

BOARD OF APPEALS

CITY & COUNTY OF SAN FRANCISCO

MEETING MINUTES – WEDNESDAY, SEPTEMBER 13, 2023

REGULAR MEETING (IN-PERSON AND REMOTE ACCESS VIA ZOOM)

5:00 P.M., CITY HALL, ROOM 416, ONE DR. CARLTON B. GOODLETT PLACE

PRESENT: President Rick Swig, Vice President Jose Lopez, Commissioner John Trasviña, Commissioner Alex Lemberg, and Commissioner J.R. Eppler.

Jen Huber, Deputy City Attorney, Office of the City Attorney (CAT); Rich Hillis, Planning Director, Planning Department (PD); Tina Tam, Deputy Zoning Administrator, PD; Matthew Greene, Acting Deputy Director, Inspection Services, Department of Building Inspection (DBI); Ryan Casey, Case Worker, Site Mitigation Program, Department of Public Health (DPH); Julie Rosenberg, Executive Director; Alec Longaway, Legal Assistant.

(1) PUBLIC COMMENT

At this time, members of the public may address the Board on items of interest to the public that are within the subject matter jurisdiction of the Board except agenda items. With respect to agenda items, your opportunity to address the Board will be afforded when the item is reached in the meeting with one exception. When the agenda item has already been reviewed in a public hearing at which members of the public were allowed to testify and the Board has closed the public hearing, your opportunity to address the Board must be exercised during the Public Comment portion of the calendar. Each member of the public may address the Board for up to three minutes. At the discretion of the Board President, public comment may be limited to two minutes. If it is demonstrated that comments by the public will exceed 15 minutes, the President may continue Public Comment to another time during the meeting.

SPEAKERS: Mike Nohr showed a video of flooding in his backyard. He blamed the flooding on construction of ADUs by the neighbors on both sides of his property. He stated that if the City wanted to provide 80,000 residential units, it should change the law so that it would not allow renters to hold landlords hostage. He also stated that renting out in-law units would generate income for property owners who would otherwise not be able to afford the property taxes.

Carl Macmurdo thanked the commissioners for their favorable rulings on the three appeals heard by the Board on November 16, 2022. These cases involved disabled, career taxi drivers who held Prop. K Taxi Medallions. He noted that subsequent to these cases, the City Attorney and Transportation Director arbitrarily ruled that the Board no longer had jurisdiction over taxicab permit appeals even though that right has been embedded in the City Charter since 1932. He stated that the SFMTA has begun an expansive wave of permit revocations including against those who had favorable rulings from the Board. He further stated that the taxi industry members hoped the Board would regain jurisdiction over taxi permit appeals.

Dirk Neyhart asked who would fight for taxi members whose permits were taken away. He noted that the SFMTA took away their appeal rights and asked why taxi drivers must pay thousands of dollars for an attorney to get the City to act properly.

George Horbal stated that he is a medallion holder and drove a cab in San Francisco for 43 years until he became disabled in 2016. He stated that the SFMTA is trying to take away his medallion despite the fact that he has been before them two times and in front of the Board of Appeals five times. He stated that the right to appeal to the Board of Appeals has been in the San Francisco Charter for over 90 years. He believes this action by the SFMTA to be a power grab by an unaccountable City agency.

Marcelo Fonseca stated that he has driven a cab for over thirty years and has been a medallion holder since 2009. He stated that he was calling to make the commissioners aware that the SFMTA was being vindictive by going after the same permit holders that the Board helped not long ago. He hoped that there would be a challenge of the City Attorney's opinion that the SFMTA has the power to terminate cabdrivers' right to appeal to the Board of Appeals. Mr. Fonseca further stated that the SFMTA is abusing its power and asked if the Board could do anything to regain jurisdiction over taxi permit appeals.

Marc Paulsen stated that he drove a cab in San Francisco for 42 years and is a medallion holder. He stated that he received a Notice of Nonrenewal of his medallion from the SFMTA, which was a surprise to him given the fact that the reasons cited by the SFMTA were the same as those presented in their argument when his case was before the Board of Appeals on March 2, 2022. He stated that if a third hearing takes place, it would be in a kangaroo-court setting. He implored the Board to investigate the legality of the actions by the SFMTA.

(2) COMMISSIONER COMMENTS & QUESTIONS

SPEAKERS: Commissioner Trasviña stated that the Equal Employment Opportunity Commission and the Department of Fair Employment and Housing have protections for retaliation for people who come before them. He asked if the Board had any retaliation provisions in its Rules or if there was anything in the City Charter which would give such protections.

President Swig referred Commissioner Trasviña's question to the City Attorney. [Deputy City Attorney Jen Huber stated that she was not aware of anything in the Charter or the Board Rules that would provide protection against retaliation]. President Swig wondered if the public would be protected by the Ethics Commission.

Commissioner Trasviña stated that, given the importance of all the issues that come before the Board, there should be a place for the public to go if they believed they were experiencing retaliation. He further stated that he wanted to explore this issue with the City Attorney for future consideration.

PUBLIC COMMENT: None.

(3) ADOPTION OF MINUTES

Discussion and possible adoption of the September 6, 2023 minutes.

ACTION: Upon motion by Commissioner Trasviña, the Board voted 5-0 to adopt the September 6, 2023, meeting minutes as amended by President Swig.

PUBLIC COMMENT: None.

(4) REHEARING REQUEST FOR APPEAL NO. 23-034

Subject property at 2550 Irving Street. Mid-Sunset Neighborhood Association, Inc. (MSNA) Appellant, is requesting a rehearing of Appeal No. 23-034, MSNA vs. DEPT. OF BUILDING INSPECTION, PLANNING DEPT. APPROVAL, decided August 16, 2023. At that time, upon motion by Vice President Lopez, the Board voted 2-2-1 (Commissioner Trasviña and Commissioner Lemberg dissented and President Swig absent) to deny the appeal and uphold the permit on the basis that it was properly issued. Lacking the three votes needed to pass the motion failed. Upon motion by Commissioner Trasviña, the Board voted 2-2-1 (Vice President Lopez and Commissioner Eppler dissented and President Swig absent) to continue this Item to September 6, 2023, so that President Swig could participate in the decision. Lacking the three votes needed to pass, the motion failed. No further motions were made by the commissioners, so the permit was upheld by operation of law. **Permit Holder:** Tenderloin Neighborhood Development Corporation. **Permit Description:** To erect 7-story, type I-B, 90 dwelling unit building with zero basements; to include residential support service office, property management office, bike parking, service space, and residential parking with puzzle lift and pit stacker system (100% affordable housing) Mayor Dir. 13-01. **Permit No.:** 2022/0505/3630.

ACTION: Upon motion by Commissioner Trasviña, the Board voted 2-3 (President Swig, Vice President Lopez, and Commissioner Eppler dissented) to grant the request for a rehearing on the basis that the matter is an extraordinary case and in order to prevent manifest injustice. Lacking the four votes needed to pass, the motion failed. Upon motion by Vice President Lopez, the Board voted 3-2 (Commissioner Trasviña and Commissioner Lemberg dissented) to deny the rehearing request on the basis that there was no new evidence presented since the prior hearing and insufficient evidence to establish manifest injustice.

SPEAKERS: President Swig disclosed that he previously had dealings with Farella, Braun & Martel, the law firm retained by the permit holder, but this would not affect his decision for the case before the Board. Enoch Wang, attorney for appellant; Donald Moore, agent for appellant; Lenny Siegel, agent for appellant; Shreya Shah, agent for permit holder; David Grunat, agent for permit holder; Rich Hillis, PD; Matthew Greene, DBI; Parag Shah, Department of Toxic Substances Control (DTSC); Hortensia Muniz-Ghazi, DTSC; Ryan Casey, DPH.

PUBLIC COMMENT: Joan Klau, Kathleen Kelley, Mike Nohr, Thomas Soper, Tomasita Medál, Renee Lazear, Joan Barquan, Adam Michels, Richard Chui, and John spoke in support of the appellant.

Jake Price (Housing Action Coalition), Robert Fruchtman, Rafa Sonnenfeld and Jessica Perla spoke in support of the permit holder.

ADJOURNMENT.

There being no further business, President Swig adjourned the meeting at 8:03 p.m.

The supporting documents for this meeting can be found at the following link:

<https://sf.gov/meeting/september-13-2023/board-appeals-hearing-september-13-2023>

A video of this meeting, can be found at the following link:

https://sanfrancisco.granicus.com/player/clip/44418?view_id=6&redirect=true&h=9fdeaca35a7db02fedf37db4fd3f2ffd