allman presented the discussion with Mr. Evans, the complainant, on the issues involved. They jointly prepared a settlement agreement, which would lead to the rescission of the Order of Abatement and enhance accessibility. He handed out a draft of that settlement agreement and made themselves available for questions.

Presentation by Edward Evans. Discussed the settlement agreement, the importance of the store in the community the concerns about the corner entrance, proposal to install a powered door at the Jones Street entrance. He would have no objections to the use of the corner door if a powered door opener were installed on Jones Street. His concern is if the store was ever sold that the powered door remain.

Mr. Allman indicated that with the powered door that the finding by the commission be that the corner door be considered an 'exit only' and not a primary entrance and that propping the door open occasionally does not change that status.

Presentation by David Baker. He lives across the street. The business is a focal point and it is comforting to have it there and his neighbors feel that way also. He emphasized the accessibility of the Jones Street entrance, the loss of money by the business, the value to the community, the potential loss to the neighborhood, and hope for a satisfactory resolution of the problem.

Vice –President Brown indicated that she had visited the site. The concerns she has with the agreement are; the powered doors should have been installed long ago, no people were observed going to the corner entry, the sidewalk curb cuts were a question she had.

Mr. Art Evans elaborated on the history of this issue and his belief that a powered door opener was never required. Mr. Ruiz confirmed that point.

Mr. Art Evans elaborated on his perspective of powered doors, Vice-President Browns comment about the non-use of the corner entry, the business impact of non-use of the corner door, and the fact that there has been only one complaint given that there are a lot of handicapped people in the Tenderloin.

Commissioner Lim indicated that she had worked for the Chinatown Development Corporation and that the steps were put in 'afterwards', that the corporation was sensitive to the code issues, and that they tried to get DPW to install a ramp and made the corner door accessible. DPW considered a ramp a sidewalk hazard. The only solution was to put in the two steps, and that the issue could not be resolved because the building had already been built. The monies were not available to remedy it any other way. An earlier solution by the AAC was to use the Jones Street entrance as a main entry and the corner as an 'exit only'. It was suggested but not part of the decision to install a powered door opener.

Vice-President Brown asked whether, when the building was built and the ice cream store was opened, if the door was opened all the time or used as an 'exit only'?

Mr. Art Evans indicated that it was used all the time and that it wasn't until the complaint that they knew they had an issue. He estimated approximately six months maybe less.

Vice-President Brown and Mr. Art Evans discussed the history of the economic impact of the

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'opened' corner door.

Commissioner Baltimore asked about increased signage to draw people in - not knowing the sign regulations in that area.

Mr. Allman address the signage options.

Vice-President Brown asked about the possibility of future complaints regarding the inaccessible corner door.

Mr. Allman said that he was asking for a decision that the current door meet the definition of an 'exit only' and that the only primary entrance is on Jones Street doorway. That finding by the Commission would be essential to making this effective for all parties.

Vice-President Brown asked if doing that would decreasing your daily sales and profits.

Mr. Allman asked to redirect that question to the City Attorney.

Ms. Boyajian responded (Note: Some portions of the response by Ms. Boyajian were not intelligible on the tape.) ...the finding by this Commissions is going to make it comply with the code.

Mr. Art Evans said that only very occasionally would the door be propped open because it will have no hardware on the outside.

Vice-President Brown addressed ventilation and circulation issues.

Ms. Boyajian noted prior discussion of the 'Dutch' door with the 'nailed shut' lower half and that that might be a way have the door and people could see activity but not walk in.

Mr. Allman said that is one of the solution proposed by that doesn't speak to the complainants concerns.

Ms. Boyajian said that putting a powered door on Jones would not solve the problem with the corner door.

Mr. Allman addressed the definition on primary entrance and the key words 'substantial flow' and does not see 'substantial flow' at the corner door.

Ms. Boyajian said that she believed that Mr. Evans said that the corner door was used all the time as an entrance.

Commissioner Baltimore asked why the department would want the bottom half nailed shut?

Mr. Ruiz said that the space is very small and that only one exit is required and that from the department's view it is would be a simple fix by filling in the door opening. The 'Dutch' door was an attempt to address the ventilation problem and have the space more attractive to passer bys.

Commissioner Baltimore agrees but is at a bit of a loss why the bottom half should be shut. It seems

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to her that a 'Dutch' door would help solve the problem. She has no problem with the 'Dutch' door and the powered door. Unless there is a code requirement that the bottom be nailed shut, she would be in favor of 'Dutch' door not having the bottom edge nailed.

Mr. Ruiz said it goes back to whether it is a primary entrance or door.

Commissioner Baltimore said she does not think the Commission has the ability to say that under the definition – this will never be judged a primary entrance.

Ms. Boyajian said they would have to say that if it is used in this way it would not be a primary entrance. They would have to spell out how it would qualify as an 'exit only'.

Commissioner Baltimore said that seemed like a reasonable compromise.

Mr. Ruiz said that the only code requirement is the essence of the complaint that this is a "primary entrance". He noted that this is an appeal of an Order of Abatement and that the decision must be modify, rescind, or uphold the Order. It is not a ratification issue. There has to be specific language addressing the Order of Abatement.

Commissioner Lim said that she has to agree with Commissioner Baltimore but she would like to see a 'Dutch' door without exterior hardware then it could not be used as a primary entrance.

President Chatillon asked Commissioner Lim if that included a powered door? She said yes.

Vice-President Brown said that she thinks the fixed bottom half would eliminate the need to ever open the bottom half. It will never be an entrance. Does the Fire Department say that it had to be unlocked on one side? What assurances does she have that in time the door doesn't become a primary entrance again. For everyone's peace of mind sealing the bottom half and having the top open for ventilation probably would enhance the corner.

Mr. Ruiz said there is no requirement for an exit there.

Mr. Allman suggested putting panic hardware on the door. There is great reticent to making the bottom half fixed. The City Attorney said the Commission can set special conditions for usage and that is the ongoing monitoring.

Ms. Boyajian said that the Department could monitor it but that the Commission could take there word they were going to comply and if they don't it's an option at that point.

Mr. Edward Evans agrees with Mr. Art Evans that there would only some times when the door would be propped open and that given the weather conditions in the neighborhood why the door would be propped open all the time. Once the powered door is in and maintained that there is no reason to object to having an access or exit at the corner from time to time. It would not be a primary source of entry given that there is no hardware. It would be exactly what it is – an 'exit only' door.

Vice-President Brown asked if Mr. Evans was the sole voice of this complaint and after all these years it is ok for the door to be opened.

Mr. Ed Evans said that he had no objection, when he first approached David, the manager; he had

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no objection at that point as long as there was a powered door access. Somehow that never got accomplished. The idea of the powered door has been around since the very beginning, though Terry Hogan had voiced it.

Commissioner Lim moved to approve the removal of the Order of Abatement with conditions. One, a powered door is installed on the main entry on Jones Street; the secondary door be an 'exit only' door; and that hardware on the outside stay removed, that the bottom half be provided with a panic bar so it can be opened in case of an emergency and better signage saying it is 'exit only' from both sides and signage indicating the main entrance is on Jones Street.

Commissioner Baltimore asked if it could be amended to include a more precise definition of the intended usage.

Vice-President Brown asked if it was intended to ask for a 'Dutch' Door?

Commissioner Lim indicated yes.

Vice-President Brown asked if there is a time limit for completing the work?

Mr. Ruiz said that the Order had a time limit and that he recommended that it be put in the decision.

The motion was restated by Ms. Boyajian. Overruling the Order of Abatement with conditions. Powered door opener on Jones, a 'Dutch' door at the Turk Street corner that is 'exit only', that there be no hardware on the outside, that there be a panic bar on the inside, that there be better signage showing that it was 'exit only' on the outside, 60 days to apply for the permit and another 30 to do the work for a total of 90 days to complete.

Vote on the motion by Commissioner Lim:

Vice-President Brown	No
Commissioner Baltimore	Aye
Commissioner Lim	Aye
Commissioner Stables	Recused
President Chattillon	Aye

The motion passed on a vote of 3-1.

Mr. Allman stated that they were glad they were at a point of resolution and that they would move very quickly to comply and asked if the abatement fees were waived.

Mr. Ruiz indicated that the Order of Abatement is overruled and that there are no abatement fees.

Mr. Allman asked whether the \$1200 fees paid earlier could be rebated.

Ms. Boyajian said that was not appropriate and that the fees were to compensate the Department for their efforts of enforcement. It could have been resolved at an earlier date.

6. COMMISSIONER AND STAFF COMMENTS AND QUESTIONS:

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Commissioner Baltimore said that in the packet it was requested to perform a site visit and that in the future they do their best to accommodate that.

President Chatillon said he would prefer a site visit and discussion ensued regarding site visit procedures with Commissioner Baltimore, Ms. Boyajian and Mr. Ruiz.

Commissioner Stables inquired about more training. He said they might want to get more information of the new building code changes effective November 1st as far as accessibility goes.

Mr. Ruiz indicated he would look into it.

Commissioner Baltimore asked about the status of Mr. Skaff.

Commissioner Stables indicated he would prefer the training from the Department. They would be the best source.

Mr. Ruiz agreed.

President Chatillon inquired about follow-up on decisions. Who does follow-up?

Mr. Ruiz said that was an excellent question. It comes down to complaint. The Department does not have an ongoing inspection program for routine inspection.

President Chatillon asked if that has been problematic in the past.

Vice-President Brown asked how long after someone complains before it is followed up by the Department?

Mr. Ruiz outlined the staff shortages, complaint investigation guidelines and current complaint investigation concerns.

Vice-President Brown indicated that it is 11 months for Howard Street and that they must put a time limit on decisions and that all motions must have 90 days. Can they do that?

Commissioner Baltimore emphasized the permit problems associated with time limits.

General discussion ensued on time limits associated with permits and complaints.

7. PUBLIC COMMENT:

There was no public comment.

8. ADJOURNMENT:

The meeting was adjourned at 2:52 PM

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