

**BOARD OF APPEALS**

**CITY & COUNTY OF SAN FRANCISCO**

**DRAFT MEETING MINUTES – WEDNESDAY, DECEMBER 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 Alex Lemberg and Commissioner J.R. Eppler.

Jen Huber, Deputy City Attorney, Office of the City Attorney (CAT); Corey Teague, Zoning Administrator, Planning Department (PD); Matthew Greene, Acting Deputy Director, Inspection Services, Department of Building Inspection (DBI); Julie Rosenberg, Executive Director; Alec Longaway, Legal Assistant.

ABSENT: Commissioner John Trasviña.

(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 and remote public participation may be limited to two minutes per person. If it is demonstrated that public comment and remote public participation will cumulatively exceed 15 minutes, the President may continue Public Comment and/or remote public participation to another time during the meeting.

SPEAKERS: Marc Bruno commented on the Board's processes. He stated that in the three hearings he recently attended at the Board, the City Attorney and the Board's Executive Director commented on policies without being asked by the commissioners. He referenced two occasions when the Board wanted to write a letter to DBI and both the City Attorney and Executive Director said that it was not necessary to do so.

**(2) COMMISSIONER COMMENTS & QUESTIONS**

Discussion and Possible Action. On September 27, 2023, the Board heard Appeal No. 23-036 @ 472-474-476 Union Street and 15 Nobles Alley. The Board voted 5-0 to grant the appeal and issue the permit on the condition it be revised to require that the three units in which work was to be performed have their unit addresses listed on the permit. The Board further recommended that DBI inspect the three units, and, with the consent of the property owner, DBI inspect the remainder of the building. On October 4, 2023, DBI reported back to the Board, via email, that the inspection of the property had been completed as requested by the Board. On November 1, 2023 and November 15, 2023, Mr. Bruno appeared before the Board during public comment and stated that DBI did not inspect the remainder of the building. Mr. Bruno also submitted written public comment on this issue. At the request of the Board, DBI submitted a written response, dated December 4, 2023, to Mr. Bruno's allegations. This letter was summarized by Matthew Greene, Deputy Director of Inspection Services, at the December 6, 2023, hearing. Mr. Bruno also spoke about this matter at the December 6, 2023 hearing. Commissioner Trasviña requested that this matter be put on the December 13, 2023 agenda so that the commissioners could engage in a discussion about the issues. Subsequent to the hearing on December 6, 2023, President Swig, through the Executive Director, asked DBI to inspect the property prior to December 13, 2023. The Commissioners will discuss these matters and may ask Mr. Bruno and DBI to address questions and provide an update on DBI's inspection.

SPEAKERS: President Swig, Commissioner Eppler, Vice President Lopez, Commissioner Lemberg and Deputy Director Greene.

Deputy Director Greene stated that DBI inspected the first three units which are listed on the plumbing permit but noted that the inspector was unable to access the other three units. He further gave a summary of the Notices of Violations (NOVs) at the property as well as a timeline for the enforcement process and the costs and penalties which could be imposed. He stated that he would ask the Chief Plumbing Inspector to try and inspect the three units not listed on the permit.

President Swig thanked Deputy Director Greene for following up on the Board's request and expressed hope that everything would be resolved to Mr. Bruno's satisfaction.

In closing, Commissioner Lemberg stated that the Board did not have any jurisdiction over this matter and was unable to take further action. They stated that they felt satisfied that Deputy Director Greene was representing the situation to the Department of Building Inspection.

PUBLIC COMMENT: Marc Bruno disagreed with Deputy Director Greene's statement that plumbing permits are ministerial. He stated that he believed DBI was not using all the tools it had available to fix this problem. He noted there were ongoing NOVs at the property and the landlord was not responding.

Maria Bugarin identified herself as Marc Bruno's girlfriend. She stated that she was present when Deputy Director Greene and Inspector Farrow went to his apartment and that they were both angry and yelling.

**(3) ADOPTION OF MINUTES**

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

ACTION: Upon motion by Vice President Lopez, the Board voted 4-0-1 (Commissioner Trasviña absent) to adopt the December 6, 2023, hearing minutes.

PUBLIC COMMENT: None.

**(4) REHEARING REQUEST FOR APPEAL NO. 23-044**

**Subject property at 223 Anderson Street.** Mary Jane Galviso, Appellant, is requesting a rehearing of Appeal No. 23-044, MARY JANE GALVISO vs. DEPT. OF BUILDING INSPECTION, PLANNING DEPT. APPROVAL, decided November 1, 2023. At that time, upon motion by Vice President Lopez, the Board voted 5-0 to deny the appeal and uphold the permit on the basis that it was properly issued. **Permit Holders:** David Coulombe and Elyzabeth Dehapiot. **Permit Description:** vertical addition to add new suite with bedroom, bath and closet; new connecting stair, new windows at rear, new window at existing front facade; resurface existing entry stair and replace guardrails; remove existing bathroom at existing primary suite and convert into a family room. **Permit No.:** 2022/1027/5336.

**ACTION:** Upon motion by Vice President Lopez, the Board voted 4-0-1 (Commissioner Trasviña absent) to deny the rehearing request on the basis that there is neither manifest injustice nor material facts to support a rehearing.

**SPEAKERS:** Mary Jane Galviso, requestor; David Coulombe, permit holder; Corey Teague, PD.

**PUBLIC COMMENT:** None.

**(5) APPEAL NO. 23-047**

TOM METZ, Appellant(s)  vs.  ZONING ADMINISTRATOR, Respondent	51 Prosper Street. Appealing the ISSUANCE on September 25, 2023, to Tom Metz, of a Reasonable Modification Decision (The proposal is to merge two dwelling units (Units 2 and 5) at the subject property by constructing an internal staircase connecting the units and removing the kitchen in Unit 5; the kitchen in Unit 5 would be converted to a bedroom; the Zoning Administrator allowed for the construction of an interior staircase connecting Units 2 & 5 but did not authorize the merger of the two units or the removal of the kitchen; the Reasonable Modification is valid only for the period that there is a qualifying disabled occupant). CASE NO. 2022-011807VAR. FOR HEARING TODAY.
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**ACTION:** Upon motion by Commissioner Lemberg, the Board voted 4-0-1 (Commissioner Trasviña absent) to continue this Item to January 10, 2024, so that the Zoning Administrator can work with the appellant on modifying the Reasonable Modification Decision to allow for the merger of the two units. The motion was made based on the Board's intent to grant the appeal and allow for the merger.

**SPEAKERS:** Tom Metz, appellant; David Brightman, agent for appellant; Corey Teague, PD, Matthew Greene, DBI.

**PUBLIC COMMENT:** Elizabeth Chur spoke in support of the appellant.

**(6) APPEAL NO. 23-049**

<p>MISHA PALECEK, Appellant(s)</p> <p>vs.</p> <p>ZONING ADMINISTRATOR, Respondent</p>	<p>566 Kansas Street.</p> <p>Appealing the ISSUANCE on September 26, 2023, to Misha Palecek, of a Variance Decision (Denial of a Rear Yard Variance) (The proposal is to legalize the 3<sup>rd</sup> floor solarium conversion within the buildable area of the lot as an expansion of the master bedroom suite, legalize the use of a 3<sup>rd</sup> floor unoccupied roof area as a deck with 5-foot side setbacks, and relocate and extend the spiral stairs located in the rear yard to access the proposed 3<sup>rd</sup> floor deck. The Planning Code requires the subject property to maintain a rear yard depth of approximately 45 feet. The existing noncomplying building has a rear yard that measures only 31 feet 8 inches. The proposed rear spiral stairs will encroach approximately 6 additional feet into the required rear yard. The Zoning Administrator determined that the project does not meet any of the five findings required by Planning Code Section 305(c) and denied the variance).</p> <p>CASE NO. 2021-005284VAR. FOR HEARING TODAY.</p>
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**ACTION:** Upon motion by Commissioner Eppler, the Board voted 4-0-1 (Commissioner Trasviña absent) to grant the appeal and issue the Variance Decision on the condition it be revised to allow for the roof area to be used as a deck; the Board overturned: (1) the conditions which prohibited a deck in the roof area which were imposed by Appeal Nos. 87-180 and 93-200 and, (2) the Notice of Special Restrictions associated with Appeal No. 93-200; the Board upheld the Variance Decision with respect to the denial of the variance for the spiral staircase in the rear yard. This motion was made on the basis that: (1) with respect to the roof area, the conditions and rationale for the prior conditions and NSR have changed, and (2) with respect to the spiral staircase, the applicant did not meet any of the five findings required by Planning Code Section 305(c).

**SPEAKERS:** Tom Tunny, attorney for appellant; Corey Teague, PD; Matthew Greene, DBI.

**PUBLIC COMMENT:** Mark Anderson and Ryan Pfeffer spoke in support of the department.

**(7) APPEAL NO. 23-042**

<p>ELENA ASTURIAS and EDUARDO PANIAGUA, Appellant(s)</p> <p>vs.</p> <p>PLANNING DEPARTMENT, Respondent</p>	<p>1228 Funston Avenue. Appealing the Cancellation on September 7, 2023, of a Building Permit (new dwelling unit on ground floor per RH-2 Zoning density; to comply with Complaint No. 2015-014724ENF; legalization of unpermitted interior remodeling and vertical addition at rear; restoration of front façade; see Permit Application No. 201402067948); the permit was canceled for: (1) failing to submit the requested or required revisions per the Planning Commission decision DRA-822 deadline, and (2) Other: same project under duplicate Permit No. 2019/0215/3076). PERMIT NO. 2021/01/13/2631. FOR HEARING TODAY. <b>Note: On October 25, 2023, upon motion by President Swig, the Board voted 4-0-1 (Commissioner Trasviña recused) to continue this Item to December 13, 2023, so that the record could be supplemented with: (1) Discretionary Review Action DRA- 822, and (2) a brief from the Planning Department which includes answers to the following questions: Does the Housing Accountability Act apply to this case? If so, is the Planning Commission's imposition of the conditions consistent with the Housing Accountability Act and why?</b></p>
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**ACTION:** Upon motion by Vice President Lopez, the Board voted 4-0-1 (Commissioner Trasviña absent) to grant the appeal and overturn the cancelation of the permit and reinstate review of the permit on the condition that it be revised to: (1) allow for the existing building envelope by removing Conditions 1 and 2 of DRA-822 Memo; (2) remove the laundry area and expand the second dwelling unit on the ground floor to include the former laundry room space. The Board further directed that the second dwelling unit on the ground floor be subject to rent control. The Board upheld Conditions 3 through 8 of DRA-822 Memo. This motion was made on the basis that the Notice of Cancellation of the permit was improperly issued. The permit holder stipulated that the second dwelling unit on the ground floor would be subject to rent control.

**SPEAKERS:** Elena Asturias, appellant; Ryan Patterson, attorney for appellant; Corey Teague, PD; Matthew Greene, DBI.

**PUBLIC COMMENT:** William Vlach, Norita Vlach, Jorge Zepeda, Francisco Herrera, Robert Fruchtmann, and Adam H. spoke in support of the appellants.

**ADJOURNMENT.**

There being no further business, President Swig adjourned the meeting at 11:54 p.m.

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

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

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

[https://sanfrancisco.granicus.com/player/clip/45071?view\\_id=6&redirect=true&h=db02de331cd085da2eb6d135dcf0cbaa](https://sanfrancisco.granicus.com/player/clip/45071?view_id=6&redirect=true&h=db02de331cd085da2eb6d135dcf0cbaa)

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