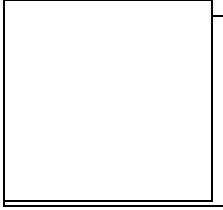


**MINUTES**

**Access Appeals Commission Hearing: July 26, 2000**



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

**ACCESS APPEALS COMMISSION**

**MINUTES**

**Wednesday, July 26, 2000**

**1:00 P.M.**

**City Hall**

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

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

President Stables called the regular meeting of the Access Appeals Commission to order at 1:11 p.m.

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

**COMMISSION MEMBERS ABSENT:** Seat vacant due to resignation  
Seat vacant due to resignation

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

The meeting was called to order by President Stables and roll call was taken. A quorum of three members was present.

**APPROVAL OF MINUTES:**

Commissioner Lim moved that the minutes for Wednesday, May 24, 2000 be approved. These minutes were approved without objection.

**PUBLIC COMMENT:**

There was none.

Public comment was closed.

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**REVIEW OF COMMUNICATION ITEMS:**

None were received

**REHEARINGS:**

**Item # 5a**

Appeal No. OA #99-16  
1675 California Street

Todd Jackson presented the department’s summary of the revised appeal and the result of the on-site inspection of July 31, 2000.

Mr. John Petersen indicated that he had met several times with the complainant and that the proposal had been redesigned to accommodate the concerns expressed.

Commissioner Baltimore expressed her appreciation and thanks to Mr. Petersen’s for working with the commission and the complainant and said she thought he had done a good job. She proposed that the AAC accept the situation worked out and granting the appeals with the exceptions proposed.

Mr. Jackson noted that the items discussed were fully code compliant except for the vertical clearance and the stairway rise. He requested that the commission limit their decision to those two items.

There was no public comment.

**A motion was made to grant the appeal provided that the appellant meet all of the criteria spelled out in the Secretary’s summary as revised on July 21, 2000, based on an unreasonable hardship granted on the basis of fiscal and physical constraints.**

**President Stables:                   Aye**  
**Vice-President Lim:               Aye**  
**Commissioner Baltimore:       Aye**

**The appeal is granted on a unanimous vote.**

**Item # 5b:**

Appeal # 00-03  
353 Sacramento Street

Todd Jackson presented the summary of the case to the commission noting the revised details based on the revised submittal.

Commissioner Baltimore requested clarification on the number of toilets required to be fully compliant.

Ms. Parker presented the conditions of the prior ruling that required every other floor (11 floors). Since that time, Otis Elevator Co., who is the manufacturer and does the testing and maintenance of the elevators, has determined that the travel time for traveling one or two floors is the same (30-40 sec trip). With that information the building ownership looked at proposed floors that would allow fully

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accessible restrooms without having to travel more than two floors. With that scenario they would be able to provide eight restrooms in the building that are fully compliant without traveling more than two floors. Signage would be provided to indicate where those restrooms are and all other restrooms would maintain the front transfer capability that they already have. All other features are fully compliant.

The proposal looked at the leases coming up and the tenant improvements that would be happening in the next few years. The next three floors would be upgraded in the next 3-4 years. Two floors in three years and one floor-four years. They have five restrooms fully compliant at this time so that over the next few years when tenants improvements happen, when they file for permits, having this approval would allow them to do tenant improvements on other floors of the building without having to do modifications to floors other than those they've specified. They have a chart provided in the pamphlet verifying that no one would have to travel more than two floors.

Commissioner Baltimore inquired why there was a time delay in finishing the restrooms.

Ms. Parker indicated that typically they have been making the modifications when there are tenant improvements. The tenants that are on those floors are not doing any construction at this time. Ideally, the work would be done as part of tenant improvement when either that tenant leaves or resigns their lease. That is how they have gotten the other five floors completed.

Commissioner Baltimore indicated that she could see accepting the proposal except for time delays. Her question on the time delays would be that they would grant a precedent for so much time but that the time would run out before finishing. It wouldn't work if five years was the maximum amount of time and that the appellant would be back before a new commission and it wouldn't afford the protection the appellant would be asking for.

President Stables asked if they couldn't have a different kind of precedent setting and basically with the exact schedule that they propose rather than the nebulous five years or maybe within four, something we just say, two within three and the third one within four years, then that covers them.

Commissioner Baltimore said she was not comfortable with that with the new commissioners making the decision for a new commission at the end of five years then they would be required to do the whole thing. She is comfortable with the eight restrooms but has a problem with the time schedule.

Ms. Parker asked for clarification if she was saying that to complete those eight they would have five years?

Commissioner Baltimore said that in the past the commission has allowed precedent setting for a maximum five years and that within the five years if there's any construction you would not have to come back before the commission. As you can see there is not a full board and she is saying, among other things, she is somewhat reluctant to go with the time schedule given the fact that it would be overlapping a board that is not even here and by the time you finish the last one it would have to come before a board anyway. It is just spreading it out longer than she is comfortable with.

Ms. Stompler clarified for the record that when we use term 'precedent setting' it serves as a special meaning in the context of this commission. In reality, the AAC hears appeals of specific building projects for which a building permit has been applied for and that in the context of that particular project and that budget, you might grant a hardship exemption. The term 'precedent setting', even if you were to come in next year with a ten million dollar remodel project, the decision you made today would no longer be binding as to that particular project. So what I think this commission has done is, as

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a courtesy to property owners and in the interest of allowing them to move forward in an efficient and predictable manner, has said that we will, as a matter of policy, be bound by an earlier decision unless circumstances change in an extraordinary fashion. So the five year number that we use has really been somewhat arbitrary. It is hard to predict what will happen five years out. She just wanted property owner to understand that precedent setting isn't truly/legally "precedent setting".

Commissioner Baltimore agreed, but the thing she mostly wanted to point out is that a building permit comes up year four, they are not protected as well as they would be if they did it.

Ms. Parker asked if they were to propose completing the restrooms in a three year time frame would that then alleviate those concerns?

Commissioner Baltimore indicated it would reduce them, not alleviate them.

Vice President Lim stated that she was more comfortable with three years and would like to see it done within three years.

Commissioner Baltimore said that they could get a complaint and she doesn't know if they're doing them a favor either, if they let them go out three years. They can get a complaint or they can come back before us. A totally new commission and they are not protected. She is not totally sure the commission wants to do that. A new commission could say 'we want every floor fully compliant'.

President Stables: But that is true if they build them tomorrow. If they build them tomorrow and they are fully compliant, next week, if they come in for another building permit and there is a new commission, they would have to go through the whole thing again.

Commissioner Baltimore says that is not her understanding. In the past if they built it and they get an exception for five years we have in the past always honored that. That's been the history.

President Stables said that goes against what she just said about... the new commission may not want to honor...

Commissioner Baltimore stated that they are granted an exemption for five years and for five years they would honor it. On the sixth year, then that is a different story. If she understands the City Attorney to say, they actually build them out, they are issued a permit and for five years they are ok because the built it, they've complied with the ruling.

Ms. Stompler said they would have to ask DBI how they acted in the past once the commission has said that for a period of five years we are not going to require you to do XYZ, what happens when three years later the property owner comes in with a permit application.

Mr. Jackson stated that the Department would not grant a hardship if it did not fully comply with the code, if it did not comply with a decision of this commission, the permit would be denied or the hardship would be denied at that point and it would not be a complaint unless it came from a private individual.

President Stables: But if there was this five year precedent setting thing, you would grant the URH.

Mr. Jackson: Correct, until they are in violation of this commission's decision, and I would read that as a five year, fairly open obligation to comply as they see fit within that window. But again, unless they are in violation of the code or this commission's decision, we would accept what they offer.

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Commissioner Baltimore asked whether DBI had difficulty tracking something that's out in the future, let's say two years to do xyz...

Mr. Jackson said that if they don't comply with the code then they need some sort of granting of approval from this commission. So again, if they don't comply with the code and they come in with a non complying condition they either need an AAC decision to allow that permit to move forward or at that point the department says you do not comply, this project cannot go forward as designed.

Commissioner Baltimore said that was not her question. Her question is that at the end of two years – nothing happens- they don't come in for another permit or at the end of three years –they don't come in for another permit. My understanding was that you do not have a tickler system which....

Inspector Jackson asked: what does your decision say- two years, three years or five years? If your decision says three years the department will continue to grant permits, as shown, until that three years window is met. At the end of three years, if they don't meet code the department will then say you do cannot approve this you need some sort of decision from the commission.

Commissioner Baltimore said that was not her question. Her question is this. You grant for five years - no permits are pulled for five years. Within three years they are supposed to put in the other two complying bathrooms. Do you have a tickler system so you can go back and check and make sure it was done in three years? My understanding is that was not ...

Inspector Jackson said we can certainly put a complaint on the computer but then again they either meet code or they need a decision from this commission. If you specify a three year window we allow the appellant to work within the three year window to satisfy the decision of this commission. If they don't meet code, then we don't, if they come with projects under the valuation, and it's outside the five year window they are entitled to proceed because they are allowed the 20% rule-there's no code violation. They come in with projects over the threshold, the department determines they need a fully accessible restroom, then they either need to provide that fully accessible restroom or they need to comply with a decision from this commission.

Commissioner Baltimore: My question was a little different. Is there a tickler system?

Inspector Jackson: We can put a complaint on the building. That's the only way to tickle it, if you will.

Commissioner Baltimore: and then they don't request anymore permits. Is there anything that would cause that to come to the attention of the department?

Inspector Torres-Gil: Not normally.

Ms. Parker said that she has worked with this particular building doing tenant improvements since 1989. She does not think year since 1989 that they have not submitted some kind of permit just because it is a high-rise office building and every ownership has always required tenants to get permits to do the work and so the likelihood of this ownership not submitting for permit in three years is almost an impossibility. They include in every application the copy of the letter stating your ruling as a means of determining that we comply because if I bring in a project right now with the restrooms only front transfer I'm going to be turned away for whatever project it is. So, I have to have that information every time we submit for permit and believe me it is worked out very carefully every time we submit.

Commissioner Baltimore said she is just trying to express her feeling and her feelings is that she is

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uncomfortable with the three years. She can accept the eight restrooms. She is uncomfortable with the three years, in that, it would be caught by the department.

Todd Jackson said that department would catch this project as easily as it would catch 601 California which was in here before, the commission gave them a two and three year window for compliance. Again, if the don't come in for permits there is no tickle for that either. So, in a sense this project is very similar to a previous decision by this commission and they are offering quite a bit more accessibility.

Commissioner Baltimore said they showed proof that they had to come in because their leases were up.

President Stables said it sounds like the department is recommending approval.

Commissioner Baltimore said she cannot do it without leases or something showing that this is coming up. I don't feel comfortable voting for this.

Ms. Parker said she can easily provide that information and if we need to do a continuation to provide that information we can do that. The building ownership has the information and this is really what this is based on – a proposal knowing that those leases will be coming up for renewal or termination of that tenant in the building.

Commissioner Baltimore said she had asked for this before from the other one and that Ms. Parker was here.

Ms. Parker said that she was not aware that it was such a specific condition of it.

Vice President Lim asked if there was any other way that the information in regard to the lease can be given to the department.

Inspector Jackson said that we can place a complaint on the computer system. Complaints are routinely checked as Ms. Parker indicated when come into the counter. We can put a date in that complaint that they either need 'x' number of floors and we can specify the floor numbers. If they don't have full compliance on that floor by that date, at that point the department would have a complaint recognition on the computer we could then at that point deny permits and the commission could make a complaint a part of the conditions.

Vic-President Lim said that what Commissioner Baltimore was asking for was proof that there will be leases coming up within that time frame and that is just information that needs to be given. I think that if you could specify that that information be given as part of the compliance and given as part of the ( ) mechanism then you could go ahead and do it rather than wait or string in out some more.

Commissioner Baltimore asked when the next meeting would be held.

Ms. Parker said they she would certainly appreciate that opportunity. This has been delayed by the fact the commission has not had two meetings. So if there is any sort of legal means of adding that information after the fact and that the ruling is contingent on that, the building owner would certainly appreciate that because the ruling is holding up some tenant improvement work.

Commissioner Baltimore said that she doesn't know why all the meetings were canceled but she is fully agreeable and just going ahead within ( ) and making sure. If they can say they are going to have a meeting in two weeks and then just take care of it.

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**President Stables made a motion to continue the case until the next meeting**

**There was no public comment regarding this motion.**

**President Stables: Aye**

**Vice-President Lim: Aye**

**Commissioner Baltimore: Aye**

**6. COMMISSIONERS' AND STAFF QUESTIONS AND COMMENTS:**

Commissioner Lim stated that she went before the BIC where there was a calendar item speaking to appointments for various committees and commissions under their jurisdiction. At that point the president said that hopefully within six weeks they will have people appointed to fill vacancies that are within the various commissions and committees. Both Mr. Walter Park and I went up and spoke to the effect that we are severely hamstrung in not having a fully commission membership working and that we have had a number of cancellations possibly due to the fact that we didn't have a full commission. That it was not fair to either the plaintiff or the people who are coming before us asking for the hardship grants. They said that they will try and they both emphasized the fact that we know there are applicants that there are people waiting to be appointed. Even if you just appoint another one and search for another. If you are not comfortable with giving us a full board, it would help. I have asked several people to write letters to the effect that they really feel that we need to have a full board. We will see what happens in six weeks. If they don't come back, we it we will go back and yell some more.

Inspector Torres-Gil indicated that he did query Ms. Aherne, Secretary to the BIC and she did confirm that the BIC did not reach a decision in this regard in terms of selecting individuals for this particular commission.

President Stables said as a result of the case we just heard, he would like to ask the department to look at its position on that exception for existing buildings regarding the toilets. When the code specifically said equivalent facilitation would provide for either lateral or front transfer toilet stall. I think the code need to consider literally in that regard and I think the city's interpretation is more stringent that the states interpretation of that same line, the same piece of code. I'm sure it benefits some people to have it interpreted that way, but I'm sure that it doesn't benefit other people. So I would like the have the department take a look at that.

Commissioner Baltimore: I do think the department is making the right decision in bringing cases before us. That is what we are supposed to be here for. We are not bound by the letter of the code, we are bound by the spirit. I think after one particular training session, both Commissioner Lim and myself found the differences in the transfers to be significant and I think that this is something we want to have the opportunity to address. In terms of fairness to people who need these kinds of transfers that this is something, I personally, and I think Commissioner Lim, hearing her comments that she had more trouble than I did, we definitely like to see continue to be brought before us.

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Inspector Torres-Gil suggested that the commissioners take a look at the Pending Issues. It will be a regular item though not necessarily a part of the agenda, if you have any suggestion or comments for future summaries.

Vice President Lim stated that she is very interested in what happens with Mervyns because I has been very disturbed whenever she goes in there. She has difficulty going through those aisles and she is not in a chair. She knows that a wheelchair cannot go through those aisles. She has seen the aisles get even narrower because of the way they put their merchandise.

President Stables expressed concern about going too far into the details of the case without hearing it or it being on the agenda.

Commissioner Baltimore mentioned that Commissioner Lim may not be on the commission when it is heard so that her comments may be taken as a public comment.

**7. PUBLIC COMMENT:**

There was no public comment.

There being no further business, the Access Appeals Commission adjourned at 1:54 p.m.

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