



**ACCESS APPEALS COMMISSION
MINUTES
Regular Meeting Wednesday, August 10, 2011**

1. CALL TO ORDER AND ROLL CALL

The meeting was called to order by President Ellsworth at 1:10 P.M.

COMMISSION MEMBERS PRESENT:

Mr. William Ellsworth, President
Mr. Ronald Vernali, Vice President
Mr. Walter Park
Ms. Alyce G. Brown
Mr. Arnie Lerner

CITY REPRESENTATIVES:

Mr. Tom Fessler, Secretary
Ms. Evelyn Karcs, Recording Secretary
Ms. Elaine Warren, Deputy City Attorney

2. REVIEW AND APPROVAL OF MINUTES:

The minutes for the July 13, 2011 meeting were approved unanimously, with amendments requested by Commissioner Brown.

3. REVIEW OF COMMUNICATIONS ITEMS:

Commissioner Brown noticed the motion adopted by the commission at the last meeting (appeal #11-04) did not have a time limit attached to it. She inquired if the decision did not have time limit, could it be considered precedent setting for three years or until the code changed. Elaine Warren stated if no time limit was placed on the decision, it would not be precedent setting. Future permits would have to come before the commission.

Secretary Fessler provided each commissioner a paper copy of the Access Appeals Information Guide in response to inquiries by commissioners at the previous meeting. He went on to say the guide was updated with current contact information and the electronic filing requirement. This guide is currently available on the Building Departments website and paper form.

The secretary emailed the Mayors Office on Disability requesting persons or groups which may be interested in commission meetings, be forwarded to the secretary. Commissioner Park suggested the secretary request their notice list.

4. NEW APPEAL

APPEAL #11-05

439 Cortland Avenue

This new appeal is requesting an unreasonable hardship, based on cost, be granted for the lack of a fully compliant front entry to an existing retail store. The appellant is proposing to provide an entry which meets all provisions of Administrative Bulletin 012, with the exception of item #3, as equivalent facilitation. Item #3 allows for a 6 foot ramp without handrails, because of an elevation change of 7 3/4 inches, the appellant proposes using an 8 foot ramp.

Marc Lindsell of 2M presented the appellants case. He stated various fully compliant ramp configurations were considered but each one required the use of considerable space within the 903 square foot space (approximately 10%) and effectively cutting the store in half. His client requested the use of AB012 with a modification to the 6' maximum requirement in order to limit the encroachment into the sales floor area.

The tenant, Nilaysh Shah, testified providing a fully compliant ramp would create a financial burden. He is presently in bankruptcy and the space lost to the ramp would cost him approximately \$5,000 a month in lost revenue. He requested the commission grant the appeal.

Commissioner Ellsworth inquired had the architect contacted the Department of Public Works (DPW) to see if the sidewalk could be altered. Marc Lindsell stated they had contacted DPW, requesting a minor sidewalk encroachment permit. DPW denied the permit because the sidewalk was newly installed. Commissioner Ellsworth was surprised by the denial and stated that alterations to sidewalks were commonly done for access proposes.

Commissioner Brown inquired had the applicant offered to pay for the sidewalk modification. Marc Lindsell responded that he discussed the modifying the sidewalk with DPW without mentioning fees or cost. Commissioner Ellsworth stated the cost for sidewalk modifications is born by the applicant. It was determined that the city would not pay for sidewalk modifications. A permit would be required from DPW with the appellant paying for the work.

Commissioner Lerner agreed this was commonly done and suggested the applicant contact DPW again. He felt the alteration to the sidewalk was achievable, creating an entry complaint with AB012. He also suggested the building was potentially historic, if so the historic building code could be used.

Commissioner Brown suggested the matter be put off until the appellant could receive the OK from DPW to adjust the sidewalk and associated costs determined. The commissioners agreed the best solution would be to alter the sidewalk creating the condition to provide a ramp fully compliant with AB012. They were concerned with the increased cost of this solution. The commission directed the secretary to contact DPW and express its opinion that sidewalks should and routinely are altered in order to provide accessible entries to persons with disabilities.

Commissioner Park made a motion to continue the appeal until the September 14, 2011 meeting. With all commissioners present, the motion passed unanimously.

5. DISCUSSION AND POSSIBLE ACTION ON ADMINISTRATIVE MATTER

Commissioner Park inquired about the status of 111 Sutter Street. Secretary Fessler reported the owners of the building had not applied for a permit to alter the buildings entry. He stated the requirement to provide a complaint entry would not be triggered until a new permit application.

Secretary Fessler reminded the commissioners of the request by City Hall Media Services not to schedule a meeting for August 24, 2011. He honored the request and will not schedule a meeting for that date.

6. COMMISSIONER'S AND STAFF'S QUESTIONS AND COMMENTS:

7. PUBLIC COMMENT:

There was no public comment.

8. ADJOURNMENT:

Thomas Fessler, Building Inspector
Department of Building Inspection
Secretary to the Access Appeals Commission