

*AAB Regular
Meeting of
March 20, 2024*

*Agenda Item
E2 & E3*

Appellant Statement

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Delivered Via E-mail ONLY

Abatement Appeals Board
Building Inspection Commission
49 South Van Ness, 5th floor
San Francisco, CA 94103

**Re: 1807 Broadway
Appeal Nos. 6915 & 6916
Complaint Nos. 202181476 & 202181768
Our File No: 12541.01**

Dear President Alexander-Tut and Commissioners:

Our office represents Daniel Wong and Janet Mak (the “**Owners**”), the owners of the property located at 1807 Broadway (the “**Property**”). Two Orders of Abatement (the “**Orders**”) were issued after a Director’s Hearing on November 3, 2021, regarding Complaints #202181476 and #202181768 and their respective Notices of Violation (the “**NOVs**”) for the Property. The Orders were posted at the Property on November 29, 2021, and the Owners promptly filed these appeals and paid the appeal fee on December 3, 2021, which were assigned Appeal No. 6915 and No. 6916, respectively (the “**Appeals**”). The Appeals are now scheduled for a hearing before the Abatement Appeals Board (the “**Board**”) on March 20, 2024, at 9:30 a.m. This letter serves as Owners’ written statement in support of the Appeals.

The Owners respectfully request that the Board reverse the Orders of Abatement on the basis that the Owners are actively complying with the NOVs and Orders, and that they are pursuing the permits and approvals necessary to abate the underlying issues. The NOVs concern topics that require extensive Planning Department review and Planning entitlements, which add additional

time to the permitting process, and the Owners have continuously worked with the Planning Department to secure the necessary approvals. Also, before the Owners engaged our office to assist them with this matter, they worked with another consultant who misled them about the actions being taken and the progress being made. When the Owners became aware of this, they fired the previous consultant and hired us to continue working toward a resolution of this matter; we respectfully ask the Board to take this into consideration as well.

I. Summary of the Complaints and NOV's

The two NOV's #202181476 and #202181768, issued August 27 and August 31, 2021, respectively, are for unpermitted horizontal additions in the rear yard, roof work and skylight infill, dry rot repair of dormer windows, an elevated walkway at east elevation, fire escape removal, and plumbing and electrical work, and the conversion from five (5) to four (4) units. The Owners filed Building Permit Application No. 2021.1101.1576 to abate these issues on November 1, 2021.

II. Planning Review & Policy Issues

The issues in the NOV's concern sensitive planning topics, which necessitated thorough Planning Department review and consideration of various policies, including the size, number, and arrangement of units, and the rear yard. For example, with respect to abating the change to four units, current state law and local policy prohibit any reduction in the number of units on a site; however, the site's current zoning only allows for up to three units. This means a permit for a reduction to four (4) units could not be approved, and a permit for five (5) units would exceed what is permitted by the zoning, and thus the Planning Department could only approve the re-establishment of a fifth unit if they have sufficient proof demonstrating its historic condition, size, and location. Additionally, the Planning Department must consider how the re-established fifth unit will impact the size of the other units, because a substantial reduction in another unit's size

would require another, separate entitlement. Also, with respect to the rear yard, there is a policy balance between the rear yard requirements and the removal of unauthorized residential space. The Planning Code provides that unpermitted residential area must be legalized if it is possible to do so safely, and Conditional Use approval is required to otherwise remove it; however, maintaining and/or altering the structure in the rear yard also requires a separate Variance approval.

All that is to say is that the review of this matter consists of a delicate negotiation between various competing—and often times conflicting—policies, at least one entitlement approval, and the participation and coordination between several Planning staff members. The Owners have engaged with this process, and we are in the final stages of a resolution with the Planning Department.

III. Planning Review History

The Planning Department opened its own enforcement case in this matter on November 10, 2021 (Planning Case No. 2021-008927ENF), and this helps illustrate the level of staff coordination required for this project. The Planning enforcement process is bifurcated between an enforcement planner who reviews violations, issues notices, and tracks progress on the enforcement, and a separate project planner who reviews the proposed plan in the same manner they would review any other project. Although this process has its merits, it can prolong the necessary review and approvals because the project planner will often not be assigned to the matter until the enforcement planner feels that they have thoroughly reviewed the violation and history.

For instance, between November 10, 2021, and April 21, 2022, the assigned enforcement planner made multiple site visits and requested additional historical documentation several times (information that is often not available in city records). Although two applications were submitted, it does not appear they were ever assigned to a project planner. Also, at this time, the Owners had employed another consultant, who we believe misled them on the progress of abatement. Even

then, it looks like the consultant continued to engage in discussions with the enforcement planner throughout 2022 to no avail.

When our office took on the matter in December 2022, the enforcement planner was still asking for modifications and documentation, and she had not allowed the project to pass on to a project planner. Between January and April 2023, our office undertook extensive historic permit research and had several conversations with the Planning Department regarding documentation and the proposed abatement plan. We then worked with the architect to prepare and submit a new Variance application between May and June 2023. Even then, the enforcement planner continued making information requests through July 2023 that prolonged assignment of a project planner.

After again modifying and resubmitting the plans on July 6 and July 21, 2023, we contacted a supervising planner to request a project planner assignment while we continued working with the enforcement planner. The supervising planner agreed on July 26, and the project was assigned in late August 2023. The project planner issued a plan check letter on September 22, 2023, and we began working on it immediately. During this time, we continued collaborating with staff and the Zoning Administrator to determine the best way to resolve the policy issues described above. After much discussion, the Zoning Administrator and our office agreed on a resolution in December 2023. After the holidays, the architect revised the plans between January and February 2024 to incorporate all of the feedback from the plan check letter and the subsequent conversations, and those plans have been submitted and are currently under review by the Planning Department.

IV. Timeline & Path to Abatement

After extensive coordination with the Planning Department, we have finalized a solution to legalize and abate the issues in the NOV's. Revised plans have been submitted. Pending their acceptance, the project will be scheduled for a Variance hearing before the Zoning Administrator,

likely within two to three months to allow for the required notice. Assuming approval of the Variance, there is a short appeal period, and then the Owners can revise their building permit application and have the permit issued. Thereafter, they can begin the work to bring the building into compliance. The difficult part of the process is over, and the project has a clear path forward.

V. Conclusion

As of today, the Owners have complied with the NOV's and Orders by filing for a building permit to abate the issues. The issuance of that building permit requires approval from the Planning Department, and as described above, the Owners have taken every available step to achieve this approval. The Planning review process can be long and arduous, and it would be fundamentally unfair to impose the Orders when the Owners have made ongoing good-faith efforts to remedy these NOV's, and finally have a defined Planning-approved path toward resolution.

For the above reasons, we respectfully request the Board to reverse the Orders and assessment of costs. Alternatively, we ask the Board to continue this matter and reassess it at a later date to allow the Owners the opportunity to finish acquiring their Planning approvals and have their building permits issued.

Thank you for your consideration. Please contact me if you have any questions.

Very truly yours,
REUBEN, JUNIUS & ROSE, LLP



Daniel J. Turner, Esq.