



DEPARTMENT OF BUILDING INSPECTION

**City & County of San Francisco
1660 Mission Street, San Francisco, California 94103-2414**

ACCESS APPEALS COMMISSION

**MINUTES
Regular Meeting
Wednesday, July 27, 2005
Room 416, City Hall**

1. CALL TO ORDER AND ROLL CALL

President Lim called the meeting of the Access Appeals Commission to order at 1:30 P.M.

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

COMMISSION MEMBERS ABSENT: None

CITY REPRESENTATIVES: Ms. Judy Boyajian, Deputy City Attorney
Mr. Rafael Torres-Gil, Secretary
Ms. Doris M. Levine, Reporter
Ms. Susan Pangilinan

2. PUBLIC COMMENT:

None

3. APPROVAL OF MINUTES

The minutes of July 13th were approved.

4. REVIEW OF COMMUNICATION ITEMS

Mr. Torres-Gil made note of the communication from Matthew Kumin dated July 25, 2005, messengered and faxed to the commissioners regarding item #5 of the agenda. Also, he made note of the reappointment of current commissioners and appointment of two new commissioners at the August 1st BIC meeting.

5. CONTINUED APPEAL: Appeal # 05-02

Vice-President Chatillon and Mr. Kumin made note of a correction of a statement in the July 25th letter regarding a commissioner in a wheelchair.

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Presentation by Mark Rennie, Attorney for IC Entertainment LLC

Commissioner Brown asked why the letter and plans were not received until yesterday. She feels it is unfair.

Mr. Kumin explained the timeline associated with preparing the information requested by the commission.

Commissioner Brown explained that it might be to everyone's advantage to take the information home to review.

Commissioner Baltimore referenced a quote from Barbara Barrett, which she considers significant, and feels the same way as Commissioner Brown. She feels a little more investigation on her part is warranted.

Commissioner Brown expressed further concerns regarding the new information and indicated it would be unfair to them for her to make a decision now.

Commissioner Baltimore noted the reference to the noncompliance of the chairlift with ADA guidelines and the inability to acquire DBI, OSHA and state approvals. She inquired of the City Attorney about following through on the appeal.

Ms. Boyajian indicated that she did not understand the reference 'they do not manufacture lifts with only chairs' and is not familiar with the OSHA or State approvals.

President Lim also noted her confusion regarding the plans, alternatives and what is really being suggested.

Mr. Kumin and the commissioners discussed lift, chairlift and ramp options and fire department discussion and concerns. The option being presented to the commission at this time is the installation of lightweight aluminum ramps.

Commissioner Brown inquired of the installation of a 'slide' in the lobby of "Slides" - next to the stairs. That was the space suggested for use by an elevator.

Mr. Kumin said that would require the use of a chair lift in front to get up the stairs. No legal access could be provided. It would make more sense to provide access to the main building lobby, which has an elevator that will be upgraded.

Mr. Kumin and Commissioner Brown continued with the discussion of the ramp option into 'Slides' and the main building lobby and the implications of that installation, on the building and access.

Mr. Torres-Gil made note of Fire Department, Public Works, and access regulations, and the implications associated with the installation of portable ramps or lifts in the required exit widths and the public right of way. The Fire Department and Department of Public Works may trump the decision of the AAC on these issues.

Commissioner Brown inquired whether there would be viable solution for the other (building lobby) side as well.

Mr. Torres-Gil said yes and that his preliminary discussions with Mario Ballard of the Fire Department and Rich Wilkins, Commercial Plan Checker, identify the three opening on the building as critical to the historical exiting system of the building. They are concerned. He could not say what their final decision would be but that they would be viewing any obstructions in the exits with a critical eye.

Commissioner Baltimore indicated that the AAC can grant exception to the ramp slope and that in the past Public Works has testified on issues of encroachment. The attorney's letter regarding non-compliance with ADA guidelines baffles her. She agrees with Commissioner Brown regarding the date of receipt of the letter. She needs clarification on several issues including the temporary ramp.

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Commissioner Brown said they need to find out from the Fire Department and Public Works if they are legal or not. The letter has misinformation, is confusing and does not clarify the situation. She needs more time to review the information. The commission is not here to stop business in San Francisco but to make sure that everyone can enjoy the business. How is it possible for the means of egress to not be accessible at the office entry when Ruby Sky did their alteration?

Mr. Torres-Gil differentiated between the path of travel and the means of egress and exit path. Ruby Sky has an accessible path of travel and the exit path does not need to be accessible.

Mr. Rennie said that he thinks the commission has to go back to the primary issue. Several persons in the building department have reviewed the building and a UHR has been granted. The unreasonable hardship is based on cost. There are documents from the architect and comments from the fire department that the ramp will block a legal fire exit. In an earthquake or power failure, if the lift was in use, it would block half of the fire exit. If two security persons used a temporary ramp they could remove it and not need electricity to do so. The architect did speak to the fire department and there would be a loss of the 48-inch path of travel width when you have the two lifts. Mr. Rennie indicated that a continuance or delays in a decision would affect the outcome and with the departure of Vice-President Chatillon another new commissioner would have to be brought up to speed and there might be more delays.

Mr. Karpaty said that any further delays would put him in a horrible situation. He'll take responsibility for any delays in providing information to the commissioners. He feels the process is unfair and that he hasn't received due process.

Commissioner Baltimore explained the process of familiarizing new commissioners with the details of an appeal. Due process would be possible with five new commissioners at the next meeting.

Mr. Karpaty indicated that he has exceeded the costs required for accessibility and that the commission can approve any ramps. The situation is a financial nightmare and involves a lot of effort from his architects and contractors. If the fire department could approve the ramp or lifts he would be willing to do it. He outlined his past investments in providing access to other club venues.

Commissioner Baltimore and Mr. Karpaty discussed elevator issues.

Mr. Torres-Gil confirmed the discussions between the architect, fire department and plan checker and their concerns regarding exiting.

Vice-President Chatillon made a motion to grant the appellants request for ratification of the UHR.

Vote on the motion by Vice-President Chatillon:

Vice-President Chatillon	Yes
Commissioner Brown	No
Commissioner Baltimore	No
President Lim	Yes

The motion failed on a vote of 2-2.

Ms. Boyajian advised the commission that the building code says that the commission's decision binds only the building department and doesn't bind the fire department. The commission could approve the lift but if the fire department won't agree to it there is no fall-back. She was wondering if the commission could approve what they would like to approve and have a fall back if the fire department won't approve it. There is nothing the appellant can do if the fire department doesn't approve it – legally or physically. If the fire department won't approve a lift or ramp there really isn't a feasible way they can comply.

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Commissioner Baltimore said that the commission has reviewed lifts on other projects. The appellant has a person she's never heard before, who's not here, who's being quoted by the architect. Some of the information from the attorney has not been 100% accurate. She is uncomfortable with the information provided. She's not aware that the lifts they've approved before do not meet federal ADA guidelines and now she is curious about that and is going to find out whether the commission has been approving things that do not meet ADA guidelines. The appellant is relying on one particular lift from one particular company that she has never heard of before.

Ms. Boyajian noted the commission's options due to the failed motion. Either they had to make a motion to continue or a motion to deny, which may fail. There is no ratification. The hardship was granted with no equivalent facilitation. The appellant could go back and work something out with the building department and abandon the appeal.

Commissioner Baltimore asked if once the matter is before the commission the commission has jurisdiction and it can't be taken away.

Ms. Boyajian said that if no new motion is made to continue, the appellant could decide to work with the building department and the department would have jurisdiction again.

Mr. Torres-Gil outlined the timing for future meetings in August, the subject of the next two appeals, and the availability of the 2 new commissioners.

Commissioner Brown noted the limited level of access to Slides and the closed/special club it will be for non-handicapped people because there is no way of getting in and out, unless you're carried.

Mr. Karpaty noted the financial impact of a hearing delayed until August 20th.

Commissioner Brown said she understood business quite well and that she has been commiserating on the matter since the case came before her. **She made a motion to continue the matter until August 10th providing there are 5 commissioners and if not, to call a special meeting.**

Commissioner Baltimore said what she could approve, in response to the City Attorney, would be: 1st: a chair lift, and 2nd: a ramp. If that fails the appellants could return to the AAC.

Commissioner Brown said that it is too convoluted at this point. She would like a clear and definitive ratification. She wants the club to open and not have anyone who is disabled come in and say, 'I can't get in here' and then, call the City Attorney and file a valid lawsuit because there is no access. She does not like lawsuits and as a small business they would not need it either. As a businessperson she is thinking about the possibility of liability. Until everything is cleared up she cannot honestly ratify anything. She would like her motion to be in place.

Commissioner Baltimore asked that the motion be voted on.

Commissioner Brown restated her motion.

Vote on the motion by Commissioner Brown:

Vice-President Chatillon	Yes
Commissioner Brown	No
Commissioner Baltimore	Yes
President Lim	Yes

The motion passed on a vote of 3-1.

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Vice-President Chatillon said that it was his last hearing and that he has to tell the commission that he is flabbergasted that it is not being granted. He understands the money that is being spent, he understands that there are issues with the fire department, but the city attorney as pointed out where they come into the equation. The building inspectors have looked at the site and the numbers are there. Why they are not ratifying this he just does not understand. He has been involved in disability rights for 15 years and he has worked for the commission for a number of years and he just does not understand this. He is speechless about this and he wants this on the record.

Ms. Boyajian said they need the fire department because she does not think they will resolve this problem without explanation of their code issues. She is sorry they weren't here today.

Mr. Torres-Gil said they couldn't be. It was too short a notice. The alternative is to make a proposal to them in writing and ask for their affirmation or denial. He believes there are procedures for preliminary plan check consideration of issues.

Commissioner Baltimore said that in the past they have invited other departments to come and make a presentation. It serves as training and clarification of issues. She thinks that would be preferable and very effective. It could be resolved at the meeting and has worked very well in the past. She hopes the secretary would extend an invitation to the fire department to send a representative to go over the code.

Commissioner Brown asked if it was possible to get a letter from the fire department to ask if the ramp would be illegal, as far as they are concerned, send it to the secretary, and then have a special meeting based on that letter. If it is illegal or if the fire department will grant it, she is willing to have a special meeting before the 10th.

Commissioner Baltimore said that she was willing to grant the appeal today if they could do a chair lift or ramp. That is so they wouldn't have to come back. They would go to the fire department and the fire department would approve a chair lift or ramp at either of the two entrances. The appellants would provide that and if not approved, then they didn't have to. She is willing to do that today rather than continue it.

Ms. Boyajian outlined the vote options including rescinding Commissioner Brown's motion.

Vice-President Chatillon made a motion to rescind the vote on Commissioner Brown's motion.

All commissioners voted in favor of this motion.

Commissioner Baltimore made a motion to: grant them the right to proceed with their project provided they put in, in either of the two entrances, a chair lift or a ramp to provide access into the building. Actually, it would only apply to the office building - it was the proposal the contractor made. If the fire department denies that then they are free to go ahead without it. They would have to investigate the ramp and the chair lift. It would be based on physical restraints.

Commissioner Brown recommended that it be based on the comments on page 1 of 1, in the July 25th letter by Terra Nova Industries. It talks about a total cost of the aluminum ramp and chair lift of \$102,000. That would be one option.

Commissioner Baltimore said that she had made her motion and wanted to leave it a little broader so that they had the option of going and looking at chair lifts and finding a chair lift of the right size. It may not be this one. It may be another one. So she would like to leave her motion as is and does not accept the amendment.

Mr. Torres-Gil suggested that it be a documented disapproval from the fire department regarding the lift or the ramp. In other words, the specific request should involve a written denial.

Commissioner Baltimore accepted that amendment.

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Mr. Rennie indicated that he and his client were in favor of the motion and thought it was a great compromise. If the fire department turns down both the ramp and a chair lift then there will be ratification of the DBI recommendation?

Commissioner Baltimore said that is the motion but that it is not a ramp or a chair lift. It has to be (unfinished comment). She is saying that you have to look at chair lifts and it has to be in writing and the ramp has to be in writing and according to the amendment that Secretary Torres-Gil suggested, it has to be in writing referencing disapproval. It would have to be the width of the chair lift or the width of the ramp that they would have to be concerned about.

Mr. Torres-Gil further suggested that the part of the fire department decide whether it would constitute an obstruction by whatever standards they feel are appropriate.

Commissioner Baltimore said that she thinks that should be clear. If you need further clarification that it is the job of the secretary who she thinks understands the motion. She would like to call the motion.

Mr. Torres-Gil restated the motion: The commission ratifies the unreasonable hardship based on legal and physical constraints with the condition that a chair lift or ramp be installed unless disapproved by the fire department.

Commissioner Baltimore added that they specify in writing why they are disapproving it.

Vote on the motion by Commissioner Baltimore as restated by Commissioner Baltimore and Mr. Torres-Gil:

Vice-President Chatillon	Yes
Commissioner Baltimore	Yes
Commissioner Brown	Yes
President Lim	Yes

The motion passed on a vote of 4-0.

6. COMMISSIONERS AND STAFFS QUESTIONS AND COMMENTS:

Commissioner Baltimore suggested that when the commission get new commissioners, that they invite the fire department for a mini training session dealing with issues such as this so they are up to snuff should the issues come up again.

Mr. Torres-Gil presented a brief resume of the new commissioners. He will follow through on Commissioner Baltimore's suggestion to invite the fire department.

Ms. Boyajian said that she would be on vacation at the next meeting. She is flying out on the 10th and returning on the 17th. Let her know if we want her to see if there is another attorney who can attend the next meeting.

Mr. Torres-Gil noted that he did not foresee a meeting on the 10th. He foresees a hearing on the 24th of August.

Commissioner Brown asked if the ratification wouldn't take effect until they hear from the fire department.

Mr. Torres-Gil said that was correct and that the matter was conditional on that. This decision will be forwarded to the plan checker who will know that the ratification will be contingent on resolution of the matter with the fire department.

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Commissioner Baltimore asked that the secretary report on it when it is resolved. She made note of the three-commissioner rule.

Mr. Torres-Gil and the commissioners bid Vice-President Chatillon farewell.

7. PUBLIC COMMENT:

There was no public comment.

8. ADJOURNMENT:

The meeting adjourned at 3:06 PM.

Rafael Torres-Gil

Senior Building Inspector

Department of Building Inspection

Secretary to the Access Appeals Commission