



ABATEMENT APPEALS BOARD
Wednesday, December 17, 2014 at 10:30 a.m.
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416
ADOPTED February 18, 2015

MINUTES

A. CALL TO ORDER and ROLL CALL.

The meeting of the Abatement Appeals Board for Wednesday, December 17, 2014 was called to order at 11:50 a.m. and a 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. REPRESENTATIVE PRESENT:

Edward Sweeney, Secretary to the Board
Rosemary Bosque, Chief Housing Inspector
John Hinchion, Senior Building Inspector
Teresita Sulit, Recording Secretary

Zachary Porianda, 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 October 15, 2014.

Commissioner McCray Jr., made a motion, seconded by President Clinch, to approve the minutes of October 15, 2014.

Commission Secretary Harris asked for public comment and there was none. The minutes were approved.

The motion carried unanimously.

D. CONTINUED APPEALS: Order of Abatement(s).

1. CASE NO. 6794: 819 Ellis Street

Owner of Record: Achilles Revoc. Trust 2003, Phillip Achilles Trustee, 819 Ellis Street, San Francisco, CA 94109

Agent for the Appellant: Armando Jimenez, 819 Ellis Street, 3rd Floor, San Francisco, CA 94109

Attorney for the Appellant: Susanne B. Kelly, M. Brett Gladstone, Hanson Bridgett LLP, 425 Market Street, 26th Floor, San Francisco, CA 94105

ACTION REQUESTED BY APPELLANT: Applicant is requesting that the Order of Abatement be held in further abeyance until they receive an approval from the Planning Department.

NOTICE OF DECISION: The Abatement Appeals Board (AAB) heard oral testimony and reviewed the documentary evidence provided by the Department of Building Inspection, the Appellant and other interested persons. After deliberation of the evidence submitted and the relief sought, the AAB made the following findings and decisions. As represented by the Department, based on its inspections on November 26, December 11, and December 17, Appellants have made a good faith effort to satisfy the conditions set forth by the AAB in its November 19, 2014 Decision, although they were untimely as to satisfying certain conditions. Accordingly, the AAB: (1) UPHOLDS the Order of Abatement; (2) HOLDS the Order of Abatement IN ABEYANCE until April 15, 2015 to allow Appellants to perform the work under the permits and to cure the violations; and (3) IMPOSES the Assessment of Costs once finalized by the Department. The conditions previously set forth in the November 19, 2014 Decision remain in effect, with the exception that item (6) is amended to allow elevator access. Appellants shall also work with the Department to facilitate continued inspections to ensure Appellants do not recommence residential use of the building.

Chief Housing Inspector Rosemary Bosque stated this case was before the AAB at the November 19, 2014 meeting in which the AAB indicated the Appellant needed to address eight items that were addressed in the Notice of Decision. The Department has conducted a sequence of re-inspections and reported on the status of each condition:

- (1) Appellant removed “hostel” sign at front of property. Residential occupancy from 2nd and 3rd floor has seized. There is no evidence of auto repair on 2nd or 3rd floors;
- (2) Possibly some auto repair on the 1st floor, may be a nature of the garage. Appellant can clarify;
- (3) Fire extinguishers, carbon monoxide alarms, smoke alarms were installed;
- (4) Appellant did not file permits within seven days, however, there was numerous meetings, discussions and feedback from the Department. The Appellant has been actively engaged in obtaining permits;

- (5) Inspections revealed that transient residential occupancy on the 2nd and 3rd floors has seized. However, the inspection also revealed beds were made and ready for future guests. The Department requested that the beds be disassembled. That morning's inspection revealed that mattresses were removed and the beds were being taken apart and stored;
- (6) Barricading parts of the building did not work because access was needed in those parts of the building due to the legal use and to maintain it. The Department does not feel this is longer necessary as the Appellant has a permit to remove the partition that was illegally installed, as long as the Appellant completes the permit. The partition was installed on the 2nd floor by the windows, a space the Appellant would like to turn into an office – something the Department does not oppose, as long as there is no residential use;
- (7) The Appellant can provide more information on this matter;
- (8) The district inspector has been working with the Appellant to complete inspections. The Department would like for inspections to take place by-monthly until all work is complete. This would help ensure that no residential use is introduced back into the property.

Chief Housing Inspector Bosque stated the Appellant has made good effort to complete all the conditions. The Department asked for the Appellant to continue to facilitate inspections to ensure that residential use will not be brought back. Staff recommendation was to uphold Assessment of Costs due to the extensive code enforcement that was done by the Department. As for the Order of Abatement, would like for Appellant to keep the momentum and complete the work under the new permit. Safety issues have been addressed by the Appellant, however, unsure how long it will take to complete work under permit.

Mr. Brett Gladstone, Hanson Bridgett Law Firm and Attorney for the Appellant, stated all residents have been removed and auto repair stopped last month. The property is being used for the Appellants taxi fleet – American Airporter, and there has been minor car repair for these vehicles in the basement. There is a City-issued permit for this that is renewed yearly. Appellant was not able to restrict elevator use because cars needed to be moved to the 2nd or 3rd floor from time to time. There was an office space on the 3rd floor and it appeared on the seismic work that was done at the property. However, DBI staff determined the walls on the plans for the office were not fully depicted. One of the two permits filed was to legalize the walls and the office. The Appellant will continue to pursue permits with the Planning Department for residential occupancy, probably a hostel type. Unsure what conditions of approval will be set and if those are feasible, it may trigger new egress and a lot of improvements therefore it may be withdrawn at a later time. If this plan does not happen, the Appellant will continue to use property as a garage and car repair or sell it to someone that may be able to get more profit. The Appellant would like to continue the case for a couple of months so that they may be able to build what they have proposed under the permit to legalize the work, new construction, remove work without permit and complete other minor work. The removal of the work without permit should not take long, however unsure if this will trigger additional work.

Members of the Abatement Appeals Board (Kevin Clinch, Frank Lee, Warren Mar, Angus McCarthy, Debra Walker and James McCray, Jr.) made comments, and asked various questions of DBI staff and the Appellant pertaining to the Appeal.

President Clinch called for public comment. There was none.

Commissioner Walker made a motion, seconded by President Clinch, to uphold the Order of Abatement and hold the Order in abeyance until the April 15, 2015 meeting and impose Assessment of Costs.

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 APPEAL: Order of Abatement(s).

1. CASE NO. 6795: 23 Wood Street

Owner of Record: Berger, Arkady, 5427 Geary Blvd., #2, San Francisco, CA 94121

Owner of Record: A. Berger and Nelly Merzheritsky, 3318 Divisadero Street, San Francisco, CA 94123

ACTION REQUESTED BY APPELLANT: To reverse the Order of Abatement and allow sufficient time to complete litigation relating to design defects and to re-design and repair defects.

NOTICE OF DECISION: The Abatement Appeals Board (AAB) heard oral testimony and reviewed the documentary evidence provided by the Department of Building Inspection, the Appellant and other interested persons. After deliberation of the evidence submitted and the relief sought, the AAB made the following findings and decisions. The violations are as stated in the Order of Abatement and Appellant has not presented a basis to support his request to withdraw the Order of Abatement. Accordingly, the AAB (1) UPHOLDS the Order of Abatement; (2) HOLDS the Order of Abatement IN ABEYANCE for two months of the December 17, 2014 hearing to allow the Appellant time to correct the violations and to document the conditions of the property for purposes of his litigation; and (3) IMPOSES the Assessment of Costs.

Senior Building Inspector John Hinchion presented the case and stated the violations were related to three expired permits for a partially complete two family dwelling. Two of the expired permits were renewed and finalized. These permits were to demolish and install a property line wall. The third permit was renewed but then expired. This permit was to add/erect a new fourth story dwelling unit. A Director's Hearing in June 2014 resulted in an Order of Abatement.

There were no active permits therefore staff recommendation was to uphold the Order of Abatement and impose Assessment of Costs.

Mr. Arkady Berger, Appellant, stated the contractor abandoned the project and there was a litigation. The trial has ended and the Court prevailed against the architect and engineer. The California State License Board revoked the contractor's license. However, they have appealed. Mr. Berger's attorney submitted letters to the Department and advised him to stop all work as it would be considered evidence. It is in Mr. Berger's interest that the project be completed and asks that the AAB please provide a continuance so that the Court case can be completed and he then proceed to complete the project. Mr. Berger does not feel the time frame given by the Department to correct the issues is sufficient time.

Members of the Abatement Appeals Board (Kevin Clinch, Frank Lee, Warren Mar, Angus McCarthy, Debra Walker and James McCray, Jr.) made comments, and asked various questions of DBI staff and the Appellant pertaining to the Appeal.

Rebuttal from the Department – Senior Building Inspector Hinchion stated the structure's siding was not completely installed and water goes into the property and it most likely has mold. Due to the expired permit, the property is a hazard; it has been vacant for the last 10 years and the building is deteriorating. Therefore staff recommends that the Order of Abatement be upheld and impose Assessment of Costs.

Rebuttal from Appellant – Mr. Berger stated the approved plans included a two car garage but that design does not fit the envelope of the property therefore new plans will be submitted for the Planning Department's approval. Due to this, it was not possible to comply with the timeframe established by the Department. Mr. Berger was trying to protect the building as much as possible and structurally the property is fine.

Members of the Abatement Appeals Board (Kevin Clinch, Frank Lee, Warren Mar, Angus McCarthy, Debra Walker and James McCray, Jr.) made comments, and asked various questions of DBI staff and the Appellant pertaining to the Appeal.

President Clinch called for public comment. There was none.

Commissioner Lee made a motion, seconded by Commissioner Walker, to uphold the Order of Abatement and hold the Order in abeyance for two months for the Appellant to correct the violation and impose Assessment of Costs.

Secretary Harris called for public comment and there was none. She proceeded with 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. 6796: 411 Minna Blvd.

Appellant and Owner of Record: Angelica Phillips Irrevoc Trust, Frank Passantino, Regina Passantino Irrevocable Trust, 411 Marina Blvd., San Francisco, CA 94123

Attorney for the Appellant: John Kevlin, Reuben, Junius & Rose LLP, One Bush Street, Suite 600, San Francisco, CA 94104

ACTION REQUESTED BY APPELLANT: Reverse Order of Abatement or grant a 10-year moratorium on the Order under Section 105A.2.8.3 of the San Francisco Building Code.

NOTICE OF DECISION: A duly noticed hearing before the Abatement Appeals Board (AAB) concerning the property located at 411 Marina Blvd. was scheduled for December 17, 2014. At the request of the Appellant's counsel, the matter is continued for the next AAB meeting.

Secretary Harris stated the case was requested to be continued, which the AAB granted.

E. GENERAL PUBLIC COMMENT

There was no General Public Comment for items not on the Abatement Appeals Board Agenda.

F. ADJOURNMENT

Commissioner Walker made a motion, seconded by Commissioner Lee, that the meeting be adjourned.

The motion carried unanimously.

The meeting was adjourned at 12:55 p.m.

Respectfully submitted,

Adriana Ortiz, Senior Clerk

Edited by: Sonya Harris, BIC Secretary