

# 1. Notice of Appeal - Appeal Form and Filing Information



## DEPARTMENT OF BUILDING INSPECTION

City & County of San Francisco

49 South Van Ness Avenue, San Francisco, California 94103-2414

# ACCESS APPEALS COMMISSION

## 1. Notice of Appeal

1. Site Address: 1839 Divisadero Street

2. Permit Application No.: 2023-0825-5288

3. Appellants Name: (print) Joe Harney       Owner  Tenant  Agent

The undersigned hereby appeals to the Access Appeals Commission a decision or action taken by the Department of Building Inspection in their enforcement of the California Code of Regulations, Title 24. *Note: An Unreasonable Hardship Request must be completed, reviewed, and signed by the plan reviewer or building inspector prior to submitting this appeal. Contact the Secretary to the Commission for additional details.*

4. Description of the specific accessible feature which will not be provided. Include the appropriate Code Section: (Provide attachments as necessary)  
Per Chapter 11B section 11B-206.4 of the 2022 California Building Code, an accessible route from the public right-of-way to the existing entrance of the tenant space will not be provided.

5. On a separate attached sheet state the following: a) The nature or use of the property including a brief description of the entire building, including the occupancy classifications of all other tenants; b) The specific code section which you are appealing; c) The specific code sections on which you base your appeal; d) The arguments supporting your appeal; e) Why you believe there is an unreasonable hardship to provide the access feature under appeal; f) What equivalent facilitation, if any, you propose to provide; and, g) Any additional reasons why the Commission should grant your appeal.

6. Contact Name: Joe Harney

7. Mailing Address: 5 Family Stones, LLC  
1707 El Nido #686,  
Diablo, CA 94528

8. Phone No.: (415)659-7118

9. Email: joe@rrea.co

10. Signature:

11. Date: 10/16/23

**IMPORTANT:** Review the information Guide (Notice of Appeals) for detailed requirements concerning the filing of this appeal. Submit the appeal package electronically [techq@sfgov.org](mailto:techq@sfgov.org): Access Appeals Commission; S. F. Department of Building Inspection; 49 South Van Ness Avenue Suite 500; San Francisco, CA 94103

Unreasonable Hardship Request #2

RE: BPA #2023-0825-5288

Applicant: Joe Harney, 5 Family Stones, LLC  
1707 El Nido #686  
Diablo, CA 94528  
T: (415)659-7118  
E: joe@rrea.co

Project Address: 1839 Divisadero Street  
San Francisco, CA 94115

Block/Lot: 1049/004

Building Occupancy: B, M, R-2

Zoning: NC-2 Neighborhood Commercial, Small Scale

Building Area: 10,872 S.F. (per SF Property Information Map)

Lot Area: 7,496 S.F. (per SF Property Information Map)

Business Name: Nest Maternity

Operating Hours: Weds-Sat: 10:30 AM – 4:30 PM

Dear Access Appeals Commission,

We are writing to you for an unreasonable hardship request at our property at 1839 Divisadero Street, 1049/004, in relation to building permit #2023-0825-5288.

The existing 2-story building contains 6 dwelling units on the second floor and 4 commercial tenant spaces on the ground floor. Built in 1900, the property recently underwent a Historic Resource Assessment in 2023 and was determined as A-Historic Resource Present by Historic Preservation. The subject space is located on the southeastern corner of the building, 1835 Divisadero Street. This existing ground floor tenant space is occupied by a small business, Nest Maternity, that specializes in in the sale of maternity essentials and infant necessities.

In accordance with Information Sheet No. DA-17 regarding the Accessible Business Entrance Program, the intent of this project is to provide as much accessibility to the ground floor tenant space as possible. In attempts to comply with section 11B-206.4, 1839 Divisadero Street posed multiple challenges. We applied for a Historic Resource Assessment with the Planning Department in January of 2023 and due to the property being categorized as A-Historic Resource Present by Historic Preservation, major alterations to the front entry would be heavily restricted by the Planning Department. The existing condition includes a 2" step up onto the exterior alcove and two additional 4" and 3" steps up into the tenant space. The existing entry alcove is shared with an adjacent tenant space, 1837 Divisadero, which we have applied for a building permit (BPA #2023-0825-5290). Regarding BPA #2023-0825-5290, we propose to regrade the existing sidewalk to align with the existing entry alcove to allow level landing accessibility to tenant space 1837 Divisadero. However, the subject tenant space of 1839 Divisadero's finish floor sits higher at roughly 7 inches from 1837 Divisadero posing additional work to provide level landings on both sides of the entry door.

In the included set of permit plans, on sheet A0.5B, an exhibit is provided showing a proposed plan and the amount of work required to make the entrance as compliant as possible. In relation to BPA #2023-0825-5290's proposal of the regraded sidewalk, the exhibit proposes in lowering the entry door

and a portion of the existing floor on the interior of the tenant space to be leveled on both sides and to provide a new interior accessible ramp with automatic door opening push buttons on both sides of the entry door.

On sheet A0.5A, we reached out to a structural engineer to assess this exhibit. In the provided letter on sheet A0.5A, the structural engineer concluded that *“From a structural standpoint, it appears that given the existing building conditions the entries at all locations will need to be substantially altered and the existing floor framing reconfigured to comply with the stated purpose. Due to the limited, confined space at each location, the entries will essentially be blocked during construction until substantial completion is completed and approved. This will likely deny entry to the tenant spaces during that time.*

*This work will have a significant impact on the tenant’s use of these spaces. Temporary displacement during construction as well as design and construction in our opinion will incur a prohibitive financial burden to the building owners.”* We fear that once construction begins, the tenant will have to shut down their business for no less than six (6) months which can potentially put them out of business.

We’ve requested a proposal from the engineer to prepare the structural drawings and calculations for the mentioned work as well as request for a construction estimate from a general contractor. We have included these proposals in the permit plans and can be found on sheet A0.5B. Per the provided proposals on sheet A0.5B, the estimated construction cost would be \$105,500.00. The structural proposal found on sheet A0.4B would cover both 1835 (please refer to Unreasonable Hardship Request #1) and 1839 Divisadero and cost \$9,350.00 for structural plans/calculations with an approximate \$3,000 hourly rate for administration during construction. Both quotes also do not account for the unknown conditions that can be discovered once demolition begins which will consequently increase the budget of construction.

In-lieu of providing a fully compliant entry, we propose to provide an automatic push button at the interior and exterior for the entry door for ambulatory access. In our consultation with the building department, Mr. Sebastian Bendezu, has advised that an acceptable equivalent facilitation would be an online presence for customers of Nest Maternity to be able to view and purchase items from their business. Customers can visit, <http://www.nest-maternity.com/index.html>, to purchase items and have them delivered if they are unable to visit their store.